

NZX Regulation Decision
Synlait Milk Limited
Application for Various Waivers from the
NZSX Listing Rules

Background

1. Synlait Milk Limited (“**SML**”) is proposing to undertake an initial public offer (“**IPO**”) and list on the NZX Main Board, on or about 23 July 2013 (“**Listing Date**”).
2. SML’s majority shareholder, Bright Dairy and Food Co Limited (which holds its shares through a subsidiary, Bright Dairy Holding Limited) (“**Bright Dairy**”), has indicated that it will support the IPO only if following the IPO it is able to continue to consolidate SML into its group financial statements (that are prepared under China GAAP).
3. Bright Dairy currently holds 51% of the ordinary shares in SML. This shareholding will be diluted as a result of the IPO process. Bright Dairy’s exact shareholding following the IPO (the “**Initial Percentage**”) is currently unknown, however, it must be no less than 37% of SML’s ordinary shares in order for SML to List on the NZX Main Board.
4. The Initial Percentage on its own will not be sufficient for Bright Dairy to continue to consolidate SML into its group financial statements under Chinese GAAP. Bright Dairy has agreed with SML that for so long as Bright Dairy continues to hold between the Initial Percentage and 50% (inclusive) of the shares in SML, the following governance arrangements will apply to SML (the “**Governance Arrangements**”):
 - (a) the board of SML (“**Board**”) will comprise eight directors, made up of the following:
 - (i) Four directors appointed by Bright Dairy (“**Bright Dairy Directors**”):
 - (A) none of whom will be required to retire by rotation under NZSX Listing Rule (“**Rule**”) 3.3.11 or subject to removal by Ordinary Resolution;
 - (B) one of whom must be ordinarily resident in New Zealand and be a director of such standing, and with such commercial and governance experience in New Zealand as is appropriate for a director of a NZX listed company; and
 - (C) all of whom are required to have appropriate skills and experience to ensure that SML has a suitable mix of skills and experience on the Board;
 - (ii) Three directors who are not appointed by Bright Dairy and who must be Independent (as that term is defined in the Rules (the “**Independent Directors**”). At the time of SML’s IPO, there will be two Independent

Directors. SML is in the process of recruiting a third Independent Director, who will be appointed to the SML Board as soon as practicable, and in any event, within three months of the IPO;

- (iii) one Managing Director or one Board Appointed Director, who will be appointed by the Board. The Managing Director will be deemed to be interested in any matter relating to the appointment or removal of the Managing Director from office, any matter relating to the Managing Director's remuneration, and any matter relating to the appointment of a new Managing Director or Board Appointed Director. The Board Appointed Director is deemed to be interested in any matter relating to the appointment or removal of the Board Appointed Director and any matter relating to the appointment of a new Board Appointed Director or Managing Director.
 - (b) The chair of the Board, who must be one of the Independent Directors, will have a casting vote. The chair of the Audit Committee must also be an Independent Director.
 - (c) In relation to the appointment of alternate directors:
 - (i) no director shall have the power to appoint an alternate director and accordingly SML's constitution ("**Constitution**") provides that no director may appoint an alternate director, a deputy or an agent to act in his or her absence or unavailability;
 - (ii) given that three of the Bright Dairy Directors are likely to be resident outside of New Zealand, in the event any Bright Dairy Director is unable to attend a meeting of the Board, that director is permitted to appoint another Bright Dairy Director to exercise his or her voting rights at that meeting.
 - (d) A quorum in respect of a Board meeting must include at least 2 Independent Directors.
5. The Governance Arrangements would apply only for as long as Bright Dairy (or any subsidiary) continues to hold between the Initial Percentage and 50% (inclusive) of the shares in SML. Immediately upon Bright Dairy ceasing to hold between the Initial Percentage and 50% (inclusive) of the shares in SML:
- (a) Bright Dairy must procure the resignation or removal of a number of Bright Dairy Directors so that the proportion which the number of remaining Bright Dairy Directors bears to the total number of directors that will hold office immediately after such removal or resignation does not exceed the proportion of the total shares of SML held by Bright Dairy. Any Bright Dairy Director who remains in office must retire by rotation at the next annual meeting of SML, and will form part of the one-third of directors required to retire by rotation at that annual meeting, and any other directors who would have otherwise been required to retire by rotation at that annual meeting will retire by rotation at subsequent annual meeting(s) in accordance with the usual rotation requirements; and
 - (b) the Governance Arrangements set out in paragraph 4 above would cease to apply and the standard governance provisions of the Rules (reflected in the Constitution)

would then apply, including the normal appointment and rotation provisions of the Rules (with no shareholder having any right of appointment under Rule 3.3.8).

6. Bright Dairy has advised SML that the Governance Arrangements are necessary in order to allow Bright Dairy to consolidate SML into Bright Dairy's group financial statements for the purposes of Chinese GAAP.
7. SML has applied for a waiver from the governance requirements in Rules 3.1.1 (as this requires the Constitution to contain provisions consistent with or having the same effect as Rules 3.3.7 and 3.4.4), 3.3.1(a), 3.3.5, 3.3.8(a) and 3.3.11, to allow the Constitution and the composition of the Board to reflect the Governance Arrangements described above. The waivers sought will apply only for so long as Bright Dairy (or any subsidiary) continues to hold between the Initial Percentage and 50% (inclusive) of the shares in SML.
8. Prior to the IPO, Synlait Limited, who currently holds 49% of the shares in SML, will distribute its holding in SML to its shareholders (the "**SL Shareholders**") by way of an in specie distribution. SL Shareholders approved the winding up of Synlait Limited and distribution of the SML shares at a shareholders' meeting held on 31 May 2013. The SL Shareholders may then retain that direct holding in SML, or choose to sell some or all of those shares to a "sell down company". The "sell down company" will transfer those shares it receives to applicants under the IPO.
9. The SL Shareholders who retain SML shares will be subject to escrow arrangements contained in Schedule 2 of the Constitution, under which the SL Shareholders will be restricted from selling, transferring, or otherwise disposing of their SML shares until at least the first day after the date on which SML releases to NZX its preliminary announcement of its financial results for the 2014 financial year (the "**Restricted Period**"). The SL Shareholders will however be able to sell up to \$300,000 worth of shares (based on the IPO price) during the Restricted Period.
10. SML also seeks a waiver from Rule 11.1.1 and NZXR approval under Rule 11.1.5 in relation to the restrictions on transferring interests in shares as set out in Schedule 2 of the Constitution.

Application 1 – Waiver from Rule 3.3.8(a)

11. Rule 3.3.8(a) requires that the proportion of directors on a Listed Issuer's Board appointed by a shareholder does not exceed the proportion of votes attached to the securities held by that shareholder.
12. SML has applied for a waiver from Rule 3.3.8(a) to allow Bright Dairy to appoint four directors to the Board, even though that number of directors is in excess of the proportion of directors Bright Dairy would be entitled to appoint under Rule 3.3.8(a).
13. In support of its application, SML submits as follows:
 - (a) SML's majority shareholder, Bright Dairy, has indicated that it will support the IPO only if it is able to continue to consolidate SML into its group financial statements and in order to consolidate SML into Bright Dairy's group financial statements, Bright Dairy must be able to control SML's Board;

- (b) full and accurate disclosure of all material aspects of the Governance Arrangements and any waivers granted must be contained in the Offer Document, so shareholders participating in the IPO are essentially approving the non-standard governance terms by subscribing for shares under the offer;
- (c) full and accurate disclosure of the Governance Arrangements and the effect of any waivers granted will be contained in every annual report of SML relating to a period during which the waiver is relied on; and
- (d) SML will bear a "Non-Standard" designation to act as a notification to the market of SML's unique Governance Arrangements.

Application 1 – Rule 3.3.8(a)

14. Rule 3.3.8(a) provides as follows:

"The Constitution may give a Security holder the right to appoint Directors, so long as:

- (a) *the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the Issuer attaching to Securities held by the appointer..."*

Application 1 – Decision

- 15. Subject to the condition in paragraph 16 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.3.8(a) to allow the Constitution to confer a right on Bright Dairy to appoint four directors to the Board, even though that number of directors is in excess of the proportion of directors Bright Dairy would be entitled to appoint under Rule 3.3.8(a).
- 16. The waiver provided in paragraph 15 is subject to the following conditions (the "**Governance Conditions**"):
 - (a) that Bright Dairy holds no less than 37% of the shares in SML at the Listing Date;
 - (b) that the Governance Arrangements are contained in the Constitution and will cease to apply when Bright Dairy ceases to hold between the Initial Percentage and 50% (inclusive) of the shares in SML.
 - (c) that full and accurate disclosure of all material aspects of the Governance Arrangements (including Bright Dairy's ability to control the Board) and SML's reliance on this waiver is contained in the Offer Document and in every Annual Report for SML relating to a period during which this waiver is relied upon;
 - (d) that SML bear a Non-Standard designation to act as a notification to the market of SML's unique Governance Arrangements;
 - (e) that SML appoint an additional Independent Director as soon as practical in accordance with clause 6 of Schedule 1 of the Constitution, and in any event, within 3 months of its Listing Date;

- (f) that for so long as Bright Dairy holds between the Initial Percentage and 50% (inclusive) of the shares in SML, SML complies with the following provisions of its Constitution:
 - i. clause 25.7; and
 - ii. clauses 6 to 11 (inclusive) and 13 of Part A of Schedule 1.
- (g) that immediately upon Bright Dairy ceasing to hold the Initial Percentage of the shares in SML, SML complies with clause 1 of Part B of Schedule 1 of the Constitution.

Application 1 – Reasons

17. In coming to the decision to grant the waiver in paragraph 15 above, NZXR considered that:
- (a) full and accurate disclosure of the Governance Arrangements of SML and the effect of any waivers granted must be contained in the Offer Document, so shareholders participating in the IPO will be aware of the non-standard governance terms and will invest on the basis of the non-standard Governance Arrangements. NZXR has also had an opportunity to review and approve that Offer Document;
 - (b) disclosure of all material aspects of the Governance Arrangements and the effect of any waivers granted will be provided in every annual report of SML relating to a period during which the waiver is relied on;
 - (c) SML will bear a “Non-Standard” designation to act as a notification to the market of SML’s unique Governance Arrangements;
 - (d) current shareholders of SML will approve the Governance Arrangements by adopting the Constitution prior to the IPO;
 - (e) the Governance Arrangements are intended to balance the rights of minority shareholders and the rights of Bright Dairy to appoint directors to the SML Board;
 - (f) SML has submitted that Bright Dairy will not support the Listing of SML unless Bright Dairy is able to consolidate SML into its group financial statements under Chinese GAAP and the Governance Arrangements are necessary to enable Bright Dairy to do this; and
 - (g) A shareholder holding 37% or more of the ordinary shares in a widely held company would have significant influence over the issuer, including with respect to the appointment of directors, and the passing of ordinary and special resolutions.

Application 2 – Waiver from Rule 3.1.1(a) in relation to Rule 3.3.7

18. SML has applied for a waiver from Rule 3.1.1(a) to the extent that Rule 3.1.1(a) would require the Constitution to incorporate by reference provisions consistent with or having the same effect as Rule 3.3.7. Rule 3.3.7 allows directors to appoint an alternate director with the consent of the majority of the Board and provides that no director may be appointed to act as an alternate for another director.

19. SML wishes to include an express provision in its Constitution which states that “no director may appoint an alternate director, a deputy or an agent to act in the absence or unavailability of the director”, which would apply while Bright Dairy holds between the Initial Percentage and 50% (inclusive) of the shares in SML. A waiver from Rule 3.3.1(a) is necessary to allow SML to include provisions in its Constitution which remove the right of directors of SML to appoint another person to act as his or her alternate.
20. SML also wishes to include an express provision in its Constitution that allows a Bright Dairy Director who is unable to attend a meeting of the Board, to appoint another Bright Dairy Director to exercise his or her voting rights at that meeting. A waiver from Rule 3.3.1(a) is also required to allow SML to include this provision in its Constitution.
21. In support of its application for a waiver from Rule 3.1.1(a), in respect of the requirement to include provisions consistent with, or having the same effect as Rule 3.3.7 in its Constitution, SML submits that:
 - (a) SML considers that while the constitutional provision, as outlined in paragraphs 19 and 20, is inconsistent with Rule 3.3.7, it is of benefit to shareholders as it is the appointed or elected directors making up the Board who have the appropriate and requisite skills and expertise to govern SML and its affairs. The prohibition on appointing alternates will result in the directors consistently attending SML’s Board meetings, and attending to SML matters personally;
 - (b) While Bright Dairy holds between the Initial Percentage and 50% (inclusive) of the shares in SML, SML wishes to allow any Bright Dairy Director who is unable to attend a meeting of the Board to appoint another Bright Dairy Director to exercise his or her voting rights at that meeting. These arrangements acknowledge the position that three of the Bright Dairy Directors are likely to be based offshore and may logistically have difficulty in attending every Board meeting; and
 - (c) Such appointments will be permitted only on a case-by-case basis and must be notified to the chairman of the board (being one of the Independent Directors).

Application 2 – Rules 3.1.1(a) and 3.3.7

22. Rule 3.3.1(a) provides as follows:

"The Constitution of each Issuer shall:

- (a) *either incorporate by reference or contain provisions consistent with, and having the same effect as, the provisions listed in Appendix 6, as such provisions apply from time to time and as modified by any Ruling relevant to the Issuer; and.."*

23. Appendix 6 includes a reference to Rule 3.3.7.

24. Rule 3.3.7 provides that:

"No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of his or her co-Directors. That appointment may be revoked by a majority of his or her co-Directors or by the Director who appointed the alternate. A Director may not be appointed to act as alternate for another Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate."

Application 2 – Decision

25. Subject to paragraph 26 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.1.1(a) to the extent that Rule 3.1.1(a) would require the Constitution to incorporate by reference provisions consistent with or having the same effect as Rule 3.3.7.
26. The waiver provided in paragraph 25 is subject to the Governance Conditions outlined in paragraph 16.

Application 2 – Reasons

27. In granting the waiver described in paragraph 25, NZXR has considered the factors outlined in paragraph 17 and that:
 - (a) Removing the directors' ability to appoint an alternate director is appropriate in these circumstances given the unique Governance Arrangements;
 - (b) Given that it is likely three of the Bright Dairy Directors will be resident outside of New Zealand, it is appropriate that they are able to appoint another Bright Dairy Director to exercise their vote at a Board meeting they are unable to attend; and
 - (c) It is appropriate for Bright Dairy Directors to appoint another Bright Dairy Director to exercise his or her vote, as all Bright Dairy Directors represent the interests of Bright Dairy.

Application 3 – Waiver from Rule 3.1.1(a) in relation to Rule 3.4.4

28. SML has applied for a waiver from Rule 3.1.1(a) to the extent that Rule 3.1.1(a) would require SML's Constitution to incorporate by reference provisions consistent with or having the same effect as Rule 3.4.4. Rule 3.4.4 allows directors of Issuers who are registered under the Companies Act 1993 (the "Act") who are "interested" in a transaction to be counted in the Board quorum and vote on a resolution at hand, if an express provision of the Act requires the directors to sign a certificate.
29. Section 161 of the Act provides that Directors who vote in favour of authorising payment of remuneration must sign a certificate that the payment is fair to the company, and the grounds for that opinion. By virtue of Rule 3.4.4, the Managing Director would be permitted to vote on a Board resolution relating to his remuneration.
30. SML wishes to include a provision in its Constitution prohibiting the Managing Director from voting on any matter relating to the Managing Director's remuneration. Because Rule 3.4.4 must ordinarily be included in an Issuer's Constitution by virtue of Rule 3.1.1(a) (the effect of which would be to permit the Managing Director to vote on his remuneration), a waiver from these inclusion requirements is needed for the Constitution to include this provision.
31. In support of its application SML submits that:

- (a) Directors' remuneration is a matter in respect of which directors are required to sign a certificate under section 161 of the Companies Act 1993. Accordingly, a waiver is required as the provision in the Constitution which prohibits the Managing Director voting on such matters is inconsistent with Rule 3.4.4;
- (b) SML considers that the Managing Director is conflicted on the matters relating to his remuneration and therefore prohibiting him from voting more accurately reflects his position as conflicted on such matters; and
- (c) Prohibiting the Managing Director from voting on his own remuneration will prevent a situation arising whereby a director who has a vested interest in a transaction may authorise the entry into, or the implementation of, matters that could be detrimental to the interests of shareholders as a result of that interest.

Application 3 – Rules 3.1.1(a) and 3.4.4

- 32. Rule 3.1.1(a) is set out in paragraph 22.
- 33. Appendix 6, as referred to in Rule 3.3.1(a), includes a reference to Rule 3.4.4.
- 34. Rule 3.4.4 provides that:

"Notwithstanding Rule 3.4.3, a Director of an Issuer which is a company registered under the Companies Act 1993 may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of that Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Companies Act 1993."

Application 3 – Decision

- 35. Subject to paragraph 36 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.1.1(a) to the extent that Rule 3.1.1(a) would require the Constitution to incorporate by reference provisions consistent with or having the same effect as Rule 3.4.4.
- 36. The waiver provided in paragraph 31 is subject to the Governance Conditions outlined in paragraph 16.

Application 3 – Reasons

- 37. In granting the waiver described in paragraph 35, NZXR has considered:
 - (a) that restricting the Managing Director's ability to vote on his own remuneration is consistent with the overarching policy of Rule 3.4.3, which is to prevent situations arising whereby directors may vote on transactions in which they have a vested interest (which would be to the detriment of shareholders); and
 - (b) Rule 3.4.4 is permissive, and it is not inconsistent with the policy of Rule 3.4.3 to allow SML to impose a more restrictive provision than that contained in Rule 3.4.4.

Application 4 – Waiver from Rule 3.3.5

38. Rule 3.3.5 provides that there must not be any restriction on the persons who may be nominated as directors by security holders, nor any precondition to the nomination of a director other than compliance with the time limits set out in Rule 3.3.5.
39. SML has applied for a waiver from Rule 3.3.5 to allow a precondition to be imposed in respect of persons who may be nominated by SML's shareholders ("**Shareholders**") to fill the three non-Bright Dairy Director positions, that those candidates be "Independent" (as defined in the Rules).
40. In support of its application SML submits as follows:
 - (a) Bright Dairy will have the right to appoint four directors to the Board, and the Board will have a maximum of eight directors. The requirement that the balance of directors on the Board (other than the Managing Director and Board Appointed Director) be independent is required to meet the provisions of Rule 3.3.1(c), which require the SML board to include at least three Independent Directors; and
 - (b) The policy behind Rule 3.3.5 is to allow security holders to nominate shareholders for appointment is not detracted from by the imposition of this condition.

Application 4 – Rule 3.3.5

41. Rule 3.3.5 provides as follows:

"No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.3.5. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An Issuer shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the Issuer before the closing date for nominations shall be given by the Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Issuer shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director."

Application 4 – Decision

42. Subject to the condition in paragraph 43 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.3.5 to allow a precondition to be imposed in respect of persons who may be nominated by Shareholders to fill the three non-Bright Dairy Director positions, that those candidates be "Independent" (as defined in the Rules).
43. The waiver provided in paragraph 42 is subject to the Governance Conditions outlined in paragraph 16.

Application 4 – Reasons

44. In coming to the decision to grant the waiver in paragraph 42 above, NZXR considered the factors outlined in paragraph 17, and that:
- (a) The pre-condition is an additional protection for shareholders, and will ensure that additional directors with Disqualifying Relationships are not appointed to the Board to fill the non-Bright Dairy Director positions; and
 - (b) The pre-condition is required to ensure that SML will be able to comply with Governance Arrangements contained in its Constitution and the Governance Conditions.

Application 5 – Waiver from Rule 3.3.11 (Rotation of Independent Directors)

45. Rule 3.3.11 requires one third of an Issuer's directors to retire by rotation at each annual meeting. The Bright Dairy Directors, the Managing Director and the Board Appointed Director would be included in the number of directors upon which the calculation of the one third is based, but would be exempt from the requirement to rotate.
46. SML has applied for a waiver from Rule 3.3.11 so that the reference to 'Directors' in Rule 3.3.11 refers solely to the Independent Directors, with the effect that only one out of the three Independent Directors is required to retire by rotation at each annual meeting.
47. In support of its application SML submits as follows:
- (a) Given the proposed composition of the Board to include four Bright Dairy Directors and one Managing Director or Board Appointed Director who are not required to retire by rotation, the effect of Rule 3.3.11 is that the balance of the Board, being the three Independent Directors, would have to retire by rotation every year;
 - (b) This is an undesirable consequence of Rule 3.3.11. If all the Independent Directors on the Board had to retire and offer themselves for re-election every year, this has the potential to deter high quality directors from taking up such positions; and
 - (c) It further disadvantages shareholders other than Bright Dairy in respect of their representation on the Board, as they will expect and need some continuity from year to year to get the right mix of experience. Too high a turnover of Independent Directors will not serve the interests of the shareholders or SML and for that reason SML submits it is appropriate that the reference to directors in Rule 3.3.11 should be taken to refer to the Independent Directors with the effect that only one Independent Director shall be required to retire by rotation at each annual meeting of Synlait Milk.

Application 5 – Rules 3.3.11 and 3.3.12

48. Rule 3.3.11 provides as follows:

"Subject to Rule 3.3.12, at least one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected."

49. Rule 3.3.12 provides as follows:

"The following Directors shall be exempt from the obligation to retire pursuant to Rule 3.3.11:

- (a) Directors appointed pursuant to Rule 3.3.8; and*
- (b) Directors appointed by the Directors, who are offered for reelection pursuant to Rule 3.3.6; and*
- (c) one Executive Director (if the Constitution so provides).*

The Directors referred to in (a) and (c) shall be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.12 is based. The Directors referred to in (b) shall be excluded from that number."

Application 5 – Decision

- 50. Subject to the condition in paragraph 51 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.3.11, so that only one out of the three Independent Directors is required to retire by rotation at each annual meeting.
- 51. The waiver provided in paragraph 50 is subject to the Governance Conditions outlined in paragraph 16.

Application 5 – Reasons

- 52. In coming to the decision to grant the waiver in paragraph 50 above, NZXR considered the factors outlined in paragraph 17 above, and that:
 - (a) The Board composition requirements require a minimum of three Independent Directors to be appointed to the Board. As the Bright Dairy Directors will be exempt from the requirement to retire by rotation at SML's annual meeting, the application of Rules 3.3.11 and 3.3.12 would result in all of the three Independent Directors being required to retire by rotation each year; and
 - (b) NZXR accepts SML's submission that this is an undesirable consequence, and requiring all the Independent Directors to retire by rotation each year could lead to instability on the SML Board, and deter quality Independent Directors from joining the SML Board; and
 - (c) As only Bright Dairy has the power to appoint and remove the Bright Dairy Directors, it is not appropriate to include those directors in the number required to retire by rotation. This result is consistent with the policy of Rule 3.3.12(a).

Application 6 – Waiver from Rule 3.3.11 (Rotation of Bright Dairy directors)

- 53. Rule 3.3.11 provides that the directors to retire by rotation shall be those who have been longest in office since they were last elected or deemed elected.

54. SML has applied for a waiver from Rule 3.3.11 so that SML may require those Bright Dairy Directors remaining in office at the first annual meeting following the date on which Bright Dairy ceases to hold the Initial Percentage of the shares in Synlait Milk, to retire by rotation, notwithstanding that they may not have been the longest in office.
55. In support of its application SML submits as follows:
- (a) While it is likely such directors will be those longest in office (given they were previously not required to retire by rotation as a result of Rule 3.3.12(a)), in the event this is not the case SML wishes to be sure that it is the remaining Bright Dairy Directors who are required to retire under Rule 3.3.11 at the first annual meeting after Bright Dairy ceases to hold at least the Initial Percentage of the shares in SML; and
 - (b) SML considers that this is consistent with the policy behind the Rule, to ensure that shareholders regularly get a chance to vote on the appointment of directors making up the Board (other than those appointed pursuant to Rule 3.3.8). As the remaining Bright Dairy Director(s) will no longer be on the Board as a result of a continuing appointment by Bright Dairy, it is appropriate that they should be the directors required to retire under Rule 3.3.11 at the first annual meeting at which they no longer hold that position.

Application 6 – Rule 3.3.11

56. Rule 3.3.11 is set out in paragraph 48 above.

Application 6 – Decision

57. Subject to the condition in paragraph 58 and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver from Rule 3.3.11, so that SML may require those Bright Dairy Directors remaining in office at the first annual meeting following the date on which Bright Dairy ceases to hold the Initial Percentage of the shares in SML, to retire by rotation, notwithstanding that they may not have been the longest in office.
58. The waiver provided in paragraph 57 is subject to the conditions outlined in paragraph 16 above.

Application 6 – Reasons

59. In coming to the decision to grant the waiver in paragraph 57 above, NZXR considered the factors outlined in paragraph 17 above, and that:
- (a) Even though these non-standard rotation arrangements could result in one Independent Director remaining in office for one year longer than would otherwise be permitted under the Rules, NZXR considers that this consequence is outweighed by the importance of allowing shareholders to vote on the re-election of Bright Dairy Directors at an early opportunity after Bright Dairy ceases to hold the Initial Percentage of the shares in SML; and

- (b) Requiring a further Independent Director to also retire by rotation could lead to board instability, if almost all of the SML directors were up for re-election.

Application 7 – Waiver from Rule 11.1.1 and Approval under Rule 11.1.5

- 60. Rule 11.1.1 restricts an Issuer from imposing in its Constitution or otherwise, subject to the provisions of any legislation, and to Rules 11.1.4 and 11.1.5, any restriction on the right of a holder of a Quoted Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Quoted Securities.
- 61. Rule 11.1.5 provides that an Issuer may, with the prior approval of NZX, incorporate in its Constitution a provision restricting the issue, acquisition or transfer of Relevant Interests in Equity Securities.
- 62. SML has applied for a waiver from Rule 11.1.1 to allow SML's Constitution to contain restrictions on the right of SL Shareholders to transfer SML shares, as set out in Schedule 2 of the Constitution.
- 63. SML also seeks NZXR's approval of Schedule 2 of its Constitution, which imposes restrictions on the SL Shareholders that are wider than restrictions on transfer.
- 64. In support of its application SML submits that:
 - (a) The restrictions imposed in Schedule 2 of the Constitution are in connection with the distribution by Synlait Limited of the shares it holds in SML to its shareholders. These restrictions are designed to ensure that the market for SML shares following the IPO is not unduly impacted by SL Shareholders selling significant numbers of SML shares into the market;
 - (b) The SL Shareholders are entitled to sell SML shares into the IPO under the secondary offer at the final IPO price and it is only those shares that they do not sell under the secondary offer that are subject to restrictions. In addition, each SL Shareholder (other than Mitsui & Co Ltd, Mitsui & Co (Australia) Ltd and John Penno) is entitled to sell up to \$300,000 worth of SML shares (based on the final IPO price) during the Restricted Period;
 - (c) The transfer restrictions have been included in the Constitution to avoid the need for every SL Shareholder to enter into an escrow agreement with SML (there are more than 100 such shareholders);
 - (d) These transfer restrictions have also been disclosed to the SL Shareholders. The notice of meeting that was sent to SL Shareholders in relation to the shareholders' meeting that was held on 31 May 2013 to approve the winding up of Synlait Limited and distribution of the SML shares included details of the restrictions. Shareholders representing approximately 89% of the shares of Synlait Limited attended the meeting (either in person or by proxy) and voted unanimously to approve the winding up and distribution. The SL Shareholders are therefore fully aware of the restrictions

and, by implication, supportive of the restrictions in the overall context of the IPO;
and

- (e) The sale and purchase agreement that will be sent to SL Shareholders (along with the offer document in relation to the IPO) so they can agree to sell into the offer, will also refer to the escrow arrangements and direct them to the website where a copy of the Constitution can be reviewed. SL Shareholders will therefore have full information when they choose whether to sell into the offer or hold shares and be subject to the escrow (or a combination of both).

Application 7 – Rules 11.1.1 and 11.1.5

65. Rule 11.1.1 provides:

"Subject to the provisions of any legislation, and to Rules 11.1.4 and 11.1.5, no Issuer shall impose, in its Constitution or otherwise, any restriction on the right of a holder of a Quoted Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Quoted Securities."

66. Rule 11.1.5 provides:

"An Issuer may, with the prior approval of NZX, incorporate in its Constitution or Trust Deed a provision restricting the issue, acquisition or transfer of Relevant Interests in Equity Securities."

Application 7 - Decision

67. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants SML a waiver to allow its Constitution to contain the restrictions on transfer as set out in Schedule 2 of the Constitution, and hereby approves the restrictions imposed on the SL Shareholders contained in Schedule 2 of the Constitution for the purpose of Rule 11.1.5.

Application 7 - Reasons

68. In coming to the decision to grant SML the waiver in respect of Rule 11.1.1 and approve the restrictions in Schedule 2 of the Constitution under Rule 11.1.5, NZXR has considered that:

- (a) SML expects that approximately 41% of SML shares may be available to be traded during the Restricted Period.
- (b) SL Shareholders are aware that any shares they do not sell through the secondary offer will be subject to certain temporary transfer restrictions, which are a key feature of the restructuring of the Synlait group to be effected prior to the IPO;
- (c) SL Shareholders will have an opportunity to sell down their entire holding if they do not wish to be subject to the transfer restrictions;
- (d) SL Shareholders will be able to sell up to \$300,000 worth of Shares (based on the IPO price) during the Restricted Period. The majority of SL Shareholders are

expected to hold less than \$300,000 worth of Shares, so this restriction will have no practical effect on these SL Shareholders; and

- (e) It would be impractical to require SML to enter into a separate agreement with each of the SL Shareholders.

Confidentiality

69. SML has requested that this application and the decision of NZXR remain confidential until SML has registered the Offer Document with the Financial Markets Authority.

70. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants SML's request.

ENDS.