



# NZX Regulation Decision

Synlait Milk Limited (NS) (SML)

Application for waivers from NZX Listing Rules 5.1.1 and 5.2.1

15 November 2019



## Background

1. The information on which these decisions are based is set out in Appendix One to this decision. These waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendix Two.
3. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules.

## Waiver from Listing Rule 5.1.1

### Decision

4. 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 Listing Rule (**Rule**) 5.1.1 to the extent that SML would otherwise be required to obtain shareholder approval for SML Subsidiary to enter into the Variation.

### Reasons

5. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
  - a. the policy behind Rule 5.1.1 is to regulate those transactions which will significantly change the nature of an Issuer's business or which have a value that represents a majority of the equity that investors hold in the Issuer and, as a result, are deemed to be so significant to the Issuer, and therefore so likely to impact shareholders' interests, that shareholders should have an opportunity to consider the transaction and exercise their right to vote before the transaction can take effect. The granting of this waiver will not offend the policy behind Rule 5.1.1;
  - b. the Variation is entirely within the ordinary course of SML's business, rather than being a transaction that significantly changes the nature of the business. The Variation confirms the current commercial relationship between SML and ATM and provides certainty to that existing commercial relationship, rather than involving the immediate expenditure of large amounts of shareholder funds;
  - c. the Variation provides a framework for orders with binding contracts only arising when a member of the ATM group places or is deemed to place purchase orders. Therefore, there is limited accuracy in the estimation of the value of the Variation over the term of the Supply Agreement (as varied by the Variation);
  - d. the Variation has been negotiated on an arm's length commercial basis. SML has submitted that the Variation is within the competence and experience of the management and the directors of the SML group;
  - e. there is precedent for the decision, including the waiver granted by NZXR to SML in respect of SML's entry into of the Supply Agreement initially in 2016 and the variation to that agreement in 2018.



# Waiver from Listing Rule 5.2.1

## Decision

6. Subject to the conditions set out in paragraph 7 below, and on the basis that the information provided by SML is complete and accurate in all material respects, NZXR grants SML a waiver from Rule 5.2.1, to the extent that this Rule would otherwise require SML to obtain shareholder approval for SML Subsidiary to enter into the Variation.
7. The waiver in paragraph 7 above is provided on the conditions that:
  - a. The Directors of SML certify that:
    - i. the terms of the Variation have been entered into, and negotiated, on an arm's length commercial basis;
    - ii. SML was not unduly influenced to enter into the Variation by ATM; and
    - iii. entry into the Variation is in the best interests of all of SML's shareholders.
  - b. the waiver, its conditions and implications are disclosed in SML's next annual report.

## Reasons

8. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
  - a. the purpose of Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, material transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer's decision to enter into a transaction or agree to its terms. The granting of this waiver will not offend the policy behind Rule 5.2.1;
  - b. NZXR is satisfied that ATM will not receive favourable consideration due to the Related Party relationship, and that the Related Party relationship has not unduly influenced the decision to enter into, or the terms and conditions of, the Variation:
    - i. SML is already party to the Supply Agreement to which the Variation relates. SML submits that it would enter into the Variation with ATM for commercial reasons, irrespective of ATM's shareholding;
    - ii. The Supply Agreement to which the Variation relates contemplated further negotiation of the matters covered by the Variation; and
    - iii. entry into, and the terms of, the Variation have been negotiated on an arm's length commercial basis;
  - c. NZXR takes comfort that despite ATM's increased shareholding, there is no ATM influence at the Board level of SML;
  - d. the Variation is effectively a revision and extension of the Supply Agreement between the parties, and is within the scope of SML's ordinary course of business;
  - e. the condition at 7(a) above provides comfort that the Variation has been negotiated and entered into on an arm's length commercial basis, and is fair and reasonable to, and in the best interests of SML and its non-shareholders; and



f. there is precedent for the decision.

## Confidentiality

9. SML has requested this decision be kept confidential until an announcement of the Variation is released to the market.
10. In accordance with Rule 9.7.2, NZXR grants SML's request.



## Appendix One

1. Synlait Milk Limited (NS) (**SML**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. A wholly-owned subsidiary of SML (**SML Subsidiary**), has entered into a variation (the **Variation**) to an existing Nutritional Powders Manufacturing and Supply Agreement with a wholly-owned subsidiary (**ATM Subsidiary**) of The a2 Milk Company Limited (**ATM**) (the **Supply Agreement**).
3. ATM is a Listed Issuer with ordinary shares Quoted on the NZX Main Board. ATM has applied to NZXR for a waiver from Rule 5.1.1 in relation to the Variation.
4. The Variation is intended to confirm the current business relationship between SML and ATM and to change certain terms of the Supply Agreement. The Variation in itself does not increase the volume of business between SML and ATM from current levels.
5. The key terms of the Variation can be summarised as:
  - a. **Term:** The term of the Supply Agreement is effectively extended by two years such that it is terminable after July 2022 by either party giving at least three years' notice to the other party. From 1 August 2022 the Supply Agreement will continue on a rolling term until either party gives three years' notice of termination to the other party.
  - b. **Minimum Supply Volume:** SML Subsidiary continues to be contractually bound to supply, under purchase orders, up to a prescribed infant and pregnancy formula volume. The Variation increases the volume that was previously provided for in the Supply Agreement.
  - c. **Exclusivity:** SML Subsidiary's exclusive supply rights continue up to an increased specified infant formula product volume in respect of infant formula already supply by SML for sale by the ATM group in the markets of China, Australia and New Zealand.
  - d. **Sales Price and Discount:** The sales price for products continues to be not fixed in the contract and varies based on a variety of factors. However, the discount applicable to a portion of the price of product is increased in respect of product above a certain volume ordered between 1 August 2020 and 31 July 2022.
6. On the basis that the Supply Agreement could remain on foot for longer than the minimum term (approximately six years from the date of this waiver) and that the exact volume of products to be purchased over the term of the Supply Agreement is uncertain, there is potential for SML Subsidiary to sell product the value of which could be in excess of 50% of the Average Market Capitalisation of SML.
7. Approximately 17.4% of the shares of SML are held by The a2 Milk Company (New Zealand) Limited which is a wholly owned subsidiary of ATM. The a2 Milk Company (New Zealand) Limited is therefore a Related Party of SML as:
  - a. ATM Subsidiary and The a2 Milk Company (New Zealand) Limited are Associated Persons by virtue of being Related Bodies Corporate; and
  - b. The a2 Milk Company (New Zealand) Limited holds greater than 10% of SML shares currently on issue.



8. On the basis that Synlait Subsidiary and ATM Subsidiary are Related Parties and there is potential for AML Subsidiary to sell product the value of which could be in excess of 10% of the Average Market Capitalisation of SML, entry into the Variation constitutes entry into a Material Transaction with a Related Party.
9. SML has applied for a waiver from Rules 5.1.1 and 5.2.1 to enter into the Variation which may amount to a related series of transactions with a Related Party with a value of greater than 50% of SML's average market capitalisation. As at the date of this waiver, SML's market capitalisation is approximately \$1.69 billion.



## Appendix Two

### **Rule 5.1 Disposal or Acquisition of Assets**

5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above

### **Rule 5.2 Transactions with Related Parties**

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval

