



# NZX Regulation Decision

Synlait Milk Limited ("SML")

Application for waivers from NZX Listing Rules 4.5.1,  
4.5.1(e)(iii), 4.19.1 and 5.2.1

10 November 2020



## Background

1. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
2. Capitalised terms that are not defined in the decision have the meanings given to them in the NZX Listing Rules (**Rules**).
3. The Rules to which this decision relates are set out in Appendix Two to this decision.

## Waiver from NZX Listing Rule 4.5.1

### Decision

4. Subject to the conditions set out in paragraph 5 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 Rule 4.5.1, to the extent required to allow any Shares offered in the Share Purchase Plan and not taken up by existing holders under that offer to be issued to other persons without requiring approval by ordinary resolution in accordance with Rule 4.1.1 and Rule 4.2.1.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - a. the waiver only applies to such number of Shares that are:
    - i. offered to existing holders under the Share Purchase Plan; and
    - ii. issued to persons other than participants in the Share Purchase Plan, as a consequence of the Share Purchase Plan being undersubscribed; and
    - iii. when aggregated with the number of Shares issued under the Placement, would exceed the relevant "25%" threshold specified in Rules 4.5.1(a), (b) and (d) (as modified by the Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules issued by NZXR on 30 September 2020);
  - b. the Share Purchase Plan is fully underwritten;
  - c. the waiver, its conditions and its implications, are disclosed in the Offer Document; and
  - d. the waiver and its conditions and implications are disclosed in SML's annual report for the financial year ending 31 July 2021.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
  - a. the policy behind Rule 4.5.1 is to ensure that, unless shareholders approve otherwise, equity capital raisings should be conducted in a way to support participation by retail shareholders and seek to mitigate dilutionary effects;
  - b. NZXR is satisfied that the structure of the Placement and the Share Purchase Plan proposed by SML mitigates the potential dilutionary impact of the additional Placement capacity provided by this waiver;
  - c. the waiver is only required to allow the Share Purchase Plan to be underwritten, giving SML and its shareholders certainty regarding the quantum of funds to be raised under the Offer and giving Bright certainty regarding the funds to be subscribed for by it in order to ensure that its holding in SML is retained at its current level at all times during, and upon completion of, the Offer;
  - d. the waiver is only required due to SML's currently depressed share price which is or may be a result of the impact of COVID-19;
  - e. The waiver is consistent with the ability that issuers have under Rule 4.1.1(a) to place shares under an underwriting arrangement in the case of pro rata offers. It is consistent with that approach to allow a Share Purchase Plan undertaken in accordance with the Listing Rules to be able to be underwritten;
  - f. SML has submitted, and NZXR has no reason not to accept that there is a risk that, in the current market conditions, alternative offer structures would achieve a materially less favourable pricing outcome and therefore result in more dilution for non-participating shareholders than the Placement and Share Purchase Plan; and
  - g. there is precedent for this decision.

## Waiver from NZX Listing Rule 4.5.1(e)(iii)

### Decision

7. Subject to the conditions set out in paragraph 8 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 4.5.1(e)(iii), to the extent this Rule would otherwise require the level of participation of Bright to be determined according to criteria applying to all persons participating in the Placement.

8. The waiver in paragraph 7 above is provided on the conditions that:
- a. At least two of SML's Directors, excluding any Director who is an Associated Person of Bright, certify to NZX that:
    - i. SML was not unduly influenced by Bright in its decision to permit Bright to participate in the Placement at a higher level of participation than other persons participating in the Placement;
    - ii. Bright will not be involved in, or influence, any allocation decision in relation to the Placement;
    - iii. Bright will derive no benefit as a result of its level of participation in the Placement at a higher level of participation than other persons participating in the Placement, other than to the extent arising as a result of participation in the Offer to avoid its holding in SML being diluted as a consequence of the Offer;
  - b. the waiver, its conditions and its implications, are disclosed in the Offer Document; and
  - c. the waiver and its conditions and implications are disclosed in SML's annual report for the financial year ending 31 July 2021.

## Reasons

9. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
- a. the policy behind Rule 4.5.1(e)(iii) is to ensure that certain persons, being Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer, do not receive preferential terms to others participating in the Placement by reason of their close association with the Issuer;
  - b. SML has submitted, and NZXR has no reason not to accept, that these circumstances do not offend the policy behind Rule 4.5.1(e)(iii) because:
    - i. the purpose of Bright's increased level of participation in the Placement is solely to ensure that it is not diluted as a consequence of the Offer or any component of the Offer, causing it to lose its director appointment rights under the Constitution;
    - ii. SML is required to comply with Rule 4.5.1(e)(i) and (ii), which require that Bright's participation is in the best interests of SML and fair to all other shareholders, and that the terms of issue are the same for all participants in the Placement;

- iii. Bright will not obtain any increased rights or voting rights by virtue of its increased level of participation in the Placement as a consequence of its pre-Offer holding in SML remaining at 39.01% at all times during, and upon completion of, the Offer; and
- iv. Bright's desire to preserve its existing director appointment rights under the Constitution would mean that, absent the granting of this waiver, SML would be unable to proceed with the structure of the equity capital raising that the Directors and Senior Managers of SML have determined, following advice from professional advisers, should be adopted for the Offer.

## Waiver from NZX Listing Rule 4.19.1

### Decision

- 10. Subject to the conditions set out in paragraph 11 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 Rule 4.19.1, to the extent this Rule would otherwise require the allotment of Shares to Bright in respect of subscriptions received under the Placement to occur within 10 Business Days of the closing date for the Placement.
- 11. The waiver in paragraph 10 above is provided on the conditions that:
  - a. the waiver, its conditions and its implications, are disclosed in the Offer Document;
  - b. the allotment of Shares to Bright occurs, in part, on the Placement Allotment Date and, in part, on the SPP Allotment Date; and
  - c. the waiver and its conditions and implications are disclosed in SML's annual report for the financial year ending 31 July 2021.

### Reasons

- 12. In coming to the decision to provide the waiver set out in paragraph 10 above, NZXR has considered that:
  - a. the policy behind Rule 4.19.1 is to ensure that, where application monies have been submitted, subscribers obtain the benefit of their investment without undue delay;
  - b. SML has submitted, and NZXR has no reason not to accept, that these circumstances do not offend the policy behind Rule 4.19.1 because:

- i. the delay in allotting the Deferred Bright Allotment Shares is occurring to ensure that Bright's holding in SML is retained at its current level at all times during, and upon completion of, the Offer;
  - ii. Bright will settle the Deferred Bright Allotment Shares on a delivery versus payment basis, so it will not be required to submit the subscription money for the relevant Shares until the date on which the Shares are allotted;
  - iii. all Shares allocated under the Placement other than the Deferred Bright Allotment Shares will be issued within the 10 Business Day period provided in the Listing Rules; and
  - iv. Bright will be advised prior to the Placement that determination of the number of Deferred Bright Allotment Shares allocated to it, and the issue of those Deferred Bright Allotment Shares, will take place on a date that is later than the 10 Business Day period provided in the Listing Rules. Through its participation in the Placement, Bright will agree to those arrangements; and
- c. there is precedent for this decision.

## Waiver from NZX Listing Rule 5.2.1

### Decision

13. Subject to the conditions set out in paragraph 14 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 the approval of shareholders to enter into a Material Transaction with any Related Party in connection with the Placement.
14. The waiver in paragraph 13 above is provided on the conditions that:
- a. At least two of SML's Directors, excluding any Director who is an Associated Person of any of the Relevant Parties, certify to NZX that:
    - i. SML was not unduly influenced in its decision to undertake the Placement by the Relevant Parties;
    - ii. the Relevant Parties who participate in the Placement will not be involved in, or influence, any allocation decision in relation to the Placement; and
    - iii. the Relevant Parties will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Placement on the same terms and

conditions as all other Equity Security holders or as participants in the Placement on commercial terms (including in the case of Bright, on the basis permitted under the waiver from Rule 4.5.1(e)(iii) granted by NZX in connection with the Placement);

- iv. entry into the Placement is in the best interests of all SML's shareholders; and
- b. the waiver, its conditions and its implications are disclosed in SML's annual report for the financial year ending 31 July 2021.

## Reasons

15. In coming to the decision to provide the waiver set out in paragraph 13 above, NZXR has considered that:
- a. the policy of Rule 5.2.1 is to ensure that a Related Party to a Material Transaction does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction, and ensures shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party;
  - b. SML has submitted, and NZXR has no reason not to accept, that these circumstances do not offend the policy behind Rule 5.2.1 because:
    - i. the Relevant Parties have not influenced SML's choice of structure for the Placement, which has been determined by the SML Board in light of advice received from its advisers;
    - ii. the pricing and allocation decisions for the Placement will be managed by the Directors of SML (excluding any Director who is an Associated Person of any of the Relevant Parties) in conjunction with the Underwriter. Accordingly, the Relevant Parties will have no influence over the pricing or allocation decisions in the Placement;
    - iii. the participation of any Relevant Parties in the Placement will be on the same basis and terms as all other Placement participants and so there is no transfer of value to those Relevant Parties;
    - iv. the reason the Placement will potentially be considered a Material Transaction under the Rules is due to the need to aggregate the market value of all shares issued to the Relevant Parties under the Placement. This aggregation is due to the potential for any Related Party to exercise undue influence over an Issuer. SML has submitted and NZXR has no reason not to accept that any of the Relevant Parties are acting together to influence SML to undertake the Placement or the Offer. If each of the Relevant Parties' participation in the Placement was considered individually, the issue of those

shares under the Placement would not be a Material Transaction under the Rules with any of the Relevant Parties; and

- v. there is precedent for this decision.

## Confidentiality

16. SML has requested that this decision be kept confidential until SML releases an announcement relating to the Offer.
17. In accordance with Rule 9.7.2, NZXR grants SML's request.



## Appendix One

1. Synlait Milk Limited (**SML**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. SML is considering a potential offer of fully paid ordinary shares in SML (**Shares**) comprising:
  - a. a NZ\$180 million placement of new Shares under Rule 4.5.1 (the **Placement**); and
  - b. a NZ\$20 million share purchase plan of new Shares under Rule 4.3.1(a) (**Share Purchase Plan**). SML will prepare an offer booklet in connection with the Share Purchase Plan (**Offer Document**),  
  
(together, the **Offer**).
3. The Placement will comprise, together:
  - a. an offer of new Shares to eligible institutional investors in New Zealand, Australia and selected other jurisdictions to raise approximately NZ\$167.2 million (**Initial Placement**); plus
  - b. the offer of Deferred Bright Allotment Shares (as defined below), which will raise up to approximately NZ\$12.8 million (the **Bright Placement**).
4. The Placement (excluding any pre-commitments from Bright or ATM) and the Share Purchase Plan are fully underwritten in accordance with the terms of an underwriting agreement to be entered into between SML and Jarden Partners Limited (and/or its affiliates) (the **Underwriter**) (the **Underwriting Agreement**).
5. The Offer will be made in New Zealand in reliance on the quoted financial product exclusion set out in clause 19 of schedule 1 of the Financial Markets Conduct Act 2013 (the **FMC Act**).
6. The Placement will be conducted on an "open access" basis (such that, for example, existing shareholders with a broker relationship can participate).
7. The Shares offered under the Placement (**Placement Shares**) will be at a fixed price of NZ\$5.10 (the **Placement Offer Price**).
8. The Shares offered under the Share Purchase Plan (**SPP Shares**) will be offered at the lower of (i) the Placement Offer Price; and (ii) a 2.5% discount to the volume weighted average market price of the Shares traded on the NZX over the five business day period prior to and including the closing date for the Share Purchase Plan (**SPP Closing Date**), rounded down to the nearest cent (the **SPP Offer Price**).
9. The Placement Shares subscribed for by eligible investors under the Initial Placement will be allotted on the **Placement Allotment Date**. The Share Purchase Plan will be conducted following the Placement. The SPP Shares subscribed for by eligible shareholders under the

Share Purchase Plan will be allotted on the **SPP Allotment Date**. The SPP Allotment Date will be more than 10 Business Days after the final closing date of the Placement.

10. The number of SPP Shares to be allotted under the Share Purchase Plan (and accordingly the number of Deferred Bright Allotment Shares) will not be known until completion of the Share Purchase Plan once the SPP Offer Price has been determined and the number of SPP Shares applied for under the Share Purchase Plan is known.

## Waiver from NZX Listing Rule 4.5.1(e)(iii) – Further Information

11. Bright Dairy Holding Limited (**Bright**) holds 39.01% of the issued share capital of SML. Bright is therefore a Related Party of SML under limb (b) of the definition of "Related Party" in the Rules.
12. Bright has the right under SML's constitution (**Constitution**) to appoint up to four Directors of SML, subject to its holding in SML not falling below a specified threshold. There are currently four representatives of Bright appointed to the SML board. Bright is therefore an Associated Person of a Director of SML under limb (e) of the definition of "Associated Person" in the Rules.
13. Accordingly, in order to ensure that Bright's proportionate holding does not fall and cause it to lose its existing director appointment rights under the Constitution, it is proposed that Bright will:
  - a. apply for, under the Placement, its pro-rata portion (39.01%) of the aggregate number of Shares to be offered under the Offer, comprising:
    - i. its pro-rata portion (39.01%) of the Placement Shares to be offered under the Initial Placement (**Bright Initial Placement Shares**); and
    - ii. such number of additional Placement Shares that will result in its holding in SML being equal to 39.01% of the Shares on issue immediately following the allotment of all Shares on the SPP Allotment Date (**Deferred Bright Allotment Shares**);
  - b. be allocated by SML the Bright Initial Placement Shares and the Deferred Bright Allotment Shares under the Placement at the Placement Offer Price;
  - c. settle and be allotted the Bright Initial Placement Shares on the Placement Allotment Date; and
  - d. settle and be allotted the Deferred Bright Allotment Shares on the SPP Allotment Date.
14. By virtue of its allocation of Deferred Bright Allotment Shares under the Placement, Bright's level of participation in the Placement will be determined according to criteria that ensures its holding in SML is not diluted as a consequence of the Offer, rather than according to criteria applying to all persons participating in the Placement.

## Waiver from NZX Listing Rule 4.5.1 – Further Information

15. The Deferred Bright Allotment Shares are required to "top-up" Bright's holding at the time the Shares under the Share Purchase Plan are issued to ensure that Bright's holding in SML is not diluted.
16. Bright requires certainty and advance notice regarding the quantum of funds it will require to fund its pro-rata participation in the Offer, so that it can obtain the necessary internal and Chinese regulatory approvals for the transfer of funds to New Zealand.
17. In order to provide Bright with the certainty it requires, it is proposed that the Share Purchase Plan is underwritten. This will allow SML to inform Bright in advance of the Offer that it will need to fund its pro-rata portion of the total offer size.
18. If the Share Purchase Plan is not underwritten, there will be no certainty regarding the size of the Bright Placement until shortly following the close of the Share Purchase Plan.
19. Any Shares offered in the Share Purchase Plan, and not taken up by eligible shareholders, will be issued under Listing Rule 4.5.1. Listing Rule 4.4.1(a) does not apply to shares offered under Listing Rule 4.3.1(c).
20. The aggregate number of Shares issued under the Placement and the Share Purchase Plan may exceed the 25% thresholds in Listing Rule 4.5.1.
21. The waiver provides the SML Board with the comfort that all Shares offered under the Offer can be issued in compliance with the Listing Rules.

## Waiver from NZX Listing Rules 4.19.1 – Further Information

22. In order to ensure that Bright's proportionate holding in SML does not fall and cause it to lose its existing director appointment rights under the Constitution, it is proposed that Bright will be allotted the Deferred Bright Allotment Shares under the Placement.
23. The number of Deferred Bright Allotment Shares will only be determined upon completion of the Share Purchase Plan once the SPP Offer Price has been determined and the number of SPP Shares applied for under the Share Purchase Plan is known.
24. The allotment of Deferred Bright Allotment Shares, once the number has been determined, will occur more than 10 Business Days of the closing date for the Placement.

## Waiver from NZX Listing Rule 5.2.1 – Further Information

25. SML has two major shareholders which are Related Parties as holders of more than 10% of SML's shares (per limb (b) of the definition of "Related Party"), being:
  - a. Bright, which holds 39.01% of SML's shares; and
  - b. The a2 Milk Company Limited (**ATM**), which holds 19.84% of SML's shares.

26. Each of Bright and ATM will be invited to participate in the Placement. Other Related Parties of SML, including Directors of SML (and their relatives), Senior Managers of SML, directors of SML may also participate in the Placement (together with Bright and ATM, all such Related Parties the **Relevant Parties**).
27. The pricing and allocation determinations under the Placement will be made between the Underwriter and the Directors of SML (excluding any Director who is an Associated Person of any of the Relevant Parties), in accordance with the terms of the Underwriting Agreement.
28. The market value of Shares to be issued to Bright and ATM in the Placement will exceed 10% of SML's Average Market Capitalisation, which was \$958,736,609 as at 9 November 2020. In addition, other Related Parties may also participate in the Placement.
29. Limb (b) of the definition of Material Transaction requires that SML consider the aggregate amount of shares being issued to any Related Party that participates in the Placement when determining whether shareholder approval of a related party transaction is required.

## Appendix Two

### **Associated Person**

a person (**A**) is associated with, or an **Associated Person** of, another person (**B**) if:

[...]

- (e) A is a director or Senior Manager of B (or vice versa), or

[...]

### **Material Transaction**

means a transaction, or a related series of transactions, whereby an Issuer:

[...]

- (b) issues its own Financial Products, or acquires its own Equity Securities, having a market value above 10% of the Issuer's Average Market Capitalisation (except where Rule 0 applies or in the case of an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

### **Related Party**

means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or

[...]

#### 4.5.1 15% Placements<sup>1</sup>

4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:

- (a) 25% of the Equity Securities of that Class on issue at the beginning of that period, and
- (b) 25% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and
- (c) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less
- (d) 25% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

- (e) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:
  - (i) all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,
  - (ii) the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and
  - (iii) the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and

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<sup>1</sup> As amended pursuant to the NZX Regulation Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules dated 19 March 2020, which can be found here: <https://www.nzx.com/regulation/classwaivers-and-rulings>.

- (f) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
  - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
  - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

[...]

#### **4.19 Allotment of Financial Products**

- 4.19.1 An Issuer making an offer of Financial Products intended to be Quoted (other than Equity Securities issued under Rule **Error! Reference source not found.** or Rule **Error! Reference source not found.**) must allot such Quoted Financial Products no later than 10 Business Days after the final closing date for the offer.

[...]

#### **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 **Error! Reference source not found.**) or conditional on such approval.