



NZX Regulation Decision

Synlait Milk Limited (SML)

Application for a waiver from NZX Main Board Listing Rule
9.1.1

5 July 2018



Waiver from NZX Main Board Listing Rule 9.1.1

Decision

1. On the basis that the information provided by Synlait Milk Limited is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants SML a waiver from NZX Main Board Listing Rule 9.1.1 to the extent that SML would be required to obtain shareholder approval for SML Subsidiary to enter into the Variation.
2. 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.
3. The Rule to which this decision relates is set out in Appendix Two.
4. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - (a) the policy behind Rule 9.1.1 is to regulate those transactions which may change the essential nature of an Issuer's business or require the immediate expenditure of large amounts of shareholders' funds. NZXR is comfortable that the granting of this waiver does not offend the policy of this Rule;
 - (b) the Variation is entirely within the ordinary course of SML's business, rather than being a transaction that changes the essential nature of the business. The Variation confirms and expands on the current commercial relationship between SML and ATM, and provides some certainty to that existing commercial relationship, rather than being an immediate expenditure 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.
 - (d) the Variation has been negotiated on an arm's length basis, and is within the competence and experience of the management and the directors of the SML group; and
 - (e) there is precedent for the decision.



Appendix One

1. Synlait Milk Limited (**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**). The Variation is subject to SML and ATM obtaining a waiver from NZX under Rule 9.1.1 or obtaining shareholder approval.
3. ATM is a Listed Issuer with ordinary shares Quoted on the NZX Main Board. ATM has applied for an equivalent waiver from Rule 9.1.1 in relation to the Variation.
4. The Variation is intended to confirm the ongoing certainty of the current business relationship between SML and ATM and to secure increased capacity. 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 Variation will effectively extend the term of the Supply Agreement by 2 years and is terminable after July 2020 by either party giving at least three years' notice to the other party. This effectively provides for a minimum term of 5 years;
 - (b) **Minimum Supply Volume:** SML Subsidiary is 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 supplied by SML for sale by the ATM group in the markets of China, Australia and New Zealand.
 - (d) **Sales Price:** the sales price for products is not fixed in the contract and fluctuates based on a variety of factors; and
 - (e) **Minimum Purchase Amount:** ATM Subsidiary will not be contractually bound to place purchase orders for any minimum quantity.
 - (f) **Adjustment of other terms reflecting the increase in the minimum supply volume:** the exclusivity, liability cap and insurance have increased taking into account the increased volume.
6. On the basis that the Supply Agreement could remain in place for longer than the minimum 5 year term 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. SML has applied for a waiver from Rule 9.1.1 to enter into the Variation which may amount to a series of related transactions with a value of greater than 50% of its average market capitalisation. As at the date of this waiver, SML's market capitalisation is approximately \$2.04 billion.



Appendix Two

Rule 9.1.1 Disposal or Acquisition of Assets

Rule 9.1.1 An Issuer shall not (subject to Rule 9.1.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Issuer or assets to be held by the Issuer:

- (a) which would change the essential nature of the business of the Issuer; or
- (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer;

except with the prior approval of an Ordinary Resolution of the Issuer or a special resolution if that Issuer must obtain approval of the transaction or transactions by a special resolution under section 129 of the Companies Act 1993.

