



NZX Regulation Decision

Intueri Education Group Limited (IQE)

Application for a waiver from NZX Main Board Listing Rule
7.6.4(b)(iii)

2 September 2015



Waiver from NZX Main Board Listing Rule 7.6.4(b)(iii)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by IQE is complete and accurate in all material respects, NZXR grants IQE a waiver from Rule 7.6.4(b)(iii) to the extent required to allow IQE to provide financial assistance to the CEO pursuant to the terms of the Scheme.
2. The waiver in paragraph 1 above is granted subject to the following conditions:
 - a. that IQE's chairperson certify, on behalf of IQE's board, that the CEO:
 - i. has not had any influence over the terms of the Scheme;
 - ii. will not vote on any resolutions relating to the Scheme; and
 - iii. will not participate in any board discussions regarding the terms of the Scheme.
 - b. that the CEO will not be a member of the R&N Committee which decides a Participant's eligibility including whether KPIs have been met, whether a Loan should be awarded where the KPIs have not been met and the quantum of the financial assistance to be provided; and
 - c. that the CEO's participation and entitlements under the Scheme is determined on the same criteria applying to all Participants (taking into account relative remuneration and specific KPIs as determined by the R&N Committee); and
 - d. that the CEO will not be a director of the Trustee.
3. 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.
4. The Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in the decision have the meanings given to them in the NZX Main Board Listing Rules.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy objective of Rule 7.6.4(b)(iii) is to ensure Directors do not exercise their discretion or use their position to obtain financial assistance which unfairly advantages Directors to the detriment of shareholders, and/or is not consistent with the financial assistance given to Employees who are not Directors;
 - b. IQE have submitted, and it is a condition to the waiver, that the CEO will participate in the Scheme on the same terms as the other Participants. The CEO's participation appears to be consistent with the assistance given to Employees who are not Directors.
 - c. The participation of the CEO in designing the scheme and determining eligibility is limited, so that the CEO cannot use his position to obtain financial assistance which is

unfairly advantageous to the CEO. The certification provided by IQE's chairperson gives NZXR comfort that the CEO has had no influence over the terms of the Scheme, will not vote on any resolutions relating to the Scheme or participate in any board discussions in respect of the Scheme. Further, the conditions of the waiver require that the R&N Committee (of which the CEO is not a member) is responsible for assessing and determining a Participant's eligibility under the Scheme;

- d. the situation falls within the circumstances stated in the footnote to Rule 7.6.4, which states that NZXR may waive the restriction on Directors and Associated Persons of Directors participating in financial assistance given to Employees in certain circumstances; and
- e. there is precedent for this decision.



Appendix One

1. Intueri Education Group Limited (“**IQE**”) is a Listed Issuer with ordinary shares (“**Shares**”) Quoted on the NZX Main Board.
2. IQE proposes to establish a scheme for selected senior executives (“**Participants**”) employed by IQE or a subsidiary of IQE, under which a Participant would be granted the right to receive an interest free loan (“**Loan**”) for the purpose of acquiring Shares in IQE (“**Scheme**”).
3. IQE wishes for its Chief Executive Officer, Robert Facer (“**CEO**”), who is also a director of IQE to have the right to participate in the Scheme.
4. The relevant terms of the Scheme are as follows:
 - a. Subject to a Participant meeting key performance indicators (“**KPIs**”), a Participant will have the right to receive a Loan to acquire ordinary Shares in IQE which are to be held on trust for the Participant by Elite Education Holdings Limited (“**Trustee**”). The CEO was a director of the Trustee but resigned as a director of the Trustee on 10 August 2015.
 - b. IQE’s Remuneration and Nominations Committee (“**R&N Committee**”) will determine each Participant’s individual KPIs and will also be responsible for determining whether a Participant has met the KPIs, approving a Participant’s entitlement to a Loan and the quantum of the Loan. Once approved, the Trustee will acquire the Shares at their market price.
 - c. A maximum total of \$2.5 million worth of Shares will be available for purchase by the Participants (of which the CEO will be entitled to a maximum of \$1.1 million over the next three years).
 - d. The following terms will apply in respect of the Loan:
 - i. the Loan will be secured over the Shares;
 - ii. the Loan will be interest free during a Participant’s employment with IQE; and
 - iii. the outstanding balance of the Loan must be repaid immediately if a Participant ceases employment with IQE, sells the relevant Shares or ceases to be beneficial owner or if the term of the Loan expires.
 - e. The Trustee may re-allocate the beneficial interest in Shares to a Participant if another Participant forfeits his or her beneficial interest under the terms of the Scheme.
 - f. The Trustee will distribute any dividends as beneficiary income and will exercise voting rights as directed by a Participant.
 - g. A Participant may not request the Trustee to sell its Shares within the first twelve months after acquisition.
 - h. A Participant has a right to require the Trustee to purchase the relevant Shares from that Participant at the original acquisition price (“**Participants’ Put Option**”). Funds

received by a Participant on exercise of the Participants' Put Option must be applied in repayment of the Loan and any surplus will be retained by a Participant.

- i. The Trustee will have a right to require IQE to repurchase the relevant Shares acquired from a Participant under the Participants' Put Option at the original acquisition price.
 - j. In pre-defined events, the Trustee will have the right to "call" any Shares held on behalf of a Participant at the original acquisition price. The proceeds received by a Participant must be applied in repayment of the Loan and any surplus will be retained by a Participant.
5. The purpose of the Scheme is to align the interests of a number of Participants with those of IQE's shareholders.
 6. The expected number of Shares that will be subject to the Scheme will not exceed 1.44% of IQE's Shares as at the end of the third year of the Scheme (based on the market price of \$1.74 at 28 July 2015). Additionally, the maximum Loan that the CEO will be granted will be for approximately 0.63% of IQE's Shares (based on the market price of \$1.74 at 28 July 2015).
 7. IQE's shareholders will be aware of the financial assistance provided to the CEO under the Scheme because IQE will send each shareholder a notice containing particulars of the Shares and financial assistance provided pursuant to section 80 of the Companies Act 1993.
 8. While NZX Main Board Listing Rule ("**Rule**") 7.6.4(b) allows financial assistance to be given to Employees in certain circumstances, the financial assistance may not be given to a Director of the Issuer or an Associated Person of the Director without obtaining shareholder approval or a waiver from NZX Regulation ("**NZXR**"). To facilitate the provision of financial assistance to the CEO under the Scheme, IQE has sought a waiver from NZXR in respect of Rule 7.6.4(b)(iii).



Appendix Two

Rule 7.6 Buybacks of Equity Securities, Redemption of Equity Securities and Financial Assistance

Rule 7.6.4 An Issuer may give financial assistance of the nature referred to in Rule 7.6.3 if:

...

- (b) the financial assistance is given to Employees of the Issuer and:
 - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) by the Issuer during:
 - (A) the shorter of the period of three years preceding the date of giving of the financial assistance and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed \$1 million; or
 - (B) the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed 5% of the Average Market Capitalisation of the Issuer; and
 - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under Rule 7.6.4(b)(i) during the shorter of the period of five years preceding the date of the giving of financial assistance and the period from the date on which the Issuer was Listed to the date of the giving of the financial assistance, does not exceed 10% of the Average Market Capitalisation of the Issuer; and
 - (iii) the financial assistance is not given to any Director of the Issuer or Associated Person of a Director; or

The footnote to Rule 7.6.4 provides:

NZX may waive the restriction in Rule 7.6.4(b)(iii) on Directors and Associated Persons participating in financial assistance given to Employees:

- (a) so far as it affects assistance given to bona fide full time Employees who are Directors, or Associated Persons of Directors, where NZX is satisfied that the amounts and terms of the assistance will be determined according to criteria applying generally to all Employees eligible to receive the assistance, and would not, if all relevant factors were publicly disclosed, be reasonably seen as being materially influenced by the relationship; and/or
- (b) where NZX is satisfied that the assistance is not likely disproportionately to benefit the persons controlling the Issuer and those associated with them.

