



NZX Regulation Decision

The a2 Milk Company Limited ("ATM")

Application for waiver from NZX Main Board Listing Rule
9.1.1

22 August 2016



Waiver from NZX Main Board Listing Rule 9.1.1

Decision

1. On the basis that the information provided by The a2 Milk Company Limited (**ATM**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants ATM a waiver from NZX Main Board Listing Rule 9.1.1 to the extent that ATM would be required to obtain shareholder approval for ATM Subsidiary to enter into the Supply Agreement.
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 are 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 Supply Agreement is entirely within the ordinary course of ATM's business, rather than being a transaction that changes the essential nature of the business. The Supply Agreement provides a framework to take forward the current commercial relationship between ATM and SML and provide some certainty to that existing commercial relationship, rather than being an immediate expenditure of shareholder funds;
 - (c) the Supply Agreement 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 Supply Agreement over the term of the Supply Agreement. Further, it would be difficult to put a meaningful resolution to shareholders to vote on; and
 - (d) the Supply Agreement is being negotiated on an arm's length basis, and is within the competence and experience of the management and the directors of the ATM group.

Confidentiality

6. ATM has requested that this application and any decision be kept confidential until an announcement of the Supply Agreement is released to the market.
7. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants ATM's request.

Appendix One

1. The a2 Milk Company Limited (**ATM**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. A wholly owned subsidiary of ATM (**ATM Subsidiary**), is proposing to enter into a Nutritional Powders Manufacturing and Supply Agreement with a wholly owned subsidiary (**Synlait Subsidiary**) of Synlait Milk Limited (**SML**) (the **Supply Agreement**).
3. SML is a Listed Issuer with ordinary shares Quoted on the NZX Main Board. SML has applied for an equivalent waiver from Rule 9.1.1 in relation to the Supply Agreement.
4. The Supply Agreement is intended to capture the current business relationship between ATM and SML. The Supply Agreement in itself does not increase the volume of business between ATM and SML from current levels but updates the current customer/supplier relationship between ATM and SML.
5. The key points of the Supply Agreement can be summarised as:
 - (a) **Term:** there is a minimum term of 5 years that is expected to commence on or around 1 September 2016. After 2 years the Supply Agreement can be ended by 3 years' notice from either party;
 - (b) **Framework:** the Supply Agreement provides a framework for the ATM Subsidiary to provide the SML Subsidiary with a written monthly rolling forecast that specifies ATM Subsidiary's product requirement for the following 12 months. Under the Supply Agreement each 12 month forecast will result in binding purchase orders being deemed to be placed for the third month specified in that forecast (**Purchase Orders**);
 - (c) **Sales Price:** the sales price for products is not fixed in the contract and fluctuates based on a variety of factors;
 - (d) **Minimum Purchase Amount:** ATM Subsidiary will not be contractually bound to place Purchase Orders for any minimum quantity;
 - (e) **Minimum Supply Volume:** SML Subsidiary is contractually bound to supply, under Purchase Orders, up to a prescribed infant formula volume;
 - (f) **Exclusivity:** SML Subsidiary will enjoy exclusive supply rights up to a specified infant formula product volume and a right of first offer for certain additional volumes, in both cases in respect of infant formula stages 1-3 already supplied by SML for sale by the ATM group in the markets of China, Australia and New Zealand.
6. If Purchase Orders under the Supply Agreement are placed at a rate of the average expected volume over a minimum term of 5 years there is potential for ATM Subsidiary to acquire product the value of which could be in excess of 50% of the Average Market Capitalisation of ATM.
7. ATM has applied for a waiver from Rule 9.1.1 to enter into the Supply Agreement which may amount to a series of related transactions with a value of greater than 50% of their average market capitalisation. As at the date of this waiver, ATM's market capitalisation is approximately \$1.6 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.