



NZX Regulation Decision

Methven Limited ("MVN")

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

15 September 2016



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 MVN is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants MVN a waiver from Rule 7.6.4(b)(iii) to the extent required to allow MVN to provide financial assistance to the Group CEO, pursuant to the Terms.
2. The waiver in paragraph 1 is provided on the conditions that:
 - a. the Directors of MVN (excluding the Group CEO) certify to NZXR in a form acceptable to NZXR that:
 - i. the Group CEO has not, and will not, have any influence over the Terms of the Scheme, did not and will not vote on any resolutions relating to the design, establishment or Terms of the Scheme, and did not and will not vote on his participation in the Scheme; and
 - ii. the provision of the financial assistance is:
 - A. in the best interests of MVN;
 - B. of benefit to all MVN shareholders (other than the Group CEO); and
 - C. on terms and conditions which are fair and reasonable to MVN and to all shareholders (other than the Group CEO); and
 - b. that the Group CEO will not be a member of the Remuneration Committee which decides eligibility of entry into the Scheme including whether a Loan should be awarded in respect of the Scheme and the quantum of such financial assistance to be provided.
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 are 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 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 disproportionately benefits Directors to the detriment of shareholders, and/or is not consistent with the financial assistance given to Employees who are not Directors. The granting of this waiver will not impact this policy;



- b. MVN has submitted that the Group CEO will participate in the Scheme, which is in all material respects consistent with the SE Scheme, in which the Group CEO participated prior to being appointed a Director;
- c. the certification required by the conditions of the waiver, and as provided by MVN's Directors, gives NZXR comfort regarding the Group CEO's lack of influence on the Scheme and his participation in the Scheme;
- d. the conditions of the waiver require that the Remuneration Committee, which is responsible for the administration of the Scheme, does not include the Group CEO. The Remuneration Committee received an external, independent benchmark report of remuneration for comparable CEO positions. Having considered that report, the Remuneration Committee determined the Scheme to be an appropriate component of the Group CEO's remuneration package;
- e. the situation falls within the circumstances discussed in the footnote to Rule 7.6.4(b)(iii), 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 where the Group CEO will not have any influence over his participation in, and entitlement under, the Scheme and is not likely to be disproportionately benefitted by the financial assistance provided under the Scheme;
- f. NZXR is comfortable that details of the Scheme will be fully disclosed to shareholders in compliance with the Companies Act 1993. NZXR is comfortable that there are rights generally available for shareholders to call a meeting under certain circumstances within the Companies Act 1993; and
- g. there is precedent for this decision.

Confidentiality

- 7. MVN has requested that this application and any decision be kept confidential until after the Scheme is disclosed to the market by MVN.
- 8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants MVN's request.



Appendix One

1. Methven Limited (**MVN**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. MVN has established a scheme for Mr David Banfield, the group chief executive officer who is also a director of MVN (**Group CEO**). Under the scheme the Group CEO is granted the right to receive an interest bearing loan (**Loan**) for the purpose of acquiring ordinary shares in MVN (**Scheme**).
3. The full terms of the Scheme (**Terms**) were determined by the Remuneration Committee (**Remuneration Committee**) and approved by the board of directors, other than the Group CEO.
4. The Remuneration Committee is comprised of Director's excluding the Group CEO, including four independent directors. The Remuneration Committee decides who is eligible to join the Scheme, as well as the amount and Terms of which the financial assistance is to be provided to the Group CEO under the Scheme.
5. Prior to his appointment as a Director, the Group CEO participated in the 2014 senior executive long term incentive scheme (**SE Scheme**).
6. The relevant Terms of the Scheme (as comparable to the SE Scheme) are as follows:
 - a. interest will be charged on the Loan at a prescribed rate (being the fringe benefit tax rate specified by Inland Revenue from time to time, calculated daily on the basis of a year of 365 days). This is the same interest rate at which interest accrues under the SE Scheme;
 - b. there will be no custodial arrangements in place in relation to the Scheme. The shares will be issued directly to the Group CEO. MVN will hold a specific security interest in the shares the Group CEO purchases with the Loan. MVN will also instruct its share registrar to register a stop-trade order while the Loan remains outstanding. This contrasts with the SE Scheme in that, under the SE Scheme, participants' shares are held by a custodian. The net effect is the same and in both the SE Scheme and the Group CEO Loan, security interests are granted over the shares to secure the relevant obligations;
 - c. the shares issued to the Group CEO will be priced at the VWAP calculated between 25 August – 29 August (inclusive). This is the same price at which employees will be offered the opportunity to subscribe for shares under a separate discount share purchase plan but these employees will receive a 10% discount as an employee benefit which the Group CEO will not receive;
 - d. based on an issue price as calculated by the VWAP over 25 August – 29 August inclusive, the Group CEO would receive 369,713 shares (rounded). This equates to approximately 0.5% of the total current shares on issue (72,773,410);
 - e. the Group CEO may not transfer the shares while the Loan remains outstanding. There is no restriction contemplated following repayment of the Loan (other than standard MVN share trading policy restrictions and inside trading restrictions);
 - f. the Loan is repayable on the 10th anniversary of the issue date or the cessation of the Group CEO's employment, whichever is earlier. The Group CEO is entitled to repay the Loan at any time prior to the repayment date; and

- g. the Group CEO has a long term incentive cash bonus payable in the event that MVN and subsidiaries net profit after tax (**NPAT**) for the year ending June 2019 exceeds a defined target. The after tax portion of any bonus earned under that scheme is required to be applied towards early repayment of the Loan.
- 7. MVN's Board, based on the Remuneration Committee recommendations, determines who is eligible to join the Scheme; the amount and Terms of the Scheme; and sets the level of participation for the Scheme. The Remuneration Committee took external advice, including having Ernst and Young provide an independent, expert benchmark report for remuneration for comparable CEO positions before the Group CEO was appointed as a director. The Group CEO is not a member of the Remuneration Committee.
- 8. The purpose of the Scheme is to align the interests of the Group CEO with those of MVN's shareholders.
- 9. MVN's shareholders will be aware of the financial assistance provided to the Group CEO under the Scheme because MVN will send each shareholder a notice containing particulars of the shares and financial assistance provided pursuant to section 79 or section 80 of the Companies Act 1993.
- 10. 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 NZXR. To facilitate the provision of financial assistance to the Group CEO under the Scheme, MVN 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.

