



NZX Regulation Decision

Chorus Limited (“CNU”)

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

07 August 2017



Background

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by CNU is complete and accurate in all material respects, NZXR grants CNU a waiver from Rule 7.6.4(b)(iii) to allow CNU to provide financial assistance to the CEO pursuant to the terms of the Plan.
2. The waiver in paragraph 1 is granted on the conditions that:
 - a. CNU's Chairman certifies on behalf of CNU's board that:
 - i. the CEO had no involvement in the preparation of the Plan;
 - ii. the CEO has not, and will not, participate in any CNU Board discussions regarding whether performance hurdles have been met, or whether Plan Shares should be awarded where the required performance hurdles have not been met; and
 - iii. the CEO's participation and entitlements under the Plan are determined by the same criteria applying to all Participants; and
 - b. the CEO will not be a member of CNU's Human Resources and Compensation Committee or vote on Board resolutions determining the employees to whom the offers will be made, and the quantum of the offers.
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 this 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 unfairly advantages Directors to the detriment of shareholders, and/or is not consistent with the financial assistance given to other Participants who are not Directors;
 - b. CNU 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 CEO had no participation in designing the Scheme and determining eligibility, so that she cannot use her position to obtain financial assistance which is unfairly advantageous. The certification provided by CNU's chairman gives NZXR comfort that the CEO has had no influence over the terms of the Plan and will not vote on any resolutions relating to the Scheme in the manner set out in that certification;

- 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 waiver.

Confidentiality

- 7. CNU has requested that its application and any decision be kept confidential until details of any offer to the CEO are released to the market.
- 8. In accordance with footnote 1 to Rule 1.11.2, NZXR grants CNU's request.



Appendix One

1. Chorus Limited (**CNU**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. CNU has established an executive long term incentive restricted share plan (the **Plan**) for selected employees (**Participants**), under which Participants would be granted the right to receive a loan for the purpose of acquiring shares (**Plan Shares**) in CNU. The Plan was implemented in August 2015.
3. CNU wishes for its CEO, Kate McKenzie (**CEO**), who is also a Managing Director of CNU, to have the right to participate in the Plan.
4. The key terms of the Plan are as follows:
 - a. CNU's Human Resources and Compensation Committee and/or Board will determine the employees to whom offers will be made and the quantum of the offers;
 - b. CNU's subsidiary, Chorus New Zealand Limited (**CNZL**) will provide the loan to Participants for the purposes of acquiring Plan Shares;
 - c. Plan Shares will be held by Chorus LTI Trustee Limited (**CLT**), a wholly owned subsidiary of CNU. CLT will hold Plan Shares for each Participant in trust;
 - d. Plan Shares will generally be acquired on-market and will be allocated to each employee at the average market price at which they are acquired;
 - e. if a Participant continues to be an employee of CNZL or a related company before the expiry of the specified restricted period and certain performance hurdles are achieved, then CLT will transfer to that Participant legal title to the Participant's Plan Shares at the end of the restricted period;
 - f. if a Participant ceases to be employed by CNZL or a related company before the expiry of the restricted period, then legal title will not be transferred to the Participant except in the limited circumstances allowed under the Plan;
 - g. if a Participant continues to be employed by CNZL or a related company for the restricted period but the performance hurdles for a tranche of Plan Shares are not achieved, legal title will not be transferred to the Participant unless the Board in its sole discretion determines otherwise. If the performance hurdles are only partially achieved, legal title in a proportionate number of the Plan Shares will be transferred;
 - h. the loan advanced by CNZL will be repayable on the date on which legal title to the Plan Shares is transferred. To the extent that legal title in Plan Shares is to be Transferred to a Participant, the Participant will be paid a bonus which, after tax (and subject to any applicable KiwiSaver obligations), equals the amount of the Participants loan balance in respect of the relevant Plan Shares. Participants authorise and direct CNZL to apply the bonus towards repayment of their outstanding loan balance; and
 - i. to the extent that legal title in the Plan Shares is not transferred to a Participant, there are put and call options in respect of the Participant's beneficial interest in the relevant Plan Shares. The consideration payable by the Trustee on exercise of the call or put option will be an amount equal to the Participant's loan balance in respect of the relevant Plan Shares. Participants authorise and direct CNZL to apply the consideration towards repayment of their outstanding loan balance.

5. The purpose of the Plan is to align the interests of employee participants with CNU's shareholders;
6. The number of shares that will be subject to grant to the CEO under the Plan in 2017 is expected to be no more than approximately 0.0145% of CNU's Shares. As such, the assistance will not disproportionately affect the current shareholders of CNU;
7. While NZX Main Board 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, CNU has sought a waiver from NZXR in respect of Rule 7.6.4(b)(iii).



Appendix Two

Rule 7.6.4(b)(iii) Buybacks of Equity Securities, Redemption of Equity Securities and Financial Assistance

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 (as defined in Rule 7.3.6) 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 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.

