



NZX Regulation Decision

Livestock Improvement Corporation Limited (NS) (“LIC”)
Waivers from NZAX Listing Rules 1.6.1, 3.2.2, 3.2.3, 3.2.6,
7.6.3 and 8.1.3;

Approvals under NZAX Listing Rule 11.1.5; and Rulings on
NZAX Listing Rules 7.3.11(c), 7.6.9 and 8.2.1.

9 February 2018



Background

1. The information on which this decision is based is set out in Appendix One to this decision. This decision will not apply if this information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Waiver from Rule 1.6.1

Decision

4. On the basis that the information provided by LIC is complete and accurate in all material respects, NZXR grants LIC a waiver from Rule 1.6.1 to the extent that the definition of “Renounceable” refers to a Right or an offer of securities by LIC that is transferrable to any person entitled to hold those securities.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 4 above NZXR has considered that:
 - a. LIC has submitted, and NZXR has no reason not to accept, that this waiver is required to facilitate its existing co-operative structure; and
 - b. NZXR has previously granted this waiver to LIC.

Waiver from Rules 3.2.2, 3.2.3 and 3.2.6

Decision

6. On the basis that the information provided by LIC is complete and accurate in all material respects, NZXR grants LIC a waiver from:
 - a. Rule 3.2.2, to allow director nominations by Users to be restricted by:
 - i. region, as set out in clause 22.4(b) of LIC’s Constitution; and
 - ii. qualification, as set out in schedule 3 of LIC’s Constitution;
 - b. Rule 3.2.2, to allow the nomination procedure, as set out in schedule 3 of LIC’s Constitution;
 - c. Rule 3.2.3, to allow Elected Directors (as defined in LIC’s Constitution) appointed on a casual basis by LIC’s Board to stand for re-election on the first day of June next occurring, as set out in schedule 3 of LIC’s Constitution;
 - d. Rule 3.2.6, to allow Elected Directors to retire by rotation on the first day of June each year, four years following their appointment, as set out in clause 23 and schedule 3 of LIC’s Constitution; and
 - e. Rules 3.2.3 and 3.2.6, to allow Appointed Directors (as defined in LIC’s Constitution) to be appointed, to have their appointment ratified and to retire, as set out in schedule 3 of LIC’s Constitution.

Reasons

7. In coming to the decision to provide the waivers set out in paragraph 6 above, NZXR has

considered that:

- a. the waiver allows LIC's corporate governance structure and Constitution to operate, reflecting the co-operative nature of LIC;
- b. LIC has submitted, and NZX has no reason not to accept, that its Elected Directors have been elected by the dairy farmers on a regional basis pursuant to the election procedures found in LIC's Constitution and its Appointed Directors appointed by the Board pursuant to the procedures found in LIC's Constitution;
- c. LIC has submitted, and NZX has no reason not to accept, that the election procedures are a robust, democratic and appropriate method of providing representation on a regional basis for LIC's shareholders, while ensuring there is appropriate independence through the Appointed Directors; and
- d. NZXR has previously granted these waivers to LIC.

Waiver from Rule 7.6.3

Decision

8. On the basis that the information provided by LIC is complete and accurate in all material respects, NZXR grants LIC a waiver from Rule 7.6.3 to allow LIC to provide financial assistance to an Approved Holding Entity for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by LIC.

Reasons

9. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
 - a. the financial assistance will be given to an Approved Holding Entity that administers LIC's voluntary investment scheme and dividend reinvestment plan;
 - b. the Approved Holding Entity will not be acquiring a beneficial interest in any Equity Securities acquired;
 - c. the financial assistance will be given on an arms-length basis, and in accordance with LIC's Constitution; and
 - d. NZXR has previously granted this waiver to LIC.

Waiver from Rule 8.1.3

Decision

10. On the basis that the information provided by LIC is complete and accurate in all material respects, NZXR grants LIC a waiver from Rule 8.1.3 to allow the Nil Paid Shares to carry full voting rights.
11. The Waiver granted in paragraph 10 above is provided on the conditions that:
 - a. Nil Paid Shares with full voting rights are only issued for the purpose of the Proposed Restructure;
 - b. LIC clearly and prominently discloses this waiver, its conditions, and its implications in the Notice of Meeting relating to the Proposed Restructure; and
 - c. LIC clearly and prominently discloses this waiver, its conditions, and its implications in LIC's half year and annual reports, during the period the waiver is relied on.

Reasons

12. In coming to the decision to provide the waiver set out in paragraph 11 above, NZXR has considered:
- a. the policy behind Rule 8.1.3 is to ensure that the voting rights of fully paid shareholders are not unfairly diluted as a result of the issue of partly paid, or unpaid, shares. NZXR is comfortable that the granting of this waiver does not offend the policy of this Rule as the Nil Paid Shares are being issued to Users on a pro rata basis to their holdings of Co-operative Control Shares;
 - b. LIC's shareholders will be given the opportunity to vote on the Proposed Restructure, including the issue of Nil Paid Shares; and
 - c. LIC has submitted, and NZXR has no reasons not to accept, that this waiver is required to facilitate the implementation of the Proposed Restructure, and to provide partial consideration for the simplification of the two classes of shares.

Approvals under Rule 11.1.5

Decision

13. Rule 11.1.5 allows an NZAX Issuer to include restrictions on the issue, acquisition or transfer of Equity Securities in its constitution, subject to the prior approval of NZX. NZXR has approved the following restrictions in LIC's Constitution:
- a. LIC is restricted in relation to the Voting Securities that may be issued, , as set out in clause 3.2.2 of LIC's Constitution, thereby maintaining its co-operative structure;
 - b. ordinary shares in LIC may only be held by or transferred to certain persons, as set out in clause 3.2.3 of LIC's Constitution;
 - c. ordinary shares in LIC shall not be held or acquired for the benefit of any person who is not a User, unless an exception is provided, as set out in clause 3.2.3A of LIC's Constitution;
 - d. no person shall hold a relevant interest in more than 5% of the total number of ordinary shares in LIC on issue, as set out in clause 6.3(a) of LIC's Constitution;
 - e. LIC may require Users who have spent in excess of the Minimum Purchase Amount to compulsorily acquire sufficient Ordinary Shares to meet the Shareholding Requirement, as set out in clause 7.1 of LIC's Constitution;
 - f. LIC may require Users who no longer spend the Minimum Purchase Amount to compulsorily dispose of their Ordinary Shares, as set out in clause 7.2 of LIC's Constitution; and
 - g. while the Dairy Industry Restructure Act 2001 restricts voting rights in LIC, no person can exercise, or control the exercise of, more than 1% of the maximum number of votes exercisable at any meeting of LIC, as outlined at clause 20.4 of LIC's Constitution.
14. The approvals granted in paragraph 13 above are provided on the conditions that:
- a. the approvals will only have effect if the changes to the Constitution are approved by LIC shareholders;
 - b. the approvals will cease to have effect in the event of any further changes to the Constitution or corporate governance structure; and
 - c. the approved restrictions and their implications are clearly disclosed in the Notice of Meeting.

Reasons

15. In coming to the decision to provide the approval set out in paragraph 14 above, NZXR has considered that:
 - a. footnote to Rule 11.1.5 recognises there are situations in which a restriction of ownership in Equity Securities may be appropriate, such as in co-operative companies. The approvals granted at 13(a) – (f) allow LIC to maintain their co-operative structure, as such NZXR is comfortable that the granting of these approvals is in line with the discretion contemplated by this footnote;
 - b. footnote to Rule 11.1.5 also contemplates the approval of a transfer restriction where it is necessary to give effect to a statutory requirement. The approval granted at 13(f) allows LIC to comply with their statutory duties, as such NZXR is comfortable that the granting of this approval is in line with the discretion contemplated by this footnote;
 - c. the condition contained in paragraph 14(a) ensures that the approvals will not have effect if shareholders do not, or are not given the opportunity to, approve the proposed changes to LIC's Constitution;
 - d. the condition contained in paragraph 14(c) ensures that Users will be fully informed of all restrictions on the issue, acquisition and transfer of their ordinary shares; and
 - e. these approvals were previously granted to LIC in the form of a waiver.

Ruling on Rule 7.3.11(c)

Decision

1. For the purpose of Rule 7.3.11(c), NZXR rules that the "Shareholding Requirement" as defined in LIC's Constitution replaces "Minimum Holding" for the purposes of Listing Rule 7.3.11(c).

Ruling on Rule 7.6.9

Decision

1. For the purpose of Rule 7.6.9, NZXR rules that any compulsory acquisition of shares held by Users who no longer spend the Minimum Purchase Amount is a "routine buy backs and issues" in accordance with Rule 7.6.9.

Ruling on Rule 8.2.1

Decision

1. NZXR rules that Rule 8.2.1 is not applicable to LIC, given its designation as a Non-Standard NZAX Issuer.

Confidentiality

1. LIC has requested that this application and any decision be kept confidential until an announcement of the Proposed Restructure is released to the market.
2. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants LIC's request.

Appendix One

Background

1. Livestock Improvement Corporation Limited (NS) (**LIC**) is a Listed Issuer with a non-standard designation on the NZX Alternative Board (**NZAX**).
2. LIC is a registered co-operative company under the Co-operative Companies Act 1996, and 100% of its shares carrying voting rights are held by customers of LIC who spend more than \$500 on qualifying products and services in a season (**Minimum Purchase Amount**).
3. LIC currently has two classes of shares on issue:
 - a. Co-operative Control shares which are not Quoted but have voting rights attached, as well as the right to a specified nominal priority dividend (**Co-operative Control Shares**); and
 - b. Investment shares which are Quoted on the NZAX and do not carry voting rights, but do carry a right to a dividend which is subordinate to the priority dividend paid on Co-operative Control Shares (**Investment Shares**).
4. Holders of Co-operative Control Shares are LIC's customers who are required to purchase its products each year (**Users**). Users are required to hold a certain number of Co-operative Control Shares, proportionate to the aggregate amount spent with LIC in the preceding season (**Share Standard**).
5. Users are not required to hold Investment Shares. Investment Shares are intended to enable Users to invest in LIC beyond the Share Standard. Investment Shares can only be held by persons holding Co-operative Control Shares, except for a small number which are available to LIC employees under an employee share purchase scheme.
6. Pursuant to LIC's Constitution, the Board may approve one or more persons to be an approved holding entity to administer any voluntary investment scheme or dividend reinvestment plan adopted by the Board (**Approved Holding Entity**).
7. Co-operative Control Shares have a nominal value of \$1.00. Investment Shares do not have a nominal value, and trade at the market price on the NZAX. LIC Investment Shares were trading at \$2.25 as at 9 February 2018.
8. There are currently approximately six million Co-operative Control Shares on issue and 30 million Investment Shares on issue.

The proposed capital restructure

9. LIC is proposing to alter its capital structure to reclassify the two existing classes of shares into a single class of ordinary shares to be Quoted on the NZAX (**Proposed Restructure**).
10. The objective of the Proposed Restructure is to create a sustainable capital structure that aligns LIC's economic and voting rights.
11. The Board of LIC wishes to reclassify Investment Shares and Co-operative Control Shares into ordinary shares on a one-for-one basis. However, due to the difference in value of the two classes of shares, they need to be equalised before the reclassification can occur.

Equalisation of Co-operative Control Shares and Investment Shares

12. In order to equalise the two classes of shares, LIC intends to issue *[two/three]* unpaid Co-operative Control shares for every one Co-operative Control Share held. Unpaid shares will carry full dividend and voting rights (**Nil Paid Shares**).
13. LIC also intends to subdivide every Investment Share held into *[three]* fully paid Investment Shares (**Investment Share Subdivision**).
14. The Investment Shares and Co-operative Control Shares will then be reclassified into ordinary

shares, maintaining the pre-restructure shareholding proportions.

15. Shareholders with Nil Paid Shares will be required to pay these up over time, with all dividends paid on the Nil Paid Shares being used for this purpose.
16. The Share Standard will increase on implementation of the Proposed Restructure, however all existing Users will meet the new Share Standard as a result of the issue of the Nil Paid Shares.

Implementation of Proposed Restructure

17. In order to implement the Proposed Restructure, LIC will seek shareholder approval to:
 - increase the Share Standard, issue nil paid Co-operative Control Shares and complete the Investment Share Subdivision; and
 - amend LIC's Constitution to effect the alteration of rights attaching to shares by reclassifying the Co-Operative Control Shares and Investment Shares into ordinary Shares.
18. Provided that the resolutions above are approved by LIC's shareholders, at the 2018 annual update¹ LIC will:
 - issue any Co-operative Control Shares required to enable Users to meet the current Share Standard – consistent with the normal annual update process;
 - effect the increased Share Standard;
 - issue nil paid Co-operative Control Shares to enable users to meet the new Share Standard; and
 - complete the Investment Share Subdivision, thereby equalising the two classes of shares.
19. All issued securities will then be reclassified into ordinary shares, carrying equal dividend and voting rights, with the nil paid Co-operative Control Shares being reclassified into Nil Paid Shares.

LIC's current waivers

20. LIC currently relies on a number of waivers from the NZAX Listing Rules (**Rules**), which have been granted to both allow LIC to maintain its co-operative structure, and its two classes of shares (**Current Waivers**).
21. As a result of the Proposed Restructure, many of the Current Waivers that were granted to enable LIC to have two classes of shares will no longer be required, and will fall away.
22. There are a number of Current Waivers that LIC still require to allow for its co-operative structure. These waivers have been amended to reflect the changes as a result of the Proposed Restructure, and have been included in this decision.

Waiver from Rule 8.1.3

23. Rule 8.1.3 requires any security that is not fully paid to carry a proportional fraction of the voting rights that would be exercisable if the security were fully paid. LIC has applied for a waiver from Rule 8.1.3 to allow it to issue the Nil Paid Shares, with the rights contemplated above.

Rulings and Approvals

24. On 24 April 2008, LIC was granted a waiver to Rule 11.1.5 in respect of LIC's Constitution,

¹ Each year, User's holdings are adjusted to meet the Share Standard. This adjustment takes place in July each year at an event known as the annual update.

which contained provisions that restricted the issue, acquisition and transfer of its securities.

25. In line with updated market practice, LIC has applied for NZX to approve, pursuant to Rule 11.1.5, restrictions to the issue, acquisition and transfer of its ordinary shares found in its Constitution.
26. LIC has also applied to NZXR for a number of rulings that allow LIC to be structured as a co-operative company.

Appendix Two

Rule 1.6.1 – Interpretation

Renounceable in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates).

Rule 3.2 – Appointment and Rotation of Directors

3.2.2 No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an NZAX Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.2.2. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An NZAX Issuer shall make an announcement to the market of the closing date for Director Nominations and the contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the NZAX Issuer before the closing date for nominations shall be given by the NZAX Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.

3.2.3 Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the NZAX Issuer, but shall be eligible for election at that meeting.

3.2.6 Subject to Rule 3.2.7, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.

Rule 7.3 – Issues of New Equity Securities

7.3.11 An NZAX Issuer may issue Equity Securities if:

- (a) ...
- (b) ...
- (c) the issue is made to an existing holder of Equity Securities of the NZAX Issuer in order to bring that holder's holding up to a Minimum Holding;

7.6.9 Rule 7.6 does not apply to routine buy backs and issues which relate to the manner in which co-operative companies administer their membership (by buying back or issuing shares as members reduce or cease or increase their business with the company).

Rule 8.1 – Voting Rights and Rights of Equity Securities

8.1.3 Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

Rule 8.2 – Lien and Forfeiture Rights

8.2.1 Except in the case of a Non-Standard NZAX Issuer, an NZAX Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such

Securities shall be restricted to one in respect of:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
- (b) such amounts as the NZAX Issuer may be called upon to pay under any legislation in respect of the specific Securities.

Rule 11 – Transfers and Statement

11.1.5 An NZAX Issuer may, with the prior approval of NZX, incorporate in its Constitution or Trust Deed a provision restricting the issue, acquisition or transfer of Relevant Interests in Equity Securities.