

NZX Regulation Decision

Veritas Investments Limited (“VIL”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

5 June 2019



Waiver from Listing Rule 9.2.1

Decision

1. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by VIL is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants VIL a waiver from NZX Main Board Listing Rule 9.2.1 (**Rule**), to the extent that this Rule prohibits VIL from entering into the Transaction (as defined in Appendix One) without shareholder approval.
2. The waiver in paragraph 1 above is provided on the condition that the Independent Directors of VIL certify to NZXR that:
 - a. the Transaction is in the best interests of VIL and its shareholders;
 - b. the Transaction has been negotiated and entered into on an arm's length commercial basis;
 - c. only the Independent Directors of VIL will vote on the decision by VIL to enter into the Transaction; and
 - d. Nomura did not influence the decision of the Independent Directors of VIL to enter into the Transaction.
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 is set out in Appendix Two.
4. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules.

Reasons

3. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
 - a. Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of the Material Transaction if it is satisfied that the involvement of any Related Parties is unlikely to influence the promotion of, or the decision to enter into, the transaction. The granting of the waiver set out in paragraph 1 will not offend the policy behind Rule 9.2.1;
 - b. VIL has submitted, and NZXR has no reason not to accept, that Nomura has not unduly influenced the decision of VIL to enter into the Transaction. The decision to enter into the Transaction had been made by VIL's Independent Directors and VIL has advised that only its Independent Directors will vote on the decision by VIL to enter into the Transaction;



- c. the certifications provided by the Independent Directors as a condition of the waiver provide comfort that the Transaction has been negotiated, and will be entered into, on an arm's length commercial basis;
- d. VIL has submitted, and NZXR has no reason not to accept, that VIL is not in a position to obtain debt financing from an alternative financier. The Transaction is also an extension or modification of the existing debt facilities provided by Nomura, which were approved by shareholders on 25 June 2018; and
- e. there is precedent for this decision.



Appendix One

1. Veritas Investments Limited (**VIL**) is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. VIL's wholly-owned subsidiary The Better Bar Company Limited (**BBC**) proposes to obtain a \$7 million extension to an existing debt facility from Pacific Dawn Limited, a wholly-owned subsidiary of Nomura Asia Holding N.V, a member of the Nomura Group (**Nomura**) (the **Transaction**).
3. The Transaction will be effected by an amendment to a term loan facility agreement with Nomura, which VIL and BBC entered into on 21 May 2018 (the **Loan Agreement**). Under the Loan Agreement, BBC may borrow from Nomura up to \$27.5 million in aggregate, and the liability of BBC was guaranteed by VIL.
4. Entry into the Loan Agreement was authorised by a resolution of VIL shareholders on 25 June 2018.
5. Pursuant to the Loan Agreement, a \$5 million facility was made available to fund the VIL group's capital expenditure and acquisitions (the **Acquisition Facility**).
6. The purpose of the Transaction is to facilitate the expansion and growth of the business of the VIL group through the acquisition of businesses and assets of hospitality venues. Any draw down against the Acquisition Facility and acquisition that the VIL group may make will be subject to the Rules.
7. The Transaction constitutes an extension of the existing Acquisition Facility provided by Nomura under the Loan Agreement.
8. Nomura is a Related Party of VIL because it is the holder of 10,759,072 warrants in VIL (the **Warrants**), which provides Nomura a right to subscribe for up to 19.9% of the ordinary shares in VIL for no consideration at any time between 28 June 2019 and 27 June 2021. The issue of the Warrants was also approved by Ordinary Resolution at the meeting of VIL shareholders on 25 June 2018.
9. As part of the Transaction, an amendment fee of \$140,000 (representing 2% of the increased facility amount) will be payable by BBC to Nomura (the **Fee**).
10. VIL's current Average Market Capitalisation (**AMC**) is approximately \$4,736,757.
11. VIL's entry into the Transaction will constitute a Material Transaction with a Related Party under Rule 9.2.1 because:
 - a. As above, Nomura is a Related Party of VIL because it is the holder of the Warrants;
 - b. through the Transaction, VIL could be exposed to liability in excess of 10% of its AMC; and
 - c. the value of the Fee is greater than 1% of VIL's AMC.



Appendix Two

9.2 Transactions with Related Parties

9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or

(b) in the case of a guarantee or other transaction of the nature referred to in paragraph

(d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

9.2.2 For the purposes of Rule 9.2.1 “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:

...

(d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, for or of obligations which could expose the Issuer to liability in excess of 10% of the Average Market Capitalisation of the Issuer; or

(e) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) in respect of which the actual gross cost to the Issuer in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuers; or

...

9.2.3 For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

...

(b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying votes; or

...

(d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

...

