



NZX Regulation Decision

The a2 Milk Company Limited ("ATM")

Application for waiver from NZX Listing Rule 5.1.1

15 November 2019





Waiver from NZX Listing Rule 5.1.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and 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 Listing Rules (**Rules**) 5.1.1 to the extent that ATM would be required to obtain shareholder approval for ATM Subsidiary to enter into the Variation.
2. The waiver in paragraph 1 above is provided on the condition that the Independent Directors of ATM certify to NZXR that:
 - a. the Variation is in the best interests of ATM and its shareholders;
 - b. the Variation has been negotiated and entered into on an arm's length commercial basis; and
 - c. SML did not influence ATM to enter into the Variation.
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 Rules to which this decision relates are set out in Appendix Two to this decision.
5. Capitalised terms which have not been 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 behind Rule 5.1 is to regulate those transactions which are major decisions for an Issuer, may significantly change the 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 Variation is entirely within the ordinary course of ATM's business, rather than being a transaction that significantly changes the nature of the business. The Variation confirms the current commercial relationship between ATM and SML and provides some certainty to that existing commercial relationship, rather than involving the immediate expenditure of shareholder funds;
 - (c) the Variation 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 Variation over the term of the Supply Agreement (as varied by the Variation);



- (d) the Variation has been negotiated on an arm's length commercial basis, and is within the competence and experience of the management and the directors of the ATM group; and
- (e) there is precedent for the decision, including the waiver granted by NZXR to ATM in respect of ATM's entry into of the Supply Agreement initially in 2016 and the variation to that agreement in 2018.

Confidentiality

- 7. ATM has requested that this decision be kept confidential until an announcement of the Variation is released to the market.
- 8. In accordance with Rule 9.7.2, 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**), has entered into a variation (the **Variation**) to an existing 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 to NZXR for a waiver from Rules 5.1.1 and 5.2.1 in relation to the Variation.
4. The Variation is intended to confirm the current business relationship between ATM and SML and to change certain terms of the Supply Agreement. The Variation in itself does not increase the volume of business between ATM and SML from current levels.
5. The key terms of the Variation can be summarised as:
 - (a) **Term:** The term of the Supply Agreement is effectively extended by two years such that it is terminable after July 2022 by either party giving at least three years' notice to the other party. From 1 August 2022 the Supply Agreement will continue on a rolling term until either party gives three years' notice of termination to the other party.
 - (b) **Minimum Supply Volume:** SML Subsidiary continues to be contractually bound to supply, under purchase orders, up to a prescribed infant and pregnancy formula volume that has increased under the Variation.
 - (c) **Exclusivity:** SML Subsidiary's exclusive supply rights continue up to an increased specified infant formula product volume in respect of infant formula already supply by SML for sale by the ATM group in the markets of China, Australia and New Zealand.
 - (d) **Sales Price and Discount:** The sales price for products continues to be not fixed in the contract and varies based on a variety of factors. However, the discount applicable to a portion of the price of product is increased in respect of product above a certain volume ordered between 1 August 2020 and 31 July 2022.
6. On the basis that the Supply Agreement could remain on foot for longer than the minimum term (approximately six years from the date of this waiver) and that the exact volume of products to be purchased over the term of the Supply Agreement is uncertain, 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 5.1.1 to enter into the Supply Agreement which may amount to a related series of transactions with a value of greater than 50% of ATM's average market capitalisation. As at the date of this waiver, ATM's market capitalisation is approximately \$9.4 billion.

Appendix Two

Rule 5.1.1 Disposal or Acquisition of Assets

5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above.

