



NZX Regulation Decision

Mercury NZ Limited (NS) (“MCY”)

Application for a waiver and an approval from NZX Listing
Rules 8.1.5 and 8.1.6(b)

19 May 2020



Waiver from Listing Rule 8.1.5

Decision

- 1) Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by MCY is complete and accurate in all material respects, NZXR grants MCY a waiver from NZX Listing Rule 8.1.5 (**Rule**), to the extent that this Rule prevents MCY from cancelling or varying any benefit or right attaching to a Quoted Financial Product by reason only of a transfer of that Quoted Financial Product.
- 2) The waiver in paragraph 1 above is provided on the conditions that:
 - a. MCY bears a non-standard designation (**NS Designation**); and
 - b. Details of the provisions in MCY's Governing Document that restrict the issue, acquisition or transfer of MCY ordinary shares and of circumstances in which dividend and voting rights may be suspended are:
 - i. appropriately disclosed in any offering documents and all statements provided to shareholders under Rule 8.3.1; and
 - ii. disclosed to new security holders who acquire MCY ordinary shares by way of new investor communications.

Reasons

- 3) In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. The provisions in MCY's Governing Document enable MCY to enforce the 10% Limit, which is a key aspect of the Ownership Restrictions under the New Zealand Government's MOM Programme;
 - b. It is desirable that MCY has the ability to ensure the 10% Limit is adhered to and that there is an appropriate disincentive to breaching the statutory requirements in Part 5A of the PFA. The PFA expressly anticipates that a company's constitution (defined as the Governing Document in the Rules) can add to the consequences set out in the PFA;
 - c. Persons trading MCY ordinary shares on market have notice of the Ownership Restrictions and the consequences of breaching the 10% Limit. These restrictions were made clear in the 2013 Offering Document, which was prepared when the Crown was initially proposing to make an offer to the public of fully paid ordinary shares in MCY. In addition, MCY continues to have an NS Designation. Accordingly, security holders will be made aware of the restrictions and are able to consider the restrictions in making a decision to invest in MCY; and
 - d. MCY's Governing Document sets out a process whereby holders of a relevant interest in Excess Shares are notified that they may have breached the 10% Limit, and of the consequences of this breach, including, in particular, where a breach is found not to be inadvertent.



Approval under Listing Rule 8.1.6(b)

Decision

- 4) On the basis that the information provided by MCY is complete and accurate in all material respects, NZXR approves the Transfer Restrictions, which allow MCY to suspend dividend and voting rights attached to MCY ordinary shares where the 10% limit is breached.
- 5) The approval is granted on the conditions stated in paragraph 2.

Reasons

- 6) In coming to the decision to grant MCY the approval described in paragraph 4, NZXR considered the reasons outlined in paragraph 3.



Appendix One

1. Mercury NZ Limited (**MCY**) is a Listed Issuer with shares and bonds Quoted on the NZX Main Board and NZX Debt Market respectively.
2. MCY is a New Zealand incorporated mixed ownership model (**MOM**) company within the meaning of section 45P of the Public Finance Act 1989 (**PFA**).
3. Accordingly, the MCY ordinary shares are subject to various restrictions under Part 5A of the PFA. These restrictions include:
 - a. Under section 45R of the PFA, the Crown must hold at least 51% of MCY's ordinary shares and will be prohibited from reducing its holding below that level. The Crown must also hold at least 51% of any other class of shares (voting or non-voting) and any other class of securities in MCY that confer the voting rights (together the **51% Holding Restriction**) and;
 - b. Under section 45S of the PFA, no person, other than the Crown, may have a relevant interest in more than 10% of any class of shares in MCY (including the MCY ordinary shares), or of any other class of securities in MCY that confer voting rights (the **10% Limit**).

(together the **Ownership Restrictions**)
4. If a person has a relevant interest in MCY ordinary shares in breach of the 10% Limit, under sections 45T(1)(c) and 45T(2) of the PFA that person will lose the right to be paid a dividend or other distribution in respect of the MCY ordinary shares held in excess of the 10% Limit (the **Excess Shares**) and must not exercise or control the exercise of the voting rights attaching to the Excess Shares.
5. In addition, section 45T(5) of the PFA allows MCY's Governing Document to provide for the 10% Limit and the consequences of a person exceeding it, and to provide for the implementation of those consequences and to add to the consequences set out in s 45T.
6. Due to NZX publishing updated Rules, MCY has approached NZX Regulation (**NZXR**) seeking the redocumentation of approval to permit the inclusion of provisions in MCY's Governing Document that restrict the issue, acquisition and transfer of MCY ordinary shares and which enable the MCY Board to suspend any benefit or right attached to MCY ordinary shares due to a contravention of the 10% Limit.
7. The provisions in MCY's Governing Document that provide for the Ownership Restrictions and the Excess Shares are:
 - a. Clause 12, which provides that any further issues of MCY ordinary shares must be made in accordance with Part 5A of the PFA;
 - b. Clause 17, which requires the MCY Board to refuse to register a transfer of MCY ordinary shares where it has actual knowledge, or believes, that the transfer of those MCY ordinary shares would, or would be likely to, contravene Part 5A of the PFA;
 - c. Clause 4 of the Fourth Schedule, which restricts MCY from issuing, acquiring or redeeming any MCY ordinary shares where the issue, acquisition or redemption would result in a breach of the 51% Holding Restriction or MCY has knowledge that the issue, acquisition or redemption would result in a breach of the 10% Limit; and

- d. Clause 7 of the Fourth Schedule, which provides for the automatic suspension of voting rights and the entitlement to dividends or other distributions in respect of Excess Shares (being MCY ordinary shares in which a Relevant Interest is held in excess of the 10% Limit);
- e. Clause 10 of the Fourth Schedule, which permits the MCY Board to refuse to register a transfer of MCY ordinary shares where:
 - i. The holder has not provided any, or satisfactory, documentary evidence where required; or
 - ii. The MCY Board has actual knowledge, or believes, that the transfer of those MCY ordinary shares will result in a contravention of the 10% Limit; and
- f. Clauses 12 to 21 of the Fourth Schedule, which provide for a registered holder of Excess Shares to have no voting rights and no entitlement to dividends or other distributions:
 - i. If a breach of the 10% Limit is determined by the board to be inadvertent, in respect of those Excess Shares (clauses 14(a) and (b)); and
 - ii. If a breach of the 10% Limit is determined by the board to be not inadvertent or there is insufficient information to determine if the breach was inadvertent, in respect of all MCY ordinary shares held by that registered holder (clauses 15(a) and (b)),

and also provide for the sale of shares so as to ensure that there is no longer a breach of the 10% Limit.



Appendix Two

Rule 8.1.5 Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product may be cancelled or varied by reason only of a transfer of that Quoted Financial Product.

Rule 8.1.6 The Governing Document of an Issuer may:

- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time) and/or in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),
- (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or
- (c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months' prior notice must be given to the affected holders before such an action.



