



NZX Regulation Decision

Augusta Capital Limited (AUG)

Application for a waiver from NZX Listing Rule 4.14.1

22 May 2020



Waiver from Listing Rules

Background

1. 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.
2. The Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms which have not been defined in the decision have the meanings given to them in the Rules.

Decision

4. On the basis that the information provided by Augusta Capital Limited (**AUG**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants AUG a waiver from NZX Listing Rule 4.14.1 (**Rule**), to the extent that this Rule prevents AUG from acquiring the PR Shares.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
 - a. the purpose of this waiver is to permit a buyback of the PR Shares where the event in anticipation of which the PR shares were issued has not eventuated;
 - b. AUG intends to acquire the PR Shares in accordance with the terms upon which they were issued, which have been disclosed to all shareholders through NZX;
 - c. the terms of the acquisition have been disclosed to all shareholders; and
 - d. had the PR Shares been issued under Rule 4.6, rather than via the exercise of PRs, Rule 4.14.4 would have permitted AUG to acquire the PR Shares.



Appendix One

1. AUG is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. In connection with the proposed takeover of AUG by Centuria Platform Investments Pty Limited announced to NZX on 29 January 2020, AUG's Board exercised a power under the Long Term Incentive Plan Rules to vary the terms of the 2016, 2017, 2018 and 2019 tranches of its performance rights plan.
3. Following that variation, AUG issued 2,183,145 ordinary shares (the **PR Shares**) in accordance with the terms of its performance rights plan as varied. Following the termination of the bid implementation agreement in relation to the proposed takeover, AUG now requires each participant in the performance rights plan to transfer the PR Shares issued to them in contemplation of the takeover back to AUG for nil consideration (the **Transfer**). Upon Transfer, the PR Shares will be cancelled. As announced to NZX on 5 May 2020, AUG's Board will issue performance rights to participants in the performance rights plan that correspond to the PR Shares that have been bought back from those participants under the Transfer.
4. The Transfer will take place under section 60(1)(b)(ii) of the Companies Act 1993 (and in accordance with clause 18.2 of AUG's constitution). AUG has given the required 10 Business Days' notice to shareholders in accordance with the requirements of section 62 of the Companies Act 1993 before the acquisition of the PR Shares can occur.
5. The original performance rights (**PRs**) were issued under Rule 4.6.1 (or its predecessor rule) with the PR Shares being issued under Rule 4.9.1(b)(i). Accordingly, the PR Shares cannot be acquired by AUG under Rule 4.14.1(d)(ii).
6. Additionally, the PR Shares cannot be acquired by AUG under Rule 4.14.1(b)(ii) as a director of AUG, Mark Francis, holds PR Shares in his capacity as managing director.



Appendix Two

4.6 3% Issues to Employees and Executive Directors

4.6.1 An Issuer may issue Equity Securities if:

- (a) the issue is made to, or to a trustee to hold for the benefit of, Employees and may include Employees that are Directors or Associated Persons of Directors only if their participation satisfies the allocation criteria applying to Employees generally,
- (b) the issue is of a Class of Equity Securities already on issue, and
- (c) the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.6.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed 3% of the aggregate of:
 - (i) the total number of Equity Securities of that Class on issue at the commencement of that period, and
 - (ii) the total number of Equity Securities of that Class issued during that period under Rules **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** and 4.9,

provided that for the purposes of this Rule 4.6.1:

- (d) Financial Products which may Convert to Quoted Equity Securities are deemed to correspond in number to, and be deemed to be of the same Class as, the Quoted Equity Securities into which they may Convert, and
- (e) if the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, unless otherwise specified in the issue terms, this is the Average Market Price.

[...]

4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations

4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
 - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
 - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and



the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

- (b) the issue of Equity Securities (**Security B**) is made on Conversion of any Financial Product (**Security A**), and
 - (i) the terms of issue of Security A provided for the Conversion to Security B and the issue of Security A was approved in the manner set out in Rule **Error! Reference source not found.** or Security A was issued in accordance with any of Rules **Error! Reference source not found.**, **Error! Reference source not found.**, 4.6, **Error! Reference source not found.** or 4.9.1(a) (whether or not any of the Rules quoted applied to the issue of Security A), or
 - (ii) the issue of Security B is approved in the manner set out in Rule **Error! Reference source not found.**, or Security B is issued in accordance with Rule **Error! Reference source not found.** or Rule 4.6,
- (c) the issue is made to bring an existing holder's holding up to a Minimum Holding, or
- (d) the issue is made under an arrangement, amalgamation or compromise effected through Part 13 or Part 15 of the Companies Act 1993 or an equivalent statutory regime in a jurisdiction other than New Zealand which NZX considers is at least as useful to the recipients.

4.14 Buy Backs and Redemption of Equity Securities

4.14.1 An Issuer may only acquire or redeem Equity Securities of that Issuer by:

- (a) an acquisition effected through NZX's order matching market or through the order matching market of an Issuer's Home Exchange,
- (b) an acquisition effected in compliance with:
 - (i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,
 - (ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:
 - (A) not made from a Director, or an Associated Person of a Director, of the Issuer, and
 - (B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the



issuer was listed, whichever is earlier, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,

- (iii) section 61(7) of the Companies Act 1993, or
 - (iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,
- (c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,
- (d) an acquisition or redemption:
- (i) approved in accordance with Rule **Error! Reference source not found.**,
 - (ii) of Equity Securities that were issued under Rule 4.6, or
 - (iii) from a holder who holds less than a Minimum Holding, or
- (e) a redemption of Equity Securities issued in compliance with Rule **Error! Reference source not found.** or **Error! Reference source not found.**, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,

provided that for the purposes of Rule 4.14.1(b)(ii)(B):

- (f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
 - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
 - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

[...]

