



# NZX Regulation Decision

AFT Pharmaceuticals Limited (“AFT”)

Application for a waiver from NZX Listing Rule 5.2.1

10 June 2020



# Waiver from Listing Rule 5.2.1

## Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by AFT is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants AFT a waiver from NZX Listing Rule (**Rule**) 5.2.1, to the extent that this Rule would otherwise require AFT to obtain the approval of shareholders to enter into the Underwriting Agreement.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - a. the Independent Directors of AFT certify to NZXR that:
    - i. the terms of the Underwriting Agreement have been entered into, and negotiated, on an arm's length and commercial basis;
    - ii. AFT was not unduly influenced to enter into the Underwriting Agreement by the Sellers; and
    - iii. the entry into, and performance, of the Underwriting Agreement is in the best interests of AFT.
  - b. The Directors associated with CRG and AF Trust have not, and will not, be involved in AFT board negotiations or resolution(s) to approve the Underwriting Agreement.
  - c. The waiver, its conditions and implications will be disclosed in AFT's next annual report.
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 Rule to which this decision relates is 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 of Rule 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party.
  - b. AFT submits, and NZXR has no reason not to accept, that these circumstances are not applicable because:
    - i. the Underwriting Agreement will be on market-standard terms, and negotiated with the Underwriters on an arms' length and commercial basis;



- ii. the Sellers will be giving customary representations and warranties regarding their shares in the Underwriting Agreement, and will pay their proportional share of the cost of the underwrite;
- iii. the price that the Sellers receive for their existing shares under the Initial Offer will be the same price as is received by AFT for the new shares under the Initial Offer, and will be an arm's length, market price agreed as between AFT, the Sellers and the Underwriters, being the underwritten price or such greater clearing price under the bookbuild (**Initial Offer Price**);
- iv. AFT's Independent Directors, none of whom are associated with the Sellers, will be required to approve the launch of the Offer. A subcommittee of any two of those Independent Directors will be required to approve on behalf of AFT the Initial Offer Price;
- v. the Sellers' participation in the Offer will be fully disclosed to AFT's shareholders;
- vi. there will not be any feature of AFT's participation in the Offer or the Underwriting Agreement that will be unduly influenced by the fact that Related Parties of AFT are involved in the Offer or party to the Underwriting Agreement; and
- vii. the Initial Offer is in the best interests of AFT and AFT shareholders who are not associated with the Sellers because the Initial Offer will:
  - i. increase AFT's free float;
  - ii. provide greater liquidity for investors;
  - iii. allow for an increased participation by retail and institutional investors (including an expected broadening of the AFT shareholder base through the introduction of new investors); and
  - iv. allow AFT to access new capital to allow it to repay debt, which will reduce its borrowing costs.

## Confidentiality

- 7. AFT has requested that this decision be kept confidential until AFT releases an announcement relating to the Offer.
- 8. In accordance with Rule 9.7.2, NZXR grants AFT's request.



## Appendix One

1. AFT Pharmaceuticals Limited (**AFT**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board.
2. AFT is considering undertaking a capital raising that would comprise an offer of approximately \$10 million new ordinary shares in AFT to selected investors (the **Placement**).
3. Alongside the Placement:
  - a. CRG<sup>1</sup> is proposing to offer all of the 16,067,045 existing shares held by them (being 15.99% of the shares currently on issue in AFT) (**CRG Sell Down**); and

- b. Hartley Atkinson and Colin McKay as trustees of the Atkinson Family Trust (**AF Trust**, and together with CRG, the **Sellers**) are proposing to offer \$3.5 million of existing shares held by them (**AF Trust Sell Down**),

to selected investors. Although initiated independently, it is proposed that the Placement be conducted contemporaneously with the CRG Sell Down and AF Trust Sell Down, such that they will be presented as a single placement and offered to eligible investors under one bookbuild (the Placement, CRG Sell Down and AF Trust Sell Down together, the **Initial Offer**).

4. Following the Initial Offer, AFT proposes to undertake a share purchase place (**SPP**) offering up to \$2 million new shares to AFT's existing shareholders (the Initial Offer and the SPP together being the **Offer**).
5. The Initial Offer will be underwritten by Forsyth Barr Group Limited and Bell Potter Securities Limited (together the **Underwriters**) and undertaken at a price agreed to between AFT, the Sellers and the Underwriters (being the underwritten price or such greater clearing price under the bookbuild).
6. AFT has an Average Market Capitalisation (**AMC**) of approximately \$470 million. An issuance of approximately \$10 million new shares in AFT under the Placement would constitute approximately 2.14% of the current AMC of AFT. The aggregate proceeds from the issue of new shares and the sale of existing shares under the Initial Offer will be greater than 10% of AFT's AMC.
7. Each of the Sellers is a Related Party of AFT, for the following reasons:
  - a. In the case of CRG:
    - i. CRG is the holder of a Relevant Interest in more than 10% of the shares in AFT currently on issue; and
    - ii. CRG is an Associated Person of Nathan Hukill, a Director of AFT who is also a managing partner of CR Group L.P., the manager of CRG.

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<sup>1</sup> For the purposes of this decision, Capital Royalty Partners II – Parallel Fund B (Cayman) L.P., Capital Royalty Partners II – Parallel Fund A L.P., Capital Royalty Partners II L.P., Capital Royalty Partners II (Cayman) L.P. are referred to collectively as "CRG".

- b. In the case of AF Trust:
  - i. AF Trust is the holder of a Relevant Interest in more than 10% of the shares in AFT currently on issue;
  - ii. Hartley Atkinson, one of the two trustees of the AF Trust, is a Director of AFT; and
  - iii. Marree Atkinson, the wife of Hartley Atkinson, is a Director of AFT.
- 8. Each of AFT, CRG and AF Trust will provide certain indemnities to the Underwriters in the placement and sell down agreement to be entered into between the Underwriters, AFT and the Sellers (the **Underwriting Agreement**) in the event that the Underwriters incur losses in connection with the Underwriting Agreement.
- 9. In accordance with the Underwriting Agreement, AFT would be exposed to liability above 10% of its AMC in the unlikely event that the Underwriters incur a loss of an amount greater than 10% of AFT's AMC as a result of the Underwriters involvement in the Initial Offer.
- 10. The Offer constitutes a Material Transaction as defined in the Rules as it involves AFT entering into an Underwriting Agreement which could expose AFT to liability above 10% of its AMC.
- 11. The Sellers, as sellers of shares under the Initial Offer, are parties to the Underwriting Agreement, together with AFT and the Underwriters. Therefore, the Sellers as Related Parties are direct parties to the Material Transaction, triggering the shareholder approval requirements of Rule 5.2.1.
- 12. AFT sought a waiver from Rule 5.2.1 to the extent that that Rule would otherwise require AFT to obtain shareholder approval to enter into the Underwriting Agreement.



## Appendix Two

### **Rule 5.2.1      Transactions with Related Parties**

Rule 5.2.1      An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct party to the Material Transaction, or

(b) a beneficiary of a guarantee or other transaction which is Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

