



NZX Regulation Decision

Quayside Holdings Limited (QHL)

Application for decisions in relation to the NZX Listing Rules

17 June 2020



Background

1. The information on which these decisions are based is set out in Appendix One to this decision. This ruling and this approval will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendix Two.
3. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules.

Ruling that Financial Products are Debt Securities

Decision

4. Subject to the condition set out in paragraph 5 below, and on the basis that the information provided by Quayside Holdings Limited (**QHL**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) declares by way of Ruling that QHL Perpetual Preference Shares (**PPS**) are Debt Securities for the purposes of the NZX Listing Rules (**Rules**).
5. The ruling in paragraph 4 above is provided on the condition that there are no material changes to the terms of the PPS while they are on issue.

Reasons

6. In coming to the decision to provide the ruling set out in paragraph 4 above, NZXR has considered that:
 - a. The PPS have been treated as Debt Securities under previous versions of the NZX Main Board / Debt Market Listing Rules since they were initially quoted, on 13 March 2008;
 - b. The PPS bear a fixed rate of return, calculated by reference to a set formula, by way of dividend payments. Accordingly, dividends paid to PPS holders are comparable to the coupon payable on Debt Securities;
 - c. In the event of liquidation, PPS holders will only be entitled to the PPS issue price and any unpaid dividends; only ordinary shareholders have any right to participate in the residual assets of QHL. In addition, this amount is unlikely to be paid out to holders other than the Council because it is likely that PPS holders would have exercised the Put Option granted by the Council; and
 - d. The terms of the PPS, including their ranking and the Put Option granted by the Council, were disclosed in Terms of the PPS offer.



Approval of Transfer Restrictions under Rule 8.1.6(b)

7. On the basis that the information provided by QHL is complete and accurate in all material respects, NZXR confirms approval of the Transfer Restrictions, which allow QHL to restrict the transfer of the PPS for the 10 day period between the record date for the Put Option or the Call Option, and the date of transfer to the Council upon exercise of either the Put Option or the Call Option. In the case of exercise of the Call Option affecting some of the PPS, the Transfer Restriction shall only apply to the relevant proportion of a PPS holder's holding.

Reasons

8. In confirming approval of the Transfer Restrictions, NZXR has considered:
 - a. That a waiver providing for the Transfer Restrictions has been in place since quotation of the PPS, and
 - b. The Transfer Restrictions are similar to restrictions imposed upon maturity of debt securities.



Appendix One

1. Quayside Holdings Limited (**QHL**) is incorporated in New Zealand under the Companies Act 1993. QHL is a commercial investment company associated with the Bay of Plenty Regional Council (the **Council**). QHL has perpetual preference shares (**PPS**) quoted on the NZX Debt Market. The PPS were offered to the public in accordance with an investment statement and prospectus, both dated 31 January 2008 (together, the **Terms**). NZX Regulation (**NZXR**) issued a ruling on 1 February 2008 that for the purposes of the Rules the PPS are Debt Securities.
2. QHL has applied for a ruling that the PPS will continue to constitute “Debt Securities” and not “Equity Securities” for the purposes of the Rules. QHL was required to apply for a new ruling as NZX has published a revised set of the Rules.
3. The relevant terms of the PPS are:

Perpetual

- a. The PPS have no fixed term, and are not redeemable.

Dividends

- b. Holders of PPS are intended to receive dividends which are fully imputed (or “grossed up” to the extent they are not fully imputed), quarterly in arrears.
- c. QHL is not obliged to pay dividends. But if a dividend is not paid on a dividend payment date (or, if it is not a Business Day, the following Business Day):
 - i. it is intended that QHL also pay interest on the unpaid amount at a rate 3% per annum above one month bank bill rate;
 - ii. while dividends remain unpaid, QHL may not pay dividends or other distributions on its uncalled capital, its ordinary shares or any other shares which rank behind the PPS; and
 - iii. the Administrative Agent will be obliged to exercise the Put Option and require the Council to acquire all PPS if a dividend is not paid within 5 Business Days of a dividend payment date.

Rights in liquidation

- d. On a liquidation of QHL, the holder of a PPS will be entitled to receive the liquidation preference in priority to the holders of its uncalled capital, its ordinary shares and any other shares ranking behind the PPS. However, in the event of a liquidation of QHL the Put Option will be exercised (if it has not already been exercised prior to the liquidation (which is the more likely event)), and holders will accordingly be entitled to receive the Put Option exercise price.

Non-voting

- e. Holders of PPS will not be entitled to receive notice of, attend, vote or speak at any meetings of QHL (or its shareholders), but will be entitled to attend any meetings of, and vote on any resolutions of, holders (for example, in relation to exercise of the Put Option, or as required by the Companies Act in relation to any

action affecting the rights attached to PPS held by members of any “interest group” of holders).

Call Option

- f. The Council may at any time call all or part (pro rata across all holders, and if in part, subject to a minimum number of PPS left uncalled) of the PPS (the **Call Option**).

Put Option

- g. In certain circumstances (including QHL becoming insolvent, electing not to pay a dividend or ceasing to have a majority shareholding (directly or indirectly) in Port of Tauranga), the put option will be triggered (the **Put Option**). Depending on the event which has triggered the Put Option, the Administrative Agent will either be automatically required, or may by a special resolution of holders (or by special approval notice) be required, on behalf of all holders of PPS, to require the Council to purchase all the PPS.

Transferability

- h. PPS are transferable generally in multiples of 1,000 and not to result in the transferor having less than a minimum holding of 5,000 PPS (the **Minimum Holdings**). In addition, if the Put Option or Call Option is exercised, the PPS may not be transferred after the record date relating to that exercise, except to the Council or its nominee and, in the case of the exercise of the Call Option made in respect of fewer than all the PPS, except to the extent that the holder retains at least the number of PPS that holder is required to transfer to the Council (or its nominee) on the transfer date (the **Transfer Restriction**).

Future Issues

- i. QHL may issue further securities (including further PPS) ranking equally with, or behind, the PPS without the consent of any holder. However, it may not issue any other shares ranking in priority to the PPS as to distributions without the approval of the holders by way of a special resolution or pursuant to a special approval notice.

Minimum Holdings and Transfer Restrictions

- 4. The Terms set out a minimum holding amount of 5,000 PPS and minimum transfer amounts of 1,000 PPS. NZXR provided a waiver to allow for the Minimum Holdings on 1 February 2008, however Rule 8.1.6(a) now allows for the Minimum Holdings restriction.
- 5. The Terms also provide for the Put Option and the Call Option, which in certain circumstances require all of the PPS in the case of the Put Option and all or some of the PPS in the case of the Call Option to be transferred to the Council. The Terms place a restriction on transfer of the PPS during the 10 day period from the Record Date for the relevant of the Put Option or Call Option and the date that the PPS are transferred to the Council. If either the Put Option or Call Option is exercised, notice of such option will be released to market giving PPS holders at least 10 Business Days’ prior notice of the record date.
- 6. If either the Put Option or the Call Option is exercised by the Council, holders of the PPS will be given notice of the date on which the PPS will be transferred. The PPS will

remain transferable by holders after receiving notice of exercise of either the Put Option or the Call Option until the Record Date, which is 10 days before the transfer date. After the Record Date, the PPS cannot be transferred other than to the Council or its nominee. In respect of this Transfer Restriction:

- a. The Transfer Restriction will allow time for the necessary administrative tasks to be performed to identify PPS holders and to arrange payment of the Put Option Exercise Price or Call Option Exercise Price to the holder by the Council. The Transfer Restriction will also prevent confusion in relation to settlement of the Put Option Exercise Price or Call Option Exercise Price;
- b. Holders of the PPS will be able to freely transfer the PPS until the Record Date if the Put Option or Call Option is exercised; and
- c. At the time of the 1 February 2008 decision relating to the Transfer Restriction, QHL's financial advisors advised that after the exercise of the Put Option or the Call Option, the PPS are unlikely to trade at a price materially different from the Put Option Exercise Price or Call Option Exercise Price (adjusted for the time value of money) respectively. NZXR has no reason to consider this does not continue to be the case.

Application to rule that the PPS are considered Debt Securities

7. In support of the application to rule that the PPS are considered Debt Securities, QHL submits:
 - a. The characteristics of the PPS are such that the market categorises them as debt instruments and will expect them to continue to trade on the NZX Debt Market;
 - b. While the PPS are considered Equity Securities under the Rules, the PPS do not have the usual attributes of equity. The PPS bear a fixed rate of return, by way of dividend payments, and participate in the assets of QHL only to the extent of the initial PPS offer price and any unpaid dividends;
 - c. QHL's ordinary shares are not listed, and accordingly QHL's Governing Document has not been required to comply with the Rules in the manner required for issuers of Equity Securities;
 - d. Holders of the PPS will not have any rights to vote generally, and PPS will not be convertible into shares that have rights to vote generally, so any protection based on this requirement is of no benefit to holders of the PPS; and
 - e. protections provided for in the Rules which are intended to prevent dilution of the interests of ordinary shareholders of an Issuer are of no benefit to holders of PPS, because the PPS are not convertible into ordinary shares.



Appendix Two

Part A - Definitions

Debt Security: has the meaning given in sections 8(1) and 8(5) of the FMC Act, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Debt Security.

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.

