



NZX Regulation Decision

Livestock Improvement Corporation Limited (NS) (LIC)
Application for a waiver from NZX Listing Rule 2.7.1

31 August 2020



Waiver from Listing Rules

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Livestock Improvement Corporation (**LIC**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants LIC a waiver from NZX Listing Rule 2.7.1 (**Rule**), to permit LIC's Elected Directors' terms to be extended as set out at paragraph 9 of Appendix One.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. LIC's shareholders approve the Proposed Governance Changes, including the extension to the existing Elected Directors' terms of tenure as part of the transitional arrangements, by special resolution at the 2020 Annual Shareholders Meeting approving changes to LIC's Constitution (incorporating such transitional changes); and
 - b. this waiver, and its effects on LIC, is summarised in each annual report of LIC.
3. This decision relates to the prior waivers and ruling decision granted by NZXR to LIC on 1 July 2019.
4. 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.
5. The Rules to which this decision relates are set out in Appendix Two to this decision.
6. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 2.7.1 in relation to director rotations is to ensure that shareholders have the ability to regularly elect (or re-elect) individuals who are representatives of the shareholders to the Issuer's board. Prior to this waiver, LIC already had a waiver from Rule 2.7.1 permitting four year terms beginning 1 June of the year the Director was elected/re-elected. The introduction of this new waiver does not affect LIC shareholder representation because the shareholders will continue to be represented by Elected Directors;
 - b. in addition to LIC's previous waiver from Rule 2.7.1, LIC has a number of other waivers from the Rules to permit its governance structure. As a result, LIC bears an NS designation;
 - c. while this is a waiver to a fundamental obligation under the Rules, it is a one-off amendment to the Elected Directors' terms to streamline the transition to allow LIC to implement the Proposed Governance Changes. As such, NZXR does not consider this decision creates a precedent for other issuers to contemplate amendments to a fundamental obligation relating to director rotation;



- d. In accordance with condition 2a. LIC's shareholders will ultimately determine whether this waiver will have effect or not by voting on the proposed changes at the 2020 Annual Shareholders Meeting. The Proposed Governance Changes require approval by special resolution, which requires at least 75% of votes cast to be in favour of the resolution;
- e. LIC's shareholder base is limited to eligible LIC product and service users who have to meet certain criteria to be eligible to become members of the co-operative. This means members of public are generally not able to invest in LIC, and LIC's co-operative nature creates a shareholder network which allows its members to have greater control and say in the governance of the co-operative; and
- f. LIC relies on an existing waiver to Rule 2.7.1 dated 1 July 2019, which permits LIC's Elected Directors to be appointed on four year terms. If the Proposed Governance Changes are approved by LIC shareholders, and following the implementation process set out in paragraph 9 of Appendix One below, LIC will comply with the director rotation requirements under the Rules and this waiver will fall away.

Confidentiality

- 8. LIC has requested this decision be kept confidential until the release of the notice of 2020 Annual Shareholders Meeting.
- 9. In accordance with Rule 9.7.2(a), NZXR grants LIC's request.



Appendix One

Background

1. Livestock Improvement Corporation Limited (**LIC**) is a Listed Issuer with a “Non Standard” (**NS**) designation.
2. LIC is a farmer-owned co-operative company registered under the Companies Act 1993, operating in the dairy industry in New Zealand.
3. LIC has approximately 10,000 shareholders, spread across four regions (Northern, Midland, Central and Southern regions as defined in LIC’s Constitution) (**Regions**). LIC shareholders are only able to nominate and vote for Directors that represent their region (**Elected Directors**). The respective Elected Directors make up seven out of the ten Directors, with the remaining being Board appointed Directors from outside of the co-operative.

Proposed Governance Changes

4. LIC is proposing to make changes to its governance structure as part of its ongoing review of the co-operative. It wishes to introduce the relevant proposal (**Proposed Governance Changes**) at its 2020 annual meeting of shareholders on 15 October 2020 (**2020 Annual Shareholders Meeting**) through amendments of the LIC Constitution (**Constitution**).
5. The Proposed Governance Changes that are relevant to this waiver are as follows:
 - a. **Reducing the number of Regions:** There are currently four Regions from which directors are elected: Northern, Midland, Central and Southern as defined in the current Constitution. LIC shareholders are only able to nominate and vote for Directors that represent their region. LIC proposes to consolidate the existing regions so as to reduce the number of regions from four to two (North Island and South Island) with three Elected Directors representing each Region;
 - b. **Reducing Elected Director terms and aligning election timing with annual meeting:** Currently, LIC Elected Directors are elected (through a paper based election process, i.e. outside a shareholders’ meeting) for four year terms starting from 1 June (the start of the dairy farming season) of the year in which they are appointed. LIC proposes to align the timing for election of Elected Directors with each year’s annual general meetings (in October), and to shorten the term of director appointments to comply with the rotation requirements under Rule 2.7.1, i.e. the term will not exceed three years or third annual shareholder meeting following election, whichever is longer; and
 - c. **More appointed directors:** Currently, LIC’s board may appoint up to three board appointed directors out of the 10 directors (**Appointed Directors**). LIC proposes to allow up to four Appointed Directors under its Constitution, subject to the subsequent ratification of that appointment by shareholders. To achieve this, one of the current Elected Directors will stand down if the Proposed Governance Changes are approved.
6. All LIC shareholders will be able to consider and vote on Proposed Governance Changes at the 2020 Annual Shareholders Meeting. The Proposed Governance Changes will require approval by special resolution, meaning it will require support from at least 75% of votes cast on the resolution. If the Proposed Governance Changes are not approved by shareholders, then the existing governance arrangements will remain in place and this waiver will not be required.

Proposed implementation of changes to Elected Directors

7. If the Proposed Governance Changes are approved, LIC needs to transition its existing Elected Directors to the new governance regime.
8. LIC has considered the possible implementation processes to streamline the changes required for the Proposed Governance Changes. LIC believes that the proposed timing and form of changes ensures LIC shareholders retain the power to review and determine whether they consider the Proposed Governance Changes to be in their best interests.
9. LIC believes that a one-off amendment to Elected Directors' terms would be the most effective way of implementing the changes required. The changes will be implemented as follows:
 - a. One of the Elected Directors representing North Island (David Jensen) will step down with effect from the date of the annual meeting (if the Proposed Governance Changes are approved). This will reduce the total number of Elected Directors from seven to six.
 - b. The existing terms of tenure of the Elected Directors will be extended by approximately five months (with the exception of one director (Gray Baldwin), whose term will be shortened by approximately 20 months to expire in October 2022). This will help align the expiry of existing Elected Directors' terms with the new annual meeting election dates.
 - c. In the next round of elections, one of the South Island directors (elected at the 2021 annual meeting) and one of the North Island directors (elected at the 2022 annual meeting) will be elected for an approximately two-year term (instead of an approximately three-year term). This will be done on a one-off basis to help ensure that, going forward, LIC will have one North Island seat and one South Island seat up for election each year.
 - d. In October 2022, one of the North Island seats will be disestablished. At the same time, a new South Island seat will be established. This will effect the transition to three Elected Directors from each Region.

To illustrate the transition, the next election dates details are set out below.

	NEW REGION	NEXT ELECTION DATE	FOLLOWING ELECTION DATE
SOUTH ISLAND	South Island	Annual meeting 2021	Annual meeting 2023 (following a two-year term)*
	South Island	Annual meeting 2021	Annual meeting 2024
	South Island (new seat)	Annual meeting 2022	Annual meeting 2025

	NEW REGION	NEXT ELECTION DATE	FOLLOWING ELECTION DATE
NORTH ISLAND	North Island (to be disestablished)	N/A (Seat disestablished at the annual meeting 2022)	N/A
	North Island	Annual meeting 2022	Annual meeting 2024 (following a two-year term)*
	North Island	Annual meeting 2022	Annual meeting 2025
	North Island	Annual meeting 2023	Annual meeting 2026

* In relation to the annual meetings in 2021 and 2022 only, two candidates will be elected in respect of the same region at the same annual meeting but will be appointed for different terms. One of the candidates will be elected for a shorter two-year term, while the other candidate will be elected for a standard three-year term. The Board will determine who of the successful candidates will be appointed for which term based on the Board's needs at the relevant time.

- Every Elected Director elected (or re-elected) after their respective proposed re-election dates set out in the table above, will be in compliance with Rule 2.7.1 (i.e., no longer reliant on this waiver).

Application for waiver from NZX Listing Rule 2.7.1

- LIC has applied for a waiver, which modifies LIC's existing Rule 2.7.1 waiver, to allow the proposed amendments to the Elected Directors' terms as set out above in paragraph 9.
- LIC seeks to rely on this waiver to Listing Rule 2.7.1 only to the extent necessary to permit the transitional arrangements described above to implement the new governance structure.

Amendment to the NZX decision dated 1 July 2019

- Subject to the Proposed Governance Changes being approved, LIC is also seeking to amend the 1 July 2019 Waiver decision because LIC will no longer be reliant on all of the waivers and rulings granted in that decision.
- LIC submits that there have been no other relevant material changes in LIC's structure or circumstances since the 1 July 2019 decision.

Appendix Two

Rule 2.7.1 Rotation of Directors

2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment.

