



NZX Regulation Decision

Serko Limited ("SKO")

Application for a waiver from limb (a) of the definition of "Share Purchase Plan" under the NZX Listing Rules

30 September 2020



Waiver from limb (a) of the definition of "Share Purchase Plan"

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Serko Limited ("**SKO**") is complete and accurate in all material respects, NZX Regulation ("**NZXR**") grants SKO a waiver from the definition of "Share Purchase Plan" ("**SPP**"), to the extent this definition would prevent SKO from accepting applications in excess of NZ\$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner) in any 12 month period.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - (i) the consideration payable for the Equity Securities issued in the SPP does not exceed NZ\$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial holder); and
 - (ii) the waiver, its conditions and implications being disclosed in SKO's next annual report.
3. The material 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 definition to which this decision relates are set out in Appendix Two.
5. The waiver in paragraph 1 above shall only apply to the SPP and not to any other offer made by SKO.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - (i) the SPP is intended to be fair to minority shareholders by providing a mechanism to mitigate the dilutionary effects of the Placement (as defined in Appendix One below);
 - (ii) absent the waiver being granted, SKO considers it likely to be necessary to cap the maximum application amount under the SPP at NZ\$35,000 given the inherent difficulties with accepting applications from shareholders for up to the full NZ\$50,000 less any amount they subscribed for under the SPP component of the Previous Offer (as defined in Appendix One below). Further, SKO is not in a position to "top-up" an application in this instance through the use of its placement capacity (given its limited headroom following the Previous Offer and subsequent share price volatility). In any case, such structures are complex and potentially difficult for shareholders to understand;
 - (iii) an SPP offer amount of up to the full NZ\$50,000 per shareholder permits almost all (approximately 98%) of SKO's shareholders to apply to participate in the SPP to a level which at least maintains their pre-Offer pro rata holding. The oversubscription facility, to the extent adopted by Serko, will likely result in reduced scaling for SKO's shareholders if the SPP is oversubscribed. If the SPP offer amount was capped at

NZ\$35,000 then fewer SKO shareholders would be able to maintain their pre-Offer pro rata holding;

- (iv) an SPP offer amount of up to the full NZ\$50,000 avoids an arbitrary distinction between those shareholders that did or did not participate in the SPP component of the Previous Offer;
- (v) the SPP component of the Previous Offer received strong shareholder support with applications significantly exceeding the offer size of NZ\$5 million. SKO has therefore increased its offer size for the proposed SPP by up to 100% compared to the SPP component of the Previous Offer to accommodate considerable demand from minority shareholders;
- (vi) the Offer structure comprising a Placement and SPP was determined by the SKO Board, after receiving advice, to be the optimal capital raising structure for SKO and its shareholders at this time which provides genuine benefits for SKO's shareholders (over a Rights offer or Accelerated offer); and
- (vii) there is precedent for this decision.

Confidentiality

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

Appendix One

9. SKO is a Listed Issuer with ordinary shares Quoted on the NZX Main Board and the ASX (as a foreign-exempt issuer).
10. SKO is confidentially considering undertaking a capital raising in reliance on the class waiver and ruling issued by NZX Regulation dated 30 September 2020 (**Class Waiver**), which would comprise an offer of newly issued ordinary shares in SKO ("**Shares**") to institutional investors under NZX Listing Rule 4.5.1 ("**Placement**") and a share purchase plan to SKO's eligible retail shareholders in New Zealand and Australia under NZX Listing Rule 4.3.1(c) ("**SPP**") (together, the "**Offer**"). SKO's intention is, where possible, to allocate on a pro-rata basis to existing shareholders in the Placement. As part of the SPP SKO will also offer an oversubscription facility. To the extent that scaling is required due to the SPP being oversubscribed, scaling will be applied relative to existing shareholding levels.
10. In October 2019, SKO undertook a capital raise by way of placement and share purchase plan (the "**Previous Offer**"). We note that, at that time, SKO did not consider that it would undertake a second capital raising within 12 months. However, SKO has been advised that, due to market conditions and the significant volatility experienced in New Zealand and globally, the current time presents the optimal window for a capital raising to be launched.
11. Under the SPP pursuant to the Previous Offer, SKO accepted applications for new Shares for up to a maximum of NZ\$15,000 / AU\$13,950 shareholder pursuant to the threshold in the definition of "Share Purchase Plan" under the NZX Listing Rules (as they were then).
12. Pursuant to limb (a) of the definition of "Share Purchase Plan" under the NZX Listing Rules, as modified by the Class Waiver, SKO is only able to accept applications under the SPP for up to NZ\$50,000 per registered shareholder (or beneficial owner) in any 12 month period. Because SKO accepted applications under the SPP component of the Previous Offer for up to NZ\$15,000 per registered holder (or beneficial owner), absent this waiver SKO would only be able (in theory) to accept applications for a maximum of NZ\$50,000 per registered holder (or beneficial owner) in the SPP, *less* the value of shares issued to that registered holder (or beneficial owner) under the SPP component of the Previous Offer. SKO has therefore applied for a waiver so that all eligible shareholders can apply for new Shares up to a maximum of NZ\$50,000.
13. Securities issued under the SPP offer will be at a price no greater than the Placement price.

Appendix Two

Share Purchase Plan¹ means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

(a) the consideration payable for the Equity Securities issued does not in any 12 month period exceed \$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),

(b) the number of Equity Securities to be issued does not exceed 30% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, and

(c) the Offer Document contains a term to the effect that, if oversubscribed, oversubscriptions will be accepted (subject to paragraph (b) above or such lower limit as contained in the Offer Document) or acceptances will be scaled having regard to the number of fully paid Equity Securities carrying Votes held by those accepting the offer either on Record Date or the closing date of the offer (and which date is relevant must be specified in the Offer Document).

¹ As amended pursuant to the NZX Regulation Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules dated 30 September 2020, which can be found here: <https://www.nzx.com/regulation/classwaivers-and-rulings>.