

**NZ RegCo**

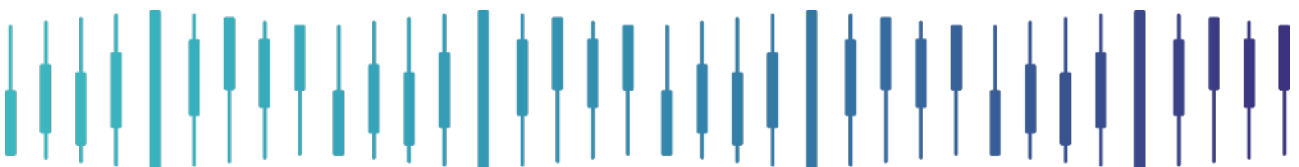
NZ'S LISTED  
MARKET REGULATOR

7 September 2023

# NZ RegCo Decision

EROAD Limited (ERD)

Application for waiver from NZX Listing Rule 4.19.1



## 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 NZX Listing Rule (**Rules**) to which this decision relates is set out in Appendix Two.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

## Waiver from Listing Rule 4.19.1

### Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by ERD is complete and accurate in all material respects, NZ RegCo grants ERD a waiver from Rule 4.19.1, to the extent that this Rule would prohibit the allotment of Shares in respect of subscriptions received from Volaris under the Equity Raising later than 10 Business Days after the closing date for the Placement and Institutional Entitlement Offer.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - a. to the extent allotment of New Shares to Volaris cannot occur on the allotment date for the Placement and the Institutional Entitlement Offer without Volaris breaching the Takeovers Code, the allotment of New Shares to Volaris occurs on the allotment date for the Retail Entitlement Offer;
  - b. the waiver, its conditions and its implications are disclosed in the Offering Document; and
  - c. the waiver, and ERD's reliance on the waiver, is disclosed in ERD's annual report for the financial year ending 31 March 2024.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
  - a. the policy behind Rule 4.19.1 is to ensure that, where application monies have been submitted, subscribers obtain the benefit of their investment without undue delay;
  - b. ERD has submitted, and NZ RegCo has no reason not to accept, that these circumstances do not offend the policy behind Rule 4.19.1 because:
    - i) to the extent that allotment of New Shares is delayed in respect of Volaris, Volaris will not be required to submit its application money in respect of those New Shares until the settlement of the Retail Entitlement Offer. Accordingly, in effect, Volaris will not be denied the benefit of this capital for any greater period than would otherwise have been the case, as a result of the waiver;
    - ii) the need for the waiver from Rule 4.19.1 has only arisen because the AREO is being conducted in two stages – the Institutional Entitlement Offer followed by the Retail Entitlement Offer. The Waiver allows Volaris to stagger the settlement of its subscriptions under the Institutional Entitlement Offer or Placement (if applicable) to enable it to comply with the Takeovers Code while still taking up its pro rata entitlement under the Offer should it choose to do so;

- iii) Volaris will be made aware of the deferred settlement timing and can therefore assess this when deciding whether to participate in the Equity Raising; and
- c. There is precedent for waivers of Rule 4.19.1

### **Confidentiality**

- 7. ERD has requested this decision be kept confidential until ERD releases an announcement relating to the Equity Raising.
- 8. In accordance with Rule 9.7.2(a), NZ RegCo grants ERD's request.

## Appendix One

1. EROAD Limited (**ERD**) is a Listed Issuer with Ordinary Shares (**Shares**) Quoted on the NZX Main Board.
2. ERD proposes to undertake a placement (the **Placement**) and an accelerated renounceable entitlement offer (the **AREO**). The Placement and the AREO (together, the **Equity Raising**) are intended to be arranged and underwritten by Canaccord Genuity (Australia) Limited and Goldman Sachs New Zealand Limited.
3. The AREO structure is intended to be functionally equivalent to a pro rata entitlement offer of new Shares in ERD (**New Shares**) to existing shareholders in ERD. However, the AREO will be conducted in two stages, with an accelerated entitlement offer to institutional shareholders (**Institutional Entitlement Offer**) followed by an entitlement offer to retail shareholders (**Retail Entitlement Offer**).
4. The entitlement price will be the same under both the entitlement offers (**Entitlement Price**).
5. New Shares that are not, or are not able to be, taken up by existing shareholders under the offers will be offered to institutions and selected other investors in two bookbuilds. If the price achieved in the relevant bookbuild is higher than the Entitlement Price, the excess will be shared (on a pro rata basis) between the relevant shareholders who did not, or who were not able to, take up their entitlement.
6. The entitlements are therefore not "renounceable" in the traditional sense, but achieve an equivalent result, with shareholders who do not (or are ineligible to) exercise their entitlement receiving the benefit of any price achieved for the New Shares in the relevant bookbuild above the Entitlement Price.
7. ERD's largest shareholder, Brillian APAC Pty Ltd (Volaris), is part of the Volaris group and is a wholly owned subsidiary of Constellation Software Inc, and as at 18 August 2023 held 18.84% of the shares in ERD.
8. As an institutional investor, Volaris will be eligible to participate in the Institutional Entitlement Offer and the Placement, and not the Retail Entitlement Offer.
9. The acceleration of the Institutional Entitlement Offer may cause Volaris to exceed the 20% control limit under the Takeovers Code if Volaris takes up its full entitlement in the Institutional Entitlement Offer. This is a matter of timing only, as upon completion of the Retail Entitlement Offer, the percentage shareholdings of parties taking up their pro rata entitlement would return back to their current level and would be diluted below their original holding as a result of allotment of shares under the Placement (unless such shareholders also participated in the Placement).
10. Accordingly, in order to ensure that Volaris can both comply with the Takeovers Code and take up its full pro rata entitlement in the Equity Raising should it wish to do so, it is proposed that Volaris be permitted to settle its subscription under the Equity Raising in two tranches:
  - a. on the settlement date for the Institutional Entitlement Offer and the Placement; and
  - b. on the settlement date for the Retail Entitlement Offer,in such a manner that its proportionate shareholdings do not exceed the level permitted by the Takeovers Code throughout the two stages of the Equity Raising.

## Appendix Two

### Rule 4.19.1

An issuer making an offer of Financial Products intended to be Quoted (other than Equity Securities issued under Rule 4.8 or 4.9) must allot such Quoted Financial Products no later than 10 Business Days after the final closing date for the offer.