



NZ RegCo

NZ'S LISTED
MARKET REGULATOR

16 November 2023

NZ RegCo Decision

New Zealand King Salmon Investments Limited (“NZK”)
Application for waiver from NZX Listing Rule 5.2.1

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 Rules (**Rules**) to which this decision relates are set out in Appendix Two.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
4. NZX Regulation Limited (**NZ RegCo**) notes that NZX will publish a revised Major and Related Parties Guidance Note on 18 December 2023 and NZ RegCo has considered the incoming guidance in making the decision to grant this waiver.

Waiver from Listing Rule 5.2.1

Decision

5. Subject to the conditions set out in paragraph 6 below and on the basis that the information provided by New Zealand King Salmon Investments Limited (**NZK**) is complete and accurate in all material aspects, NZ RegCo grants NZK a waiver from Rule 5.2.1, to the extent that this Rule would otherwise require NZK to seek shareholder approval in relation to the Distribution Agreement.
6. The waiver in paragraph 5 above is provided on the conditions that:
 - a. The Directors of NZK other than any Director who is an Associated Person of CRE or CRFSC certify that:
 - i. the terms of the Distribution Agreement have been negotiated, and the Distribution Agreement will be entered into, on an arm's length commercial basis;
 - ii. NZK was not unduly influenced to enter into the Distribution Agreement by CRE or CRFSC;
 - iii. entry into the Distribution Agreement is in the best interests of NZK and all of NZK's shareholders who are not CRE or related to, or Associated Persons of, CRE; and
 - iv. the terms of the Distribution Agreement are not materially different to similar distribution agreements entered into by NZK with non-related parties.
 - b. The waiver, its conditions and implications are disclosed in NZK's next annual report; and
 - c. NZK release a statement to NZX through MAP about its entry into the Distribution Agreement and why it and the waiver is in the best interests of NZK and the non-interested shareholders.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 5 above, NZ RegCo has considered that:
 - a. the purpose of Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, Material Transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer's decision to enter into a transaction or agree to its terms. The granting of this waiver will not offend the policy behind Rule 5.2.1;
 - b. NZ RegCo is satisfied that CRFSC will not receive favourable consideration due to the Related Party Relationships, and that the Related Party Relationships have not unduly

influenced the decision to enter into, or the terms and conditions of, the Distribution Agreement, as:

- i. any Director who is an Associated Person of CRE or CRFSC has had limited involvement in the discussions regarding the Distribution Agreement, and has abstained from voting on any decisions relating to entry into the Distribution Agreement;
 - ii. the terms of the Distribution Agreement, and entry into the Distribution Agreement, have been negotiated on an arm's length commercial basis; and
 - iii. NZK contemplates providing supply to CRFSC under the Distribution Agreement at prices no more favourable to CRFSC than those charged to other customers generally,
- c. the conditions at paragraph 6 (a) and (c) above provide comfort that the Distribution Agreement has been negotiated and entered into on an arm's length commercial basis, and is in the best interests of NZK and its shareholders that are not CRE or related to or associated with CRE or CRFSC; and
- d. there is precedent for the decision.

Confidentiality

8. NZK has requested this decision be kept confidential until an announcement of the Distribution Agreement is released to the market.
9. In accordance with Rule 9.7.2(a), NZ RegCo grants NZK's request.

Appendix One

1. New Zealand King Salmon Investments Limited (**NZK**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board and on the ASX (as a foreign exempt listing).
2. To support NZK's expansion into Mainland China, NZK proposes to formalise its trading relationship with China Resources Food Supply Chain Co. Ltd (**CRFSC**) by entering into an exclusive distribution agreement (**Distribution Agreement**). CRFSC is partially owned (indirectly) by China Resources Enterprise Limited (**CRE**). CRE also owns 9.81% of the ordinary shares in NZK.
3. The key terms of the Distribution Agreement can be summarised as:
 - (a) **Term:** The initial term of the Distribution Agreement is three years from the date of execution of the agreement. The parties have the ability to extend the term for a further two years.
 - (b) **Minimum Order Volume:** CRFSC is required to place orders totalling a minimum of 4,000kgs of salmon products per calendar month throughout the term. If CRFSC fails to place an order for the minimum order volume for any calendar month throughout the term, NZK can either terminate the Distribution Agreement or appoint one or more other distributors within Mainland China.
 - (c) **Exclusivity:** NZK appoints CRFSC as the exclusive distributor to import and distribute a range of salmon products in Mainland China and CRFSC shall only purchase the products from NZK (except that CRFSC may purchase and distribute salmon products from certain other New Zealand producers).
 - (d) **Sales Price:** The sales price for the salmon products is not fixed in the contract and varies based on a number of factors. We understand that NZK intends to charge CRFSC commercial rates which are no more favourable to CRFSC than other customers.
4. NZK considers that CRFSC is a Related Party of NZK as:
 - (a) CRE, an indirect shareholder of CRFSC, owns 9.81% of the shares in NZK; and
 - (b) Yuen Carol Chen, Deputy General Manager of Corporate Strategy and Development at CRE, is a director of NZK.

(together, the **Related Party Relationships**)
5. As at the date of this waiver decision, NZK's Average Market Capitalisation is approximately NZ\$107 million.
6. On the basis that the Distribution Agreement could remain on foot for longer than the minimum term and that the exact volume of products to be purchased over the term of the Distribution Agreement is uncertain, there is potential for NZK to sell salmon products to CRFSC with a value which could be in excess of 10% of the Average Market Capitalisation of NZK.
7. NZK senior management have negotiated the Distribution Agreement on NZK's behalf. Carol Chen has been party to certain discussions regarding the Distribution Agreement, however NZK submits that her involvement has been limited and that she has not had any undue influence on NZK's decision to enter into the Distribution Agreement, or its terms and conditions.

Appendix Two

Rule 5.2 Transactions with Related Parties

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 a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject.

Definitions

Material Transaction

means a transaction, or a related series of transactions, whereby an Issuer:

- (a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation, ...

Related Party

means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, ...

Associated Person

a person (A) is associated with, or an **Associated Person** of, another person (B) if:

- (a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa), ...