

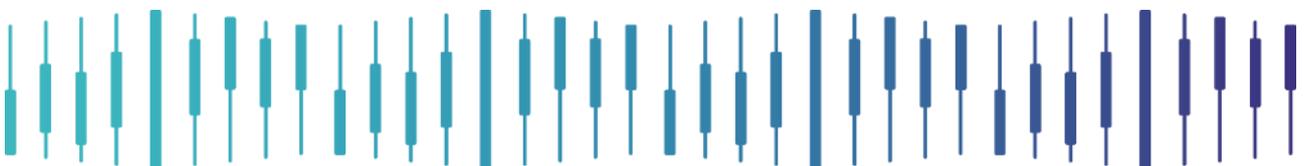
**NZ RegCo**

NZ'S LISTED  
MARKET REGULATOR

19 March 2024

# NZ RegCo Decision

Ascension Capital Limited (“ACE”)  
Application for waiver from NZX Listing Rule 4.2.2



## 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 to which this decision relates to 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 4.2.2

### Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by ACE is complete and accurate in all material respects, NZ RegCo grants ACE a waiver from Rule 4.2.2 to the extent that this Rule would otherwise require ACE to issue the Earn-In Shares within the 12 months following shareholder approval for the allotment.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - a. The Earn-In Shares will be issued no later than 36 months after Completion; and
  - b. The proposed non-interested directors of ACE following completion of the reverse takeover of Being AI Limited certify to NZ RegCo that in the opinion of each of the proposed non-interested directors, the issue of the Earn-In Shares is in the best interests of, and is fair and reasonable to, ACE and all shareholders not associated with the issue of the Earn-In Shares.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
  - a. The purpose of Rule 4.2.2 is to ensure that Issuers do not unduly delay the issue of Securities for which they have received shareholder approval. This mischief is not present where:
    - i) the number of shares to be issued or acquired in the future is determined by an objective formula; and
    - ii) the possibility of issuing or acquiring the securities is clearly disclosed by ACE during the period ACE is reliant on the Timing Waiver.
  - b. ACE's shareholders will have the opportunity to vote on whether or not to approve the Proposed Transaction at a special meeting. The notice of special meeting provided to shareholders explains the Proposed Transaction as well as the Timing Waiver. In particular, it states that the allotment of Shares would take place later than 12 months after the date of the meeting, and that ACE has sought a waiver from this timeframe under the Rules;
  - c. The issue of the Earn-In Shares is conditional on AGE achieving certain agreed share price milestones in the 9-36 months following Completion. It will therefore not be known if some of the Earn-In Shares are to be issued within the 12 months following shareholder approval of the issue;
  - d. ACE has submitted, and NZ RegCo has no reason not to accept:
    - i) that it is common for commercial transactions of this nature to include both contingent consideration such as the Additional BCL Purchase Price, as well as mechanisms

designed to adjust the purchase price depending on the actual performance of the business being acquired; and

- ii) the timeframes agreed for the Earn-In Adjustment are typical for this type of transaction.
- e. The issue of Shares pursuant to the Earn-In Adjustment will be determined based on an objective formula, which will be set out in the notice of special meeting;
- f. The Timing Waiver, and ACE's reliance on the Timing Waiver, will be clear to future ACE shareholders as it will be disclosed in ACE's Annual Reports and any Offering Document published during the period ACE is reliant on the Timing Waiver; and
- g. There is precedent for waivers of Rule 4.2.2.

## Appendix One

1. Ascension Capital Limited (**ACE**) is a Listed Issuer with Ordinary Shares (**Shares**) Quoted on the NZX Main Board.
2. On 11 December 2023, ACE announced that it had entered into a conditional agreement to acquire 100% of the shares on issue in AGE Limited, Send Global Limited and Being Consultants Limited (**Proposed Transaction**). The Proposed Transaction is governed by a sale and purchase agreement and the parties to this agreement are targeting a completion date of 29 March 2024 (**Completion**). The vendor for AGE Limited and Send Global Limited is 2061 LP (**AGE & SGL Vendor**) and the vendor for Being Consultants Limited is David McDonald (**BCL Vendor**).
3. The consideration payable by ACE to the AGE & SGL Vendor for the Proposed Transaction is \$40 million and is to be satisfied at Completion through the issue of 1,600,000,000 Shares to the AGE & SGL Vendor (**AGE and SGL Purchase Price**).
4. The consideration payable by ACE to the BCL Vendor for the Proposed Transaction is as follows:
  - a) At Completion, ACE will pay the BCL Vendor \$5 million by way of the issue of 200,000,000 Shares to a nominee of the BCL Vendor (**Initial BCL Purchase Price**); and
  - b) Within 9-36 months after Completion, ACE will pay the BCL Vendor up to a further \$35 million by way of the issue of up to 1,399,992,000 Shares to a nominee of the BCL Vendor (**Earn-In Shares**), subject to ACE achieving certain share price milestones within 36 months after Completion (**Earn-In Adjustment**) (**Additional BCL Purchase Price**).
5. ACE will seek shareholder approval for the Proposed Transaction as it is a Major Transaction under the NZX Listing Rules (**Rules**). The Notice of Special Meeting was published on 11 March 2024.
6. ACE will also seek (among other things) shareholder approval for the issue of Shares to be issued as consideration for the Proposed Transaction.
7. Any Earn-In Shares would be issued within 9-36 months of Completion. If part of the Additional BCL Purchase Price becomes payable, payment by ACE would be due promptly, so the latest possible date for the issue of such shares would be 36 months from Completion (in practice this might be a few working days after).
8. ACE has applied for a waiver from Rule 4.2.2(b) to enable it to satisfy the consideration required by the Additional BCL Purchase Price without having to seek future shareholder approval. In particular, ACE requests a waiver from this Rule as it applies with respect to the issue of the Earn-In Shares as satisfaction of the Additional BCL Purchase Price (**Timing Waiver**).

## Appendix Two

### Rule 4.2.2

An issue of Equity Securities authorised under Rule 4.2.1 must be completed within:

- a) 36 months after the passing of those resolutions, if the issue is restricted to Employees; and
- b) 12 months after passing of those resolutions in all other circumstances, otherwise the issue cannot occur until further approval is obtained under Rule 4.2.1