



NZX Regulation Decision

Mercer Group Limited (“MGL”)

Application for a waiver from NZX Main Board Listing Rule
9.2.5(b)

3 October 2016



Waiver from NZX Main Board Listing Rule 9.2.5(b)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by MGL is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants MGL a waiver from Rule 9.2.5(b), to the extent that this Rule requires MGL to provide with the Notice of Meeting an Appraisal Report that addresses the Related Party implications of the Rights Offer, as one part of the Related Transactions.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Directors certify to NZXR that:
 - i. the terms of the Rights Offer are fair and in the best interests of MGL and MGL's shareholders, excluding the Associated Shareholders; and
 - ii. MGL was not influenced in its decision to enter into the Rights Offer by the interests of the Associated Shareholders;
 - b. the Notice of Meeting will be sent to MGL shareholders and will be accompanied by an Appraisal Report which addresses Rules 7.5 and 9.2.1 in respect of the Underwrite and the Rule 9.2.1 in respect of the Underwrite Fee;
 - c. the Notice of Meeting sets out the details of the waiver in paragraph 1 above, and the implications of this waiver; and
 - d. the waiver and the conditions of the waiver, are disclosed in MGL's half-year and annual reports for the year in which the Related Transactions take place.
3. 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.
4. The Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 9.2.5(b) is to ensure that shareholders are provided with independent advice when being asked to make a decision on a Material Transaction where a Related Party is a party to that transaction. An Appraisal Report provides investors with an independent view, and additional details, on a Material Transaction which may have been influenced by a Related Party relationship. In these circumstances, NZXR is comfortable that the policy behind Rule 9.2.5(b) is not offended by granting this waiver;
 - b. the Underwrite and Underwrite Fee involves a Related Party receiving a benefit which is not available to other shareholders. MGL is required to produce an Appraisal Report on the Underwrite under Rule 7.5 and Rule 9.2.1 and on the Underwrite Fee under

Rule 9.2.1. Comparatively, the Rights Offer is a pro rata renounceable rights offer under which each shareholder of MGL has an opportunity to participate on the same terms and receive the same benefit. NZXR considers independent information about the Underwrite and Underwrite Fee is the most relevant to the decision shareholders being asked to make. On that basis, NZXR is comfortable that the Appraisal Report focuses on the Underwrite and Underwrite Fee;

- c. but for the Underwrite and the Underwrite Fee, the Rights Offer would fall within the exemption provided for in Rule 9.2.4(b) as all MGL shareholders will have the ability to receive the same benefit under that offer. On that basis, NZXR is comfortable that the Appraisal Report focuses on the Underwrite and Underwrite Fee;
- d. MGL has submitted, and NZXR has no reason not to accept, that including further information in the Appraisal Report that is being provided to shareholders regarding the implications of the Rights Offer, will not provide additional meaningful guidance to shareholders;
- e. the conditions of the waiver provide comfort that the Rights Offer is fair to MGL and MGL's shareholders; and that MGL was not influenced in its decision to enter into the Rights Offer, Underwrite and Underwrite Fee by the interests of the Associated Shareholders; and
- f. NZXR has had the opportunity to review MGL's Notice of Meeting, which includes the resolutions to approve the Rights Offer, Underwrite and Underwrite Fee.



Appendix One

1. Mercer Group Limited (**MGL**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. MGL proposes to undertake a pro rata 2.25 for 1 renounceable rights offer to eligible shareholders, seeking to raise \$7,019,335 (**Amount Raised**), on the terms which will be released to the market on or about 28 October 2016 (**Rights Offer**). Under the Rights Offer, eligible shareholders will be entitled to the right to acquire one ordinary share in MGL.
3. Asset Management Limited (**Asset Management**), Asset Trading Limited, Victoria Mansions Limited, National Mortgage Underwriters Limited (**National Mortgage**) and the Murray Capital Rakaia Fund Limited Partnership (**Rakaia Fund**) (together, the **Rolleston Associates** and each a **Rolleston Associate**) and Humphry Rolleston and Graham Riley (together, the **Associated Shareholders**), and all other eligible shareholders may participate in the Rights Offer, contingent upon holding shares at the relevant Record Date.
4. The Rolleston Associates and Humphry Rolleston and Graham Riley are Related Parties of MGL under NZX Main Board Listing Rule (**Rule**) 9.2.3 because, during the 6 month period prior to the Rights Offer, Underwrite and Underwriting Fee:
 - a. Humphry Rolleston was a director of MGL (Humphry Rolleston ceased being a director of MGL on 12 July 2016);
 - b. Asset Management holds 14.34% of MGL's voting shares and Humphry Rolleston and Graham Riley own 11.44% of MGL's voting shares; and
 - c. Humphry Rolleston is a director of each of the Rolleston Associates therefore Rolleston Associates are Associated Persons of Humphry Rolleston.
5. In order to gain certainty around the proceeds received from the Rights Offer, MGL has negotiated for Asset Management to fully underwrite the Rights Offer up to a maximum of 701,933,504 ordinary shares (**Underwrite**) for a fee of \$280,773.40 plus GST (if any), representing 4% of the Amount Raised (**Underwriting Fee**). Under the Underwrite, Asset Management may increase their shareholding if they are required to take up any rights that are not taken up by eligible shareholders under the Rights Offer.
6. The Rights Offer and Underwrite will result in MGL issuing its own securities with a market value in excess of 10% of the Average Market Capitalisation (**AMC**) of MGL. Further, the Underwriting Fee will result in MGL obtaining services where the gross cost to MGL will exceed 1% of the AMC. The Rights Offer, Underwrite and Underwriting Fee are a related series of transactions (**Related Transactions**). On that basis the Related Transactions are a Material Transaction for the purposes of Rule 9.2.1. As the Rolleston Associates are direct or indirect parties to the Related Transactions, approval of the Related Transactions is required under Rule 9.2.1.
7. The Related Transactions are therefore conditional upon MGL receiving shareholder approval. The Underwrite requires shareholder approval by way of ordinary resolution for the purposes of Rules 7.5 and 9.2.1, and the Takeovers Code. The Rights Issue and the Underwriting Fee require shareholder approval by way of ordinary resolution for the purposes of Rule 9.2.1. These approvals will be sought at MGL's annual shareholders' meeting, which will be held on or about 18 October 2016 (**AGM**).
8. A notice of meeting containing the resolutions requiring approval for the Related Transactions (**Notice of Meeting**) will be provided to MGL shareholders in advance. A

report by an approved independent adviser (the **Appraisal Report**) will accompany the Notice of Meeting in relation to both the Underwrite (in accordance with Rules 7.5 and 9.2.1 and as required by the Takeovers Code), and the Underwriting Fee (in accordance with Rule 9.2.1).

9. The Rights Offer would fall within the exemption provided in Rule 9.2.4(b) which exempts issuers from the requirement to get shareholder approval for a Material Transaction with a Related Party, where all holders have the ability to receive the same benefit. However, as the Rights Offer forms part of a related series of transactions in which all holders do not receive the same benefit, MGL is not able to rely on this exemption.
10. Therefore, but for this waiver, the Appraisal Report would also be required to address the Rights Offer as part of the related series of transactions that require approval under Rule 9.2, before being entered into.



Appendix Two

Rule 9.2 Transactions with Related Parties

9.2.5 The text of any resolution to be put to a meeting of an Issuer for the purposes of Rule 9.2.1 shall be set out in the notice of the relevant meeting. That notice shall:

[...]

(b) be accompanied by an Appraisal Report; and

