



NZX Regulation Decision

Hellaby Holdings Limited (HBY)

Application for a waiver from NZX Main Board Listing Rule 9.2.1

28 June 2016



Waiver from NZX Main Board Listing Rule 9.2.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Hellaby Holdings Limited (**HBY**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants HBY a waiver from NZX Main Board Listing Rule (**Rule**) 9.2.1 to the extent required to allow HBY to enter into the Proposed Transaction without obtaining shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Directors of HBY certify to NZXR that:
 - i. they were not influenced in their decision to enter into the Proposed Transaction by the interests of any Associated Person of Mr Sclater;
 - ii. they are not interested in the Proposed Transaction;
 - iii. HBY will receive fair value from the Proposed Transaction;
 - iv. the terms and conditions of the Proposed Transaction are in the best interests of HBY, and are fair and reasonable to HBY shareholders; and
 - v. any decision to enter in to the Proposed Transaction was unanimously approved by HBY's Directors; and
 - b. the waiver, its conditions and the implications of this waiver are disclosed in HBY's next half-year report and annual report.
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 Rules to which this decision relates are set out in Appendix Two to this decision.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 9.2.1 is to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1;
 - b. HBY has submitted, and NZXR has no reason not to accept, that Mr Sclater, in his personal capacity as well as his capacity as a trustee of the Trust and an executor of the Estate, as well as any other trustees of the Trust and executors of the Estate, are unlikely to have influenced HBY's entry into the Proposed Transaction, as:



- i. Mr Sclater will derive no personal financial benefit from the Proposed Transaction, other than potentially on an indirect basis as a shareholder of HBY, as he has no beneficial interest in either the Trust or the Estate's property; and
- ii. Mr Sclater (in his capacity as an independent trustee and executor) has no ability to influence the negotiations for, or final terms of, the Proposed Transaction. He does not, and cannot, take part in the management of the Maui Fund; it is the Manager's responsibility to manage the Maui Fund, including negotiating the terms of the Proposed Transaction with HBY;
- c. HBY, the Trust and the Estate are structurally separate. Furthermore, Mr Sclater (in his capacity as a trustee of the Trust and an executor of the Estate), as well as any other trustees of the Trust and executors of the Estate have not, and cannot, make decisions which would influence the Maui Fund in respect of the Proposed Transaction. Given these circumstances, NZXR is comfortable that there is unlikely to be any direct or indirect transfer of value from HBY to Mr Sclater (in his capacity as a trustee and executor of the Trust and the Estate), as well as any other trustees of the Trust and executors of the Estate, which would be inconsistent with the policy behind Rule 9.2.1;
- d. the certifications provided by HBY's Directors as a condition of the waiver provide comfort that the Proposed Transaction will be negotiated, and entered into, on an arm's length commercial basis and that entry into the Proposed Transaction will be in the best interests of HBY; and
- e. there is precedent for this decision.

Confidentiality

- 6. HBY has requested that its application, and NZXR's decision, be kept confidential until the Proposed Transaction is executed, and details of the Proposed Transaction are announced.
- 7. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants HBY's request.



Appendix One

1. HBY is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. HBY has received an offer by Maui Capital Limited, in its capacity as the manager (**Manager**) of the Maui Capital Aqua Fund, a private equity fund with approximately \$250 million of committed funds established by the Manager (**Maui Fund**), to purchase Hellaby Equipment Limited (**HBY-EL**). HBY is considering entering into a transaction under which HBY would sell its shares in HBY-EL for approximately \$81 million cash (subject to a working capital adjustment) (**Proposed Transaction**).
3. HBY and the Manager are currently conducting their negotiations in respect of the purchase of all of HBY's shares in HBY-EL through a wholly-owned subsidiary of the Maui Fund (**SPV**). If the Proposed Transaction proceeds, HBY will be contracting with the SPV to effect the sale.
4. For the purposes of Rule 9.2.1, there are Related Party relationships because:
 - a. Mr James Sclater (**Mr Sclater**) is a Director of HBY;
 - b. Mr Sclater is an independent trustee of (i.e., he has no beneficial interest in) the Tindalls Trust (**Trust**), which holds 50,000 shares in the Maui Fund (representing approximately 0.02% of the committed funds of the Maui Fund); and
 - c. Mr Sclater is the executor of the RA Henderson Estate (**Estate**), which holds 50,000 shares in the Maui Fund (representing approximately 0.02% of the committed funds of the Maui Fund). Mr. Sclater has no beneficial interest in that estate.

The Trust and Estate are therefore Related Parties of HBY under Rule 9.2.3(c), on the basis that they are deemed to be Associated Persons of Mr Sclater under Rule 1.8.3(b).
5. Mr Sclater (in his capacity as a trustee of the Trust and executor of the Estate) is an indirect party to the Proposed Transaction.
6. Other than Mr Sclater, no Director or executive officer of HBY or its subsidiaries, has an interest in the Maui Fund or is otherwise associated with the Maui Fund or the Manager. In addition, no Associated Persons of HBY's Directors or executive officers, are direct or indirect parties to the Proposed Transaction.
7. The Proposed Transaction is a Material Transaction for the purposes of Rule 9.2.2. As at the date of this waiver decision, HBY's Average Market Capitalisation is \$238,913,274. The indicative sale price for the Proposed Transaction is approximately \$81 million cash (subject to a working capital adjustment) and will equate to approximately 33.90% of HBY's Average Market Capitalisation, which is in excess of the 10% prescribed by Rule 9.2.2(a).

Appendix Two

Rule 1.8 Associated Persons

- 1.8.1 In the Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of Rules 1.8.2 to 1.8.6.
- 1.8.2 A person (the “first person”) is associated with another person (the “second person”) if, in making a decision or exercising a power affecting an Issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.
- 1.8.3 Without limiting Rule 1.8.2, the first person is associated with the second person if
- ...
- (b) the first person is a spouse, domestic companion, child or parent of the second person, or a nominee or trustee for any of them or for the second person;

Rule 9.2 Transactions with Related Parties

- 9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:
- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- ...
- unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.
- 9.2.2 For the purposes of Rule 9.2.1 “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:
- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer; or
- ...
- 9.2.3 For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:
- (a) a Director or executive officer of the Issuer or any of its Subsidiaries; or
- ...
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself);

