



11 April 2025

NZX Wellington
NZX:BAI Company Announcement

Being AI Limited Market Update

Being AI Limited (NZX:BAI) (BAI or the Company) today provides an update focused on the activities and challenges faced by the Company and its controlled interests (BAI group) in the period since the release of BAI's Interim Results on 29 November 2024.

Since the Being AI Limited 2024 Annual Shareholder Meeting and release of Interim Results, and having divested Being Consultants Limited (BCL) to purchaser 2384 LP connected to Group CEO David McDonald, BAI has focused on a single artificial intelligence project led by CEO David McDonald, known as Project Treehouse¹.

Listing Rule compliance

As announced to the market by NZ RegCo on 3 February 2025 (Suspension Notice), NZ RegCo exercised its discretion to suspend the quotation of BAI's ordinary shares following the resignation of BAI's Independent Directors, Brett O'Riley and Andy Higgs, each with effect from 5.00pm on 31 January 2025.

As set out in the Suspension Notice, the resignations of Brett O'Riley and Andy Higgs resulted in the Board comprising only two directors (at that stage, being David McDonald and Katherine Allsopp-Smith), neither of whom were independent directors as defined in the NZX Listing Rules (Independent Directors). Subsequently, on 7 March 2025, Group CEO David McDonald resigned from the Board but remained as Group CEO. Paul Forno, the CEO of Send Global Limited, a BAI group entity, was appointed then as an executive director of BAI.

As a result, due to circumstances outside BAI's control, BAI has not complied with the NZX Listing Rules 2.1.1 (Composition of Board Directors) which outlines the requirement to:

- have a Board comprising at least three directors, two of whom must be Independent Directors; and
- have an Audit Committee comprising at least three members, all of which are directors and the majority of which are Independent Directors.

This matter has now been rectified as described in the announcement: www.nzx.com/announcement/449252

Following the unexpected resignations of Andy Higgs and Brett O'Riley, considerable efforts were made by the continuing BAI directors to secure the appointment of new Independent Directors. This included engaging with a number of independent candidates recommended to BAI by the Institute of Directors in New Zealand, BDO New Zealand and others.

Michael Stiassny, Greg Cross and Steve Phillips were ultimately appointed as Independent Directors on 31 March 2025 which now resolves BAI's non-compliance with the NZX Listing Rules 2.1.1. BAI has asked NZ RegCo to approve release of BAI from the suspension of BAI share trading currently in place.

On 1 April 2025, BAI was notified by NZ RegCo in an "obligations letter" about NZ RegCo's concerns with announcements regarding BAI's disclosures about the earlier divestment of BCL (now known as Possibl.ai) to purchaser 2384 LP connected to Group CEO David McDonald. NZ RegCo advised these announcements were non-compliant with NZX

¹ Project Treehouse is BAI's core Agentic Futures AI project, introduced by David McDonald as the Machine Readable Marketplace (MRM) at BAI's Annual Shareholders Meeting on 12 September 2024 as per www.NZX.com/announcements/437879

"Project Treehouse" comprises intellectual property owned by one or more members of BAI group (and is not limited to the BAI group entity, Treehouse Technologies Limited).

Online
beingai.group

Office
**14 Honan Place / Avondale
Auckland / 1026 / New Zealand**





Listing Rules 3.1.1 (Continuous Disclosure) and 3.4.1 (Related Party Transactions). These announcements had been prepared with assistance from BAI's lawyers, Wynn Williams. BAI's Board accepts the NZ RegCo obligation letter findings.

Inability of Board to act except in a very limited way

Until the appointment of new Independent Directors, the Board has been unable to form a quorum under its constitution and the NZX Listing Rules. In accordance with Listing Rule 2.9, the Board's power to act has been limited to focusing on resolving the shortfall in the number of directors required by the Listing Rules, or calling a shareholder's meeting. The Board's efforts during this time were focused on securing the appointment of appropriately skilled and experienced directors, especially given the significant unexpected challenges that have faced the BAI group since its listing in April 2024.

Major shareholder support

Since BAI's listing in April 2024 (following the reverse listing transaction), the BAI group has had the benefit of financial support from Wilshire Treasury Limited (Wilshire), an entity owned by BAI's major shareholder, Evan Christian's family trust interests.

- Loan facilities

As disclosed in BAI's Interim Results, an existing loan from Wilshire (being an amount of \$7,631,158 as at 31 January 2025) to Send Global Limited was repayable on 26 March 2025. BAI lawyers Wynn Williams, and former Independent Director and Chair Andy Higgs received confirmation on 29 January 2025 of Wilshire's offer to extend the existing loan's terms. In the absence of Send Global and its co-guarantors and/or BAI reaching any formal agreement with Wilshire (and Wilshire having had no engagement on the topic prior to the loan expiry date (because BAI was without Independent Directors), Wilshire has unilaterally determined, and has advised BAI accordingly, that Wilshire has extended the repayment date of the loan to 1 April 2026 by way of a deed poll dated 11 April 2025.

On 31 March 2025, Wilshire entered discussions with the new Independent Directors to provide a new loan facility of \$500,000 to BAI under new terms, given that BAI group has been unable to secure alternative funding.

- Unrealised divestment of Send Global Limited

In late November 2024, the Board had decided in principle to divest non-core assets of the BAI group and therefore sold Being Consultants Limited (BCL). In December 2024, the Board further considered the divestment of Send Global Limited. It was proposed that this divestment would occur through an agreement by BAI to transfer all of its shares in Send Global Limited to Wilshire in consideration for Wilshire agreeing to assume all of the BAI group's then outstanding debts and providing further short term loan advances to BAI group.

That transaction (Send Global Proposal) would have required shareholder consent under Listing Rule 5.1.1 as the divestment of Send Global Limited from the BAI group would constitute a significant change in the nature BAI's business. The Send Global Proposal would not have been a Material Transaction with a Related Party (for the purposes of Listing Rule 5.2.1), as the Aggregate Net Value of the assets that would have been sold under the transaction (i.e. the shares in Send Global Limited) was less than 10% of BAI's Average Market Capitalisation (for the relevant period prior to NZ RegCo placing BAI's shares into suspension).

Given the inherent conflict of interest for Katherine Allsopp-Smith (who is an associated person of Wilshire), discussions relating to the Send Global Proposal were led for BAI by Brett O'Riley and Andy Higgs as BAI's then Independent Directors. As part of the discussions, the majority shareholders made clear to BAI that Wilshire's support for further capital and the Send Global Proposal was conditional on evidence of a viable capital raising or external capital investment into the BAI group for Project Treehouse.

However, as noted, prior to the Send Global Proposal being finalised and agreed between BAI and Wilshire, Brett O'Riley and Andy Higgs unexpectedly resigned from their positions with BAI, leaving on 31 January 2025. As the sale considerations remained incomplete, there was no requirement for BAI to disclose the potential sale process to the market under the NZX continuous disclosure listing rules (as the Continuous Disclosure Listing Rule "safe harbour" applied).

Inability to attract and secure investment

As announced in September 2024, BAI sought to raise new capital for deployment and investment across the BAI group's business divisions. The new capital was sought through a share purchase plan for existing BAI shareholders and a





concurrent general offer to non-BAI shareholders. Of the 9,340,000 new ordinary shares in BAI on offer, BAI received subscriptions for 570,025 new shares (being just over 6% of the shares offered), raising only \$350,000 before legal costs.

Subsequently BAI explored opportunities to raise new capital from external sources for Project Treehouse. While there was some initial non-binding interest from related-party investors (not connected to Wilshire), no reasonable offers in the interests of all BAI shareholders have been received.

Any such transaction that does eventuate would likely require shareholder approval under the Listing Rules due to the transaction value and/or the identity of the proposed investor.

Financial position

The BAI group's financial position as at 30 September 2024 was set out in the Interim Results released by BAI on 29 November 2024. In accordance with NZX Listing Rules, BAI plans to release preliminary full year results no later than 30 May 2025, and its audited full year results no later than 30 June 2025.

As stated above, due to the lack of third-party investment, BAI currently has limited liquidity. To address this, Wilshire has provided a new loan facility of \$500,000 under new terms. This will also provide the Independent Directors with the working capital runway necessary to conduct their strategic review. Further, to allow time for Project Treehouse to pursue funding options, BAI has undertaken steps to resize the business and reduce costs.

a) Existing Wilshire Treasury facility

The existing loan from Wilshire to Send Global Limited (currently \$7,631,158) was repayable on 26 March 2025. BAI's lawyers Wynn Williams and then Independent Director and Chair Andy Higgs received confirmation on 29 January 2025 of Wilshire's willingness to extend existing loan terms. BAI is the beneficiary of this term extension via Deed Poll.

b) Existing ANZ facility variation for Send Global Limited

The new expiry date for the \$1 million Term Facility is 30 September 2025, with interest-only repayments. The Commercial Flexi Facility has a limit of \$2 million, reducing to \$1 million on 30 September 2025. The limit of \$1 million, previously set to expire on 01 April 2025, has been extended to 30 September 2025. And, repayments on the existing \$5,250,000.00 Term Facility (originally a \$6 million term loan from ANZ) are interest-only until 31 December 2025.

c) New Wilshire Treasury facility for BAI

On 31 March 2025, Wilshire entered discussions with the new Independent Directors to provide a new secured loan to BAI of \$500,000 under new lending terms, as BAI has been unable to secure alternative funding. The loan will have an interest rate of 12% with a repayment date 12 months from the date of the agreement. The loan will be secured by a general security agreement over BAI, but is not guaranteed by any BAI subsidiary nor has any other security been agreed.

Strategic review

Given the circumstances outlined in this market update, and as noted in the market announcement of 31 March 2025, the newly constituted Board is undertaking a comprehensive strategic review with urgency. The Board's purpose is to determine the best next steps for BAI group, with a singular focus on seeking a solution that maximises potential value for all BAI shareholders.

BAI remains in compliance with its continuous disclosure obligations and plans to release preliminary full year results no later than 30 May 2025, and audited full year results no later than 30 June 2025.

[ends]

This announcement has been authorised by BAI Board Chair, Michael Stiassny.

For further information, in the first instance please contact:

Mike Dunshea
BAI Group Secretary
Mobile 027 579 8687
mike.dunshea@beingai.group

