



# NZX Regulation Decision

Intueri Education Group Limited (IQE)

Application for a waiver from NZX Main Board Listing Rule  
9.2.1

21 MARCH 2016



## Decision

1. Subject to the conditions set out in paragraph 2 below and on the basis that the information provided by Intueri Education Group Limited (**IQE**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants IQE a waiver from NZX Main Board Rule 9.2.1 (**Rule**) to the extent that IQE would be required by that Rule to seek shareholder approval to enter into the Earn-Out Deferment.
2. The waiver in paragraph 1, above, is provided subject to the following conditions:
  - (a) the Directors of IQE certify to NZX that:
    - i. the terms of the Earn-Out Deferment have been and will be negotiated on an arm's length and commercial basis;
    - ii. entry into and the terms of the Earn-Out Deferment will be in the best interests of IQE, and it will be fair and reasonable to IQE's shareholders; and
    - iii. IQE has not been and will not be influenced in its decision to enter into the Earn-Out Deferment by the interests of the Vendors; and
  - (b) the waiver, its conditions and the implications of this waiver are disclosed in IQE's annual report for the period that it seeks to rely on the waiver.
3. The material 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 aspects.
4. The Rules to which this decision relates are set out in Appendix Two.
5. Capitalised terms that are not 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 9.2.1 is to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to its relationship with the Issuer. NZXR may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or personal interests of a Related Party are immaterial or plainly unlikely to have influenced the promotion, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1;
  - (b) IQE has submitted, and NZXR agrees, it is unlikely the Vendors could have influenced IQE's decision to enter into the Earn-Out Deferment for the following reasons:
    - i. neither Ms Brookes nor Ms Walsh has ever been a Director of IQE. Therefore, neither of the Vendors have never been in a position to directly influence the decision of the IQE board;

- ii. Ms Brookes retired as a Director of OCA and entered into a period of maternity leave for her position as CEO for OCA on 1 January 2016. The negotiations for the Earn-Out Deferment began after Ms Brookes' retirement. Therefore, it is unlikely Ms Brookes' involvement was material or influential to the management of IQE, or its board, in determining to enter into the Earn-Out Deferment;
  - iii. Ms Walsh is considered to be a Related Party, only because of her role as an executive officer of OCA, a subsidiary of IQE. The nature and function of that role means it is unlikely Ms Walsh's involvement was material or influential to the management of IQE, or its board, in determining to enter into the Earn-Out Deferment;
  - iv. the Earn-Out Deferment has been proposed by IQE and IQE submits is the most appropriate method of accommodating the higher than expected earn-out payment required; and
  - v. IQE has submitted, and NZXR has no reason not to accept, that the only transfer of value to the Vendors is through the payment of interest. Implementation of the Earn-Out Deferment is important for IQE's management of working capital in the near term. As such IQE receives a reciprocal benefit and was unlikely influenced into entering the Earn-Out Deferment by the Vendors;
- (c) the conditions of the waiver provide comfort that the terms of the Earn-Out Deferment will be negotiated, agreed and entered into on an arm's length commercial basis and will be in the best interests of IQE and its shareholders; and
- (d) there is precedent for the decision.

## Confidentiality

7. IQE has requested that NZX keep this waiver confidential until the Earn-Out Deferment negotiations are complete, and is announced to the market. In accordance with Footnote 1 to Rule 1.11.2 NZXR grants IQE's request.



## Appendix One

1. Intueri Education Group Limited (**IQE**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. IQE entered into a sale and purchase agreement with Ms Cheryl Brookes and Ms Catherine Walsh (both acting in their individual capacities and as trustees for the C Walsh Investment Trust and the Brookes Investment Trust respectively) (the **Vendors**) on the 12 December 2014 (the **SPA**). The SPA was for the acquisition of the remaining ordinary shares in Online Courses Australia Group Pty Limited (**OCA**) that IQE did not already own. The SPA was amended on 6 January 2015 (prior to completion of the share purchase).
3. On completion of the SPA, OCA became a wholly-owned subsidiary of IQE.
4. The SPA provides for an “earn-out” mechanism. The earn-out amount payable by IQE to the Vendors to be determined based on the performance of OCA’s business for the financial year ended 31 December 2015.
5. Following the completion of the year ended 31 December 2015, the earn-out payment required to be made by IQE is AU\$19,908,998, approximately AU\$5,000,000 higher than IQE contemplated when entering into the SPA.
6. To assist IQE with the prudent management of its working capital requirements, the Vendors and IQE have agreed that a portion of the earn-out amount will be deferred from the date that is 5 business days after the 31 December 2015 audit of OCA is completed, which is expected to be in late March or early April 2016 until 30 June 2017 (the **Earn-Out Deferment**). The proposed Earn-Out Deferment has a value of AU\$4,908,998, which exceeds more than 10% of IQE’s Average Market Capitalisation.
7. The key terms of the Earn-Out Deferment are:
  - (a) interest is to be payable on the amount deferred under the Earn-Out Deferment at a rate of 6.95% per annum;
  - (b) the repayment date is to be 30 June 2017, or earlier if elected by IQE, or certain events of default occur; and
  - (c) security is to be granted over the assets of some of IQE’s Australian subsidiaries and the giving of guarantees by some of IQE’s Australian subsidiaries, in favour of the Vendors.
8. The Vendors are related parties to the transaction pursuant to Rule 9.2.3.
9. Ms Brookes was a Director and the Chief Executive (**CEO**) of OCA until 1 January 2016. Effective from that date Ms Brookes resigned from her position as a Director of OCA, and began a period of maternity leave from her position as CEO. As six months has not lapsed since Ms Brookes left her positions as a Director or executive officer of OCA, she is a Related Party of IQE under Rule 9.2.3(a).
10. Ms Walsh is an executive officer of OCA, responsible for quality and compliance oversight. Pursuant to Rule 9.2.3(a), Ms Walsh is a Related Party of IQE.
11. Neither of the Vendor’s are, nor have ever been, a Director of IQE.

12. The only value received by the Vendor's under the Earn-Out Deferment is the payment of interest on the amount of the earn-out that is deferred, and payment of the deferred principal amount.
13. The Earn-Out Deferment is a Material Transaction under Rule 9.2.2 and therefore requires shareholder approval under Rule 9.2.1 because:
  - (a) pursuant to Rule 9.2.2(c) the Earn-Out Deferment constitutes borrowings by IQE in excess of 10% of IQE's Average Market Capitalisation as at 11 March 2016;
  - (b) pursuant to Rule 9.2.2(d) the security to be granted over the assets of some of IQE's Australian subsidiaries to secure the borrowing constitutes the granting of security for obligations which could expose IQE to liability in excess of 10% of IQE's Average Market Capitalisation as at 11 March 2016; and
  - (c) pursuant to Rule 9.2.2(d) the giving of guarantees by some of IQE's Australian subsidiaries constitutes the entry into of guarantees which could expose IQE to liability in excess of 10% of IQE's Average Market Capitalisation as at 11 March 2016.
14. IQE has applied to NZX Regulation ("**NZXR**") for a waiver from Rule 9.2.1 to the extent that this Rule would otherwise require IQE to obtain shareholder approval to enter into the Earn-Out Deferment.



## Appendix Two

### Rule 9.2 Transactions with Related Parties

Rule 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 at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

Rule 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
- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 10% of the Average Market Capitalisation of that Issuer, save in the case of an issue pursuant to Rule 7.3.5 where only the market value of those Securities being issued to the Related Party or to any Employees of the Issuer are to be taken into account; or
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; or
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, for or of obligations which could expose the Issuer to liability in excess of 10% of the Average Market Capitalisation of the Issuer; or
- (e) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) in respect of which the actual gross cost to the Issuer in any financial year (ignoring any returns or
- (f) benefits in connection with such services) is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer; or
- (g) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer;
- (h) For the purposes of Rule 9.2.2(a), “Aggregate Net Value” means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value



Rule 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
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes; 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); or
- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but a person is not a Related Party of an Issuer if:

- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or executive officer of the Issuer is also a Director of that person, so long as:
  - i. not more than one third of the Directors of the Issuer are also Directors of that person; and
  - ii. no Director or executive officer of the Issuer has a material direct or indirect economic interest in that person, other than by reason of receipt of reasonable Directors' fees or executive remuneration; or
- (f) that person is a Subsidiary of, incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
  - i. no Related Party of the Issuer has or intends to obtain a material direct or indirect economic interest in that Subsidiary, incorporated joint venture, or unincorporated joint venture participant, other than by reason of receipt of reasonable Director's fees or executive remuneration; and
  - ii. the Issuer is entitled to participate, directly or indirectly, in at least one half of the income or profits, and the assets, of that Subsidiary, incorporated joint venture, or unincorporated joint venture participant.

