



NZX Regulation Decision

Future Mobility Solutions Limited (“FMS”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

24 August 2018



Waiver from 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 FMS is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants FMS a waiver from Rule 9.2.1 to the extent required to allow FMS 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 Non-Interested Directors of FMS certify, in a form acceptable to NZXR, that:
 - i. in their opinion, the Underwriting Agreement represents fair value and is fair and reasonable to FMS and its shareholders, other than the Related Parties or FMS shareholders that are Associated Persons of the Related Parties;
 - ii. in their opinion, the terms of the Underwriting Agreement will be entered into, and have been negotiated on, an arms' length commercial basis and are in the best interests of FMS and its shareholders other than the Related Parties or FMS shareholders that are Associated Persons of the Related Parties; and
 - iii. the Related Party Relationship did not influence the decision of the Board to enter into the Proposed Transaction;
 - (b) the Related Parties will participate in the Rights Offer on terms identical to those offered to all other FMS shareholders, other than in respect of the Underwriting Agreement; and
 - (c) this waiver, its conditions and its implications are disclosed in FMS's Rights Offer document and FMS's half year and annual reports for the year in which the Rights Offer takes 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 the information provided to NZXR by FMS 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.
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 grant the waiver set out in paragraph 1 above, NZXR has considered that:
 - a) Rule 9.2.1 seeks 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 involvement of any Related Party has not unduly influenced the promotion

of, or the decision to enter into, the transaction or its terms and conditions. The granting of this waiver will not offend the policy behind Rule 9.2.1;

- b) FMS has submitted, and NZXR has no reason not to accept, that under the terms of the Underwriting Agreement, Capital Key will not gain favourable consideration because of the Related Party Relationship;
- c) the proposed conditions provide comfort that the;
 - i) Underwriting Agreement will be negotiated and entered into on an arms' length commercial basis;
 - ii) Underwriting Agreement will be fair, reasonable and in the best interests of FMS and its shareholders; and
 - iii) Related Party Relationship has not influenced and will not unduly influence FMS's decision to enter into, or the terms and conditions of, the Underwriting Agreement;
- d) the participation of Related Parties or their Associated Persons in the Rights Offer will be on the same terms as all other participants in the Rights Offer, other than in respect of the Underwriting Agreement arrangements;
- e) FMS has submitted, and NZXR has no reason not to accept, that due to FMS's size and the proposed size of the Rights Offer, it is not practical to seek third party underwriting services from an investment bank; and
- f) there is precedent for this decision.

Confidentiality

- 7. FMS has requested that its application, and NZXR's decision, be kept confidential until FMS has announced the Rights Offer.
- 8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants FMS's request.

Appendix One

- 1) Future Mobility Solutions Limited (**FMS**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board and is subject to NZX Main Board Listing Rules (**Rules**).
- 2) FMS is proposing to undertake a pro-rata renounceable rights issue to raise approximately \$3.7 million for working capital purposes and to support its growth plans (**Rights Offer**). The Rights Offer will be made pursuant to the exclusion in clause 19 of Schedule 1 of the Financial Markets Conduct Act 2013.
- 3) FMS proposes that the Rights Offer will be partially underwritten and it intends to enter into an underwriting agreement with Capital Key Holdings Limited (**Capital Key**) (**Underwriting Agreement**). It is anticipated that the value of the Underwriting Agreement could be up to 60% of the Rights Offer, which amounts to approximately \$2.21 million, with an underwriting fee of approximately \$88,000 (**Underwriting Fee**).

(together, the **Proposed Transaction**)

- 4) Capital Key through a nominee entity is a shareholder in FMS. It currently holds less than 10% of FMS shares on issue and will participate in the Rights Offer on terms identical to those offered to all other FMS shareholders, other than in respect of the Underwriting Agreement.
- 5) Mark Broadley is currently the CEO and a Director of FMS. Mark Broadley is also the sole Director of Capital Key.
- 6) For the purposes of Rule 9.2.1, Capital Key is a Related Party of FMS, as:
 - a) Mark Broadley is a Related Party of FMS, pursuant to Rule 9.2.3(a), through his role as CEO and Director of FMS; and
 - b) pursuant to Rule 9.2.3(c), Capital Key is an Associated Person of Mark Broadley.

(together, the **Related Party Relationship**)

- 7) FMS's current Market Capitalisation, as of 23 August 2018, is approximately \$16 million. The expected value of the Rights Offer is likely to be in excess of 10% of FMS's Average Market Capitalisation. For the purpose of Rule 9.2.1, in undertaking the Rights Offer, FMS will be entering into a Material Transaction that forms part of a related series of transactions, which includes a transaction with a Related Party (being the Underwriting Agreement). Rule 9.2.4(b) does not apply to the Proposed Transaction as the Rights Offer is part of this related series.

Appendix Two

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:

- (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

...

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); or

...

9.2.4 Rule 9.2.1 shall not apply to:

...

- (b) The issue, acquisition or redemption by an Issuer of Securities of that Issuer, or the giving by an Issuer of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 7.3.4(h). For the purposes of this paragraph, the transfer, by an Issuer which is a company registered under the Companies Act 1993, of shares held by that company in itself, shall be deemed to constitute an issue of Securities; or