



NZX Regulation Decision

EROAD Limited (“ERD”)

Application for waiver from NZX Main Board Listing Rule
7.6.4(b)(iii)

24 September 2018



Waiver from NZX Main Board Rule 7.6.4(b)(iii)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by ERD is complete and accurate in all material respects, NZXR grants ERD a waiver from Rule 7.6.4(b)(iii) to the extent required to allow ERD to provide financial assistance to the Executive Director, pursuant to the Terms.
2. The waiver in paragraph 1 is provided on the conditions that:
 - a. The Chair of the Committee certifies to NZXR (in a form acceptable to NZXR) on behalf of ERD's Board that:
 - i. the provision of the financial assistance is:
 - a. in the best interests of ERD;
 - b. of benefit to all ERD shareholders (other than the Executive Director); and
 - c. on terms and conditions which are fair and reasonable to ERD and to all shareholders (other than the Executive Director); and
 - ii. in relation to the Executive Director's participation in, or entitlements under, the Scheme, the Executive Director:
 - a. did not have, and has not had, any significant influence over the Scheme including the Criteria and the Terms;
 - b. did not, and will not, vote on any resolutions relating to the Scheme including the Criteria and the Terms;
 - c. did not, and will not, participate in any board discussions regarding his/her involvement in the Scheme including the Criteria and the Terms; and
 - b. The Executive Director will not be a member of the Committee which decides eligibility of entry into the Scheme, including whether a loan should be awarded in respect of the Scheme and the quantum of such financial assistance to be provided; and
 - c. The Executive Director's participation under the Scheme has been, and will be, determined by the same criteria applying to all Participants of the Scheme.
3. The information on which this decision is based is set out in Appendix One. 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.



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 objective of Rule 7.6.4(b)(iii) is to ensure Directors do not exercise their discretion or use their position to obtain financial assistance which unfairly advantages Directors to the detriment of shareholders, and/or is not consistent with the financial assistance given to Employees who are not Directors. The granting of this waiver will not impact this policy;
 - b. the certification required by the conditions of the waiver, and as provided by ERD's Directors, gives NZXR comfort regarding the Executive Director's lack of influence on the Scheme and his participation in the Scheme;
 - c. the conditions of the waiver require that the Committee, which is responsible for the administration of the Scheme, does not include the Executive Director. The Committee has recommended to the Board that the Scheme to be an appropriate component of the Executive Director's remuneration package;
 - d. the situation falls within the circumstances stated in the footnote to Rule 7.6.4, which states that NZXR may waive the restriction on Directors and Associated Persons of Directors participating in financial assistance given to Employees in certain circumstances where the Executive Director will not have any influence over his Participation in, and entitlement under, the Scheme and is not likely to be disproportionately benefited by the financial assistance provided under the Scheme;
 - e. NZXR is comfortable that details of the Scheme will be fully disclosed to shareholders in compliance with the Companies Act 1993. NZXR is comfortable that there are rights generally available for shareholders to call a meeting under certain circumstances within the Companies Act 1993;
 - f. the performance period under the Scheme includes Financial Year 2018 and Financial Year 2019. As such, waiting for the next Annual Meeting to approve the Scheme would not appropriately align incentives for the Executive Director; and
 - g. there is precedent for this decision.

Confidentiality

7. ERD has requested that this application and any decision be kept confidential until after the Scheme is disclosed to the market by ERD.
8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants ERD's request.



Appendix One

1. EROAD Limited (**ERD**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. ERD has established a scheme for selected senior employees (**Participants**) employed by ERD and/or its subsidiaries (the **EROAD Group**) under which a Participant is granted the right to receive an interest free loan (**Loan**) for the purpose of acquiring Shares in ERD (the **Scheme**).
3. ERD wishes for its Chief Executive Officer, Mr. Steven Newman, who is also a director of ERD (**Executive Director**), to have the right to participate in the Scheme.
4. The full terms of the Scheme (**Terms**) were determined by the Remuneration, Talent and Nominations Committee (the **Committee**) and approved by the Board other than the Executive Director.
5. The Committee comprises solely Independent Directors and recommends to the Board who is eligible to join the Scheme, as well as the amount, and terms, of the financial assistance to be provided to Participants under the Scheme.
6. The relevant Terms are as follows:
 - a. subject to the satisfaction of Criteria set for a particular financial year, a Participant will have the right to receive a Loan to acquire shares in ERD which will be held on trust as bare trustee by EROAD LTI Trustee Limited (**Trustee**), a wholly owned subsidiary of ERD. The Executive Director is not a director of the Trustee;
 - b. ERD's Board, on advice from the Committee: determines which Participants are eligible to join the Scheme; determines the form of the Scheme after taking external advice; sets the level of participation for Participants; and sets the amount and terms of the financial assistance to be provided to Participants under the Scheme. Once approved, shares will be issued to the Trustee at market price or the Trustee will re-allocate forfeited shares from prior grants under the Scheme; the following terms will apply in respect of the Loan:
 - (a) the Loan will be secured over the shares; and
 - (b) the Loan will be interest free;
 - c. the Trustee will exercise voting rights as directed by a Participant;
 - d. if a participant ceases to be employed by ERD (or a related company) before the expiry of the restricted period, then legal title will not be transferred to the participant except in the limited circumstances allowed under the Plan;
 - e. if a participant continues to be employed by ERD or a related company for the restricted period but the performance hurdles for a tranche of shares are not achieved, legal title will not be transferred to the participant. If the performance hurdles are only partially achieved, legal title in a proportionate number of the shares will be transferred;



- f. the loan advanced by ERD will be repayable on the date on which legal title to the shares is transferred. To the extent that legal title in shares is to be transferred to a participant, the participant will be paid a bonus which, after tax, equals the amount of the participant's loan balance in respect of the relevant shares. Participants authorise and direct ERD to apply the bonus towards repayment of their outstanding loan balance; and
 - g. to the extent that legal title in the shares is not transferred to a participant, there are put and call options in respect of the Participant's beneficial interest in the relevant shares. The consideration payable by the Trustee on exercise of the call or put option will be the transfer to the Trustee of the participant's loan balance in respect of the relevant shares.
7. The Board of the Company, through the Committee, will determine those employees of the ERD Group who are eligible to join the Scheme, and the level of participation in the Scheme, in accordance with the policy determined by the Board from time to time **(Criteria)**.
8. ERD shareholders and prospective investors will be aware of the financial assistance being provided to Mr Newman under the Scheme, because ERD's annual report and remuneration policy provides details of the Scheme.
9. While NZX Main Board Rule **(Rule)** 7.6.4(b) allows financial assistance to be given to Employees in certain circumstances, the financial assistance may not be given to a Director of the Issuer or an Associated Person of the Director without obtaining shareholder approval or a waiver from NZX Regulation **(NZXR)**. To facilitate the provision of financial assistance to the Executive Director under the Scheme, ERD has sought a waiver from NZXR in respect of Rule 7.6.4(b)(iii).



Appendix Two

Rule 7.6.4(b)(iii) Buybacks of Equity Securities, Redemption of Equity Securities and Financial Assistance

7.6.4 An Issuer may give financial assistance of the nature referred to in Rule 7.6.3 if:

....

- (b) the financial assistance is given to Employees (as defined in Rule 7.3.6) of the Issuer and:
 - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) by the Issuer during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed 5% of the Average Market Capitalisation of the Issuer; and
 - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under Rule 7.6.4(b)(i) during the shorter of the period of five years preceding the date of the giving of financial assistance and the period from the date on which the Issuer was Listed to the date of the giving of the financial assistance, does not exceed 10% of the Average Market Capitalisation of the Issuer; and
 - (iii) the financial assistance is not given to any Director of the Issuer or Associated Person of a Director; or

...

The footnote to Rule 7.6.4 provides:

NZX may waive the restriction in Rule 7.6.4(b)(iii) on Directors and Associated Persons participating in financial assistance given to Employees:

- (a) so far as it affects assistance given to bona fide full time employees who are Directors, or Associated Persons of Directors, where NZX is satisfied that the amounts and terms of the assistance will be determined according to criteria applying generally to all employees eligible to receive the assistance, and would not, if all relevant factors were publicly disclosed, be reasonably seen as being materially influenced by the relationship; and/or
- (b) where NZX is satisfied that the assistance is not likely disproportionately to benefit the persons controlling the Issuer and those associated with them.

