



NZX Regulation Decision

Cavalier Corporation Limited (“CAV”)

Application for a waiver from NZX Main Board Listing Rule
3.5.1

24 May 2018



Waiver from Rule 3.5.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by CAV is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants CAV a waiver from Rule 3.5.1, to the extent that this Rule requires CAV to seek shareholder approval to increase the pool of remuneration for its Directors to allow CAV to pay remuneration to the New Director until the 2018 AGM.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. The remuneration paid to the New Director does not exceed \$56,000 per annum, pro-rated from the date of appointment to the date of the 2018 AGM;
 - b. CAV discloses the waiver, with the reasons for it, at the time it announces the New Director's appointment pursuant to Rule 10.6.1;
 - c. The waiver expires on the date of the 2018 AGM, which is to be held no later than 31 October 2018; and
 - d. CAV's board certifies that the appointment of the New Director and the remuneration proposed to be paid is in the best interests of CAV and its shareholders, and the remuneration has been determined on arm's length, commercial terms.
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 Rule to which this decision relates is set out in Appendix Two to this decision.
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 provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. The policy of Rule 3.5.1 is to ensure that shareholders have oversight of Directors' remuneration. NZX is satisfied that the granting of this waiver would not offend the policy of the Rule, as the limited term of the waiver ensures that shareholders will continue to have oversight of CAV's Director remuneration and can vote on changes to the Fee Pool at the 2018 AGM;
 - b. The amount proposed to be paid to the New Director is aligned with that paid to the other non-Executive Directors of CAV at this time;
 - c. The appointment of the New Director is for a limited period, at the end of which the New Director will be required to stand for re-election;
 - d. The waiver will expire at the 2018 AGM, and as such CAV will be required to seek shareholder approval for a revised Fee Pool; and



- e. The appointment of the New Director and the remuneration proposed to be paid has been certified to be in the best interests of CAV and its shareholders.

Confidentiality

- 7. CAV has requested this application and any decision be kept confidential until it announces the appointment of the New Director to the market.
- 8. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants CAV's request.



Appendix One

1. NZX Main Board Listing Rule (**Rule**) 3.5.1 permits Issuers to set Director remuneration as either:
 - a. A monetary sum per annum payable to all Directors of the Issuer taken together (the **Fee Pool**); or
 - b. A monetary sum per annum payable to any person who from time to time holds office as a Director of the Issuer.
2. In both instances, a resolution must be put to shareholders for their approval. If an Issuer creates a Fee Pool, it may subsequently increase remuneration beyond the amount contemplated by the resolution if:
 - a. There is an increase in the number of Directors (in NZXR's view, from the number holding directorships at the time the pool was established); and
 - b. The amount of the increase does not exceed the average amount then being paid to each of the other non-Executive Directors (other than the Chairperson).
9. In 2007, Cavalier Corporation Limited (**CAV**) shareholders approved a Fee Pool of \$350,000, at which time CAV had eight Directors. It paid \$245,000 to the non-Executive Directors, of which \$70,000 was paid to the Chairperson. Accordingly, as at 2007, CAV paid the non-Executive Directors (excluding the Chairperson) \$35,000 on average. If the same spilt was applied on the basis that the total Fee Pool was fully allocated (accounting for the additional \$105,000 approved by shareholders) the non-Executive Directors (excluding the Chairperson) would be entitled to \$50,000 on average (representing the amount that the shareholders were effectively approving be paid to each non-Executive Director in 2007).
10. CAV subsequently made changes to its Board, such that it now has a total of five Directors. Those Directors receive, in total, the full \$350,000 Fee Pool. The amount paid to non-Executive Directors (excluding the Chairperson) in 2018 is \$59,500 on average.
11. CAV now wishes to appoint a sixth Director (the **New Director**), who it proposes to pay \$56,000 per annum. However, as Rule 3.5.1 only contemplates increases in the Fee Pool where there has been an increase in the number of Directors from the number holding directorships at the time the Fee Pool was approved, CAV cannot rely on the mechanism to increase remuneration beyond the \$350,000 Fee Pool. It would instead need to seek shareholder approval of the change to the Fee Pool, either by special meeting or at the 2018 Annual General Meeting (**2018 AGM**) set down for late October 2018.
12. CAV has sought a waiver from Rule 3.5.1 to the extent shareholder approval is required, so that it may appoint the New Director in advance of the 2018 AGM, without incurring the cost of holding a special meeting. The Board has identified the New Director as possessing qualities which it considers will assist the Board in carrying out its functions.
13. CAV has indicated it wishes to appoint the New Director from 1 June 2018. Based on the New Director being paid \$56,000 per annum and being appointed from this date, the New Director will receive approximately \$23,333.33 in fees before being required to stand for re-election at the 2018 AGM pursuant to Rule 3.3.6. CAV has indicated to NZXR that it will seek shareholder approval to increase the Fee Pool at the 2018 AGM.

Appendix Two

3.5. Directors' Remuneration

3.5.1. No remuneration shall be paid to a Director of an Issuer by that Issuer or any of its Subsidiaries in his or her capacity as a Director of the Issuer or any of its Subsidiaries unless that remuneration has been authorised by an Ordinary Resolution of the Issuer, other than remuneration paid to a Director by a Subsidiary that has Equity Securities Quoted. Each such resolution shall express Directors' remuneration as either:

- a. a monetary sum per annum payable to all Directors of the Issuer taken together; or
- b. a monetary sum per annum payable to any person who from time to time holds office as a Director of the Issuer.

Such a resolution may expressly provide that the remuneration may be payable either in part or in whole by way of an issue of Equity Securities, provided that issue occurs in compliance with Rule 7.3.8.

If remuneration is expressed in accordance with (a), then in the event of an increase in the total number of Directors of the Issuer holding office, the Directors may, without the authorisation of an Ordinary Resolution of the Issuer, increase the total remuneration by such amount as is necessary to enable the Issuer to pay to the additional Director or Directors of the Issuer remuneration not exceeding the average amount then being paid to each of the other non-Executive Directors (other than the chairperson) of the Issuer.

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a general meeting of the Issuer unless notice of the amount of increase has been given in the notice of meeting. Nothing in this Rule 3.5.1 shall affect the remuneration of Executive Directors in their capacity as executives.

Directors' remuneration for work not in the capacity of a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 9.2 (if applicable).

