



NZX Regulation Decision

MOA Group Limited (MOA)

Application for waivers from NZX Listing Rules 4.2.2 and 4.16.2(b)

4 October 2019





Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2019 (**Rules**). This waiver decision re-documents the prior waiver decision granted by NZX Regulation (**NZXR**) dated 21 February 2019 to reflect the updated Rule references.
2. The information on which this decision is based is set out in Appendix One to this decision. These waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
3. The Rules to which this decision relates are set out in Appendix Two.
4. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Waiver from Listing Rules 4.2.2 and 4.16.2

Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by MOA is complete and accurate in all material respects, NZXR grants MOA a waiver from Rules 4.2.2 and 4.16.2 to the extent that these Rules would otherwise require MOA to issue or acquire the consideration Shares within the 12 months following shareholder approval for the allotment or redemption.
6. The waiver in paragraph 5 above is provided on the conditions that:
 - a. Any Shares issued as partial satisfaction of the Additional Payment are issued within 25 months of Completion;
 - b. Any Shares issued as partial satisfaction of an upwards Earn-out Adjustment are issued within 25 Business Days of the date following the end of the first two full financial years after Completion;
 - c. Any Shares acquired as partial satisfaction of a downwards Earn-out Adjustment are acquired and cancelled within 25 Business Days of the date following the end of the first two full financial years after Completion;
 - d. The Timing Waivers, and MOA's reliance on the waivers, is disclosed in MOA's annual reports during the period MOA is reliant on the waiver; and
 - e. The Timing Waivers, and MOA's reliance on the waivers, is disclosed in any Offering Document that MOA publishes during the period MOA is reliant on the waiver.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 6 above, NZXR has considered that:
 - a. The purpose of Rules 4.2.2 and 4.16.2 is to ensure that Issuers do not unduly delay the issue or acquisition of Securities for which they have received shareholder approval. This mischief is not present where:



- i. the number of shares to be issued or acquired in the future is determined by an objective formula; and
 - ii. the possibility of issuing or acquiring the securities is clearly disclosed by MOA during the period MOA is reliant on the Timing Waivers.
- b. MOA's shareholders have had the opportunity to vote on whether or not to approve the Proposed Transaction at a special meeting. The notice of special meeting clearly explained the Proposed Transaction as well as the Timing Waivers granted by NZX on 21 February 2019. In particular, it was clear that the allotment and/or acquisition of Shares would take place later than 12 months after the date of the meeting, and that MOA has been granted a waiver from the timeframes under the Rules;
- c. The issue of Additional Payment Shares is conditional on the Vendors achieving certain agreed commercial milestones to the Purchaser's satisfaction in the 12-24 months following Completion. It will therefore not be known if the Additional Payment Shares are to be issued within the 12 months following shareholder approval of the issue;
- d. The issue, or acquisition and cancellation, of Shares pursuant to the Earn-out Adjustment is dependent on the financial performance of the sale businesses in the two financial years following Completion. It will therefore not be known if any Shares are to be issued, or acquired and cancelled, pursuant to the Earn-out Adjustment within the 12 months following shareholder approval of the issue or acquisition;
- e. MOA has submitted, and NZXR has no reason not to accept:
 - i. that it is common for commercial transactions of this nature to include both contingent consideration such as the Additional Payment, as well as earn-out mechanisms designed to adjust the purchase price depending on the actual performance of the business being acquired;
 - ii. the timeframes agreed for the Additional Payment and Earn-out Adjustment are typical for this type of transaction; and
 - iii. The agreed timeframes allow MOA's Board sufficient time to determine whether the achievement of the commercial milestones will lead to the business outcomes required in order for the Additional Payment to become payable.
- f. The issue or acquisition of Shares pursuant to the Earn-Out Adjustment will be determined based on an objective formula, which will be set out in the notice of special meeting;
- g. The Timing Waivers, and MOA's reliance on the Timing Waivers, will be clear to future MOA shareholders as it will be disclosed in MOA's Annual Reports and any Offering Document published during the period MOA is reliant on the Timing Waivers; and
- h. There is precedent for waivers of Rule 4.2.2.





Appendix One

1. Moa Group Limited (**MOA**) is a Listed Issuer with ordinary shares (**Shares**) Quoted on the NZX Main Board.
2. On 21 December 2018, MOA announced that it had entered into a conditional agreement to acquire eleven Auckland hospitality businesses (the **Savor Group Businesses**) (**Transaction**). MOA has entered into the Transaction via Savor Group Limited, a wholly owned subsidiary incorporated for the purposes of the Transaction (**Purchaser**).
3. The Transaction is governed by six separate sale and purchase agreements, with different vendors, although all corporate vendors are majority owned and controlled by Lucien Law and/or Paul Robinson (**Vendors**). The Transaction was completed on 1 April 2019 (**Completion**).
4. The consideration for the Transaction is as follows:
 - a) At Completion, the Purchaser paid the Vendors an initial purchase price of \$13 million (**Initial Purchase Price**) by way of a 60/40 split of cash and ordinary MOA Shares;
 - b) Subject to the Vendors achieving certain agreed commercial milestones within 24 months of Completion, and MOA's Board being satisfied that the achievement will lead to certain business outcomes, the Purchaser will, 12-24 months from Completion, pay the Vendors up to \$5.4 million (**Additional Payment**) by way of a 60/40 split of cash and Shares; and
 - c) A further adjustment will be made following Completion, depending on the financial performance of the Savor Group Businesses over the first two financial years (years ending 31 March 2020 and 31 March 2021) (**Earn-out Adjustment**). The Earn-out Adjustment may result in up to \$3 million of Shares being issued to the Vendors, or up to \$3 million of Shares which were issued in satisfaction of the Initial Purchase Price being transferred from the Vendors to MOA, and cancelled on acquisition.
5. MOA obtained shareholder approval on 12 March 2019 for the Transaction as it is a Major Transaction under the NZX Listing Rules (**Rules**).
6. MOA has also obtained shareholder approval:
 - a) for the issue of Shares to be issued as consideration for the Transaction; and
 - b) to cancel any Shares that are transferred back to MOA in the event of a downwards Earn-out Adjustment.
7. Any shares issued as partial satisfaction of the Additional Payment would be issued 12-24 months from Completion. If the Additional Payment becomes payable, payment by MOA would be due promptly, so the latest possible date for the issue of such shares would therefore be 24 months from Completion (in practice this might be a few working days after).
8. Any Shares issued in satisfaction of an upwards Earn-out Adjustment would be issued within 25 business days of the date following the end of the first two full financial years after Completion (therefore any such Shares would be issued within 25 business days of 31 March 2021).



9. If, pursuant to a downwards Earn-out Adjustment, the Vendors are required to transfer Shares back to MOA, MOA intends to cancel those Shares upon acquisition. If any such Shares are required to be transferred to MOA, the transfer will take place within the same timeframe described above.
10. MOA has applied for a waiver from Rules 4.2.2 and 4.16.2 to enable it to satisfy the consideration required by the Transaction without having to seek future shareholder approval. In particular, MOA requests a waiver from those Rules as they apply with respect to the:
 - a) issue of Shares as partial satisfaction of the Additional Payment (**Additional Payment Shares**);
 - b) issue of Shares as satisfaction of an upwards Earn-out Adjustment; and
 - c) acquisition of Shares as satisfaction of a downwards Earn-out Adjustment.(together, **Timing Waivers**).





Appendix Two

Rule 4.2.2

An issue of Equity Securities authorised under Rule 4.2.1 must be completed within:

- (a) 36 months after the passing of those resolutions, if the issue is restricted to Employees, and
 - (b) 12 months after the passing of those resolutions in all other circumstances,
- otherwise the issue cannot occur until further approval is obtained under Rule 4.2.1.

Rule 4.16.2

A transaction authorised by resolutions passed under Rule 4.16.1 must be completed:

- (a) within 36 months if transacted only with Employees, and
- (b) within 12 months in all other circumstances,

otherwise the transaction cannot occur until further approval is obtained under Rule 4.16.1.

