



# NZX Regulation Decision

Finzsoft Solutions Limited ("FIN")

Application for waivers from NZX Listing Rules 5.1.1 and 5.2.1

31 January 2020



# Background

## Decision

1. 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.
2. The NZX Listing Rules (**Rules**) to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

## Waiver from Listing Rule 5.1.1

### Decision

4. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by FIN is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants FIN a waiver from Rule 5.1.1, to the extent that this Rule would otherwise require FIN to obtain the approval of shareholders to enter into the Transaction.
5. The waiver in paragraph 4 above is provided on the conditions that:
  - a. the directors of FIN certify to NZXR that:
    - i. the terms of the Transaction have been entered into, and negotiated, on an arm's length and commercial basis; and
    - ii. the Transaction is in the best interest of FIN and its shareholders; and
  - b. the waiver, its conditions and its implications are disclosed in FIN's next annual report.

### 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 5.1.1 is to regulate those transactions which will significantly change the nature of an Issuer's business or which have a value that represents a majority of the equity that investors hold in the Issuer and, as a result, are deemed to be so significant to the Issuer, and therefore so likely to impact shareholders' interests, that shareholders should have an opportunity to consider the transaction and exercise their right to vote before the transaction can take effect. The granting of this waiver will not offend the policy behind Rule 5.1.1;
  - b. the Transaction is entirely within the ordinary course of FIN's business, rather than being a transaction that significantly changes the nature of the business. The Transaction confirms the current commercial relationship between FIN and FCU;
  - c. the directors of FIN submit, and NZXR has no reason not to accept, that the Transaction is in the best interests of its shareholders as the Transaction provides extra funding to FIN, which will allow FIN to complete the development of a product to which, as announced by FIN on 15 July 2019, a significant multi-product, five-year licence has

already been signed. Further to this, \$2 million of proceeds from the Transaction will be used to repay the ANZ Facility – the “on demand” nature of which creates uncertainty and risk for FIN;

- d. the Transaction has been negotiated on an arm’s length commercial basis. FIN has submitted, and NZXR has no reason not to accept, that the negotiation of the Transaction is within the competence and experience of the directors of FIN;
- e. there is precedent for this decision.

## Waiver from Listing Rule 5.2.1

### Decision

- 7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by FIN is complete and accurate in all material respects, NZXR grants FIN a waiver from Rule 5.2.1, to the extent that this Rule would otherwise require FIN to obtain the approval of shareholders to enter into a Material Transaction with a Related Party.
- 8. The waiver in paragraph 7 above is provided on the conditions that:
  - a. the directors of FIN certify to NZXR that:
    - i. the terms of the Transaction have been entered into, and negotiated, on an arm’s length and commercial basis;
    - ii. FIN was not unduly influenced to enter into the Transaction by the Related Party; and
    - iii. entry into the Transaction is in the best interest of all FIN’s shareholders; and
  - b. the waiver, its conditions and its implications are disclosed in FIN’s next annual report.

### Reasons

- 9. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
  - a. The policy of Rule 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party. The granting of this waiver will not offend the policy behind Rule 5.2.1;
  - b. NZXR is satisfied that FIN has not been unduly influenced due to the Related Party relationship, and that the Related Party relationship has not unduly influenced the decision to enter into, or the terms and conditions of, the Transaction as:
    - i. FIN is already party to the MSA to which the Transaction relates and the terms of the Transaction are not materially different to similar transactions entered into with non-related parties. FIN submits that the MSA was entered into on 30 June 2016 – in advance of Mr Scott becoming an alternate director of FIN;



- ii. entry into, and the terms of, the Transaction were negotiated on an arm's length basis;
- iii. NZXR takes comfort that FCU's influence over FIN's decision to enter into the Transaction is limited to Mr Scott's ability to influence, and participate in decisions of, the FIN board. FIN has advised that Mr Scott has not participated in, and will not participate in, any FIN board discussions on, or approving, the Transaction. Accordingly, FIN submits, and NZXR has no reason not to accept, that FCU (via Mr Scott) is not in a position to exercise any influence over FIN's decision to enter into the Transaction;
- c. the directors of FIN submit that entry into the Transaction is in the best interests of FIN and its non-related shareholders for reasons specified at paragraph 6(c);
- d. there is precedent for this decision.

## Confidentiality

- 10. FIN has requested that this decision be kept confidential until an announcement of the Transaction is released to the market.
- 11. In accordance with Rule 9.7.2, NZXR grants FIN's request.



## Appendix One

1. Finzsoft Solutions Limited (together with members of its group, **FIN**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. FIN has an existing master services agreement dated 30 June 2016 (the **MSA**) with First Credit Union (**FCU**) pursuant to which:
  - a. FCU engages FIN, and FIN accepts the engagement, to provide the “Deliverables” (as that term is defined in the MSA) and the “Services” (as that term is defined in the MSA) in accordance with the MSA;
  - b. the Deliverables are “Sovereign” finance and banking software product modules licenced by FIN to FCU. “Sovereign” is FIN’s flagship product and is a core banking and front-end system targeted at banks, building societies, credit unions and finance companies;
  - c. the Services include support and maintenance, and escrow, services;
  - d. the principal fees payable by FCU to FIN are annual licence fees for the Deliverables (the **Annual Licence Fees**) and service fees for the Services;
  - e. the Annual Licence Fees are payable quarterly in advance; and
  - f. the term is for 10 years, expiring on 30 June 2026.
3. The form of the MSA is substantially based on FIN’s “standard form” master services agreement for Sovereign (the **Sovereign Standard Form Agreement**), although there are certain special conditions that have been agreed between FIN and FCU. Each of FIN’s other key Sovereign customers has also entered into a master services agreement with FIN substantially based on the Sovereign Standard Form Agreement.

### Major Transaction

4. It has been proposed that FIN enter into a transaction with FCU (the **Transaction**) pursuant to which the MSA would be amended such that:
  - a. FCU would prepay Annual Licence Fees for 5 years and 9 months (the **Prepayment Period**);
  - b. the parties extend the term of the MSA to 30 September 2026;
  - c. in consideration for the Customer prepaying the annual licence fees, the aggregate Annual Licence Fees for the Prepayment Period are reduced by a discount rate of approximately 5% per annum (the **Prepayment**); and
  - d. while all of the Prepayment will be paid upfront, the Prepayment will be notionally spread over the Prepayment Period in agreed quarterly instalments (the **Discounted Quarterly Instalments**) so that, if there is an event of default, FIN’s obligations to repay a portion of Discounted Quarterly Instalments at that time is pre-agreed.
5. FIN is to use \$2 million of the Prepayment to repay its existing flexible credit facility (the **ANZ Facility**) with ANZ Bank New Zealand Limited (**ANZ**). The ANZ Facility is:
  - a. repayable on demand by ANZ at any time; and



- b. secured by a first ranking general security agreement over all the assets of FIN (the **ANZ GSA**).
6. Upon repayment of the ANZ Facility, the ANZ GSA is to be released and FIN is to grant FCU a first ranking general security agreement over all the assets of FIN.

**Material Transaction with Related Parties**

7. In addition, FIN has applied for a waiver from Rule 5.2.1 in respect of the Transaction.
8. Simon Scott serves on the board of directors of each FIN and FCU. Mr Scott was appointed by Andrew Holliday as his alternate director on 3 October 2018.
9. As the Transaction involves:
- a. FIN acquiring assets (i.e. cash) having an Aggregate Net Value above 10% of the Average Market Capitalisation of FIN; and
  - b. FIN giving security which could expose FIN to liability above 10% of the Average Market Capitalisation of FIN,
- the Transaction is a Material Transaction for the purposes of Rule 5.2.1.
10. FCU is a direct party to the Material Transaction. FCU is a Related Party of FIN because Mr Scott is an alternate director of FIN, and FCU is an Associated Person of Mr Scott on the basis that he is a Director and a Senior Manager of FCU.



## Appendix Two

### **Rule 5.1      Disposal or Acquisition of Assets**

Rule 5.1.1      An Issuer must not enter into any transaction, or related series of transactions, to acquire, sell, lease (whether as lessor or lessee) exchange, or otherwise except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above.

### **Rule 5.2      Transactions with Related Parties**

Rule 5.2.1      An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

