



NZX Regulation Decision

Hellaby Holdings Limited (“HBY”)

Application for a waiver from Main Board Listing Rules
3.3.1(b), 3.3.1(c), 3.3.2, 3.3.3, 3.3.4 and 3.6.2(c)

7 February 2017



Waiver from Rules 3.3.1(b), 3.3.1(c), 3.3.2, 3.3.3, 3.3.4 and 3.6.2(c)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by HBY is complete and accurate in all material respects, NZXR grants HBY a waiver, until the expiration of the Target Delisting Date, from:
 - (a) Rule 3.3.1(b), to the extent that this Rule would otherwise require HBY's Board to comprise of two Directors that are ordinarily resident in New Zealand;
 - (b) Rule 3.3.1(c), to the extent that this Rule would otherwise require HBY's Board to comprise of two Independent Directors or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater;
 - (c) Rule 3.3.2, to the extent that this Rule would otherwise require HBY's Board to identify which Directors it has determined, in its view, to be Independent Directors;
 - (d) Rule 3.3.3, to the extent that this Rule would require HBY's Board to make a determination under Rule 3.3.2, in accordance with Rule 3.3.3;
 - (e) Rule 3.3.4, to the extent that this Rule would otherwise require HBY to make the necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under Rule 3.3.2; and
 - (f) Rule 3.6.2(c), to the extent that this Rule would otherwise require HBY's Audit Committee to be comprised of a majority of Independent Directors.
2. The waiver granted in paragraph 1 above, is granted on the conditions that:
 - (a) the compulsory acquisition process under the Takeovers Code (**Compulsory Sale**) in respect of the relevant shares that have not been accepted in HBY shall commence on 8 February 2017;
 - (b) that HBY will take all reasonable steps to delist from the NZX Main Board on or before the Target Delisting Date; and
 - (c) those HBY shareholders that have not accepted Bapcor's offer to acquire their shares by the expiry of the Offer Period (**Remaining Shareholders**), and who will be subject to the Compulsory Sale, are not permitted to object to the terms, or implementation of, the Compulsory Sale under the terms of the Takeovers Code.
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 Rules to which this decision relates are 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.



6. In accordance with NZX policy, NZXR consulted with the Chair of the NZ Markets Disciplinary Tribunal when making this determination.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - (a) the policy behind Rule 3.3.1(b) is to ensure that shareholders have a point of contact in New Zealand;
 - (b) the policy behind Rules 3.3.1(c) and 3.6.2(c), is to safeguard the interests of minority shareholders by ensuring that Independent Directors, with no other interests to hinder their judgment in the interests of the Issuer, can contribute an independent perspective to Board decision-making;
 - (c) NZXR was comfortable granting the waiver in this instance as the relief sought is only for a finite period (expected to be less than a month); from 8 February 2017, the Remaining Shareholders' interests will be limited to the Compulsory Sale process under the Takeovers Code; and the need for a point of contact in New Zealand will have materially diminished;
 - (d) in this instance the Offer by Bapcor was unsolicited, and the Current Independent Directors have indicated that they will resign with effect from 8 February 2017. As a result, HBX's compliance with Rules 3.3.1(b), 3.3.1(c), 3.3.2, 3.3.3, 3.3.4 and 3.6.2(c) in this instance is influenced by those factors;
 - (e) requiring HBX to appoint interim Directors to satisfy these compositional requirements for such a limited period will impose a disproportionate compliance burden, with limited corresponding benefit to shareholders; and
 - (f) the waivers granted from Rules 3.3.2, 3.3.3, 3.3.4, are simply consequential waivers to waiver granted from Rule 3.3.1(c).



Appendix One

1. Hellaby Holdings Limited (**HBY**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board (**Main Board**).
2. On 21 October 2016, Bapcor Finance Pty Ltd (**Bapcor**) made an unsolicited takeover offer to purchase all fully paid ordinary shares in HBY at a price of \$3.60 per ordinary share (the **Offer**).
3. On 31 January 2017, Bapcor obtained acceptances of the Offer in respect of more than 90% of the ordinary shares in HBY and became the “dominant owner” of HBY as defined in the Takeovers Code.
4. HBY shareholders had until 11.59pm on 7 February 2017 to either accept or reject (through no action) the Offer (the **Offer Period**). As at 8.30am on 7 February 2017, Bapcor disclosed a relevant interest in 94.16% of HBY ordinary shares in connection with acceptances into the Offer.
5. On 8 February 2017, Bapcor intends to:
 - (a) despatch compulsory acquisition notices (**CA Notices**) and accompanying transfer forms (**Transfer Forms**) in accordance with Part 7 of the Takeovers Code to all HBY shareholders who have not accepted the Offer; and
 - (b) submit to NZX Regulation (**NZXR**) an application to delist HBY from the Main Board. HBY intends to delist on or before 8 March 2017 (or, if applicable, such later date specified by NZXR as the effective date for the delisting to occur) (**Target Delisting Date**).
6. Under the Takeovers Code HBY shareholders are required to return the Transfer Forms to Bapcor within 21 days after the CA Notices are dispatched being 11.59pm 1 March 2017 (**CA Period**). If HBY shareholders do not return the completed Transfer Form to Bapcor by the CA Period, then Bapcor will, by Wednesday 8 March 2017:
 - (a) deliver to HBY the consideration of \$3.60 per ordinary share for all ordinary shares in respect of which a Transfer Form has not been returned to Bapcor. This payment will be held on trust by HBY for the benefit of those HBY shareholders; and
 - (b) send to HBY an instrument of transfer for those ordinary shares, executed on behalf of holders of those ordinary shares by Bapcor or its agent (as Bapcor is required to do under the Takeovers Code).
7. HBY’s Independent Directors, who, are both ordinarily resident in New Zealand, Steve Smith and Paul Byrnes (**Current Independent Directors**) have indicated that they intend to resign following the commencement of the Compulsory Sale process. The remaining five directors will not be independent, and only one of those five directors will be ordinarily resident in New Zealand.
8. HBY seeks a waiver from:
 - (a) Main Board Rule (**Rule**) 3.3.1(b) which requires the Board of an Issuer to include at least two Directors who are ordinarily resident in New Zealand; and



- (b) Rules 3.3.1(c), 3.3.2, 3.3.3, 3.3.4 and 3.6.2(c) which set out the requirements for the number of Independent Directors to be on the Board of an Issuer, and on the Audit Committee.



Appendix Two

3.3 Appointment and Rotation of Directors

3.3.1 The composition of the Board shall include the following:

- (a) the minimum number of Directors (other than alternate Directors) shall be three; and
- (b) at least two Directors shall be ordinarily resident in New Zealand; and
- (c) the minimum number of Independent Directors shall be two or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.

3.3.2 The Board must identify which Directors it has determined, in its view, to be Independent Directors.

3.3.3 The Board must make a determination under Rule 3.3.2:

- (a) no later than 10 Business Days following an appointment of a Director by Security holders. Immediately after making such a determination the Issuer shall release to the market whether the Board has determined that the Director is an Independent Director unless a determination by the Board in relation to that Director was disclosed under Rule 10.4.5(l) in the most recently published annual report; and
- (b) no later than 10 Business Days following appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the Issuer shall release to the market whether the Board has determined that such Director is an Independent Director; and
- (c) prior to publication of its annual report to enable it to comply with Rule 10.4.5(l).

3.3.4 It is the responsibility of the Issuer to make the necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under Rule 3.3.2.

3.6 Audit Committee

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3.6.2 The Audit Committee shall:

- (a) be comprised solely of Directors of the Issuer; and
- (b) have a minimum of three members; and
- (c) have a majority of members that are Independent Directors; and
- (d) have at least one member with an accounting or financial background.

