

NZ RegCo

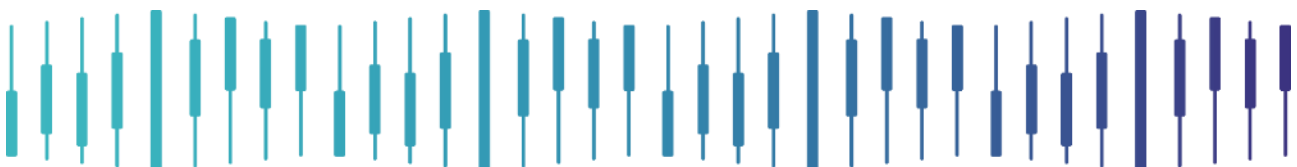
NZ'S LISTED
MARKET REGULATOR

29 May 2024

NZ RegCo Decision

Synlait Milk Limited (NS) (SML)

Application for Waiver from NZX Listing Rule 5.1.1(b)



Background

1. The approval from NZX Regulation Limited (**NZ RegCo**) for the waiver set out in the decisions below will not apply if the information provided by SML is not, or ceases to be, full and accurate in all material respects.
2. Capitalised terms which have not been defined in this decision have the meaning given to them in the NZX Listing Rules (**Rules**).
3. The information on which this decision is based is set out in Appendix One to this decision. This decision will not apply if that information is not or ceases to be full and accurate in all material respects.
4. The Rules to which these decisions relate are set out in Appendix Two to this decision.

Waiver from Rule 5.1.1(b)

Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by Synlait Milk Limited (NS) (**SML**) is complete and accurate in all material respects, NZ RegCo grants SML a waiver from Rule 5.1.1(b), to the extent required to allow SML to enter into the Relevant Contracts during a period from 12-months from the date of the waiver and perform the Relevant Contracts without needing to obtain shareholder approval.
6. The waivers contained in paragraph 5 are subject to conditions that:
 - a. SML's Non-Interested Directors certify to NZX that the granting of the waiver is in the best interest of each of:
 - i SML, and
 - ii SML's shareholders as a whole,
 - b. SML's Non-Interested Directors certify to NZX that the Relevant Contracts will:
 - i not significantly change the nature of SML's business, and
 - ii be in the ordinary course of SML's business,
 - c. SML's Non-Interested Directors certify to NZX that the Relevant Contracts are in the best interest of each of:
 - i SML, and
 - ii SML's shareholders as a whole,
 - d. SML's Non-Interested Directors include in the certificate a summary of the core grounds for the certifications given under each limb of conditions (a), (b), and (c), described above,
 - e. SML's Non-Interested Directors certify to NZX that entry into and performance of one or more Relevant Contracts is not, and will not be, a major transaction requiring shareholder approval of SML's shareholders for the purposes of the Companies Act 1993, and
 - f. the waiver and its conditions and implications are disclosed in SML's annual report for the financial year ending 31 July 2024.

7. NZ RegCo will publish the certificate to market alongside publication of this waiver decision.

Reasons

8. In coming to the decision to provide the waivers set out in paragraph 5 above, NZ RegCo has considered that:

- a. SML has submitted, and NZ RegCo has no reason not to accept, that the granting of the waiver is in the best interest of each of SML and its shareholders as a whole. The conditions of the waiver require the Non-Interested Directors of SML to give certification to this effect, which will be published to market.
- b. The policy behind Rule 5.1.1(b) is to regulate those transactions 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. Major transactions significantly change the nature of an Issuer's business or represent a majority of the equity that investors hold in the Issuer, and are therefore significant.
- c. SML has submitted, and NZ RegCo has no reason not to accept, that the circumstances underpinning this waiver do not offend the policy behind Rule 5.1.1(b), and the application of Rule 5.1.1(b) in respect of entry into and performance of the Relevant Contracts would otherwise impose an unreasonable and disproportionate restriction on SML's ability to enter into long term and multi-year arrangements where it would receive payment or pay for procurement undertaking business as usual activities:
 - i the entry into and performance of the Relevant Contracts are arrangements where SML is undertaking business as usual activities involving the supply of dairy and non-dairy products derived from, or manufactured using, dairy and non-dairy products and raw materials supplied to it for payment under contract, and the procurement of products, raw materials or services involved in such supply, rather than being transactions that significantly change the nature of its business. The conditions of the waiver require SML's Non-Interested Directors of SML to give certification to this effect;
 - ii the entry into of the Relevant Contracts are in the best interests of each of SML and its shareholders as a whole as they are intended to provide further revenue to SML's business, improve SML's financial performance and maximise shareholder value in the long term. The conditions of the waiver require SML's Non-Interested Directors of SML to give certification to this effect;
 - iii the waiver is restricted to a period of 12 months from the date of this waiver and applies only to Relevant Contracts, being, in summary, contracts which are within SML's usual business activities, involving the supply of dairy and non-dairy products derived from, or manufactured using, dairy and non-dairy products and raw materials supplied to it for payment under contract, and the procurement of products, raw materials or services involved in such supply, in excess of 50% of SML's AMC. On expiry of the waiver, SML will need to consider whether shareholder approval under Rule 5.1.1(b) is required before entering into, or renewing, any other similar contracts; and
 - iv the major transaction provisions of the Companies Act 1993 provide that transactions the value of which exceed 50% of the value of the company's assets must be approved by a special resolution of shareholders, or be contingent upon such approval. This requirement cannot be waived. SML's shareholders retain the protections of the Companies Act 1993 for transactions that are significant compared to the value of the company's assets, and will have the opportunity to vote on these transactions. In this instance, SML submits that the entry into and performance of the potential Relevant Contracts will not trigger this requirement for SML and SML shareholder approval is not required by the Companies Act

1993. The conditions of the waiver require the Non-Interested Directors of SML to give certification to this effect.

- d. The NZX Guidance Note Major and Related Party Transactions provides examples of the limited situations in which NZ RegCo might grant a waiver from Rule 5.1.1, such as if an Issuer is entering into a multi-year arrangement where it is receiving cash under a contract in excess of 50% of the Issuer's Average Market Capitalisation where the Issuer is undertaking business as usual activities. SML's entry into and performance of the Relevant Contracts are arrangements where it is undertaking business as usual activities for cash consideration which is analogous to the example provided in the NZX Guidance Note.
- e. There is precedent for this decision.

Confidentiality

- 9. SML has requested that this decision be kept confidential until NZ RegCo finalises and releases this decision.
- 10. In accordance with Rule 9.7.2, NZ RegCo grants SML's request.

Appendix One

Further Information

1. Synlait Milk Limited (**SML**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. The SML Group is a dairy and non-dairy manufacturer, with its primary business being the supply of high value advanced nutritional formulas and powders, dairy ingredients and liquid dairy products to leading health and nutrition companies internationally. As part of its business as usual activities, SML undertakes the supply of dairy and non-dairy products derived from, or manufactured using, dairy and non-dairy products and raw materials supplied to it for payment under contract and the procurement of products, raw materials or services involved in such supply. Certain of those products do not relate exclusively to those products and ingredients. A number of those contracts can be for multi-year terms.
3. SML's market capitalisation is currently around \$100 million. Relative to its market capitalisation, SML is a significant business, with \$1.6 billion of revenue in FY23, total assets of approximately \$1.7 billion and net assets of approximately \$700 million as at 31 January 2024.
4. Accordingly, certain contracts entered into by SML when undertaking business as usual activities have a Gross Value of more than 50% of the Average Market Capitalisation of SML. Under Rule 5.1.1(b) the entering into of these transactions, or a related series of transactions, involving the acquisition or disposal of assets (which includes cash) which involves a Gross Value above 50% of the AMC of the Issuer requires shareholder approval by way of an ordinary resolution.
5. For the purposes of this waiver, **Relevant Contracts** are contracts entered into and performed by SML or any of subsidiaries (the **SML Group** and each a **SML Group Member**) as part of business as usual transactions and which are principally:
 - (a) for the purchase and payment for dairy products or non-dairy nutritional products;
 - (b) for the purchase and payment for products, raw materials or services involved in the manufacture and sale of dairy products and non-dairy nutritional products; or
 - (c) with a customer for the supply by a SML Group Member of dairy products or non-dairy nutritional products derived from, or manufactured using, dairy products or non-dairy nutritional products or raw materials supplied to a SML Group Member,to the extent that such Relevant Contract:
 - (d) is entered into in the 12-month period after the date of the waiver;
 - (e) has a Gross Value of more than 50% of SML's Average Market Capitalisation; and
 - (f) is a transaction or series of related transactions falling within, or in connection with, (a), (b) or (c) above.
6. While the Relevant Contracts are principally for the matters set out in paragraph 5(a), (b) and (c) above, SML also expects that the agreements may also have non-material components of capital investment, trial or registration services. Examples of these ancillary matters are the use of specific tools or storage, emissions reduction activity, or product development. SML submits that these ancillary matters are standard features for contracts of this nature and it would be commercially difficult to enter into the Relevant Contracts without also agreeing the ancillary matters.

Appendix Two

Rule 5.1 Disposal or Acquisition of Assets

5.1.1 An Issuer must not enter into any transaction, or a 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.