

NZ RegCo

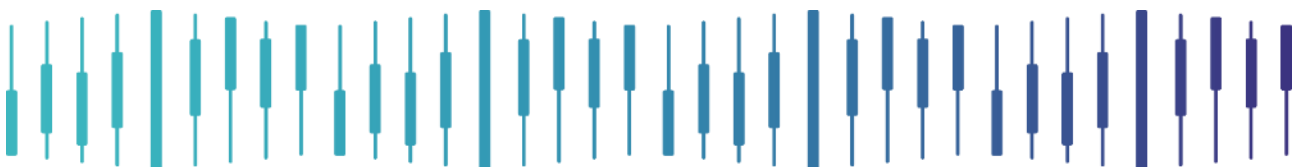
NZ'S LISTED
MARKET REGULATOR

30 April 2021

NZ RegCo Decision

Air New Zealand Limited (NS) ("AIR")

Application for waivers from NZX Listing Rules 5.1.1 and 5.2.1



Background

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 Rules to which this decision relates are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in Appendix One to 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 5 below, and on the basis that the information provided by Air New Zealand Limited (**AIR**) is complete and accurate in all material respects, NZX Regulation Limited (**NZ RegCo**) grants AIR a waiver from NZX Listing Rule 5.1.1 (**Rule 5.1.1**) to the extent required to allow AIR to enter into and perform the Loan Arrangements without needing to obtain shareholder approval.
5. The waiver in paragraph 4 is provided on the following conditions:
 - a. That two Independent Directors of AIR must certify (on behalf of the AIR Board) that:
 - i. the Loan Arrangements have been and will be negotiated on an arms' length basis;
 - ii. entry into the Loan Arrangements is in the best interests of all AIR shareholders (other than the Crown); and
 - iii. entry into the Loan Arrangements is not a major transaction for AIR requiring shareholder approval for the purposes of the Companies Act 1993.
 - b. That the conditions and implications of this waiver are disclosed in AIR's 2021 annual report.
 - c. That the Loan Arrangements, when finalised, are not materially inconsistent with the terms of the Terms Sheet, and AIR's market announcement about the Loan Arrangements of 9 April 2021.

Reasons

6. In coming to the decision to provide the waiver of Rule 5.1.1 set out in paragraph 4 above, NZ RegCo has considered that:
 - a. The policy behind 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. AIR has submitted, and NZ RegCo has no reason not to accept, that the granting of this waiver will not offend the policy behind Rule 5.1.1.

- b. 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. Accordingly, shareholders are afforded 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, the entry into the Loan Arrangements by AIR does not trigger this requirement and AIR shareholder approval is not required by the Companies Act 1993. The conditions of the waiver require the Independent Directors of AIR to give a certification to this effect.
- c. The entry into or performance of the Loan Arrangements by AIR will not change the essential nature of the business of AIR.
- d. AIR submits, and NZ RegCo has no reason not to accept, that the Loan Arrangements are in the best interests of the shareholders (other than the Crown).
- e. The Loan Arrangements provide for an extension of the existing Crown Loan Facility which provides AIR with liquidity to assist with deferring a proposed capital raise. The deferral allows time for AIR to assess evolving circumstances directly relevant to AIR's capital needs, such as the vaccine roll-out, the trans-Tasman travel bubble, international border openings more generally and the impact of these factors on consumer demand for travel.
- f. The Loan Arrangements have been negotiated on an arms' length basis. The conditions of the waiver require the Independent Directors of AIR to give a certification to this effect.
- g. NZ RegCo notes that if AIR was to convene a shareholder meeting in the manner contemplated under Rule 5.1.1, the Crown would not be restricted by Rule 6.3.1 from voting on the ordinary resolution to approve the entry into the Loan Arrangements. Given the Crown's 51.91% shareholding it would be able to control the outcome of that vote.
- h. AIR submits, and NZ RegCo has no reason not to accept, that the market is fully informed about the Loan Arrangements and that all material information about the Crown Loan Facility have been released to market.
- i. There is precedent for this decision, including the waiver decision granted to AIR on 19 March 2020.

Waiver from NZX 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 AIR is complete and accurate in all material respects, NZ RegCo grants AIR a waiver from NZX Listing Rule 5.2.1 (**Rule 5.2.1**) to the extent required to allow AIR to enter into and perform the Loan Arrangements without needing to obtain shareholder approval.
8. The waiver in of Rule 5.2.1 in paragraph 7 above is provided on the following condition:
 - a. That two Independent Directors of AIR must certify (on behalf of the AIR Board) that:
 - i. the Loan Arrangements have been, and will be, negotiated on an arms' length basis;
 - ii. entry into the Loan Arrangements is in the best interests of all AIR shareholders (other than the Crown); and
 - iii. the Crown, as the majority shareholder in AIR, has not influenced the AIR Board's decision to enter into the Loan Arrangements.
 - b. That the conditions and implications of this waiver are disclosed in AIR's 2021 annual report.

Reasons

9. In coming to the decision to provide the waiver of Rule 5.2.1 set out in paragraph 7 above, NZ RegCo has considered that:
 - a. Rule 5.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZ RegCo has noted in the Guidance Note regarding Rule 5.2.1 that it may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 5.2.1.
 - b. AIR has submitted, and NZ RegCo has no reason not to accept, that the Crown (as the Related Party) is unlikely to have any influence over AIR's decision to enter into the Loan Arrangements as:
 - i. the need for the Crown Loan Facility and then the Amended Facility arose as a result of external factors currently adversely affecting AIR, namely the travel restrictions in New Zealand and other countries and reduced demand for travel as a result of the COVID-19 virus;
 - ii. the Loan Arrangements are being made in connection with a deferral of the proposed capital raising, which is considered by the AIR board to be in the best interests of shareholders (other than the Crown). This includes because such a deferral should give AIR more time to assess the impact of the current developments, including the vaccine roll-out, the trans-Tasman travel bubble, other potential border openings and broader consumer demand for international travel. Each of those matters are factors that could impact the amount of capital to be raised. Such assessment could potentially mean less new equity capital is required and therefore less dilution is suffered by shareholders who do not exercise their opportunity to participate in any such raise;

- iii. each of AIR and the Crown has been involved (through their respective advisers) in its own assessment of capital and liquidity needs for AIR, resulting in the decision taken by AIR and the Crown to defer the proposed capital raising;
 - iv. the terms of the Loan Arrangements represent the best available terms in the circumstances, and include a reduction in the interest rate and a reduction in the commitment fee payable, which benefits AIR as a whole and represents more favourable terms than the Crown Loan Facility;
 - v. the Loan Arrangements are in the best interests of all of AIR's shareholders (other than the Crown);
 - vi. while the Crown is the majority shareholder in AIR, it is not involved in AIR's business operations; and
 - vii. while the Crown does vote its shares to approve the appointment of directors (and is consulted on appointments), it has not selected or appointed directors to the Board.
- c. The condition at paragraph 8(a) provides comfort that any decision to enter into the Loan Arrangements will be considered on an arms' length basis, that the Loan Arrangements will be in the best interests of all AIR shareholders (other than the Crown), and that the Crown's connection as the majority shareholder in AIR has not influenced the AIR Board's decision to enter into the Loan Arrangements.
- d. There is precedent for this decision.

Appendix One

1. Air New Zealand Limited (NS) (**AIR**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board, and Debt Securities quoted on the NZX Debt Market.
2. The COVID-19 virus has had a material adverse impact on AIR's operations and financial performance and position, due to travel restrictions in New Zealand and other countries and reduced demand for air travel.
3. As announced on 20 March 2020, AIR entered into a debt funding agreement with the Crown (the **Crown Loan Facility**). NZX RegCo granted waivers from Rule 5.1.1 and Rule 5.2.1 on 19 March 2020 to permit AIR to enter into the Crown Loan Facility without shareholder approval.
4. Since then AIR has continued to work with the Crown and its advisers on the airline's capital structure and funding needs, with a view to completing an equity capital raise by 30 June 2021. In light of evolving circumstances related to the Covid-19 pandemic, including the vaccine roll-out and trans-Tasman travel bubble, the Crown and AIR have agreed it would be appropriate to defer the equity capital raise to allow time to assess these evolving circumstances further.
5. Consequently, AIR (as guarantor and primary obligor) and Air New Zealand Aircraft Holdings Limited (as borrower) has entered into a binding, conditional terms sheet (the **Terms Sheet**) which sets out certain amendments to the Crown Loan Facility to be made via an amending deed (**Amending Deed**, and the Crown Loan Facility being amended by the Amending Deed being referred to in this letter as the **Amended Facility**). Further details are set out in the announcement released by AIR on 9 April 2021.¹ The Terms Sheet, the Amending Deed and the Amended Facility are referred to collectively as the **Loan Arrangements**.
6. The Loan Arrangements have been and will be negotiated on an arms' length basis. All parties are independently advised.
7. The Loan Arrangements:
 - a. will be a Major Transaction for the purposes of Rule 5.1.1 because it will involve AIR entering into a transaction with a Gross Value in excess of 50% of its Average Market Capitalisation; and
 - b. will be a Material Transaction for the purposes of Rule 5.2.1 because it will involve AIR borrowing an amount in excess of 10% of its Average Market Capitalisation.
8. The Crown is a Related Party of AIR because the Crown is a 51.91% shareholder of AIR exceeding the 10% threshold pursuant to the definition of Related Party in the NZX Listing Rules.

¹ <https://www.nzx.com/announcements/370391>

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.

Rule 5.2 Transactions with Related Parties

5.2.1 An Issuer shall 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 a 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.

"Material Transaction" means a transaction, or a related series of transactions, whereby an Issuer:

...

(c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account);

"Related Party" means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

...

(b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes.