



NZX Regulation Decision

Snakk Media Limited (SNK)

Application for a waiver from NXT Market Rules 24 and 25

3 November 2015

Waiver from NXT Market Rule 24

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Snakk Media Limited (“**SNK**”) is complete and accurate in all material respects, NZX Regulation (“**NZXR**”) grants SNK a waiver from NXT Market Rule (“**Rule**”) 24 for a period of twelve months from Migration, to the extent that this Rule requires SNK to have a constitution that is not inconsistent with the Rules and conforms with the content requirements set out in the Rule.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. SNK provides NZXR with the notice for its 2016 annual meeting of shareholders for NZXR’s approval, and that notice of meeting includes a special resolution to amend SNK’s constitution so that it complies with Rule 24;
 - b. SNK clearly and prominently discloses this waiver, its conditions and the implications in the Listing Document and Pre-Break Announcement; and
 - c. SNK provides NZXR with a written undertaking that until SNK adopts a constitution that contains all of the provisions required by the Rules, SNK will comply with the Rules as if the applicable provisions in Rule 24 were contained in the constitution.
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 Rule to which this decision relates is set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

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 24 is to ensure that Issuers’ constitutions are consistent with the Rules. This consistency helps to reinforce the protections provided under the Rules for investors and ensures that Issuers are not conflicted in complying with both the Rules and their constitution;
 - b. SNK’s existing constitution is compliant with the NZAX Listing Rules, and is largely consistent with the Rules. NZXR considers that the constitution will provide shareholders with a sufficient level of protection until a constitution that is fully compliant with the Rules is able to be adopted by SNK;

- c. as well as being consistent with the content requirements in the Rule, the condition in paragraph 2(c) above provides NZXR comfort that shareholders will not be disadvantaged by SNK's constitution not including the requirements set out in Rule 24, and will provide a similar protection as the requirement for a constitution not to be inconsistent with the Rules;
- d. SNK will enter into, and be bound by, a Listing Agreement with NZX. Upon migration, SNK will be required to comply with all of the obligations imposed upon it under the Rules. NZX has the ability to take action against SNK if it fails to comply with the Rules;
- e. NZX will also receive acknowledgements from SNK's directors in accordance with Rule 12, confirming that the directors are aware that SNK is contractually bound to observe the Listing Agreement and the Rules, and that the directors will use their best endeavours to procure SNK's compliance with the Rules;
- f. if a waiver from Rule 24 is not granted by NZXR, SNK would be required to call a special meeting of shareholders to seek approval of constitutional amendments by special resolution. NZXR accepts that the cost of a special meeting may not be proportional to the benefits provided in the circumstances, where additional protections provided to shareholders include the undertaking required by paragraph 2(c) of this waiver; and
- g. the waiver will only apply for a period of twelve months from the date of Migration, at the end of which the constitution will need to comply with the Rules.

Waiver from NXT Market Rule 25

Decision

- 7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by SNK is complete and accurate in all material respects, NZXR grants SNK a waiver from Rule 25 to the extent that this Rule would otherwise require SNK to seek shareholder approval to issue shares to directors and employees on the exercise of the Options.
- 8. The waiver in paragraph 7 is provided on the conditions that:
 - a. SNK clearly and prominently discloses this waiver, its conditions and the implications in the Listing Document and Pre-Break Announcement;
 - b. on or before the Migration, the directors of SNK certify to NZXR, in a form acceptable to NZXR, that the issue of shares to directors and employees, in accordance with the terms of the Plan is:
 - i. in the best interests of SNK; and

- ii. on terms and conditions which are fair and reasonable to SNK and all shareholders who are not receiving, and are not associated with persons receiving, shares under the issue.
 - c. that the number of Options on issue, the conversion requirements, and the effect of conversion be disclosed in the Listing Document.
9. 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.
10. The Rule to which this decision relates is set out in Appendix Two to this decision.
11. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

12. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
- a. the policy objective of Rule 25 is to ensure that directors do not exercise their discretion or use their position to acquire shares or options in a manner that unfairly advantages directors to the detriment of shareholders, and/or is not consistent with the terms of issue of shares or options to other shareholders;
 - b. the issue of the Options was made in compliance with NZAX Listing Rule 7.3.6. Under the NZAX Listing Rules at the time of issue of the Options, SNK was not required to take any further steps to effect their conversion into ordinary shares. Consequently, the Plan does not contemplate any form of cash settlement or alternative compensation if SNK is unable to issue the shares. Failure to obtain shareholder approval of the issue (in the absence of a waiver) would cause SNK to breach its obligations under the Plan;
 - c. SNK has submitted, and NZXR has no reason not to accept, that the issue of shares on the conversion of the Options to directors and employees of SNK will not have a detrimental impact on shareholders as it will simply uphold the terms of issue of the Options. Further, the condition in paragraph 8(b) provides NZXR comfort that shareholders will not be disadvantaged by the issue of shares to directors and employees of SNK;
 - d. SNK has submitted, and NZXR has no reason not to accept, that seeking shareholder approval would unfairly disadvantage Option holders by causing the ability to issue shares on exercise of the Options to fall outside SNK's control;
 - e. the waiver will apply only to Options issued prior to the Migration, and future employee and director incentive plans will need to comply with the Rules; and

- f. the conditions in paragraph 8(a) and (c) above require SNK to provide access to information about this waiver and its implications to prospective and existing investors as part of the Migration, as well as to those wishing to trade in SNK's ordinary shares. Investors can take this information into account when making their investment decision.



Appendix One

1. Snakk Media Limited (“**SNK**”) is a listed issuer with ordinary shares quoted on the NZX Alternative Market (“**NZAX**”).
2. SNK has applied to NZX Limited (“**NZX**”) to migrate its quotation from the NZAX to the NXT Market (“**Migration**”).
3. On 2 October 2015, SNK released a pre-break announcement (“**Pre-Break Announcement**”) in respect of the Migration, as well as an offer of ordinary shares (“**Offer**”) to existing and prospective investors.
4. SNK intends to commence the quotation of its ordinary shares on the NXT Market on or around 5 November 2015, subject to meeting all of NZX’s requirements.

Waiver from Rule 24 – Further Background

5. NXT Market Rule (“**Rule**”) 24 requires SNK to have a constitution that is not inconsistent with the Rules and that contains a provision to the effect that, for so long as the company is listed on the NXT Market, SNK must comply with the Rules.
6. SNK’s constitution currently complies with the NZAX Listing Rules, as it has been an issuer listed on that market. The NZAX Listing Rules differ from the NXT Market Rules, such that on Migration, SNK would be required to amend its constitution to comply with Rule 24. Amending the constitution would require shareholder approval.
7. The first opportunity for SNK to amend its constitution without calling a special meeting is at its next Annual Meeting, scheduled to take place in September 2016. SNK wishes to complete the Migration prior to that Annual Meeting.
8. SNK has sought a waiver from NZXR in respect of Rule 24 to allow it to have a constitution that is inconsistent with the Rules until its next Annual Meeting. This waiver will only apply if SNK is listed on the NXT Market.

Waiver from Rule 25 – Further Background

9. SNK has an existing share option plan (“**Plan**”) where SNK, at the board’s discretion, has the ability to issue options (“**Options**”) to acquire new shares issued by SNK to directors and employees of SNK and its subsidiaries.
10. Prior to the Migration, SNK has, or will have, issued Options to several directors and employees under the Plan. As at 2 October 2015, there were 18,313,750 Options on issue to directors and employees of SNK. SNK intends to issue a further 7,953,990 Options prior to the Migration.

11. All Options currently on issue to directors and employees were issued in accordance with NZAX Listing Rule 7.3.6. At the time the Options were issued, NZAX Listing Rule 7.3.6 permitted SNK to issue Options to directors and employees without seeking shareholder approval. Further, NZAX Listing Rule 7.3.11(b) would permit SNK to issue shares on the exercise of Options, including to directors, without restriction. Consequently, the terms of the Options do not contemplate a cash settlement or provide for alternatives if SNK is unable to issue the shares on exercise of the Options.
12. Under the Rules, Issuers wishing to issue equity securities to directors must comply with Rule 25. Rule 25 provides that an issue of equity securities to directors requires either shareholder approval or the release of a transaction announcement.
13. For those Option holders that are not directors, the Options were not originally issued under paragraph 3 of Schedule 3B to the Rules, and therefore paragraph 10 of Schedule 3B is not available to SNK to permit the issue of shares on exercise of the Options.
14. To facilitate the issue of shares on exercise of the Options, SNK has sought a waiver from NZXR in respect of Rule 25.

Appendix Two

Constitution

24 A NXT company must have a constitution that is not inconsistent with the rules and that contains a provision to the effect that, for so long as the company is listed on the NXT Market, the company must comply with the rules, subject to any applicable waiver granted under rule 92 or ruling made under rule 93. The constitution must provide for the provision of notices, reports, accounts and other documents to shareholders by electronic means.

Issues of equity securities

25 A NXT company may only issue equity securities without shareholder approval if:

- a) A NXT company issues shares of the same class as quoted shares representing fewer than 20% of the number of quoted shares in the NXT company calculated according to the formula set out in Schedule 3A (Issues of Shares – “20% rule”); and
 - i. no issue of shares is made to a director of the NXT company or to an associated person of a director of the NXT company; and
 - ii. the board of the NXT company certifies in writing that the consideration for the issue is fair and reasonable to the NXT company and to persons not receiving shares or not associated with persons receiving shares, or the issue price is greater than 85% of the volume weighted average market price of those shares during the earlier of:
 1. the 5 business days immediately prior to the day the issue is made, or
 2. the 5 business days immediately prior to the day the issue is announced to the market; or
- b) A NXT company issues equity securities in the circumstances set out in Schedule 3B (Permitted Issues of Equity Securities); or
- c) A NXT company issues shares of the same class as quoted shares after release of a transaction announcement in the form approved by NZX at least 10 business days prior to the issue and no meeting has been requested by shareholders holding at least 5% of the shares in the NXT company within that 10 business day period.

Schedule 3B

The circumstances when equity securities may be issued under rule 25(b) are:

...

- 3 An issue of shares or options to acquire shares to employees of the NXT company or a subsidiary of the NXT company (excluding directors of the NXT company). The number of shares or options issued together with the number of shares or options issued under this paragraph during the previous 12 months must not exceed the aggregate of:

- (a) 3% of the number of quoted shares on issue at the beginning of that 12 month period; and
- (b) 3% of the quoted shares issued during that period in accordance with the rules other than shares issued under this paragraph or shares issued on exercise of options issued under this paragraph.

...

- 10 An issue of shares on exercise of an option issued under paragraph 3 [sic] of this schedule.

