



NZX Regulation Decision

SeaDragon Limited (SEA)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

2 December 2015



Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SeaDragon Limited (“**SEA**”) is complete and accurate in all material respects, NZX Regulation (“**NZXR**”), grants SEA a waiver from NZX Main Board Rule (“**Rule**”) 9.2.1 to the extent that this Rule would require SEA to seek Shareholder approval to enter into the Supply Agreement.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Directors of SEA, other than those Associated with CVT, certify to NZX that:
 - i. the terms of the Supply Agreement will be negotiated on an arm’s length and commercial basis and will be considered independently of CVT’s interests;
 - ii. SEA will not be influenced in its decision to enter into the Supply Agreement by the interests of CVT, any Director or executive officer of CVT, or any Associated person of any of them; and
 - iii. the terms of the Supply Agreement will be in the best interests of SEA and fair to SEA’s shareholders that are not associated with CVT; and
 - b. the waiver, its conditions and implications, are disclosed in SEA’s annual report for the period it seeks to rely on the waiver.
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 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 behind Rule 9.2.1 is to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to its relationship with the Issuer. NZXR 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 9.2.1;
 - b. SEA and CVT were not Related Parties when they agreed the terms of the Strategic Agreement. Therefore, CVT would not have been able to apply a related party influence over the terms of the Strategic Agreement, and the terms of the Supply Agreement as set out in the Strategic Agreement. The agreement to negotiate the Supply Agreement was disclosed to the market when the Strategic Agreement was entered into between SEA and CVT. Therefore the commercial relationship between SEA and CVT is known and understood by SEA’s shareholders;
 - c. SEA’s Board has formed an Independent Sub-Committee which excludes any representative of CVT. This ensures that SEA’s negotiation of and decision to enter into

the Supply Agreement will not be, and will not be perceived to be, influenced by CVT's interests;

- d. the conditions of the waiver provide comfort that the Supply Agreement will be negotiated, agreed and entered into on an arm's length commercial basis and SEA will not be influenced in the negotiation of, or its decision to enter into, the Supply Agreement by the interests of CVT;
- e. SEA has submitted, and NZXR has no reason to not accept, that SEA has a long established business of manufacturing and supplying fish oils and fractions. Accordingly, SEA is able to determine with reasonable accuracy what is an arm's length price for any of its products subject to the Supply Agreement; and
- f. there is precedent for the decision.



Appendix One

1. SEA is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. As advised to the market on 28 September 2015, SEA entered into a strategic agreement (“**Strategic Agreement**”) with Comvita Limited (“**CVT**”). The Strategic Agreement was negotiated on an arm’s length basis between CVT and SEA. At the time of entry into the Strategic Agreement, CVT and SEA were not Related Parties.
3. The Strategic Agreement included that CVT and SEA agreed to negotiate and enter into a supply agreement giving CVT rights of first refusal to all SEA products (the “**Supply Agreement**”).
4. As at the date of this waiver, the terms of the Supply Agreement have been substantially agreed. The mechanism to set the price for supply is based on a market rate established with reference to a range of benchmarks.
5. On 2 November 2015, SEA formed an independent sub-committee of the Board that has responsibility for, and oversight of, all matters associated with the Supply Agreement and the relationship with CVT (the “**Sub-Committee**”). The Sub-Committee is responsible for the negotiation of the Supply Agreement and oversight (to the extent necessary) once it is agreed.
6. On 2 November 2015, CVT appointed Brett Hewlett as a director to the board of SEA. Brett Hewlett has had no involvement in the negotiation of the Supply Agreement from that date. Prior to his appointment, Brett Hewlett’s involvement with the negotiation of the Supply Agreement was limited to his capacity as representative of CVT.
7. The Sub-Committee will not include Brett Hewlett.
8. Under Rule 9.2.1, SEA is required to obtain shareholder approval by ordinary resolution for a transaction or related series of transactions with a Related Party under which SEA will purchase or sell assets having an Aggregate Net Value in excess of 10% of SEA’s Average Market Capitalisation.
9. As at the date of this waiver CVT holds 13.14% of SEA’s shares. CVT is therefore a Related Party of SEA in accordance with Rule 9.2.3(b). CVT’s holding was acquired by virtue of the Strategic Agreement under which CVT agreed to participate in the shortfall bookbuild associated with SEA’s 3 for 5 renounceable rights offer.
10. It is possible that, over time, the value of SEA products purchased by CVT pursuant to the Supply Agreement will (in aggregate) fall within the definition of a Material Transaction for the purposes of Rule 9.2.2(a).



Appendix Two

Rule 9.2 Transactions with Related Parties

Rule 9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

