



NZX Regulation Decision

SeaDragon Limited (“SEA”)

Application for a waiver from NZX Listing Rule 5.2.1

5 May 2020



Waiver from Listing Rule 5.2.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SEA is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants SEA a waiver from NZX Listing Rule (**Rule**) 5.2.1, to the extent that this Rule would otherwise require SEA to obtain the approval of shareholders to enter into a Material Transaction with a Related Party.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the directors of SEA (**Board**) certify to NZXR that:
 - i. the terms of the Transaction have been entered into and negotiated on an arm's length and commercial basis;
 - ii. SEA was not unduly influenced to enter into the Transaction by the Related Party;
 - iii. entry into the Transaction is in the best interest of all SEA's shareholders other than Pescado and any Associated Persons of Pescado; and
 - b. the waiver, its conditions and its implications are disclosed in SEA's next annual report.
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 which have not been 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 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the Board may have been subject to actual or perceived influence from a Related Party. Granting this waiver will not offend the policy behind this rule.
 - b. NZXR is satisfied that SEA has not been unduly influenced due to the Related Party relationship, and that the Related Party relationship has not unduly influenced the decision to enter into, or the terms and conditions of, the Transaction. This is due to the following, which SEA has submitted and NZXR has no reason not to accept:
 - i. the Transaction was negotiated on an arm's length basis, consistent with a typical company/substantial shareholder relationship;
 - ii. the Transaction was required to be approved by the board of each SEA and Pescado;

- iii. Each of SEA and Pescado has separate legal representation in relation to negotiations of the Transaction;
 - iv. Mark Stewart (who serves on the Board and is the ultimate owner of Pescado) and his alternate director, Warwick Webb, will not be in a position to exercise undue influence over SEA's decision to enter into the Transaction as neither party has participated, or will participate, in any SEA board discussions on, or approving, the Transaction;
 - v. Mark Stewart or Warwick Webb are each "interested" in the Transaction within the meaning of Rule 2.10.1 and will not vote on a Board resolution for, or be counted in a quorum for the consideration of, the Transaction;
- c. SEA also submitted, and NZXR has no reason not to accept, the following:
- i. given SEA's difficult financial position and its requirement for urgent funding to survive, the Board does not consider that it would be in best interest of SEA to incur the significant expense of seeking shareholder approval for the Transaction.
 - ii. if shareholder approval was required for the Transaction, the votes of shareholders with representation on the Board (excluding Pescado), on their own, would carry the resolution (holding approximately 59.13% of the eligible votes); and
 - iii. Non-Affiliated Holders have the opportunity to vote on (and veto) the Transaction at the special meeting. Only Non-Affiliated Holders can vote on the resolution to delist on NZSX. This means that if they do not wish to approve the Transaction, they can vote against the delisting in which case the facility will not proceed.
- d. The non-related shareholders represented on the Board and all other shareholders not represented on the Board are impacted in the same way and their interests are fully aligned; and
- e. There is precedent for this decision.

Confidentiality

- 7. SEA has requested that this decision be kept confidential until SEA releases an announcement relating to the Transaction.
- 8. In accordance with Rule 9.7.2, NZXR grants SEA's request.



Appendix One

1. SeaDragon Limited (**SEA**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board (**NZSX**).
2. SEA has applied to be delisted from the NZSX and will seek shareholder approval at a special meeting on 22 May 2020.
3. SEA is proposing to enter into a transaction with Pescado Holdings Limited (**Pescado**), which involves SEA borrowing money above 10% of the Average Market Capitalisation (**AMC**) of SEA (**Transaction**). The Transaction is conditional on SEA's shareholders having resolved to approve SEA delisting from the NZSX.
4. SEA has sustained ongoing financial losses and requires further capital to survive. Over the past several months, the Board has actively sought such further capital through discussions with brokers, institutional investors and high net worth individuals.
5. The only source of capital currently available to SEA is via the Transaction. Absent the Transaction, it is highly likely that, on or about June 2020, the Board will have no option but to place SEA into receivership or liquidation.

Material Transaction with a Related Party

6. Pescado is a direct party to the Material Transaction. Pescado is a Related Party of SEA because it is the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of SEA carrying Votes (**Related Party**). As at the date of this waiver, Pescado holds approximately 23.31% of SEA's shares.
7. The Transaction involves SEA proposing to enter into a new loan facility of up to \$2 million. SEA proposes to draw down \$1.5 million shortly after 22 May 2020 (before delisting) to repay an existing unsecured loan and interest with Pescado. The repayment of the existing unsecured loan was a condition of Pescado entering in to the Transaction. The remaining loan will be used to finance general corporate activities and for working capital purposes.
8. SEA's AMC is around \$8,645,923 and accordingly the Transaction will likely be of a value above 10% of SEA's AMC and is therefore a Material Transaction for the purposes of Rule 5.2.1.
9. SEA sought a waiver from NZXR from Rule 5.2.1 to the extent that it would otherwise be required to obtain shareholder approval in order to enter into the Transaction.



Appendix Two

Rule 5.2.1 Transactions with Related Parties

Rule 5.2.1 An Issuer must 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 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.

