



NZX Regulation Decision

Vector Limited (NS) (VCT)

Application for waivers from NZX Main Board Listing Rules
2.20.1(d) and 6.3.1

30 June 2020



Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2020 (the **Rules**). This decision re-documents selected prior waiver decisions granted by NZX Regulation (**NZXR**) for Vector Limited (**VCT**) on 22 June 2005 and 12 September 2008.
2. The information on which these decisions are 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.
3. The Rules to which these decisions relate are set out in Appendix Two.
4. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules.

Waiver from Listing Rule 2.20.1(d)

Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by VCT is complete and accurate in all material respects, NZXR provides a waiver from Rule 2.20.1(d) to allow clause 2.5 of the VCT Governing Document to provide that, unless the prior written approval of Entrust has been obtained, an act or omission authorised by a Ruling will not be deemed to be authorised if it would be in contravention of the Special Provisions of the Governing Document.
6. The waiver in paragraph 5 above is provided on the conditions that:
 - a. VCT has a non-standard designation;
 - b. In respect of any Ruling that VCT applies for, VCT must raise with NZX any potential for the Ruling to conflict with the Special Provisions prior to the Ruling being made; and
 - c. In the context of any other Ruling made or to be made by NZX that might conflict with the Special Provisions, VCT must promptly and without delay bring the conflict to the attention of NZX immediately after it becomes aware of the Ruling or intention to make the Ruling.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 5 above, NZXR has considered that:
 - a. the Special Provisions do not conflict with the Rules, but rather contain additional restrictions requiring the trustees of Entrust to provide consent before VCT may undertake certain actions that would otherwise be permitted by the Rules;
 - b. VCT submits that clause 2.5 of the constitution is necessary to restrict a Ruling being granted that would otherwise override the Special Provisions;
 - c. The conditions require VCT to raise with NZXR any conflict between the Special Provisions and any Ruling VCT might apply for or class Ruling that NZXR might make; and



- d. The holding and control that Entrust has in VCT has been in place since VCT's Listing and was disclosed to shareholders at that time. This has ensured that the market and shareholders are aware of the additional restrictions contained in VCT's Governing Document.

Waiver from Listing Rule 6.3.1

Decision

8. Subject to the conditions set out in paragraph 9 below, and on the basis that the information provided by VCT is complete and accurate in all material respects, NZXR grants VCT a waiver from Rule 6.3.1, to the extent that this Rule would otherwise disqualify Entrust from voting on resolutions under Rule 2.11.
9. The waiver in paragraph 8 above is provided on the conditions that:
 - a. The VCT remuneration committee commissions an independent expert's report on the appropriate remuneration level for Directors' remuneration;
 - b. There is no distinction between the Directors' fees payable to the Directors who are trustees of Entrust (**Associated Directors**) and other directors, based solely on whether or not a Director is an Associated Director;
 - c. The independent members of the VCT remuneration committee provide a certificate to NZXR stating that:
 - i. the proposed Directors' fees are set on an arm's length and commercial basis;
 - ii. the proposed level of Directors' remuneration is consistent with the level suggested in the independent expert's report; and
 - d. Entrust provides written confirmation to NZXR that:
 - i. no Associated Person of Entrust that has been nominated to be elected as a Director of VCT, or is currently a Director of VCT, will take part in any decision of the trustees of Entrust on whether to abstain, or vote for or against, any resolution the subject of this waiver.
 - ii. neither Entrust nor any Associated Person of Entrust (other than the trustees of Entrust who are Directors of VCT) will receive any direct or indirect benefit arising from Directors remuneration payable by VCT.
 - e. Details of the waiver, the conditions imposed by NZXR, the independent expert's recommendation and the Remuneration Committee's certificate, are included in the notice of meeting to be circulated to VCT shareholders in respect of any resolutions voted on by Entrust in reliance on this waiver.
 - f. This waiver will continue in force only as long as the material facts on which this waiver is based, and Rules 6.3.1 and 2.11, remain the same. If the relevant material facts or Rules change VCT must reapply for the waiver.



Reasons

10. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
 - a. The terms of the Directors' remuneration must be set on an arm's length and commercial basis. VCT's remuneration committee will commission a report by an independent expert on the appropriate level of Directors' remuneration. The proposed remuneration to be put to shareholders will be consistent with the level recommended in this report;
 - b. The restriction in Rule 6.3.1, as it relates to Rule 2.11, provides a safeguard to non-related shareholders that personal interests or connections will not influence the level of Director remuneration set by a resolution put to shareholders. In these circumstances NZXR considers that the independent expert's report and the Remuneration Committee certification will provide comfort to non-related shareholders that Entrust will have no undue influence on the formulation, design or negotiation of the adjustment to the Directors' remuneration;
 - c. NZXR considers that comfort is provided that Entrust will not be influenced as to how to vote with regard to the resolution as:
 - i. no Associated Directors, or potential Associated Directors, will take part in the decision made by Entrust with regard to how Entrust will vote as a shareholder of VCT on the resolution; and
 - ii. neither Entrust nor any Associated Person (other than the Associated Directors) of Entrust will receive any direct or indirect benefit from the increase in Directors' remuneration.
 - d. There is precedent for this decision.



Appendix One

1. VCT is a Listed Issuer with Equity Securities Quoted on the NZX Main Board, and Debt Securities which mature on 15 June 2022 (VCT080) and 27 May 2025 (VCT090) quoted on the NZX Debt Market.
2. Since its initial public offer in 2006 (**IPO**), VCT's majority shareholder has been the trustees of Entrust (previously the Auckland Energy Consumer Trust) (**Entrust**) which jointly hold 75.1% of VCT's shares. Prior to the IPO the trustees of Entrust were the sole shareholder in VCT from its establishment in 1993. The trustees represent a community trust that was established to ensure stewardship over Auckland's electricity network remains in the control of Aucklanders.
3. On 1 January 2019, NZX updated its Listing Rules. This required Issuers to reassess their current waivers and constitutional arrangements in light of these Updated Rules. NZX provided a further update to its Listing Rules on 1 January 2020.
4. VCT's Shareholders approved the adoption of a new Governing Document on 23 September 2019. The waivers referred to in this decision were deemed to be still required by VCT under the Updated Rules to provide for VCT's corporate governance structure.

Waiver from Rule 2.20.1(d) – Further Background

1. The VCT constitution, developed in conjunction with the IPO, and summarised in the prospectus for the IPO, includes a number of provisions which give certain rights to Entrust which continue to apply while Entrust hold 50.01% or more of the voting securities of VCT – the provisions are set out in clauses 4.1, 4.2, 4.4, 14.2, 18.2, 33.11 and 34 of the VCT Governing Document (**Special Provisions**).
2. The Special Provisions are not inconsistent with the Rules. Rather they contain additional restrictions on VCT that go further than the restrictions in the Rules. In particular, the Special Provisions:
 - a. require Entrust prior written approval before the board of VCT enters into any contract or arrangement to issue shares or other equity securities, with certain narrow exceptions;
 - b. require dividends and other distributions to be in cash, unless otherwise approved by Entrust;
 - c. except in respect of certain disposals, that VCT must not sell, lease, exchange, franchise or otherwise dispose to a third party of any of the electricity distribution assets and associated land holdings part of the former Auckland Electric Power Board district, without the prior approval of Entrust; and
 - d. do not allow VCT to enter into any transaction of the kind regulated by Rule 5.1, if the gross value of the transaction would exceed 15% of the Average Market Capitalisation of VCT (rather than the 50% threshold provided for in Rule 5.1).
3. Clause 2.5 of VCT's Governing Document presents a conflict with Rule 2.20.1(d) as it would restrict a Ruling being granted that would otherwise override the Special Provisions. VCT has therefore applied for this waiver to be redocumented.

Waiver from Rule 6.3.1 – Further Background

1. Listing Rule 6.3.1 disqualifies Directors intended to receive a payment or benefit in respect of a resolution (pursuant to Listing Rule 2.11), and any Associated Person of such a Director, from voting in favour of any resolution under Rule 6.3.1.
2. There are five trustees of Entrust who are duly elected in trustee elections. Two of the trustees are currently Directors of VCT, making Entrust an Associated Person of those Directors for the purpose of the Listing Rules.
3. As Entrust is an Associated Person of two Directors of VCT, Rule 6.3.1 prevents Entrust from voting in favour of a resolution under Listing Rule 6.3.1. VCT has therefore applied for this waiver to be redocumented.



Appendix Two

Rule 2.20 **Content of Governing Document for Issuers of Equity Securities**

2.20.1(d) The Governing Document of each Issuer of Quoted Equity Securities must:

...

(d) provide that any Rulings authorising an act or omission which would otherwise be in breach of the Issuer's Governing Document will be deemed to be authorised by the Governing Document unless the Governing Document contains a contrary intention.

Rule 6.3 **Voting Restrictions**

6.3.1 Notwithstanding anything to the contrary in the Rules, persons identified in Column 2 of the table below are unable to Vote in favour of the resolutions listed in Column 1.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolutions under Rule 2.11	The Director intended to receive a payment or benefit in respect of the matter being the subject of the resolution, and any Associated Person of that Director.

