

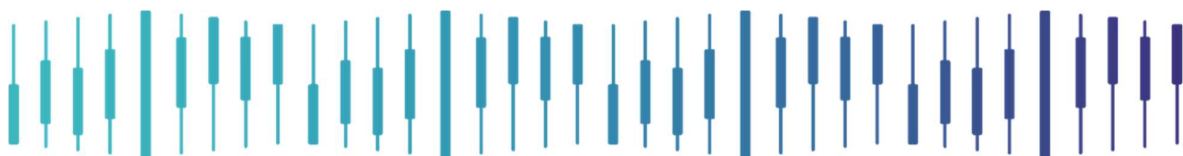


7 June 2024

NZ RegCo Decision

Allied Farmers Limited (“**ALF**”)

Application for waiver from NZX Listing Rule 8.1.5 and approval under NZX Listing Rule 8.1.6



Background

1. The material information on which these decisions are based are set out in Appendix One to these decisions. This waiver and approval will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The NZX Listing Rules (**Rules**) to which these decisions relate are set out in Appendix Two.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Waiver from NZX Listing Rule 8.1.5

4. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by ALF is complete and accurate in all material respects, NZ RegCo grants ALF a waiver from Rule 8.1.5 to the extent that this Rule would otherwise prevent ALF from suspending the voting rights attaching to securities that, in accordance with the Constitutional Amendments, are Affected Shares.

Approval under NZX Listing Rule 8.1.6

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by ALF is complete and accurate in all material respects, NZ RegCo grants ALF approval under Rule 8.1.6 to allow ALF to include provisions in its Constitution that:
 - (a) restrict the transfer of ALF's securities to any person if the Board knows or believes that the transfer will or is likely to result in that person having a relevant interest in breach of the Ownership Threshold;
 - (b) restrict ALF from issuing, acquiring or redeeming shares where ALF has actual knowledge that the issue, acquisition or redemption would result in a breach of the Ownership Threshold; and
 - (c) allow the Board to require documentation and/or information in relation to a proposed transfer or transferee of ALF's shares, in the circumstances permitted under the Constitutional Amendments.

Conditions

6. The waiver in paragraph 4 and the approval in paragraph 5 above are provided on the conditions that:
 - (a) ALF will be given a non-standard (**NS**) designation, in terms of its listing on the NZX Main Board;
 - (b) an outline and explanation of the provisions in the Constitutional Amendments that restrict the transfer of securities, and of the circumstances in which voting rights are suspended (**Outline and Explanation of the Effects**) are appropriately disclosed in any offering documents for equity securities, or securities convertible into equity

securities, offered by ALF and statements provided to Quoted Financial Product Holders under Rule 8.3.1;

- (c) ALF includes an Outline and Explanation of the Effects in the explanatory notes to the Notice of Meeting for the special meeting of shareholders at which the Constitutional Amendments are proposed to be approved;
- (d) ALF includes an Outline and Explanation of the Effects on its website and includes reference to that disclosure in each annual report published by ALF;
- (e) ALF obtains approval from NZX in relation to the method of sale prior to exercising its power to require the compulsory sale of Affected Shares on behalf of a shareholder; and
- (f) the Outline and Explanation of the Effects includes an explanation that:
 - i. should the Board become aware that a transfer of ALF shares would, if registered, cause a breach the Ownership Threshold, the Board will decline to register that transfer of shares; and
 - ii. if certain of ALF's shares are Affected Shares, the voting rights attached to those Affected Shares are automatically suspended until ALF shares or relevant interest(s) in ALF shares are disposed of such that the Affected Shares cease to be Affected Shares.

Reasons

7. In coming to the decision to provide the waiver and approval set out in paragraphs 4 and the 5 above, NZ RegCo has considered that:
- (a) the policy underlying Rule 8.1.5 reflects the fundamental principle that shareholders are entitled to exercise rights attaching to the securities they hold and only in very limited circumstances should those rights be removed. NZ RegCo is comfortable that the circumstances in which the voting rights of the Affected Shares may be suspended does not breach the policy of this Rule;
 - (b) ALF will seek shareholder approval for the Constitutional Amendments. As ALF is seeking to amend its Constitution, the resolution must be approved by a majority of 75% of the votes of those ALF shareholders entitled to vote and voting on the resolution in person or by proxy;
 - (c) the suspension of voting rights attached to any of ALF's shares would only apply in limited circumstances. Specifically, voting rights attaching to Affected Shares would only be suspended upon those shares actually becoming Affected Shares, with that suspension only applying up until the point that the holder of the Affected Shares has disposed of shares or relevant interest(s) in shares such that the Affected Shares cease to be Affected Shares;
 - (d) the conditions contained in paragraph 6 will ensure that persons trading ordinary shares on market have notice of the ownership restrictions and the consequences of

breaching the Ownership Threshold (including the automatic suspension of voting rights and ALF's right to transfer the Affected Shares); and

- (e) there is precedent for this decision.

Confidentiality

8. ALF has requested that this decision be kept confidential until ALF announces the Constitutional Amendments and advises NZ RegCo that the Notice of Meeting for the special meeting to consider and vote on the Constitutional Amendments has been distributed to shareholders.
9. In accordance with Rule 9.7.2(a), NZ RegCo grants ALF's request.

Appendix One

1. Allied Farmers Limited (**ALF**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. ALF has a valuable tax loss asset. During FY23, ALF obtained a Private Ruling from Inland Revenue that significantly increased the available tax losses. As a result of the Ruling, ALF had unused tax losses as at 30 June 2023 of \$186 million. This is an approximate 8 times multiple of ALF's market capitalisation as at 6 June 2024. If future taxable profits are available to use those tax losses, their value to ALF and its shareholders is approximately double the market capitalisation of ALF as at 6 June 2024.
3. Those tax losses belong to ALF and its subsidiaries (**Group**). The Group's ability to utilise those tax losses is dependent on it meeting shareholder continuity requirements under the Income Tax Act 2007. Given the age of the tax losses, the Group is not able to rely on the business continuity test to carry forward those tax losses. ALF submits that if shareholder continuity were to be lost, that would have a significant negative effect on ALF as it would result in the loss of a significant asset of ALF.
4. In order to minimise the risk to ALF and its shareholders of shareholder continuity being lost inadvertently and prior to the tax losses being utilised by the Group, ALF proposes that its constitution be amended (**Constitutional Amendments**) to introduce restrictions on any person having a 'relevant interest' (as defined in the Financial Markets Conduct Act 2013 (**FMCA**)) in shares that comprise (in the case of (a) below only) or exceeds, the greater of:
 - (a) 5% of shares in ALF;
 - (b) that person's "Effective Time Holding" (as described in paragraph 8 below); and
 - (c) that person's "Permitted Transaction Holding" (as described in paragraph 9 below),
(the **Ownership Threshold**).
5. ALF has submitted that the Constitutional Amendments would not guarantee that the necessary shareholder continuity to preserve the Group's tax losses would be maintained, as the shareholder continuity rules under the Income Tax Act measure continuity of 'voting interests' and 'market value interests' (as defined under the Income Tax Act), as opposed to continuity of 'relevant interests' (as defined under the FMCA), and those concepts do not entirely overlap. However, ALF recognises that no constitutional restrictions can provide certainty in preserving shareholder continuity, and it considers that basing the constitutional restrictions on 'relevant interests' presents ALF with the best opportunity in practice to minimise the risk of loss of shareholder continuity and resultant forfeiture of all or part of its tax loss asset.
6. The proposed Constitutional Amendments provide that:
 - (a) ALF must not issue, acquire or redeem any shares if ALF has actual knowledge that such issue, acquisition or redemption would result in a person breaching the Ownership Threshold unless the person is an "Approved Nominee" (see paragraph 10 below for further details);
 - (b) the ALF board of directors (**Board**) must decline to register a transfer of ALF's shares if the Board knows or believes that the transfer of those shares will or is likely to result in any person breaching the Ownership Threshold;

- (c) the shareholder of any shares in which a person has a relevant interest, to the extent such shares have resulted in that person breaching the Ownership Threshold (being, those shares in which the person has a relevant interest in excess of the Ownership Threshold) (**Affected Shares**), will not be entitled to exercise the votes attached to those Affected Shares at any meeting of shareholders. Any such vote cast will be disregarded. This suspension of voting rights will be automatic with effect from the point in time immediately prior to that person breaching the Ownership Threshold and will not be dependent on the Board having first made a determination that shares are Affected Shares. However, nothing will prevent the shareholder from attending a shareholder meeting. The suspension of voting rights attaching to Affected Shares will continue until those shares or relevant interest(s) in those shares are disposed of such that those shares cease to be Affected Shares;
 - (d) any shareholder that holds ALF shares which the Board has determined to be Affected Shares (see paragraph 7 below) will be required to dispose of ALF shares or relevant interest(s) in ALF shares such that the Affected Shares cease to be Affected Shares within 20 working days of the Board making the determination that the relevant shares are Affected Shares. The Board will also have the ability to sell any Affected Shares on behalf of a shareholder (in a manner first approved by NZX) if the Board is not satisfied that those Affected Shares have ceased to be Affected Shares in the 20 working day period referred to above; and
 - (e) ALF can require that certain registered holders of shares provide ALF with a statutory declaration (or other evidence as required by the Board) containing certain prescribed information. That information is intended to enable the Board to ascertain whether any person has a relevant interest in the registered holder's shares in breach of the Ownership Threshold.
7. The Constitutional Amendments include a requirement for the Board to give notice to the relevant shareholder before making a determination that certain shares held by that shareholder are Affected Shares. The notice must explain the consequence of the Board determining that those shares are Affected Shares. After a specified period has passed during which time the shareholder is able to make representations to the Board, the Board is able to:
- (a) give notice to the shareholder with its final determination as to whether such shares are Affected Shares; and
 - (b) if the Board has determined that such shares are Affected Shares, exercise the powers outlined in paragraph 6(d) above.
8. The Constitutional Amendments contain an exception for persons with existing relevant interests in 5% or more of ALF shares. Those persons' holdings will effectively be grandfathered at the percentage of shares in ALF in which that person had a relevant interest at the time that the Constitutional Amendments are first announced to the market (the **Effective Time**). That is, any such person would not be required to reduce their relevant interest below 5% of ALF shares, but would not be permitted to increase their relevant interest in ALF shares while it remains at or above 5% of ALF shares, except where it has reduced as a result of an issue of shares by ALF (other than under a pro-rata offer of shares to shareholders) (such person's percentage relevant interest in ALF shares being their **Effective Time Holding**).

9. The Constitutional Amendments also contains an exception to allow a person to have a relevant interest in a “**Permitted Transaction Holding**” which would otherwise be greater than 5%. A person’s Permitted Transaction Holding reflects the percentage of shares in which a person has a relevant interest after an issue or transfer of shares, or entry into an agreement, pursuant to a “Permitted Transaction”. The following transactions are Permitted Transactions:
- (a) the issue or transfer of ordinary shares on the vesting of any of the 144,032 performance rights issued under ALF’s long term incentive plan (**LTIP**) prior to the Effective Time;
 - (b) future issues or transfers of ordinary shares under any employee share purchase scheme (as defined in the FMCA) which is operated by ALF (including the LTIP), if such issue or transfer is approved by an ordinary resolution of ALF;
 - (c) an acquisition under a full offer or partial offer, in each case as defined in rule 3(1) of the Takeovers Code (as set out in the Takeovers Regulations 2000) (**Code**);
 - (d) an entry into of an agreement in connection with a transaction described in paragraph (c) above under which a shareholder commits to accept the relevant offer when made;
 - (e) an entry into of a voting agreement (as defined in the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020 (**Exemption Notice**) (as amended from time to time)) in connection with a scheme of arrangement under Part 15 of the Companies Act 1993 where such voting agreement complies with that Exemption Notice; and
 - (f) an allotment or acquisition of voting securities (as defined in rule 3(1) of the Code) which is approved by ordinary resolution of ALF in accordance with rule 7(c) or 7(d) of the Code; or a compulsory acquisition in accordance with Part 7 of the Code.
10. The Constitutional Amendments contain a further exception for relevant interests held by certain “Approved Nominees”. Approved Nominees are trustee corporations or nominee companies to which section 285(1)(b) of the FMCA applies and who would be in breach of the Ownership Threshold merely due to being attributed with the relevant interests of a person for which they hold shares.
11. The restrictions contained in the Constitutional Amendments will cease to apply and will be deemed to be deleted from the Constitution of ALF on the earlier of:
- (a) the date on which the Board determines, on a reasonable basis, that all of the tax losses available at the Effective Time have been utilised or are no longer available to the Group; and
 - (b) any cessation date approved by a special resolution of ALF.

Appendix Two

Rule 8.1.1

Subject to the provisions of any legislation, and to Rule 8.1.4, Rule 8.1.6(a), Rule 8.1.6(b) and Rule 8.2, no Issuer may impose, in its Governing Document or otherwise, any restriction on the right of a holder of a Quoted Financial Product to transfer that Financial Product, or any restriction upon registration of a properly completed transfer of Quoted Financial Products.

Rule 8.1.3

Subject to the provisions of Rule 8.1.2 and Rule 8.1.6(a) and (b), and of any applicable legislation, no Issuer may:

- (a) require any documentation relating to transfers other than to establish an entitlement to transfer,
- (b) require any information relating to the transferee (except for such information necessary to record the transfer), or
- (c) impose any restriction on the acceptability of any common form of transfer.

Rule 8.1.5

Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product may be cancelled or varied by reason only of a transfer of that Quoted Financial Product.

Rule 8.1.6

The Governing Document of an Issuer may:

- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities:
 - i. in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time), and/or
 - ii. in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),
- (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or
- (c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months' prior notice must be given to the affected holders before such an action.