



NZX Regulation Decision

Sanford Limited (“SAN”)

Application for a waiver from NZX Listing Rule 8.1.5

22 May 2019



Waiver from NZX Listing Rule 8.1.5

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by SAN is complete and accurate in all material respects, NZXR grants SAN a waiver from Rule 8.1.5, to the extent that this Rule would otherwise prevent SAN from suspending the voting rights attaching to securities that the Board has determined, in accordance with the process set out in the Fourth Schedule of the Constitution, are Affected Shares.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. SAN will be given a non-standard (NS) designation, in terms of its listing on the Main Board;
 - b. an outline and explanation of the provisions in the Constitution that restrict the transfer of securities, and of the circumstances in which voting rights may be 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 SAN and statements provided to Quoted Financial Product holders under Rule 8.3.1
 - c. SAN includes an Outline And Explanation Of The Effects on its website and includes reference to that disclosure in each annual report published by SAN;
 - d. SAN 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
 - e. The Outline And Explanation Of The Effects includes an explanation that:
 - i. should SAN become aware that a transfer of its securities will, if registered, cause SAN to exceed the Overseas Ownership Threshold, SAN has the ability to refuse to register that transfer of securities; and
 - ii. should SAN determine that certain of its securities are Affected Shares (whether due to the holder taking a transfer of those securities, a change in circumstances of the holder or otherwise), SAN has the power to suspend the voting rights attaching to those Affected Shares until those Affected Shares are disposed of to a Non-Overseas Person (whether as a result of a sale by the relevant shareholder or by SAN exercising its power to require the Compulsory Sale of Affected Shares on behalf of the relevant shareholder).
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 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 underlying Rule 8.1.5 reflects the fundamental principle that shareholders are entitled to exercise the rights attaching to the securities they hold (especially the right to vote) and only in very limited circumstances should these rights be removed. NZXR is comfortable that the circumstances in which the voting rights of the Affected Securities may be suspended does not breach the policy of this Rule;
 - b. the provisions described in paragraph 9 of Appendix One only apply in limited circumstances. Specifically, the provision that grants the Board the power to suspend the voting rights attaching to the Affected Shares only applies once it is determined that the shares are in fact Affected Shares, and that suspension only applies up until the point that the Affected Shares are transferred to a Non-Overseas Person;
 - c. the conditions contained in paragraph 2 will ensure that persons trading ordinary shares on market have notice of the limit on aggregate overseas ownership of SAN's securities and the consequences of holding securities which cause SAN to breach the Overseas Ownership Threshold. Further, any such person will have notice of SAN's power to suspend voting rights on and require (or effect) a transfer of Affected Shares; and
 - d. there is precedent for this decision.



Appendix One

1. Sanford Limited (**SAN**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board (**Main Board**).
2. SAN owns a significant amount of provisional catch history, quota, and annual catch entitlement (**Fishing Quota**).
3. Investments by overseas persons (as defined in the Overseas Investment Act 2005 (**OIA**)) (**Overseas Persons**) in Fishing Quota require consent under the OIA and Fisheries Act 1996 (**FA**). Under section 57D of the FA, an overseas investment in Fishing Quota will occur where:
 - a. an Overseas Person acquires an interest in Fishing Quota; or
 - b. an Overseas Person acquires securities of an Issuer (**A**) that owns or controls interests in Fishing Quota if, as a result of the acquisition, A becomes an Overseas person.
4. An Issuer will be considered an Overseas Person under the OIA if 25% or more of its securities are held by Overseas Persons, which may include individuals or companies domiciled outside New Zealand (**Legislative Limit**).
5. SAN is currently not an Overseas Person because, as at 28 February 2019, SAN estimates that only approximately 15.54% of its securities are held by Overseas Persons. Accordingly, SAN does not currently require OIA consent to acquire Fishing Quota.
6. If an Overseas Person acquires securities in SAN and SAN consequently exceeds the Legislative Limit (which could occur via on-market transfers without SAN's knowledge):
 - a. the acquisition of SAN's securities that caused SAN to exceed the Legislative Limit will constitute an overseas investment in Fishing Quota and will require consent under the FA and OIA; and
 - b. SAN will itself become an Overseas Person and will require consent for any subsequent acquisitions of Fishing Quota.
7. If the acquirer that causes SAN to exceed the Legislative Limit fails to apply to the Overseas Investment Office (**OIO**) for consent prior to giving effect to that acquisition, SAN could potentially be required to forfeit ownership of all of its Fishing Quota to the Crown.
8. If SAN was required to forfeit all of its Fishing Quota, that would have a significant negative effect on SAN, as it would represent the loss of a major proportion of SAN's assets (in value terms) and result in SAN no longer being able to operate its fishing business (due to no longer holding Fishing Quota).
9. On 14 December 2016, SAN amended its Constitution to give the Board the ability to:
 - a. require on request a current, or proposed new, shareholder to provide information concerning whether they are an Overseas Person under the OIA (clause 3 of the Fourth Schedule of the Constitution);



- b. refuse to register a share transfer if:
 - i. the Board considers that it will, or is likely to, cause the extent of overseas ownership in SAN to exceed a specified percentage (currently set at 90%, however, the percentage can be increased by the Board) of the statutory level at which the number of securities in SAN held by Overseas Persons under the OIA makes SAN itself an Overseas Person (**Overseas Ownership Threshold**) and hence potentially subject to forfeiture of Fishing Quota in the absence of a remedy or exemption; or
 - ii. the transferee has not provided satisfactory documentary evidence on request, with respect to determining whether the registration of that transfer would cause the extent of overseas ownership in SAN to breach the Overseas Ownership Threshold,

(**Transfer Restrictions**) (clause 15.4 and clause 5 to the Fourth Schedule of the Constitution);
 - c. suspend the voting rights attaching to any of SAN's securities which the Board determines, after following the process in the Constitution, have caused the extent of overseas ownership in SAN exceed the Overseas Ownership Threshold (**Affected Shares**) (clause 9.1(a) of the Fourth Schedule to the Constitution); and
 - d. require the sale of Affected Shares, through a method previously approved by NZX, if the registered holder does not sell those securities to a person who is not an Overseas Person (**Non-Overseas Person**) within 20 working days, with the proceeds of the sale (less any costs of sale) being paid to the registered holder (**Compulsory Sale of Affected Shares**) (clause 9.1(b) of the Fourth Schedule to the Constitution).
10. SAN has received independent advice that the Overseas Ownership Threshold has been set at an appropriate level, and is likely to provide SAN with sufficient headroom to measure and control the aggregate level of ownership of SAN's securities by Overseas Persons, considering the Board's broader powers to interrogate and control SAN's share register, the widespread awareness of the ownership restrictions, and the disincentives any party would have to cause SAN to intentionally breach the Legislative Limit.
11. The provisions outlined in paragraph 9 above enable SAN to monitor the aggregate holding of SAN's securities by Overseas Persons and to maintain it at a level below the Overseas Ownership Threshold. This is a key aspect of SAN's ability to reduce the risk of SAN being required to forfeit its Fishing Quota under the provisions of the FA by virtue of SAN becoming an Overseas Person without prior consent being obtained under the OIA (something which SAN would otherwise have very limited ability to control).
12. Clause 7 of the Fourth Schedule to the Constitution includes a requirement for the Board to give notice to the relevant registered holder before making a determination that certain securities held by that holder are Affected Shares. The notice must explain the consequence of the Board determining that those securities are Affected Shares. After a specified period has passed during which time the holder is able to make representations to the Board, the Board of SAN is then able to:



- a. give notice to a holder with its final determination as to whether such securities are Affected Shares; and
 - b. in the event that the Board has determined that such securities are Affected Shares, exercise the powers outlined in paragraphs 9.c and 9.d above.
13. NZX has updated the Rules, effective from 1 January 2019. This waiver decision re-documents the prior waiver decision to reflect the updated Rule references and language.
14. The prior waiver decision included approval pursuant to NZX Main Board Listing Rule (**Existing Listing Rule**) 11.1.5 to allow SAN to include the Transfer Restriction provisions in its Constitution.
15. On 19 November 2018, NZX Regulation (**NZXR**) issued class waivers and rulings for NZX Main Board and Debt Market Transition (**Class Waiver**) in which approval under Existing Listing Rule 11.1.5 is deemed to be an approval under Rule 8.1.6.



Appendix Two

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Rule 8.1.5

- 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.

