



NZX Regulation Decision

Foley Family Wines Limited (“FFW”)

Waivers from NZX Main Board Listing Rules 5.1.1, 5.1.2(e), 5.1.2(i), 5.2.1, 5.2.2(b), 5.2.2(c), 5.2.2(d) and 5.2.2(f)

Rulings on NZX Main Board Listing Rules 3.3.3(a), 3.3.6, 3.3.10, 3.3.14, 3.3.15, 3.5.1, 6.1.1, 7.3.1(a), 7.3.3(c), 7.3.5, 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.6.1, 7.6.4, 7.6.5, 9.1.1, 9.2.1, 10.4.4, 10.4.5(g), 10.4.5(m), 10.4.8, 11.1.5, 11.2.2 and 11.2.4(b)

22 November 2018



Background

1. The information on which this decision is based is set out in Appendix One. The waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendices Two and Three.
3. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules, unless the terms are not defined in the Rules, in which case they shall have the meanings given to them in the NZAX Listing Rules or in the NZX Main Board Rules as the context requires.

Waivers from Main Board Listing Rules 5.1.1, 5.1.2(e), 5.1.2(i), 5.2.1, 5.2.2(b), 5.2.2 (c), 5.2.2(d) and 5.2.2(f)

Decision

4. Subject to the conditions in paragraph 5 below, NZXR grants FFW waivers from:
 - a. Rules 5.1.1 and 5.2.1, to the extent that those Rules require that an applicant submitting an application for Listing and Quotation of a Class of Securities submit that application through a Primary Market Participant acting as an Organising Participant;
 - b. Rules 5.1.2(e), 5.1.2(i), 5.2.2(d) and 5.2.2(f) in their entirety;
 - c. Rule 5.2.2(b), to the extent that the Rule requires that an application for Quotation by an applicant under Rule 5.2.1 be submitted with evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of Securities for which Quotation is sought; and
 - d. Rule 5.2.2(c), to the extent that the Rule requires a draft Offering Document, Prospectus or Profile to be provided in respect of any Securities then on issue for which Quotation is sought.
5. The waiver set out in paragraph 4 above is provided on the conditions that:
 - a. FFW makes an application for Listing and Quotation in accordance with the Rules as modified by the waivers granted; and
 - b. FFW makes no offer of a Class of Securities that is not Quoted on the NZAX together with the application for Migration to the NZX Main Board.

Reasons

6. In coming to the decision to provide the waivers set out in paragraph 4 above, NZXR has considered that:
 - a. Rules 5.1.1, 5.2.1 and 5.2.2(b) generally require that new Listings and Quotations are made through a Primary Market Participant, in order to help new Issuers prepare for Listing and Quotation and assist Issuers with any public offer being



made. The granting of this waiver will not offend the policy behind Rule 5.1.1, 5.2.1 and 5.2.2(b);

- b. FFW is already Listed with its shares Quoted on the NZAX and seeks to Migrate the Quotation of its Shares to the NZX Main Board. There will be no public offer of a new Class of Securities associated with the application;
- c. imposing the requirement that the application for Listing and Quotation be submitted through a Primary Market Participant would provide no benefit to the FFW's security holders, the market as a whole, or NZX;
- d. the matters set out in Rules 5.1.2(i), 5.2.2(c), 5.2.2(d) and 5.2.2(f) are largely administrative in the context of the Migration and therefore enforcing these requirements would provide no benefit to FFW's security holders, the market as a whole, or NZX; and
- e. there is precedent for this decision.

Rulings in relation to Main Board Listing Rules as listed in Appendix Two

Decision

7. A number of Rules refer to matters done under other Rules, which means FFW may not be able to comply with the Rules in respect of these matters, notwithstanding that the equivalent NZAX Listing Rules have been complied with. NZXR therefore grants a ruling that matters undertaken under certain NZAX Listing Rules as set out in the table in Appendix Two are deemed to have been undertaken under the equivalent Rules.



Appendix One

1. Foley Family Wines Limited (**FFW**) is a Listed Issuer with ordinary shares (**Shares**) Quoted on the NZAX Market (**NZAX**).
2. FFW has applied to NZX Regulation (**NZXR**) to migrate the Quotation of its Shares from the NZAX to the NZX Main Board (**Migration**).
3. On 16 November 2018, FFW released an announcement in respect of the Migration.
4. FFW intends to commence the quotation of its Shares on the NZX Main Board on or around 3 December 2018, subject to meeting all of NZXR's requirements.
5. As FFW is already Listed, with its Shares Quoted on the NZAX, FFW proposes only to migrate the Listing and Quotation of its Shares from the NZAX to the NZX Main Board. There is no public offer associated with the Migration.
6. NZXR considers that the waivers and the rulings adequately balance the interests of FFW, and the protections for its Security holders and, other than the waivers of the Rules granted in this decision, FFW will be required to fully comply with the Rules in all other respects.



Appendix Two

NZX Main Board Listing Rules

NZX Main Board Listing Rule(s)	Application of NZAX Rules in the Migration of FFW
3.3.3(a)	As per the Rules.
3.3.6	Any person who is appointed as a Director by the Directors prior to FFW Listing on the NZX Main Board who has not retired from office in accordance with NZAX Listing Rule 3.2.3 shall be required to retire from office at the next annual meeting of FFW in accordance with Rule 3.3.6
3.3.10 and 10.4.5(m)	A Director appointed under NZAX Listing Rule 3.2.4 shall be deemed to have been appointed under Rule 3.3.8 for the purposes of Rule 3.3.10 and Rule 10.4.5(m).
3.3.14	An approval by NZX under NZAX Listing Rule 3.2.8 shall be deemed to be an approval under Rule 3.3.14.
3.3.15	A holder of a special office in terms of NZAX Listing Rule 3.2.9 shall be deemed to have been appointed the holder of a special office in terms of Rule 3.3.14 for the purposes of Rule 3.3.15.
3.5.1	The remuneration which FFW is authorised to pay under NZAX Listing Rule 3.4.1 shall be deemed to be authorised under Rule 3.5.1.
6.1.1	An approval by NZX under NZAX Listing Rule 6.1.1 shall be deemed to be an approval by NZX of the relevant document under Rule 6.1.1.
7.3.1(a)	A resolution passed pursuant to NZAX Listing Rule 7.3.1(a) shall be deemed to be a resolution passed pursuant to Rule 7.3.1(a).
7.3.3(c)	A resolution passed pursuant to NZAX Listing Rule 7.3.3(c) shall be deemed to be a resolution passed pursuant to Rule 7.3.3(c).



NZX Main Board Listing Rule(s)	Application of NZAX Rules in the Migration of FFW
7.3.5 and 7.3.6	<p>For the purposes of Rule 7.3.5 and 7.3.6:</p> <ul style="list-style-type: none"> • Equity Securities issued pursuant to NZAX Listing Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6 or 7.3.11 shall be deemed to have been issued under Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6 and 7.3.10 respectively; • Equity Securities issued pursuant to NZAX Listing Rule 7.3.5, the issue of which has been ratified by an Ordinary Resolution of FFW, shall be counted in Rule 7.3.5(c) as if they had been issued and ratified under the Rules; • FFW shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX; and • FFW shall not be in breach of Rule 7.3.5 or 7.3.6 if the Equity Securities issued by it prior to its Listing on the NZX Main Board exceeds the aggregate permitted by those Rules in circumstances where FFW issued those Equity Securities in compliance with NZAX Listing Rule 7.3.5 or 7.3.6 respectively.
7.3.8	A resolution passed pursuant to NZAX Listing Rule 3.4.1 shall be deemed to be a resolution passed pursuant to Rule 3.5.1 for the purposes of Rule 7.3.8.
7.3.9	An approval by NZX under NZAX Listing Rule 7.3.10 shall be deemed to be an approval under Rule 7.3.9.
7.3.10	<p>For the purposes of Rule 7.3.10:</p> <ul style="list-style-type: none"> • Securities issued in accordance with any of NZAX Listing Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.6, 7.3.11(a) or 7.3.11(e) shall be deemed to have been issued in accordance with Rules 7.3.1(a), 7.3.4, 7.3.5, 7.3.10(a) and 7.3.10(e) respectively; and • Securities, the issue of which was approved in the manner set out in NZAX Listing Rule 7.3.1(a), shall be deemed to have been approved in the manner set out in Rule 7.3.1(a).
7.6.1	For the purposes of Rule 7.6.1 Equity Securities issued in compliance with, or under, NZAX Listing Rules 7.3.1(a), 7.3.4 or 7.3.6 shall be deemed to have been issued in compliance with, or under, Rules 7.3.1(a), 7.3.4 or 7.3.6 respectively.
7.6.4	<p>For the purposes of Rule 7.6.4:</p> <ul style="list-style-type: none"> • financial assistance given under NZAX Listing Rule 7.6.4(b)(i) shall be deemed to have been given under Rule 7.6.4(b)(i); and • FFW shall be deemed to have been Listed on the NZX Main Board on the date on which it was listed on the NZAX.



NZX Main Board Listing Rule(s)	Application of NZAX Rules in the Migration of FFW
7.6.5	A proposal authorised by resolutions passed pursuant to NZAX Listing Rule 7.6.5 shall be deemed to be a Proposal authorised by resolutions passed pursuant to Rule 7.6.5.
9.1.1	A transaction authorised by resolutions passed pursuant to NZAX Listing Rule 9.1.1 shall be deemed to be a transaction authorised by a resolution passed pursuant to Rule 9.1.1.
9.2.1	A transaction authorised by a resolution passed pursuant to NZAX Listing Rule 9.2.1 shall be deemed to be a transaction authorised by a resolution passed pursuant to Rule 9.2.1.
10.4.4	A reference in the FFW's most recent annual notification under section 209(1)(b) of the Companies Act to the next half-yearly report under the NZAX Listing Rules shall be deemed to be a reference to FFW's next half-year report under the Rules for the purposes of Rule 10.4.4 such that FFW shall be deemed to have made its next half year report available to Quoted Security holders.
10.4.5(g)	An exercise of NZX's powers under NZAX Listing Rule 5.4.2 shall be deemed to be an exercise of NZX's powers under Rule 5.4.2.
10.4.8	A document referred to in NZAX Listing Rules 10.4 and 10.5 shall be deemed to be a document referred to in Rules 10.3 and 10.4 for the purposes of Rule 10.4.8.
11.1.5	An approval by NZX under NZAX Listing Rule 11.1.5 shall be deemed to be an approval under Rule 11.1.5.
11.2.2	A statement required by NZAX Listing Rule 11.2.1 or 11.2.3 shall be deemed to be a Statement required by Rules 11.2.1 and 11.2.3 respectively for the purposes of Rule 11.2.2.
11.2.4(b)	A statement of holding of Securities complying with NZAX Listing Rule 11.2 shall be deemed to be a Statement for the purposes of Rule 11.2.4(b).



Appendix Three

NZX Main Board Listing Rules

Rule 5.1 Listing

5.1.1 Any person may apply to NZX for Listing either:

- (a) with NZX as the Home Exchange; or
- (b) with a Recognised Stock Exchange as the Home Exchange, if that person is domiciled or incorporated outside New Zealand and listed on a Recognised Stock Exchange (an “Overseas Listed Issuer”); or
- (c) as a Dual Listed Issuer.

Application shall be made through a Primary Market Participant acting as Organising Participant.

5.1.2 The following information and material shall be submitted with an application under Rule 5.1.1:

[...]

- (e) a copy of the applicant’s certificate of incorporation or commensurate document for the Issuer’s entity (if applicable); and

[...]

- (i) copies of annual reports for the last five years, if available; and

[...]

Rule 5.2 Quotation of Securities

5.2.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of its Securities to be Quoted on the NZSX or NZDX. Separate application must be made for each Class of Securities, through a Primary Market Participant acting as Organising Participant, except that the application need not be made through an Organising Participant in the case of an application to Quote a Class of Securities where the Securities to be Quoted are rights to Securities that are already Quoted.

5.2.2 The following information and material shall be submitted with an application under Rule 5.2.1:



[...]

- (b) evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of Securities for which Quotation is sought or a certificate is provided under Rule 7.4 of the NZX Participant Rules (whichever is applicable); and
- (c) a draft Offering Document, Prospectus, or Profile in respect of the Securities (which shall include, without limiting any other provision of the Rules, the timetable required by Rule 7.1.5(b)); and
- (d) any Advertisement that is proposed to be issued before the date of Quotation in respect of the Securities; and

[...]

- (f) details of proposed arrangements to ensure that persons subscribing for the Securities in the offer have an opportunity to trade on Quotation of the Securities.

