

NZX Regulation Decision

Chorus Limited (“CNU”)

Application for a waiver from NZX Listing Rule 2.3.2, 4.1.1, 4.1.2, 4.2.1, 4.14, 6.6.1, 8.1.5, and ruling from NZX Listing Rule 4.9.1.

3 April 2020



Background

1. NZX has updated the NZX Listing Rules (**Rules**), effective from 1 January 2020. This waiver decision re-documents a prior waiver and ruling decision granted by NZX Regulation (**NZXR**) dated 30 August 2011.
2. The information on which these decisions are based is set out in Appendix One. These waivers and rulings 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 which have not been defined in this decision have the meanings given to them in the Rules.

Application One – Waiver from Rule 2.3.2(c) and 2.3.2(d)

Decision

5. Subject to the condition in paragraph 6 below, and on the basis that the information provided to NZXR by Chorus Limited (“**CNU**”) is complete and accurate in all material respects, NZXR grants CNU a waiver from Rule 2.3.2(c) and 2.3.2(d) to enable CNU’s constitution to include a restriction on who can be a Director of CNU, namely prohibiting Associated Persons of Telecommunications Services in New Zealand from being CNU Directors.
6. The waiver in paragraph 5 is granted on the condition that this waiver is summarised in each annual report of CNU (or the annual report contains a reference to where this information can be found on CNU’s website), and any announcement made by CNU under Rule 2.3.2(c) and 2.3.2(d).

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 5 above, NZXR has considered that:
 - a. the Crown required CNU to enter into the Deed Relating to Certain Operational and Governance Undertakings (**Deed**) as a condition to Chorus’ participation in the UFB initiative which provides for restrictions on who can be a CNU Director; and
 - b. the restrictions on CNU Director nominations will be appropriately highlighted to CNU shareholders by virtue of the condition contained in paragraph 6 above.



Application Two – Waiver from Rule 4.1.1, 4.1.2 and 4.2.1.

Decision

8. On the basis that the information provided to NZXR by CNU is complete and accurate in all material respects, NZXR grants CNU a waiver from the requirement contained in Rules 4.1.1, 4.1.2 and 4.2.1 for CNU to obtain specific shareholder approval, by Ordinary Resolution, for the issue of the CIP Equity Securities and CIP Warrants.

Reasons

9. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
 - a. CNU submitted, and NZXR has no reason not to accept, that it would be impossible for shareholders to vote separately on the issue of the CIP Equity Securities and CIP Warrants as the issue of those Securities was effectively a condition of the Demerger proposal;
 - b. the Demerger was undertaken to allow CNU to participate in the UFB initiative;
 - c. the CIP Equity Securities and CIP Warrants were an integral part of the successful bid for CNU to participate in the UFB initiative;
 - d. the terms and conditions of the issue of the CIP Equity Securities and CIP Warrants have been settled following extensive negotiations between TEL and CIP; and
 - e. all material details of the CIP Equity Securities and CIP Warrants, including all material details of their terms of issue, and conversion and exercise, and the fact that in certain circumstances CNU shares could be issued pursuant to the terms of the CIP Equity Securities and/or the CIP Warrants in a manner that is dilutive to CNU shareholders were disclosed in the Scheme Booklet.

Application Three – Ruling on Rule 4.9.1(b)

Decision

10. On the basis that the information provided to NZXR by CNU is complete and accurate in all material respects, for the purpose of Rule 4.9.1(b) in relation to CNU, NZXR rules that that:
 - a. any conversion of CIP Equity Securities into CNU ordinary shares;
 - b. any conversion of CIP Equity Securities into Preference Shares;
 - c. any conversion of Preference Shares into CNU ordinary shares; and



- d. any exercise of the CIP Warrants in relation to which CNU issues CNU ordinary shares;

falls within the ambit of Rule 4.9.1(b).

Reasons

11. In coming to the decision to provide the ruling set out in paragraph 10 above, NZXR has considered that:

- a. CNU submitted that the CIP Equity Securities are convertible into CNU ordinary shares and into voting preference shares (which carry the right to convert into ordinary CNU shares on equivalent terms to the CIP Equity Securities);
- b. CNU also submitted that the CIP Warrants provide the holder of a CIP Warrant with a right to purchase CNU ordinary shares at a specified strike price;
- c. the material terms of the conversion of each of the CIP Equity Securities and exercise of the CIP Warrants were appropriately disclosed in the Scheme Booklet;
- d. Rule 4.9.1(b) allows an Issuer to issue Equity Securities upon conversion of an Equity Security, if the terms of those securities provide for conversion to the kind of security issued;
- e. as the issue of the CIP Equity Securities and CIP Warrants was an integral part of the Demerger and TEL shareholders voted on the Demerger, it would not be appropriate for the conversion of the CIP Equity Securities and CIP Warrants to be individually voted on by CNU shareholders; and
- f. NZXR has granted CNU the above waiver from Rules 4.1.1, 4.1.2, and 4.21.

Application Four – Waiver from Rule 4.14.1(e)

Decision

12. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants CNU a waiver from Rule 4.14.1(e) to the extent necessary to allow CNU to redeem the CIP Equity Securities in accordance with their terms of issue.

Reason

13. In coming to the decision to grant the waiver set out in paragraph 12 above, NZXR has considered that:

- a. the CIP Equity Securities provide CNU with a right of redemption in certain prescribed circumstances, but given the waiver granted to CNU in respect of Rules 4.1.1, 4.1.2, and 4.2.1 above, will not be issued in accordance with Rule 4.14.1(e);
- b. the material terms of the CIP Equity Securities (including the material terms relating to the ability for CNU to redeem the CIP Securities) were appropriately disclosed in the Scheme Booklet; and



- c. NZXR accepts that the redemption of the CIP Equity Securities could have been effected pursuant to Rule 4.14.1(e) but for the fact that approval of the terms of issue were effectively given by TEL shareholders in the approval of the overall Demerger resolution, rather than specific approval being provided under Rule 4.14.1(e).

Application Five – Waiver from Rule 6.6.1

Decision

14. Subject to the conditions in paragraph 15 below, and on the basis that the information provided to NZXR by CNU is full and accurate in all material respects, NZXR grants CNU a waiver from Rule 6.6.1 to allow CNU to include the power of forfeiture reflecting the Ownership Thresholds in its Constitution.
15. The waiver in paragraph 14 is granted on the conditions that:
 - a. CNU bears a non-standard (NS) designation; and
 - b. this waiver and its effect are disclosed in CNU's annual reports (or the annual report contains a reference to where this information can be found on CNU's website).

Reason

16. In coming to the decision described in paragraph 14 above, NZXR considered the following factors:
 - a. Although there is a tension between the forfeiture provisions in the CNU Constitution and this Rule, the interests of investors are appropriately served by the appropriate disclosure of the Ownership Thresholds in CNU's annual reports, and by the application of the non-standard designation to CNU;
 - b. the power of forfeiture in respect of the Ownership Thresholds was disclosed in the Scheme Booklet;
 - c. the Deed is integral to CNU's participation in the UFB initiative, and it is therefore appropriate that the Ownership Thresholds are included in CNU's Constitution;
 - d. the conditions contained in paragraph 15 will ensure that CNU shareholders are aware of the Ownership Thresholds; and
 - e. there is precedent for granting this waiver in the decision provided to TEL in 1991.



Application Six – Waiver from Rule 8.1.5

Decision

17. Subject to the conditions in paragraph 18 below, and on the basis that the information provided to NZXR by CNU is full and accurate in all material respects, NZXR grants CNU a waiver from Rule 8.1.5 to allow CNU to contain provisions in its Constitution to allow the CNU Board to cancel the voting rights attached to the CNU shares where the Ownership Thresholds are breached.
18. The waiver in paragraph 17 is granted on the condition that this waiver on the conditions that:
 - a. CNU bear a non-standard (NS) designation;
 - b. the material details of the ability for the CNU Board to cancel the voting rights of the CNU shares to which this decision relates and the existence of this waiver are disclosed in every annual report of CNU.

Reason

19. In coming to the decision described in paragraph 17 above, NZXR considered the following factors:
 - a. the CNU Constitution contains an ability for the CNU Board to prevent a shareholder from voting in the event of a breach of the Ownership Thresholds. The CNU Board may therefore cancel a shareholder's right on a CNU holder executing a transfer in breach of the Ownership Thresholds;
 - b. the conditions contained in paragraph 18 will ensure that current and future shareholders in CNU are put on notice of the restrictions on transferability that are contained in CNU's Constitution;
 - c. the material details of the ability for the CNU Board to cancel the voting rights of the CNU shares that are contained in CNU's Constitution were disclosed in the Scheme Booklet; and
 - d. NZXR believes that there are considerations which justify the inclusion of the provisions which provide the CNU Board with the ability to cancel the voting rights of the CNU shares as described in this decision to be included in CNU's Constitution, including that CNU's entry into the Deed is integral to its participation in the UFB initiative and the Ownership Thresholds are contained in the Deed.



Appendix One

Chorus Limited (“**CNU**”) demerged from Telecom Corporation of New Zealand Limited (“**TEL**”) (now Spark) in 2011 to become a publicly listed network services operator. This demerger (the “**Demerger**”) was a condition of the agreements providing for CNU’s participation in the New Zealand Government’s ultra-fast broadband (“**UFB**”) initiative.

The Demerger was implemented by way of a High Court Scheme of Arrangement under Part XV of the Companies Act 1993 following approval by TEL shareholders at its 2011 Annual Meeting (the “**Demerger AGM**”). TEL shareholders were provided with a Scheme Booklet (the “**Scheme Booklet**”) which was approved by NZX Regulation (“**NZXR**”) prior to the Demerger AGM.

Crown Infrastructure Partners (“**CIP**”) (formerly Crown Fibre Holdings Limited) is the entity that was formed by the Government to, amongst other things, manage the UFB initiative. CIP will invest, at CNU’s election, up to approximately \$1.33 billion in CNU as the network is built via subscription for securities to be funded and issued in different build phases. For the first phase of the UFB network build (**UFB1**), the total committed funding available for Chorus over the period of UFB1 network construction is expected to be \$929 million in return for the following securities (“**CIP Securities**”):

- a. Non-voting redeemable preference shares, which entitle the holder to a right to a repayment preference on liquidation and include the right to dividends in certain circumstances depending on the uptake of end-user fibre, and which are convertible into ordinary CNU shares in certain circumstances (“**CIP Equity Securities**”);
- a. Non-interest bearing repayable debt securities (the “**CIP Debt Securities**”);
- b. Warrants issued for nil consideration which allow the holder to subscribe for CNU shares on certain exercise dates, where the strike price is based on a total shareholder return on CNU shares of 16% per annum (“**CIP Warrants**”).

For the second phase of the UFB network build (**UFB2** and **UFB2+**), different funding rates are applied. Total CIP funding available to Chorus for the second phase is expected to be approximately \$408 million. In return for the CIP funding for UFB2 and UFB2+, CIP Equity Securities and CIP Debt Securities will be issued on similar terms as UFB1 securities, but will have different dividend entitlement dates (for CIP Equity Securities) and different redemption dates (for CIP Debt Securities). There are no CIP Warrants in relation to UFB2 and UFB2+ funding.

The Crown required that CNU enter into a Deed Relating to Certain Operational and Governance Undertakings (“**Deed**”) to protect the Crown’s interest in its investment into CNU in the context of the UFB initiative.

Accordingly, CNU’s Constitution reflects certain provisions of the Deed as follows:

- a. restrictions on candidates for director nominations – these are reflected in clause 17.3 of CNU’s Constitution as follows:

“No person who is an Associated Person of a person which provides Telecommunications Services in New Zealand (other than the services to be provided by Chorus) shall be appointed or hold office as a director.”

- b. the issue of certain Equity Securities to CIP, including the CIP Equity Securities and CIP Warrants; and
- c. certain restrictions in respect of the ownership of CNU shares (“**Ownership Thresholds**”), which are reflected in clause 2 of the First Schedule of CNU’s Constitution as follows:

“No person shall have a relevant interest in 10 percent or more of the total voting shares for the time being without, and except in accordance with, the prior written approval of the Crown under the Deed (unless it has been terminated with the consent of the Crown).

No person who is not a New Zealand national shall have a relevant interest in more than 49.9 percent of the total voting shares for the time being without, and except in accordance with the terms of, the prior written approval of the Crown given under the Deed (unless it has been terminated with the consent of the Crown).”

Clause 3 of the First Schedule of CNU’s Constitution, which provides for a power of forfeiture in the event of a CNU shareholder breaching the Ownership Thresholds by allowing the CNU Board to sell all or some of the CNU holder’s shares.

Accordingly, to enable CNU to continue to participate in the UFB initiative, it is necessary for the waivers and rulings in this decision to continue to apply.

Approval of Transfer Restrictions

In addition to the Ownership Thresholds, in the decision dated 30 August 2011, NZXR approved CNU to incorporate provisions into its Constitution restricting the transfer of Equity Securities where:

“the [CNU] Board [is]... permitted to do so by the Act or the Rules, in any of the following circumstances:

- (a) when it must do so under clause 4 of the First Schedule;*
- (b) where the registration of the transfer would or would be likely to breach clause 4 of the First Schedule.*

Clause 4 of the First Schedule of the CNU Constitution requires the CNU Board to decline to register a transfer of voting shares if, in the reasonable opinion of the CNU Board after due enquiry, any person would breach the Ownership Thresholds as a result of the transfer.

Class Waiver

In November 2018, NZX issued a Class Waiver and Ruling that deems NZX’s previous approval for CNU to incorporate provisions in its constitution restricting the transferability of its Equity Securities as an approval under updated Rule 8.1.6. This approval continues to apply without the need to separately re-document the decision.



Appendix Two

- Rule 2.3.2** An Issuer must comply with the following Director nomination process:
- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,
 - (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,
 - (c) there must be no restriction on who may be nominated as a Director, unless:
 - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
 - (ii) applicable legislation restricts who may be a Director of the Issuer,
 - (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and
 - (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

Rule 4.1 Issue of New Equity Securities

Rule 4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

Rule 4.1.2 An Issuer may issue Equity Securities, without approval by Ordinary Resolution, by way of:

- (a) a pro-rata Rights offer, bonus issue or a Share Purchase Plan in accordance with Rule 4.3 and, if applicable, Rule 4.4,
- (b) an issue under an Issuer's 15% placement capacity in accordance with Rule 4.5.1,
- (c) an issue to Employees, in accordance with Rule 4.6, or
- (d) other issues for dividend reinvestment plans, director remuneration, takeovers, amalgamation, conversions and Minimum Holdings in accordance with Rules 4.7 to 4.9.

Rule 4.2.1 Shareholder approval for Issues by Ordinary Resolution

For the holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:



- (a) separate Ordinary Resolutions of each Class of Quoted Equity Securities whose rights or entitlements could be affected, or
- (b) if a Class of Quoted Equity Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 4.2.1(a), a single resolution of all such Classes of Equity Securities voting together.

Rule 4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations

Rule 4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
 - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
 - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,
- (b) the issue of Equity Securities (**Security B**) is made on Conversion of any Financial Product (**Security A**), and
 - (i) the terms of issue of Security A provided for the Conversion to Security B and the issue of Security A was approved in the manner set out in Rule 4.2.1 or Security A was issued in accordance with any of Rules 4.3, 4.5.1, 4.6, 4.8 or 4.9.1(a) (whether or not any of the Rules quoted applied to the issue of Security A), or
 - (ii) the issue of Security B is approved in the manner set out in Rule 4.2.1, or Security B is issued in accordance with Rule 4.5.1 or Rule 4.6,
- (c) the issue is made to bring an existing holder's holding up to a Minimum Holding, or
- (d) the issue is made under an arrangement, amalgamation or compromise effected through Part 13 or Part 15 of the Companies Act 1993 or an equivalent statutory regime in a jurisdiction other than New Zealand which NZX considers is at least as useful to the recipients.



Rule 4.14 Buy Backs and Redemption of Equity Securities

Rule 4.14.1 An Issuer may only acquire or redeem Equity Securities of that Issuer by:

- (a) an acquisition effected through NZX's order matching market or through the order matching market of an Issuer's Home Exchange,
- (b) an acquisition effected in compliance with:
 - (i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,
 - (ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:
 - (A) not made from a Director, or an Associated Person of a Director, of the Issuer, and
 - (B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the issuer was listed, whichever is earlier, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,
 - (iii) section 61(7) of the Companies Act 1993, or
 - (iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,
- (c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,
- (d) an acquisition or redemption:
 - (i) approved in accordance with Rule 4.16.1,
 - (ii) of Equity Securities that were issued under Rule 4.6, or
 - (iii) from a holder who holds less than a Minimum Holding, or
- (e) a redemption of Equity Securities issued in compliance with Rule 4.2.1 or 4.3, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,
provided that for the purposes of Rule 4.14.1(b)(ii)(B):
- (f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:



- (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
- (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

Rule 6.6 Lien and Forfeiture

Rule 6.6.1 An Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Equity Securities will be restricted to one in respect of:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities, and
- (b) any amount which the Issuer may be called upon to pay under any legislation in respect of the specific Equity Securities, whether or not the due date for payment has passed.

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.

