



NZX Regulation Decision

Kingfish Limited (“KFL”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

30 May 2017



Waiver from NZX Main Board Listing Rule 9.2.1

Decision

1. Subject to the condition set out in paragraph 2 below, and on the basis that the information provided by Kingfish Limited (**KFL**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants KFL a waiver from Rule 9.2.1 to the extent required to allow KFL to enter into the Transactions without obtaining shareholder approval.
2. The waiver in paragraph 1 above is provided on the conditions
 - a. that all Independent Directors of KFL certify to NZXR that:
 - i. the entry into the Administration Services Agreement was negotiated and entered into on an arm's length commercial basis;
 - ii. the amendments to the Management Agreement were negotiated on an arm's length commercial basis;
 - iii. in their opinion, the amendments to the Management Agreement and the entry into the Administration Services Agreement are in the best interests of all Kingfish shareholders; and
 - iv. Fisher Funds and the directors of Kingfish who are Associated Persons of Fisher Funds have not unduly influenced the decision to amend the Management Agreement or enter into the Administration Services Agreement.
 - b. the waiver, its conditions and the implications of this waiver are disclosed in KFL's annual report.
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. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.
5. The Rules to which this decision relates are set out in Appendix Two to this decision.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 9.2.1;



- b. KFL has submitted, and NZXR has no reason not to accept, that the Related Parties are plainly unlikely to have influenced entry into or the terms of the Administration Services Agreement and the amendments to the Management Agreement, as:
 - i. entry into, and the terms of, the Administration Services Agreement has been negotiated on an arm's length commercial basis;
 - ii. the amendments to the Management Agreement were considered on their commercial merits and the independent directors were not influenced by the existing relationship between KFL and Fisher Funds; and
 - iii. the amendments to the Management Agreement and the entry into the Administration Services Agreement are in the best interests of all KFL shareholders;
- c. the confirmations provided by KFL's independent directors as a condition of the waiver provide comfort that the entry into the Administration Services Agreement and the amendments to the Management Agreement were negotiated, and entered into, on an arm's length commercial basis and that Fisher Funds and the directors of KFL who are Associated Persons of Fisher Funds have not unduly influenced the board of KFL's decision to amend the Management Agreement or enter into the Administration Services Agreement; and
- d. there is precedent for this decision.

Confidentiality

- 7. KFL has requested that its application, and NZXR's decision, be kept confidential until a date for disclosure has been agreed with KFL, so that communications with shareholders can be coordinated with release of NZXR's decision.
- 8. In accordance with Footnote 1 to Rule 1.10.2, NZXR grants KFL's request.



Appendix One

1. KFL is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. In 2004, Kingfish Limited (**KFL**) listed on the NZX. Kingfish is a listed investment company that invests in quality, growing New Zealand companies. To meet its objectives as a listed investment company, KFL outsources all investment and portfolio management discretion to a Manager (**Fisher Funds**) as documented in the Management Agreement.
3. The appointment of Fisher Funds as the Manager prior to listing in 2004 was central to the investment proposition of KFL (as set out within the contents of the 2004 Prospectus) and continues to be today.
4. The Management Agreement originally contemplated that administration services would be provided by Fisher Funds to Kingfish and that such services would be recharged in full to Kingfish. In December 2014, an Administration Services Agreement was signed between Fisher Funds and Kingfish. The purpose of the Administration Services Agreement was to provide for the administration services contemplated under the Management Agreement to be provided by Fisher Funds, but rather than on a recharge basis, the services would be provided for a set fee. The rationale for this change was to create efficiencies for Kingfish across staff utilisation and costs. There were no substantive changes to the nature and scope of the administration services provided by Fisher Funds or the actual costs payable by Kingfish in respect of the administration services.
5. One director of KFL, Carmel Fisher, is also a director of, and has an ownership stake in, Fisher Funds.
6. For the purposes of Rule 9.2.1, there is a Related Party Material Transaction because:
 - a. Fisher Funds is a Related Party of KFL, as Fisher Funds and KFL have a common director, Carmel Fisher, who also has a material direct or indirect economic interest in Fisher Fund;
 - b. KFL outsources administration services and all investment and portfolio management discretion to Fisher Funds (as Manager),
 - c. KFL pays an administration fee and management fee to Fisher Funds for the services provided, and
 - d. the actual gross cost to KFL in any financial year of the services that Fisher Funds provides under the Management Agreement and related Administration Services Agreement will likely exceed an amount equal to 1% of the average market capitalisation of KFL.
7. The remaining directors of KFL, Alistair Ryan, Carol Campbell and Andy Coupe are Independent Directors for the purposes of the Rules.



Appendix Two

Rule 1.8 Associated Persons

- 1.8.1 In the Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of Rules 1.8.2 to 1.8.6.
- 1.8.2 A person (the “first person”) is associated with another person (the “second person”) if, in making a decision or exercising a power affecting an Issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.
- ...
- 1.8.5 If the first person is associated with the second person in terms of Rule 1.8.2 to 1.8.4, then the second person shall be deemed to be associated with the first person.

Rule 9.2 Transactions with Related Parties

- 9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:
- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- ...
- unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.
- 9.2.2 For the purposes of Rule 9.2.1 “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:
- (e) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) in respect of which the actual gross cost to the Issuer in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer;
- ...
- 9.2.3 For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:
- ...
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself);

