



# NZX Regulation Decision

Marlborough Wine Estates Group Limited (“MWE”)  
Application for a waiver from Clause 2 of Schedule 1A to  
the NXT Market Rules

28 March 2018

# Waiver from Clause 2 of Schedule 1A to the NXT Market Rules

## Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by MWE is complete and accurate in all material respects, NZXR grants MWE a waiver from the Clause in respect of its Shares for a period of six months to the extent that the Clause requires MWE to have 25% of their ordinary shares held by at least 50 Members of the Public holding at least a Minimum Holding.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - a. for the period of the waiver MWE has at least 50 shareholders who are Members of the Public holding separate parcels of shares of at least a Minimum Holding, that together represent at least 17% of the Shares;
  - b. MWE releases an interim update which discloses to the market a summary of the waiver, its conditions and implications upon finalisation of the waiver;
  - c. MWE clearly and prominently discloses a summary of the waiver, its conditions, and the implications in any half-year and annual reports that fall during the period of this waiver;
  - d. MWE clearly and prominently discloses the waiver, its conditions, and its implications in any offer documents relating to any offer of securities undertaken by MWE during the period of the waiver;
  - e. MWE consistently monitors the total number of Members of Public holding shares in MWE and the percentage of total shares held by Members of the Public holding at least a Minimum Holding;
  - f. MWE notifies NZX Regulation as soon as practicable if there are any material changes to the percentage of ordinary shares held by Members of the Public holding at least a Minimum Holding; and
  - g. the Directors of MWE will certify to NZXR, in a form acceptable to NZXR, once MWE meets the requirements of the Clause.
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 Clause to which this decision relates is set out in Appendix Two to this decision.

5. Capitalised terms that are not 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. MWE meets the requirement in the Clause to have at least 50 shareholders that are Members of the Public;
  - b. the purpose of the Clause is to promote a liquid market which is important to ensure efficient price setting and to enable shareholders to trade;
  - c. the NXT Market Maker arrangements provide an additional mechanism for liquidity in MWE's shares, which provides additional comfort that MWE shareholders will not be disadvantaged;
  - d. as an executive director, Min Jia holds Confidential Information about MWE that would preclude him from selling down his shares. Once the Confidential Information becomes public, Min Jia will be able to sell down his shares, which is likely to increase the number and percentages of MWE shareholders who are Members of the Public; and
  - e. there is precedent for this waiver.

## Confidentiality

7. MWE has submitted that the application for a waiver and the information contained therein (including the fact that Min Jia holds the Confidential Information) could mislead investors as it would be pre-determinative of the final OIO decision if made public. MWE has requested that this application and any decision be kept confidential until the outcome of the OIO investigation has been determined and published to the market thus rendering all Confidential Information publicly available.
8. In accordance with Rule 92, NZXR grants MWE's request.

## Appendix One

1. Marlborough Wine Estates Group Limited (**MWE**) is a NXT company with its ordinary shares (**Shares**) quoted on the NXT Market.
2. Clause 2 of Schedule 1A (**the Clause**) to the NXT Market Rules (**Rules**) states that to be eligible for Listing an NXT Applicant must have at least 50 shareholders who are Members of the Public holding separate parcels of shares of at least a Minimum Holding, that together represent at least 25% of the shares.
3. On 29 June 2016, NZX Regulation (**NZXR**) granted MWE a waiver from the Clause for a period of twelve months (**2016 Waiver**). One of the conditions of the 2016 Waiver was that for the period of the waiver, MWE needed to have at least 50 shareholders who were Members of the Public holding separate parcels of Shares of at least a Minimum Holding, which together represented at least 17% of the Shares on issue. The 2016 Waiver was extended on 30 June 2017 for a further six months.
4. As at 13 March 2018, MWE's spread remains at 17.38% representing Shares held by Members of the Public while Min Jia, MWE's founder, director and substantial shareholder has a legal or beneficial interest in 74.10% of MWE's Shares on issue.
5. The Overseas Investment Office (**OIO**) has been processing a retrospective consent application (**Consent Application**) in relation to a technical breach of the Overseas Investment Act 2005 (**OIA**) that occurred as part of MWE's internal restructure to prepare for its listing on the NXT Market. MWE received an intention to decline the Consent Application in September 2016. MWE made substantive resubmissions to the OIO regarding this matter. However, in early 2018, the OIO reverted with an indication that MWE should instead withdraw its Consent Application and the OIO would conclude its investigation into the breaches and issue a warning letter to MWE and Min Jia (**Confidential Information**). MWE believes that there will be no further regulatory action by the OIO upon issuing the warning letter.
6. At present, MWE is precluded from releasing the Confidential Information until the outcome of the OIO's investigation has been determined and published to the market thus rendering all Confidential Information publicly available, and is subsequently not presently required to release the information under the Rules. Once the information can be made publicly available, MWE has indicated that Min Jia intends to reduce his shareholding in MWE.
7. Currently, Min Jia holds the Confidential Information which precludes him from reducing his shareholding until the Confidential Information is publicly available. MWE has submitted that if Min Jia were to sell his Shares without the OIO's intention being known to the market, there is a real and substantial risk of insider trading.

## Appendix Two

### Schedule 1A - Pre-requisites for Listing

To be eligible for **listing** an **applicant** must fulfil all the following requirements before **listing**:

...

2. Have at least 50 shareholders who are members of the public holding separate parcels of shares of at least a minimum holding, that together represent at least 25% of the shares;