



NZX Regulation Decision

Promisia Integrative Limited (PIL)

Application for a waiver from NZX Main Board Listing Rule
9.2.1(a)

2 November 2018



Waiver from Listing Rules

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by PIL is complete and accurate in all material respects, NZXR grants PIL a waiver from NZX Main Board Listing Rule 9.2.1 (**Rule**), to the extent that this Rule requires that PIL seek shareholder approval to receive the Cash Advance from the Brankin Trust.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the non-interested Directors of PIL certify, in a form acceptable to NZXR, that:
 - i. There are no other viable sources of funding available to PIL.
 - ii. The Cash Advance is required urgently to provide PIL with working capital so that PIL can continue to trade.
 - iii. The Cash Advance is being provided on terms that are more favourable than any other funding option available to PIL.
 - iv. Receiving the Cash Advance is in the best interests of PIL and the shareholders of PIL.
 - v. In deciding to accept the Cash Advance, the non-interested Directors of PIL have not been unduly influenced by Mr Brankin or any Associated Person of Mr Brankin.
 - vi. The certifying directors are not interested in the Cash Advance, as the term is used in Rule 3.4.3, nor are they Associated Persons of Mr Brankin or the Brankin Trust.
 - b. The Brankin Trust is providing the \$440,000 Cash Advance on the basis there are no immediate or on-call repayment obligations and zero percent interest for the life of the loan. The key condition of providing the Cash Advance, other than entering into the GSA, is that a resolution will be put to PIL shareholders seeking approval for a transaction that will have the economic effect of repaying the Cash Advance .
 - c. PIL will announce full details of the Cash Advance and loans with the Brankin Trust to the market.
 - d. PIL will before 31 December 2018 seek shareholder approval in accordance with Rule 9.2.1 for the method of repaying the Brankin Trust.
 - e. The waiver, its conditions and effect are disclosed to market and detailed in PIL's next 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. 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. 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 involvement of any Related Party has not unduly influenced the promotion of, or the decision to enter into, the transaction or its terms and conditions. NZXR is satisfied that the granting of this waiver will not offend the policy behind Rule 9.2.1;
 - b. PIL has sought funding from a number of other sources but has not been able to secure the additional working capital;
 - c. The Cash Advance is on better than commercial terms;
 - d. PIL has advised, and NZXR has no reason not to accept, that the Cash Advance will provide PIL with urgent working capital and that without the Cash Advance PIL will not be able to continue operating; and
 - e. The funds are required by PIL to meet its operating obligations prior to the earliest practical time that a meeting of shareholders can be called.

Appendix One

1. Promisia Integrative Limited (**PIL**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board and accordingly is subject to the NZX Main Board Listing Rules (**Rules**).
2. PIL has entered into an agreement to receive a \$440,000 cash advance from the Brankin Trust in instalments over a two-month period (the **Cash Advance**). PIL would ordinarily require shareholder approval under Rule 9.2.1(a) for the Cash Advance as it will result in the Brankin Trust lending PIL an amount in excess of 10% of PIL's Average Market Capitalisation which in accordance with Rule 9.2.2(c) is a Material Transaction. The Brankin Trust is an Associated Person of Mr Brankin, a Director of PIL, and is therefore a Related Party of PIL in accordance with Rule 9.2.3(c).
3. The terms of the Cash Advance are:
 - (a) Security is to be provided to the Brankin Trust by way of a General Security Agreement (**GSA**) to the value of \$1,500,000 charged over the assets of PIL;
 - (b) A resolution be placed before a meeting of shareholders as soon as practicable for approval of a transaction that would have the economic effect of repaying the Cash Advance will;
 - (c) There are no immediate or on-call repayment obligations for any portion of the Cash Advance or other loans provided from the Brankin Trust;
 - (d) No interest is payable on the Cash Advance and
 - (e) The terms of the Cash Advance, including the open-ended repayment obligations, will not change if PIL Shareholders do not approve Brankin Trust underwriting a potential rights offer.
4. The GSA for \$1,500,000 has already been entered into. This GSA covers an existing \$360,000 loan from the Brankin Trust, the intended \$440,000 in additional Cash Advances,

and a \$798,175 debt assigned to the Brankin Trust as announced to the market on 5 October 2018.

5. PIL intends to conduct a rights offer of up to \$2.3 million, with the Brankin Trust underwriting up to \$1.3 million of this offer (the **Rights Offer**). PIL intends to hold a shareholder meeting at the end of November or early December to seek shareholder approval for the Brankin Trust to underwrite the Rights Offer. Shareholder approval is required for the Brankin Trust to act as an underwriter as the Brankin Trust is a Related Party of PIL in accordance with Rule 9.2.3(c).
6. If there is low shareholder uptake which results in the Brankin Trust supporting the offer in accordance with the underwriting terms then it is possible the Brankin Trust will hold up to 68% of PIL's issued share capital. PIL is engaging with the Takeovers Panel on the application of the Takeovers Code to the Rights Offer.
7. PIL has submitted, and NZXR has no reason not to accept, that the Cash Advance will provide PIL with urgent working capital and that without the Cash Advance PIL will not be able to continue operating.



Appendix Two

Rule 9.2 New Supply Arrangements with Related Parties

Rule 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.

Rule 3.4.3 Subject to Rule 3.4.3, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an Issuer is not a company registered under that Act, the reference to the “company” in that section shall be read as a reference to the Issuer.

Rule 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:

- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; or ...

Rule 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); or

