



29 September 2008

NZX Regulation Decision
PGG Wrightson Limited ("PGW")
Application for waiver from Listing Rules 7.3.5, 7.6.4 and 9.2.1

Background

1. PGG Wrightson Limited ("PGW") is Listed on the NZSX Market.
2. At the time of making the application on which this decision is based, PGW was conducting an institutional private placement of ordinary shares to habitual and professional investors in New Zealand and elsewhere pursuant to Listing Rule 7.3.5 ("Placement").
3. The goal of the Placement is to raise capital to finance the acquisition by PGW of 50% of the shares in Silver Fern Farms Limited ("SFF Transaction"). The SFF Transaction is due for settlement on 26 September 2008.
4. In order to complete the SFF Transaction, PGW has negotiated a funding line from its bank, a condition of which is the raising of \$110 million of new equity. PGW considers the Placement essential to meet its bank's requirement.
5. The global and New Zealand market conditions in capital markets are currently extremely volatile and the timing of the Placement means that PGW is facing a challenge to raise capital under the Placement.
6. The number of shares to be issued under the Placement will not exceed the maximum number permitted to be issued under Listing Rule 7.3.5, being approximately 43.4 million shares.
7. The Placement will be offered to a wide range of institutional and qualified investors to be selected solely by Goldman Sachs JBWere ("GSJBW") and/or any co-managers it appoints.
8. Because of the application of NZSX Listing Rules ("Rules") 7.3.5(a) and 9.2, it was not originally intended that either Rural Portfolio Investments Limited ("RPI") or Murray Flett, or an Associated Person of him, (for convenience both referred to as "Mr Flett") the subjects of this waiver decision, would participate in the Placement.
9. RPI holds approximately 30% of the shares in PGW and Craig Norgate and Baird McConnon, who are directors of PGW, are also directors of RPI and indirect, beneficial shareholders in RPI.
10. RPI is:
 - (a) an Associated Person of a Director of the Issuer (which is relevant for the purposes of Listing Rule 7.3.5(a)); and
 - (b) a Related Party of the Issuer for the purposes of Listing Rule 9.2.1, because it has a relevant interest in more than 10% of the shares in PGW.
11. Murray Flett is:
 - (a) an Associated Person of the Issuer as he is a director of PGW; and
 - (b) a Related Party of the Issuer.

12. The bookbuild process for the Placement is being conducted by GSJBW in the current difficult market conditions. This has meant that in order to raise as much equity capital as possible (subject to Listing Rules 7.3.5 and 7.5) it is, in the view of the Independent Directors of PGW, necessary to extend the Placement to RPI and Mr Flett in order to raise the maximum amount of equity capital.
13. Contemporaneously with the Placement it is proposed that PGW's subsidiary PGG Wrightson Investments Limited ("PGWIL") purchase from RPI and/or Mr Flett up to 14 million shares in New Zealand Farming Systems Uruguay Limited ("NZS") for \$1.50 per share (total \$21 million), ("NZS Share Sale").
14. The 20 day volume weighted average price of NZS shares is \$1.4808.
15. While the NZS Shares Sale would not constitute a Material Transaction if considered on its own, as it is to be concluded as a related transaction with the Placement, it will constitute a Material Transaction because the Aggregate Net Value of the related series of transactions is in excess of 5% of PGW's Average Market Capitalisation.
16. PGW already owns approximately 11% of NZS and is committed (as manager of NZS) to acquiring additional NZ shares to ensure it retains a meaningful equity interest, in anticipation of likely future placements by NZS, which will otherwise dilute its interests. There is an existing board approved mandate to PGW management to acquire additional tranches of NZS shares, but there is little liquidity in the stock.
17. The opportunity to undertake the NZS Share Sale is therefore an opportunity to acquire an additional tranche of NZS shares at pricing below PGW's valuation, and was approved by the independent directors of PGW on 23 September 2008.

Application

18. PGW has applied to NZX Regulation for the following waivers:
 - (a) a waiver from the prohibition in Rule 7.3.5(a) on issuing Equity Securities to any Director of the Issuer or Associated Person of a Director, to allow RPI and Mr Flett to participate in the Placement; and
 - (b) a waiver from the requirement in Rule 9.2.1 to obtain shareholder approval for a Material Transaction with a Related Party, to allow:
 - (i) any issue of shares to RPI and Mr Flett under the Placement;
 - (ii) entry by PGW into the NZS Share Sale; and
 - (iii) a waiver from the prohibition in Rule 7.6.4 on PGW giving financial assistance for the purpose of, or in connection with, the acquisition of shares by Flett and RPI under the Placement to the extent that the NZS Share Sale may constitute such financial assistance.

Rule 7.3.5(a) Submissions

19. PGW has made the following submissions in support of its application in respect of Rule 7.3.5(a):

- (a) The policy underlying Rule 7.3.5(a) is to prevent the exception in Rule 7.3.5 to the requirement for shareholder approval to an issue of shares under Rule 7.3.1 being exploited by issues of shares on terms unfavourable to the Issuer to persons who may be in a position to influence the Issuer (e.g. Associated Persons of Directors of the Issuer). This policy will not be compromised by the Placement, as the terms available to RPI and Mr Flett under the Placement (including as to price) will be the same as those available to all other placees.
- (b) The issue price for the Placement will be set by PGW's financial advisers, GSJBW (in consultation with PGW but the ultimate price decision will be for GSJBW), and will be an arms-length price set by reference to a market based bookbuild process.
- (c) Because participation by RPI is effectively limited by the Takeovers Code, there is no possibility that RPI will increase the percentage of voting rights in PGW that it holds or controls as a result of the Placement. Rule 7.5 also applies (in respect of RPI) to the Placement and PGW is not seeking a waiver in respect of that rule.
- (d) While Craig Norgate, Baird McConnon and Murray Flett, each directors of PGW, may derive a personal benefit or gain from the Placement as a result of their shareholding directly, or indirectly in the case of RPI, the policy underlying Rule 7.3.5(a) is not offended by that fact for the reasons set out above, including in particular:
 - (i) Rule 7.5 applies, so neither RPI nor Mr Flett will increase their ability to exercise or direct the exercise of effective control of PGW;
 - (ii) The price and terms of the Placement will be the same for all placees, and will be determined on an arms length and commercial basis; and
 - (iii) Because of Rules 7.3.5(a) and 9.2, PGW did not propose originally that RPI and Mr Flett would participate in the Placement but, because of the significant recent change in market conditions, it is now considered desirable (and in the best interests of PGW and its shareholders) that they have the opportunity to participate in the Placement.
- (e) A successful Placement is fundamental to completing the funding of the SFF Transaction and is therefore in the best interests of the Company and all shareholders. In view of current market conditions, the success of the Placement depends on the widest possible participation and requires that RPI and Mr Flett are able to subscribe.

Rule 9.2.1 Submissions

20. PGW makes the following submissions in support of its application for a waiver from Rule 9.2.1:
- (a) Rule 9.2.1 is aimed at regulating those transactions in which a Related Party may gain favourable consideration because of that Related Party's relationship with the Issuer, or where there is a perception that favourable consideration may be afforded. This is not the case in the current circumstances – as evidenced by the fact that identical

terms will be offered to both the Related Parties and the non-Related Parties under the Placement (other than any pre-commitment arrangements); and

- (b) While the overall Placement size will exceed the 5% threshold in Rule 9.2.1, the aggregate amount to be subscribed by Related Parties (RPI and Mr Flett) under the Placement is expected to be less than that threshold. NZX has, in the past, granted waivers where a Related Party is a party to a transaction where the overall value of the transaction exceeds the relevant threshold, but the value being provided by the Related Party does not.
- (c) The \$15 million consideration under the NZS Share Sale is approximately 2% of 'Average Market Capitalisation'. Accordingly, the NZS Share Sale is not a 'Material Transaction' of itself but is only caught by Rule 9.2.1 because it can be considered with the Placement as part of a related series of transactions.
- (d) Rule 9.2.1 is protection against an Issuer transferring value to a Related Party by requiring Material Transactions with Related Parties to be approved by shareholders. The non-Related Party directors of PGW recognise that the proposed NZS Share Sale price is more than the current NZS share price. However, in reaching the view that the NZS Share Sale is in the best interest of shareholders, they are implicitly confirming that there would be no value transfer to RPI or Mr Flett because:
 - (i) they consider PGW is buying the NZS shares for at or below their true value. NZS is not a liquid stock and to purchase the proposed amount at \$1.50 per share would be very difficult in the timeframes contemplated.
 - (ii) PGW is effectively purchasing greater participation in the Placement and the benefits that may bring (which would otherwise not be assured).
- (e) The current market circumstances are extremely difficult. PGW is in a position where it must raise equity now in order to complete the SFF Transaction. Failing to complete the SFF Transaction will have serious ramifications for PGW.
- (f) PGW's non-Related Party directors recognise the possibility that the NZS Share Sale may be perceived as resulting in a value transfer to RPI or Mr Flett. Nevertheless, after considering all the circumstances, those directors have reached the view that the NZS Share Sale is in the best interest of all PGW shareholders. In other words, they consider the NZS Share Sale is likely to be better than the counter-factuals (including referring the NZS Share Sale to a shareholder meeting - for which there is no time).
- (g) GSJBW has advised PGW that the institutions taking part in the Placement have committed to the Placement on the condition it is filled. RPI and Mr Flett's allocation under the Placement is approximately 25% of the total Placement and therefore crucial to the Placement's success.

Rule 7.6.4 Submissions

21. PGW makes the following submissions in support of its application for a waiver from Rule 7.6.4:
- (a) If RPI or Flett were not a director or associated person of PGW any financial assistance involved in that transaction would be permitted under Rule 7.6.5(a).
 - (b) The policy behind Rule 7.6.5(a) not including financial assistance given to any director of PGW or their associated persons aligns with that for Rules 7.3.5 and 9.2.1.
 - (c) The reasons traversed in the applications relating to Rules 7.3.5 and 9.2.1 apply equally to Rules 7.6.4 and 7.6.5(a).

Rule 7.3.5(a), 7.6.4 and 9.2

22. Rule 7.3.5(a) provides that:
- 7.3.5 Issues Within 15% Limit: An Issuer may issue Equity Securities if:
- (a) the issue is not made in whole or in part to any Director of the Issuer, Associated Person of a Director or Employee (as defined in Rule 7.3.6) of the Issuer; and ...
23. Rule 9.2.1 provides that:
- 9.2 TRANSACTIONS WITH RELATED PARTIES
- 9.2.1 Restriction: 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
 - (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,
- unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.
24. Rule 7.6.4 provides that:
- 7.6.4 Prohibition on Financial Assistance: An Issuer shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Issuer unless the giving of that assistance:
- (a) complies with Rule 7.6.5; or
 - (b) is approved in accordance with Rule 7.6.6.

Decision

25. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PGW a waiver from Rules 7.3.5(a), 7.6.4 and 9.2.1 to enable RPI and

Mr Flett to participate in the Placement and for PGW to enter into the NZS Share Sale transaction on the following conditions:

- (a) The proportion of the total ordinary shares in PGW held by:
 - (i) RPI does not increase as a result of the Placement; and
 - (ii) Mr Flett remains less than 5%.
- (b) The Placement is offered to a range of institutional or habitual investors selected by the lead manager GSJBW, and that range is not reduced as a result of the decision by NZXR to grant this waiver to allow RPI and Mr Flett to participate;
- (c) The terms and conditions on which the Placement is offered to RPI and Mr Flett are (except to the extent that PGW will enter into the NZS Share Sale) identical to the terms and conditions offered to other investors;
- (d) PGW must impose on RPI and Mr Flett as a condition of entry into the NZS Share Sale transaction that, if the shareholder approval in paragraph 25(e) below is not obtained, RPI and Mr Flett agree to re-purchase within 12 months of the meeting, the NZS shares purchased under the NZS Share Sale in the same proportions and at the same price as the NZS Share Sale.
- (e) PGW must at a meeting of shareholders (to be held before 30 November 2008) seek retrospective approval of the NZS Share Sale under Rules 7.6.6 and 9.2.1 (to which Rule 9.3 will apply), and if that approval is not obtained for the entry by PGW into the NZS Share Sale, PGW must exercise its right under the NZS Share Sale transaction referred to in paragraph 25(d) above.
- (f) GSJBW provide a certificate to NZXR that:
 - (i) The allocation of shares in the Placement will be conducted by GSJBW without regard to the relationship between RPI, Mr Flett and PGW and the range of institutional or habitual investors is not reduced as a result of the decision by NZXR to grant this waiver to allow Mr Flett and RPI to participate; and
 - (ii) Any determination by GSJBW of the price of shares issued in the Placement, pursuant to the bookbuild process managed by GSJBW, will not be influenced by the nature of the relationship between RPI, Mr Flett and PGW.
- (g) The Independent Directors of PGW certify to NZXR that:
 - (i) The Placement will be undertaken on an arms' length and commercial basis and that they consider that the Placement and the NZS Share Sale are in the best interests of PGW's shareholders who are not participating in the Placement.
 - (ii) The association between PGW, RPI and Mr Flett did not influence the decision for PGW to undertake the Placement.

- (iii) None of the directors of PGW associated with RPI or Mr Flett himself took part in or influenced the decision to offer participation in the Placement and enter into the NZS Share Sale (other than indicating an interest or a readiness to participate in the Placement which they could do if the NZS Share Sale occurred).
 - (iv) That the participation of RPI and Mr Flett is essential to the completion of the Placement and that failure to complete the Placement would have serious financial consequences for PGW.
- (h) PGW must disclose, in its next half year report, the price paid for shares under the Placement, the details of the NZS Share Sale and if this waiver is published by NZX or relied upon by PGW prior to the publication of the half year report, either a summary of this waiver or a statement that the waiver has been granted and an appropriate cross reference to its website where a summary of the waiver is published and will remain published for a period of 12 months following publication of the half year report.

Reasons

26. In coming to the decision to grant PGW a waiver from Rule 7.3.5(a) NZXR has considered the following matters:
- (a) The purpose of Rule 7.3.5(a) is to prevent the issue of Equity Securities to a Director of the Issuer or Associated Person of a Director of the Issuer unless the terms of that issue are approved by shareholders. The Rule ensures that Directors are not able to exercise their discretion to issue Equity Securities on terms that are unfairly advantageous to them or are prejudicial to the other shareholders of the Issuer.
 - (b) The terms and conditions of the Placement are identical (but for the entry into the NZS Share Sale) for all parties participating. GSJBW must execute a certificate as a condition of this waiver as set out in paragraph 16(d) above.
 - (c) It is also a condition of this waiver that the proportionate shareholding of RPI does not increase as a result of the Placement and that the proportionate interest of Mr Flett does not exceed 5%.
 - (d) The waiver has been granted on the basis that, under the Placement, RPI will not increase its proportionate ordinary shareholding in PGW and Mr Flett's shareholding will remain immaterial.
27. In coming to the decision to grant PGW a waiver from Rule 9.2.1 to conduct the Placement on the proposed terms and enter into the NZS Share Sale NZXR has considered the following matters:
- (a) The purpose of the prohibition in Rule 9.2.1 is to ensure that undue influence is not exercised by a Related Party to cause a transfer of value to a Related Party or to cause entry into transactions on terms that are unfairly favourable to those Related Parties without scrutiny by, and approval of, minorities or other shareholders.

- (b) The participation by RPI and Flett in the Placement is not on the same terms as those placees or shareholders who are not Related Parties due to the NZS Share Sale transaction.
- (c) While satisfied that the personal connections with, or involvement or personal interest of, Related Parties are immaterial or plainly unlikely to have influenced the decision to enter the Placement, NZXR is not satisfied that this is the case for the NZS Share Sale. This NZS Share Sale transaction appears to have been a pre-condition of participation by RPI and Mr Flett in the Placement.
- (d) PGW has advised, and NZXR has no reason not to accept, that RPI and Mr Flett are unable to participate in the Placement if the NZS Share Sale is not concluded and that, without their participation, the Placement cannot be completed. PGW has also advised, and NZXR has no reason not to accept, that that failure to complete the NZS Share Sale will have serious financial consequences for PGW. NZXR is aware of the current challenging market conditions and international liquidity problems.
- (e) NZXR is accordingly willing to grant the waiver that allows the NZS Share Sale to proceed if:
 - (i) the Independent Directors attest to the importance of the Placement in completing the SFF Transaction as set out in the certificates required by this waiver;
 - (ii) The transaction is retrospectively approved by shareholders under Rule 9.2 and, if that approval is not obtained, unwound as set out in the conditions in paragraph 25.

28. In coming to the decision to grant PGW a waiver from Rule 7.6.4, to the extent that the NZS Share Sale constitutes such financial assistance, NZXR has considered the following matters:
- (a) If RPI or Flett were not a director or associated person of PGW any financial assistance involved in that transaction would be permitted under Rule 7.6.5(a).
 - (b) The policy behind Rules 7.6.4 and 7.6.5(a) is similar to the policy underlying Rules 7.3.5(a) and 9.2.1 and NZXR has considered the representations by PGW in relation to those waiver applications and the conditions imposed by NZXR when granting those waivers.
 - (c) That the transaction will be retrospectively approved by shareholders under rule 9.2 and, if that approval is not obtained, unwound as set out in the conditions in paragraph 25.

Confidentiality

29. PGW has requested that this decision to remain confidential if:
- (a) a decision is made by PGW not to proceed with the Placement; or
 - (b) Mr Flett or RPI do not participate in the Placement.

30. NZXR grants this request and will release this decision only when placement of shares to Mr Flett or RPI is confirmed and the Placement itself is publicly announced.

ENDS