



NZX Regulation Decision

AFT Pharmaceuticals Limited (AFT)

Application for a waiver from NZX Main Board Listing Rule
5.2.3

21 December 2015



Waiver from NZX Main Board Listing Rule 5.2.3

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by AFT Pharmaceuticals Limited (“**AFT**”) is complete and accurate in all material respects, NZX Regulation (“**NZXR**”) grants AFT a waiver from Rule 5.2.3 in respect of its ordinary shares for a period of twelve months to the extent this Rule requires AFT to have at least 25% of Shares held by Members of the Public holding at least a Minimum Holding.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the AF Trust Escrow Agreement provides that 15% of the Shares held by AF Trust must be released from escrow six months after AFT is listed and the Escrow Arrangements between AFT and AF Trust and the CRG Funds provide that their holdings are released from escrow once AFT’s preliminary announcement is made for the financial year ending 31 March 2017;
 - b. NZXR receives an undertaking from the AF Trust that it will not increase its holding in AFT during the term of the waiver, otherwise than as a result of an allotment pursuant to an offer or issue of shares that is made pro-rata to all AFT shareholders;
 - c. at least 10% of Shares are held by Members of the Public, with each Member of the Public holding at least a Minimum Holding;
 - d. AFT clearly and prominently discloses this waiver, its conditions, and its implications in AFT’s half year and annual reports, and in any offer documents relating to any offer of Shares undertaken by AFT, during the period of the waiver;
 - e. AFT makes an announcement to the market on the day of its Listing of the results of its Offer, including the number of Members of the Public holding at least a Minimum Holding of Shares and the percentage of Shares held by Members of the Public holding at least a Minimum Holding;
 - f. AFT notifies NZXR as soon as practicable if there is any material reduction to the total number of Members of the Public holding at least a Minimum Holding of Shares, and/or the percentage of Shares held by Members of the Public holding at least a Minimum Holding, as announced by AFT on the days of its Listing;
 - g. AFT consistently monitors the total number of Members of the Public holding Shares and the percentage of Shares held by Members of the Public holding at least a Minimum Holding; and
 - h. AFT provides NZXR with a written quarterly update of the total number of Members of the Public holding Shares holding at least a Minimum Holding and the percentage of Shares held by Members of the Public holding at least a Minimum Holding. The quarterly updates are from the date the waiver is granted, for the period of the waiver. The updates are to be provided to NZXR within ten business days of the end of each quarter.
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 Rule to which this decision relates is set out in Appendix Two to this decision.



5. Capitalised terms that are not defined in the 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. the purpose of Rule 5.2.3 is to promote a liquid market which is important to ensure efficient price setting and to enable shareholders to trade;
 - b. AFT expects that on conclusion of the Offer, between 10.5% and 11.8% of the Shares will be held by Members of the Public, holding at least a Minimum Holding. AFT expects to meet the requirement that 500 Members of the Public hold at least a Minimum Holding. Based on the expected market capitalisation of AFT, this will result in at least \$26.9 million (represented by not less than 9.6 million Shares) being held by Members of the Public, and available for trading. NZXR is satisfied that AFT will maintain a spread of Security holders which is sufficient to ensure a liquid market and that the granting of this waiver will not adversely affect holders of the Shares;
 - c. AFT's application for the waiver, and the implications of the waiver, were disclosed in the product disclosure statement in respect of the Offer. As such, investors under the Offer will have applied for Shares on a fully informed basis as to the likely spread of Shares following quotation. Further, the condition that AFT announce the results of its Offer, including the spread of Shares, will result in a fully informed market;
 - d. while the Escrow Arrangements will initially reduce the number of Shares available for trading, as Shares are released from escrow they will become available for sale. The condition contained in paragraph 2(a) above, provides NZXR comfort that the AF Trust Escrow Agreement will have the effect that at least 25% of the total Shares in AFT are free from escrow and available for sale, six months after AFT's Listing. AFT has submitted, and NZXR has no reason not to accept, that the spread of Shares is likely to increase over time;
 - e. the conditions in paragraphs 2(d) and (e) above will provide access to information about this waiver and its implications for those wishing to trade in, or accept any offer of, Shares during the period of this waiver;
 - f. the conditions contained in paragraphs 2(f), (g) and (h) above require AFT to monitor the spread of Shares and to provide information that will allow NZXR to monitor any material changes in AFT's spread of Shares over the period of the waiver;
 - g. NZXR will have the opportunity to reconsider the waiver 12 months after Listing of AFT, if a waiver is still required. Should the percentage of Shares held by Members of the Public holding at least a Minimum Holding drop below 10% NZXR will have the opportunity to reconsider this waiver; and
 - h. there is precedent for this decision.



Appendix One

1. AFT Pharmaceuticals Limited (“**AFT**”) has applied for Listing and Quotation of its ordinary shares (“**Shares**”) on the NZX Main Board, following an initial public offer by the company (the “**Offer**”).
2. The Offer comprises an offer by AFT of \$30.2 million of new Shares plus oversubscriptions of up to \$4.0 million of new Shares, and a sale by the Atkinson Family Trust (“**AF Trust**”) of \$3.0 million of existing Shares.
3. The principal shareholders of AFT are the AF Trust and funds managed by entities related to CRG, a US-based investment management firm (the “**CRG Funds**”). As at 26 November 2016, AF Trust held 87% of the shares in AFT and the CRG Funds held approximately 9% of the shares in AFT, in aggregate.
4. The shares held by the CRG Funds are preferred shares and will convert to Shares on completion of the Offer and AFT Listing on the NZX Main Board.
5. On 26 November 2015, the CRG Funds entered into a subscription agreement with AFT to subscribe for 5.4 million Shares under a US private placement as part of the Offer (“**Subscription Agreement**”). Accordingly, following subscription of these Shares, the CRG Funds will hold between 13.3% to 13.5% of the Shares (depending on oversubscriptions).
6. On conclusion of the Offer, the AF Trust will hold between 74.9% and 76.0% of the Shares (depending on oversubscriptions).
7. On 26 November 2015, AF Trust and the CRG Funds entered into escrow agreements with AFT (together the “**Escrow Arrangements**”).
8. The escrow arrangement entered into by AF Trust provides that:
 - a. 15% of the Shares held by the AF Trust will be released from escrow six months after AFT is Listed; and
 - b. subject to a. above, the remaining Shares held by AF Trust will be released from escrow, so that they are free to be sold, once AFT’s preliminary announcement is made for the financial year ending 31 March 2017.

(“**AF Trust Escrow Agreement**”)
9. The escrow agreement with the CRG Funds provides that the Shares held by CRG Funds will be released from escrow, so that they are free to be sold, once AFT’s preliminary announcement is made for the financial year ending 31 March 2017 (“**CRG Escrow Agreement**”).



Appendix Two

Rule 5.2.3

5.2.3 A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

