



# NZX Regulation Decision

AFT Pharmaceuticals Limited (“AFT”)

Application for a waiver from NZX Main Board Listing Rule  
5.2.3

21 December 2016



# 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 is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants AFT a waiver from NZX Main Board Rule (**Rule**) 5.2.3 in respect of its ordinary shares for a period of 12 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. 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;
  - b. at least 10% of shares are held by more than 500 Members of the Public, with each Member of the Public holding at least a Minimum Holding;
  - c. 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;
  - d. 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;
  - e. 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; and
  - f. 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.
  - g. AFT provides NZXR, with the second quarterly update provided under paragraph 2(f), an update on:
    - i. the proposed initiatives AFT intends to undertake to materially increase the percentage of shares held by Members of the Public before the expiry of the waiver; and
    - ii. the intentions of the parties under the Escrow Arrangements in respect of their ongoing holding or sale of any of the shares released from escrow during the waiver period (following engagement by AFT with such parties).
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. Since listing on 22 December 2015, the number of Members of the Public holding at least a minimum holding in AFT's ordinary shares has increased;
  - b. the Original Waiver and its implications were disclosed in the Offering Documents for AFT's ordinary shares when AFT listed last year. 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;
  - c. while the Escrow Arrangements initially reduced the number of shares available for trading, as shares are released from escrow they will become available for sale. Further, the condition in paragraph 2(g) will require AFT to actively consider, and engage with shareholders currently subject to escrow restrictions, opportunities to materially increase the percentage of shares held by Members of the Public, prior to the expiration of this waiver;
  - d. the conditions in paragraph 2(c) 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;
  - e. the conditions contained in paragraphs 2(d), (e) and (f) 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;
  - f. NZXR will have the opportunity to reconsider the waiver in 12 months. 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
  - g. there is precedent for this decision.



## Appendix One

1. AFT Pharmaceuticals Limited (**AFT**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. On 21 December 2015, NZXR granted AFT a waiver from the requirements of Rule 5.2.3 in respect of its ordinary shares for a period of 12 months from Quotation (**Original Waiver**). A summary of the Original Waiver and its implications were included in the Offering Documents for the AFT shares.
3. As at 30 November 2016, there were 836 Members of the Public holding approximately 11.23% of AFT ordinary shares on issue. AFT, therefore, do not meet the requirement that 25% of its ordinary shares are held by Members of the Public as per Rule 5.2.3. AFT has sought a waiver to allow AFT to meet a spread requirement lower than the Rule.
4. The Atkinson Family Trust (**AF Trust**) and funds managed by entities related to CRG, a US-based investment management firm (the **CRG Funds**), are the principal shareholders of AFT. As at 30 November 2016, the AF Trust and CRG Funds together hold 88.77% of AFT ordinary shares.
5. The AF Trust, the CRG Funds and a number of directors and senior managers of AFT are party to escrow agreements with AFT (together the **Escrow Arrangements**).
6. On 23 June 2016, six months after AFT Listed, 15% of shares held by the AF Trust were released from escrow, as provided by the AF Trust's Escrow Arrangement.
7. The remaining shares under the Escrow Arrangements, 72.336% of AFT shares on issue, will be released from escrow, so that they are free to be sold, the first business day after AFT's preliminary announcement is made for the financial year ending 31 March 2017.



## 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.

