

NZX Regulation Decision
Life Pharmacy Limited ("LPL")
Application for waiver from NZSX Listing Rules ("Rules") 3.3.5(a), 3.3.7 and 3.3.8

Background

1. On 19 June 2007, LPL announced that it had entered into a subscription agreement and option deed ("Agreements") with LPL Trustee Limited ("Trust"), a company nominated by Segoura Limited (both of which companies are controlled by Andrew Bagnall).

2. Under the Agreements, the Trust will subscribe \$5.25 million for 7 million ordinary shares in LPL at an initial price of \$0.75 per share ("Placement"). Further under the option deed, the Trust is entitled to subscribe for additional shares to enable the Trust to hold up to 50.01% (including the 7 million shares to be issued to the Trust) of the ordinary shares in LPL ("Option"). The Option is to endure for two years and has an exercise price of \$0.75 in year one and \$0.825 in year two.

3. The Agreements are conditional (amongst other things) on:

(a) LPL shareholders approving by ordinary resolution both the Placement and the Option;

(b) the Trust being entitled to appoint up to two directors to the board of LPL ("Trust Directors") and;

(c) the Trust Directors being exempt from removal by an ordinary resolution of LPL shareholders pursuant to Rule 3.3.7 and the requirement for retirement by rotation pursuant to Rule 3.3.8.

4. LPL currently has five directors on its board and is permitted to have a maximum of 8 directors. Under the Agreements, the proportion which the Trust Directors will bear to the total number of directors will be 28.57% (if a 7 member board) or 25% (if an 8 member board). This exceeds the proportion of total votes held by the Trust, as required by Rule 3.3.5(a).

Application

5. LPL has approached NZX Regulation ("NZXR") seeking a waiver from Rule 3.3.5(a) to allow the Trust to appoint two directors to the board of LPL, thereby exceeding the proportion of total votes held by the Trust for two years.

6. Further, LPL is seeking a waiver from Rules 3.3.7 and 3.3.8, such that the Trust Directors are not subject to removal by an ordinary resolution of LPL or retirement by rotation for a period of two years.

7. In support of its application, LPL has submitted the following:

(a) The waiver from Rule 3.3.5(a) applies only while the Trust continues to hold the 7 million Placement shares, provided that it continues to hold at least 10.1% of LPL issued share capital;

(b) The waiver from Rule 3.3.5(a) applies only for a period of two years;

(c) The right to appoint two directors is an inherent part and condition precedent of the Agreements. Therefore without the waiver, the Trust has the option to not proceed with the investment;

(d) The Trust's commercial rationale for wanting the director appointment rights is that approximately 70% of LPL's share capital is held by five key shareholders who exercise considerable control over LPL and its Board. The trust believes that LPL would benefit from having a higher representation on the board that is not associated with those five shareholders;

(e) The removal of the Trust Directors should also be within the control of the Trust, otherwise the appointment rights have little practical effect; and

(f) The Agreements and accompanying conditions are subject to shareholder approval. Therefore the waivers give LPL shareholders the opportunity to express their view on the merits of the proposed transactions.

Relevant Rules

8. Rule 3.3.5(a) provides:

Right of Security Holder to Appoint: The Constitution may give a Security holder the right to appoint Directors, so long as:

(a) the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the Issuer attaching to Securities held by the appointer;

9. Rule 3.3.7 provides:

Removal from Office: All Directors (other than a Director appointed pursuant to Rule 3.3.5) shall be subject to removal from office as Director by Ordinary Resolution of the Issuer.

10. Rule 3.3.8 provides:

Rotation: Subject to Rule 3.3.9, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.

Decision

11. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants LPL a waiver from Rules 3.3.5(a), 3.3.7 and 3.3.8 on the conditions that:

(a) LPL shareholders approve the matters that require waivers from the Rules;

(b) The waiver will expire after two years from the date of allotment of the Placement shares;

(c) The Trust does not decrease its holding in LPL below 19% except by way of dilution due to the issue of shares, in which case it would not go below 10.1%.

Reasons

11. In coming to the decision to grant LPL the waivers from Rules 3.3.5(a), 3.3.7 and 3.3.8, NZXR has considered the following matters:

(a) While there is no direct precedent for the waiver from Rule 3.3.5(a), the Agreements and accompanying conditions are subject to shareholder approval. Therefore the waivers simply give LPL shareholders the opportunity to express their view on the merits of the proposed transactions.

(b) The Trust is entitled under the Option to subscribe for up to 50.01% of the ordinary shares in LPL. It is therefore likely that the circumstances resulting in a need for a waiver from Rule 3.3.5(a) will not last long.

(c) The Trust's commercial rationale for wanting the director appointment rights is that approximately 70% of LPL's share capital is held by five key shareholders who exercise considerable control over LPL and its Board. The Trust believes that LPL would benefit from having a higher representation on the board who is not associated with those five shareholders.

(d) The waiver will expire after two years from the date of allotment of the Placement shares, and during this period it is likely that the Trust will increase its proportion of shareholding in LPL. NZXR has given particular weight to the limited time period and would have declined a waiver for an extended time period.