



18 October 2005

NZX Regulation Decision
The Warehouse Group Limited
Waiver from NZSX Listing Rule 7.6.6

Background

1. The Warehouse Group Limited (“WHS”) set up an Executive Share Scheme (“Scheme”) in 2004 after obtaining shareholder approval. Pursuant to the terms of the Scheme, selected executive employees or executive directors of WHS or any subsidiary of WHS (“Executive Employees”) can be issued conditional rights to be transferred ordinary shares in WHS (“Shares”) at a future date. Such rights are conditional on the achievement of certain pre-determined performance criteria. No consideration is payable by Executive Employees upon the issue of conditional rights or upon the allocation and transfer of Shares on the exercise of such rights. The trustee of the Scheme is The Warehouse Management Trustee Company No.2 Limited (“Trustee”).
2. At its 2005 annual meeting WHS intends to seek shareholder approval to the issue of further conditional rights to acquire up to a maximum of 2,000,000 Shares under the Scheme in 2006. In connection with the issue of further rights, WHS intends to provide financial assistance to the Trustee to purchase the Shares in connection with the Scheme. WHS intends to provide financial assistance to the Trustee by way of a loan of up to a maximum value of \$5.1 million in 2006 (“Financial Assistance”).

Application

3. WHS has applied to NZX Regulation (“NZXR”) seeking a waiver from the timing requirements of NZSX Listing Rule (“Rule”) 7.6.6 to enable WHS to provide the Financial Assistance to the Trustee within a twelve month period following the approval of shareholders.
4. In support of its application, WHS submits:
 - a. Under the terms of the Scheme, offers cannot be made to Executive Employees until around September and October in each year when the company can assess its results for the end of the financial year.

Accordingly, the amount of Financial Assistance to be provided to the Trustee can not be calculated until around September or October each year.

- b. The number of conditional rights in Shares that will be offered under the Scheme will be based on a maximum dollar value divided by the market value of the Shares calculated two business days prior to the date of offer (“Offer Date Price”). Accordingly, the Financial Assistance will need to be provided to the Trustee as close as possible to the date of offer to ensure that the Trustee is able to purchase the relevant number of Shares at or about Offer Date Price.
- c. The purchase of the Shares by the Trustee will need to be made in accordance with WHS’s insider trading policy.

Rule 7.6.6

- 5. Rule 7.6.6 restricts the provision of financial assistance by WHS to six months from the date of approval by shareholders
- 6. Rule 7.6.6 provides that:

“An Issuer may acquire Equity Securities under Rule 7.6.1(d) or redeem Equity Securities under Rule 7.6.3(e), or give financial assistance under Rule 7.6.4(b), if the precise terms and conditions of the specific proposal (the “Proposal”) to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements are materially affected in a similar way by the Proposal. Any such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.”

Decision

- 7. On the basis that the information provided to NZXR is complete and accurate in all material respects NZXR grants WHS a waiver from Rule 7.6.6 to the extent necessary to allow WHS to provide Financial Assistance to the Trustee within a twelve month period following the approval of shareholders. This waiver is granted subject to the conditions that:
 - a. WHS obtains shareholder approval of the precise terms and conditions of the Financial Assistance for the duration of the Scheme.
 - b. This waiver and its effect is disclosed in WHS’s half year and annual reports for the period in which it is in force.

Reasons

8. NZXR considers that, provided shareholders are fully informed of the terms of the Scheme for which their approval is sought, the policy of the Rule will not be infringed. Given that a notice of meeting setting out terms of the share scheme would be distributed to all shareholders and a condition of the waiver required additional disclosure to shareholders concerning the effect of the waiver or such approval by shareholders, NZXR is satisfied at the level of disclosure.
9. There is precedent for granting waivers from Rule 7.6.6.

General

10. NZXR notes that in its recent consultation paper on the proposed amendments to the Rules, one proposal is to extend the period during which Financial Assistance can be given from 6 to 12 months from the date of shareholder approval. In a recent waiver decision NZXR acknowledged the similarities in rationale between Rules 7.3.2 and 7.6.6 and granted a waiver from the requirement in Rule 7.6.6 to complete the financial assistance within 6 months of the authorising resolution.

ENDS.