

22 September 2005

NZX Regulation Decision
The Warehouse Group Limited
Application for Waiver from Listing Rule 9.2.1

Background

1. The Warehouse Group Limited (“WHS”) is a company that is Listed on the NZSX market.
2. WHS is in discussions with a number of parties regarding the possible sale of its Australian business (“Australian Business”). One proposal involves the sale of the Australian Business (probably by way of sale of the assets of the Australian Business by The Warehouse Group (Australia) Pty Limited (“TWAL”)) ("**Proposed Transaction**") to an Australian special purpose vehicle ("Newco") which will be incorporated by one or more private equity investors ("PEI") for the purpose of undertaking the Proposed Transaction. The discussions include Newco acquiring the Australian Business and another similar business to form a new discount variety chain which will be managed by Newco with various service agreements in relation to information technology, trade marks and procurement services to be entered into between WHS and Newco.
3. Ian Tsicalas is a director of WHS and the CEO of TWAL. It is proposed that if the Proposed Transaction were to proceed, Mr Tsicalas would become CEO of Newco and may be entitled to a direct and indirect equity interest in Newco (including the option for Mr Tsicalas to buy shares in Newco and/or be issued with a form of convertible security, for example optional convertible notes). If this were to occur Mr Tsicalas will resign from his position as a director of WHS and CEO of TWAL prior to commencing employment with Newco. The availability of Mr Tsicalas as CEO of Newco is likely to be a condition of completion of the Proposed Transaction.
4. The value of the Australian Business exceeds 5% of the Average Market Capitalisation of WHS.

Application

5. WHS has sought a waiver from Listing Rule 9.2.1 to enable it to enter into a transaction with Newco to sell the Australian Business without seeking shareholder approval.
6. In support of the application WHS submits that:
 - a. Proposed Transaction was recommended to the WHS Board by WHS CEO and Managing Director, Ian Morrice, who, together with WHS Chief Financial Officer Luke Bunt, has been involved in some high level negotiations with the PEIs and representatives of other parties.
 - b. The negotiation of the Proposed Transaction is being conducted with the PEIs by way of a competitive arms length bidding process.

- c. Newco has not yet been formed and will not be formed until the agreement to enter into the Proposed Transaction has been completed and is in the process of being implemented.
- d. Mr Tsicalas has not been involved in any of the negotiations with any of the PEIs and has no pre-existing relationship with any of these parties other than by virtue of Mr Tsicalas encountering some of the PEIs and their officers in other roles that he has held prior to joining WHS.
- e. That Mr Tscalas's personal interest is immaterial and has not influenced the promotion of the proposal to enter into the Proposed Transaction or its terms and conditions. To avoid the possibility of any such influence, Mr Tsicalas will be excluded from all WHS Board discussions relating to the Proposed Transaction if and when one or more of the PEIs make a firm offer for the Australian Business.
- f. The applicant proposed that prior to WHS proceeding with the Proposed Transaction, WHS will have the independent directors of WHS who vote in favour of entering into the agreement certify to NZX that:
 - i. the decision to enter into the transaction for the sale of the Australian Business was not influenced by any relationship (actual or potential) between Ian Tsicalas and the PEIs or Newco;
 - ii. no fees are being paid directly or indirectly to Mr Tsicalas in respect of the Proposed Transaction;
 - iii. the sale of the Australian Business is in the best interests of the shareholders of WHS;
 - iv. to the best of their knowledge, Mr Tscialas did not provide information to Newco about the WHS business other than as authorised by WHS in conjunction with the sales process or properly provided in his capacity as Chief Executive Officer of TWAL; and
 - v. the negotiation with the successful PEI was conducted in an open, competitive and arm's length manner.

Listing Rule 9.2.1

- 7. Listing Rule 9.2.1 requires shareholders of an Issuer to approve by ordinary resolution material transactions entered into by that Issuer with Related Parties to that Issuer. This requirement is intended to create openness in the Issuer's relationships with its Related Parties and is intended to capture transactions where a party may gain (or be perceived to gain) favourable consideration because of that party's relationship with the Issuer.
- 8. Listing Rule 9.2.1 provides:

“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:

- (c) that Material Transaction is an employment agreement with a natural person who is not a director within the meaning of section 126 of the Companies Act 1993 of the Issuer or any of its Subsidiaries; or
- (d) the total value of that Material Transaction is less than \$250,000; or
- (e) that Material Transaction is approved by an Ordinary Resolution of the Issuer.

9. Footnote 1 to Listing Rule 9.2.1 provides:

“NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.”

Decision

10. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR has decided to grant WHS a waiver from Listing Rule 9.2.1 to the extent that that rule may require shareholder approval of the transaction by virtue of the relationship between Mr Tsicalas and Newco. NZXR has granted this waiver on the conditions that:
- a. Prior to WHS proceeding with the Proposed Transaction, WHS deliver to NZX a certificate signed by all the WHS directors (other than Mr Tsicalas) that:
 - i. the decision to enter into the transaction for the sale of the Australian Business was not influenced by Mr Tscalas or any relationship (actual or potential) between Ian Tsicalas and the PEIs or Newco;
 - ii. From the date of this waiver decision, Mr Tsicalas will be excluded from all WHS board discussions relating to the Proposed Transaction;
 - iii. no fees are being paid directly or indirectly to Mr Tsicalas in respect of the Proposed Transaction;
 - iv. the sale of the Australian Business is in the best interests of the shareholders of WHS;
 - v. to the best of their knowledge, Mr Tscialas did not provide information to Newco about the WHS business other than as authorised by WHS in conjunction with the sales process or properly provided in his capacity as CEO of TWAL; and
 - vi. the negotiation with the successful PEI was conducted in an open, competitive and arm's length manner.
 - b. There is no material change to the details of the transaction from that provided to NZXR in the application made by WHS for this waiver.

Reasons

11. NZXR believes that Listing Rule 9.2.1 is relevant to the proposed Transaction in two respects:
 - a. By operation of Listing Rules 1.3.2 and 1.3.3(e) Mr Tsicalas will become an associated person of Newco by virtue of being likely to become party in the future to an arrangement or relationship whereby Mr Tsicalas will influence Newco. Newco becomes an associated person of Mr Tsicalas by operation of Listing Rule 1.3.5, and Newco becomes a Related Party of WHS by operation of Listing Rule 9.2.3(c), being and associated person of a director of WHS; and
 - b. If the entry into of an employment contract between Mr Tsicalas and Newco is a condition of the agreement entered into in respect of the Proposed Transaction, that employment contract will be a linked or related transaction to the Proposed Transaction. Mr Tsicalas is a Related Party of WHS by virtue of his position as Director of WHS and CEO of TWAL, and for the purposes of Listing Rule 9.1.1 is treated as a party to the agreement entered into in respect of the Proposed Transaction.

12. In coming to the decision to grant WHS a waiver from Listing Rule 9.2.1, NZXR has considered that:
 - a. The fact that Newco becomes a Related Party of WHS arises by the technical operation of the listing rules, and arises solely out of the possible future relationship between Mt Tsicalas and Newco.
 - b. Newco will not be incorporated until after the agreement for the Proposed Transaction has been accepted by WHS. It is accordingly impossible for Newco to influence WHS in its entry into that agreement.
 - c. The applicant has satisfied NZXR that footnote 1 to Listing Rule 9.2.1 applies. That is to say that on the basis of the information provided NZXR is satisfied that the personal connections with, or involvement or personal interest of the Related Parties are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.

Timing and Confidentiality

13. NZXR determined that the application for waiver and the decision in relation to that application should remain confidential unless and until the agreement relating to the Proposed Transaction is entered into and has agreed to delay publication of this decision until such time.

ENDS