



5 February 2007

NZX Regulation Decision
The Warehouse Group Limited
Application for Waivers from NZSX Listing Rules 7.3.2(b) and 7.6.6A(b)

Background

1. The Warehouse Group Limited (“WHS”) is incorporated in New Zealand and is listed on the NZSX and ASX markets. WHS operates an employee share scheme pursuant to which selected executive employees (“Executive Employees”) are offered rights (“Conditional Rights”) to acquire listed ordinary shares (“Shares”) of WHS at the end of certain pre-determined periods (“Scheme”). The terms of this Scheme are contained in a deed in respect of The Warehouse Group Limited Executive Share Scheme dated 7 September 2005 (“Deed”) which is proposed to be amended at the upcoming special meeting of WHS shareholders scheduled to be held on 23 March 2007.
2. WHS has in the past sought shareholder approval for the issue of Conditional Rights to Executive Employees under the Scheme, including issues to certain Directors in their capacity as Executive Employees, and for the provision of financial assistance to The Warehouse Management Trustee Company No.2 Limited as trustee of the Scheme (“Trustee”) to enable the Trustee to purchase Shares for the purposes of the Scheme. Such shareholder approval was obtained at the annual meetings of WHS in 2004 and 2005.
3. WHS intends to issue further Conditional Rights under the Scheme as follows:
 - (a) **2006/2007 financial year:** in the trading window following the release of WHS’s half-year results in March and April 2007;
 - (b) **2007/2008 financial year:** in the trading window following the release of WHS’s full-year results in September and October 2007;
 - (c) **2008/2009 financial year:** in the trading window following the release of WHS’s full-year results in September and October 2008; and
 - (d) **2009/2010 financial year:** in the trading window following the release of WHS’s full-year results in September and October 2009.
4. The Deed contains restrictions on the number of Shares in respect of which Conditional Rights may be issued. Conditional Rights in respect of a maximum of 2,000,000 Shares of WHS may be issued under the Scheme in any financial year of WHS.
5. It is intended that Ian Morrice, Group Chief Executive and Managing Director of

- WHS will be invited to participate in the issue of the Conditional Rights under the Scheme. WHS has advised NZX that the Conditional Rights which will be offered to Ian Morrice will likely equate to 60 percent of his base salary (totalling approximately \$819,000), that there are approximately 40 Executive Employees in total who will be offered Conditional Rights under the Scheme and that the likely proportion of the value to be offered to Ian Morrice under the Scheme (relative to other executives) is approximately 16%.
6. WHS also intends to provide financial assistance to the Trustee to enable the Trustee to purchase the relevant number of Shares associated with the issue of the Conditional Rights in the particular financial year.
 7. WHS intends to seek shareholder approval at a special meeting of WHS shareholders to be held on or about 23 March 2007 for:
 - (a) the issue of Conditional Rights, as set out in paragraphs 3 to 5 above (pursuant to NZSX Listing Rule (“Rule”) 7.3.1(a));
 - (b) the provision of ongoing financial assistance to the Trustee, as set out in paragraph 6 above (pursuant to Rule 7.6.6);
 - (c) the acquisition of Conditional Rights by Ian Morrice within prescribed limits (pursuant to ASX Listing Rule 10.14 and 10.15A). These limits will be set out in the notice of meeting for the proposed 23 March 2007 special meeting (“Notice of Meeting”); and
 - (d) the issue of securities under the Scheme as an exception to ASX Listing Rule 7.1 (pursuant to ASX Listing Rule 7.2 (exception 9)).
 8. Full details of the Scheme and a summary of the terms of the Deed will be provided to shareholders in the Notice of Meeting and accompanying Appraisal Report.
 9. Pursuant to Rule 7.3.1(a), WHS intends to seek shareholder approval of the precise terms and conditions of the proposal to issue Conditional Rights in the financial years specified in paragraph 7 above. Rule 7.3.1(a) requires that such issues be completed within the time specified in Rule 7.3.2. As Ian Morrice, a Director of WHS, will be participating in the issue of the Conditional Rights under the Scheme, WHS must comply with the timing requirements in Rule 7.3.2(b) and the issue of the Conditional Rights must occur within 12 months after the passing of the shareholder resolutions approving such issue of the Conditional Rights.
 10. Pursuant to Rule 7.6.6, WHS intends to seek shareholder approval of the precise terms and conditions of the proposal to give ongoing financial assistance to the Trustee in connection with the purchase of Shares associated with the issue of the Conditional Rights set out in paragraph 7 above. As financial assistance will be provided to the Trustee, WHS must comply with the timing requirements in Rule 7.6.6A(b) and the provision of financial assistance must occur within 12 months after the passing of the shareholder resolutions authorising the provision of financial assistance. This is because the Trustee does not fall within the definition of “Employee” in Rule 7.3.6 as the Trustee is effectively acting as trustee for WHS – the Executive Employees having no legal or beneficial ownership of the Shares held by the Trustee.

11. WHS has supplied to NZX a draft notice of meeting to consider the issue of Conditional Rights to Executive Employees and the provision of financial assistance to the Trustee and a copy of the proposed Deed to be approved by WHS shareholders at the upcoming special meeting.

Application

12. WHS seeks from NZX Regulation (“NZXR”) waivers from the timing requirements in Rules 7.3.2(b) and 7.6.6A(b) to the extent that the timing requirements of Rules 7.3.2(a) and 7.6.6A(a) respectively will apply to the issue of the Conditional Rights to Executive Employees pursuant to the Scheme and the provision of financial assistance to the Trustee for the purposes of the Scheme as described above.
13. In support of its application, WHS has made the following submissions:
 - (a) Rules 7.3.2 and 7.6.6A are analogous in the sense that they require an issue to occur or financial assistance to be given within similar time periods from the passing of shareholder resolutions. Both Rules distinguish between transactions involving Employees and all other transactions. The waivers being sought will allow WHS to comply with the time periods applying to issue of securities, or the provision of financial assistance, to employees. It is intended that the issue of Conditional Rights to Executive Employees and the provision of financial assistance to the Trustee will occur within 36 months of the passing of the relevant resolutions of shareholders on or about 23 March 2007 (that is, by on or about 23 March 2010).
 - (b) In relation to the issue of Conditional Rights to Executive Employees, the sole reason that WHS is not able to rely on Rule 7.3.2(a) is because Conditional Rights are to be issued to Ian Morrice, Group Chief Executive and Managing Director of WHS. However, Ian Morrice will only be issued such Conditional Rights in his capacity as an Executive Employee of WHS. No other Director of WHS is entitled to participate in the Scheme.
 - (c) As is the case for all other Executive Employees who will be invited to participate in the Scheme:
 - (i) the terms and conditions of issue applying to the Conditional Rights to be issued to Ian Morrice are those set out in the Deed; and
 - (ii) Ian Morrice will be offered Conditional Rights commensurate with his employment status; in his case, as Group Chief Executive.
 - (d) Accordingly, participation by Ian Morrice in the Scheme is determined by eligibility criteria applying to other Executive Employees which is not influenced by his position as a Director of WHS and the terms and conditions of his participation in the Scheme will be the same as those applying to other Executive Employees.
 - (e) In addition, WHS will seek shareholder approval of:
 - (i) the terms and conditions of the issue of Conditional Rights to Executive Employees. As noted above, a summary of the terms and

conditions of the Conditional Rights and of the Deed will be included in the Notice of Meeting;

- (ii) the maximum number of Shares in respect of which Conditional Rights will be issued under the Scheme in each relevant financial year. As noted in paragraph 4 above, in accordance with the Deed, Conditional Rights in respect of an aggregate maximum of 2,000,000 Shares may be offered to Executive Employees in each financial year. Under the Deed this maximum limit may only be altered if there is a consolidation or subdivision of Shares, Share buyback, or other reconstruction of, or adjustment to the Shares or the Share structure of WHS; and
 - (iii) the maximum number of Shares in respect of which Conditional Rights will be issued to Ian Morrice in each financial year. This latter approval is required by ASX Listing Rules 10.14 and 10.15A. ASX Listing Rule 10.15A permits an issue to occur no later than 3 years after the meeting of WHS at which shareholder approval is obtained.
- (f) Shareholders will, therefore, be asked to approve the relevant resolutions with knowledge of the waiver being sought. They will receive a full explanation of the terms and conditions of the issue of Conditional Rights to Executive Employees generally and to Ian Morrice in particular. If in future WHS seeks to issue Conditional Rights to any other Director, shareholder approval of such issue would be required at such time (ASX Listing Rule 10.15A requires that a statement to this effect be included in the Notice of Meeting). In addition, shareholders will be informed on an ongoing basis of the issue of Conditional Rights under the Scheme. In particular, ASX Listing Rule 10.15A requires that future annual reports of WHS include details of any Conditional Rights issued under the Scheme for which approval was sought (a statement to this effect must be included in the Notice of Meeting). The acquisition of Conditional Rights by Executive Employees, including Ian Morrice, will generally be required to be disclosed pursuant to the Securities Markets Act 1988.
- (g) Previous waiver decisions have noted that the policy rationale of Rule 7.3.2 is to prevent an issuer from having shareholders approve an issue and then delay the actual issue indefinitely until a favourable point in time. However, the waiver being sought is not open-ended but is limited to the issue of Conditional Rights within a 36 month period from the date upon which the relevant shareholder resolutions are passed. The timing of the issue of Conditional Rights is also subject to insider trading laws in both New Zealand and Australia and WHS currently operates an insider trading policy which permits trading in securities within 6 week trading windows following the release of the WHS's full-year and half-year results. Accordingly, the issue of Conditional Rights must occur within such trading windows at points in time when the market is fully informed. The waiver sought would not appear to be in conflict with the policy rationale of Rule 7.3.2.
- (h) In relation to the provision of financial assistance to the Trustee, the sole purpose of such financial assistance is to enable the Trustee to purchase Shares for the purposes of the Scheme for later transfer to Executive Employees. The provision of financial assistance in connection with an

employee share scheme would appear to be consistent with the spirit of Rule 7.6.6A(a).

- (i) Shareholder approval will be sought for the provision of financial assistance to the Trustee in connection with the issue of Conditional Rights under the Scheme in each relevant financial year. In each relevant financial year, such financial assistance will have an upper limit equivalent to the dollar value of the aggregate maximum number of Shares in respect of which Conditional Rights may be issued (that is, the dollar value of a maximum of 2,000,000 Shares). This will be set out in the Notice of Meeting.
- (j) Shareholders will be asked to approve the provision of financial assistance with full knowledge of the waiver sought. They will also receive a full explanation of the terms and conditions of the financial assistance which will be provided by way of a loan to the Trustee under a loan agreement. In addition, at the time of the provision of the financial assistance to the Trustee, shareholders will also receive a disclosure document pursuant to the Companies Act 1993 which will set out full details of such financial assistance.
- (k) Previous waiver decisions have observed that the policy rationale of Rule 7.6.6 is to protect shareholders in the event of a significant change in circumstances from the time approval is given to the time the actual assistance is given. However, WHS is seeking a waiver which would permit it to provide financial assistance within the time period applying to transactions with “Employees”: it is not an open-ended waiver. Moreover, if circumstances do significantly alter then it is unlikely that performance targets for the Conditional Rights (increase in WHS’s Share price and operational and financial performance of business units and of WHS, respectively, and individual performance targets), will be met. In such circumstances any financial assistance already paid to the Trustee and any Shares already purchased will be subject to the terms of the loan agreement.
- (l) A key feature of the Scheme is to align the interests of shareholders and Executive Employees. Shares are only transferable to the extent that the performance targets are met, which is in the interests of existing shareholders. In addition, the Scheme does not result in the dilution of shareholder rights as Shares purchased for the purposes of the Scheme are purchased on-market. Ongoing protection is afforded to shareholders by the provisions of the Companies Act 1993 as, immediately prior to the issue of Conditional Rights or the provision of financial assistance to the Trustee, the Directors of WHS must have regard to the considerations set out in sections 49, 76 and 78, respectively, of that Act. Those provisions require the Directors to determine that the issue of Conditional Rights or the provision of financial assistance, as the case may be, is fair and reasonable to WHS.

Applicable Rules

14. Rule 7.3.2 provides:

“Time Limit: An issue authorised by resolutions passed pursuant to Rule 7.3.1(a) shall be completed:

(a) if that issue is made solely to Employees (as defined in Rule 7.3.6) within 36 months after the passing of those resolutions; or

(b) in all other circumstances, within twelve months after the passing of those resolutions.

(Amended 1/5/04)”

15. Rule 7.6.6A provides:

“Time Limit: A proposal authorised by resolutions passed pursuant to Rule 7.6.6 shall be completed:

(a) if that Proposal is transacted solely to Employees (as defined in Rule 7.3.6) within 36 months after the passing of those resolutions; or

(b) in all other circumstances, within twelve months after the passing of those resolutions.

(Amended 10/05/06)”

16. The footnote to Rules 7.3.7 and 7.6.7 are identical and provide:

“NZX may waive the prohibition on a Director or Associated Person having a beneficial interest in the scheme in question if NZX is satisfied that the beneficial interest is determined by criteria applying to employees generally, and would not, if all relevant factors were publicly disclosed, reasonably be seen as being materially influenced by the relevant relationships.”

Decision

17. On the basis that the information provided to NZXR is complete and accurate in all material respects, NZXR grants WHS waivers from Rules 7.3.2(b) and 7.6.6A(b) to the extent necessary to allow WHS to issue Conditional Rights to Executive Employees and provide financial assistance to the Trustee within a 36 month period following the date of approval of shareholders. These waivers are granted subject to the conditions that:

- (a) WHS obtains shareholder approval of the precise terms and conditions of the issue of Conditional Rights to Executive Employees and the provision of financial assistance to the Trustee for the duration of the Scheme; and
- (b) These waivers and their effect are disclosed in WHS's half year and annual reports for the period in which they are in force.

Reasons

18. In coming to this decision, NZXR has considered the following:

- (a) WHS intends to seek shareholder approval for the issue of the Conditional Rights and the provision of the financial assistance and an Appraisal Report

will accompany the Notice of Meeting pursuant to Rule 6.2.2(c).

- (b) Given that the Notice of Meeting and accompanying Appraisal Report setting out the terms of the Scheme will be distributed to all shareholders and a condition of these waivers requires additional disclosure to shareholders concerning the effect of the waivers, NZXR is satisfied at the level of disclosure.
 - (c) It is only because one of approximately 40 participants in the Scheme (representing approximately 16% of the value of the Scheme) does not fit within the definition of Employee in Rule 7.3.6 that the Scheme is caught by Rules 7.3.2(b) and 7.6.6A(b). The one person will, nevertheless, participate in the Scheme in his capacity as an Executive Employee on the same basis as the other Executive Employees. In that light, the waivers are not open ended, but will merely allow the Scheme to incorporate Mr Morrice in his capacity as an Executive Employee on the same basis as other Executive Employees participating in the Scheme and function as intended. Therefore, analogous to the footnote to Rules 7.3.7 and 7.6.7, NZXR is satisfied that the beneficial interest of Mr Morrice in the Scheme is determined by criteria applying to Executive Employees generally, and would not, if all relevant factors were publicly disclosed, reasonably be seen as being materially influenced by his position as a Director of WHS.
 - (d) Upon the issue of the Conditional Rights to the Executive Employees and the provision of financial assistance to the Trustee, the Directors of WHS must have regard to the provisions of sections 49, 76 and 78 of the Companies Act 1993.
19. NZXR accepts that in the present circumstances, a waiver would not undermine the purpose and spirit of Rules 7.3.2(b) or 7.6.6A(b) being to prevent an issuer from having shareholders approve an Issue of Securities and provision of financial assistance then delay the actual issue indefinitely until a particularly favourable point in time.

Publication

20. No application has been made in respect of confidentiality of the application and the decision in respect of the application. Accordingly NZXR will publish this decision in accordance with Rules 1.7.2 and 1.7.4.

ENDS