



# NZX Regulation Decision

Mowbray Collectables Limited (MOW)

Application for a waiver from NZX Main Board Listing Rule  
9.2.5(b)

9 June 2015



## Waiver from NZX Main Board Listing Rule 9.2.5(b)

### Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Mowbray Collectables Limited (“**MOW**”) is complete and accurate in all material respects, NZX Regulation (“**NZXR**”) grants MOW a waiver from NZX Main Board Listing Rule 9.2.5(b) to the extent that it requires MOW to prepare an Appraisal Report in relation to the sale of MBL and WPC to the Purchaser.
2. The waiver in paragraph 1 above is provided on the conditions that:
  - a. the Non-Interested Directors certify that:
    - i. they consider the sale of MBL and WPO is in the best interests of, and is fair and reasonable to, shareholders;
    - ii. they were not influenced by the Purchaser in reaching their decision to sell MBL and WPO; and
    - iii. the sale negotiations between the non-interested directors and the Purchaser were conducted on an arms length and commercial basis; and
  - b. the notice of meeting sets out the details of the waiver and its implications. In particular, that MOW’s shareholders will not receive an Appraisal Report assessing the related party implications and the impact of the sale of MBL and WPO on MOW.
- c. 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.
- d. The Rules to which this decision relates are set out in Appendix Two to this decision.

### Reasons

In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:

- a) the policy underlying Rule 9.2.5(b) is to seek to ensure that shareholders are provided with independent advice on Material Transactions with a Related Party, in the form of an Appraisal Report. An Appraisal Report provides investors with an independent view and additional details on a transaction which may have been influenced by the Related Party relationship. In these circumstances, NZXR is comfortable that the policy of Rule 9.2.5(b) is not offended by the granting of this waiver;
- b) MOW has submitted that it undertook an open and competitive sale process to determine interest in acquiring MBL and WPC with a view to achieving the best available value. The conditions of the waiver provide comfort that the Transaction has been negotiated on an arms length and commercial basis, and that the Purchaser has not exercised any undue influence over the Non-Interested Directors in their decision to enter into the Transaction;
- c) the qualified audit highlighted the difficulties in valuing MBL's inventory, and MOW's auditors have advised that is practically difficult to reliably audit, except at a significant cost. BDO has provided advice to the Non-Interested Directors on determining the appropriate valuation methodology for assessing the baseline valuation of the businesses, against the purchase price. MOW has submitted, and NZXR has no

reason not to accept, that an independent Appraisal Report may not provide additional meaningful guidance to shareholders due to the difficulties in evidencing the lower of cost price or net realisable value of some of MBL's inventory;

- d) NZXR has had the opportunity to review and comment on MOW's notice of meeting which includes the resolution to approve the Transaction; and
- e) there is precedent for this decision.



## Appendix One

1. Mowbray Collectables Limited (“**MOW**”) is a Listed Issuer with Securities Quoted on the NZX Main Board.
2. Mowbray Bethunes Limited (“**MBL**”) is a wholly owned subsidiary of MOW, and, together with Wildlife Philatelic Collections Pty Limited (“**WPC**”), operates MOW’s stamp, coin and bank notes trading business.
3. In 2014, MOW’s auditor formed a view that it was unable to obtain sufficient audit evidence to conclude whether the inventory valuation method used by MBL accurately approximated cost in respect of its inventory. As a result, the audit report was qualified in that MOW was unable to evidence the lower of cost price or net realisable value in respect of some of MBL’s inventory.
4. MOW has advised that the directors of MOW consider the qualified audit:
  - a. will impede the company’s ability to raise new capital and therefore pursue growth;
  - b. is not appropriate for a listed company given the lack of assurance it provides about the company’s financial position; and
  - c. results in considerable costs for the company in terms of increased audit and advisory fees.
5. MOW has also advised that it needs to retire some of its bank debt. In its Interim Report for the year ended 30 September 2014, and in subsequent announcements, MOW signalled that it had begun to evaluate MBL and WPC with a view to determining whether ownership within a public company remained appropriate.
6. On 12 December 2014, MOW announced that it had commenced a sale process of MBL and WPC (the “**Transaction**”). MOW acknowledged that a director of MOW, Mr John Mowbray, may choose to enter the sale process, and announced that it had established a sub-committee of the independent directors (excluding Mr John Mowbray) to take the sale process forward (the “**Non-Interested Directors**”).
7. As a director and 39.85% shareholder in MOW, Mr John Mowbray is a Related Party of MOW for the purposes of Rule 9.2.3.
8. The Non-Interested Directors engaged BDO Wellington (“**BDO**”) to provide valuation advice on MBL and WPC. The purpose of this advice was to provide the Non-Interested Directors with a baseline valuation of MBL and WPC (as at 30 September 2014) and the appropriate valuation methodology for determining or assessing against a purchase price. BDO advised the Non-Interested Directors that the most appropriate measure of value was a net tangible assets approach.
9. In December 2014, the Non-Interested Directors publicly sought expressions of interest for the purchase of MBL and WPC. The Non-Interested Directors also circulated a letter requesting expressions of interest to 11 known, potential purchasers (including Mr John Mowbray), located both in New Zealand and internationally.
10. In January 2015, the Non-Interested Directors received expressions of interest from two parties, one being Mr John Mowbray. The other party later withdrew their interest, with the

sole remaining interest in acquiring both MBL and WPC in their entirety being Mr John Mowbray.

11. The Non-Interested Directors also received an expression of interest for parts of the MBL and WPC businesses; however the Non-Interested Directors determined that this would be sub-optimal in comparison to the sale of MBL and WPC in their entirety, given the niche nature of MBL and WPC. The Non-Interested Directors considered that this scenario could result in the residual assets being difficult to divest for meaningful value, and could cause MOW to retain its audit qualification.
12. In March 2014, Mr John Mowbray presented the Non-Interested Directors with a conditional offer to acquire MBL and WPC. The Non-Interested Directors then commenced negotiations with Mr John Mowbray to refine the terms of the offer.
13. On 2 April 2015, MOW announced that it had entered into a conditional heads of agreement to sell MBL and WPC to Philcoin Investments Limited, a company held by interests associated with Mr John Mowbray (the “**Purchaser**”). MOW also confirmed that it would seek shareholder approval of the Transaction.
14. The purchase price was agreed to be the aggregate net tangible asset value of MBL and WPC as at 31 March 2015, being \$950,000. The valuation was based on the un-audited book value of the assets of MBL and WPC, consistent with the valuation approach recommended to the Non-Interested Directors by BDO in September 2014.
15. The net value of MBL and WPC exceeds 10% of MOW’s average market capitalisation of approximately \$2.55 million. Accordingly, the Transaction constitutes a Material Transaction for the purposes of Rule 9.2.1, and requires an Appraisal Report to accompany the relevant Notice of Meeting in accordance with Rule 9.2.5(b).
16. MOW has approached NZXR for a waiver from Rule 9.2.5(b) to the extent that this rule requires MOW to prepare an Appraisal Report in relation to the sale of MBL and WPC to the Purchaser.



## Appendix Two

### Rule 9.2.5

The text of any resolution to be put to a meeting of an Issuer for the purposes of Rule 9.2.1 shall be set out in the notice of the relevant meeting. That notice shall:

- a) be approved by NZX in accordance with Rule 6.1; and
- b) be accompanied by an Appraisal Report; and
- c) contain such other material as is necessary to enable the holders of Securities of the Issuer to decide whether the transaction price and terms are fair.

