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## **NZSX WAIVERS**

In accordance with NZSX Listing Rule 10.5.5(f) the Company advises the following NZSX waivers have been granted.

During the twelve (12) month period ending on 23 July 2013 the Company applied to NZSX for waivers from NZSX Listing Rules 7.10.5, 9.2.1, 7.12.2 and 7.10.2, all of which were granted.

## **BACKGROUND**

- 1 On 28 May 2013 the Company entered into an agreement to purchase the entire issued share capital of Zuellig Healthcare Holdings Australia Pty Limited (*Symbion*) from Symbion Holdings Pte Limited (the *Vendor*). The purchase price for Symbion of \$865 million (*Purchase Price*) was satisfied through the issue of fully paid ordinary shares in the Company to the Vendor having a value of approximately \$498 million (*Consideration Shares*) and a cash payment of approximately \$367 million (*Consideration Cash*). The issue of the Consideration Shares resulted in the Vendor and associates holding 40% of the total issued shares in the Company (together the *Transaction*).
- 2 The Company funded the Consideration Cash by:
  - 2.1 completing an underwritten placement of EBOS ordinary shares worth approximately \$90 million to new and existing institutional investors (the *Placement*);
  - 2.2 undertaking an underwritten 7 for 20 pro-rata renounceable rights offer worth approximately \$149 million (the *Entitlement Offer*); and
  - 2.3 additional debt facilities of approximately \$140 million.
- 3 The Company wished to offer its shareholders who accepted their Entitlement Offer entitlement in full the option to apply for additional rights not taken up by other shareholders by way of an oversubscription facility (*Oversubscription Facility*), necessitating a waiver from the provisions of NZSX Listing Rule 7.10.5 (*Rule 7.10.5*).
- 4 The Transaction was a material transaction under NZSX Listing Rule 9.2.1 (*Rule 9.2.1*) due to it being a purchase of assets having an Aggregate Net Value in excess of 10% of the Company's then Average Market Capitalisation of approximately \$518 million.

- 5 Rule 9.2.1 requires that the Company as an Issuer shall not enter into a Material Transaction if a Related Party is a party to at least one of a related series of transactions which form part of the Material Transaction unless the transaction associated to the Related Party is approved by an ordinary resolution of the Company. As the Placement and Entitlement Offer formed part of the Transaction, each was considered part of a related series of transactions.
- 6 Two companies that are Related Parties of the Company wished to participate in the Placement and act as sub-underwriters to the Entitlement Offer. Whyte Adder No 3 Limited and Herpa Properties Limited (the *Related Companies*) are both a Related Party under Rule 9.2.3(a) as two directors of the Related Companies, Mr Peter Kraus and Mr Barry Wallace, are both directors of EBOS. Together the Related Companies then held 8.43% of the Company's shares on issue. The Placement and sub-underwriting formed part of the related series of transactions of the Material Transaction, being the Transaction.
- 7 In order to meet the timeframe of the Transaction, the Company needed to set the closing date for applications under the Entitlement Offer as ten Business Days after the mailing of the letters of entitlement instead of the twelve Business Days required by NZSX Listing Rule 7.10.2 (*Rule 7.10.2*).
- 8 Prior to the Placement, Entitlement Offer and issue of Consideration Shares, the Company undertook a bonus issue of its shares (*Bonus Issue*) to allocate imputation credits to the Company's shareholders. The Bonus Issue resulted in the Company's shareholders receiving two new EBOS shares for every 53 EBOS shares held at the Bonus Issue Record Date of 6 June 2013.
- 9 The Company approached NZX Regulation (*NZXR*) for a waiver from Rules 7.10.5, 9.2.1 and 7.10.2 in respect of the Transaction, and a waiver from Rule 7.12.2 in respect of the Bonus Issue.
- 10 Waivers applied for and granted:

#### 10.1 Listing Rule 7.10.5

The Company applied to NZXR for a waiver from the requirements in Rule 7.10.5 in order that the Entitlement Offer could include the Oversubscription Facility.

NZXR granted the waiver subject to the following conditions:

- (a) to the extent available, and pro rated to the extent not, allocations under the Oversubscription Facility were to be made to any shareholder participating in the Oversubscription Facility who would otherwise hold less than a minimum holding after the Entitlement Offer to the extent to allow them to hold a minimum holding; and
- (b) in respect of any remaining rights, in the event that demand for the Entitlement Offer exceeded supply, participants were to be scaled on a pro rata basis in accordance with their shareholding at the Record Date for their entitlement.

## 10.2 Listing Rule 9.2.1

The Company applied to NZXR for a waiver from Rule 9.2.1 so that the Related Companies could participate in the Placement and act as sub-underwriters to the Entitlement Offer without obtaining shareholder approval.

NZXR granted the waiver subject to the following conditions:

- (a) the terms and conditions on which the Related Companies participate in the Placement and act as sub-underwriters of the Entitlement Offer were to be identical to those offered to the other parties who were participating in the Placement and acting as sub-underwriters;
- (b) the directors of the Company, other than Mr Kraus and Mr Wallace, certify to NZXR that Mr Kraus and Mr Wallace had no part in the negotiation of the terms of participation in the Placement or as sub-underwriters;
- (c) Mr Kraus and Mr Wallace abstain from, and do not participate in any discussions or approval of the Placement allocations;
- (d) the Notice of Meeting in respect of the approval of the acquisition of Symbion clearly discloses the participation of the Related Companies in the Placement and as sub-underwriters of the Entitlement Offer; and
- (e) the Notice of Meeting in respect of the approval of the acquisition of Symbion clearly discloses the Related Companies are considered Related Parties to the Symbion Transaction in respect of Rule 9.2.1.

## 10.3 Listing Rule 7.12.2

The Company applied to NZXR for a waiver from Rule 7.12.2 to permit the Bonus Issue Record Date to be six Business Days after the announcement of the Bonus Issue rather than the stipulated ten Business Days.

NZXR granted the waiver subject to the following conditions:

- (a) The Company releases information on the Bonus Issue in the form required by Rule 7.12.2 on the day of announcement of the Transaction, Wednesday 29 May 2013; and
- (b) The Record Date for the Bonus Issue is 6 June 2013.

The conditions of the waiver from Rule 7.12.2 required the Company to provide the market six Business Days' notice of the Bonus Issue. Within these six Business Days the market would have at least one day, 31 May 2013, where trading can occur in order for those who wished to move on or off the Company share register before the Bonus Issue.

## 10.4 Listing Rule 7.10.2

The Company applied to NZXR for a waiver from Rule 7.10.2 so that it could set the closing date for applications under the Entitlement Offer as ten

Business Days after the mailing of letters of entitlement instead of the twelve Business Days required by Rule 7.10.2.

NZXR granted the waiver subject to the following conditions:

- (a) the prospectus and acceptance form contain prominent statements encouraging shareholders to accept early and utilise direct credit as a payment option;
- (b) the prospectus be posted as soon as practicable after the shareholder meeting on 14 June 2013 and in any event before the end of 17 June 2013;
- (c) The Company files an appendix 7 confirming the offer timetable as soon as a waiver is finalised and release to the market copy of the prospectus, and post a copy on its website, promptly after registration; and
- (d) letters of entitlement and the prospectus be sent by fast post to those outside Auckland (being the place the Company's share registrar/mail house are located).

11 A complete copy of the waivers referred to above can be found at [www.ebos.co.nz](http://www.ebos.co.nz) or at [www.nzx.com](http://www.nzx.com) under the EBO code.

Yours faithfully  
EBOS GROUP LIMITED



Dennis Doherty  
Chief Financial Officer