

**NZX Market Supervision Decision
Heritage Gold NZ Limited
Application for Waiver from NZSX Listing Rule 7.10.10.**

Background

1. Heritage Gold NZ Limited (“**HGD**”) is a New Zealand incorporated Listed Issuer with ordinary shares Quoted on the NZX Main Board. HGD’s ordinary shares are also Quoted on the ASX.
2. HGD’s Talisman site will shortly be ready for development and, as a result, HGD is considering restructuring certain aspects of its business. HGD is considering transferring certain specified non-core assets to a wholly-owned subsidiary, which will in due course seek its own funding.
3. HGD proposes to undertake a share purchase plan (“**SPP**”) to raise up to approximately \$1.5 million to part fund its development activities (the “**HGD SPP**”).
4. NZSX Listing Rule (“**Rule**”) 7.10.10 requires Issuers to provide an Appendix 7 to NZX Limited (“**NZX**”) at least five Business Days prior to the Ex Date to determine entitlements. Accordingly, the Record Date in respect of a SPP must be at least seven Business Days after the Issuer notifies NZX of the SPP in the form of an Appendix 7.
5. Under the ASX Listing Rules, the Record Date for a SPP must be the Business Day before an Issuer notifies ASX of the SPP.
6. Due to the conflicting timetable requirements, HGD is unable to comply with both the Rules and the ASX Listing Rules in respect of the HGD SPP.

Application

7. HGD has applied to NZX Market Supervision (“**NZXMS**”) for a waiver from Rule 7.10.10, so that it may set the Record Date in respect of the HGD SPP as the Business Day before an Appendix 7 relating to the HGD SPP is provided to NZX.
8. In support of its application HGD makes the following submissions:
 - (a) There is no compelling policy reason for providing advance notice of the Record Date for the HGD SPP. The policy behind Rule 7.10.10 is to provide advance notice to the market of a rights issue, such that it can be “priced” by the market and the market can determine whether to trade in or out of the relevant stock by the Record Date. However, the NZX Guidance Note relating to SPPs dated 1 May 2007 recognises

that “the offer under a Share Purchase Plan is not pro-rata and so may not be “priced” by the market into the price of the existing shares to the same extent as a rights issue... the market does not require, in the context of an SPP, time to “price” any payment, distribution or right”. This is particularly true of the HGD SPP which is expected to be of a relatively modest size, and on that basis is not expected to have any material impact on the overall pricing of HGD’s shares;

- (b) The ASX Listing Rules did not previously stipulate any timetable requirements for SPPs. Accordingly, NZSX Listed Issuers who were also listed on the ASX, were able to complete SPPs without the need for any waivers. However, in June 2010, the ASX amended its rules to impose timetable requirements on SPPs. Under these revisions, the Record Date for an SPP must be “1 Business Day before the entity announces [the] security purchase plan” (ASX Listing Rule 7.40 and Appendix 7A);
- (c) Following those amendments to the ASX Listing Rules, there is an irreconcilable conflict between the Rules and the ASX Listing Rules, which means that an NZSX Issuer that is also listed on the ASX is not able to comply with the Record Date requirements of both exchanges;
- (d) In its consultation paper relating to its amendments to the SPP Record Date requirements, ASX noted that requiring the Record Date to be backdated to the Business Day before the announcement date of an SPP “will not detract from the underlying principle of the SPP, of providing long-term shareholders the opportunity to purchase at no brokerage, and possibly at a discount to the market price, as a reward for their loyalty”;
- (e) One of the principal reasons why ASX accelerated the Record Date for SPPs was that they had received a number of complaints that having a Record Date post announcement could contribute to a disorderly market by incentivising short selling and delayed settlements by sellers who wished to remain on the register as at the Record Date so as to be eligible to participate in a SPP;
- (f) If the Record Date for the HGD SPP was post announcement, HGD considers that there would be a possibility that the market could “game” the offer. Because an SPP is not pro-rata, investors can exploit an SPP by purchasing the minimum number of shares for the Record Date, subscribing at the discounted issue price, which is common in SPPs and then trading out of the stock. Similarly, existing investors could “split” their investment across different entities so as to be eligible to participate in the SPP multiple times. It would not be possible to “game” the SPP in this manner, if the Record Date is the Business Day prior to announcement;
- (g) HGD shares have been relatively thinly traded in recent times. As such, granting the waiver should mean that:

- i. Long-term shareholders obtain the opportunity to participate in the HGD SPP; and
 - ii. There is no opportunity for third parties who would not otherwise trade the stock, to “game” the HGD SPP and derive an unwarranted benefit at the cost of long-term shareholders; and
- (h) If the waiver is not granted, the NZSX and ASX requirements as to the Record Date are not reconcilable and HGD may not be able to undertake the HGD SPP. A waiver from Rule 7.10.10 will allow the HGD SPP to be completed, which HGD considers will be beneficial to its shareholders.

Rule 7.10.10

9. Rule 7.10.10 provides that:

“Where a Rights issue is to be made but Quotation is not sought the Issuer shall give to NZX forthwith after the decision has been made and at least 5 Business Days before the Ex Date to determine entitlements, on the form in Appendix 7, full details of the issue, including the nature, entitlement and timing of the issue of Rights and conversion, pricing, amounts payable and ranking of Securities for future benefits.”

Decision

10. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants HGD a waiver from Rule 7.10.10, so that it may set the Record Date in respect of the HGD SPP as the Business Day before an Appendix 7 relating to the HGD SPP is provided to NZX.
11. The waiver in paragraph 10 is granted on the condition that the Record Date for the HGD SPP is the Business Day before the Appendix 7 relating to the HGD SPP is provided to NZX.

Reasons

12. In coming to this decision, NZXMS has considered the following matters:
- (a) Following the amendment of the ASX Listing Rules, there is an irreconcilable difference between the timetabling requirements in the Rules and the ASX Listing Rules. In the absence of a waiver from either exchange, HGD, as an NZSX Listed Issuer who is also listed on the ASX, is unable to raise additional capital by way of a SPP;
 - (b) HGD should not be disadvantaged by being precluded from raising additional capital through a SPP simply because it is listed on both the ASX and the NZSX; and

- (c) Neither HGD nor HGD's shareholders will be disadvantaged by HGD conducting the HGD SPP in accordance with the ASX timetable requirements. Those timetable requirements are not inconsistent with NZX's policy in respect of SPPs generally, and are able to be accommodated within NZX's operational infrastructure.

Reasons

13. HGD has requested that NZX keep this waiver confidential until such date as HGD announces the HGD SPP.

14. In accordance with Footnote 1 to Rule 1.11.2, NZXMS grants HGD's request.

ENDS.