NZX Regulation Decision   
The Warehouse Group Limited   
Application for Waiver from NZSX Listing Rules 7.10, 7.12.1, 7.12.2, 7.12.9 and 11.2

**Background**

1. The Warehouse Group Limited (WHS) has established The Warehouse Group Limited Executive Share Scheme (Scheme) for a small group of selected eligible executive employees or executive directors of WHS (or a subsidiary of WHS) who satisfy certain conditions (Employees).
2. Employees will be offered a conditional right to be transferred the following types of shares in WHS (Shares):
   1. award shares (based on profit for the immediately preceding year subject to the individual meeting performance criteria for that year); and/or
   2. performance shares (transferred to Employees at the end of three years conditional upon share price increase).
3. The trustee of the Scheme is The Warehouse Management Trustee Company No. 2 Limited (Trustee). The details of the Scheme and the role of the Trustee are set out in the ‘Deed in respect of The Warehouse Group Limited Executive Share Scheme’ (Deed).
4. Pursuant to a loan agreement between WHS and the Trustee, WHS will advance funds to the Trustee to enable the Trustee, upon direction of a Remuneration, Talent and Nomination Committee, to purchase Shares and hold them on trust until they are transferred to the Employees in accordance with the Deed.
5. WHS has sought and obtained shareholder approval for the Scheme, the issue of the conditional rights and the provision of financial assistance to the Trustee. WHS is proposing to make its first offers under the Scheme to Employees in September 2005.

**A Application – Waiver from NZSX Listing Rule 7.10**

1. WHS has applied to NZX Regulation (NZXR) for a waiver from NZSX Listing Rule 7.10 to excuse it from undertaking the additional requirements where a rights issue arises.
2. WHS requested this waiver on the basis that the conditional rights arising under the Scheme are “Rights” as defined in NZSX Listing Rule 1.1.2 (as determined by NZXR is its decisions upon applications by Contact Energy Limited (29 July 2004) and Nuplex Industries Limited (20 October 2004).
3. In support of its application WHS states that:
   1. The conditional rights to acquire the Shares under the Scheme are very different from the rights contemplated by NZSX Listing Rule 7.10. The use of the term ‘Rights issue’ in the NZSX Listing Rules appears to contemplate an issue of Rights offered to all holders of existing securities, e.g. NZSX Listing Rules 8.1.6 and 8.1.7 refer to Rights issues to the holders of underlying securities.
   2. Offers of conditional rights will be made only to Employees as performance incentives (not to all holders of Shares in WHS).
   3. The requirements of NZSX Listing Rule 7.10 do not fit with the issue of conditional rights to the Employees.   
      NZSX Listing Rule 7.10
4. NZSX Listing Rule 7.10 sets out additional requirements associated with the issue of “Rights” (as defined in the NZSX Listing Rules), including details of holders’ entitlements, and the acceptance or renunciation of those entitlements.   
     
   Decision – NZSX Listing Rules 7.10
5. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants WHS a waiver from NZSX Listing Rule 7.10.   
     
   Reasons – NZSX Listing Rule 7.10
6. In coming to this decision NZXR has considered that the requirements of NZSX Listing Rule 7.10 do not fit with and were not intended to capture the granting of rights to a limited number of employees under an incentive plan such as the Scheme.

**B Application – Waivers from NZSX Listing Rules 7.12.1, 7.12.2 and 7.12.9**

1. WHS has applied to NZXR for a waiver from NZSX Listing Rules 7.12.1, 7.12.2, and 7.12.9 to avoid WHS from having to:
   1. Provide certain detailed information to NZX about the securities issued by WHS under the Scheme (NZSX Listing Rule 7.12.1);
   2. Provide advance notification to NZX (in the form set out in Appendix 7 of the NZSX Listing Rules) of the conversion into Shares of the securities issued by WHS under the Scheme (NZSX Listing Rule 7.12.2); and
   3. Notify NZX of the conversion of the Shares (NZSX Listing Rule 7.12.9).
2. In support of its application WHS states that:
   1. The information required to be supplied to NZX pursuant to these NZSX Listing Rules is to inform market participants of any increase or decrease in WHS’s issued securities, including upon the conversion of options.
   2. The securities issued by WHS under the Scheme are conditional rights to acquire (by transfer) the Shares. All Shares transferred to the Employees upon exercise of these conditional rights (after satisfaction of the relevant conditions) will be Shares previously purchased by the Trustee through an on-market acquisition.
   3. At no time will there be an issue of new Shares under the Scheme and so, consequently, no dilution of existing shareholdings in WHS.
   4. In accordance with Sections 19T and 19U of the Securities Markets Act 1988, since the Employees will fall within the definition of ‘officers’ or ‘directors’ in that Act, the Employees will have to make detailed public disclosures about the securities issued to the Employees by WHS under the Scheme and the subsequent conversion of those securities into Shares. Full and accurate information will be provided to Employees to NZX and to the market to enable, amongst other things, shareholders to see whether there is any potential dilution of their shareholdings.
   5. The various purposes of NZSX Listing Rules 7.12.1, 7.12.2, and 7.12.9 are met by the disclosures required by the Securities Markets Act 1988.

NZSX Listing Rules 7.12.1, 7.12.2 and 7.12.9

1. NZSX Listing Rule 7.12.1 outlines the details of an issue or acquisition that an Issuer must provide to NZX where it issues securities, or acquires securities of that Issuer.
2. NZSX Listing Rule 7.12.2 provides that:   
   “Notification: Where any benefit is to be paid or distributed on Quoted Securities (including dividends, interest or bonus issues) or any Conversion of Securities or call on Securities is to take place, the Issuer shall give to NZX, forthwith after any Director’s recommendation and at least 10 Business Days before the Record Date to determine entitlements or obligations, full details of the benefit, Conversion or call, including the information in the table below. That information shall be supplied in the form set out in appendix 7.”
3. NZSX Listing Rule 7.12.9 provides that:   
   “Notice Upon Conversion: Immediately following each Conversion of Securities (including Options), the Issuer shall notify NZX of:
   1. the number of Securities Converted and the number and Class of Securities into which they have been Converted; and
   2. details of any interest or dividend conditions attaching to the Securities Converted, and allotted upon Conversion; and
   3. how many Securities of the same Class remain to be Converted.”
4. The intention of NZSX Listing Rule 7.12 is to ensure that full and accurate information is provided to the market about securities on issue. The information provided under NZSX Listing Rules 7.12.1, 7.12.2, and 7.12.9 primarily enables a shareholder to see whether there is any potential dilution of their holdings.   
     
   Decision – NZSX Listing Rules 7.12.1, 7.12.2 and 7.12.9
5. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants WHS waivers from NZSX Listing Rules 7.12.1, 7.12.2 and 7.12.9.   
     
   Reasons – NZSX Listing Rules 7.12.1, 7.12.2 and 7.12.9
6. In coming to this decision NZXR has considered:
   1. The Shares will be purchased on-market and so there will be no dilution of existing shareholdings in WHS or any change in the total number of shares on issue.
   2. The relevant interest disclosure regime imposed upon directors and officers by existing legislation will ensure that the necessary information regarding the holdings of those directors and officers will be provided to the market enabling full and transparent information to be available for consideration.
   3. There is precedent for this waiver decision.

**C Application – Waiver from NZSX Listing Rule 11.2**

1. WHS has also applied to NZXR for a waiver from NZSX Listing Rule 11.2, excusing WHS from its obligations in that Rule to provide statements to holders of the convertible securities under the Scheme.
2. In support of its application WHS states that:
   1. The requirement to issue certain statements to the Employees of their shareholding is unnecessary as WHS is required under the Deed to notify Employees of:
      1. their conditional rights to acquire Shares in WHS by way of provision of a Participation Deed which will also be signed by each relevant Employee; and
      2. their right to direct and accept a transfer of Shares immediately prior to the date of exercise.
   2. It is unnecessary for WHS to be required to make another disclosure pursuant to NZSX Listing Rule 11.2 for the conditional rights granted or the Shares transferred.   
      NZSX Listing Rule 11.2
3. NZSX Listing Rule 11.2 requires an Issuer to issue statements to holders of the Issuer’s Quoted Securities, and outlines when the statements are required and the details to be included in such statements.   
     
   Decision – NZSX Listing Rule 11.2
4. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants WHS a waiver from NZSX Listing Rule 11.2 on the condition that the notification the Employees receive upon transfer of the Shares into their names contains the matters required by NZXR Listing Rule 11.2.4.   
     
   Reasons – NZSX Listing Rule 11.2
5. In coming to this decision NZXR has considered that under the Scheme, WHS is already required to notify the Employees upon the transfer of their shares and except for the matters required by NZXR Listing Rule 11.2.4, a further statement serves no purpose.
6. There is precedent for this waiver decision.   
     
   ENDS.