

NZX Regulation Decision
Orion Minerals Group Limited
Application for Waiver from NZAX Listing Rules 10.4.2 and 10.5.3

Background

1. On 7 October 2007, RLV No.3 Limited (“RLV”) listed on the NZAX market.
2. On 12 December 2008, RLV purchased all of the shares of Minera Varry S.A. (“MV”), a Chilean mining company. This transaction was a reverse listing of MV onto the NZAX market for the purposes of the NZAX Listing Rules (“Rules”). The new company comprising of RLV and MV was renamed Orion Minerals Group Limited (“OMG”) on completion of the reverse listing.
3. OMG (and previously RLV) has a balance date for its financial year of 30 June. MV has a balance date for its financial year of 31 December.
4. For the purposes of New Zealand International Financial Reporting Standards (“NZIFRS”) OMG is the parent company of MV. It is a requirement of NZIFRS that consolidated group financial information is used in the compilation of financial reports, and as OMG is the parent company of MV, NZIFRS requires that the balance date of OMG of 30 June be used for the financial reporting of the OMG.
5. Chilean law requires MV to provide its financial statements only on an annual basis, there is no requirement for six monthly reporting. Accordingly MV has only ever prepared annual financial information.
6. Rule 10.4.2 of the Rules requires that OMG provide a preliminary announcement of its half yearly results to 31 December 2008, not more than 75 days after the end of the financial half year to which the results relate. OMG is therefore required to provide the preliminary announcement by 16 March 2009. Section 2 of appendix 1 to the Rules (“Appendix 1”) specifies a range of financial information that the preliminary announcement must contain. Appendix 1 requires that financial information must not only be provided for the relevant reporting period, but also for the previous corresponding period (i.e. to 31 December 2007).
7. Rule 10.5.3 requires that OMG provide a half yearly report within four months after the end of the first six months of each financial year of OMG. OMG is therefore required to provide its half yearly report by 30 April 2009. Part B of Appendix 1 to the Rules specifies the financial information required to be contained in the half yearly report. Appendix 1 requires that the financial information must not only be provided for the relevant reporting period, but also for the previous corresponding period (i.e. to 31 December 2007).
8. As noted in paragraph 5 above, MV has previously only prepared annual financial information relevant to the creation of an annual report for the period ending 31 December 2008. OMG has not maintained internal accounting data sufficient to, nor does it believe it can recreate, the required half yearly financial information necessary for the preparation of the preliminary announcement or the half yearly report for the period to 31 December 2008.

Application 1

9. OMG has approached NZX Regulation (“NZXR”) seeking a waiver from the requirement of Rule 10.4.2 that it provide a preliminary announcement containing the information specified in section 2 of Appendix 1. OMG proposes that it will provide annual financial information in place of the half yearly financial information otherwise required by section 2 to Appendix 1.
10. OMG makes the following submissions in support of its application:
- (a) Chilean law requires that MV provide financial reports on an annual basis. MV has therefore never previously prepared half yearly financial statements, nor compiled the relevant financial information to be in a position to prepare half yearly financial statements. OMG further advises that it is not possible for OMG to recreate the half yearly financial information from the financial information that OMG currently possesses. Accordingly, OMG does not consider that it is currently able to comply with the requirements of the Rules, and without a waiver will be in breach of the Rules.
 - (b) Shareholders of OMG will not be prejudiced by the provision of full year financial information in place of half yearly financial information, as the annual financial statements of OMG (including those of MV) provide the most comprehensive picture of the financial position of OMG to date.
 - (c) OMG is willing to provide a directors’ certificate stating that:
 - (i) providing annual financial information in place of half yearly financial information, for the half yearly preliminary announcement and report, will not mislead or prejudice current or potential investors of OMG, and
 - (ii) that the performance of MV in the first six months of the 2008 year was not substantially better than the last six months.
 - (c) OMG submits that, as a preliminary announcement containing half yearly financial information cannot be provided, OMG will provide at the relevant reporting dates:
 - (i) a preliminary announcement containing annual financial information for OMG for the period to 31 December 2008, in the form required by section 2 of Appendix 1. The comparative financial information required by section 2.1 of Appendix 1 will be the annual financial information of OMG for the 12 month period until 12 December 2007; and
 - (ii) a preliminary announcement in the subsequent half yearly reporting period to 31 December 2009 containing:
 - a) the half yearly financial information for the period to 31 December 2009, as required by Rule 10.4.2 and specified in section 2 of Appendix 1,
 - b) annual financial information, in the form required by section 2 to Appendix 1, for the period to 31 December 2009, and the comparative financial information for the previous corresponding 12 month period.

Rules 10.4.1 and 10.4.2

11. Rules 10.4.1 and 10.4.2 provide:

10.4 PRELIMINARY ANNOUNCEMENTS

- 10.4.1** Full Year and Half Year: Each NZAX Issuer shall make an announcement pursuant to NZAX Listing Rule 10.4.2 through NZX for public release, in the manner prescribed by NZAX Listing Rule 10.3 as soon as the Material Information is available, and in any event;
- (a) before the release of each annual report, and not later than 75 days after the end of the financial year to which that report relates; and
 - (b) before the release of each half yearly report and not later than 75 days after the end of the financial half year to which that report relates.
- 10.4.2** Contents of Preliminary Announcement: Each preliminary announcement, whether for a full year or a half year, shall include the information and otherwise address the matters specified in the relevant section of appendix 1.

12. Section 2 of Appendix 1 provides:

- 2 **Half-Year Results:** The following information must be contained in each preliminary announcement given to NZX under NZAX Listing Rule 10.4.1 in respect of a half year:
- 2.1 Details of the reporting period and the previous corresponding period.
 - 2.2 Information prescribed by NZX from time to time. This information must be identified as “Results for announcement to the market” and must be placed at the beginning of the report in a tabular format as specified by NZX from time to time.
 - 2.3. The following information, which may be presented in whatever way the Issuer considers is the most clear and helpful to users, e.g., combined with the body of the report, combined with notes to the financial statements, or set out separately.
 - a. A statement of financial performance.
 - b. A statement of financial position, which may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals.
 - c. A statement of cash flows, which may be condensed but must report as line items each significant form of cash flow.
 - d. Details of individual and total dividends or distributions and dividend or distribution payments. The details must include the date on which each dividend or distribution is payable and (if known) the amount per security of foreign sourced dividends or distributions.
 - e. Details of any dividend or distribution reinvestment plans in operation and the last date for the receipt of an election notice for participation in any dividend or distribution reinvestment plan.
 - f. Net tangible assets per security with the comparative figure for the previous corresponding period.
 - g. Details of entities over which control has been gained or lost during the period, including the following.
 - i. Name of the entity.

- ii. The date of the gain or loss of control.
 - iii. Where material to an understanding of the report – the contribution of such entities to the reporting entity’s profit from ordinary activities during the period and the profit or loss of such entities during the whole of the previous corresponding period.
- h. Details of associates and joint venture entities including the following.
- i. Name of the associate or joint venture entity.
 - ii. Details of the reporting entity’s percentage holding in each of these entities.
 - iii. Where material to an understanding of the report - aggregate share of profits (losses) of these entities, details of contributions to net profit for each of these entities, and with comparative figures for each of these disclosures for the previous corresponding period.

Decision

13. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants OMG a waiver from Rule 10.4.2. This waiver is granted to the extent that OMG need not provide the half yearly financial information specified in section 2 of Appendix 1, in its half yearly preliminary announcement. In place of the half yearly financial information, OMG is required to provide annual financial information in the same form as required by section 2 of Appendix 1. For example, where section 2.3(c) of Appendix 1 specifies a “statement of cash flows”, this statement will describe cash flows for the 12 month period (i.e. not the 6 month period) to 31 December 2008.
14. This waiver is granted on the following conditions:
- (a) Within the 75 day timeframes from the relevant reporting dates set out in Rule 10.4.1, OMG will provide:
 - (i) a preliminary announcement for the half yearly period to 31 December 2008 containing all of the financial information required by section 2 of Appendix 1. The information provided in this preliminary announcement will be annual financial information for the 12 month period immediately preceding 31 December 2008. The comparative financial information required by section 2.1 of Appendix 1 will be the annual financial information for OMG, for the 12 month period until 12 December 2007.
 - (ii) a preliminary announcement for the subsequent half yearly reporting period to 31 December 2009 that includes:
 - a) half yearly financial information specified in Appendix 1 of the Rules, as required by Rule 10.4.2; and
 - b) annual financial information, in the form specified in section 2 of Appendix 1 for the period until 31 December 2009, and the comparative financial information for the previous corresponding annual period.

- (c) Any material seasonal variability in revenues or expenses are prominently disclosed in the preliminary announcement to be made for the period to 31 December 2008.
- (d) That the directors of OMG provide a directors' certificate stating that:
 - (i) providing annual financial information in place of half yearly financial information, for the half yearly preliminary announcement and report, will not mislead or prejudice current or potential investors of OMG, and
 - (ii) that the performance in the first six months of the 2008 year was not substantially better than the last six months.

Reasons

15. In coming to the decision to grant OMG a waiver from the requirements of Rule 10.4.2, NZXR has considered that:
- (a) The purpose of preliminary announcements provided under Rule 10.4.2 is to ensure that current or potential investors are informed as to the situation of the Issuer. Accordingly, the question at issue is whether OMG's investors would be prejudiced in receiving the modified preliminary announcement for the half year ended 31 December 2008.
 - (b) NZXR does not consider that OMG's current or potential investors would be materially prejudiced by receiving a preliminary announcement containing annual financial information in place of the half yearly financial information required by Rule 10.4.2, because:
 - (i) OMG has only been operating as a consolidated entity since the reverse listing of OMG on 12 December 2008. The information material to its financial reports, for example the major assets, revenues and expenses of OMG, relates to its subsidiary MV. The consolidated group report for OMG will provide an accurate representation of the situation of OMG;
 - (ii) it is a condition of this waiver that all of the classes of financial information required by section 2 of Appendix 1 are included in the preliminary announcement. The only difference being that the time period that the information relates to is a 12 month period rather than a half-yearly period as required by Rule 10.4.2;
 - (iii) it is a condition of this waiver that OMG provide the information required by para 14(a) above, meaning that OMG will be in a position to comply with Rule 10.4.2 the next time it is required to make a half yearly preliminary announcement;
 - (iv) it is a condition of this waiver that any relevant seasonal variances for revenue or expenses will be fully and prominently disclosed in the preliminary announcement to be provided by OMG; and
 - (v) full year financial information is generally more comprehensive than half yearly reporting.
 - (c) Given the different requirements of the Rules and the requirements that MV been previously subject to under Chilean law, and that OMG only listed on the NZAX immediately prior to the current six month reporting period, NZXR accepts that OMG is unable to comply with the requirements of Rule 10.4.2. Accordingly, NZXR accepts that the unique circumstances of this application support the granting of the requested waiver.

- (d) The giving of the certificate from the Directors of OMG required by paragraph 14(d) above will provide comfort to current and potential investors that the provision of annual rather than half yearly financial information is not misleading or prejudicial to shareholders.
- (e) Pursuant to section 36ZM of the Securities Markets Act 1988, the Securities Commission (“Commission”) was approached to comment on OMG’s application. The Commission concurred with NZXR’s decision to grant the waiver on the terms proposed by NZXR.

Application 2

- 16. OMG has approached NZXR seeking a waiver from the requirement of Rule 10.5.3 that it provide a half yearly report containing the information specified in part B of Appendix 1 to the Rules, to the extent that OMG may provide annual financial information in place of the half yearly financial information specified in part B to Appendix 1.
- 17. In support of its application, OMG restates the submissions made in paragraphs 10(a)-(c) above, and further submits:
 - (a) OMG will provide:
 - (i) a half yearly report composed of annual financial information for OMG (including the financial information relevant to MV), containing all of the financial information required by part B of Appendix 1, except that the information will relate to the 12 month period to 31 December 2008. The comparative financial information required by paragraph 1 to part B of Appendix 1 will be the annual financial information for OMG, for the 12 month period until 12 December 2007; and
 - (ii) a half yearly report for the subsequent half yearly reporting period to 31 December 2009 that includes:
 - a) half yearly financial information specified in part B of Appendix 1 of the Rules, as required by Rule 10.4.2,
 - b) annual financial information, in the form specified in part B of Appendix 1 for the period until 31 December 2009, and the comparative financial information for the previous corresponding annual period.

Rule 10.5.3

- 18. Rule 10.5.3 provides:

10.5.3 Half Yearly Report: Each NZAX Issuer shall issue within four months after the end of the first six months of each financial year of the NZAX Issuer:

- (a) deliver to NZX electronically, in the format specified by NZX from time to time; and
- (b) make available to each Quoted Security holder in accordance with NZAX Listing Rule 10.5.3A,

a half-yearly report. That half-yearly report shall include the information and otherwise address the matters prescribed by the relevant section of appendix 1.

19. Part B of Appendix 1 provides:

Half-yearly report

The following information must be included in each half-yearly report prepared for the purposes of NZAX Listing Rule 10.5.3. The information may be presented in whatever way is the most clear and helpful to users, e.g. combined with the body of the report, combined with notes to the accounts, or set out separately.

1. Details of the reporting period and the previous corresponding period.
2. A statement of financial performance together with notes to the statement.
3. A statement of financial position together with notes to the statement. The statement of financial position may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals.
4. A statement of cash flows together with notes to the statement. The statement of cash flows may be condensed but must report as line items each significant form of cash flow.
5. A statement of movements in equity together with notes to the statement.
6. Details of individual and total dividends or distributions and dividend or distribution payments. The details must include the date on which each dividend or distribution is payable, and (if known) the amount per security of foreign sourced dividend or distribution.
7. Details of any dividend or distribution reinvestment plans in operation and the last date for the receipt of an election notice for participation in any dividend or distribution reinvestment plan.
8. Net tangible assets per security with the comparative figure for the previous corresponding period.
9. Details of entities over which control has been gained or lost during the period, including the following.
 - 9.1 Name of the entity.
 - 9.2 The date of the gain or loss of control.
 - 9.3 Where material to an understanding of the report – the contribution of such entities to the reporting entity's profit from ordinary activities during the period and the profit or loss of such entities during the whole of the previous corresponding period.
10. Details of associates and joint venture entities including:
 - 10.1 The name of the associate or joint venture entity;
 - 10.2 Details of the reporting entity's percentage holding in each of these entities; and
 - 10.3 Where material to an understanding of the report - aggregate share of profits (losses) of these entities, details of contributions to net profit for each of these entities, and with comparative figures for each of these disclosures for the previous corresponding period.
8. A statement of any major changes or trends in the Issuer's business subsequent to the end of the financial year or half year, as the case may be, and shall include where material any changes in the

value of the Issuer's assets, or in its profitability, and any contingent liabilities, all in relation to the position disclosed in the last published financial statements.

9. A statement of the amount of any unrealised gains resulting from the revaluation of assets of the Issuer, any subsidiary, or any associated company and unrealised net changes in values or development margins of investment assets included as separate items after profit before extraordinary items, identifying separately amounts arising from any unrealised gains of associated companies.
10. A statement of any material change in accounting policies applied in preparation of the statements reflected in the announcement and the impact of the change
11. For foreign entities, which set of accounting standards is used in compiling the report (e.g., International Financial Reporting Standards).

The report must also contain any additional information required by law or any applicable financial reporting standard or necessary to ensure the report is not misleading. The report may include any additional facts, figures or interpretative notes that the Directors wish to include. If the financial statements have been audited, the report shall disclose and any qualifications the auditors have made to those financial statements.

Application 2 - Decision

20. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants OMG a waiver from Rule 10.5.3. This waiver is granted to the extent that OMG need not provide the half yearly financial information specified in part B of Appendix 1, in its half yearly report. In place of the half yearly financial information, OMG is required to provide annual financial information in the same form as required by part B of Appendix 1. For example where paragraph 5 of part B of Appendix 1 specifies "a statement of movements in equity together with the notes to the statement", this statement will describe movements in equity for the 12 month period (i.e. not the 6 month period) to 31 December 2008.
21. This waiver is granted subject to the following conditions:
 - (a) Within the 4 month timeframe set out in Rules 10.5.3, OMG will provide:
 - (i) a report for the six months to 31 December 2008 composed of annual financial information for OMG (including the financial information relevant to MV), containing all of the financial information required by part B of Appendix 1, except that the information will relate to the 12 month period immediately preceding 31 December 2008. The comparative financial information required by paragraph 1 to part B of Appendix 1 will be the annual financial information for OMG, for the 12 month period until 12 December 2007; and
 - (ii) a half yearly report for the subsequent half yearly reporting period to 31 December 2009 that includes:
 - a) half yearly financial information specified in part B of Appendix 1 of the Rules, as required by Rule 10.4.2; and

- b) annual financial information, in the form specified in part B (modified accordingly) for the period until 31 December 2009, and the comparative financial information for the previous corresponding annual period.
- (b) Any material seasonal variability in revenues or expenses are prominently disclosed in the the half yearly report to be made for the period to 31 December 2008.
- (c) The directors of OMG provide the certificate set out in paragraph 14(d), above.

Application 2 - Reasons

22. In coming to the decision to grant OMG a waiver from the requirements of Rule 10.5.3, NZXR has considered that:

- (a) The purpose of half yearly reports provided under Rule 10.5.3 is to ensure that current or potential investors are informed as to the situation of the Issuer. Accordingly, the question at issue is whether OMG's investors would be prejudiced in receiving the modified half yearly report for the 6 months ended 31 December 2008.
- (b) NZXR did not consider that OMG's current or potential investors would be materially prejudiced by receiving a half yearly report containing annual financial information in place of the half yearly financial information required by Rule 10.5.3 and Appendix 1, because:
 - (i) OMG has only been operating as a consolidated entity since the reverse listing of OMG on 12 December 2008. The information material to its financial reports, for example the major assets, revenues and expenses of OMG, relates to its subsidiary MV. The consolidated group report for OMG will provide an accurate representation of the situation of OMG;
 - (ii) it is a condition of this waiver that all of the classes of financial information required by part B of Appendix 1 are included in the preliminary announcement, the material difference being that the time period that the information relates to is a 12 month period rather than a half-yearly period as required by Rule 10.5.3;
 - (iii) it is a condition of this waiver that OMG provide the information required by paragraph 20(a) (i) above, meaning that OMG will be in a position to comply with Rule 10.4.2 the next time it is required to make a half yearly preliminary announcement; and
 - (iv) it is a condition of this waiver that any relevant seasonal variances for revenue or expenses will be fully and prominently disclosed in the half yearly report to be provided by OMG.
- (c) Given the different requirements of the Rules and Chilean law, and that OMG only listed on the NZAX immediately prior to the reporting period, NZXR accepts that OMG is unable to comply with the requirements of Rule 10.5.3 annual. Accordingly, NZXR accepts that the unique circumstances of this application support the granting of the requested waiver.
- (d) The giving of the certificate required by paragraph 21(c) above will provide comfort to shareholders that the provision of annual rather than half yearly financial information is not misleading or prejudicial to those shareholders.
- (e) Pursuant to section 36ZM of the Securities Markets Act 1988, the Securities Commission ("Commission") was approached to comment on OMG's application. The Commission concurred with NZXR's decision to grant the waiver on the terms proposed by NZXR.

ENDS.