



RUBICON

## Notice of September 2019 Annual Shareholders' Meeting

Notice is hereby given that the Annual Meeting of Rubicon Limited shareholders will be held at the Centenary Lounge, Eden Park, Reimers Avenue, Auckland, on Tuesday 17 September 2019 at 10:30am.

To view and listen to the webcast please visit: [www.rubicon-nz.com](http://www.rubicon-nz.com) or [https://globalmeet.webcasts.com/starthere.jsp?ei=1256777&tp\\_key=7866fe52a5](https://globalmeet.webcasts.com/starthere.jsp?ei=1256777&tp_key=7866fe52a5)

### Voting / Appointment of Proxy Form

Accompanying this document is a voting / appointment of proxy form to enable you to vote on the resolutions either by:

- attending the Annual Meeting;
- lodging a postal vote; or
- appointing a proxy to vote at the Annual Meeting.

If you do not plan to attend the Annual Meeting you are encouraged to complete and return the enclosed voting / appointment of proxy form as soon as possible or lodge your postal vote / proxy online.

### Important Dates

5:00pm, Friday 13 September 2019	Record date for voting entitlements for the Annual Shareholders' Meeting
10:30am, <u>Sunday 15 September 2019</u>	Latest time for online lodgement / receipt of postal votes and proxy forms
10:30am, Tuesday 17 September 2019	Annual Meeting of Shareholders

All dates / times are given in New Zealand time.

### Business of the Meeting

- Chairman's introduction**
- Operational review**
- Shareholder questions**
- Resolutions**

Shareholders will be asked to consider and, if thought appropriate, pass ordinary resolutions on the following matters:

#### Election of Directors

Mr George Adams was appointed as a Director by the Board in August 2019. In accordance with the Constitution, Mr Adams holds office only until this Annual Meeting. Mr Adams is eligible and offers himself for election. A biography of Mr Adams is contained in Explanatory Note 1.

1. That George Adams be elected as a Director of the Company.

#### Non-executive Director Remuneration

2. That, subject to the election of Mr Adams as a Director of the Company, to authorise that NZ\$150,000 of the NZ\$800,000 maximum aggregate remuneration able to be paid to Directors in 2019, shall be payable to Mr Adams by way of an issue of shares in the Company (and not in cash), in compliance with New Listing Rule 4.7.1 and on the terms described in Explanatory Note 2.

#### Auditor's Remuneration

3. To authorise the Directors to fix Deloitte's fees and expenses as the Company's auditor for the year ending 31 March 2020. See Explanatory Note 3.

In addition, shareholders will be asked to consider, and if thought appropriate, pass the following special resolution:

#### Changes to the Company's Constitution

On 1 January 2019, NZX introduced new listing rules (the **New Listing Rules**) which have replaced the listing rules which previously applied to the Company (the **Previous Listing Rules**). To comply with, and for consistency with, the New Listing Rules, the Company needs to amend its constitution.

4. That the existing constitution of the Company is revoked, and the constitution tabled at the meeting, and referred to in Explanatory Note 4, is adopted as the constitution of the Company.

## PROCEDURAL NOTES

- a. Each of Resolutions 1 - 3 is an ordinary resolution and must be passed by a simple majority of the votes of those shareholders entitled to vote and voting on the resolutions.
- b. Resolution 4 is a special resolution and must be passed by a majority of 75% or more of the votes of those shareholders entitled to vote and voting on the resolution.
- c. David Knott (including Dorset Management Corporation) and Ranjan Tandon (including Libra Fund LP), who collectively hold 44.9% of the shares on issue, have confirmed they intend to vote in favour of all resolutions.
- d. Mr Adams does not currently own any Rubicon shares. Mr Adams will not be voting any Rubicon shares he may acquire or any discretionary or undirected proxies on Resolution 2.
- e. The persons who will be entitled to vote on the resolutions at the Annual Meeting are those persons who are recorded on the register as shareholders at 5:00pm on 13 September 2019 (record date).
- f. The accompanying voting / appointment of proxy form should be used to vote on the resolutions. You can participate by postal vote, by proxy, or by casting your vote in person at the Annual Meeting.
- g. A shareholder that is entitled to attend and vote at the Annual Meeting is entitled to appoint a proxy (or a representative in the case of a corporate shareholder) to attend and vote on their behalf. The proxy does not need to be a shareholder of the Company.
- h. You may appoint the Chair of the meeting or any Director as your proxy if you would like. Except as expressly noted in the Procedural Notes above (where there is a restriction on the voting of proxies by Mr Adams), the Chair of the meeting and the Directors confirm that they will vote for resolutions marked "Proxy Discretion", even if they have an interest in the outcome of the resolution. Subject to that same voting restriction on Mr Adams, the Directors intend to vote all undirected proxies in favour of the resolutions. If "Proxy Discretion" is ticked, and your named proxy does not attend the meeting, or if the proxy is not named, the Chair of the meeting will act as your proxy.
- i. A shareholder may cast a postal vote instead of attending the meeting in person or appointing a proxy to attend. Sharon Ludher-Chandra, the Company Secretary, has been authorised by the Board to receive and count postal votes.
- j. A shareholder can elect to lodge their proxy appointment or postal vote online as per the instructions in the Voting / Appointment of Proxy form.

By Order of the Board

Sharon Ludher-Chandra  
Company Secretary  
Rubicon Limited

Auckland  
New Zealand  
19 August 2019

## EXPLANATORY NOTES

### 1. Resolution 1 – Election of George Adams

*Ordinary resolution - "That George Adams be elected as a Director of the Company."*

#### George Adams – Independent Director

*Chartered Accountant (FCA) and Chartered member of the Institute of Directors*

Mr Adams, who is based in New Zealand, brings broad industry knowledge to the Board. His previous management positions include managing director of Coca-Cola Amatil in New Zealand and Finance Director of British Telecom Northern Ireland. He is currently a director of Competenz and Tegel Group Holdings, deputy chairman of Cavalier and chairman of Netlogix and Mix Cosmetics. In addition, Mr Adams is the chairman and co-founder of Apollo Foods Limited (a Hawkes Bay lifestyle beverage company) and Insightful Mobility (a tech start up focusing on delivering market leading sales force solutions).

The Board unanimously supports the nomination of Mr Adams.

### 2. Resolution 2 - Non-executive Director's Remuneration

*Ordinary resolution - "That, subject to the election of Mr Adams as a Director of the Company, to authorise that NZ\$150,000 of the NZ\$800,000 maximum aggregate remuneration able to be paid to non-executive Directors of the Company in 2019, shall be payable to Mr Adams by way of an issue of shares in the Company (and not in cash), in compliance with New Listing Rule 4.7.1 and on the terms described below."*

#### NZX Listing Rules

The Company must comply with the New Listing Rules in relation to the remuneration of non-executive Directors. New Listing Rule 4.7.1, as it applies here to an issue of shares by the Company to a non-executive Director, requires that:

- an issue of shares made to satisfy Director remuneration is authorised by an ordinary resolution of shareholders;
- the shares are of a class already on issue;
- the shares are issued after the end of the period to which the remuneration of the non-executive Director is payable; and
- the issue price of the shares is not less than the Average Market Price (as that term is defined in the New Listing Rules) before the issue is made.

#### Background and Rationale

The Company's current maximum aggregate remuneration of NZ\$800,000 was approved by shareholders in 2001 and was temporarily increased to NZ\$825,000 for 2018. The Company's current maximum aggregate remuneration can only be paid to Directors in the form of cash.

Last year, the independent directors of Rubicon at the time (being Tom Avery, Ozey Horton, and Paul Smart) expressed an interest in being remunerated by way of restricted equity, as is common practice in the US. As a result, the Board proposed, and shareholders approved, an offer of restricted shares (**Shares**) in the Company to those independent directors (the **2018 Plan**).

The Board proposes to extend the same offer to the new independent director, George Adams. Accordingly, similar to the 2018 Plan, the Board proposes to issue Shares to a trustee (the **Trustee**), to be held on trust for Mr Adams in his capacity as a Director of the Company, conditional on him meeting certain vesting criteria over three years. Payment of Mr Adams' remuneration by way of an issue of Shares requires approval from shareholders.

The Board considers it to be in the Company's interests to remunerate Mr Adams by way of restricted Shares and cash, rather than solely by way of cash. It will assist the Company in retaining critical director competencies, necessary to bring value to the Company's business. Further, by providing remuneration to Mr Adams in the form of Shares, his interests are more closely aligned with those of shareholders.

#### Issue of equity securities as non-executive Director remuneration

Of the Directors' remuneration pool of NZ\$800,000, NZ\$150,000 will be used solely to make the issue of Shares to the Trustee to be held on behalf of Rubicon's new independent Director. This issue of Shares will be in addition to the current cash payments made to the non-executive Directors every three months.

Mr Adams' entitlement to the Shares will arise immediately on approval by shareholders of Resolution 2 on 17 September 2019, and the issue will be made on the day following the Annual Meeting on 18 September 2019.

The Shares to be issued will be new ordinary Shares in the Company of the same class as the Company's existing ordinary shares, but which will be held by the Trustee and will only vest in Mr Adams if certain vesting criteria are met.

The vesting criteria and the other terms and conditions upon which the Trustee will hold the Shares on behalf of Mr Adams (the **2019 Plan**) are set out below. The 2019 Plan will also be subject to a trust deed.

## Terms of the 2019 Plan

If Resolution 2 is approved:

- the Company will issue to the Trustee NZ\$150,000 (after tax) of Shares on the first trading day following the 2019 Annual Meeting, to be held on Mr Adams' behalf by the Trustee until vesting occurs for the relevant Shares (the **Restrictive Period**); and
- the actual number of Shares held by the Trustee on behalf of Mr Adams will be determined by dividing \$150,000 by the Average Market Price (as that term is defined in the New Listing Rules) of Rubicon shares before the issue is made.

In addition, the Company will make a cash payment to Mr Adams over the next three years equal to the tax on the gross value of the Shares, subject to a cap of NZ\$24,627 per annum. Should Mr Adams remain on the Board for the full Restrictive Period, the maximum cash-equivalent pre-tax value he will receive under the operation of the 2019 Plan will be NZ\$223,881 (i.e. NZ\$150,000 + NZ\$73,881), or up to NZ\$74,627 per annum (plus the value of any increment in the share price that has occurred from 18 September 2019). When combined with an independent director's current base cash remuneration of NZ\$62,500 per annum, this equates to a total pre-tax annual remuneration of up to NZ\$137,127 per annum.

No further Shares will be offered to Mr Adams as remuneration without seeking shareholder approval. Accordingly, the Shares allocated under the 2019 Plan will be the maximum number of shares paid to Mr Adams as remuneration.

Details of the Shares allocated to Mr Adams will be advised by the Company to NZX on allocation and will be published in the 2020 annual report of the Company.

### *Entitlement*

The Shares to be issued will be ordinary shares in the Company having the same rights, privileges, limitations and conditions as existing ordinary Rubicon shares.

### *Vesting of Shares*

Legal title will be transferred to, and the Shares will be registered in, Mr Adam's name, in three equal tranches on the first, second and third anniversaries following the date of issue, provided that Mr Adams remains a Director of the Company on the relevant anniversary date.

Any transfer of Shares to Mr Adams following the vesting criteria being met will occur within one month of the relevant anniversary date.

### *Early Termination of Directorship*

If Mr Adams ceases to be a director of the Company for any reason other than not being re-elected to the Board by shareholders, Mr Adams will not be entitled to any Shares that have not already vested in his name as at the date of ceasing to be a director.

### *Voting Rights and Transfer Restrictions*

Mr Adams will have no voting rights in respect of the Shares at all times while the Shares are held by the Trustee under the 2019 Plan. Until the Shares have vested, the Trustee shall have absolute discretion as to how the Shares are voted.

Until legal title in the Shares transfers to Mr Adams, Mr Adams cannot sell, transfer, mortgage, charge or otherwise encumber or dispose of those Shares.

Neither Mr Adams, nor the Company, nor any other person may terminate, cancel, surrender or otherwise make or obtain payment of the returns from the Shares other than as described in these terms.

Mr Adams may not enter into arrangements (including through the use of derivative instruments or otherwise) which seek to remove or limit the economic risk of participating in the 2019 Plan.

### *Dividends*

During the Restrictive Period, Mr Adams will not be entitled to the benefit of any dividends, capital returns or other distributions declared and to the benefit of any bonus issues or other entitlements offered to holders of Shares. All such entitlements will be received and held by the Trustee and only pass to Mr Adams on transfer of legal title to the Shares to which the entitlement relates.

### *Corporate Actions*

If at any time while Shares are held by the Trustee on behalf of Mr Adams under the 2019 Plan, the Company issues shares pro-rata to shareholders generally by way of a bonus issue involving the capitalisation of reserves or distributable profit:

- any such bonus Shares will not be transferred to Mr Adams but will be held by the Trustee on behalf of Mr Adams for so long as the Shares which gave rise to the bonus Shares remain subject to the Restrictive Period;
- at the end of the Restrictive Period for the relevant Shares, legal title to a pro-rata number of bonus Shares will be transferred to Mr Adams proportionate to the number of Shares (if any) for which legal title is transferred to Mr Adams at the end of the Restrictive Period.

If at any time while Shares are held by the Trustee on behalf of Mr Adams under the 2019 Plan, the Company makes or announces any rights issue or other offer to shareholders to take up shares or securities other than shares, the Trustee may elect, at its sole discretion, whether to participate on behalf of Mr Adams in any such offer. If the Trustee does participate, it will seek to do so in a manner that provides for the value or benefit of the Company's offer to be transferred to Mr Adams only on transfer of legal title to the Shares to which such value or benefit relates (in the same manner that applies to dividends).

If prior to the vesting of the Shares:

- the Company is a party to a Court-approved reorganisation, merger or reconstruction; or
- any person makes an offer to acquire the Shares of the Company for consideration comprising cash and/or securities,

which:

- may, if accepted, result in that person acquiring 50% or more of the total votes of the Company at a shareholders' meeting; or
- is recommended to shareholders by the Board,

the Board will, at its absolute discretion, determine whether, and subject to such conditions as it thinks fit, some or all of the Shares will immediately vest in Mr Adams.

#### **Voting restrictions**

The Company will disregard any votes cast on Resolution 2 by Mr Adams or any associated person (as defined in the New Listing Rules) of Mr Adams.

The Company will not disregard any votes cast by Mr Adams as a proxy for a person who is entitled to vote, in accordance with the express directions (i.e. instructions to vote for, against or abstain from the resolution) on the Proxy Form. However, New Listing Rule 6.3.3 prohibits Mr Adams from exercising discretionary or undirected proxy votes on this resolution.

The Directors recommend that shareholders vote to approve Resolution 2.

### **3. Resolution 3 - Auditor's Remuneration**

*Ordinary resolution: "To authorise the Directors to fix Deloitte's fees and expenses as the Company's auditor for the year ending 31 March 2020."*

Deloitte is automatically re-appointed at the Annual Meeting as auditor of the Company by virtue of section 207(T) of the New Zealand Companies Act 1993 (the **Companies Act**). The proposed ordinary resolution is required to authorise the Directors of the Company to fix Deloitte's fees and expenses for the following year for the purposes of section 207(S) of the Companies Act.

The Directors recommend that shareholders vote to approve Resolution 3.

### **4. Resolution 4 – Changes to Rubicon's constitution**

*Special resolution - "That the existing constitution of the Company is revoked, and the constitution tabled at the meeting, and referred to in Explanatory Note 4, is adopted as the constitution of the Company."*

To ensure compliance with the New Listing Rules, the Company must amend its constitution. An amended constitution has been prepared.

A copy, marked to show the changes from the existing constitution, is available:

- at the Annual Meeting;
- on the Company's website: <http://www.rubicon-nz.com/governance/constitution/>; and
- by request from the Company Secretary: email: Sharon.Ludher-Chandra@rubicon-nz.com, phone: 64-9-356 9800.

A summary of the proposed changes to the constitution is set out below. Unless expressly stated otherwise, references to clause numbers below are references to clause numbers in the constitution as proposed to be amended.

#### **Methods of holding meetings:**

Changes have been made to provide more up-to-date wording and flexibility to enable Director and shareholder meetings to be held by electronic means.

#### **Notice of meeting:**

Changes have been made to align the requirements set out in the constitution for a notice of shareholders' meeting with recent changes made to the Listing Rules and the Companies Act, and for consistency with current market practice.

#### **Voting at meetings of shareholders:**

The New Listing Rules require that all voting at shareholders' meetings must be conducted by way of a poll. This has been reflected (where required) in clause 15. Although this is a new requirement, it does not change the recent practice of the Company. We have also made a number of amendments throughout clause 15 to reflect changes in law which provide greater flexibility around audio-visual meetings and voting and participation of shareholders by electronic means.

**Proxies:**

Amendments have been made to reflect current market practice relating to appointment of proxies by electronic means and to reflect changes to the language used in the New Listing Rules. The changes do not affect the right to appoint a proxy. The new constitution has also been updated to reflect changes to the Companies Act which relate to the lodgement of proxies.

**Directors:**

The rules governing regular retirement and re-election of Directors have changed under the New Listing Rules, resulting in changes to clause 20 of the constitution. Under the Previous Listing Rules, executive directors were not required to retire by rotation. Under the New Listing Rules, all directors are subject to the same rotation requirements. The New Listing Rules require that a Director must not hold office (without re-election) past the third annual meeting following that Director's appointment or three years, whichever is longer. This is in contrast to the Previous Rules which required one third of Directors to retire from office at the annual meeting each year, and were eligible for re-election.

**Executive Director:**

The Previous Listing Rules provided that the term of appointment of an executive Director must not exceed five years. This requirement has been removed and clause 22 of the constitution has been amended to reflect this.

**New Listing Rules incorporated by reference:**

A number of the New Listing Rules are not expressly set out in the new constitution, but are instead incorporated into the constitution by reference.

**Removal of clauses no longer required to be incorporated:**

A number of clauses have been removed from the constitution where they are no longer required by the New Listing Rules to be set out in the constitution. Where applicable, the equivalent provisions of the New Listing Rules are incorporated by reference into the new constitution – as discussed above.

**Forfeiture of Shares:**

Clause 8 has been updated to provide for the Company to recover from a shareholder accrued expenses incurred by the Company by reason of a non-payment of a call by that shareholder.

**Alternate Directors:**

The provision which prescribed that an Alternate Director's remuneration must be paid by the appointing Director, and that the expenses of the Alternate Director in attending Director meetings be paid by the Company has been removed. The payment of such amounts are instead governed by the provisions of the Companies Act and clause 24.1 of the constitution.

**Unclaimed distributions:**

Clause 26.5 of the constitution has been amended to remove the requirement that the Company hold unclaimed distributions for five years before being forfeited. Under the amended clause the Company may mingle such distribution with other money of the Company and shall not be required to hold it or to regard it as being subject to any trust (subject always to being required to pay such amounts to a person producing evidence of their entitlement to the distribution).

**Other changes:**

Changes to the definitions in the constitution, and various other less significant wording changes, have been made to reflect the provisions of the New Listing Rules, to reflect changes to legislation, market practice or to generally modernise the constitution (particularly regarding electronic communications).

Pursuant to the Companies Act, the revocation of the existing constitution and adoption of a new constitution must be approved by a special resolution of shareholders (being a majority of 75% or more of the votes of shareholders entitled to vote and voting on the resolution). As the effect of the amendments to the constitution is not to impose or remove a restriction on the activities of the Company or affect the rights attaching to shares, the shareholder minority buy-out rights under the Companies Act do not apply to this resolution.

Bell Gully has provided an opinion to NZX that it considers that the new constitution complies with the New Listing Rules.

The Directors recommend that shareholders vote to approve Resolution 4.