



NZX Regulation Decision

New Zealand Oil & Gas Limited

Application for waiver from NZX Main Board Listing Rule
9.2.1

7 November 2018



Waiver from NZX Main Board Listing Rule 9.2.1

Decision

- 1) Subject to the conditions set out at paragraph 2 below and on the basis that the information provided by New Zealand Oil & Gas Limited (**NZO**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants NZO a waiver from NZX Main Board Listing Rule (**Rule**) 9.2.1, to the extent that this Rule would otherwise require NZO to seek shareholder approval to enter into the Proposed Transactions (as defined below).
- 2) The waiver in paragraph 1, above, is provided on the conditions that:
 - (a) the directors of NZO who are not also directors of Cue certify, in a form acceptable to NZX, that:
 - (i) they believe the terms of the Proposed Transactions have been negotiated, agreed and are to be entered into on an arm's length and commercial basis;
 - (ii) they believe the terms of the Proposed Transactions represent fair value and are fair and reasonable to NZO and its shareholders; and
 - (iii) Beach did not influence the final decision of NZO's board to enter into the Transactions.
 - (b) This waiver, its conditions and the implications of this waiver are disclosed in NZO's next annual report.
- 3) The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not, or ceases to be, full and accurate in all material respects.
- 4) The Rules to which this decision relates are set out in Appendix Two to this decision.
- 5) Capitalised terms used but not defined in this decision have the meaning set out in this decision (including the Appendices) or in the Rules.

Reasons

- 6) In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has taken into consideration the following:
 - (a) The policy underlying Rule 9.2.1 is to ensure that Related Parties do not exercise undue influence on an Issuer's decision to enter into a Material Transaction, or in order to reach a favourable outcome or a transfer of value to the Related Party in respect of a transaction;
 - (b) In this instance, the status of NZO and Beach Energy Limited (**Beach**) as Related Parties arises by virtue of NZO being party to unincorporated joint venture arrangements to which Beach is also party. In this regard, the Transactions do not offend the policy behind Rule 9.2.1;

- (c) The Key Acquisition Transactions (as defined in Appendix One) are being entered into between NZO and Cue Energy Resources Limited (**Cue**) (or a wholly owned subsidiary of Cue). Beach is not involved in those transactions other than as a party in relation to a separate transaction that has been entered into between Beach and Cue;
- (d) NZXR is satisfied that the relationship between NZO and Beach has not influenced the decision to enter into the Proposed Transactions as:
 - (i) the involvement of an independent party who holds or will hold a significant stake in the Ironbark permits, and who has or will have operatorship of those permits means there is a commercial check on any behaviour by NZO which may offend the policy behind Rule 9.2.1; and
 - (ii) NZO has not changed, and has no ability to change, the terms of the JOAs to favour Beach ahead of the other joint venture participants;
- (e) NZXR accepts that the existing relationships between NZO and Beach (through the joint ventures) is unlikely to have influenced the decision of the board of NZO to enter into the Proposed Transactions. The certificate provided by the directors of NZO provides adequate assurance and protection to shareholders of NZO that the transaction represents fair value and is in the best interests of shareholders in NZO, and is entered into on a commercial, arm's length basis;
- (f) The condition at paragraph 2(a) provides comfort that the Proposed Transactions have been negotiated and entered into on an arm's length and commercial basis and are fair, reasonable and in the best interests of NZO and its shareholders; and
- (g) There is precedent for this decision.

Confidentiality

- 7) NZO has requested that this application, and any decision made in relation to it, remain confidential until NZO releases an announcement relating to the Proposed Transactions.
- 8) In accordance with Footnote 1 to Rule 1.11.2, NZXR grants NZO's request.

Appendix One

Background

- 1) NZO is a listed issuer with its shares quoted on the NZX Main Board.
- 2) NZO is entering into a series of related transactions (the **Proposed Transactions**), comprising:
 - (a) The acquisition by NZO (through an indirect wholly-owned subsidiary of NZO that is to be incorporated in Australia) of a 15% interest in exploration permit WA-359-P (**Ironbark I**) from a wholly owned subsidiary of Cue;
 - (b) The associated entry into a joint operating agreement in respect of Ironbark I (**JOA I**) between NZO, Cue, BP Developments Australia Pty Limited (**BP**) and Beach;
 - (c) The acquisition by NZO of a call option (**Call Option**) granted by Cue in relation to a 5.36% participating interest in exploration permit WA-409-P (**Ironbark II**, together with Ironbark I, **Ironbark**); and
 - (d) Upon exercise of such Call Option, the entry by NZO into a joint operating agreement in respect of Ironbark II (**JOA II**, and together with JOA I, the **JOAs**) between NZO, Cue, BP and (potentially) Beach.

Ironbark I

- 3) The Ironbark I project is located in Australia and is currently 100% owned by Cue Exploration Pty Limited, a wholly-owned subsidiary of Cue. NZO owns 50.04% of the shares in Cue.
- 4) NZO has entered into a conditional agreement to acquire a 15% interest in the Ironbark I project (the **Farmin Transaction**) from Cue in consideration for:
 - (a) the payment to Cue of AUD642,600 as initial consideration in respect of past costs incurred by Cue in respect of the Ironbark I permit; and
 - (b) covering 17.85% of the costs of exploration of the Ironbark I permit up to an agreed level, and 15% of costs thereafter.
- 5) The value of NZO's commitments in respect of Ironbark I and JOA I is expected to be approximately USD17 million.
- 6) Independently of this acquisition, Cue has conditionally agreed to sell interests in Ironbark I to each of BP and Beach (the **Farmout Transactions**). Binding arrangements in respect of these transactions are already in place between the parties.
- 7) Implementation of the Farmin Transaction and the Farmout Transactions will require the coordination of all parties to enter into JOA I, which will regulate the terms of the joint venture in respect of Ironbark I. Each of NZO, Cue, BP and Beach have entered into an assignment and joint venture coordination agreement relating to Ironbark I (the **Coordination Agreement**). The Coordination Agreement provides for the assignment of interests from Cue to the Ironbark I joint venture participants upon satisfaction of certain conditions precedent.
- 8) Upon completion under the Coordination Agreement, the interests in Ironbark I will be held as follows:

- (a) BP 42.5% (operator)
- (b) Cue 21.5%
- (c) Beach 21%
- (d) NZO 15%

Ironbark II

9) Cue has also agreed to grant to NZO a Call Option in relation to a 5.36% participating interest in Ironbark II (the **Call Option Transaction**, and together with the Farmin Transaction, the **Key Acquisition Transactions**). Under the Call Option Transaction, NZO will:

- (a) if the Call Option is exercised by NZO, cover 10.72% of the costs of exploration of the Ironbark II permit up to an agreed level, and 5.36% of costs thereafter; and
- (b) pay Cue a 10% royalty on future revenue earned by NZO from the permit.

NZO has not exercised the Call Option. The Call Option may be exercised at any time up to a specified long-stop date.

10) If NZO decides to exercise the Call Option, it will be required to enter into JOA II which regulates the terms of the joint venture in respect of Ironbark II. The terms of JOA II are broadly similar terms to the terms of JOA I.

11) The value of NZO's commitments in respect of Ironbark II and JOA II is approximately USD10 million (if the Call Option is exercised by NZO) excluding the royalty obligation.

12) Cue has also granted a call option to Beach under which Beach can acquire a 7.5% interest in the Ironbark II project. The Beach call option was entered into and announced in 2017.

13) The Ironbark II project is currently 80% owned by BP (who is also the operator) and 20% owned by Cue Exploration Pty Limited, a wholly-owned subsidiary of Cue. If both the Call Option and the Beach call option are exercised, it is expected that the interests in Ironbark II would be held as follows:

- (a) BP 80% (operator)
- (b) Cue 7.14%
- (c) Beach 7.5%
- (d) NZO 5.36%

NZO and Cue

14) The entry into the Key Acquisition Transactions between NZO and Cue are not required to be approved as a Material Transaction with a Related Party as Cue is a Subsidiary of NZO and:

- (a) No Related Party of NZO has or intends to obtain a material direct or indirect economic interest in Cue; and
- (b) NZO is entitled to participate in more than one-half of the income or profits of Cue.

15) Accordingly, Cue is not a Related Party of NZO as it falls within the exception in Rule 9.2.3(f).

NZO and Beach

16) Independent of the Proposed Transactions, NZO and Beach are party to joint operating agreements in respect of:

- (a) New Zealand petroleum exploration permit PEP 52717 (**Clipper**), as to a 50% interest each; and
- (b) petroleum exploration permit PEP 38146 (**Kupe**). NZO has a 4% interest in Kupe and Beach has a 50% interest. Beach is the operator of the Kupe field.

Listing Rule 9.2.1(a)

17) The Proposed Transactions are a Material Transaction with a Related Party under Rule 9.2.1(a) as the entry into the JOAs form part of a series of related transaction between NZO and Beach, where Beach is a related party of NZO by virtue of their relationship as parties to existing joint venture arrangements.

Material Transaction

18) The Proposed Transactions are Material Transactions, as defined in Rule 9.2.2, because the value of the consideration to be provided by NZO has an Aggregate Net Value in excess of 10% of NZO's Average Market Capitalisation.

Related Parties

19) Beach is a Related Party of NZO because:

- (a) Rule 9.2.3(c) provides that an "Associated Person of the Issuer" is a "Related Party" for the purposes of the transaction approval requirements in Rule 9.2.1.
- (a) NZO and Beach are likely to be "Associated Persons" because:
 - (i) in terms of Rule 1.8.2, their historic relationship through the Clipper and Kupe joint ventures could be viewed as matter which was capable of influencing NZO decisions; and
 - (ii) Rule 1.8.3(d) deems two persons to be "Associated Persons" if they are "acting jointly or in concert". Each of the Clipper and Kupe joint ventures could be considered an example of Beach and NZO "acting jointly or in concert".

Shareholder approval ordinarily required

20) Rule 9.2.1(a) prohibits an Issuer from entering into a Material Transaction if a Related Party is, or is likely to become, a direct or indirect party to the Material Transaction, or at least one of a related series of transactions of which the Material Transaction forms part, unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

Appendix Two

Rule 1.8 provides:

- 1.8.1 “In the Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of Rule 1.8.2 to Rule 1.8.7.
- 1.8.2 A person (the "first person") is associated with another person (the "second person") if, in making a decision or exercising a power affecting an Issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.
- 1.8.3 Without limiting Rule 1.8.2, the first person is associated with the second person if:
- ...
- (d) The first person and second person are acting jointly or in concert; or...”

Rule 9.2.1 provides:

“An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; ...

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.”

Rule 9.2.2 provides:

“For the purposes of Rule 9.2.1, “Material Transaction” means a transaction or a related series of transactions whereby an Issuer:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer; or ...”
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; ...

Rule 9.2.3 provides:

“For the purposes of Rule 9.2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or executive officer of the Issuer or any of its Subsidiaries; or
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes; or
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or

- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself; ...”