

Our ref: SJD\SLAI\02 3002 0619
Partner: Sarah Dulhunty
Direct line: +61 2 9258 6643
Email: sarah.dulhunty@ashurst.com
Contact: Scott Lai, Senior Associate
Direct line: +61 2 9258 6276
Email: scott.lai@ashurst.com

Ashurst Australia
Level 11
5 Martin Place
Sydney NSW 2000
Australia

GPO Box 9938
Sydney NSW 2001
Australia

Tel +61 2 9258 6000
Fax +61 2 9258 6999
DX 388 Sydney
www.ashurst.com

24 August 2017

BY EMAIL

Rupa Kapadia
Adviser, Listings Compliance
ASX Compliance Pty Ltd
20 Bridge Street
Sydney NSW 2000

ashurst

Dear Rupa

Response to ASX query

We refer to your letter dated 22 August 2017.

As you know, we act for Boart Longyear Limited (the **Company**).

We respond to your questions as follows, adopting your numbering:

1. **Does the Company consider that it has sufficient capacity under listing rule 7.1 to make the issue of securities to First Pacific under the Settlement without seeking shareholder approval under that rule? If the answer to this question is yes, please set out the basis for this view.**

Yes.

Under the Settlement on 9 August 2017 referred to in your letter it was agreed that:

- (a) ordinary shares in the Company (**Shares**), representing in aggregate approximately 4% of the Company's post Recapitalisation issued share capital (or 483,585,950 Shares) (**New Shares**), will be issued to the holders of the 10% Secured Notes under the Secured Scheme on a pro rata basis; and
- (b) the number of Shares issued to Centerbridge under the Subscription Deed and, to Ares and Ascribe under the Unsecured Creditors' Scheme, will be reduced by a number of Shares equivalent to the number of New Shares.

Thus, the terms of the Settlement have no additional dilutive impact on shareholders of the Company.

We do not consider that entering into the Settlement constituted an agreement to issue equity securities, rather it constituted an agreement by the Company to propose amendments to the creditors schemes previously proposed by the Company. Even if the Settlement is considered to be an agreement to issue equity securities, we consider that it would fall within Exception 13 to ASX Listing Rule 7.1 because at the time of entering into the Settlement all the issues of equity securities under the Recapitalisation had been approved by shareholders at the Company's annual general meeting on 13 June 2017 (**AGM**).

The New Shares will be issued to the holders of the 10% Secured Notes on the implementation date for the creditors schemes *after*:

- (a) the issue of 4,190,069,760 Shares to Ares as the holder of the 7% Unsecured Notes under the Unsecured Creditors Scheme which was approved by shareholders at the AGM (see resolution 7) (see Exception 16 to Listing Rule 7.1);
- (b) the issue of 4,458,708,997 Shares to Ascribe as the holders of the 7% Unsecured Notes under the Unsecured Creditors Scheme which was approved by shareholders at the AGM (see resolution 8) (see Exception 16 to Listing Rule 7.1);
- (c) the issue of 1,191,486,322 Shares to the holders of the 7% Unsecured Notes (other than Ares and Ascribe) under the Unsecured Creditors Scheme which was approved by shareholders at the AGM (see resolution 9); and
- (d) the issue of 12,385,854,284 Shares to Centerbridge or its Affiliates under the Subscription Deed which was approved by shareholders at the AGM (see resolution 6) (see Exception 16 to Listing Rule 7.1).

Thus at the time of issuing the New Shares the Company's capacity under Listing Rule 7.1 is 3,469,879,969 Shares, as calculated below:

A = 23,176,099,298, being:

The number of fully paid ordinary securities on issue 12 months before the issue date	939,074,462
Plus the number of fully paid ordinary securities issued in the 12 months under an exception in rule 7.2	21,045,538,514, comprising: <ul style="list-style-type: none"> - 21,034,633,041 Shares issued in reliance on Exception 16 (being those Shares referred to in paragraphs (a), (b) and (d) above); and - 10,905,473 Shares issued to Non-Executive Directors in reliance on Exception 14 (as approved by Shareholders at the 2015 AGM)
Plus the number of partly paid ordinary securities that became fully paid in the last 12 months	0
Plus the number of fully paid ordinary securities issued in the 12 months with the approval of holders of ordinary securities under rule 7.1 or 7.4	1,191,486,322 (being those Shares referred to in paragraph (d) above)
Less the number of fully paid ordinary securities cancelled in the 12 months	0

B = 15%

C = 6,534,925

(Being the number of equity securities issued or agreed to be issued in the 12 months before the issue date or date of agreement to issue that are not issued under an exception in rule 7.2, under rule 7.1A.2 or with the approval of holders of ordinary securities under rule 7.1 or rule 7.4.)

This means that at the time of issue of the New Shares the Company is permitted to issue the New Shares without the approval of ordinary shareholders under Listing Rule 7.1.

2. **Does the Company consider that listing rule 10.11 applies to the issue of shares to First Pacific under the Settlement? if the answer to this question is no, please set out the basis for this view and, in particular, the Company's analysis of the relationship (if any) between First Pacific and Centerbridge, whether or not Centerbridge and First Pacific are acting in concert in relation to the Settlement, and whether or not First Pacific is an associate of Centerbridge.**

No, First Pacific is not a related party of the Company so listing rule 10.11 has no application to the issue of Shares to First Pacific under the Secured Creditors' Scheme.

First Pacific holds no Shares in the Company and does not have a nominee on its board of the Company and has no other relationship with the Company other than being the holder of 10% Secured Notes.

As you will be aware First Pacific has been the primary objector to the creditors' schemes. It appeared at the first court hearing to object to the creditors meetings being convened and then challenged the decision of Black J to convene the meetings of creditors in the New South Wales Court of Appeal and when it lost that appeal sought leave to appeal to the High Court of Australia. It also appeared at the second court hearing to contest approval of the creditors' schemes. First Pacific and Centerbridge have been in opposite negotiating positions in relation to the restructuring of the Company and remain in contest in respect of First Pacific's continued objection to the creditors' schemes in their original form.

In order for First Pacific to be a related party of the Company within the meaning of section 228 (7) of the Corporations Act, First Pacific must be acting in concert with a related party (presumably, Centerbridge) on the understanding that Centerbridge will receive a financial benefit if the Company gives First Pacific a financial benefit.

To act in concert "involves at least an understanding between the parties as to a common purpose or object..." (*Bank of Western Australia v Ocean Trawlers Pty Ltd* (1995) 13 WAR 407. The entry into and a common purpose of executing a transaction is not sufficient to establish parties are acting in concert (*IPT Systems Ltd v MTIC Corporate Pty Ltd*).

First Pacific and Centerbridge do not share a common purpose. First Pacific has agreed to the Settlement in order to advance its interests as the holder of 10% Secured Notes and Centerbridge has agreed to the Settlement to advance its wider and different interests as the holder of 10% Secured Notes, 7% Unsecured Notes, the provider of Term Loans A and B and a major holder of equity in the Company.

There is also no link between Centerbridge receiving a benefit and the Company giving First Pacific a benefit. A condition to Centerbridge's receipt of a benefit under the altered creditors' schemes is not that the Company give First Pacific a benefit but rather that the court approves the altered creditors' schemes and they are implemented.

Black J in *In the matter of Boart Longyear Limited* [2017] NSWSC 1105 at 315 to 326 was also not persuaded that First Pacific and Centerbridge were acting in concert for the purposes of Chapter 2E of the Corporations Act.

3. **Does the entity consider the changes resulting from the Settlement to be consistent with the various shareholder approvals obtained on 13 June 2017? if the answer to this question is "yes", please set out the basis for this view.**

Yes.

The shareholder approvals sought for the purposes of the Listing Rules were sought for the purposes of Listing Rule 7.1 and 10.11. Shareholder approvals were also sought for the purposes of item 7 of section 611 of the Corporations Act which meant the Company was able to rely on Exception 16 in Listing Rule 7.2. Shareholders were provided with all information needed to fully and fairly inform members to enable members to judge for themselves whether to attend the meeting and vote for or against the resolutions. Shareholders were also provided with all information required by Listing Rule 7.3 and Listing Rule 10.3.

The policy behind Listing Rule 7.1 is to prevent significant dilutions of the holdings of the existing shareholders without those shareholders having an opportunity to participate in or to approve those issues.

The shareholder approvals obtained for the purposes of Listing Rule 7.1 (including by way of exception) approved the issue of up to a certain number of Shares. As a result of the Settlement a fewer number of Shares will be issued pursuant to those approvals. In other words, the dilutive impact of the approved issues of Shares will be less. None of the information provided pursuant to Listing Rule 7.3 for the purposes of those approvals has changed. Accordingly, we consider the approvals to be entirely consistent with the Settlement and that the Settlement does not in any way undermine the policy behind Listing Rule 7.1.

The policy behind Listing Rule 10.11 is to deal with transactions between a Company and persons in a position to influence the Company and the potential that arises for the transfer of value from the listed entity to related parties. The Settlement did not impact the nature of the related parties in respect of whom approval was sought nor the information provided under Listing Rule 10.13. The primary implication of the Settlement will be that the number of Shares being issued to Centerbridge will be less than the number for which approval was sought. Accordingly, we consider the approvals to be entirely consistent with the Settlement and that the Settlement does not in any way undermine the policy behind Listing Rule 10.11.

Yours faithfully


Ashurst Australia



22 August 2017

Mr Philip Mackey
Company Secretary
Company Matters Pty Ltd
Level 12, 680 George Street
Sydney NSW 2000

By email: Mackey@companymatters.com.au

Dear Mr Mackey,

Boart Longyear Limited (the "Entity"): ASX query

ASX Limited ("ASX") refers to the following;

1. The notice of annual general meeting lodged as a market announcement on 12 May 2017, for the meeting held on 13 June 2017, whereby shareholders approved various resolutions related to the recapitalisation of the Entity (the "Shareholder Approvals"), including an approval under listing rule 10.11 to an issue of shares to Centrebridge Partners L.P. ("Centrebridge") and under listing rule 7.1 to an issue of shares to shareholders other than Centrebridge and to the holders of various unsecured notes.
2. The Company's announcement lodged on 9 August 2017, advising that the Entity had reached a settlement (the "Settlement") with First Pacific Advisors LLC ("First Pacific") during the mediation ordered by the Supreme Court of New South Wales. Under the terms of the Settlement, among other things, shares will be issued to First Pacific and the Entity will reimburse First Pacific for fees and expenses of up to USD3 million occurred in connection with the Creditors' Schemes.
3. Listing rule 7.1 which provides as follows:

7.1 Subject to rules 7.1A and 7.1B, without the approval of holders of ⁺ordinary securities, an ⁺entity must not issue or agree to issue more ⁺equity securities than the number calculated according to the following formula.

$$(A \times B) - C$$

A = The number of fully paid ⁺ordinary securities on issue 12 months before the ⁺issue date or date of agreement to issue,

- *plus the number of fully paid ^{*}ordinary securities issued in the 12 months under an exception in rule 7.2,*
- *plus the number of partly paid ^{*}ordinary securities that became fully paid in the 12 months,*
- *plus the number of fully paid ^{*}ordinary securities issued in the 12 months with approval of holders of ^{*}ordinary securities under rule 7.1 or rule 7.4,*
- *less the number of fully paid ^{*}ordinary securities cancelled in the 12 months.*

B = 15%

C = The number of ^{}equity securities issued or agreed to be issued in the 12 months before the ^{*}issue date or date of agreement to issue that are not issued:*

- *under an exception in rule 7.2;*
- *under rule 7.1A.2; or*
- *with the approval of the holders of ^{*}ordinary securities under rule 7.1 or rule 7.4.*

4. Listing rule 10.11 which provides as follows:

10.11 Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue ^{}equity securities to any of the following ^{*}persons without the approval of holders of ^{*}ordinary securities.*

10.11.1 A ^{}related party.*

10.11.2 A ^{}person whose relationship with the entity or a ^{*}related party is, in ASX's opinion, such that approval should be obtained.*

Having regard to the ASX Listing Rules including listing rules 7.1 and 10.11, we ask that you answer each of the following questions.

1. Does the Entity consider that it has sufficient capacity under listing rule 7.1 to make the issue of securities to First Pacific under the Settlement without seeking shareholder approval under that rule? If the answer to this question is yes, please set out the basis for this view.
2. Does the Entity consider that listing rule 10.11 applies to the issue of shares to First Pacific under the Settlement? If the answer to this question is no, please set out the basis for this view and, in particular, the Entity's analysis of the relationship (if any) between First Pacific and Centrebridge, whether or not Centrebridge and First Pacific are acting in concert in relation to the Settlement, and whether or not First Pacific is an associate of Centrebridge.
3. Does the Entity consider the changes resulting from the Settlement to be consistent with the various Shareholder Approvals obtained on 13 June 2017? If the answer to this question is "yes", please set out the basis for this view.

Your response should be sent to me by e-mail at rupa.kapadia@asx.com.au. It should not be sent to the ASX Market Announcements Office.

A response is requested as soon as possible and, in any event, not later than half an hour before the start of trading (ie before 9.30 a.m. A.E.S.T.) on Thursday, 24 August 2017.

This request is made under listing rule 18.7. Under listing rule 18.7A, ASX reserves the right to release a copy of this letter and your response to the market, so your response should be in a form suitable for release and must separately address each of the questions asked.

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

[Sent electronically without signature]

Rupa Kapadia
Adviser, Listings Compliance