



NZX Regulation Decision

Tilt Renewables Limited ("TLT")

Application for a waiver from NZX Main Board Listing Rule
7.6.4(a)

1 May 2017



Waiver from Rule 7.6.4(a)

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Tilt Renewables Limited (**TLT**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants TLT a waiver from Rule 7.6.4(a), to the extent that this Rule would otherwise prevent TLT from providing Financial Assistance to the Trustee pursuant to the terms of the Fixed Trading Plan for the Directors of TLT.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Non-Interested Directors of TLT certify to NZX that:
 - i. the arrangements between the Trustee, TLT and each Relevant Director have been entered into and negotiated on an arm's length commercial basis; and
 - ii. in their opinion, entry into the arrangements between the Trustee, TLT and each Relevant Director is fair and reasonable to, and in the best interests of, TLT and its shareholders not associated with the Relevant Directors;
 - b. should TLT pay any fees to the Trustee in connection with the Fixed Trading Plan:
 - i. the Non-Interested Directors of TLT certify to NZX that:
 - (a) the fee arrangement has been entered into and negotiated on an arm's length commercial basis; and
 - (b) in their opinion, the fees paid are fair and reasonable to, and in the best interests of, TLT and its shareholders not associated with the Relevant Directors; and
 - ii. TLT must disclose to the market any fees paid to the Trustee by TLT in connection with the Fixed Trading Plan;
 - c. should there be an amendment to the Financial Assistance provided in connection with the Fixed Trading Plan:
 - i. the Non-Interested Directors of TLT certify to NZX that:
 - (a) the amended Financial Assistance arrangement has been entered into and negotiated on an arm's length commercial basis; and
 - (b) the amended Financial Assistance arrangement is fair and reasonable to, and in the best interests of, TLT and its shareholders not associated with the Relevant Directors; and
 - ii. TLT must disclose to the market any amendment to the Financial Assistance arrangement in connection with the Fixed Trading Plan;
 - d. the key terms of the Fixed Trading Plan and the arrangements to be entered into between the Trustee, TLT and each Relevant Director are disclosed to the market when the Fixed Trading Plan is established; and



- e. the waiver, its conditions and the implications of the waiver are disclosed in TLT's annual reports during the term of the fixed trading plan and the arrangements between the Trustee, TLT and each Relevant Director.
- 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 which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

- 6. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. the policy behind Rule 7.6.4 is to ensure that Directors, or their Associated Persons, do not unduly influence a proposal to receive financial assistance from an Issuer, or to receive financial assistance on unduly favourable or beneficial terms, due to their relationship with the Issuer. The granting of this waiver will not offend the policy of these Rules;
 - b. the conditions contained in paragraphs 2.a., 2.b.(i) and 2.c.(i) provide comfort that any Financial Assistance arrangements have been or will be entered into on arm's length commercial basis and the terms are fair and reasonable and in the best interests of TLT and TLT shareholders not associated with the Relevant Directors;
 - c. TLT shareholders will be able to access information about the Fixed Trading Plan and the Financial Assistance. The Companies Act 1993 requires TLT to disclose information to TLT shareholders regarding the Financial Assistance given to the Relevant Directors and their Associated Persons and the value of any benefits received by Directors during the relevant reporting period;
 - d. there is precedent for this decision.

Confidentiality

- 7. TLT has requested that its application and any decision be kept confidential until the details of the Fixed Trading Plan are released to market.
- 8. In accordance with footnote 1 to Rule 1.11.2, NZXR grants TLT's request.



Appendix One

1. Tilt Renewables (**TLT**) is a Listed Issuer with ordinary shares (**Shares**) Quoted on the NZX Main Board.
2. TLT is proposing to establish a fixed trading plan for the Directors of TLT, where the Directors will be obliged to apply 50% of their cash remuneration to purchase Shares on market (**Fixed Trading Plan**).
3. In accordance with the Takeovers Code, any Director:
 - a. who holds or controls more than 20% of TLT's voting securities; or
 - b. who is an associate of a shareholder who holds or controls more than 20% of TLT's voting securities,will not be permitted to hold or control the voting rights in the Shares that are purchased pursuant to the Fixed Trading Plan, except as provided by the Takeovers Code.
4. None of TLT Directors currently hold or control voting rights in TLT in excess of 20%. However, TLT submits that for the purposes of the Takeovers Code members of the TLT Board may be "associates" of Infratil Limited and its related bodies corporate (**Infratil**) (the **Relevant Directors**).
5. Infratil holds 51.04% of Shares in TLT. Pursuant to an investment management agreement, H.R.L. Morrison & Co Group Limited Partnership (via a wholly-owned subsidiary) (**MCO**) also has a non-beneficial interest in those TLT shares because it manages Infratil's investment.
6. Given the Relevant Directors may be "associates" of Infratil or MCO, TLT proposes that the Fixed Trading Plan will operate as follows:
 - a. participation in the plan would be mandatory for all TLT Directors. Each Director (or their chosen family entity) will enter into a participation agreement with TLT;
 - b. each month, 50% of each Director's remuneration will be withheld by TLT and paid to an NZX Participant (**Manager**). The Manager will use the remuneration to purchase TLT Shares on market;
 - c. once the Manager has acquired the Shares, the Manager will either:
 - i. in respect of the Relevant Directors, transfer the Shares to a trustee that would hold the Shares on trust for the Relevant Director (**Trustee**). The Relevant Director would not control the voting rights of the Shares; or
 - ii. transfer the Shares to those Directors of TLT for whom the Trustee will not be holding Shares (**Non Interested Directors**);
 - d. while Shares are held by the Trustee, the Manager or the Trustee will not vote them. Any dividends paid on Shares held by the Trustee will be paid to the Relevant Director or their chosen family entity;
 - e. Directors are not permitted to withdraw from the Fixed Trading Plan. Directors will not be permitted to sell Shares that have been transferred to them until after one year after their directorship has ceased; and

- f. Shares that are transferred to the Trustee will not be transferred to the Relevant Director until the "association" has ceased, or the relevant holding or control of the associate has fallen below the 20% Takeovers Code threshold. If the directorship ceases before that time, the Shares will be sold one year after the directorship has ceased and the net proceeds provided to the Director.
- 7. Under the proposed arrangements between each Relevant Director and the Trustee:
 - a. the Trustee will enter into an agreement with TLT and each Relevant Director in order to provide the service;
 - b. Shares will be transferred to the Trustee to hold on trust for the Relevant Director;
 - c. the Trustee will not exercise any voting rights attaching to Shares held by the Trustee;
 - d. when a Relevant Director ceases to be prohibited from holding and controlling the voting rights, the Trustee will transfer the Shares to the Relevant Director or their chosen family entity. The Trustee will be given a written direction signed by TLT and the Relevant Director as to when this can occur;
 - e. dividends on Shares held by the Trustee will be paid to the Relevant Director; and
 - f. the Trustee does not currently intend to charge TLT any fees for its services (but this may change should the Trustee change) (**Fee Arrangements**), but would require an indemnity from TLT for any liability it may suffer as a result of its involvement in the Fixed Trading Plan (**Indemnity**).
- 8. The Trustee, as a trustee for the Relevant Director, will be an Associated Person of the Relevant Director under NZX Main Board Listing Rule (**Rule**) 1.8.3(b).
- 9. The Indemnity and the potential Fee Arrangements given by TLT to the Trustee will constitute financial assistance under Rule 7.6.3 (the **Financial Assistance**).
- 10. As the Financial Assistance will be given to an Associated Person of a Director of TLT it does not fall within the ambit of Rule 7.6.4(a). The Financial Assistance could not be provided to the Trustee unless it is approved by an ordinary resolution of shareholders under Listing Rule 7.6.5. In order to comply with Listing Rule 7.6.6, this ordinary resolution would need to be obtained every twelve months for as long as the Fixed Trading Plan is in place. TLT has therefore sought a waiver from the requirement in Rule 7.6.4(a) that the Financial Assistance is not given in whole or in part to any Director of the Issuer or Associated Person of a Director.



Appendix Two

7.6 Buy Backs of Equity Securities, Redemption of Equity Securities, and Financial Assistance

7.6.4 An Issuer may give financial assistance of the nature referred to in Rule 7.6.3 if:

(a) the financial assistance is not given in whole or in part to any Director of the Issuer, Associated Person of a Director or Employee of the Issuer, and the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (a) by the Issuer during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed 10% of the Average Market Capitalisation of the Issuer; or

(b) the financial assistance is given to Employees of the Issuer and:

(i) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) by the Issuer during:

(A) the shorter of the period of three years preceding the date of giving of the financial assistance and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed \$1 million; or

(B) the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Issuer was Listed to the date of giving of the financial assistance, does not exceed 5% of the Average Market Capitalisation of the Issuer; and

(ii) the amount of the financial assistance, together with the amount of all other financial assistance given under Rule 7.6.4(b)(i) during the shorter of the period of five years preceding the date of the giving of financial assistance and the period from the date on which the Issuer was Listed to the date of the giving of the financial assistance, does not exceed 10% of the Average Market Capitalisation of the Issuer; and

(iii) the financial assistance is not given to any Director of the Issuer or Associated Person of a Director; or

(c) the financial assistance is offered or given so that all holders of Equity Securities of the Issuer are treated, or given the opportunity to be treated, on the same basis.

7.6.5 An Issuer may acquire or redeem Equity Securities under Rule 7.6.1(d), or give financial assistance under Rule 7.6.3(b), if the precise terms and conditions of the specific proposal (the "Proposal") to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements are materially affected in a similar way by the Proposal.

