



NZX Regulation Decision

New Zealand Oil and Gas Limited (“NZO”)

Application for a waiver from NZX Main Board Listing Rule
9.2.1

14 June 2017



Waiver from Listing Rules

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by New Zealand Oil and 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 Transaction.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. the Directors of NZO certify, in a form acceptable to NZX, that:
 - i. the Transaction has been negotiated, agreed and entered into on an arm's length and commercial basis;
 - ii. in their opinion the Transaction represents fair value and is fair and reasonable to NZO and its shareholders who are not related to, or Associated Persons of Mitsui; and
 - iii. Mitsui did not influence the final decision of the Board to enter into the Transaction; and
 - 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 relate are set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meaning 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 underlying Rule 9.2.1 is to ensure that Related Parties do not exercise undue influence over 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 the Material Transaction. NZXR is comfortable that the policy of the Rule is not offended by the granting of this waiver;
 - b. the Transaction arose out of a competitive bid process that was facilitated by an independent advisor and conducted on an arm's length basis;
 - c. NZO received independent legal advice when preparing its initial bid and during the negotiations of the SPA. NZO's legal advisors were independent of Mitsui's legal advisors;



- d. the condition at paragraph 2 (a) provides comfort that the Transaction has been negotiated and entered into on an arm's length and commercial basis and is fair, reasonable and in the best interests of NZO and its shareholders who are not Associated Persons of the Related Party; and
- e. there is precedent for this decision.



Appendix One

1. New Zealand Oil & Gas Limited (**NZO**) is a Listed Issuer with shares Quoted on the NZX Main Board.
2. Until 1 January 2017 NZO held a 15% participating interest in the Kupe joint venture (**Past Interest**). The other parties to the Kupe joint venture were Origin Energy (50%), Genesis Energy Limited (**Genesis**) (31%) and Mitsui E&P Australia Pty Limited (**Mitsui**) (4%) (**Kupe Joint Venture**). The Kupe Joint Venture developed and operated the Kupe field under the Kupe permit (**Kupe Permit**). The Kupe Permit provided for the right to mine for oil, LPG and gas in the Kupe field.
3. In November 2016 NZO shareholders approved the sale of the Past Interest to Genesis (**Sale**). The Sale had an effective date of 1 January 2017.
4. In April 2017 Mitsui conducted a competitive sales process for its 4% interest in the Kupe Joint Venture. The competitive sales process was facilitated by an independent advisor. NZO submitted a bid in accordance with this competitive sales process and was selected as the preferred bidder.
5. NZO and Mitsui have entered into a binding process letter (**Process Letter**), requiring each party to enter into a formal sale and purchase agreement (**SPA**) once Mitsui has exhausted the pre-emptive process provided for in the Kupe Joint Venture agreement.
6. Under the SPA NZO will acquire Mitsui's 4% participating interest in the Kupe Joint Venture together with associated contracts and other assets for a price of \$35 million plus GST (if any) (**Acquisition**). The \$35 million purchase price is based on an effective economic date of 1 January 2017. As completion will not occur until later in 2017, the purchase price will be adjusted to reflect net revenue associated with Mitsui's 4% participating interest in the Kupe Joint Venture during the period from 1 January 2017 to the completion date. The SPA is conditional on, amongst other requirements, NZO receiving a waiver from its obligations under Rule 9.2.1 or obtaining shareholder approval.
7. The Process Letter, SPA and Acquisition form a series of related transactions (**Transaction**) resulting in a Material Transaction for the purposes of Rule 9.2.2(a). Under the Transaction NZO is acquiring assets having an aggregate net value in excess of 10% of the average market capitalisation (**AMC**) of NZO. As at the date of this waiver NZO's AMC is approximately \$102,832,000.
8. Mitsui is a Related Party of NZO for the purposes of Rule 9.2.3(c) as they were both parties to the Kupe Joint Venture within 6 months of the Transaction. Mitsui is an Associated Person of NZO, as:
 - a. in terms of Rule 1.8.2, their historic relationship through the Kupe Joint Venture could be viewed as a matter which was capable of influencing NZO decisions; and
 - b. Rule 1.8.3(d) deems two persons to be Associated Persons if they are acting jointly or in concert. The Kupe Joint Venture could be considered an example of Mitsui and NZO acting jointly or in concert.
9. NZO cannot rely on Rule 9.2.3(f) because NZO was not entitled to at least one half of the income or profits, and assets, of the Kupe Joint Venture.

Appendix Two

Rule 1.8 Associated Persons

- 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 Transactions with Related Parties

- 9.2.1 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."
- 9.2.2 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 ..."
- 9.2.3 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:
- (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
- ...
- but a person is not a Related Party of an Issuer if:



...

- (f) that person is a Subsidiary of, incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
 - (i) no Related Party of the Issuer has or intends to obtain a material direct or indirect economic interest in that Subsidiary, incorporated joint venture, or unincorporated joint venture participant, other than by reason of receipt of reasonable Director's fees or executive remuneration; and
 - (ii) the Issuer is entitled to participate, directly or indirectly, in at least one half of the income or profits, and the assets, of that Subsidiary, incorporated joint venture, or unincorporated joint venture participant.

