



NZX Regulation Decision

New Zealand Oil & Gas Limited ("NZO")

Application for a waiver from NZX Listing Rule 5.2.1

10 February 2020



Waiver from Listing Rule 5.2.1

Decision

1. Subject to the conditions set out at paragraph 2 below and on the basis that the information provided by NZO is complete and accurate in all material respects, NZXR grants NZO a waiver from Rule 5.2.1, to the extent that this Rule would otherwise require NZO to seek shareholder approval to exercise the Call Option and enter into JOA II.
2. The waiver in paragraph 1, above, is provided on the condition that:
 - (a) 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 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 redocument the waiver set out in paragraph 1 above, NZXR has taken into consideration the following:
 - (a) The policy underlying Rule 5.2.1 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 as Related Parties arises by virtue of NZO being party to unincorporated joint venture arrangements to which Beach is also a party, or potential party. In this regard, the exercise of the Call Option and entry into JOA II does not offend the policy behind Rule 5.2.1;
 - (c) NZXR is satisfied that the relationship between NZO and Beach has not influenced the decision to enter into the 2018 Transactions (which includes the Call Option and JOA II) 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 5.2.1;
 - (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; and
 - (iii) the directors of NZO, who are not also directors of Beach, have previously certified that they believe the terms of the 2018 Transactions represent fair value and are fair and reasonable to NZO and its shareholders;



- (d) NZXR accepts that the existing relationships between NZO and Beach (through the joint ventures) are unlikely to influence the decision of the board of NZO to exercise the Call Option and enter into JOA II;
- (e) NZXR takes comfort from the certification granted by the NZO directors who are not also directors of Beach, dated 7 November 2018, that:
 - (i) they believe the terms of the 2018 Transactions were negotiated, agreed and were to be entered into on an arm's length and commercial basis;
 - (ii) they believe the terms of the 2018 Transactions represented fair value and were 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 2018 Transactions;
- (f) This provides adequate assurance and protection to shareholders of NZO; and
- (g) There is precedent for this decision.



Appendix One

Background

1. New Zealand Oil & Gas Limited (**NZO**) is a listed issuer with ordinary shares quoted on the NZX Main Board.
2. NZO was granted a waiver on 7 November 2018 by NZX Regulation (**NZXR**) from Rule 9.2.1 of the NZX Main Board Listing Rules dated 1 October 2017 to permit NZO to enter into a series of related transactions without the need to obtain prior shareholder approval. The 2018 waiver related to the following transactions (the **2018 Transactions**):
 - (a) The acquisition by NZO (through an indirect wholly-owned subsidiary of NZO that was incorporated in Australia) of a 15% interest in exploration permit WA-359-P (**Ironbark I**) from a wholly owned subsidiary of Cue Energy Resources Limited (**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 Energy Limited (**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**); and
 - (d) Upon exercise of such Call Option, the entry by NZO into a joint operating agreement in respect of Ironbark II (**JOA II**) between NZO, Cue, BP and Beach.
3. NZO has since acquired Ironbark I and entered into JOA I (together, the **Completed Transactions**) and has acquired (but not yet exercised) the Call Option.
4. The exercise of the Call Option, and resulting entry into JOA II, may amount to a Material Transaction with a Related Party (Beach), so would otherwise require NZO to obtain the approval of shareholders under NZX Listing Rule (**Rule**) 5.2.1.
5. NZO has applied for the 2018 Waiver to be redocumented in the event that NZO exercises the Call Option and enters into JOA II with Cue, BP and Beach.

Details of the Transactions

Ironbark I

6. The Ironbark I project is located in Australia and (before the Completed Transactions) was 100% owned by Cue Exploration Pty Limited, a wholly-owned subsidiary of Cue. NZO owns 50.04% of the shares in Cue.
7. NZO acquired a 15% interest in the Ironbark I project from Cue (the **Farmin Transaction**) 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 the costs thereafter.
8. The value of NZO's commitments in the project is approximately USD \$17 Million.

9. Independently of the acquisition, Cue has sold interests in Ironbark I to each of BP and Beach. The parties have entered into an assignment and joint venture coordination agreement for Ironbark I.
10. Under the Coordination agreement, the interests in Ironbark I are held as follows:
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|-----|-------|-------|
| (a) | BP | 42.5% |
| (b) | Cue | 21.5% |
| (c) | Beach | 21% |
| (d) | NZO | 15% |

Ironbark II

11. Under the 2018 Transactions, NZO was granted a Call Option by Cue for a 5.36% participating interest in Ironbark II. Here, NZO will:
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|-----|--|
| (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. |
12. NZO has not yet exercised the Call Option. If NZO exercises 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.
13. Cue also granted a call option to Beach (the **Beach Call Option**) under which Beach can acquire a 7.5% interest in the Ironbark II project. If the Beach Call Option is exercised, Beach will:
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|-----|---|
| (a) | become party to JOA II and the joint venture in respect of Ironbark II; |
| (b) | cover 15% of the costs of exploration of the Ironbark II permit up to an agreed level (15% of USD\$90,000,000 exploration costs), and 7.5% of costs thereafter; and |
| (c) | pay Cue a 10% royalty on future revenue earned by Beach from the permit. |
14. The Beach Call Option was put in place and publicly announced in 2017, predating the Call Option in favour of NZO.
15. 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:
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|-----|-------|----------------|
| (a) | BP | 80% (operator) |
| (b) | Cue | 7.14% |
| (c) | Beach | 7.5% |
| (d) | NZO | 5.36% |



16. Under the current Call Option Agreement, the final date the Call Option may be exercised is 90 days prior to the expiry of the permit year 3 of WA-409-P (the **Option End Date**). The Call Option Agreement is currently being amended to extend the Option End Date to 90 days prior to the expiry of the permit year 4 of WA-409-P. BP Developments Australia Pty Limited, as the Operator of the permit, filed an application with the Australian National Offshore Petroleum Titles Administrator to extend the expiry of the permit and reorder some work programme obligations within permit years. This application was approved on 17 October 2019. Once the Call Option Agreement has been amended, the Option End Date will be 14 July 2021.

Related Party Relationships

NZO and Beach

17. 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;
 - (b) petroleum exploration permit PEP 38146 (**Kupe**). NZO has a 4% interest, while Beach has a 50% interest; and
 - (c) JOA I.
18. If NZO and Beach each exercise their respective call options, they will both be party to Ironbark II, and thus JOA II.
19. Accordingly, Beach is a Related Party of NZO because:
- (a) Rule 5.2.1 provides that an Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become a direct party to the Material Transaction;
 - (b) the definition of Related Party under the Rules includes an Associated Person of the Issuer;
 - (c) NZO and Beach are Associated Persons because:
 - (i) their historic relationship through the Clipper and Kupe joint ventures could be viewed as a matter which was capable of influencing NZO decisions; and
 - (ii) subparagraph (f) of the definition of Associated Person deems two persons to be "Associated Persons" if they are "acting jointly or in concert". Each of the Clipper, Kupe, and JOA I joint ventures could be considered an example of Beach and NZO "acting jointly or in concert".

NZO and Cue

20. For completeness, the 2018 Transactions were primarily between NZO and Cue. The 2018 Transactions did not require approval as a Material Transaction with Cue as a Related Party as:
- (a) Ironbark I was 100% owned by Cue Exploration Pty Limited, a wholly owned subsidiary of Cue;



- (b) Cue is a subsidiary of NZO and thus Cue Exploration Pty Limited is a subsidiary of NZO under s 5 of the Companies Act 1993;
 - (c) no Related Party of NZO has, or intends to obtain, a material direct or indirect economic interest in Cue Exploration Pty Limited; and
 - (d) NZO, as the owner of more than 50% of the shares in Cue, is entitled to participate in more than one-half of the income or profits of Cue.
21. Therefore, Cue falls within the exception under limb (f) of the Related Party definition in the Glossary to the Listing Rules and the 2018 Transactions were not Material Transactions with a Related Party for Listing Rule purposes.

Material Transaction

22. If NZO exercises the Call Option, and enters into JOA II, this will trigger Rule 5.2.1 as NZO will have entered into a Material Transaction where Beach (the Related Party) is a direct party to the Material Transaction. This is a Material Transaction 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.
23. NZO has confirmed that the value of NZO's commitments in respect of Ironbark II and JOA II would be approximately USD\$10 million if the Call Option is exercised by NZO (or approximately NZ\$15.3million) excluding the royalty obligation. The current Average Market Capitalisation of NZO is NZD\$109,713,800, as of 10 February 2020.



Appendix Two

Rule 5.2 Transactions with Related Parties

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

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

Associated Person

a person (**A**) is associated with, or an **Associated Person** of, another person (**B**) if:

- (a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),
- (b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),
- (c) A and B are Relatives or Related Bodies Corporate,
- (d) A and B are partners to whom the Partnership Act 1908 applies.
- (e) A is a director or Senior Manager of B (or vice versa), or
- (f) A and B are acting jointly or in concert,

except that:

- (g) A is not an Associated Person of B merely because:
 - (i) A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice,
 - (ii) A's ordinary business includes dealing in Financial Products on behalf of others and A is acting in accordance with the specific instructions of B,
 - (iii) A acts as a proxy or representative of B for the purposes of a meeting of holders of Financial Products, or
 - (iv) there is another person with which A and B are both associated
- (h) persons will not be Associated Persons if NZX makes a Ruling that they are not Associated Persons.



Material Transaction

means a transaction, or a related series of transactions, whereby an Issuer:

- (a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation,
- (b) issues its own Financial Products, or acquires its own Equity Securities, having a market value above 10% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or in the case of an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer,
- (e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or
- (f) undertakes an amalgamation, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer.

Related Parties

Related Party means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

- (a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or
- (d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction,



but a person is not a Related Party of an Issuer if:

- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or Senior Manager of the Issuer is also a Director of that person, so long as:
 - (i) the proportion of Directors of the Issuer who are also Directors of that person is one third or less, and
 - (ii) no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's fees or executive remuneration, or
- (f) that person is a Subsidiary or 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, other than through the Issuer itself, a material direct or indirect economic interest in that Subsidiary or joint venture other than receiving reasonable Director's fees or executive remuneration, and
 - (ii) the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the Subsidiary or incorporated joint venture or is entitled to at least one half of the income or profits, and the assets, of the unincorporated joint venture (if and when distributed).

