



NZX Regulation Decision

Z Energy Limited (“ZEL”)

Application for a waiver from NZX Listing Rule 4.5.1

11 May 2020



Waiver from Listing Rule 4.5.1

Background

1. 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.
2. The NZX Listing Rule (**Rule**) to which this decision relates are set out in Appendix Two.
3. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.

Decision

4. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Z Energy Limited (**ZEL**) is full and accurate in all material respects, NZX Regulation (**NZXR**) grants ZEL a waiver from Rule 4.5.1, to the extent required to allow a placement of up to 30% of ZEL's ordinary shares (**Placement**) without requiring approval by ordinary resolution in accordance with Rule 4.1.1 and Rule 4.2.1.
5. The waiver above is provided on the conditions that:
 - a. the Placement made in reliance on the waiver must otherwise comply with Rule 4.5.1 as if the references to "25%" in Rules 4.5.1(a), (b) and (c) (as modified by the Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules issued by NZXR on 19 March 2020 (**Class Waiver**)) were read as references to 30%;
 - b. the waiver, its conditions and its implications are disclosed in the Offer Document(s) published in relation to the Placement and SPP;
 - c. the Placement is conducted on an "open access" basis (such that, for example, existing ZEL shareholders with a broker relationship can participate) and that existing ZEL shareholders (including those participating through a broker) will be given priority to obtaining a pro rata allocation in the Placement;
 - d. ZEL must disclose to NZX as part of the announcement to be made over the Market Announcement Platform on completion of the Placement, identifying the proportions of existing shareholders and other investors that participated in the Placement and describing the allocation policy used to determine allocations in the Placement;
 - e. the SPP be undertaken in accordance with the timeline set out in Appendix One, or as otherwise agreed in writing with NZXR, subject to any changes required to comply with applicable law;
 - f. the SPP have an application limit of NZ\$50,000 per shareholder; and
 - g. the SPP offer contains pricing protection for participating shareholders such that the price will be the lower of the pricing under the Placement and a price that represents an appropriate discount, if any (to be determined by ZEL's board) to the volume weighted average price of ZEL ordinary shares traded during the five NZX trading days up to, and including, the closing date for the SPP.

Reasons

6. In coming to the decision to provide the waiver set out above, NZXR has considered that:
- a. the policy behind Rule 4.5.1 is to ensure that, unless shareholders approve otherwise, equity capital raisings should be conducted in a way to support participation by retail shareholders and seek to mitigate dilutionary effects;
 - b. NZXR is satisfied that the structure of the Placement, together with the SPP proposed by ZEL, is such that almost all retail shareholders will have a sufficient opportunity to participate to the extent required to maintain their pro rata shareholding in ZEL. As the SPP application limit is \$50,000, approximately 99% of eligible ZEL retail shareholders will have the opportunity to maintain their pro rata shareholding in the SPP alone. The Offer therefore meets the policy objective underpinning Rule 4.5.1;
 - c. the structure of the Placement, together with the SPP, complies with recommendation 8.4 of the NZX corporate governance code which recommends:

If seeking additional equity capital, issuers of quoted equity securities should offer further equity securities to existing equity security holders of the same class on a pro rata basis, and on no less favourable terms, before further equity securities are offered to other investors; and
 - d. ZEL has submitted, and NZXR has no reason not to accept, that there is a risk that, in the current market environment, alternative offer structures would achieve a materially less favourable pricing outcome and therefore result in more dilution for non-participating shareholders than the Placement and SPP.

Confidentiality

7. ZEL has requested this decision be kept confidential until an announcement about the Offer is made to the market. In accordance with Rule 9.7.2, NZXR grants this request.



Appendix One

1. Z Energy Limited (**ZEL**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board.
2. The unprecedented impacts arising from the COVID-19 virus and the New Zealand Government's response has sustained a heightened risk to ZEL's operating performance and immediate financial outlook. These factors have exacerbated capacity constraints on working capital positions, earnings and ability to meet financial covenants. Access to sufficient equity capital is important to maintain operations during this volatile market environment and to strengthen ZEL's balance sheet.
3. ZEL has secured waivers and amendments of debt covenants that Z considered it would otherwise have been at risk of breaching at the September 2020 and March 2021 test dates. Taken as a package, these waivers and amendments give Z greater confidence that there will be no default in respect of its debt finance obligations through this period. These waivers are conditional on Z meeting certain requirements (including completing an equity capital raising).
4. Given the implicit uncertainty surrounding the longer term impacts of COVID-19, and the need to reassure investors that ZEL has no further immediate need for equity capital, ZEL considers that a significant equity capital raise is required which would likely see ZEL exceed the placement cap currently allowed under the Rules (even as modified by the Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules issued by NZXR on 19 March 2020).
5. ZEL's current preference is to obtain the capital it requires through undertaking an underwritten institutional placement (as also defined above, the **Placement**) in conjunction with a share purchase plan (**SPP**) (together, the **Offer**).
6. ZEL's view is that there is a risk that, in the current market environment, alternative offer structures to an underwritten institutional placement and share purchase plan would achieve a materially less favourable pricing outcome and therefore result in more dilution for non-participating shareholders than the Offer, and give rise to a greater level of uncertainty in terms of achieving the proceeds that ZEL has targeted.
7. Given current market volatility, the availability of underwriting support and the requirements of ZEL's lenders, ZEL does not consider that there is sufficient time to seek shareholder approval for a placement above the current cap.
8. Based on the best information available, ZEL considers that almost all (approximately 99%) of its retail shareholders will have the opportunity to avoid dilution and participate (at least) pro rata through a SPP. Of the larger shareholders that cannot achieve their pro rata allocation in the SPP, ZEL expects the vast majority are institutions who can participate in the Placement, and retail shareholders that are expected to have broker relationships and will be able to participate in the Placement (as well as via the SPP).
9. In relation to the Placement, ZEL, in conjunction with its advisers, will be contacting all existing institutional shareholders as well as NZ-based retail broker firms (who will themselves contact clients who have an appropriately sized existing holding of ZEL

shares). ZEL's advisers will also contact other potentially interested institutional investors through normal channels, including Bloomberg announcements. Those who wish to participate in the Placement will have until around 5pm Monday 11 May (NZT), being around one business day, to submit a firm bid.

10. Although this Placement will be extended to new investors, which supports the register composition and has the potential to reduce the pricing discount (which minimises value dilution for any existing shareholder unable to participate), ZEL is committed to applying an allocation principle for the Placement to ensure all existing shareholders will be allocated at least their pro-rata entitlement (to the extent they apply for it). Access to the Placement will occur at the same time for all participants. Allocation will only occur after the requisite deadline for firm bids. Following that, ZEL (with its advisers) will determine final Offer allocation, in line with its allocation principles.
11. ZEL considers that the Placement and SPP provides the greatest opportunity for retail shareholder participation in the Offer in comparison to alternative structures. ZEL is proposing a SPP offer period (of at least 10 business days) that allows physical distribution of SPP offer materials and provides increased time for shareholders to complete and return application forms.
12. ZEL proposes to undertake the capital raising by way of issue of new shares in ZEL (New Shares). As noted above, the full Offer will be made by way of:
 - (a) the Placement, which will be underwritten by Goldman Sachs New Zealand Limited; and
 - (b) the SPP.
13. The Placement will be conducted in accordance with the following principles:
 - (a) the Placement will be conducted on an "open access" basis (such that, for example, existing shareholders with a broker relationship can participate); and
 - (b) existing shareholders (including those participating through a broker) will be given priority to obtaining a pro rata allocation in the Placement.
14. The pricing for the SPP will be the lower of the pricing under the Placement and the price that represents an appropriate discount, if any (to be determined by ZEL's board) to the volume weighted average price of ZEL ordinary shares traded during the five NZX trading days up to, and including, the closing date for the SPP.
15. The SPP expected to represent not less than 15% of the total offer size, which is representative of the direct retail portion of ZEL's share register. ZEL is proposing to have available an option to accept oversubscriptions to the extent shareholders pro rata demand cannot be satisfied under the original SPP offer size.
16. ZEL will offer the SPP with an application limit of NZ\$50,000 per shareholder (in accordance with the Class Waiver). Based on ZEL's shareholder register as at 31 March 2020, all of ZEL's New Zealand and Australian retail shareholders that hold less than (approximately) 57,000 shares are expected to be able to apply for and receive a pro rata allocation through the SPP. Based on the best available information, ZEL considers that



this covers all but a small number of ZEL's Australian and New Zealand retail shareholders (less than approximately 1% of shareholders).

17. ZEL expects that, in respect of those remaining Australian and New Zealand retail shareholders:
 - (a) at least half would be able to achieve at least 50% of their pro rata participation through the SPP; and
 - (b) most will have a broker relationship and will be able to participate in the Placement in accordance with the expected allocation principles as set out above.
18. The Placement and the SPP will be conducted in accordance with the following timetable (NZST):
 - (a) Record Date for SPP: 8 May 2020
 - (b) Trading Halt, Cleansing Notice and Placement process commences: 11 May 2020
 - (c) expected completion of the Placement process: not later than 8.00am 12 May 2020
 - (d) Trading Halt Lifted, announcement of completion of the Placement: expected to be 10:00am 12 May 2020
 - (e) Allotment and Quotation on the NZX of the New Shares issued under the Placement: 15 May 2020
 - (f) Opening Date for SPP: 15 May 2020
 - (g) Closing Date for SPP: 29 May 2020
 - (h) Allotment and Quotation on the NZX of the New Shares issued under the SPP: 5 June 2020



Appendix Two - Rules

4.1 Issue of New Equity Securities

- 4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.
- 4.2.1 For holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:
- a) separate Ordinary Resolutions of each Class of Quoted Equity Securities whose rights or entitlements could be affected, or
 - b) if a Class of Quoted Equity Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 4.2.1(a), a single resolution of all such Classes of Equity Securities voting together.

15% Placements

- 4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:
- c) 15% of the Equity Securities of that Class on issue at the beginning of that period, and
 - d) 15% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and
 - e) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less
 - f) 15% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

- g) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:
 - i. all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,
 - ii. the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and
 - iii. the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and

- h) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and
- i) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
 - i. in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
 - ii. any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

