

NZ RegCo

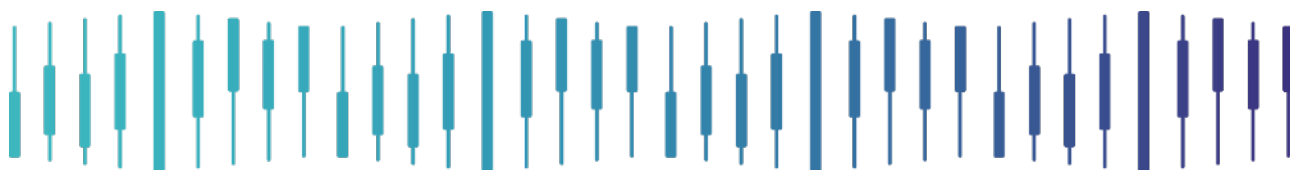
NZ'S LISTED
MARKET REGULATOR

11 September 2024

NZ RegCo Decision

Contact Energy Limited (CEN)

Application for Waiver from NZX Listing Rule 4.9.1(a)



Background

1. The information on which this decision is based is set out in Appendix One to this decision. This decision 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 is set out in Appendix Two to this decision.
3. Capitalised terms which have not been defined in this decision have the meaning given to them in the Rules.

Waiver from Rule 4.9.1(a)

Decision

4. Subject to the condition set out in paragraph 5 below, and on the basis that the information provided by Contact Energy Limited (**CEN**) is complete and accurate in all material respects, NZ RegCo grants CEN a waiver from Rule 4.9.1(a) to the extent this rule would require CEN to offer CEN shares under the Scheme to Overseas Shareholders.
5. The waiver in paragraph 4 above is provided on the condition that CEN must arrange the sale of any CEN shares to which the Overseas Shareholders would be entitled if they were eligible to receive them under the Scheme, to and by a nominee who is an NZX Firm, and that the nominee must then account to the Overseas Shareholders for the net proceeds of sale of those CEN shares.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
 - a. the policy behind Rule 4.9.1(a) is that all holders of the same class of shares should receive the same consideration for their shares. This policy is satisfied because Overseas Shareholders will be fairly compensated under the Proposed Transaction through the issuance of securities (being the Consideration Shares which would have otherwise been offered and issued to those Overseas Shareholders) to a nominee company which will then sell them and transfer the net proceeds to the Overseas Shareholders;
 - b. Shareholders outside of New Zealand and Australia hold a minority of the Target's Shares, being approximately 0.66% of the Shares. The costs and complexity associated with offering and issuing Consideration Shares to Overseas Shareholders outweighs the benefit of strict compliance with Rule 4.9.1(a);
 - c. the granting of this waiver is consistent with the exemption policy of the Takeovers Panel in relation to scrip offers;
 - d. the Rules contain a similar exclusion to that proposed by the Waiver in relation to the ability to exclude shareholders in overseas jurisdictions from offers made under Rule 4.4.1(e) (which relates to an offer for the issue of securities in connection with pro-rata issues and share purchase plans). In that case, shareholders may be excluded if, in the Issuer's reasonable opinion, it would be unduly onerous for the Issuer to make that offer in those overseas jurisdictions. The sale mechanism required under Rule 4.4.1(e) in respect of Renounceable offers is substantially the same as is proposed under this waiver;
 - e. the Rules also contemplate that a dividend reinvestment plan may exclude shareholders in a jurisdiction outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous to make the offer in that jurisdiction;
 - f. the arrangements for Overseas Shareholders will be a matter considered by the Court when it decides whether to make orders to convene a meeting of Target shareholders for the purpose of

voting on the Scheme (or by the Takeovers Panel in respect of any takeover offer); and

- g. there is precedent for this decision.

Confidentiality

- 7. CEN has requested that this application and any decision be kept confidential until the release of an announcement that the scheme implementation deed relating to the proposed Scheme has been signed.
- 8. In accordance with Rule 9.7.2(a), NZ RegCo grants CEN's request.

Appendix One

1. Contact Energy Limited (**CEN**) is a Listed Issuer with Securities Quoted on the NZX Main Board and is also listed with ASX Limited (**ASX**) as a New Zealand foreign exempt listing.
2. CEN is considering acquiring all of the shares (**Shares**) in Manawa Energy Limited (**MNW**) pursuant to a court-approved scheme of arrangement under Part 15 of the Companies Act 1993 (the **Scheme**). Alternatively, CEN may consider undertaking the acquisition by way of a takeover offer under the Takeovers Code (whether at the outset of any transaction or if the scheme implementation agreement in respect of the Scheme was terminated) (**Takeover**, and together with the Scheme, the **Proposed Transaction**).
3. It is proposed that the consideration payable under the Proposed Transaction to MNW shareholders will be paid partly in cash and partly by the issue of new ordinary shares in CEN (**Consideration Shares**). More specifically, it is proposed that, if the Proposed Transaction completes:
 - a. Consideration Shares will be issued to MNW shareholders who are ordinarily resident in New Zealand, Australia or any other jurisdiction as may be agreed in writing by CEN and MNW (each acting reasonably) (**Local Shareholders**).
 - b. Consideration Shares which are to be issued to MNW shareholders in jurisdictions other than New Zealand, Australia and any other such agreed jurisdictions (**Overseas Shareholders**) will be issued to a nominee. The nominee will be instructed to sell the Consideration Shares in an orderly manner and account to the Overseas Shareholders for the proceeds. Shareholders outside of New Zealand and Australia hold approximately 0.66% of the Shares in MNW.
4. This approach is proposed as a way of ensuring that all MNW shareholders are fairly compensated for the sale of their shares in MNW, while avoiding the significant cost and complexity which would be involved with offering and issuing CEN shares jurisdictions other than New Zealand, Australia and other agreed jurisdictions.
5. CEN is proposing to rely on Rule 4.9.1(a) to undertake the Proposed Transaction.

Appendix Two

4.9 Issues relating to takeovers, conversions, minimum holdings and amalgamations

4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
 - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
 - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

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