



NZX Regulation Decision

Bay Energy Limited (“BEL”)

Application for a waivers from NZX Main Board Listing

Rules 7.1.15 and 7.11.1

14 September 2016



Waiver from Debt Market Listing Rule 7.11.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by Bay Energy Limited (**BEL**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants BEL a waiver from NZX Debt Market Listing Rule (**Rule**) 7.11.1, to the extent that this Rule requires BEL to allot the Exchange Bonds and Priority Pool Bonds within five business days after the latest date on which applications for the Exchange Bonds and Priority Pool Bonds close.
2. The waiver in paragraph 1 above is provided on the conditions that:
 - a. BEL allots the Exchange Bonds and Priority Pool Bonds within 12 business days after the latest date on which applications for the Exchange Bonds and Priority Pool Bonds close;
 - b. the Offering Documents for each of the Exchange Bonds and Priority Pool Bonds clearly set out the timetable for the Exchange Offers and Priority Pool Offer, including an indication of the difference in time between the date at which the Existing TPW Bonds will be redeemed, and when the Exchange Bonds and Priority Pool Bonds will be allotted;
 - c. the Offering Documents for each of the Exchange Bonds and Priority Pool Bonds include a reference to this waiver and a reference to where further information can be found in the disclose register; and
 - d. this waiver and its implications are disclosed in the disclose register for each of the Exchange Offers and Priority Pool Offers.
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 of Rule 7.11.1 is to ensure that, where application monies have been submitted, subscribers obtain the benefit of their investment without undue delay. The granting of this waiver will not offend the policy of behind Rule 7.11.1;
 - b. allotment of the Exchange Bonds and Priority Pool Bonds will occur before Quotation of the Bonds. Therefore, investors will all have access to their securities at the time trading begins. Investors can have access to their capital sooner, by opting to redeem their Existing TPW Bonds. The conditions of this waiver required BEL to provide information on the extended allotment period to prospective investors, for investors to consider before they decide to invest in the Exchange Bonds and / or Priority Pool Bonds, or have their Existing TPW Bonds redeemed;



- c. the redemption of the Existing TPW Bonds is required to take place prior to the implementation date for the Demerger. BEL has scheduled the close date for the Exchange Offers and Priority Pool Offer as close to the redemption as possible. Further, it is a function of the Demerger structure that the Exchange Bonds and Priority Pool Bonds cannot be issued until after the Demerger is implemented;
- d. BEL wishes to allot the bonds under the Exchange Offers, Priority Pool Offer and the Public General Offer at the same time. Further, BEL wishes to have a five day offer period from the implementation of the Demerger to the close of the Public General Offer to enable prospective investors sufficient opportunity to take up the offer. These timetable requirements extend the allotment of the Exchange Bonds and Priority Pool Bonds beyond the five business day period required by the Rules; and
- e. BEL have submitted, and NZXR has no reason not to accept, that holders of Existing TPW Bonds who elect to exchange their bonds or participate in the Priority Pool Offer (as applicable), will not be disadvantaged by the extended offer period as they will (in effect) accrue interest on their Exchange Bonds and Priority Pool Bonds from the redemption date of the Existing TPW Bonds.

Waiver from Debt Market Listing Rule 7.1.15

Decision

7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by BEL is complete and accurate in all material respects, NZXR grants BEL a waiver from Rule 7.1.15 to the extent that this Rule would require the disclosure of TPW as a substantial product holder in BEL in the Offering Documents.
8. The waiver in paragraph 7 above is provided on the condition that:
 - a. the Offering Documents for each of the Bonds include a reference to this waiver and a reference directing people to the disclose register where further information can be found; and
 - b. BEL clearly and prominently discloses in the disclose register for the Bonds:
 - i. the scheme booklet for the Demerger which includes a summary of the process involved in implementing the Demerger;
 - ii. an explanation that BEL is currently a wholly owned subsidiary of TPW;
 - iii. an explanation that the owners of BEL after the Demerger will be the same as holders of TPW at the record date; and
 - iv. a reference to where information on who the substantial shareholders of TPW can be found.
9. 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.
10. The Rules to which this decision relates are set out in Appendix Two to this decision.



11. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Reasons

12. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
 - a. the policy of Rule 7.1.15 is that, where an issuer is not already Listed, investors can receive and consider information on the current Substantial Product Holders in that issuer, before making their investment decision. The granting of this waiver will not offend that policy;
 - b. BEL has submitted, and NZXR has no reason not to accept, that given the short duration that TPW will be a Substantial Product Holder, disclosing the nature of the interests held by TPW is not useful and potentially confusing for potential investors in the Bonds;
 - c. due to the Demerger structure, the current Substantial Product Holders of TPW at the Demerger record date will be the Substantial Product Holders of BEL at the point of BEL Listing. Information about the Substantial Products Holders in TPW is already publicly available; and
 - d. there is precedent for this waiver.

Confidentiality

13. BEL has requested that its application, and any decision made in relation to it, be kept confidential until the Offering Documents have been lodged with the Registrar of Financial Service Providers under section 48 of the Financial Markets Conduct Act 2013.
14. In accordance with Footnote 1 to Rule 1.11.2 NZXR grants BEL's request.



Appendix One

1. Trustpower Limited (**TPW**) is a listed issuer with bonds Quoted on the NZX Debt Market (**NZDX**), including the TPW090 bonds, TPW100 bonds, TPW110 bonds and TPW120 bonds (the **Existing TPW Bonds**).
2. Pursuant to a scheme of arrangement to be implemented under Part XV of the Companies Act 1993, TPW will separate into two New Zealand incorporated companies, Bay Energy Limited (**BEL**) and Tilt Renewables Limited (**TRL**) (the **Demerger**). TPW is currently the parent company of BEL and TRL. The Demerger is being completed on a one for one basis and, on completion, the shareholders of TPW at the record date for the demerger will become the shareholders in BEL and TRL.
3. BEL has applied to become a Listed Issuer, following the Demerger.
4. BEL intends to make an offer of three series of bonds, to replace the Existing TPW Bonds, including:
 - a. unsecured unsubordinated fixed rate bonds with a maturity date of 15 December 2017 (**2017 Bonds**) to replace the current TPW100 bonds;
 - b. unsecured unsubordinated fixed rate bonds with a maturity date of 15 December 2021 (**2021 Bonds**) to replace the current TPW120 bonds; and
 - c. unsecured subordinated fixed rate bonds with a maturity date of 15 September 2019 (**2019 Bonds**) to replace the current TPW110 bonds.
5. BEL intends to issue an additional series of unsecured, unsubordinated bonds with a maturity date of 15 December 2022 (**2022 Bonds**) and will give holders of the TPW090 bonds a priority right to participate in the offer of those bonds.
6. BEL has applied to Quote the 2017 Bonds, 2021 Bonds, 2019 Bonds and 2022 Bonds (the **Bonds**) on the NZDX.
7. The offer of the 2017 Bonds, 2021 Bonds and 2019 Bonds (the **Exchange Bonds**) is being made as an exchange offer which is limited to holders of comparable lines of Existing TPW Bonds (the **Exchange Offers**). Existing bondholders who do not take up the exchange offer will have their Existing TPW Bonds redeemed.
8. Under the Exchange Offers, holders of Existing TPW Bonds can exchange those bonds for the corresponding series of Bonds, which will have the same ranking, interest rate, and maturity date as the applicable Existing TPW Bonds.
9. The 2022 Bonds will be offered through a general offer to the public, which includes:
 - a. an offer of the 2022 Bonds reserved for current holders of the TPW090 Bonds (**Priority Pool Bonds** and **Priority Pool Offer**); and
 - b. an offer of the 2022 Bonds to all members of the New Zealand public (**Public General Offer**).



10. The scheduled offer timetable is as follows:

Event	Date
Exchange Offer close date	Wednesday, 12 October 2016
Priority Pool Offer close date	Wednesday, 12 October 2016
Redemption date	Thursday, 13 October 2016
Demerger implementation date	Friday, 14 October 2016
Public General Offer close date	Friday, 21 October 2016
Allotment date	Wednesday, 26 October 2016
Quotation date	Thursday, 27 October 2016

11. This timetable allows for the Exchange Offers and Priority Pool Offers to close on the date before the Existing TPW Bonds are redeemed. Redemption is required to occur before the Demerger can be implemented to ensure that TPW will have no further obligations to the holders of the Existing TPW Bonds as at that date. Therefore, redemption is scheduled to occur one day prior to the implementation date of the Demerger.
12. The Quotation date for the Bonds is required to be sufficient time after the Demerger implementation for NZX Limited to establish the issuers and instruments in the trading system. The close date for the Public General Offer is proposed to be 21 October 2016 to ensure that potential investors still have the opportunity to take up the Public General Offer during the period between Demerger implementation and Quotation.
13. The scheduled Issue date under the Exchange Offers, Priority Pool Offer and the Public General Offer is 26 October 2016.
14. As the Bonds are to be Quoted, but for a waiver, BEL would be required to allot the Bonds offered under the Exchange Offers and Priority Pool Offer within five business days of 12 October 2016 (being 19 October 2015). This waiver allows BEL to instead allot the Exchange Bonds and Priority Pool Bonds at the same time as the Bonds offered under the Public General Offer.
15. Two Product Disclosure Statements have been prepared for the offer of the Bonds (the **Offering Documents**). But for a waiver, NZDX Rule 7.1.15 would require that the Offering Documents include information about TPW as the current Substantial Product Holder of BEL.



Appendix Two

Rule 7.1 Offering Documents, Profiles and Advertisements

Rule 7.1.15 Every Offering Document or Profile other than an Offering Document issued by an Issuer which at the time has Securities Quoted on a market provided by NZX shall include:

- (a) A statement of the identity of any Substantial Product Holders disclosed to the Issuer (If necessary following a request by the Issuer), the nature of the relevant interests held by each of them, and the consideration and other terms and conditions of any transaction under which the beneficial owner acquired and holds those securities as disclosed to the Issuer;
- (b) A statement as to the identity of any person who received from the Issuer a request pursuant to Rule 7.1.15(a) and who failed or refused to provide to that Issuer the information requested; and
- (c) The date as at which the identity of the person disclosed under (a) or (b) above is disclosed.

Rule 7.11 Allotment

Rule 7.11.1 An Issuer making an issue of Securities Quoted or to be Quoted (other than Equity Securities issued under Rule 7.3.10) shall proceed to allotment within five Business Days after the latest date on which applications for Securities close.

