



NZX Regulation Decision

Trustpower Limited (“TPW”)

Bay Energy Limited (“TPX”)

Tilt Renewables Limited (“TLT”)

Application for waivers and rulings under NZX Main Board Listing
Rules 3.4.3, 3.5.1 and 5.2.3

10 August 2016



1. The information on which the waiver and ruling decisions below are based on is set out in Appendix One to these decisions. These waiver and rulings will not apply if this information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendix Two to these decisions.
3. Capitalised terms that are not defined in this decision take on the definitions assigned to them in the Rules.

Waiver from NZX Main Board Listing Rule 3.4.3

Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by TPW is complete and accurate in all material respects, NZXR grants TPW a waiver from Rule 3.4.3 to the extent required to allow the Interested Directors to vote on any resolutions necessary to consider, progress, or give effect to the Demerger.
5. The waiver in paragraph 4 above is provided on the conditions that:
 - (a) the waiver will only apply to those resolutions required to take the necessary steps to progress the Demerger, to put the Demerger proposal before shareholders, and to implement the Demerger if it is approved by shareholders;
 - (b) the waiver will only apply to the Interested Directors who are considered to be 'interested' within the meaning assigned to that term in section 139 of the Companies Act 1993, as a result of the Interested Relationships described and defined in Appendix One to this waiver decision; and
 - (c) TPW clearly and prominently discloses this waiver, its conditions and its implications in the Scheme Booklet.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
 - (a) the policy behind Rule 3.4.3 is to prevent situations arising where Directors, who have a vested interest in a transaction, may authorise the entry into, or implementation of, matters that are detrimental to the interests of security holders, as a result of that interest;
 - (b) the granting of this waiver will not offend the policy of the Rule, as the Interested Relationships that would otherwise preclude the Interested Directors from voting in this instance are of a technical nature, and are unlikely to materially influence or compromise the Interested Directors' judgement when considering matters in relation to the Demerger;
 - (c) TPW's shareholders will ultimately vote on whether or not to approve the Demerger, and the waiver allows the full TPW board to put the proposal to shareholders; and
 - (d) given the fundamental nature of the Demerger, it is in shareholders' best interests that the Demerger be critically evaluated, discussed, and considered by the full TPW board.



Ruling on NZX Main Board Listing Rule 3.5.1

Decision

7. On the basis that the information provided by TPW is complete and accurate in all material respects, NZXR rules that an Ordinary Resolution passed by TPW to authorise the remuneration to be paid to the TPX and TLT Directors, is an Ordinary Resolution of the Issuer to authorise the remuneration paid to Directors for the purposes of Rule 3.5.1.

Reasons

8. In coming to the decision to provide the ruling set out in paragraph 7 above, NZXR has considered that:
 - (a) TPX and TLT will each seek shareholder approval for the remuneration packages to be paid to their respective directors, from their sole shareholder, TPW, while they are both unlisted entities. The approvals sought will be in compliance with the constitutions of each of TPX and TLT, and the relevant provisions of the Companies Act 1993;
 - (b) Rule 3.5.1 is triggered at the point of payment of remuneration to a director, or directors. At the point when TPX and TLT pay remuneration to their directors, TPW will no longer be a Listed Issuer. TPW is therefore not required to seek shareholder approval for remuneration to be paid to the Directors of its subsidiaries, TPX and TLT, as at the point when the Rule 3.5.1 is triggered, the Rule will no longer apply to TPW. Accordingly, TPX and TLT will still be entitled to pay the remuneration to their respective directors, and Rule 7.3.8 will apply to allow such remuneration to be satisfied by the issue of shares; and
 - (c) there is precedent for this decision.

Ruling on NZX Main Board Listing Rule 5.2.3

Decision

9. Subject to the conditions set out in paragraph 10 below, and on the basis that the information provided by TPW is complete and accurate in all material respects, NZXR rules that it is satisfied that each of TPX and TLT will maintain a spread of Security holders which is sufficient to ensure there is a sufficiently liquid market in the ordinary shares for TPX and TLT, respectively, for the purposes of Rule 5.2.3.
10. The ruling in paragraph 9 above is provided on the conditions that:
 - (a) TPW clearly and prominently discloses the ruling, and its implications in the Scheme Booklet for the Demerger;
 - (b) TPX and TLT clearly and prominently disclose this ruling and its implications in their annual reports, in relation to any period, during which the ruling was relied upon for the whole or part of that period;
 - (c) TPX notifies NZXR as soon as practicable if there has been a material reduction in either or both of:
 - i) the total number of Members of the Public holding at least a Minimum Holding in TPX; or
 - ii) the percentage of TPX ordinary shares held by Members of the Public holding at least a Minimum Holding; and
 - (d) TLT notifies NZXR as soon as practicable if there has been a material reduction in either or both of:

- i) the total number of Members of the Public holding at least a Minimum Holding in TLT; or
 - ii) the percentage of TLT ordinary shares held by Members of the Public holding at least a Minimum Holding; and
- (e) the ordinary shares of TPX and / or TLT are held by at least 500 Members of the Public holding at least 20% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding.

Reasons

11. In coming to the decision to provide the ruling set out in paragraph 9 above, NZXR has considered that:

- (a) while it is unlikely that TPX and TLT will comply with the specified thresholds contained in Rule 5.2.3, based on the TPW's submissions, NZXR is comfortable that each of TPX and TLT will maintain a spread of Security Holders sufficient to ensure a liquid market in each of TPX and TLT's ordinary shares;
- (b) the conditions contained in paragraphs 10 (c) and (d) require that TPX and TLT each be aware of the respective spread of their ordinary shares, and in the event that this changes, that they notify NZXR as soon as practicable; and
- (c) there is precedent for this decision.

Confidentiality

12. TPW has requested that its application, and NZXR's decision, be kept confidential until such time as TPW releases the Scheme Booklet to the market.

13. In accordance with footnote 1 to each of Rule 1.10.2 and 1.11.2, NZXR grants TPW's request.



Appendix One

1. Trustpower Limited (**TPW**) is currently a Listed Issuer with Securities Quoted on the NZX Main Board and Debt Market.
2. TPW is proposing to undertake a demerger (**Demerger**) under which all existing assets and liabilities of TPW will be separated into two New Zealand registered companies:
 - (a) Bay Energy Limited (**TPX**); and
 - (b) Tilt Renewables Limited (**TLT**).
3. TPX and TLT will then each list on the NZX Main Board. Currently, TPX and TLT are wholly owned subsidiaries of TPW.
4. The Demerger will be implemented by way of a scheme of arrangement, under Part 15 of the Companies Act 1993. The Demerger will require:
 - (a) approval of the High Court of New Zealand; and
 - (b) to be passed by a single resolution, with shareholders voting at least 50% of the TPW votes on issue, of at least 75% of the votes cast by voting TPW shareholders, as required by section 236A(4) of the Companies Act 1993.
5. TPW will convene a shareholders' meeting at which the Demerger will be put to a shareholders' vote. TPW shareholders will be provided with a combined notice of meeting and scheme booklet (**Scheme Booklet**) to facilitate their consideration of the Demerger.
6. Should the Demerger be approved, shareholders in TPW will receive one ordinary share in TLT and one ordinary share in TPX, for each share they hold in TPW on the on the Record Date.
7. Subject to approval by NZX, TPX and TLT will then each list on the NZX Main Board, and TPW will delist from the NZX Main Board.

Interested Directors

8. TPW consider that three of its Directors may be interested in the Demerger, by virtue of the following relationships (**Interested Relationships**):
 - (a) TPW consider that Paul Ridley-Smith and Marko Bogoievski are each technically "interested" in the Demerger, for the purpose of section 139 of the Companies Act 1993, as they are each directors or employees of TPW's largest shareholder, Infratil Limited (**IFT**), or of a related company of IFT, which (like any other shareholder) could derive a material financial benefit from the Demerger; and
 - (b) TPW consider that Alan Bickers (together with Mr Ridley-Smith and Mr Bogoievski, the **Interested Directors**) could also be regarded as technically "interested" in the Demerger, for the purpose of section 139 of the Companies Act 1993, as Mr Bickers is a representative of TPW's second largest shareholder, Tauranga Energy Consumer Trust (**TECT**), which could therefore derive a material financial benefit from the Demerger.
9. As a result of the Interested Relationships above, three of seven Directors on TPW's Board would otherwise be unable to vote on any boards resolutions in respect of the Demerger pursuant to NZX Main Board Rule (**Rule**) 3.4.3.
10. While TPW would still be able to call a quorum of the board to consider the Demerger, given how fundamental the Demerger transaction is, TPW considers that it is appropriate that the full TPW Board should be able to consider and discuss the Demerger. TPW has therefore sought a waiver from Rule 3.4.3 to allow this.

Directors' Remuneration

11. While TPX and TLT are still unlisted entities, TPX and TLT will each seek shareholder approval for their proposed remuneration packages (**Initial Remuneration**) to be paid to each of their directors. At this point, TPW will be the sole shareholder of each of TPX and TLT.
12. As permitted by Rule 3.5.1, TPW has indicated that the Initial Remuneration packages to be paid to the TPX and TLT's directors may consist in whole or in part of Equity Securities. TPW has confirmed that the resolution by TPW to authorise the remuneration to be paid to the Directors of TPX and TLT will expressly provide that this Initial Remuneration may be payable either in part or in whole by way of an issue of Equity Securities, and shall also comply with all other criteria under Rule 7.3.8 in respect of an issue of this nature.
13. TPW has also indicated that, while TLT remains an unlisted entity, that TLT would also seek TPW's approval, as its sole shareholder, of an increase in the remuneration to be paid to the directors of TLT.
14. The Scheme Booklet for the Demerger will set out what the remuneration for directors of TPX and TLT will be, to inform investors as a part of their considerations of whether to approve the Demerger.

Spread

15. TPW's ordinary shares are currently held by approximately 12,000 Members of the Public, holding approximately, 22.84% of the ordinary shares on issue.
16. TPW estimates that that the ordinary shares of each of TPX and TLT will initially be held by approximately 12,000 Members of the Public, holding approximately 22.84% of the number of securities of that class on issue. On listing it may be that the price of TPX and TLT is such that shareholders who are currently considered Members of the Public for the purposes of TPW's spread, will not be considered Members of the Public for the purposes of the TPX and TLT.
17. TPW have submitted that while the exact figures demonstrating TPX and TLT's compliance with Rule 5.2.3 could only be demonstrated upon implementation of the Demerger, that the recent trading activity in TPW's own ordinary shares, and levels of spread in these securities provides an appropriate proxy for the levels expected in each of TPX and TLT's ordinary shares, post-Demerger.
18. TPW have submitted that as at 5 May 2016, there were, on average, 46 trades per day in TPW ordinary shares over the previous 30 day period. These trades involved an average daily volume of 71,744 shares, at an average daily value of \$556,283.
19. On this basis, TPW considers that it is likely that each of TPX and TLT will maintain a spread of security holders sufficient to ensure a liquid market, thereby satisfying the policy objective of Rule 5.2.3.
20. Further, TPW has indicated that TLT will likely undertake a capital raise sometime in the foreseeable future, and if this does occur, that this should help to further increase spread in TLT's ordinary shares.



Appendix Two

Rule 3.4

Proceeding and Powers of Directors

3.4.3 Subject to Rule 3.4.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an Issuer is not a company registered under that Act, the reference to the “company” in that section shall be read as a reference to the Issuer.

Rule 3.5

Directors' Remuneration

3.5.1 No remuneration shall be paid to a Director of an Issuer by that Issuer or any of its Subsidiaries in his or her capacity as a Director of the Issuer or any of its Subsidiaries unless that remuneration has been authorised by an Ordinary Resolution of the Issuer, other than remuneration paid to a Director by a Subsidiary that has Equity Securities Quoted. Each such resolution shall express Directors' remuneration as either:

(a) a monetary sum per annum payable to all Directors of the Issuer taken together; or

(b) a monetary sum per annum payable to any person who from time to time holds office as a Director of the Issuer.

Such a resolution may expressly provide that the remuneration may be payable either in part or in whole by way of an issue of Equity Securities, provided that issue occurs in compliance with Rule 7.3.8.

If remuneration is expressed in accordance with (a), then in the event of an increase in the total number of Directors of the Issuer holding office, the Directors may, without the authorisation of an Ordinary Resolution of the Issuer, increase the total remuneration by such amount as is necessary to enable the Issuer to pay to the additional Director or Directors of the Issuer remuneration not exceeding the average amount then being paid to each of the other non-Executive Directors (other than the chairperson) of the Issuer.

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a general meeting of the Issuer unless notice of the amount of increase has been given in the notice of meeting. Nothing in this Rule 3.5.1 shall affect the remuneration of Executive Directors in their capacity as executives.

Directors' remuneration for work not in the capacity of a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 9.2 (if applicable).



Rule 5.2

Quotation of Securities

5.2.3 A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

Rule 7.3

Issue of New Equity Securities

7.3.8 An Issuer may issue Equity Securities to a Director if:

- (a) the issue is made in accordance with a resolution passed under Rule 3.5.1; and
- (b) the issue is of a Class of Equity Securities already on issue; and
- (c) the issue of Equity Securities is made after the end of the period (or half period) to which that remuneration relates; and
- (d) the issue price of the Equity Securities is equal to the volume weighted average market price of Equity Securities of that class over the 20 Business Days before the issue occurs.

