



March 16, 2009

**NZX Regulation Decision
Pike River Coal Limited
Application for waivers from Listing Rules 7.10.2, 7.10.5, 8.1.6 and 9.2.1
Application for approval under Rule 8.1.4.**

Background

1. Pike River Coal Limited ("PRC") is listed on the NZSX market.
2. On 3 March 2009 PRC announced its intention to undertake an underwritten pro rata renounceable issue of shares ("Offer") to shareholders resident in New Zealand or Australia. Prior to the Record Date it is intended that a placement ("Placement") will be made to AMP Capital Investors (New Zealand) Limited ("AMPI").
3. The Offer is for an amount of \$41 million, comprising 58,571,429 new shares to be offered to shareholders on a 1:5.015281102 basis at an issue price of \$0.70 each payable in full on application. Each new share will come with a free new option ("Option"), which can be exercised at \$1.25 for a new ordinary share at any time until 5pm 2 years from the date of issue (which is expected to be 21 April 2011).
4. The Placement will raise \$4 million and will result in AMPI being issued 5,714,285 ordinary shares, at \$0.70 per new share, and the same number of free Options. The terms of the new shares and Options are identical to those offered in the Offer. As the Placement is to occur before the Record Date for the Offer, the shares issued to AMPI will be entitled to participate in the Offer. While the Options issued under the Offer will be participating options (i.e will entitle the holder to participate in rights issues), under the subscription agreement the Options to be issued to AMPI within the Placement will not carry an entitlement to participate in the Offer.
5. PRC proposes to use the proceeds of the Offer and the Placement as working capital to help sustain the operation of its coal mine, until payment is received for PRC's initial coal shipments. It was expected that the first shipment would depart New Zealand in April 2009 and that production would increase more quickly. As a consequence of the ventilation shaft rock fall announced to the market on 19 February 2008, the first shipment is now not expected until the third quarter of 2009.
6. It is intended that the Offer will be fully underwritten by McDouall Stuart Corporate Finance Limited ("McDouall Stuart") (who will be "lead underwriter") and New Zealand Oil & Gas Limited ("NZOG"). The details of each underwriters commitments, is as follows:
 - (a) McDouall Stuart is to underwrite between \$26.5 million and \$27.3 million of the \$41 million Offer; and

- (b) NZOG is to underwrite between \$13.7 million and \$14.5million of the \$41 million Offer.
- 7. While the underwriting obligations are yet to be finalised it is expected that, as with PRC's rights issue of 2008, McDouall Stuart will be paid a fee of 2.5% of the value of the offer it underwrites and NZOG will receive an underwriting fee of 2.25% of the value of the offer it underwrites.
- 8. The Offer is to be made under a New Zealand short form Prospectus and Investment Statement ("Offer Document") in reliance on the trans-Tasman mutual recognition scheme for the offers of securities. Accordingly the Offer will be made under the Offer Document to PRC shareholders resident in New Zealand and Australia.

Application 1 - Rule 7.10.2

- 9. PRC has approached NZX Regulation ("NZXR") seeking a waiver from NZSX Rule, 7.10.2 ("Rule") so that the closing date for applications under the Offer can be 12 Business days after the last day of mailing the entitlement letters and Offer Documents to entitled shareholders
- 10. In support of its application PRC submits that:
 - (a) The current timetable requirements for rights issues, most notably the requirement to have an offer open for at least 18 Business Days after mailing of the last letters of entitlement, create a real impediment to efficient capital raising. NZX has indicated its support for shortening the timing requirements for rights issues and has, within its 15 December 2008 exposure draft of the NZSX/NZDX Listing Rule review, suggested two areas where the timetable can be reduced. In particular it is suggested that the minimum period for which a rights issue (whether renounceable or not) is required to remain open after the letters of entitlement have been mailed, be reduced from 18 to 12 Business Days. This shortened timeframe is identical to that sought by PRC within this application. The proposed 12 Business Day period is 2 Business Days longer than the timing requirements of the ASX. While supportive of the proposed shortened timetable within the Rules, they submit that it would be more useful for Dual Listed Issuers if NZX were to consider reducing this timing requirement to align with those required by the ASX Listing Rules;
 - (b) Eligible shareholders will not be materially disadvantaged by the reduced Offer period because:
 - (i) Eligible shareholders will still have two and a half weeks to observe the market pricing of the rights and determine whether to take up their rights. In addition shareholders may be able to extend this period to 16 Business Days by shunting their shares and rights between the New Zealand and Australian share registers. Where this is possible shareholders and non shareholders may trade the rights on the ASX from 4 Business Days before the Record Date, until 2 Business Days before the closing date of the Offer on the NZSX

market. By comparison the minimum trading period for rights provided for by the Rules is 17 Business Days;

- (ii) The requirements of the trans-Tasman mutual recognition scheme for the offer of securities mean that eligible shareholders will have access to the Offer Document for a longer period of time than most rights issues before they are required to decide whether to subscribe for shares and/or trade their rights. Specifically, PRC is required to lodge a notice of its intent to make the Offer with the Australian Securities and Investments Commission (“ASIC”) 14 days before the Offer opens. This notice is required, amongst other things, to include a copy of the Offer Document. Once this letter has been lodged with ASIC the act of lodgment and the Offer Document will be announced to NZX and ASX. In addition a copy of the Offer Document will be made available on PRC’s website.
- (c) It is in the best interests of PRC shareholders that PRC has access to funds enabling it to operate the mine at a level of capacity considered appropriate. The maintenance of sufficient levels of working capital is of paramount importance in this regard. If the amount of working capital is not maintained at an adequate level, production may need to be slowed or stopped altogether. Clearly this would not be in the best interests of PRC or its shareholders.
- (d) Based on waivers of Rule 7.10.2 that have previously been given (i.e., the waivers granted to AMP NZ Office Trust and Goodman Property Trust on 30 January 2007 and 8 November 2007 respectively) PRC submits that it is appropriate to grant this waiver so long as:
 - (i) the reduced trading timetable in New Zealand is clearly noted by PRC in its announcement of the Offer and its Offer Document; and
 - (ii) the letter of entitlement and Offer Document are sent by fast post to eligible shareholders who are resident outside of Auckland, where PRC’s share register is based.

Rule 7.10.2

11. Rule 7.10.2 provides that:

7.10.2 Closing Date for Applications: Without limiting Rule 7.10.1, the closing date and time for applications under Rights issues (whether or not renounceable) shall not be earlier than the 18th Business Day after the day of mailing of the last of the letters of entitlement.

Decision

12. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from 7.10.2 so that the closing date for the Offer may be 11 Business Days after the day of mailing of the entitlement letters and offer documents to all shareholders, on the following conditions:
- (i) the reduced trading timetable in New Zealand is clearly noted by PRC within its announcement of the Offer; and
 - (ii) the letter of entitlement and Offer Document are sent by fast post to eligible shareholders who are resident outside of Auckland, where PRC's share register is based.

Reasons

13. In coming to the decision to grant PRC waiver from Rule 7.10.2, NZXR has considered the following matters:
- (a) The market and shareholders should already be aware of PRC's intention to undertake the Offer and their entitlement under the Offer, due to the announcement released by PRC on 3 March 2009. Accordingly, shareholders will have more than 18 Business Days, from the time the Offer was first announced, to consider whether to accept their entitlement.
 - (a) The condition that PRC send the letters of entitlement and offer documents by way of fast post ensures that shareholders will ensure these are received, and therefore shareholders will be able to accept or renounce their entitlement, as soon as is practicably possible.
 - (b) There is precedent for this decision, including those referred to by PRC in paragraph 10(e) above.

Application 2 - Rule 7.10.5

14. PRC has applied for a waiver of Rule 7.10.5 to enable entitled persons to make applications in excess of their entitlement to the extent of any shortfall in the Offer.
15. In support of its application, PRC submits that:
- (a) based on waivers of Rule 7.10.5 that have previously been given (i.e., the waivers granted to PRC, Skellerup Holdings Limited and Smartpay Limited on 14 January 2008, 11 February 2008 and 18 April 2008 respectively) it is appropriate to grant this waiver so long as:
 - (i) shares allocated to satisfy applications in excess of entitlements are divided up between those who apply in direct proportion to the number of shares held by the applicants as at the record date for entitlements;
 - (ii) Rule 7.5 is not breached;

- (iii) Rule 9.2.1 is not breached; and
 - (iv) the Offer Document records that a waiver from Rule 7.10.5 has been granted by NZXR and details the conditions of the waiver as indicated in paragraphs 17(a) & (b) below.
- (b) there are only three large shareholders of PRC, who hold the following proportion of PRC ordinary shares:
- (i) NZOG - 29.1%
 - (ii) Gujarat NRE Limited - 8.9%
 - (iii) Saurashtra World Holdings Private Limited - 7.6%.
- (c) Rule 7.5 will not be breached by the issue of the shares since:
- (i) the Takeovers Code will prohibit NZOG from increasing its percentage of the voting rights in PRC. Accordingly the maximum number of shares which NZOG may subscribe for under the Offer is that number which, upon allotment, equates to its current shareholding level; and
 - (ii) no other person or group of persons is regarded by the Board of PRC as likely to increase its measure of effective control of PRC by virtue of the relatively small size of the Offer and limitations that exist under the takeovers code; and
 - (iii) Rule 9.2.1 would not be breached since all shareholders and Optionholders would have been treated equally, and therefore the exception in Rule 9.2.4(b) would apply.

Rule 7.10.5

16. Rule 7.10.5 provides that

Entitlement: A Renounceable Right shall not entitle the holder of the Right to apply for more than the entitlement of Securities except to enable acquisition of the number of Securities needed to give that holder a Minimum Holding.

Decision 2

17. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 7.10.5 to the extent necessary to enable entitled persons to make applications in excess of their entitlements to the extent of any shortfall in the Issue, subject to the following conditions:

- (a) Shares allocated to satisfy applications in excess of entitlements are divided between those who apply in direct proportion to the number of shares held by the applicants as at the record date for entitlements; and
- (b) The Offer documents for the Issue record that a waiver from Rule 7.10.5 has been granted by NZXR and details the conditions imposed on that waiver.

Application 2 - Reasons

18. In granting a waiver from Rule 7.10.5, NZXR considered that:
- (a) There is precedent for the granting of a waiver from Rule 7.10.5 in decisions made to PRC and to WDT on 11 November 2005 and ICP BIO Technology Limited on 3 July 2007.
 - (b) It is a condition of the waiver that shares are divided between applicant in direct proportion to the number of shares held by the applicants as at the record date for their entitlements. In addition, as Rule 7.5 continues to apply, there are unlikely to be any control changes occurring as a result of this waiver.

Application 3 - Approval under Rule 8.1.4

19. PRC has applied to NZXR for approval, pursuant to Rule 8.1.4, for the proposed issue to AMPI of 5,714,285 new shares ("Placement Shares"), on terms which are identical to those proposed under the Offer, at an issue price which represents a discount to the Average Market Price of PRC's existing shares of greater than 10%. The Placement Shares will be issued under Rule 7.3.5.
20. AMPI is an existing shareholder of PRC, but holds an insignificant number of shares and is not a Related Party or Associate Person of PRC. To ensure that the Offer is fully underwritten it is important for McDouall Stuart to line up sub-underwriters. It is anticipated that AMPI will enter into a sub-underwriting agreement with McDouall Stuart, on terms to be negotiated between those parties, in relation to the Offer and will be paid a fee in relation to those shares it sub-underwrites. AMP will not be paid a fee in relation to the Placement Shares. In addition the terms of the Options to be issued under the Placement will be modified to differ slightly to the terms of the Options to be issued under the Offer, to ensure they have no entitlement to participate in the Offer. Absent the Placement, AMP could, as sub-underwriter end up with an allocation of new shares and Options in PRC, but is keen to ensure it can acquire a minimum stake in PRC. This is why the Placement is proposed. As a result of the Placement, the size of the Offer has been reduced \$4 million. At this lower figure it will be easier for PRC to obtain underwriting commitments for the full value of the Offer. This will be of benefit to both PRC and its shareholders given the funds sought are essential the ongoing development of PRC's mine.
21. In support of this application PRC submits that:
- (a) The Placement is of value to both PRC and PRC shareholders as it assists PRC in progressing with the Offer being fully underwritten. This is especially so given the funds sought are essential for the ongoing development of PRC's mine to a point of steady production.
 - (b) The Placement is being made on identical terms to those which will be offered to PRC shareholders under the Offer. In this regard any perceived unfair dilution to existing shareholders as a result of the Placement is largely cancelled by the Offer which offers the identical discount to all shareholders on a pro rata basis.

- (c) While the Placement Shares will be issued at a discount to the Average Market Price of PRC's ordinary shares of around 25%, the size of the Placement is very small. After allotment the Placement Shares will amount to approximately 1.8% of PRC's total shares on issue. This is significantly less than the maximum 15% provided by Rule 7.3.5 and will only slightly dilute existing shareholders.
- (d) The Board of PRC does not consider the discount excessive given the current declining state of global markets and general difficulties companies now face in sourcing funding. The benefit of the reduced price of shares offered under the Placement will be extended to all shareholders under the Offer. While Issuers can make placements under Rule 7.3.5 at a discount of up to 10% of the market price, shareholders are generally not able to obtain such favourable pricing. By pricing the shares offered in the Placement at the identical price to those offered under the Offer, shareholders are being treated in a nearly identical manner to AMPI;
- (e) While its consent has not been explicitly sought, the fact of this intended placement has been advised to NZOG as PRC's major shareholder and it has supported this aspect of the fundraising; and
- (f) Before PRC can issue the Placement Shares, the board must resolve under section 47 of the Companies Act 1993 that the issue price and the terms of issue of the Placement Shares are fair and reasonable to PRC and to all existing shareholders, and provide a certificate to that effect

Rules 8.1.3 and 8.1.4

22. Rule 8.1.3 provides that

Issue of Equity Securities carrying Voting Rights - Pricing If:

- (a) *an Issuer proposes to issue Equity Securities carrying Votes, or Securities which are Convertible into Equity Securities carrying Votes, under Rules 7.3.4(ba), 7.3.5 or 7.3.6 (the "Affected Securities"); and*
- (b) *the proportion that the issue price of the Affected Securities (together, in the case of Convertible Securities, with the amount of any consideration payable on Conversion), forms of the Average Market Price of that Issuer's existing Quoted Equity Securities is not at least 90% of the proportion that number of Votes carried by Affected Securities (or, in the case of Convertible Securities, the Securities into which the Affected Securities Convert), forms of the number of Votes carried by that Issuer's existing Quoted Equity Securities.*

the Issuer shall not issue the Affected Securities without the approval of NZX pursuant to Rule 8.1.4.

23. Rule 8.1.4 provides that:

Approval by NZX. Any provision of the nature referred to in Rule 8.1.1 or 8.1.2, or issue of the nature referred to in Rule 8.1.3, shall be subject to the approval of NZX. NZX may grant approval

on such conditions as it thinks fit (including a condition for approval of resolutions of holders of any Class or group of Securities of the Issuer)

Decision - Application 3

24. On the basis that the information provided to NZXR is complete and accurate in all material respects, NZXR hereby approves the issue price of the Placement Shares, pursuant with Rule 8.1.4.

Reasons - Application 3

25. In coming to its decision to approve the issue price of the Placement Shares, NZXR has considered the following matters:
- (a) A significant purpose of listing on NZX, or any other securities exchange, is to facilitate the swift raising of capital. In present market conditions the strict application of Rule 8.1.3 dissuades Issuers from raising capital via equity funding.
 - (b) The Placement is being offered at the same price as the Offer. Therefore, all shareholders will have the opportunity to purchase additional PRC rights and/or shares on the same terms as the Placement Shares.
 - (c) NZXR accepts PRC's submission that, whilst the size of the discount being given is large when considered against the limit contained in Rule 8.1.3, the dilutionary affect that this will have on shareholders is small. In addition any mischief presented by this small dilution is mitigated by the fact that PRC will conduct the Offer shortly after the Placement.
 - (d) NZXR accepts PRC's submission that, considering current market conditions and the difficulty facing companies that are seeking funding, the discount offered under the Placement is not excessive.

Application 4 - Waiver from Rule 8.1.6

26. As described in paragraph 4 above, it is intended that the terms of the Options to be issued to AMPI will entitle the holder to participate in rights issued except for the Offer.
27. PRC has applied for waiver from Rule 8.1.6 so that it may issue the AMPI Options as participatory options.
28. In support of its application, PRC submits that:
- (a) where the Options to be granted to AMPI reflect the same terms as Options which will, at or around the same time, be offered to all PRC shareholders under the Offer, it is appropriate for a waiver to be granted.
 - (b) The alternative would be for PRC to remove the participation right from the AMPI options. However, given that the Options are intended to have the same terms as Options offered to all shareholders, that would result in the participation right also being removed from the terms of the Options offered under the Offer.

- (c) PRC believes the participation right is of real value to all PRC shareholders. For the same reason as it is submitted above that the terms of the Placement of the new shares is appropriate in the circumstances, it is also submitted that providing participation rights in respect of the AMPI options is also appropriate. The Placement to AMPI is an important component of PRC's fundraising at this time. If the participation right is not provided to AMPI, it could seek to renegotiate its participation in the Placement or its sub-underwriting of the Rights Offer.
- (d) The potential dilution of existing shareholders arising from the issue of new Options to AMP within the Placement is minimal. The 5,714,286 new options AMP will receive under the Placement will amount to approximately 8.89% of the new options on issue once the allotment has occurred under the Offer. When combined with all other PRC securities which have participation rights for future rights issues this figure drops to approximately 1.37%. In addition there would only be dilution to the extent that existing PRC security holders do not take up the rights under any future rights issue.
- (e) It does not consider the participatory nature and related terms of the new options excessive given the current declining state of global markets and general difficulties companies now face in sourcing funding. By providing the same participatory rights to those new options included within the Offer, shareholders are being treated in a nearly identical manner to AMP.
- (f) While its consent has not been explicitly sought, the fact of this intended Placement has been advised to NZOG, as PRC's major shareholder, who has supported this aspect of the fundraising; and
- (g) Before PRC can issue the placement shares (which includes the new Options), the Board must resolve under section 47 of the Companies Act 1993 that the issue price and the terms of the Placement shares (which includes the new options) are fair and reasonable to PRC and to all existing shareholders, and provide a certificate to that effect.

Rule 8.1.6

29. Rule 8.1.6 provides that:

Participation of Options in Rights Issues: *An Option must not confer the right to participate in a Rights issue unless the Option:*

- (a) *is exercised before the Record Date for the Rights issue; or*
- (b) *was issued under a pro rata offer made pursuant to Rule 7.3.4 to the holders of Quoted Equity Securities; or*
- (c) *was issued with the approval of holders of Quoted Equity Securities, and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option*

Provided that nothing in this Rule 8.1.6 shall apply to any Option which was issued prior to the coming into force of this Rule or Listing of an Issuer.

Decision - Application 4

30. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 8.1.6 to the extent that the Options issued to AMPI pursuant to the Placement may confer a right to participate in future Rights issues, except for the Offer.

Reasons - Application 4

31. In coming to its decision to grant PRC a waiver from Rule 8.1.6, NZXR considered the following matters:
- (a) NZXR accepts PRC's submission that issuing the Options to AMPI on the same terms as the Options issued under the Offer is of benefit to PRC and all shareholders. In particular, NZXR notes PRC's submission that without the participatory right AMPI may seek to re-negotiate the terms on which it participates in the Placement and the important part which the Placement plays in the overall fundraising.
 - (b) The dilutionary effect of the AMPI Options on PRC shareholders is minimal. In particular, NZXR notes that on completion of the Offer the AMPI options will represent approximately 1.37% of all PRC securities. Accordingly, NZXR accepts PRC's submission that the relevant benefit to PRC and its shareholders of issuing the AMPI Options on the same terms as Options issued under the Offer outweighs any perceived mischief created through a dilution of ordinary shareholders.
 - (c) As detailed in paragraph 20 above, AMPI desired to obtain a certain minimum stake in PRC. This could occur by AMPI entering into a sub-underwriting agreement with McDouall Stuart and reliance on acquiring a stake as a result of any shortfall in the Offer. However, this method this did not provide certainty for AMPI as to the stake that they would acquire. NZXR notes that if AMPI acquired shares and Options as sub-underwriter a waiver from Rule 8.1.6 would not be required. However in order to provide AMPI with certainty, AMPI's desired shareholding was subtracted from the size of the Offer and issued as a Placement but on the same terms as the Offer.

Application 5 - Waiver from Rule 9.2.1

32. The terms of the underwriting agreement with NZOG may require NZOG to procure its subsidiary NZOG Services Limited to subscribe for its entitlement of 17,022,270 shares, and required NZOG to subscribe for a further 3,571,428 shares in PRC. This would result in PRC issuing its own Equity Securities to NZOG and NZOG Services Limited, being a Related Party by virtue of Rule 9.2.2(b), having a market value of greater than 5% of the Average Market Capitalisation of PRC.
33. Under the terms of the underwriting agreement with McDouall Stuart, McDouall Stuart may be required to subscribe for up to \$27.3 million worth of shares in PRC. Accordingly, under the underwriting agreement, PRC may issue its own Equity Securities to McDouall Stuart having a

- market value in excess of 5% of the Average Market Capitalisation of PRC thereby making this transaction a Material Transaction by virtue of Rule 9.2.2(b).
34. Additionally, McDouall Stuart intends to enter into sub-underwriting agreements for a portion of its commitment under the Offer (“sub-underwrite”). Included in the parties intended to sub-Underwrite the Offer are Gordon Ward and Stuart Nattrass, directors of PRC and therefore Related Parties of PRC.
35. The terms on which Gordon Ward and Stuart Nattrass will sub-underwrite the Offer are identical to those provided to the non-Related Party sub-underwriters. It is expected that Gordon Ward will sub-Underwrite less than 1% of the Offer and Stuart Nattrass will sub-underwrite approximately 1.2% of the Offer.
36. PRC has applied to NZXR for a waiver of Rule 9.2.1 to the extent that this Rule would otherwise require PRC to obtain shareholder approval of the underwriting arrangements with NZOG and the sub-Underwrite of the Offer by Gordon Ward and Stuart Nattrass, on the basis that they constitute a Material Transaction to which a Related Party is a direct or indirect party.
37. In support of its application, PRC submits that:
- (a) the policy behind Rule 9.2, as detailed in the footnote, is the protection of non-associated shareholders;
 - (b) PRC does not wish to make the Offer unless it has confidence that it will be fully subscribed, since the majority of the Offer proceeds are earmarked for specific expenditure in the short term. As PRC needs this funding to continue its operations, and thereby deliver its first shipments of coal and receive its first payments, it is submitted that PRC has a very strong commercial imperative to ensure that the Offer is fully subscribed, and that its success cannot be left simply to an expectation that shareholders will take up their entitlements under the Offer.
 - (c) In current global markets, it is a very strong market signal that the Offer is able to be fully underwritten.
 - (d) PRC directly approached NZOG and McDouall Stuart on the basis of the precedent of their underwriting commitments last year, which contributed to the success of PRC’s 2008 rights offer (which was oversubscribed). PRC has proposed the same commercial terms that those parties had last year and which the PRC Board resolved was in the best interest of PRC.
38. With regards to the position of McDouall Stuart as underwriter, PRC makes the following submissions:
- (a) As was the case last year, McDouall Stuart advised PRC that it would only underwrite the Offer if NZOG, as a major shareholder, also committed to an underwrite.
 - (b) McDouall Stuart has approached existing institutions on PRC’s register for supporting underwriting commitments and other parties. Among those parties to sub-Underwrite the Offer will be Gordon Ward and Stuart Nattrass, directors and therefore Related Parties of PRC. PRC is not involved in those arrangements. All sub-underwriting

arrangements are being concluded on the same terms (i.e., Gordon Ward and Stuart Natrass will receive a fee which is the same as that which McDouall Stuart has negotiated with the institutional underwriters).

39. With regards to the underwriting fees to be paid PRC submits that the underwrite fee of 2.25% to be paid to NZOG is a commercial one. The underwriting fees payable to McDouall Stuart and to NZOG (and any sub-Underwriters, including Gordon Ward and Stuart Natrass) are based on the same percentages that applied to PRC's rights issue in 2008. NZX accepted that these fees were commercial when it granted waivers for PRC's rights issue in 2008. If anything, market circumstances have deteriorated further since the 2008 rights issue and there may have been a basis for McDouall Stuart and other institutional underwriters to seek an increased fee (which PRC has avoided).
40. PRC makes the following submissions in respect of its dealings with Related Parties:
- (a) Given the precedent of the underwriting arrangements last year, PRC set the underwriting fees with NZOG and McDouall Stuart independently of the other;
 - (b) The only "cross-over" between the commitments has occurred as part of PRC ensuring the Offer is fully underwritten. While NZOG was first asked to underwrite approximately \$12m of the Offer, PRC has now sought to increase that amount to between \$13.8 and \$14.5m (to reflect a decrease in the commitment from McDouall Stuart).
 - (c) McDouall Stuart is dealing separately with Stuart Natrass and Gordon Ward in respect of their role as sub-underwriters. Those persons will receive the same terms as other sub-underwriters. The fee agreed between PRC and McDouall Stuart was set prior to Stuart Natrass and Gordon Ward entering into discussions with McDouall Stuart. Therefore this will not be a situation in which Stuart Natrass and Gordon Ward will influence the terms of the underwrite in a way which results in better terms being offered to them as Related Parties as opposed to any other sub-underwriter.
 - (d) As the policy behind Rule 9.2 is to safeguard non-associated shareholders from non-commercial arrangements there is no value in requiring shareholder approval for NZOG's participation in the underwrite or for Stuart Natrass and Gordon Ward to sub-underwrite where those arrangements are clearly established to be commercial and arms length.
 - (e) The PRC Board therefore views the direct underwrite with NZOG and the sub-underwriter arrangements with Stuart Natrass and Gordon Ward, simply reflect the McDouall Stuart underwrite, and as being necessary to ensure the success of the Offer, which the Board of PRC sees as critical to PRC's future.
 - (f) Accordingly, the underwrite, and the sub-underwriting arrangements with Stuart Natrass and Gordon Ward, will be conducted on an arms-length basis and on commercial terms.
 - (g) The granting of the waiver requested would "in-principle" be in line with those waivers previously granted to PRC on 14 January 2008, Ebos Group Limited on 2 November

2006, Fletcher Building Limited on 10 November 2004 and to AMP NZ Office Trust on or about 10 December 2004.

- (h) That granting the waiver would fulfil the policy grounds listed in the footnotes to Rule 9.2.1.

Rule

41. Rule 9.2.1 provides that:

Restriction: *An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:*

- (a) *a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or*
- (b) *in the case of a guarantee or other transactions of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction;*

unless that Material Transaction is approved by Ordinary Resolution of the Issuer.

41. Rule 9.2.2(b) provides that:

Definition of Material Transaction: *For the purposes of Rule 9.2.1, "Material Transaction" means a transaction whereby an Issuer:*

- (b) *issues its own Securities or acquires its own Equity Securities having a market value in excess of 5% of the Average Market Capitalisation of that Issuer.*

42. Footnote 1 to Rule 9.2.1 provides:

NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.

Decision

42. On the basis that the information provided to NZXR is full and accurate in all material respects NZXR grants PRC a waiver from the requirement in Rule 9.2.1 to seek shareholder approval of the:

- (a) underwriting agreements with NZOG and McDouall Stuart; and
- (b) sub-underwriting agreements between McDouall Stuart and Stuart Natrass, and McDouall Stuart and Gordon Ward.

43. These waivers are granted on the condition that:

- (a) The directors of PRC, not Associated (as that term is defined in the Rules) with NZOG or McDouall Stuart certify to NZXR that the:
- (i) terms of the underwriting agreements with McDouall Stuart and NZOG were negotiated on an arms' length and commercial basis;
- (ii) terms of the underwriting agreements with McDouall Stuart and NZOG are fair and in the best interests of PRC shareholders that are not associated with NZOG;

- (iii) directors of PRC which are Associated (as that term is defined in the Rules) with NZOG did not influence the promotion of the proposal to enter into the underwriting agreements, the setting of the terms of the Issue or any allocation decisions; and
- (b) John Dow certifies to NZXR that the negotiation of the terms of, and decision to enter into, the underwriting agreements occurred prior to the negotiation of the sub-underwriting agreements with Gordon Ward and Stuart Nattrass; and
- (c) NZXR receives a certificate from two of the directors of McDouall Stuart, certifying that :
 - (I) when seeking persons to sub-underwrite the Offer and negotiating the terms of the sub-Underwriting, McDouall Stuart has followed a procedure that ensures that all potential sub-underwriters had been identified and given the opportunity to participate and that Stuart Nattrass and Gordon Ward have had no greater opportunity to participate in the process than any other persons; and
 - (II) the negotiation of the terms of, and decision to enter into, the Underwriting Agreement occurred prior to the negotiation of, and decision to enter into, the sub-Underwriting Agreements with Gordon Ward and Stuart Nattrass;
- (d) NZXR receives a solicitor's opinion that:
 - (i) the terms of the underwriting agreements are consistent with the terms of an arms length transaction and there are no material differences between the principal terms of the agreements between PRC and McDouall Stuart and PRC and NZOG; and
 - (ii) the terms of the sub-underwriting agreements are consistent with the terms of an arms length transaction and there are no material differences between the principal terms of the sub-Underwriting Agreements between McDouall Stuart and Gordon Ward, McDouall Stuart and Stuart Nattrass and McDouall Stuart and other sub-underwriting agreements.

Reasons

44. In coming to its decision to grant PRC a waiver from Rule 9.2.1 NZXR considered the following matters:
- (a) The policy of Rule 9.2.1 is to regulate transactions whereby a Related Party to the transaction may gain favourable consideration due to their relationship with the issuer. However, NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the involvement of a Related Party to the transaction was unlikely to have influenced the promotion to enter the transaction.
 - (b) As described in paragraphs 37(d) and 38(a), McDouall Stuart was only prepared to underwrite the Offer if NZOG, as a major shareholder, also committed to an underwrite.

- (c) The terms of the underwriting agreement with McDouall Stuart, in particular the 2.5% fee to be paid, were negotiated and set on an arm's length commercial basis. The terms of the agreement with NZOG, with particular reference to the 2.25% fee, are less favourable to NZOG than those agreed with McDouall Stuart. This suggests that the Related Party relationship did not influence the proposal to enter into the transaction or its terms and conditions.
- (d) Any sub-underwriting agreements between McDouall Stuart and Related Parties will be negotiated after the lead underwrite. These agreements will reflect the terms of the agreement between PRC and McDouall Stuart and further will reflect that terms on which other unrelated parties will sub-underwrite.
- (e) The oversubscription facility, the subject of the waiver from Rule 7.10.5, will provide shareholders with the ability to take up the shortfall prior to Related Parties having to meet their obligations under the sub-underwriting agreements.
- (f) NZXR will receive directors certificates referred to in paragraph 43 above and a solicitors opinion in accordance with paragraph 43.
- (g) On the basis of the above NZXR can be satisfied that the policy set out in Footnote 1 to Rule 9.2.1 as to when NZXR will waive the requirement to obtain shareholder approval of a Related Party transaction will be met.
- (h) There is precedent for waivers of this type, including to PRC dated 14 January 2008 and Smartpay Limited dated 18 April 2008.

ENDS