

April 20, 2010

NZX Regulation Decision
Pike River Coal Limited (“PRC”)
Application for waivers from NZSX Listing Rules 9.2.1 and 7.10.5

Background

1. Pike River Coal Limited (“PRC”) is listed on the NZSX market.
2. PRC is seeking waivers from NZSX Listing Rules (“Rules”) 9.2.1 and 7.10.5 in connection with a fundraising package (“Fundraising Package”) that PRC announced to the market on 24 February 2010.
3. The Fundraising Package consists of 4 elements:
 - (a) PRC seeks to raise NZ\$50 million (“Equity Raising”) by way of:
 - (i) a placement of shares to the value of \$10 million conducted in accordance with NSZX Listing Rule 7.3.5, and ASX Listing Rule 7.1, and that relies in part on NZSX Listing Rule 7.3.5(b) (and does not require shareholder approval under ASX Listing Rule 10.11) (“Placement”); followed by;
 - (ii) a \$40 million pro rata renounceable rights issue of ordinary shares conducted in accordance with NZSX Listing Rule 7.3.4(a) and ASX Listing Rule 7.2 (“Rights Issue”).
 - (b) New Zealand Oil & Gas Limited (“NZOG”) providing PRC with a new convertible bond facility of up to US\$28.9 million (“New Convertible Bond Facility”) to fund, at any time up to the current maturity date, the redemption of the Liberty Harbor Bonds (ie 12 March 2011).
 - (c) PRC granting NZOG an option (“Coal Option Agreement”) to purchase:
 - (i) for the period from 23 February 2010 until 31 March 2013, up to the total part of the annual coal production from the Pike River Mine that is not, as at 23 February 2010, contractually committed to any other party; and
 - (ii) for the period from 1 April 2013 for the remainder of the Pike River Mine life, up to 30% of the annual coal production from the Pike River Mine.
 - (d) A short term loan facility of up to \$15 million that NZOG has agreed to provide to PRC, if and when required, for a period of up to three months from 23 February 2010 (“Short Term Loan Facility”).
4. Shareholder approvals will be sought for the New Convertible Bond Facility and the Coal Option Agreement.

Application 1 - Waiver from Rule 9.2.1 for the Equity Raising

5. The Placement is to be followed by the Rights Issue and, therefore, these two transactions, together comprising the Equity Raising, constitute a related series of transactions for Rule purposes.
6. Each of NZOG and Gujarat have made commitments, albeit conditional at this stage, to support each component of the Equity Raising to the extent of their respective equity percentage interests in PRC.
7. In addition to its commitment to participate, NZOG has facilitated the Equity Raising, since NZOG’s commitment has enabled PRC:
 - (a) first, to secure underwriting support from Gujarat;
 - (b) secondly, to undertake negotiations with other potential lead underwriters in relation to an underwrite that, without commitments from NZOG and Gujarat, would need to extend to the whole Equity Raising; and
 - (c) thirdly, to make a placement a viable proposition (and one that is intended (by creating competitive pricing) to benefit all shareholders in the Rights Issue).

8. The Equity Raising is to be fully underwritten (the “Underwrite”) on the following basis:
 - (a) two joint lead underwriters who are still to be appointed are to underwrite that part of the Equity Raising that is not underwritten by the underwrites referred to in paragraph 8(b) below;
 - (b) NZOG, who will be the third joint lead underwriter (all three being collectively referred to as “Lead Underwriters”), and Gujarat are each to severally underwrite the Equity Raising to the extent of their respective equity percentage interests in PRC.
9. Each of NZOG and Gujarat is to satisfy its underwriting commitment by subscribing under the Placement and the Rights Issue to the extent of its equity percentage interest in PRC. In the event of a shortfall in subscriptions under the Placement, or the Rights Issue at the closing date, the two Lead Underwriters still to be appointed will, subject to satisfaction of certain market standard conditions, take up the shortfall at the issue price.
10. The Equity Raising is a Material Transaction for Rule purposes since the amount of the Equity Raising exceeds 10% of PRC’s average market capitalisation and includes subscription commitments from major shareholders (being related parties) of PRC.
11. NZOG and Gujarat are each related parties of PRC for the following reasons:
 - (a) in the case of NZOG, it holds 29.53% of the shares in PRC and, at the time of PRC’s IPO, together with Gujarat and Saurashtra Fuels Private Limited (Saurashtra), entered into subscription agreements with PRC as part of which NZOG agreed separately with each of those companies to vote in favour of the nominee of the other as a director and they agreed to do likewise for NZOG. As a result, NZOG has a “Relevant Interest” in Gujarat and Saurashtra’s shares in PRC in terms of the Securities Markets Act 1988; and
 - (b) in the case of Gujarat, at the time of PRC’s IPO, it entered into a subscription agreement with PRC and NZOG as part of which NZOG agreed with Gujarat to vote in favour of the nominee of Gujarat as a director and Gujarat agreed to do likewise for NZOG. As a result, Gujarat has a “Relevant Interest” in NZOG’s shares in PRC in terms of the Securities Markets Act 1988.
12. The following fees (totalling slightly in excess of 0.5% of PRC’s Average Market Capitalisation) are to be payable to underwriters and Lead Managers:
 - (a) underwrite fees are to be payable to all the Lead Underwriters and Gujarat at the same percentage level as the underwriting fees to be paid to the two Lead Underwriters still to be appointed, and these fees are to be paid, in each case, on the amount of their commitments made in relation to the Equity Raising; and
 - (b) offer management fees are to be payable to the Lead Managers, and a facilitation fee is to be payable to NZOG (at the same percentage level as the offer management fees to be paid to the Lead Managers), and these fees, in aggregate, will not exceed the percentage rate at which these fees are paid multiplied by the amount of the Equity Raising.
13. Accordingly, PRC has applied for a waiver from Rule 9.2.1 to the extent that this Rule would otherwise require PRC to obtain shareholder approval to the Equity Raising on the basis that the Equity Raising is a Material Transaction that includes subscription commitments from related parties of PRC.
14. In support of its application, PRC makes the following submissions:
 - (a) PRC has resolved that it is in the best interests of PRC that NZOG and Gujarat participate in the Equity Raising, and that the Equity Raising be underwritten on an arms length basis and on commercial terms.
 - (b) NZOG and Gujarat have each already made commitments to support the Equity Raising, albeit conditionally at this stage, to the extent of their respective equity percentage interests in PRC.
 - (c) These are to be for a normal underwriting fee to be agreed between PRC and NZOG or Gujarat (as the case may be) and the Lead Managers (with the fees for NZOG and Gujarat to be at the same percentage level as the underwriting fees payable to the two Lead Underwriters who are still to be appointed), and otherwise to be on normal terms and conditions for an underwriting

of this nature but, in any case, on terms and conditions no less favourable than the underwriting terms agreed by PRC with any other underwriter of the Equity Raising. The Lead Underwriters may approach other existing institutions on PRC's register for supporting underwriting commitments. If so, those Lead Underwriters will require all supporting underwriting commitments to be on terms and conditions that are no more favourable to those other institutions than those applying to NZOG and Gujarat.

- (d) NZOG and the Lead Managers are to be paid a facilitation fee (in the case of NZOG) and offer management fees (in the case of the Lead Managers), with NZOG's facilitation fee to be at the same percentage level as the Lead Managers' offer management fees (and with the aggregate of both fees not to exceed the percentage rate at which these fees are paid multiplied by the amount of the Equity Raising), and with NZOG's facilitation fee being payable for it enabling PRC:
 - (i) first, to secure underwriting support from Gujarat;
 - (ii) secondly, to undertake negotiations with other potential Lead Underwriters in relation to an Underwrite that, without commitments from NZOG and Gujarat, would need to extend to the whole Equity Raising; and
 - (iii) thirdly, to make a placement a viable proposition (and one that is intended, by creating competitive pricing, to benefit all shareholders in the Rights Issue).
- (e) Neither NZOG nor Gujarat have had, nor will they have, any involvement in negotiations between the two Lead Underwriters and PRC for the development of the terms of the Underwrite, the underwriting and sub-underwriting processes, or determining the underwriting or sub-underwriting allocations (their only negotiations being with PRC as to the amount of their underwriting commitments and the matters referred to in paragraph (c) and, in the case of NZOG, (d) above).
- (f) Accordingly, the Equity Raising will be conducted on an arms length basis and on commercial terms.
- (g) In particular, this is not a situation of PRC negotiating with lead underwriters, and then those lead underwriters negotiating support from sub-underwriters on the basis that they assume a more certain (and lesser) risk, in which case one might expect a sub-underwriting fee to be at a lower rate than paid to the lead underwriters (with there being no other fees).
- (h) Therefore, PRC has sought commitments from shareholders of the standing and substance of NZOG and Gujarat, in advance of negotiating the Underwrite, and in order to support those negotiations, and it is on this basis that PRC is to pay an underwriting fee to NZOG and Gujarat at the same rate as the fees payable to the two Lead Underwriters that are still to be appointed.
- (i) The facilitation fee payable to NZOG reflects its role in facilitating the matters referred to in (d)(i), (ii) and (iii) above, and, whilst it is different in nature from a lead management fee, NZOG's actions nevertheless substantially facilitate the Equity Raising, just as the services of Lead Managers are designed to do, and therefore PRC will be negotiating normal fees with the Lead Managers, but with an allowance for NZOG's facilitation fee. PRC and NZOG agreed to the facilitation fee, but only to the extent that it delivered value in the form of a reduced lead management fee. Therefore, NZOG's facilitation fee only applies to the portion of the Equity Raising it has committed to support, and lead management fee payable to the Lead Manager will only apply to the remainder of the Equity Raising - which the Lead Managers underwrite.
- (j) Therefore, this is not a situation in which either NZOG or Gujarat will cause the terms of the Underwrite (taken as a whole) to be any different from what they might be were NZOG and Gujarat not to participate in the Underwrite, since:

- (i) the fees payable to the Lead Underwriters and the Lead Managers will be at rates that are no different from what they would be were NZOG and Gujarat not to participate in the Underwrite;
 - (ii) the underwrite fees payable to the two Lead Underwriters, to NZOG as the third Lead Underwriter, and to Gujarat, will all be payable at the same rate in relation to underwritings of separate parts of the Equity Raising as described above;
 - (iii) the fee payable to the Lead Managers will be after an allowance for NZOG's facilitation fee.
- (k) This means that the aggregate amount of underwriting, management and facilitation fees payable in connection with the Equity Raising will be no more than would normally be the case with an Equity Raising of this amount, but their composition will nevertheless reflect the nature of the transaction and the roles played by the various participants, but not the fact that some of the participants are related parties of PRC.
- (l) If NZOG and Gujarat do not participate in the Equity Raising, then, if there was simply to be a Rights Issue for the full \$50 million, as originally envisaged, they would nevertheless be entitled, under Rule 9.2.4(b), to take up their entitlements.
- (m) The granting of the waiver requested would "in-principle" be in line with those waivers previously granted to Ebos Group Limited on 2 November 2006, Fletcher Building Limited on 10 November 2004, AMP NZ Office Trust on or about 10 December 2004, and PRC on 14 January 2007 and 16 March 2009.

Rule 9.2.1

15. Rule 9.2.1 provides:

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 transaction 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 an Ordinary Resolution of the Issuer.

16. 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

17. On the basis that the information provided to NZX is full and accurate in all material respects, NZX grants PRC a waiver from the requirement in Rule 9.2.1(a) to seek shareholder approval of the Equity Raising due to the participation of NZOG and Gujarat in underwriting and facilitating the Equity Raising.
18. This waiver is granted on the condition that the Independent Directors of PRC certify to NZX that:
- (a) the Board of PRC has reviewed all available funding options, and, in their opinion, the selected NZOG deal represents fair value, is on arms length commercial terms, and is in the best interests of shareholders of PRC not associated with NZOG;
 - (b) some of PRC's major shareholders were consulted, but it was not possible to put the proposal to shareholders as a whole due to timing constraints; and

- (c) that without immediate funding the financial position of PRC would be untenable.

Reasons

- 19. In coming to the decision to grant PRC a waiver from Rule 9.2.1, NZX considered the following matters:
 - (a) This is not a situation where footnote 1 to Rule 9.2.1 directly applies. It cannot be said that NZOG did not influence the terms of the Material Transaction. PRC approached several parties to put together a funding package for it to consider. Included in these parties was NZOG, whose package was subsequently chosen. Accordingly, NZOG was instrumental in determining the terms of the Material Transaction, being the Equity Raising.
 - (b) However, NZX considers that where an Issuer is in urgent need for immediate funding, and a Related Party, as that term is defined in the Rules, is prepared to provide that funding on arm's length commercial terms that are more beneficial than other parties who have been approached, the mere fact that a Related Party is involved should not, by itself, prevent the transaction.
 - (c) PRC is in such a situation as described in paragraph 19(b) above. PRC approached several parties seeking proposed fundraising packages. The fundraising package offered by NZOG, when considered in its totality, was, in the opinion of the Independent Directors of PRC, the best available option for PRC.
 - (d) PRC's Independent Directors are prepared to certify to the matters stated in paragraph 18, thereby confirming that the policy contained in paragraph 19(b) is present in this instance.
 - (e) NZX notes that other, less urgent, components of the Fundraising Package will be subject to shareholder approval.

Application 2 - Waiver from Rule 7.10.5

- 20. PRC also applies for a waiver from Rule 7.10.5 to enable entitled persons to make applications in excess of their entitlements, to the extent of any shortfall in the Rights Issue.
- 21. PRC submits that:
 - (a) based on the waivers of Rule 7.10.5 that have previously been given (i.e. the waivers granted to Wellington Drive Technologies Limited and ICP Bio Technology Limited on 11 November 2005 and on 3 July 2007 respectively) that 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; and
 - (ii) the offer document for the Rights Issue records that a waiver from Rule 7.10.5 has been granted by NZX Regulation, and details the conditions of the waiver.
 - (b) there are only three large shareholders of PRC, with the following percentage holdings:
 - (i) 29.53% for NZOG;
 - (ii) 7.55% for Gujarat; and
 - (iii) 6.42% for Saurashtra.
 - (c) Rule 7.5 will not be breached by the issue of the shares since:
 - (i) the Takeovers Code will prohibit NZOG from taking up any shares other than its pro rata entitlement in reliance on the relevant exemption in the Takeovers Code; 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 Underwrite.

- (d) PRC considers this assists the Underwriters, by potentially reducing the call on their commitments, but without the risk of any shareholder materially increasing its ability to exercise effective control of PRC.

Rule

22. Rule 7.10.5 states:

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

23. 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 on the conditions that:

- (a) 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; and
- (b) the offer document for the Rights Issue records that a waiver from Rule 7.10.5 has been granted by NZX Regulation and details the conditions of the waiver.

Reasons

24. In coming to the decision to grant PRC 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 - Waiver from Rule 9.2.1 for Coal Option Agreement

- 25. As noted earlier in this decision, PRC will seek shareholder approval in relation to the Coal Option Agreement.
- 26. In anticipation of this shareholder approval being obtained, PRC has applied for a waiver from the requirement of Rule 9.2.1 to obtain shareholder approval in respect of the negotiation of the price payable to PRC under the coal supply agreement (“New Coal Agreement”) arising from the exercise of the Coal Option Agreement.
- 27. In particular, PRC is seeking a waiver from Rule 9.2.1 in relation to quarterly and/or annual price negotiations for the term of the New Coal Agreement.
- 28. Prices payable under the New Coal Agreement would be negotiated annually or quarterly between NZOG (or an assigned counterparty) and PRC, once the benchmark price for the relevant year, or quarter (as the case may be), has been finalised, on the basis that they then apply as from the start of the relevant year, or quarter (as the case may be).
- 29. As the New Coal Agreement will have an Aggregate Net Value over its life in excess of 10% of the Average Market Capitalisation of PRC, the New Coal Agreement is a Material Transaction for PRC under Rule 9.2.2.
- 30. NZOG is a related party of PRC, for the reasons set out in paragraph 11(a) above.
- 31. In support of its application, PRC makes the following submissions:
 - (a) The price negotiation process under the New Coal Agreement will effectively be accepted by shareholders of PRC by their approval of the Coal Option Agreement.

- (b) The annual or quarterly price negotiation between PRC and NZOG (or an assigned counterparty) will be a two stage process:
 - (i) first, a benchmark price is set that is the price set by suppliers (by agreement with their counterparties) of Queensland hard coking coal that is similar to the coal produced by PRC;
 - (ii) secondly, the Independent Directors of PRC will negotiate with NZOG on an arm's length basis, based on the benchmark price, and will not be affected by the relationship between the parties, and the outcome will be commercial arm's length prices.
- (c) The annual or quarterly price negotiations for the New Coal Agreement will constitute, in effect, an annual or quarterly renewal of that agreement whose price setting process will already have been approved by shareholders on account of them having approved the Coal Option Agreement. The overall outcome of the coal price negotiations will, however, be disclosed to the market pursuant to the continuous disclosure requirements of NZSX and ASX Rules, and in PRC's financial statements, which are made available to shareholders and the market.
- (d) In the opinion of PRC, it is not practical to have annual price negotiations, let alone quarterly price negotiations, approved by PRC shareholders. This would involve annual or quarterly meetings and the information to be provided to shareholders would necessarily need to be limited so as to avoid commercial prejudice to PRC, when PRC's competitors obtain that same information.
- (e) PRC considers that the expense and inconvenience of convening a special meeting of shareholders annually, or every quarter, to seek approval would be unduly onerous and costly to PRC, particularly given that there will be little benefit involved.
- (f) In the opinion of PRC, this application fits into the policy set out in footnote 2 to Rule 9.2.1, and is consistent with the Oyster Bay Vineyards Limited Waiver decision dated 8 May 2006.
- (g) An independent report from an appropriately qualified person appointed by PRC's Independent Directors, would be provided to NZXR no later than 10 working days after agreement has been reached on the coal prices for:
 - (i) each contract year (in relation to annual pricing); or
 - (ii) the final quarter of each contract year (in relation to quarterly pricing);stating that the agreed prices for the contract year (in relation to annual pricing), or each quarter of the contract year (in relation to quarterly pricing), are considered to be commercial arm's length prices.
- (h) The Independent Directors of PRC would certify to NZXR no later than 10 working days after:
 - (i) agreement has been reached on the coal prices for each contract year (in relation to annual pricing), or for the final quarter of each contract year (in relation to quarterly pricing); and
 - (ii) the independent appropriately qualified person has provided his/her report;that the agreed prices for the contract year (in relation to annual pricing), or each quarter of the contract year (in relation to quarterly pricing), are considered to be commercial arm's length prices.
- (i) PRC would disclose details of the New Coal Agreement, and the terms of the relevant waiver, in each of its annual reports for the period it seeks to rely on the waiver.
- (j) PRC would report to NZXR at the expiry of each five year period from the date of the granting of the waiver and, at that point, NZXR would consider whether to review, or revoke, the waiver.

Rule

32. Rule 9.2.1 is contained in paragraph 15 above.
33. Footnote 2 to Rule 9.2.1 states:
NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 in respect of the annual or other renewal or re-negotiation of transactions which have been approved by a resolution under Rule 9.2.1, if the Issuer produces a report from a suitable independent person as to the fairness of the terms of the renewal or re-negotiation.

Decision

34. 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 obtain shareholder approval in respect of the negotiation of the price payable to PRC under the New Coal Agreement. For the avoidance of doubt, this waiver will apply to any assignee of the New Coal Agreement or the Coal Option Agreement (including if that assignee is a Related Party, as that term is defined in the Rules, of PRC).
35. This waiver is granted on the following conditions:
- (a) PRC disclose the terms of this waiver, and its conditions, in the notice of meeting issued to approve the Coal Option Agreement, and each annual report that is issued while PRC relies on this waiver;
 - (b) NZX is provided with independent reports, in accordance with paragraph 31(g) above, not later than 10 working days after agreement has been reached on the coal prices for:
 - (i) each contract year (in relation to annual pricing); or
 - (ii) the final quarter of each contract year (in relation to quarterly pricing); and
 - (c) PRC provides NZX with the independent director certifications referenced in paragraph 31(h) above.

Reasons

36. In coming to the decision to grant PRC a waiver from Rule 9.2.1 with respect to the New Coal Agreement, NZXR considered the following matters:
- (a) The Coal Option Agreement, which underlies the New Coal Agreement, is to be voted on by PRC shareholders at an upcoming meeting. Only if the Coal Option Agreement is approved, and exercised, will this waiver from Rule 9.2.1 be required.
 - (b) If shareholders approve the Coal Option Agreement, the annual and/or quarterly price setting process will also have effectively been reviewed and approved by shareholders.
 - (c) The notice of meeting will be reviewed and approved by NZXR. Accordingly, NZXR can satisfy itself that the terms of the Coal Option Agreement, and the future terms of the New Coal Agreement, including any quarterly and/or annual price setting mechanisms, have been fully disclosed to shareholders.
 - (d) Negotiating the price of coal to be sold is directly within PRC's line of business.
 - (e) NZX agrees with PRC's submission that it would be unduly costly and burdensome to require PRC to seek shareholder approval of the quarterly or yearly price negotiations. Further, provided that PRC supplies NZX with the report and certifications detailed in paragraphs 35(b) and (c) above, NZX is satisfied that there that there is no benefit to the wider market in having PRC apply for a waiver from Rule 9.2.1 at each quarterly/annual negotiation. Accordingly, NZX is satisfied that it is not necessary for PRC to apply for the waiver at each quarterly or annual negotiation.

- (f) NZX notes that the pricing under coal contracts is set by an international independent reference point, i.e. by reference to coal sales in the Queensland market.

Application 4 -Waiver from Rule 9.2.1 for Short Term Loan Facility

37. The Short Term Loan Facility is not, in and of itself, a Material Transaction for PRC.
38. However, the Short Term Loan Facility is connected to the Rights Issue, and hence can be seen to be a Material Transaction made up of a series of transactions that includes the Short Term Loan Facility, since the Short Term Loan Facility is conditional on PRC entering into underwriting agreements for the Rights Issue.
39. Accordingly, PRC has applied to NZXR for a waiver from Rule 9.2.1 to the extent that this Rule would otherwise require PRC to obtain shareholder approval to the Short Term Loan Facility.
40. In support of its application, PRC submits that:
- (a) the only elements of the Short Term Loan Facility that technically make it a Material Transaction with a related party are the fact that, apart from an initial drawing, it is conditional upon PRC completing the Placement and entering into underwriting agreements for the Equity Raising and the fact that the initial draw is repayable by the earlier of 30 April 2010 and receipt of funds from the Placement, and further drawings are repayable on the earlier of 23 May 2010 and receipt of proceeds from the Rights Issue, and therefore it can be seen, technically, to be part of the Equity Raising which is a Material Transaction to be underwritten, in part, by a Related Party.
 - (b) the Short Term Loan Facility is on substantially the same terms as the previous short term loan facility that PRC obtained from NZOG (and which has since been repaid), which was not subject to the condition referred to in (a) above;
 - (c) the terms of this Short Term Loan Facility were negotiated without reference to the Equity Raising, and the only connection to the Equity Raising is the fact that the Short Term Loan Facility (apart from the initial draw) is conditional upon PRC completing the Placement and entering into underwriting agreements for the Equity Raising;
 - (d) the condition regarding underwriting has been inserted in the proposed Short Term Facility Agreement because it is intended that PRC will repay the monies drawn under the proposed Short Term Facility Agreement from the proceeds of the Equity Raising, as will be the case with the initial drawdown; and
 - (e) in these circumstances, the personal interest of NZOG in relation to the Equity Raising is immaterial since the terms of the Short Term Loan Facility have been negotiated without reference to the Equity Raising, and it is only the need of NZOG to have comfort concerning PRC's means of repayment that has led to the condition connecting the Short Term Loan Facility to the Rights Issue.

Rules

41. Rule 9.2.1 is contained in paragraph 15 above.
42. Footnote 1 to Rule 9.2.1 is contained in paragraph 16 above.

Decision

43. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 9.2.1, to the extent that this Rule would otherwise require PRC to seek shareholder approval of the Short Term Loan Facility.
44. This waiver is granted on the conditions that the Independent Directors of PRC certify to NZX that:
- (a) PRC approached a number of parties seeking proposals to address PRC's immediate funding requirements; and

- (b) the Short Term Loan Facility, considered in the context of the Fundraising Package:
 - (i) is on arms' length commercial terms;
 - (ii) is in the best interests of PRC shareholders not associated with NZOG; and
 - (iii) was offered on superior terms to those offered by other parties.

Reasons

45. In coming to the decision to grant PRC a waiver from Rule 9.2.1, NZXR considered that:

- (a) As was the case with the waiver from Rule 9.2.1 in the context of the Equity Raising, it cannot be said that NZOG, being a Related Party of PRC, did not influence the terms of the transaction. However, it can be said, and the Independent Directors of PRC will certify to this effect, that the terms of short term funding offer by a NZOG were superior to those offered by other parties, when considered as part of the Fundraising Package, and the transaction is therefore in the best interests of PRC shareholders.
- (b) Accordingly, where the terms offered by a Related Party are superior to terms offered by non-related parties (and is therefore in the interest of non-associated shareholders), NZX considered that the mere fact of involvement by that related party should not block an urgent transaction.
- (c) The Independent Directors have certified to NZX regarding the matters in paragraph 44 above. In addition, the Independent Directors have certified, in the context of the waiver from Rule 9.2.1 for the Equity Raising, that without immediate funding the financial position of PRC would be untenable and that, due to this urgency, PRC has been unable to put this matter to shareholders.
- (d) Accordingly, NZXR is satisfied that a waiver from Rule 9.2.1 is appropriate.

ENDS