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Company Announcements Office
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TOWER Rights Issue – NZX Waiver

Copy of NZX waiver decision released by NZXR attached.

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NZX REGULATION

August 19, 2009

NZX Regulation Decision
TOWER Limited
Application for waivers from NZSX Listing Rules 7.10.5 and 9.2.1

Background

1. TOWER Limited ("TWR") is listed on the NZSX and ASX markets.
2. TWR is proposing to undertake a pro rata renounceable rights issue, the exact terms of which are yet to be finalised ("Rights Issue").
3. It is proposed that the Rights Issue will be fully underwritten by Goldman Sachs JBWere (NZ) Limited ("Underwriter") and will raise approximately $80 million.
4. As part of the Rights Issue, TWR intends offering its eligible shareholders the option to apply for oversubscriptions to the extent of any shortfall in the Rights Issue ("Excess Subscription Facility")
5. In addition, the Underwriter has requested that Guinness Peat Group ("GPG") irrevocably commit, immediately prior to the announcement of the Rights Issue, to take up all of its entitlement to new shares, held by Ithaca (Custodians) Limited, in consideration for an early commitment fee.

Application 1 - Waiver from NZSX Listing Rule 7.10.5

6. TWR seeks a waiver from NZSX Listing Rule ("Rule") 7.10.5 to enable eligible shareholders to make applications in excess of their pro rata entitlement under the Rights Issue, in accordance with the Excess Subscription Facility.
7. In support of its application, TWR submits that:
   (a) TWR wishes to allow eligible shareholders to participate in the Excess Subscription Facility to allow them to take additional shares in respect of rights renounced by other shareholders in preference to the Underwriter (and any sub-underwriter) acquiring such shares. TWR considers that enabling shareholders to take up surplus shares in preference to the Underwriter will be beneficial because:
      (i) It is expected that shareholders acquiring such shares will be medium to long term holders of those shares. If shares are acquired by the Underwriter it is expected that it would sell these shares in the short term (or the market would expect such a sale) which would likely have a detrimental effect on TWR's share price; and
      (ii) TWR has a significant number of shareholders holding less than a Minimum Holding. This is for historic reasons arising from the demutualisation of TWR. By providing for an Excess Subscription Facility, eligible shareholders will be

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encouraged to acquire further shares in TWR because no brokerage or other fees will be charged. This may result in fewer shareholders holding less than a Minimum Holding.

(iii) It is expected that a reasonable number of rights will be allowed to lapse. This is because, as noted above, due to the composition of TWR's share register, which includes a significant number of eligible shareholders having small shareholdings, it is likely that a substantial proportion of such shareholders will not take any action in respect of their entitlement and allow rights to lapse. TWR's preference is for existing eligible shareholders to be given the opportunity to acquire the shares not taken up, rather than the Underwriter.

(b) The allocation of shares under the Excess Subscription Facility will be dealt with by TWR's Board as follows:

(i) First, to the extent available and prorated to the extent not, to any eligible shareholders participating in the Excess Subscription Facility who would hold less than a Minimum Holding after the Rights Issue. This is consistent with the approach permitted by Rule 7.10.5;

(ii) Second, in respect of any remaining rights, to all other eligible shareholders participating in the Excess Subscription Facility, on a pro rata basis.

(c) There are a number of precedents for the waiver sought from Rule 7.10.5, including to Allied Farmers Limited on 14 April 2009, Pike River Coal Limited on 16 March 2009 and Metlifecare Limited on 24 February 2009.

Rule

8. 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

9. On the basis that the information provided to NZX Regulation ("NZXR") is full and accurate in all material respects, NZXR grants TWR a waiver from Rule 7.10.5 to enable TWR to offer the Excess Subscription Facility subject to the following conditions:

(a) Shares allocated to satisfy applications in excess of entitlements are divided:

(i) First, to the extent available and prorated to the extent not, to any eligible shareholders participating in the Excess Subscription Facility who would hold less than a Minimum Holding after the Rights Issue ("Small Shareholders") to the extent to allow them to hold a Minimum Holding.

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(ii) Second, in respect of any remaining rights, to all other eligible shareholders participating in the Excess Subscription Facility, and including Small Shareholders in relation to any application in excess of a Minimum Holding, in direct proportion to the number of shares held by the applicant as at the record date for their entitlement.

(b) The offer documents for the Rights Issue record that a waiver from Rule 7.10.5 has been granted by NZXR and details the conditions of this waiver.

Reasons

10. In coming to the decision to grant TWR waiver from Rule 7.10.5, NZXR has considered the following matters:

(a) There is precedent for granting waivers from Rule 7.10.5, including those referred to in paragraph 7(c) above.

(b) It is a condition of the waiver that shares issued under the Excess Subscription Facility are divided in accordance with paragraph 9(a) above. This ensures that, with the exception of those shareholders who subscribe for additional shares to hold greater than a Minimum Holding, to the greatest extent possible, shares issued under the Excess Subscription Facility will be issued in proportion to the number of shares held by the applicant as at the record date for their entitlement. 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 2 - Waiver from Rule 9.2.1

11. The Underwriter has requested that GPG irrevocably commit, immediately prior to the announcement of the Rights Issue, to take up all of its entitlement to new shares in consideration for an early commitment fee ("Early Commitment Agreement").

12. GPG is a related party of TWR, as that term is defined in Rule 9.2.3, due to GPG holding a relevent interest of approximately 35% of the issued shares in TWR.

13. The payment of the early commitment fee is not in itself a Material Transaction, as its value would be less than 1% of TWR's Average Market Capitalisation. However, the proposed Rights Issue is a Material Transaction.

14. The Early Commitment Agreement forms part of a related series of transactions that includes the Rights Issue.

15. Accordingly, TWR has applied for a waiver from Rule 9.2.1. In support of its application, TWR submits that:

(a) The Early Commitment Agreement has been proposed because it is considered that GPG's commitment is critical to provide TWR with sufficient certainty for it to undertake the Rights Issue. In particular, this is because:

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(i) GPG has a relevant interest in approximately 35% of the issued shares in TWR;

(ii) TWR and the Underwriter consider that GPG's participation will be a significant factor in encouraging other shareholders to take up their entitlement under the Rights Issue. It shows both the commitment of the cornerstone shareholder and that the Underwriter will not be asked to take up that portion of the Rights Issue, which it may have otherwise sought to dispose of having a negative effect on TWR's share price. The nature of TWR's share register, which is largely retail, other than GPG, is such that an indication of support given by the commitment from such a large shareholder has considerable influence on the take up of rights by those retail shareholders; and

(iii) The Underwriter has advised that it will not underwrite the Rights Issue without a commitment from GPG to take up all of its entitlement.

(b) Tony Gibbs is a director of GPG, and Tony Gibbs and Michael Jeffries are both employees of companies within the GPG group. Each is also a director of TWR. However, these directors form a minority of TWR's board. Further, given the proposal, both have declared that they have an 'interest' in the underwriting agreement and will not, in accordance with Rule 3.4.3, vote on this matter or be counted in the quorum.

(c) The amount of the early commitment fee will be negotiated between the Underwriter and GPG with no input from TWR. TWR has been advised by the Underwriter that the early commitment fee will be paid out of the underwriting fee and will not exceed the the amount of the underwriting fee which would be payable in respect of 35% of TWR's shares.

(d) The early commitment fee will not exceed 1% of TWR's Average Market Capitalisation. This means that, of itself, the fee is below the level referred to in Rule 9.2.2(e). In addition, the total underwriting fee payable to the Underwriter is also below the level referred to in Rule 9.2.2(e).

(e) If shareholder approval were sought to the Rights Issue because of the Early Commitment Agreement, this would add significant cost and delay to the proposed transaction. TWR has been advised by the Underwriter that it is now an appropriate opportunity to undertake the Rights Issue. By delaying the Rights Issue until after shareholder approval is obtained, market conditions may have altered, making it difficult for TWR to successfully undertake the Rights Issue at its proposed issue price. In addition, there is benefit to TWR in concluding an issue before its year end (30 September).

(f) There is precedent for the waiver sought, including to AMP NZ Office Trust on 7 May 2009, Pike River Coal Limited on 16 March 2009 and Skellerup Holdings Limited on 11 February 2008.

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Rule

16. 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.

17. 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.*

18. 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

19. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants TWR a waiver from the requirement in Rule 9.2.1 to seek shareholder approval of the Rights Issue including the Early Commitment Agreement.

20. This waiver is granted on the conditions that:

(a) The directors of TWR, not Associated (as that term is defined in the Rules) with GPG certify to NZXR that:

(i) The terms of the underwriting agreement between the Underwriter and TWR (including the mandate letter and non disclosure agreement negotiated between the parties) were negotiated on an arms' length and commercial basis;

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(ii) The terms of the underwriting agreement between the Underwriter and TWR are fair and in the best interests of TWR shareholders that are not associated with GPG; and

(iii) The directors of TWR which are Associated (as that term is defined in the Rules) with GPG did not influence the promotion of the proposal to enter into the underwriting agreement.

(b) The Underwriter certifies to NZXR that the terms of the Early Commitment Agreement were negotiated by the Underwriter on an arms' length commercial basis.

(b) The offer documents for the Rights Issue record that a waiver from Rule 9.2.1 has been granted by NZXR and details the conditions of this waiver.

Reasons

21. In coming to the decision to grant TWR 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, NZXR 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) The terms of the underwriting agreement were negotiated on a commercial arms length basis, and NZXR has received certifications to this effect, including as to the non participation of interested GPG employees in these negotiations.

(c) The Early Commitment Agreement was negotiated directly between the Underwriter and GPG and consideration payable to GPG is on terms no more favourable than the underwriting fee. NZXR is therefore comfortable that the policy contained in footnote 1 to Rule 9.2.1 has been satisfied and that a waiver may be granted.

(d) The Underwriter has indicated that it was unwilling to underwrite the Rights Issue in the absence of the Early Commitment Agreement.

(e) There is precedent for waivers of this type, including those referred to in paragraph 15(f) above.

Confidentiality

22. TWR has requested that its application for this waiver, and NZXR's decision, be kept confidential until the Rights Issue is announced to the market. NZXR grants this request as it is consistent with the policy contained in footnote 1 to Rule 1.11.2.

ENDS

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