

# ASX Announcement

## ASX Waivers granted

**22 March 2019 - Challenger Energy Limited (CEL or the Company)** (ASX: CEL), today announces that the ASX has granted waivers from ASX Listing Rule(s) 1.1 condition 12, 2.1 condition 2, 7.3.2 and confirmation to Listing rule 6.1. under the terms detailed in the attached Annexure A.



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# ANNEXURE A

## ASX Waivers

### Challenger Energy Limited ('CEL'): Waiver Decision

I refer to your letter dated 7/03/2019 applying on behalf of CEL for waivers from ASX Listing Rule(s) 1.1 condition 12, 2.1 condition 2, 7.3.2 and confirmation to Listing rule 6.1.

I am pleased to advise that ASX Limited ('ASX') has decided to grant the waiver(s) you have requested.

### Decision

ASX's formal decision is as follows:

1. Based solely on the information proved, in relation to binding term sheet agreements entered into between Challenger Energy Limited (the "Company") and AEP Corporation Pty Ltd ("AEP") to acquire 100% of the issued capital of AEP ("Proposed Acquisition") and the following assets from AEP, via its wholly owned subsidiaries: 75% of the Hulan Project and 100% of the El Guayabo Project located in Argentina and Ecuador respectively, and the public offer to raise up to \$5,000,000 ("Public Offer") and the issue of the following securities (all references to the number of securities to be issued is on a post-Consolidation basis unless expressly states otherwise):

- 1.1. 166,666,667 fully paid ordinary shares with an issue price of at least \$0.03 per share ("Capital Raising Shares");

#### *Consideration Securities*

- 1.2. 180,000,000 Consideration Shares (on a post Consolidation basis);
- 1.3. 78,444,444 Consideration Options (on a post Consolidation basis) with an exercise price of \$0.04 each with an expiry date of 30 June 2022 ("Consideration Options"); and
- 1.4. 120,000,000 Consideration Performance Shares (on a post Consolidation basis) (Performance Shares),

(together, the "Consideration Securities") to the AEP Shareholders;

- 1.5. 10,000,000 Shares on conversion of loans from Pitt Street Absolute Return Fund Pty Ltd and Seco Resource Finance Pty Ltd ("Third Party Lender Shares");
- 1.6. a total of 6,000,000 Shares to the Lead Managers to the Public Offer (or their nominees) comprising:
  - 1.6.1. 3,000,000 Shares to Baillieu Limited (or their nominees); and
  - 1.6.2. 3,000,000 Shares to Peloton Capital (or their nominees),(together, the "Advisor Shares");
- 1.7. up to 245,000,001 Shares to the registered owners of the Projects ("Earn-In Shares"); and
- 1.8. 25,000,000 Shares to AEP Shareholders ("Conversion Shares");

ASX Limited ("ASX") does each of the following:

- 1.1. Grants a waiver from listing rule 1.1 condition 12 to the extent necessary to permit the exercise price of up to 78,444,444 Consideration Options not to be at least \$0.20, on the following conditions.
  - 1.1.1. The exercise price of the Consideration Options is not less than \$0.02; and
  - 1.1.2. Security holders specifically approve the exercise price of the Consideration Options as part of the approvals obtained under listing rule 11.1.2 for the Proposed Acquisition.
- 1.2. Grants a waiver from listing rule 2.1 condition 2 to the extent necessary to permit the issue price of the Capital Raising Shares not to be at least \$0.20 each on the following conditions:

- 1.2.1. the issue price of the Capital Raising Shares is not less than \$0.03 each (“Issue Price”); and
    - 1.2.2. Security holders approve the Issue Price of the Capital Raising Shares as part of the approvals obtained under listing rule 11.1.2 for the Proposed Acquisition.
  - 1.3. Grants a waiver from listing rule 7.3.2 to permit the notice of meeting (the “Notice”) seeking shareholder approval for the issue of up to 245,000,001 fully paid ordinary shares in the Company (“Waiver Securities”) upon the Company satisfying the milestones in relation to each of the Projects (“Milestones”) not to state that the Waiver Securities will be issued within 3 months of the date of the shareholder meeting, on the following conditions.
    - 1.3.1 The Waiver Securities must be issued no later than 60 months after the date of reinstatement of the Company’s securities to official quotation.
    - 1.3.2 For any annual reporting period during which any of the Waiver Securities have been issued or any of them remain to be issued, the Company’s annual report sets out in detail the basis on which the Waiver Securities may be issued.
    - 1.3.3 In any half year or quarterly report for a period during which any of the Waiver Securities have been issued or remain to be issued, the Company must include a summary statement of the number of Waiver Securities that have been issued (or remain to be issued) during the reporting period.
    - 1.3.4 The Notice sets out in detail the Milestone which must be satisfied prior to the issue of the Waiver Securities.
    - 1.3.5 The Milestone which must be satisfied for the Waiver Securities to be issued is not varied.
    - 1.3.6 The Company releases the terms of this waiver to the market at the same time the Notice is released to ASX.
  - 1.4. Considers the terms of the Performance Shares to be and equitable for the purposes of listing rule 6.1 subject to the following conditions:
    - 1.4.1. The Company obtains shareholder approval for the issue of the Performance Shares and the notice of meeting seeking shareholder approval includes sufficient information about the terms and conditions of the Performance Shares including, if applicable, approval for the issue of the Performance Shares which are held by a related party pursuant to Chapter 2E of the Corporations Act 2001 (Cth).
    - 1.4.2. The Performance Shares are not quoted.
    - 1.4.3. The Performance Shares are not transferable.
    - 1.4.4. The Performance Shares do not have voting rights, subject to those required by law.
    - 1.4.5. The Performance Shares do not permit the holder to participate in new issues of capital such as bonus issues and entitlement issues.
    - 1.4.6. The Performance Shares do not carry an entitlement to a dividend.
    - 1.4.7. Each Performance Shares converts into one ordinary share in the capital of the Company on achievement of the relevant milestone.
    - 1.4.8. If the performance milestone for a class of Performance Shares (“Performance Milestone”) is not achieved by the relevant expiry date, all Performance Shares held by each holder in that class shall lapse.
    - 1.4.9. The Company makes an announcement upon the conversion of any of the Performance Shares.
    - 1.4.10. The terms and conditions of the Performance Shares, including without limitation the relevant Performance Milestones that have to be satisfied before each class of Performance Shares is converted into ordinary shares, are not to be changed

without the prior approval of ASX and the Company's shareholders.

- 1.4.11. Upon conversion of the Performance Shares into ordinary shares, the Company will apply to the ASX for quotation of the shares within the requisite time period.
- 1.4.12. The Company discloses the following in each annual report, annual audited accounts, half-yearly report and quarterly cashflow report issued by the Company in respect of any period during which any of the Performance Shares remain on issue or were converted or cancelled:
  - (a) The number of Performance Shares on issue during the relevant period.
  - (b) A summary of the terms and conditions of the Performance Shares, including without limitation the number of ordinary shares into which they are convertible and the milestones that must be satisfied in order for the Performance Shares to be converted.
  - (c) Whether any of the Performance Shares were converted or cancelled during that period.
  - (d) Whether any Performance Milestones were met during the period.
- 1.4.13. The Company discloses the following in item 9 of each Appendix 3B lodged by the Company while any of the Performance Shares remain on issue:
  - (a) The number of Performance Shares on issue at the time of lodgement of the Appendix 3B.
  - (b) The conversion ratio of the Performance Shares into ordinary shares upon achievement of a relevant Performance Milestone.

2. ASX has considered listing rules 1.1 condition 12, 2.1 condition 2, 6.1, 6.2 and 7.3.2 only and makes no statement as to the Company's compliance with other listing rules.

## **BASIS FOR DECISION**

### **Listing Rule 1.1 condition 12**

#### **Underlying policy**

1. Standard waiver in accordance with ASX policy.

### **Listing Rule 2.1 condition 2**

#### **Underlying policy**

2. Standard waiver in accordance with ASX policy.

### **Listing Rule 7.3.2**

#### **Underlying policy**

3. Listing rule 7.1 protects a listed entity's security holders against dilution of their voting and economic interests in the listed entity by imposing a limit on the number of equity securities that may be issued by the entity without prior security holder approval. This limit is not applicable if security holders' approve the issue of the securities at a general meeting. Listing rule 7.3 sets out the information required to be included in the Notice seeking approval for the issue of the securities. In particular, listing rule 7.3.2 requires the notice to state the date by which the entity will issue the securities and this date must be no later than 3 months after the date of the meeting, or, for court approved reorganisation of capital, no later than 3 months after the date of the court approval. This rule ensures that an issue of securities that has been approved by security holders is made within a reasonable timeframe following the approval, so that it is less likely that the circumstances in which the issue is made will have changed materially.

## **Facts and reasons for granting waiver**

4. Upon the Transaction being completed and performance-based Milestones being achieved, the Company is proposing to issue the Waiver Securities to the Vendors of the Hulan and El Guayabo

projects. The degree of dilution is ascertainable given that the maximum number of Waiver Securities to be issued is fixed. The Notice seeking shareholder approval for the issue of the Waiver Securities will contain details of the maximum number that may be issued and the relevant Milestone to be reached to trigger their issue, with the Waiver Securities to be issued no later than 60 months after the date of shareholder approval. There is a sufficient degree of certainty about the maximum number of Waiver Securities that may be issued in order for shareholders to be able to give their informed consent to their future issue within the relevant period.

### **Listing Rule 6.1 and 6.2**

#### **Underlying policy**

5. The terms of equity securities must be appropriate and equitable in order to protect the interests of investors and the integrity of the market.

#### **Facts and reasons for providing confirmation**

6. The Company is proposing to issue 120,000,000 unquoted, non-voting, non-participating, non-transferable Performance Shares to the AEP Shareholders as part of the Proposed Acquisition. The Performance Shares will convert into one share upon the achievement of two performance milestones, based on the achievement of JORC Compliant Mineral Resource Estimate of at least Inferred category on either Project or upon completion and announcement of a positive JORC compliant Scoping Study ("Milestones"). Each Milestone is to be achieved within a maximum period of 60 months from the date of completion of the Acquisition. The shares into which the Performance Shares will convert if all of the milestones are satisfied will constitute a maximum of 14% of the Company's issued capital on a fully diluted basis. The milestones fall within the parameters set out in Guidance Note 19. The terms and structure of the Performance Shares comply with sections 6 and 7 of Guidance Note 19. The terms of the Performance Shares, including the milestones and the expiry periods, are considered appropriate and equitable.

#### **Conditions of waiver(s)**

As you will see, the waiver(s) are subject to certain conditions. Under Listing Rule 18.1.1, these conditions must be complied with for the waiver(s) to be effective.

#### **ASX's power to vary or revoke waiver**

It should be noted that under ASX Listing Rule 18.3, ASX may vary or revoke the waiver(s) at any time.

It should also be noted that if other material facts come to light following this letter, ASX may withdraw or change its advice. Regardless of any view expressed in this letter, ASX will retain its absolute discretion under Listing Rule 1.19 not to admit CEL to the Official List, which it can exercise at any time.