

## SOLID ENERGY NEW ZEALAND LIMITED

### NOTICE OF MEETING OF CREDITORS TO APPROVE A COMPROMISE WITH CREDITORS PURSUANT TO PART 14 OF THE NEW ZEALAND COMPANIES ACT 1993 ("NOTICE OF MEETING")

NOTICE IS GIVEN that a meeting of certain of the creditors of Solid Energy New Zealand Limited (the **Company**) convened in accordance with Part 14 of the New Zealand Companies Act 1993 will be held at the offices of Simpson Grierson, Level 11, HSBC Tower, 62 Worcester Boulevard, Christchurch on Tuesday, 22 October 2013 commencing at 1pm to consider and, if thought fit, approve the compromise proposed by the board of directors of the Company (the **Board**) between the Company and ANZ Bank New Zealand Limited, Bank of New Zealand, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch, Commonwealth Bank of Australia, New Zealand Branch, New Zealand Central Securities Depository Limited (in its capacity as the Holder, on behalf of TSB Bank Limited, of Notes under, and as defined in, the MTN Deed Poll (in such capacity, the **TSB Holder**)) and Westpac New Zealand Limited (the **Debt Exchange Creditors**) on the terms set out in the Debt Exchange Compromise Proposal dated 14 October 2013 included in Schedule 1 of the Explanatory Statement which accompanies, and forms part of, this Notice of Meeting (the **Debt Exchange Compromise**) by passing the resolution set out below.

#### RESOLUTION OF CREDITORS

It is hereby resolved, by way of a single resolution of the Debt Exchange Creditors:

- that the Debt Exchange Compromise between Solid Energy New Zealand Limited and ANZ Bank New Zealand Limited, Bank of New Zealand, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch, Commonwealth Bank of Australia, New Zealand Branch, the TSB Holder and Westpac New Zealand Limited pursuant to Part 14 of the Companies Act 1993, as set out in the Debt Exchange Compromise Proposal dated 14 October 2013, be approved; and*
- to approve, confirm and ratify the taking by the Company, its related companies and their respective directors and officers, of all actions it or they consider necessary or desirable to give effect to the resolution passed at this meeting.*

#### NOTES

##### Explanatory Statement

Further information in respect of the matters to be voted on in the resolution is set out in the Explanatory Statement which accompanies, and forms part of, this Notice of Meeting.

##### Resolution of creditors

In accordance with section 230(2) of the Companies Act 1993, if the resolution is passed, the Debt Exchange Compromise will be binding on the Company and each Debt Exchange Creditor.

The resolution will be passed, and the Debt Exchange Compromise approved, if a majority in number representing 75% in value of the Debt Exchange Creditors voting in person, or by proxy or by post, vote in favour of the resolution.

**Quorum**

A quorum for the meeting of creditors is present if three Debt Exchange Creditors (being creditors who are entitled to vote on the resolution) are present in person or by proxy, or have cast postal votes. If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place (or to such other date, time and place as the chairperson of the meeting may appoint) and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Debt Exchange Creditors present or their proxies are a quorum.

If the meeting is adjourned for less than 30 days, no notice of the time and place of the adjourned meeting shall be given other than by announcement at the meeting which is adjourned.

**Voting**

As a Debt Exchange Creditor, you may exercise your right to vote by being present in person (by appointing a representative to attend the meeting on your behalf without the need for a proxy), by appointing a proxy or by casting a postal vote. Each Debt Exchange Creditor is entitled to cast the number of votes set out beside that Debt Exchange Creditor's name in Schedule 2 of the Explanatory Statement which accompanies, and forms part of, this Notice of Meeting.

A proxy is entitled to attend and be heard at the meeting, as if the proxy were the Debt Exchange Creditor by whom the proxy was appointed.

A Debt Exchange Creditor that is a body corporate may appoint a representative to attend the meeting on its behalf.

Instead of voting in person or by proxy, you may cast a postal vote on the resolutions set out in this Notice of Meeting to be voted on at the meeting. Josh Cairns of Simpson Grierson, Wellington is authorised to receive and count postal votes in relation to the meeting. If you vote by casting a postal vote in respect of the resolution set out in this Notice of Meeting and a different resolution is submitted to the meeting, then your postal vote is invalid in respect of that different resolution but you may vote in respect of that different resolution either by being present in person or by proxy.

A Voting/Proxy Form is enclosed with this Notice of Meeting. See the instructions below and on the Voting/Proxy Form for an explanation of how to use the Voting/Proxy Form.

If you have decided how you will vote on the resolution and do not intend to attend the meeting, you should complete and sign the Voting/Proxy Form, either casting a postal vote or appointing a proxy to attend and vote on your behalf. Completed Voting/Proxy Forms should be sent to:

(a) if you are casting a postal vote:

Simpson Grierson  
Level 24, HSBC Tower  
195 Lambton Quay  
Wellington 6011  
PO Box 2402  
Wellington 6140

Attention: Josh Cairns

(b) if you are appointing a proxy to attend and vote on your behalf:

The Board of Directors  
Solid Energy New Zealand Limited

c/o Simpson Grierson  
Level 24, HSBC Tower  
195 Lambton Quay  
Wellington 6011  
PO Box 2402  
Wellington 6140

Attention: Josh Cairns

in each case, so as to be received by the relevant recipient by no later than 1pm on Friday, 18 October 2013.

If you direct your proxy how to vote, the person you appoint as proxy will be entitled to attend the meeting to represent your interests and your proxy vote will be automatically counted.

If you appoint your proxy with a discretion on how to vote, your proxy will need to cast your vote at the meeting. If your proxy does not attend the meeting your vote will not be counted.

You may name the Chairperson of the Meeting as your proxy if you wish.

### **Chairperson**

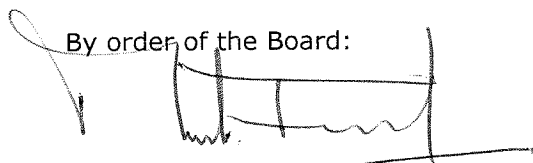
In accordance with clause 3(2A) of Schedule 5 of the Companies Act 1993, the Board (as the proponent of the Debt Exchange Compromise) shall nominate a person to be the Chairperson of the Meeting.

### **Defined terms**

Capitalised terms used in this Notice of Meeting (including in the text of the resolution) have the meaning given to those terms in the Debt Exchange Compromise Proposal, unless otherwise defined in this Notice of Meeting.

Dated: 14 October 2013

By order of the Board:

A handwritten signature in black ink, appearing to be 'Mark Ford', written over a horizontal line.

**Mark Ford**

Chairman of Solid Energy New Zealand Limited

**SOLID ENERGY NEW ZEALAND LIMITED**

**EXPLANATORY STATEMENT ACCOMPANYING NOTICE OF MEETING**

**14 October 2013**

**IMPORTANT NOTICE**

This Explanatory Statement sets out the matters required by section 229(2)(b) and (c) of the Companies Act 1993.

This document forms part of the Notice of Meeting. Debt Exchange Creditors are advised to read and consider carefully this Explanatory Statement together with the Notice of Meeting.

The information contained in this document has been prepared by the Board based upon information available.

The statements, opinions and information contained in this document are made, held or given respectively as at the date of this document unless another time is specified and such statements, opinions and information are made, held or given solely by or on behalf of the Company unless expressly attributed to another party. Service of this document does not give rise to any implication that the facts set out in it since the date of service remain unchanged.

Nothing contained in this document constitutes an admission of any fact or liability on the part of the Company or any other person in respect of any asset to which they may be entitled or any claim against them.

No director has authorised any person to make any representation, whether oral, written, express or implied, concerning the meeting of Debt Exchange Creditors or, the proposed resolution of the Debt Exchange Creditors, which is inconsistent with the statements made in this document. Consequently, if such representations are made, they should not be relied upon.

Debt Exchange Creditors should not construe the contents of this document as legal, tax, financial or other professional advice. Each Debt Exchange Creditor should consult its own professional advisers as to the legal, tax, financial or other matters relevant to the action it should take in connection with the meeting and the proposed Debt Exchange Compromise.

## 1. INTRODUCTION

The Board has convened a meeting of the Debt Exchange Creditors in accordance with Part 14 of the New Zealand Companies Act 1993 to be held at the offices of Simpson Grierson, Level 11, HSBC Tower, 62 Worcester Boulevard, Christchurch on Tuesday, 22 October 2013 commencing at 1pm to consider and, if thought fit, approve the Debt Exchange Compromise proposed by the Board.

The purpose of this Explanatory Statement is to provide information to assist Debt Exchange Creditors in making an informed decision on whether to vote in favour of the Debt Exchange Compromise at the forthcoming meeting and to set out the information required by section 229(2) of the Companies Act 1993. Accordingly, this Explanatory Statement includes:

- (a) an explanation as to why the Debt Exchange Compromise has been proposed and the likely impact on Debt Exchange Creditors if the resolution to approve the Debt Exchange Compromise is passed;
- (b) the Board's recommendation that Debt Exchange Creditors vote in favour of the resolution to approve the Debt Exchange Compromise and an outline of the reasons why the Board believes Debt Exchange Creditors should do so; and
- (c) an outline of the proposed restructuring which the Company is seeking to implement, including the Debt Exchange Compromise.

This document has been made available to each Debt Exchange Creditor, being all creditors of the Company known to the Board who would be affected by the Debt Exchange Compromise.

## 2. WHO ARE THE PROPONENTS OF THE DEBT EXCHANGE COMPROMISE?

Mark Ford, Alan Broome, Pip Dunphy, David Patterson, Neville Sneddon and Andy Coupe, being the Board, are the proponents of the Debt Exchange Compromise pursuant to section 228(1)(a) of the Companies Act 1993. The address of the proponents is c/- the Company, 15 Show Place, Addington, Christchurch, New Zealand.

## 3. WHY HAS THE DEBT EXCHANGE COMPROMISE BEEN PROPOSED?

### 3.1 Current circumstances

After a decade of growth, the Company is facing a challenging market situation which currently is causing its operations to be unprofitable. This has seen a significant deterioration in the financial position of the Company.

During the course of preparing the Company's half yearly financial statements for the six month period to 31 December 2012, it became apparent to the board of directors of the Company (at the time) that the Company was unlikely to comply with certain financial covenants in the existing bilateral facilities provided to the Company by ANZ Bank New Zealand Limited, Bank of New Zealand, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch, Commonwealth Bank of Australia, New Zealand Branch and Westpac New Zealand Limited (the **Debt Rescheduling Creditors**).

The Debt Rescheduling Creditors have, to date, not acted upon that non-compliance.

### 3.2 **Proposed Restructuring**

Unless the Company restructures its financial indebtedness, a key aspect of which is the Debt Exchange Compromise, the Board is of the view that the Company will become unable to pay its debts, and therefore will be unable to continue trading.

The Company, together with the Crown as its shareholder, is committed to restructuring the business so that it will be viable and financially stable and has a strong and coherent strategy to rebuild value. The Debt Exchange Compromise is a key element of this and the restructuring commitments of the Crown and the Company are conditional on the Debt Exchange Compromise being approved.

### 3.3 **Consequences if proposed restructuring not implemented**

If the Company does not restructure its financial position and its banking arrangements, the Board is of the view that the Company will not be able to continue to trade and liquidation or voluntary administration of the Company will be the likely outcome.

## 4. **WHAT ARE THE TERMS OF THE DEBT EXCHANGE COMPROMISE?**

The Debt Exchange Compromise has been proposed pursuant to Part 14 of the New Zealand Companies Act 1993. The terms of the proposed Debt Exchange Compromise are set out in the Debt Exchange Compromise Proposal in Schedule 1. Please read them carefully, including in particular the RPS Terms appended to the Debt Exchange Compromise Proposal.

### 4.1 **Overview of the proposed restructuring**

The Company's proposed restructuring includes the following interdependent steps:

- (a) the Debt Rescheduling Compromise which, if approved, will result in the existing bilateral facilities provided by the Debt Rescheduling Creditors being rescheduled on the terms of the Rescheduled Facilities Agreement;
- (b) the Debt Exchange Compromise which, if approved, will result in the Debt Exchange Creditors exchanging a total of \$75 million of debt owed to them by the Company for \$75 million of equity (in the form of redeemable preference shares to be issued by the Company);
- (c) the provision of a working capital facility of \$50 million, a secured term loan facility of \$50 million and a standby term loan facility of up to \$30 million by the Crown to the Company; and
- (d) the Crown subscribing for \$25 million of redeemable preference shares in the Company.

### 4.2 **Overview of the Debt Exchange Compromise**

Upon the Debt Exchange Compromise taking effect, the Compromised Proportion of each Debt Exchange Creditor's Outstanding Principal Debt will be exchanged for that Debt Exchange Creditor's Relevant Proportion of the redeemable preference shares to be issued pursuant to the Debt Exchange Compromise. A total of \$75 million of Outstanding Principal Debt will be exchanged for \$75 million of redeemable preference shares. The Debt Exchange Compromise will become effective upon the following conditions being satisfied:

- (a) the Debt Exchange Creditors passing a resolution approving the Debt Exchange Compromise in accordance with the Companies Act 1993;

- (b) the Existing Bilateral Facilities being rescheduled on the terms of the Rescheduled Facilities Agreement pursuant to the Debt Rescheduling Compromise;
- (c) the consent of the entitled persons of the Company to the issue of the redeemable preference shares to be issued pursuant to the Debt Exchange Compromise being given, and that consent not being rescinded on or before the time at which the other conditions to the Debt Exchange Compromise are satisfied;
- (d) the medium term note holders of the Company passing the extraordinary resolution set out in a notice of meeting dated 30 September 2013 in accordance with the deed poll for medium term notes.

The amount of each Debt Exchange Creditor's Outstanding Principal Debt that will be exchanged for redeemable preference shares on the Debt Exchange Compromise taking effect is set out in the Debt Exchange Compromise Proposal.

#### 5. **WHAT ARE THE REASONABLY FORESEEABLE CONSEQUENCES OF CREDITORS APPROVING THE DEBT EXCHANGE COMPROMISE?**

The reasonably foreseeable consequences of the Debt Exchange Creditors approving the Debt Exchange Compromise are that the Company will exchange \$75 million of the Company's financial indebtedness to the Debt Exchange Creditors for \$75 million of redeemable preference shares, as part of a suite of restructuring measures, including:

- (a) the Company's indebtedness under its existing bilateral facilities continuing on the terms of the Rescheduled Facilities Agreement (including an extension of the term of those facilities to 7 September 2016); and
- (b) additional liquidity being made available to the Company by the Crown in the form of new secured working capital facilities of up to \$130 million.

If the Debt Exchange Compromise is not approved by the Debt Exchange Creditors, the Company is very unlikely to be able to effect a restructuring of its financial indebtedness. In particular, if the Debt Exchange Compromise is not approved, the Company will not be able to improve its balance sheet position by issuing redeemable preference shares pursuant to the Debt Exchange Compromise. Further, the Crown's commitment to subscribe for \$25 million of redeemable preference shares is conditional on the Debt Rescheduling Compromise and the Debt Exchange Compromise becoming effective.

If the Company is not able to restructure its financial position and its banking arrangements, the Board is of the view that the Company is unlikely to be able to continue to trade and liquidation or voluntary administration of the Company will be the likely outcome.

#### 6. **WHAT INTERESTS DO DIRECTORS HAVE IN THE DEBT EXCHANGE COMPROMISE?**

None of the current directors has any legal or beneficial interest in the shares of the Company, nor are they creditors of the Company, save that in the ordinary course of business they may be insured or indemnified by the Company in their capacity as directors.

**7. WHO WILL THE DEBT EXCHANGE COMPROMISE BIND?**

The Debt Exchange Compromise and any amendment to it proposed at the meeting of creditors, will be approved if a majority in number representing 75% in value of creditors, voting in person or by proxy at the meeting or by postal vote, vote in favour of the resolution submitted to the meeting.

ANZ Bank New Zealand Limited, Bank of New Zealand, Commonwealth Bank of Australia, New Zealand Branch, and Westpac New Zealand Limited have agreed to vote in favour of the Debt Exchange Compromise. TSB Bank Limited has agreed to instruct the TSB Holder to vote in favour of the Debt Exchange Compromise.

If the Debt Exchange Compromise is approved, the Debt Exchange Compromise will be binding on the Company and each Debt Exchange Creditor.

It is a term of the Debt Exchange Compromise Proposal that if, pursuant to section 232(3) of the Companies Act 1993, the Court orders that any Debt Rescheduling Creditor is not bound by all or part of the Debt Rescheduling Compromise, or that any Debt Exchange Creditor is not bound by all or part of the Debt Exchange Compromise, then no Debt Exchange Creditor shall be bound by the Debt Exchange Compromise.

**8. WHEN WILL THE DEBT EXCHANGE COMPROMISE TAKE EFFECT?**

The Debt Exchange Compromise will become effective upon the conditions to the Debt Exchange Compromise being satisfied.

**9. WHAT IS THE PROCEDURE FOR VARYING THE DEBT EXCHANGE COMPROMISE FOLLOWING ITS APPROVAL?**

Following its approval, the Debt Exchange Compromise may be varied by resolution of the Debt Exchange Creditors passed in accordance with clause 5(2) of the Fifth Schedule of the Companies Act 1993 at the meeting called for the purpose considering the Debt Exchange Compromise or a meeting called for the purpose of considering the variation. Any such variation will require approval by a majority in number representing 75% in value of the creditors affected by the Debt Exchange Compromise (as varied).

In addition, if, as described above, the Court orders that any Debt Rescheduling Creditor is not bound by all or part of the Debt Rescheduling Compromise, or that any Debt Exchange Creditor is not bound by all or part of the Debt Exchange Compromise, then no Debt Exchange Creditor shall be bound by the Debt Exchange Compromise and without further act or formality the Debt Exchange Compromise shall be deemed varied so that any action taken pursuant to it is void and of no effect.

**10. WHO ARE THE DEBT EXCHANGE CREDITORS?**

A list of the Debt Exchange Creditors and the amount owing or estimated to be owing to each of them and the number of votes which each of them is entitled to cast on the resolution of the Debt Exchange Creditors is set out in Schedule 2.

The Debt Exchange Creditors are all creditors known to the Board who would be affected by the Debt Exchange Compromise.



11. **RECOMMENDATION**

The directors believe that passing the resolution to approve the Debt Exchange Compromise is in the best interests of the Debt Exchange Creditors as a whole and, accordingly, recommend that Debt Exchange Creditors vote in favour of the resolution to approve the Debt Exchange Compromise.

**For the above reasons all Debt Exchange Creditors who are entitled to vote are encouraged to vote in favour of the resolution to approve the Debt Exchange Compromise.**

12. **WHAT ARE YOU REQUIRED TO DO NOW?**

Debt Exchange Creditors who are entitled to vote at the meeting may do so in person (or, in the case of corporations, by a duly authorised representative), by proxy or by casting a postal vote. Debt Exchange Creditors who wish to appoint a proxy to attend and vote on their behalf or cast a postal vote, should complete and return the enclosed Voting/Proxy Form in accordance with its instructions.

**Every Debt Exchange Creditor who wishes to vote by proxy or cast a postal vote must complete and sign the Voting/Proxy Form and send it to the relevant address set out in the Notice of Meeting which this Explanatory Statement accompanies so as to be received by the relevant recipient by 1pm on Friday, 18 October 2013**

13. **WHO SHOULD I CONTACT WITH ENQUIRIES?**

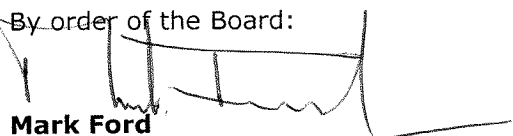
All enquiries should be directed during normal business hours to Steve Surridge of the Company at:

*Solid Energy New Zealand Limited  
15 Show Place, Addington  
Christchurch 8024  
New Zealand*

*Contact: Steve Surridge  
Email: [steve.surridge@solidenergy.co.nz](mailto:steve.surridge@solidenergy.co.nz)  
Tel: +64 3 345 6000*

Dated: 14 October 2013

By order of the Board:



**Mark Ford**  
Chairman of Solid Energy New Zealand Limited

## **SCHEDULE 1: DEBT EXCHANGE COMPROMISE PROPOSAL**

## **DEBT EXCHANGE COMPROMISE PROPOSAL**

between

**Solid Energy New Zealand Limited**

and

**certain of Solid Energy New Zealand Limited's creditors**

dated 14 October 2013

The Board of the Company proposes the following compromise between the Company and the Debt Exchange Creditors pursuant to Part 14 of the Companies Act 1993 (New Zealand):

### **1 DEBT EXCHANGE COMPROMISE**

#### **1.1 Debt Exchange Compromise**

Under the Debt Exchange Compromise, each Debt Exchange Creditor will exchange the Compromised Proportion of its Outstanding Principal Debt for its Relevant Proportion of the RPS, on the terms and subject to the conditions set out in this Compromise Proposal, and accordingly:

- (a) ANZ Bank New Zealand Limited will exchange \$8,152,174 of its Outstanding Principal Debt for 8,152,174 of the RPS;
- (b) Bank of New Zealand will exchange \$16,304,348 of its Outstanding Principal Debt for 16,304,348 of the RPS;
- (c) The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch will exchange \$16,304,348 of its Outstanding Principal Debt for 16,304,348 of the RPS;
- (d) Commonwealth Bank of Australia, New Zealand Branch will exchange \$9,171,196 of its Outstanding Principal Debt for 9,171,196 of the RPS;
- (e) the TSB Holder will exchange \$13,756,793 of its Outstanding Principal Debt for 13,756,793 of the RPS; and
- (f) Westpac New Zealand Limited will exchange \$11,311,141 of its Outstanding Principal Debt for 11,311,141 of the RPS.

#### **1.2 Implementation of Debt Exchange Compromise**

Subject to clause 2, at the Effective Time the following will occur sequentially without any further act or formality, except as otherwise provided, in the following specific order:

- (a) the Company will prepay to each Debt Exchange Creditor the Compromised Proportion of its Outstanding Principal Debt (such amounts to be held and applied solely in accordance with this clause);
- (b) each Debt Exchange Creditor will be deemed to have subscribed for its Relevant Proportion of the RPS in consideration for the payment of an amount

equal to the amount payable to it under clause 1.2(a), which shall be satisfied in accordance with clause 1.2(c);

- (c) the Company's payment obligation to each Debt Exchange Creditor under clause 1.2(a) and each Debt Exchange Creditor's payment obligation to the Company under clause 1.2(b) will, and may only, be satisfied by setting off the relevant payment obligations against each other with the result that each such payment obligation is fully satisfied and no further cash payment will be required by any party; and
- (d) each Debt Exchange Creditor will be issued its Relevant Proportion of the RPS by entry in the share register of the Company as the holder of those RPS.

### 1.3 **Notification of Outstanding Principal Debt to be compromised**

The TSB Holder shall be entitled, by notice to the Company given prior to the Effective Time, to select which one or more of the notes or series of notes which comprise Outstanding Principal Debt of the TSB Holder shall be the subject of the Debt Exchange Compromise. If any such notice is not given to the Company by the Effective Time then the Company shall apply the Debt Exchange Compromise to such series of notes or notes as the Company in its discretion may select and shall provide notice of the same to the TSB Holder following the Debt Exchange Compromise being effected. Each notice given pursuant to this clause 1.3 shall be binding in accordance with its terms.

## 2 **CONDITIONS**

### 2.1 **Conditions**

The Debt Exchange Compromise is conditional on:

- (a) *Approval of Debt Exchange Creditors* – the Debt Exchange Creditors passing a resolution approving the Debt Exchange Compromise in accordance with clause 5(2) of the Fifth Schedule of the Companies Act 1993;
- (b) *Debt Rescheduling* – the Existing Bilateral Facilities being rescheduled on the terms of the Rescheduled Facilities Agreement pursuant to the Debt Rescheduling Compromise;
- (c) *Entitled Persons Consent* – the consent of the entitled persons of the Company to the issue of the RPS in accordance with section 107(2) of the Companies Act 1993 being given and not rescinded on or before the Effective Time; and
- (d) *Approval of Note Holders* – the Note Holders passing the extraordinary resolution set out in a notice of meeting dated 30 September 2013 in accordance with the MTN Deed Poll.

### 2.2 **Failure to satisfy conditions**

If any condition contained in clause 2.1 is not satisfied (or deemed satisfied) by the Long Stop Date then:

- (a) the Debt Exchange Compromise will not proceed;
- (b) the Board will, or will procure that the Company will, unwind any actions taken to give effect to this Compromise Proposal; and

(c) this Compromise Proposal will otherwise cease to be of any further effect.

### **3 SUBSEQUENT LIQUIDATION OF THE COMPANY**

Subject to any order of the High Court of New Zealand, the Debt Exchange Creditors agree that if a liquidator is appointed to the Company after this Compromise Proposal has been implemented, the Debt Exchange Compromise will continue in effect and be binding on the liquidator of the Company.

### **4 GENERAL**

#### **4.1 Notices**

All notices given pursuant to clause 1.3 may be given by notice in writing posted to the registered address of the relevant party, or as otherwise agreed by the relevant parties. Notice given by post shall be treated to have been given 5 Business Days (at the place of receipt) after the notice was posted. Notice given by fax or email (if those methods have been agreed) shall be treated to have been given 1 Business Day (at the place of receipt) after the notice was transmitted.

#### **4.2 Variation of Debt Exchange Compromise**

The terms of this Debt Exchange Compromise may be varied:

(a) by resolution of the Debt Exchange Creditors passed in accordance with clause 5(2) of the Fifth Schedule of the Companies Act 1993 at the meeting called for the purpose of considering the Debt Exchange Compromise or any meeting called for the purpose of considering the variation; or

(b) without further act or formality where clause 4.3 applies.

#### **4.3 Debt Exchange Compromise binding**

This Debt Exchange Compromise is binding on all Debt Exchange Creditors to whom notice of the Compromise Proposal was given under section 229 of the Companies Act 1993 and on the Company. If, pursuant to section 232(3) of the Companies Act 1993 the Court orders that any Debt Exchange Creditor is not bound by all or part of the Debt Exchange Compromise, or that any Debt Rescheduling Creditor is not bound by all or part of the Debt Rescheduling Compromise:

(a) no Debt Exchange Creditor shall be bound by the Debt Exchange Compromise; and

(b) this Compromise Proposal shall be deemed varied so that any action taken pursuant to clause 1.2 is void and of no effect.

#### **4.4 Debt Exchange Compromise governed by New Zealand Law**

This Debt Exchange Compromise is to be governed and construed by the laws of New Zealand and the passing of the resolution referred to in clause 2.1(a) shall have the effect that the Debt Exchange Creditors submit to the exclusive jurisdiction of the Courts of New Zealand.

### **5 INTERPRETATION**

#### **5.1 Definitions**

In this Compromise Proposal the following expressions shall (unless the context otherwise requires) have the following meanings:

*Board* means the board of directors of the Company.

*Business Day* means a day, other than a Saturday or Sunday, on which all banks are open for business generally in Auckland, New Zealand.

*Company* means Solid Energy New Zealand Limited.

*Compromise Proposal* means this compromise proposal (as varied in accordance with its terms) made by the Board between the Company and the Debt Exchange Creditors and dated 14 October 2013.

*Compromised Proportion* means 20.38%.

*Debt Exchange Compromise* means the compromise set out in this Compromise Proposal.

*Debt Exchange Creditors* means each of:

- (a) ANZ Bank New Zealand Limited;
- (b) Bank of New Zealand;
- (c) The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch;
- (d) Commonwealth Bank of Australia, New Zealand Branch;
- (e) the TSB Holder; and
- (f) Westpac New Zealand Limited.

*Debt Rescheduling Compromise* means the compromise proposed, or to be proposed, by the Board between the Company and certain creditors of the Company pursuant to which (amongst other things) the Existing Bilateral Facilities will be rescheduled on the terms of the Rescheduled Facilities Agreement, as set out in a compromise proposal dated 14 October 2013.

*Effective Time* means the time at which all of the conditions in clause 2.1 are satisfied, excluding the condition in clause 2.1(c) which must be satisfied on the Debt Exchange Compromise being implemented in accordance with clause 1.2.

*Existing Bilateral Facilities* means:

- (a) the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and ANZ Bank New Zealand Limited (as amended from time to time);
- (b) the facility agreement dated 3 December 2009 entered into between the Company, each Guarantor and Bank of New Zealand (as amended from time to time);
- (c) the facility agreement dated 20 December 2010 entered into between the Company, each Guarantor and The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch (as amended from time to time);

- (d) the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and Commonwealth Bank of Australia, New Zealand Branch (as amended from time to time);
- (e) the facility agreement dated 20 December 2010 entered into between the Company, each Guarantor and Commonwealth Bank of Australia, New Zealand Branch (as amended from time to time); and
- (f) the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and Westpac New Zealand Limited (as amended from time to time).

*Facilities* means the Existing Bilateral Facilities, rescheduled as the Rescheduled Facilities Agreement pursuant to the Debt Rescheduling Compromise.

*Guarantors* means Solid Energy Renewable Fuels Limited, Spring Creek Mine Holdings Limited, Solid Energy Land Holdings Limited and Biodiesel New Zealand Limited.

*Long Stop Date* means 31 October 2013.

*MTN Deed Poll* means the deed poll for medium term notes issued by the Company dated 3 December 2009 (as amended).

*Note Holders* means the persons recorded in the register maintained by Link Market Services Limited as the holders of notes issued by the Company under the MTN Deed Poll and being entitled to vote at the meeting referred to in clause 2.1(d).

*Outstanding Principal Debt* means, as at the Effective Time:

- (a) for each Debt Exchange Creditor other than the TSB Holder, the principal amount of debt owing by the Company to that Debt Exchange Creditor under the Facilities; and
- (b) for the TSB Holder, the principal amount payable on repayment or redemption of the notes issued under the MTN Deed Poll in respect of which the TSB Holder is the registered holder at the date of this Compromise Proposal on behalf of TSB Bank Limited.

*Relevant Proportion* means, for each Debt Exchange Creditor, the proportion borne by that Debt Exchange Creditor's Outstanding Principal Debt to the Outstanding Principal Debt of all Debt Exchange Creditors, being:

- (a) for ANZ Bank New Zealand Limited, 10.87%;
- (b) for Bank of New Zealand, 21.74%;
- (c) for The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch, 21.74%;
- (d) for Commonwealth Bank of Australia, New Zealand Branch, 12.23%;
- (e) for the TSB Holder, 18.34%; and
- (f) for Westpac New Zealand Limited, 15.08%.

*Rescheduled Facilities Agreement* means the syndicated facilities agreement between, amongst others, the Company, ANZ Bank New Zealand Limited as the facility agent and the security trustee and each of ANZ Bank New Zealand Limited, Bank of New Zealand, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch, Commonwealth Bank of Australia, New Zealand Branch and Westpac New Zealand Limited as lenders, rescheduling the Existing Bilateral Facilities in accordance with the Debt Rescheduling Compromise.

*RPS* means the 75,000,000 redeemable preference shares of the Company to be issued to the Debt Exchange Creditors on the terms set out in the appendix to this Compromise Proposal.

*TSB Holder* means New Zealand Central Securities Depository Limited (in its capacity as the Note Holder, on behalf of TSB Bank Limited, of Notes under, and as defined in, the MTN Deed Poll).

## 5.2 **Interpretation**

In this Compromise Proposal:

- (a) the division of this Compromise Proposal into clauses and the inclusion of headings is for convenience of reference only and do not affect the construction or interpretation of this Compromise Proposal;
- (b) references to clauses and appendices are to clauses and appendices of this Compromise Proposal;
- (c) the singular includes the plural and vice versa;
- (d) references to dates and time are to dates and times in New Zealand;
- (e) references to currency are to New Zealand currency; and
- (f) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

## 5.3 **Time of the essence**

Time will be of the essence as regards the performance of each matter or thing provided for in this Compromise Proposal.



**APPENDIX: RPS TERMS**

## Redeemable Preference Shares

### Terms of Issue

<b>Issuer</b>	Solid Energy New Zealand Limited.
<b>Nature of security</b>	Redeemable preference shares ( <b>RPS</b> ).
<b>Allottees and other restrictions</b>	<p>The allotment of RPS will be made to:</p> <ul style="list-style-type: none"> <li>• The Minister of Finance and the Minister for State-Owned Enterprises on behalf of Her Majesty the Queen in right of New Zealand;</li> <li>• Bank of New Zealand;</li> <li>• ANZ Bank New Zealand Limited;</li> <li>• Commonwealth Bank of Australia, New Zealand Branch;</li> <li>• Westpac New Zealand Limited;</li> <li>• The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch; and</li> <li>• New Zealand Central Securities Depository Limited (to be held on behalf of TSB Bank Limited),</li> </ul> <p>(together, the <b>Allottees</b>).</p> <p>No prospectus or investment statement will be prepared.</p>
<b>Issue size</b>	NZ\$100,000,000.
<b>Shareholder approval – issue of RPS</b>	Section 107 of the Companies Act 1993 ( <b>Act</b> ) entitled person consent.
<b>Issue price</b>	\$1.00 per RPS.
<b>Ranking</b>	<p>RPS will rank:</p> <ul style="list-style-type: none"> <li>• equally among themselves; and</li> <li>• in priority to ordinary shares in the Issuer on the liquidation of the Issuer as to the Redemption Amount, but behind the creditors of the Issuer.</li> </ul>

<b>Distributions</b>	<p>RPS are entitled to a <i>pro rata</i> share in all dividends declared by the board of directors of the Issuer (the <b>Board</b>) (at its discretion) ahead of ordinary shareholders.</p> <p>Dividends will be paid in accordance with the Act, subject to satisfaction of the solvency test.</p> <p>Any distribution shall have attached to it the maximum number of imputation credits able to be lawfully attached.</p> <p>The Issuer will not pay any dividend or make any other form of distribution to ordinary shareholders until the RPS are redeemed.</p>
<b>Redemption discretion</b>	The RPS will be redeemable on a pro rata basis at the discretion of the Board.
<b>Redemption process</b>	<p>RPS may be redeemed by the Issuer in whole or in part for the Redemption Amount on the maturity date(s) determined by the Board.</p> <p>On redemption (or liquidation of the Issuer), the holder receives the Redemption Amount.</p>
<b>Redemption Amount</b>	\$1.00 plus 5% per annum compounding quarterly from the date of issue less any dividends paid per RPS.
<b>Voting rights</b>	<p>No voting rights other than on matters affecting rights and privileges of holders as required by s 117 of the Act.</p> <p>One vote per RPS.</p>
<b>Preferential rights</b>	<p>RPS will have preferred access to distributions in priority to ordinary shares in the Issuer.</p> <p>On a liquidation of the Issuer, after the repayment of all creditors in full, the RPS will be redeemed in full for the Redemption Amount, in priority to the ordinary shares.</p> <p>The RPS will not confer any other rights to participate in the profits or assets of the Issuer such as cash issues, debentures, convertible notes or other offers of securities.</p>
<b>Other entitlements</b>	None. In particular, no conversion to ordinary shares.
<b>Listing</b>	None.
<b>Underwriting</b>	None.

<b>Allotment</b>	<p>The Allottees will be allotted RPS in the following proportions:</p> <ul style="list-style-type: none"> <li>• The Minister of Finance and the Minister for State-Owned Enterprises on behalf of Her Majesty the Queen in right of New Zealand – \$25,000,000;</li> <li>• Bank of New Zealand - \$16,304,348;</li> <li>• ANZ Bank New Zealand Limited - \$8,152,174;</li> <li>• Commonwealth Bank of Australia, New Zealand Branch - \$9,171,196;</li> <li>• Westpac New Zealand Limited - \$11,311,141;</li> <li>• The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch - \$16,304,348; and</li> <li>• New Zealand Central Securities Depository Limited (to be held on behalf of TSB Bank Limited) - \$13,756,793.</li> </ul>
<b>Transferability</b>	See attached paper.
<b>Further issues</b>	Subordinated issue acceptable, but further issue of same or prior ranking class needs RPS holders' approval.

## **Conditions attaching to the transfer of the RPS**

1. The RPS are freely transferable to the classes of financial institution specified below under the heading "Definition of Permitted Transferees" (**Permitted Transferees**). Where the RPS are being transferred to a Permitted Transferee, the transferor must deliver a copy of the share transfer of RPS to the Crown as and when notice of the transfer is given to the Issuer for registration.
2. No RPS may be transferred to a person who is not a Permitted Transferee unless that transferee is also a financial institution and then only if the transferor has first consulted with the Crown as to the identity of the proposed transferee, its directors, senior management and its ownership and matters pertaining to the standing of the proposed transferee, its directors, senior management and owners as fit and proper persons. The consultation will be for a period of 5 working days (within the meaning of the Act) and will commence when the transferor has provided the Crown with reasonable documentary details as to the matters the subject of the consultation.
3. No RPS may be transferred to a person who is not a Permitted Transferee and who is not a financial institution.
4. All correspondence or notices concerning any proposed transfer of RPS, is to be addressed to the Treasury Solicitor.
5. A financial institution is for the purposes of these conditions any recognised New Zealand, Australian or international financial institution or entity the principal business of which is investment or the provision of financial services including, without limitation, banks, private equity firms, hedge funds, investment banks, insurers and reinsurers.
6. The term "fit and proper person" when used in these conditions is a reference to the fit and proper person standards applied by APRA and the RBNZ as part of their prudential supervision of Australian ADI's and New Zealand registered banks.

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### **Definition of Permitted Transferees**

The following classes are deemed to be Permitted Transferees for the purpose of these conditions:

- a. any financial institution appointed by the Crown to advise it on financial or securities matters within the previous 12 months;
- b. a registered bank (whether registered in New Zealand or in any other OECD member country, Hong Kong or Singapore); or
- c. any other financial institution (including a fund, a private equity firm and an insurer or reinsurer) supervised (and not merely regulated) by a central bank or other governmental supervisory agency in New Zealand or Australia; or

- d. any financial institution wholly-owned or controlled by the Crown (including ACC and the New Zealand Superannuation Fund) or the Commonwealth Government of Australia or the government of any Australian state or territory; or
- e. any subsidiary of, or investment bank, fund or investment vehicle owned or controlled by, any entity within sub-paragraphs (a) to (d) above.

## SCHEDULE 2: LIST OF DEBT EXCHANGE CREDITORS

<b>Name of Debt Exchange Creditor</b>	<b>Amount owing to the Debt Exchange Creditor by the Company</b>	<b>Number of votes entitled to be cast by the Debt Exchange Creditor on the resolution set out in the Notice of Meeting<sup>1</sup></b>
ANZ Bank New Zealand Limited	NZ\$40,054,504.11 <sup>2</sup>	40,054,504
Bank of New Zealand	NZ\$80,106,016.43 <sup>3</sup>	80,106,016
The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch	NZ\$80,091,791.78 <sup>4</sup>	80,091,791
Commonwealth Bank of Australia, New Zealand Branch	NZ\$45,060,928.77 <sup>5</sup>	45,060,928
TSB Holder	NZ\$68,790,400.74 <sup>6</sup>	68,790,400

<sup>1</sup> Each Debt Exchange Creditor is entitled to one vote for every NZ\$1 owed to that Debt Exchange Creditor by the Company.

<sup>2</sup> The amount owed by the Company to ANZ Bank New Zealand Limited is the aggregate of the principal amount of debt advanced to the Company by ANZ Bank New Zealand Limited under the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and ANZ Bank New Zealand Limited (as amended from time to time), being \$40,000,000 plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$54,504.11.

<sup>3</sup> The amount owed by the Company to Bank of New Zealand is the aggregate of the principal amount of debt advanced to the Company by Bank of New Zealand under the facility agreement dated 3 December 2009 entered into between the Company, each Guarantor and Bank of New Zealand (as amended from time to time), being \$80,000,000 plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$106,016.43.

<sup>4</sup> The amount owed by the Company to The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch is the aggregate of the principal amount of debt advanced to the Company by The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch under the facility agreement dated 20 December 2010 entered into between the Company, each Guarantor and The Bank of Tokyo-Mitsubishi UFJ, Ltd., Auckland Branch (as amended from time to time), being \$80,000,000 plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$91,791.78.

<sup>5</sup> The amount owed by the Company to Commonwealth Bank of Australia, New Zealand Branch is the aggregate of the principal amount of debt advanced to the Company by Commonwealth Bank of Australia, New Zealand Branch under the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and Commonwealth Bank of Australia, New Zealand Branch (as amended from time to time) and the facility agreement dated 20 December 2010 entered into between the Company, each Guarantor and Commonwealth Bank of Australia, New Zealand Branch (as amended from time to time), being \$45,000,000 plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$60,928.77.

<sup>6</sup> The amount owed by the Company to the TSB Holder is calculated as the principal amount payable on repayment or redemption of the Notes issued under the MTN Deed Poll in respect of which New Zealand Central Securities Depository Limited is, at the date of the Notice of Meeting, the registered Holder on behalf of TSB Bank Limited being \$67,500,000, plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$1,290,400.74.

Westpac New Zealand Limited	NZ\$55,577,576.31 <sup>7</sup>	55,577,576
<b>TOTAL</b>	NZ\$369,681,218.14	369,681,215

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<sup>7</sup> The amount owed by the Company to Westpac New Zealand Limited is the aggregate of the principal amount of debt advanced to the Company by Westpac New Zealand Limited under the facility agreement dated 30 November 2004 entered into between the Company, each Guarantor and Westpac New Zealand Limited (as amended from time to time), being \$55,500,000 plus accrued, but unpaid, interest on that principal amount to the date of the Notice of Meeting of \$77,576.31.



## VOTING/PROXY FORM RELATING TO DEBT EXCHANGE COMPROMISE PROPOSAL

For the meeting of the Debt Exchange Creditors of Solid Energy New Zealand Limited (the *Company*) to be held at the offices of Simpson Grierson, Level 11, HSBC Tower, 62 Worcester Boulevard, Christchurch on Tuesday, 22 October 2013 commencing at 1pm (the *Meeting*).

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### Section A: Identity of Debt Exchange Creditor

*Overprint legal name of relevant creditor.*

of *Overprint address of relevant creditor.*

(the **Creditor**)

is a Debt Exchange Creditor of the Company.

The Creditor: (you **must** tick one option)

☐ appoints a proxy to represent it at the Meeting (complete **Sections B, C and E** below); **OR**

☐ submits its vote by post (complete **Sections D and E** below).

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### Section B: Appointment of Proxy ONLY

**The Creditor may appoint the Chairperson of the Meeting as its proxy. To appoint this individual tick the box below.**

The Creditor, being a Debt Exchange Creditor of the Company hereby appoints:

**EITHER** the Chairperson of the Meeting (*tick box*) ☐

**OR** another person (*complete details below*)

Full name:

of (*address*):

or failing such person

Full name:

of (*address*):

as its proxy to exercise its vote in accordance with the directions set out in **Section C** below at the Meeting and at any adjournment of that Meeting, and to vote as it thinks fit on any other resolution proposed at the Meeting (or any adjournment) so as to give effect to the intention as set out below where possible.

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### Section C: Voting Instructions for Proxy ONLY

**The Creditor's proxy will vote as directed below (if you choose to appoint a proxy). If you do not tick either box, the Creditor's proxy (if appointed) can vote as they think fit.**

**Resolution:**

To approve the resolution set out in the notice of meeting

**For**

☐

**Against**

☐

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**Section D: Postal Vote ONLY**

If the Creditor wishes to cast a postal vote in respect of the resolution, please cast its vote below by ticking one of the boxes. If the Creditor is making a postal vote, it is not able to vote on any other resolution that may be put to the Meeting.

**Resolution:**

To approve the resolution set out in the notice of meeting

**For**☐**Against**☐

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**Section E: To be signed on behalf of the Creditor**

Signed: \_\_\_\_\_

Name

Position of signatory

Date  /  / 2013

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**GUIDELINES FOR COMPLETING THE VOTING/PROXY FORM**

1. A proxy need not be a Debt Exchange Creditor.
2. If the Creditor is a body corporate this Voting/Proxy Form must be signed by a duly authorised attorney or officer of the Creditor if it wishes to appoint a proxy or cast a postal vote.
3. If this Voting/Proxy Form is completed by an attorney or representative, the power of attorney or appointment of representative or a copy certified by a solicitor must, if not previously produced to the Company, accompany the Voting/Proxy Form together with a completed certificate of non-revocation of authority.

**YOU CAN RETURN THIS VOTING/PROXY FORM IN ANY OF THE FOLLOWING WAYS****Mail or physical delivery:****If the Creditor is casting a postal vote, send the Voting/Proxy Form to:**

Simpson Grierson  
Level 24, HSBC Tower  
195 Lambton Quay  
Wellington 6011  
PO Box 2402  
Wellington 6140

Attention: Josh Cairns

**If the Creditor is appointing a proxy to attend and vote on its behalf, send the Voting/Proxy Form to:**

The Board of Directors  
Solid Energy New Zealand Limited

c/o Simpson Grierson  
Level 24, HSBC Tower  
195 Lambton Quay  
Wellington 6011  
PO Box 2402  
Wellington 6140

	Attention: Josh Cairns
<b>Scan &amp; email:</b>	<p><b>If the Creditor is casting a postal vote, send the Voting/Proxy Form to:</b></p> <p>Josh Cairns of Simpson Grierson at <a href="mailto:josh.cairns@simpsongrierson.com">josh.cairns@simpsongrierson.com</a></p> <p><b>If the Creditor is appointing a proxy to attend and vote on its behalf, send the Voting/Proxy Form to:</b></p> <p>The Board of Directors of Solid Energy New Zealand Limited, c/o Josh Cairns of Simpson Grierson at <a href="mailto:josh.cairns@simpsongrierson.com">josh.cairns@simpsongrierson.com</a></p> <p>(in either case, please put the words "<i>Voting/Proxy Form</i>" in the subject line for easy identification)</p>
<b>EACH CREDITOR'S VOTING/PROXY FORM SHOULD BE RETURNED BY NO LATER THAN 1PM ON FRIDAY, 18 OCTOBER 2013</b>	