



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE FINANCIAL MARKETS AUTHORITY  
AND  
THE TAKEOVERS PANEL**

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MEMORANDUM OF UNDERSTANDING dated 23<sup>rd</sup> August 2016

between

**THE FINANCIAL MARKETS AUTHORITY (the FMA)**

and

**THE TAKEOVERS PANEL (the Panel)**

together, **the agencies**

## **BACKGROUND**

1. The FMA is an independent Crown entity established under section 6 of the Financial Markets Authority Act 2011 (**FMA Act**). The FMA's main objective, as set out in section 8 of the FMA Act, is to promote and facilitate the development of fair, efficient, and transparent financial markets. The FMA has statutory functions under the FMA Act and the Acts listed in Schedule 1 of that Act. The FMA enforces securities, financial reporting, and company law as they apply to financial products and services and securities markets and its role is to help develop financial markets that efficiently allocate capital, operate with integrity and provide diverse investment opportunities for New Zealanders and international investors.
2. The Takeovers Panel is an independent Crown entity established under the Takeovers Act 1993 (**Takeovers Act**). The role of the Panel is to administer the Takeovers Code which ensures that all shareholders have a fair opportunity to participate in control-change transactions<sup>1</sup> (such as takeovers and allotments or acquisitions of parcels of financial products) in Code companies.<sup>2</sup> The Panel also has functions under the Takeovers Act, amongst other things, to keep under review the practices of Code companies and to investigate any act or omission or practice for the purpose of exercising its enforcement powers under the Takeovers Act.

## **PURPOSE**

3. The FMA and the Takeovers Panel may both have an interest in matters relating to misconduct in financial markets or by financial market participants involved in control-change transactions.
4. The FMA and the Panel intend to work together to enable them to better carry out their respective regulatory responsibilities.
5. The purpose of this memorandum is to record the FMA's and the Takeovers Panel's commitment to:
  - 5.1 identify common regulatory objectives and roles;

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<sup>1</sup> A control-change transaction means a person increases their holding or control of voting rights to (together with that of their associates) any level above 20% of a Code company's voting rights.

<sup>2</sup> A Code company is a New Zealand registered company that has listed voting securities (e.g., ordinary shares) on a registered exchange's trading market; or has 50 or more shareholders with voting rights, and 50 or more share parcels.

- 5.2 support each other in fulfilling each agency's primary statutory objectives; and
  - 5.3 record the spirit of cooperation that will operate between the agencies.
6. Nothing in this memorandum is intended to limit or affect the independence of each agency or the requirement that each agency must independently perform its statutory functions.

#### **RELATIONSHIP AND COOPERATION PRINCIPLES**

7. The FMA and the Panel recognise the importance of effective regulation of New Zealand's securities markets to improve the confidence of investors in the integrity of those markets. To this end, the agencies agree to collaborate with a view to facilitating each agency's primary statutory objectives, including by:
- 7.1 promptly referring relevant complaints and providing information to the other agency where appropriate;
  - 7.2 responding promptly to contact from the other;
  - 7.3 working together, so far as is practicable, to improve the effectiveness and efficiency of each agency's investigations and enforcement;
  - 7.4 adopting a no surprises approach, by advising each other early of any identified issues that might affect the other party; and
  - 7.5 communicating and sharing information and know-how to improve the effective delivery of the agencies' respective statutory functions in regard to financial products and financial services.
8. The agencies agree that staff from both agencies will meet as required to give effect to the requirements of this memorandum. The principal contacts that will coordinate these meetings and any communication between the agencies are:
- 8.1 for the Panel, the General Counsel; and
  - 8.2 for the FMA, the Head of Capital Markets for all operational market related matters, and for broader relationship matters generally, the General Counsel.
9. The agencies agree to liaise with each other before either party releases any public statement referring to the other.
10. This memorandum may be available on each agencies' website.

#### **INFORMATION SHARING**

11. The exchange of full information in a timely manner is essential to both the FMA and the Panel.
12. The FMA has information on entities and individuals that is gathered in the course of its monitoring and supervision of the market. The Panel similarly gathers information on Code companies.

13. Both agencies agree to make relevant information available to the other, subject to any legislative requirements, in a timely and efficient manner and in accordance with, respectively, section 15A of the Takeovers Act and section 30 of the FMA Act, set out in the Schedule for ease of reference.
14. When confidential material is exchanged under the provisions of this MOU, both agencies agree to treat the material as the home agency might, and not to release or disclose without the consent of the other unless required, authorised or permitted by law.
15. Where the FMA or the Panel has been served with a compulsory notice which would require the disclosure to a third party of information obtained under this MOU, the agency will, where possible, notify the other agency in writing prior to disclosure or as soon as possible following disclosure, so as to enable the other agency to determine what action, if any, it should take.

#### **AMENDMENT AND TERMINATION**

16. This memorandum will remain in effect until terminated by either agency (by giving 30 days' written notice) or by mutual consent.
17. All confidentiality commitments between the agencies will remain in effect despite any termination of the memorandum.
18. The memorandum may be amended by mutual written consent of the agencies.

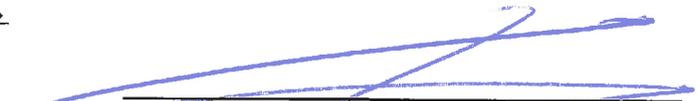
#### **ISSUE RESOLUTION**

19. Both agencies will use their best endeavours to resolve any issue in a timely manner and in the way that best supports the delivery of the agencies' objectives.
20. In the event of issues arising between the agencies, the agencies will work together to resolve them as quickly as possible by mutual agreement.

#### **EXECUTED**



Rob Everett  
Chief Executive  
Financial Markets Authority



Margaret Bearsley  
Chief Executive  
Takeovers Panel

## Schedule

### Takeovers Act 1993

#### **15A Sharing of information and documents with FMA**

- (1) The Panel may provide to the FMA any information, or a copy of any document, that the Panel—
- (a) holds in relation to the exercise of the Panel's powers or the performance of its functions and duties; and
  - (b) considers may assist the FMA in the exercise of the FMA's powers or the performance of its functions and duties under any enactment.
- (2) The Panel may use any information, or a copy of any document, provided to it by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Panel's exercise of its powers or the performance of its functions and duties.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

### Financial Markets Authority Act 2011

#### **30 Sharing of information and documents with law enforcement or regulatory agencies and overseas regulators**

- (1) The FMA may provide to a law enforcement or regulatory agency<sup>3</sup> or an overseas regulator any information, or a copy of any document, that the FMA—
- (a) holds in relation to the performance or exercise of the FMA's functions, powers, or duties under this Act or any other enactment; and
  - (b) considers may assist, as the case may be,—
    - (i) the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any enactment; or
    - (ii) the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law.
- (2) However, the FMA may provide information, or a copy of a document, to an overseas regulator under this section only if the FMA is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993).
- (3) The FMA may use any information, or a copy of any document, provided to it by a law enforcement or regulatory agency under any enactment, or by an overseas regulator, in the FMA's performance or exercise of its functions, powers, or duties under this Act or any other enactment.
- (4) This section applies despite anything to the contrary in any contract, deed, or document.

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<sup>3</sup> The Panel is defined as a law enforcement or regulatory agency.