



TAKEOVERS PANEL

Memorandum of Understanding

Between the Takeovers Panel & NZX Limited

On regulatory co-operation & sharing of information

Dated 1 May 2015



MEMORANDUM OF UNDERSTANDING

PARTIES

The **TAKEOVERS PANEL**, a body corporate established by the Takeovers Act 1993 (the “**Panel**”)

NZX LIMITED, a company registered under the Companies Act 1993 and having its registered address at Level 1, NZX Centre, 11 Cable Street, Wellington (“**NZX**”)

BACKGROUND

- A. This Memorandum of Understanding (“**MOU**”) sets out a framework for engagement and co-operation between the Panel and NZX, taking into account their respective regulatory roles, including:
- (a) in the case of NZX, the regulation of issuers and participants operating on NZX’s licensed markets; and
 - (b) in the case of the Panel, oversight of takeovers and other change of control transactions regulated by the Takeovers Code that is in force under the Takeovers Act (the “**Code**”) involving Code companies in New Zealand’s securities markets.
- B. The Panel has functions under section 8 of 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 and functions under Parts 3 and 4 of the Takeovers Act.
- C. NZX has established and operates licensed markets for the quotation and trading of financial products, subject to rules binding on listed issuers and market participants. NZX has responsibilities for the surveillance of activities on its markets and for the enforcement of its rules.
- D. The Panel and NZX intend to work together to enable them to better carry out their respective regulatory responsibilities (the “**Purpose**”).
- E. In particular, the parties wish to establish a protocol for the sharing of information between them, as provided for in section 15C of the Takeovers Act and sections 357 and 358 of the Financial Markets Conduct Act 2013 (the “**FMCA**”). These statutory provisions are set out in the Appendix to this MOU.

1 SHARING OF INFORMATION WITH THE PANEL BY NZX

Information and assistance that must be given

- 1.1 NZX is responsible for surveillance of trading activity on its markets and monitoring and enforcing compliance with its rules. NZX may, in the course of carrying out its regulatory functions or duties, obtain information about trading activity or proposed transactions that may indicate non-compliance with the Code (including prohibited acquisitions or allotments of voting securities, misleading or deceptive conduct or information, or

failures to disclose information required by the Code) or otherwise have implications for the discharge by the Panel of its regulatory functions.

- 1.2 Under section 357 of the FMCA, NZX must give to the Panel (or any person authorised by the Panel) information, assistance, and access to NZX's facilities if the Panel reasonably requests it in order to carry out its functions. The parties agree that any request under section 357 will be made in writing to the Head of Market Supervision (or other relevant nominated senior member of NZX Regulation) at NZX and will include the following:
- (a) The name of the listed issuer or person that is the subject of the request;
 - (b) A description of the information, assistance, or access to NZX's facilities that is required by the Panel;
 - (c) The Panel's reasons for making the request; and
 - (d) The timeframe in which the Panel requests NZX to comply with the request.

- 1.3 If NZX has any concerns or objections to a request made by the Panel under section 357 of the FMCA, the parties agree that representatives of each of the parties will meet, as soon as practicable, to discuss those concerns or objections with a view to resolution.

Information that may be given

- 1.4 Under section 358(2) of the FMCA, NZX may provide to the Panel any information that NZX considers may assist the Panel in the performance of its functions. The parties agree that any communications under section 358 may be conducted in writing or verbally, according to convenience at the time. The Panel will nominate from time to time a member of the Panel executive for the purpose of receiving any information provided by NZX under section 358(2) of the FMCA. Any request by the Panel for copies of documents will be made in writing to the Head of Market Supervision (or other relevant senior member of NZX Regulation).
- 1.5 NZX further agrees that, as far as reasonably practicable and as soon as practicable after becoming aware, it will inform the Panel, pursuant to section 358, about the following matters:
- (a) any breach identified by NZX of a substantial holding disclosure obligation under subpart 5 of Part 5 of the FMCA in relation to a Code company listed on a market operated by NZX;
 - (b) potential takeovers under the Code that involve a Code company listed on a market operated by NZX; and
 - (c) draft notices of meeting that have been submitted to NZX for approval (i) that contain a shareholder resolution for the purposes of the Code, or (ii) which relate to a proposed scheme of arrangement or amalgamation under Part 15 of the Companies Act 1993 affecting the voting rights of a Code company listed on a market operated by NZX.

2 SHARING OF INFORMATION WITH NZX BY THE PANEL

- 2.1 The Panel is primarily responsible for monitoring and enforcing compliance with the Code. The Panel may, in the course of carrying out its statutory functions, obtain information concerning persons and entities that are subject to NZX's rules.
- 2.2 Under section 15C of the Takeovers Act, the Panel may provide NZX 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 NZX in the exercise of NZX's powers, or the performance of its functions and duties, under any enactment or any market rules (within the meaning in section 6(1) of the FMCA).
- 2.3 The parties agree that any communications under section 15C may be conducted in writing or verbally, according to convenience at the time. NZX will nominate from time to time a member of NZX Regulation for the purpose of receiving any information provided by the Panel under section 15C of the Takeovers Act. Any request made by NZX for copies of documents held by the Panel will be made in writing to the Chief Executive of the Panel (or other relevant senior executive).
- 2.4 The Panel further agrees that, as far as reasonably practicable and as soon as practicable after becoming aware, it will inform NZX, pursuant to section 15C, about any notices of meeting that have been submitted to the Panel for approval that contain a shareholder resolution for the purposes of NZX's rules.

3 CONFIDENTIALITY

- 3.1 The parties agree that information obtained in confidence under this MOU will not be disclosed to any third party without prior consultation with the other party to this MOU, unless such disclosure is required by law.

4 RELATIONSHIP AND CO-OPERATION PRINCIPLES

- 4.1 The Panel and NZX 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 parties agree to collaborate with a view to facilitating the Purpose, through engagement on matters of mutual interest, identifying staff training and secondment opportunities (if resources permit), and sharing information relating to law reform and policy development.
- 4.2 The parties agree to hold regular meetings (between members of the Panel's executive team and NZX's Regulation and Policy teams) for the purposes of facilitating the matters contemplated in clause 4.1 of this MOU.
- 4.3 The parties agree to liaise with each other before either party releases any public statement referring to the other.

5 MOU TERM AND REVIEW

- 5.1 This MOU has an initial term of five years (the “**Initial Term**”) and thereafter will automatically renew for further terms of five years (“**Subsequent Terms**”) unless either party gives the other 6 months’ written notice of termination or the parties otherwise agree in writing to terminate this MOU.
- 5.2 The parties will endeavour to meet at least six months prior to the expiry of the Initial Term, or Subsequent Terms (as the case may be), to review, with a view to facilitating the Purpose, the progress of the MOU.
- 5.3 Any amendments to the MOU agreed between the parties from time to time will be evidenced in writing.

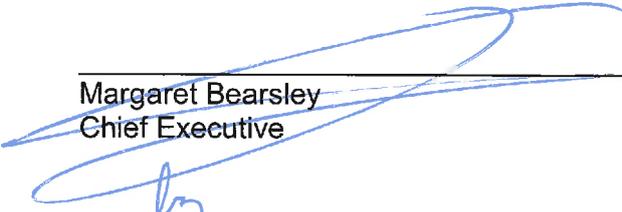
6 MOU NOT BINDING

- 6.1 This MOU is intended to facilitate the Purpose and to assist the parties with their respective regulatory activities. Nothing in this MOU is intended to limit or affect the independence of either party, and is not intended to create legally enforceable rights or obligations. The Panel and NZX recognise that each has powers, functions, and obligations under law and, in respect of NZX, as operator and regulator of its markets. Any statements of intention by either in this MOU are subject to the discretion of each to act as necessary to perform its functions or obligations and to exercise any statutory or regulatory powers.
- 6.2 Nothing in this MOU is intended to limit or affect the independence of either body. Nothing in this MOU:
- (a) limits or affects the statutory powers of the Panel or the Panel’s ability to perform its functions and act where necessary in the public interest; or
 - (b) requires or obliges NZX to provide any information to the Panel or obliges NZX to do any other act or thing which goes beyond NZX’s legal obligations under legislation; or
 - (c) limits the information that NZX will provide to the Panel, or that the Panel may request from NZX, to the information and reporting set out in this MOU.



EXECUTION

SIGNED on behalf of the Panel:



Margaret Bearsley
Chief Executive

SIGNED on behalf of NZX:



Tim Bennett
Chief Executive

APPENDIX

FINANCIAL MARKETS CONDUCT ACT 2013

357 Licensed market operator must give FMA or Takeovers Panel other information and assistance on request

- (1) A licensed market operator must give to the FMA or the Takeovers Panel (or any person authorised by the FMA or the Takeovers Panel) information, assistance, and access to the licensed market operator's facilities if the FMA or the Takeovers Panel reasonably requests it in order to carry out its functions.
- (2) The FMA or the Takeovers Panel must require that information, assistance, or access by notice in writing to the licensed market operator.

358 Power to disclose further information

- (1) A licensed market operator may provide to the FMA any information that the licensed market operator considers may assist the FMA in the performance of the FMA's functions.
- (2) A licensed market operator may provide to the Takeovers Panel any information that the licensed market operator considers may assist the Takeovers Panel in the performance of its functions.

TAKEOVERS ACT 1993

15C Sharing of information and documents with licensed market operators

- (1) The Panel may provide to a licensed market operator 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 licensed market operator in the exercise of the operator's powers, or the performance of its functions and duties, under any enactment or any market rules (within the meaning of [section 6\(1\)](#) of the Financial Markets Conduct Act 2013).
- (2) The Panel may use any information, or a copy of any document, provided to it by a licensed market operator under section 357 or 358 of the Financial Markets Conduct Act 2013 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](#).