

3 April 2019

Enforceable Undertaking

Pursuant to sections 46 and 46A of the Financial Markets
Authority Act 2011

The enforceable undertaking is offered to the Financial Markets
Authority for its acceptance under sections 46 and 46A of the
Financial Markets Authority Act 2011 by:

Mark Stephen Talbot

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www.fma.govt.nz

AUCKLAND OFFICE | Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON OFFICE | Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

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Contents

Overview	4
Parties	4
Introduction	4
Background	5
Relevant context	5
Background facts	5
Admissions	8
Admissions	8
No further action	8
Undertakings and Payment	9
Undertakings	9
Payment	9
Notice	9
Acknowledgements	10
Acknowledgements	10
Execution	11
Execution (cont.)	12

Overview

Date: *3rd* day of *April* 2019

Parties

MARK STEPHEN TALBOT, of Auckland, New Zealand

and

FINANCIAL MARKETS AUTHORITY, an independent Crown entity established under the Financial Markets Authority Act 2011

Introduction

This enforceable undertaking is given by Mark Stephen Talbot (**Mr Talbot**), and has been accepted by the Financial Markets Authority (**FMA**) in accordance with sections 46 and 46A of the Financial Markets Authority Act 2011 (**FMA Act**).

Mr Talbot has offered this enforceable undertaking following an investigation made by the FMA into his trading of shares in VMob Group Limited (**VMob**).

Background

Relevant context

- A. Following a referral from NZX Limited (**NZX**) in September 2014, the FMA investigated Mr Talbot's trading of shares in VMob between August 2012 and October 2014.
- B. Based on the investigation, the FMA filed criminal charges against Mr Talbot in relation to the following offences under the Securities Markets Act 1988 (**SMA**):
 - (i) One charge of trading by an information insider, contrary to sections 8C and 8F.
 - (ii) Eight separate charges of failing to disclose a relevant interest, contrary to sections 19T and 19ZD.
- C. The Crown Solicitor and Mr Talbot have since agreed to a resolution of the charges. As part of this resolution, Mr Talbot has entered a guilty plea to one representative charge for the breach of his disclosure obligations under sections 19T and 19ZD of the SMA.
- D. Further, Mr Talbot has agreed to enter into this enforceable undertaking with the FMA.

Background facts

Relevant entities

- E. VMob became a listed issuer on the NZAX through a reverse listing transaction on 27 August 2012, when Velo Capital Limited (**Velo**) purchased the share capital in VMob Limited. Velo changed its name to VMob Group Limited effective 31 August 2012.
- F. Mr Talbot is a chartered accountant and operated a virtual Chief Financial Officer (**CFO**) service through his company Diablo Management Limited. On 1 November 2011, Mr Talbot was appointed virtual CFO of VMob Limited. He was VMob's virtual CFO until 7 July 2014. During this period he was contracted to work as the company's CFO at least one day per week and was considered an officer of the company. On 8 July 2014, Mr Talbot was replaced as VMob's virtual CFO. From 8 July 2014 to 30 September 2014, Mr Talbot was retained by VMob as an adviser.
- G. Mr Talbot is, and was at all material times, the director and a shareholder of two companies which were used as investment vehicles: Blumau Finance Limited (**Blumau**) and MST Holdings Limited (**MST Holdings**). At the time, Mr Talbot and his father had an arrangement that the shares held by Blumau in VMob were held for the benefit of Mr Talbot's father, who lives in the United Kingdom.
- H. As a company listed on the NZAX, VMob had in place a trading policy that applied to all directors, officers, employees and contractors of the company. As virtual CFO, Mr Talbot's responsibilities included administration of the trading policy. Mr Talbot was one of several officers of the company responsible for making new staff and contractors aware that there was a trading policy in place and that it applied to all staff, contractors and directors. Mr Talbot was one of several officers of the company also responsible for answering any questions staff had around the trading policy. Mr Talbot was aware of Board approval for VMob personnel to trade in the company's shares.

McDonald's Japan RFP

- I. In 2014, McDonald's Japan conducted a request for proposal (RFP) for an app-based platform to support their loyalty programme. VMob was one of a number of service providers invited to respond. The contract was originally projected to yield \$4.8 million over three years, representing significant revenue to the company. By comparison, for the year ended 31 March 2014, the company's total operating revenue was \$385,000.
- J. In addition to the financial benefit a contract of this size would bring to the company, the real value to the company was the validation of its service by a major international company, such as McDonald's, in a large market, such as Japan.
- K. VMob submitted its response to the RFP in May 2014. On 15 May 2014, the company was notified that it had been shortlisted. Only two other parties remained in contention.
- L. On 26 May 2014, Mr Talbot attended the VMob Board meeting. At the Board meeting, VMob's Chief Operating Officer (COO) gave the Board an update on the sales pipeline, including the pitch to McDonald's Japan. On 16 June 2014, the COO gave a further update to the VMob Board. Mr Talbot attended the Board meeting via skype.
- M. Throughout the discussion and negotiation process with McDonald's, VMob was considered the preferred option and the likely party to be awarded the contract.
- N. On 23 July 2014, McDonald's advised VMob they would be awarded the contract. The same day, at 4:07pm, the COO sent an email to VMob directors and officers, including Mr Talbot, saying: "[McDonald's Japan] confirmed officially that eMarketing at McJapan is now fully aligned internally, and they have selected Vmob and wish to move forward with us alone ... As a reminder, we are projecting \$5.5m revenue over 3 years from this program if they do contract for the full scope offered".
- O. On 7 August 2014, the head of eMarketing at McDonald's Japan wrote to VMob confirming that VMob had been awarded the contract.

NZX announcement and VMob share price

- P. On 11 August 2014, VMob announced to the market that it had been awarded the McDonald's Japan contract. NZX designated the announcement as "price sensitive".
- Q. On 8 August 2014, the last trading day prior to the announcement, VMob's share price closed at \$0.012.
- R. On 12 August 2014, the day after the announcement, VMob's share price closed at \$0.017.

Insider trading

- S. In July 2014, Mr Talbot wanted to purchase VMob shares while the share price was low. He made a request to the Board Chairman to purchase VMob shares. Mr Talbot says that the request was in relation to shares to be purchased by MST Holdings.
- T. As the CFO who attended Board meetings where the McDonald's Japan opportunity had been discussed, Mr Talbot knew there was a good prospect that VMob would secure the contract.
- U. From the COO's email on 23 July 2014, Mr Talbot was aware that McDonald's Japan had resolved to award the contract to VMob. This was material information that was not available to the market.
- V. On 24 July 2014, Mr Talbot, through Blumau, purchased 1,000,000 VMob shares:
 - (i) The buy order was placed at 11:47 on 24 July 2014. The trade was executed at 13:37 the same day.

- (ii) The shares traded at \$0.010.
 - (iii) The total consideration for the 1,000,000 shares was \$10,000.
- W. On 24 July 2014, after the trade had been executed, Mr Talbot forwarded a copy of the trading policy to the Board Chairman. Mr Talbot said he did this because he, and another Board member, proposed purchasing further shares in the company and had raised this with the Board Chairman. His email of 24 July 2014 provided an extract from the trading policy which covered the restrictions on trading prior to the release of the company's full year and half year financial results. This is known as the "blackout period". The email did not refer to the restriction on purchasing shares when there was material information available to company personnel that was not generally available to the general public.
- X. On 25 July 2014, the Board Chairman responded to Mr Talbot's request to purchase shares. He said: "... you are insiders and aware of the potential large deal with McDonald's in Japan. Given this deal has the potential to close within a couple of weeks, neither [another VMob director] nor I consider it is wise for you to purchase VMob shares until the outcome of the McDonalds Japan deal is determined and (if successful) announced to the market".
- Y. Mr Talbot responded later that day saying "Understood, thanks [Board Chairman]". Mr Talbot did not purchase further VMob shares.
- Z. Mr Talbot did not disclose to the Board Chairman that, through Blumau, he had purchased 1,000,000 VMob shares the previous day.
- AA. On 31 October 2014, Blumau transferred all its VMob shares to Anthony Talbot, Mr Talbot's father. On the same day, Mr Talbot signed an NZX disclosure notice advising of this transfer, as well as the sale of all VMob shares held by MST Holdings and VMob options held by Mr Talbot to a third party. The VMob shares transferred to Mr Talbot's father are still held in his name.

Mr Talbot's comments

- BB. Mr Talbot accepted that, through Blumau, he purchased 1,000,000 VMob shares on 24 July 2014.
- CC. Mr Talbot stated that Blumau was a vehicle through which he purchased shares in NZX listed companies for the benefit of his father, who resides in the United Kingdom.
- DD. Mr Talbot said he first purchased VMob shares through Blumau via a private placement in 2013. He said the VMob directors knew he was associated with Blumau and knew that any VMob shares he purchased through Blumau were for his father's benefit, rather than his own. He said VMob directors advised him a disclosure notice was not required for Blumau because the shares were held non-beneficially.
- EE. When Mr Talbot purchased shares on 24 July 2014, he said he believed the McDonald's contract negotiations were no impediment to him purchasing shares because he was doing so for his father's benefit.
- FF. Mr Talbot said he filed the necessary disclosure notice after becoming aware of the FMA's inquiry and taking advice.

Admissions

Admissions

1. Mr Talbot accepts that at the relevant times, he was required to comply with the SMA in his capacity as an information insider and/or officer of a listed issuer, being VMob.
2. Mr Talbot also accepts that he traded, by purchasing, 1,000,000 shares in VMob on 24 July 2014.
3. Mr Talbot admits that:
 - 3.1 he had information that VMob was likely to be awarded the contract with McDonald's Japan during all relevant times when he traded in shares in VMob on 24 July 2014;
 - 3.2 the information was material information that was not generally available to the market, and which he received in his capacity as a senior manager of VMob;
 - 3.3 he knew that the information was material information that was not generally available to the market until the announcement to the market was made on 11 August 2014;
 - 3.4 having traded in shares in VMob on 24 July 2014 he has contravened section 8C of the SMA; and
 - 3.5 it is no defence that the shares purchased by Mr Talbot through Blumau on 24 July 2014 were held for the benefit of his father.

No further action

4. In agreeing to accept these admissions made by Mr Talbot, and the undertakings and payment offered by him (as set out **below**), the FMA agrees that unless otherwise required by law it will not take any further action against Mr Talbot in relation to the insider trading.

Undertakings and Payment

Undertakings

Mr Talbot has offered the undertakings (as set out **below**) and the FMA has agreed to accept these undertakings in accordance with sections 46 and 46A of the FMA Act.

5. Mr Talbot undertakes that he will not be a director or promotor of, or in any way (whether directly or indirectly) be concerned or take part in the management of, a listed issuer, as that term is defined in the Financial Markets Conduct Act 2013, for a period of **5 years** from the date this enforceable undertaking is executed by both parties.

Payment

In addition to offering the undertakings (as set out **above**), Mr Talbot has also offered a payment in lieu of a pecuniary penalty which the FMA has also agreed to accept in accordance with sections 46 and 46A of the FMA Act.

6. Mr Talbot undertakes that:
 - 6.1 he will pay \$150,000 to the FMA in lieu of a pecuniary penalty (**Penalty Sum**); and
 - 6.2 the Penalty Sum will be paid to the FMA according to the following schedule (**Schedule A**):

Date	Amount
22 March 2019	\$50,000
21 June 2019	\$50,000
20 September 2019	\$50,000

7. The Penalty Sum will be paid into a Crown Bank Account, after deducting the FMA's actual costs incurred in connection with its investigation into this matter.

Default

8. In the event that Mr Talbot fails to pay the Penalty Sum within the time specified in Schedule A, the FMA may at its absolute discretion pursue recovery of the Penalty Sum plus interest in accordance with the Interest on Money Claims Act 2016 and legal costs on a solicitor-client basis.

Notice

9. The FMA will give notice of the undertakings offered, and the payment made, by Mr Talbot on its website (www.fma.govt.nz). A corresponding media statement will also be published on the FMA's website.

Acknowledgements

Acknowledgements

10. Mr Talbot acknowledges that:
 - 10.1 the undertakings and payment voluntarily given by him and accepted by the FMA in accordance with sections 46 and 46A of the FMA Act may be legally enforced by the FMA in accordance with section 47 of the FMA Act from the date this enforceable undertaking is executed by both parties;
 - 10.2 where the FMA undertakes legal proceedings to enforce the terms of this enforceable undertaking, Mr Talbot accepts and agrees to pay the FMA's legal costs in relation to those proceedings;
 - 10.3 following the execution of this enforceable undertaking by both parties, it will be published by the FMA on its website, together with a media statement; and
 - 10.4 in accepting the undertakings and payment, the FMA is not prevented from exercising its rights under financial markets legislation and/or under the FMA Act in relation to any contravention(s) of the undertakings or arising from any future conduct.

Execution (cont.)

The Financial Markets Authority accepts this enforceable undertaking pursuant to sections 46 and 46A of the FMA Act by its authorised delegate:



Rob Everett

Chief Executive Officer at the Financial Markets Authority

In the presence of:



Name: CAROLINE CAMPBELL

Occupation: EXECUTIVE ASSISTANT

Address: AUCKLAND

Execution

Signed by MARK STEPHEN TALBOT:



MARK STEPHEN TALBOT

In the presence of:



Name: *Claire Talbot*

Occupation: *Landscaper*

Address: [REDACTED]