



Memorandum of Understanding

Between the Financial Markets Authority
And NZX Limited



Parties

FINANCIAL MARKETS AUTHORITY a Crown entity established in 2011 under the Financial Markets Authority Act 2011 (“**the FMA**”)

NZX LIMITED a limited liability company registered under the Companies Act 1993 (“**NZX**”)

Background

- The FMA regulates New Zealand’s financial markets. Its main objective is to promote and facilitate the development of fair, efficient and transparent financial markets. In relation to registered markets, the FMA has specific regulatory and enforcement functions regarding market misconduct and disclosures.
- NZX is the operator of securities markets and a derivatives market. NZX is regulated by the FMA and must report to the FMA on its compliance with its obligations under the Financial Markets Conduct Act 2013 (“**FMC Act**”) to, amongst other matters, operate its markets in a fair, orderly and transparent manner.
- Both Parties have an interest in promoting confidence in New Zealand’s markets and wish to agree a framework for engagement and co-operation, to assist each other in achieving their objectives and to facilitate open discussion and flow of information between the Parties.
- This memorandum of understanding (“**MOU**”) sets out the framework for engagement and co-operation between the FMA and NZX, which takes into account their complementary regulatory roles.

1. Framework of Engagement

- 1.1 This MOU provides a framework of engagement and co-operation for the following areas:
- a. relationship governance;
 - b. oversight review process;
 - c. operational interaction between NZX and the FMA; and
 - d. public statements.
- 1.2 The FMA 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.

2. Relationship principles

- 2.1 These principles describe behaviour that the Parties consider important to the success of this MOU, and the Parties agree to comply with these principles.
- 2.2 The principles, governing the way in which the Parties will conduct themselves in relation to all matters arising out of or under this MOU, are:
- a. to communicate in an open, honest and timely manner;
 - b. to respond promptly to requests by the other;
 - c. to exchange information and ideas to improve monitoring and regulation by each organisation, including in relation to each organisation's knowledge and processes;
 - d. to promote efficient use of each organisation's resources, and reduce potential disruption of listed issuers and market participants, by minimising duplication of monitoring and regulatory operations where appropriate; and
 - e. to forewarn each other of actions taken or proposed to be taken of which the other might reasonably expect to be advised.

3. MOU not binding

- 3.1 This MOU is intended to be facilitative only and to assist the Parties in the performance of their respective functions, and is not intended to create legally enforceable rights or obligations.
- 3.2 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 FMA or the FMA'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 FMA 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 FMA, or that the FMA may request from NZX, to the information and reporting set out in this MOU.

4. Relationship Governance

- 4.1 Engagement between NZX and the FMA will be governed by two committees – an Oversight Committee and an Operating Committee.
- 4.2 The Parties will establish an Oversight Committee, whose responsibilities shall include:
- a. review of operation of this MOU and formulation of recommendations to the Parties as to any amendments the Oversight Committee considers necessary or desirable;
 - b. to discuss and provide feedback on proposed NZX market oversight infrastructure priorities (regulation, structure and processes) in addition to areas identified in the FMA's General Obligations Review for the previous period, prior to these being settled by NZX, and monitor progress with these;

- c. developing a joint agenda for development of the capital markets in New Zealand;
 - d. agreeing the scope of the FMA's General Obligations Review at the first meeting of each year for the following review period;
 - e. monitoring progress of action in areas identified in the FMA's General Obligations Review for the previous period;
 - f. discussion of regulatory issues of mutual concern;
 - g. discussion of broader relationship issues; and
 - h. discussion of issues escalated by the Operating Committee.
- 4.3 The Oversight Committee shall include the CEOs of the FMA and NZX, the Head of Market Supervision of NZX, the Director of Compliance of the FMA, and the Head of Markets Oversight of the FMA, or as otherwise agreed by the Parties.
- 4.4 The Oversight Committee will meet, in person at a minimum of every six months, in the first and third quarters of the calendar year. In addition to the six monthly meetings, the Oversight Committee will convene at the written request of either Party. Where a Party requests that the Oversight Committee convene in addition to its six monthly meeting the Party calling for the meeting shall provide the other with reasons requesting that a meeting be convened and a draft agenda for the meeting.
- 4.5 The Parties will establish an Operating Committee, whose responsibilities shall include:
- a. managing the implementation of this MOU and day-to-day dealings between the Parties and recommending to the Oversight Committee any amendments to this MOU that will assist operations under it;
 - b. discussion of any issues relating to the registered markets that have arisen since the previous meeting of the Operating Committee;
 - c. discussion of any work either Party is undertaking in respect of which the other Party may have an interest, including current investigations and referrals;
 - d. review of Oversight Review regular performance reporting;
 - e. discussion of any issues arising out of NZX's regular reporting to the FMA;
 - f. discussion of any issues escalated by NZX/ FMA staff for the consideration of the Operating Committee; and
 - g. discussion of progress by NZX with any actions agreed or required to be taken following the FMA's previous report on NZX's compliance with its statutory obligations.
- 4.6 The Operating Committee shall comprise business leaders and day-to-day operational staff appointed by each of NZX and the FMA.
- 4.7 The Operating Committee will meet, in person, at a minimum once every three months. In addition to the three monthly meetings, the Operating Committee will convene at the written request of either Party. Where a Party requests that the Operating Committee convene in addition to its three monthly meeting the Party calling for the meeting shall



provide the other with reasons requesting that a meeting be convened and a draft agenda for the meeting.

- 4.8 The Operating Committee shall provide a report to the Oversight Committee on its deliberations, together with the minutes of its meetings, upon request.
- 4.9 To ensure effective communication, one person from each of NZX and the FMA should sit on both the Oversight Committee and the Operating Committee.

5. Oversight Reporting to the FMA

- 5.1 Under the FMC Act, the FMA is required to assess how well NZX is complying with its obligations, which are designed to ensure that its licenced markets operate in a fair, orderly and transparent way.
- 5.2 To assist with the assessment by the FMA of NZX's compliance with its statutory obligations, NZX shall provide to the FMA copies of the following reports at the end of each calendar quarter ("**Regular Reporting**"):
 - a. all reporting from Head of Market Supervision to the NZX Board of Directors ("**the NZX Board**") for the quarter, including monthly reports and reports prepared for meetings of the NZX Board by NZX Regulation;
 - b. relevant excerpts of minutes of any meetings of the NZX Board held during the quarter, including any relevant Board papers referred to therein;
 - c. additional market services and IT & Technology information and other information that is routinely provided to the NZX Board and is relevant to NZX's statutory obligations;
 - d. all periodic Regulation reports to the Regulatory Governance Committee ("**RGC**") and minutes of meetings of the RGC for the quarter;
 - e. all activity and information logs maintained by NZX Regulation, as at the end of the quarter; and
 - f. any report prepared by NZX of progress against any actions agreed or required to be taken following the FMA's previous General Obligations Review report.
- 5.3 The FMA and NZX may, by mutual agreement, amend the frequency and content of the Regular Reporting.
- 5.4 As part of the annual review provided by NZX under section 337 of the FMC Act , NZX shall provide to the FMA:
 - a. market assessment report for NZX's financial year ("**the Review Period**"), to be submitted within three months of the end of NZX's financial year as required by legislation, which will contain at a minimum:
 - (i) a summary of monthly and quarterly reporting of both operational and regulatory performance for the Review Period; and
 - (ii) NZX's self-assessment of its performance in relation to, and compliance with, its statutory obligations during the Review Period;

- b. market infrastructure review: an assessment of progress against market infrastructure reviews in the areas settled by NZX after discussion with the Oversight Committee for the Review Period.
- 5.5 The FMA will publish its report on its assessment of NZX's compliance with its obligations within three months of receipt of NZX's annual market assessment report.

6. Interaction

- 6.1 The Parties will develop a series of protocols covering areas in which the FMA and NZX engage, including:
- a. live market issues;
 - b. continuous disclosure (investigations and waiver/rulings);
 - c. insider trading and market manipulation surveillance and investigation;
 - d. investigations and complaints concerning market participants;
 - e. market rules approval;
 - f. review of offer documents; and
 - g. requests for data.
- 6.2 The protocols will be developed on the basis of the following considerations:
- a. the responsibility and role of each Party; and
 - b. the infrastructure and resources of each Party.
- 6.3 The protocols will include an outline of roles of each Party, the process and the relevant contact persons.
- 6.4 The protocols (and any amendments thereto) will be formulated by the Operating Committee and approved by the Oversight Committee.

7. Public Statements

- 7.1 The Parties will develop a series of protocols covering communications with media and complainants on the basis of the following considerations:
- a. the responsibilities each Party has in relation to complaints;
 - b. the roles of each Party as agreed with reference to the other Party; and
 - c. whether a communication refers to the other Party.
- 7.2 The protocols will include an outline of roles of each Party, the process and the relevant contact persons.
- 7.3 The protocols (and any amendments thereto) will be formulated by the Operating Committee in consultation with the media representatives of each Party, and will be approved by the Oversight Committee.

8. Confidentiality

- 8.1 For the purposes of this MOU, “**Confidential Information**” includes all information relating to any engagement between the Parties pursuant to this MOU and all information provided by a Party in accordance with this MOU, other than information that:
- a. is in or comes into the public domain through no fault of the relevant Party or any of its officers, employees, agents or contractors;
 - b. was and can be demonstrated to have been, lawfully in the relevant Party's possession or known to the relevant Party before its disclosure; or
 - c. is disclosed to the relevant Party by a third party having no obligation of confidence in relation to that information.
- 8.2 Each Party agrees:
- a. to keep confidential all Confidential Information; and
 - b. to use the Confidential Information solely for the purposes of performing its functions.
- 8.3 The Parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other Party, or which the disclosure of, would amount to a breach of any privacy obligations or legislation or governing rules that apply to that Party.
- 8.4 Nothing in this MOU will prevent the disclosure of information that is required or permitted to be disclosed by law. Where either Party is required by law to disclose information obtained under this MOU or intends to disclose information obtained under this MOU which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing Party will notify the other Party in writing as soon as practicable.

9. MOU Term and Review

- 9.1 The MOU will continue in full force and effect unless and until terminated:
- a. by agreement of the Parties; or
 - b. by either Party, on not less than 3 months written notice to the other Party.
- 9.2 Any amendments to this MOU will be evidenced in writing.

Execution

Signed for and on behalf of the Financial Markets Authority

Rob Everett

Chief Executive

28 January 2015

Date: _____

Signed for and on behalf of NZX Limited

Tim Bennett

Chief Executive

28 January 2015

Date: _____

