

**Memorandum of Understanding**

between the

**Securities Commission**

and

**NZSE Limited**

on regulatory co-operation

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**PARTIES**

**THE SECURITIES COMMISSION** a body corporate established by the Securities Act 1978 (the "Securities Act") (the "Commission")

**NZSE Limited** a company registered under the Companies Act 1993 and having its registered office at 2 Hunter Street, Wellington. (the "NZSE")

**BACKGROUND**

- A. This memorandum of understanding ("**MOU**") sets out the parties' agreement relating to the provision of information to each other and co-operation with each other for the effective regulation of the New Zealand securities markets.
- B. The Commission has functions under section 10 of the Securities Act 1978 (the "**Securities Act**") to keep under review practices relating to securities and activities on securities markets and to comment thereon to any appropriate body.
- C. The Commission also has enforcement functions under the Securities Act relating to offers of securities to the public and under the Securities Markets Act 1988 (the "**Markets Act**") relating to insider trading, substantial security holders, and futures dealing.
- D. NZSE has established and runs a market for the quotation and trading of securities, subject to rules binding on public issuers and market participants. NZSE has responsibilities for the surveillance of activities on its markets and for the enforcement of its rules.
- E. NZSE and the Commission intend to work together for effective co-regulation of the listed securities markets run by NZSE. In the case of NZSE, some of the functions and responsibilities set out in this MOU may be performed or discharged by delegates of NZSE ("**NZSE Delegates**"). To the extent that NZSE has delegated responsibility for its surveillance and enforcement functions to NZSE Delegates, the NZSE will ensure that such NZSE Delegates comply with the terms of this MOU.
- F. The Commission and NZSE recognise that this MOU does not limit either party in the assistance or information provided to the other.
- G. NZSE and the Commission recognise that each has powers, functions, and obligations under law. Any statements of intention by either in this MOU are subject to the discretion of each to act as necessary to perform its legal functions or obligations and to exercise any statutory powers.
- H. This MOU sets out the parties' agreement with respect to the discharge of certain statutory responsibilities. As such this MOU supplements the party's statutory responsibilities; it defines areas of agreed responsibility and agreed processes. This MOU accordingly does not repeat the parties' statutory obligations.

## 1. RELATIONSHIP PRINCIPLES

- 1.1 NZSE and the Commission recognise that they each have a critical role to play in the regulation of, and in ensuring the health of, the New Zealand securities markets. NZSE and the Commission have a shared goal of ensuring the optimal regulation of the New Zealand securities markets by promoting the confidence of investors, contributing to the efficiency of New Zealand's securities markets, enhancing the performance and reputation of NZSE's stock market as a fair, efficient, deep and well informed, internationally competitive market and by facilitating appropriate levels and quality of disclosure to ensure well informed markets, (the "**shared goal**").
- 1.2 NZSE and the Commission agree that in order to achieve this shared goal they must work collaboratively with each other. The parties have agreed that there are a number of principles which are important to the success of the collaborative relationship and with which they will comply in order to achieve the shared goal.
- 1.3 The principles, governing the way in which parties will each conduct themselves in relation to all matters arising out of or under this MOU, are:
- (a) To communicate in an open, honest and timely communication;
  - (b) To respond promptly to requests by the other and to market participants;
  - (c) To exchange information and ideas to improve surveillance and regulation by each organisation;
  - (d) To work together, so far as is practicable, to avoid duplication of participant resources and time recognising that cost of compliance with the NZ regulatory framework is a key issue for the participants in that market;
  - (e) To reduce potential disruption to the operations of public issuers by minimising duplication of surveillance and regulatory operations;
  - (f) To promote efficient use of each organisations resource by minimising duplication of surveillance and regulatory operations;
  - (g) To forewarn each other of actions taken, or proposed to be taken, of which the other might reasonably expect to be advised;
  - (h) To aim to ensure that the most appropriate party, recognising the relative statutory and structural (and in NZSE's case contractual) issues of each party, responds to a regulatory issue;
  - (i) To provide feedback after an investigation to ensure the parties are learning and updating knowledge and enhancing processes.

### ("Relationship Principles")

- 1.4 These Relationship Principles describe behaviour that the parties consider critical to the success of the co-regulatory environment and on achieving the shared goal. The parties agree to comply with the Relationship Principles.

## 2. MOU NOT BINDING

- 2.1 Nothing in this MOU is intended to limit or affect the independence of either body. Except where the Commission and NZSE expressly agree that the terms and conditions of this MOU are in substitution for and replace the requirements of the Markets Act nothing in this MOU:
- (a) Limits or affects the statutory powers of the Commission or the Commission's ability to perform its functions and act where necessary in the public interest; or
  - (b) Requires or obliges NZSE to provide any information to the Commission or obliges NZSE to do any other act or thing with goes beyond NZSE's legal obligations under the Markets Act.
- 2.2 In particular, this MOU is intended to be facilitative and to assist with the mechanics and implementation of those legal obligations imposed upon NZSE under the Markets Act.

## 3. OPERATIONS GROUP

- 3.1 The parties will establish an operations group (the "**Operations Group**") who will manage the implementation and day to day dealings between the parties under this MOU. The Operations Group will comprise the personnel set out in Annex A.
- 3.2 The Operations Group will meet, in person, at a minimum once every 3 months. In addition to the 3 monthly meeting, the Operations Group will convene at the written request of either party. Where a party requests that the Operations Group convene in addition to its 3 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.
- 3.3 At each meeting of the Operations Group the following will be standing agenda items:
- (a) Assessment of the processes established under this MOU, in particular their effectiveness and workability;
  - (b) Provision of briefs to each other on any work the other is undertaking in respect of which the other may have an interest, including current investigations and referrals;
  - (c) Assessment of the level and appropriateness of referrals each party is providing to the other;
  - (d) Assessment as to whether hand offs from one party to the other are occurring at the appropriate time and in an appropriate manner; and
  - (e) Recommending changes to the MOU that will assist the day to day operations under it.
- 3.4 The Operations Group will provide a report to the Strategic Group bi-annually concerning the matters addressed by it in the preceding six month period.

## 4. NZSE REFERRALS

### Principles

4.1 NZSE and the Commission agree that the following key principles will guide them in dealing with referrals from NZSE to the Commission.

- (a) NZSE is the front-line regulator of its securities markets, in particular of matters that are regulated under the conduct rules of NZSE.
- (b) The Commission is the statutory regulator responsible for reviewing practices on securities markets and for enforcing certain breaches of the Securities Act and the Markets Act. The Commission also has a function to review and comment on practices relating to securities.
- (c) Certain matters that come to the attention of NZSE must be referred to the Commission under section 36ZD of the Markets Act.
- (d) Other matters that come to the attention of NZSE may be referred to the Commission under section 36ZL of the Markets Act.
- (e) It benefits all market participants when breaches of market standards are investigated and dealt with in a timely and effective way. It is important to an effective outcome that matters are dealt with by the appropriate regulator.
- (f) Referral procedures should be streamlined and efficient so that the Commission is promptly informed of matters of significance, so NZSE is able to provide the best quality information to the Commission, and so that regulatory gaps are minimised.
- (g) The Commission will provide feedback on referrals to assist NZSE in market regulation and to inform ongoing referral procedures.
- (h) Without limiting the jurisdiction of either to act in any case, the Commission and NZSE will discuss cases where there is an overlap of regulatory responsibilities, to avoid inappropriate duplication.
- (i) The Commission and NZSE recognise that NZSE may refer a matter to the Commission following a preliminary investigation by NZSE, where it appears a more effective outcome may be achieved through use of the Commission's statutory powers of inquiry.
- (j) NZSE and the Commission recognise that the Commission may refer matters to NZSE for investigation, in particular where a matter appears primarily to raise questions of compliance with NZSE's conduct rules.

### Compulsory Referrals

4.2 The Commission and NZSE agree that where the Commission must be notified of a matter under section 36ZD of the Markets Act, NZSE will use all reasonable endeavours to do the following within 1 business day of NZSE taking action or knowing or suspecting of a significant contravention that requires notification:

- (a) inform the Commission of the action or event, the name of the contact person at NZSE for the matter under referral, the information required under section 36ZF of the Markets Act; and
  - (b) advise an estimate of the time required to provide the further information set out in clause 4.4
- 4.3 Where all information required under S36ZF of the Markets Act cannot be provided to the Commission within 1 business day, NZSE will, within that time period, inform the Commission of the action or event to be referred and will advise the likely time required to provide the information specified in the Markets Act.
- 4.4 For the purpose of section 36ZJ of the Markets Act, the Commission requires any referral under section 36ZD to include the following additional information:
  - (a) Where the referral relates to a known or suspected contravention of any conduct rule:
    - (i) A description of the steps taken by NZSE in investigating the matter to date;
    - (ii) A description of any intended action on the part of NZSE or its delegates and an indicative timetable for that action;
  - (b) Where the referral relates to disciplinary action taken by the Exchange for breach of any conduct rules, whether in the Exchange's view the matter requires further investigation or action by the Commission or any other body.
- 4.5 Clause 4.4 does not limit the ability of the Commission to require the provision of any further information about any specific referral or the ability of NZSE to provide further information relating to a matter under referral.
- 4.6 The Commission and NZSE agree that information provided under section 36S of the Markets Act will be provided in writing to the Director of Enforcement at the Securities Commission.
- 4.7 For the purpose of section 36ZD of the Markets Act NZSE and the Commission agree that the question of whether any known or suspected contravention of NZSE's conduct rules or relevant legislation is a "significant contravention" will be determined on the facts of each particular case. In the event NZSE is in doubt about whether or not a matter may involve a significant contravention NZSE may refer the matter to the Commission under section 36ZL of the Markets Act.
- 4.8 The Commission and NZSE acknowledge that not every known or suspected contravention of NZSE's conduct rules or relevant legislation will be a significant contravention in terms of section 36ZD of the Markets Act.
- 4.9 The Commission and NZSE agree to maintain an active dialogue through the Strategic Group and the Operations Group concerning regulatory matters of particular concern to each other and to the market, to assist in the identification of matters for referral under section 36ZD of the Markets Act.

### **Discretionary referrals**

- 4.10 NZSE is primarily responsible for surveillance of trading activity on its market and monitoring and enforcing compliance with its conduct rules. NZSE's surveillance may reveal information about trading activity that is indicative of insider trading, disclosure failures, market manipulation, or other matters relating to the functions of the Commission.
- 4.11 Where NZSE's market surveillance shows unusual movements in share price or trading volume NZSE will conduct a preliminary screening of the matter and may refer any matter to the Commission under section 36ZL of the Markets Act where the NZSE forms the view that this may assist the Commission in the performance of its functions.
- 4.12 Any referral made under section 36ZL will be made in writing to the Director of Enforcement at the Commission and will include the following information:
- (a) The names and contact details of the persons who are subject of the referral;
  - (b) A description of the activity or events leading to referral of the matter by NZSE, including any reports generated by NZSE's surveillance software;
  - (c) A description of the steps taken by NZSE in investigating the matter;
  - (d) The reason for referral of the matter to the Commission;
  - (e) The name of the contact person at NZSE for the referral; and
  - (f) Any other information held by NZSE relevant to the matter under referral.

### **Urgent referrals**

- 4.13 Where in the opinion of NZSE a matter referred to the Commission may require urgent action on the part of the Commission (whether the referral is made under section 36ZD or section 36ZL of the Markets Act) the referral will clearly state this. Where possible the Director of Enforcement at the Commission will be warned of a pending urgent referral by telephone.
- 4.14 Where a referral is made on an urgent basis the initial referral will contain as much of the information required under this MOU as is possible in the time available, including the reasons for NZSE's view that urgent action is desirable. The further information required under this MOU will be provided as soon as practicable.
- 4.15 The Commission will give high priority to any urgent referral. The Commission will endeavour to assess an urgent referral and provide NZSE with a preliminary response, including an indication of intended action, within 2 trading days of receipt.

### **Commission action and reporting**

- 4.16 Where a matter is referred to the Commission by NZSE under the Markets Act or this MOU the Commission will:
- (a) provide the specified contact at NZSE an indication of the length of time required to perform a preliminary assessment;

- (b) assess the matter referred to it as soon as practicable;
  - (c) consult with NZSE in respect of the matter under referral; and
  - (d) inform the specified contact at NZSE for the matter under referral of the outcome of that preliminary assessment.
- 4.17 The Commission will inform NZSE of any action on the part of the Commission, including, where appropriate, any exercise of the Commission's statutory powers or referral to other enforcement or regulatory bodies. NZSE acknowledges that these reports are confidential and are intended only for the purpose of NZSE's market regulation responsibilities.
- 4.18 Where it appears to either NZSE or the Commission that a matter notified to the Commission as a known or suspected contravention of a conduct rule may also involve a contravention of any enactment, NZSE and the Commission agree to consult on the desirable process for exercise of powers by each body before either body takes action in respect of the matter.
- 4.19 Where NZSE notifies the Commission of a suspected contravention of a conduct rule and advises the Commission that it intends to take action under the conduct rules the Commission will await the outcome of NZSE's action before taking the matter further, subject to the Commission retaining its discretion to exercise its powers and functions in the public interest where it appears to the Commission that the matter involves a possible contravention of an enactment.
- 4.20 It is acknowledged that where a referral relates to disciplinary action taken by NZSE under its conduct rules, further action may not be required on the part of the Commission.

## **5. REFERRALS FROM COMMISSION**

### **Procedure**

- 5.1 If a matter comes to the attention of the Commission that appears to relate to compliance with or application of the conduct rules of NZSE the Commission may refer that matter to NZSE.
- 5.2 Referrals to NZSE will be made in writing to the General Counsel.
- 5.3 Any referral under this clause 5 will include the following information:
- (a) The names and contact details of the persons who are the subject of the referral;
  - (b) A description of the background to the referral, including to the extent possible any reports prepared by Commission staff on the matter;
  - (c) A description of the steps taken by the Commission in investigating the matter to date;
  - (d) Whether at the time of the referral the Commission intends to take further steps in its investigation of the matter;

- (e) The reason for the referral of the matter to NZSE, including the facts supporting the Commission's view that the matter appears to relate to non-compliance with the conduct rules;
- (f) The name of the contact person at the Commission for the matter; and
- (g) Any other information held by the Commission relevant to the matter that the Commission is able to provide in the circumstances of the case.

### **NZSE action and reporting**

- 5.4 Where a matter is referred to NZSE under this MOU NZSE will assess the matter referred to it as soon as practicable and will inform the Commission of the outcome of that assessment.
- 5.5 NZSE will inform the Commission of any action on the part of NZSE, including where appropriate any exercise of NZSE's powers under the conduct rules.

## **6. CONTINUOUS DISCLOSURE**

### **Principles**

- 6.1 Under section 19B(1) of the Markets Act a public issuer must notify information in accordance with the continuous disclosure provisions of the listing rules of a registered exchange in certain the circumstances.
- 6.2 NZSE is a registered exchange and NZSE's listing rules include such continuous disclosure provisions.
- 6.3 Under NZSE's listing rules a public issuer may apply for a waiver from the requirements of the listing rules or a ruling on the interpretation of the listing rules. NZSE also publishes, from time to time, guidance notes on the interpretation and meaning of the listing rules.
- 6.4 Section 36ZM of the Markets Act provides a process for the involvement of the Commission in any determination of a waiver from, or determination of the meaning of, the continuous disclosure listing rules of a registered exchange.
- 6.5 The Commission and NZSE agree that the following key principles will guide them in dealing with and making determinations on any continuous disclosure matter:
  - (a) The criteria set out in 19A of the Markets Act (attached as Annex C).
  - (b) Applications will be dealt with as quickly and efficiently as possible.
  - (c) NZSE will provide the Commission with early notice of receipt by it of any continuous disclosure matters.
  - (d) NZSE will provide detailed information to the Commission on any continuous disclosure matters as soon as possible and practicable after receipt of those matters as possible.

- (e) The Commission will advise NZSE, as soon as possible and practicable, of any concerns or issues the Commission has with a proposed determination of a continuous disclosure matter by NZSE and the Commission's anticipated response if NZSE makes such determination.

### **Waivers and Rulings**

#### **6.6 NZSE will:**

- (a) Notify the Commission each time a continuous disclosure waiver or determination application is received by it. Such notification will be provided to the Commission in writing to the General Counsel;
- (b) Use all reasonable endeavours to provide the notification anticipated in clause 6.6(a) no later than the second trading day after the receipt of the application from the public issuer;
- (c) Provide the Commission its memorandum of advice, analysis and any preliminary or draft determination concerning the continuous disclosure application immediately upon finalising such documentation;
- (d) Advise the Commission of the timeframe in which NZSE requires comments from the Commission in respect of a continuous disclosure application; and
- (e) At its discretion, where it considers it appropriate and expedient, invite the Commission to attend any proceedings of the NZSE (whether by phone in person or otherwise) in respect of any continuous disclosure application.

#### **6.7 The Commission will:**

- (a) Provide to NZSE, as soon as possible, and in any event no later than the time requested by the NZSE under clause 6.6(d), any preliminary comments it may have in respect of the application, including (but without limiting any Commission response) the Commission's anticipated response if NZSE makes a determination in the terms proposed by the applicant or in terms proposed by NZSE as set out in its advice to the Commission under clause 6.6(c); and
- (b) Advise NZSE whether it considers the proposed determination is such that it does not achieve the purpose of subpart 1 of Part 2 of the Markets Act.

**6.8** After receiving comments from the Commission under clause 6.7(a) NZSE will provide to the Commission its draft determination on any continuous disclosure matter and the Commission shall have two trading days, or such shorter period as the parties may agree in respect of any continuous disclosure matter, to provide any further comments or written submissions on the determination.

**6.9** The Commission will be provided with a copy of the final determination, including the grounds on which such determination was based, at the same time as such final determination is provided to the public issuer seeking the determination.

### **Urgent Determinations**

- 6.10 The Commission and NZSE recognise that there may be cases where an application for waiver from, or determination of the meaning of, a continuous disclosure provision of the listing rules, needs to be dealt with as a matter of urgency. The notification provided to the Commission under clause 6.6(a) will clearly state that the matter is urgent.
- 6.11 Where possible in urgent cases the General Counsel at the Commission should be warned of a pending application by telephone.
- 6.12 Where a referral is made on an urgent basis the initial notification will contain as much information as is available at that time and NZSE will provide to the Commission as soon as it is available the documentation under clause 6.6(c).
- 6.13 The Commission's submissions and advice on an urgent application may be made orally.
- 6.14 The Commission will make every effort to provide comments on an urgent application in a timely fashion.

### **Guidance Notes**

- 6.15 NZSE from time to time issues guidance notes to public issuers. Guidance notes provide guidance on the meaning and interpretation of NZSE's listing rules.
- 6.16 Where NZSE intends to issue a guidance note in respect of the continuous disclosure provisions of NZSE's listing rules, NZSE shall notify the General Counsel of the Commission by email of its intention to issue such a guidance note.
- 6.17 NZSE shall provide to the General Counsel of the Commission the proposed draft of the guidance note as soon as it is available and, in any event, NZSE will endeavour to provide the Commission with a proposed guidance note one business week prior to the proposed release of such guidance note to public issuers.
- 6.18 The Commission will provide NZSE with its comments on the proposed guidance note, including any comments concerning the Commission's anticipated response if NZSE issues such guidance note, as soon as possible, and in any event, two trading days before the proposed release of the guidance note.
- 6.19 NZSE will consider any written submissions provided by the Commission on such guidance note.

### **Agreed Process**

- 6.20 As permitted by section 36ZW of the Markets Act, the processes set out in clauses 6.6 to 6.19 are in substitution for and replace the requirements set out in sections 36ZM and 36ZN of the Markets Act.

## **7. DIRECTIONS**

### **Principles**

- 7.1 Under Section 36ZO of the Markets Act the Commission may give directions to a registered exchange to suspend trading in certain securities registered on a registered exchange or give other directions in relation to trading on the registered exchange in accordance with sections 36ZP to 36ZT.
- 7.2 Without limiting the ability of the Commission to perform its statutory functions and exercise its statutory powers, the Commission agrees that it will consider the following principles in exercising its power to give directions:
- (a) It is desirable for NZSE and the Commission to work together for the effective regulation of NZSE's listed securities market;
  - (b) The NZSE is the front-line regulator of NZSE's listed securities market and should have the opportunity to sanction participants;
  - (c) Where possible and appropriate the Commission will draw to the attention of NZSE matters relating to the regulation, trading, or conduct of NZSE's markets, or of participants in those markets, that might lead the Commission to give notice of an intention to give a direction;
  - (d) Where the Commission raises a matter with NZSE under clause 7.2(c), NZSE will assess and report on the matter to the Commission as soon as practicable.;
  - (e) Where possible and appropriate, representatives of NZSE and the Commission will meet to discuss matters of concern to the Commission and will endeavour to reach solutions in the interest of the market.

## **8. CONDUCT RULES APPROVAL AND DISALLOWANCE**

### **Principles**

- 8.1 NZSE and the Commission agree to maintain a dialogue on the operation of NZSE's conduct rules, and to consult early where changes to those rules are perceived to be needed or are proposed.
- 8.2 NZSE recognises that the Commission has a statutory role to advise the Minister on proposed changes to NZSE's conduct rules. The Commission will provide comment on proposed changes to the NZSE in a timely fashion. The NZSE recognises that any comment or assistance provided to NZSE cannot bind the Commission in its advice given to the Minister under the Markets Act.
- 8.3 The Commission will consult with NZSE prior to providing its advice on any proposed change to the Minister under the Markets Act

## Process

- 8.4 Where NZSE proposes to introduce a new conduct rule, or to change an existing conduct rule (a **“proposed change”**) NZSE will, where possible, give the Commission early notice of its intention to do this and will consult with the Commission on draft changes ahead of the submission of the new rule or amendment to the Minister.
- 8.5 The notification will include the following information:
- (a) The proposed change to the conduct rules;
  - (b) The reasons for the proposed change;
  - (c) Whether in the view of NZSE the approval or disallowance process under the Markets Act will apply to the proposed change;
  - (d) A timetable for introduction of the proposed change; and
  - (e) A description of the consultation that NZSE intends to carry out prior to making any change to the conduct rules arising from the proposal.
- 8.6 Where possible and appropriate NZSE and the Commission will meet to discuss proposed changes to the conduct rules before NZSE submits the new rule or amendment to the Minister.

## 9. PUBLICITY

- 9.1 The Commission and NZSE recognise the confidentiality and market sensitivity of information concerning active investigations by either body.
- 9.2 The Commission and NZSE agree that in general no public comment will be made about regulatory or enforcement matters at the time of referral from one body to the other. Where public comment by either body is appropriate in an individual case NZSE and the Commission will where possible consult prior to public comment being made by either party. Where prior consultation is not possible the party commenting will inform the other party of the public comment made as soon as practicable after commenting.
- 9.3 Where either NZSE or the Commission decides to comment publicly or issue a report, including as a result of any inquiry held following a referral by the other party, it will consult with the other on the form and timing of this.
- 9.4 Where either the Commission or NZSE intends to refer to the other in any public comment in relation to a specific regulatory matter it will consult with the other prior to making that public comment. In the case of NZSE any consultation will be with the General Counsel or Chief Executive Officer and in the case of the Commission consultation will be with the General Counsel or Chairman.
- 9.5 The Commission and NZSE agree to acknowledge the work of each other in any public comment made resulting from a matter under referral.

## 10. LIMITATIONS ON EXCHANGE AND USE OF INFORMATION

- 10.1 The provision of information by NZSE or the Commission to the other under this agreement is subject to any relevant legal considerations or constraints. Without limitation this includes legal professional privilege, natural justice, and confidentiality.
- 10.2 Some information provided to NZSE by the Commission may be subject to a confidentiality order made under the Securities Act.
- 10.3 Any information provided to the Commission may be used by the Commission in performing its statutory functions or exercising its statutory powers including, without limitation, by publication of any report or comment under section 28A of the Securities Act or by referral to another regulatory or law enforcement agency.
- 10.4 NZSE and the Commission agree that information obtained in confidence under this agreement will not be disclosed to any third party without prior consultation with the other party, unless such disclosure is required by law.

## 11. STRATEGIC GROUP

- 11.1 The parties will establish a Strategic Group (the "**Strategic Group**") who will:
- (a) Ensure the co-regulatory environment is functioning appropriately; and
  - (b) Discuss regulatory issues concerning the market which are of mutual concern to the parties.
- 11.2 The Strategic Group will comprise the personnel set out in Annex **B**.
- 11.3 The Strategic Group will meet at once every 6 months. In addition to the six monthly meeting, the Strategic Group will convene at the written request of either party where a party considers that such a meeting is necessary because:
- (a) The co-regulatory environment does not appear to be functioning appropriately; or
  - (b) A regulatory issue has arisen that requires discussion,
- and the party calling the meeting provides the other with reasons supporting its request.

## 12. MOU TERM AND REVIEW

- 12.1 This MOU has an initial term of twelve months ("**Initial Term**") and thereafter shall automatically renew for further terms of twelve months ("**Subsequent Term**") unless either party provides the other with notice under clause 12.2.
- 12.2 Either party may terminate this MOU by providing the other party with three months written notice of its intention to terminate.
- 12.3 The parties will meet annually, three months prior to the expiry to the Initial Term or Subsequent Term, as the case may be, to discuss this MOU and the need for changes to its terms (the "**Annual Review**").

- 12.4 At the Annual Review the parties will consider any recommendations made by the Operations Group and/or the Strategic Group.
- 12.5 Any amendments to the MOU will be evidenced in writing.

**EXECUTION**

**SIGNED** by the NZSE Limited:

Simon Christopher Allen  
Chairman

Mark Rhys Weldon  
Chief Executive Officer

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**SIGNED** by the Securities Commission:

Jane Diplock AO  
Chairman

\_\_\_\_\_  
Name

**ANNEX A  
OPERATIONS GROUP**

The Operations Group will comprise of the following personnel.

For NZSE:

- General Counsel;
- Representative of the Panel Executive; and
- Representative of Market Control.

For the Commission:

- General Counsel;
- Director of Enforcement; and
- Representative of enforcement team.

Either party may invite additional personal to attend meetings of the Operations Group.

**ANNEX B  
STRATEGIC GROUP**

The Strategic Group will comprise the following personnel.

For NZSE:

- CEO;
- The Chair of the Board or his or her designate;
- A member of the Board, nominated by NZSE; and
- General Counsel.

For the Commission:

- The Chair of the Commission;
- Two Commission Members, nominated by the Commission;
- General Counsel; and
- Director of Enforcement.

**ANNEX C**  
**SECTION 19A OF THE MARKETS ACT**

**19A Purpose of this subpart**

The purpose of this subpart is to provide for appropriate continuous disclosure by public issuers of material information that is not generally available to the market.

2. The following criteria are relevant to the implementation of that purpose (without limiting the other relevant criteria):

- (a) providing an appropriate level of protection for investors:
- (b) seeking to maintain the integrity and international competitiveness of the New Zealand listed markets:
- (c) ensuring that the benefits resulting from the continuous disclosure regime justify the costs, including the following costs:
  - (i) the value that a public issuer gives up if the information is not kept confidential; and
  - (ii) compliance costs for public issuers and registered exchanges in disclosing the information:
- (d) ensuring reasonable consistency and predictability in the application of the continuous disclosure regime:
- (e) avoiding unfair advantages resulting from inappropriate disclosure of information to some, but not all, investors:
- (f) recognising the important to the New Zealand listed markets of attracting and retaining public issuers:
- (g) recognising the desirability of an effectively functioning framework of co-regulation of listed markets by registered exchanges and the Commission:
- (h) recognising the importance of maintaining international best practices for continuous disclosure in listed markets:
- (i) any principles applying to the co-ordination of business law between Australia and New Zealand set out in any agreement or memorandum of understanding between the Governments of New Zealand and Australia.