



23 May 2011

ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL:

PUBLIC CENSURE OF SKELLERUP HOLDINGS LIMITED (SKL) BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF NZSX LISTING RULES 3.3.1(c), 3.6.2(b) AND 3.6.2(c)

1. In a determination of the NZ Markets Disciplinary Tribunal (*the Tribunal*) dated 10 May 2011, the Tribunal found that SKL acted in breach of NZSX Listing Rules 3.3.1(c), 3.6.2(b) and 3.6.2(c) (*the Rules*) and as at the date of that determination remained in breach of those Rules.

Background

2. Rule 3.3.1(c) requires a minimum of two Independent Directors on the Board of an Issuer. Rule 3.6.2(b) requires the Audit Committee of an Issuer to have a minimum of three members, and Rule 3.6.2(c) requires that a majority of Audit Committee members be Independent Directors.
3. On 30 June 2010, Mr D Stewart resigned from the SKL Board. The SKL Board then comprised two Independent Directors (Ms E Coutts and Mr D Mair) and two Directors with a Disqualifying Relationship (Sir Selwyn Cushing and Mr J Thompson). SKL sought waivers from NZX Market Supervision (*NZXMS*) from the Rules as it intended appointing Mr Mair its Chief Executive Officer. As a result, Mr Mair would cease to be an Independent Director and the Board of SKL would comprise only one Independent Director.
4. On 15 July 2010, *NZXMS* granted SKL a temporary waiver from the Rules for 3 months, expiring on 15 October 2010. Since 15 October 2010, SKL has failed to comply with the Rules.
5. SKL offered reasons in mitigation for the on-going breach of the Rules which involve commercially sensitive information.

Determination

6. The Tribunal takes the breach of these Rules very seriously. The corporate governance provisions of the Rules are of vital importance to the integrity of the market and to give investor's confidence in the directors who are appointed to represent their interests. In addition, an appropriately comprised audit committee is critical in ensuring that an Issuer maintains a robust audit process.

7. The Tribunal considered that the breach of the Rules by SKL warranted the imposition of a financial penalty at the upper end of the scale for an offence of this nature. While SKL did not dispute the breach, the Tribunal considered that there were a number of aggravating factors including that:
- a. SKL had been in breach of the Rules for far too long – over 9 months including the 3 month waiver period;
 - b. A breach of these Rules for such a length of time is likely to bring both NZX and the market into disrepute;
 - c. SKL has breached more than one Rule and the Tribunal takes the breach of each of these Rules seriously;
 - d. SKL appear to have taken no action before the referral of the matter to the Tribunal to rectify the breaches;
 - e. The Tribunal was not satisfied with the reasons advanced by SKL as to why the appointment of an Independent Director has been delayed for such a significant length of time; and
 - f. SKL had failed to reply within reasonable timeframes to the investigation by NZXMS into the breaches of the Rules.

Penalties

8. The Tribunal has made the following orders:
- a. That a public censure of SKL in the form of this announcement be made;
 - b. That SKL rectify the breaches within 20 Business Days of the date of its decision;
 - c. That SKL pay NZX within 20 Business Days of the date of its decision:
 - i. \$15,000 for the breach of Rule 3.3.1(c);
 - ii. \$5,000 for the breach of Rule 3.6.2(b); and
 - iii. \$5,000 for the breach of Rule 3.6.2(c).
9. That SKL pay NZX, within 20 Business Days of the date of its decision, the actual costs and expenses incurred by the Tribunal and NZX in considering this matter.

Censure

10. The Tribunal hereby publicly censures SKL for its breaches of NZSX Listing Rules 3.3.1(c), 3.6.2(b) and 3.6.2(c).

DATED 23 May 2011

Peter Wilson, Division Chairman, NZ Markets Disciplinary Tribunal