



21 August 2014

PUBLIC CENSURE OF MARSDEN MARITIME HOLDINGS LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF NZX MAIN BOARD LISTING RULE 9.3.1

1. In a determination of the NZ Markets Disciplinary Tribunal (*the Tribunal*) dated 8 August 2014, the Tribunal found that Marsden Maritime Holdings Limited (*MMH*) breached NZX Main Board Listing Rule (*Rule*) 9.3.1.
2. What follows is a high level summary. The facts of this matter and the Tribunal's detailed reasoning are set out in its decision.

Background

3. MMH held its 2013 annual meeting on 18 October 2013. One of the resolutions put to shareholders at that meeting was "to approve an increase in Directors' fees from \$182,600 to \$200,000" (*the Resolution*).
4. Northland Regional Council (*NRC*) holds approximately 53% of MMH's shares. NRC voted in favour of the Resolution.
5. At the date of MMH's 2013 annual meeting, Mr Colin Mitten was a Director of MMH and the Chairman of Northland Inc Limited (*Northland Inc*), a company wholly owned by NRC. Northland Inc is a Council Controlled Organisation and is the Northland region's economic development agency.

Determination

Interpretation of Rules

6. "Associated Person" is broadly defined in Rule 1.8.2 and is intended to capture a wide range of different scenarios in which two parties are associated for the purposes of the Rules.
7. In the context of Rule 1.8.2, the term "relationship" must be given its ordinary meaning - one person does not have to be able to influence another person in order for there to be a "relationship" between or involving them within the meaning of Rule 1.8.2.
8. In the Tribunal's view, an entity (whether or not it is a company) and the chairperson of a company that is wholly owned by that entity have a sufficient connection to constitute a "relationship" for the purpose of Rule 1.8.2.
9. The Tribunal notes that while Rule 1.8.3(a)(iii) only applies where the first person is a company, it does nevertheless indicate that this type of relationship is one that is intended to be caught by the overarching provision of Rule 1.8.2. Rule 1.8.3 is not intended to provide an exhaustive list of scenarios in which association exists nor is it intended to limit the breadth of Rule 1.8.2. Rather, it provides a set of scenarios in which the first person will be associated with the second person.

10. The Tribunal also notes that the test in Rule 1.8.2 is whether the first person *could* be influenced by the second person as a consequence of the relationship. This test does not require influence to have been used in relation to the particular matter.
11. The breadth of the definition of "Associated Person" is acknowledged in Footnote 1 to Rule 1.8. If Issuers are in any doubt as to whether any two or more persons are Associated Persons, they should seek a Ruling from NZX under Rule 1.8.6.

Application of the Rules

12. In the Tribunal's view, a relationship did exist for the purpose of Rule 1.8.2 between NRC and Mr Mitten (who was a director of MMH and the Chairman of Northland Inc) at the time of the 2013 annual meeting.
13. Once a relationship exists, the test in Rule 1.8.2 requires that the first person *could* be influenced in making a decision or exercising a power affecting the Issuer as a consequence of that relationship. In the Tribunal's view, the fact that influence *could* exist as a consequence of a relationship between the relevant parties is sufficient. It is not necessary that the first person would be, or was, influenced in respect of the particular matter in order for them to be an Associated Person.
14. While there is no materiality threshold in Rule 1.8.2, two persons will only be "associated" if one of them could be influenced as a consequence of an Arrangement or relationship between or involving them. To that extent, the relationship between the two persons must be of such a nature that one person could be influenced by the existence of the relationship.
15. Overall, the Tribunal considers that NRC was an Associated Person of a Director of MMH at the time of the 2013 annual meeting and should therefore have been disqualified from voting on the Resolution in accordance with Rule 9.3.1.
16. The Tribunal notes that Issuers can apply for a waiver from the disqualifying provisions in Rule 9.3.1, where, for example, the relationship is immaterial to the relevant resolution or there is no material benefit to the Associated Person arising from the relevant resolution. MMH could, therefore, have sought a waiver permitting NRC to vote on the Resolution.

No Financial Penalty

17. The Tribunal considered that a financial penalty was not appropriate in this case based on the submissions from NZX that:
 - (a) MMH appears to have considered, and held an honest belief, that NRC was not an Associated Person of a Director of MMH; and
 - (b) Under Rule 9.3.5, the Resolution is not impugned on the basis of the breach of Rule 9.3.1.

Orders

18. The Tribunal ordered that MMH be publicly censured in the form of this announcement.
19. No award of costs was made against MMH.

The Tribunal

20. The Tribunal is a disciplinary body independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the market rules.