



17 January 2014

## **ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL**

### **PUBLIC CENSURE OF VETILOT LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF NZAX LISTING RULE 10.5.1**

1. In a determination of the NZ Markets Disciplinary Tribunal ("**Tribunal**") dated 17 January 2014 (see separate announcement made today, 17 January 2014, for the full text of the determination), the Tribunal found that Vetilot Limited ("**VET**") acted in breach of NZAX Listing Rule ("**Rule**") 10.5.1. VET breached Rule 10.5.1 by failing to file and distribute its annual report within four months of the end of its financial year.

#### **Summary**

2. An issuer listed on the NZAX market is required to provide its annual report to the market within four months of the end of the Issuer's financial year, under Rule 10.5.1.
3. VET's financial year-end is 31 March, and accordingly its 2013 annual report was due to be provided to NZX for release to the market by 31 July 2013.
4. As VET did not file its 2013 annual report until 15 August 2013, it breached Rule 10.5.1.
5. As a result of the breach, trading in VET's securities was suspended from 8 August 2013 until 15 August 2013.
6. VET did not provide an update or explanation to the market concerning the delay in finalising the annual report until a considerable period of time after the annual report had been released and the suspension in the trading of its securities had been released.
7. The Tribunal has stated in a number of determinations that it is of particular importance that an Issuer's reporting deadlines are met. Delays in the provision of material information, or audited financial statements, are likely to unnerve investors and damage confidence both in the Issuer's securities and in the market's integrity. This loss of confidence will be exacerbated where the absence of information is accompanied by a trading halt which lasts for any extended period. In addition, the Tribunal has previously noted that it expects Issuers who are going to miss a financial reporting deadline, to notify NZX and the market of a likely delay as soon as it becomes apparent.

#### **Determination**

8. The Tribunal was dismayed to find the company in breach of Rule 10.5.1 for a second time in a relatively short period – with VET (or IRG as it then was) having already been the subject of disciplinary action by the Tribunal for breaches of obligations under the Rules with respect to periodic reporting in March 2011. It is

completely unsatisfactory that VET has again failed to release its annual report when due.

9. The only mitigating factor in favour of VET is that the breach continued for approximately two weeks. By contrast, the Tribunal considered the following aggravating factors:
  - a. The annual report was due to be released by 31 July 2013 but was released to the market on 15 August 2013. Accordingly the market was uninformed for approximately two weeks, and trading in VET was suspended for approximately one week.
  - b. VET did not provide an update or explanation to the market concerning the delay in finalising the annual report. The Tribunal has previously noted that it expects Issuers who are going to miss a financial reporting deadline, to notify NZX and the market of a likely delay as soon as it becomes apparent.
  - c. VET's explanation is that the delay was a result of VET disposing of its operating assets and placing a number of its subsidiaries into liquidation in the financial year ended 31 March 2013. NZX does not consider this to be a sufficient explanation for VET failing to meet its periodic reporting obligations.
  - d. NZX first wrote to VET in respect of the Annual Report on 13 August 2013. VET did not provide a response to that letter, despite NZX following up with VET on multiple occasions (via both email and phone).
  - e. VET (or IRG as it then was) has already been the subject of disciplinary action by the Tribunal for breaches of obligations under the Rules with respect to periodic reporting.
10. In considering the appropriate penalty to impose in this case, the Tribunal noted that:
  - a. Having regard to the range of penalties imposed in other cases, its assessment of the seriousness of the breach and the size of VET, the Tribunal has determined that the appropriate starting point for a fine for a breach of Rule 10.5.1 is now \$30,000.
  - b. In the present case a \$30,000 fine is regarded by the Tribunal as lenient when the aggravating factors affecting VET's conduct are considered. Whilst some other cases have involved much longer trading halts the Tribunal considers that the aggravating factors, particularly those of repeat offending, the absence of market updates or explanations and the failure to respond to NZX enquiries in this case make it broadly comparable with those where larger fines were imposed.
  - c. In this case, the fact that the breach continued for approximately two weeks (when compared with continuing breaches of several months) and VET's relatively small size are the only factors that stand in the way of imposing a fine that would have been higher.
  - d. The Tribunal is also troubled by VET's lack of response to NZX's statement of case and the apparent parallels with the standard of responding by the (then) the IRG determination in March 2011.

## **Orders**

11. The Tribunal made the following orders:

- a. VET be publicly censured;
- b. That VET pay the NZX Discipline Fund \$40,000 by way of penalty for the breach of Rule 10.5.1;
- a. That VET pay the actual costs and expenses incurred by the Tribunal in considering this matter; and
- b. That VET pay the actual costs and expenses incurred by NZX in relation to this matter.

## **Censure**

The Tribunal hereby publicly censures VET for its breach of Rule 10.5.1.

## **The Tribunal**

The Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the NZMDT 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.

Dated 17 January 2014