



18 December 2020

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

### **PUBLIC CENSURE OF AIR NEW ZEALAND LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACH OF NZX LISTING RULE 3.1.1**

1. The NZ Markets Disciplinary Tribunal (**Tribunal**) has approved a settlement agreement between NZX Limited (**NZX**) and Air New Zealand Limited (**AIR**) dated 9 December 2020 (**Settlement Agreement**).

#### **Summary**

2. AIR is a New Zealand incorporated company, with its ordinary shares quoted on the NZX Main Board. AIR is a Listed Issuer and is therefore bound by the NZX Listing Rules (**Rules**).
3. After an investigation NZX found that AIR had breached Rule 3.1.1 by:
  - a. Not releasing Material Information promptly and without delay upon becoming Aware of it.
  - b. Not releasing Material Information via NZX's market announcement platform (**MAP**) before releasing it to the public or any other party.

#### **Background**

4. Towards the end of February 2020, COVID-19 began seriously impacting markets in New Zealand and internationally. While many Issuers in New Zealand were affected by the COVID-19 pandemic, those Issuers involved in tourism and travel such as AIR were affected particularly badly.
5. On 8 April 2020, NZX published guidance to Issuers on the approach to disclosure of Material Information under Rule 3.1.1 in light of the COVID-19 pandemic, including in respect of assessing whether specific information was Material in the circumstances (**NZX COVID-19 Guidance**).
6. The NZX COVID-19 Guidance specifically indicated that Issuers were expected to assess whether decisions about operational or capital expenditure, including reducing labour cost, would be likely to have a material effect on the price of the Issuer's securities and therefore require disclosure under Listing Rule 3.1.1.
7. During the period from February to June 2020, AIR released a number of announcements concerning the implications of the COVID-19 pandemic on its business via MAP. These announcements contained information on reducing its costs, including an announcement on 26 May 2020 (which AIR flagged as comprising Material Information), in which AIR stated that it had made labour reductions of approximately 30% or 4,000 employees, which it expected to drive annualised savings of \$350 to \$400 million.

8. From early afternoon on Friday 5 June 2020, the CEO of AIR communicated information to all AIR staff, Airpoints customers, and selected media, outlining a three-phase plan for the 800-day period until August 2022 (**CEO's Message**). The three phases were labelled Survive, Revive, and Thrive. A key facet of the Survive phase was AIR's plans to further reduce its labour costs (in addition to those announced on 26 May 2020) by around \$150 million, including by implementing reduced hours, leave without pay, job sharing, voluntary exits, and potentially redundancies. This release was not announced via MAP. Instead it was released sequentially to all AIR staff, to selected media, and to New Zealand-based Airpoints members between 12.46pm and 3.26pm on the afternoon of 5 June. The AIR CEO also conducted several media interviews regarding the CEO's Message on the afternoon of 5 June 2020.
9. A materially similar announcement to the CEO's Message was released via MAP at 8.30am on Monday 8 June 2020, following contact from NZX.
10. NZX investigated the CEO's Message for the purpose of assessing whether any part of it constituted Material Information. As a Listed Issuer AIR is required under Rule 3.1.1:
  - a. To promptly and without delay release Material Information through MAP; and
  - b. Not to disclose any Material Information to the public, any other stock exchange, or any other party without first releasing the Material Information through MAP.
11. After investigation, NZX concluded that the labour cost reduction target mentioned in the CEO's Message was Material Information, and so AIR had breached its obligations under Rule 3.1.1 by not releasing Material Information promptly and without delay and by releasing this information through means other than MAP. AIR remedied the breach by publishing its announcement through MAP before the market opened on the morning of 8 June 2020.
12. As contextual factors, it is noted that:
  - a. AIR has provided frequent market updates relating to the impact of the COVID-19 pandemic on AIR and its operations; and
  - b. the breach took place in the context of unique and extraordinary pressures on the business as a result of the COVID-19 pandemic. The uncertainty surrounding the duration, scale and impact of the pandemic, and the rapid changes required to respond to evolving Government measures, have had a particularly significant impact on the airline industry.

### **Determination**

13. AIR accepts the findings by NZX that the CEO's Message incorporated Material Information, and so in releasing the CEO's Message to stakeholders and media prior to release via MAP AIR breached its obligations under Rule 3.1.1. AIR accepts that a penalty should be imposed by the Tribunal for these breaches.
14. The Tribunal considers that a breach of the Rules relating to continuous disclosure is a breach of a fundamental obligation. Compliance with these Rules by Issuers is essential in maintaining market integrity and investor confidence.

15. Accordingly, the Tribunal considers that the breaches are serious and fall within Penalty Band 3 of Procedure 9 of the Tribunal Procedures. Under Penalty Band 3, a penalty of between \$0 and \$500,000 may be imposed.
16. The Tribunal considered that there were aggravating factors in this case:
  - a. AIR did not observe its own Continuous Disclosure Policy when finalising the 5 June 2020 communication, nor did it refer the communication to its Disclosure Committee. NZX considers that had AIR's internal Policy been followed, this breach would have been prevented.
  - b. NZX had published specific guidance in respect of disclosure in light of the COVID-19 pandemic shortly before the breach occurred, so AIR was on notice of the potential materiality of a labour cost reduction operating cost decision. Further, AIR had released previous updates via MAP on reducing its labour costs.
  - c. NZX advise that 2,520 trades in AIR shares occurred on the afternoon of 5 June 2020 while there was information asymmetry in the market. AIR's share price rose significantly on 8 June 2020, although NZX considers that a pattern of price surges within the global aviation industry across 5 to 8 June 2020 contributed, in part, to this movement.
17. The Tribunal also considered that there were mitigating factors:
  - a. AIR did not itself benefit financially from the breach.
  - b. Once the issue was identified, it was promptly addressed (at 8.30am on 8 June 2020, before market open). The total duration of the information asymmetry was short (4 hours and 44 minutes).
  - c. NZX considers that there is no evidence of any financial benefit or financial harm caused by asymmetrical trading on the afternoon of 5 June 2020.
  - d. AIR does not have any record of breaches of Rule 3.1.1 and has a good compliance history.
  - e. AIR has cooperated with NZX during the course of the investigation and has entered into an early settlement of NZX's referral to the Tribunal.
  - f. The breach appears to have been inadvertent, although AIR did not follow its own Continuous Disclosure Policy.
18. The Tribunal has taken into consideration in its decision to approve the settlement that the breach occurred during a period of significant uncertainty, particularly for those in the airline industry, arising from the COVID-19 pandemic. Taking the aggravating and mitigating factors into account, the Tribunal considers that while the breach comes within Penalty Band 3 of its procedures, a penalty at the low end of the available range, together with a public censure, is appropriate.

## **Penalties**

19. NZX and AIR have agreed that:
  - a. A public censure by the Tribunal will be made;
  - b. AIR will pay to the NZX Discipline Fund a financial penalty of NZ\$40,000 for the breach of Rule 3.1.1;

- c. AIR will pay the costs of the Tribunal (plus GST, if any); and
- d. AIR will pay NZX's costs in bringing this proceeding.

**Approval**

- 20. The Settlement Agreement is approved by the Tribunal pursuant to NZ Markets Disciplinary Tribunal Rule 8, and as such, the Settlement Agreement is the determination of the Tribunal.

**Censure**

- 21. The Tribunal hereby censures AIR for a breach of Rule 3.1.1.

**The Tribunal**

- 22. The Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the NZ Markets Disciplinary 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 NZX market rules.

**ENDS**