

Memorandum of Understanding

between

Financial Markets Authority Te Mana Tatai Hokohoko

and

NZX Regulation Limited



Memorandum of Understanding

Dated 11 May 2023

Between **Financial Markets Authority (FMA)**

And **NZX Regulation Limited (NZ RegCo)**

Background

1. The Financial Markets Authority Te Mana Tatai Hokohoko (**FMA**) is an independent Crown entity established by section 6 of the Financial Markets Authority Act 2011 (**FMA Act**) with statutory functions under the FMA Act and the Acts listed in Schedule 1 of the FMA Act.
2. The FMA's main objective is to promote and facilitate the development of fair, efficient and transparent financial markets. Under the FMA Act, the FMA has general information gathering and enforcement powers, including monitoring, supervision, investigation, and enforcing compliance with securities, financial reporting and company laws (as they apply to financial services and securities markets). The FMA's statutory powers and duties involve regulation of licensed financial product markets and their operators (including NZX Limited (**NZX**)), financial advisers, brokers, licensed supervisors and issuers, including issuers of KiwiSaver and superannuation schemes.
3. NZX Regulation Limited (**NZ RegCo**) is a limited liability company incorporated under the Companies Act 1993 on 12 August 2020 and duly registered in the Companies Register with the company number 8072017 and NZBN: 9429048500548.
4. NZ RegCo has been established to undertake NZX's regulatory functions under NZX's and New Zealand Clearing and Depository Corporate Limited's market rules, including monitoring and enforcing compliance with those rules. NZ RegCo works with the FMA as a co-regulator under the Financial Markets Conduct Act 2013 (**FMCA**) in relation to continuous disclosure, market manipulation and insider trading.
5. The parties share common interests and together promote confidence in New Zealand's financial markets. The parties wish to agree a framework for engagement and co-operation, to assist each other in achieving their objectives and to facilitate open discussion and flow of information between the parties.
6. This memorandum of understanding (**MOU**) sets out the framework for engagement and co-operation between the FMA and NZ RegCo, which takes into account their complementary regulatory roles.

Purpose

7. The purpose of this MOU (**Purpose**) is to formalise the relationship of cooperation between the FMA and NZ RegCo, and to:
 - a. record the parties' commitment to work together for the efficient regulation of the New Zealand financial system;
 - b. record the basis by which the parties will endeavour to assist each other in the performance of their respective functions;
 - c. agree the manner by which the parties will work together on matters of mutual interest;
 - d. allow for the sharing of information needed for the exercise of the regulatory functions of the parties in a more efficient and timely manner; and
 - e. set out the framework and responsibilities of each of the parties.

Principles

8. The parties commit to:
 - a. communicate in an open, honest and timely manner;
 - b. respond promptly to requests by the other party in scope of this MOU;
 - c. consult on matters of common interest;
 - d. exchange information relevant to this MOU;
 - e. discuss initiatives and ideas to improve the efficiency and effectiveness of the parties' functions, particularly in the areas of potential duplication of monitoring and regulatory functions;
 - f. share training and staff development opportunities; and
 - g. coordinate activities that will be mutually beneficial for the parties.
9. The FMA and NZ RegCo anticipate that cooperation will be primarily achieved through on-going information sharing, supplemented when necessary by more in-depth cooperation. This MOU intends to support such cooperation as well as to facilitate the exchange of non-public information where necessary.

Relationship Management

10. Engagement between the parties will be governed on two levels – a Regulatory Cooperation Oversight Forum (**Oversight Forum**) and a Regulatory Operating Forum (**Operating Forum**).
11. Oversight Forum
 - a. The parties will establish the Oversight Forum.

- b. The Oversight Forum will comprise:
 - i. the NZ RegCo Chief Executive Officer;
 - ii. the FMA Executive Director of Response & Enforcement;
 - iii. the FMA Director, Specialist Supervision & Response;
 - iv. the FMA Head of Perimeter & Response; and
 - v. such other persons as otherwise agreed by the parties.
- c. The Oversight Forum will aim to meet on a six-monthly basis each calendar year.
- d. In addition to its regular meetings, the Oversight Forum will convene at the written request of either party. If a party makes a request for an out of cycle meeting, the party making that request will provide the other with reasons for requesting the meeting and a draft agenda for the meeting.
- e. The responsibilities of the Oversight Forum include:
 - i. reviewing the operation of this MOU, and the protocols developed under this MOU (**Protocols**), as well as recommending any amendments considered necessary or desirable to support the Purpose;
 - ii. discussing strategic initiatives and areas of focus relating to the parties' regulatory decision-making, infrastructure priorities, and processes, relevant to the Purpose;
 - iii. acting as a forum to discuss regulatory issues of mutual concern;
 - iv. acting as a forum to discuss broader relationship issues, including any that may arise out of this MOU;
 - v. acting as a forum to discuss issues escalated to it by the Operating Forum; and
 - vi. ensuring outcomes of its deliberations, together with the minutes of its meetings, are documented.

12. Operating Forum

- a. The parties will establish the Operating Forum.
- b. The Operating Forum will comprise:
 - i. the NZ RegCo Head of Issuer Regulation;
 - ii. the NZ RegCo Head of Participant Compliance;
 - iii. the NZ RegCo Head of Surveillance;
 - iv. the NZ RegCo Head of Market Conduct;
 - v. the FMA Manager, Market Conduct;
 - vi. the FMA Manager, Investor Information; and
 - vii. such other persons as otherwise agreed by the parties.
- c. The Operating Forum will aim to meet three times each calendar year.
- d. In addition to its regular meetings, the Operating Forum will convene at the written request of either party. If a party makes a request to convene the Operating Forum, the party making that request will provide the other with reasons for requesting the meeting and a draft agenda for the meeting.

- e. The responsibilities of the Operating Forum include:
 - i. managing the implementation of this MOU and the Protocols, the day-to-day dealings between the parties and recommending to the Operating Forum any amendments to this MOU and/or the Protocols that will assist operations under it, or which are considered necessary or desirable to support the Purpose;
 - ii. discussing issues relating to regulatory oversight of NZX's licensed markets, and the participants operating on them;
 - iii. discussing work either party is undertaking in respect of which the other party may have an interest, including current or potential investigations and referrals;
 - iv. discussing issues escalated by NZ RegCo or FMA staff for the consideration of the Operating Forum; and
 - v. ensuring outcomes of its deliberations, together with the minutes of its meetings, are documented.

Interaction

- 13. The parties will develop Protocols covering the most significant matters on which the parties engage, including:
 - a. live market issues;
 - b. continuous disclosure (investigations and waiver/rulings);
 - c. insider trading, market manipulation, surveillance and investigation;
 - d. substantial product holder, and director and officer's disclosures under the FMCA;
 - e. disciplinary actions and suspected significant contraventions;
 - f. complaints or information concerning NZX Participant conduct;
 - g. complaints or information concerning Listed Issuer conduct;
 - h. review of regulated offer documents;
 - i. direct listings and reverse listings;
 - j. surveillance data requests;
 - k. FMA information, assistance or access requests;
 - l. media statements; and
 - m. any other matters as agreed by the parties.

- 14. The Protocols have been developed on the basis of the following considerations:
 - a. the responsibility and role of each party; and
 - b. the infrastructure and resources of each party.

- 15. Any proposed amendment to the Protocols requires approval by the Oversight Forum.

Confidential information

16. For the Purpose of this MOU and the Protocols and subject to the remainder of this clause, **“Confidential information”** is information relating to any engagement between the parties pursuant to this MOU and all information provided by a party in accordance with this MOU and/or the Protocols.
17. Confidential Information excludes information that:
 - a. is in or comes into the public domain through no fault of the relevant party or any of its directors, officers, employees, agents or contractors;
 - b. is independently acquired or developed by a party without breaching any of its obligations under this MOU or at law, and without the benefit or use of any Confidential Information disclosed by the other party;
 - c. was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or
 - d. is disclosed to the relevant party by a third party having no obligation of confidence in relation to that information.
18. Each party agrees:
 - a. to keep confidential all Confidential Information and not disclose that Confidential Information to a third party unless:
 - i. it has obtained the prior consent of the other party to such disclosure of the Confidential Information; or
 - ii. disclosure is required, authorised or permitted by law; or
 - iii. the information is disclosed in the course of, and for the purposes of, enforcement activity by that party; and
 - b. to use the Confidential Information solely for the purposes of performing its functions and the Purpose.
19. When Confidential Information is exchanged between the parties, both parties agree to treat the information as the disclosing party would, and commit to:
 - a. keep the information secure and protected; and
 - b. have suitable protections in place for maintaining the confidentiality of the information; and
 - c. exercise the utmost control with the purpose of preventing non-intended disclosure; and
 - d. only allow the recipient party's authorized employees or directors to access the information relevant to performance of the party's functions and the Purpose.
20. The parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other party, or which the disclosure of, would amount to a breach of any privacy obligations or legislation or governing rules that apply to that party.

21. Nothing in this MOU will prevent the disclosure of information that is required or permitted to be disclosed by law. If either party is required by law to disclose information obtained under this MOU or intends to disclose information obtained under this MOU which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing party will notify the other party in writing as soon as practicable unless by law either party is able to disclose information without informing the other party.

Term, Review and Termination

22. This MOU will continue in effect unless is terminated in accordance with clauses 23 and 24.
23. Variation or termination of the MOU and/or any of its Protocols, and/or the addition of new Protocols, may be undertaken by the mutual agreement of the parties and in writing.
24. Either party may terminate the MOU by giving three months' written notice to the other party.
25. Upon termination of this MOU, the parties will meet to discuss and agree the process by which joint initiatives or Protocols developed under this MOU will be terminated. This including ensuring, to the maximum extent possible, that the parties' respective interests, objectives and on-going performances of their respective functions are not prejudiced by the termination of the MOU beyond the extent of any prejudice necessarily caused by virtue of the termination.

Costs

26. Unless the parties mutually determine otherwise, the cost of signing this MOU and meeting its commitments will be meet by the party incurring the cost.

Disputes

27. Where there is a disagreement, issue of difference in relation to the interpretation or the performance of this MOU, the parties will seek to resolve it within the Oversight Forum.

Legal

28. Nothing in this MOU will make either party liable for the actions of the other or constitute any legal relationship between the parties. This MOU does not create legally enforceable rights or obligations on either party.
29. Nothing in this MOU is intended to limit or restrict the exercise of the parties' functions and duties, or it will affect the independence of the parties or it will require the parties to act in a particular manner.
30. This MOU is to be read subject to any enactment, regulation or rule, Cabinet Directive or Chief Executive instruction.
31. Where there are changes to Government Policy which affect the purpose and scope of this MOU, each party agrees to inform the other of those changes at the earliest opportunity and re-negotiate any aspects of the MOU if necessary.

32. This MOU repeals and replaces the MOU between the FMA and NZX Limited dated 28 January 2015.

Signed by the Chief Executive of the Financial Markets Authority

A handwritten signature in black ink, appearing to be 'S. Barrass', written over a horizontal line.

Samantha Barrass

Date: 8/5/2023

Signed by the Chief Executive of NZX Regulation Limited

A handwritten signature in black ink, appearing to be 'Joost van Amelsfort', written over a horizontal line.

Joost van Amelsfort

Date: 11/5/2023