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Overseas Investment Act Reform
The Treasury
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By email: overseasinvestment@treasury.govt.nz

NZX Limited Submission: Reform of the Overseas Investment Act 2005

1. NZX Limited (**NZX**) refers to the consultation document '*Reform of the Overseas Investment Act 2005: Facilitating productive investment that supports New Zealanders' wellbeing'* (**Consultation Document**). NZX would like to thank The Treasury for the opportunity to provide input into the second stage of this important reform of the Overseas Investment Act 2005 (**Act**).

2. NZX is a licensed market operator of the NZX Securities Markets[1] and the NZX Derivatives Market, and is New Zealand's Exchange. The NZX Securities Markets comprise 196 listed issuers with a total market capitalisation of $181.2 billion[2]. NZX supports vital sectors of New Zealand's economy and lowers the cost of capital for listed New Zealand companies, delivering $2.4 billion of value to the New Zealand economy[3]. Companies listed on the NZX Main Board within the S&P/ NZX 50 contributed $24.6 billion GDP for the financial year ended 2017.

3. NZX is regulated under the Financial Markets Conduct Act 2013 (**FMCA**) by the Financial Markets Authority (**FMA**) an independent Crown entity with responsibility to the Minister of Commerce.

Purpose of regulating overseas investment

4. NZX supports appropriate regulation of overseas investment to enable a productive, sustainable and inclusive economy. As noted in the Consultation Document, New Zealand is a small domestic market which needs international investment to support productivity and to enable access to global distribution networks. NZX agrees that such investment needs to be appropriately regulated, to mitigate the risk to New Zealand that

[1] The NZX securities markets comprise the NZX Main Board, NZX Debt Market, NZAX and the NXT Market. NZX also operates the Fonterra Shareholders' Market which is a private market on which shares in Fonterra Co-operative Group Limited may be traded by Fonterra farmers.

[2] Please refer to NZX's monthly shareholder metrics for April 2019, available here.

[3] Refer to the New Zealand Institute of Economic Research Report "The economic contribution of NZX" dated February 2018.

its core assets are either used inefficiently or New Zealand's wealth is distributed off-shore.

5. NZX considers that the current requirements of the Act are too restrictive in the New Zealand context, and do not reflect the approach taken internationally. We understand that Singapore does not place general restrictions on foreign investment[4], rather this is regulated on a sectoral basis (telecommunications, media, banking and land). This is arguably also the case in New Zealand for certain strategic assets where stronger control restrictions also exist in separate legislation, as discussed in paragraph 28 below. Similarly the concept of 'foreign investment' or a 'foreign investor' does not apply in the United Kingdom, where the regulation of merger activity is conducted by reference to the general public interest[5].

Considerations relevant to our submission

6. NZX's submission focusses on who should be subject to the consent regime under the Act. We consider that companies that are incorporated in New Zealand and listed on a NZX Securities Market (**NZX Issuers**) are fundamentally New Zealand companies, and should be subject to differential treatment under the Act.

7. These companies choose to list on NZX (rather than offshore) because they are proud of their New Zealand heritage, they want to be as Kiwi as they can possibly be. NZX Issuers see a listing on NZX as a mechanism to connect to New Zealand investors and employees, to be included in New Zealand funds and indices, and to contribute to the New Zealand economy. The broad application of the Act to these New Zealand companies is contrary to their expectations when listing on New Zealand's stock exchange and can therefore be a source of frustration for them.

8. NZX Issuers operate in a highly regulated environment, and are subject to obligations under the NZX Listing Rules, the Companies Act, the FMCA and the Takeovers Code. Additional detail in relation to relevant aspects of the regulatory environment in which NZX Issuers operate is set out in Appendix 1 to this submission.

9. These obligations ensure that there is both visibility of foreign ownership and monitoring of increases in control, and that shareholders approve major transactions and related party transactions undertaken by NZX Issuers, along with certain transactions that materially increase effective control of an NZX Issuer. NZX Issuers are also FMC reporting entities, and are required to file financial statements that provide transparency of the tax they contribute to the New Zealand economy in addition to the other NZX disclosure requirements. NZX Issuers are also encouraged to include disclosure in their annual reports of their sustainability practices (including their impact on employees, stakeholders and the broader New Zealand economy). This level of transparency, which is driven by the NZX listing, is a benefit to New Zealand as it facilitates a high degree of tax compliance, and promotes consideration of broader contributions by these companies to New Zealand. This supports a view that an NZX listing should be treated by the Government as a preferred vehicle for holding assets in New Zealand.

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[4] Investment Laws of ASEAN Countries: A comparative review, IISD Report, December 2017.

[5] Foreign Investment Review, Lexology, Preiskel & Co LLP.

10. These obligations are established and enforced by New Zealand regulators, primarily the FMA and NZX. The FMA enforces the substantial product holder regime prescribed by the FMCA, and regulates NZX's conduct as a licensed market operator, including through the approval of amendments to the Listing Rules. NZX is the frontline regulator of the NZX Securities Markets and is subject to a statutory control limit that prevents any one holder having the ability to control more than 10% of NZX's voting rights.

11. While NZX Issuers are able to seek exemption from the Act's requirements on an individual basis, this process is inefficient. We support amendments to the regime that both appropriately enshrine class exemptions on the basis of clear and objective criteria, and dis-apply operative provisions on an appropriate basis. The current scope and framework of the Act currently imposes disproportionate compliance costs on NZX Issuers and their shareholders, thereby inhibiting overseas investment in New Zealand that would otherwise enhance the development of a productive New Zealand economy.

12. We also note that there are certain practical difficulties for NZX Issuers in complying with the Act and some of the proposed reform options. These difficulties arise because NZX Issuers are widely held by a diverse pool of shareholders that are constantly changing. In addition, investments in NZX Issuers are commonly held through custodial or nominee companies, making it difficult for NZX Issuers to identify the domicile of their underlying investor base.

13. We have surveyed all of our listed issuers to gauge their support for some of the matters raised in this submission, and received 29 responses. 83% of those survey respondents agreed that the application of the Act to NZX Issuers imposed disproportionate compliance costs, and all respondents supported differential treatment of NZX Issuers on the basis of the regulatory environment in which they operate.

14. Our response to the specific options raised in the Consultation Document is set out in further detail below.

Who needs consent to invest in sensitive assets?

15. The Consultation Document proposes a number of options to reform the definition of 'overseas person', to ensure that fundamentally New Zealand companies are not subject to the significant compliance cost of seeking consent under the Act, before investing in sensitive assets.

16. The current definition of 'overseas person' applies too broadly, and potentially applies to all companies listed on NZX, including in particular those within the S&P/NZX 50 Index[6] which covers approximately 90% of the New Zealand equity market by capitalisation (reflecting companies who participate in all sectors of New Zealand's economy). These companies are highly liquid and their investors typically include custodial and nominee holders.

Alternative options: definition of 'overseas person'

17. In relation to the proposed reforms to the definition of 'overseas person' for bodies corporate, NZX wishes to propose two alternative options from those set out in the

[6] More information in respect of the S&P/NZX 50 Index is available here.

Consultation Document. The alternative options relate to NZX Issuers, which are New Zealand incorporated companies that are listed on a NZX Securities Market.

Alternative option 1

Exclude NZX Issuers from the definition of 'overseas person'.

Such an approach would:

- reflect that NZX Issuers are fundamentally New Zealand companies, with a strong economic and physical connection to New Zealand;
- take account of the regulatory environment in which NZX Issuers operate (described in detail in Appendix 1 to this submission), which:
  - ensures increases in control are transparent and monitored;
  - requires shareholder approval for acquisitions or divestments that would significantly change the nature of the NZX Issuer's business or exceed 50% of the average market capitalisation of the NZX Issuer; and
  - requires shareholder approval for a related party transaction, which would include a material transaction between a NZX Issuer and a 10% (or more) shareholder; and
- align with the purpose of the Act, and create a bright-line standard which would be simple to apply.

Alternative option 2

Exclude NZX Issuers from the definition an 'overseas person', unless one overseas person (together with its associates) holds greater than 25% of the shares of an NZX Issuer.

Such an approach would be appropriate because:

- it addresses the conceptual deficiency in the current definition (which presumes that a diverse overseas shareholder base will vote in the same manner to exercise negative control, despite no connection or association existing between those overseas shareholders);
- it leverages the substantial product holder regime and Takeovers Code (described in detail in Appendix 1 to this submission), which respectively provide transparency around shareholdings of 5% or more and protections for increases in control;
- it promotes the purposes of the Act, by not requiring NZX Issuers to obtain consent under the Act unless they have a significant international connection; and
- it will be simple for NZX Issuers to comply with.

Alternative options - further considerations

We note that the introduction of either alternative option 1 or alternative option 2 above, could be supported by a call-in power (on the basis of clearly defined criteria), to enable the Overseas Investment Office (**OIO**) further flexibility to ensure appropriate oversight of investments in sensitive New Zealand assets by overseas persons.

Consultation Document options: definition of 'overseas person'

18. As noted in paragraph 13 above, NZX surveyed listed issuers in relation to the proposed reform of the definition of 'overseas person'. Survey respondents clearly supported NZX's alternatives options (described in paragraph 17 above), over option 2 that is proposed in the Consultation Document, with 90% of respondents favouring the alternatives proposed by NZX.

19. While we favour the alternative options outlined in paragraph 17 above, we also wish to make the following submissions in relation to the proposed reform options to the definition of 'overseas person' that are outlined in the Consultation Document, in case these options are further progressed.

20. Of the options proposed in the Consultation Document, we support option 2. Under this option, an NZX Issuer would be regarded as an 'overseas person' where overseas persons collectively hold 'substantial holdings' (being holdings of 5% or more) in 'control rights' that cumulatively exceed 25%.

21. We support option 2, as it leverages a well understood existing regime that provides visibility of the ownership of NZX Issuers, and reduces uncertainty for NZX Issuers in determining their compliance with the Act's requirements.

22. We recommend that option 2 is implemented for NZX Issuers, but not for other bodies corporate, as this option leverages the substantial product holder regime set out in the FMCA which only applies to listed issuers.

23. If this option is implemented, we suggest that the reference to 'control rights' is replaced with the FMCA's 'relevant interest' test that underpins the substantial product holder regime. This test is widely understood and includes legal and beneficial share ownership, along with the right to control the votes attached to financial products. We note that the term 'control rights' appears to be undefined n the Consultation Document.

24. In order for NZX Issuers to practically be able to comply with option 2, the legislation should be drafted to clarify that NZX Issuers can rely on substantial product holder notices filed under the FMCA regime, in order to determine whether they are an 'overseas person'.

25. We do not support option 1 (which would raise the ownership threshold required to trigger the definition to 49%), as it will not alleviate the practical difficulties faced by NZX Issuers in determining underlying beneficial ownership.

26. We consider that option 3 (which reflects option 2 overlaid with a requirement to consider the distribution of economic returns to overseas persons) needs further refinement, if it is to be considered further.

27. In particular, we are concerned about the ability for NZX Issuers to determine where economic returns are distributed (given that custodial holders often represent diverse underlying beneficial interests). It is also unclear whether the definition of economic returns in option 3 would be confined to a consideration of dividend payments. We note that there can be a significant time period between dividend payments, and that an NZX Issuer's shareholder base can change rapidly. We therefore suggest that the distribution of economic returns at a point in time, is not the correct test to determine whether an NZX Issuer is an 'overseas person'. We note that if this test is intended to exclude KiwiSaver schemes from the definition of 'overseas person', that this should be more expressly stated.

28. As a more general comment, we note that the alternative options we have proposed in paragraph 17 above, or any of the options proposed in the Consultation Document, could be supported by excluding from the regime NZX Issuers who are subject to control restrictions under their constitutions[7] reflecting their strategic importance to New Zealand, or that are substantially government owned. These NZX Issuers are already subject to more onerous control restrictions, and the obligations under the Act add additional complexity and cost, without providing added protection.

29. We also note that some NZX Issuers may be unit trusts and recommend that consideration is given to the operation of section 7(2)(f) of the Act when the definition of 'overseas person' is amended.

Tipping Point – consent for acquirer

30. Currently, if an overseas person wishes to acquire shares of an NZX Issuer who invests in sensitive land, and that acquisition results in more than 25% of the NZX Issuer being held in aggregate by overseas persons, then the acquirer of the shares needs to obtain consent for the acquisition.

31. As noted in paragraph 17, we recommend an amendment to the definition of 'overseas person' such that NZX Issuers are excluded from the definition, this would also remove the need for 'tipping point' consent for investors in NZX Issuers. We consider that this proposal would address The Treasury's concerns around the tipping point requirement because it would:

- leverage the existing regulatory framework that applies to NZX Issuers that enables visibility of ownership (through the substantial product holder regime) and monitoring of increases in control (through the Takeovers Code);
- prevent the Act from dis-incentivising overseas investment, particularly for NZX Issuers close to the current 'overseas person' ownership threshold, who have a diverse and continuously changing shareholder base. Currently the Act potentially requires many acquirers to seek consent for small holdings in such NZX Issuers, even where their interest is only held for a short period of time; and

[7] For example: clause 2 of the First Schedule of Chorus Limited's Constitution prevents a person from holding a relevant interest in 10% or more of Chorus Limited's voting shares and requires that no person who is not a New Zealand national may hold a relevant interest in 49.9% or more of Chorus Limited's voting shares without Crown consent.

- remove the uncertainty (and disproportionate compliance costs) for acquirers in determining whether consent is required for small incremental acquisitions.

32. The second option we describe in paragraph 17 of this submission would have a similar effect on the concerns around 'tipping point' consent, albeit to a lesser degree.

33. Of the options outlined in the Consultation Document, we support option 3. This option would require consent for an acquisition, only when the acquisition would result in an acquirer becoming a substantial product holder of an NZX Issuer (with the current treatment continuing to apply to non-NZX Issuers). We support this approach as it leverages a well understood existing regime that provides visibility of the ownership of NZX Issuers, and reduces uncertainty for NZX Issuers in determining their compliance with the Act's requirements.

Incremental investments in shareholdings

34. Currently an overseas person must obtain consent for additional incremental investments in sensitive assets (which includes shares).

35. While there are some exemptions from these requirements, we agree that these exemptions are too narrow, in particular because: additional consent is required for small incremental increases (below the Takeovers Code control thresholds); additional consent is required where control increases due to a corporate action (outside of the control of the holder); indirect increases by related companies requires additional consent in certain circumstances; and, further consent is required where the asset becomes sensitive over time.

36. We note that our proposal to exclude NZX Issuers from the definition of 'overseas person' as described in paragraph 17, above, would address these concerns for investments in NZX Issuers, and would be appropriate for the reasons set out above. In particular, because the Takeovers Code regulates increases in control of NZX Issuers, and there are additional protections under the NZX Listing Rules. In this regard, we note that NZX Issuers who are not Code Companies, require shareholder approval before issuing, acquiring or redeeming shares, where that transaction would result in a holder (and its associates) materially increasing their ability to increase effective control over the NZX Issuer.

37. We also support the proposal noted in option 1 of the Consultation Document, that the operative provisions of the Act are amended so that small incremental increases do not trigger a consent requirement, unless a Takeovers Code control threshold is exceeded.

Screening of portfolio investors

38. Currently certain exemptions exist in relation to portfolio investors (professional investors, including certain KiwiSaver and other schemes) who are designated by Regulations made under the Act. The exemption enables an entity (such as an NZX Issuer) to exclude interests held by portfolio investors when determining whether it is an 'overseas person' under the Act.

39. We consider that it is appropriate for NZX Issuers to have the ability to access foreign investment provided by portfolio investors, and support the introduction of a class exemption regime.

40. We agree that the current exemption process is inefficient, as it requires designation by Regulation, and uncertain, as no legislative criteria exist to inform the determination of whether an entity is a 'portfolio investor'. We consider that the class exemption could be framed by reference to alternative combinations of the factors set out in options 1 to 3 of the Consultation Document.

41. We consider that there is some merit in option 1, which defines the eligibility criteria for the exemption based on the portfolio investor's behaviour. We recommend that these criteria are more carefully refined, and tied to the investment mandate of a portfolio investor as stated in its Statement of Investment Policies and Objectives (**SIPO**) and voting policy.

42. All managers of registered schemes under the FMCA (including KiwiSaver and superannuation schemes) are required to maintain a SIPO that meets the requirements of the FMCA. These requirements include that the SIPO specify the nature and type of investments for the scheme and any limits on the proportion of each type of assets in which the scheme may invest[8]. A number of managers prescribe limits in their SIPO that limit the proportion a scheme or fund may hold in a single issuer[9]. Some portfolio investors also operate funds that invest under a passive mandate, by seeking to track or outperform an index. We suggest that these criteria would demonstrate that the portfolio investor was not seeking to control an entity.

43. We also note that a number of fund managers have a policy not to vote the financial products that they hold, or to vote only in limited circumstances. These voting policies are usually publicly available, and may act as another mechanism by which to determine whether a portfolio investor is seeking to exercise control.

44. We suggest that further consideration is given to the criteria set out in option 2 of the Consultation Document. In particular, option 2 suggests that an entity could be treated as a portfolio investor where "control rights" associated with the entity's holdings are at least 76% beneficially held by New Zealanders. We note that the manner in which a portfolio investor votes is usually determined by its voting policy, with fund members' voting rights being set out in the Trust Deed. It is unusual for fund members to have rights to vote the underlying holdings of the fund. Therefore, it is usually the portfolio investor that has the right to vote the shares it holds in an underlying entity, and members of the fund managed by the portfolio investor will usually not hold a legal or beneficial ability to control the manner in which the portfolio investor elects to vote.

45. We consider that there is merit in option 3 which would allow New Zealand domestically regulated superannuation funds and KiwiSaver schemes to be deemed 'portfolio investors'. This is the most simple and certain of the options proposed, and such schemes are primarily comprised of New Zealand investors.

[8] Refer to sections 164 to 167 of the FMCA.

[9] For example: Smartshares' NZ Top 50 Fund is a passive fun which tracks the S&P/NZX 50 Portfolio Index, that index has a 5% cap on the weight of each financial product contained in the index.

46. We also suggest that consideration is given as to how the entity who is relying on the class exemption (for example, an NZX Issuer) can obtain certainty that an investor is a portfolio investor. This could be addressed by portfolio investors self-certifying to the Overseas Investment Office that they are relying on the exemption, and that list being publicly maintained.

Next steps

47. We commend The Treasury's efforts in assessing the manner in which the Act could be reformed and the consultation process that has been conducted. We would be pleased to meet with officials to further discuss the matters raised in this submission.

Yours faithfully,

Kristin Brandon
Head of Policy and Regulatory Affairs
NZX Limited

Appendix 1

Our submission supports differential treatment of NZX Issuers. In part this is due to the regulatory regime which applies to NZX Issuers and the NZX Securities Markets. We provide further information in respect of the regulatory regime in this Appendix.

Legislative regime that applies to NZX Issuers and the NZX Securities Markets

The FMCA contains a number of provisions which impose additional requirements for conduct on licensed markets, such as the NZX Securities Markets. In particular, Part 5 of the FMCA imposes prohibitions on insider trading and market manipulation, and imposes the substantial product holder regime. These obligations only apply to licensed markets, such as the NZX Securities Markets.

Substantial product holder regime

The substantial product holder regime requires persons who holds a relevant interest in a NZX Issuer, to make certain disclosures to NZX and the relevant NZX Issuer. Relevant interests are broadly defined. A person has a relevant interest in a financial product if the person:

(a) is a registered holder of the product; or
(b) is a beneficial owner of the product; or
(c) has the power to exercise, or to control the exercise of, a right to vote attached to the product; or
(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the product.

A relevant interest exists regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular financial product or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons.

Persons who hold a relevant interest must provide notification when their interest exceeds or falls below 5% of a class of a NZX Issuer's quoted financial products, or where an interest in excess of 5% changes by 1% or more. The notification must be made in a form prescribed by legislation.

Substantial product holder notices are publicly available and freely searchable. The FMA is responsible for enforcing the substantial product holder regime.

Financial reporting

All NZX Issuers are FMC reporting entities under the FMCA. As such they are required to keep proper accounting records and file publicly available financial statements that meet the requirements of generally accepted accounting practice. These financial statements must be audited by a qualified auditor.

Takeovers Code

'Code companies' are subject to regulation under the Takeovers Code. A Code company includes NZX Issuers and large companies (being broadly those with 50 shareholders or more).

The Code regulates increases in control in 'code companies'. The control levels set out in the Code are 20%, 50% and 90% and the Code imposes differential requirements based upon the level of control being sought.

The Code permits increases in control of up to 20% without any restrictions. Acquisitions that would result in increases of control above 20%, 50% and 90% must be undertaken by a means permitted under the Code, including by way of takeover offer, or through shareholder approval.

Companies Act 1993

The Companies Act requires New Zealand incorporated companies to have at least one director who is ordinarily resident in New Zealand (or an enforcement country). The Companies Act also imposes requirements that changes in directors are lodged on the New Zealand Companies Office Register which is publicly available.

The Companies Act also requires the name and residency of a New Zealand incorporated company's ultimate holding company to be maintained on the Companies Office Register.

Regulation of NZX Issuers under the NZX Listing Rules

NZX operates under a self-regulatory organisation model (**SRO**), as the frontline regulator of the NZX Securities Markets and is responsible for monitoring and enforcing compliance with the Listing Rules. NZX also refers conduct or information to the FMA, when NZX considers that this would assist the FMA carry out its functions. This role is performed by the NZX Regulation team, which operates behind an information barrier from the rest of the organisation in accordance with its own governance and oversight arrangements.

NZX operates its Securities Markets in accordance with the NZX Listing Rules which govern, among other matters, the admission, conduct and activities of Issuers. The Listing Rules are supported by a listing agreement entered into between NZX and an NZX Issuer, which contractually obligates the Issuer to comply with the relevant Listing Rules (And certain Listing Rules are required to be entrenched in an NZX Issuer's constitution).

The NZX Main Board Listing Rules contain certain provisions that are relevant to our submission, including those discussed in more detail below.

Increases in effective control

NZX Issuers (who are not Code Companies) must obtain shareholder approval where they wish to issue, acquire or redeem equity securities if it will result in a holder (or its associates) increasing effective control in the NZX Issuer. Notices of meeting proposing such a resolution are required to be accompanied by an Appraisal Report (which is an independent report by an appropriately qualified person who has been approved by NZX).

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Free-float requirements

On listing, NZX Issuers must have an anticipated market capitalisation of at least $10 million, and an appropriate spread of Equity Security holders to ensure a sufficiently liquid market in the Class of Equity Securities.

In order to satisfy the spread requirements, NZX usually requires that at the date of listing the NZX Issuer will have at least 20% of its shares held by at least 100 Non-Affiliated Holders (being the registered holders or, where there is a custodial holding the beneficial owners of the shares).

Major transactions

NZX Issuers must obtain shareholder approval for major transactions (including acquisitions and disposals) where the value of the transaction exceeds more than 50% of the NZX Issuer's average market capitalisation, or where the transaction would significantly change the nature of the NZX Issuer's business.

NZX Regulation reviews notices of meeting in relation to major transaction proposals to ensure that the notice contains sufficient explanation to enable a reasonable person to understand the effect of the transaction.

Related party transactions

NZX Issuers must obtain shareholder approval when entering into material transactions (including acquisitions, divestments and issuances with a value of more than 10% of the NZX Issuer's average market capitalisation) to related parties (which include holders of 10% or more of the NZX Issuer's shares).

NZX Regulation reviews notices of meeting in relation to major transaction proposals to ensure that the notice contains sufficient explanation to enable a reasonable person to understand the effect of the transaction.

Issuances

NZX Issuers must generally obtain shareholder approval prior to issuing further shares or other financial products, subject to certain exceptions (which include: placements of up to 15% of the NZX Issuer's quoted equity securities; issuance to employees in certain circumstances; and pro-rata issuances).

NZX Issuers must notify the market of changes in capital, arising due to issuances, acquisitions or redemptions by the NZX Issuers, including the date, reason and authority for the change.

Continuous disclosure

NZX Issuers must comply with continuous disclosure obligations (and these requirements have statutory backing through the FMCA). These obligations require NZX Issuers to notify the market of material information promptly and without delay. The test used for determining whether information is 'material information' is the same as that used in the insider trading provisions of the FMCA, being information that a reasonable person would expect to have a material effect on the price of the NZX Issuer's quoted securities.

NZX Issuers must disclose such information where they have constructive knowledge of its existence (because a director or senior manager ought reasonably to have come into the

possession of that information). Listing Rule 3.1.2 prescribes a number of specific situations in which material information is not required to be released to the market.

Corporate governance

NZX Issuers of equity securities must include a statement in their annual report or information on their website, as to the extent to which they have complied with the NZX Corporate Governance Code (**Code**). Recommendation 4.3 of the Code recommends disclosure of environmental, economic and social sustainability factors and practices. NZX has provided guidance to issuers as to the manner in which they should report against this requirement in the Environmental, Social and Governance Guidance Note.

NZX's obligations as a licensed market operator

NZX is a licensed market operator and must comply with the general obligations for licensed market operators under the FMCA (**General Obligations**), along with the other statutory requirements that are set out in the FMCA and associated regulations.

NZX's general obligations as a licensed market operator include statutory obligations as follows:

(1) to the extent that is reasonably practicable, do all things necessary to ensure that each of its licensed markets is a fair, orderly, and transparent market;

(2) to have adequate arrangements in place for operating its licensed markets, including arrangements:

   (a) for releasing market announcements provided to NZX in accordance with disclosures made to NZX under disclosure obligations under the FMCA;

   (b) for handling conflicts between NZX's commercial interests and regulatory obligations to operate a fair, orderly and transparent market;

   (c) for monitoring the conduct of participants (including NZX Issuers) on or in relation to its licensed markets;

   (d) for enforcing compliance with the Listing Rules (for example, by having a sufficiently independent adjudicative body to adjudicate on contraventions that are referred to it); and

(3) to be sufficiently resourced to operate its licensed markets properly, including by having appropriate financial, technological, and human resources.

As a licensed market operator, NZX Limited is subject to a control limit, such that no person may hold or control more than 10% of the voting rights in NZX Limited. This requirement is reflected in NZX Limited's constitution and the Financial Markets Conduct Regulations 2014.

Under the FMCA, the FMA must approve amendments to the NZX Listing Rules before those amendments can be effective and NZX has an obligation to publish a copy of the NZX Listing Rules on its website at all times.

The Financial Markets Authority oversees NZX's licensed market operator activities. Under the FMCA, NZX is annually required to report to the FMA, as to the manner in which it has

discharged its obligations as a licensed market operator. The FMA must then publish a report setting out its determination in respect of NZX's fulfilment of its licensed market operator obligations. If the FMA considers that NZX is failing to meet one or more of its market operator obligations, it can require NZX to submit an action plan to the FMA for the remedy of those failures, direct NZX to correct the deficiency or cancel NZX's licence.

Interaction between NZX, the FMA and the Takeovers Panel

Under the FMCA, NZX must share information, provide assistance, or provide access to NZX's facilities to the FMA or the Takeovers Panel. Additionally, NZX has discretion to disclose information to the FMA or Takeovers Panel at any time where it considers the disclosure of that information would assist the FMA or Takeovers Panel in the performance of their respective functions.

In practice, NZX, the FMA, and Takeovers Panel regularly engage with one another and collaborate to regulate the NZX Securities Markets. NZX has established processes and policies for engaging with these regulators on day-to-day basis.