

17 August 2016

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Dear Hamish

**SUBMISSION ON NZX CONSULTATION RELATING TO IDENTIFICATION OF PRICE SENSITIVE INFORMATION & ADMINISTRATIVE TRADING HALTS**

- 1 We are pleased to have this opportunity to respond to NZX's preferred option in the [consultation response paper](#) on the process for identification of price sensitive information and administrative trading halts.
- 2 Chapman Tripp is the primary New Zealand corporate and securities law adviser for a large number of New Zealand listed companies on the NZX and the ASX. We are represented on the Listed Company Association's executive.

**Chapman Tripp's submission**  
***Preferred option not supported***

- 3 It is our strongly held view that NZX's preferred option will not provide a sufficiently certain and consistent outcome for issuers, investors or the market in general. We have four principal concerns, outlined below.

*Issuers not better placed to undertake role*

- 3.1 Although issuers might be better placed theoretically to manage the assessment of price sensitive information, in practice they face the same challenges as NZX. We expect that unless NZX publishes clear guidelines, issuers will err on the side of caution and identify more announcements as price sensitive than are necessary. Already some issuers appear to treat the MAP platform as a way to divulge information that should more properly be released as a general media statement.

Information released through NZX should either be "material information" under rule 10.1, and tagged as price sensitive, or should come within the categories of periodic (rule 10.4) or other administrative information (rule 10.6) which should not be tagged. Alternatively, release should be identified as required under some statutory obligation (such as Takeovers code, FMCA director and senior manager or FMCA substantial product holder disclosure).

Although there are prevailing market standards, outcomes are inconsistent as issuers take different approaches to the announcements that would form part of the prescribed list. For example, some issuers release all of the material relating to, or in connection with the financial results into the results

announcement (such as Appendix 7 forms), while others choose to release each item separately.

The practical outcome will be to impose another administrative burden and disclosure requirement on issuers.

*Our suggested variant to the NZX preferred approach – limited prescribed list*

In our view, as long as there is a new category for “material” information under rule 10.1, that is not already categorised, and a relatively short list of prescribed price sensitive announcements, all consultants interests will be accommodated. Our suggested prescribed list is **attached**. We also think some of the existing announcement types could be combined or simplified.

We welcome the fact that NZX intends to consult with issuers further on the implementation but, whatever the outcome of those consultations, some issuers will inevitably adopt further compliance procedures (and shoulder additional costs) to deal with this further obligation. We would appreciate being involved in the further consultation.

*The red (P) should be a black (H)*

- 3.2 We think there is a real risk that investors will be misled into placing undue reliance upon the “red P” price sensitivity assessment (or any comparable indicator of sensitivity), particularly given the likely conservatism that will prevail, and the fact that results announcements often may not be price sensitive at all. For example, if an issuer has provided guidance, and reports within that guidance, and does not materially change its guidance for the following period (or otherwise include any surprises in its announcement), it is hard to see how this would be price sensitive.

One way to mitigate this risk would be change from a “red P” marker for price sensitive to a more neutral “black H” (for Administrative Trading Halt), or similar. We also think there is merit in removing this marker for announcements made at least 15 minutes pre-open. If the marker simply represents where a trading halt has been applied, there is no good reason to include it pre-open. Further, if information is considered material enough that it needs to be released during the course of the day, that information is likely to be price sensitive.

Accordingly, we think removing the marker for announcements made pre-open and not asking issuers whether such announcements are “material information” will reduce the administrative burden on issuers and provide them with a further incentive to release announcements pre-open. If they are in doubt as to whether information is “material”, they can release it pre-open and avoid the assessment.

*Align with ASX*

- 3.3 As flagged in our initial submission, we strongly support the alignment of the approach of NZX and ASX to minimise the risk of any arbitrage or mismatch between trading on the two exchanges. We understand that NZX and ASX are continuing to discuss how they deal with administrative trading halts, and we hope those discussions lead to a single agreed approach.

*email*

- 3.4 We strongly support retaining the ability for issuers to submit announcements by email. Obviously rule 10.2.2(b) would need formal amendment if that option is to be taken away, and to be clear we do not support that change.

We note that in a takeovers context, certain announcements by a listed offeror or target company (such as the takeover notice, target company statement and updates on acceptances) must be provided to NZX, the Takeovers Panel and certain other persons "at the same time". While the listed company may be able to release the document through MAP, this would mean that the timing for release would be uncertain (as it would depend on how long NZX takes to process the document). For this reason, we have often emailed such documents simultaneously.

If issuers are repeat offenders for releasing announcements via email, we suggest NZX contacts those issuers to discourage them from continuing that practice, rather than simply cutting off the email service.

It is also unclear to us why a distinction appears to be drawn between substantial product holder notices and other notices where the obligation to file falls upon a party other than the issuer. By way of example, director & senior manager disclosure obligations fall upon the individual, rather than the issuer. These should be treated consistently with substantial product holder notices when submitted by a third party.

**Further information**

- 4 Please let us know if you need any further information.

Yours faithfully

  
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**INDICATIVE LIST OF ANNOUNCEMENTS FOR ADMINISTRATIVE TRADING HALTS**

ASSET	Purchase / sale of <u>material</u> assets. Disposal or purchase of or intention to dispose or purchase <u>material</u> assets
CREDIT	Credit rating change – amendment to credit rating by a Credit Rating Agency or notification in change of status
FLLYR	Preliminary full year results
FORECAST	Financial forecasts – notice of a listed issuers management indicating future trading or financial performance
HALFYR	Preliminary half year results
JOINT	Joint venture announcements
<u>MATERIAL</u>	<u>Material information release by issuer under rule 10.1 – where the announcement does not fall under another category</u>
MERGER	Details of <u>material</u> merger of issuer or subsidiary of a listed issuer
QUARTER	Quarterly report – summarising trading performance or financial position
STAND	Notice that an NZX Firm wishes to stand in the market for securities in a listed issuer / <u>daily progress reports</u>
TAKEOVER	<u>Takeover Notice</u> Announcements made <del>in respect of a takeover</del> by or of a listed issuer <u>and during the course of a takeover. Such announcements would include</u> Director recommendations  <u>[but not routine notifications of acceptance levels]</u>