



20 April 2021

## **PUBLIC CENSURE OF NZME LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACH OF NZX LISTING RULES 3.1.1 AND 3.20.1**

1. The NZ Markets Disciplinary Tribunal (**Tribunal**) has approved a settlement agreement between NZX Limited (**NZX**) and NZME Limited (**NZM**) dated 26 March 2021 (**Settlement Agreement**).

### **Summary**

2. NZM is a New Zealand incorporated company, with its ordinary shares quoted on the NZX Main Board. NZM is a Listed Issuer and is therefore bound by the NZX Listing Rules (**Rules**).
3. After an investigation NZX found that NZM had breached:
  - a. Rule 3.1.1 by failing to release Material Information to stakeholders through NZX's market announcement platform (**MAP**) "promptly and without delay"; and
  - b. Rule 3.20.1 by failing to release information about a decision to change a Director to stakeholders "promptly and without delay".
4. The breaches of Rules 3.1.1 and 3.20.1 relate to the same event, being the resignation on 11 June 2020 of NZM's former Chair.

### **Background**

5. NZM is a provider of news and media services in New Zealand.
6. On 12 May 2020, NZM gave notice of its annual shareholders meeting (**ASM**) scheduled for 3pm on 11 June 2020 via MAP. The agenda for the ASM included an ordinary resolution supported by the NZM Board that its current Chair, Mr Cullinane, be re-elected as a Director.
7. However, once advance voting and proxies had closed for the ASM on 9 June 2020, it became apparent that Mr Cullinane was unlikely to be re-elected as Director.
8. At 11.36am on 11 June 2020, NZM received a letter of resignation from Mr Cullinane which was stated to be effective immediately.
9. After receiving the letter of resignation, and after taking external legal advice on their disclosure obligations, the Board met to discuss the letter and its implications. In this time, NZM also prepared a draft announcement, which it sent to Mr Cullinane seeking his comments at 12.02pm. Mr Cullinane responded that he had no comments at 12.16pm.
10. NZM did not release an announcement to the market regarding Mr Cullinane's resignation until 2.44pm on 11 June 2020, 16 minutes before the ASM was due to commence. NZM obtained and acted in reliance on external legal advice regarding the approach to disclosure.
11. When the announcement was released, it was marked with the "P" flag to denote price sensitivity. NZM's position is that the P flag reflected the package of information being released in advance of the ASM, including the presentations and the announcement of Mr Cullinane's resignation. NZX disagrees with issuers taking this approach. NZX considers

that every potential announcement should be individually assessed by issuers for materiality and the application of the "P" flag, and the bundling of multiple announcements detracts from this analysis.

12. NZX investigated the information held by NZM prior to the ASM for the purpose of assessing whether any part of it constituted Material Information and whether NZM had failed to comply with any of the Listing Rules. As a Listed Issuer NZM is required under Rule 3.1.1 to promptly and without delay release Material information through MAP. Additionally, under Rule 3.20.1, NZM is required to promptly and without delay release through MAP information regarding any decision made to change a Director.
13. After conducting its investigation, NZX concluded that:
  - a. Mr Cullinane's resignation was Material Information for NZM because the resignation related to the Chair and the circumstances of it were sudden and unexpected. As a result, NZX concluded that NZM had breached its obligations under Rule 3.1.1 by failing to release this information promptly and without delay.
  - b. NZM's failure to release information about a change in a Director promptly and without delay also constituted a breach of Rule 3.20.1.

### **Determination**

14. NZM accepts the findings by NZX that it failed to release Material Information about a change in a Director promptly and without delay, and thereby breached Rules 3.1.1 and 3.20.1. NZM accepts that a penalty should be imposed by the Tribunal for these breaches.
15. 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 for maintaining market integrity and investor confidence. The Tribunal recognises, however, that the materiality of a change of Director will depend upon the particular circumstances of the case.
16. Accordingly, the Tribunal considers that the breaches concern a fundamental obligation and fall within Penalty Band 3 of Procedure 9 of the Tribunal Procedures. Under Penalty Band 3, a financial penalty of between \$0 and \$500,000 may be imposed.
17. The Tribunal considered that there were aggravating factors in this case, namely:
  - a. NZM was aware that the Chair's resignation was both unexpected and that it occurred during a period when there was considerable market interest in its activities as a result of the events surrounding its efforts to acquire Stuff.
  - b. The market announcement of Mr Cullinane's departure lacked adequate context and did not contain sufficient information for investors to understand and assess its implications.
18. The Tribunal considered that there were mitigating factors:
  - a. The breaches were of limited duration, with Mr Cullinane's resignation received at 11.36am and the announcement to the market issued at 2.44pm on 11 June 2020.
  - b. There is no evidence of any impact on the market and investors.
  - c. NZM's Board and Management turned their minds to NZM's continuous disclosure obligations in accordance with NZM's continuous disclosure compliance processes and obtained and acted in reliance on external legal advice regarding the approach to disclosure.
  - d. NZM has co-operated with NZX's investigation and has entered into an early settlement of NZX's referrals to the Tribunal.

19. Taking the aggravating and mitigating factors into account, the Tribunal considers that, while the breach comes within Penalty Band 3 of its procedures, a sanction at the lower end of the available range is appropriate.

### **Penalties**

20. NZX and NZM have agreed that:
- a. A public censure will be made by the Tribunal;
  - b. NZM will pay to the NZX Discipline Fund a financial penalty of NZ\$20,000 for the breach of Rules 3.1.1 and 3.20.1;
  - c. NZM will pay the costs incurred by the Tribunal (plus GST, if any);
  - d. NZM will pay the costs incurred by NZX (plus GST, if any) in bringing this proceeding; and
  - e. NZM will pay the external legal costs incurred by NZX (plus GST, if any) in bringing this proceeding.

### **Approval**

21. 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**

22. The Tribunal hereby censures NZM for a breach of Rules 3.1.1 and 3.20.1.

### **The Tribunal**

23. 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**