

## Disclosure of beginning to have substantial holding

*Section 276, Financial Markets Conduct Act 2013*

**To** NZX Limited  
and  
**To** Fliway Group Limited (NZX: FLI)

Date this disclosure made: 25 October 2017

Date on which substantial holding began: 25 October 2017

### **Substantial product holder(s) giving disclosure**

Full name(s): Yang Kee Group (New Zealand) Pty Limited

### **Summary of substantial holding**

Class of quoted voting products: Ordinary Shares ("**Shares**")

Summary for Yang Kee Group (New Zealand) Pty Limited

For this disclosure,—

- (a) total number held in class: 24,604,576
- (b) total in class: 45,437,910
- (c) total percentage held in class: 54.150%

### **Details of relevant interests**

Details for Yang Kee Group (New Zealand) Pty Limited

Nature of relevant interest(s): Power to control the disposition of Shares

For that relevant interest,—

- (a) number held in class: 24,604,576
- (b) percentage held in class: 54.150%
- (c) current registered holder(s): Duncan Hawkesby and Gretchen Hawkesby as trustees of the D & G Hawkesby Trust
- (d) registered holder(s) once transfers are registered: N/A

### **Details of transactions and events giving rise to substantial holding**

Details of the transactions or other events requiring disclosure:

On 25 October 2017 (after market close), Yang Kee Group (New Zealand) Pty Limited ("**Yang Kee NZ**") and Fliway Group Limited ("**Fliway**") entered into a Scheme Implementation Agreement ("**SIA**") providing for a Court-approved scheme of arrangement under Part 15 of the Companies Act 1993 which, if approved, would result in Yang Kee NZ acquiring all of the Shares in Fliway for \$1.22 per Share (the "**Scheme**").

Also on 25 October 2017 (after market close), Yang Kee NZ entered into a Deal Protection Deed with Duncan Hawkesby and Gretchen Hawkesby as trustees of the D & G Hawkesby Trust ("**Hawkesby Trust**"). The Hawkesby Trust holds 24,604,576 Shares.

Under the Deal Protection Deed, amongst other things, the Hawkesby Trust agreed, subject to certain exceptions, not to:

- dispose of its Shares;
- solicit a transaction involving the acquisition of its Shares;
- solicit a third party to make, propose or announce any acquisition of any other person's Shares, the acquisition of all or a material part of the business of Fliway, a merger with Fliway or any other transaction which could reasonably be expected to be inconsistent with the Scheme.

The Hawkesby Trust's obligations under the Deal Protection Deed expire on the earlier of the date on which the Scheme becomes effective, the SIA is terminated and the independent directors of Fliway announce to NZX that they have received, and intend to recommend, a proposed transaction that the independent directors consider to be a "Superior Proposal" for the purposes of the SIA.

No consideration was provided to the Hawkesby Trust under the Deal Protection Deed.

The Deal Protection Deed (10 pages) is attached.

#### **Additional information**

Address(es) of substantial product holder(s):

Yang Kee Group (New Zealand) Pty Limited  
c/- Harmos Horton Lusk Limited  
Level 37  
Vero Centre  
48 Shortland Street  
Auckland

Contact details:

Cheng Ter Chiang (Group CFO); Email: [tc.cheng@yangkee.com](mailto:tc.cheng@yangkee.com); Phone: +65 6430 4388

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: N/A

#### **Certification**

I, Cheng Ter Chiang, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

# DEAL PROTECTION DEED

Relating to Fliway Group Limited's proposed scheme of arrangement

Dated

25 October

2017

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## Parties

DUNCAN JOHN HAWKESBY AND GRETCHEN SARAH HAWKESBY as trustees of The D & G Hawkesby Trust ("**Shareholder**")

YANG KEE GROUP (NEW ZEALAND) PTY LTD ("**Bidder**")

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## Introduction

- A. The Bidder proposes to enter into a Scheme Implementation Agreement ("**SIA**") with Fliway Group Limited ("**Target**") under which the Bidder and the Target will agree to implement a scheme of arrangement under Part 15 of the Companies Act 1993 involving the acquisition by the Bidder of all of the shares in the Target at NZ\$1.22 per share ("**Scheme**").
  - B. The Shareholder holds 24,604,576 shares in the Target (such shares, together with any other shares in the Target acquired by the Shareholder after the dated of this Deed, being the "**Shareholder's Shares**").
  - C. The Shareholder has confirmed to the Bidder that the Shareholder intends to vote all of the Shareholder's Shares in favour of the Scheme unless, prior to the vote being held:
    - (a) the SIA is terminated; or
    - (b) the independent directors of the Target announce to NZX that they have received, and intend to recommend, a proposed transaction that the independent directors of the Target consider to be a "Superior Proposal" for the purposes of the SIA.
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## This Deed Records

- 1. **STATUS OF STATEMENT OF INTENTION**
  - 1.1 **Status of the statement of intention:** The statement of intention recorded in paragraph C of the Introduction ("**Statement of Intention**") is not, and is not intended to be, contractually binding on the Shareholder. The Statement of Intention is not a voting undertaking and does not grant to the Bidder any control over the voting rights attaching to the Shareholder's Shares.
  - 1.2 **Shareholder acknowledgements:** Without limiting clause 1.1, the Shareholder acknowledges that:
    - (a) the Bidder has relied on the Statement of Intention;

- (b) the Bidder and the Target may refer to the Statement of Intention, including in any scheme booklet prepared by the Target to be sent to Target shareholders in connection with a shareholder meeting to be held to consider the Scheme;
- (c) the execution of this Deed will give the Bidder a relevant interest (as defined in the Financial Markets Conduct Act 2013) in the Shareholder's Shares;
- (d) the Bidder is required to immediately disclose that relevant interest, and a copy of this Deed (including the Statement of Intention), to NZX;
- (e) the making of the Statement of Intention by the Shareholder is conduct in relation to, or conduct that is incidental or preliminary to, a transaction or event that is regulated by the Takeovers Code for the purposes of rule 64 of the Takeovers Code; and
- (f) the failure by the Shareholder to act in a manner consistent with the Statement of Intention is likely to be conduct that is misleading or deceptive for the purposes of rule 64 of the Takeovers Code.

1.3 **Remedies under the Takeovers Act:** The Shareholder acknowledges that if it fails to act in a manner consistent with the Statement of Intention:

- (a) the Takeovers Panel may make a determination under section 32(3)(b) of the Takeovers Act 1993 that the Takeovers Panel is not satisfied that the Shareholder has acted in compliance with the Takeovers Code; and
- (b) the Bidder could make an application to the Court for a compensation order under section 33K of the Takeovers Act 1993.

For the avoidance of doubt, the acknowledgement in this clause 1.3 is not intended to limit the rights or remedies of any person under the Takeovers Act 1993.

## 2. **PROHIBITED DEALINGS**

2.1 **Definition of Encumbrance:** "Encumbrance" includes a charge, mortgage, security interest, lien, option, right of pre-emption, first right of refusal or other adverse interest of any nature.

2.2 **Prohibited dealings:** The Shareholder will not do, or agree to do, directly or indirectly, any of the following:

- (a) sell, transfer, grant or permit an Encumbrance over, or otherwise dispose of, any interest in, or control over, any of the Shareholder's Shares;
- (b) invite, seek, solicit, encourage, initiate or otherwise facilitate any person other than the Bidder (a "**Third Party**") to:
  - (i) acquire any interest in, or control over, any of the Shareholder's Shares;
  - (ii) make, propose or announce:
    - (A) any direct or indirect acquisition of an interest in, or the right to acquire or have a direct or indirect economic interest in, any other person's shares in the Target;

- (B) any direct or indirect acquisition of, or the right to acquire or have a direct or indirect economic interest in, all or a material part of the business and/or assets of the Target and its subsidiaries;
- (C) a transfer of control of the Target or a material part of the business of the Target and its subsidiaries;
- (D) otherwise an acquisition of, or merger with, the Target; or
- (E) any other transaction which could reasonably be expected to be inconsistent with the Scheme or result in the Bidder abandoning or failing to proceed with the Scheme,

whether by way of an on-market or off-market purchase of shares, stand in the market, takeover offer, scheme of arrangement, capital reduction, buy-back of shares, sale or purchase of assets, share issue (or the issue or grant of options, convertible securities or other rights or entitlements to shares) or other recapitalisation, joint venture, insolvency proceeding, dual-listed company structure (or other synthetic merger) or other transaction or arrangement (a “**Prohibited Transaction**”);

- (c) provide any information of any nature to a Third Party for the purposes of encouraging or facilitating, or allowing that Third Party to consider, a Prohibited Transaction;
- (d) do any act, matter or thing which is, or which may reasonably be expected to be, inconsistent with the Shareholder’s obligations under sub-clause (a) or (b).

**2.3 Permitted dealings:** Clause 2.2 does not prevent:

- (a) the Shareholder from voting in favour of the Scheme;
- (b) the Shareholder from transferring shares in the Target to the Bidder on the Scheme becoming effective;
- (c) any act, matter or thing undertaken by the Shareholder with the Bidder’s prior written approval;
- (d) Duncan Hawkesby from doing any act, matter or thing in his capacity as a director or officer of the Target, provided that the relevant act, matter or thing does not result in a breach of the SIA by the Target.

**2.4 Warranty:** The Shareholder represents and warrants that, as at the date of this Deed, it is not in discussions, directly or indirectly, with any Third Party regarding a Prohibited Transaction.

**3. EXPIRY AND TERMINATION**

**3.1 Expiry:** This Deed will expire on the earlier of the date on which:

- (a) the Scheme becomes effective;
- (b) the SIA is terminated;
- (c) the independent directors of the Target announce to NZX that they have received, and intend to recommend, a proposed transaction that the independent directors of the Target consider to be a “Superior Proposal” for the purposes of the SIA.

- 3.2 **Termination by the Bidder:** If the Takeovers Panel or the High Court considers that this Deed, or any obligation of the Shareholder under this Deed, makes the Shareholder a different interest class from other shareholders in the Target for the purposes of section 236A of the Companies Act 1993, the Bidder may by written notice to the Shareholder terminate this Deed or any of the Shareholder's obligations under this Deed.
- 3.3 **Termination by Shareholder:** If the Scheme becomes effective and the Bidder fails to pay the Scheme consideration to the Shareholder, the Shareholder may terminate this Deed by written notice to the Bidder.
- 3.4 **Accrued rights and obligations:** The rights and obligations of each party that accrued prior to the expiry or termination of this Deed will survive the expiry or termination of this Deed.
- 4. MUTUAL WARRANTIES**
- 4.1 **Warranties:** Each party represents and warrants to the other that:
- (a) it has the power and authority to enter into, exercise its rights and perform and comply its obligations under, this Deed;
  - (b) its obligations are legal, valid and binding and are enforceable against it in accordance with the terms of this Deed.
- 5. GENERAL**
- 5.1 **Relationship:** Nothing in this Deed will create, constitute or evidence any partnership, joint venture, agency, or trust relationship between the parties and neither party will have any authority to act for, or to incur any obligation on behalf of, the other party.
- 5.2 **Variation and waiver:** This Deed may only be varied in writing signed by the parties. No waiver of any breach, or failure to enforce any provision, of this Deed at any time by either party will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of this Deed.
- 5.3 **No assignment:** No party will, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this Deed.
- 5.4 **Costs:** The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Deed and any documentation pertaining hereto.
- 5.5 **Severability:** If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination will not impair the enforceability of the remaining parts of this Deed, which will remain in full force, and such provision will be deemed to be modified to the extent necessary to render it legal, valid and enforceable.
- 5.6 **Entire agreement:** This Deed constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of this Deed and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.
- 5.7 **Counterparts:** This Deed may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and

enforceable Deed between the parties. Either party may execute this Deed by signing any such counterpart.

- 5.8 **Compliance with applicable law:** Nothing in this Deed requires any party to do any act, matter or thing in contravention of the Takeovers Code, the Financial Markets Conduct Act 2013 or the Companies Act 1993.
- 5.9 **Governing law:** This Deed is governed by, and shall be construed in accordance with, the laws of New Zealand. Each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of this Deed and waives any right that party may have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.



## Signed as a Deed

SIGNED by DUNCAN JOHN HAWKESBY as trustee of The D & H Hawkesby Trust in the presence of:



Duncan John Hawkesby

Signature of witness

Name of witness

Occupation

City/town of residence

SIGNED by GRETCHEN SARAH HAWKESBY as trustee of The D & H Hawkesby Trust in the presence of:

Gretchen Sarah Hawkesby

Signature of witness

Name of witness

Occupation

City/town of residence

YANG KEE GROUP (NEW ZEALAND) PTY LTD  
by:

Signature of director

Name of director

Signature of director

Name of director

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## Signed as a Deed

SIGNED by DUNCAN JOHN HAWKESBY as trustee of The D & H Hawkesby Trust in the presence of:

\_\_\_\_\_  
Duncan John Hawkesby

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

SIGNED by GRETCHEN SARAH HAWKESBY as trustee of The D & H Hawkesby Trust in the presence of:

  
\_\_\_\_\_  
Gretchen Sarah Hawkesby

  
\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness **Jasmine Louise Cunard**  
**Solicitor**

\_\_\_\_\_  
Occupation **Auckland**

\_\_\_\_\_  
City/town of residence

YANG KEE GROUP (NEW ZEALAND) PTY LTD  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

## Signed as a Deed

SIGNED by **DUNCAN JOHN HAWKESBY** as trustee of The D & H Hawkesby Trust in the presence of:

\_\_\_\_\_  
Duncan John Hawkesby

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

SIGNED by **GRETCHEN SARAH HAWKESBY** as trustee of The D & H Hawkesby Trust in the presence of:

\_\_\_\_\_  
Gretchen Sarah Hawkesby

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

**YANG KEE GROUP (NEW ZEALAND) PTY LTD**  
by:

  
\_\_\_\_\_  
Signature of director  
**CHENG TER CHIANG**  
\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

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## Signed as a Deed

SIGNED by DUNCAN JOHN HAWKESBY as  
trustee of The D & H Hawkesby Trust in the  
presence of:

\_\_\_\_\_  
Duncan John Hawkesby

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

SIGNED by GRETCHEN SARAH HAWKESBY as  
trustee of The D & H Hawkesby Trust in the  
presence of:

\_\_\_\_\_  
Gretchen Sarah Hawkesby

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

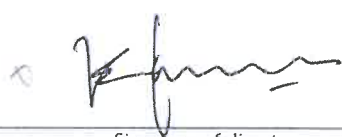
\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

YANG KEE GROUP (NEW ZEALAND) PTY LTD  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

Koh Kien Chon  
\_\_\_\_\_  
Name of director