



19 October 2017

**PUBLIC CENSURE OF VERITAS INVESTMENTS LIMITED
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF
NZX MAIN BOARD LISTING RULE 10.1.1**

1. The NZ Markets Disciplinary Tribunal (*Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*) and Veritas Investments Limited (*VIL*) dated 3 October 2017 (*Settlement Agreement*).

Summary

2. VIL is an Issuer with ordinary shares Quoted on the NZX Main Board. VIL is subject to the NZX Main Board Listing Rules (*Rules*).
3. NZX determined that VIL had breached Rule 10.1.1 by failing to immediately disclose Material Information, as outlined below. Under the terms of the Settlement Agreement, VIL accepts NZX's view that VIL breached Rule 10.1.1, albeit that VIL did not hold that view at the time of the relevant conduct, and has agreed to the penalties outlined below.

Background

4. In September 2014, VIL acquired the Nosh Food Market business (*Nosh*).
5. On 9 September 2016, VIL announced to the market that it had "received a committed term sheet from the ANZ Bank which it has accepted. The committed term sheet renews the Group's existing banking facilities and provides for a rescheduling of the debt obligations and a reduction in the debt repayments."
6. Under the committed term sheet issued by ANZ Bank New Zealand Limited (*ANZ*) and signed by VIL on 8 September 2016, VIL committed to the following undertakings (*the Undertakings*):
 - a. Delivery to ANZ by 15 January 2017, or earlier, of either of the following in form and substance satisfactory to ANZ:
 - i. An unconditional contract for the sale of Nosh; or
 - ii. In the event an unconditional sale of Nosh is unsuccessful, a proposal for the closure and wind down of Nosh to include a detailed review of the associated costs;
 - b. Any closure and wind down of Nosh is to be completed by 31 March 2017 with satisfactory evidence of this to be provided to ANZ.
7. VIL did not disclose the Undertakings to the market until 14 December 2016, following engagement by NZX Regulation.

Determination

8. In the Tribunal's view, an Issuer entering into a signed commitment with its bank in which it undertakes to sell or close and wind down a significant part of its business, as was the case in this instance, is information that would constitute Material Information for the purposes of Rule 10.1.1.
9. The requirement under Rule 10.1.1 to disclose Material Information to the market immediately is a fundamental obligation placed on Issuers under the Rules. The Rules are intended to ensure that the market is informed of relevant information at all times, that New Zealand's listed capital markets are efficient, transparent and fair, and that there is equality of information in the market.
10. In order to determine whether the penalty VIL must pay under the terms of the Settlement Agreement was appropriate, the Tribunal considered the overall conduct of VIL.
11. The Tribunal considered as mitigating factors in this case that VIL:
 - a. considered its continuous disclosure obligations and took legal advice on this specific issue;
 - b. did not intentionally breach Rule 10.1.1, but rather exercised a bone fide judgment in the interests of VIL;
 - c. co-operated with NZX Regulation's investigation;
 - d. has not been referred to the Tribunal before; and
 - e. reached a settlement with NZX.
12. The Tribunal notes that while obtaining and relying on legal advice may be a factor in mitigating the penalty, ultimately it is a matter for boards to exercise their own commercial judgement based on their knowledge of the Issuer and its business to determine whether information is Material Information and whether disclosure is required. The Tribunal also notes that had a settlement not been reached and the breach been proved, VIL could have expected a higher penalty to be imposed for the breach.
13. The Tribunal considered as aggravating factors in this case that:
 - a. there was a period of 68 business days in which the market remained uninformed of the Undertakings; and
 - b. any breach of the continuous disclosure rules is likely to have an impact on market integrity.

Penalties

14. NZX and VIL have reached a settlement and agreed that:
 - a. A public censure by the Tribunal will be made.
 - b. VIL will pay \$55,000 to the NZX Discipline Fund (plus GST, if any) by way of penalty.
 - c. VIL will pay the costs of the Tribunal (plus GST, if any).
 - d. VIL will pay \$9,000 being the costs of NZX (plus GST, if any).

Approval

15. The Settlement Agreement is approved by the Tribunal pursuant to Rule 8 of the Tribunal Rules, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

16. The Tribunal hereby publicly censures VIL for its breach of Rule 10.1.1.

The Tribunal

17. The NZ Markets Disciplinary Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the 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 market rules.

ENDS