

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

**AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**

AND

**STOCK EXCHANGE OF NEWCASTLE  
LIMITED (ACN 000 902 063)**

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## 1. INTRODUCTION

This Memorandum of Understanding sets out the general arrangements between ASIC and NSX for co-operation and assistance in relation to monitoring and, where appropriate, enforcing provisions of the Law, the Listing Rules and the Business Rules in relation to NSX's market. The arrangements are not legally binding on ASIC or NSX.

ASIC is charged under the ASIC Act with responsibility for administration of the Law. In performing its functions and exercising its powers, ASIC is directed by the ASIC Act to strive to:

- (1) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy and
- (2) promote the confident and informed participation of investors and consumers in the financial system.

NSX is approved as a stock exchange and recognised as a local stock exchange under the Law.

## 2. DEFINITIONS

Unless the contrary intention appears:

*"Announcements"* means information about a Listed Entity (whether or not it is a Listed Disclosing Entity) made available to a stock market conducted by NSX, including, but not limited to, information required to be provided by NSX to ASIC under section 776(2B) of the Law.

*"ASIC"* means the Australian Securities and Investments Commission.

*"ASIC Act"* means the Australian Securities and Investments Commission Act.

*"Business Day"* means a business day as defined in NSX's Listing Rules and Business Rules.

*"Business Rules"* means the rules of NSX made to govern the activities and conduct of NSX and the Participants.

*"Compliance Committee"* means the committee appointed by the NSX Board of Directors primarily for the purpose of ensuring NSX's effective compliance with the laws, regulations, guidelines and policies applicable to NSX, overseen by the NSX Board of Directors.

*"Compliance Committee Member"* means a person appointed to the Compliance Committee by the NSX Board of Directors.

*"the Law"* means the Corporations Law.

*"Listed Entity"* means an entity on the Official List of NSX.

*"Listed Disclosing Entity"* means a listed disclosing entity as defined in the Law.

*"Listing Rules"* means the rules of NSX made to govern the activities and conduct of Listed Entities.

*"MOU"* means memorandum of understanding.

*"NSX"* means the Stock Exchange of Newcastle Limited.

*"Official List"* means official list as defined in NSX's Listing Rules and Business Rules.

*"Participant"* means a participating organisation or affiliate, each as defined in the Listing Rules and Business Rules.

*"Regulatory Risks"* means any factors adversely affecting NSX's performance of its continuing obligations as an approved market operator including:

- (1) the primary and secondary regulatory risks set out in Annexure 1;
- (2) that NSX does not have sufficient resources (including financial, technological and human resources) to properly operate its market and to carry out supervisory arrangements in respect of the market;
- (3) any failure by NSX to meet its reporting and other statutory requirements under the Law; and
- (4) any other factors that in the opinion of ASIC have the potential to undermine the confidence of investors and Participants in the overall integrity of the NSX market and its Participants.

*"Risk Disclosure Statement"* means a statement prescribed by NSX and required to be issued by Participants pursuant to Rule 7 of Part F of the Business Rules.

*"Trading Day"* means a trading day as defined in the Listing Rules and Business Rules.

### **3. INTERPRETATION**

Unless the contrary intention appears, an expression has the same meaning in this MOU as in the Law.

References to Annexures, Parts and paragraphs are to Annexures, Parts and paragraphs of this MOU.

### **4. MOU APPLIES TO AGENTS OF NSX**

All references to NSX in this MOU apply equally to any consultant, contractor or other agent retained by NSX who performs any of the functions or responsibilities of NSX under the Law, the terms of its exchange authorisation or this MOU. NSX will ensure that the terms of any contract by which it retains a consultant, contractor or other agent to perform any of its functions or responsibilities under the Law, include obligations to ensure the consultant, contractor or agent complies with the MOU in the same manner and to the same extent as NSX is required to comply with the MOU and NSX will use its best endeavours to procure the consultant, contractor or agent to so comply.

## **5. ALLOCATION OF RESPONSIBILITIES BETWEEN ASIC AND NSX UNDER THE LAW**

- (1) ASIC has primary responsibility for:
  - (a) exercising oversight of NSX to ensure that it complies with its ongoing obligations under the Law; and
  - (b) ensuring Participants on NSX's market comply with the Law.
- (2) NSX has primary responsibility for:
  - (a) ensuring that the rules and procedures of the market and their enforcement by NSX are consistent with fair, orderly and transparent trading;
  - (b) supervising trading on its market;
  - (c) monitoring Listed Entities' conduct in relation to the market; and
  - (d) regulating Participants' conduct in relation to the market.

## **6. CO-OPERATION BETWEEN ASIC AND NSX**

ASIC and NSX recognise that they each have a role to play in promoting the confidence of investors in the Australian markets and in contributing to the efficiency of the markets. ASIC and NSX also recognise that in certain circumstances there is an overlap in the roles of ASIC and NSX.

### **6.1 Markets**

- (1) ASIC has responsibility for enforcing Part 7.11 of the Law.
- (2) NSX is responsible for monitoring its market to ensure that the trading of securities on that market is fair, orderly and transparent, and generally that the market is conducted with due regard to the interests of the public.
- (3) In the event NSX identifies any of the suspected contraventions referred to at Part 7, NSX agrees to refer those matters to ASIC in accordance with Part 7.

### **6.2 Listed Entities**

- (1) ASIC has responsibility for ensuring compliance by Listed Entities with the Law.
- (2) NSX is responsible for monitoring the conduct of Listed Entities, including their compliance with the Law and Listing Rules.
- (3) In the event NSX identifies any of the suspected contraventions referred to at Part 7, NSX agrees to refer those matters to ASIC in accordance with Part 7.

### **6.3 Disclosure**

- (1) The Listing Rules and the Law contain a number of provisions relating to disclosure including, in particular, Chapter 6 of the Listing Rules, and sections 205G and 1001A and Part 6D.2 of the Law.

- (2) NSX will:
  - (a) take primary responsibility for monitoring and enforcing compliance with the disclosure requirements of the Listing Rules; and
  - (b) notify ASIC if appropriate in accordance with Part 7 .
- (3) The steps NSX will take to fulfil these obligations will include:
  - (a) assessing whether market releases provided to NSX:
    - (i) have been provided in a timely manner; and
    - (ii) contain adequate information having regard to, among other things, information NSX may obtain through other sources;
  - (b) assessing whether a market release to NSX is required having regard to, among other things, information NSX may obtain through other sources;
  - (c) reviewing listing documentation lodged with applications for new listings to ensure adequate disclosure has been made to enable secondary trading to commence in a well-informed market; and
  - (d) taking such enforcement action as NSX considers appropriate if it believes that a Listed Entity has not complied with the disclosure provisions of the Listing Rules.
- (4) ASIC will:
  - (a) continue to take primary responsibility for monitoring and enforcing Part 6D.2 of the Law; and
  - (b) continue to take primary responsibility for enforcing section 1001A of the Law; and
  - (c) notify NSX if appropriate in accordance with Part 7 .

#### **6.4 Accounting**

- (1) The Listing Rules and the Law contain a number of provisions relating to accounting requirements including, in particular, Listing Rules 6.8 to 6.12 of Section IIA and IIC and 6.6 to 6.10 of Section IIB and Chapters 2M and 2N of the Law.
- (2) NSX will:
  - (a) subject to paragraph (4), take primary responsibility for monitoring and enforcing compliance with the accounting requirements of the Listing Rules; and
  - (b) notify ASIC if appropriate in accordance with Part 7 .
- (3) The steps NSX will take to fulfil these obligations will include:
  - (a) reviewing half yearly reports, preliminary final statements and annual accounts lodged by Listed Entities;

- (b) assessing whether market releases provided to NSX in relation to accounting requirements:
    - (i) have been provided in a timely manner;
    - (ii) contain adequate information having regard to, among other things, information NSX may obtain through other sources;
  - (c) assessing whether a market release to NSX in relation to accounting requirements is required having regard to, among other things, information NSX may obtain through other sources; and
  - (d) taking such enforcement action as NSX considers appropriate if NSX believes that a Listed Entity has not complied with the accounting requirements of the Listing Rules.
- (4) Paragraph 6.4(2)(a) does not oblige NSX to take primary responsibility for monitoring and enforcing compliance with accounting standards or the Law's accounting requirements. Nothing in this MOU is to be construed, however, as preventing NSX from requiring a Listed Entity to comply with the accounting standards or the accounting requirements of the Law in connection with satisfying the accounting requirements of the Listing Rules or maintaining an informed market.
- (5) ASIC will:
- (a) take primary responsibility for monitoring and enforcing compliance with the accounting standards and the accounting requirements of the Law; and
  - (b) notify NSX if appropriate in accordance with Part 7 .

## **6.5 Related Party Transactions and Corporate Governance**

- (1) The Listing Rules and the Law contain a number of provisions relating to related party transactions and corporate governance.
- (2) NSX will:
  - (a) take primary responsibility for monitoring and enforcing compliance with the related party transactions requirements of the Listing Rules including 6.45 to 6.51 of Section IIA and 6.44 and 6.45 of Section IIC; and
  - (b) notify ASIC if appropriate in accordance with Part 7 .
- (3) The steps NSX will take to fulfil these obligations will include:
  - (a) reviewing documentation lodged with NSX relating to the related party transactions requirements of the Listing Rules;
  - (b) monitoring compliance with the related party transactions requirements of the Listing Rules having regard to, among other things, information NSX may obtain through other sources; and

- (c) taking such enforcement action as NSX considers appropriate if it believes that a Listed Entity has not complied with the related party transactions requirements of the Listing Rules.
- (4) ASIC will:
  - (a) continue to take primary responsibility for monitoring and enforcing compliance with the corporate governance and related party transactions requirements of the Law including Part 5C.7 and Chapters 2D and 2E of the Law; and
  - (b) notify NSX if appropriate in accordance with Part 7 .

## **6.6 Participants**

- (1) NSX has responsibility under the Law and Business Rules for ensuring that Participants act in an efficient, honest and fair manner, and in a manner that does not prejudice the interests of NSX or Participants in conducting a fair, orderly and transparent market.
- (2) NSX is responsible for monitoring the conduct of Participants, including their compliance with the Law and Business Rules.
- (3) ASIC has responsibility for monitoring and enforcing compliance by persons licensed under the Law to conduct a securities business and holders of proper authorities with the Law and the conditions of the relevant licences.
- (4) Where ASIC requests NSX to circulate information for the guidance of Participants, NSX agrees to assist by circulating such information on behalf of ASIC.
- (5) In the event NSX identifies any of the suspected contraventions referred to at Part 7, NSX agrees to refer those matters to ASIC in accordance with Part 7.

## **6.7 Systems Failures**

ASIC and NSX will agree upon the circumstances in which NSX should notify ASIC regarding an actual or anticipated systems failure including but not limited to automated trading systems and market dissemination systems and the manner in which notification should be given.

## **6.8 General**

- (1) If NSX formally asks ASIC for assistance or documents, NSX will clarify as precisely as possible the assistance or documents required.
- (2) If ASIC intends formally asking NSX for assistance or the production of documents, ASIC will clarify as precisely as possible the assistance or documents required before service of any notice on NSX.

# **7. REFERRALS OF INFORMATION**

## **7.1 Serious Contraventions**

- (1) For the purpose of this MOU:



- (a) a serious contravention of the Law is any contravention of:
  - (i) sections 111AU, 180 to 184, 590, 592(6), 596, 606, 670A, 671B, 1308, 1309 and Parts 6D.2, 6D.3 and 7.11 of the Law which is not minor or technical; or
  - (ii) the Law that NSX believes is a deliberate contravention, which is not minor or technical; or
  - (iii) the Law that NSX believes, may result in substantial loss to investors or may have a materially adverse effect on the integrity of the market.
- (b) a serious contravention of the Business Rules or Listing Rules, in respect of referral of information by NSX to ASIC, is any contravention of the Business Rules or Listing Rules which NSX believes:
  - (i) is a deliberate breach and which is not minor or technical; or
  - (ii) may result in substantial loss to investors or which may have a materially adverse affect on the integrity of the market.
- (c) a serious contravention of the Business Rules or Listing Rules, in respect of referral of information by ASIC to NSX, is any contravention of the Business Rules or Listing Rules which ASIC believes:
  - (i) is a deliberate breach and which is not minor or technical; or
  - (ii) may result in substantial loss to investors or which may have a materially adverse affect on the integrity of the market.
- (2) Subject to the provisions of this MOU, where NSX is satisfied that a serious contravention of the Law or the Business Rules or the Listing Rules may have occurred, it agrees to refer the matter to ASIC in the manner set out in this Part.
- (3) Paragraph 7.1(2) is not to be construed as restricting in any way the ability of NSX to inform ASIC, either orally or in writing, of any matter or to provide ASIC with any information. NSX agrees to use its best endeavours to inform ASIC of any matter where to do so would facilitate the objectives of this MOU.

## **7.2 Matters to be Referred to ASIC by NSX**

- (1) NSX agrees to notify ASIC where:
  - (a) NSX suspects a serious contravention of the Law, or the Business Rules or Listing Rules, may have been committed, by providing ASIC with a statement setting out:
    - (i) particulars of the contravention that it suspects may have been committed; and

- (ii) the reasons for its suspicion;
- (b) NSX suspects that a licensed securities dealer or investment adviser or a representative of a licensed securities dealer or investment adviser, has not performed their duties honestly, efficiently and fairly, by providing ASIC with a statement setting out:
  - (i) particulars of the conduct giving rise to its suspicion that the licensed securities dealer or investment adviser, has not performed their duties honestly, efficiently and fairly; and
  - (ii) the reasons for its suspicion;
- (c) NSX suspects a person has contravened provisions of the Law or the Business Rules or Listing Rules on a recurrent basis which, although not each constituting a serious contravention, show a pattern of disregard for the requirements of the Law or Business Rules or Listing Rules, by providing ASIC with a statement setting out:
  - (i) particulars of the contraventions that it suspects the person may have committed; and
  - (ii) the reasons for its suspicion;
- (d) NSX suspects a person has engaged in fraudulent or dishonest conduct in respect of dealings in securities or in respect of the business of a participant, by providing ASIC with a statement setting out:
  - (i) particulars of the fraudulent or dishonest conduct it suspects the person to have engaged in; and
  - (ii) the reasons for its suspicion;
- (e) NSX believes that it possesses information which is such that ASIC should:
  - (i) exercise its power under sub-section 713(6) of the Law to exclude an entity from section 713 of the Law;
  - (ii) request a supplementary prospectus be lodged under section 719 of the Law;
  - (iii) impose, vary or revoke an order in writing under section 739(3) or (4) (interim stop order) or section 739(1) (stop order) of the Law;
  - (iv) make a determination under section 740(1) of the Law that a number of different bodies are closely related and that their transactions should be aggregated for the purposes of the fundraising provisions;
  - (v) apply to the Corporations and Securities Panel for a declaration of unacceptable circumstances within the

meaning of Subdivision B of Division 2 of Part 6.10 of the Law;

- (vi) impose, vary or revoke a notice under section 775 of the Law (prohibiting trading in securities of a Listed Entity);
- (vii) take civil or criminal court proceedings;
- (viii) exercise its power under sections 826 (revocation of licence), 827 (suspension of licence), 828 (banning order where licence revoked or suspended) or 829 (banning order against unlicensed person) of the Law;

by providing ASIC with a statement setting out the relevant information and the reasons for its belief;

- (f) an application for listing on the Official List is withdrawn or does not proceed, by providing a statement setting out that fact and, if known, any reasons for the withdrawal or failure to proceed; or
  - (g) NSX believes information it has casts doubt on the financial stability of a Participant, by providing ASIC with a statement setting out the relevant information and the reasons for its belief.
- (2) Section 776(2A) of the Law requires that an exchange that believes a person has committed, is committing or is about to commit, a serious contravention of the securities exchange's business rules or listing rules or the Law must, as soon as possible, lodge a statement setting out:
- (a) particulars of the contravention that it believes the person has committed, is committing or is about to commit; and
  - (b) its reasons for that belief.

### **7.3 Manner of Referring Matters to ASIC by NSX**

- (1) Where NSX has agreed to provide a statement or otherwise refer a matter to ASIC, pursuant to paragraphs 7.1 and 7.2, NSX agrees to do so as soon as is reasonably practicable in the circumstances.
- (2) In providing a statement or otherwise referring a matter to ASIC, NSX agrees to provide ASIC with all documents in its possession relevant to the matters contained in the statement.
- (3) Statements to be provided and other referrals to be made to ASIC by NSX, pursuant to paragraphs 7.1 and 7.2, should be sent by NSX directly to the Director, National Markets Unit, or any other person advised by ASIC from time to time.

### **7.4 Form and Content of Referrals by NSX**

- (1) Each referral by NSX to ASIC should include all information relevant to the subject of the referral which is known to NSX after due inquiries, whether by reason of its own resources or its inquiries. ASIC and NSX intend to agree upon a form that such referrals should follow, and nature of content they should include.

- (2) ASIC does not require a referral to include information which may be regarded as anecdotal or which has no evidentiary value. NSX acknowledges ASIC will form its own opinion as to whether, on the basis of the information provided, it has reason to suspect a contravention of the Law or Business Rules or Listing Rules, and that ASIC cannot form such an opinion solely on the basis of any opinion of NSX.
- (3) NSX is not required to include any statement or information that it considers may be defamatory of any person and in relation to which NSX is not entitled to the defence of qualified privilege. Where NSX believes that ASIC could make inquiries of a particular person to the extent that person may have information that may assist ASIC in its investigations, NSX may nominate that person as a possible source of additional information.

### **7.5 Assessment of Referrals by ASIC**

Where NSX notifies ASIC of a matter under paragraphs 7.1 and 7.2, ASIC will do an initial assessment of the matter, and inform NSX of the outcome of the assessment as a matter of urgency or as soon as reasonably practicable having regard to the circumstances of the particular matter.

### **7.6 Matters to be Referred to NSX by ASIC**

- (1) ASIC will notify NSX, as soon as is reasonably practicable in the circumstances, where:
  - (a) ASIC suspects that there has been a serious contravention of the Business Rules, Listing Rules, a condition of a Participant's licence, or the Law, which may warrant disciplinary action by NSX; or
  - (b) ASIC proposes to impose, or to vary or revoke, conditions or restrictions, in relation to a Participant's licence.
- (2) ASIC will provide NSX with such additional information in relation to any such matter as it can consistently with its obligations under section 127 of the ASIC Act.

### **7.7 Assessment of Referrals by NSX**

Where ASIC notifies NSX of a matter under paragraph 7.6, NSX will do an initial assessment of the matter, and inform ASIC of the outcome of the assessment as a matter of urgency or as soon as reasonably practicable having regard to the circumstances of the particular matter.

### **7.8 Co-operation Between ASIC and NSX**

- (1) ASIC and NSX agree that all necessary assistance will be given by each agency to facilitate close co-operation and assistance in the investigation of referred matters and deal effectively and promptly with referrals made pursuant to this Part.

- (2) Where appropriate, NSX agrees to provide such other assistance as may be reasonably requested of it by ASIC for the performance of ASIC's functions.
- (3) ASIC and NSX each agree to maintain records of all referrals and relevant action taken and retain those records for at least 7 years after the matter is concluded.

## **7.9 Disciplinary Action**

- (1) Where an ASIC investigation of a matter referred to it by NSX or notified by ASIC to NSX pursuant to this Part, discloses matters which should be subject to disciplinary or legal proceedings (whether civil or criminal) against a Participant, ASIC and NSX agree there will be:
  - (a) an assessment by ASIC and NSX as to whether the appropriate disciplinary action should be taken by ASIC or NSX; and
  - (b) consultation between ASIC and NSX prior to the commencement of any action, so as to co-ordinate the respective response by each party, if appropriate.
- (2) Where ASIC and NSX agree it would be more appropriate for disciplinary action to be taken in a particular matter by NSX, ASIC will provide to NSX any relevant information in its possession which would assist in those disciplinary proceedings, subject to any obligations it owes in respect of confidentiality.
- (3) Where ASIC elects to take action against a Participant, whether disciplinary or legal, NSX agrees, if requested by ASIC, to use its best endeavours to assist in the provision of expert testimony.
- (4) Where either NSX or ASIC take enforcement action in relation to a matter referred under this Part, it will keep the other informed on a regular basis of the progress of the enforcement action.

## **8. TRANSFER OF INFORMATION MATTERS**

### **8.1 General**

- (1) The parties acknowledge that under section 776(2B) of the Law, NSX is required to give ASIC a document that contains information about a Listed Disclosing Entity that NSX makes available to a market conducted by NSX.
- (2) In addition to that information required to be given by the Law, NSX also agrees to give to ASIC the other information included in the definition of Announcements at Part 2.

### **8.2 Delivery of Announcements to ASIC by NSX**

- (1) NSX agrees that it will cause its appointees or representatives to deliver, at 12noon and at 3pm (AEST) on the day an Announcement is made available to the market, a paper-based version of the Announcement to ASIC's Business Centre at Ground Floor, T&G

Building, 45 Hunter Street, Newcastle or such other address within New South Wales notified by ASIC to NSX from time to time.

- (2) Delivery of Announcements may be effected by hand delivering the documents or by engaging a courier service to deliver the documents. In the case of hand delivery, an ASIC officer will acknowledge confirmation of receipt by signing and dating a copy of the covering sheet for each batch of documents received. When a courier service is engaged, the courier will provide NSX with a signed acknowledgement for each batch showing the time and date of delivery to ASIC.
- (3) Should ASIC cease to have a Business Centre or other publicly accessible office in Newcastle, ASIC and NSX agree to review the delivery times and arrangements referred to in paragraphs 8.2(1) and 8.2(2).

### **8.3 Variation of Method of Giving Announcements**

- (1) NSX may wish to commence giving ASIC Announcements by electronic means.
- (2) ASIC and NSX will agree the terms of such electronic delivery, and acknowledge that ASIC will require at least six (6) calendar months notice of NSX's wish to commence electronic delivery, to enable mechanisms for electronic delivery of Announcements to be agreed, developed and implemented.
- (3) ASIC and NSX agree that, as soon as reasonably practicable following the signing of this MOU, appropriate representatives of both NSX and ASIC will form a working party to discuss possible means of electronic delivery of Announcements.

### **8.4 Co-operation and Assistance by NSX**

- (1) Prior to 31 December each year NSX will give to ASIC:
  - (a) a list of its anticipated peak financial reporting days for the following year; and
  - (b) a list of days that NSX has declared not to be Business Days or Trading Days for the following year;
  - (c) a list of all codes used by NSX to identify Listed Disclosing Entities; and
  - (d) a list of all sub-codes to be used by NSX to identify the nature of an Announcement.
- (2) NSX agrees to identify to ASIC upon delivery of Announcements, on a document to be attached to each Announcement or by some other means agreed by ASIC and NSX, the sub-code relevant to each Announcement as referred to at paragraph 8.4(1)(d).
- (3) NSX may decide to amend the list of Business Days and Trading Days, referred to at paragraph 8.4(1)(b), at any time. NSX agrees to promptly notify ASIC of any such amendments.

- (4) NSX agrees to use its best endeavours to give ASIC seven (7) days notice of any proposed change of code, and of any new code, used to identify a Listed Disclosing Entity.
- (5) NSX also agrees to use its best endeavours to give ASIC seven (7) days notice of any proposed change of sub-codes referred to at paragraph 8.4(1)(d), and of any new sub-code.

### **8.5 Quality of Announcements Given to ASIC**

NSX agrees to use its best endeavours to ensure that the copy of each Announcement given to ASIC in accordance with this Part, will not be of materially lower quality than the copy or image received by NSX.

### **8.6 Costs Payable by NSX**

- (1) NSX is responsible for all costs associated with delivery of Announcements to ASIC.
- (2) Should NSX wish to commence giving ASIC Announcements by electronic means as referred to at paragraph 8.3(1), NSX and ASIC will agree the responsibility for costs associated with electronic lodgement.

## **9. ASIC'S SUPERVISION OF NSX**

ASIC and NSX acknowledge that ASIC, in undertaking its oversight supervisory role, has responsibility to ensure NSX's arrangements for managing its Regulatory Risks are continuously effective.

NSX agrees that those arrangements must be sufficient to, amongst other things, ensure there are reasonable prospects of detecting and dealing appropriately with breaches of the market's procedural requirements and with unlawful or undesirable conduct on, or associated with, the market and to perform its reporting and other obligations under the Law.

ASIC's approach to the supervision of NSX will be risk-based in order to enhance the efficiency and effectiveness of the supervision process. The manner in which supervision is undertaken by ASIC of NSX is at ASIC's discretion and may vary from time to time depending upon what ASIC considers appropriate in order to discharge its regulatory responsibilities and to assist NSX to manage the Regulatory Risks effectively.

To assist ASIC to achieve these regulatory objectives, and to enable ASIC to discharge its responsibilities to monitor NSX's compliance with its obligations, NSX agrees to co-operate with ASIC by providing ASIC with all information and other assistance which ASIC may reasonably require in exercising its powers and carrying out its functions.

### **9.1 Regulatory Risks**

Should ASIC, at any time, have any concerns with respect to the operations of NSX, including, without limitation, the manner in which NSX is managing the Regulatory Risks, ASIC and NSX acknowledge that ASIC may exercise its powers for any relevant purpose, including, without

limitation, the purpose of ensuring the concerns are addressed sufficiently to enable ASIC to be confident that the Regulatory Risks are being effectively managed.

## **9.2 Risk Disclosure Statements**

- (1) ASIC and NSX agree to consult in the ninth (9<sup>th</sup>) calendar month immediately following the date of commencement of trading on the exchange, in respect of whether NSX should seek to vary Rule F.7 of the Business Rules, to extend the period during which Risk Disclosure Statements are required to be issued by Participants.
- (2) ASIC and NSX will use their best endeavours to ensure agreement is reached in respect of the matters referred to at paragraph 9.2(1) in sufficient time to enable the Business Rules and, if appropriate, the Risk Disclosure Statement, to be amended if necessary, before the conclusion of the period of twelve (12) months following the date of commencement of trading on NSX.

## **9.3 Regulatory Planning and Reporting**

- (1) NSX agrees to prepare and give to ASIC:
  - (a) on the first occasion, on or before 28 February 2001; and
  - (b) thereafter, on or about 31 May each yeara regulatory plan addressing the manner in which NSX proposes to manage, in the financial year immediately following the submission of the regulatory plan, the Regulatory Risks.
- (2) The parties agree that the regulatory plan will address the Regulatory Risks including by reference to the information being or to be maintained by NSX pursuant to paragraph 9.4. The regulatory plan will also outline the resources NSX will devote to the performance of its regulatory function in the forthcoming period and will outline the relevant experience and expertise of the senior management and compliance staff and whether the number of such key staff will increase, decrease or stay the same over the period of the plan.
- (3) The plan will describe management, compliance, human resource and system capability-related contingency planning to address any anticipated increases in the number of quoted securities or volume of trading during the period of the plan.
- (4) In respect of the regulatory plans referred to at paragraph 9.3(1)(b), NSX agrees to provide ASIC with an opportunity to comment on and approve the proposed regulatory plan, by providing ASIC with a proposed regulatory plan at least seven (7) weeks before the due date for the regulatory plan's submission. ASIC and NSX will use their respective best endeavours to ensure agreement is reached in respect of the regulatory plan in sufficient time to enable the plan to be submitted on or before its due date.
- (5) In addition to the regulatory planning and reporting described at paragraphs 9.3(1) to (4), the parties agree that ASIC may require NSX



to complete a self-assessment in a form required by ASIC, within four (4) weeks of ASIC providing such form to NSX. ASIC may require NSX to support its responses in the self-assessment by providing logs, registers or other documents.

#### **9.4 Maintenance of Records by NSX**

- (1) NSX agrees to:
  - (a) maintain information that indicates the extent to which NSX is effectively managing its Regulatory Risks, in a form that can be made accessible to ASIC; and
  - (b) maintain information that indicates the methods by which NSX is managing its Regulatory Risks, in a form that can be made accessible to ASIC.

#### **9.5 ASIC Access to NSX Information Relevant to Management of Regulatory Risks**

- (1) Upon ASIC making a written request to NSX for information of the nature referred to at paragraph 9.4, NSX agrees to make available to ASIC, in an accessible form, the requested information.
- (2) Subject to paragraph 9.5(3), the frequency and nature of ASIC's requests for particular information will be at ASIC's discretion.
- (3) In determining what frequency and nature of requests is appropriate ASIC will have regard to:
  - (a) level of risk that a Regulatory Risk may not be effectively managed by NSX including with regard to the Business Rules and Listing Rules and practices in respect of managing the particular risk;
  - (b) gravity of possible harm should a risk not be effectively managed; and
  - (c) cost to NSX of compliance with the proposed request.
- (4) In assisting ASIC to have access to, and analyse, the relevant information, NSX agrees to:
  - (a) give ASIC, or its representatives or appointees, reasonable access to any information including records, files, tapes or computer systems, within NSX's possession, power or control as ASIC may reasonably require;
  - (b) provide to ASIC such facilities as it or its representatives or appointees may reasonably require in accessing the information referred to at paragraph 9.4;
  - (c) produce to ASIC, or its representatives or appointees, specified documents, files, tapes, computer data or other relevant material in NSX's possession, power or control as ASIC may reasonably require;

- (d) print information in NSX's possession, power or control which is held on computer or on microfilm or otherwise convert it into a readily readable document or such other record as ASIC may reasonably require;
- (e) permit representatives or appointees of ASIC to copy documents or other material on the premises of NSX at NSX's expense and to remove copies and hold them elsewhere, or provide such copies on request;
- (f) make its representatives readily available for meetings with representatives or appointees of ASIC; and
- (g) ensure that its representatives answer truthfully, fully and promptly all questions which representatives or appointees of ASIC reasonably put to it.

## **9.6 Surveillance of NSX Activities by ASIC**

- (1) As part of its supervision program, ASIC may conduct regular surveillance of NSX to enable ASIC to evaluate the extent to which a Regulatory Risk is being managed effectively, and is likely to be managed effectively in the future.
- (2) The surveillance may consist of either or both of the following:
  - (a) a review of information in the possession, power or control of NSX to enable ASIC to determine how effectively NSX is managing its Regulatory Risks, including by reference to NSX's regulatory plan referred to at paragraph 9.3; and
  - (b) interviewing relevant NSX staff as required.
- (3) ASIC will use its reasonable endeavours to cause the surveillance to be conducted over a period convenient to NSX. ASIC will consult with NSX regarding the timetable for surveillance before commencing the surveillance.
- (4) To enable ASIC to conduct the surveillance, NSX agrees, as far as is reasonable, to:
  - (a) make relevant information requested by ASIC, accessible to ASIC in a manner consistent with that referred to at paragraph 9.5;
  - (b) make its representatives readily available for meetings with representatives or appointees of ASIC; and
  - (c) ensure that its representatives answer truthfully, fully and promptly all questions which representatives or appointees of ASIC, reasonably put to them during the surveillance.
- (5) ASIC may also conduct surveillance visits of Participants. NSX will be given an opportunity to discuss, with ASIC, any such proposed surveillance before it is conducted.

## **9.7 Communicating Outcomes of NSX Surveillance**

After conducting a surveillance of NSX, ASIC will notify the exchange in writing of the outcomes of the surveillance. NSX will be given an opportunity to comment on any outcomes identified by ASIC.

## **9.8 Other Supervision Matters**

- (1) NSX agrees to:
  - (a) give ASIC access to its trading platform on a read only basis;
  - (b) give ASIC access to its company and market announcements;
  - (c) advise ASIC within fourteen (14) days of becoming aware of a claim or potential claim on its fidelity fund or compensation arrangements; and
  - (d) advise ASIC within fourteen (14) days of any changes to its senior managers.

## **9.9 Consultation Regarding Supervision**

- (1) ASIC and NSX will agree by 30 June each year, a plan for the implementation of ASIC's supervision of NSX in the financial year immediately following, including:
  - (a) the nature of the information NSX will deliver to ASIC or otherwise make available to ASIC;
  - (b) the frequency with which NSX will deliver or otherwise make available that information; and
  - (c) the manner in which NSX will deliver or otherwise make available that information, including the conduct of surveillance.
- (2) ASIC will provide to NSX, guidelines for the preparation of an annual plan for the implementation of ASIC's supervision of NSX.

## **9.10 Corporate Governance of NSX**

- (1) NSX agrees that no person will be appointed as a director or senior manager of NSX unless and until:
  - (a) the person has provided NSX with all information and documentation which ASIC reasonably requires in order for ASIC to determine whether or not the person is of good character and high business integrity;
  - (b) NSX has provided to ASIC all information and documentation received by it pursuant to paragraph 9.10(1)(a); and
  - (c) NSX has not received any notice from ASIC before the end of thirty (30) days after the day on which ASIC receives the information and documentation referred to in paragraph 9.10(1)(a) above that, in the opinion of ASIC, the person is not of good character and high business integrity for the purposes of holding the office of director or senior manager of NSX.

- (2) NSX also agrees that if ASIC notifies NSX within the thirty (30) day period referred to at paragraph 9.10(1)(c) that ASIC reasonably believes the relevant person is not of good character and high business integrity then NSX will not appoint the person as a director or to a senior manager position.
- (3) NSX agrees that it will not allot shares to, or register a transfer of shares to, a person that results in that person or an associated person becoming entitled to a relevant interest in NSX, as defined in the Law, of 15% or more, without first providing ASIC with thirty (30) days notice of NSX's intention to do so and whatever information and documentation ASIC reasonably requires about the person and/or associated persons to enable ASIC to assess whether the relevant person is of good character and high business integrity.
- (4) NSX agrees that if ASIC notifies NSX within the thirty (30) day period referred to in paragraph 9.10(3) that ASIC reasonably believes the relevant person is not of good character and high business integrity NSX will not allot the shares or register the transfer of shares (as the case may be).
- (5) NSX agrees that where it proposes to alter or amend any terms of its constitution it will not make any such alteration or amendment without first providing ASIC with thirty (30) days notice prior to the issue of any circulatory resolution or notice of meeting convening a meeting to consider the alteration or amendment.
- (6) NSX also agrees that if ASIC notifies NSX within the thirty (30) day period referred to in paragraph 9.10(5) that ASIC reasonably believes the proposed alterations or amendments would result in NSX not operating a fair, orderly and transparent stock market NSX will not proceed with the proposed alteration or amendment.

#### **9.11 Compliance Committee of NSX**

- (1) NSX agrees that the Compliance Committee will always consist of a majority of Compliance Committee Members who are independent.
- (2) NSX agrees that the terms of engagement of each Compliance Committee Member who is an independent Compliance Committee Member, will ensure that every independent Compliance Committee Member is, and continues to be, independent from the commercial operations of NSX.
- (3) Without limitation to paragraphs (1) and (2), NSX agrees to ensure that:
  - (a) each person who is a independent Compliance Committee Member does not, and will not, have a relevant interest in shares or securities in NSX as long as the person remains a independent Compliance Committee Member;
  - (b) no independent Compliance Committee Member is remunerated by NSX except in the Compliance Committee Member's

capacity as a member of the Compliance Committee or for professional skills and services rendered to NSX;

- (c) each person who is an independent Compliance Committee Member is obliged to meet the director integrity standards set out in clause 10.22 of NSX's constitution.
- (4) NSX also agrees to give ASIC one (1) month's prior written notification when the composition of the independent Compliance Committee Members is to change, or a change in the Compliance Committee's role is contemplated.

## **10. CONFIDENTIALITY**

- (1) The provision of information by ASIC to NSX under this MOU is subject to section 127 of the ASIC Act.
- (2) ASIC and NSX agree to use their respective best endeavours to provide relevant information in response to requests as is reasonably practicable in the circumstances, subject to any relevant legal considerations and any caveats which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.
- (3) ASIC and NSX acknowledge that if ASIC receives a request for information it may be obliged to comply with the rules of natural justice and may be required to consult with a person likely to be adversely affected by the disclosure of the information, depending on the effect on the person and the use or disclosure proposed to be made.
- (4) Each of ASIC and NSX agree not to disclose any confidential information obtained pursuant to this MOU to a third party unless it has obtained the prior consent of the party providing the confidential information, or if required by law to do so.

## **11. REGULAR LIAISON**

- (1) ASIC and NSX will meet quarterly or more frequently as required to discuss the operation of this MOU.
- (2) ASIC and NSX will give written notice to each other from time to time of the name of the persons who are to act as their primary point of contact in respect of each of the following:
  - (a) ASIC's supervision of NSX;
  - (b) referrals of information;
  - (c) technical difficulties regarding the transfer of information from NSX to ASIC as referred to at Part 8; and
  - (d) the MOU generally, including measures that should be taken to enhance its operation.
- (3) ASIC and NSX will co-operate with and assist each other to achieve the objectives of this MOU, including facilitating staff secondments,

where appropriate, from time to time.

## **12. PUBLICITY**

- (1) ASIC and NSX recognise that information obtained in the course of monitoring and enforcing the matters covered by this MOU may be confidential or market sensitive. They also recognise that it is not desirable to publicise a referral or matter where to do so may jeopardise an investigation or enforcement action by either ASIC or NSX. However ASIC and NSX also recognise that it will sometimes be necessary for (a) ASIC to publicise a referral or matter in the public interest or (b) NSX to make information public in order to prevent uninformed trading or to justify a suspension of trading.
- (2) Where either ASIC or NSX makes a referral to the other under this MOU which may lead to an investigation or enforcement action by the other, they will consult on whether the referral should be publicised and, if so, what details should be provided (if any) and which party (if any) should make a public statement about the referral.
- (3) Where a referral by NSX leads to an ASIC investigation or enforcement action, or a referral by ASIC to NSX is connected with an ASIC investigation or enforcement action, the parties agree any publicity in relation to the ASIC investigation or enforcement action will be made in accordance with ASIC Policy Statement 47.
- (4) Where ASIC makes a public statement relating to a matter which resulted from a referral by NSX to ASIC and NSX has given significant assistance, ASIC will give public acknowledgement of the work done by NSX. If possible the wording of the acknowledgement will be settled with NSX before release.
- (5) Where NSX makes a public statement relating to a matter which resulted from a referral by ASIC to NSX and ASIC has given significant assistance, NSX will give public acknowledgement of the work done by ASIC. If possible the wording of the acknowledgement will be settled with ASIC before release.

## **13. REVIEW OF MOU**

ASIC and NSX agree to undertake a strategic review of this MOU either immediately before commencement of the Financial Services Reform Act, or during August 2001, whichever occurs first, and thereafter once each year at a place, date and time to be agreed. The review will be conducted by senior executive officers of ASIC and NSX and will address those matters that ASIC or NSX consider necessary or desirable to review.

## **14. VARIATION AND TERMINATION OF MOU**

- (1) If it becomes apparent from any review conducted under Part 13 that it is necessary or would be desirable to amend or add to this MOU, NSX and ASIC will each use reasonable endeavours to agree upon

appropriate amendments or additions to the MOU as soon as practicable thereafter.

- (2) If NSX or ASIC observe that particular paragraphs of the MOU are impractical or otherwise redundant or difficult to implement, or if circumstances or the regulatory environment alter fundamentally, ASIC and NSX will use their reasonable endeavours to agree upon the appropriate amendments to the MOU as soon as possible thereafter.
- (3) This MOU will continue in force unless and until the parties agree to terminate it or one party gives the other party written notice terminating the arrangements under the MOU. A party intending to terminate the MOU will give at least twelve (12) months notice to the other party of that intention. If differences between ASIC and NSX lead to the formation of such an intention then the parties will endeavour to resolve them before terminating the MOU.

DATED

2001

SIGNED for and on behalf of  
AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION  
by

SIGNED for and on behalf of  
STOCK EXCHANGE OF  
NEWCASTLE LIMITED  
by

.....  
Jillian Segal  
Deputy Chair

.....

**Annexure 1**  
**PRIMARY AND SECONDARY REGULATORY RISKS REGARDING**  
**CONDUCT OF NSX's SECURITIES MARKET**

**1. Primary regulatory risks**

ASIC and NSX agree that the primary regulatory risks NSX faces in the operation of its market are:

- (1) NSX may not, to the extent reasonably practicable, do all things necessary to ensure that its stock market is a fair, orderly and transparent market;
- (2) NSX may not, to the extent reasonably practicable, ensure that Listed Entities comply with their obligations; and
- (3) NSX may not, to the extent reasonably practicable, ensure that Participants comply with their obligations.

**2. Secondary regulatory risks**

ASIC and NSX agree that secondary risks NSX faces in the operation of its market include the matters described below.

*(1) Ensuring Fair, Orderly and Transparent Market*

In managing the primary regulatory risk that NSX may not, to the extent reasonably practicable, do all things necessary to ensure that each stock market of NSX is an orderly, transparent and fair market, NSX must manage the following secondary risks:

- (a) Investors may not have confidence that they will have timely and effective access to the market because the trading platform is unreliable or creates delays in the execution of transactions.
- (b) Investors may not have timely and effective access to the market for a particular security or be able to access information relevant to their decision to trade in a timely and fair manner or investors cannot rely on the market as an efficient price setting mechanism.
- (c) Investors may not have confidence that transactions on the market are the result of genuine supply and demand because surveillance practices to detect manipulative and other abusive trading practices are inadequate.
- (d) Investors may not have confidence that transactions on the market are the result of genuine supply and demand because disciplinary and other enforcement action (in respect of issues identified by NSX's market surveillance) is inadequate to deter manipulative and other abusive trading practices.
- (e) Investors may not have confidence that they are adequately protected from settlement failure because electronic systems supporting clearing and settlement services are inadequate or unreliable.



- (f) Investors may not have confidence that they are adequately protected from settlement failure because detection of and disciplinary action in respect to settlement failures is inadequate.
- (g) Investors may not have confidence that they are adequately protected from settlement failure because fidelity fund or other compensation arrangements are inadequate.

(2) *Ensuring Compliance By Listed Entities With Their Obligations*

In managing the primary regulatory risk that NSX may not, to the extent reasonably practicable, ensure that Listed Entities comply with their obligations, NSX must manage the following secondary risks:

- (a) Investors may not have confidence that obligations arising from the Listing Rules are enforced against Listed Entities in a fair and consistent manner which protects the interests of investors because NSX's general enforcement of its Listing Rules is inadequate or processes for making decisions about waiving compliance by Listed Entities with obligations arising from the Listing Rules are inadequate or because dissemination of information about waiver decisions is inadequate, uneven or not timely.
- (b) Investors may not have fair and equal access to all relevant information about the entities whose securities are quoted on the market because practices and procedures for detecting and referring breaches of disclosure obligations, the "leaking" of price-sensitive information or insider trading, are inadequate.
- (c) Investors do not have confidence that they are trading in an informed and transparent market because practices and procedures for taking enforcement action in respect of breaches of disclosure obligations or the "leaking" of information are inadequate.

(3) *Ensuring Participants Comply With Their Obligations*

In managing the primary regulatory risk that NSX may not, to the extent reasonably practicable, ensure that Participants comply with their obligations, NSX must manage the following secondary risks:

- (a) Investors may suffer loss caused by incompetent Participants because practices and procedures for detecting or taking measures to deal with incompetent participants are inadequate or not timely.
- (b) Investors may suffer loss caused by Participants' financial deficiencies or insolvency, because practices and procedures for detecting and taking measures to deal with Participants in financial difficulty are inadequate or not timely.
- (c) Investors may suffer loss because of breaches by Participants of their fiduciary duties through fraud, misappropriation, front-running, delayed allocation or other irregularities because practices and procedures for detecting and investigating breaches by Participants of such obligations and the disciplinary penalties imposed are inadequate or ineffective.