

# Committees and Panels Conflict Handling Processes and Procedures

NSX Limited

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National Stock Exchange of Australia Limited

(ABN 11 000 902 063)

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# 1. Introduction

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## Background

NSX Limited (“**NSXL**”) is committed to conducting its business in a way that is open and accountable to shareholders, its stakeholders, customers and the wider marketplace. NSXL believes that its corporate governance practices as a public company should be of a high and rigorous standard.

NSXL is the parent company of the National Stock Exchange of Australia Ltd (“**NSXA**”). NSXA holds an Australian Market Licence enabling NSXA to operate a Stock Exchange within Australia.

As a market licensee, NSXA has the statutory obligation to operate a market that is fair, orderly and transparent (“**FOT obligations**”)<sup>1</sup>. Responsibility for NSXA meeting its statutory obligations as a market licensee rests with the board of NSXA and supported by the Board of NSXL.

This requirement is enshrined in the constitutions of NSX Limited and National Stock Exchange of Australia Limited.

If you are in doubt about the standards that are set by the Policy or your obligations under the Policy, you should speak to your manager.

## Governance Standards and Requirements

The policy is reflective of the following governance standards:

- (a) The Constitution of NSX Limited;
- (b) The Corporations Act;
- (c) ASIC Regulatory Guides as varied from time to time;
- (d) While NSXL is the holding company of NSXA, reflect the requirements and conditions of the National Stock Exchange of Australia Australian Market Licence and published variations; and
- (e) While NSXL is listed on ASX, the ASX Corporate Governance Council Principles and Recommendations (the fourth edition), the ASX Listing Rules and Guidance Notes.

# 2. Committees and Panels

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NSXA is required to comply with its licence conditions and have adequate arrangements for operating the NSXA market, including:-

- (a) handling conflicts between its commercial interests and the need for it to ensure the market is fair, orderly and transparent; and
- (b) monitoring and enforcing compliance with its market operating rules.<sup>2</sup>

The market operating rules of the NSXA are the NSXA Listing Rules and NSXA Business Rules.

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<sup>1</sup> Subsection 792A of the Corporations Act (2001) Cth

<sup>2</sup> Subsections 792A (c )(i) and (ii) of the Corporations Act



An important part of the conflict handling arrangements involves the decisions made about these rules by independent committees and panels, delegated by the NSXA Board, to make certain supervisory decisions on behalf of NSXA under its market operating rules.

*NSXL NSXA Conflicts Handling Policy and Procedures* sets out the arrangements NSXL and NSXA have in place to manage such conflicts, including the disclosure and reporting requirements for any possible conflicts of interest by directors, officers, and employees (be they actual, apparent, potential or perceived).

## Delegated Powers

Representatives of NSXA includes members of the independent NSXA committees and panels convened from time to time to make certain supervisory or disciplinary decisions on behalf of NSXA concerning the NSXA Listing Rules and NSXA Business Rules.

Article 13.3 of the NSXL Constitution expressly provides that the powers conferred on NSXA by its Listing Rules and Business Rules (in particular admissions, exclusion, suspension, expulsion, and disciplining), are to be exercised:-

- (a) fairly and impartially;
- (b) in the interests of the public; and
- (c) with due regard for natural justice.

The independent Committees delegated by the NSXL Board and comprised for a majority of independent directors and the Chair to not be the Chair of NSXL are:

- (a) Audit & Risk Committee;
- (b) Nomination & Remuneration Committee

The independent NSXA committees and panels so delegated by the NSXA Boards are:-

- (a) Listings and Applications Committee (LAC);
- (b) Compliance Committee;
- (c) Disciplinary Panel, and
- (d) Appeals Panel.

The NSXA committees and panels are made up of members who are external industry professionals, the majority of whom are independent members, being independent of the NSXA Board and management, but in making decisions about the NSXA Listing Rules and NSXA Business Rules become NSXA representatives.

Accordingly, committee and panel members are required to comply with all relevant NSXL and NSXA conflict handling policies, procedures and arrangements that are in place from time to time, when carrying out their respective duties and responsibilities, to ensure NSXA meets its statutory obligations as a market licensee.

## Listings and Admissions Committee

The Listing and Admissions Committee is an NSXA Board delegated committee responsible for reviewing and approving applications submitted by applicant issuers, participants and nominated advisers to join the NSXA market.

The members are required to comply with the conflict handling processes and procedures set out below in this document that mean a conflicted or potentially conflicted member cannot be involved with decisions concerning an applicant.



## Compliance Committee

The Compliance Committee is an NSXA Board delegated committee that is responsible for reviewing the compliance of applications submitted by applicant issuers seeking waivers to the rules, issuers, participants and nominated advisers that may require consideration of a waiver from either the NSXA Listing Rules or NSXA Business Rules. Further the Committee under the rules has the power to impose sanction on issuers, participants and advisers for proven breaches of the rules.

The members of the Committee are required to comply with the conflict handling processes and procedures set out below in this document. This means a conflicted or potentially conflicted member should not be present or influence others in deliberation or decision making in the matter concerning the listed issuer, participant or nominated adviser.

## Disciplinary Panel

The Disciplinary Panel is an NSXA Board delegated panel that makes disciplinary decisions concerning alleged breaches of the NSXA Listing Rules or NSXA Operating Rules in disciplinary matters referred to it. Members of the Disciplinary Panel are Compliance Committee members.

The Disciplinary Panel Chair and members are required to comply with the conflict handling processes and procedures set out below in this document that means a conflicted or potentially conflicted member cannot be part of a panel to be convened to hear and determine a matter.

## Appeals Panel

The Appeals Panel may hear and determine an appeal from certain decisions made by the Disciplinary Panel or the Compliance Committee. Members of the Appeal Panel are Compliance Committee members.

The Appeals Panel Chair and members are required to comply with the conflict handling processes and procedures set out below in this document, that means a conflicted or potentially conflicted member cannot be part of a panel convened to hear and determine a matter.

# 3. Conflict Handling

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## Member Conflict Disclosure Obligation

Committee and panel members need to disclose all conflicts of interest as set out in the *NSXL NSXA Conflicts Handling Policy and Procedures* to ensure any decision that they are a part of as a committee or panel is made without any conflict of interest or apprehension of bias or undue influence. Any conflict involving a decision maker on a committee or panel may mean the decision was made without natural justice being afforded as required. It could also mean NSXA had not complied with its market licensee conflict handling obligations.

All actual, apparent, potential or perceived conflicts of interest of committee and panel members must be disclosed, updated as required and will be recorded on the following registers:-

- (a) Listings and Admissions Committee; and
- (b) Compliance Committee.

As panel members for the Disciplinary Panel and Appeal Panel are presently selected from Compliance Committee members, there is no separate panel members' conflicts of interest register.



A Committee or Panel members' disclosure of interests is formally made by completing and submitting the form attached as Appendix A to the *NSXL NSXA Conflicts Handling Policy and Procedure*. Conflicts must also be declared at the start of any Committee or Panel meeting so that they are included in the minutes of the meeting. What constitutes a conflict of interest for the purposes of this process is set out in this document and must be followed.

It is the responsibility of committee and panel members to fully disclose any actual, apparent, potential or perceived conflict of interest that could conflict with the proper performance of their functions in making supervisory decisions about, or imposing disciplinary sanctions, under the NSXA Listing Rules or NSXA Business Rules.

In order to disclose the conflicts of committee and panel members required to be identified and managed by NSXA, reference should be had to the relevant parts of the *NSXL NSXA Conflicts Handling Policy and Procedures, including appendices A and B*. Such conflicts include, but not be limited to, any personal, professional or financial interest, direct or indirect, with a listing applicant; NSXA listed entity; NSXA participant or NSXA nominated adviser as set out in the policy document.

Where there is any doubt as to the possible status of an interest or relationship under the above policy, or this document, any query must be directed by a Panel or Committee member to the Head of Compliance as soon as possible.

## Convening Committees and Panels

Prior to selection of a member to be on a committee or panel to be convened to review or determine a matter, the Committee Chair will review the relevant Committee or Panel Members' Disclosure of Interests Register to assess which members are suitable for consideration by not having any apparent conflict with the party concerned.

The Committee Chair will then nominate members for the committee or panel to be convened. Each of the nominated members will then be asked to specifically advise if they are aware of any current possible conflict of interest involving the party concerned that could preclude them from the matter.

Committee members and Panel members cannot be selected to form part of a committee or panel convened to make decisions concerning any matter where it is determined they have a conflict of interest. Committees are appointed by the relevant Board to carry out the functions set out in their relative charters whereas the panels are convened by the committees for a specific purpose and have a limited lifetime. Panels may be comprised of committee members and/or external appointees which are not conflicted to the specific purpose of the panel.

If there is any doubt about the possible conflict concerned then the proposed member should not be selected by the Chair to form part of the committee or panel convened. A conflicted member may not seek to interfere in or influence the panel or committee selection, deliberations or decision.

If the Chair has a conflict of interest they will not be able chair the matter, nor otherwise be part of the panel or committee, including selecting the panel or committee concerned and an alternate replacement will be appointed for the matter who is not conflicted. The Chair must also not seek to interfere in, or influence the panel or committee's proceedings, deliberations or decision (collectively or on an individual member basis).

Committee and Panel members may have a conflict of interest arise subsequent to a committee or panel being convened, and/or during proceedings, which may conflict with their duties and responsibilities. In that event, the Chair of the Committee or Panel must be immediately notified and they will decide if the conflict of interest is one that would preclude the member from continuing as a sitting committee or panel member.

Where a sitting Committee or Panel member is conflicted in these circumstances, they will be asked to step down as a member and another member will be appointed in their place (after the usual conflict of interest checks outlined above have been carried out) by the Chair.



## Disciplinary Panel Conflict Processes

The party whose matter is referred to an Disciplinary Panel or Appeals Panel must be provided with the names of the members of the sitting panel convened to hear the matter and given the opportunity to object to any panel member taking part, on the basis of conflict of interest or apprehension of bias.

The Chair of the sitting panel will consider any objection received and decide if the sitting member should cease to take part in proceedings. In arriving at a decision, the Chair is to consult with the Head of Compliance to ensure natural justice is afforded to the party concerned.

## Committee and Panel Conflict Assurance

Contemporary written records are required to be maintained of the convening of Committees and Panels, to show that the relevant conflict handling processes, including all necessary conflict of interest member checks were carried out as required.

Contemporary written records are also to be maintained of any objection received about a sitting Disciplinary Panel member, and how it was dealt with.

The Head of Compliance will review Committee decisions and Disciplinary Panel determinations on a quarterly basis to assess if conflict handling arrangements, including those set out in this document and the *NSXL NSXA Conflict Handling Policy and Procedures*, have been adequately considered and properly applied in practice.

Any concern this has not been the case will be reported by the Head of Compliance to the Chair of the committee or Panel in the first instance, and remedial steps undertaken to prevent any further failure to comply to ensure the Company is able to meet its statutory conflict handling obligations. The Head of compliance will also provide a report to the NSXA Board.

Where there is a serious or systemic failure by any Committee or Panel or member, to comply with the relevant conflict handling arrangements, then the matter must be referred to the Chair of the relevant Board who will decide the appropriate action to be taken to resolve the situation. This may involve removing a Panel or Committee member from their position to ensure the NSXA is able to meet its market licensee obligations.