

Managing Conflict of Interest Policy and Procedures

NSX Limited

(ABN 33 089 447 058)

National Stock Exchange of Australia Limited

(ABN 11 000 902 063)

Issued: December 2020





Table of Contents

| | |
|---|----|
| Table of Contents | 2 |
| 1. Introduction | 3 |
| 2. Purpose and scope | 3 |
| 3. Market licensee obligations | 10 |
| 4. Employee conflict handling | 16 |
| 5. Director conflict handling..... | 17 |
| 6. Responsibility | 19 |
| 7. Reporting..... | 20 |
| 8. Register..... | 21 |
| Annexure A: Conflicts of interest reporting form..... | 22 |
| Annexure B: Disclosure of Interests Notice | 23 |
| Annexure C: Persons with Influence..... | 24 |



1. Introduction

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**”)¹. 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 Board Charter and Constitution of NSX Limited;
- (b) The Board Charter and Constitution of the National Stock Exchange of Australia Limited;
- (c) The Corporations Act 2001;
- (d) ASIC Regulatory Guides as varied from time to time, in particular Regulatory Guides 172 and 181;
- (e) 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
- (f) While NSXL is listed on ASX, the ASX Corporate Governance Council Principles and Recommendations (the fourth edition) with respect to the ASX Listing Rules and Guidance Notes.

2. Purpose and scope

Introduction

This document sets out the policies and procedures for conflict handling that are in place for NSXL and NSXA. It includes how the NSXL and NSXA meet their statutory conflict handling obligations as well as potential conflicts of interests that may arise otherwise in the course of directors, officers of the company, senior managers and employees carrying out their respective roles and functions.

We are committed to conducting the business of our companies in a way that is open and accountable to shareholders and the wider marketplace. We believe our corporate governance practices as a public company are of

¹ Subsection 792A of the Corporations Act (2001) Cth



a high standard and meet the various statutory obligations, including adequately managing commercial conflicts of interest, together with the express statutory conflict handling obligations of the NSXA under the Corporations Act² company constitution and ASX Corporate Governance Principles.

NSXA is the holder of an Australian Market Licence approved under the Corporations Act. As an Australian Market Licensee, NSXA is required to operate a fair, orderly and transparent market (**'FOT obligations'**)³. The market licensee obligations of NSXA include having adequate conflict handling arrangements in place to manage the apparent or potential conflict between the commercial interests of NSXA (and by extension NSXL) and the compliance and regulatory operation of the NSXA market.

Directors, contractors and employees are individually obligated to comply with certain requirements that rise or may arise in the course of their employment or engagement, including statutory obligations and other obligations that apply under common law. Common law conflict obligations include their individual respective fiduciary duties owed to NSXL and NSXA.

This document sets out, generally, the range of policies and procedures in place that collectively form the Conflict Handling Arrangements (the "Arrangements"). These arrangements are the subject of change from time to time, enhanced and added to as required, to ensure as far as possible that NSXL and NSXA continue to meet their statutory obligations.

Policy and Procedure Purpose

The purpose of this policy and procedure is to enable the adequate handling of any conflicts of interest that may rise in the following:

- (a) NSXA statutory conflict obligations as a Australian Market Licensee;
- (b) NSXL statutory conflict obligations as the holding company of an Australian Market Licensee
- (c) Employees and contractors carrying out their role and functions;
- (d) Directors carrying out their role, duties and functions.

The policy is designed is to ensure that at all times NSXA meets its market licence obligations to retain its market licence, as well as prevent it being suspended or having conditions imposed upon it.

Directors, contractors and employees are to ensure that they carrying out their respective roles and functions in line with the licence obligations of NSXA. This means strictly complying with the specific conflict handling arrangements designed to achieve this outcome.

Where conflicts cannot be adequately managed through controls and disclosure, employees must avoid the conflict or refrain from the activity. This may be where the conflict of interest materially risks undermining the actual or perceived integrity of NSXL as the holding company and the NSXA as the market licensee⁴.

Failure to comply

Failure to comply with these conflict handling arrangements, as required, may mean an employee is subject to disciplinary action, including termination of their services. In the case of directors a serious failure to comply may

² Corporations Act (2001) Cth

³ s792A Corporations Act and ASIC Regulatory Guide 172

⁴ ASIC Regulatory Guide 172



mean they are no longer able to be classified as a fit and proper person to be a director⁵ and/or where the failure involves a statutory or fiduciary conflict obligation subject them to legal action.

Any failure to comply with the NSXL conflict handling arrangements generally and those of NSXA as a market licensee specifically may negatively impact the reputation of the NSXL as a publicly listed company and that of the NSXA market. Such failure may have the potential to cause damage to NSXL and its shareholders as well as the NSXA market.

Statutory Requirements

NSXA, and by extension NSXL as the holding company of NSXA, is required to have adequate arrangements to manage any conflicts, so that it does not allow commercial interests to prevail, or be perceived to prevail, over its statutory obligation to operate a fair, orderly and transparent market.

As a market licensee, NSXA is required to the extent reasonably practicable, do all things necessary to ensure that it operates a fair, orderly and transparent market.⁶

This statutory obligation includes having adequate arrangements in place to manage any *actual, potential or perceived* conflict of interest that may arise between the commercial interests of NSXA and the interests of NSXA Clients i.e. listed entities, participants and nominated advisers.

NSXA has a range of measures in place to handle its statutory conflict obligation as it considers its commercial interests are completely aligned and best served by operating a market that is fair, orderly and transparent. NSXL conflict handling arrangements include a variety of controls to identify and address potential or perceived conflicts between its commercial and interests and statutory obligations.

The conflict handling arrangements of NSXL and NSXA have been developed with the particular circumstances and strategy of the business in mind, including having regard to the current size, scale and complexity of the NSXA market and associated NSXL businesses.

Conflict Handling Framework

In reading this document, reference should also be made to the relevant sections in the following policy and procedure documents that together with this document, collectively make up the conflict handling framework of NSXL and NSXA, including:-

- (a) NSXL Constitution⁷;
- (b) NSXA Constitution;
- (c) NSXL Corporate Governance Statement⁸;
- (d) NSXL Board Charter;
- (e) NSXA Board Charter;

⁵ NSXA AML Licence dated 26 February 2018 Section 9 Persons of Influence

⁶ As per financial market operator obligations set out under s792A of the Corporations Act.

⁷ See Articles 12 and 13 of the NSXL Constitution in particular

⁸ Such statement included in the NSX Limited Annual Report.



- (f) Audit & Risk Committee Charter;
- (g) the NSXA Listing Rules and NSXA Business Rules
- (h) Practice Notes about the NSXA Operating Rules;
- (i) Listings & Admissions Committee Charter;
- (j) Compliance Committee Charter;
- (k) Procedures for Appointment of new Directors and Senior Managers;
- (l) Code of Ethics and Conduct;
- (m) Policy and Procedures for Dealing in Securities by Directors and Employees (“Dealing Rules”);
- (n) Provision of Services by Directors or Director Related Parties Procedures;
- (o) Remuneration & Nomination Committee Charter;
- (p) Employees Conflicts Register;
- (q) Directors Conflicts Register;
- (r) Committees and Panels policies and procedures;
- (s) Compliance Committee Members’ Conflicts Register;
- (t) Listing and Admissions Committee Members’ Conflicts Register;
- (u) Review Parties Policies and Procedures and register;
- (v) Whistleblower policy;
- (w) Continuous disclosure policy;
- (x) Anti-bribery and anti-corruption policy.

The conflict handling framework of NSXL and NSXA are all living documents in that the policies and procedures may at any time be subject to change to ensure they are adequate and continue to meet regulatory requirements and commercial developments including the strategy of NSXA and NSXL⁹.

The Head of Compliance is responsible for the operation of the conflict handling arrangements and will notify directors, contractors and employees of any changes to these policies and procedures.

Conflicts of Interest Defined

The types of interest that may give rise to a conflict of interest involving a director or employee include direct and indirect financial, professional and personal interests.

The definition of a conflict of interest is:-

“A conflict of interest may arise where an actual or potential, direct or indirect, interest of a director or employee, is or may be perceived to be, in conflict with the interests of the NSXL or NSXA, and/or its clients, and preference is or may be given to the director or employee above that of interest of the NSXL or NSXA and/or its clients.”

⁹ The current public policy documents can be found on the NSX website. Employees should also refer to any internal policies and procedures that are also applicable.



The definition is qualified because such a conflict of interest may be any of the following:

- (a) Actual;
- (b) Apparent;
- (c) Potential; or
- (d) Perceived.

For the purposes of NSXA a client includes, a listed entity, participant or nominated adviser of NSXA (“**NSXA Clients**”) and further by virtue of its statutory conflict obligations as a market operator. How NSXA manages its specific market licensee statutory conflict handling obligations are separately considered and set out below.

Types of Conflicts of Interest¹⁰

An actual, apparent, potential or perceived conflict of interest may involve any of the following:-

- (a) commercial interests of NSXL as a listed entity;
- (b) commercial interests of NSXA as a market operator (including FOT conflict obligations);
- (c) personal interests of a director of NSXL and/or NSXA;
- (d) financial interests of a director of NSXL and/or NSXA;
- (e) professional interests of a director of NSXL and/or NSXA;
- (f) personal interests of an employee;
- (g) financial interests of an employee; and
- (h) professional interests of an employee.

Examples of Conflicts of interest

Directors, contractors and employees have a responsibility not to, nor be seen to, be able to put their own financial, professional or personal interests before that of NSXL, NSXA and their respective clients, and the NSXA market.

Examples of these types of interests include but are not limited to the following:

Financial interests

A financial interest may involve a person having:

- (a) a substantial or material shareholding in a listed entity, adviser or participant of NSXA or a related entity; or
- (b) a substantial or material business relationship, financial investment or other commercial involvement with a listed entity, adviser or participant on the NSXA market or related entity.

¹⁰ Note that this list is not exhaustive.



Professional interests

A professional interest may involve a person:

- (a) providing substantial or material services to or performing work for a listed entity, participant or nominated adviser of NSXA, a related entity or a director of such entity, or having done so in the past;
- (b) having a substantial or material business relationship with a listed entity, participant or nominated adviser on the NSXA market or a director of such entities; or
- (c) having a connection to a matter, or being a party to a transaction, that is the subject of consideration by the NSXL or NSXA, including any application for admission to the official list or as a participant or nominated adviser on the NSXA market.

Personal interests

A personal interest may involve a person having a substantial or material current personal relationship:

- (a) with a listed entity, participant or nominated adviser, a related entity of them or a director of such entities;
- (b) with an organisation (or one or more of its members, employees or associates) that is closely associated with a listed entity, participant or nominated adviser on the NSXA market.

It is the responsibility of NSXL and NSXA directors, contractors and employees to consider if they have any conflict of interest that could conflict with the proper discharge of their individual respective duties to the NSXL and NSXA. This may also involve individual statutory obligations to do so, as well as fiduciary duties at common law owed by directors and officers of the companies¹¹.

Accordingly, it is very important directors, senior managers and employees understand their own individual ongoing conflict handling obligations, as well as those of NSXA as a market licensee.

Managing Conflicts of Interest

Conflicts of interest are managed in a numerous ways, including by:

- (a) ongoing disclosure of interest requirements;
- (b) identifying type of conflicts as disclosed;
- (c) putting adequate arrangements in place to manage the effect of the conflict;
- (d) internal structures and reporting lines, and
- (e) segregation of business and supervisory duties and responsibilities.

In addition to the statutory conflict handling obligations of NSXL and NSXA, there are additionally separate conflict of interest obligations owed individually by directors, officers, senior managers, employees, contractors and consultants to NSXL and NSXA at law, including market licence obligations and common law fiduciary duties.

Directors and employees are required to declare their interests prior to their appointment or engagement and continue to make declarations of interest or otherwise on an ongoing basis as required so any changes to interests are adequately managed at all times.

¹¹ An officer of a company is as defined under the Corporations Act.



Directors must also declare any material personal interest at a board meeting concerning a matter before the board, not vote on the matter and absent themselves from the meeting during the board deliberations and decision about it. These are statutory obligations and the only exemptions from these requirements is as provided under the Corporations Act.¹²

The numerous conflict handling arrangements in place enables any conflicts of interest to be identified, recorded and addressed, to ensure amongst other things that the NSXA continues to meet its FOT conflict obligations as a market operator.

¹² Section 195(2) of the Corporations Act



3. Market licensee obligations

NSXA is one of the few licenced market operators in Australia. It therefore has an important role to play of upholding the standards expected of such a licensee to ensure such markets are fair, orderly and transparent, that support market integrity and trust and confidence in markets generally, and therefore the Australian financial system.

NSXA, and by extension NSXL¹³ as the holding company of NSXA, is required to have adequate arrangements to manage any conflicts, so that it does not allow commercial interests to prevail over its statutory compliance and supervisory obligations to operate a fair, orderly and transparent market.

As a market licensee, NSXA is required to the extent reasonably practicable, do all things necessary to ensure that it operates a fair, orderly and transparent market ¹⁴ (“FOT” Obligations).

This statutory obligation includes having adequate arrangements in place to manage any apparent, potential or perceived conflict of interest that may arise between the commercial interests of NSXA and the interests of NSXA Clients (i.e. listed entities, participants and nominated advisers).

The conflict of interest management arrangements in place are specifically designed to meet the nature, size and complexity of the business of operating the NSXA market¹⁵.

NSXA has a range of measures in place to handle its statutory conflict obligations as it considers its commercial interests are completely aligned and best served by operating a market that is fair, orderly and transparent. NSXA conflict handling arrangements include a variety of controls to identify and address potential or perceived conflicts between its commercial and interests and statutory obligations.

The statutory obligation to operate a fair, orderly and transparent market is met by NSXA, amongst other things, by having Listing Rules and Business Rules appropriate to its market that are monitored and enforced to ensure it operates as intended.

Conflict of interests may be considered to arise in the application by NSXA of these rules. Such conflicts may be actual, potential or perceived because of the competing interests between the commercial interests of NSXA (and by extension NSXL) operating a market, with its regulatory obligation of ensuring its Listing Rules and Business Rules are complied with to ensure that the NSXA market is fair, orderly and transparent.

Persons of influence

A requirement by the NSXA Australian Market licence conditions Section 9¹⁶ concerns the appointment or reappointment of persons to positions of influence.

When appointing people to a position of influence within either NSXL or NSXA, they will undergo a series of comprehensive checks before appointment. In some cases, people with influence over compliance and surveillance decisions will also need to have the results of the due diligence sent to ASIC in accordance with the NSXA Australian Market Licence. An example of the areas where checks are performed by NSXA is given in the table in **Annexure C**. This table of data and a package of data including resume, references, certificates, internet searches, bankruptcy

¹³ Refer to the NSXL Constitution

¹⁴ Pursuant to the financial markets operator obligations as set out under s792A of the Corporations Act.

¹⁵ ASIC Regulatory Guide 181

¹⁶ <https://download.asic.gov.au/media/4656592/20180226-signed-nsxa-licence-variation.pdf>



searches, ASIC register searches and police checks is provided to ASIC in satisfaction of the Market Licence requirements and so that ASIC may perform their own comprehensive checks and provide a no-objection response, if ASIC so considers fit.

In considering whether a senior manager or person of influence is suitable, the licensee should take into account all circumstances, including the person's conduct and involvement in events that may have taken place overseas and the person's connection with any person who may not be considered suitable¹⁷.

NSXA Conflict Examples

Examples of where an actual, apparent, potential or perceived conflict of interest may arise in the operation of the NSXA market include key decisions required to be made in the following:

- (a) admission of an entity under the Listing Rules;
- (c) admission of a Participant under the Business Rules;
- (d) accepting a Nominated Adviser under the Business Rules;
- (e) granting a waiver of Listing Rules or Business Rules;
- (f) issue a price query;
- (g) grant a trading halt;
- (h) investigate potential breaches of the Listing Rules;
- (i) institute enforcement action for alleged breaches of the Listing Rules;
- (j) suspend or delist a Listed Entity;
- (k) terminate a Participant;
- (l) refer breaches of the Listing Rules or Business Rules to ASIC¹⁸;
- (m) any action taken concerning review parties.

The above decisions may involve a perceived conflict of interest because NSXA is making decisions about its existing or potential clients. It is in the commercial interest of NSXA, as for any company to have many clients to generate income and revenue to develop and expand its business.

The FOT conflict obligations of NSXA, as a market licensee mean there is a statutory presumption that commercial conflicts of interest are deemed to exist in the operation of its market.

Examples of the types of actual, perceived or apparent conflicts that may arise in the operation of the NSXA market are as follows:-

- (a) entities approved for admission to the official list so NSXA (and by extension NSXL), has the benefit of the listing fees and other revenue such listing would generate.
- (b) waivers granted that are contrary to the underlying principle of the rule concerned to achieve the commercial outcome outlined above.

¹⁷ ASIC Regulatory Guide 172

¹⁸ Section 792B of the Corporations Act



- (c) participants on the NSXA market admitted because of the size and extent of their clients who may trade on the market without proper regard being had to whether or not the participant meets the standards required of an NSXA participant under the NSXA Business Rules.
- (d) Nominated advisers being accepted simply due to the amount of potential listings they may direct to the NSXA market without due regard first being had as to whether the nominated adviser themselves meets the NSXA Business Rules criteria for nominated advisers.
- (e) Failing to take any or appropriate action under the NSXA Listing Rules or NSXA Business Rules where a breach of them is reasonably suspected to maintain or enhance commercial relations with a potential or existing client. This would mean preferring the interests of the NSXA client over and above that of the interests of operating a fair, orderly and transparent market in the interest of investors and potential investors in the market. It would also mean the interest of NSXA itself (and by extension NSXL), would not be served in this instance either as NSXA would breach its market licence conditions in failing to operate a fair, orderly and transparent market.

NSXA Conflict Handling Framework

NSXA has a considerable range of controls and measures in place to manage actual, apparent, potential and perceived commercial conflicts that may arise in the operation of its market, including the following conflict handling arrangements:

- (a) The NSXL Board operates predominately the commercial, strategic and corporate activities and the NSXA Board operates predominately the regulatory and compliance activities of the NSXA market.
- (b) Organisational structure and reporting lines, including separate Business Development; Compliance, Market Surveillance; Market Control, and Admissions teams for employees of the NSXA market;
- (c) Disclosure of interests by directors and employees;
- (d) Person of Influence appointment framework¹⁹;
- (e) Systems and controls to prevent inappropriate exchange of information;
- (f) Listing Rules that are subject to review and updating to align with strategy as well as meet any regulatory, legislative or other required changes;
- (g) NSXA Practice Notes that provide guidance on the NSXA Listing Rules, including listing admission requirements;
- (h) NSXA Practice Notes setting out expectations and standards required of the listed entities, its participants and nominated advisers;
- (i) Requirement that the underlying principles of the Listing Rules are met when decisions are made about them;
- (j) Review of listing applications by the independent Listings and Admissions Committee;
- (k) Monitoring and surveillance arrangements to ensure listed entities comply with their continuing obligations under the Listing Rules;

¹⁹ See Annexure C: Persons with Influence



- (l) Review of all waivers requested from the Listing Rules (other than concerning admission) and NSXA Business Rules by an independent Compliance Committee;
- (m) Disciplinary arrangements for dealing with a suspected breach of the Listing Rules, including referring the matter to the Compliance Committee and subsequently the Disciplinary Panel for determination;
- (n) Processes for identifying and managing Review Parties conflicts.

As a market operator, NSXA has the obligation of ensuring its NSXA Listing Rules and NSXA Business Rules are complied with to ensure its market is fair, orderly and transparent. This means monitoring NSXA Clients for compliance purposes, and where a suspected breach of the rules is detected taking appropriate compliance and enforcement action against them.

Decisions made in this respect may be made by the Listing and Admissions Committee or Compliance Committee, both of which being made up of members who are all independent of NSXA and NSXL directors, management and staff.

The establishment of these independent committees thereby avoids the commercial conflict inherent in certain key decisions concerning the enforcement of the NSXA Listing Rules and Business Rules as provided for expressly under the FOT conflict obligations.²⁰ As such they form an important part of the NSXA conflict handling framework that ensure the operation of a fair, orderly or transparent market.

The result of NSXA conflict handling arrangements is to ensure that compliance and enforcement decisions are not able to be made, influenced by or interfere with any business development employees or others with a commercial role and function in NSXA or NSXL.

Review Parties Conflict Handling

A Review Party, for the purposes of NSXA conflict handling, includes the following:

- (a) A party of which an NSXL or NSXA director or any officer of NSXL or NSXA is a director of, or otherwise has a material personal interest in; or
- (b) A related body corporate of NSXL; or
- (c) A substantial shareholder of NSXL or NSXL is a substantial shareholder of it²¹, or
- (d) Directors of NSX Group have a material shareholding or are a material creditor of the party;²² or
- (e) NSXL Group holds a substantial shareholding or is a material creditor of the party; or
- (f) The party is a direct competitor and NSXA markets supervises the party; or
- (g) NSXA classifies it as a Review Party due to the significant potential conflict between NSXA's commercial interests and its statutory obligations as a market operator.

²⁰ Section 792A(c) of the Corporations Act involving the appointment of an independent person

²¹ Substantial shareholder as defined under the Corporations Act

²² As defined under the Corporations Act



As a market licensee, NSXA has express statutory obligations to have in place specific conflict handling arrangements for parties subject to the NSXA Listing Rules and NSXA Business Rules having a material connection to NSXA, and parties in competition with NSXA²³.

In these circumstances the apparent or perceived conflict of NSXA is potentially significant and so specifically required to be managed by NSXA. Parties that meet the above criteria of being related to or a competitor of NSXA in these circumstances are referred to as “Review Parties”.

The actual or potential Review Party conflict is that NSXA might make a decision under its Listing Rules or Business Rules in favour of those parties it has a material connection to because it would be in its mutual commercial interests to do so. NSXA might make decisions under its Listing Rules or Business Rules a competitor is subject to that do not favour the competitor, for the same commercial reason that is to the advantage of NSXA.

The statutory obligations applying to Review Parties expressly provide that in certain circumstances a party may apply to ASIC for it to make certain decisions under the NSXA Business Rules instead of NSXA.

The statutory obligations applying to entities deemed Review Parties subject to the Listing Rules, provide that certain financial products, managed investment schemes or trusts of a related body corporate of NSX, may be traded on the NSXA market. This is provided that arrangements have first been made with ASIC for dealing with possible conflicts of interest concerning such entities or trusts. In addition, the Listing Rules must provide for ASIC, instead of NSXA, to make certain decisions and take action (or require NSXA to take action on ASIC’s behalf) under the rules before any such Review Party Entity or trust is included on the official list.

NSXA has specific conflict handling procedures in place to enable it to identify potential Review Parties and manage the specific commercial interest conflicts concerned as required at law if and when they may arise. These are the NSXA Review Parties Policies and Procedures.

NSXL utilises its share registry service to assess substantial shareholders of NSXL and the declarations of interests made by NSXL and NSXA directors, as well as officers and employees on an ongoing basis to identify those parties that are or may be classified as a Review Party.

Key supervisory decisions under the NSXA Listing Rules and NSXA Operations Rules involving Review Parties, are to be made by the Head of Compliance and the independent NSXA Committees and Panels that have authority delegated by the NSXA Board.

The Head of Compliance will oversee and monitor all NSXA decisions made concerning Review Parties to ensure they are appropriately made given the particular FOT conflict obligations such parties represent. Where this occurs this information will be included in their annual compliance report to the NSXL Board.

Independent Review Assurance

The general statutory obligations of a market licensee require it to have adequate arrangements for handling its commercial conflicts against the need to ensure the market it operates is fair, orderly and transparent. Such arrangements may involve the appointment of an independent party or related entity to assist the licensee meet its conflict handling obligations, including monitoring and enforcing compliance with the market’s Business Rules.²⁴

²³ Sections 798C, 798DA and 798E of the Corporations Act

²⁴ Section 792A(c) of the Corporations Act



The Business Rules of the NSXA are the NSXA Listing Rules and the NSXA Business Rules. NSXA has established two separate independent committees to assist it operate a fair, orderly and transparent market, the NSXA Listings and Admissions Committee and the NSXA Compliance Committee.

These independent committees form an integral and important part of NSXA conflict handling arrangements (and by extension those of NSXL) by making certain key decisions in relation to the NSXA Listings Rules and Business Rules. Key decisions will be those that affect a fair, orderly and transparent market.

In addition, certain enforcement and disciplinary action of NSXA for breach of its Business Rules may be referred to the independent NSXA Disciplinary Panel and Appeal Panel for determination.

As a market licensee, NSXA has a statutory obligation to give ASIC an annual report on the extent to which it has complied with its market licence obligations, including those concerning its FOT conflict handling obligations, on an annual basis²⁵. This report will include details of any supervisory action taken in relation to Review Parties.

Listings and Admissions Committee

The Listing and Admissions Committee reviews all applications based on analysis provided by the Companies Manager. The Committee is made up of industry professions comprising a majority of independent members. Members typically come from a variety of occupations with relevant experience. Employees, although providing information, submissions and reports to the Committee, are not members of the Committee.

The Committee has delegated authority from the NSXA Board to approve applications. The separation of the NSXA Board from the application process means that there is a wall in place to reduce the potential for undue influence in the application approval decision.

Further, as the Committee has delegated authority from the NSXA Board, this means that potential commercial and regulatory conflicts that may be experienced at a Board level are not present or are minimised at the Committee level.

The Committee does not have the delegated power to waiver listing rules. By not allowing the Committee to waive rules, the Committee does not have the ability to make a non-complying application compliant. The Committee can only approve applicants that are compliant or if a waiver is required because of non-compliance then that waiver is referred to the Compliance Committee. This segregation of approvals further enshrines the commercial view of the Listing and Admissions Committee away from the regulatory view of the Compliance Committee so that commercial considerations don't cloud the application decision.

Members of the Listings and Admissions Committee are required to comply with the *NSXA Committees and Panels Conflicts Handling Processes and Procedures* as well as the *NSXL NSXA Conflicts Handling Policy and Procedures*.

Compliance Committee

The Compliance Committee reviews all applications for waivers of the NSXA Business Rules. The Committee is made of industry professions comprising a majority of independent members. Members typically come from a variety of occupations with relevant experience. Employees, although providing information to the Committee, are not members of the Committee.

The Committee has delegated authority from the Board to approve waivers to rules and attend to compliance and supervisory matters. The separation of the Board from the compliance process means that there is a wall in place to reduce the potential for undue influence in the application decision by granting waivers that were inappropriate.

²⁵ section 792F(1)



Again, as the Committee has delegated authority from the NSXA Board, this means that potential commercial and regulatory conflicts that may be experienced at a Board level are not present or are minimised at the Committee level.

There is no interaction or cross over discussions allowed between members of the Compliance Committee and Listings and Admissions Committee.

Members of the Compliance Committee are required to comply with the *NSXA Committees and Panels Conflicts Handling Processes and Procedures* as well as the *NSXL NSXA Conflict Handling Policy and Procedures*.

Enforcement of the NSXA Rules - NSXA Disciplinary Panels

NSXA have disciplinary procedures in place to ensure compliance with the NSXA Listing Rules and NSXA Business Rules. A disciplinary matter is one NSXA identifies as any matter that could affect the fair, orderly and transparent operation of the NSXA market ("Disciplinary Matter").

It is the role of Senior Management to identify any suspect breach of the NSXA Listing Rules and NSXA Business Rules, where appropriate obtain further information from the party required to comply with the rules concerned ("NSXA Client"), log the suspected breach and if appropriate inform ASIC.

Senior Management may refer the suspect breach to the NSXA Compliance Officer who will either take action on the Disciplinary Matter, or refer the matter for determination to the NSXA Disciplinary Panel.

The NSXA Disciplinary Panel is comprised of members drawn from the NSXA Compliance Committee. As such it is an independent body that makes decisions about whether or not there has been a breach of the NSXA Listing Rules and NSXA Business Rules. In the event a breach is found, the NSXA Disciplinary Panel may impose a range of penalties including imposing fines and delisting.

Appeals Panel

An NSXA Client may appeal a decision of the NSXA Compliance Committee to the NSXA Appeals Panel. The NSXA Appeals Panel is comprised of a sub-set of eligible members drawn from the Compliance Committee or as may be appointed by the NSXA Board from time to time.

Conflict of interest handling arrangements are in place to ensure that any Disciplinary Panel or Appeals Panel member is not making a decision where they are in an apparent or perceived conflict situation.

Details about the NSXA processes and procedures for conducting Disciplinary Matters for possible breaches of its Listing Rules and Business Rules, including referral to the independent Disciplinary Panel and Appeals Panel for determination are set out in an NSXA Practice Note on the NSX website.

Members of an NSXA Disciplinary or NSXA Appeals Panel are required to comply with the *NSXA Committees and Panels Conflicts Handling Processes and Procedures* as well as the *NSXL NSXA Conflict of Interest Handling Policy and Procedures*.

4. Employee conflict handling

NSXL and NSXA have in place numerous policies and procedures for managing actual, apparent, potential and perceived conflicts of interest that may arise in the course of their employment generally, and specifically in relation to any actions and decisions involved with the operation of a fair, orderly and transparent market.

Under these policies and procedures NSXA and NSXL staff are amongst other things, required at all times to:



- (a) Act honestly, fairly and with integrity in the best interests of NSXL and NSXA;
- (b) Comply with the laws and regulations applying to NSXL and NSXA and its operations;
- (c) Not do, or fail to do, anything that could cause NSXA to fail to comply with its statutory obligations as a markets licensee;
- (d) Comply with Conflict Handling Arrangements, including this document;
- (e) Comply with the Code of Ethics and Conduct;
- (f) Disclose all material personal interests as required and not participate in any process involving them directly or indirectly;
- (g) Not misuse confidential or sensitive information which may give an advantage or disadvantage to a party not intended to have such information, including an NSXA listed entity, participant, nominated adviser, customer, client or competitor;
- (h) Not take advantage of property or information for personal gain or to compete with NSXA or its listed entities, participants and nominated advisers;
- (i) Not misuse or take advantage of the property or information of a third party;
- (j) Not knowingly participate in any illegal or unethical activity, including any activity that is or may be considered a form of bribery or corruption;
- (k) Must manage or avoid any conflict of interest that would affect their ability to perform their role;
- (l) Not act in any way likely to harm the reputation of NSXA or NSXL.

Promptly report any concern about a possible breach of any Conflict Handling Arrangements, Dealing Rules or the Code of Ethics and Conduct

When in doubt about any aspect of the application of any the Conflict Handling Arrangements seek clarification or advice from the Head of Compliance.

Management reserves the right in the selection process of new or existing employees to ask applicants about potential conflicts of interests. Applicants may be advised of the need to abandon or divest an interest to avoid any conflict if their application is successful.

Failure by an employee to comply with any Conflict Handling Arrangements, including the *Conflict Handling Policy and Procedures; Dealing Rules* and *Code of Ethics and Conduct* may result in disciplinary action being taken, including termination of employment.

5. Director conflict handling

Various arrangements are in place to manage directors' conflicts of interest be they, actual, apparent, potential or perceived. This includes their respective statutory obligations as a director to disclose a material personal interest in any matter that relates to the affairs of the company to the other directors of the company and abide by restrictions on voting and being present while the matter concerned is considered at a NSXA or NSXA Board meeting²⁶.

²⁶ Sections 191 and 195(1) of the Corporations Act



Directors are required to disclose any material personal interests that could conflict with them carrying out their statutory directors duties and fiduciary duty. The Constitution Corporations Act require Board directors to disclose to the Board any material personal interests, including being a director of a listed entity, nominated adviser or participant of NSXA so they cannot participate in any Board deliberations and decisions about such matters. This includes any decisions to be made by the Board in relation to the NSXA Listing Rules and the NSXA Business Rules and the entity conflicted as a result of its relationship with the director.

The NSXL Board has adopted AASB Standard 101 to determine levels of materiality where applicable in relation to certain material personal interests. A relationship is presumed immaterial when it generates less than 5%, and presumed material when it generates more than 10% of revenue over a twelve month period, in the absence of evidence or convincing argument to the contrary.

Directors are required to disclosure at the commencement of every Board meeting their current material personal interests. In the event they have a material personal interest in any matter of business before the Board they cannot vote on the matter and must not be present when the matter is considered. In these circumstances the conflicted director is required to physically absent themselves from the meeting of the board of directors.

Oral declarations at Board meetings are required to be made by directors as to whether or not they have a material personal interest in any agenda item or matter of business before the board at the beginning of each board meeting. The declarations given are each recorded in the minutes of the Board meeting and if required lodged on the Directors' Conflicts Register.

Directors are also required to declare any potential conflict of interest that may arise subsequent to their appointment so it can be assessed and if a conflict identified appropriate conflict handling arrangement put in place to manage it. All conflicts of interest are included on the Directors Conflicts Register.

Directors are required to meet their disclosure of conflicts obligations and comply with the *Code of Ethics and Conduct, Dealing Rules, Provision of Services by Directors and Related Parties Procedures* amongst other things in the performance of their duties, including complying with all other Conflict Handling policies and procedures that apply to them.

In addition to the above, directors each have an individual statutory obligations under the Corporations Act to not make improper use of inside information acquired by virtue of their position to gain, directly or indirectly, an advantage for themselves or any other person, or to cause detriment to the NSXL Group.²⁷

Directors also have an individual statutory obligation not make improper use of their position as a director to gain, directly or indirectly, an advantage for themselves or any other person, or to cause detriment to NSXL Group.²⁸

Directors also have a fiduciary duty at common law to act in the best interests of the Company and its shareholders generally.

The conflict handling arrangements provide for ongoing disclosure of interest, together with other measures for ensuring that decisions by its directors are free from any interest, position, association or relationship that could, or could be reasonably perceived to materially interfere with the exercise of their independent judgment and capacity to act in the best interests of NSXL and its shareholders.

The Boards are to have no day-to-day operational involvement in the supervision of the NSXA market. Their role in that area is confined to setting and reviewing policy in this regard. The Boards have delegated certain significant

²⁷ Sections 183 and 184 of the Corporations Act

²⁸ Sections 182 and 184 of the Corporations Act



market compliance and enforcement decisions to the Compliance Committee, Disciplinary Panel and Appeals Panel. The Board has delegated review of listing applications to the Listings and Admissions Committee.

6. Responsibility

Employee Responsibility

It is the responsibility of employees to immediately inform the Head of Compliance of any actual, apparent, potential or perceived conflict of interest involving themselves or about any other circumstances they are aware of that may give rise to one.

The interests of Employees are individually recorded on the Employees Conflicts of Interest Register.

Employees are not to be involved in any matter where they have a conflict of interest, nor are they to attempt to influence or interfere with the consideration and decision making process concerning the matter.

Chief Executive Officer/Managing Director Responsibility

It is the responsibility of the Chief Executive officer/MD in consultation with the Head of Compliance as required, to decide if there is a conflict of interest and apply measure to adequately manage such conflict. This may include, but is not limited to the following requirements:

- (a) the employee discontinues in his or her duties;
- (n) the employee be directed to divest him or herself from that interest; or
- (o) the employee's duties be rearranged or reassigned.

Where the conflict concerns the Chief Executive Officer/MD, the matter must be referred to the Board to decide the conflict handling measures to apply.

Head of Compliance Responsibility

The Head of Compliance is responsible for providing guidance to employees about all conflict handling policies and procedures in place from time to time, including this document.

The Head of Compliance is also responsible for maintaining and updating the various Conflict so Interests Registers, including the Directors' Disclosure of Interests Registers and Employees' Disclosure of Interests Register.

They are also responsible for formally reporting to the Chief Executive Officer/MD all conflict of interest situations that arise and how they have been managed, including any Review Parties.

Board Responsibility

All new and existing directors must declare any financial, personal or professional interest on an initial and ongoing basis as required under the Corporations Act. This includes but is not limited to declaring any of the following interests:

- (a) shares and positions held in NSXA Listed Entities;
- (b) shares and positions held in NSXA Participants;
- (c) shares and positions held with NSXA Nominated Advisers; and



(d) shares and positions held with suppliers of services to the NSXL Group.

Directors are required to sign a Declaration of Interests form and required to inform the Head of Compliance, the Chair of the relevant Board or the Chief Executive Officer/MD of any changes to their interests on an ongoing basis, as well as at the beginning of every Board meeting.

Any disclosure made is captured in the *Disclosures of Conflicts of Interests and Review Parties Procedures* that records all director disclosures noting the relationship and nature of the actual or potential conflict of interest identified. Any Review Party identified is also included in this document. This document is maintained by the Company Secretary on behalf of the Board.

As part of the Board papers in preparation for every Board meeting, Board members receive a copy of the current Directors' Conflicts of interest register. Any changes are recorded on the Board Minutes of the Meeting by the Company Secretary and the register subsequently provided to the Head of Compliance.

Directors are required to acknowledge and declare as part of their conflicts declaration that they agree to comply with the provisions of section 195 of the Corporations Act, which restricts them being present at meetings and considering and voting on resolutions on matters in which they have a material personal interest, unless directors who do not have a material personal interest approve the circumstances set out in subsection 195(2) and the Act, or ASIC gives its approval for them to be present and vote under a declaration or order.

The Board is to promptly review conflicts of interest reports when received from the Head of Compliance and/or Company Secretary.

Committee and Panel Member Responsibility

Members of the Committees and Panels are each required to formally disclose any conflict of interest which will be recorded on the relevant register.

It is the obligation of members to disclose an actual, apparent, potential or perceived conflict of interest on an ongoing basis as required under the *Conflict Handling Policy and Procedures, Code of Ethics and Conduct and Committees and Panels Conflict Handling* frameworks. A member cannot sit on a committee or panel in which they may have an interest in the matter before the committee or panel. A conflict of interest check is conducted on any member prior to selection on a committee or panel who is also required to advise prior to being appointed that they have no current conflict which could preclude them.

7. Reporting

Conflicts of Interest Declaration Form

Where directors and employees believe they are in a conflict of interest situation or have become aware of a conflict of interest, they must immediately notify the Head of Compliance of the situation and complete a Conflicts of Interest form. Details of the conflict concerned are then recorded by Head of Compliance on the Employee Conflicts of Interest Register.

Members of the Listing and Admissions Committee and Compliance Committee are also required to make declarations of interest to ensure that they are not conflicted when making any decision involving an application to list on the NSXA market.

This requirement also extends to the Compliance Committee members concerning supervisory decisions made concerning NSXA Participants. NSXA Disciplinary Panel and Appeals Panel members are drawn from the pool Compliance Committee members on a case by case basis as required.



Accordingly, the declarations of interests of any members nominated to hear and determine an enforcement matter will be updated before they become a Panel member to ensure they have no financial, personal or professional interest in the party before the Panel.

The **Conflicts of Interest Report form** to be used is attached as **Annexure A** to this document.

New Applicant Disclosure of Interests Notification Form

Directors and employees will be informed of any new applicant to the NSXA market, so any conflict of interest they may have with the entity, participant or nominated adviser applying to join the NSXA market is declared and recorded on the Conflicts of Interest Register.

The **New Applicant Disclosure of Interests Notification form** is attached as **Annexure B** to this document.

8. Register

The following registers record the conflicts of interest declared by the directors, employees and committee members of the NSXL Group:

- (a) Directors' Conflicts of Interest Register;
- (b) Employees' Conflicts of Interest Register;
- (c) Listing and Applications Committee Members' Conflicts of Interest Register;
- (d) Compliance Committee Members' Conflicts of Interest Register;
- (e) Review Parties Register.

Head of Compliance is responsible for the maintenance and updating of these registers.



Annexure A: Conflicts of interest reporting form

| | |
|---|---|
| TO: | [REPORTING OFFICER] |
| FROM: | [DIRECTOR OR STAFF MEMBER NAME] |
| DATE OF REPORT: | |
| DETAILS OF CONFLICT SITUATION | Include the following: Date of event(s) Description of event(s). Describe, as best you can, what are the facts and circumstances giving rise to the conflict of interest situation. Staff or Director(s) involved in event |
| Signed: (reporting staff members name and signature) | Signature: Name: Date: ____ / ____ / ____ |

| | |
|---------------|--|
| ACTION | Action taken by NSXL or NSXA to resolve situation: Date of resolution Referral to the Board Yes/No Referral to the Compliance Committee Yes/No Description of Resolution |
|---------------|--|



Annexure B: Disclosure of Interests Notice

To: NSX Limited Directors
National Stock Exchange of Australia Limited Directors
NSXA Compliance Committee members
NSXA Listing & Admissions Committee members
NSXL and NSXA Chief Executive Officer / Managing Director
NSXL and NSXA Company Secretary

From: Head of Admissions

Date: [Insert memo date]

Re: **Disclosure of Interests**

NSXA is currently in receipt of the following applications:

Participant Broker Applicants

[Insert applicant name(s)]

Listing Applicants

[Insert applicant name(s)]

Nominated Adviser Applicants

[Insert applicant name(s)]

Please advise any interests you may have in the applicants or their applications. For the purposes of your response, an interest is any substantial financial interest in the applicant or its application (including but not limited to shares, loans, notes, interests in contracts etc), can be direct or indirect and also includes holding a directorship or executive role within that organisation.

Please also indicate whether any undue influence has been exerted upon you by any party in relation to the outcome of the application.

Your response will be reviewed by the relevant Committee when making supervisory decisions in relation to the application.

Should a response not be received by close of business on [Insert closing date], it will be accepted that you have nothing to disclose. Should your position change, you should advise me immediately.

[Head of Admissions]



Annexure C: Persons with Influence

The Australian Market Licence regime and in particular the NSXA market licence conditions dated 26 February 2018 at Section 9 specify that persons of influence have to undergo comprehensive checks and assessment of their suitability before appointment.

Where conflicts cannot be adequately managed through controls and disclosure, the licensee must avoid the conflict or refrain from the activity. This may be where the conflict of interest materially risks undermining the actual or perceived integrity of the operator's market²⁹.

Category test factors of suitability for a person with influence

| FACTOR | DESCRIPTION |
|---|--|
| a Good fame and character | <p>This factor includes the attributes of diligence, honesty and judgement and ensuring that the person is not fined, suspended, disqualified, convicted of an offence under sub-section 206B (1) of the Corporations Act (or an overseas equivalent) or subject to any other sanction by Government or a regulatory or professional body (sub-section 853C (3) of the Corporations Act).</p> <p>NSX should validate this through its own checks rather than rely on undertakings.</p> |
| b Appropriate educational experience and financial market experience | <p>This factor includes appropriate knowledge and skills to demonstrate professional competence required in the role concerned.</p> <p>For example, a senior manager with responsibility for a specific area should have appropriate knowledge and experience in the area they have responsibility for, and directors should have the requisite experience to fulfil their duties.</p> |
| c Understanding Australian law and market rules | <p>Directors must ensure they properly and fully understand (and will comply with) their own legal obligations as a director of an Australian company and the corresponding duty of due diligence that they owe, as well as the legal and corporate governance obligations of NSXL and NSX.</p> |
| d Financial soundness | <p>This includes determining whether they have been unable to fulfil any financial obligations or have been the subject to bankruptcy</p> |
| e Conflict of interest handling | <p>Adequate arrangements to be considered to manage or avoid, where appropriate, conflicts of interest that would affect their ability to properly perform their role. In this regard, NSXL and NSX are required to carefully consider potential director appointees and members of internal management committees to ensure that any actual or apparent conflict of</p> |

²⁹ ASIC Regulatory Guide 172 RG 172.121



| FACTOR | DESCRIPTION |
|---|--|
| f Unsuitable conduct association | interest arising from their roles and relationships with other entities (such as issuers and their advisers, and majority stakeholders) are managed in a manner that meets the market licence obligations. |
| g Effectively fulfil their responsibilities | Ability to effectively undertake and fulfil their responsibilities, including participating in meetings and decision making. This should take into account the person's availability and commitment to performing the role (including having regard to the context of any other roles or expectations on the person's time), their physical location and any language barriers. If required, arrangements to ensure language barriers can be overcome and will not hinder the effective and efficient operation of the business. Importantly, the person must be accessible and able to communicate clearly with their colleagues during normal interactions and short notice. |