

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities
and Investments Commission (ASIC) by:

913A

WSE Investment Fund No.2 Pty Ltd
ACN 150 399 947
110 Newland Street
Bondi Junction NSW 2022
(WSE)

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following
definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

Corporations Act means the *Corporations Act 2001* (Cth);

FEX means Financial & Energy Exchange Limited ACN 122 086 284;

FEX Equity means FEX Equity Markets Pty Limited ACN 150 665 044

NSX means NSX Ltd ACN 089 447 058;

Taranaki means Taranaki Investments Pty Ltd ACN 143 998 921

2. Background

2.1 ASIC's role

2.1.1 Under s1 of the ASIC Act, ASIC is charged with a statutory
responsibility to perform its functions and to exercise its powers so as to
promote the confident and informed participation of investors and
consumers in the financial system.

2.2 Relevant law

2.2.1 One of the purposes of Chapter 6 of the Corporations Act is to ensure
that the acquisition of control over the voting shares in a listed body
takes place in an efficient, competitive and informed market.

2.2.2 Section 606 of the Corporations Act prohibits a person from acquiring a
relevant interest in issued voting shares in a listed company that results
in that person's or someone else's voting power in the company

increasing from 20% or below to more than 20% or from a starting point that is above 20% and below 90%.

- 2.2.3 Section 610 of the Corporations Act states that a person's voting power in a designated body is:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in designated body}} \times 100$$

where:

person's and associates' votes is the total number of votes attached to all the voting shares in the designated body (if any) that the person or an associate has a relevant interest in.

- 2.2.4 Section 671B of the Corporations Act requires a person to give certain specified information to a listed company if the person begins to have, or ceases to have, a substantial holding in the company or the person has a substantial holding in the company and there is a movement of at least 1% in their holding.

2.3 Details of Conduct

- 2.3.1 Mr Brian John Price is the Chief Executive Officer and a director of FEX.
- 2.3.2 Ms Margaret Jane Poppelwell is currently employed as the Group Manager of FEX.
- 2.3.3 Both Taranaki and WSE have purchased shares in the NSX having been funded by Margaret Poppelwell. In turn Margaret Poppelwell obtained loan funding from FEX, which FEX described as an employee incentive scheme.
- 2.3.4 As at 21 June 2010, according to the substantial holding notice dated 22 June 2010 FEX had a voting power of 21.88% in NSX.
- 2.3.5 As at 2 August 2010, according to the substantial holding notice dated 20 August 2010 Taranaki had acquired a relevant interest in NSX of 5.09%.
- 2.3.6 As at 12 November 2010, according to the substantial holding notice dated 18 November 2010 Taranaki had acquired a relevant interest of 6.11% in NSX.
- 2.3.7 On 13 January 2011, according to the substantial holding notice dated 13 January 2011 as a result of a sale to FEX Taranaki ceased to be a substantial holder in NSX and FEX moved to a voting power of 25.16% in NSX.
- 2.3.8 As at 4 May 2011, according to the substantial holding notice dated 10 May 2011 WSE had acquired a relevant interest of 9.29% in NSX.

- 2.3.9 On 13 May 2011, FEX Equity announced an off-market takeover bid for all NSX shares (**the Offer**).

2.4 ASIC's investigation/ surveillance and analysis

- 2.4.1 As a result of an investigation commenced under section 13 of the ASIC Act, ASIC is of the view that unacceptable circumstances have occurred and continue to occur in relation to the affairs of NSX and that:

- (a) FEX, Taranaki and WSE are associates within the meaning of section 12(2) of the Corporations Act in relation to the affairs of NSX;
- (b) If they are associates then the acquisition of NSX shares by WSE and Taranaki were carried out in contravention of section 606 of the Corporations Act; and
- (c) If they are associates then substantial holding notices disclosing the association between FEX, WSE and Taranaki in relation to NSX have not been lodged in accordance with section 671B of the Corporations Act.

2.5 ASIC's concerns

- 2.5.1 ASIC is concerned that:

- (a) there is an association between FEX, WSE and Taranaki within the meaning of section 12(2) of the Corporations Act; and
- (b) and if there is an association:
 - a. WSE and Taranaki have collectively acquired up to 15.4% of NSX shares (currently 12.91%) in contravention of section 606 of the Corporations Act; and as a result
 - b. FEX, WSE and Taranaki's voting power increased to 38.07% (as at 13 January 2011); and
 - c. FEX, WSE and Taranaki and their associates have failed to comply with the substantial holding notice provisions in section 671B of the Corporations Act.

2.6 Acknowledgement of concerns

- 2.6.1 WSE acknowledges, without admission, that based on ASIC's views as outlined above, ASIC has reason to be concerned that there is either a relevant agreement in relation to, or the parties are acting in concert in relation to, the affairs of NSX and has offered to give the undertakings described in section 3 below.

- 2.6.2 ASIC acknowledges the co-operation and assistance of WSE and its director in relation to these enforceable undertakings

3. Undertakings

- 3.1 Under section 93AA of the ASIC Act, WSE has offered, and ASIC has agreed to accept as an alternative to ASIC commencing legal proceedings for a contravention of sections 606 and 671B of the Corporations Act or making an application to the Takeovers Panel under section 657C of the Corporations Act, the following undertakings.

(a) WSE will not vote its NSX shares on the special resolutions to be considered at the Extraordinary General Meeting of NSX that is scheduled to be held on 28 July 2011, where a special resolution to remove the 15% shareholder voting power limitation will be considered.

(b) WSE will not accept the Offer unless:

- i. at least 50% of the NSX shares that are not held by Taranaki and WSE (or associates of them, if any) have been accepted into the Offer (**50% Condition**); and
- ii. the Offer is unconditional, save for the satisfaction of the 90% minimum acceptance condition.

(c) WSE will accept any rival takeover bid for all bid class securities (**Rival Bid**) in respect of all the issued NSX shares which it holds within 7 days from the date that all of the following conditions are satisfied in respect of a Rival Bid:

- i. the consideration offered under the Rival Bid is more than (or becomes more than) 105% of the value of the consideration offered under the Offer (as assessed by ASIC and notified to WSE if the consideration offered under the Rival Bid is other than cash or is a combination of cash and non-cash consideration);
- ii. the Rival Bid is or has become unconditional; and
- iii. the Rival Bid offer period starts before WSE has accepted into the Offer;

unless prior to the expiration of the 7 day period referred to above:

- iv. the Offer is varied so that the value of the consideration offered under the Offer is at least equal to the value of the consideration offered under the Rival Bid; or

- v. another rival takeover bid in respect of all the issued NSX shares (**Second Rival Bid**) has been announced and the consideration offered under that bid is more than (or becomes more than) the value of the consideration offered under the Rival Bid.
- (d) Before the end of the offer period under the Offer, or where applicable, the end of the offer period of the Rival Bid or Second Rival Bid, whichever occurs later (**End Date**), if WSE disposes of its NSX shares in any other way except by accepting into the Offer, Rival Bid or Second Rival Bid, it will:
- i. not dispose of these shares to FEX, Taranaki, WSE or any of their associates;
 - ii. provide ASIC with a list detailing the disposal or disposals that details the amount of shares sold, consideration for the shares, whether the transaction was on market or off market, date of disposal and the purchaser of the shares (if known) within 7 days of the disposal occurring; and
 - iii. comply with the substantial holding provisions under s671B of the Corporations Act.
- (e) If WSE has not disposed of its NSX shares by the End Date, it must transfer its NSX shares to a broker nominated by ASIC (**Nominee**) within 5 days of the End Date and the Nominee must be directed by WSE to effect either:
- i. an orderly on-market sale of the NSX shares held by WSE; or
 - ii. an off market sale of those shares to sophisticated or professional investors (as defined in the Corporations Act) that are not associated with any of WSE, Taranaki, FEX or any associate of those parties;
- on the basis that:
- iii. the sell down must occur within 6 months of engagement of the Nominee (**Sell Down Period**);
 - iv. the Nominee must obtain from any prospective purchaser a statutory declaration that it is not associated with WSE, Taranaki or FEX or any of their associates;
 - v. none of FEX, Taranaki or any of their associates or any associate of WSE may purchase the shares; and
 - vi. the Nominee must account to WSE for the proceeds of sale, net of the costs, fees and expenses of the sale.

- (f) Within 1 business day of these undertakings being accepted, WSE must lodge a revised substantial holding notice in accordance with section 671B of the Corporations Act in relation to NSX which includes the relevant interests in NSX held by Taranaki.
- (g) WSE undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- (h) WSE will provide all documents and information requested by ASIC from time to time for the purpose of assessing WSE's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 WSE acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution, in a manner and to an extent, that is consistent with the way in which its concerns are outlined in this document;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2 Further WSE acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's rights or powers *other than*:
 - i. the right to commence proceedings in a Court for a contravention of section 606 and, or, section 671B of the Corporations Act; or
 - ii. the right to make an application to the Takeovers Panel under section 657C of the Corporations Actin relation to the circumstances specified in this undertaking; and
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

4.3 While WSE does not admit any contravention of section 606 and, or, section 671B of the Act and does not otherwise make any admission by entry into this enforceable undertaking, WSE acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms in section 3 above.

Handwritten signatures and initials:
J-2
WJE

- 4.4 WSE acknowledges that this undertaking has no operative force until accepted by ASIC, and WSE and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Signed for WSE INVESTMENT FUND)
NO.2 PTY LTD by an authorised officer in
the presence of:

WSEdgington

27/7/11

Signature of officer

[Signature]

Name of officer: Warwick Scott Edgington

Signature of witness

John Laxon

Office held: Director

Name of witness

**Accepted by the Australian Securities and Investments Commission under s93AA
of the ASIC Act by its duly authorised delegate:**

[Signature]

Jane Margaret Eccleston Delegate of Australian Securities and Investments
Commission

Date: 27 July 2011

27/7/11
WSE