



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:

FEX Equity Markets Pty Ltd ACN 150 665 044

Level 1 7 Bridge Street

Sydney NSW 2000

(Bidder)

913A

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 Ltd ACN 122 086 284;

NSX means NSX Ltd ACN 089 447 058;

Taranaki means Taranaki Investments Pty Ltd ACN 143 998 921;

WSE means WSE Investment Fund No.2 Pty Ltd ACN 150 399 947.

2. Background

2.1 ASIC's role

2.1.1 Under section 1 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 a 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.
- 2.3.3 On 2 May 2011, the Bidder was incorporated as a small proprietary company with Mr Price being the sole director and FEX the sole shareholder.
- 2.3.4 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.
- 2.3.5 On 13 May 2011, the Bidder 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) because of the 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 The Bidder acknowledges, 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 cooperation and assistance of the Bidder and its director in relation to these enforceable undertakings.

3. Undertakings

- 3.1 Under section 93AA of the ASIC Act, the Bidder 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) the Bidder will not take into account the NSX shares held by Taranaki or WSE when determining:
 - i. whether the Bidder has satisfied the 90% test in section 661A(1)(b)(i) of the Corporations Act unless those shares are accepted into the Offer in accordance with the undertakings given to ASIC by Taranaki and WSE on or about the date of these undertakings;
 - ii. whether the Bidder has satisfied the 75% test in section 661A(1)(b)(ii) (those NSX shares would not be counted in the calculation of the number of NSX shares acquired by the Bidder nor the number of NSX shares that the Bidder offered to acquire); and
 - iii. whether the Bidder has satisfied either of the "90% holder" tests in sections 664A(1) and 664A(2) of the Corporations Act unless those shares have been accepted into the Offer in accordance with the undertakings given to ASIC by Taranaki and WSE on or about the date of these undertakings;
 - (b) On the day these undertakings are accepted by ASIC, the Bidder will lodge a supplementary bidder's statement, a draft of which has

been provided to ASIC and in relation to which ASIC has no objections, which sets out the nature of ASIC's concerns and these undertakings;

- (c) Whenever the Bidder gives any substantial holding notice concerning NSX the Bidder will refer in a letter accompanying the substantial holding notice to this undertaking until WSE and Taranaki cease to hold shares in NSX;
- (d) The Bidder undertakes that it will pay the costs of its compliance with this enforceable undertaking; and
- (e) The Bidder will provide all documents and information requested by ASIC from time to time for the purpose of assessing the Bidder's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 The Bidder 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 terms of this undertaking;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2 Further the Bidder 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 Act;

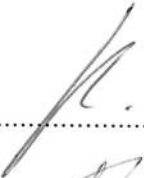
in relation to the circumstances specified in this undertaking;
and


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

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

SIGNED for FEX EQUITY MARKETS)
PTY LIMITED by its sole director:)


..... Director


..... Witness

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


.....
Jane Margaret Eccleston

Delegate of Australian Securities and Investments Commission

27 July 2011