

## VARIATION OF ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

### Subsection 93AA(2)

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

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

### 1. DEFINITIONS

1.1 In this variation of enforceable undertaking, defined terms used have the same meaning as those in the undertaking given to, and accepted by, ASIC on 27 July 2011 by WSE, a copy of which is attached as an annexure to this document.

1.2 The following additional definitions are used:

**nominated broker** means a financial services licensee nominated by ASIC for the purposes of paragraph 3.1(e) of the undertaking in a nominated broker notice;

**nominated broker notice** means a written notice given by ASIC to WSE that nominates a financial services licensee for the purposes of paragraph 3.1(e) of the undertaking.

**professional investor** has the meaning given by section 9 of the Corporations Act;

**sophisticated investor** means a person to whom an offer of a body's securities does not need disclosure under Part 6D.2 of the Corporations Act because of subsection 708(8) of that Act.

### 2. BACKGROUND

2.1 On 27 July 2011, WSE offered the undertaking to ASIC, and on the same day ASIC accepted the undertaking.

2.2 On 30 July 2011, certain inaccuracies in the Background section of the undertaking were notified to ASIC.

2.3 On 21 May 2012, WSE advised ASIC that it had not fully complied with paragraph 3.1(e) of the undertaking and that it holds 2,672,067 NSX shares. As at the date of this variation, WSE holds 2,672,067 confirm NSX shares.

### 3. VARIATION OF UNDERTAKING

3.1 Under subsection 93AA(2) of the ASIC Act, WSE varies, and ASIC consents to, the variation of the undertaking by:

(a) omitting paragraph 3.1(e) and substituting:

"(e) If WSE has not disposed of all its NSX shares by the End Date, it must:

- (i) by no later than 5 days after being given a nominated broker notice, instruct a nominated broker to sell on WSE's behalf all its NSX shares either on-market, or off-market to sophisticated or professional investors, on the basis that WSE instructs the nominated broker that:
  - a. the nominated broker must take all reasonable steps, and WSE must take all reasonable steps to assist the nominated broker, to ensure that none of the NSX shares are sold to FEX, Taranaki or any of their associates or any other associate of WSE; and
  - b. if any NSX shares are sold off-market to sophisticated or professional investors, the nominated broker must take all reasonable steps to obtain from the purchaser a statutory declaration that the purchaser is not an associate of WSE, Taranaki or FEX or any of their associates; and
- (ii) by no later than 6 months after being given a nominated broker notice, dispose of its NSX shares.

(ea) If ASIC gives WSE a nominated broker notice after the End Date, WSE must:

- (i) by no later than 7 days after being given the nominated broker notice, give a written notice to ASIC confirming that it has instructed the nominated broker in accordance with subparagraph (e)(i);
- (ii) by no later than 5 days after the end of each month during which the nominated broker had acted for WSE for the purposes of paragraph (e), give a written notice to ASIC specifying the following information:
  - a. the number of shares sold by the nominated broker;
  - b. the price at which the shares were sold;
  - c. the date of the sales;
  - d. confirmation as to whether the sale was on-market or off-market;

- e. for off-market sales - details of the purchaser (if known) including any statutory declarations as referred to in subparagraph (e)(i)(b); and
- f. the number of NSX shares which remain unsold by the nominated broker at the end of the relevant month.

#### 4. ACKNOWLEDGMENTS

##### 4.1 WSE acknowledges that ASIC:

- (a) may issue a media release on execution of this variation of enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this variation of enforceable undertaking; and
- (c) will make this variation of enforceable undertaking available for public inspection.

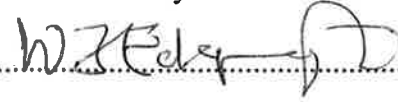
4.2 Subject to paragraph 4.4 below, WSE acknowledges that this variation of enforceable undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this variation of enforceable undertaking or the undertaking.

4.3 Nothing in this variation of enforceable undertaking constitutes an admission by WSE of a contravention by WSE of the undertaking or any other matter.

4.4 WSE acknowledges that the acceptance by ASIC of the variation in section 3 above varies the undertaking and does not derogate from ASIC's powers and rights to take any action in relation to the undertaking except that ASIC may not take any action under section 93AA of the ASIC Act in relation to any breach of paragraph 3.1(e) of the undertaking that is alleged to have occurred before this variation came into force but only insofar as that alleged breach relates to the obligation of WSE to dispose of its NSX shares within the time period specified in subparagraph 3.1(e)(iii) as in force before this variation came into force.

4.5 WSE acknowledges that this variation of enforceable undertaking has no operative force until accepted by ASIC.

**SIGNED for WSE INVESTMENT FUND )**  
**NO.2 PTY LTD by its sole director: )**

.....  .....

Director  
Warwick Edgington


29/4/13 WSE JK

.....  .....

Witness  
John Laxon

29/4/13 WSE JK

**Consented to by the Australian Securities and Investments Commission under the ASIC Act subsection 93AA(2) by its duly authorised delegate:**

.....  .....

Jane Margaret Eccleston  
Delegate of the Australian Securities and Investments Commission

Dated 6 May 2013