



25 September 2015

Hamish Macdonald
NZX Head of Policy
By email: consultation@nzx.com

Dear Hamish

NZX consultation on identification of price sensitive information & administrative trading halts

This submission is made by the Listed Companies Association (**LCA**) in response to the NZX Consultation Paper on the Process for Identification of Price Sensitive Information and Application of Trading Halts on Release of Price Sensitive Information (**Consultation Paper**).

Summary

1. The LCA supports Option 1.
2. We consider that any change in NZX's practice should align with, and be implemented at the same time as, a change in ASX's practice. New Zealand currently has [32 dual-listed companies](#) and any difference in approach between NZX and ASX can have real impacts on major NZ listed companies. Accordingly, NZX may need to revisit this issue if the ASX decides to continue to identify price sensitive information and impose Administrative Trading Halts (**ATHs**), or to adopt some other approach, following ASX's review of its practices.
3. For the reasons noted below, we do not consider that any of Options 2, 3 or 4 would address the issues identified in the Consultation Paper.
4. Our conclusions, including our preferred Option, are based on the collective experience of the LCA members. We are interested in any further information NZX has regarding the impact ATHs have, and Option 1 would have, on the market or investor practice generally.
5. Our views may change if the impact of Option 1 on investors was material (see our responses to Questions 3-5 below).

Comment

It can be difficult for both issuers and NZX alike to accurately determine whether or not information is price sensitive prior to its release to the market.

Given this difficulty, NZX understandably adopts a conservative approach.

This, however, leads to more information than necessary being identified as price sensitive and unnecessary trading interruptions (via ATHs).

The difficulty in identifying price sensitive information also means that information which is, but does not on its face appear to be, price sensitive may not be identified as such¹.

As a result:

- ATHs may not be applied in instances where they are appropriate;
- Price sensitive information may be overlooked by those placing undue emphasis on NZX's identification.

For dual listed issuers, there is the additional risk that the NZX and the ASX adopt different views as to which information is price sensitive giving rise to arbitrage opportunities.

We do not consider that shifting the burden for identifying price sensitive information to issuers (Option 3) resolves these issues. Although issuers are generally better placed than NZX to identify price sensitive information, even issuers struggle at times to identify that information prior to its release. As a result, many issuers may adopt a conservative approach leading to more information than necessary being identified as price sensitive.

The risk of undue reliance being placed on identified price sensitive information will also remain. This could result in some potentially price sensitive information being overlooked (e.g. information originating from third parties such as substantial product holder notices).

Option 3 would also give rise to arbitrage opportunities if the ASX did not also adopt the same approach.

We do not consider that Option 2 is an optimum solution. While there are benefits in identifying a prescribed list of announcements which will be price sensitive, as the Consultation Paper notes:

- Issues will still arise "around the edges";
- Adopting a rigid approach could lead to information being identified as price sensitive when it is not; and
- Price sensitive information not on the "prescribed list" will still be released without identification or application of an ATH.

ASX would also need to adopt the same approach, and both NZX's and ASX's prescribed lists (and practice "around the edges") would need to be identical, to avoid any arbitrage opportunities arising.

We also note that some announcements likely to be on the "prescribed list" (such as annual results or major transaction announcements) will contain a lot of information which will often be difficult to adequately analyse and understand within the 10 or 15 minute ATH window.

If Option 2 is adopted however, we consider that the "prescribed list" should be limited perhaps to situations where there is a large volume of information for the market to digest, such as:

- Results announcements;
- AGM materials;
- Investor presentations; and
- Takeover materials.

For the reasons noted above in respect of Options 2 and 3, we do not consider that Option 4 will address the issues identified in the Consultation Paper.

¹ For example, information previously released by an issuer or a third party may mean that an announcement which appears not to be price sensitive could be.

LCA response to questions in the Consultation Paper

1. *What are the risks and benefits of NZX's current practice of seeking to identify price sensitive information and flagging this information to the market?*

We consider the primary benefit of identifying price sensitive information is to bring that information to the attention of the market. However, for the reasons noted above and in the Consultation Paper, this benefit does not appear to always be realised.

We consider that the risks are outlined in the Consultation Paper and above, including:

- The difficulty in accurately and consistently identifying price sensitive information prior to its release;
- Undue emphasis being placed on the identification of price sensitive information; and
- Inconsistent application between NZX and ASX leading to arbitrage opportunities.

2. *What are the risks and benefits of NZX's current practice of applying Administrative Trading Halts following the identification of price sensitive information?*

We consider the primary benefits of ATHs are to provide investors with:

- Time to consider information while an issuer's securities are not trading; and
- The ability to adjust orders.

The major risks associated with ATHs appear to be outlined in the Consultation Paper, including:

- The imposition of unnecessary market interruptions (given the difficulty of identifying price sensitive information prior to its release); and
- Inconsistent application between NZX and ASX leading to arbitrage opportunities.

At a practical level, it is also unclear to us whether all investors benefit equally from ATHs (e.g. Are orders frequently adjusted under ATHs? Do many "retail" investors adjust orders given the limited 10-15 minute ATH window? Does this feature in fact benefit "realtime" traders – primarily institutional investors – rather than "retail" investors?).

We note that NZX is seeking views from the New Zealand Shareholder's Association (**NZSA**) and we would welcome any further information NZX has on the risks associated with ATHs from the NZSA and other stakeholders.

3. *Do you consider that the practice of applying Administrative Trading Halts following the release of price sensitive information is necessary in order to promote the operation of fair, orderly and transparent markets?*

The Consultation Paper notes that NZX's data suggests that its identification of price sensitive information is unlikely to be accurate in the majority of cases. As a result, unnecessary market interruptions are occurring. As noted above, there are other disadvantages with NZX's current practice. We do not consider that these issues will be resolved under Options 2-4.

It also appears that international practice is generally to apply routine trading halts to facilitate dissemination, rather than to allow time for consideration, of information (particularly where there are multiple channels for dissemination). Given the primacy of MAP, this issue does not appear to be as real in the NZ context.

Accordingly, it does not appear that ATHs are necessary. Moreover, unless ATHs give all investors an equal opportunity we do not consider 10 to 15 minute ATHs necessarily in the best interests of the market.

However, as noted at the outset, our conclusions (including our preferred Option) are based on the collective experience of the LCA members. We are interested in any further information NZX has regarding the impact ATHs have, and Option 1 would have, on the market or investor practice generally. If the impact on investors is material, this may change our view.

4. *Do you prefer any of the alternative options discussed in part III? Please explain your reasons, including the likely risks and benefits.*

Option 1 is our preferred option (however, as noted above, if the impact of Option 1 on investors is material this may change our view).

The application of ATHs to a short prescribed list of announcements, without those announcements being marked as price sensitive, is another option. However the issues identified above in respect of Option 2 will still arise. In addition, not all investors would be aware of, and therefore could benefit from, the ATH.

5. *What would be the impact on you if NZX ceased its current practice (i.e. option 1)?*

There would be no or very little impact on listed issuers.

The Consultation Paper notes that the main impact of Option 1 on investors is that they will have responsibility for independently monitoring information and will not have the ability to adjust orders under an ATH. As noted above, we are interested in any further information NZX has regarding the impact of Option 1.

6. *What factors should NZX consider when determining any timetable for ceasing its current practice as proposed?*

We note the ASX is considering a similar change in policy. In our view, it would be ideal if the two exchanges adopted a common approach and that changes be implemented at the same time as across both exchanges (ideally as soon as possible following a decision to adopt the change, after a short notification period).

About the LCA

Established in 1981 the LCA (listedcompanies.co.nz) is an independent, voluntary non-profit organisation providing a forum for discussion and exchange of views on issues of importance to New Zealand listed companies. The LCA's main purposes are to:

- Help issuers further the long-term interests of their shareholders by working for a fair, adequate, and efficient regulatory system;
- Help issuers maximise the benefits of listing and to make the requirements that come with that status appropriate and reasonable to comply with; and
- Promote confidence in, and growth of, business and capital markets in New Zealand.

The LCA's members are NZX Main Board, NZAX, NZDX and dual listed issuers.

This submission has been broadly supported by the issuers consulted and has expressly been endorsed by the issuers listed in the Appendix.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Miller', written in a cursive style.

Sarah Miller
Acting Chairperson
Listed Companies Association

Appendix

List Of LCA Members Who Have Expressly Consented To Being Named In Support Of This Submission:

- Air New Zealand Limited
- Chorus Limited
- Contact Energy Limited
- Evolve Education Group Limited
- Fletching Building Limited
- Fisher & Paykel Healthcare Corporation Limited
- Fonterra Co-operative Group Limited
- Kathmandu Holdings Limited
- Millennium & Copthorne Hotels New Zealand Limited
- New Zealand Oil & Gas Limited
- Smartpay Holdings Limited
- Spark New Zealand Limited
- Summerset Group Holdings Limited
- Wynyard Group Limited
- Xero Limited