BEFORE THE TAKEOVERS PANEL

IN THE MATTER OF	the Takeovers Act 1993 and the Takeovers Code
AND	
IN THE MATTER OF	a determination under section 32 of the Takeovers Act 1993 concerning NZME Limited
MEETING	7 April 2025 by video conference
	28 April 2025 at Auckland
MEMBERS	M W Stearne (Chair of the Division) D M Goatley N W Starrenburg S H Judd
APPEARANCES	F Cuncannon (Cuncannon Partners) as counsel assisting the Panel
	E Scorgie (Chapman Tripp) for J Grenon
	D Raudkivi (Russell McVeagh) for Spheria Asset Management Pty Limited
IN ATTENDANCE	A J Hudson (Chief Executive), M E Cunliffe (General Counsel), B Tan (Panel executive)

DETERMINATION AND STATEMENT OF REASONS

7 MAY 2025

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DETERMINATION AND STATEMENT OF REASONS

Determination

1 The Panel has determined that it is satisfied that James Grenon did not breach rule 6(1)(a) of the Takeovers Code (the **Code**) when he increased the percentage of voting rights held or controlled in NZME by acquiring control of a total of 1,212,975 NZME shares (the **4 March Shares**), representing 0.646% of the voting rights in NZME Limited (**NZME**), on 4 March 2025 (the **4 March Acquisitions**).

2 Central to the Panel's determination is its view that, at the time of the 4 March Acquisitions, Mr Grenon was not associated with Spheria Asset Management Pty Limited (**Spheria**), Spheria being the controller of at least 14.946% of the voting rights in NZME.[1] Further, the Panel does not consider that Mr Grenon was associated with Spheria on 28 April 2025 (the date on which the Panel heard oral evidence in relation to this matter).

3 However, the Panel did conclude that Mr Grenon was associated with Caniwi Capital Partners Limited (**Caniwi**) before the 4 March Acquisitions, Caniwi being, at the time of the 4 March Acquisitions, the controller of 1.674% of the voting rights in NZME. Further, the Panel has not been provided with evidence to demonstrate that this association has ended.

4 The Panel's view as to the continuing nature of Mr Grenon's association with Caniwi is not a determination for the purposes of the Takeovers Act 1993 (the **Act**). However, the Panel considers that, given Mr Grenon's indications that he may wish to acquire further shares in NZME, it is appropriate to provide guidance based on the information before the Panel.

5 If Mr Grenon were minded to acquire control of further voting rights in NZME, the Panel cautions Mr Grenon to consider whether he is associated with any other shareholders such that the number of

[1] In addition to the voting rights which Spheria controlled, Spheria advised that it held a relevant interest in a further 4.517% of the voting rights in NZME, under terms whereby the clients could determine how the voting rights would be exercised (although it appeared that Spheria would have significant influence over the exercise of the voting rights).

voting rights held or controlled by those shareholders would further limit the number of voting rights which Mr Grenon may acquire without breaching the Code.

6 The Panel has set out a detailed exposition of the law and analysis of the facts below to assist parties in similar circumstances in understanding their legal position.

How the Code relates to discussions between shareholders regarding voting

7 Shareholders may wish to discuss matters in relation to Code companies in which they hold shares. Such discussions may, for example, extend to the past and future performance of the company, the company's strategic direction, and the composition of its board. These types of discussions are a commercially legitimate form of engagement between owners of a company and, in and of themselves, do not breach the Code.

8 However, the Code's fundamental rule (rule 6) restricts the aggregation of voting control of a Code company above 20% by a person and that person's associates. If discussions and engagement between shareholders go so far as to result in the shareholders becoming associates for the purposes of the Code, the Code restricts the acquisition, by any of those associated shareholders, of further voting rights if, after the acquisition, the associated shareholders would hold or control (in aggregate) more than 20% of the voting rights.

9 Forming an association, by itself, is not prohibited by the Code. A group of shareholders who together hold more than 20% of the voting rights in a Code company may become associated for Code purposes without breaching the Code. A breach of the Code would only occur if one of those associated shareholders:

(a) acquired control over another's voting rights (or joined them in sharing in the control of those voting rights); or

(b) became the holder or controller of an increased percentage of voting rights,

and, in either case, the aggregate percentage of voting rights held or controlled by the associates after the acquisition exceeded 20%.

10 It will usually be clear when a shareholder acquires control over another shareholder's voting rights or joins in the sharing of control. However, it may be less clear whether and when an association has been formed which, in practice, restricts further acquisitions of voting rights.

11 From a policy perspective, efforts to obtain voting control over more than 20% of a Code company without making a Code offer (or giving independent shareholders the opportunity to vote on the proposal) is the central activity which the Code regulates. As was written in relation to the draft Code in 1996:[2]

> *Where a person wishes to cross the 20% threshold, ie, move to de facto or de jure control, the person will ordinarily have to obtain shareholder approval or make an offer to all shareholders. The fundamental rule thus combines with the compliance options to provide all shareholders an opportunity to participate in a transfer of control, either by voting on the proposed acquisition or by accepting or rejecting an offer for their shares. This is the principal measure that the Code provides in response to the fairness objective in section 20(1)(c) of the Takeovers Act 1993.*

[2] See Bob Dugan "Law, Economics and the Draft Takeovers Code" (1996) VUWLR 3. Bob Dugan, then a Reader with the Faculty of Law Victoria University of Wellington, was employed as a researcher by the Takeovers Panel Advisory Committee and by the Takeovers Panel.

Background to the matter before the Panel

12 NZME is a Code company under the Act, and for the purposes of the Code, on account of being a New Zealand-incorporated company which is a listed issuer that has financial products that confer voting rights quoted on a licensed market.

13 Mr Grenon is a shareholder in NZME. Mr Grenon holds 18,726,724 NZME shares personally and a further 100 NZME shares are held by JTG 4 Limited, of which Mr Grenon is the sole director and shareholder.

14 Mr Grenon has been seeking to remove some or all of the directors of NZME and replace them with other directors (the **Proposed Spill**).[3]

15 The Proposed Spill became public knowledge on or around 6 March 2025 when Mr Grenon's approach to NZME was announced by NZME following Mr Grenon writing to NZME on the same day outlining plans for the Proposed Spill and summarising Mr Grenon's reasons for initiating it (the **6 March Letter**).

16 The 6 March Letter noted that Mr Grenon had discussed in confidence his proposals with some of NZME's largest shareholders, who (in aggregate with Mr Grenon) held or controlled approximately 37% of the voting rights in NZME, and that these shareholders had communicated that they intended to support Mr Grenon's proposal (in this determination, the people other than Mr Grenon who held or controlled shares in NZME that comprised this 37% are referred to as the **Supporting Shareholders**).

17 Shortly prior to the release of the 6 March Letter, Mr Grenon acquired further NZME shares (having previously acquired a shareholding of just below 5%). Specifically, Mr Grenon entered into on and off market transactions to:

(a) acquire a total of 8,512,494 NZME shares, representing 4.530% of the voting rights in NZME, on 28 February 2025 (the **28 February Acquisitions**) which settled on or around 4 March 2025, bringing the percentage of NZME voting rights held or controlled by Mr Grenon to 9.321%; and

(b) acquire the 4 March Shares, with those transactions settling on or around 6 March 2025, bringing the percentage of NZME voting rights held or controlled by Mr Grenon to 9.966%.

18 Following the release of Mr Grenon's substantial product holder notice in relation to the 28 February Acquisitions and the 6 March Letter, the Panel made enquiries of Mr Grenon and the Supporting Shareholders and sought submissions as to whether Mr Grenon was associated with any of the Supporting Shareholders.

19 After considering the information received in response to the Panel's enquiries, the Panel agreed, on the basis of the information then before it, that:

(a) there was a reasonable possibility that Mr Grenon was associated with Caniwi and Spheria at the time of the 4 March Acquisitions;

(b) at the time of the 4 March Acquisitions, Mr Grenon, Caniwi and Spheria, in aggregate, held or controlled more than 20% of the voting rights in NZME; and

(c) accordingly, there was a reasonable possibility that the 4 March Acquisitions may not have been in compliance with the Code.[4]

[3] The Proposed Spill has taken various forms. There have been at least 3 main proposals, as summarised in NZME's announcement of April 2025, available here: https://www.nzx.com/announcements/449330. For convenience, the Panel has not distinguished between the variations. All share the common key feature of looking to significantly change NZME's board and, as a consequence, its strategic direction.

[4] As to this threshold and the Panel's approach as to whether to call a section 32 meeting, please see the Panel's Guidance Note on Section 32 of the Takeovers Act 1993 at: https://www.takeovers.govt.nz/guidance/guidance-notes/section-32-of-the-

20 The Panel advised Mr Grenon of this conclusion on 1 April 2025 and enquired whether Mr Grenon would be willing to address the matter by providing undertakings under which Mr Grenon would:

(a) sell all of the 4 March Shares within 6 months;

(b) not exercise the voting rights attached to the 4 March Shares until their sale; and

(c) ensure that any public statement by Mr Grenon in relation to his voting control in NZME reflected the voting restrictions.

21 On 3 April 2024, Mr Grenon, through his legal advisers, Chapman Tripp, advised that Mr Grenon would not provide the undertakings.

22 The Panel then resolved to convene a meeting pursuant to section 32(1) of the Act to consider, and make a determination as to, whether it is satisfied or is not satisfied that Mr Grenon did not act or is not acting or intends to act not in compliance with the Code in respect of the acquisition of control of voting rights in NZME (the **Meeting**). In its accompanying letter to Mr Grenon, the Panel noted that:

> *The Panel's inquiry will be conducted in respect of the issues identified in the Notice of Meeting. The Panel's view is that matters both before and after the [4 March Acquisitions] may be relevant to the assessments the Panel needs to make. Accordingly, it intends to inquire about circumstances from the start of your relationships with each of Caniwi and Spheria (i.e., September 2024) to the date the Panel concludes its inquiries. The Panel will address any further matters that arise in the course of its inquiries as it considers appropriate at that time. This may include requesting further evidence or documents in relation to those matters as well.*

23 To call the Meeting, the Panel had agreed, at the time, that there was a reasonable possibility Mr Grenon had breached the Code as it concluded that there was a reasonable possibility that Mr Grenon was associated with Spheria prior to the 4 March Acquisitions. The Panel reached this view based on various matters, including information that had been provided by shareholders other than Mr Grenon.

24 The Meeting was convened on 7 April 2025 to discuss procedural matters. The Meeting was then adjourned. The Panel subsequently summonsed documentary evidence and witnesses in relation to the substantive portion of the Meeting which was held on 28 April 2025.[5] Written submissions were made by Mr Grenon prior to and following the Meeting. Following the conclusion of the Meeting, Spheria provided written submissions.

25 The Panel considered all materials received, but this determination and statement of reasons specifically address only the materials which the Panel considers necessary to explain its reasoning.

takeovers-act-1993. As is stated in the Panel's guidance, "to satisfy the Threshold Test the Panel need only consider that there is a reasonable possibility of non-compliance with the Code". This is a low standard which reflects on the investigatory nature of section 32 proceedings.

[5] The Panel notes that time before holding the substantive portion of the Meeting was longer than the Panel would have preferred. However, there were significant issues with availability of witnesses and Easter and ANZAC statutory holidays which caused a delay in convening the substantive portion of the Meeting.

The fundamental rule and association

The fundamental rule and "control" over voting rights

26 The "fundamental rule" set out in rule 6(1) of the Code provides that:

> ***6 Fundamental rule***
>
> *(1) Except as provided in rule 7, a person who holds or controls—*
>
> *(a) no voting rights, or less than 20% of the voting rights, in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company unless, after that event, that person and that person's associates hold or control in total not more than 20% of the voting rights in the code company:*
>
> *(b) 20% or more of the voting rights in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company.*
>
> *(2) For the purposes of subclause (1), if—*
>
> *(a) a person and any other person or persons acting jointly or in concert together become the holders or controllers of voting rights, that person is deemed to have become the holder or controller of those voting rights:*
>
> *(b) a person or persons together hold or control voting rights and another person joins that person or all or any of those persons in the holding or controlling of those voting rights as associates, the other person is deemed to have become the holder or controller of those voting rights:*
>
> *(c) voting rights are held or controlled by a person together with associates, any increase in the extent to which that person shares in the holding or controlling of those voting rights with associates is deemed to be an increase in the percentage of the voting rights held or controlled by that person.*

27 Rule 3(1) defines "control" and "voting right" as follows:

> ***control**, in relation to a voting right, means having, directly or indirectly, effective control of the voting right; and **controller** has a corresponding meaning*
>
> ***voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company or financial product holders of another body corporate, not being a right to vote that is exercisable only in 1 or more of [certain limited specified circumstances]*

28 It is important to emphasise where association does not need to be considered when assessing compliance with rule 6 – specifically, in situations involving effective control of voting rights. If a person acquires effective control over voting rights, this is regulated by rule 6 without needing to consider association. A person who increases its effective control of voting rights in a Code company above 20% breaches the Code unless a relevant exception applies.

29 One example of control over voting rights that constitutes 'effective control' is a contractually enforceable voting obligation owed by a shareholder to a third party (such as a voting agreement in relation to a scheme of arrangement, under which a shareholder agrees in favour of the 'bidder', that the shareholder will vote for the scheme).[6]

[6] The Panel has granted class relief in relation to such voting agreements. See the Takeovers Code (Voting Agreements for Schemes of Arrangement) Exemption Notice 2020.

The definition of "associate" in the Code

30 "Associate" is defined in rule 4 of the Takeovers Code as follows:

> ***4 Meaning of associate***
>
> *(1) For the purposes of this code, a person is an associate of another person if—*
>
> *(a) the persons are acting jointly or in concert; or*
>
> *(b) the first person acts, or is accustomed to act, in accordance with the wishes of the other person; or*
>
> *(c) the persons are related companies; or*
>
> *(d) the persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associates; or*
>
> *(e) the first person is an associate of a third person who is an associate of the other person (in both cases under any of paragraphs (a) to (d)) and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person.*
>
> *(2) A director of a company or other body corporate is not an associate of that company or body corporate merely because he or she is a director of that company or body corporate.*

31 Association is one of the key anti-avoidance concepts in the Code. As set out in *CodeWord 7* (September 2002):

> *The Code is concerned with regulating changes of control of Code companies. The Code would be ineffectual if it concentrated only on voting rights held or controlled by a particular company or individual. It was essential to include in the Code the concept of "association" so that when two or more associated parties acquire ownership of, or control of, voting rights above 20% in a Code company the fundamental rule is triggered.*

32 Accordingly, in addition to restricting a person from increasing its own effective control of voting rights above 20%, rule 6(1)(a) also restricts any member of a group of associated persons from increasing their voting control such that the associates' aggregate voting control would exceed 20%. In effect, the associate concept in rule 6(1)(a) deems a person to have effective control over the voting rights held or controlled by associates, for anti-avoidance purposes. An unduly narrow approach to the interpretation of rule 4, or the finding of association, would be inconsistent with this anti-avoidance purpose.

33 For clarity, because:

(a) a binding voting obligation confers effective control over the relevant voting rights; and

(b) association is only relevant under rule 6(1)(a) where a person does not have effective control over voting rights,

a legally enforceable voting agreement or similar (which confers effective control) is not a requirement of, or a necessary precondition to, association between persons for Code purposes.

34 The definition of associate in rule 4 is open-ended and requires a fact-based analysis for all five limbs, despite the lack of express references to "under the circumstances" in rules 4(1)(a) and (b).[7] The key question is whether the relationship between the relevant persons is such that their respective voting control should properly be aggregated for the purposes of rule 6, despite the absence of effective control over each other's voting rights.

Joint or in Concert Limb

35 After hearing the oral evidence, the Panel decided that the only limb of the definition of associate that remained at issue was rule 4(1)(a) (the **Joint or in Concert Limb**). Accordingly, the Panel does not address the other limbs of rule 4(1) in its assessment of the evidence set out below.

36 As to the substance of the Joint or in Concert Limb, the Panel said in *Kerifresh* (emphasis added):[8]

> *The essence of the concept of acting in concert involves **knowing conduct** the **result of communication between the parties** and not simply simultaneous actions occurring spontaneously. It involves at least an understanding between the parties as to **a common purpose or intent**.*

37 The Panel considers that this is a helpful starting point. However, it lacks detail as to what level of communication is required, and what sort of knowing conduct is sufficient.

38 As to the common purpose or intent, Mr Grenon's submissions suggested that for rule 4(1)(a) to be engaged, the intent had to be the acquisition of voting rights. The Panel disagrees. The Panel accepts that rule 4(1)(a) does not apply to all joint or in concert conduct (for example, joint conduct which is entirely unrelated to a Code company) but considers the rule is not limited to joint conduct aimed at the acquisition of voting rights. Rather, the Panel considers that rule 4(1)(a) can also apply to joint conduct in connection with the voting rights in a Code company. This could include circumstances where persons have a common purpose to seek a shareholder vote. Whether such persons are acting jointly or in concert will depend on the circumstances, including a close examination of the relevant conduct and communications.

39 The Panel discusses indicia of joint or in concert conduct in the context of a board spill below.

Determining whether an association exists

Level of evidence of association required

40 Association is a factual enquiry. In many cases, evidence of association will not be in writing. As such, it is necessary to examine the particular facts and surrounding circumstances of each situation to draw inferences. As the Australian Panel has said in *Dromana Estate Limited*:[9]

> *[Issues] of association are notoriously difficult for outsiders to prove since access to the type of evidence needed is rarely available. Issues of association frequently need to be decided on the basis of inferences from partial evidence, patterns of behaviour and a lack of a commercially viable explanation for the impugned circumstances.*

41 The Panel also notes that the Australian Panel's approach to association issues is to require that the applicant provide sufficient evidence of association to convince the Panel as to association, albeit with proper inferences being drawn – this is often referred to as the "hurdle test".

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[7] *CodeWord 7.*
[8] See *Kerifresh Limited* at [151] available at: www.takeovers.govt.nz/assets/Determinations/3c3f57828e/Kerifresh-Limited-22-November-2007-Determination.pdf.
[9] *Dromana Estate Limited 01R* [2006] ATP 8 at [25].

42 The hurdle test arises out of the jurisdiction of the Australian Panel which differs from that of the New Zealand Panel and does not apply in New Zealand:

(a) As the Australian Panel said in *Dragon Mining Limited*:

> *[The] Panel has limited investigatory powers which means, before we decide to conduct proceedings, an applicant must do more than make allegations of association and rely on us to substantiate them. An applicant must persuade us by the evidence it adduces that we should conduct proceedings.*[10]

(b) In contrast, the New Zealand Panel has broad investigative functions. Further, unlike the Australian Panel, the New Zealand Panel is not focused only on dispute resolution. It both serves an adjudicative purpose (at least in the first instance) as well as a regulatory function.[11]

43 In its submissions, Spheria argued that there was a high threshold for inferring association. The Panel does not accept this to be the case:

(a) Applying too high a threshold to infer association is inconsistent with the purpose of association as an anti-avoidance provision. If, for example, an express written agreement or written records of 'in concert' understandings were required, the objectives of the Code would be undermined.

(b) To the extent that such an argument is based on the Australian hurdle test, the rationale does not apply in New Zealand.

(c) To the extent that any such argument is based on the Panel's determination in *Calgary Petroleum Limited*[12] (***Calgary Petroleum***), the Panel does not agree with this interpretation (as is discussed further below).

<u>New Zealand precedent – *Calgary Petroleum*</u>

44 The most relevant New Zealand precedent is the Panel's determination in *Calgary Petroleum*.

45 The scenario in *Calgary Petroleum* bears some similarities to the present situation in that there was a proposal to remove a director (Mr Treuren).[13] In *Calgary Petroleum*, Mr Treuren, in broad terms, argued that the Panel should infer an association between shareholders based on the outcome of a shareholder vote and actions in relation to an earlier rights issue. The critical passage in the determination is as follows (emphasis added):

> *[67] … Mr Treuren alleged that the fact that the resolution removing him as a director of Calgary was passed by a large majority (77.93% of shareholders voting, the constitution required a 75% majority) when the resolution had previously failed indicated that a number of shareholders were associates and that the associated shareholders had increased their voting rights under the rights issue and then acted together in exercising their votes at the May 2005 shareholders meeting. The Panel did not agree that the inference of association could be drawn from the circumstances of voting.*

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[10] *Dragon Mining Limited* [2014] ATP 5 at [60] (footnotes omitted). This has been cited by the Australian Panel in other subsequent decisions – see for example *Tissue Repair Limited* [2024] ATP 20 at [24].

[11] The Panel's functions include making determinations (see section 8(1)(e) of the Act), investigating any act or omission for the purpose of exercising its powers and functions under Parts 3 and 4 of the Act (see section 8(1)(d) of the Act) and making applications to the Court (see section 8(1)(e) of the Act).

[12] See the Panel's determination at: https://www.takeovers.govt.nz/transactions/panel-determinations/calgary-petroleum-limited.

[13] The differences between *Calgary Petroleum* and the current matter include that in *Calgary Petroleum* it was proposed that one director be removed, and a key concern was a rights issue under which, it was alleged, the shareholders favouring removal had increased their aggregate control percentage.

> *[68] The fact that a number of shareholders vote in the same way on a single issue does not on its own mean that those shareholders should be considered associates for the purposes of the Code.* ***Even if a number of shareholders agree to exercise their votes in a particular way at a meeting of a company this would not necessarily make them associates of each other.***

46 Mr Grenon and Spheria pointed to the emphasised text in paragraph 68 of *Calgary Petroleum* in their submissions.

47 The Panel's approach to *Calgary Petroleum* is as follows:

(a) As stated in the final sentence of paragraph 68 of *Calgary Petroleum*, the mere fact that shareholders vote in the same way on a resolution does not necessarily, by itself, support an inference that shareholders are associates for Code purposes. Consistent with this, the Panel considers that the opening sentence of paragraph 68 of *Calgary Petroleum* is uncontroversial. If shareholders voting in the same way created an association, essentially all shareholder votes would give rise to associations.

(b) In *Calgary Petroleum*, the Panel was not considering a situation where there was evidence of coordination. Instead, the Panel considered whether an inference could be drawn from the percentage of votes cast in favour of the relevant resolution. There was no evidence before the Panel of a voting agreement between shareholders, so the second sentence of paragraph 68 of *Calgary Petroleum* did not relate to any facts before the Panel. In the Panel's view, this sentence was not intended as, and is not, a policy statement that voting agreements do not give rise to association for Code purposes. Rather, the second sentence of paragraph 68 states simply that a voting agreement does not necessarily give rise to an association. This leaves open the possibility that an association might be a consequence of an agreement as to how shareholders might vote.

(c) In this regard, the Panel considers that there will be examples of voting agreements which do give rise to an association. While the Panel's position is that a voting agreement for a scheme of arrangement does not, in and of itself, result in an assumed association:

(i) the Panel has been clear that even in this context, it will assess whether the terms of a voting agreement may give rise to a potential association in the context of a proposed scheme on a case-by-case basis;[14] and

(ii) the context of a scheme voting agreement is relatively unique in that it is effectively between a buyer and seller – this differs from a voting agreement between parties who will remain as shareholders and are deciding how they should exercise their votes together.

(d) All of the above is reflective of the fact that whether or not an association exists is dependent on all the facts and circumstances of each transaction or circumstance.

(e) If shareholders in a Code company did agree, in an enforceable manner, to exercise their votes in a particular way, this would be directly regulated by the Code as an increase in effective control over voting rights.[15]

[14] See the Panel's Guidance Note on Schemes of Arrangement available at: https://www.takeovers.govt.nz/guidance/guidance-notes/schemes-of-arrangement at [5.24].
[15] See paragraphs 28 and 29 above.

John King speech

48 Mr Grenon also pointed to comments made by John King (then Panel Chair) in a 2002 speech. Mr King stated (emphasis added):[16]

> *Some criticism of the Code has been based around a misunderstanding of how the fundamental rule [rule 6] works. For example it has been suggested that if a group of institutions decide, after consultation, to vote against a proposal they may breach the fundamental rule. This is not correct. The fundamental rule is concerned with whether the voting rights which a person holds or controls are increased. The Code does not inhibit the ability of shareholders to exercise as they think fit the votes that they hold or control* ***and certainly does not prevent discussion, consultation, co-operation and agreement between shareholders in the exercise of those voting rights****.*

49 The argument advanced by Mr Grenon based on this text is as follows:

> *Understood in this context, the proposition that control over voting rights is not required for the Panel to find an association does not extend to situations where there is no alternative basis for finding an association, such as where the shareholders merely engaged in discussions about the exercise of voting rights or agreed to exercise their votes in a particular way. As Mr King's remarks in the quotation set out above make clear, such discussions or agreements (without more) are not sufficient to establish an association.*

50 The passage from Mr King's speech quoted above relates to the operation of the fundamental rule, which prohibits increases in voting control above 20%. The passage does not relate to association. When read in this context, Mr King was stating that the Code does not prevent discussion, consultation, and co-operation between shareholders, because this type of shareholder engagement does not result in increases in effective voting control. Mr King did not state that discussion, consultation, and co-operation between shareholders will not result in an association between those shareholders.

51 When read consistently with the Code, the reference to "agreement" in the emphasised text cannot be read as Mr King endorsing an unrestricted ability for shareholders in a Code company to enter into enforceable voting agreements. As a voting agreement confers effective control over voting rights, the Code prevents shareholders from entering into such voting agreements where they result in a person, or group of associated persons, increasing aggregate voting control above 20%. Accordingly, the Panel considers that the reference in Mr King's speech to "agreement" between shareholders is qualified and informed by the surrounding text of "discussion, consultation, co-operation" and refers only to unenforceable commitments of a commercial nature.

The Australian position

52 Although, as noted above, the Panel considers that the Australian 'hurdle test' is not applicable in New Zealand in terms of setting preliminary evidential requirements, the Panel believes that the Australian Panel's reasoning can often be helpful in respect of matters before the New Zealand Panel.

53 The Australian Panel has issued a number of decisions in relation to association, including in the context of board spills. The Panel considers that it is appropriate to take those decisions into account, including in ascertaining how parties' relationships should be analysed and the type of matters that can tend to indicate an association (albeit that there are differences in statutory drafting).

[16] John King "The Takeovers Code – In Operation" (speech, March 2002).

ASIC Regulatory Guide 128

54 Specifically in relation to board spills, ASIC Regulatory Guide 128: Collective action by investors (**ASIC RG 128**)[17] summarises the Australian position.

55 ASIC RG 128 provides that the following conduct is unlikely to constitute acting as associates or entering into a relevant agreement, where the conduct is confined to the exchange of views or information and each investor is not bound to act in a certain way and retains discretion:[18]

(a) holding discussions or meetings about voting at a specific or proposed meeting of an entity;

(b) discussing issues about the entity, including problems and potential solutions;

(c) discussing possible matters to be raised with the entity's board;

(d) discussing and exchanging views on a resolution to be voted on at a meeting; and

(e) disclosing individual voting intentions on a resolution.

56 Conversely, ASIC RG 128 provides that:[19]

(a) it would be rare for a person to elect to publicly sign a notice requisitioning a resolution without having formed any understanding with their co-signatories as to voting;

(b) investors formulating joint proposals relating to board appointments or a strategic issue are likely to indicate that there is an understanding between the investors on a particular matter relating to the affairs of the company, which amounts to a relevant agreement or acting in concert and these investors being considered associates;

(c) if the conduct extends to the formulation of joint proposals to be pursued together or there is an understanding that the investors will act or vote in a particular way, then concerns may arise; and

(d) agreeing on a plan concerning voting is likely to result in an association being formed.

Australian Panel decisions

57 The New Zealand Panel considers that the application of ASIC RG 128 is well illustrated in the contrasting Australian Panel determinations of *Aguia Resources Limited* (**Aguia**)[20] and *Caravel Minerals Limited* (**Caravel**).[21]

58 In Aguia the Australian Panel found that there was an association between shareholders. In summary:

(a) Three shareholders and/or their controllers (the **Requisitioning Shareholders**) requisitioned a general meeting to change the composition of the board and nominated new directors (one of whom was a Requisitioning Shareholder).

(b) Prior to the requisition, the Requisitioning Shareholders were in discussions about the proposal, and the timing and execution of the board spill resolution.

[17] See https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-128-collective-action-by-investors/.
[18] ASIC RG 128, table 1 on page 12.
[19] ASIC RG 128, table 2 on page 14.
[20] [2019] ATP 13 – see: https://takeovers.gov.au/reasons-decisions/2019-atp-13.
[21] [2018] ATP 8 – see: https://takeovers.gov.au/reasons-decisions/2018-atp-8.

(c) Aguia submitted the Requisitioning Shareholders were associated by entering a scheme for the purposes of controlling or influencing the composition of the board and conduct of the company's affairs by agreeing to vote in favour of the resolutions proposed in the requisition notice.

59 In a detailed examination of the parties' correspondence, the Australian Panel was satisfied the conduct had sufficiently extended beyond ordinarily permissible discussions. Importantly, there was a formulation of a joint proposal and the use of language displayed teamwork to pursue control and influence over the board spill resolution. The more specific matters that the Australian Panel pointed to were as follows:

(a) existing structural links between certain parties;

(b) inferences of teamwork from the extent and content of correspondences which included sharing draft work and other documentation in relation to the requisition notice amongst the Requisitioning Shareholders;

(c) references to working together e.g., "the need to be co-ordinated", "the boys", "Hello Peter (and team)" and numerous uses of "we";

(d) one Requisitioning Shareholder, who was also nominated as a director, emailed detailed plans regarding the requisitions and management of the company in the event the requisitions were successful. The Panel considered this went beyond legitimate preparation or due diligence that is ordinarily appropriate for a possible incumbent director to undertake prior to election; and

(e) correspondence included analysis of other shareholders' intentions.

60 In contrast, the Australian Panel did not find an association in *Caravel*. The relevant background of *Caravel* was:

(a) Three groups of shareholders (the **Initiating Shareholders**) jointly signed a notice to requisition a general meeting to consider resolutions for the appointment of two new directors and removal of three of the four existing directors. Caravel also received a voting intention statement and support statement along with the requisitioning notice.

(b) One of the Initiating Shareholders, Mr Cooke, was nominated as a new director and he also sought the joint signing to show other shareholders were in support and demonstrate that they were not "just a small group of dissident shareholders".

(c) Mr Cooke was transparent with other Initiating Shareholders about the potential association issues.

61 In *Caravel*, it was argued that the signing of the notice showed a relevant agreement between the Initiating Shareholders. The Panel considered that the signing of the notice alone was not clear enough and insufficient to establish a relevant agreement in these circumstances.[22] The Australian Panel noted, despite the shared frustration, there was not necessarily "a meeting of minds", for example, there were no materials showing that the Initiating Shareholders:

(a) had received any drafts of, or signed off on, the support statement; or

(b) did not retain their individual rights to vote in any way they so wished.

[22] ASIC RG 128 provides that the joint signing of a requisition notice is more likely to constitute acting as associates. The Australian Panel's decision in *Caravel Minerals Limited* shows the fact-based analysis for determining association is holistic and pragmatic.

62 The Australian Panel did consider that there was one group of the Initiating Shareholders who had a "close working relationship" in relation to the requisition notice, including "drafting, discussing and signing off on the support statement. The Panel concluded that further material would be required to establish whether there was an association amongst this group. However, the Australian Panel noted that the aggregate voting control of these shareholders did not exceed 20%, so did not consider further enquiries were warranted.

The United Kingdom – the City Code

63 In the United Kingdom, the Takeovers Panel's approach is that a presumption of association will arise if shareholders reach an understanding of support prior to the requisition or threat being made to the company.

64 In the City Code on Takeovers and Mergers, note to rule 9.1 provides (emphasis added):

> *The Panel does not normally regard the action of shareholders voting together on a particular resolution as action which of itself indicates that such persons are acting in concert. However,* ***the Panel will normally presume shareholders who requisition*** *or threaten to requisition the consideration of a board control-seeking proposal at a general meeting,* ***together with their supporters as at the date of the requisition or threat****, to be acting in concert with each other and with the proposed directors.*

65 This contrasts with shareholders' whose support is obtained after announcement – such shareholders are generally not considered to be associates. As to whether shareholders are supporters for this purpose, paragraph 4.1 of the UK Panel's Practice Statement 26 provides that (emphasis added):

> *[Requisitioning shareholders] and their supporters, will be presumed to have come into concert* ***only once an agreement or understanding*** *is reached between them in respect of the "board control-seeking" proposal. … preliminary discussions between shareholders on particular matters would not give rise to a presumption of connectedness.*

Summary of key indicia of association in a board spill

66 Having regard to the matters outlined above, the Panel has set out below, certain indicia which may be relevant to a finding of association (or lack thereof) in relation to a board spill. These indicia are relevant to whether there is joint or in concert behaviour between persons for the purposes of the Joint or in Concert Limb.

67 Not all of the indicia of association set out below need to be present to find an association or absent to find there is no association. Rather, the focus is on the overall relationship. There does not need to be one definitive fact which demonstrates association (or a lack thereof) – it is the cumulative effect of the factors. Further, the Panel may make inferences based on the available evidence.

68 The Panel considers that the following (non-exhaustive) indicia may contribute to a finding that there has been or is joint or in concert activity for the purposes of rule 4(1)(a):

(a) The existence of an agreement, arrangement or understanding between the shareholders in connection with how they will exercise their voting rights:

(i) This requires the engagement to be more than one-way/unilateral in nature.

(ii) An agreement or understanding does not need to be an obligation to exercise voting rights in a certain way. An enforceable obligation would give effective control over the relevant voting rights meaning that a finding of association is unlikely to be necessary for the Code to be engaged.

(iii) There is a distinction between seeking shareholder support for a proposal and shareholders becoming participants in the proposal and/or helping formulate it.

(b) Active and/or collaborative engagement or participation by such a shareholder such as participating in formulating the proposal, preparing or commenting on key documents relating to a proposal, or ongoing participation in strategy discussions/planning or correspondence relating to the proposal. Comments on key documents need not be extensive – a lack of critical comments could indicate significant support for the proposal and/or engagement prior to drafting.

(c) A shareholder stipulating key prerequisites for their support of a proposal.

(d) Engagement (and providing support for a proposal) before the proposal is announced/made to the Code company.

(e) Assisting with the selection of the potential nominees for election as directors.

(f) The nomination, by the shareholder who proposes a board spill (or analogous), of an individual for election as director where that individual is affiliated with another shareholder who supports the proposal.

(g) Shareholders having shared or joint plans for the management of the company after the shareholder vote.

(h) Shareholders co-signing the requisition notice or shareholder proposal. However, the fact that other shareholders do not sign the requisition notice or shareholder proposal does not demonstrate that the parties are not associated.

69 Conversely, the following (non-exhaustive) indicia may be contribute to a finding that there has not been joint or in concert activity:

(a) In general terms, a lack of engagement as described in paragraph 68 above.

(b) A lack of an agreement or understanding as to how each shareholder might act and a retention of a discretion as to how they will act.

(c) Potential associates engaging in interactions which are confined to the exchange of views or information rather than formulating a plan with input from both parties.

(d) Comments on key documents or public correspondence being confined to the description of the shareholder's position, rather than on the broader merits of the proposal or how the proposal might be pursued.

(e) Extensive or fundamental disagreement between shareholders regarding a proposal. However, the mere existence of disagreement on certain matters is not determinative that there is no association, particularly where there is broad alignment on the overall proposal.

70 Absent the presence of the indicia of association set out in paragraph 68 above, the mere request for, and/or expression by a shareholder of, non-binding or conditional support for a proposal is unlikely to give rise to an association.

Approach to analysis of association

71 The fundamental issue before the Panel was whether, prior to the 4 March Acquisitions (or any other acquisitions), Mr Grenon was associated with shareholders such that the fundamental rule would restrict further acquisitions of voting rights.

72 Mathematically, the critical potential association was that between Mr Grenon and Spheria. If Spheria was not associated with Mr Grenon at the relevant time, then the 4 March Acquisitions did not result in Mr Grenon and his associates increasing their voting control above 20%. However, in addition to interactions between Mr Grenon and Spheria, there were various interactions between Mr Grenon and Caniwi and between Caniwi and Spheria.

Association between Mr Grenon and Caniwi

Introduction

73 There were numerous indicia of association in the relationship between Caniwi (through Mr Bowker, Caniwi's Executive Chairman and Mr Gittings, Caniwi's Chief Executive Officer)[23] and Mr Grenon. In summary, the Panel concluded that, while there was evidence indicating that Mr Grenon and Caniwi were not fully aligned on all matters, they were aligned on the most critical matters and were actively working in a collaborative fashion to achieve the Proposed Spill, as described further below.

Mr Gittings' and Mr Bowker's potential roles in relation to the NZME board following the Proposed Spill

74 Mr Gittings, the Chief Executive Officer of Caniwi, was one of the four individuals proposed by Mr Grenon for election as directors (such individuals, from time to time, being the **Proposed Nominees**) in the 6 March Letter. The Panel considers the fact that Mr Grenon proposed the Chief Executive Officer of Caniwi as one of his initial Proposed Nominees in circumstances where Caniwi was willing to provide voting support for those Proposed Nominees is a strong indicator of a potential association between Mr Grenon and Caniwi.

75 In addition, Mr Grenon and Mr Bowker also contemplated a role for Mr Bowker, the Executive Chairman of Caniwi, following the Proposed Spill. While Mr Bowker's precise intended role was unresolved, the parties communicated an intention for Mr Bowker to have some ongoing involvement with NZME board matters, potentially as an alternate director for Mr Gittings or as a non-voting board observer. This reinforced the Panel's assessment in paragraph 74.

The parties' relationship

Mr Bowker's role in relation to the Proposed Spill

76 Mr Bowker had an active role in relation to the Proposed Spill, collaborating with Mr Grenon in several important respects. For example, Mr Bowker proposed potential directors, jointly interviewed certain people being considered as possible Proposed Nominees, participated in strategy meetings with potential directors, and liaised with the key shareholder (Spheria) including seeking indications their voting intentions (or comfort in relation to them).

[23] There was some uncertainty as to Mr Bowker and Mr Gittings' precise titles. However, the Panel has adopted the titles used on Caniwi's website as at the date of this determination. For the purposes of this determination, and consistent with the evidence provided to the Panel, the Panel has treated Mr Bowker and Mr Gittings as agents or representatives of Caniwi.

77 Of particular note:

(a) Mr Grenon gave evidence that, while he had a previous interest in NZME, it was after speaking with Mr Bowker about NZME in August 2024 that Mr Grenon decided to buy shares in the company.

(b) The evidence suggests that Mr Grenon and Mr Bowker were, amongst other things, focused on unlocking value associated with NZME's ownership of OneRoof and, from a reasonably early point in their engagement about NZME, they each formed the view that this would require a change in the Chair of NZME. This evolved to Mr Grenon and Mr Bowker each concluding that a change in the full board was the appropriate course of action. From 23 November 2024, Mr Grenon and Mr Bowker began exchanging messages regarding potential replacement directors, with Mr Bowker first suggesting his preferred board on 23 November 2024.

(c) Following the exchange of views as to prospective candidates, Mr Bowker and Mr Grenon arranged to meet with two of these candidates for lunch on 23 December 2024, but, for various reasons, neither of those candidates were selected as the Proposed Nominees initially proposed by Mr Grenon. Also on 23 December 2024, Mr Bowker introduced a further prospective director to Mr Grenon referring to the director "coming onto [the NZME] board as part of the project we are executing".

(d) As to the Proposed Nominees who were ultimately proposed, Mr Grenon described them as follows in an email to Spheria on 5 January 2025:

> *None of them are good friends of mine but I either know them somewhat (Philip Crump) or they are recommended by Troy.*

(e) Consistent with the above, in his oral evidence, Mr Grenon described Mr Bowker as "a resource" for him in respect of the Proposed Spill, including due to his connections in New Zealand.

(f) Although Mr Bowker was not, and did not wish to be, one of the Proposed Nominees, he was invited to, and attended, a key meeting on 17 January 2025, where Mr Grenon and the other initial Proposed Nominees were first introduced to each other and key aspects of the logistics and strategy for the Proposed Spill were discussed. Although there was some inconsistency in the evidence as to why Mr Bowker attended that meeting (and the Panel notes the matters discussed in paragraph 75), except for professional advisers, Mr Bowker was the only participant in the meeting who was not a Proposed Nominee. Consistent with this, Mr Bowker was copied on a variety of email correspondence after that meeting between Mr Grenon and the Proposed Nominees, including emails relating to logistics and strategy (such as indicative voting support from other shareholders).

(g) Overall, there were ongoing, and at times sustained, communications between Mr Grenon and Mr Bowker from when they first spoke in August 2024 up to and after the 4 March Acquisitions. While the phone logs provided in evidence did not distinguish between missed calls and calls that actually occurred, it appears that Messrs Grenon and Bowker spoke on a large number of occasions.

(h) Mr Bowker was involved in shareholder engagement in connection with assessing support for, or progressing, the Proposed Spill. Mr Bowker and Mr Grenon had both initially intended to travel to Sydney on 20 November 2024 to visit Mr Booker of Spheria, the largest relevant interest holder in NZME. However, in the end, only Mr Bowker made the trip. The evidence provided to the Panel confirms that Mr Bowker met with Mr Booker on 20 November 2024, and changes to the NZME board were discussed. Mr Bowker subsequently engaged with Mr Booker a number of times regarding Spheria's voting support for the Proposed Spill.

Moving shares out of custody to facilitate a requisition

78 A further instance of collaborative conduct between Caniwi and Mr Grenon occurred when Caniwi and Mr Grenon each moved some of their respective shares out of a nominee account to facilitate a requisition.

79 The background is as follows:

(a) At the relevant time, Mr Grenon was considering requisitioning a meeting to progress the Proposed Spill (this was later abandoned in favour of nominating directors for the annual general meeting).

(b) The requisition would need to be signed by the holders of 5% or more of the shares in NZME.

(c) At that time, Mr Grenon controlled just under 5% of the shares in NZME which he held through a nominee – i.e., not enough to requisition a meeting. However, Caniwi and Mr Grenon held more than 5% of the shares in NZME in aggregate.

(d) Messrs Grenon and Bowker were both operating under the understanding that, in order to requisition a meeting, they would need to hold the relevant shares directly rather than through a nominee.

80 As to the actions that were taken:

(a) Mr Grenon wrote to Mr Bowker on 20 January 2024 including as follows (emphasis added):

> *I have spoken to Jardens and am getting the detail of what it takes to get these shares in my name. Likely to be very easy and quick. I think I will have it all teed up to occur as soon as NZME makes the first move.* ***Troy, ideally you would also have enough in your name that we can easily top the 5% at the relevant date.***

(b) Mr Bowker then responded:

> *I've transferred 2 million shares held in custody into Caniwi Capital's name. That should be more than enough.*

81 In oral evidence, Mr Grenon described the transfer of shares as follows (emphasis added):

> *It's a tiny, itsy, bitsy step, I guess. But in the end we didn't use it because I had a misunderstanding or not even necessarily a misunderstanding.* ***I wanted to be in a position that if something had to be done with 5% shareholders, we could have 5% and I didn't have 5% at that time, I only had 4.8%.*** *So I'm trying to cover the bases from my perspective.*

82 The Panel considers that, while a requisition was not ultimately provided to NZME, it important that Mr Grenon thought he could rely on Caniwi to join in signing the requisition if needed, and that Caniwi took active steps to facilitate this. While the transfer of shares may have been administratively straightforward, at the time of the email correspondence referred to in the above paragraphs, Mr Grenon did not hold sufficient shares to requisition a meeting alone. Accordingly, the communications and Caniwi's conduct point to an understanding between Caniwi and Mr Grenon and to the conclusion that they were working together towards a common goal (i.e., the Proposed Spill).

Drafting of the 6 March Letter and legal fees

83 Mr Grenon said to the Panel that an important factor in demonstrating the absence of association between himself and Caniwi was that Mr Grenon was primarily responsible for drafting the 6 March

Letter, albeit that he sought input on his draft from various others including the Proposed Nominees, Mr Bowker, and other larger shareholders.

84 Mr Grenon also said to the Panel that another important factor in demonstrating the absence of association between himself and Caniwi was that Mr Grenon paid the legal fees in relation to the Proposed Spill and that Caniwi did not contribute to these.

85 The Panel does not consider these factors to be determinative (individually or together). Rather, they are factors to be weighed with the other factors discussed in this determination.

Matters which were not agreed

86 There appeared to be broad agreement between Mr Grenon and Caniwi regarding key strategic matters including the need to remove the current board, and the need to realise greater value from OneRoof. However, Caniwi and Mr Grenon did not agree on all matters. For example, while Mr Grenon and Caniwi both wished to unlock value associated with NZME's ownership of OneRoof, they gave evidence that they have not reached agreement on the mechanism for this. There was a disagreement regarding whether and how Mr Grenon would be remunerated, which led to Mr Grenon changing his position on that matter before the 6 March Letter was circulated in draft to the Supporting Shareholders for comment.

87 Association does not require the parties to have agreed on all matters. The Panel considers that there was an agreement or understanding as to a primary goal or central objective of the Proposed Spill, being a proposal that was intended to be put to a shareholder vote.

Conclusions

88 Having regard to the factors discussed above, the Panel considered that there was:

(a) a common purpose or intent between Mr Grenon and Caniwi which was connected to voting rights in NZME, being the Proposed Spill (a proposal to be put to a shareholder vote);

(b) communications between Mr Grenon and Caniwi regarding that common purpose or intent; and

(c) knowing conduct toward the common purpose or intent, that was not simply simultaneous actions occurring spontaneously.

89 Accordingly, the Panel concluded that, at the time of the 4 March Acquisitions, Mr Grenon and Caniwi were acting jointly or in concert and were associates for the purposes of the Code under the Joint or in Concert Limb.

90 The Panel also makes the following observations (which are not a formal aspect of its determination):

(a) In evidence, Mr Bowker asserted that he was associated with certain other shareholders in NZME (not Mr Grenon or Spheria). However, as those holdings were not mathematically relevant in terms of whether the 4 March Acquisitions breached the Code, the Panel did not make enquiries of those shareholders or consider the issue further (including as to whether there were any relevant associations under the Triangulation Limb).

(b) The question as to whether Mr Grenon and Caniwi remain associates on any particular date after 4 March 2025 would require a separate assessment by the Panel having regard to relevant facts and circumstances. However, for the purposes of seeking to provide clarity to Mr Grenon and Caniwi, the Panel notes (without making a formal determination) that it has not been provided with evidence demonstrating that the association has ended.

Association between Mr Grenon and Spheria

91 The evidence indicates that was a reasonable degree of engagement between Mr Grenon/Mr Bowker and Spheria in respect of the Proposed Spill, including:

(a) discussing the Proposed Spill with Mr Booker;

(b) inviting Mr Booker to comment on the Potential Nominees or propose his own;

(c) inviting Mr Booker to comment on the draft of the 6 March Letter;

(d) discussions and correspondence regarding other matters, including the attitudes and conduct of other NZME shareholders regarding the Proposed Spill; and

(e) requesting that Spheria provide a statement of its formal support for the Proposed Spill.

92 Although Mr Grenon portrayed Spheria's support in absolute terms at times to others, the Panel considers that, overall, Mr Booker was reasonably cautious and circumspect in his responses and communications with Mr Grenon and Mr Bowker. Further, Mr Booker did not propose any nominees (despite being invited to do so), in some cases refrained from providing substantive responses, and made it clear that he did not wish to form a collective with Mr Grenon as "this could create issues from a takeover law perspective". The Panel considers that Spheria's engagement, by itself, was insufficient to constitute joint or in concert conduct for the purposes of the Joint or in Concert Limb.

93 That said, there was evidence that Mr Booker did undertake some proactive steps in connection with the Proposed Spill, such as:

(a) providing Mr Grenon with a limited number of comments on the draft of the 6 March Letter;

(b) communicating to Mr Bowker that one matter Mr Grenon had in mind (as to his remuneration) was unacceptable to Spheria and engaging in discussions in respect of that matter;

(c) making a small number of suggestions to Mr Grenon as to individuals who might be of assistance to NZME; and

(d) on 13 March 2025 (i.e., after the 4 March Acquisitions), releasing a media statement recording Spheria's unqualified support for the Proposed Spill.

94 The Panel concluded that these steps did not go beyond legitimate engagement between shareholders such that Mr Booker was collaborating with Mr Grenon on the Proposed Spill. Mr Booker's focus was on pursuing what he perceived to be necessary change at NZME for the benefit of Spheria's clients, rather than particular support for Mr Grenon. He perceived the Proposed Spill as one of a number of potential pathways that could result in the change that Spheria desired, and he remained open to (and actively pursued) alternatives. While Mr Booker appears to have been set on significant change to the NZME board, he appeared agnostic as to whether the change came through Mr Grenon's Proposed Nominees or other means. The Panel carefully considered Mr Booker's unequivocal public statement made on 13 March 2025.[24] That statement reflected how events had developed to that point and was a commercial step intended to bring matters to a head.

[24] The Panel does not necessarily agree that a person who gives an unqualified statement of voting intention is free to vote as the person sees fit. In the context of a takeover, it would generally be regarded as misleading and deceptive conduct for a person to not act in accordance with unqualified statements of intention. See the Panel's commentary on "last and final statements" in the Panel's Guidance Note on Misleading and Deceptive Conduct at https://www.takeovers.govt.nz/guidance/guidance-notes/misleading-or-deceptive-conduct. However, the Panel notes that board spills are not a transaction regulated by the Code. Therefore, Mr Booker's statement was not "preliminary to a transaction or event that is or is likely to be regulated by this code"

95 Accordingly, the Panel concluded that, at the time of the 4 March Acquisitions, Mr Grenon and Spheria were not acting jointly or in concert and were not associates for the purposes of the Code under the Joint or in Concert Limb.

Dated: 7 May 2025

Signed for and on behalf of the Panel by the Chair of the Division:

M W Stearne

and rule 64 would not apply to it. Regulation of the statement as misleading or deceptive conduct would fall instead under the Financial Markets Conduct Act 2013.