

NEWS



Nuplex to pay NZ\$3 mln to settle civil proceedings with Securities Commission over non-disclosure of loan covenant breaches



23rd Feb 11, 10:05am by Bernard Hickey

See the full Securities Commission statement below: Also see Gareth Vaughan's July 2 article on the covenant breaches.

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In April 2010, the Securities Commission commenced civil proceedings against Nuplex Industries Limited and six of its present or past directors, John Hirst, Robert Aitken, Barbara Gibson, David Jackson, Bryan Kensington and Michael Wynter.

The Commission alleged in those civil proceedings that Nuplex should have announced to the market a forecast and (subsequent) confirmed breach by Nuplex of the Senior Debt Cover Ratio covenant in its banking facility agreement as at 31 December 2008. The Commission alleged that this was Material Information and therefore that the failure to announce it to the market was a breach of the continuous disclosure rules in the NZSX Listing Rules and thereby a breach of section 19B of the Securities Markets Act 1988. The Commission also alleged that the defendant-directors were a party to that breach by Nuplex.

- *The parties have reached a full and final settlement of the matters raised in the Commission's proceedings.*

As part of that settlement, Nuplex will make available a sum of NZ\$3,054,980.57 as compensation for all shareholders who purchased and retained shares in Nuplex over the period from 22 December 2008 to 18 February 2009. Nuplex will shortly write to all shareholders who purchased and retained shares over that period setting out the terms of the offer of compensation. This offer is to be made on equal terms to all Nuplex shareholders who purchased and retained shares over that period whether they purchased those shares by trades conducted on NZX or ASX.

Nuplex acknowledges that, once it was apparent to the company that the SDCR covenant would be breached as at 31 December 2008, this was Material Information which should have been disclosed to the market and that Nuplex was therefore in breach of the continuous disclosure rules in NZSX Listing Rules 10.1.1(a) and 10.1.1(c) and thereby in breach of s 19B of the Securities Markets Act 1988.

Nuplex has also agreed to pay NZ\$148,127.53 as a contribution to the Commission's investigation and court costs.

The Commission's court proceedings against Nuplex and the directors will now be discontinued.

Chapman Tripp partner and securities law specialist Roger Wallis described the out of court settlement as a good result for all stakeholders.

Wallis said it was a win for Nuplex shareholders who bought shares between 22 December 2008 and February 2009 given they'll get compensation, a win for the Commission against the company through Nuplex's acceptance that the senior debt covenant breach was material information it should have disclosed, and a pragmatic response from Nuplex's independent directors to avoid ongoing litigation cost and distraction.

Wallis, who didn't act for any of the parties in the case, said the settlement was also a good result for corporate governance given the extensive publicity generated by the case had sent a "salutary message" to boards to focus more closely on their continuous disclosure obligations.

"The Nuplex litigation was a important test case of the law closely followed by listed company boardrooms, company executives and advisers," said Wallis.

"Although the pragmatic solution negotiated by Nuplex and the Commission should be regarded as a win on points for the Commission and affected shareholders, the full and final settlement against all parties means that personal liability of directors, and the scope of their reasonable steps defence, will not be resolved by this litigation."

There were other cases still before the courts, Wallis added, where the boundaries of these laws may be tested.

WESTPAC SECURITIES COMMISSION CBA NUPLEX CITIBANK CHAPMAN TRIPP DEBT LOAN COVENANTS

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1 Comments

by Gareth Vaughan | 23rd Feb 11, 2:02pm

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FYI, I have updated this with comments from Chapman Tripp's Roger Wallis.

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