

## NZX/GDT JOINT ANNOUNCEMENT 14 May 2019

### NZX/GDT INFORMATION SHARING AGREEMENT

GDT and NZX propose to enter an information sharing agreement that will help to underpin confidence in the integrity of both the physical and financial dairy markets. This agreement will provide further assurance to market participants that they are competing on an equal basis with all other participants.

The NZX Dairy Derivatives Market is directly linked to GDT Events through NZX's use of GDT winning prices to settle its dairy derivative contracts. The GDT and NZX markets are also interlinked economically since a participant's incentive to trade and hold a position in either market may be affected by their current and expected future positions in the other market.

Under the terms of its market operator licence, NZX Regulation conducts surveillance in respect of potential market manipulation prohibited under the exchange's market rules and the Financial Markets Conduct Act 2013. GDT also regularly conducts market surveillance to ensure compliance with its rules.

To support and strengthen their respective market surveillance regimes, GDT and NZX propose to enter an agreement to share information in circumstances where a specific anomaly has been identified in either market. This information may include the trading activity relevant to the market outcome being investigated. This information will be used exclusively for the purpose of investigation and will remain confidential to the two parties involved.

NZX Head of Market Supervision Joost van Amelsfort commented: "NZX Regulation welcomes this proposed arrangement with GDT, aimed at improving surveillance capabilities in tandem with the maturing of the exchange's dairy derivatives market. The ability for NZX Regulation to obtain information directly from GDT further enhances the integrity of the market, in support of cross market investigations."

Bill Shields, Chair GDT Events Oversight Board, commented: "The GDT Events Oversight Board supports the aim of enhancing cooperation across the two markets through this proposed information sharing agreement with NZX Regulation, and welcomes feedback from GDT participants prior to the Board making a final decision on the agreement".

GDT Participants	NZX Participants
Send Feedback to: <a href="mailto:help@globaldairytrade.info">help@globaldairytrade.info</a> Subject line: Feedback on NZX/GDT information sharing agreement Submissions close on: <b>5 June 2019</b>	NZX Surveillance Contact Details Email: <a href="mailto:surveillance@nzx.com">surveillance@nzx.com</a> Phone: 04 495 2829



# NZX/GDT Information Sharing Agreement

Public consultation paper, May 2019



## INTRODUCTION

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1. GDT proposes to enter into an agreement with the NZX for each party to assist the other party to investigate possible trading anomalies by providing, where appropriate, information on the trading activity of individual participants relevant to an investigation.
2. The GDT Events Oversight Board discussed the proposed NZX/GDT Information Sharing Agreement on 7 October 2018 and 8 May 2019, and has endorsed for Global Dairy Trade to consult with interested stakeholders.
3. This paper outlines the nature and benefits of a proposed arrangement with the NZX, with the full text of the draft Agreement attached for your review.
4. The accompanying paper on Proposed Changes to Trading Rules details the changes to the GDT Events Trading Rules required prior entering the agreement.

## BACKGROUND

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5. GDT and NZX share a common interest in ensuring physical and financial dairy market participants retain confidence in both markets.
6. Both GDT and NZX have rules that prohibit participants from manipulating, or colluding with other parties to manipulate, market outcomes (for GDT refer to Rules A3.1 and A3.2).
7. Whereas the two markets are interconnected through the NZX's use of GDT winning prices to settle various derivative instruments, currently no arrangement exists to enable GDT and NZX to share information that may be relevant to an investigation of potential manipulation in either market.
8. The NZX's regulatory role is performed by NZX Regulation, an independent division of NZX. NZX Regulation's functions include undertaking frontline surveillance and monitoring of the NZX Dairy Derivatives Market, to identify potentially anomalous trading conduct or activity that may breach the prohibition on market manipulation under the New Zealand Financial Markets Conduct Act 2013.
9. NZX Regulation refers instances of potential market manipulation to the New Zealand Financial Markets Authority (FMA) for further investigation and action, as the entity with primary responsibility for enforcing the Financial Markets Conduct Act.
10. GDT is subject to New Zealand law and as such could be compelled by the FMA to provide information to it on the trading activity of GDT participants.
11. However, there is a gap whereby NZX cannot obtain individual trading information directly from GDT, and GDT cannot obtain individual trading information from the NZX. GDT also does not have the authority under the current rules to provide individual trading information to the NZX.

## NATURE OF INFORMATION REQUESTS

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12. The proposed agreement provides for each party to request information from the other party only where a specific anomaly has been identified. Examples are provided on pages 3 and 4 of the draft agreement.
13. NZX Regulation may request from GDT:
  - a. The legal identity of a participant bidding in a GDT Trading Event; and
  - b. Details of round-by-round bidding by specified participants in products related to the settlement prices used by NZX.
14. Similarly, GDT may request from NZX Regulation:
  - a. Whether specified participants hold positions in any dairy derivative;
  - b. Size of the positions; and

- c. Trading history during the relevant time period.
- 15. The information provided by one party must be kept confidential by the other party and must only be used for conducting the investigation, which for NZX Regulation includes that they may provide any information supplied by GDT to the FMA.
- 16. GDT will notify the chair of the Oversight Board of the fact that a request has been received, but not the detailed nature of the request.
- 17. GDT will also provide a summary of the requests received (with no identifying details) in each annual Market Surveillance Report to the Oversight Board.
- 18. Further detail is available in the draft agreement.

## **BENEFIT TO GDT PARTICIPANTS**

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- 19. The proposed information sharing agreement will strengthen GDT's market surveillance regime, both directly by providing GDT with a more complete picture of trading activity, and indirectly through more effective surveillance by NZX Regulation.
- 20. The proposal will help to underpin confidence in the integrity of GDT Trading Events by:
  - a. Improving GDT's capability to identify anomalies and potential breaches in the rules;
  - b. Serving as a deterrent to participants of either market to not breach the rules.
- 21. This should enhance the confidence of each bidder that they are competing on an equal basis with all other participants.

## **PROCESS AND TIMING**

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- 22. GDT's agreement to enter the information sharing arrangement is subject to the necessary changes to the GDT Event Trading Rules being adopted by the Oversight Board.
- 23. These changes are detailed in the rule change proposals in the accompanying paper on Proposed Changes to Trading Rules.
- 24. GDT will notify participants once the agreement has been signed.

# Information Sharing Agreement

Between NZX and Global Dairy Trade



## **INFORMATION SHARING AGREEMENT** dated *[insert date]*

between

**NZX Limited** a limited liability company registered under the Companies Act 1993 (**NZX**)

**GlobalDairyTrade Holdings Limited** a limited liability company registered under the Companies Act 1993 (**GDT**)

### **Background**

- NZX is a licensed operator of securities and derivatives markets, including NZX's Dairy Derivatives Market (**Derivatives Market**).
- GDT provides data insights and analytics for the dairy industry and operates dairy commodity sales platforms, including GDT Trading Events (as defined in the GDT Trading Event Rules), via an online auction trading platform for globally traded dairy ingredients (**GDT Events**). The final settlement prices of various dairy futures contracts traded on the Derivatives Market are calculated by reference to winning prices achieved in prescribed products via GDT Events.
- Management of (i) all Trading Events, (ii) information relevant to seller and bidder participation, and (iii) round by round bidding in those Trading Events, is undertaken by CRA International, Inc (**GDT Events Trading Manager**) under separate commercial arrangements entered into with GDT.
- Under the NZX Derivatives Market Rules, accredited derivatives participants are prohibited from engaging in certain conduct, including creating conditions in which contract prices do not, or will not, reflect fair market value by manipulation of a GDT Event, as the underlying market relevant to contracts on the Derivatives Market. In addition, the Financial Markets Conduct Act 2013 (**FMC Act**) prohibits acts or omissions which have, or are likely to have, the effect of creating, or causing the creation of, a false or misleading appearance with respect to the extent of active trading in, price for trading in or value of, quoted financial products. This includes the contracts quoted on the Derivatives Market. The prohibitions described above are collectively referred to in this agreement as "market manipulation" prohibitions.
- Trading via GDT Events is subject to prescribed trading rules (**GDT Trading Event Rules**, as amended from time to time). Under the GDT Trading Event Rules, GDT participants (being persons who have entered into a GDT Events Participation Agreement with GDT) are prohibited from taking any action, or omitting to take any action, if the act or omission will have, or may have, the effect of creating or causing a false or misleading appearance of, or a false or artificial market for, participation, supply or demand in a GDT Event, in circumstances where the participant knows, or ought reasonably to know, that such act or omission will or is likely to have that effect.
- The GDT Events Trading Manager and GDT themselves conduct surveillance of bidding behaviour in GDT Events. This includes assessing participants' compliance in GDT Events with contractual obligations that apply to those participants under the GDT Trading Event Rules. GDT completes a market surveillance assessment which is reported annually to the GDT Events Oversight Board. The GDT Events Oversight Board chairperson has the authority to convene a Rulings Panel to assess complaints by other participants or GDT in relation to a participant's alleged breach of the GDT Trading Event Rules.

- The ability of GDT to conduct market surveillance is limited to the extent this requires analysis of cross market behaviour. This is because there are no established arrangements under which GDT is able to access information about participants and trading on the Derivatives Market, which may be relevant to the assessment of trading conduct that may amount to a breach of the GDT Trading Event Rules.
- Under the terms of NZX's market license, NZX has obligations under the FMC Act to, among other matters, (i) operate its markets in a fair, orderly and transparent manner and (ii) monitor the conduct of participants on or in relation to the markets. NZX performs its regulatory functions through NZX Regulation (**NZXR**). NZXR operates as a separate unit of NZX, subject to a comprehensive conflicts management framework. NZXR's functions include real-time and post-trade monitoring of trading on the Derivatives Market.
- The ability of NZXR to conduct surveillance of potential market manipulation, and to perform post-trade monitoring on contracts traded on the Derivatives Market, is limited to the extent this requires analysis of cross market behaviour. This is because there are no established arrangements under which NZXR is able to access information of participants and bidding in GDT Events, to assess whether that may be relevant to assessment of trading conduct that may amount to market manipulation on the Derivatives Market.
- Both parties to this agreement have an interest in promoting confidence in the trading of physical commodities on GDT Events and trading on the Derivatives Market, and wish to agree a framework for the sharing of information between them, to enhance:
  - (a) NZXR's ability to undertake surveillance of trading in, and positions held in, contracts on the Derivatives Market; and
  - (b) GDT's ability to conduct surveillance of trading in GDT Events.
- This agreement provides a framework for the sharing of information between GDT and NZXR in certain circumstances. It outlines details of:
  - (a) the kinds of information that may be requested by NZXR or GDT;
  - (b) the circumstances in which a request may be made by NZXR or GDT, and the purpose for which any information will be used;
  - (c) the process by which NZXR or GDT will submit information requests;
  - (d) the process by which the other party will respond to information requests; and
  - (e) the parties' respective approaches to confidentiality.

## 1. Scope of Information Requests by NZXR

- 1.1 As part of its market monitoring and surveillance activity in relation to the Derivatives Market, NZXR may, in certain scenarios, seek information from GDT in relation to bidder behaviour in GDT Events. Requests for information would be triggered by a specific anomaly identified by NZXR's market surveillance function. Such anomalies include, for example, where:
  - (a) An individual client builds a significant position in a dairy futures contract and appears to have contributed to an increase in the price in that contract. They

may also hold a significant position in the related options contract linked to the futures contract, e.g. WMP Futures and WMP Options. If the client has hedged more in futures contracts than is on offer in the physical market, or if their hedge represents a significant portion of the total physical available on offer in the GDT Event, they may aggressively bid up in the GDT Event; or

- (b) Potential collusion is suspected between participants in futures and/or options contracts. NZXR may seek to determine whether this may also extend to collusion between those participants, or related parties, via participation in GDT Events.
- 1.2 To enable NZXR to investigate potential market misconduct under the FMC Act and/or the Derivatives Market Rules, NZXR may request from GDT the following information under this agreement:
- (a) The legal identity of a participant bidding in a GDT Trading Event; and
  - (b) Details of round-by-round bidding, and final bidding, by specified participants in products for sale through a GDT Trading Event, including, but not limited to:
    - (i) Whole Milk Powder, Regular - NZ, Contract 2;
    - (ii) Skim Milk Powder, Medium Heat - NZ, Contract 2;
    - (iii) Butter, Unsalted 25kg - NZ, Contract 2; and
    - (iv) Anhydrous Milk Fat, Regular 210kg drum - NZ/AU, Contract 2.
- 1.3 GDT will, subject to GDT's obligations under the GDT Trading Event Rules, respond to such a request by providing to NZXR:
- (a) The information specifically requested under clause 1.2; and
  - (b) Similar data for products and/or contract periods, or relevant bidding data from previous GDT Trading Events, that GDT considers (in its discretion) may be relevant to NZXR's specific information request. (For example, in relation to a specific request submitted for data on Whole Milk Powder, Regular - NZ, Contract 2, the parties note that cross-market behaviour could be occurring on Whole Milk Powder - UHT or Whole Milk Powder - Instant across adjacent contract periods, Contract 1 and Contract 3).

## **2. Scope of Information Requests by GDT**

- 2.1 As part of its market monitoring and surveillance activity in relation to GDT Events, GDT may, in certain scenarios, seek information from NZXR that may be relevant to bidder behaviour in GDT Trading Events. Such scenarios include, for example, where:
- (a) Significant pricing deviations are observed in a GDT Trading Event for any products within a Product Group (as defined in the GDT Trading Event Rules) that are relevant to a derivative traded on the Derivatives Market, including, but not limited to, Whole Milk Powder, Skim Milk Powder, Anhydrous Milk Fat or Butter. In those circumstances, GDT would seek to better understand the drivers for such pricing outcomes, including if participants bidding in the GDT Event had

a significant position in a derivative that may benefit from the relevant winning price in the physical product; or

- (b) A participant may have participated in both GDT Events and the Derivatives Market, such that their behaviour may constitute a breach of GDT Trading Event Rules.
- 2.2 To enable GDT to more comprehensively undertake surveillance of participants' obligations under the GDT Trading Event Rules in these circumstances, GDT may request from NZXR under this agreement confirmation (or otherwise) of whether specified participants who have bid in a GDT Trading Event, hold positions in any dairy derivative quoted on the Derivatives Market, including the size of their positions and trading history during the relevant time period.
- 2.3 NZXR will, subject to NZX's obligations under the Derivatives Market Rules, respond to such a request by providing to GDT:
- (a) The information specifically requested under clause 2.2; and
  - (b) If information gathered by NZXR under this agreement indicates a potential breach of the GDT Trading Events Rules not already identified by GDT, and which would not give rise to a potential breach of the FMC Act and/or the Derivatives Market Rules, such information as NZXR considers (in its discretion) may be relevant to facilitate GDT's investigation.

### **3. Information requests**

- 3.1 Any request for information by either party under this agreement will:
- (a) Be made in writing;
  - (b) Be submitted via email to GDT or NZXR's primary contact, as set out in section 6 of this agreement;
  - (c) Specify the details of the information sought, by reference to (where applicable):
    - (i) a specific participant on GDT Events or the Derivatives Market;
    - (ii) a specific GDT Trading Event; and
    - (iii) the specific product offered for sale in that GDT Trading Event or derivative traded on the Derivatives Market.
- 3.2 GDT and/or NZXR will endeavour to collate the relevant information and provide that information in writing via email to the requestor (via the contact details set out in section 6 of this agreement) within 10 business days of an information request.
- 3.3 The parties acknowledge that while reasonable care will be taken when providing information under this agreement, ultimately that information is provided on an "as is" and "as available" basis and neither party makes any representation or warranty in relation to the information provided, including as to the availability, reliability, accuracy, timeliness, completeness or fitness for any particular purpose of that information.

3.4 To the extent that the information requested under this agreement includes personal information, each party acknowledges that the provision of, and access to, such information must comply with applicable privacy laws, including the Privacy Act 1993.

#### 4. Confidentiality

4.1 For the purposes of this agreement, “Confidential Information” includes all information relating to any engagement between the parties pursuant to this agreement, including any requests for information by NZXR or GDT, and all information provided by either party in accordance with this agreement, other than information that:

- (a) is in or comes into the public domain through no fault of the relevant party or any of its officers, employees, agents or contractors;
- (b) was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or
- (c) is disclosed to the relevant party by a third party having no obligation of confidence in relation to that information.

4.2 Each party agrees:

- (a) to keep confidential all Confidential Information;
- (b) to not disclose any Confidential Information to any person, including any related bodies corporate or employees, unless contemplated under this agreement or with the prior written consent of the other party; and
- (c) to use the Confidential Information solely for the purposes of:
  - (i) in the case of NZXR, investigating potential market misconduct under the FMC Act and/or the Derivatives Market Rules; and
  - (ii) in the case of GDT, investigating potential breach by participants of their obligations under Rules A3.1 and/or A3.2 of the GDT Trading Event Rules.

4.3 For the purposes of clause 4.2(b), it is expressly acknowledged by GDT that information provided by GDT to NZXR:

- (a) may be provided by NZXR to the Financial Markets Authority (**FMA**), in connection with engagement on potential market misconduct under the FMC Act; and
- (b) may comprise supporting information for a referral to the FMA made by NZXR under section 358 of the FMC Act.

4.4 GDT Trading Event Rule B4.6(h) requires GDT to notify members of GDT's Oversight Board of any investigation, inquiry, request for information, complaint or proceeding from a regulatory or governmental agency in relation to any breach or alleged breach of any law in respect of the GDT Events Trading Platform or the GDT Trading Event Rules. GDT will, in relation to the sharing of information under this agreement that may relate to such investigations, limit its reporting under GDT Trading Event Rule B4.6(h) to the following:

- (a) Notification to the chairperson of the Oversight Board of the fact of any request for information made by NZXR pursuant to this agreement, but not the detailed nature of that request; and
  - (b) A summary in each annual Market Surveillance Report provided by GDT to the Oversight Board of requests received during the period covered by that report, and any subsequent public statements made by NZXR, the FMA or any other regulatory body in connection with such requests.
- 4.5 GDT acknowledges that NZXR’s obligations of confidentiality in relation to NZXR referrals made to the FMA, and any subsequent action taken by the FMA, will prevent NZXR informing GDT on the result of each investigation, and thus no further notifications would be provided to the Oversight Board.
- 4.6 Nothing in this agreement will prevent the disclosure of information that is required or permitted to be disclosed by law or required to be disclosed by the rules of a recognised stock exchange (including the NZX listing rules).
- 4.7 The parties will use adequate measures to ensure that any Confidential Information under a party’s control cannot be accessed or used by any unauthorised person.

**5. Costs**

- 5.1 Reasonable costs incurred by either party in responding to the other’s request for data, will be invoiced to GDT or NZXR’s primary contact, as set out in section 6 of this agreement. In the case of NZX, that invoice should note the invoice as being directed to “NZX Discipline Fund”, and noting the payment code 49.10.100.63917. Such costs will be payable in arrears in accordance with the payment terms set out in the relevant invoice.
- 5.2 Either party may request an estimate of cost at the time of raising their information request, prior to confirming that the work should proceed.

**6. Contact information**

6.1 NZXR contact information:

Email	<a href="mailto:surveillance@nzx.com">surveillance@nzx.com</a>
Key contact	Phillip Baillie Team Leader – NZX Surveillance Level 2, NZX Centre, 11 Cable Street, Wellington 6011 PO Box 2959, Wellington 6140, New Zealand DDI +64 4 498 2258

6.2 GDT contact information:



Email	<a href="mailto:help@globaldairytrade.info">help@globaldairytrade.info</a>
Key contact	Global Dairy Trade Level 12, 23 Customs Street East, Auckland 1010 PO Box 106561, Auckland 1143, New Zealand

## 7. Initial Period

- 7.1 The initial term of this agreement will be for a period of two years from the Commencement Date (**Initial Period**).
- 7.2 From the expiry of the Initial Period, this agreement will continue until terminated in accordance with clause 8.

## 8. Term and termination

- 8.1 After completion of the Initial Period, this agreement may be terminated:
- (a) On a date agreed between the parties in writing; or
  - (b) By either party giving not less than two months' notice in writing.

## 9. General

- 9.1 This agreement may be altered only in writing signed by each party.
- 9.2 No party may assign this agreement or any rights or obligations under this agreement, without the prior written consent of the other party.
- 9.3 Each party must pay its own costs of negotiating, preparing and executing this agreement.
- 9.4 Part or all of any provision of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining provisions of this agreement continue in force.
- 9.5 This agreement may be executed in counterparts. All executed counterparts constitute one agreement.
- 9.6 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.
- 9.7 This agreement is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

**EXECUTION**

**SIGNED** for and on behalf of  
**NZX Limited**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print title

**SIGNED** for and on behalf of  
**GlobalDairyTrade Holdings Limited**

\_\_\_\_\_  
Signature

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Print name

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Print title

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