

# FLIWAY GROUP LIMITED

## NOTICE OF MEETING AND SCHEME BOOKLET

For a scheme of arrangement between Fliway Group Limited and its shareholders in relation to the proposed acquisition of all of the fully paid ordinary shares of Fliway Group Limited by Yang Kee Group (New Zealand) Pty Limited, a wholly owned subsidiary of Yang Kee Logistics Pte Limited.

### VOTE IN FAVOUR

Your Independent Directors unanimously recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal

The Special Meeting will be held at 3.00pm (New Zealand time) on Friday, 8 December 2017 at the offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010.

#### Shareholder Information Line

+64 9 375 5998 between 8.30am and 5.00pm (New Zealand time), Monday to Friday

This is an important document and requires your immediate attention. You should carefully read it in its entirety before deciding whether or not to vote in favour of the Scheme. If you are in any doubt about what you should do, you should seek advice from your broker or your financial, taxation or legal adviser immediately. If you have sold all of your shares in Fliway, please ignore this Scheme Booklet.

# IMPORTANT INFORMATION

## PURPOSES OF THIS SCHEME BOOKLET

The purposes of this Scheme Booklet are to:

- provide you with information about the proposed acquisition of Fliway by Yang Kee NZ;
- provide you with the material terms of the Scheme and explain their effect;
- explain the manner in which the Scheme will be considered and, if approved, implemented;
- provide you with information that could reasonably be expected to be material to your decision whether to vote in favour of, or against, the Scheme; and
- include the information required by the Takeovers Panel in relation to the Scheme.

This Scheme Booklet is not a product disclosure statement.

## YOUR DECISION

This Scheme Booklet does not take into account your individual investment objectives, financial situation or needs. You must make your own decisions and seek your own advice in this regard.

The information and recommendations contained in this Scheme Booklet do not constitute, and should not be taken as constituting, financial product advice.

If you are in any doubt as to what you should do, you should seek advice from your financial, taxation or legal adviser before making any decision regarding the Scheme.

## NOT AN OFFER

This Scheme Booklet does not constitute an offer to Shareholders (or any other person), or a solicitation of an offer from Shareholders (or any other person), in any jurisdiction.

## LAWS OF NEW ZEALAND

This Scheme Booklet has been prepared in accordance with New Zealand law. Accordingly, the information contained in this Scheme Booklet may not be the same as that which would have been disclosed in this Scheme Booklet if it had been prepared in accordance with the laws and regulations of another jurisdiction.

## FORWARD LOOKING STATEMENTS

This Scheme Booklet contains certain forward looking statements. You should be aware that there are risks (both known and unknown), uncertainties, assumptions and other important factors that could cause the actual conduct, results, performance or achievements of Fliway to be materially different from the future conduct, market conditions, results, performance or achievements expressed or implied by such statements or that could cause future conduct to be materially different from historical conduct. Deviations as to future conduct, market conditions, results, performance and achievements are both normal and to be expected.

Forward looking statements generally may be identified by the use of forward looking words such as 'aim', 'anticipate', 'believe', 'estimate', 'expect', 'forecast', 'foresee', 'future', 'intend', 'likely', 'may', 'planned', 'potential', 'should', or other similar words.

Neither Fliway nor any other person gives any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward looking statements in this Scheme Booklet will actually occur. You are cautioned against relying on any such forward looking statements.

## PRIVACY AND PERSONAL INFORMATION

Fliway and Yang Kee may collect personal information in the process of implementing the Scheme. Such information may include the name, contact details and shareholdings of Shareholders and the name of persons appointed by those persons to act as a proxy or corporate representative at the Special Meeting. The primary purpose of the collection of personal information is to assist Fliway and Yang Kee to conduct the Special Meeting and implement the Scheme. Personal information of the type described above may be disclosed to Link, print and mail service providers, proxy solicitation firms, Related Companies of Fliway and Yang Kee and Fliway's and Yang Kee's service providers and advisers. Shareholders have certain rights to access personal information that has been collected. Shareholders should contact Link in the first instance, if you wish to access your personal information. Shareholders who appoint a named person to act as their proxy or corporate representative should make sure that person is aware of these matters.

## IMPORTANT INFORMATION

### **NO INTERNET SITE FORMS PART OF THIS SCHEME BOOKLET**

Any references in this Scheme Booklet to any website are for informational purposes only. No information contained on any website forms part of this Scheme Booklet.

### **DIAGRAMS, CHARTS, MAPS, GRAPHS AND TABLES**

Any diagrams, charts, maps, graphs and tables appearing in this Scheme Booklet are illustrative only and may not be to scale.

### **EFFECT OF ROUNDING**

A number of figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Scheme Booklet are subject to the effect of rounding. Accordingly, actual calculations may differ from amounts set out in this Scheme Booklet.

### **RESPONSIBILITY FOR INFORMATION**

Other than as set out below, this Scheme Booklet has been prepared by, and is the responsibility of, Fliway:

- the Yang Kee Information has been prepared by, and is the responsibility of Yang Kee. Fliway and its officers and employees do not assume any responsibility for the accuracy or completeness of the Yang Kee Information. Yang Kee and their respective officers and employees do not assume any responsibility for the accuracy or completeness of any information in the Scheme Booklet other than the Yang Kee Information; and
- the Independent Adviser's Report contained in Annexure B has been prepared by, and is the responsibility of, the Independent Adviser. Fliway and its officers and employees do not assume any responsibility for the accuracy or completeness of the Independent Adviser's Report.

### **NOTICE OF THE FINAL COURT HEARING**

If you wish to oppose the Scheme at the Final Court Hearing, which is expected to be at 10.00am on 19 December 2017 at the High Court, Parliament Street, Auckland, you must file a notice of appearance or a notice of opposition together with supporting documents on which you wish to rely in the manner set out in section 6.7 by 5.00pm on 12 December 2017.

### **ROLE OF TAKEOVERS PANEL AND HIGH COURT**

The fact that the Takeovers Panel has provided a letter of intention indicating that it does not intend to object to the Scheme, or that the High Court has ordered that a meeting be convened, does not mean that the Panel or the Court:

- has formed any view as to the merits of the proposed Scheme or as to how Shareholders should vote (on this matter Shareholders must reach their own decision); or
- has prepared, or is responsible for the content of, the Scheme documents or any other material.

### **DEFINED TERMS**

Capitalised terms set out in this Scheme Booklet have the meanings given to them in the Glossary in section 1.

### **DATE OF THIS SCHEME BOOKLET**

This Scheme Booklet is dated 21 November 2017.



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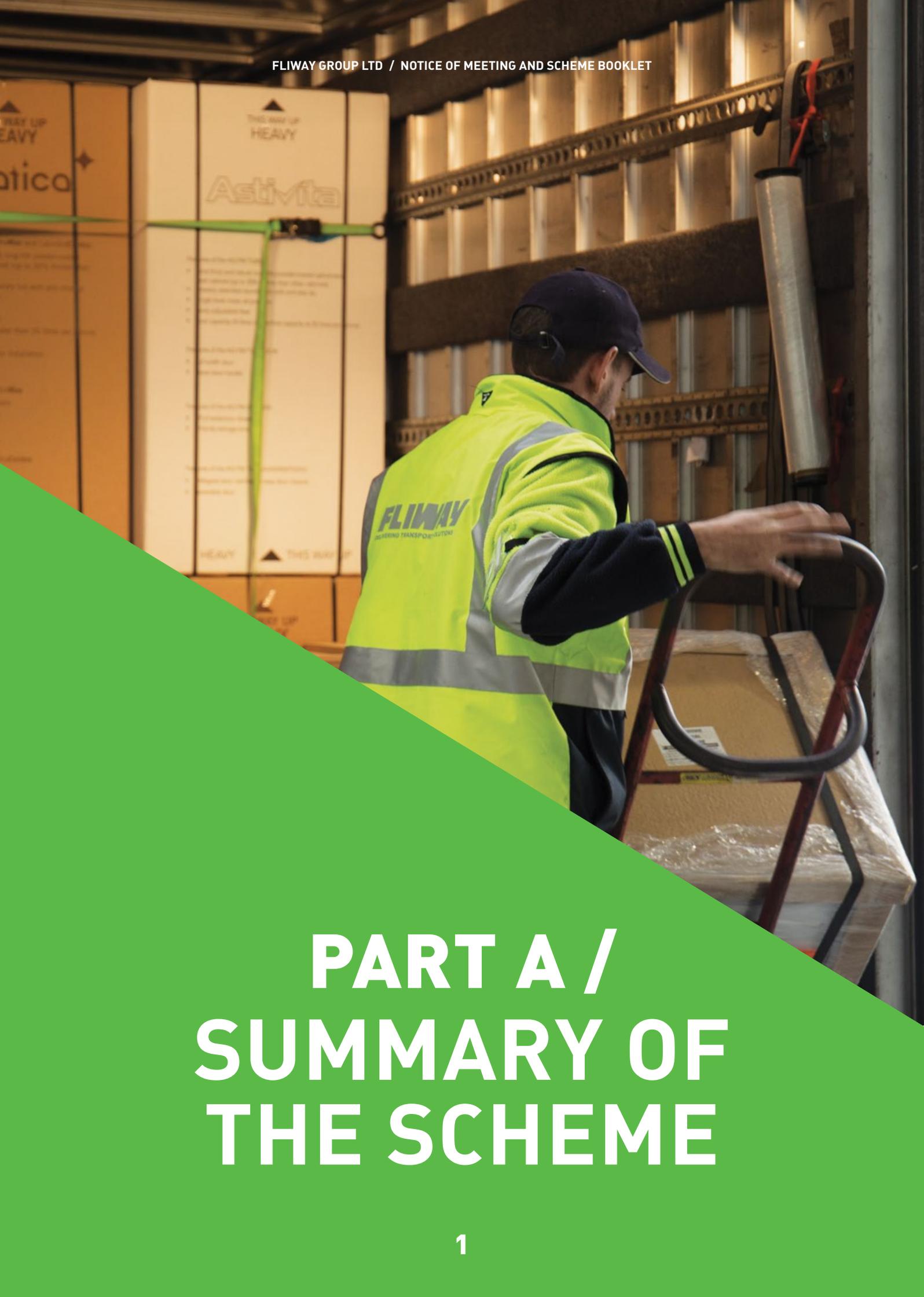
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# PART A / SUMMARY OF THE SCHEME

# 1. KEY DATES

INDICATIVE DATE AND TIME	EVENT
21 November 2017	<b>Scheme Booklet</b> – Date this Scheme Booklet was distributed
3.00pm 6 December 2017	<b>Closing</b> time and date for Voting/Proxy Forms for the Special Meeting to be submitted
5.00pm 6 December 2017	<b>Voting Eligibility Date</b> – for determining eligibility to vote at the Special Meeting
3.00pm 8 December 2017	<b>Special Meeting</b> – to be held at the offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010
<b>IF THE SCHEME IS APPROVED BY SHAREHOLDERS</b>	
19 December 2017, or such later date as the High Court directs	<b>Final Court Hearing</b> – to approve the Scheme
21 December 2017	<b>Last day of trading in Fliway Shares</b> – Fliway Shares will be suspended from trading on the NZX Main Board from close of trading on this date
5.00pm 27 December 2017	<b>Scheme Record Date</b> – for determining entitlements to the Scheme Consideration
4 January 2018	<b>Implementation Date</b> – payment of the Scheme Consideration to Scheme Shareholders
31 May 2018	<b>End Date</b> – If the Scheme has not been implemented by this date it will not proceed (unless Fliway and Yang Kee agree to extend the End Date)

All dates in the table above are indicative only and, among other things, are subject to obtaining all necessary approvals from the High Court.

Any changes to the above timetable will be announced via the NZX Markets Announcements Platform (MAP) and notified on Fliway's website at [www.fliway.com](http://www.fliway.com)

All references to time in this Scheme Booklet are references to New Zealand time, unless otherwise stated.

Any obligation to do an act by a specified time in New Zealand time must be done at the corresponding time in any other jurisdiction.

## 2. CHAIRMAN'S LETTER

Dear Shareholder,

21 November 2017

On behalf of the Fliway Board, I am pleased to provide you with this Scheme Booklet, which contains the information you should need regarding the proposed acquisition of your Fliway Shares by Yang Kee NZ, a wholly owned New Zealand subsidiary of Yang Kee.

The proposed acquisition is to be completed via a Scheme of Arrangement. If the proposed Scheme is approved and all Conditions are satisfied, registered Shareholders will receive NZ\$1.22 in cash for each Fliway Share. This is expected to be paid to Shareholders on 4 January 2018.

This Scheme Booklet has been prepared to help you assess the merits of the Scheme before you vote.

In the absence of a Superior Proposal arising, your Independent Directors:

- unanimously recommend that you **VOTE IN FAVOUR** of the Scheme of Arrangement; and
- intend to vote **IN FAVOUR** with regard to all the Fliway Shares that they own or control.

In forming this view, your Independent Directors have carefully considered the advantages and disadvantages of Yang Kee's proposal. In recommending the Scheme, your Independent Directors have taken into account the following:

- **NZ\$1.22 is at the upper end of the Independent Adviser's valuation range**
  - The Independent Adviser, KordaMentha, has assessed the value of Fliway Shares to be in the range of NZ\$1.04 to NZ\$1.24 per share. NZ\$1.22 is at the upper end of this range.
- **The Scheme Consideration represents a strong offer**
  - Your Independent Directors are confident that the Scheme Consideration represents a strong offer based on recent trading performance.
  - The Scheme provides an opportunity for Shareholders to realise the full value of their Fliway Shares now for 100% cash consideration.

- **The majority shareholder and Managing Director intends to vote in favour of the Yang Kee offer**

- The D&G Hawkesby Trust, which holds 54.15% of Fliway Shares, has entered into a Deal Protection Deed with Yang Kee NZ in which, amongst other things, it confirms its intention to vote in favour of the Scheme. See section 8.10 for a summary of the terms of the Deal Protection Deed.

- **The Scheme Consideration of NZ\$1.22 values Fliway's earnings favourably when compared with other comparable change of control transactions**

- The Scheme Consideration of NZ\$1.22 per Scheme Share implies an enterprise value to underlying EBIT<sup>1</sup> for the 12 months to 30 June 2017 of 10.6x. This compares favourably to the same ratio for recent similar transactions, as shown in section 5.3.

- **No better offer (defined as a Superior Proposal in this Scheme Booklet) has emerged**

- There is currently no alternate scenario, through either organic growth or an existing Superior Proposal, that the Independent Directors believe will result in Shareholders realising equivalent value for their shares.

- **You will not pay any brokerage on the transfer of your Fliway Shares to Yang Kee NZ under the Scheme**

Having said that, we acknowledge that there are valid reasons why you may decide not to vote in favour of the Scheme, including:

- **You may wish to maintain an investment in a publicly listed company with the specific characteristics of Fliway in terms of industry, operations, profile, size, capital structure and potential dividend stream**
  - If the Scheme is implemented, you will no longer have an investment in Fliway. You will no longer be exposed to the benefits and risks of Fliway's future financial performance or the future prospects of its ongoing business.

<sup>1</sup> Enterprise Value divided by underlying EBIT (Earnings before interest, tax and significant items, associates and minority interest). Underlying EBIT includes the 50% share of UPS-Fliway joint venture NPAT earnings, grossed up for tax to make it an EBIT number.

- **You may consider that Fliway has greater value over the longer term than you will receive under the Scheme**
  - If the Scheme is approved, it is expected to complete on 4 January 2018. This timeframe may not be consistent with your investment objectives.
  - Also, you may consider that Fliway has stronger long term growth potential and that the Scheme Consideration does not fully reflect your views on long term value.
- **You may consider that the Scheme is not in your best interests or you may believe that the Independent Adviser's valuation range does not reflect the full value of Fliway**
  - Despite the valuation range provided by the Independent Adviser, you may believe that the Scheme is not in the best interests of Shareholders or not in your individual interests.
- **You may consider that there is a possibility that a Superior Proposal could emerge**
- **The tax implications of the Scheme may not suit your current financial position**
  - If the Scheme is implemented, it will potentially result in tax implications for you, which may arise earlier than may otherwise have been the case.
- **You may consider that the Scheme is subject to conditions that you consider unacceptable**
  - The Scheme is subject to a number of Conditions, which are summarised in section 10.2. You may consider those Conditions unacceptable.

***Your vote is important whether or not you support the Scheme and regardless of how many Fliway Shares you own. I strongly encourage you to exercise your right to vote on this important transaction.***

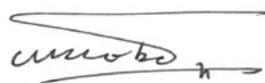
Please read this Scheme Booklet carefully and in its entirety as it contains important information that you should consider before you vote. You may also wish to seek independent legal, financial, taxation or other professional advice.

If you do not support the Scheme, you can also file a notice of appearance or notice of opposition with the High Court. Please see section 6.7 for more information about how to do this.

On behalf of the Independent Directors, I would like to reiterate our support for the Scheme. We strongly encourage you to vote, **IN FAVOUR** of the Scheme, in the absence of a Superior Proposal arising.

I look forward to your participation at the Special Meeting on 8 December 2017.

Yours sincerely,



**Craig Stobo**  
Chairman, Fliway Group Limited

## 3. ACTION REQUIRED

### STEP 1: READ THIS SCHEME BOOKLET AND SEEK ADVICE IF YOU HAVE ANY QUESTIONS

- Please read this document carefully and in its entirety as it will assist you in making an informed decision on how to vote.
- This Scheme Booklet contains important information, including:
  - the reasons your Independent Directors recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal;
  - the reasons why you may choose to vote for, or against, the Scheme;
  - the time, date and location of the Special Meeting;
  - details of how to vote; and
  - the Independent Adviser's Report.
- If you have any questions in relation to this document or the Scheme, you should call the Shareholder Information Line between 8.30am and 5.00pm, Monday to Friday, on +64 9 375 5998.
- If you are in any doubt as to what you should do, please seek advice from your financial, taxation or legal adviser.

The Special Meeting will be held at 3.00pm (New Zealand time) on Friday 8 December 2017 at the offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010.

If you are a Shareholder on the Voting Eligibility Date (expected to be 5.00pm on 6 December 2017), you are entitled to vote on the Scheme.

Shareholders can vote:

- **in person** - by attending the Special Meeting and bringing your personalised admission card (which accompanies this Scheme Booklet);
- **by proxy** - by completing, signing and lodging the Voting/ Proxy Form in accordance with the instructions on that form; or
- **by corporate representative** - a company which is a Shareholder may appoint a person to attend the Special Meeting on its behalf in the same manner as that in which it could appoint a proxy.

### STEP 2: VOTE ON THE SCHEME

**It is very important that you vote.**

**Voting is how you have your say in determining the future of your investment in Fliway.**

For the Scheme to proceed, it is necessary that BOTH of the two voting thresholds are met:

1. 75% or more of the votes cast<sup>2</sup> must be voted in favour of the Scheme Resolution; and
2. more than 50% of the total number of Fliway Shares on issue must be voted in favour of the Scheme Resolution.

<sup>2</sup> By each interest class, although at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. See section 6.2(a) for more information about what an interest class is.

### APPOINT A PROXY IF YOU CANNOT ATTEND THE SPECIAL MEETING IN PERSON

If you are unable to attend the Special Meeting in person, you can vote by appointing a proxy to attend and vote on your behalf.

You should arrange to have your proxy attend the Special Meeting if you appoint a person other than the Chairman of the Special Meeting as your proxy.

#### To appoint a proxy

#### Complete the Voting/Proxy Form and submit it as set out below.

Completed Voting/Proxy Forms must be received by Link Market Services no later than 3.00pm 6 December 2017 (New Zealand time).

You can submit your Voting/Proxy Form:

- **online:** at Link Market Services website and following the instructions (<https://investorcentre.linkmarketservices.co.nz/voting/FLI>). You will be required to enter your holder number and FIN for security purposes
- **by mail:** Link Market Services Limited, PO Box 91976, Auckland 1142
- **in person:** Link Market Services Limited, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010
- **by fax:** +64 9 375 5990
- **by email:** [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz) (please use "Fliway Proxy Form" as the subject for easy identification)

### 3.1 IF YOU HAVE A QUESTION FOR THE CHAIRMAN OF THE SPECIAL MEETING

Shareholders are invited to submit their questions for the Chairman in writing as set out below. Fliway has discretion as to which, and how, questions will be answered during the Chairman's address at the Special Meeting.

- **online:** at Link Market Services website and following the instructions (<https://investorcentre.linkmarketservices.co.nz/voting/FLI>). You will be required to enter your holder number and FIN for security purposes
- **by email:** [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz) (please use "Fliway Question" as the subject for easy identification)
- **by mail:** Link Market Services Limited, PO Box 91976, Auckland 1142
- **by fax:** +64 9 375 5990

### 3.2 IF YOU ARE NOT IN FAVOUR OF THE SCHEME

If you are not in favour of the Scheme, you can vote against it at the Special Meeting. As a Shareholder, you also have the right to appear and be heard at the Final Court Hearing. You will need to file a notice with the Court. Further details are set out in section 6.7.

If you do not want to participate in the Scheme, you are free to sell your Fliway Shares at any time up to close of trading on the date which is two Business Days before the Scheme Record Date (in order not to be registered as a Shareholder on the Scheme Record Date).

## 4. FREQUENTLY ASKED QUESTIONS

QUESTION	ANSWER	MORE INFORMATION
<b>THE SCHEME</b>		
<b>What am I being asked to consider?</b>	If you are in favour of the proposal for your Fliway Shares to be acquired for NZ\$1.22 cash per share by Yang Kee NZ.	See section 6 for more detail.
<b>What is the Scheme?</b>	<p>The Scheme is the scheme of arrangement between Fliway and its Shareholders as at the Scheme Record Date. If approved, the Scheme will implement the acquisition of Fliway by Yang Kee NZ.</p> <p>A scheme of arrangement is a statutory procedure that can be used for one company to acquire another company.</p> <p>For the Scheme to proceed, it requires the approval of Shareholders and the New Zealand High Court.</p> <p>If the Scheme is approved and implemented, Shareholders as at the Scheme Record Date will receive a cash payment of NZ\$1.22 per share.</p>	<p>See section 6 for more detail.</p> <p>See Annexure C for a copy of the Scheme Plan.</p>
<b>What do the Independent Directors recommend?</b>	Your Independent Directors unanimously recommend that Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal.	See section 5 for more detail on the reasons for this recommendation.
<b>How do the Independent Directors intend to vote?</b>	Both Independent Directors intend to vote all of the Fliway Shares that they hold or control in favour of the Scheme, in the absence of a Superior Proposal.	Not applicable.
<b>Is there an independent adviser's report?</b>	Yes. KordaMentha has prepared a report on the merits of the Scheme.	See Annexure B for a copy of the Independent Adviser's Report.
<b>What is the Independent Adviser's valuation range?</b>	KordaMentha concluded that the stand alone value of Fliway's Shares is in the range of NZ\$1.04 to NZ\$1.24 per share.	See Annexure B for a copy of the Independent Adviser's Report.
<b>Who are Yang Kee?</b>	Yang Kee is one of Singapore's largest privately owned logistics companies, with 2017 revenues expected to exceed S\$200 million (approximately NZ\$210 million). Yang Kee are looking to expand their presence in the Australasian region.	See section 7 for details about Yang Kee.

QUESTION	ANSWER	MORE INFORMATION
<b>WHAT WILL HAPPEN IF THE SCHEME PROCEEDS?</b>		
<b>What will I receive if the Scheme is approved and implemented?</b>	You will receive a cash payment of NZ\$1.22 for every Fliway Share held as at the Scheme Record Date (expected to be 5.00pm on 27 December 2017).	See section 6.1 for more detail on the Scheme Consideration.
<b>When will I be paid?</b>	It is expected that you will be paid on 4 January 2018.  For payment to occur, all of the Conditions, must be satisfied or waived (if capable of waiver).  If this timing changes, Fliway will announce the updated timing to NZX.	See section 6.1 for more detail on the Scheme Consideration.
<b>How will I be paid?</b>	Payments will generally be made by electronic transfer into the bank account you have nominated to receive dividends. If: <ul style="list-style-type: none"><li>• you wish to change your bank account details; or</li><li>• you have not previously nominated a bank account,</li></ul> please advise Link Market Services of your bank account details by 5.00pm on 27 December 2017.  If you have not nominated a bank account, payment will be made by cheque. Your cheque will be mailed to the mailing address you have registered with Link Market Services.	See section 6.1 for more detail on the Scheme Consideration.
<b>Will I receive any further dividends from Fliway?</b>	No further dividends will be paid to you if the Scheme is implemented.	Not applicable.
<b>Can I sell my Fliway Shares now?</b>	Yes. You can sell your Fliway Shares on market at the then prevailing market price (which may be more or less than the Scheme Consideration) at any time before trading in Fliway Shares is suspended in anticipation of the implementation of the Scheme.  Fliway intends to apply to NZX for Fliway Shares to be suspended from official quotation on the NZX Main Board. Subject to NZX agreeing to the suspension request, it is currently expected that Fliway Shares will be suspended from quotation on the NZX Main Board from close of trading on 21 December 2017. You will not be able to sell your Fliway Shares on market after this time.	Not applicable.
<b>What are the tax implications of the Scheme?</b>	Tax implications will depend on your specific circumstances. You should seek your own professional tax advice in relation to your personal tax position.	Not applicable.

## 4. FREQUENTLY ASKED QUESTIONS (CONTINUED)

QUESTION	ANSWER	MORE INFORMATION
<b>WHAT IS THE PROCESS FOR THE SPECIAL MEETING?</b>		
<b>When and where will the Special Meeting be held?</b>	<p>The Special Meeting will be held on Friday, 8 December 2017 commencing at 3.00pm.</p> <p>The Special Meeting will be held at the offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010.</p>	See section 3 and the Notice of Meeting in Annexure A for details of the Special Meeting.
<b>What are the voting requirements to approve the Scheme?</b>	<p>For the Scheme to proceed the votes cast in favour of the Scheme Resolution must represent:</p> <ul style="list-style-type: none"> <li>• 75% or more of the votes cast;<sup>3</sup> and</li> <li>• more than 50% of the total number of Fliway Shares.</li> </ul>	See sections 3 and 6 and the Notice of Meeting in Annexure A for details on the Scheme approval requirements.
<b>Am I entitled to vote at the Special Meeting?</b>	If you are registered as a Shareholder at 5.00pm on 6 December 2017 (the Voting Eligibility Date), then you are entitled to attend and vote at the Special Meeting.	See section 3 and the Notice of Meeting in Annexure A for details on your entitlement to vote.
<b>How do I vote if I am not able to attend the Special Meeting?</b>	By appointing a proxy to attend and vote on your behalf.	See section 3 and the Notice of Meeting in Annexure A for details on how to vote.
<b>When will the result of the Special Meeting be known?</b>	<p>Shortly after the meeting finishes. The result will be announced to NZX once available.</p> <p>Even if the Scheme Resolution is approved by Shareholders, the Scheme will still be subject to approval of the High Court.</p>	Not applicable.

<sup>3</sup> By each interest class, although at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. See section 6.2(a) for more information about what an interest class is.

QUESTION	ANSWER	MORE INFORMATION
<b>WHAT IS THE PROCESS FOR THE SPECIAL MEETING?</b>		
<b>What happens to my Fliway Shares if I do not vote, or if I vote against the Scheme, and the Scheme is implemented?</b>	<p>If the Scheme is implemented, any Fliway Shares which you hold on the Scheme Record Date will be transferred to Yang Kee NZ on the Implementation Date.</p> <p>You will receive the Scheme Consideration, even if you did not vote, or voted against the Scheme.</p>	Not applicable.
<b>Why is my vote important?</b>	<p><b>If you are in favour of the Scheme, it is very important that you cast your vote.</b></p> <p>The Scheme is an important transaction for Fliway and as a Shareholder, voting is how you have your say in determining the future of your investment.</p> <p>For the Scheme to be implemented, the votes cast in favour must represent both:</p> <ul style="list-style-type: none"> <li>• 75% or more of the votes cast<sup>3</sup>; and</li> <li>• 50% or more of the total number of Fliway Shares on issue, including those not voted.</li> </ul>	Not applicable.
<b>What do I do if I do not support the Scheme?</b>	<p>If you do not support the Scheme:</p> <ul style="list-style-type: none"> <li>• you should attend the Special Meeting, either in person or by proxy, and vote against the Scheme Resolution; and/or</li> <li>• if Shareholders pass the Scheme Resolution at the Special Meeting, you may wish to oppose the approval of the Scheme, by filing and serving a notice of opposition and any other supporting documents by 5.00pm on 12 December 2017 and attending the Final Court Hearing.</li> </ul>	See section 6.7 for details on shareholder objection rights.

## 4. FREQUENTLY ASKED QUESTIONS (CONTINUED)

QUESTION	ANSWER	MORE INFORMATION
<b>IS THERE ANY REASON WHY THE SCHEME WOULD NOT PROCEED?</b>		
<b>What is required for the Scheme to proceed?</b>	<p>There are a number of Conditions that will need to be satisfied or waived (where capable of waiver) before the Scheme can become Effective.</p> <p>In summary, these Conditions are:</p> <ul style="list-style-type: none"> <li>• High Court approval;</li> <li>• approval of the Scheme by Shareholders at the Special Meeting;</li> <li>• no Government Agency intervening in a way that restricts the implementation of the Scheme;</li> <li>• no Material Adverse Change occurring in relation to Fliway; and</li> <li>• no Fliway Prescribed Occurrence occurring (this covers matters such as changes to Fliway's capital structure or business, insolvency events and various other prescribed events).</li> </ul> <p>The High Court also has the power to order that the Scheme is subject to other terms and conditions as it sees fit.</p> <p>If any of the Conditions are not satisfied or waived (where capable of waiver) by 31 May 2018, then the Scheme will not proceed unless Fliway and Yang Kee agree to extend that End Date.</p>	<p>See section 10.2 for information on the Conditions to the Scheme.</p> <p>The definitions of "Material Adverse Change" and "Fliway Prescribed Occurrence" are set out in the Glossary in section 11.</p>
<b>Is there a time limit for the Conditions to be satisfied?</b>	The Scheme must be implemented by 31 May 2018 (or such later date as Fliway and Yang Kee may agree).	Not applicable.
<b>What if there is a Competing Transaction?</b>	<p>If a Competing Transaction emerges before the Special Meeting, your Independent Directors will carefully consider it.</p> <p>Yang Kee has certain rights to match any Competing Transaction.</p> <p>If the Independent Directors withdraw, change or qualify their recommendation in relation to the Scheme, Fliway will be obliged to pay the Bidder Reimbursement Fee to Yang Kee.</p>	See section 10 for information on Competing Transaction and Superior Proposals.

<sup>3</sup> By each interest class, although at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. See section 6.2(a) for more information about what an interest class is.

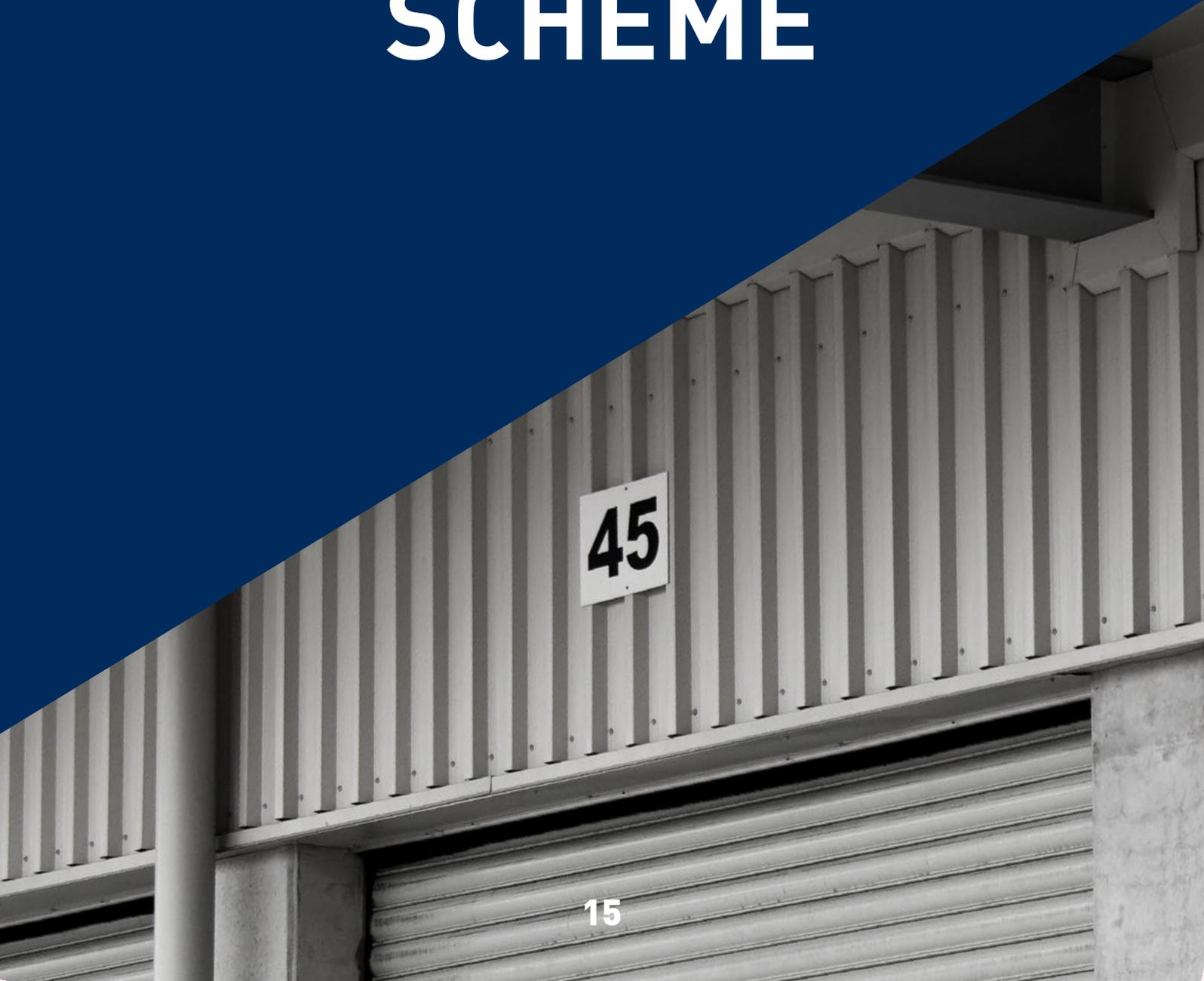


## 4. FREQUENTLY ASKED QUESTIONS (CONTINUED)

QUESTION	ANSWER	MORE INFORMATION
<b>WHAT HAPPENS IF THE SCHEME DOES NOT PROCEED?</b>		
<b>What happens if the Scheme does not proceed?</b>	<p>If the Scheme is not implemented, Scheme Shareholders will not receive NZ\$1.22 cash per share from Yang Kee NZ.</p> <p>Instead, Shareholders will retain their Fliway Shares and, in the absence of another proposal, Fliway will continue to operate as a stand-alone company listed on the NZX Main Board.</p> <p>Shareholders will continue to be subject to the benefits and risks associated with Fliway's business and other general benefits and risks relating to an investment in a publicly listed company.</p>	See section 6.4 for details on what happens if the Scheme does not proceed.
<b>When is the Bidder Reimbursement Fee payable by Fliway?</b>	Under the Scheme Implementation Agreement, a Bidder Reimbursement Fee must be paid by Fliway if certain events occur, including if an Independent Director withdraws, changes or qualifies a recommendation to vote in favour of the Scheme or if a Competing Transaction emerges and is completed within 12 months of the date it is announced. The quantum of the Bidder Reimbursement Fee is NZ\$750,000 plus any amount previously paid by Yang Kee to Fliway to reimburse Fliway for its costs associated with responding to Yang Kee's proposal (in each case plus GST, if applicable).	See section 10 for further information on the Bidder Reimbursement Fee.
<b>When is the Target Reimbursement Fee payable by Yang Kee?</b>	Under the Scheme Implementation Agreement, a Target Reimbursement Fee of NZ\$750,000 (plus GST, if applicable) must be paid by Yang Kee if Fliway terminates the Scheme Implementation Agreement due to a material breach of the agreement by Yang Kee.	See section 10 for further information on the Target Reimbursement Fee.
<b>FURTHER INFORMATION</b>		
<b>Where can I get further information?</b>	For further information, you can call the Shareholder Information Line on +64 9 375 5998 between 8.30am and 5.00pm, Monday to Friday.	Not applicable.



# PART B / DETAILED INFORMATION ABOUT THE SCHEME

A photograph of a white corrugated metal building facade. A white sign with the number 45 is mounted on the wall. The building has a concrete base and a corrugated metal upper section. The image is partially obscured by a dark blue diagonal overlay on the left side.

45

# 5. KEY CONSIDERATIONS RELEVANT TO YOUR VOTE

*This section provides information that is intended to help you with your decision about whether or not to vote in favour of the Scheme. Amongst other things, that decision requires you to assess whether or not you would rather: (a) receive NZ\$1.22 cash in respect of each Share held; or (b) continue to hold your Fliway Shares. As a listed company, there is significant information about Fliway available publicly. If you would like further information about Fliway, its business, prospects and the risks it faces, please go to [www.fliway.com/](http://www.fliway.com/) investors, [www.nzx.com](http://www.nzx.com) or contact your financial adviser.*

## 5.1 YOUR INDEPENDENT DIRECTORS RECOMMEND THAT YOU VOTE IN FAVOUR OF THE SCHEME

Your Independent Directors believe that there are strong reasons to vote in favour of the Scheme, which outweigh the reasons to vote against the Scheme, in the absence of a Superior Proposal. The reasons considered by your Independent Directors are set out in sections 5.3 and 5.4.

The Independent Directors comprise of your two non-executive Directors. Duncan Hawkesby, Fliway's Managing Director, is also a Director of Fliway but has chosen to abstain from making a recommendation to avoid any perceived conflict of interest given his significant interest in Fliway Shares.

## 5.2 YOUR VOTE IS IMPORTANT

For the Scheme to proceed, it is necessary that BOTH of the two voting thresholds are met:

- 75% or more of the votes cast<sup>4</sup> must be voted in favour of the Scheme Resolution; and
- more than 50% of the total number of Fliway Shares must be voted in favour of the Scheme Resolution.

## 5.3 REASONS TO VOTE IN FAVOUR OF THE SCHEME

**a) Your Independent Directors unanimously recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal**

Your Independent Directors unanimously recommend that, in the absence of a Superior Proposal, you vote in favour of the Scheme Resolution required to implement the Scheme at the Special Meeting to be held on 8 December 2017.

In reaching their recommendation to vote in favour of the Scheme, your Independent Directors have considered the merits of the Scheme, the Scheme Consideration in relation to the Independent Adviser's valuation range, as well as the outlook for Fliway's businesses and broader market conditions.

Both of your Independent Directors hold or control Fliway Shares and they intend to vote all of the Fliway Shares held or controlled by them in favour of the Scheme, in the absence of a Superior Proposal. The interests of your Independent Directors are set out in sections 9.5 and 9.12.

**b) NZ\$1.22 is at the upper end of the Independent Adviser's valuation range of NZ\$1.04 to NZ\$1.24 per Fliway Share**

KordaMentha has been appointed as the Independent Adviser to prepare an Independent Adviser's Report on the merits of the Scheme.

KordaMentha has assessed the value of Fliway (including a premium for control) to be in the range of NZ\$1.04 to NZ\$1.24 per Fliway Share. The Scheme Consideration of NZ\$1.22 cash per Fliway Share is at the upper end of this range.

**c) The Scheme provides an opportunity for Shareholders to realise the full value of their Fliway Shares now for 100% cash consideration**

The Scheme Consideration offered to Fliway Shareholders is 100% cash, and Yang Kee's proposal is for all of your Fliway Shares. Your Independent Directors are confident the Scheme Consideration represents a strong offer based on Fliway's recent trading performance.

If the Scheme does not proceed, the amount which you will be able to realise for your investment in Fliway by selling Shares on market or by receiving dividends, will be uncertain. You will continue to be subject to the benefits and risks associated with Fliway's business and other

<sup>4</sup> By each interest class, although at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. See section 6.2(a) for more information about what an interest class is.

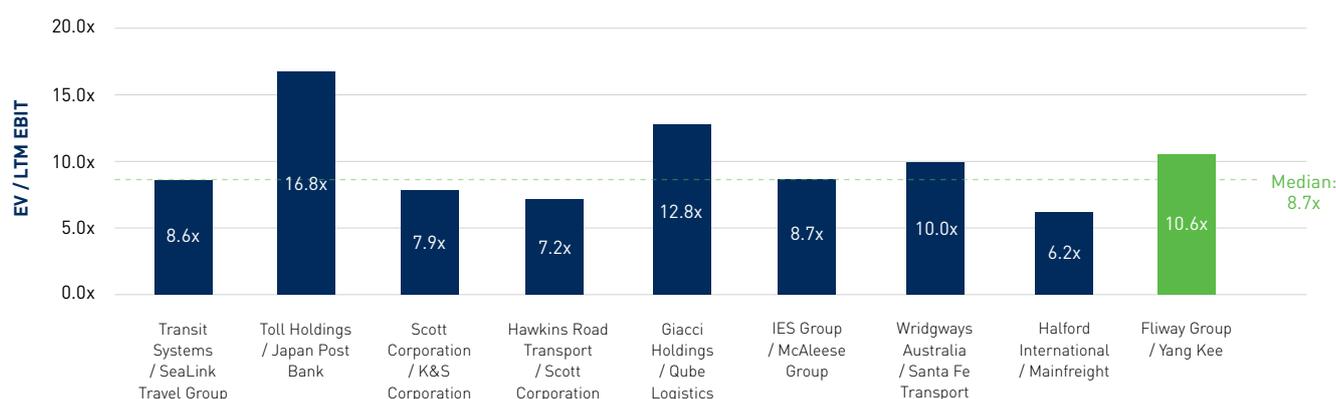
## 5. KEY CONSIDERATIONS RELEVANT TO YOUR VOTE (CONTINUED)

general benefits and risks relating to any investment in a publicly listed company. Among other things, these benefits and risks include the performance of Fliway's business, general economic conditions and movements in the share market. Fliway has also experienced low levels of daily trading, which means that should you wish to sell your Fliway Shares at any point, you may struggle to find a buyer at the price you wish to sell.<sup>5</sup>

The Scheme will remove the uncertainty of future value and liquidity for you by providing you with the ability to sell your shareholding in Fliway at an attractive price.

### e) The majority shareholder associated with Fliway's Managing Director intends to vote its shares in favour of Yang Kee's proposal

Fliway's majority shareholder, The D&G Hawkesby Trust, intends to vote all of its Fliway Shares in favour of the Scheme, subject to no Superior Proposal arising. The D&G Hawkesby Trust is associated with Fliway's Managing Director Mr Duncan Hawkesby and holds approximately 54.15% of Fliway's total shares on issue.



### d) The value of NZ\$1.22 per share values Fliway's earnings favourably when compared with other comparable change of control transactions

The Scheme Consideration of NZ\$1.22 per Scheme Share implies a ratio of EV<sup>6</sup> (enterprise value) to underlying EBIT<sup>7</sup> for the 12 months to 30 June 2017 of 10.6x. This compares favourably to the median for this ratio of recent precedent comparable transaction multiples of 8.7x the last 12 months EBIT, as shown below.<sup>8</sup>

### f) Fliway's Shares have never closed at or above the Scheme Consideration of NZ\$1.22 since listing on the NZX Main Board in April 2015

Fliway Shares listed at NZ\$1.20 in April 2015, and have closed below this price every day since, with an all-time low of NZ\$0.91 on 2 October 2015 and a VWAP<sup>9</sup> of NZ\$1.08 for this period. The chart below shows Fliway's share price performance since listing.

<sup>5</sup> For a number of years there has been limited liquidity in Fliway Shares. In the 12 months up to and including 25 October 2017, there was an average of 18,770 shares traded per day (representing 0.04% of Fliway's current shares outstanding and an average daily trading value of NZ\$20,124).

<sup>6</sup> Fliway considers that EV (enterprise value) is the best valuation metric for comparing transaction multiples. It represents the total purchase price paid for a company (including outstanding debt balances and cash) and allows for comparisons of transactions even though companies may have differing capital structures.

<sup>7</sup> Enterprise Value divided by underlying EBIT (Earnings before interest, tax and significant items, associates and minority interest). Underlying EBIT includes the 50% share of UPS-Fliway joint venture NPAT earnings, grossed up for tax to make it an EBIT number.

<sup>8</sup> Source: KordaMentha Independent Adviser's Report.

<sup>9</sup> VWAP means the volume weighted average price at which Fliway Shares have traded on the NZX Main Board for the relevant period. VWAP is calculated as the total dollar value of shares traded, divided by the total volume (or number) of shares traded during the period referred to. VWAPs have been calculated up to and including market close as of Wednesday, 25th October 2017 using data provided by IRESS.



**g) No Superior Proposal has emerged since the Scheme was announced**

Since the announcement of Yang Kee’s proposal to the NZX Main Board by Fliway on 25 October 2017, and up to the date of this Scheme Booklet, no Superior Proposal has emerged. Your Independent Directors believe that a Superior Proposal is not likely to be forthcoming given the absence of any other offers during this period and the prolonged period since Fliway’s listing in April 2015, during which Fliway’s Shares have traded below its listing price.

**h) The price at which Fliway Shares trade may be less than the Scheme Consideration if the Scheme is not implemented and no Superior Proposal emerges**

Your Independent Directors are unable to predict the price at which Fliway Shares will trade in the future, but believe that if the Scheme is not implemented, and in the absence of a Superior Proposal, the price at which your Fliway Shares trade is likely to be below the Scheme Consideration being offered by Yang Kee.

**i) The Scheme Consideration of NZ\$1.22 cash per share represents a premium to the recent Fliway share price on a variety of measures:**

- 13.0% premium to the closing price of Fliway Shares on 25 October 2017;
- 16.0% premium to the one-month VWAP of Fliway Shares on 25 October 2017; and
- 14.4% premium to the six-month VWAP of Fliway Shares on 25 October 2017.

**Offer price premium to recent Fliway share price**



**j) No brokerage costs will be charged on the transfer of your Fliway Shares to Yang Kee if the Scheme proceeds**

This is in contrast to selling your Fliway Shares on the NZX Main Board where you may incur brokerage charges.

## 5. KEY CONSIDERATIONS RELEVANT TO YOUR VOTE

(CONTINUED)

### 5.4 REASONS YOU MAY NOT VOTE IN FAVOUR OF THE SCHEME

**a) You may wish to maintain an investment in a publicly listed company with the specific characteristics of Fliway in terms of industry, operations, profile, size, capital structure and potential dividend stream**

If the Scheme is approved and implemented, you will be paid 100% cash consideration and cease to be a Shareholder. As such, you will no longer be exposed to the benefits and risks of Fliway's future financial performance or the future prospects of its ongoing business. However, there is no guarantee as to Fliway's future performance, as with all investments in listed securities.

**b) You may consider that Fliway has greater value over the longer term than you will receive under the Scheme**

If the Scheme is approved and implemented, it is expected to complete on 4 January 2018. This timeframe may not be consistent with your investment objectives and you may consider that your Fliway Shares have greater value over the longer term.

You may consider that Fliway has stronger long term growth potential and that the Scheme Consideration does not fully reflect your views on long term value. You may therefore prefer to retain your listed Fliway Shares and realise the value of your Fliway Shares over the longer term.

**c) You may consider that the Scheme is not in your best interests or you may believe that the Independent Adviser's valuation range does not reflect the full value of Fliway**

Despite the valuation range provided by the Independent Adviser, you may believe that the Scheme is not in the best interests of Shareholders or not in your individual interests.

**d) You may consider that there is a possibility that a Superior Proposal could emerge**

However, note that your Independent Directors have no basis to believe an alternative proposal will be received, given that:

- the Directors have not received any approaches since the announcement of Yang Kee's proposal on 25 October 2017; and
- Fliway Shares have traded at a price below their listing price since April 2015.

**e) The tax implications of the Scheme may not suit your current financial position**

If the Scheme is approved and implemented, it will potentially result in tax implications for you, which may arise earlier than may otherwise have been the case.

**f) You may consider that the Scheme is subject to conditions that you consider unacceptable**

The Scheme is subject to a number of Conditions, including Shareholder approval, High Court approval, no Material Adverse Change or no Fliway Prescribed Occurrence occurring.

All of the Conditions are summarised in section 10.2. If these Conditions are not satisfied or waived (where capable of waiver) by 31 May 2018, the Scheme will not proceed (even if it has been approved by Shareholders) and you will not receive the Scheme Consideration as contemplated by the Scheme, unless Fliway and Yang Kee agree to extend this timeframe.

## 5.5 ADDITIONAL MATTERS FOR YOU TO CONSIDER

### a) You may sell your Fliway Shares on the NZX Main Board or at any time prior to suspension of Fliway Shares from trading

You should take into account that you may be able to sell your Fliway Shares on the NZX Main Board at any time prior to the close of trading on the date which is two Business Days before the Scheme Record Date if you do not wish to hold them and participate in the Scheme. However, you should be aware that you may not receive consideration equivalent to the Scheme Consideration of NZ\$1.22 cash per share, and may incur brokerage charges on the sale. You should seek your own independent professional advice to determine if your individual financial or taxation circumstances may make it preferable for you to do so.

### b) The Scheme may be implemented even if you do not vote at the Special Meeting or you vote against the Scheme

Regardless of whether you vote for or against the Scheme, abstain or do not vote at all, the Scheme may still be implemented if it is approved by Shareholders and the High Court, and the other Conditions are satisfied or waived. If this occurs, your Fliway Shares will be transferred to Yang Kee NZ and you will receive the Scheme Consideration.

### c) There are implications to consider if the Scheme is not approved

If the Scheme is not approved by Shareholders, or the High Court, or the other Conditions are not satisfied or waived:

- you will not receive the Scheme Consideration;
- your Fliway Shares will not be transferred to Yang Kee NZ (they will be retained by you);
- Fliway will continue to operate as a stand-alone entity;
- you will continue to be exposed to the benefits and risks associated with an investment in Fliway and other general benefits and risks relating to any investment in a publicly listed company; and
- in the absence of a Superior Proposal, the Fliway share price may fall.

### d) A Bidder Reimbursement Fee may be payable by Fliway in some circumstances

Fliway may be liable to pay the Bidder Reimbursement Fee to Yang Kee in certain circumstances if the Scheme does not proceed. Those circumstances include if an Independent Director withdraws, changes or qualifies a recommendation to vote in favour of the Scheme or if a Competing Transaction emerges and is completed within 12 months of the date it is announced. However, the Bidder Reimbursement Fee will not be payable by Fliway to Yang Kee if the Scheme does not proceed because it is not approved by Shareholders by the requisite majorities.

Further information on the Bidder Reimbursement Fee is set out in section 10.5.

## 6. FURTHER INFORMATION ABOUT THE SCHEME

*This section provides further details of the Scheme, including how it would be implemented.*

### 6.1 SCHEME CONSIDERATION

If the Scheme is implemented, Shareholders will receive NZ\$1.22 in cash from Yang Kee NZ for every Fliway Share held as at the Scheme Record Date.

Payments will generally be made by electronic transfer into the bank account you have nominated to receive dividends.

If:

- you wish to change your bank account details; or
- you haven't otherwise provided bank account details and you wish to be paid by electronic transfer,

please advise Link of your bank account details by 5.00pm on 27 December 2017.

Payment will be made by cheque if you have not nominated a bank account or if Fliway in its discretion decides. Your cheque will be mailed to the mailing address you have registered with Link Market Services.

Payment of the Scheme Consideration will be made on the Implementation Date, currently expected to be 4 January 2018.

### 6.2 KEY STEPS IN THE SCHEME

The Scheme is to be implemented by way of a scheme of arrangement under Part 15 of the Companies Act. The key steps in the process to implement the Scheme are summarised briefly below.

#### a) Shareholder approval requirements

The Scheme will only be implemented if:

- the Scheme Resolution is approved by the requisite majorities of Shareholders at the Special Meeting;
- it is approved by the High Court at the Final Court Hearing; and
- the Conditions are satisfied or waived (if capable of waiver).

Approval by Shareholders at the Special Meeting requires:

- the votes cast in favour of the Scheme Resolution to represent 75% or more of the votes cast by each interest class of Shareholders; and

- the votes cast in favour of the Scheme Resolution to represent more than 50% of the total Fliway Shares (being the total eligible voting rights in Fliway).

Each of these voting thresholds must be met for the Scheme Resolution to be approved.

Shareholders whose rights are so dissimilar that they cannot sensibly consult together about a common interest will form a separate interest class for the purposes of voting on the Scheme Resolution. As at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. In the event that Yang Kee, or entities associated with it, acquires Fliway shares before the Voting Eligibility Date, it will constitute a separate interest class. However, Yang Kee has agreed with Fliway in the Scheme Implementation Agreement that it would sign a deed poll committing to vote any such shares in favour of the Scheme.

In the event that the Scheme Resolution is approved by the requisite majorities of Shareholders at the Special Meeting, then Fliway will apply to the High Court for orders approving the Scheme.

#### b) Takeovers Panel "no objection statement"

Under the Companies Act, Fliway may request a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to the High Court making orders to approve the Scheme. This is commonly referred to as a "no objection statement".

Fliway has applied for a "no objection statement" from the Takeovers Panel. However, the Takeovers Panel does not issue "no objection statements" until just before documents are filed for the Final Court Hearing in respect of the Scheme. This will not take place until after the Special Meeting.

In the meantime, Fliway requested from, and has been granted by, the Takeovers Panel a preliminary statement (called a "letter of intention"), which was presented to the High Court on the Initial Court Date.

The Takeovers Panel has indicated in its "letter of intention" that, on the basis of the documents and information provided to it, it is minded to issue a final "no objection statement" on or before the Final Orders Date.

If it gives a “no objection statement”, the Takeovers Panel will not be commenting on the merits of the Scheme. The Takeovers Panel’s role is to assist the High Court by, for example: (a) reviewing this Scheme Booklet with a view to ensuring that it includes appropriate information, that interest classes are adequately identified, and that other protections available to Shareholders under the Scheme are appropriate; and (b) helping ensure that matters relevant to the High Court’s decision are brought to the High Court’s attention.

Even when a “no objection statement” is granted by the Takeovers Panel, the High Court still has discretion whether or not to approve the Scheme.

#### **c) Final Court Hearing**

At the Final Orders Date, the High Court will consider whether to make orders approving the Scheme. The High Court will consider whether:

- there has been compliance with the relevant procedural rules, the relevant legislation and the orders made at the Initial Court hearing which took place on 20 November 2017 (including in relation to the Special Meeting);
- the Scheme has been fairly put to Shareholders, including whether the Scheme Booklet puts the information reasonably necessary to enable each class of Shareholders to judge and vote on the Scheme;
- Shareholders in each class are fairly represented by those Shareholders who vote on the Scheme; and
- whether the Scheme is such that it might reasonably be approved by an intelligent and honest business person acting in respect of his or her own interest.

The Scheme will be implemented if the High Court approves the Scheme and all other Conditions have been satisfied or waived (where capable of waiver).

Each Shareholder has the right to appear at the Final Court Hearing (see section 6.7).

#### **d) Scheme Record Date**

Those Shareholders on the Register on the Scheme Record Date will be entitled to receive the Scheme Consideration in respect of the Fliway Shares they hold as at the Scheme Record Date.

##### *i) Dealings on or prior to the Scheme Record Date*

For the purpose of determining which Shareholders are eligible to participate in the Scheme, dealings in Fliway Shares will be recognised only if:

- in the case of dealings of the type to be effected through NZX’s clearing and settlement system, the transferee is registered on the Register as the holder of the relevant Fliway Shares as at 5.00pm on the Scheme Record Date; or
- in all other cases, registrable transmission applications or transfers in respect of those dealings or valid requests in respect of other alterations are received by Link on or before the Scheme Record Date.

For the purposes of determining entitlements under the Scheme, Fliway will not accept for registration or recognise any transmission or transfer applications in respect of Fliway Shares received after 5.00pm on the Scheme Record Date. Fliway intends to apply to NZX for Fliway Shares to be suspended from official quotation on the NZX Main Board from close of trading on the date which is two Business Days before the Scheme Record Date. This is expected to be 21 December 2017.

##### *ii) Dealings after the Scheme Record Date*

For the purpose of determining entitlements to the Scheme Consideration, Fliway must maintain the Register in its form as at the Scheme Record Date until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.

After 5.00pm on the Scheme Record Date, each entry of a Shareholder on the Register (other than entries on the Register in respect of Yang Kee NZ) will cease to have effect, except as evidence of entitlement to the Scheme Consideration in respect of the Fliway Shares relating to that entry.

## 6. FURTHER INFORMATION ABOUT THE SCHEME (CONTINUED)

### e) Implementation Date

This is the day Shareholders will be paid for their Shares. The Implementation Date is the fourth Business Day after the Scheme Record Date.

By 4.00pm on the Business Day before the Implementation Date, Yang Kee NZ must pay into a trust account operated by Link the aggregate Scheme Consideration payable to Scheme Shareholders.

On the Implementation Date, which is currently expected to be 4 January 2018, the Scheme Shares will be transferred to Yang Kee NZ without Scheme Shareholders needing to take any further action.

Immediately after the Scheme Shares are transferred to Yang Kee NZ, Link will pay from the trust account, on behalf of Yang Kee NZ, the Scheme Consideration received from Yang Kee NZ, to Scheme Shareholders.

### f) Deed Poll

Yang Kee NZ and Yang Kee have executed the Deed Poll pursuant to which:

- Yang Kee NZ has undertaken in favour of each Scheme Shareholder to provide each Scheme Shareholder with the Scheme Consideration to which they are entitled under the Scheme, subject to the Scheme becoming Effective; and
- Yang Kee has undertaken in favour of each Scheme Shareholder to guarantee the performance of the obligations of Yang Kee NZ described above.

A copy of the Deed Poll is set out in Annexure D.

### 6.3 CONDITIONS

The Scheme is subject to certain Conditions being satisfied or, if capable of waiver, waived (in addition to obtaining approval of Shareholders and the High Court). These Conditions include:

- no Material Adverse Change occurring in relation to Fliway;
- no adverse regulatory intervention that would prevent, prohibit, or otherwise materially adversely impact on, the Scheme; and

- no Fliway Prescribed Occurrence occurring (this covers matters such as changes to Fliway's capital structure or business, insolvency events and various other prescribed events).

These Conditions, and the other Conditions the Scheme is subject to, are described in more detail in section 10.2. The definitions of "Material Adverse Change" and "Fliway Prescribed Occurrence" are set out in the Glossary in section 11.

The High Court also has the power to make such other conditions to the Scheme as it sees fit.

### 6.4 IF THE SCHEME IS NOT IMPLEMENTED

If the Scheme does not proceed, Shareholders will continue to hold their Fliway Shares.

Fliway will continue as a stand-alone entity listed on the NZX Main Board. Shareholders will continue to be subject to the benefits and risks associated with Fliway's business and other general benefits and risks relating to any investment in a publicly listed company.

In the absence of an alternative proposal which is similar or superior to the Scheme, it is likely that the price at which Fliway Shares trade may fall.

Depending on the reasons why the Scheme does not proceed, Fliway may be liable to pay the Bidder Reimbursement Fee.

Information on the Bidder Reimbursement Fee and Target Reimbursement Fee is set out in section 10.5.

### 6.5 WARRANTIES BY SHAREHOLDERS

The Scheme provides that each Scheme Shareholder is taken to have warranted to Yang Kee NZ on the Implementation Date that all their Fliway Shares which are transferred under the Scheme will be fully paid and free from encumbrances or interests of third parties and that they have full power and capacity to transfer their Fliway Shares to Yang Kee NZ. Full details of the warranties to be provided are set out in the Scheme Plan attached as Annexure C.

## 6.6 DELISTING OF FLIWAY

Fliway will apply for termination of the official quotation of Fliway Shares on the NZX Main Board and if the Scheme is implemented, will be removed from the NZX Main Board from close of trading on the Implementation Date.

## 6.7 SHAREHOLDER OBJECTION RIGHTS

If you do not support the Scheme, you can vote against the Scheme Resolution at the Special Meeting.

In addition, if you are a Shareholder, you may appear and be heard at the application for Final Court Orders, which is expected to occur at 10.00am on 19 December 2017 at the Auckland Registry of the High Court. To do so, you must file a notice of appearance or a notice of opposition (in either case containing an address for service), and any affidavits or memoranda of submissions on which you intend to rely, by 5.00pm on 12 December 2017, and serve a copy on Fliway at 66 Westney Road, Mangere, Manukau City, Auckland or email [fliwayenquiries@fliway.com](mailto:fliwayenquiries@fliway.com). If you do this, Fliway will serve you, at your address for service, a copy of all documents filed in support of the application for Final Court Orders by 5.00pm on 13 December 2017.

Any other person claiming to have a proper interest in the Scheme, who wishes to appear and be heard on the application for Final Court Orders must file an application for leave to be heard and a notice of opposition (both containing an address for service), any affidavits, and a memorandum of submissions upon which such person intends to rely, by 5.00pm on 12 December 2017 and serve a copy on Fliway at 66 Westney Road, Mangere, Manukau City, Auckland or email [fliwayenquiries@fliway.com](mailto:fliwayenquiries@fliway.com). If you do this, Fliway will serve upon any such person, at their address for service, a copy of the affidavits in support of the application for Final Court Orders by 5.00pm on 13 December 2017.

If the application for Scheme approval is opposed, oppositions will be heard by the High Court at 10.00am on 19 December 2017, or such later date as the High Court directs.

You may only appear and be heard at the hearing of the application for Final Court Orders if you are:

- a Shareholder who files a notice of appearance or a notice of opposition to the application for Final Court Orders within the required timeframes (set out above); or
- any other person who claims to have a proper interest in the Scheme who files an application for leave to be heard and a notice of opposition to the application for Final Court Orders within the required timeframes (set out above), and who is subsequently granted leave to appear and be heard at the hearing of the application for Final Court Orders.

In addition, the Takeovers Panel may consider an objection by a Shareholder or other interested party to the Scheme when determining whether to provide its "no objection statement". Written objections can be submitted directly to the Takeovers Panel (whether or not a "no objection statement" is granted) by email ([takeovers.panel@takeovers.govt.nz](mailto:takeovers.panel@takeovers.govt.nz)).

There are no other dissent or buy-out rights for Shareholders who do not support the Scheme.

If you do not want to participate in the Scheme, you are free to sell your Fliway Shares at any time before close of trading on the NZX Main Board on the date which is two Business Days before the Scheme Record Date. The then prevailing market price may vary from the Scheme Consideration.

# 7. INFORMATION ABOUT YANG KEE

*Information in this section has been prepared by, and is the responsibility of, Yang Kee. Fliway does not assume any responsibility for the accuracy or completeness of this information.*

## 7.1 BACKGROUND

Yang Kee is one of Singapore's largest privately owned logistics companies. Over the past 10 years, Yang Kee has developed from a small, two-truck firm, into an industry leader, complementing its operations with warehousing and freight. It employs more than 600 people in 32 offices across 12 countries.

Yang Kee provides services and solutions in warehousing, transportation, freight forwarding, customs clearance and project logistics management. Specialty services include the handling of hazardous cargo, specialty chemicals, lubricants and general industrial products.

Yang Kee owns and operates on over 3 million ft<sup>2</sup> of warehouse and yard space, across Singapore and the Asia Pacific region.

## 7.2 CLIENTS AND INVESTORS

Yang Kee Group serves world renowned clients across a wide range of industries and geographies, delivering best in-class solutions.

Yang Kee is incorporated in Singapore, with government linked agency EDBi Canadian pension funds among its investors. The Executive Chairman, Mr Koh Yang Kee and his family interests together own 92% of the Yang Kee Group.

## 7.3 RECENT ACQUISITIONS

In March 2017, Yang Kee acquired Australian firm Axima Pty Limited for a total consideration of A\$34 million. The acquisition of this specialist end-to-end logistics provider marked Yang Kee's first investment into the Australian and New Zealand market. Axima primarily operates in Australia, but also has offices in China, Hong Kong and the US. The acquisition provided Yang Kee with expertise and experience in the fast-moving consumer goods sector, as well as a platform to enlarge its presence in the growing Australasian market.

## 7.4 OUTLOOK

Yang Kee (together with its subsidiaries) are expected to have net assets of S\$300 million (approximately NZ\$315 million) at the end of 2017. Yang Kee expects to generate revenues in excess of S\$200 million (approximately NZ\$210 million) in the financial year ending 31 December 2017.





# **PART C / STATUTORY AND OTHER INFORMATION**

# 8. YANG KEE INFORMATION EQUIVALENT TO SCHEDULE 1 OF THE TAKEOVERS CODE

*This section contains information, to the extent applicable, equivalent to the information that would be provided by Yang Kee NZ in a takeover offer document in accordance with Schedule 1 to the Takeovers Code.*

*Yang Kee NZ has prepared, and is solely responsible for, the information in this section. Yang Kee NZ has not prepared, and is not responsible for, information which is referred to in this section, but which is set out in another section of this Scheme Booklet.*

## 8.1 DATE

This section was prepared, and is current, as at 20 November 2017.

## 8.2 YANG KEE AND ITS DIRECTORS

The name and address of Yang Kee NZ is:

Yang Kee Group (New Zealand) Pty Limited

Harmos Horton Lusk Limited

Level 37

Vero Center

48 Shortland Street

Auckland 1010

New Zealand

The directors of Yang Kee NZ are:

- a) Cheng Ter Chiang;
- b) Koh Kien Chon; and
- c) Sandra Fairchild.

## 8.3 SCHEME COMPANY

The name of the company to which the Scheme relates is Fliway Group Limited.

## 8.4 SCHEME TERMS

The terms and conditions of the Scheme are set out in the Scheme Plan in Annexure C. A summary of the terms and conditions of the Scheme is included in section 6.

## 8.5 OWNERSHIP OF EQUITY SECURITIES OF FLIWAY

None of the following persons hold or control any equity securities in Fliway:

- a) Yang Kee NZ;
- b) any Related Company of Yang Kee NZ;
- c) any person acting jointly or in concert with Yang Kee NZ; and
- d) any director of any person described in paragraphs (a) to (c) above.

Information about the persons who hold or control 5% or more of any class of equity securities in Fliway is set out in section 9.5.

## 8.6 TRADING IN FLIWAY EQUITY SECURITIES

None of the persons referred to in sections 8.5(a) to (d) above have acquired or disposed of any equity securities in Fliway in the six month period ending on the date of this Scheme Booklet.

## 8.7 AGREEMENTS TO VOTE IN FAVOUR OF SCHEME

Except as set out below in this section 8.7, no person has agreed, or publicly announced an intention, to vote in favour of the Scheme.

### Craig Stobo and Alan Isaac

Craig Stobo and Alan Isaac, who are Directors of Fliway, hold Scheme Shares, either directly or through associated interests. On 25 October 2017, as required by the Scheme Implementation Agreement, Fliway publicly announced that, subject to certain conditions, Messrs Stobo and Isaac intend to vote all of their Scheme Shares, or procure that their associated interests vote all of their Scheme Shares, in favour of the Scheme.

The number of Scheme Shares held or controlled by each of Messrs Stobo and Isaac and their respective associated interests is set out in section 9.5.

## 8. YANG KEE INFORMATION EQUIVALENT TO SCHEDULE 1 OF THE TAKEOVERS CODE

(CONTINUED)

### The D&G Hawkesby Trust

On 25 October 2017, Duncan Hawkesby and Gretchen Hawkesby, in their capacity as trustees of The D&G Hawkesby Trust entered into a deal protection deed with Yang Kee (the **Deal Protection Deed**) which, amongst other things, included their intention to vote all of their Scheme Shares in favour of the Scheme, subject to certain conditions. The material terms of the Deal Protection Deed are summarised in section 8.10.

The number of Scheme Shares held or controlled by Duncan Hawkesby and Gretchen Hawkesby, in their capacity as trustees of The D&G Hawkesby Trust, is set out in section 9.5.

### 8.8 ARRANGEMENTS TO PAY CONSIDERATION

Yang Kee NZ confirms that resources will be available to it sufficient to meet the total Scheme Consideration to be provided to Scheme Shareholders if the Scheme becomes Effective.

Yang Kee NZ and Yang Kee have executed the Deed Poll under which Yang Kee agree in favour of each Scheme Shareholder to guarantee the payment by Yang Kee NZ of the Scheme Consideration.

### 8.9 ARRANGEMENTS BETWEEN YANG KEE AND FLIWAY

Except as set out below in this section, no agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between Yang Kee NZ or any Associates of Yang Kee NZ and Fliway or any Related Company of Fliway, in connection with, in anticipation of, or in response to, the Scheme.

#### Confidentiality Agreement

On 8 November 2016, Yang Kee and Fliway entered into a confidentiality agreement under which Yang Kee agreed to keep confidential information provided by Fliway in connection with the Scheme.

#### Exclusivity Letters

Yang Kee and Fliway entered into a number of exclusivity letters (dated, respectively, 25 November 2016, 5 May 2017 and 21 September 2017) to facilitate Yang Kee undertaking due diligence on Fliway and, subsequently, the negotiation of the Scheme Implementation Agreement. Under those exclusivity letters:

- a) Fliway provided to Yang Kee certain rights of exclusivity, including Fliway committing:
  - i. not to solicit competing proposals or conduct any negotiations in relation to a competing proposal;
  - ii. to notify Yang Kee if it received an unsolicited competing proposal that it intended to progress; and
  - iii. to provide Yang Kee with reasonable access to information that Yang Kee reasonably requests to facilitate the progress of the transaction,
 and both parties agreeing to provide reasonable assistance to each other with a view to progressing the transaction in good faith;
- b) Fliway agreed to reimburse Yang Kee's transaction fees and costs in certain circumstances involving Fliway deciding to pursue a competing transaction, up to an agreed cap; and
- c) Yang Kee agreed to reimburse Fliway's transaction fees and costs in certain circumstances involving Yang Kee deciding not to pursue the transaction (other than as a result of having identified a material due diligence issue), up to an agreed cap.

In addition, under the exclusivity letter dated 21 September 2017, Yang Kee agreed to pay to Fliway the amount of NZ\$200,000 as an initial contribution to Fliway's transaction fees and costs. Yang Kee paid that amount to Fliway on 22 September 2017.

#### Cost Letter

On 12 October 2017, Yang Kee and Fliway entered into a cost letter under which Yang Kee agreed, in consideration of Fliway instructing Bell Gully to prepare the notice of meeting and scheme documentation for the Scheme, to pay Bell Gully's invoices for the preparation of those documents, up to a maximum aggregate amount of NZ\$60,000.

#### Scheme Implementation Agreement

Yang Kee, Yang Kee NZ and Fliway entered into the Scheme Implementation Agreement on 25 October 2017. The material terms of the Scheme Implementation Agreement are summarised in section 10.

**Escrow Letter**

Fliway, Yang Kee NZ and Link Market Services Limited (as Fliway's share registrar) entered into a letter agreement dated 7 November 2017 setting out detailed arrangements relating to the completion of the Scheme. The letter provides that, as contemplated by the terms of the Scheme, Link Market Services Limited will establish a trust account into which Yang Kee NZ will deposit the total Scheme Consideration. It also sets out the detailed terms of how Link Market Services Limited will effect completion of the Scheme by transferring the Scheme Shares to Yang Kee NZ and paying the Scheme Consideration to Scheme Shareholders subject to the Conditions being satisfied in accordance with the terms of the Scheme.

**Court Disclosure Letter**

Fliway and Yang Kee have entered into a letter agreement dated 3 November 2017 pursuant to which Yang Kee consents to Fliway including certain Yang Kee information as part of the materials filed with the Court in support of the Scheme. Fliway has committed to give Yang Kee notice of any requests to access the materials filed, not to agree to their disclosure without Yang Kee's consent and to give Yang Kee certain rights relating to the preservation of the confidentiality of this Yang Kee information.

**8.10 ARRANGEMENTS BETWEEN YANG KEE AND DIRECTORS AND SENIOR OFFICERS OF FLIWAY**

Except as set out below in this section 8.10, no agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between Yang Kee NZ or any Associates of Yang Kee NZ and any Director or Senior Officer of Fliway or any Related Company of Fliway (including any agreement or arrangement providing for a payment or other benefit proposed to be made or given by way of compensation for loss of office or as to the Director or Senior Officer remaining in or retiring from office), in connection with, in anticipation of, or in response to, the Scheme.

**Deal Protection Deed**

On 25 October 2017, Duncan Hawkesby (who is a Director and Senior Officer) and Gretchen Hawkesby, in their capacity as trustees of The D&G Hawkesby Trust entered into the Deal Protection Deed with Yang Kee NZ. The material terms of the Deal Protection Deed are as follows:

- a) The D&G Hawkesby Trust confirmed their intention to vote in favour of the Scheme unless, prior to the vote being held, the Scheme Implementation Agreement is terminated or the Independent Directors announce to NZX that they have received, and intend to recommend, a proposed transaction that the Independent Directors consider to be a Superior Proposal for the purposes of the Scheme Implementation Agreement. This confirmation is a statement of intention and is not contractually binding.
- b) The D&G Hawkesby Trust agreed not to sell, transfer or grant an encumbrance over any of their Scheme Shares.
- c) The D&G Hawkesby Trust agreed not to encourage or solicit a competing transaction for Fliway.
- d) The Deal Protection Deed expires on the earlier of the date on which the Scheme becomes Effective, the date the Scheme Implementation Agreement is terminated and the date on which the Independent Directors announce to NZX that they have received, and intend to recommend, a proposed transaction that the Independent Directors consider to be a Superior Proposal for the purposes of the Scheme Implementation Agreement. In addition, Yang Kee NZ may terminate the Deal Protection Deed if the Takeovers Panel or the High Court consider that the Deal Protection Deed, or the obligations under the Deal Protection Deed, make The D&G Hawkesby Trust a different interest class from other Scheme Shareholders for the purposes of section 236A of the Companies Act.

**Services Agreement - Duncan Hawkesby and Jim Sybertsma**

To assist with the transition in ownership following the implementation of the Scheme, both Duncan Hawkesby (as Managing Director) and Jim Sybertsma (as Chief Financial Officer) entered Services Agreements with Fliway on 25 October 2017.

Under the Services Agreements, both Messrs Hawkesby and Sybertsma will continue to be employed by Fliway on their current terms and conditions of employment until 30 June 2018.

Following this date, both Messrs Hawkesby and Sybertsma will provide services to Fliway as independent contractors and, in the case of Mr Hawkesby, as a director, until 30 June 2019. They will receive a service fee of NZ\$1,200 per day and the expected time commitment is five days per month.

## 8. YANG KEE INFORMATION EQUIVALENT TO SCHEDULE 1 OF THE TAKEOVERS CODE

### (CONTINUED)

Services to be provided by Mr Hawkesby include chairing a board committee responsible for overseeing the integration of Fliway with Yang Kee Group following completion and ensuring continuity of Fliway's business. In addition, Mr Hawkesby will remain as a director of Fliway Group Limited and UPS-Fliway for that period and will receive NZ\$70,000 (per annum) for that role.

Similarly, Mr Sybertsma must attend all meetings of the Board (as a non-director) and act as a non-voting, non-director member of the board committee chaired by Mr Hawkesby.

Although Yang Kee is not a party to these Services Agreements, the Services Agreements are expressed to be for the benefit of, and enforceable by, Yang Kee.

#### Selling Shareholder Indemnity

As disclosed in Fliway's Prospectus dated 6 March 2015 in connection with its initial public offering, The D&G Hawkesby Trust, entered into a deed of indemnity in favour of Fliway on 5 March 2015 (the **Selling Shareholder Indemnity**). Under the Selling Shareholder Indemnity, The D&G Hawkesby Trust agreed to indemnify Fliway against any loss of earnings as a result of a third party claim relating to an event that occurred before allotment of shares under the initial public offering. However, claims against Fliway that arise in the ordinary course of its day-to-day activities as a result of the loss or damage to goods or inventory were excluded from the Selling Shareholder Indemnity. A claim was also excluded to the extent Fliway recovers proceeds under its insurance policies. Under the Selling Shareholder Indemnity, Fliway must not make a claim unless the amount of the claim exceeds NZ\$250,000. The de-listing of Fliway from the NZX Main Board following a change of control transaction (such as the Scheme) would mean that the Selling Shareholder Indemnity would automatically terminate. The D&G Hawkesby Trust's liability under the Selling Shareholder Indemnity is limited to an aggregate maximum amount that reduces over time on the basis set out below:

Period in which notice of claim is given by Fliway	Aggregate Maximum Amount (NZ\$)
Before or on 8 April 2016	4,000,000
9 April 2016 – 8 April 2017	3,000,000
9 April 2017 – 8 April 2018	2,000,000
9 April 2018 – 8 April 2019	1,000,000
9 April 2019 – 8 April 2020	500,000
After 4 pm on 8 April 2020	0

In order to help facilitate the Scheme, The D&G Hawkesby Trust has reached an arrangement with Yang Kee whereby the terms of the Selling Shareholder Indemnity would be amended such that:

- it does not terminate on the completion of the Scheme (but would still terminate on a subsequent change of control transaction); and
- the minimum claim threshold referred to above increases from NZ\$250,000 to NZ\$500,000.

On 25 October 2017, Fliway and The D&G Hawkesby Trust entered into a Deed of Amendment and Restatement to effect these amendments, subject to the Scheme becoming Effective.

#### 8.11 FINANCIAL ASSISTANCE

Yang Kee NZ has arrangements in place to pay the total Scheme Consideration. After the Scheme Consideration is paid, Fliway will be a wholly owned subsidiary of Yang Kee NZ and may grant security over its assets and the assets of its subsidiaries to the financiers to the Yang Kee Group.

#### 8.12 INTENTIONS ABOUT MATERIAL CHANGES TO FLIWAY

Yang Kee NZ has not provided information about its intentions for Fliway because, if the Scheme becomes Effective, Fliway will become a wholly owned subsidiary of Yang Kee NZ.

#### 8.13 NO PRE-EMPTION RIGHTS CLAUSES IN FLIWAY'S CONSTITUTION

Fliway's constitution does not contain any restrictions on the right of Scheme Shareholders to transfer Scheme Shares (being the equity securities to which the Scheme relates) which have the effect of requiring Scheme Shareholders to offer Scheme Shares for purchase to other Scheme Shareholders or to any other person before transferring the Scheme Shares under the Scheme.

#### **8.14 NO ESCALATION CLAUSES**

Except for the Services Agreements referred to in section 8.10, there is no agreement or arrangement (legally enforceable or not) under which:

- a) any existing Scheme Shareholder will or may receive in relation to, or as a consequence of, the Scheme any additional consideration or other benefit over and above the Scheme Consideration; or
- b) any prior holder of equity securities in Fliway will or may receive any consideration or other benefit as a consequence of the Scheme.

#### **8.15 ONLY ONE CLASS OF FINANCIAL PRODUCTS IS SUBJECT TO THE SCHEME**

The only financial products subject to the Scheme are Scheme Shares. Accordingly, no report is required to be obtained by Yang Kee NZ as to the fairness and reasonableness of the consideration and terms of the Scheme as between different classes of financial products.

# 9. FLIWAY INFORMATION EQUIVALENT TO SCHEDULE 2 OF THE TAKEOVERS CODE

The information in this section 9 contains information, to the extent applicable, that would be provided by Fliway in a target company statement under Schedule 2 of the Takeovers Code.

## 9.1 DATE

This Scheme Booklet is dated 21 November 2017.

## 9.2 SCHEME

This Scheme Booklet relates to a scheme of arrangement between Fliway and its Shareholders in relation to the proposed acquisition of the Scheme Shares by Yang Kee NZ, a wholly-owned subsidiary of Yang Kee.

## 9.3 SCHEME COMPANY

The name of the company to which the Scheme relates is Fliway Group Limited.

## 9.4 DIRECTORS OF FLIWAY

The names of the Directors of Fliway are:

- Craig Hamilton Stobo;
- Alan Raymond Isaac; and
- Duncan John Hawkesby.

Craig Stobo and Alan Isaac have been determined to be "Independent Directors" for the purposes of the NZX Main Board Listing Rules.

## 9.5 OWNERSHIP OF EQUITY SECURITIES OF FLIWAY

### *Ownership interests of directors and senior officers of Fliway*

#### **Fliway Shares**

The table below sets out the number and the percentage of Fliway Shares held or controlled by each Director or Senior Officer of Fliway or their Associates.

Name of Director or Senior Officer	Description	Number of Fliway Shares held or controlled	Percentage of total Fliway Shares
Craig Stobo	Independent Director	54,400	0.1%
Alan Isaac	Independent Director	50,000	0.1%
Duncan Hawkesby	Managing Director	24,629,576	54.15%

### **No other ownership of equity securities**

Except as set out in the tables above, no other Director or Senior Officer or their Associates holds or controls any equity securities of Fliway.

### **Ownership interests of substantial product holders of Fliway**

The table below sets out the number and the percentage of Fliway Shares held or controlled by any other person holding or controlling 5% or more of the Fliway Shares, to the knowledge of Fliway. The information in this table is based on information known to Fliway on 20 November 2017, being the latest practicable date before the date of this Scheme Booklet.

Name of substantial product holders	Number of Fliway Shares held or controlled	Percentage of total Fliway Shares
Duncan John Hawkesby and Gretchen Sarah Hawkesby as Trustees of The D & G Hawkesby Trust	24,604,576	54.15%
Salt Funds Management	3,876,462	8.5%

Except as set out in the table above, to Fliway's knowledge no other person holds or controls more than 5% of a class of equity securities of Fliway.

Fliway has not issued any equity securities since the completion of its initial public offering in April 2015. Accordingly, during the two year period prior to this Scheme Booklet, no equity securities in Fliway have been issued to Fliway's Directors or Senior Officers, or the substantial product holders listed above.

## 9.6 TRADING IN FLIWAY EQUITY SECURITIES

None of Fliway's Directors and Senior Officers, or the substantial product holders listed above, have acquired or disposed of any equity securities in Fliway during the six month period before 20 November 2017, being the latest practicable date before the date of this Scheme Booklet.

## 9.7 INTENTIONS TO VOTE IN FAVOUR OF THE SCHEME

The table below sets out, as at the date of this Scheme Booklet, the name of every Director, Senior Officer and Associate of a Director or Senior Officer who has advised Fliway that he or she intends to vote in favour of the Scheme, and the number of Fliway Shares in respect of which the person intends to vote in favour of the Scheme.

Name	Description	Number of Fliway Shares intended to be voted in favour
Craig Stobo	Director	54,400
Alan Isaac	Director	50,000
Duncan Hawkesby	Managing Director	24,629,576

## 9.8 OWNERSHIP OF EQUITY SECURITIES OF YANG KEE

No securities in either Yang Kee or Yang Kee NZ are held or controlled by any of:

- Fliway;
- any Director or Senior Officer of Fliway; or
- any Associate of a Director or Senior Officer of Fliway.

## 9.9 TRADING IN EQUITY SECURITIES OF YANG KEE

Neither Fliway, nor any Director, Senior Officer or any of their Associates, has acquired or disposed of any equity securities of either Yang Kee or Yang Kee NZ during the six month period before 20 November 2017, being the latest practicable date before the date of this Scheme Booklet.

## 9.10 ARRANGEMENTS BETWEEN YANG KEE AND FLIWAY

Except in relation to the confidentiality agreement, exclusivity letters, cost letter, Scheme Implementation Agreement, escrow letter and court disclosure letter referred to in section 8.9, no agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between Yang Kee or any Associates of Yang Kee and Fliway or any Related Company of Fliway in connection with, in anticipation of, or in response to, the Scheme.

## 9.11 RELATIONSHIP BETWEEN YANG KEE AND DIRECTORS AND SENIOR OFFICERS OF FLIWAY

Other than the three instances described below, no agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between Yang Kee and any Associates of Yang Kee, and any Director or Senior Officer of Fliway or any Related Company of Fliway in connection with, in anticipation of, or in response to, the Scheme.

## Deal Protection Deed

In connection with the entry into the Scheme Implementation Agreement, The D&G Hawkesby Trust has entered into a Deal Protection Deed with Yang Kee NZ, the terms of which are summarised in section 8.10.

## Services Agreement – Duncan Hawkesby and Jim Sybertsma

To assist with the transition in ownership following the implementation of the Scheme, both Duncan Hawkesby (as Managing Director) and Jim Sybertsma (as Chief Financial Officer) entered Services Agreements with Fliway on 25 October 2017. Although Yang Kee is not a party to these Services Agreements, the Services Agreements are expressed to be for the benefit of, and enforceable by, Yang Kee. The terms of these Services Agreements are summarised in section 8.10.

## Selling Shareholder Indemnity

In order to help facilitate the Scheme, The D&G Hawkesby Trust has reached an arrangement with Yang Kee whereby the terms of the Selling Shareholder Indemnity would be amended. The terms of the amendments are summarised in section 8.10.

None of the Directors or Senior Officers of Fliway are also directors or senior officers of Yang Kee (or any Related Company of Yang Kee).

## 9.12 AGREEMENT BETWEEN FLIWAY AND ITS DIRECTORS AND SENIOR OFFICERS

In connection with the announcement of the Scheme, The D&G Hawkesby Trust has agreed with each of Cameron McKeown (General Manager Domestic) and Jon Gundy (General Manager International) that it will pay each of them NZ\$300,000 in aggregate over three payments if they remain employed (and haven't given notice of resignation) by Fliway for the 24 months following the Implementation Date.

The transitional employment arrangements in respect of Duncan Hawkesby and Jim Sybertsma are described in section 9.11.

Otherwise, no agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between Fliway or any Related Company of Fliway and any Directors, Senior Officers or their Associates of Fliway or its Related Companies, under which a payment or other benefit may be made or given by way of compensation for loss of office, or as to their remaining in or retiring from office in connection with, in anticipation of, or in response to, the Scheme.

## 9. FLIWAY INFORMATION EQUIVALENT TO SCHEDULE 2 OF THE TAKEOVERS CODE

(CONTINUED)

### 9.13 INTERESTS OF DIRECTORS AND SENIOR OFFICERS OF FLIWAY IN CONTRACTS OF YANG KEE OR ITS RELATED COMPANIES

Other than the Deal Protection Deed, Services Agreements and Selling Shareholder Indemnity referred to in section 9.11 above, no Director or Senior Officer or their Associates has an interest in any contract to which Yang Kee, or any related company of Yang Kee, is a party.

### 9.13A. INTERESTS OF FLIWAY'S SUBSTANTIAL SECURITY HOLDERS IN MATERIAL CONTRACTS OF YANG KEE OR ITS RELATED COMPANIES

Other than the Deal Protection Deed, Duncan Hawkesby's Services Agreement and the Selling Shareholder Indemnity referred to in section 9.11 above, no person who, to the knowledge of the Directors or the Senior Officers holds or controls 5% or more of any class of equity securities of Fliway, has an interest in any material contract to which Yang Kee, or any related company of Yang Kee, is a party.

### 9.14 ADDITIONAL INFORMATION

The Yang Kee Information in this Scheme Booklet is the responsibility of Yang Kee. Having said that, in the opinion of Fliway's Directors and to the best of their knowledge, no additional information is required to make that information correct or not misleading.

### 9.15 RECOMMENDATION

Your Independent Directors unanimously recommend that Shareholders vote in favour of the Scheme Resolution, in the absence of a Superior Proposal. The Independent Directors' reasons for this recommendation are set out in section 5.3.

As set out in section 5.1, Duncan Hawkesby, being the Managing Director of Fliway, has abstained from making any recommendation as to whether Shareholders should vote in favour of, or against, the Scheme.

### 9.16 ACTIONS OF FLIWAY

Except for the arrangements summarised in sections 9.10, 9.11 and 9.12 above, there are no material agreements or arrangements (whether legally enforceable or not) of Fliway or any Related Company of Fliway entered into as a consequence of, in response to, or in connection with, the Scheme.

There are no negotiations underway as a consequence of, in response to, or in connection with, the Scheme that relate to, or could result in:

- an extraordinary transaction, such as a merger, amalgamation or reorganisation, involving Fliway or any of its Related Companies;
- the acquisition or disposition of material assets by Fliway or any of its Related Companies;
- an acquisition of equity securities by, or of, Fliway or any of its Related Companies; or
- any material change in the issued equity securities of Fliway, or the policy of the Fliway Board relating to distributions of Fliway.

### 9.17 EQUITY SECURITIES OF FLIWAY

Fliway has 45,437,910 Fliway Shares on issue. All Fliway Shares are fully paid. Fliway has no options, or rights to acquire equity securities, on issue.

Subject to certain conditions in the constitution of Fliway and the NZX Main Board Listing Rules, each Fliway Share confers upon the holder the right to:

- a) an equal share in dividends authorised by the Fliway Board;
- b) an equal share in the distribution of surplus assets on liquidation of Fliway;
- c) participate in certain further issues of equity securities by Fliway; and
- d) cast one vote on a show of hands or the right to cast one vote per share on a poll, at a meeting of Shareholders on any resolution, including a resolution to:
  - i) appoint or remove a director or auditor;
  - ii) alter Fliway's constitution;
  - iii) approve a major transaction;
  - iv) approve an amalgamation involving Fliway; and
  - v) put Fliway into liquidation.

### 9.18 FINANCIAL INFORMATION

A copy of Fliway's most recent annual report (being the annual report for the year ended 30 June 2017) is available on Fliway's website at [www.fliway.com](http://www.fliway.com).

Each person who is eligible to vote on the Scheme may also request from Fliway a copy of Fliway's most recent annual report by making a written request to:

66 Westney Road,  
Mangere, Manukau City,  
Auckland

Fliway paid a final dividend of NZ\$0.04 per Share on 15 September 2017. Otherwise there have not been any material changes in the financial or trading position, or prospects, of Fliway since its 30 June 2017 annual report was prepared and sent to Shareholders.

### 9.19 INDEPENDENT ADVICE ON MERITS OF THE SCHEME

KordaMentha is the Independent Adviser who has provided a report in relation to the merits of the Scheme. A copy of the full Independent Adviser's Report is set out in Annexure B.

### 9.20 ASSET VALUATIONS

No information provided in this Scheme Booklet refers to a valuation of any asset of Fliway.

### 9.21 PROSPECTIVE FINANCIAL INFORMATION

The Independent Adviser's Report contains prospective financial information in relation to Fliway. The principal assumptions on which the prospective financial information is based are set out in the Independent Adviser's Report.

Other than the prospective financial information referred to above, this Scheme Booklet does not refer to any other prospective financial information about Fliway.

### 9.22 SALES OF UNQUOTED EQUITY SECURITIES UNDER THE SCHEME

There are no unquoted equity securities that are subject to the Scheme.

### 9.23 MARKET PRICES FOR QUOTED EQUITY SECURITIES

The Fliway Shares are quoted on the NZX Main Board.

The closing price on the NZX Main Board of Fliway Shares on:

- 20 November 2017, being the latest practicable working day before the date on which this Scheme Booklet was sent to Shareholders, was NZ\$1.20 on the NZX Main Board; and

- 25 October 2017, being the last day on which NZX was open for business before the date on which Fliway announced that it had entered into the Scheme Implementation Agreement with Yang Kee, was NZ\$1.08 on the NZX Main Board.

The highest and lowest closing market prices of Fliway Shares on the NZX Main Board (and the relevant dates) during the six months before 25 October 2017 (being the last day on which NZX was open for business before the date on which Fliway announced that it had entered into the Scheme Implementation Agreement with Yang Kee), were as follows:

- the highest closing market price of Fliway Shares was NZ\$1.17 on 14 August 2017; and
- the lowest closing market price of Fliway Shares was NZ\$0.99 on 14 June 2017.

During the six month period before 25 October 2017 (being the last day on which NZX was open for business before the date on which Fliway announced that it had entered into the Scheme Implementation Agreement with Yang Kee), Fliway did not issue any equity securities, make any changes to any equity securities on issue, or make any distributions, which could have affected the market prices of Fliway Shares referred to above, except that Fliway paid a final dividend for the financial year ending 30 June 2017 of NZ\$0.04 per share on 15 September 2017.

Except as set out in this Scheme Booklet, there is no other information about the market price of Fliway Shares that would reasonably be expected to be material to the making of a decision by Shareholders when making a decision to vote for or against the Scheme Resolution.

### 9.24 OTHER INFORMATION

The Directors are not aware of any additional information, which is not required to be disclosed elsewhere in this Scheme Booklet, that could reasonably be expected to be material to the Shareholders when making a decision to vote for, or against, the Scheme Resolution.

### 9.25 BOARD APPROVAL OF FLIWAY INFORMATION

The contents of the Scheme Booklet have been approved by the Fliway Board, other than:

- the Yang Kee Information, which Yang Kee has approved; and
- the Independent Adviser's Report, which has been prepared by KordaMentha.

# 10. SUMMARY OF THE SCHEME IMPLEMENTATION AGREEMENT

## 10.1 DATE AND PARTIES

The Scheme Implementation Agreement is dated 25 October 2017 and is between Yang Kee NZ, Yang Kee and Fliway.

## 10.2 CONDITIONS

Implementation of the Scheme is subject to Conditions, which must be satisfied or waived (as applicable) prior to the Scheme being implemented. The Conditions are:

- High Court approval of the Scheme in accordance with section 236 of the Companies Act;
- approval of the Scheme by Shareholders by:
  - a majority of 75% of the votes of the Shareholders in each interest class entitled to vote and voting on the Scheme Resolution<sup>10</sup>; and
  - a simple majority of the votes of all Shareholders entitled to vote on the Scheme Resolution;
- no judgment, order, restraint or prohibition being enforced or issued by any Government Agency prior to implementation that prohibits, prevents or restricts the implementation of the Scheme;
- no Material Adverse Change occurring in relation to Fliway prior to 8.00am on the Implementation Date; and
- no Fliway Prescribed Occurrence occurring (this covers matters such as changes to Fliway's capital structure or business, or insolvency events) prior to 8.00am on the Implementation Date.

The last date by which the High Court approval and shareholder approval conditions must have been satisfied or waived (if capable of waiver) is 31 May 2018 or such later date as Fliway and Yang Kee may agree (the **End Date**). If any event or change in circumstances occurs that prevents a Condition being satisfied, Fliway and Yang Kee must consult in good faith to determine whether to change the End Date to a later date or proceed with an alternative transaction that results in a member of the Yang Kee Group acquiring all of the Fliway Shares or all or substantially all of the assets of Fliway.

The Scheme must be implemented by the End Date. If the Scheme has not been implemented by the End Date, either Fliway or Yang Kee may terminate the Scheme Implementation Agreement. Neither party would be required to pay either a Bidder Reimbursement Fee or Target Reimbursement Fee (as applicable) to the other party in those circumstances.

## 10.3 RECOMMENDATION AND VOTING INTENTIONS

Fliway has agreed to ensure that each of its Independent Directors will recommend that Shareholders vote in favour of the Scheme and that each of its Directors will undertake to vote all of the Fliway Shares held or controlled by him or her in favour of the Scheme, subject to there being no Superior Proposal and the Independent Adviser's Report concluding that the Scheme Consideration is within or above the Independent Adviser's valuation range for the Fliway Shares.

## 10.4 EXCLUSIVITY

The Scheme Implementation Agreement contains certain exclusivity arrangements in favour of Yang Kee. These arrangements apply until the earlier of termination of the Scheme Implementation Agreement, the date the Scheme is Effective and the End Date (the **Exclusivity Period**).

In summary, Fliway has granted Yang Kee the following exclusivity rights during the Exclusivity Period:

- **No Shop:** Fliway must not solicit any Competing Transaction or any proposal that may reasonably be expected to lead to a Competing Transaction;
- **No Talk:** Fliway must not enter into negotiations in relation to a Competing Transaction that may reasonably be expected to lead to a Competing Transaction;
- **No Due Diligence:** Fliway must not make available to a third party any non-public information relating to Fliway that may reasonably be expected to assist a third party to formulate a Competing Transaction;
- **Notification:** if Fliway receives a potentially Competing Transaction, or any request to do anything referred to in the no talk or no due diligence provisions (as described above), Fliway must notify Yang Kee; and
- **Matching Right:** if Fliway receives a potentially Competing Transaction, it must give Yang Kee five Business Days to provide an equivalent or superior proposal to the terms of the Competing Transaction.

However, Fliway is not required to comply with its no talk and no due diligence obligations if it receives an unsolicited bona fide Competing Transaction and the Directors, acting in good faith and having received advice, consider that failing to respond to such Competing Transaction would be likely to constitute a breach of the fiduciary or statutory duties owed by any Director.

<sup>10</sup> As at the date of this Scheme Booklet it is expected that all Shareholders will comprise one interest class. See section 6.2(a) for more information about what an interest class is.

## 10.5 REIMBURSEMENT FEES

Fliway has agreed to pay Yang Kee a Bidder Reimbursement Fee of NZ\$750,000 plus any amount previously paid by Yang Kee to Fliway to reimburse Fliway for its costs associated with responding to Yang Kee's proposal (in each case plus GST, if applicable) in certain circumstances. In broad terms, those circumstances are:

- if a Competing Transaction is announced before the Implementation Date and is completed within 12 months of the date of that announcement;
- if any Independent Director fails to recommend to Shareholders to vote in favour of the Scheme (or qualifies or withdraws that recommendation); or
- if Yang Kee terminates the Scheme Implementation Agreement due to a material breach of the agreement by Fliway.

Yang Kee has agreed to pay Fliway a Target Reimbursement Fee of NZ\$750,000 (plus GST, if applicable) where Fliway terminates the Scheme Implementation Agreement due to a material breach of the agreement by Yang Kee.

In both cases, these payments are intended to reimburse the other party for cost and effort incurred in developing the Scheme.

## 10.6 TERMINATION RIGHTS

Either Fliway or Yang Kee may terminate the Scheme Implementation Agreement if:

- the Special Meeting is held but the Scheme Resolution is not passed by the requisite majorities;
- the High Court determines not to make the Final Court Orders;
- the Scheme has not become Effective by the End Date (provided that the terminating party's failure to comply with its obligations has not directly and materially contributed to this); or
- the other party has not remedied a breach of the Scheme Implementation Agreement which is material in the context of the Scheme taken as a whole.

In addition, Fliway may terminate the Scheme Implementation Agreement if Fliway's Independent Directors recommend to Fliway's Shareholders that they vote in favour of a Competing Transaction (assuming Fliway has complied with its no shop, no talk, notification and matching right obligations to Yang Kee).

Further, Yang Kee may terminate the Scheme Implementation Agreement if:

- Fliway enters into a definitive agreement to implement a Competing Transaction;
- a Material Adverse Change or a Fliway Prescribed Occurrence occurs; or
- if any Independent Director fails recommend to Shareholders to vote in favour of the Scheme (or qualifies or withdraws that recommendation).

## 10.7 GUARANTEE

Yang Kee has guaranteed to Fliway the performance by Yang Kee NZ of all of its obligations under the Scheme Implementation Agreement.

# 11. GLOSSARY

The meaning of terms set out in this Scheme Booklet are set out below:

<b>Associate</b>	has the same meaning as in rule 4 of the Takeovers Code;
<b>Bidder Reimbursement Fee</b>	means NZ\$750,000 plus an amount equal to all amounts previously paid by Yang Kee to Fliway to reimburse Fliway for its costs associated with responding to Yang Kee's proposal (in each case plus GST, if applicable);
<b>Business Day</b>	means any day (other than a Saturday, Sunday or a public holiday) on which trading banks are generally open for over-the-counter banking business in Auckland, New Zealand;
<b>Companies Act</b>	means the Companies Act 1993 (New Zealand);
<b>Company</b>	means Fliway Group Limited;
<b>Competing Transaction</b>	means a proposal, transaction, or arrangement which, if completed, would result in a third party: <ul style="list-style-type: none"> <li>• directly or indirectly acquiring or being entitled to acquire: <ul style="list-style-type: none"> <li>- more than 20% of the shares of Fliway; or</li> <li>- all or a material part of the business or assets of the Fliway Group;</li> </ul> </li> <li>• acquiring control of Fliway or a material part of the business of the Fliway Group; or</li> <li>• otherwise acquiring or merging with Fliway;</li> </ul>
<b>Conditions</b>	means the conditions to the Scheme, as summarised in section 10.2 of this Scheme Booklet;
<b>Deal Protection Deed</b>	has the meaning given to it in section 8.7 of this Scheme Booklet;
<b>Deed Poll</b>	means the deed poll executed by Yang Kee NZ and Yang Kee dated 7 November 2017 pursuant to which Yang Kee NZ acknowledges and confirms its obligations under the Scheme, and Yang Kee agrees to guarantee Yang Kee NZ's performance of its obligations, in the form set out in Annexure D;
<b>Directors or Director</b>	means a member or members of the Fliway Board;
<b>Effective</b>	when used in relation to the Scheme, means the coming into effect, under section 236(3) of the Companies Act, of the order of the High Court made under section 236(1) of the Companies Act in relation to the Scheme and all conditions to the implementation of the Scheme having been satisfied or waived in accordance with the Scheme;
<b>End Date</b>	means 31 May 2018, or such later date as agreed in writing between Fliway and Yang Kee;
<b>Excluded Event</b>	means any matter, event or circumstances: <ul style="list-style-type: none"> <li>• required or specifically permitted by the Scheme Implementation Agreement or the Scheme;</li> <li>• resulting from changes in general economic or political conditions (including changes in foreign exchange rates and commodity prices), the securities market in general or law;</li> <li>• fairly disclosed to NZX prior to the date of the Scheme Implementation Agreement or to Yang Kee in its due diligence investigations;</li> <li>• done or not done at the written request or with the written acknowledgement and written approval of Yang Kee, including any consequences reasonably foreseeable as a result of such matters;</li> <li>• resulting solely from the actual or anticipated change of control of Fliway contemplated by the Scheme Implementation Agreement; or</li> <li>• resulting from changes in generally accepted accounting principles or the interpretation of them;</li> </ul>

<b>Final Court Hearing</b>	means the final hearing of the High Court in respect of the Scheme, which is expected to take place at 10.00am on 19 December 2017 or such later date as the High Court directs;
<b>Final Court Orders</b>	means the final orders of the High Court in respect of the Scheme made under section 236(1) of the Companies Act;
<b>Final Orders Date</b>	means the date on which Final Court Orders are granted by the High Court;
<b>Fliway</b>	means Fliway Group Limited or, where the context requires, the Fliway Group;
<b>Fliway Board or Board</b>	means the board of directors of Fliway;
<b>Fliway Group</b>	means Fliway and each of its Related Companies, and a reference to a Fliway Group Member or a member of the Fliway Group is to Fliway or any of its Related Companies;
<b>Fliway Prescribed Occurrence</b>	means the list of events or circumstances relating to Fliway that are defined in the Scheme Implementation Agreement as Prescribed Occurrences, including changes to Fliway's capital structure or business, insolvency events and various other prescribed events;
<b>Fliway Share</b>	means a fully paid ordinary share in the capital of Fliway;
<b>Independent Directors</b>	means Craig Stobo and Alan Isaac, both being Independent Directors for the purposes of the NZX Main Board Listing Rules;
<b>Initial Court Date</b>	means 20 November 2017;
<b>Initial Court Orders</b>	means the initial court orders of the High Court relating to the Scheme dated 20 November 2017, a copy of which is set out in Annexure E;
<b>Link</b>	means Link Market Services Limited, Fliway's share registrar;
<b>Material Adverse Change</b>	<p>means any matter, event or circumstance which occurs, is discovered or is announced after the Scheme Implementation Agreement was signed, and which is not an Excluded Event, (each a <b>Specified Event</b>) which has had, or is reasonably likely to have or has the effect of diminishing the:</p> <ul style="list-style-type: none"> <li>• consolidated net assets of the Fliway Group taken as a whole by at least NZ\$3,000,000 against what it would reasonably have been expected to be but for the Specified Event (either individually or when aggregated with other matters, events or circumstances of a similar kind or category); or</li> <li>• consolidated earnings before interest, tax, depreciation, amortisation of the Fliway Group for the financial years ending 30 June 2018 and 30 June 2019 by at least NZ\$1,000,000 per year against what it would reasonably have been expected to be but for the Specified Event (either individually or when aggregated with other Specified Events that individually have the effect of so diminishing earnings before interest, tax, depreciation and amortisation of the Target Group for those periods by at least NZ\$333,000), disregarding matters, events or circumstances which have a one-off or non-recurring impact;</li> </ul>

## 11. GLOSSARY (CONTINUED)

<b>NZ\$</b>	means New Zealand dollars;
<b>NZX</b>	means NZX Limited;
<b>NZX Main Board</b>	means the main board equity security market operated by NZX;
<b>Register</b>	means the share register of Fliway;
<b>Related Company</b>	in relation to a company, has the meaning given to that expression in section 2(3) of the Companies Act read as if a reference to a "company" was a reference to any body corporate wherever incorporated;
<b>Scheme or Scheme of Arrangement</b>	means a scheme of arrangement under Part 15 of the Companies Act under which all of the Fliway Shares held by Scheme Shareholders will be transferred to Yang Kee NZ and the Scheme Shareholders will be entitled to receive the Scheme Consideration, in accordance with the Scheme Plan set out in Annexure C, subject to any amendment or modification made pursuant to section 236(2) of the Companies Act;
<b>Scheme Booklet</b>	means this document together with its annexures;
<b>Scheme Consideration</b>	means NZ\$1.22 cash in respect of each Share held by a Scheme Shareholder;
<b>Scheme Implementation Agreement</b>	means the scheme implementation agreement between Fliway, Yang Kee NZ and Yang Kee dated 25 October 2017, a summary of which is set out in section 10;
<b>Scheme Plan</b>	means the Scheme Plan set out in Annexure C, subject to any amendments agreed between Fliway, Yang Kee and Yang Kee NZ and the Court approves under section 236(1) of the Companies Act;
<b>Scheme Record Date</b>	means 5.00pm on the date which is four Business Days after the Final Orders Date;
<b>Scheme Resolution</b>	means the special resolution set out in the Notice of Meeting set out in Annexure A;
<b>Scheme Shares</b>	means all of the Fliway Shares on issue as at the Scheme Record Date;
<b>Scheme Shareholder</b>	means each person who is a Shareholder at the Scheme Record Date;
<b>Senior Officer</b>	means a member of Fliway's Senior Management Team as identified in the Directory at the end of this Scheme Booklet;
<b>Shareholder</b>	means each person registered in the Register as a holder of Fliway Shares;
<b>Special Meeting</b>	means the meeting of Shareholders ordered by the High Court to be convened in respect of the Scheme (and includes any adjournment of that meeting);

<b>Superior Proposal</b>	<p>means a written bona fide Competing Transaction which the Board, acting in good faith and after receiving written advice from its external financial and legal advisers, determines:</p> <ul style="list-style-type: none"> <li>• does not breach the no shop, no talk, no due diligence or matching obligations that Fliway owes Yang Kee; and</li> <li>• the Board determines, acting in good faith and having taken advice: <ul style="list-style-type: none"> <li>a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Transaction (including any timing considerations, conditions precedent and the identity of the proponent); and</li> <li>b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders (as a whole) than the Scheme taking into account all terms and conditions of the Competing Transaction (including consideration, form of consideration, conditionality, funding, certainty and timing);</li> </ul> </li> </ul>
<b>Takeovers Code</b>	<p>means the Takeovers Code recorded in the Takeovers Code Approval Order 2000 (SR2000/210) (New Zealand), as amended, including any applicable exemption granted by the Takeovers Panel;</p>
<b>Target Reimbursement Fee</b>	<p>means NZ\$750,000, plus GST (if applicable);</p>
<b>The D&amp;G Hawkesby Trust</b>	<p>means Duncan Hawkesby and Gretchen Hawkesby, in their capacity as trustees of The D&amp;G Hawkesby Trust;</p>
<b>UPS-Fliway</b>	<p>means United Parcel Service – Fliway (NZ) Limited;</p>
<b>Voting Eligibility Date</b>	<p>means the time for determining eligibility to vote at the Special Meeting, being 5.00pm on 6 December 2017 or, if the Special Meeting is adjourned, being 5.00pm on the day which is two Business Days before the adjourned meeting time for the Special Meeting;</p>
<b>Voting/Proxy Form</b>	<p>means the voting and proxy form which accompanies this Scheme Booklet;</p>
<b>Yang Kee Information</b>	<p>means such information regarding the Yang Kee Group that is provided or approved by the Yang Kee Group or any of its advisers for inclusion in sections 7 and 8 or any supplementary information for Shareholders; and</p>
<b>Yang Kee Group</b>	<p>means Yang Kee and each of its Related Companies, and a reference to a member of the Yang Kee Group is to Yang Kee or any of its Related Companies.</p>

# ANNEXURES



# ANNEXURE A: NOTICE OF MEETING

Notice is given that a special meeting of shareholders of Fliway Group Limited will be held:

**Date:** 8 December 2017

**Time:** 3.00pm

**Where:** The offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010

## AGENDA

### Scheme Resolution

To consider, and if thought fit, to pass the following resolution:

*That the Scheme (the terms of which are described in this Scheme Booklet) be and is hereby approved.*

By order of the Board of Directors



**Jim Sybertsma**

Chief Financial Officer

**Fliway Group Limited**

21 November 2017

### Notes

1. The Scheme Booklet (which includes this Notice of Meeting) provides information in relation to the Scheme Resolution and the Scheme, how the Scheme will be implemented and the reasons for proposing the Scheme. In particular, section 3 (*Action required*) contains details about the Special Meeting and how to vote or appoint a proxy. A Voting/Proxy Form accompanies this Scheme Booklet.
2. The voting thresholds under the Companies Act for approval of the Scheme are:
  - a) a majority of 75% of the votes of the Shareholders in each interest class entitled to vote and voting on the Scheme Resolution; and
  - b) a simple majority of the votes of all Shareholders entitled to vote on the Scheme Resolution. This threshold applies on the total number of Fliway Shares rather than by each interest class separately.
3. Both of the voting thresholds set out in Note 2 above must be met for the Scheme Resolution to be approved.
4. As at the date of this Scheme Booklet, it is expected that all Shareholders will comprise one interest class. See section 6.2(a) of the Scheme Booklet for more information about what an interest class is, including the impact of Yang Kee or its associates acquiring Fliway Shares before the Voting Eligibility Date.
5. Further, as at the date of this Scheme Booklet, it is not expected that any Shareholders will be restricted from voting on the Scheme Resolution pursuant to the NZX Main Board Listing Rules.
6. **Whether or not if you are in favour of the Scheme, it is very important that you cast your vote.**
7. The persons who will be entitled to vote at the Special Meeting are those persons (or their proxies or representatives) whose name is recorded in the Fliway share register at the Voting Eligibility Date.
8. Shareholders who are eligible to vote can vote:
  - a) **in person** - by attending the Special Meeting and bringing your personalised admission card (which accompanies this Scheme Booklet);
  - b) **by proxy** – see Note 9 below; or
  - c) **by corporate representative** - a company which is a Shareholder may appoint a person to attend the Special Meeting on its behalf in the same manner as that in which it could appoint a proxy.

## ANNEXURE A: NOTICE OF MEETING (CONTINUED)

9. To appoint a proxy, completed Voting/Proxy Forms must be received by Link by no later than 3.00pm (New Zealand time) on 6 December 2017. Completed Voting/Proxy Forms can be submitted:
- a) **online:** at Link Market Services website and following the instructions (<https://investorcentre.linkmarketservices.co.nz/voting/FLI>). You will be required to enter your holder number and FIN for security purposes
  - b) **by mail:** Link Market Services Limited, PO Box 91976, Auckland 1142
  - c) **in person:** Link Market Services Limited, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010
  - d) **by fax:** +64 9 375 5990
  - e) **by email:** [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz) (please use "Fliway Proxy Form" as the subject for easy identification)
10. A proxy need not be a Shareholder. You may, if you wish, appoint the Chairman (or any other Director) as your proxy. The Chairman (and all other Directors of Fliway) intends to vote proxies in favour of the Scheme (in the absence of a Superior Proposal) unless otherwise instructed.
11. Once appointed, a proxy can be revoked by giving written notice to the address details set out in Note 9 above if such notice is received before 3.00pm (New Zealand time) on 6 December 2017.
12. Shareholders are invited to submit their questions for the Chairman in writing as set out below. Fliway has discretion as to which, and how, questions will be answered during the Chairman's address at the Special Meeting:
- a) **online:** at Link Market Services website and following the instructions (<https://investorcentre.linkmarketservices.co.nz/voting/FLI>). You will be required to enter your holder number and FIN for security purposes
  - b) **by email:** [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz) (please use "Fliway Question" as the subject for easy identification)
  - c) **by mail:** Link Market Services Limited, PO Box 91976, Auckland 1142
  - d) **by fax:** +64 9 375 5990
13. This Notice of Special Meeting has been approved by NZX Limited in accordance with the NZX Main Board Listing Rule 6.1.1. However, NZX does not take responsibility for any statement contained in this Notice of Meeting.
14. Capitalised terms used in this Notice of Meeting have the meanings given to them in section 11 of the Scheme Booklet (*Glossary*).

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT



## **Fliway Group Limited**

Independent Adviser's Report in relation to the proposed acquisition  
of Fliway Group Limited

November 2017

KordaMentha confirms that it:

- (a) has no conflict of interest that could affect its ability to provide an unbiased report; and
- (b) has no direct or indirect pecuniary or other interest in the proposed transaction considered in this report, including any success or contingency fee or remuneration, other than to receive the cash fee for providing this report.

KordaMentha has satisfied the Takeovers Panel, on the basis of the material provided to the Panel, that it is independent under the Takeovers Code for the purposes of preparing this report.

Independent New Zealand firm internationally affiliated with KordaMentha

**KordaMentha**

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

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## 1 Terms of the Proposed Transaction

### 1.1 Introduction

Fliway Group Limited (**Fliway** or **the Company**) is a New Zealand incorporated company listed on the NZX Main Board. It is one of New Zealand's largest specialised transport and logistics companies with a nationwide presence and global freight forwarding relationships.

On 26 October 2017, Fliway announced the signing of a Scheme Implementation Agreement under which the parties agreed to implement a court-approved scheme of arrangement (**the Scheme**) to effect the sale of all of the outstanding shares in Fliway to Yang Kee Group (New Zealand) Pty Limited, a wholly owned New Zealand subsidiary of Yang Kee Logistics PTE Limited (**Yang Kee**).

Yang Kee is one of Singapore's largest privately owned logistics companies. In 2017, Yang Kee is expected to generate revenues in excess of S\$200 million with approximately S\$300 million in net assets expected by the end of 2017. It employs approximately 600 people in 32 offices across 12 countries and provides services and solutions in warehousing, freight forwarding, customers clearance and project logistics management.

Fliway is subject to the Takeovers Code (**Code**). While there is no legal requirement under the Code for an Independent Adviser's Report (**the Report**) in relation to the Scheme, the practice of the Takeovers Panel requires a report before it will consider issuing a no-objection statement to the Court as part of its process of considering whether to approve the Scheme.

### 1.2 The Scheme

#### 1.2.1 Consideration

The proposed consideration is \$1.22 cash per Fliway share.

#### 1.2.2 Conditions

The Scheme is conditional on:

- The approval of shareholders by the requisite majorities under the Companies Act.
- The approval of the High Court in accordance with the Companies Act.
- Other conditions for the benefit of Yang Kee, that may be waived at its discretion, that are relatively common in transactions of this type, including amongst other items that there are no material adverse changes to Fliway.

#### 1.2.3 Other features of the Scheme

Whilst Fliway cannot solicit any superior alternative proposal, should one eventuate it can respond and facilitate an alternative transaction.

Should a superior alternative proposal eventuate then Yang Kee has the right to match that proposal.

The Independent Directors have recommended the Scheme. However, under certain circumstances, including if an alternative superior proposal is recommended and transacted upon, then Fliway may be required to pay a break fee to Yang Kee of \$750,000 plus any amounts paid to Fliway or its legal advisors in connection with Fliway's response to Yang Kee's proposal.

Yang Kee is obligated to pay Fliway \$750,000 in the event that Fliway terminates the Scheme Implementation Agreement as a result of a material breach by Yang Kee.

### 1.3 Shareholder Approval

The Scheme requires the approval of both:

- 75% of all votes cast by shareholders in each interest class (for the purposes of the Scheme all Fliway shareholders are expected to form a single interest class); and
- 50% of the total voting rights attaching to Fliway shares (whether voted or not).

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

The Shareholder Meeting to consider the Scheme is proposed to be held in early December 2017.

The Independent Directors of Fliway (Craig Stobo and Alan Isaac) support the Scheme and recommend that Fliway shareholders vote in favour of the Scheme, subject to no superior alternative proposal arising.

Each Director of the Board of Fliway, including the Independent Directors, has indicated that he or she will be voting the Fliway shares that they control in favour of the Scheme, subject to no superior alternative proposal arising.

## 1.4 Purpose of the Report

Fliway has requested that the Takeovers Panel issue a "no-objection statement" in relation to the Scheme which will then be presented to the High Court to assist with its deliberations.

The practice of the Takeovers Panel (except in very limited circumstances) is to require the preparation of an independent report before it will consider issuing a no-objection statement. It is also customary practice in New Zealand for an independent report to be provided to shareholders when considering a transaction of the nature of the Scheme.

Accordingly, the Independent Directors of Fliway have appointed KordaMentha to prepare the Report setting out our view of the merits of the Scheme. Our appointment was subsequently approved by the Takeovers Panel.

The Report has been prepared to assist Fliway shareholders to consider the merits of the Proposed Transaction and is being sent to shareholders of Fliway together with the **Notice of Meeting**.

Shareholders should read the Notice of Meeting issued by Fliway in conjunction with the Report.

Voting on the Scheme is a matter for individual shareholders based on their own views as to value and future market conditions, risk profile, liquidity preference, portfolio strategy, tax position and other factors. In particular, taxation consequences will vary widely across shareholders. Shareholders will need to consider these consequences and, if appropriate, consult their own professional adviser.

## 1.5 Other

The sources of information, to which we have had access and upon which we have relied, are set out in Appendix 1 of this report.

This report should be read in conjunction with the statements and declarations set out in Appendix 2 regarding our independence, qualifications, general disclaimer and indemnity and the restrictions upon the use of this report.

References to '\$', dollars or cents are to New Zealand dollars, unless specified otherwise. References to financial years or 'FY' mean Fliway's financial year end 30 June unless specified otherwise.

Please note, tables may not add due to rounding.

## 2 Merits of the Proposed Transaction

Where an offeror makes a takeover offer under the Takeovers Code, the target company is required to obtain an independent adviser's report on the merits of the offer. This requires the independent adviser to consider issues wider than just valuation. We have prepared this Report in respect of the Scheme as if it was a merits report on a takeover offer under the Takeovers Code.

The term 'merits' has no definition either in the Takeovers Code itself or in any statute dealing with securities or commercial law in New Zealand. While the Takeovers Code does not prescribe a meaning of the term 'merit', it suggests that merits include both positives and negatives in respect of the Offer. We have adopted this approach in this Report in respect of the Scheme.

### 2.1 Fliway

Fliway operates under two key segments Fliway Domestic, which undertakes the warehousing and transport of freight in New Zealand; and Fliway International, which organises transportation and border clearance for international freight. Fliway also has a 50% share in United Parcel Service – Fliway (NZ) Limited (**UPS-Fliway**), which is a joint venture with UPS that arranges the pick-up and delivery of express international packages.

Fliway Domestic is different from many other transport operators, as it focuses on sectors where customer demands are significant and includes the transport of freight that is often difficult to handle, fragile or of high value. To service this requirement, Fliway operates hard-sided vehicles, hand loads goods (avoiding the use of forklifts and pallets) and is more likely to be actively involved in the deployment of equipment than many of its competitors.

Fliway's domestic operations contribute the largest portion of income, but are also more capital intensive given Fliway's trucks are owned by the Company.

Table 2.1 summarises the financial performance for Fliway between FY12–FY17 (actuals) and FY18 (budget) excluding UPS-Fliway.

Table 2.1: Group financial performance, excluding UPS-Fliway (\$ million)

	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Budget
Revenue	73.2	74.4	81.5	84.2	82.6	85.4	91.8
EBITDA (excl. UPS JV)	6.3	6.0	7.0	7.4	9.0	7.2	9.2
<b>EBIT (excl UPS JV)</b>	<b>4.9</b>	<b>4.7</b>	<b>5.6</b>	<b>5.2</b>	<b>6.8</b>	<b>4.9</b>	<b>6.8</b>
Operating Margin	6.7%	6.3%	6.8%	6.2%	8.3%	5.7%	7.4%

Source: Fliway 2015 Prospectus, Annual Reports and Management Accounts

Fliway has budgeted \$6.8 million earnings before interest and tax (**EBIT**) in FY18, in line with its FY16 financial performance and 38% ahead of its FY17 performance. The improvement between FY17 and FY18 is primarily due to an expected improvement in the performance of its Fliway Domestic operations.

Fliway's domestic transport operations suffered in FY17, in large part due to:

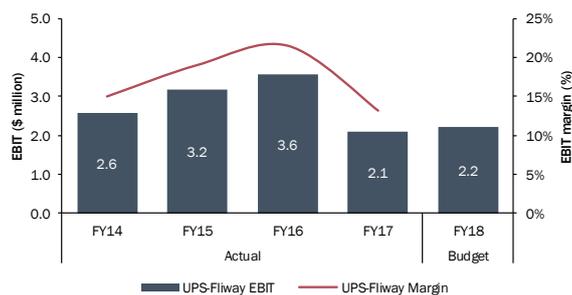
- **Loss of customer** – Fliway lost its second largest customer in June 2016, just prior to FY17.
- **Kaikoura earthquake** – The Kaikoura earthquake caused disruption to Fliway and other New Zealand transport businesses. Fliway imposes a natural disaster surcharge; however, this only partly offset the additional costs.

Figure 2.1 shows UPS-Fliway's financial performance for FY14–FY17 (actuals) and FY18 (budget).

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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Figure 2.1: Financial performance summary – UPS-Fliway



Source: Management Accounts and Annual Reports

UPS-Fliway underwent a structural shift in FY17, with a lowering of the compensation rates.

In our view, the near-term outlook for the UPS-Fliway joint venture and International operations is for relatively flat financial performance, with limited growth achieved historically. There is potential for growth in the Domestic business, partly due to a recovery from a poor FY17 result. However, there are risks for the Domestic business, including key customer concentration and the operating leverage that Fliway has due to it owning its vehicle fleet. We also note Fliway has high property lease costs, which is a relatively fixed cost and provides further operating leverage (e.g. premise lease costs in FY17 were \$5.5 million, relative to total EBIT of \$4.9 million excluding the UPS JV).

Fliway management advise that the business has no immediate need, nor plans, to raise capital via either debt or equity.

### 2.2 Standalone valuation of Fliway

We have assessed the standalone value of Fliway's equity at between \$1.04 and \$1.24 per share, with a midpoint of \$1.14 per share.

The calculation is set out at Table 2.2:

Table 2.2: Capitalisation of earnings valuation (\$ thousand, unless indicated otherwise)

	Low	High
Fliway EBIT – core operations	5,900	6,800
EBIT Multiple	8.5x	8.5x
<b>Enterprise value (excl. UPS-Fliway)</b>	<b>50,150</b>	<b>57,800</b>
UPS-Fliway EBIT	2,200	2,200
EBIT multiple	6.0x	7.0x
Shareholding percentage	50%	50%
<b>UPS-Fliway</b>	<b>6,600</b>	<b>7,700</b>
Combined enterprise value	56,750	65,500
Less net debt	(9,300)	(9,300)
Equity value	47,450	56,200
Shares (thousands)	45,438	45,438
<b>Value per share</b>	<b>\$1.04</b>	<b>\$1.24</b>

The following factors are relevant when considering the value of Fliway's shares:

- We have assessed Fliway's Enterprise Value (EV) based on the sum of:
  - Fliway's core operations, valued based on normalised EBIT between \$5.9 million and \$6.8 million, and an earnings multiple of 8.5x EBIT.
  - Fliway's share of UPS-Fliway, valued based on \$2.2 million normalised EBIT and an earnings multiple range of 6.0x-7.0x EBIT. Fliway has a 50% shareholding in the joint venture.
- The range of \$1.04 to \$1.24 per Fliway share represents the pro rata value of 100% of Fliway, and therefore includes a premium for control.

Fliway does not own the buildings it occupies. To make it more comparable to some of its peers, such as Mainfreight, we have adjusted Fliway's earnings and EV, assuming Fliway purchased the land and buildings from which it operates<sup>1</sup>. Based on our indicative analysis, Fliway would have an EBIT multiple approximately 40% higher were it to purchase its buildings. This means the hypothetical value of Fliway would have an implied adjusted earnings multiple (comparable to Mainfreight) of 12.0x EBIT. While still less than Mainfreight's earnings multiple of 15.8x EBIT, we consider this residual variance to be reasonable given the other differences between the companies (scale, historical growth and relative exposures to different markets).

Yang Kee's proposed consideration of \$1.22 per Fliway share is towards the high-end of our valuation range.

Fliway's share price has declined following its listing in April 2015 at \$1.20 per share and has traded broadly within a range of \$0.91 per share to \$1.20 per share.

Yang Kee's proposed consideration represents a premium of 13% to the share price of \$1.08, prior to the announcement of the Scheme as well as a 16% premium to Fliway's one-month VWAP.

### 2.3 Fliway's majority shareholder intends to vote for the Scheme

Fliway's majority shareholder The D&G Hawkesby Trust intends to vote all of its Fliway shares in favour of the Scheme, subject to no superior proposal arising. The D&G Hawkesby Trust is associated with Fliway's Managing Director Duncan Hawkesby and holds approximately 54.1% of Fliway's total shares on issue.

The support of the D&G Hawkesby Trust significantly increases the probability that shareholders will approve the Scheme. Nonetheless, each shareholder is entitled to vote for or against the Scheme and the support of the majority shareholder does not make it certain that the Scheme will be approved.

### 2.4 Alternatives

Fliway shareholders could choose to vote against the Scheme, either on the basis that they prefer to be shareholders in a standalone Fliway or in the expectation that they might realise superior value through an alternative change of control transaction in the future.

The immediate consequence of a decision to reject the Scheme and to pursue a standalone strategy would be the reversal of any positive effect on the share price that has been caused by the announced possibility of the Scheme. On 26 October 2017, the trading day after the Scheme was announced, the Fliway share price increased from \$1.08 to \$1.19 per Fliway share.

The longer term consequences of a decision to reject the Scheme are less clear. In our view, the near-term outlook for the UPS-Fliway joint venture and International operations is for relatively flat financial performance, with limited growth achieved historically. There is potential for growth in the Domestic business, partly due to a recovery from a poor FY17 result. However, there are risks for the Domestic business, including key customer concentration and the operating leverage that Fliway has due to it owning its vehicle fleet.

It is possible that Fliway shareholders may be able to realise greater value through a change of control transaction in the future. However, it would be presumptive to assume that one will eventuate. We understand that no alternative proposal has been forthcoming and that there are very few potential acquirers of Fliway, given its specialised freight services. In any event, there is nothing to prevent any potential alternative acquirer from announcing its interest in an acquisition of Fliway at some

<sup>1</sup> Fliway pays approximately \$5.5 million rent per annum to occupy its land and buildings. For our analysis, we have assumed Fliway purchased the land and buildings at an average rental yield of 7.5%, and this was debt funded. The debt funding would increase enterprise value by approximately \$73 million. We have assumed an increase in building depreciation at 1.5% of the purchase price (broadly equivalent to Mainfreight's building depreciation). The net impact would be a \$4.4 million increase to Fliway's EBIT (\$5.5 million less rent, and \$1.1 million more depreciation) with offsetting increased interest costs.

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT

## (CONTINUED)

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time before the Fliway shareholders' meeting at which shareholders will vote on the Scheme. In the absence of such a counter-offer, Fliway shareholders could have some confidence that there are no superior alternative transactions involving some third party currently unknown.

### 2.5 Likelihood of Yang Kee increasing its proposed consideration

Unless a more attractive alternative proposal from an as yet unidentified third party is forthcoming, we consider it unlikely that Yang Kee will increase its proposed consideration. The Scheme's proposed consideration has been accepted by the majority shareholder and is towards the high-end of our valuation range.

### 2.6 Summary

For shareholders deciding whether to approve the Scheme, key issues to be considered when assessing the merits of the Scheme include:

- The proposed consideration of \$1.22 per Fliway share sits within our assessed standalone valuation range of \$1.04 to \$1.24 per Fliway share. Furthermore, the proposed consideration is towards the high end of our valuation range.
- Fliway's majority shareholder, which is associated with Fliway's Managing Director Duncan Hawkesby, intends to vote all of its Fliway shares in favour of the Scheme, subject to no superior proposal arising.
- If shareholders do not approve the Scheme, Fliway will continue to be listed on the NZX. In the absence of any other factors, there is a real prospect that Fliway's share price may recede from current levels.
- As at the time of our report going to print, no superior alternative proposal has been forthcoming and we understand that there are very few potential acquirers of Fliway, given its specialised freight services. In any event, there is nothing to prevent any potential alternative acquirer from announcing its interest in an acquisition of Fliway at some time before the Fliway shareholders' meeting at which shareholders will vote on the Proposed Transaction. In the absence of such a counter-offer, Fliway shareholders could have some confidence that there are no superior alternative transactions involving some third party currently unknown.
- The proposed consideration is a premium of 13% above the share price of \$1.08 prior to the Scheme being announced.

In our view, unless a superior proposal is forthcoming, the positives of approving the Scheme outweigh the negatives. In particular, the proposed consideration is within our assessed valuation range and furthermore lies towards the high-end of our valuation range.

#### *Voting to approve the Scheme*

Voting to approve the Scheme is a matter for individual shareholders based on their own views as to value and future market conditions, risk profile, liquidity preference, portfolio strategy, tax position and other factors. In particular, taxation consequences will vary widely across shareholders and we note the proposed consideration may vary between shareholders given their respective tax position. Shareholders will need to consider these consequences and, if appropriate, consult their own professional adviser.

### 3 Industry Overview

Fliway operates in the New Zealand transport industry which, for the purposes of comparability with Fliway’s operating divisions, can be segmented into Domestic (Transport and Delivery; and Logistics); and International.

#### 3.1 Domestic

##### 3.1.1 Transport and Delivery

This sector involves the transport of freight from business to business (B2B) and more increasingly, with growing online shopping, business to customer (B2C). Given New Zealand’s reliance on trade, a considerable proportion of New Zealand’s domestic transportation involves the transport of goods to and from major ports.

Figure 3.1 illustrates the freight and delivery market and shows that Fliway’s primary freight operations are ‘general freight’ and ‘specialised freight’ as well as some courier services through its JV with UPS (discussed below).

Figure 3.1: Freight market segments and areas in which Fliway operates

Market segments	  			
	Bulk freight Full truck load	General freight Full truck load & less than full truck load	Specialised freight Less than full truck load	Courier
Types of freight	<ul style="list-style-type: none"> <li>Coal</li> <li>Timber</li> <li>Petroleum</li> <li>Milk powder</li> </ul>	<ul style="list-style-type: none"> <li>Packaged goods</li> <li>Cars</li> <li>Cloths</li> </ul>	<ul style="list-style-type: none"> <li>Specialised electronics</li> <li>Dangerous goods</li> <li>Refrigeration</li> <li>Liquids</li> </ul>	<ul style="list-style-type: none"> <li>Small packages (&lt;25kg)</li> <li>Home deliveries</li> </ul>
Characteristics	<ul style="list-style-type: none"> <li>Standardised consignments</li> <li>Bulk handling facilities</li> </ul>	<ul style="list-style-type: none"> <li>Standard drive-through freight yard and forklift</li> </ul>	<ul style="list-style-type: none"> <li>Requires more ‘service’ than typical freight</li> <li>Fragmented market</li> <li>Specialised facilities i.e. hard sided trucks with tail lifts, cross docks</li> </ul>	<ul style="list-style-type: none"> <li>Time sensitive</li> <li>Fleet tailored to small volume, high value freight</li> <li>After hours delivery</li> </ul>
Value of service	<ul style="list-style-type: none"> <li>Low</li> </ul>	<ul style="list-style-type: none"> <li>Low</li> </ul>	<ul style="list-style-type: none"> <li>High</li> </ul>	<ul style="list-style-type: none"> <li>Highest</li> </ul>
Operators	<ul style="list-style-type: none"> <li>Rail</li> <li>Coastal shipping</li> <li>Large freight companies</li> </ul>		<ul style="list-style-type: none"> <li>Specialised operators</li> <li>High barrier to entry</li> </ul>	<ul style="list-style-type: none"> <li>Couriers</li> </ul>
Logistics and warehousing	<ul style="list-style-type: none"> <li>Provider of 3PL</li> <li>Prescriptive EDI and SKU management</li> <li>Integrated and non-integrated facilities</li> </ul>		<ul style="list-style-type: none"> <li>Spare parts</li> <li>Customisable EDI and SKU management</li> <li>Integrated facilities in Auckland and Christchurch</li> </ul>	
International transport	<ul style="list-style-type: none"> <li>Global networks</li> <li>Prescriptive delivery and pricing structure</li> </ul>		<ul style="list-style-type: none"> <li>Independent freight forwarders</li> <li>Trusted global relationships</li> <li>Flexibility to secure best outcome for customers</li> </ul>	

Source: Fliway Prospectus

The value of service for ‘specialised freight’ is typically higher than for general freight, as more specialised equipment and facilities are required. Categories such as milk, coal and timber are generally transported through bulk freight services, which involve more rail and coast shipping modes and offer a lower value of service from operators.

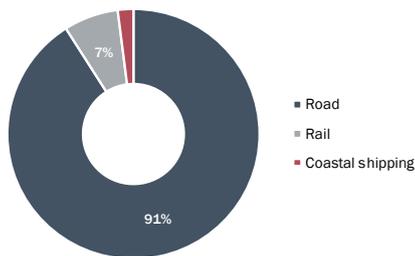
Figure 3.2 shows that road is the dominant transport mode in New Zealand, this is partly due to shorter distances within regions that cannot be completed economically by rail or coastal shipping. Total revenues reached \$7.3 billion in the 2016-17 year as operators continued to benefit from rising freight volumes over the past five years<sup>2</sup>.

<sup>2</sup> IBISWorld, Road Freight Transport in New Zealand, April 2017

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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Figure 3.2: Domestic transport mode



Source: Ministry of Transport, National Freight Demand Study

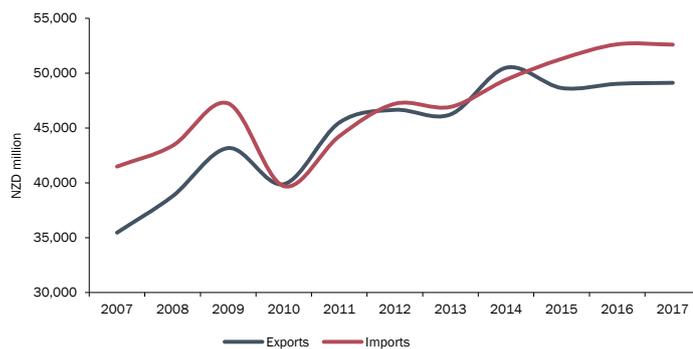
Freight revenue is expected to continue its stable historical trend over the next five years, forecasted at an annual growth rate of 1.4%<sup>3</sup>.

#### Key drivers

Road freight is a key service in the New Zealand economy and is influenced by the following drivers:

- **Cost to serve** – defined as the cost of road transport (including fuel). Increases in the cost to serve predominately lead to growth in industry revenue as this industry is price inelastic. Movements in fuel prices are typically able to be passed onto customers as a surcharge without a significant loss of demand. Conversely, a reduction in fuel prices is expected by customers to be included in pricing to remain competitive.
- **Imports and exports** – goods imported and exported to and from New Zealand are required to be transported to major ports and regions. This creates substantial influence over demand for freight services. New Zealand's total trade (imports and exports) has increased 30% (by value) over the past 10 years as illustrated in figure 3.3 below.<sup>4</sup>

Figure 3.3: Overseas Merchandise Trade by value



Source: Statistics New Zealand, 28 September 2017

- **Wholesale trade** – wholesalers require road freight services to transport their goods to retailers. However, there is a trend for increasing internalisation of transport services for manufacturers and retailers and this poses a risk to intermediaries such as Flway.<sup>5</sup>

<sup>3</sup> IBISWorld, Road Freight Transport in New Zealand, April 2017

<sup>4</sup> Statistics New Zealand, accessed 28 September 2017

<sup>5</sup> IBISWorld, Road Freight Transport in New Zealand, April 2017

- **Population** – is expected to grow by 15% in New Zealand over the next 12 years<sup>6</sup>. Consequently, with an increasing population, consumer demand and consumption are expected to increase. Further, with a growing online population ordering direct from businesses, supply chains will need to shift to cater for the expected growth in B2C services.

#### *Market Competition*

- The domestic road freight industry currently has approximately 3,900 providers. The number of operators has decreased approximately 12% over the past five years, primarily due to consolidation as larger businesses acquire smaller operators.<sup>7</sup>
- Continued investment in IT infrastructure, such as traffic monitoring systems and GPS, of the larger operators will impact those small operators who are unable to invest, resulting in the potential for smaller operators to fall behind in terms of productivity and efficiency of operations. This may result in these operators being unable to compete on price in the market which is a major factor of competition.
- Economies of scale of providing an integrated full service supply chain are expected to see the market become more concentrated as the larger businesses continue to put pressure on and acquire those smaller operators. The number of operators is expected to decline 2.1% annually over the next five years.<sup>8</sup>

### 3.1.2 Logistics

There is an increasing shift towards the outsourcing of warehousing and distribution services, also referred to as 'third party logistics' or '3PL' or 'logistics'. This allows customers to benefit from flexible inventory capacity requirements as business operations fluctuate due to demand, seasonality or other factors.

Logistics can be a significant part of a customer's supply chain and customers can benefit from outsourcing this to third party logistics providers by utilising their scale, specialised staff and investment in physical and IT infrastructure. Furthermore, demand is expected to increase with operators offering other valued added services such as labelling and assembly operations to produce finished products. Revenue for warehousing and logistics in New Zealand increased over the past five years at 4.1% annual growth<sup>9</sup>.

#### *Key drivers*

Logistics is an industry growing from customer demand which is influenced by:

- **Wholesale trade demand** – businesses that purchase from manufacturers to sell to consumers require storage before they are transported on. Wholesale trade activity is expected to increase leading to expected revenue increases.
- **Online shopping demand** - the rise of online retailing on a national and global scale by existing bricks-and-mortar retailers and new online only platforms has accelerated demand in this industry requiring more warehousing space and logistics solutions.
- **Total imports and exports** – goods being held in transit generally require storage before they are moved into or out of the country.
- **Manufacturing demand** – manufacturers require warehousing to store raw materials or finished goods.

<sup>6</sup> Statistics New Zealand, accessed 27 September 2017

<sup>7</sup> IBISWorld, Road Freight Transport in New Zealand, April 2017

<sup>8</sup> IBISWorld, Road Freight Transport in New Zealand, April 2017

<sup>9</sup> IBISWorld, Warehousing and Storage Services in New Zealand, August 2017

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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## 3.2 International

International freight involves freight forwarding services as well as management of customs documentation and processes.

Freight forwarders often acquire capacity with large scale transport operators and repackage that capacity which is used to service individual customers international trade requirements.

International freight can also involve handling customer legal requirements to ensuring that documentation for trade is sufficient, including customs clearances etc.

### *Key drivers*

International freight forwarding and customer agency is exposed to external factors on a national and global economic level, as identified below:

- **Import values** – Changes in merchandise import values has a direct impact on the demand for services from this industry. Imports are generally affected by foreign exchange rates and consumer confidence.
- **Export values** – The level of export trade activity and value influences the demand of freight forwarders and customs agencies. Export merchandise is expected to grow over the next five years with rising international trade driven by:
  - Trade liberalisation in South East Asian countries, reducing tariffs on New Zealand exports.
  - A new Free Trade Agreement (FTA) with the United Kingdom is expected once they have seceded from the European Union.
  - Increasing trade relationship with China (NZ's second largest trading country) including extending the current FTA, agreed to by China.
- **Machinery capital expenditure** – An increase in private capital expenditure on machinery and equipment required locally increases the demand on importing from overseas countries, as was seen during the Canterbury rebuild, and is expected to continue to increase.

## 4 Fliway Profile

### 4.1 Business Overview

Fliway was established in 1977 and has grown to be one of New Zealand’s larger independent and locally owned specialised transport and logistics companies, with a nationwide presence and strong global freight forwarding relationships.

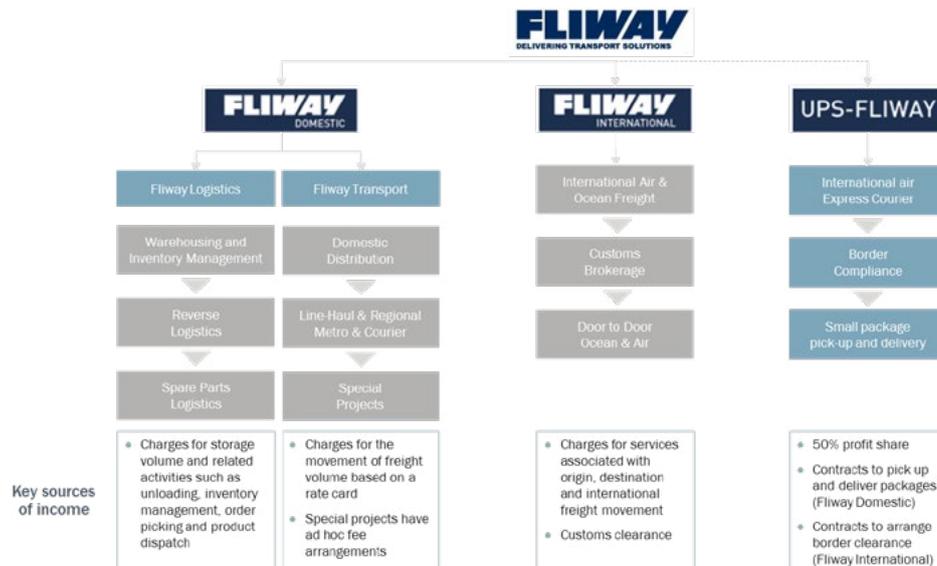
Figure 4.1: Timeline of key events in Fliway’s formation



Today, Fliway has over 400 staff, a fleet of over 170 vehicles and a footprint of 12 transport branches and 5 logistics warehouses spread throughout New Zealand. It also has several longstanding relationships, with international transport operators and a joint venture with UPS.

Figure 4.2 illustrates Fliway’s operating structure and key sources of income. Fliway operates under two key segments Fliway Domestic, which undertakes the warehousing and transport of freight in New Zealand; and Fliway International, which organises transportation and border clearance for international freight. Fliway also has a 50% share in UPS-Fliway, which arranges the pick-up and delivery of express international packages.

Figure 4.2: Fliway operating segments



## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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Figure 4.3 and 4.4 show that Fliway's domestic operations contribute the largest portion of income, but are also more capital intensive. Fliway also earns a material portion of its income from the International and UPS-Fliway operations and these businesses are less capital intensive, as freight movements for these segments are generally undertaken by third parties.

Figure 4.3: FY17 EBIT by segment (pre-corporate)

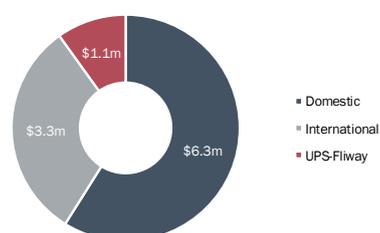
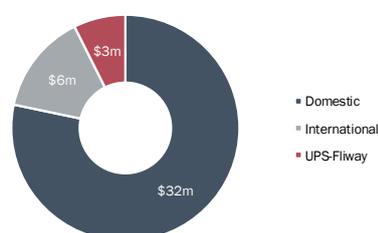


Figure 4.4: FY17 net operating assets by segment



### 4.2 Financial Performance

Table 4.1 summarises the Group financial performance for Fliway between FY12–FY17 (actuals) and FY18 (budget). The periods FY12–FY14 include pro forma adjustments. These adjustments are set out and explained in Fliway's 2015 Prospectus and 2015 Annual Report.

Table 4.1: Group financial performance, excluding UPS-Fliway (\$ million)

	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Budget
Revenue	73.2	74.4	81.5	84.2	82.6	85.4	91.8
EBITDA (excl. UPS JV)	6.3	6.0	7.0	7.4	9.0	7.2	9.2
<b>EBIT (excl UPS JV)</b>	<b>4.9</b>	<b>4.7</b>	<b>5.6</b>	<b>5.2</b>	<b>6.8</b>	<b>4.9</b>	<b>6.8</b>
Operating Margin	6.7%	6.3%	6.8%	6.2%	8.3%	5.7%	7.4%

Source: Fliway 2015 Prospectus, Annual Reports and Management Accounts

Fliway has budgeted \$6.8 million EBIT in FY18, in line with its FY16 financial performance and 38% ahead of its FY17 performance. The improvement between FY17 and FY18 is primarily due to an expected improvement in the performance of its Fliway Domestic operations.

Principal assumptions underpinning the FY18 budget include:

- Inflation of 2% per annum, which affects rent costs and general expenses.
- Salary and wage inflation of 3%.
- Domestic business EBIT is expected to increase due to recovering from the impact of the Kaikoura earthquakes as well as increased revenue (driven by a small number of new customers) and an expected improved margin (resulting from improved efficiency).
- International business EBIT is expected to remain relatively flat as a result of increased revenue being largely offset by increased salary and other costs.
- Overheads forecast at current run rates plus inflation.
- Reduced depreciation costs as computer software comes to the end of its accounting life and replacement is not yet necessary.

#### 4.2.1 Fliway Domestic

Fliway Domestic operates through two business units:

- **Fliway Transport** – transportation of goods throughout New Zealand
- **Fliway Logistics** – warehousing and distribution services, including inventory management.

The service offerings of Fliway Logistics and Fliway Transport are complementary, affording opportunities for Fliway to provide one unit's services to the other unit's customers. This supports the retention of customers, in part because changing logistics providers (warehousing and inventory management) can be a time-consuming process for customers.

Fliway Domestic is different from many other transport operators, as it focuses on sectors where customer demands are significant and includes the transport of freight that is often difficult to handle, fragile or of high value. To service this requirement, Fliway operates hard-sided vehicles, hand loads goods (avoiding the use of forklifts and pallets) and is more likely to be actively involved in the deployment of equipment than many of its competitors.

##### *Fliway Transport*

Fliway undertakes 'line-haul' services between its 12 transport branches, using heavy truck and trailer units, as well as local transport using its smaller 'metro' vehicles. Fliway's line-haul fleet is managed centrally, with most trucks operated under fixed cost per kilometre maintenance contracts and owned no longer than seven years. Fliway's Metro fleet is managed by local branch managers and is maintained in their respective domiciled region.

Fliway owns and operates all its trucks and trailers, as opposed to an owner-driver model.

While Fliway's fleet set-up is ideally suited to specialised freight, it is not suited to bulk freight. Management advise that labour productivity is typically lower than an owner-driver model and Fliway's hard sided vehicles are less suited to palletised freight. This might limit Fliway's opportunities to expand its customer base, but likely also offers a barrier to other operators entering its existing market niche.

Fliway's transport revenue has increased slowly over the past eight years, from \$35.1 million to \$42.8 million between FY10 and FY17, this represents compound annual growth rate of 3.8% per annum. However, over this period, Fliway's earnings margins have decreased, so that its earnings have been relatively static.

##### *Fliway Logistics*

Fliway Logistics provides fully out-sourced warehousing and distribution services from five facilities, three in Auckland, one in Wellington and one in Christchurch. Services include:

- racked and bulk storage;
- 'reverse logistics' where Fliway manages product returns from retail locations back to Fliway's warehouses; and
- 'spare parts logistics' where Fliway manages organisations' spare parts function.

Almost all Fliway Logistics' customers are serviced by other Fliway business units, in particular Fliway Transport.

Logistics customers tend to be very sticky, given the difficulty of moving inventory from one supplier to another and the investment necessary to integrate IT systems. This can make it difficult to quickly win new customers, unless there is a compelling market proposition from a supplier, but it also provides a level of protection from losing customers.

Fliway has steadily increased its revenue from logistics operations over the past eight years, from \$9.1 million to \$15.0 million between FY10 and FY17, this represents compound annual growth rate of 7.4% per annum.

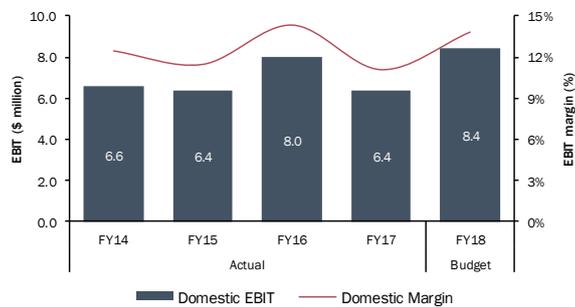
## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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### Domestic financial performance

Figure 4.5 shows that Fliway Domestic performed relatively poorly in FY17, due to a decline in its Transport earnings.

Figure 4.5: Financial performance summary – Fliway Domestic



Source: Management Accounts

Fliway's domestic transport operations suffered in FY17, in large part due to:

- **Loss of customer** – Fliway lost its second largest customer in June 2016, just prior to FY17. Despite this, Fliway increased its revenue in FY17. However, the replacement revenue earned a lower margin than that which had been generated from the previous customer.
- **Kaikoura earthquake** – The Kaikoura earthquake caused disruption to Fliway and other New Zealand transport businesses. The earthquake disabled the rail network transferring a significant amount of freight onto road transport, this resulted in Fliway needing to redeploy its own trucks to affected areas, reducing network efficiency and in some cases requiring subcontract to other entities at relatively high rates. Fliway imposes a natural disaster surcharge; however, this only partly offset the additional costs.

These issues do highlight risks with Fliway's Domestic business, including:

- Reliance on key customers; and
- Owning its own fleet increases Fliway's operating leverage which means relatively small changes in gross profit can materially impact its profitability.

In FY18, Fliway is budgeting a partial recovery for Transport and continued growth for Logistics. The budgeted increase in earnings between FY17 and FY18 is due to increased revenue (new customers) as well as an expected improved margin (resulting from improved efficiency).

### 4.2.2 Fliway International

Fliway International's activities are centred on coordinating inbound and outbound international sea and air freight. Fliway also provides freight forwarding services for cross-trade goods, which do not originate or transit through New Zealand at any point. Fliway does not deliver freight outside of New Zealand, but has agency relationships with international transport businesses to fulfil these services on behalf of Fliway's customers.

Fliway has an in-house customs brokerage team of 11 people, which arranges clearing of customs and border compliance paperwork at New Zealand and international destinations. Fliway handles approximately 9,000 international shipments and 96,000 customs clearances (imports and exports to/from New Zealand) for more than 170 customers per annum.

These arrangements can involve several logistics parties. For example, the customer may have a direct relationship with a shipping line, with Fliway effectively taking over the management of supply chain once the goods arrive at a New Zealand port.

Fliway international arranges:

- Freight to be moved from producer to port

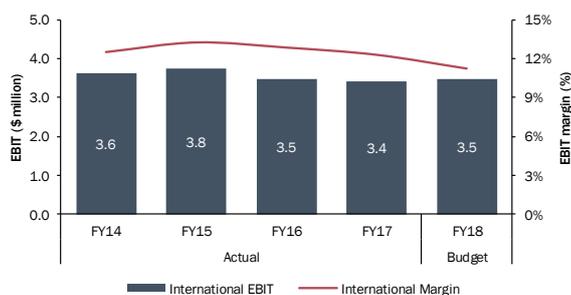
- Loading of freight to carrier
- Clearing of customs at both New Zealand and end destination (for exports)
- Unloading of freight from vessel
- Delivery to end destination.

Fliway International provides freight forwarding and customs brokerage services to a range of customers servicing many industries, including electronics, aviation, medical, fitness and motor vehicles.

#### *International financial performance*

Figure 4.6 shows that Fliway International's financial performance has declined slightly since FY14.

**Figure 4.6: Financial performance summary – Fliway International**



Source: *Management Accounts*

Fliway International has had relatively stable earnings over the past four years, albeit with a small deterioration and the outlook is also for flat financial performance for FY18.

The international freight forwarding industry is highly competitive, and Fliway's international operations have suffered from some margin pressure in recent years.

Fliway has budgeted a slight increase in international earnings in FY18. This increased revenue is expected from customer wins, but Fliway expects margin pressure to continue.

#### **4.2.3 UPS-Fliway Joint Venture**

UPS-Fliway is a 50/50 joint venture between Fliway and UPS, one of the world's largest package delivery companies. The joint venture was established in 1998. Both UPS and Fliway have equal representation on the joint venture's board.

UPS-Fliway is a small-package express courier business. Packages sent to and from New Zealand through the UPS international sales network must use the UPS-Fliway joint venture in New Zealand.

The joint venture employs approximately 30 staff. Day-to-day operations are overseen by UPS management. Fliway Transport arranges domestic deliveries and pickups for UPS-Fliway, and Fliway International provides customs brokerage services.

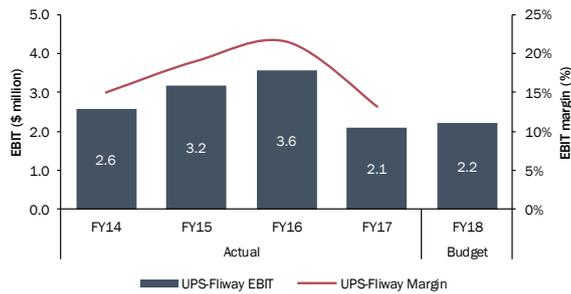
#### *UPS-Fliway financial performance*

Figure 4.7 shows UPS-Fliway's financial performance for FY14–FY17 (actuals) and Fliway's expectations for FY18 (budget). Fliway includes 50% of UPS-Fliway's EBIT or EBITDA in its own reported 'Underlying EBIT' and 'Underlying EBITDA' amounts.

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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Figure 4.7: Financial performance summary – UPS-Fliway



Source: Management Accounts and Annual Reports

UPS-Fliway underwent a structural shift in FY17, with a lowering of the compensation rates. This resulted in the joint venture being paid less per unit volume. We understand this was a UPS initiative to lower inbound pricing and was reflective of the need to be more competitive to stimulate growth for the JV.

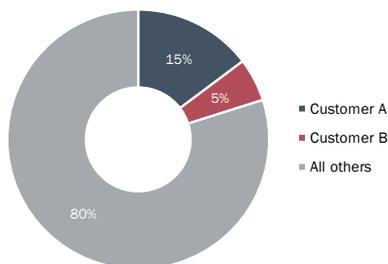
FY18 budget is based on Fliway's expectations for FY18 and assumes performance in line with FY17.

The joint venture arrangement between UPS and Fliway is perpetual in nature. We also understand from Fliway that the joint venture is mutually beneficial to both parties. We expect that the joint venture is unlikely to make excessive profits as this would indicate that it is over-charging UPS and/or Fliway (which would not be in their own respective interests).

### 4.3 Customers

Fliway has some key customer risk for two customers but is otherwise lowly concentrated with over 1,000 individual customers spanning across their three operating segments. There are two customers that exceed 5% of Fliway's total revenue, with the largest customer representing approximately 15%. In June 2016, Fliway lost its second largest, high margin, customer due to consolidating with an existing provider. The customer contributed approximately 5% to its total revenue which had a material impact on its FY17 profitability, as discussed.

Figure 4.8: Fliway's Customers as a % of Revenue – 12 months ended 30 April 2017



Source: Management Accounts

### 4.4 Summary of Financial Performance

In our view, the near-term outlook for the UPS-Fliway joint venture and International operations is for relatively flat financial performance, with limited growth achieved historically. There is potential for growth in the Domestic business, partly due to a recovery from a poor FY17 result. However, there are risks for the Domestic business, including key customer concentration and the operating leverage that Fliway has due to it owning its vehicle fleet. We also note Fliway has high property lease costs,

which is a relatively fixed cost and provides further operating leverage (e.g. premise lease costs in FY17 were \$5.5 million, relative to total EBIT of \$4.9 million).

#### 4.5 Financial Position

Table 4.2 summarises the financial position of Fliway.

Table 4.2: Financial Position (\$ thousand)

	Sept 2017
Receivables and prepayments	12,365
Creditors, accruals and provisions	(7,733)
Net tax payable	(590)
<b>Net working capital (excl. financing)</b>	<b>4,042</b>
Property, plant and equipment	11,019
Goodwill	23,046
Other intangible assets	1,072
Deferred tax	432
<b>Net operating assets</b>	<b>39,612</b>
Cash and cash equivalents	1,204
Bank borrowings	(10,300)
Other debt/derivatives	(195)
<b>Net cash/(debt)</b>	<b>(9,291)</b>
Investment in associate and joint ventures	2,464
<b>Net assets</b>	<b>32,785</b>
Net Tangible Assets (net assets less intangibles and JV)	6,203
Net Tangible Assets per share	13.7c

Source: Annual Report

Key points which should be considered when reviewing the balance sheet include:

- Fliway has a positive net working capital balance, with accounts receivable only partly offset by accounts payable.
- Over two thirds of Fliway's property, plant and equipment is the ownership of their vehicle transport fleet, with the remaining assets including office equipment, furniture and fittings and computer equipment.
- Goodwill relates to the acquisition of Fliway by parties associated with Duncan Hawkesby in October 2006.
- Fliway had \$9.3 million net debt as at 30 September 2017
- Net tangible assets per share as at 30 September 2017 was 13.7 cents.

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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### 4.6 Cash Flow

#### 4.6.1 Capex

Table 4.3 shows Fliway's historical capital expenditure and depreciation.

Table 4.3: Capital expenditure and depreciation (\$ thousand)

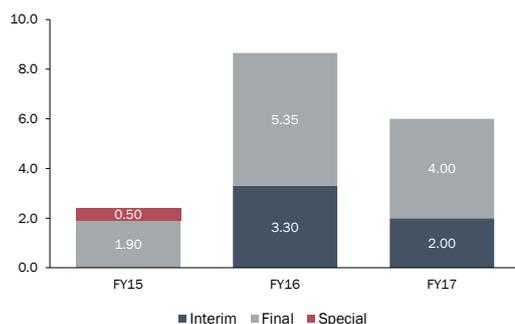
	2014 Actual	2015 Actual	2016 Actual	2017 Actual
Purchase of property, plant and equipment	3,714	4,605	2,600	3,373
Sale of property, plant and equipment	(297)	(264)	(131)	(246)
<b>Net capital expenditure</b>	<b>3,417</b>	<b>4,341</b>	<b>2,469</b>	<b>3,127</b>
Depreciation and amortisation	1,445	2,030	2,087	2,414
<b>Net capital expenditure as a proportion of depreciation and amortisation</b>	<b>236%</b>	<b>214%</b>	<b>118%</b>	<b>130%</b>

Fliway has budgeted for capital expenditure of \$3.6 million and depreciation and amortisation of \$2.4 million in FY18. Fliway management consider that long run capital expenditure to maintain its asset base will be approximately \$3.4 million per annum, which is around \$1 million higher than the annual accounting depreciation charge and consistent with the average amount of capital expenditure incurred between FY14 and FY17.

#### 4.6.2 Dividends

Fliway has paid total dividends (fully imputed) of 8.65 cents per share in FY16 and 6.00 cents per share in FY17. The decline in dividend between FY16 and FY17 broadly aligned with a decline in earnings per share from 12 cents per share to 9 cents per share.

Figure 4.9: Fliway dividends (cents per share)



#### 4.7 Capital Structure and Ownership

Fliway has 45,437,910 ordinary shares on issue; and as at 25 October 2017, there were more than 1,000 registered shareholders. The top 20 shareholders accounted for 76.3% of the ordinary shares on issue.

Table 4.4: Share register as at 25 October 2017

Shareholder	Investor type	Shares	Percentage
Duncan Hawkesby & Gretchen Hawkesby	Managing Director	24,604,576	54.1%
New Zealand Central Securities Depository Limited	Retail	4,385,275	9.7%
Ace Finance Limited	Retail	803,500	1.8%
FNZ Custodians Limited	Retail	754,481	1.7%
Xinwei Investment (NZ) Limited	Retail	650,000	1.4%
Custodial Services Limited	Retail	624,835	1.4%
Forsyth Barr Custodians Limited	Retail	618,781	1.4%
Yong Zhong	Retail	467,836	1.0%
Chin Hwa Wu Yu	Retail	300,000	0.7%
Hsiao Pau Yu & Chin Hwa Wu Yu	Retail	300,000	0.7%
Roger John Williams	Retail	202,000	0.4%
Ronald James Woodrow	Retail	130,000	0.3%
Peter James Stewart	Retail	120,000	0.3%
Peter Bruce Sadler	Retail	100,901	0.2%
Brian Kelly Limited	Retail	100,000	0.2%
John Cameron & Susan Cameron	Retail	100,000	0.2%
Philip Meads & Janette Meads & Thomas Wright	Retail	100,000	0.2%
Roger Johnson & Cynthia Johnson	Retail	100,000	0.2%
Joe Longson & Peter Attewell & Margaret Longson	Retail	99,940	0.2%
William Aldridge & Gillian Aldridge	Retail	86,464	0.2%
<b>Top 20 shareholders</b>		<b>34,648,589</b>	<b>76.3%</b>
Remaining shareholders		10,789,321	23.7%
<b>Total</b>		<b>45,437,910</b>	<b>100.0%</b>

The major shareholder is Duncan Hawkesby and Gretchen Hawkesby (as trustees of the D&G Hawkesby Trust) who own 54.1% of Fliway. The remaining shares are widely held by retail investors either directly or through custodial services.

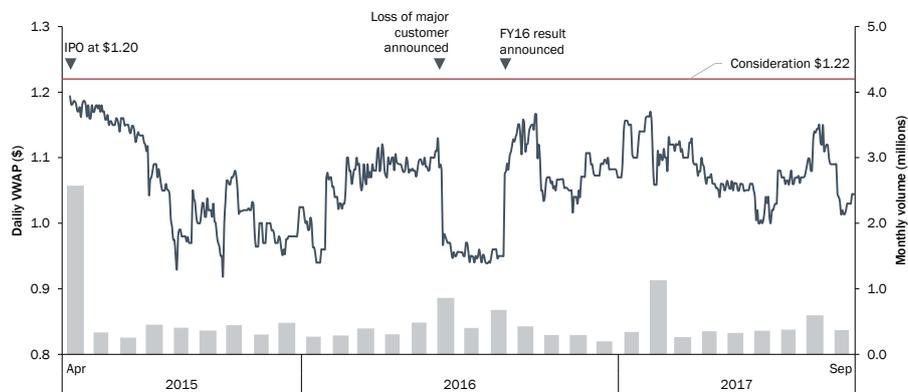
## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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### 4.8 Share Price Performance

Figure 4.10 illustrates the share price and volume for Fliway shares since Fliway listed on the NZX Main Board in April 2015.

Figure 4.10: Fliway's share price and volume on NZX Main Board



Source: Capital IQ

Fliway's share price has declined following its listing in April 2015 at \$1.20 per share and has traded broadly within a range of \$0.91 per share to \$1.20 per share. The share price decreased in June 2016 when the loss of a major customer was announced. This subsequently reversed when a better than expected FY16 result was announced in August 2016. Fliway Shares are widely held by retail shareholders.

Table 4.5: VWAP and volume to 25 October 2017

	Share Price Low	Share Price High	VWAP	Volume (million)	Proportion of Issued Capital
One month	\$1.03	\$1.08	\$1.05	0.2	0.4%
Three months	\$1.01	\$1.18	\$1.08	1.2	2.7%
Twelve months	\$0.99	\$1.18	\$1.08	4.9	10.7%

Source: Capital IQ

Approximately 4.9 million Fliway Shares traded in the 12 months ended 25 October 2017, at prices between \$0.99 and \$1.18. The Offer Price of \$1.22 per share represents a:

- premium of 13% to the share price of \$1.08 on 25 October 2017;
- premium of 16% to the VWAP of \$1.05 in the month ended 25 October 2017;
- premium of 13% to the VWAP of \$1.08 in the three months ended 25 October 2017; and
- premium of 13% to the VWAP of \$1.08 in the twelve months ended 25 October 2017.

## 5 Valuation

### 5.1 Approach

There are four methodologies commonly used for valuing businesses:

- Discounted Cash Flow (DCF) analysis;
- Capitalisation of earnings;
- Estimate of proceeds from an orderly realisation of assets; and
- Industry rules of thumb.

These valuation methodologies are detailed at Appendix 3.

Each of these valuation methodologies is appropriate in different circumstances. A key factor in determining which methodology is appropriate is the actual practice commonly adopted by purchasers of the type of businesses involved.

We have adopted the capitalisation of earnings approach as the primary methodology to estimate the market value of Fliway. We consider this approach appropriate because Fliway's earnings have been relatively consistent over many years, indicating a degree of predictability.

We have undertaken two crosschecks to the capitalisation of earnings approach:

- **Property-adjusted earnings multiple:** Fliway does not own the land and buildings from which it operates, whereas many of its peers (e.g. Mainfreight) have a substantial investment in land and buildings. The effect of owning land and buildings is to shift the 'riskiness' of the business operations to be closer to that of a property investment company. Land and buildings typically have a lower yield than Fliway, which means that were Fliway to purchase its land and buildings, its earnings multiple would be expected to be higher than it would otherwise. We have adjusted the earnings multiple implied by our capitalisation of earnings valuation, to make it comparable to a business which owns its land and buildings; and considered whether this multiple is reasonable, when compared to Fliway's peers.
- **Net tangible assets:** Many transport businesses have substantial property, plant and equipment. To the extent that these businesses earn an adequate return on investment, they will tend to be valued based on a multiple of earnings. However, where a business is performing poorly, its value based on a multiple of earnings will often fall to below the value of its assets on a stand-alone basis. This can be observed with some of the listed Australian transport operators shown in Appendix 4 (Table A4.2). As a crosscheck, we have considered Fliway's net tangible assets, and compared to the value implied by our capitalisation of earnings valuation.

In circumstances such as the Proposed Transaction, our preference is generally to use the DCF and earnings multiple approaches to crosscheck one another. In undertaking a DCF valuation considerable judgement is needed in estimating future cash flows and the valuer generally places significant reliance on medium to long term projections prepared by management. Fliway does not prepare forecasts beyond the current year budget that reflect management's best expectation of how the business will perform. Therefore, we have not been able to undertake a DCF valuation, which is common for businesses of a comparable size to Fliway.

Any valuation, by its very nature, must attribute a current value that reflects the expected future financial performance of the subject business. Consequently, information regarding the expected future performance, such as financial projections, is vital to the valuation exercise. We have relied on the budget for FY18 prepared by Fliway management and approved by the Fliway board.

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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## 5.2 Capitalisation of Earnings

### 5.2.1 Earnings Multiple

To undertake a capitalisation of earnings valuation, it is necessary to determine an appropriate earnings multiple, which is then applied to an estimate of earnings.

Comparable earnings multiples are generally derived by benchmarking the entity being valued using transaction evidence available for comparable companies. Transaction evidence is typically sourced from:

- Earnings multiples based on the current share price of comparable listed companies.
- Earnings multiples based upon recent acquisitions of comparable companies.

Observed trading multiples need to be adjusted for factors such as relative size, growth, profitability, and risk. Also, observed transactions for listed entities are generally for small parcels of shares, and therefore typically exclude a premium for control that would normally apply to a 100% shareholding.

We have considered the earnings multiples for transport businesses based in New Zealand and Australia, many of which are larger than Fliway, have a greater investment in property, are exposed to different industries, and have different business models (owner-driver versus company owned vehicles).

When applying the capitalisation of earnings approach, many different earnings or cashflow measures can be applied. Commonly adopted multiples include EBITDA multiples, EBIT multiples and price earnings multiples. Price earnings multiples are commonly used in the context of the sharemarket. EBITDA and EBIT multiples are more commonly used in valuing whole businesses for acquisition purposes where gearing is in the control of the acquirer.

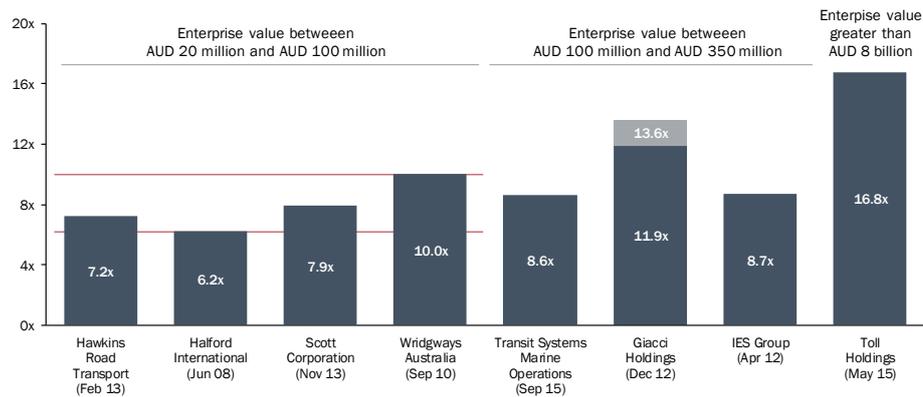
The choice between different earnings multiples is typically not critical and should give a similar result. EBITDA can sometimes be preferable if depreciation or non-cash charges distort earnings or make comparisons between companies difficult. However, care needs to be taken of factors such as level of capital expenditure needed for the business and the key differences between the subject company being valued and other comparable companies being used as valuation benchmarks.

We have adopted EBIT multiples to value Fliway, primarily because this should reduce (albeit not eliminate) the impact of the difference between Fliway's business model (company owned vehicles) and that of some of its peers (owner-driver vehicles). This cost of vehicles under an owner-driver model is as an operating expense (paid to contractors), whereas under a company-owned vehicles model, the part of the costs is in capital expenditure.

#### *Comparable acquisition multiples*

Figure 5.1 illustrates the earnings multiples for transactions involving broadly comparable Trans-Tasman transport and logistics companies (a description of the transactions is also set out in full in Appendix 4). These transactions have been selected based on the following criteria:

- the target company primary business is providing transport and/or logistics services
- the target company is based in either Australia or New Zealand
- the target company has an enterprise value above \$5 million
- the acquirer held 100% of the target company on completion of the transaction.

Figure 5.1: Acquisitions of transport and logistics companies – EBIT multiples<sup>10</sup>

Source: Capital IQ, independent advisers' reports and companies' announcements

The following factors are relevant when considering the acquisition multiples:

- Acquisition multiples typically include a premium for control, which usually reflects expected synergies, as well as the prevailing economic environment and other non-quantifiable factors.
- Many of the businesses acquired own substantial amounts of land and buildings. This contrasts with Fliway, which leases its properties. Businesses which own their own land and buildings typically have a lower weighted average cost of capital, and therefore higher EBIT multiples.
- All the identified transactions are in Australia, where they tend to be heavily dependent on the mining and petroleum industries. These industries have been depressed in recent years and this has weighed on the performance of the transport and logistics companies which service these industries.
- The comparable businesses are generally exposed to a range of different industries, with the most common being the resource sector, or fuel transportation.
- The acquisition multiples shown in Figure 5.3 are generally historical multiples, based on the companies' earnings in the most recently available 12 months prior to the transaction, with some of the earnings having been normalised by the companies involved in the transactions. Typically, assuming business earnings are increasing, forecast earnings multiples are lower than historical earnings multiples.
- Toll Holdings transacted at 16.8x normalised EBIT. We consider Fliway should have a significantly lower EBIT multiple than Toll Holdings, because it is significantly smaller and much less diversified.
- Excluding Toll Holdings, the comparable businesses were acquired for earnings multiples which range between 6.2x and 11.9x EBIT; and have median of 8.6x EBIT.
- For comparable businesses acquired at an enterprise value between AUD 20 million and AUD 100 million, the earnings multiples range between 6.2x and 10.0x EBIT; and have a median of 7.5x EBIT.

#### Comparable trading multiples

Figure 5.2 illustrates the forecast earnings multiples for broadly comparable Trans-Tasman transport and logistics companies which are currently listed (a description of the transactions is also set out in full in Appendix 4). We have selected these comparable companies based on the following criteria:

- the listed company primary business is providing transport and/or logistics services
- the listed company is based in either Australia or New Zealand
- the listed company has an enterprise value above \$5 million

<sup>10</sup> Companies ordered by increasing EBIT.

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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- the listed company does not appear financially distressed (i.e. does not have materially more debt than equity). This is because such entities' reported values of debt and equity cannot be relied upon.

Figure 5.2: Selected listed transport and logistics companies – Forecast EBIT multiples<sup>11</sup>



Source: Capital IQ and the companies' financial accounts

There are fundamental differences between Flway's operations and those of the comparable companies, including infrastructure sector mix; the mix of construction versus design services provided; growth prospects; and most notably size.

Mainfreight is a large diversified New Zealand based transport and logistics company which has extensive international operations. Mainfreight has experienced robust historical growth, increasing EBIT at 9.5% per annum between 2013 and 2017; and is forecast to continue to have robust growth over the next three years<sup>12</sup>. Mainfreight also has an extensive investment in land and buildings (\$590 million at book value). We would expect Mainfreight to trade at a substantially higher EBIT multiple than Flway.

Freightways is a Trans-Tasman business based in New Zealand. Freightways has express package delivery and information management operations. Freightways has experienced strong earnings growth in recent years, particularly in its Information Management operations. We would expect Freightways to trade at a substantially higher EBIT multiple than Flway.

Aurizon Holdings provides integrated heavy haul freight railway services in Australia. This business is substantially larger than even Mainfreight. Given the nature of Aurizon's rail operations, a part of its business is a material part of its business is a monopoly, which has a regulated return. This significantly lowers the business risk faced by Aurizon (when compared to many other transport operators), but also limits the opportunity for organic growth. We would expect Aurizon to trade at a substantially higher EBIT multiple than Flway.

Lindsay Australia provides transport, logistics, and rural supply services to the food processing, food services, fresh produce, rural, and horticultural sectors in Australia. Lindsay Australia's financial performance has declined in recent years, and its NTA per share is currently 1.5x its share price. One broker follows Lindsay Australia, and it is forecasting a 35% increase in EBIT for FY18. These factors indicate Lindsay is being priced with option-like characteristics (material upside if it recovers, and limited downside if it does not). We consider these factors mean Lindsay is a useful indicator of valuation but does not provide a direct comparison to Flway.

We set out a wider range of comparable listed companies at Appendix 4. However, most of those companies have EBIT multiples much higher than Mainfreight. Investigation of these other comparable companies generally shows they have very low Price to NTA ratios, indicating that their financial earnings are low (relative to their invested assets), and they are being valued based either on an expected strong recovery in earnings, or net realisable assets. For completeness, we have considered Flway's NTA as a broad crosscheck to our valuation.

<sup>11</sup> Companies ordered by increasing EBIT, converted to New Zealand dollars using current exchange rates.

<sup>12</sup> Median EBIT forecast by brokers indicates Mainfreight will have 11.9% compound annual growth over the next three years.

*Selection of earnings multiple range*

We have assessed an earnings multiple for Fliway (excluding UPS-Fliway) at between 8.0x and 9.0x EBIT. For the purpose of our valuation, we have adopted the mid-point of this range. We have arrived at our estimate of an earnings multiple for Fliway, after considering:

- Comparable transactions under AUD 350 million have generally occurred between 7.2x and 10.0x EBIT (one outlier above, and one below this range). The median for transactions of similar size to Fliway<sup>13</sup> is 7.5x EBIT.
- The two New Zealand businesses which are broadly comparable (Mainfreight and Freightways) are large, have diversified operations and have experienced robust growth in recent years.
- Fliway's earnings have not shown material growth over the last six years, albeit there has been some volatility in its earnings and it is budgeting a stronger result in FY18, in line with its FY16 performance.
- Fliway does not own the land and buildings from which it operates.
- Fliway has some key customer concentration, and given its high fixed costs, losing a customer can have an immediate material impact on its business. Against this, Fliway has established its business to cater to its customers specific requirements, which means it should generally have strong customer retention.
- Fliway's ongoing capital expenditure requirements are in excess of its accounting depreciation charge.
- The size of Fliway's transport operations, relative to the comparable companies (both listed and acquired).
- The control premium that would apply to a 100% shareholding.

We have applied an earnings multiple of between 6.0x and 7.0x to UPS-Fliway's EBIT. This is less than the multiple applied to Fliway's core business, to account for a lack of control (50% ownership, and UPS controls operations).

<sup>13</sup> Between AUD 20 million and AUD 100 million

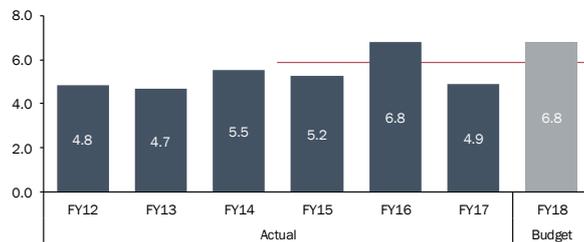
## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

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### 5.2.2 Normalised Earnings

Fliway's earnings, excluding UPS-Fliway, are illustrated at Figure 5.3.

Figure 5.3: Fliway EBIT excluding UPS-Fliway (\$ million)



Source: KordaMentha analysis

The principal assumptions underpinning the FY18 budget are set out at section 4.2 of the Report and include:

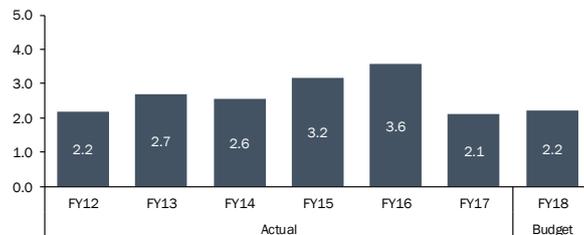
- Inflation of 2% per annum, which affects rent costs and general expenses.
- Salary and wage inflation of 3%.
- Domestic business EBIT is expected to increase due to recovering from the impact of the Kaikoura earthquakes as well as increased revenue (driven by a small number of new customers) and an expected improved margin (resulting from improved efficiency).
- International business EBIT is expected to remain relatively flat as a result of increased revenue being largely offset by increased salary and other costs.
- Overheads forecast at current run rates plus inflation.
- Reduced depreciation costs as computer software comes to the end of its accounting life and replacement is not yet necessary.

For our valuation, we have estimated Fliway's Normalised EBIT at between \$5.9 million and \$6.8 million, based on:

- Fliway's average EBIT over the last three years as well as FY18 Budget is \$5.9 million.
- Fliway has budgeted \$6.8 million EBIT in the current year.

We have estimated the UPS-Fliway joint venture's EBIT at \$2.2 million per annum. This is equal to the current FY18 budget and slightly more than was earned in FY17. FY18 budget assumes financial performance broadly equal to that achieved in FY17. We note commercial terms were renegotiated in FY17 and therefore earlier years are not indicative of future financial performance.

Figure 5.4: UPS-Fliway EBIT (\$ million)



Source: KordaMentha analysis

### 5.2.3 Summary of Capitalisation of Earnings valuation

We have assessed the standalone value of Fliway's equity at between \$1.04 and \$1.24 per share, with a midpoint of \$1.14 per share. The calculation is set out at Table 5.1:

Table 5.1: Capitalisation of earnings valuation (\$ thousand, unless indicated otherwise)

	Low	High
Fliway EBIT – core operations	5,900	6,800
EBIT Multiple	8.5x	8.5x
<b>Enterprise value (excl. UPS-Fliway)</b>	<b>50,150</b>	<b>57,800</b>
UPS-Fliway EBIT	2,200	2,200
EBIT multiple	6.0x	7.0x
Shareholding percentage	50%	50%
<b>UPS-Fliway</b>	<b>6,600</b>	<b>7,700</b>
Combined enterprise value	56,750	65,500
Less net debt	(9,300)	(9,300)
Equity value	47,450	56,200
Shares (thousands)	45,438	45,438
<b>Value per share</b>	<b>\$1.04</b>	<b>\$1.24</b>

The following factors are relevant when considering the value of the Fliway's shares:

- We have assessed Fliway's EV in the range of \$56.7 million to \$65.5 million, based on the sum of:
  - Fliway's core operations, valued in the range \$50.1 million to \$57.8 million based on normalised EBIT between \$5.9 million and \$6.8 million, and an earnings multiple of 8.5x EBIT.
  - Fliway's share of UPS-Fliway, valued in the range \$6.6 million to \$7.7 million based on \$2.2 million normalised EBIT, an earnings multiple range of 6.0x–7.0x EBIT, and Fliway's 50% shareholding in the joint venture.
- Net Debt is based on Fliway's net debt as at 30 September 2017.
- Fliway has 45,438,910 shares on issue, as at the date of this report.
- The range of \$1.04 to \$1.24 per Fliway share represents the pro rata value of 100% of Fliway, and therefore includes a premium for control.

#### Crosschecks to value

Fliway does not own the buildings it occupies. To make it more comparable to some of its peers, such as Mainfreight, we have adjusted Fliway's earnings and EV, assuming Fliway purchased the land and buildings from which it operates<sup>14</sup>. Based on our indicative analysis, Fliway would have an EBIT multiple approximately 40% higher were it to purchase its buildings. This means any value of Fliway would have an implied adjusted earnings multiple (comparable to Mainfreight) of 12.0x EBIT. While still less than Mainfreight's earnings multiple of 15.8x EBIT, we consider this residual variance to be reasonable given the other differences between the companies (scale, historical growth and relative exposures to different markets).

We have also considered Fliway's net tangible assets. This is important because those comparables shown in Appendix 4 which have recently performed poorly tend to be valued based on their underlying assets (rather than their earnings). Fliway has \$15.5 million operating assets, excluding goodwill and intangibles, which compares to our enterprise value range of \$56.8 million to \$65.5 million. This indicates Fliway should not be valued on its assets, as its earnings imply a much greater value.

<sup>14</sup> Fliway pays approximately \$5.5 million rent per annum to occupy its land and buildings. For our analysis, we have assumed Fliway purchased the land and buildings at an average rental yield of 7.5%, and this was debt funded. The debt funding would increase enterprise value by approximately \$73 million. We have assumed an increase in building depreciation at 1.5% of the purchase price (broadly equivalent to Mainfreight's building depreciation). The net impact would be a \$4.4 million increase to Fliway's EBIT (\$5.5 million less rent, and \$1.1 million more depreciation) with offsetting increased interest costs.

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

## Appendix 1: Sources of Information

### Documents relied upon

Key information which was used and relied upon, without independent verification, in preparing this report includes the following:

- Fliway FY18 Budget
- Fliway's Annual Reports for 2015, 2016 and 2017
- Fliway's historical management accounts for FY12–FY17
- Fliway's IPO prospectus
- Fliway's investor updates and market announcements for 2016 and 2017
- Fliway's share register and trading information
- Corporate strategy documents prepared by Fliway
- Broker reports on Fliway prepared Forsyth Barr
- Capital IQ
- Comparable companies' announcements and annual reports
- Ministry of Transport, National Freight Demand Study, March 2014
- Statistics New Zealand, accessed 28 September 2017
- IBISWorld, Road Freight Transport in New Zealand, April 2017
- IBISWorld, Warehousing and Storage Services in New Zealand, August 2017
- IBISWorld, Customs Agency and Freight Forwarding Services in New Zealand, August 2017.

We have also had discussions with Fliway's management in relation to the nature of Fliway's business operations, and the known risks and opportunities for the foreseeable future.

### Reliance upon information

In forming our opinion we have relied upon and assumed, without independent verification, the accuracy and completeness of all information that was available from public sources and all information that was furnished to us by Fliway and its advisers. We have no reason to believe any material facts have been withheld.

We have evaluated that information through analysis, enquiry and examination for the purposes of forming our opinion but we have not verified the accuracy or completeness of any such information. We have not carried out any form of due diligence or audited the accounting or other records of Fliway. We do not warrant that our enquiries would reveal any matter that an audit, due diligence review or extensive examination might disclose.

## Appendix 2: Qualifications and declarations

### Qualifications

KordaMentha is an independent New Zealand Chartered Accounting practice, internationally affiliated with the KordaMentha group. The firm has established its name nationally through its provision of professional financial consultancy services with a corporate advisory and insolvency emphasis, and because it has no business advisory, audit or tax divisions, avoids any potential conflicts of interest which may otherwise arise. This places the firm in a position to act as an independent adviser and prepare independent reports.

The persons responsible for preparing and issuing this report are Michael Stiasny (BCom, LLB, CA); Shane Bongard (BCom (Hons)); and Shaun Hayward (BCom, BProp). All have significant experience in providing corporate finance advice on mergers, acquisitions and divestments, advising on the value of shares and undertaking financial investigations.

### Disclaimers

It is not intended that this report should be used or relied upon for any purpose other than as an expression of KordaMentha's opinion as to merits of the proposed transaction. KordaMentha expressly disclaims any liability to any Fliway equity security holder that relies or purports to rely on the Report for any other purpose and to any other party who relies or purports to rely on the Report for any purpose.

This report has been prepared by KordaMentha with care and diligence and the statements and opinions given by KordaMentha in this report are given in good faith and in the belief on reasonable grounds that such statements and opinions are correct and not misleading. However, no responsibility is accepted by KordaMentha or any of its officers or employees for errors or omissions however arising (including as a result of negligence) in the preparation of this report, provided that this shall not absolve KordaMentha from liability arising from an opinion expressed recklessly or in bad faith.

### Indemnity

Fliway has agreed that, to the extent permitted by law, it will indemnify KordaMentha and its partners, employees and officers in respect of any liability suffered or incurred as a result of or in connection with the preparation of this report. This indemnity does not apply in respect of any negligence, misconduct or breach of law. Fliway has also agreed to indemnify KordaMentha and its partners, employees and officers for time incurred and any costs in relation to any inquiry or proceeding initiated by any person except where KordaMentha or its partners, employees and officers are guilty of negligence, misconduct or breach of law in which case KordaMentha shall reimburse such costs.

### Independence

KordaMentha does not have at the date of this report, and has not had, any shareholding in, or other relationship, or conflict of interest with Fliway that could affect its ability to provide an unbiased opinion in relation to this transaction. KordaMentha will receive a fee for the preparation of this report. This fee is not contingent on the success or implementation of the proposed transaction or any transaction complementary to it. KordaMentha has no direct or indirect pecuniary interest or other interest in this transaction. We note for completeness that a draft of this report was provided to Fliway and its advisers, solely for the purpose of verifying the factual matters contained in the Report. While minor changes were made to the drafting, no material alteration to any part of the substance of this report, including the methodology or conclusions, were made as a result of issuing the draft.

### Consent

KordaMentha consents to the issuing of this report, in the form and context in which it is included, in the information to be sent to Fliway shareholders. Neither the whole nor any part of this report, nor any reference thereto may be included in any other document without the prior written consent of KordaMentha as to the form and context in which it appears.

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

## Appendix 3: Valuation Methodologies

There are four methodologies commonly used for valuing businesses:

- Discounted Cash Flow (DCF) analysis;
- Capitalisation of earnings;
- Estimate of proceeds from an orderly realisation of assets; and
- Industry rules of thumb.

Each of these valuation methodologies is appropriate in different circumstances. A key factor in determining which methodology is appropriate is the actual practice commonly adopted by purchasers of the type of businesses involved.

### Discounted cash flow

It is a fundamental principle that the value of an asset or business is represented by its expected future cash flows, discounted to present value at a rate which reflects the risk inherent in those cash flows. This approach, referred to as the DCF methodology, is particularly suited to situations where a business is in a growth phase or requires significant additional investment to achieve its projected earnings.

The DCF methodology requires considerable judgement in estimating future cash flows and the valuer generally places significant reliance on medium to long term projections prepared by management. The DCF valuation methodology can also be very sensitive to changes in underlying assumptions. Notwithstanding these limitations, DCF valuations are appropriate where current earnings are not representative of reasonable expectations of future earnings.

### Capitalisation of earnings

The capitalisation of earnings methodology requires an assessment of the maintainable earnings of the business and the selection of an appropriate capitalisation rate, or earnings multiple. This methodology is most appropriate where there is a long history of relatively stable returns and capital expenditure requirements are neither large nor irregular. In practice, it is often difficult to obtain accurate forecasts of future cash flows and therefore the capitalisation of earnings methodology is often used as a surrogate for the DCF methodology.

### Realisation of assets

The realisation of assets approach is based on an estimate of the proceeds from an orderly sale of assets. This methodology is more commonly applied to businesses that are not going concerns. The valuation result reflects liquidation values and typically attributes no value to any goodwill associated with on-going trading.

### Industry rules of thumb

In some industries, businesses are valued using well established 'rules of thumb'. Generally these rules of thumb are used as a cross-check for other valuation methodologies.

## Appendix 4: Valuation Evidence

### Comparable Transactions

Table A4.1 shows EBIT multiples for completed acquisitions of Trans-Tasman transport and logistics companies within the last 10 years.

Table A4.1: Comparable transport and logistics company transactions

Date	Target	Acquirer	Primary Location	Enterprise Value \$ millions	EBIT multiple <sup>15</sup>
Sep 2015	Transit Systems (Marine)	SeaLink Travel Group	Australia	AUD 125	8.6x
May 2015	Toll Holdings	Japan Post Bank	Australia	AUD 8,057	16.8x
Nov 2013	Scott Corporation	K&S Corporation	Australia	AUD 84	7.9x
Feb 2013	Hawkins Road Transport	Scott Corporation	Australia	AUD 14	7.2x
Dec 2012	Giacci Holdings	Qube Logistics	Australia	AUD 128–146	11.9x–13.6x
Apr 2012	IES Group	McAleese Group	Australia	AUD 309	8.7x
Sep 2010	Wridgways Australia	Sante Fe Transport	Australia	AUD 87	10.0x
Jun 2008	Halford International <sup>16</sup>	Mainfreight	Australia	AUD 21	6.2x
<b>Median</b>					<b>8.7x</b>

Source: Capital IQ, financial statements and announcements and research reports

The comparable transactions are described below.

#### Transit Systems (Marine operations) – SeaLink Travel Group

SeaLink agreed to acquire the marine operations of Transit Systems for AUD 130 million in September 2015. Transit Systems' marine operations operated passenger and vehicle ferries in Australia.

#### Toll Holdings – Japan Post Bank

Japan Post Bank agreed to acquire Toll Holdings (Toll) for AUD 6.5 billion in February 2015, where Toll was subsequently delisted from the ASX. Toll retained its name and is now an operating division under Japan Post Bank's global operations. Toll provides fully integrated freight and logistics through its multiple subsidiaries and divisions, predominately throughout Australasia, Europe and the Middle East.

#### Scott Corporation – K&S Corporation

K&S Corporation acquired Scott Corporation (Scott) for AUD 43 million in cash and stock in November 2013. Scott provides transportation services predominately of hazardous and bulk materials by road, rail and coastal shipping in Australia. It also operates logistics services through its warehousing and distribution segments.

Scott Corporation owned minimal land and buildings (relative to its total value).

#### Hawkins Road Transport – Scott Corporation

Hawkins specialised in the distribution of fuel and petroleum products to the mining, aviation and retail consumer sectors in Australia. Hawkins had key customer concentration and key contracts in place for a limited period of time at the date of the acquisition.

<sup>15</sup> To the extent possible, multiples are based on historical earnings over the last 12 months of available earnings for the company, adjusted for any key anomalies identified by the target company or its independent expert at the time of the transaction.

<sup>16</sup> EBIT multiple is a KordaMentha estimate based on a disclosed 6x EBITDA multiple; and approximately \$1,000,000 fixed assets acquired, for which we have assumed \$200,000 depreciation per annum.

## ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

### Giacci Holdings – Qube Logistics Holdings

Giacci was a family owned company and was acquired by Qube in February 2012.

Giacci provided bulk haulage, handling and storage services in Australia. It also owned strategic sites, including some land which was surplus to operating requirements. At the time of the acquisition, Qube advised the market that Giacci offered significant 'cross sell' opportunities across both businesses' customer bases.

The purchase price included AUD 18 million of deferred consideration, subject to earnings. The low-end of the multiple range in Table A4.1 excludes deferred consideration, and the high end includes 100% of the deferred consideration.

### IES Group – McAleese Group

IES Group provided transport and other logistics services to the resource, energy, aviation and chemical industries, primarily in Australia. The acquisition expanded and diversified McAleese's operations to include bulk haulage and liquid fuel distribution.

### Wridgways Australia – Sante Fe Transport

Sante Fe Transport along with EAC Moving & Relocation Services, acquired Wridgways Australia in September 2010.

Wridgways Australia provided removal, relocation and storage services for households and businesses, such as the hotel and resorts industry, including all packing and unpacking.

### Halford International – Mainfreight

In July 2008, Mainfreight exercised a call option to acquire Halford International for AUD 21 million. Halford International provided logistical solutions including freight forwarding and customs brokerage in Australia and internationally. Halford International also provided warehouse and distribution services. The company now operates as a subsidiary of Mainfreight.

## Comparable Companies

Table A4.2 shows EBITDA multiples for publicly listed companies in the transport and logistics industry in New Zealand and Australia. These companies are multi-disciplinary companies who operate across multiple sub sectors in the industry and are generally much larger than Fliway, with the exception of Lindsay Australia, CTI Logistics and Chalmers.

Table A4.2: Comparable transport and logistics companies

Primary location	Company	Enterprise Value \$ millions <sup>17</sup>	EBITDA multiples		EBIT multiples		Price/NTA
			LTM <sup>18</sup>	NTM <sup>19</sup>	LTM	NTM	
New Zealand	Mainfreight Limited	2,735	14.6x	12.5x	17.8x	15.8x	6.6x
	Freightways Limited	1,333	13.4x	12.1x	15.2x	14.0x	NM
Australia	Aurizon Holdings Limited	14,474	9.1x	8.7x	15.1x	14.1x	2.0x
	Qube Holdings Limited	5,034	22.6x	16.4x	51.2x	28.8x	2.2x
	K&S Corporation Limited	359	6.5x	n/a	29.1x	n/a	1.1x
	Lindsay Australia Limited	227	6.6x	5.1x	20.8x	11.6x	1.5x
	CTI Logistics Limited	118	7.9x	n/a	18.6x	n/a	1.2x
	Chalmers Limited	34	7.8x	n/a	36.6x	n/a	0.7x
<b>Median</b>			<b>8.5x</b>	<b>12.4x</b>	<b>19.6 x</b>	<b>14.3 x</b>	<b>1.5x</b>

Source: Capital IQ, financial statements and announcements and research reports

The comparable companies are described below.

### Mainfreight

Mainfreight provides supply chain logistics solutions in New Zealand, Australia, the Americas, Asia, and Europe. It offers warehousing, domestic distribution, and international air and ocean freight forwarding services.

The company was founded in 1978 and is based in Auckland, New Zealand.

### Freightways

Freightways provides express package and business mail services, and information management services primarily in New Zealand and Australia. It operates through express package and business mail, information management, and corporate segments. The company provides network courier services under brands such as, New Zealand Couriers, Post Haste Couriers, Castle Parcels and NOW Couriers brands. The company offers its services through its network, as well as through alliances with international express package operators.

Freightways Limited was founded in 1964 and is based in Penrose, New Zealand.

### K&S Corporation

K&S Corporation provides transportation and logistics, contract management and warehousing and distribution, and fuel distribution services primarily in New Zealand and Australia. The company operates in three segments: Australian Transport, Fuels, and New Zealand Transport. It provides road, rail, and coastal sea forwarding for full and break bulk loads. The company also manages distribution services, as well as provides equipment and personnel. Further, the company transports bulk solids, liquids, and dangerous goods by road, rail, and sea; and aviation refuelling services and aviation fuel supply solutions to airports and bulk fuel customers.

K&S Corporation is headquartered in Truganina, Australia.

<sup>17</sup> Enterprise value converted to New Zealand Dollars.

<sup>18</sup> Last Twelve Months – based on available financial accounts and Capital IQ.

<sup>19</sup> Next Twelve Months – based on broker forecasts sourced from Capital IQ.

# ANNEXURE B: INDEPENDENT ADVISER'S REPORT (CONTINUED)

KordaMentha

## Aurizon Holdings

Aurizon Holdings operates an integrated heavy haul freight railway operator in Australia. It transports various commodities, such as mining, agricultural, industrial, and retail products; and retail goods and groceries across small and big towns and cities. In addition, it transports bulk freight for miners, primary producers, and the manufacturing industry.

Aurizon Holdings is headquartered in Brisbane, Australia.

## Qube Holdings

Qube Holdings provides logistics services for clients in import and export cargo supply chains in Australia. The company's Logistics segment offers services relating to the import and export of containerized cargo. This segment provides various services, which includes physical and documentary processes and tasks of the import/export supply chain, such as road and rail transport of containers to and from ports, operation of full and empty container parks, customs services, warehousing, and international freight forwarding, as well as bulk rail haulage services. Its Ports & Bulk segment offers logistics services relating to the import and export of non-containerized freight with a focus on automotive, bulk, and break bulk products; and an integrated logistics solution for the automotive industry.

Qube Holdings is based in Sydney, Australia.

## Lindsay Australia

Lindsay Australia provides transport, logistics, and rural supply services to the food processing, food services, fresh produce, rural, and horticultural sectors in Australia. It operates through transport and rural segments. The transport segment is involved in the cartage of general and refrigerated products, and ancillary sales. The Rural segment sells and distributes a range of agricultural supply products.

The company is headquartered in Acacia Ridge, Australia.

## CTI Logistics

CTI Logistics provides transport and logistics services in Australia. It operates through three segments: Logistics, Transport, and Property. The company offers transport services, such as couriers, parcels, taxi trucks, fleet management, heavy haulage, line haul, and freight forwarding services. It also provides warehousing and distribution services, including contracted distribution centre, overflow warehousing, temperature controlled storage, pick and pack, bulk product storage and stock control management services.

CTI Logistics is based in West Perth, Australia.

## Chalmers

Chalmers provides road transportation, logistic, warehousing, tank and container storage in Australia. It operates through Transport, Containers, and Property segments. The company offers container transportation services primarily for importers and exporters. It also provides logistic services, including packing and unpacking general and specialized cargo that comprises machinery, steel, wine, personal effects, and food stuffs; and handling of break bulk steel products. In addition, the company offers quarantine services; warehousing and distribution, cross docking/LCL deliveries and in-transit storage and reefer monitoring services. Further, it operates container parks that provide integrated container service facilities comprising handling, repair, sale, washing, and lining of containers.

Chalmers is headquartered in Yarraville, Australia.

# ANNEXURE C: SCHEME PLAN

## SCHEME PLAN

for a **scheme of arrangement** under Part 15 of the Companies Act 1993

between

**Fliway Group Limited** (Company No. 1870504) a duly incorporated company having its registered office at 66 Westney Road, Mangere, Manukau City 2022 (**Target**)

and

**Scheme Shareholders** (as defined below)

and

**Yang Kee Group (New Zealand) Pty Ltd** (Company No. 6513652) a duly incorporated company having its registered office at 48 Shortland Street, Auckland 1010 (**BidCo**)

and

**Yang Kee Logistics Pte Limited** (Company No. 199701491H) a duly incorporated company having its registered office at No. 8, Jurong Pier Road, Singapore 619160 (**Guarantor**)

### 1. Conditions

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The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date;
- (c) approval of this Scheme by the Court under section 236(1) of the Companies Act, including with any alterations made or required by the Court and agreed to in writing by Target, Bidco and Guarantor;
- (d) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to by Target, Bidco and Guarantor having been satisfied or waived; and
- (e) the orders of the Court made under section 236(1) of the Companies Act approving this Scheme coming into effect, pursuant to subsection 236(3) of the Companies Act on or before the End Date (or any later date Target and Guarantor agree in writing).

### 2. Scheme Consideration into trust accounts

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Subject to the Scheme Implementation Agreement not having been terminated, BidCo must deposit (or procure the deposit of) an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders in immediately available cleared funds in a New Zealand dollar denominated trust account operated by Target or the Registrar and notified to BidCo at least three Business Days prior to the Implementation Date, by no later than 4.00pm on the Business Day before the Implementation Date.

# ANNEXURE C: SCHEME PLAN (CONTINUED)

## 3. Implementation

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Subject to the conditions set out in clause 1 being satisfied and the Scheme Consideration having been deposited in accordance with clause 2, commencing at 9.00am on the Implementation Date and in the following order:

- (a) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo and Target must enter, or procure the entry of, the name of BidCo in the Register in respect of all of the Scheme Shares; and then
- (b) subject to compliance in full with clause 3(a), Target must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Scheme Record Date in accordance with clause 4.

## 4. Payment of the Scheme Consideration

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### 4.1 Method of payment

The payment under clause 3(b) will be satisfied by:

- (a) where a Scheme Shareholder has prior to the Scheme Record Date, made a valid election in accordance with the requirements of the Target and the Registrar to receive payments from the Target by electronic funds, transfer to a bank account nominated by that Scheme Shareholder, paying the relevant amount by electronic transfer in accordance with that election (unless the Target in its absolute discretion elects to make the payment in accordance with clause 4.1(b)); or
- (b) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).

### 4.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be forwarded to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

### 4.3 Surplus in trust accounts

To the extent that, following satisfaction of the obligations under clause 3(b), there is a surplus in the trust account referred to in clause 2, that surplus (less any amount retained under clause 4.5(b)) shall be immediately paid to BidCo.

#### 4.4 Unclaimed monies

Target may cancel a cheque issued under clause 4.1(b) if the cheque:

- (a) is returned to the Target; or
- (b) has not been presented for payment within six months after the Implementation Date.

#### 4.5 Orders of a court or Government Authority

Notwithstanding any other provision of this Scheme Plan, if written notice is given to the Target on or prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Authority that:

- (a) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 3(b), the Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the consideration from being provided to any particular Scheme Shareholder in accordance with clause 3(b), or the payment of such consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration) will be retained in the trust account referred to in clause 2 until such time as provision of the consideration to the Scheme Shareholder in accordance with clause 3(b) is permitted by that order or direction or otherwise by law. Any amount so retained under this clause 4.5(b) may be held by the Target or any of the Target's related companies, provided that BidCo procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of BidCo's and the Target's obligations under clause 3(b) with respect to the amount so provided or retained.

### 5. Dealing in Target Shares

#### 5.1 Recognition of dealings

To establish the identity of the Scheme Shareholders:

- (a) dealings in Target Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected through NZX's clearing and settlement system, the transferee is registered in the Register as the holder of the relevant Target Shares as at 5.00 pm on the Scheme Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00pm on the Scheme Record Date at the place where the Register is kept; and
- (b) the Target must not accept for registration, nor recognise for any purpose (except a transfer to BidCo pursuant to this Scheme Plan), any transfer or transmission application or other request received after 5.00 pm on the Scheme Record Date, or received prior to such times but not in registrable or actionable forms.

# ANNEXURE C: SCHEME PLAN

## (CONTINUED)

### 5.2 Register

- (a) The Target must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 5.1(a)(ii) on or before 5.00pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires the Target to register a transfer that:
- (i) relates to a transfer of Target Shares on which Target has a lien; or
  - (ii) would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'minimum holding' (for the purposes of this clause 5.2(a) 'minimum holding' has the meaning given in the NZX Main Board Listing Rules).
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, on or after the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and BidCo shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Register in accordance with the provisions of this clause 5.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Shares (other than statements of holding in favour of BidCo) will cease to have effect after 5.00pm on the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of BidCo) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Scheme Record Date and in any event by 5.00pm on that day, Target must make available to BidCo in the form BidCo reasonably requires, details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Register on the Scheme Record Date.

### 6. General provisions

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#### 6.1 Amendments to Scheme Consideration

BidCo may increase the Scheme Consideration by written notice at any time to the Target prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by the Target.

#### 6.2 Title to and rights in Scheme Shares

Each Scheme Shareholder is taken to have warranted to BidCo on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to BidCo together with any rights and entitlements attaching to those shares.

### 6.3 Authority given to Target

Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date irrevocably appoints Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against BidCo and the Guarantor (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and the Target, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 6.3 to one or more of the Target's officers.

### 6.4 Binding effect of Scheme

- (a) The Scheme binds:
  - (i) the Target;
  - (ii) the Guarantor;
  - (iii) BidCo; and
  - (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of the Target.

### 6.5 End Date

The Scheme must be implemented by the End Date. If the Scheme has not been implemented by the End Date, and is terminated by the Target or Guarantor in accordance with the terms of the Scheme Implementation Agreement, this Scheme Plan will become void and be of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to BidCo of any funds deposited in accordance with clause 2 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

### 6.6 Guarantor's guarantee

- (a) Guarantor guarantees, as primary obligor and not merely as surety, the due and punctual performance by BidCo of all of its obligations under this Scheme Plan and indemnifies the Scheme Shareholders against any loss or damage which they may suffer as a direct or indirect result of the breach by Bidco of any of its obligations under this Scheme Plan.
- (b) The Guarantor is not to be discharged, nor are the Guarantor's obligations to be affected, by any matter or thing which, but for this clause 6.6(b), would or might have discharged the Guarantor or affected its obligations, including:

## ANNEXURE C: SCHEME PLAN (CONTINUED)

- (i) the giving of time, credit or other indulgence or concession to BidCo, the Guarantor or any other person; or
- (ii) anything done or omitted to be done by a Scheme Shareholder or Target in the exercise or non-exercise of its right and powers; or
- (iii) BidCo or the Guarantor or other person being incompetent to be bound by this Scheme Plan or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provision of this Scheme Plan; or
- (iv) any release, discharge, compromise, or other arrangement given to or made with BidCo, the Guarantor or any other person; or
- (v) the dissolution of BidCo, any change in the status, function, control or ownership of BidCo, or any consolidation, merger or conveyance of BidCo; or
- (vi) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against BidCo,

it being the intention of the parties that the guarantee and obligations of the Guarantor are to be absolute and unconditional in all circumstances, and neither the Scheme Shareholders nor Target are under any liability to the Guarantor in respect of the items listed in this clause 6.6(b) even though the Guarantor's rights in subrogation may be prejudiced as a result.

- (c) If any payment made by or on behalf of BidCo to Target or Scheme Shareholders is avoided by law, that payment is not to be deemed to have discharged the liability of BidCo or the Guarantor in respect of it.
- (d) The rights of Target and Scheme Shareholders under this clause 6.6 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by BidCo of all of its obligations under this Scheme Plan.

### 6.7 **No liability when acting in good faith**

Each Scheme Shareholder agrees that none of the directors, officers or employees of the Target, BidCo or Guarantor, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

### 6.8 **Governing law**

This Scheme Plan is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Scheme Plan, its performance or subject matter.

## 7. **Definitions and interpretation**

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### 7.1 **Definitions**

In this Scheme Plan:

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which trading banks are generally open in Auckland, New Zealand for normal business;

**Companies Act** means the Companies Act 1993;

**Conditions** means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) of the Companies Act and approved in writing by the Target, the Guarantor and BidCo;

**Court** means the High Court of New Zealand, Auckland Registry;

**Deed Poll** means the deed poll entered into by BidCo and the Guarantor in favour of the Scheme Shareholders dated 7 November 2017;

**End Date** means 9.00 am on 31 May 2018 or such later date as the Guarantor, BidCo and the Target agree in writing;

**Final Orders Date** means the date on which final orders of the Court made under section 236(1) (and section 237, if applicable) of the Companies Act are granted;

**Government Authority** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**Implementation Date** means the day on which the Scheme is to be implemented, being the date four Business Days after the Scheme Record Date, or such other date as the Guarantor and the Target agree in writing;

**NZX** means NZX Limited;

**Register** means the register of Target Shares maintained by the Registrar on behalf of the Target;

**Registered Address** means, in relation to a Target Shareholder, the address shown in the Register as at the Scheme Record Date;

**Registrar** means LINK Market Service Limited;

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by the Guarantor and Target in writing;

**Scheme Booklet** means the notice of meeting and scheme booklet dated 21 November 2017 prepared by the Target in relation to the Scheme;

**Scheme Consideration** means NZ\$1.22 cash in respect of each Target Share held by a Scheme Shareholder or such other amount notified to the Target by the BidCo in accordance with clause 6.1;

**Scheme Implementation Agreement** means the scheme implementation agreement dated 25 October 2017 between BidCo, the Guarantor and the Target;

**Scheme Record Date** means 5.00pm on the date which is four Business Days after the later of the Final Orders Date, or such other date agreed between the Guarantor, BidCo and the Target in writing;

# ANNEXURE C: SCHEME PLAN

## (CONTINUED)

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Scheme Record Date;

**Scheme Shares** means all of the Target Shares on issue at the Scheme Record Date;

**Share** means an ordinary share in the capital of the Target;

**Shareholder** means a person who is registered in the Register as the holder of one or more Target Shares from time to time;

**Special Meeting** means the special meeting of Target Shareholders ordered by the Court to be convened pursuant to section 236A(2) of the Companies Act in respect of the Scheme (and includes any adjournment of that meeting); and

**Takeovers Code** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

### 7.2 Interpretation

In this Scheme Plan:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme Plan;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Authority, as well as an individual;
- (e) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Authority with legal power to do so);
- (g) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'NZ\$' or 'dollar' is to New Zealand currency, unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;
- (k) a reference to a party to a document includes that party's successors and permitted assignees; and
- (l) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

**7.3 Business Day**

Where the day on, or by which, any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day, unless otherwise indicated.

# ANNEXURE D: DEED POLL

## Deed Poll

relating to

a scheme of arrangement pursuant to Part 15 of the Companies Act 1993 involving Fliway Group Limited

**Yang Kee Group (New Zealand) Pty Ltd**  
BidCo

and

**Yang Kee Logistics Pte Limited**  
Guarantor

and

**Each registered holder of ordinary shares in the capital of Fliway Group Limited on issue as at the Scheme Record Date**  
Scheme Shareholders

Date

**BELL GULLY**

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET  
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND  
TEL 64 9 916 8800 FAX 64 9 916 8801

## BELL GULLY

This Deed Poll is made on 2017

by (1) Yang Kee Group (New Zealand) Pty Ltd (BidCo)

and by (2) Yang Kee Logistics Pte Limited (Guarantor)

in favour of (3) Each registered holder of ordinary shares in the capital of Fliway Group Limited on issue as at the Scheme Record Date (Scheme Shareholders)

### Introduction

- A. Fliway Group Limited (**Target**), BidCo and Guarantor are parties to the Scheme Implementation Agreement.
- B. Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Target, BidCo, Guarantor and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to BidCo and BidCo will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders.
- C. BidCo is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme Plan.
- D. Guarantor is entering into this Deed Poll for the purposes of undertaking in favour of Scheme Shareholders to guarantee BidCo's obligation to pay the Scheme Consideration to the Scheme Shareholders.

### It is declared

#### 1. Definitions and interpretation

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##### 1.1 Definitions

In this Deed Poll:

**Final Orders** means orders under section 236(1) (and section 237, if applicable) of the Companies Act in respect of the Scheme;

**Scheme Plan** means the scheme plan attached as Attachment 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Guarantor and Target in writing and which are disclosed to the Court prior to the Court making the Final Orders; and

**Unconditional** means the coming into effect pursuant to section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and the satisfaction of all Conditions,

and words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

# ANNEXURE D: DEED POLL (CONTINUED)

**BELL GULLY**

## 1.2 Interpretation

Sections 7.2 and 7.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to "this Scheme Plan" are to be read as reference to "this Deed Poll".

## 2. Nature of this Deed Poll

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### 2.1 Third party rights and appointment of attorney

BidCo and Guarantor each acknowledge that:

- (a) this Deed Poll is intended to confer a benefit upon, and therefore be relied upon and enforced by, any Scheme Shareholder in accordance with its terms under the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme Plan each Scheme Shareholder appoints Target and each of its directors as its agent and attorney to enforce this Deed Poll against BidCo and Guarantor on the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

Notwithstanding the foregoing, this Deed Poll may be varied by the parties to it in accordance with clause 8.2 without the approval of any Scheme Shareholder.

### 2.2 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (a) BidCo and Guarantor have fully performed their obligations under it; or
- (b) it is terminated under clause 3.2.

## 3. Conditions

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### 3.1 Conditions

This Deed Poll, and the obligations of BidCo and Guarantor under it, are conditional in all respects upon the Scheme becoming Unconditional.

### 3.2 Termination

The obligations of BidCo and Guarantor under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

- (a) the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional; or
- (b) the Scheme does not become Unconditional before the End Date,

unless Guarantor and Target otherwise agree in writing.

### 3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then BidCo and Guarantor are released from their obligations to further perform this Deed Poll.

## 4. Scheme Consideration

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Subject to clause 3, BidCo:

- (a) undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 4.00pm on the Business Day before the Implementation Date an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the trust accounts to be held and dealt with in accordance with clause 2 of the Scheme Plan; and
- (b) irrevocably acknowledges and agrees that, subject to compliance in full with clause 3(a) of the Scheme Plan, the Scheme Consideration deposited into the trust accounts referred to in clause 4(a) must be applied to Scheme Shareholders in satisfaction of their respective entitlements to receive the Scheme Consideration under the Scheme in accordance with the Scheme Plan.

## 5. Warranties

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BidCo and Guarantor each warrants in favour of each Scheme Shareholder that:

- (a) it is a company or other body corporate validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken, or will take, all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## 6. Guarantor guarantee

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### 6.1 Guarantee

Guarantor guarantees, as primary obligor and not merely as surety, the due and punctual performance by BidCo of all of its obligations under this Deed Poll.

### 6.2 No discharge

Clause 13.2 (No discharge) of the Scheme Implementation Agreement will apply *mutatis mutandis* to Guarantor's guarantee under clause 6.1 as if set out in full in this Deed Poll.

## ANNEXURE D: DEED POLL (CONTINUED)

BELL GULLY

### 7. Notices

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#### 7.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be in writing (which includes fax) and may be delivered or sent by post or email to BidCo and Guarantor as follows:

Address:  
Email address:  
For the attention of:

Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

#### 7.2 When notice given

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (c) if sent by email, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon delivery to the recipient's server,

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

#### 7.3 Proof of service

In proving service of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the email was properly addressed and transmitted as the case may be.

### 8. General

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#### 8.1 Waiver

- (a) BidCo and Guarantor may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 8.1(a):
  - (i) conduct includes a delay in exercising a right;
  - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and

**BELL GULLY**

- (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**8.2 Variation**

- (a) Subject to clauses 8.2(b) and 8.2(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between BidCo, Guarantor and Target, in which event BidCo and Guarantor will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that BidCo and Guarantor enter into a new deed poll which has the effect of reversing any variation under clause 8.2(b), then, if BidCo and Guarantor so agree, BidCo and Guarantor must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

**8.3 Cumulative rights**

The rights, powers and remedies of BidCo, Guarantor and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

**8.4 Assignment**

The rights and obligations of BidCo, Guarantor and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 8.4 is invalid.

**8.5 Further assurance**

Each of BidCo and Guarantor must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

**8.6 Governing law and jurisdiction**

- (a) This Deed Poll is governed by the laws in force in New Zealand.
- (b) BidCo and Guarantor each irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with any proceeding arising out of or in connection with this Deed Poll and irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- (c) Guarantor appoints BidCo as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Deed Poll.

# ANNEXURE D: DEED POLL (CONTINUED)

BELL GULLY

## Execution

Executed and delivered as a deed poll.

EXECUTED on behalf of Yang Kee Group (New Zealand) Pty Ltd by:



Director

Chang Ter Chiang

Print Name



Director

Koh Kien Chon

Print Name

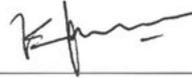
EXECUTED on behalf of Yang Kee Logistics Pte Limited by:



Director

Koh Yang Kee

Print Name



Director

Koh Kien Chon

Print Name

# ANNEXURE E: INITIAL COURT ORDERS

In the High Court of New Zealand  
Auckland Registry  
I Te Kōti Matua o Aotearoa  
Tāmaki Makaurau Rohe

CIV 2017-404-2704

Under Part 19 of the High Court Rules  
In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

**Fliway Group Limited**

Applicant

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**Initial orders under section 236 of the Companies Act  
1993 relating to an originating application for orders  
approving an arrangement under Part 15 of the  
Companies Act 1993**

**20 November 2017**

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**BELL GULLY**

BARRISTERS AND SOLICITORS

S V A EAST / R D H MASSEY  
COUNSEL FOR THE APPLICANT  
AUCKLAND LEVEL 22, VERO CENTRE, 48 SHORTLAND STREET  
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND  
TEL 64 9 916 8800 FAX 64 9 916 8801

## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

### BEFORE THE HONOURABLE JUSTICE MUIR

Monday 20 November 2017

The interlocutory application by Fliway Group Limited (**Fliway**) for initial orders relating to an originating application for approval of a scheme of arrangement under Part 15 of the Companies Act 1993, dated 13 November 2017, was determined by the Honourable Justice Muir on 20 November 2017. Upon hearing from S V A East and R D H Massey, counsel for the applicant, and upon reading the originating application for approval of a scheme of arrangement under Part 15 of the Companies Act 1993 dated 13 November 2017, the affidavits of Cheng Ter Chiang dated 8 November 2017, James William Sybertsma dated 9 November 2017, Michael Peter Stiasny dated 10 November 2017, Craig Hamilton Stobo dated 13 November 2017, Duncan John Hawkesby dated 13 November 2017, and Toby Greig Sharpe dated 13 November 2017, this Court makes orders:

#### Timetable

1. Confirming that unless otherwise advised by the Court, the Application for Final Orders will be heard at 10:00 am on 19 December 2017.

#### Service and representation

2. Directing:
  - (a) That formal service of the originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993 (the **Application for Final Orders**) and this ex parte interlocutory application for initial orders (the **Application for Initial Orders**) be dispensed with; and
  - (b) That representation in relation to the Application for Initial Orders be dispensed with.
3. Directing Fliway to serve all documents filed in this proceeding on the Takeovers Panel.



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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4. Directing that, except as provided in these orders or required by s 236A of the Companies Act 1993 (the **Act**):
- (a) Fliway is not required to serve any other documents on the persons specified in these orders; and
  - (b) if hearing of the Application for Final Orders is adjourned for any reason, Fliway is required only to serve those persons who are entitled to appear and be heard under paragraph 25 below with notice of the new hearing date.

**Confidentiality & orders that Court File not be searched**

5. Confirming the continuation of the orders made by this Court on 26 October 2017 that the originating application, all interlocutory applications, affidavits, and all other documents related to approval of the proposed scheme of arrangement (the **Scheme**) on the Court File shall not be searched, inspected or copied until such time as the Scheme Booklet (as defined at paragraph 14 below) has been distributed to Fliway shareholders in accordance with the orders at paragraph 15 below.

**Scheme Meeting**

6. Directing that:
- (a) Subject to subparagraph (b) below, all of the shareholders of Fliway are in a single interest class for the purposes of voting at the Scheme Meeting (as defined in paragraph 7(a) below);
  - (b) Notwithstanding subparagraph (a) above, if Yang Kee Group (New Zealand) Pty Limited (**YKNZ**) and Yang Kee Logistics Pte Limited (**Yang Kee**) or any of their related companies are shareholders of Fliway on the Shareholder Record Voting Date (as defined at paragraph 10(b) below) then the two interest classes of shareholders for the purpose of voting at the Scheme Meeting are:



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

- (i) Yang Kee, YKNZ and/or any of their related companies;  
and
  - (ii) All other shareholders.
7. Directing Fliway to:
- (a) hold a special meeting of the Fliway shareholders on 8 December 2017 at 3.00pm at the offices of Link Market Services, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010 (the **Scheme Meeting**); and
  - (b) at the Scheme Meeting, put the Scheme (as amended by Fliway before the Scheme Meeting in a manner consistent with these orders, if necessary) to the Fliway shareholders for consideration and approval in the manner specified in these orders (the **Resolution**).
8. Except as otherwise provided in these orders, requiring that the Scheme Meeting be conducted in accordance with Fliway's constitution and Schedule 1 and ss 121 – 125 of the Act (including in respect of the chairperson's power to adjourn the Scheme Meeting).
9. Directing that Fliway's chairman, Mr Craig Stobo, or his nominee act as the chairperson of the Scheme Meeting.
10. Directing that only holders of Fliway Shares whose names appear in the register of shareholders as at:
- (a) 5.00pm on 20 November 2017 (**Scheme Booklet Record Date**) are entitled to receive a Scheme Booklet (as defined at paragraph 14 below); and
  - (b) 5.00pm on 6 December 2017 (**Shareholder Voting Record Date**) are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof.
11. Directing that:



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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- (a) to be valid, all completed proxy votes must be received by Link by no later than 3.00 pm on 6 December 2017 (New Zealand time). **(Proxy Deadline)** and can be submitted:
- (i) online: at Link Market Services website and following the instructions. (<https://investorcentre.linkmarketservices.co.nz/voting/FLI>). Voters will be required to enter their holder number and FIN for security purposes;
  - (ii) by mail: by sending to: Link Market Services Limited, PO Box 91976, Auckland 1142;
  - (iii) in person: by delivering to: Link Market Services Limited, Level 11, Deloitte Centre, 80 Queen Street, Auckland 1010.
  - (iv) by fax: +64 9 375 5990; or
  - (v) by email: to [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz) (using "Fliway Proxy Form" as the subject for easy identification).
- (b) Fliway is entitled to disregard any proxy votes received after the Proxy Deadline; but
- (c) Fliway may waive, in its discretion, the Proxy Deadline if it deems such waiver to be in its best interests and in the best interests of Fliway shareholders as a whole.
12. Directing that voting is to be by way of a poll, rather than by a show of hands.
13. Directing that the Resolution shall be approved if it is passed:
- (a) by a majority of 75% of the votes of the shareholders in each interest class entitled to vote and voting; and
  - (b) a simple majority of the votes of those shareholders entitled to vote.



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

### Notice of Scheme Meeting and information for shareholders

#### *Notice of Meeting and Scheme Booklet*

14. Directing Fliway to give notice of the Scheme, Scheme Meeting, and Application for Final Orders by distributing a booklet including the following sections, which is attached as exhibit [DJH-17] of the affidavit of Duncan John Hawkesby dated 13 November 2017 (the **Scheme Booklet**), which collectively will constitute part (though not necessarily all) of the materials to be sent to Shareholders, in accordance with paragraph 15 below:
- (a) A summary of the key times and dates relevant to the Scheme;
  - (b) A letter from the chairman of Fliway's board of directors addressed to Shareholders;
  - (c) A section highlighting the action required by Shareholders in respect of the Scheme;
  - (d) A "Frequently Asked Questions" section;
  - (e) A section setting out key considerations relating to shareholders' votes;
  - (f) A more detailed explanation of the Scheme, explaining in detail how the Scheme will be implemented;
  - (a) Information about YKNZ and Yang Kee;
  - (g) Further information about YKNZ. This is intended to be the equivalent to the information shareholders would receive under Schedule 1 of the Takeovers Code had YKNZ made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
  - (h) Further information about Fliway. This is intended to be the equivalent to the information shareholders would receive under Schedule 2 of the Takeovers Code, if YKNZ had made a takeover



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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offer under the Takeovers Code, instead of proceeding by a scheme of arrangement;

- (i) A summary of the Scheme Implementation Agreement;
- (j) A glossary;
- (k) A notice of meeting including or accompanied by:
  - (i) The formal notice of meeting;
  - (ii) Explanatory notes providing procedural details; and
  - (iii) A proxy form for use by shareholders for appointment of a proxy to vote at the Scheme Meeting;
- (l) An independent report prepared by KordaMentha and addressed to Fliway shareholders regarding the Scheme;
- (m) A copy of the Scheme Plan;
- (n) A copy of the Deed Poll;
- (o) Copies of the orders made by the Court following the hearing of the Application for Initial Orders; and
- (p) A copy of the Application for Final Orders.

***Distribution of Notice of Scheme Meeting and Scheme Booklet***

15. Requiring Fliway to:

- (a) distribute the approved Scheme Booklet at least 10 working days before the Scheme Meeting by sending it in accordance with paragraph (b) below to:
  - (i) all Fliway directors;
  - (ii) Fliway's auditors;



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

- (iii) all Fliway shareholders listed on Fliway's share register as at the Scheme Booklet Record Date; and
- (b) send the approved Scheme Booklet to Fliway shareholders in terms of the preceding paragraph by sending it to the Shareholders' address as recorded on Fliway's share register at 5 pm on the Scheme Booklet Record Date in:
  - (i) electronic format to all shareholders who have elected to receive documents from Fliway in electronic form only.
  - (ii) in respect of those New Zealand resident shareholders who have not so elected, by fast post.
  - (iii) in respect of any foreign shareholders who have not so elected and who have provided a physical address, by international express courier.
  - (iv) in respect of any foreign shareholders who have not so elected and for whom no physical address is available, by international air mail post to the relevant box number.
- (c) provide on request a copy of the approved Scheme Booklet to any other person who becomes a Fliway shareholder and entitled to vote on the Resolution after the Scheme Booklet Record Date but before the Shareholder Voting Record Date;
- (d) make hard copies of the approved Scheme Booklet available for inspection and removal from Fliway's offices at 66 Westney Road, Mangere, Manukau City 2022, from 20 November 2017; and
- (e) make electronic copies of the approved Scheme Booklet available for inspection and download from Fliway's website, from 20 November 2017.



16. Directing that the Scheme Booklet be deemed to have been received by all those to whom it was ordered to be sent 48 hours after it is sent in accordance with paragraph 15(b) above.

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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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17. Granting leave to Fliway to effect service outside the jurisdiction in the manner referred to in paragraph 15(b) above.
18. Directing that the approved Scheme Booklet be lodged on NZX's market announcement platform prior to its distribution to Shareholders.
19. Directing that if Fliway accidentally fails or omits to send a Scheme Booklet to any person specified in paragraph 15(a) above or the Scheme Booklet is not received by any such person:
  - (a) any such failure or omission does not constitute a breach of the orders made in relation to the Scheme or invalidate any Resolution passed or proceedings taken at the Scheme Meeting, but
  - (b) where any such failure or omission is brought to Fliway's attention, Fliway shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

***Amendment of Scheme Plan or Notice of Scheme Meeting and Scheme Booklet***

20. Directing that Fliway may make such amendments to materials contained in the Scheme Booklet as it may determine are in its best interests or the best interests of its shareholders, other affected or properly interested persons. If the Scheme Plan or Resolution are amended, it will be the Scheme Plan or Resolution as amended that are put to shareholders for consideration and approval. Where possible, any such amendments to materials in the Scheme Booklet will be:
  - (a) made before Fliway distributes the Scheme Booklet to shareholders and any other person identified in paragraph 15(a) or directed to be served with this application; but
  - (b) if any material amendment to a document contained in the Scheme Booklet is made after the Scheme Booklet is distributed to Fliway shareholders and any other person directed to be



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

served with this application and more than 72 hours before the Scheme Meeting (including any adjournment of the Scheme Meeting) (**Announcement Window**), Fliway will notify those persons of such amendments in accordance with paragraph 15(b)(i) to (iv) above, and additionally by lodging a notice on NZX's market announcement platform.

### **Advertisement**

21. Approving the draft advertisement regarding the Scheme Meeting and shareholders' and others' rights of opposition to the Scheme attached as exhibit [DJH-18] to the affidavit of Duncan John Hawkesby dated 13 November 2017 (the **Approved Advertisement**).
22. Requiring Fliway to advertise the Scheme Meeting, at least 10 working days before the Scheme Meeting, by publishing an advertisement that is in the same or substantially the same format as the Approved Advertisement, in the following major daily newspapers:
  - (a) New Zealand Herald;
  - (b) Waikato Times;
  - (c) Dominion Post;
  - (d) Christchurch Press;
  - (e) Otago Daily Times;
  - (f) Taranaki Daily News; and
  - (g) The Southland Times.

### **Reporting of the results of the Scheme Meeting**

23. Requiring Fliway to notify the outcome of the Scheme Meeting by:
  - (a) lodging the results on NZX's market announcement platform as soon as practicable after voting at the Scheme Meeting is complete; and



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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- (b) serving written notice on persons entitled under paragraph 27 below to appear and be heard at the hearing of the Application for Final Orders. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete.

24. Requiring Fliway, as soon as reasonably practicable after 8 December 2017, and in any event prior to the Court's consideration of the Application for Final Orders, to cause to be filed with the Court, and served on any party who has filed a notice or an application for leave under the orders at paragraphs 25 or 26 (as applicable) at the relevant address for service, an affidavit or affidavits:

- (a) verifying compliance with the requirements of the orders made following hearing of this Application for Initial Orders;
- (b) including confirmation of:
  - (i) the Resolution voted on at the Scheme Meeting;
  - (ii) in respect of each interest class of shareholders, the number of votes cast for and against the Resolution;
  - (iii) the number of shareholders voting in favour of the Resolution; and
  - (iv) the proportion of the total number of voting rights that were voted in favour of the Resolution.

**Rights of opposition**

25. Directing that any shareholder who wishes to appear and be heard on the Application for Final Orders must, by 5:00pm on Tuesday 12 December 2017, file and serve on Fliway at 66 Westney Road, Mangere, Manukau City, 2022, New Zealand, or by email at [fliwayenquiries@fliway.com](mailto:fliwayenquiries@fliway.com):

- (a) a notice of appearance (containing an address for service); or
- (b) if they oppose the Application for Final Orders:



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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## ANNEXURE E: INITIAL COURT ORDERS (CONTINUED)

- (i) a notice of opposition (containing an address for service), any affidavit(s); and
  - (ii) a memorandum of submissions on which they intend to rely.
26. Directing that any other person who considers that they have a proper interest in the Scheme and who wishes to appear and be heard on the Application for Final Orders to file and serve on Fliway at 66 Westney Road, Mangere, Manukau City, 2022, New Zealand, or by email at [fliwayenquiries@fliway.com](mailto:fliwayenquiries@fliway.com) by 5:00pm on Tuesday 12 December 2017, an application for leave to be heard on the Application for Final Orders (containing an address for service), a notice of opposition, any affidavit(s) and a memorandum of submissions.
27. Directing that the only persons entitled to appear and be heard at the Application for Final Orders are:
- (a) Fliway;
  - (b) the Takeovers Panel;
  - (c) those persons who file a notice of appearance or opposition in accordance with paragraph 25 above;
  - (d) those persons who are granted leave pursuant to an application made in accordance with paragraph 26 above;
  - (e) YKNZ; and
  - (f) Yang Kee.
28. Requiring Fliway by 5:00pm on 13 December 2017 to serve (at the stated address for service) a copy of all documents filed in support of the Application for Final Orders upon any person entitled under paragraphs 25 and 26 to appear and be heard at the Application for Final Orders as well as file and serve any papers in reply.



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Initial orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

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**Leave to return to Court at short notice**

29. Granting leave to Fliway or any other person entitled under paragraph 27 above to appear and be heard at the Application for Final Orders to apply for further orders on 24 hours' notice.



Date: 20 November 2017

  
.....  
Registrar/Deputy Registrar

**R KUMAR  
DEPUTY REGISTRAR**



# ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS

In the High Court of New Zealand                      CIV  
Auckland Registry  
I Te Kōti Matua o Aotearoa  
Tāmaki Makaurau Rohe

Under Part 19 of the High Court Rules

In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

**Fliway Group Limited**, a duly incorporated company, having its registered  
office at 66 Westney Road, Mangere, Manukau City, 2022, New Zealand  
Applicant

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**Originating application for orders approving a scheme of  
arrangement under Part 15 of the Companies Act 1993**

**13 November 2017 (As amended 20 November 2017)**

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**BELL GULLY**  
BARRISTERS AND SOLICITORS

S V A EAST / R O H MASSEY  
COUNSEL FOR THE APPLICANT  
AUCKLAND LEVEL 22, VERO CENTRE, 48 SHORTLAND STREET  
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND  
TEL 64 9 916 8800 FAX 64 9 916 8801

**ORIGINATING APPLICATION FOR ORDERS APPROVING A SCHEME OF ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

**To:** The Registrar of the High Court at Auckland

**And to:** Persons directed to be served in the initial orders obtained following a hearing on 20 November 2017.

**This document notifies you that –**

1. The applicant will at 10:00 am on 19 December 2017 apply to the Court for orders that:
  - (a) the scheme of arrangement described in the Scheme Plan (a draft of which is located at Schedule 1 of this application and the final version of which will be submitted to the Court prior to the hearing of this application) (the **Scheme**) is approved and binding upon:
    - (i) Fliway Group Limited (**Fliway**);
    - (ii) Yang Kee Logistics Pte Limited (**Yang Kee**);
    - (iii) Yang Kee Group (New Zealand) Pty Limited (Company No. 6513652) (**YKNZ**); and
    - (iv) Every person who is a Scheme Shareholder in terms of the Scheme Plan; and
  - (b) Fliway is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.
2. The grounds on which each of the above orders is sought are:
  - (a) section 236(1) of the Companies Act 1993 (the **Act**) provides jurisdiction for the Court to make orders that the Scheme is binding on Fliway and such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit;

## ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

- (b) section 237(1) of the Act provides jurisdiction for the Court to make additional orders to give effect to the Scheme;
- (c) by the date on which this application is determined, Fliway will have:
  - (i) complied with the initial orders made by this Court under s 236(2) of the Act following a hearing on 20 November 2017;
  - (ii) complied with Part 15 of the Act;
  - (iii) held a meeting of shareholders at which shareholders will have voted to approve the Scheme in accordance with s 236A(2)(a) and s 236A(4) of the Act; and
  - (iv) filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to the orders being made, in accordance with s 236A(2)(b)(ii) of the Act;
- (d) the Scheme is such that an intelligent and honest person of business acting in respect of his or her own interest would reasonably approve it.

3. This application is made in reliance on:

- (a) Part 15 of the Act;
- (b) Parts 7 and 19 of the High Court Rules (**Rules**);
- (c) the submissions of counsel filed in support of the ex parte interlocutory application for initial orders;
- (e) the evidence filed in support of this application as set out in the affidavits of:
  - (i) Cheng Ter Chiang dated 8 November 2017;
  - (ii) James William Sybertsma dated 9 November 2017;
  - (iii) Michael Peter Stiassny dated 10 November 2017;

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Originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993

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- (iv) Craig Hamilton Stobo dated 13 November 2017;
- (v) Duncan John Hawkesby dated 13 November 2017; and
- (vi) Toby Greig Sharpe dated 13 November 2017;
- (d) any further affidavit filed by the applicant prior to the hearing of this application; and
- (e) further memoranda of counsel to be filed prior to the hearing of this application.

Dated 13 November 2017



.....  
S V A East  
Solicitor for the applicant

This document is filed by Sophie Virginia Addison East, solicitor for the applicant, of the firm Bell Gully. The address for service of the Plaintiff is at the offices of Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland.

Documents for service on the applicant may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 4199, Auckland; or
- (b) left for the solicitor at a document exchange for direction to DX CP20509, Auckland; or
- (c) transmitted to the solicitor by facsimile to facsimile number +64 9 916 8801.

# ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

## SCHEME PLAN

for a scheme of arrangement under Part 15 of the Companies Act 1993

between

**Fliway Group Limited** (Company No. 1870504) a duly incorporated company having its registered office at 66 Westney Road, Mangere, Manukau City 2022 (**Target**)

and

**Scheme Shareholders** (as defined below)

and

**Yang Kee Group (New Zealand) Pty Ltd** (Company No. 6513652) a duly incorporated company having its registered office at 48 Shortland Street, Auckland 1010 (**BidCo**)

and

**Yang Kee Logistics Pte Limited** (Company No. 199701491H) a duly incorporated company having its registered office at No. 8, Jurong Pier Road, Singapore 619160 (**Guarantor**)

### 1. Conditions

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The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date;
- (c) approval of this Scheme by the Court under section 236(1) of the Companies Act, including with any alterations made or required by the Court and agreed to in writing by Target, Bidco and Guarantor;
- (d) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to by Target, Bidco and Guarantor having been satisfied or waived; and
- (e) the orders of the Court made under section 236(1) of the Companies Act approving this Scheme coming into effect, pursuant to subsection 236(3) of the Companies Act on or before the End Date (or any later date Target and Guarantor agree in writing).

### 2. Scheme Consideration into trust accounts

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Subject to the Scheme Implementation Agreement not having been terminated, BidCo must deposit (or procure the deposit of) an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme

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Originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993

Shareholders in immediately available cleared funds in a New Zealand dollar denominated trust account operated by Target or the Registrar and notified to BidCo at least three Business Days prior to the Implementation Date, by no later than 4.00pm on the Business Day before the Implementation Date.

### 3. Implementation

---

Subject to the conditions set out in clause 1 being satisfied and the Scheme Consideration having been deposited in accordance with clause 2, commencing at 9.00am on the Implementation Date and in the following order:

- (a) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo and Target must enter, or procure the entry of, the name of BidCo in the Register in respect of all of the Scheme Shares; and then
- (b) subject to compliance in full with clause 3(a), Target must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Scheme Record Date in accordance with clause 4.

### 4. Payment of the Scheme Consideration

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#### 4.1 Method of payment

The payment under clause 3(b) will be satisfied by:

- (a) where a Scheme Shareholder has prior to the Scheme Record Date, made a valid election in accordance with the requirements of the Target and the Registrar to receive payments from the Target by electronic funds, transfer to a bank account nominated by that Scheme Shareholder, paying the relevant amount by electronic transfer in accordance with that election (unless the Target in its absolute discretion elects to make the payment in accordance with clause 4.1(b)); or
- (b) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).

#### 4.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of the Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be forwarded to either, at the sole discretion of the Target, the holder

## ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

### 4.3 Surplus in trust accounts

To the extent that, following satisfaction of the obligations under clause 3(b), there is a surplus in the trust account referred to in clause 2, that surplus (less any amount retained under clause 4.5(b)) shall be immediately paid to BidCo.

### 4.4 Unclaimed monies

Target may cancel a cheque issued under clause 4.1(b) if the cheque:

- (a) is returned to the Target; or
- (b) has not been presented for payment within six months after the Implementation Date.

### 4.5 Orders of a court or Government Authority

Notwithstanding any other provision of this Scheme Plan, if written notice is given to the Target on or prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Authority that:

- (a) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 3(b), the Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the consideration from being provided to any particular Scheme Shareholder in accordance with clause 3(b), or the payment of such consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration) will be retained in the trust account referred to in clause 2 until such time as provision of the consideration to the Scheme Shareholder in accordance with clause 3(b) is permitted by that order or direction or otherwise by law. Any amount so retained under this clause 4.5(b) may be held by the Target or any of the Target's related companies, provided that BidCo procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of BidCo's and the Target's obligations under clause 3(b) with respect to the amount so provided or retained.

## 5. Dealing in Target Shares

### 5.1 Recognition of dealings

To establish the identity of the Scheme Shareholders:

- (a) dealings in Target Shares will only be recognised if:

- (i) in the case of dealings of the type to be effected through NZX's clearing and settlement system, the transferee is registered in the Register as the holder of the relevant Target Shares as at 5.00 pm on the Scheme Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00pm on the Scheme Record Date at the place where the Register is kept; and
- (b) the Target must not accept for registration, nor recognise for any purpose (except a transfer to BidCo pursuant to this Scheme Plan), any transfer or transmission application or other request received after 5.00 pm on the Scheme Record Date, or received prior to such times but not in registrable or actionable forms.

## 5.2 Register

- (a) The Target must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 5.1(a)(ii) on or before 5.00pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires the Target to register a transfer that:
- (i) relates to a transfer of Target Shares on which Target has a lien; or
  - (ii) would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'minimum holding' (for the purposes of this clause 5.2(a) 'minimum holding' has the meaning given in the NZX Main Board Listing Rules).
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, on or after the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and BidCo shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Register in accordance with the provisions of this clause 5.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Shares (other than statements of holding in favour of BidCo) will cease to have effect after 5.00pm on the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of BidCo) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Scheme Record Date and in any event by 5.00pm on that day, Target must make available to BidCo in the form BidCo reasonably requires, details of the names, Registered Addresses and holdings of Target Shares for each

## ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

Scheme Shareholder as shown in the Register on the Scheme Record Date.

### 6. General provisions

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#### 6.1 Amendments to Scheme Consideration

BidCo may increase the Scheme Consideration by written notice at any time to the Target prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by the Target.

#### 6.2 Title to and rights in Scheme Shares

Each Scheme Shareholder is taken to have warranted to BidCo on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to BidCo together with any rights and entitlements attaching to those shares.

#### 6.3 Authority given to Target

Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date irrevocably appoints Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against BidCo and the Guarantor (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Target and each of its directors (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and the Target, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 6.3 to one or more of the Target's officers.

#### 6.4 Binding effect of Scheme

- (a) The Scheme binds:
  - (i) the Target;
  - (ii) the Guarantor;
  - (iii) BidCo; and

- (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of the Target.

#### 6.5 End Date

The Scheme must be implemented by the End Date. If the Scheme has not been implemented by the End Date, and is terminated by the Target or Guarantor in accordance with the terms of the Scheme Implementation Agreement, this Scheme Plan will become void and be of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to BidCo of any funds deposited in accordance with clause 2 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

#### 6.6 Guarantor's guarantee

- (a) Guarantor guarantees, as primary obligor and not merely as surety, the due and punctual performance by BidCo of all of its obligations under this Scheme Plan and indemnifies the Scheme Shareholders against any loss or damage which they may suffer as a direct or indirect result of the breach by BidCo of any of its obligations under this Scheme Plan.
- (b) The Guarantor is not to be discharged, nor are the Guarantor's obligations to be affected, by any matter or thing which, but for this clause 6.6(b), would or might have discharged the Guarantor or affected its obligations, including:
  - (i) the giving of time, credit or other indulgence or concession to BidCo, the Guarantor or any other person; or
  - (ii) anything done or omitted to be done by a Scheme Shareholder or Target in the exercise or non-exercise of its right and powers; or
  - (iii) BidCo or the Guarantor or other person being incompetent to be bound by this Scheme Plan or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provision of this Scheme Plan; or
  - (iv) any release, discharge, compromise, or other arrangement given to or made with BidCo, the Guarantor or any other person; or
  - (v) the dissolution of BidCo, any change in the status, function, control or ownership of BidCo, or any consolidation, merger or conveyance of BidCo; or
  - (vi) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against BidCo.

it being the intention of the parties that the guarantee and obligations of the Guarantor are to be absolute and unconditional in all circumstances,

## ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

and neither the Scheme Shareholders nor Target are under any liability to the Guarantor in respect of the items listed in this clause 6.6(b) even though the Guarantor's rights in subrogation may be prejudiced as a result.

- (c) If any payment made by or on behalf of BidCo to Target or Scheme Shareholders is avoided by law, that payment is not to be deemed to have discharged the liability of BidCo or the Guarantor in respect of it.
- (d) The rights of Target and Scheme Shareholders under this clause 6.6 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by BidCo of all of its obligations under this Scheme Plan.

### 6.7 No liability when acting in good faith

Each Scheme Shareholder agrees that none of the directors, officers or employees of the Target, BidCo or Guarantor, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

### 6.8 Governing law

This Scheme Plan is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Scheme Plan, its performance or subject matter.

## 7. Definitions and interpretation

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### 7.1 Definitions

In this Scheme Plan:

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which trading banks are generally open in Auckland, New Zealand for normal business;

**Companies Act** means the Companies Act 1993;

**Conditions** means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) of the Companies Act and approved in writing by the Target, the Guarantor and BidCo;

**Court** means the High Court of New Zealand, Auckland Registry;

**Deed Poll** means the deed poll entered into by BidCo and the Guarantor in favour of the Scheme Shareholders dated 7 November 2017;

**End Date** means 9.00 am on 31 May 2018 or such later date as the Guarantor, BidCo and the Target agree in writing;

**Final Orders Date** means the date on which final orders of the Court made under section 236(1) (and section 237, if applicable) of the Companies Act are granted;

**Government Authority** means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**Implementation Date** means the day on which the Scheme is to be implemented, being the date four Business Days after the Scheme Record Date, or such other date as the Guarantor and the Target agree in writing;

**NZX** means NZX Limited;

**Register** means the register of Target Shares maintained by the Registrar on behalf of the Target;

**Registered Address** means, in relation to a Target Shareholder, the address shown in the Register as at the Scheme Record Date;

**Registrar** means LINK Market Service Limited;

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by the Guarantor and Target in writing;

**Scheme Booklet** means the notice of meeting and scheme booklet dated 20 November 2017 prepared by the Target in relation to the Scheme;

**Scheme Consideration** means NZ\$1.22 cash in respect of each Target Share held by a Scheme Shareholder or such other amount notified to the Target by the BidCo in accordance with clause 6.1;

**Scheme Implementation Agreement** means the scheme implementation agreement dated 25 October 2017 between BidCo, the Guarantor and the Target;

**Scheme Record Date** means 5.00pm on the date which is four Business Days after the later of the Final Orders Date, or such other date agreed between the Guarantor, BidCo and the Target in writing;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Scheme Record Date;

**Scheme Shares** means all of the Target Shares on issue at the Scheme Record Date;

**Share** means an ordinary share in the capital of the Target;

**Shareholder** means a person who is registered in the Register as the holder of one or more Target Shares from time to time;

**Special Meeting** means the special meeting of Target Shareholders ordered by the Court to be convened pursuant to section 236A(2) of the Companies Act in respect of the Scheme (and includes any adjournment of that meeting); and

# ANNEXURE F: APPLICATION FOR FINAL COURT ORDERS (CONTINUED)

**Takeovers Code** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

## 7.2 Interpretation

In this Scheme Plan:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme Plan;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Authority, as well as an individual;
- (e) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Authority with legal power to do so);
- (g) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'NZ\$' or 'dollar' is to New Zealand currency, unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;
- (k) a reference to a party to a document includes that party's successors and permitted assignees; and
- (l) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

## 7.3 Business Day

Where the day on, or by which, any thing is to be done is not a Business Day that thing must be done on or by the next Business Day, unless otherwise indicated.



# DIRECTORY

## DIRECTORS

Craig Stobo, Chairman  
Duncan Hawkesby, Managing Director  
Alan Isaac

## SENIOR MANAGEMENT TEAM

Duncan Hawkesby  
Managing Director  
Jim Sybertsma  
Chief Financial Officer  
Cameron McKeown  
General Manager Domestic  
Jon Gundy  
General Manager International  
Colin Burrow  
Chief Information Officer  
Kate Bacchus  
General Manager People

## SOLICITORS

Bell Gully

## FINANCIAL ADVISER

FNZC

## SHARE REGISTRAR

Link Market Services Limited  
Level 11, Deloitte Centre,  
80 Queen Street, Auckland 1010  
PO Box 91976  
Auckland 1142

**Email:** [meetings@linkmarketservices.co.nz](mailto:meetings@linkmarketservices.co.nz)

**Website:** [www.linkmarketservices.co.nz](http://www.linkmarketservices.co.nz)

## SHAREHOLDER INFORMATION LINE

Between 8.30am and 5.00pm, Monday to Friday

**Telephone:** +64 9 375 5998

**Facsimile:** +64 9 488 8787

## FLIWAY GROUP LIMITED

### Registered office and address for service

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