

COMPLETED ACQUISITION by FNZ (AUSTRALIA) BIDCO PTY LTD OF GBST HOLDINGS LIMITED

Final Undertakings given by Kiwi Holdco CayCo, Ltd (KHC), FNZ (Australia) Bidco Pty Ltd (FNZ (Australia)), FNZ (UK) Ltd (FNZ UK) (together FNZ), Falcon General Partner LLC, Falcon LP and Falcon Newco Limited (together, Falcon), Caisse de dépôt et placement du Québec (CDPQ) and Generation Investment Management LLP (GIM) and GBST Holdings Limited to the Competition and Markets Authority pursuant to section 82 of the Enterprise Act 2002

Background

- A. On 5 November 2019, FNZ (Australia) Bidco Pty Ltd (**'FNZ (Australia)'**) acquired GBST Holdings Limited (**'GBST'**) (the **'Merger'**).
- B. On 8 April 2020, the Competition and Markets Authority (the **'CMA'**), in accordance with section 22(1) of the Enterprise Act 2002 (the **'Act'**), referred the Merger to a group of CMA panel members to determine, pursuant to section 35 of the Act:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**'SLC'**) in any market or markets in the United Kingdom (**'UK'**) for goods or services.
- C. On 13 May 2020, the CMA made an interim order (**'IO'**) pursuant to section 81(2) of the Act for the purpose of preventing pre-emptive action in accordance with that section and replacing the Initial Enforcement Order made on 22 November 2019. On 13 May 2020, the CMA issued directions under the IO for the appointment of a monitoring trustee (the **'Monitoring Trustee'**) in order to monitor and ensure compliance with the IO.

- D. On 5 November 2020, the CMA published a final report pursuant to section 38 of the Act (the '**Phase 2 Report**') which concluded that:
- (a) the Merger has created a relevant merger situation;
 - (b) the creation of that situation has resulted in, or may be expected to result, in an SLC in relation to the supply of Retail Platform Solutions, excluding in-house software in the UK; and
 - (c) the CMA should take action to remedy the SLC found and any adverse effects resulting from it.
- E. On 2 December 2020, FNZ made an application to the Competition Appeal Tribunal ('**CAT**') pursuant to section 120 of the Act for a review of the CMA's decision in the Phase 2 Report.
- F. On 21 January 2021, the CAT, following the CMA's request, ordered the remittal of the Phase 2 Report to the CMA in respect of the finding of the SLC (paragraph 10.2 of the Phase 2 Report) and the final decision as to the remedy (paragraph 11.379 of the Phase 2 Report).
- G. On 25 January 2021, the CMA appointed a group of CMA panel members to further investigate and report on the Merger.
- H. On 4 June 2021, the CMA published its final report on the Merger (**Final Report**) pursuant to section 35(1) of the Act, which concluded that:
- (a) the Merger has created a relevant merger situation;
 - (b) the creation of that situation has resulted in, or may be expected to result, in an SLC in relation to the supply of Retail Platform Solutions, in the UK; and
 - (c) the CMA should take action to remedy the SLC found and any adverse effects resulting from it.
- I. The CMA, having regard to its findings in the Final Report, requires the divestiture of GBST, or the divestiture of GBST with the right for FNZ to buy-back certain assets of the Capital Markets business (**Buy-back Assets**) subsequent to GBST's sale, in line with the parameters set out in Annex 1 (the '**Remedy**').
- J. The implementation of the Remedy will be subject to the following safeguards:
- (a) FNZ, will be subject to regular reporting requirements to the CMA in accordance with paragraph 10.

- (b) The Monitoring Trustee, appointed in accordance with paragraph 6, will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedy.
- (c) The scope and terms of any negotiations are set out in Annex 1.
- (d) The purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 2.
- (e) The CMA will have oversight of the appointment and services provided by any Separation Consultant in line with the criteria outlined in paragraph 9.
- (f) These Final Undertakings include provisions enabling the CMA to direct the appointment of:
 - (1) a Divestiture Trustee to effect the Final Disposal of GBST in accordance with the conditions set out at paragraph 11; and
 - (2) a Hold Separate Manager to act as an independent interim manager with executive powers to manage the business of GBST in accordance with the conditions set out at paragraph 15.
- K. The Interim Order ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings.
- L. Each of FNZ and GBST gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects resulting from it. In addition, each of CDPQ, Falcon and GIM, gives on behalf of itself, and where relevant, its Subsidiaries or Affiliates, the undertakings as set out at paragraph 3.8.

1. Interpretation

- 1.1. The purpose of these Final Undertakings is to give effect to the Remedy identified in the Final Report and they shall be construed in accordance with the Final Report.
- 1.2. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Final Report (as appropriate).

- 1.3. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5. References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 1.6. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 1.7. The annexes form part of these Final Undertakings.
- 1.8. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 1.9. A reference to a body corporate or incorporate includes a reference to its successor in title.
- 1.10. Further in these Final Undertakings:

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| the ' Act ' | means the Enterprise Act 2002; |
| 'Affiliate' | means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act ; |
| 'Approved Purchaser' | means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 2; |
| 'Approved Timetable' | means the timetable notified by the CMA to FNZ in accordance with paragraph 10.1; |
| 'Asset Maintenance Undertakings' | means those undertakings set out in paragraph 4; |

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| ‘Associated Person’ | means a person who is an associated person within the meaning of section 127 of the Act ; |
| ‘business’ | has the meaning given by section 129(1) and (3) of the Act ; |
| ‘Buy-back Assets’ | means Global GBST Capital Market Assets , as set out in Annex 1 as agreed by the CMA. |
| ‘CDPQ’ | means Caisse de dépôt et placement du Québec, a business with its head office at Édifice Price 65, rue Sainte-Anne, 14th Floor Québec, Québec G1R 3X5 with NEQ 8812257473 and its Subsidiaries ; |
| ‘CMA’ | means the Competition and Markets Authority; |
| ‘Commencement Date’ | means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act ; |
| ‘Confidential Information’ | means business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature; |

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| ‘control’ | includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act ; |
| ‘Divestiture Period’ | means the period starting with the Commencement Date and ending [✂] after the Commencement Date or such longer period as the CMA may approve in accordance with paragraph 20; |
| ‘Divestiture Trustee’ | means a person appointed in accordance with paragraph 11; |
| ‘Divestiture Undertakings’ | means those undertakings set out in paragraph 3; |
| ‘Falcon’ | means Falcon General Partner LLC, Falcon LP and Falcon Newco Limited; |
| ‘Falcon General Partner LLC’ | means a company incorporated in the United States of America, at registered address c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 with file number 7081631; |
| ‘Falcon LP’ | means a partnership incorporated in Canada, at registered address 9 Wellington Street West, Toronto, Ontario, Canada, with registered number 281050625; |
| ‘Falcon Newco Limited’ | means a company incorporated in the Cayman Islands, at registered address 89 Nexus Way, Camana Bay, Grand Cayman Ky1-9009, Cayman Islands with registration number 343271; |
| ‘Final Disposal’ | means the completion of the divestiture of GBST in accordance with the Final Undertakings to an Approved |

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| | Purchaser; |
| ‘Final Report’ | means the CMA’s report titled ‘Completed acquisition by FNZ of GBST’ dated 4 June 2021; |
| FIRB | means the Australian Financial Investment Review Board |
| ‘FNZ’ | means Kiwi Holdco CayCo, Ltd (KHC), FNZ (Australia) Bidco Pty Ltd (FNZ (Australia)), FNZ (UK) Ltd (FNZ UK) collectively; |
| ‘FNZ (Australia)’ | means FNZ (Australia) Bidco Pty Ltd, a company incorporated in Australia, with ACN 635 824 636; |
| ‘FNZ business’ | means the business conducted by FNZ and its Subsidiaries but not including the GBST business ; |
| ‘FNZ (UK)’ | means FNZ (UK) Ltd, a company incorporated in England and Wales, with company number 05435760; |
| ‘GBST’ | means GBST Holdings Limited, a company incorporated in Australia, with ABN 85 010 488 874 and its Subsidiaries and includes the GBST business ; |
| ‘GBST business’ | means the business conducted by GBST and its Subsidiaries ; |
| ‘GIM’ | means Generation Investment Management LLP, a partnership incorporated in England and Wales with company number OC307600 and its Subsidiaries ; |

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| ‘Global GBST Capital Markets Business’ | means the business of GBST’s capital markets division. |
| ‘Global GBST Wealth Management Business’ | means the business of GBST’s wealth management division. |
| ‘Hold Separate Manager’ | means a person appointed in accordance with paragraph 15; |
| ‘Interim Order’ | means the interim order made by the CMA on 13 May 2020; |
| ‘Key Staff’ | means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business; |
| ‘KHC’ | means Kiwi Holdco CayCo Ltd, a company incorporated in the Cayman Islands, with company number 219450; |
| ‘Legal Representatives’ | means, in the case of FNZ, Falcon, CDPQ and GIM, Slaughter and May and, in the case of GBST, Linklaters LLP; |
| ‘Merger’ | means the completed acquisition by FNZ (Australia) of GBST ; |
| ‘Monitoring Trustee’ | means a person appointed or retained in accordance with paragraph 6; |
| ‘ordinary course of business’ | means matters connected to the day-to-day supply of goods and services by the FNZ business or the GBST business and does not include matters involving significant changes to the organisational structure; |
| ‘Purchaser Approval Criteria’ | means the criteria set out in Annex 2; |
| ‘Related Person’ | means any Subsidiary, Affiliate or Associated Person ; |

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| ‘Relevant Market’ | means the supply of Retail Platform Solutions, excluding in-house supply of software, in the UK; |
| ‘Retail Platform Solutions’ | has the meaning given to that term in the Report ; |
| ‘Remedy’ | means the divestiture of GBST as set out in Chapter 11 of the Final Report ; |
| ‘Phase 2 Report’ | means the CMA’s report titled <i>‘Completed acquisition by FNZ of GBST’</i> dated 5 November 2020; |
| ‘Separation Consultant’ | means the external advisers appointed by FNZ as set out in paragraph 9. |
| ‘SLC’ | means a substantial lessening of competition; |
| ‘Subsidiary’ | unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006; |
| ‘Transaction Agreements’ | means the sale agreement and all other agreements to be concluded between FNZ and the Approved Purchaser which are necessary in order to give effect to the Final Disposal and reacquisition by FNZ of any of the Buy-back Assets; |
| ‘Trustee Divestiture Period’ | means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee ; |
| ‘Trustee Obligation’ | means bringing about the Final Disposal, including the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly, and, [X]; |
| ‘UK’ | means the United Kingdom of Great Britain and Northern Ireland; |

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| 'Working Day' | means a day that is not a Saturday or Sunday or a bank holiday in England and, insofar as an obligation relates to GBST, a day that is not a Saturday or Sunday or a public holiday in Australia; and |
| 'written consent' | means a consent given in writing, including by e-mail. |

2. Commencement

- 2.1. These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

3. Divestiture Undertakings

- 3.1. FNZ gives the following undertakings:
- 3.1.1. to give effect to and implement the Final Disposal within the Divestiture Period having due regard to the findings in the Final Report; and
 - 3.1.2. to comply with any written directions given by the CMA under these Final Undertakings, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings, including the appointment of a Divestiture Trustee.
- 3.2. FNZ undertakes to run a transparent sales process by keeping the CMA and the Monitoring Trustee up to date with progress and by sharing key advice received from the Separation Consultant in accordance with paragraph 10.
- 3.3. FNZ undertakes to inform the CMA as soon as practicable, and in any event within two Working Days, of each of: (i) a shortlist of potential purchasers being drawn up for which it intends to seek the CMA's formal approval against the Purchaser Approval Criteria together with details of all other bidders that have lodged a formal bid with FNZ for the acquisition of FNZ since the publication of the Final Report, together with an explanation of why they have not been shortlisted; (ii) a draft sale and purchase agreement being agreed in near-final form to achieve Final Disposal and (iii) Final Disposal taking place.
- 3.4. FNZ undertakes to provide the CMA with sufficient information regarding each potential purchaser for which FNZ seeks formal approval from the CMA,

having regard to the Purchaser Approval Criteria, to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.

- 3.5. The CMA will advise FNZ whether any potential purchaser is an Approved Purchaser within a reasonable time of the CMA concluding it has received sufficient information about each of the potential purchasers. The CMA will inform FNZ where it considers it has received insufficient information.
- 3.6. FNZ undertakes to seek approval from the CMA in advance of:
 - 3.6.1. Distributing the Information Memorandum and process letter to potential bidders, these being the key materials based on which FNZ will market the divestiture of GBST including FNZ's reacquisition of the Buy-Back Assets (including any terms related to separation support and/or transitional services);
 - 3.6.2. concluding any heads of terms (if applicable);
 - 3.6.3. the near final and final terms of the divestiture including all Transaction Agreements relating to any terms for the acquisition of any of the Buy-back Assets and any separation support and/or transitional services agreements prior to signature of the Transaction Agreements and to provide any other relevant information the CMA may require.
- 3.7. FNZ undertakes to provide the CMA with final signed copies of all Transaction Agreements (including agreements relating to the acquisition by FNZ of the Buy-back Assets and any separation support and/or transitional services) within three Working Days of them being signed.
- 3.8. FNZ undertakes to use its best endeavours to assist and support the Approved Purchaser in obtaining any regulatory approvals necessary to achieve Final Disposal as expeditiously as possible, including through inclusion of relevant obligations in the sale and purchase agreement pertaining to the Final Disposal. GBST undertakes to use its best endeavours to assist and support the Approved Purchaser in obtaining such regulatory approvals as expeditiously as possible.
- 3.9. FNZ undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to give effect to its undertakings as set out in Clause 3.1.1. above.
- 3.10. CDPQ, Falcon and GIM undertake:

- 3.10.1. to assist FNZ and GBST to the extent their assistance is necessary to achieve the objectives of these Final Undertakings;
 - 3.10.2. not to impede or otherwise prevent FNZ or GBST from meeting their obligations under these Final Undertakings; and
 - 3.10.3. to comply with any written directions given by the CMA in relation to their obligations under these Final Undertakings, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings.
- 3.11. FNZ undertakes that, except with the prior written consent of the CMA, it will not, and to procure that any Related Person over which FNZ has control will not for a period of ten years from the date of Final Disposal, bring under their common ownership or control, in whole or in part, GBST or any of its Subsidiaries, or any assets of GBST or any of its Subsidiaries, with the exception of any Buy-back Assets.

4. *Asset Maintenance Undertakings*

- 4.1. Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the IEO and IO as listed on the inquiry case page¹ (as may be amended with the prior written consent of the CMA or otherwise updated by the CMA), which will remain applicable until Final Disposal), each of FNZ and GBST undertake, until Final Disposal, not to take any action which might impede the Final Disposal, or FNZ's ability to acquire the Buy-back Assets, including any action which might:
- 4.1.1. lead to the integration of the GBST business with the FNZ business;
 - 4.1.2. lead to any further integration of the Global GBST Wealth Management Business and the Global GBST Capital Markets Business except where such action(s) are consistent with GBST's ordinary business activities prior to the Commencement Date (including but not limited to negotiating and signing contracts with new or existing employees, contractors, customers or suppliers);
 - 4.1.3. transfer the ownership or control of GBST (except, for the avoidance of doubt, to the Approved Purchaser on terms approved by the CMA);
or

¹ See <https://www.gov.uk/cma-cases/fnz-gbst-merger-inquiry>.

- 4.1.4. impair the ability of the Global GBST Wealth Management Business or the Global GBST Capital Markets Business to compete effectively.
- 4.2. Further and without prejudice to the generality of paragraph 4.1, each of FNZ and GBST undertake at all times until Final Disposal to procure that, except with the prior written consent of the CMA (which includes any previously granted derogations pursuant to the IEO and IO):
 - 4.2.1. no action is taken by FNZ to solicit the transfer of staff from the GBST business to FNZ;
 - 4.2.2. the GBST business is carried on separately from the FNZ business and the separate sales or brand identity of the GBST business is maintained;
 - 4.2.3. the GBST business is maintained as a going concern and sufficient resources are made available for the development of the GBST business, on the basis of its pre-Merger business plans (as updated by GBST from time to time in the ordinary course of business), and having due regard to the need to maintain and/or preserve the GBST business as an effective competitor and to all relevant circumstances as reasonably determined by the CMA;
 - 4.2.4. except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the GBST business;
 - 4.2.5. the nature, description, range and quality of goods and/or services supplied by the GBST business are maintained and preserved;
 - 4.2.6. except in the ordinary course of business for the separate operation of the GBST business and the FNZ business:
 - 4.2.6.1. all of the assets of the GBST business are maintained and preserved, including facilities and goodwill;
 - 4.2.6.2. none of the assets of the GBST business are disposed of; and
 - 4.2.6.3. no interest in the assets of the GBST business is created or disposed of;
 - 4.2.7. there is no integration of the information technology of the GBST business and FNZ business, and the software and hardware platforms of the GBST business remain essentially unchanged, except for planned R&D upgrades, routine changes and maintenance;

- 4.2.8. the customer and supplier lists of the GBST business and the FNZ business are operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business are carried out by the GBST business alone and for the avoidance of doubt the FNZ business will not negotiate on behalf of the GBST business (and vice versa) or enter into any joint agreements with the GBST business (and vice versa);
 - 4.2.9. all existing contracts of the GBST business and the FNZ business continue to be serviced by the business to which they were awarded;
 - 4.2.10. no changes are made to Key Staff of the GBST business;
 - 4.2.11. no Key Staff are transferred between the GBST business and the FNZ business;
 - 4.2.12. all reasonable steps are taken to encourage all Key Staff to remain with the GBST business; and
 - 4.2.13. no Confidential Information passes, directly or indirectly, from the GBST business (or any of its employees, directors, agents or Related Persons) to the FNZ business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA) and any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.
- 4.3. FNZ and GBST each undertakes that until Final Disposal, it will keep the CMA informed of any material developments (and with the consent of the CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 8 of these Final Undertakings) relating to the GBST business, which include but are not limited to:
- 4.3.1. details of Key Staff who leave or join the GBST business;
 - 4.3.2. any interruption of the GBST business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - 4.3.3. substantial changes in the GBST business's contractual arrangements or relationships with key suppliers; and

- 4.3.4. substantial adverse changes in the financial position and/or performance of the GBST business;
 - 4.3.5. any material changes to the Global GBST Capital Markets Business including any of the Buy-back Assets.
- 4.4. FNZ and GBST each undertakes that within a period of five Working Days from the Commencement Date, they will provide written compliance statements to the CMA in a form set out in Annex 3 and 4, confirming compliance with their respective obligations under paragraph 4 of these Final Undertakings (subject to any granted derogations). FNZ and GBST shall each also set out any details of material developments for the purposes of paragraph 4.3 of which they are aware. Thereafter, FNZ, and GBST, each will provide similar compliance statements to the CMA on a monthly basis until Final Disposal, with the first such monthly statement to be submitted to the CMA no later than one month from the first written statement.

5. Procedure for consent, notification and issuing Directions

- 5.1. FNZ and GBST, each undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.
- 5.2. FNZ and GBST, each recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 5.3. In the event that either FNZ or GBST discovers that an application for consent or approval has been made without full disclosure to the CMA, in accordance with paragraph 5.1, FNZ and GBST each undertakes to:
 - 5.3.1. inform the CMA in writing, identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
 - 5.3.2. at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 5.4. FNZ and GBST shall each use all reasonable endeavours to make each application, or to procure that each application for consent or approval is made, so that it is received by the CMA at least five Working Days, or such

lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Final Undertakings.

- 5.5. The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five Working Day period referred to in paragraph 5.4 above. This provision is without prejudice to the CMA's duties under the Act.
- 5.6. FNZ, GBST, CDPQ, Falcon and GIM each will comply with such written directions as the CMA may from time to time issue and will take such steps as may be specified or described in such directions for complying with these Final Undertakings.
- 5.7. FNZ, GBST, CDPQ, Falcon and GIM each acknowledge that the CMA may choose not to issue directions immediately upon becoming entitled to do so, and recognises that any delay by the CMA in making a written direction shall not affect the obligations of FNZ, GBST, CDPQ, Falcon and GIM at such time as the CMA makes any written direction under paragraph 5.6.

6. Monitoring Trustee – Appointment

- 6.1. FNZ undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 8 on behalf of the CMA. Provided that the other conditions set out in this paragraph 6 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 13 May 2020 under the IO.
- 6.2. In the event that FNZ proposes to retain the current Monitoring Trustee, no later than five Working Days after the Commencement Date, FNZ shall provide the CMA with a copy of the updated agreed terms and conditions of appointment that reflect these Final Undertakings.
- 6.3. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
- 6.4. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 6.5. FNZ shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the

appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.

6.6. Unless paragraph 6.2 applies:

6.6.1. the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. FNZ shall inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by FNZ, FNZ shall provide the CMA with a copy of the agreed terms and conditions of appointment.

6.6.2. If the proposed Monitoring Trustee is rejected by the CMA, FNZ shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 6.3 to 6.5 above.

6.7. The provisions of paragraph 6.8 below shall apply if:

6.7.1. paragraph 6.2 does not apply;

6.7.2. FNZ fails to nominate persons in accordance with paragraph 6.6 above;

6.7.3. those further persons nominated by FNZ in accordance with paragraph 6.6 above are rejected by the CMA; or

6.7.4. FNZ is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.

6.8. The CMA shall nominate one or more persons to act as Monitoring Trustee, and FNZ shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.

6.9. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in paragraph 8 below and that the Monitoring Trustee will monitor the compliance of FNZ and GBST with their respective obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the

Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

7. *Monitoring Trustee – replacement, discharge and reappointment*

- 7.1. FNZ acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require FNZ to replace the Monitoring Trustee.
- 7.2. If the Monitoring Trustee is removed under paragraph 7.1 above, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in paragraph 6 above.

8. *Monitoring Trustee – functions*

- 8.1. The Monitoring Trustee's functions are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
 - 8.1.1. monitoring compliance with the Divestiture Undertakings and the Asset Maintenance Undertakings; and
 - 8.1.2. monitoring the progress made against the Approved Timetable towards Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
 - 8.1.2.1. the steps that have been taken towards the preparation of agreements for the divestiture of GBST, including any separation activity and any right for FNZ to acquire the Buy-back Assets, and the persons to whom such agreements have been distributed;
 - 8.1.2.2. where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between FNZ and its financial or other advisers and possible purchasers or its financial or other advisers in connection with the disposal process;

- 8.1.2.3. reporting on any developments that the Monitoring Trustee reasonably considers may have a material impact on FNZ's ability to meet a step or deadline in the Approved Timetable;
- 8.1.2.4. assisting the CMA in:
 - 8.1.2.4.1. testing the appropriateness of the scope of the Buy-back Assets with prospective purchasers to ensure that any assets to be sold back to FNZ would not adversely impact the Global GBST Wealth Management Business; and
 - 8.1.2.4.2. seeking to understand any material differences in the asset packages sought to be sold back to FNZ by potential purchasers and the extent of any GBST resource required or committed to separation and/or transitional services, and the impact on the Global GBST Wealth Management Business; and
- 8.1.2.5. in instances where the Monitoring Trustee reasonably considers there to be a material risk that FNZ will not meet a step or deadline in the Approved Timetable, the Monitoring Trustee may attend meetings between FNZ and possible purchasers in connection with the disposal process;
- 8.1.2.6. making recommendations to the CMA in order to ensure an efficient divestiture process that is within the Divestiture Period and achievable;
- 8.1.2.7. monitoring the due diligence process generally and reporting to the CMA any concerns regarding either the impact of the process on GBST to ensure it is not overburdened or potential purchasers not having sufficient access to GBST information or staff;
- 8.1.2.8. overseeing the operation of any data room and clean teams to ensure that robust controls and safeguards are put in place and complied with to ensure GBST's proprietary, confidential and commercially sensitive information is appropriately protected during any due diligence process;
- 8.1.2.9. supporting the CMA in assessing both purchaser suitability and the Transaction Agreements;
- 8.1.2.10. monitoring any separation planning activity that takes place ahead of Final Disposal;

8.1.2.11. overall monitoring of both FNZ's and GBST's conduct during the divestiture process, including the reasonableness and timeliness of requests and responses to requests for information required for the due diligence and sale process or separation planning activities; and

8.1.2.12. undertaking any further investigations as may be required by the CMA in relation to compliance with these Final Undertakings and/or any proposed extension of the Divestiture Period.

8.2. The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks until Final Disposal, the first report to be submitted not later than three weeks from the Commencement Date.

9. Separation Consultant(s)

9.1. To the extent CMA approval for the Separation Consultant agreement has not yet been obtained, FNZ undertakes that within the period of five Working Days from the Commencement Date, or such other period as may be agreed by the CMA, and in any event before the Separation Consultants commence any work involving the GBST business. FNZ will provide the CMA with any draft agreement(s) between FNZ and its Separation Consultant(s) for review and approval and will not enter such agreements until GBST has been consulted by the CMA on the nature of the Separation Consultant's proposed workplan.

9.2. FNZ undertakes to share, all key analysis and advice prepared by FNZ's Separation Consultant(s) pertaining to the separation process and the specification of assets with the CMA and Monitoring Trustee. In order to discharge this obligation, FNZ undertakes to ensure that any Separation Consultant(s) liaises closely with the Monitoring Trustee and invites them to all meetings and includes them on all correspondence with GBST.

9.3. GBST undertakes to ensure that any Separation Consultant will have reasonable access to information and to relevant individuals from the GBST business to facilitate the preparation of the required analysis and advice about the separation process. GBST undertakes to review and provide comments or confirmations on the factual accuracy of the draft deliverables prepared by the Separation Consultant(s) as promptly as reasonably possible as long as the work of the Separation Consultant does not adversely impact on the operation of the GBST business.

- 9.4. FNZ undertakes to ensure any Separation Consultant(s) appointed by FNZ is subject to an appropriate NDA to be entered into between GBST and the Separation Consultant(s) and approved by the CMA, including contractual restrictions to protect GBST's commercially sensitive information, and instruct the Separation Consultant to ensure that any actions or requests to GBST in the course of fulfilling its mandate, are reasonable and proportionate, and are not expected to adversely impact on the operation of the GBST business.
- 9.5. FNZ undertakes to ensure that any agreement(s) between FNZ and the Separation Consultant(s) will recognise the CMA's right, (subject only to statutory limits and considerations, and to reasonable access, release and reliance or non-reliance requirements of the Separation Consultant(s)), to share any key analysis or advice prepared by FNZ's Separation Consultant(s) with third parties (including prospective purchasers), where the CMA considers it appropriate to do so. Before exercising its right to share final advice and analysis with third parties, as provided for in this paragraph 9.5, the CMA will provide FNZ and the Separation Consultant with written notice and specify the relevant advice (or parts of the advice) that will be shared with third parties, and the identity of the relevant third party, and consider any representations FNZ or the Separation Consultant make in this regard. Where reasonably required to do so, the CMA will provide the Separation Consultant with any required release and access letters signed by the relevant third parties and include any disclaimer notices reasonably required by the Separation Consultant.

10. *Divestiture Reporting Obligations*

- 10.1. FNZ undertakes that within the period of five Working Days from the Commencement Date, or such other period as may be agreed by the CMA, it will provide a timetable that it proposes to adopt, subject to the CMA's approval, to ensure the Final Disposal. The CMA will either approve this timetable as proposed or require reasonable amendments to it and will notify FNZ of the Approved Timetable.
- 10.2. Thereafter, FNZ will provide a written report to the CMA every four weeks or such other interval as agreed with the CMA, until Final Disposal and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee. The reports will outline the progress that FNZ has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:
- 10.2.1. the progress that has been made against the Approved Timetable;

- 10.2.2. the progress that has been made on any separation plan;
 - 10.2.3. the status of any discussions that have been held with potential purchasers of GBST;
 - 10.2.4. the progress that has been made towards agreeing heads of terms (if applicable);
 - 10.2.5. an overview of any key advice or analysis provided by its Separation Consultant(s) (see paragraph 9 above);
 - 10.2.6. the steps that have been taken towards reaching a sale and purchase agreement and the persons to whom any draft agreement has been distributed; and
 - 10.2.7. such other matters as may be directed by the CMA or Monitoring Trustee from time to time.
- 10.3. FNZ undertakes that in the report to the CMA, it shall, among other things, provide to the CMA:
- 10.3.1. the total number of persons who have lodged a formal bid with FNZ for the acquisition of GBST since the publication of the Final Report;
 - 10.3.2. the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with FNZ, since the publication of the Final Report and subsequently been short-listed by FNZ as a preferred purchaser; and
 - 10.3.3. details of the efforts taken by FNZ and its financial advisers to solicit purchasers for GBST.
- 10.4. In the event that FNZ does not meet a step as set out in the Approved Timetable or FNZ is otherwise delayed in implementing the Final Disposal, FNZ undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than three Working Days from becoming aware that a step in the Approved Timetable is unlikely to be met.

11. *Divestiture Trustee – appointment*

- 11.1. FNZ recognises and acknowledges that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period including where:

- 11.1.1. the CMA reasonably considers that FNZ has not complied with the Approved Timetable in such a way that Final Disposal is unlikely to take place within the Divestiture Period;
 - 11.1.2. the CMA reasonably considers, after raising any concerns with FNZ (and where appropriate the Monitoring Trustee), that FNZ has not engaged constructively with its obligations under these Final Undertakings or that it has otherwise failed to comply with its obligations under these Final Undertakings; and/or
 - 11.1.3. FNZ fails to give effect to the undertakings as set out in Clause 3.1.1.
- 11.2. FNZ undertakes that on the direction of the CMA and in accordance with such directions given as to timing, FNZ shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 11.3 below and shall include among other things:
 - 11.2.1. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and
 - 11.2.2. a schedule of the steps to be taken to give effect to the mandate.
- 11.3. Each person on the list referred to in paragraph 11.2 shall be independent of and unconnected to FNZ, GBST, CDPQ, Falcon and GIM and possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 11.4. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, FNZ shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, FNZ shall be free to choose the Divestiture Trustee to be appointed from among the names approved. FNZ undertakes to appoint the Divestiture Trustee within three Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 11.5. If all the proposed Divestiture Trustees are rejected by the CMA, FNZ shall submit the names of at least two further persons within four Working Days

starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.2 to 11.4 above.

- 11.6. The provisions of paragraph 11.7 below shall apply only if:
- 11.6.1. FNZ fails to nominate persons in accordance with paragraph 11.2 above;
 - 11.6.2. those further persons nominated by FNZ in accordance with paragraph 11.5 above are rejected by the CMA; and
 - 11.6.3. FNZ is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 11.7. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and FNZ shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

12. *Divestiture Trustee – functions*

- 12.1. Each of FNZ and GBST recognise and acknowledge that:
- 12.1.1. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
 - 12.1.2. in order to implement the Remedy, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the Buy-back Assets (including directions that GBST be divested in its entirety without a re-acquisition by FNZ of any of the Buy-back Assets), where the CMA has reasonable grounds for believing that the Remedy cannot be achieved within the Trustee Divestiture Period;
 - 12.1.3. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
 - 12.1.4. the Divestiture Trustee shall protect the legitimate financial interests of FNZ and GBST subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.

- 12.2. FNZ recognises and acknowledges that the Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to FNZ and GBST. FNZ and GBST each undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
- 12.3. FNZ recognises and acknowledges that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of FNZ or GBST. FNZ undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

13. *Divestiture Trustee – duties and obligations of FNZ and GBST*

- 13.1. FNZ and GBST each undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require to discharge the Trustee Obligation.
- 13.2. FNZ and GBST each recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information related to GBST necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and FNZ and GBST each undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, FNZ and GBST each undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for divestiture, subject in each case to the Divestiture Trustee's compliance with GBST's or FNZ's internal policies.
- 13.3. FNZ and GBST each undertake (to the extent legally possible) to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. FNZ and GBST each undertake that upon the reasonable request of the Divestiture Trustee they shall execute the documents required to give effect to the Trustee Obligation.

- 13.4. FNZ and GBST each undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to give effect to the Trustee Obligation and FNZ and GBST recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to FNZ or GBST or any of their respective Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to give effect to the Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 13.5. FNZ undertakes that, at FNZ's expense, the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate for the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by FNZ and shall provide FNZ with a reasoned explanation should it decide to appoint new advisers. Should FNZ refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with FNZ, approve and direct the appointment of such advisers.
- 13.6. Each of FNZ and GBST undertake to make no objection to the Final Disposal save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of either of the Parties, subject to the Trustee Obligation. Where either of FNZ or GBST wish to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee reasonably to protect its legitimate financial and business interests, the relevant party shall submit to the CMA a notice setting out its objections within three Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

14. *Divestiture Trustee – replacement, discharge and reappointment*

- 14.1. FNZ acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require FNZ to replace the Divestiture Trustee.
- 14.2. If the Divestiture Trustee is removed under paragraph 14.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a

full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 11 above.

- 14.3. FNZ recognises and acknowledges that, other than in accordance with paragraph 14.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

15. *Hold Separate Manager*

- 15.1. FNZ recognises and acknowledges that the CMA may direct the appointment by FNZ of a Hold Separate Manager as an independent interim manager with executive powers to manage the GBST business.
- 15.2. The Hold Separate Manager shall be appointed at the written direction of the CMA where the CMA, upon reasonable grounds, considers that there has been a material change in relation to the GBST business including a material change to the existing GBST senior management team and the Hold Separate Manager shall undertake such matters as the CMA may specify in the written direction.

16. *Variations to these Final Undertakings*

- 16.1. The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 16.2. Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 16.3. The consent of the CMA shall not be unreasonably withheld.

17. *General obligations to provide information to the CMA*

- 17.1. FNZ, GBST, CDPQ, Falcon and GIM each undertakes that it shall promptly provide to the CMA such information and such cooperation as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83 and 94 of the Act.
- 17.2. FNZ, GBST, CDPQ, Falcon and GIM each undertake that should it at any time be in breach of any provision of these Final Undertakings it will notify the CMA within two Working Days starting with the date it becomes aware of the

breach or relevant circumstances, that there has been a breach and of all the circumstances of that breach.

- 17.3. FNZ, GBST, CDPQ, Falcon and GIM each undertake that should it be aware of any circumstances which may materially impact on its ability to comply with its obligations under these Final Undertakings it will notify the CMA within two Working Days starting with the date it becomes aware of the relevant circumstances.
- 17.4. Where any person, including a Monitoring Trustee, Divestiture Trustee or Hold Separate Manager must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, FNZ, GBST, CDPQ, Falcon and GIM each undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of FNZ, GBST or CDPQ, Falcon and GIM to any person other than to the CMA, without the prior written consent of both the CMA and FNZ, GBST or CDPQ, Falcon and GIM (as applicable).

18. *Acceptance of service*

- 18.1. FNZ, CDPQ, Falcon and GIM each hereby authorise their Legal Representatives, Slaughter and May whose address for service is c/o William Turtle, Slaughter and May, One Bunhill Row, London EC1Y 8YY; and GBST hereby authorises GBST's Legal Representatives Linklaters LLP, whose address for service is c/o Nicole Kar, Linklaters LLP, One Silk Street, London, EC2Y 8HQ to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to FNZ, GBST, CDPQ, Falcon and GIM and their respective Subsidiaries or Affiliates in connection with proceedings in court in the UK) provided that a copy of all such documents, orders, requests, notifications or other communications, are, in the case of FNZ, CDPQ, Falcon and GIM, also sent via email to William.Turtle@slaughterandmay.com, and in the case of GBST to nicole.kar@linklaters.com.
- 18.2. Unless FNZ, GBST, CDPQ, Falcon and GIM (as the case may be) each informs the CMA that its Legal Representatives have ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, written directions, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on FNZ, GBST, CDPQ, Falcon and GIM if it is served on their respective Legal Representatives, and service

or receipt shall be deemed to be acknowledged by it if it is acknowledged by email from their respective Legal Representatives to the CMA.

- 18.3. Paragraph 18.1 has effect irrespective of whether, as between FNZ or GBST and their respective Legal Representatives, FNZ's or GBST's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless they inform the CMA that FNZ's or GBST's Legal Representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by FNZ's or GBST's Legal Representatives (including a failure to notify FNZ or GBST of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.
- 18.4. Paragraph 18.1 has effect irrespective of whether, as between CDPQ, Falcon and GIM and their respective Legal Representatives, CDPQ, Falcon and GIM's Legal Representatives have or continue to have any authority to accept and acknowledge service on behalf of it (unless it informs the CMA that CDPQ, Falcon and GIM's Legal Representatives have ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by CDPQ, Falcon and GIM's Legal Representatives (including a failure to notify CDPQ, Falcon and GIM of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

19. *Effect of invalidity*

- 19.1. FNZ, GBST, CDPQ, Falcon and GIM each undertakes that should any provision of these Final Undertakings be contrary to law or invalid for any reason, it shall continue to observe the remaining provisions.

20. *Extension of time*

- 20.1. FNZ recognises and acknowledges that the CMA may, where it considers it appropriate, in response to a written request from FNZ showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which FNZ, the Monitoring Trustee, the Divestiture Trustee and/or the Hold Separate Manager (as the case may be) must take action.
- 20.2. In particular (and without prejudice to the CMAs wider discretion set out in 20.1 above) the CMA will grant extension(s) to the Divestiture Period if, at the

end of the Divestiture Period the only action required to achieve Final Disposal is the obtaining of any FIRB approval required for Final Disposal, and provided that FNZ has met its obligations in paragraph 3.8 above and the CMA is satisfied that such FIRB approval is likely to be given within a reasonable period of time.

21. Undertakings given jointly and severally

21.1. Where undertakings in these Final Undertakings are given by FNZ and GBST, they are given jointly and severally.

21.2. GBST and FNZ undertake to take all reasonable steps not to impede each other from meeting their respective obligations under these Final Undertakings.

21.3. GBST and FNZ undertake to cooperate with each other and take all reasonable steps to enable FNZ to comply with the Divestiture Undertakings and to give effect to and implement Final Disposal, including complying with any written directions, consents or approvals given by the CMA. In particular:

21.3.1. FNZ undertakes to engage with GBST promptly as regards any applications to the CMA for consent or approval.

21.3.2. Subject to GBST's Asset Maintenance obligations set out in paragraph 4, which take precedence, GBST undertakes to:

21.3.2.1. Make reasonable efforts to provide information requested timeously;

21.3.2.2. Make reasonable efforts to perform required actions within the time periods set out in the Approved Timetable.

21.3.2.3. Inform FNZ within three Working Days of becoming aware of any developments that GBST reasonably considers may have a material impact on GSBT's ability to meet a step or deadline in the Approved Timetable; and

21.3.2.4. Engage with FNZ promptly as regards any applications to the CMA for consent or approval.

22. Governing Law

22.1. These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

22.2. Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF FNZ:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF Caisse de dépôt et placement du Québec:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF Falcon General Partner LLC:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF Falcon LP, by its General Partner:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF Falcon Newco Limited:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF Generation Investment Management LLP:

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Signed

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Name

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Title

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Date

FOR AND ON BEHALF OF GBST:

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Signed

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Name

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Title

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Date

Annex 1: Matters included within the scope of Buy-back divestiture package and permitted transaction structure

1. In line with the Remedy outlined in the Final Report, this annex forms the basis of negotiating parameters for which FNZ may engage prospective purchasers of the GBST business.
2. FNZ will be entitled to market GBST for sale and as part of the sales process to market the sale as being subject to re-acquisition of the following assets and operations, such re-acquisition to occur following Final Disposal:
 - (i) All Capital Markets customer contracts;
 - (ii) The defined list of core proprietary Capital Markets software listed in paragraph 5 below, including the source code of and IP in that software and
 - (iii) Any other shared assets (including technical staff and SMEs), used by the Global GBST Capital Markets Business that a purchaser does not wish to retain, provided that this does not adversely affect the competitiveness of GBST's Global Wealth Management Business
3. For the avoidance of doubt, the CMA will only approve a purchase by FNZ of any shared assets if the CMA is satisfied that the final proposal is agreed by the Approved Purchaser and does not harm the operation or competitiveness of the Global GBST Wealth Management Business, whether such harm arises through the disclosure of confidential and commercially sensitive IP required by the Global GBST Wealth Management Business or otherwise. The CMA will not approve the re-acquisition if it considers the burden that the related reacquisition process (including any separation or transitional services) places on the Global GSBT Wealth Management Business resources would have an adverse impact on the operation or competitiveness of the Global GBST Wealth Management Business. Additionally, the CMA will not accept a proposal that would likely distort competition in any market.
4. As provided for in paragraph 3.6, the CMA will assess the terms of any agreed divestiture (including any provision for re-acquisition of the Buy-back Assets) in conjunction with the Monitoring Trustee and through discussions with the Approved Purchaser, any other relevant third parties (e.g. that show an expression of interest in the divestment) and GBST.

The defined list of core proprietary Capital Markets software

5. FNZ shall be able to market the sale of the GBST business with the right to buy-back the Capital Markets customer contracts (in accordance with paragraph 2(i)) and the following Capital Markets IP/software:

- (i) [✂]
- (ii) [✂]
- (iii) [✂]
- (iv) [✂]
- (v) [✂]
- (vi) [✂]
- (vii) [✂]
- (viii) [✂]
- (ix) [✂]
- (x) [✂]
- (xi) [✂]
- (xii) [✂].

6. If so required by the Approved Purchaser for the continued operation of the GBST Global Wealth Management business and practically possible, the Approved Purchaser will be allowed a mirror copy of the specific Capital Markets software source code for the above IP/software under licence if required under terms to be negotiated by FNZ and approved by the CMA.

Other assets

7. Subject to CMA approval, FNZ may acquire shared assets (including technical staff and SMEs), used by the Global GBST Capital Markets Business at the Approved Purchaser's absolute discretion provided FNZ's acquisition of such assets, technical staff and/or SMEs does not adversely affect the operation or competitiveness of GBST's Global Wealth Management Business.
8. For any embedded common proprietary software or IP which is embedded in Global GBST Wealth Management products or used by both the Global GBST Wealth Management Business and Global GBST Capital Market Business, the Approved Purchaser will have absolute discretion over whether FNZ will be sold or licensed a copy of such common embedded software or IP. If not, FNZ will be required to develop a replacement solution. FNZ will be entitled to negotiate with the Approved Purchaser to provide FNZ with reasonable assistance, and reasonable access to systems, to enable it to produce a replacement solution.

9. In addition to the assets and operations listed in paragraph 2 of this Annex 1, the Approved Purchaser shall have discretion to sell back any other assets used by the Global GBST Capital Markets Business to FNZ as long as this does not include any shared assets that are material to the ongoing operation of, or the absence of which may have an adverse impact on, the Global GBST Wealth Management Business.
10. To the extent that FNZ and the Approved Purchaser agree to include any additional assets as contemplated in paragraph 8-10 of this Annex 1 within the Buy-back Assets, the CMA will review all such assets included in the Buy-back Assets in conjunction with the Monitoring Trustee and through discussions with the Approved Purchaser, other relevant bidders and GBST as necessary. The CMA will only approve the inclusion of any such additional assets in the Buy-back Assets if sufficient evidence is provided that demonstrates that the proposal will not have an adverse impact on the Global GBST Wealth Management business.

Separation Assistance and Transitional services

11. FNZ and the Approved Purchaser are free to negotiate the provision of separation support and/or a transitional service agreement, however the Approved Purchaser has the full discretion to refuse to provide any transitional services to FNZ. The precise terms of any agreement for the provision of separation support and/or transitional services are to be determined through negotiations between FNZ and the Approved Purchaser and subject to the approval of the CMA.
12. The CMA will review any separation support and/or transitional services agreement as part of the approval of the terms of the divestiture (including any provisions relating to the Buy-back Assets), as provided for in paragraph 3.6. The CMA will not accept a separation support or transitional service agreement if it may have an adverse impact on the Global GBST Wealth Management Business to compete. Any separation support or transitional service agreement should be limited to that which is strictly necessary both in terms of scope and length and not impose a disproportionate burden on GBST.

Transaction Agreements

13. The GBST business must be divested in full to an Approved Purchaser as provided for in Clause 3.1.1, with the separation and reacquisition of the Buy-back Assets, if applicable, taking place following Final Disposal. For the avoidance of any doubt, transaction documents reflecting the Final Disposal and the re-acquisition of the Buy-back Assets after Final

Disposal, including agreement(s) of any separation support/transitional services arrangements may be executed in parallel and are, whenever executed, subject to CMA prior approval.

14. The Transaction Agreements shall include terms of the Final Disposal, the Buy-back Assets and terms on which those are to be re-acquired by FNZ following Final Disposal, and, if so agreed by FNZ and the Approved Purchaser the scope and amount of any resource to be committed by GBST and/or the Approved Purchaser to the separation process and the level and nature of separation support to be contributed by each of FNZ, GBST and/or the Approved Purchaser to transitional services (if any).
15. The CMA will review the Transaction Agreements in conjunction with the Monitoring Trustee and through discussions with the Approved Purchaser and GBST as necessary, will only approve such documents if sufficient evidence is provided that demonstrates that the proposal is not likely to have a material adverse impact on the competitiveness of the Global GBST Wealth Management business in the Relevant Market.
16. The Transaction Agreements must set out the process by which separation will occur, including the time period within which the Buy-back Assets will be transferred to FNZ after Final Disposal.

Annex 2: Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report.

1. Independence

At the time of Final Disposal, the Approved Purchaser must have no current significant connection (for example financial, ownership or management links) to FNZ, CDPQ, Falcon or GIM that may compromise the Approved Purchaser's incentives to compete with FNZ after Final Disposal.

2. Capability

The Approved Purchaser must have access to or be able to secure appropriate financial resources and expertise (including managerial, operational and technical capability) to enable the GBST Global Wealth Management Business to be an effective competitor in the Relevant Market. This access should be sufficient to enable the GBST Global Wealth Management Business to continue to develop as an effective competitor.

3. Commitment to the Relevant Market

The Approved Purchaser must demonstrate to the satisfaction of the CMA that it has an appropriate business plan to maintain and operate the GBST Global Wealth Management Business as a viable and active business in competition with FNZ and other competitors in the Relevant Market so as to remedy the SLC and the adverse effects that may be expected to result from it, as set out in the Report.

4. Absence of competitive or regulatory concern

In considering whether to give consent to an Approved Purchaser, the CMA shall consider whether the terms of the sale and purchase agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of GBST or FNZ's purchase of the Buy-back Assets (including any services relating to this) would not remedy the relevant SLC and the adverse effects that may be expected to result from it. In addition, the CMA shall require that the divestiture of GBST to the Approved Purchaser must not raise further competition or regulatory concerns in any Market.

Annex 3: FNZ Compliance statement

Compliance Statement for FNZ

We [insert names] confirm on behalf of FNZ (FNZ) that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period), FNZ has complied with the Final Undertakings given to the CMA in relation to the Merger on [Date] (the Undertakings).
2. Except with the prior written consent of the CMA:
 - (a) no action has been taken by FNZ which might impede the Final Disposal, including any action which might:
 - (i) lead to the integration of GBST with FNZ;
 - (ii) transfer the ownership or control of GBST; or
 - (iii) otherwise impair the ability of the GBST business to compete independently in any of the Relevant Markets.
 - (b) no action has been taken by FNZ to solicit the transfer of staff from the GBST business to FNZ;
 - (c) the GBST business has been carried on separately from the FNZ business and the GBST business's separate sales or brand identity has been maintained;
 - (d) the GBST business has been maintained as a going concern and sufficient resources have been made available for the development of the GBST business, on the basis of its pre-Merger business plans (as updated by GBST from time to time in the ordinary course of business), and having due regard to the need to maintain and/or preserve the GBST business as an effective competitor and to all relevant circumstances, as reasonably determined by the CMA;
 - (e) except in the ordinary course of business, no substantive changes have been made to the organisational structure of, or the management responsibilities within, the GBST business;
 - (f) the nature, description, range and quality of goods and/or services supplied in the UK by the GBST business have been maintained and preserved;

- (g) except in the ordinary course of business for the separate operation of the GBST business and the FNZ business:
- (i) all of the assets of the GBST business have been maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the GBST business have been disposed of; and
 - (iii) no interest in the assets of the GBST business has been created or disposed of;
- (h) there has been no integration of the information technology of the GBST business and FNZ business, and the software and hardware platforms of the GBST business have remained essentially unchanged, except for planned R&D upgrades, routine changes and maintenance;
- (i) the customer and supplier lists of the GBST business and the FNZ business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business have been carried out by the GBST business alone and for the avoidance of doubt the FNZ business has not negotiated on behalf of the GBST business (and vice versa) or entered into any joint agreements with the GBST business (and vice versa);
- (j) all existing contracts of the GBST business and the FNZ business have been serviced by the business to which they were awarded;
- (k) no changes have been made to Key Staff of the GBST business;
- (l) no Key Staff have been transferred between the GBST business and the FNZ business;
- (m) all reasonable steps have been taken to encourage all Key Staff to remain with the GBST business; and
- (n) no Confidential Information has passed, directly or indirectly, from the GBST business (or any of its employees, directors, agents or Related Persons) to the FNZ business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA).
- (o) Except as listed in paragraph (p) below, there have been no:

- (i) Key Staff that have left or joined the GBST business;
- (ii) interruptions of the GBST business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial changes in the GBST business's contractual arrangements or relationships with key suppliers; and
- (iv) substantial adverse changes in the financial position and/or performance of the GBST business.

(p) [list of material developments].

- 3. FNZ remains in full compliance with the Undertakings and will continue actively to keep the CMA informed of any material developments relating to the GBST businesses in accordance with paragraph 4.6 of the Undertakings.

Interpretation

- 4. Terms defined in the Undertakings have the same meaning in this compliance statement.

FOR AND ON BEHALF OF FNZ

Signature.....

Name.....

Title.....

Date.....

Annex 4: GBST Compliance statement

Compliance Statement for GBST

We [insert names] confirm on behalf of GBST Holdings Limited (GBST) that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period), GBST has complied with the Final Undertakings given to the CMA in relation to the Merger on [Date] (the Undertakings).
2. Except with the prior written consent of the CMA:
 - (a) no action has been taken by GBST which might impede the Final Disposal, including any action which might:
 - (i) lead to the integration of GBST with FNZ;
 - (ii) transfer the ownership or control of GBST; or
 - (iii) otherwise impair the ability of the GBST business to compete independently in any of the Relevant Markets.
 - (b) no action has been taken by FNZ to solicit the transfer of staff from the GBST business to FNZ;
 - (c) the GBST business has been carried on separately from the FNZ business and the GBST business's separate sales or brand identity has been maintained;
 - (d) the GBST business has been maintained as a going concern and sufficient resources have been made available for the development of the GBST business, on the basis of its pre-Merger business plans (as updated by GBST from time to time in the ordinary course of business), and having due regard to the need to maintain and/or preserve the GBST business as an effective competitor and to all relevant circumstances, as reasonably determined by the CMA;
 - (e) except in the ordinary course of business, no substantive changes have been made to the organisational structure of, or the management responsibilities within, the GBST business;
 - (f) the nature, description, range and quality of goods and/or services supplied in the UK by the GBST business have been maintained and preserved;

- (g) except in the ordinary course of business for the separate operation of the GBST business and the FNZ business:
- (i) all of the assets of the GBST business have been maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the GBST business have been disposed of; and
 - (iii) no interest in the assets of the GBST business has been created or disposed of;
- (h) there has been no integration of the information technology of the GBST business and FNZ business, and the software and hardware platforms of the GBST business have remained essentially unchanged, except for planned R&D upgrades, routine changes and maintenance;
- (i) the customer and supplier lists of the GBST business and the FNZ business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GBST business have been carried out by the GBST business alone and for the avoidance of doubt the FNZ business has not negotiated on behalf of the GBST business (and vice versa) or entered into any joint agreements with the GBST business (and vice versa);
- (j) all existing contracts of the GBST business and the FNZ business have been serviced by the business to which they were awarded;
- (k) no changes have been made to Key Staff of the GBST business;
- (l) no Key Staff have been transferred between the GBST business and the FNZ business;
- (m) all reasonable steps have been taken to encourage all Key Staff to remain with the GBST business; and
- (n) no Confidential Information has passed, directly or indirectly, from the GBST business (or any of its employees, directors, agents or Related Persons) to the FNZ business (or any of its employees, directors, agents or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory, accounting obligations and/or pursuant to a derogation granted by the CMA).
- (o) Except as listed in paragraph (p) below, there have been no:

- (i) Key Staff that have left or joined the GBST business;
- (ii) interruptions of the GBST business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial changes in the GBST business's contractual arrangements or relationships with key suppliers; and
- (iv) substantial adverse changes in the financial position and/or performance of the GBST business.

(p) [list of material developments].

- 3. GBST remains in full compliance with the Undertakings and will continue actively to keep the CMA informed of any material developments relating to the GBST businesses in accordance with paragraph 4.6 of the Undertakings.

Interpretation

- 4. Terms defined in the Undertakings have the same meaning in this compliance statement.

FOR AND ON BEHALF OF GBST

Signature.....

Name.....

Title.....

Date.....