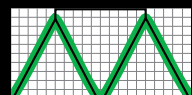


ANNUAL REPORT 2014

NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL



FUNCTION OF NZ MARKETS DISCIPLINARY TRIBUNAL

The NZ Markets Disciplinary Tribunal (the Tribunal) is an independent regulatory body established under the NZ Markets Disciplinary Tribunal Rules (Tribunal Rules).

The Tribunal's principal role is to determine whether there has been a breach of the NZX Conduct Rules¹, the NZX Derivatives Market Rules, the Clearing and Settlement Rules of New Zealand Clearing Limited (CHO) and the Fonterra Shareholders' Market (FSM) Rules (together the Market Rules) in matters referred to it by NZX Limited (NZX).

In the event that the Tribunal finds a breach, it must assess the appropriate penalty. The penalties the Tribunal may impose are set out in the Tribunal Rules. The Tribunal, in conjunction with NZX, has established procedures to give guidance to parties dealing with the Tribunal (the Tribunal Procedures). The Procedures also inform Tribunal members when determining the appropriate penalty to be imposed.

The Tribunal serves in an adjudicative role. It is not an inspectorate of market conduct. That role is performed by NZX Regulation. The Financial Markets Authority (FMA) is responsible for reviewing how well NZX is meeting its obligations.

The Tribunal also has authority under the Tribunal Rules to:

- (a) review decisions made by NZX, CHO or New Zealand Depository Limited (CDO), as the context requires, in respect of a waiver or ruling application made under the Rules on referral from the applicant; and
- (b) review decisions made by CHO in respect of a claim for compensation under the Clearing and Settlement Rules where the claimant alleges that CHO has failed to determine its claim in good faith.

The Tribunal does not deal directly with members of the public.

MEMBERS

The Tribunal must be composed of various categories of member, representing different interest groups and experience. Members include lawyers, Market Participant representatives, Issuer representatives, members with knowledge of clearing and derivatives and members of the public who have particular areas of expertise. Members are appointed by NZX, subject to confirmation by the FMA.

The Tribunal ordinarily works through divisions comprising 3 members who do not have a conflict of interest and who have relevant expertise in respect of the matter under consideration.

RELATIONSHIP WITH NZX

The Tribunal is funded by NZX and members of the Tribunal are appointed by NZX (subject to confirmation by FMA). Apart from that, the Tribunal is wholly independent of NZX.

SPECIAL DIVISION

Tribunal Rule 3.2 establishes a Special Division. The Special Division administers the NZX Conduct Rules as they apply to NZX as a listed issuer and the funds managed by Smartshares Limited, a subsidiary of NZX.

More information on the Tribunal, including the Tribunal Rules and recent decisions, can be viewed at <https://nzx.com/NZMDT>.

¹ The NZX Conduct Rules comprise 1) the NZX Participant Rules, which govern the conduct of market participants in NZX's markets – the Main Board, Debt Market, NZAX Market and the NXT Market; and 2) the NZX Listing Rules governing the conduct of issuers whose securities are listed on NZX's markets.

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CHAIRMAN'S REPORT

CHAIRMAN'S REPORT

This is my first report as Chair of the Tribunal. I would like to thank Derek Johnston for his stewardship of the Tribunal; his contribution being recognised by his subsequent appointment as a non-director member and incoming Chair of the Regulatory Governance Committee of the NZX board established in response to the FMA's recommendation for reviewing the performance of NZX Regulation.

RELATIONSHIP WITH NZX

The Tribunal is funded by NZX and members of the Tribunal are appointed by NZX subject to confirmation by FMA. The Tribunal's working relationship with NZX is good. There are regular meetings and discussions between the Chair and Executive Counsel of the Tribunal with NZX Regulation and the Head of Market Supervision, both on operational matters and policy matters. In addition, following further recommendations from the FMA, the Head of Market Supervision consults with the Chair on matters which may have a significant market impact or which represent a specific conflict for NZX. The Tribunal is nevertheless independent from NZX.

REFERRALS

Referrals from NZX have continued to increase significantly. Eighteen matters were referred in 2014, including two oral hearings. Six referrals involved market participants and 12 involved issuers. The referrals also represent an increased percentage of breaches identified by NZX Regulation, at approximately 16%, increased from approximately 10% in previous years. The Tribunal is also pleased to note the continued reduction in delays in referring breaches from NZX Regulation to the Tribunal, with most matters now referred within 3 months of NZX Regulation becoming aware of a possible breach. The issuer matters involved three cases of continuous disclosure breaches, two of periodic reporting breaches and four involving late filing of information. Four of the market participant matters related to contract notes and one related to reported breaches of the mandatory holding period for securities following a new listing on the market.

The Tribunal notes that it is committed to ensuring that investors have confidence in the capital markets and that the integrity of the market is maintained. With that in mind, the Tribunal has noted that it will be looking to increase penalties where appropriate, particularly for serious breaches such as continuous disclosure rules or periodic reporting breaches, and breaches involving repeat offenders. The Tribunal has also stated that it will not necessarily follow precedent determinations in setting the level of penalty.

NZX Regulation has also referred breaches of a minor or technical nature to the Tribunal, such as the issue of allotment notices by issuers and the provision of contract notes by market participants. This has led to the

establishment of some precedent and enabled NZX Regulation to notify and remind issuers and market participants of their obligations in respect of the relevant Rules.

PENALTIES REVIEW

Following from the comments above, NZX Regulation is currently undertaking a review of penalties in consultation with the Tribunal. This review will consider for example whether the penalty bands are appropriate, the penalties imposed within each band are sufficient, together with mitigating and extenuating factors.

WEBSITE

The Tribunal now has a separate section on the NZX website which is more user friendly for issuers and market participants to access information relevant to the Tribunal and also access to Tribunal decisions going back to 2011.

MEMBERSHIP

The Tribunal has a stable membership of 24 experienced members comprising seven public appointees, six legal appointees, seven representing issuers, four market participants, two clearing participants and one derivatives market appointee. A number of members cover more than one category of appointment.

I would like to acknowledge and thank the contributions of Andrew Beck as Chair of the Special Division and Shane Edmond as Deputy Chair of the Tribunal, and in particular recognise the skills and dedication of our Executive Counsel Rachel Batters and Assistant Executive Counsel Stephen Layburn. Thanks also to members for their involvement during the year and their willingness to assist on Tribunal matters often at short notice.

In addition to the Tribunal's annual meeting held in May 2014, a members' forum was held in November 2014 which provided members a further opportunity to discuss Tribunal and policy matters and to meet with senior NZX executives.

As required by the Tribunal Rules, the Tribunal confirms that it believes it has adequate resources available to it to undertake its role under the Tribunal Rules, and that NZX has continued to provide all the assistance which the Tribunal requires to undertake its role.

The NZX Discipline Fund accounts indicate that there is an accumulated surplus of \$429,549 as at 31 December 2014, with one bad debt of \$6,000 written off. NZX and the Tribunal are considering how these funds can best be utilised in providing issuers and market participants with compliance learning opportunities, particularly in educating new issuers on the rationale for the relevant rules and on their ongoing compliance obligations under the rules.





MEMBERS

MEMBERS

MEMBERS OF THE TRIBUNAL AS AT 31 DECEMBER 2014

LEGAL

David Flacks (Chairman), Andrew Beck, David Boldt, Mark Freeman, Don Holborow and Rachael Reed.

LISTED ISSUER

Jo Appleyard, Kevin Baker*, Trevor Janes, James Ogden, Dame Alison Paterson, Susan Peterson and Christopher Swasbrook.

MARKET PARTICIPANTS

Shane Edmond (Deputy Chairman), Richard Bodman, Geoff Brown and Nick Hegan*.

MEMBERS OF THE PUBLIC

Danny Chan, Richard Keys, David Kreider, Richard Leggat, Noeline Munro, Leonard Ward and Mariëtte van Ryn.

CLEARING PARTICIPANTS

Richard Bodman and Geoff Brown

DERIVATIVES PARTICIPANTS

Richard Bodman

MEMBERS OF THE SPECIAL DIVISION AS AT 31 DECEMBER 2014

Andrew Beck (Chairman), Kevin Baker, Shane Edmond and James Ogden.

Rachel Batters and Stephen Layburn act as Executive Counsel to the Tribunal.

* Kevin Baker and Nick Hegan's membership classifications were changed in June 2014.



STATEMENTS OF CASE, FINDINGS AND PENALTIES

STATEMENTS OF CASE, FINDINGS AND PENALTIES

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS
REQUIRED BY TRIBUNAL RULE 14.1.3(a) - (c) WHICH PROVIDES:

“14.1.3 The Tribunal shall create and provide an annual regulatory report (the Annual Regulatory Report) to the public by the end of April of the following year using as a minimum the information from the report in respect of each year provided to the Tribunal by NZX and CHO above, and that collated by itself below:

- a) number of statements of case issued by NZX and CHO and the type of matters addressed in those statements of case;
 - b) the findings of the Tribunal and the Appeal Panel in respect of each statement of case issued by NZX and CHO, provided such disclosures are consistent with any decision on publication made by the Tribunal;
 - c) any penalties imposed by the Tribunal and the Appeal Panel; and...”
-

NZMDT 1/14 NZX V RAKON LIMITED (RAK)

Division: Don Holborow (division chairman), James Ogden and David Kreider

Statement of Case served: 17 January 2014

Oral Hearing held: 14 February 2014

Date of Determination: 24 February 2014

Rule Breached: NZX Main Board Listing Rule 10.1.1

FACTS:

In 2013, RAK entered into negotiations with a Chinese-based entity listed on the Shenzhen Stock Exchange (SZSE). The negotiations culminated in a Cooperation Framework Agreement (Agreement) which expressed the intention of the parties to form a strategic partnership and set out the process they would follow to enter into a formal share transfer agreement. The Agreement also provided that until the Chinese entity had paid a deposit of US\$0.5 million, the Agreement was not legally binding.

On 4 July 2013 the parties signed the Agreement, with the approval of their respective boards. The parties exchanged emails on the timing of the announcements to NZX and SZSE, with RAK believing that the announcements would not be made until it had received the deposit.

On 5 July 2013, NZX observed a significant price rise and increase in trading volume in RAK ordinary shares. Investigations by NZX found that the Chinese entity had announced the Agreement to SZSE and that this information was publicly available online from 11:42pm (NZST) on 4 July 2013. NZX contacted RAK, which was not aware that the announcement had been made in China. RAK ordinary shares were placed in a trading halt at approximately 11.35am on 5 July 2013 and at 12:17pm on 5 July 2013, RAK announced details of the Agreement.

TRIBUNAL FINDINGS:

The Tribunal found that RAK had breached Rule 10.1.1.

In the Tribunal's view, a proposal or negotiation can be complete for the purposes of Rule 10.1.1(a)(iii)(B) before it becomes legally binding. The Tribunal noted that the Rules do not explicitly require a legally binding commitment, but rather contemplate a broader range of situations where a proposal or negotiation may be complete.

The Tribunal found that the Agreement was complete at the time of execution by the parties on the evening of 4th July 2013, and was required to be immediately disclosed by RAK at that time – in practice this should have occurred before the market opened in New Zealand on 5 July 2013.

PENALTY:

RAK was ordered to pay \$30,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

RAK was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

The Tribunal released its determination and censure of RAK - nzx.com/NZMDT/tribunal-decisions.

[NZMDT 2/14 – Case Withdrawn](#)

NZMDT 3/14 NZX V STEEL & TUBE HOLDINGS LIMITED (STU)

Division: David Flacks (division chairman), Trevor Janes and Len Ward

Statement of Case served: 28 April 2014

Date of Determination: 3 June 2014

Rule Breached: NZX Main Board Listing Rules 3.3.6, 10.6.1(d), and 10.6.1(e)

FACTS:

In January 2014, NZX became aware that STU had failed to comply with a number of its obligations under the Rules; being to ensure that a director appointed by the STU board retired and was elected at the next annual meeting, failing to announce the resignation of an officer and failing to announce a change in registered address to NZX.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and STU under which STU accepted breaching Rules 3.3.6, 10.6.1(d) and 10.6.1(e) and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALITY:

STU was ordered to pay \$12,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

STU was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of STU - nzx.com/NZMDT/tribunal-decisions.

NZMDT 4/14 NZX V KVB KUNLUN NEW ZEALAND LIMITED (KVBA) AND CHEE JOO KOH

Division: Shane Edmond (division chairman), Richard Leggat and Rachael Reed

Statement of Case served: 26 May 2014

Oral Hearing held: 11 September 2014

Date of Determination: 8 October 2014

Rule Breached: NZX Participant Rules 3.3.2, 3.9, 3.13(c), 8.1.1(c), 8.4.1, 10.5.4, 10.5.9 and 10.5.10

FACTS:

On 16 December 2013, NZX conducted a routine inspection of KVBA in which it observed that KVBA's employees and prescribed persons had participated in an initial public offering but had failed to provide NZX with the necessary certification in breach of Participant Rule 10.5.4.

NZX also observed that over a seven month period from 10 May 2013 to 20 November 2013, there were 29 instances where KVBA's employees and prescribed persons sold securities before the expiry of the mandatory 10 Business Day holding period required under Participant Rule 10.5.9 (Holding Period). In each case, Mr Koh (KVBA's Managing Principal from August 2011 until 4 April 2014) had approved the sale of the relevant securities. NZX alleged that this approval was given by Mr Koh without first considering whether the requests were made because of special personal circumstances unrelated to market prices – as required under Participant Rule 10.5.10.

On 21 May 2014, KVBA self-reported a further instance of the Holding Period requirement not being met on 19 December 2013 regarding the sale of securities by a KVBA employee. Mr Koh again gave approval, improperly concluding that there was sufficient evidence of special personal circumstances for the purposes of Participant Rule 10.5.10.

Given the breaches of Participant Rules 10.5.4, 10.5.9 and 10.5.10, NZX considered that KVBA had also breached the requirements in Participant Rules 3.9, 3.13(c), 8.1.1(c) and 8.4.1 to comply with the Rules, to observe Good Broking Practice and to ensure that its employees comply fully with the Participant Rules and at all times observe Good Broking Practice.

TRIBUNAL FINDINGS:

The Tribunal found that KVBA had breached NZX Participant Rules 3.9, 3.13(c), 8.1.1(c), 8.4.1, 10.5.4, 10.5.9 and 10.5.10.

The Tribunal approved a settlement between NZX and Mr Koh under which Mr Koh accepted breaching Participant Rules 3.3.2 and 10.5.10 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

KVBA was ordered to pay \$40,000 to the NZX Discipline Fund and was publicly censured.

Mr Koh was ordered to pay \$25,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

KVBA was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

Mr Koh was required to contribute to the costs of the Tribunal and NZX.

PUBLICATION:

The Tribunal released its censures of KVBA and Mr Koh - nzx.com/NZMDT/tribunal-decisions.

NZMDT 5/14 NZX V FONTERRA CO-OPERATIVE GROUP LIMITED

Division: Andrew Beck (division chairman), Richard Keys and Alison Paterson

Statement of Case served: 5 June 2014

Date of Determination: 12 June 2014

Rule Breached: Fonterra Shareholders' Market Rule 9.1.1

FACTS:

In the early hours of Saturday, 3 August 2013 Fonterra provided a market announcement to NZX advising that on Wednesday, 31 July 2013 tests indicated the potential presence of *Clostridium botulinum* (a bacterium which can cause botulism) in a sample of whey protein concentrate (WPC80) manufactured by Fonterra in May 2012 and that it had notified eight of its customers.

NZX alleged in its statement of case to the Tribunal that Fonterra breached FSM Rule 9.1.1 by failing to release Material Information to NZX concerning the potential contamination of its WPC80 product immediately after coming into possession of that information by midday on 31 July 2013.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement between NZX and Fonterra. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

Under the settlement, Fonterra did not admit breaching FSM Rule 9.1.1, but acknowledged NZX's view and agreed to make certain payments as outlined below.

The Tribunal noted that it was concerning and disappointing that a disclosure issue had been required to be raised by NZX with Fonterra and that Fonterra had not accepted that a breach had occurred. The Tribunal also considered that Fonterra could have managed its compliance with continuous disclosure obligations better. The Tribunal reinforced the need for organisations, and particularly those of the size and standing of Fonterra, to devote proper resources, time and training in respect of their continuous disclosure obligations and to foster a culture of openness and transparency in relation to continuous disclosure issues.

PENALTY:

Fonterra was ordered to pay \$150,000 to the NZX Discipline Fund and a public announcement was made.

COSTS:

Fonterra was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released a public statement - nzx.com/NZMDT/tribunal-decisions.

NZMDT 6/14 NZX V ISSUER A

Division: Jo Appleyard (division chairwoman), Susan Peterson and James Ogden

Statement of Case served: 25 June 2014

Date of Determination: 11 July 2014

Rule Breached: NZX Main Board Listing Rule 7.12.1

FACTS:

Issuer A issued redeemable preference shares Quoted on the NZX Main Board. However, it did not release an allotment notice to the market until 8 business days after the shares were issued.

Rule 7.12.1 provides that if an Issuer issues Quoted Securities it must give NZX details of the issue for release to the market "forthwith" after the issue.

TRIBUNAL FINDINGS:

The Tribunal found Issuer A in breach of Rule 7.12.1.

PENALTY:

Issuer A was ordered to pay \$5,000 to the NZX Discipline Fund.

COSTS:

Issuer A was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

NZX sought an order that the Tribunal privately reprimand Issuer A, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal has published guidelines to explain its policy on the naming of respondents who are market participants (the Naming Policy). While the Naming Policy does not explicitly relate to Issuers, it does provide some

guidance on the nature of the breaches in which a party will be named. Under the Naming Policy, the name of a respondent is most likely to be published when:

- a. The public has been harmed, or public confidence in the sector has been damaged.
- b. The respondent has been involved in repeated offences and shown disregard for the relevant Rules.
- c. The penalty for the respondent falls within penalty bands 4 to 8 of the Tribunal Procedures.

The Tribunal saw no evidence to suggest that the breach by Issuer A had caused public harm, Issuer A had not been referred to the Tribunal previously nor did NZX advise the Tribunal of any other breaches of the Rules by Issuer A and the breach fell within penalty band 2 of the Tribunal Procedures. On that basis, the Tribunal considered that a private reprimand, as opposed to a public censure, was appropriate in this case.

NZMDT 7/14 NZX V ISSUER B

Division: Jo Appleyard (division chairwoman), Susan Peterson and James Ogden

Statement of Case served: 26 June 2014

Date of Determination: 2 July 2014

Rule Breached: NZDX Listing Rule 7.12.1

FACTS:

Issuer B issued bonds Quoted on the NZDX Market. However, it did not release an allotment notice to the market until 5 business days after the bonds were issued.

Rule 7.12.1 provides that if an Issuer issues Quoted Securities it must give NZX details of the issue for release to the market "forthwith" after the issue.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Issuer B under which Issuer B accepted breaching NZDX Rule 7.12.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

Issuer B was ordered to pay \$5,000 to the NZX Discipline Fund.

COSTS:

Issuer B was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Issuer B, as permitted under Tribunal Rule 11.5.1(a).

As noted above, the Naming Policy provides guidance on the nature of the breaches in which a party will be named. The Tribunal saw no evidence to suggest that the breach by Issuer B had caused public harm, Issuer B had not been referred to the Tribunal previously nor did NZX advise the Tribunal of any other breaches of the Rules by Issuer B and the breach fell within penalty band 2 of the Tribunal Procedures. On that basis, the Tribunal considered that a private reprimand, as opposed to a public censure, was appropriate in this case.

NZMDT 8/14 NZX V MARSDEN MARITIME HOLDINGS LIMITED (MMH)

Division: Mark Freeman (division chairman), Alison Paterson and David Kreider

Statement of Case served: 17 July 2014

Date of Determination: 8 August 2014

Rule Breached: NZX Main Board Listing Rule 9.3.1

FACTS:

One of the resolutions put to shareholders at the MMH 2013 annual meeting was "to approve an increase in Directors' fees from \$182,600 to \$200,000". Northland Regional Council (NRC), which held approximately 53% of MMH's shares, voted in favour of the resolution.

At the date of MMH's 2013 annual meeting, Mr Colin Mitten was a Director of MMH and the Chairman of Northland Inc Limited, a company wholly owned by NRC. Northland Inc is a Council Controlled Organisation and is the Northland region's economic development agency.

TRIBUNAL FINDINGS:

The Tribunal found that NRC was an Associated Person of a Director of MMH at the time of the 2013 annual meeting and should therefore have been disqualified from voting on the Resolution in accordance with Rule 9.3.1.

In the Tribunal's view, a relationship did exist for the purpose of Rule 1.8.2 between NRC and Mr Mitten (who was a director of MMH and the Chairman of Northland Inc) at the time of the 2013 annual meeting. Once a relationship exists, the test in Rule 1.8.2 requires that the first person could be influenced in making a decision or exercising a power affecting the Issuer as a

consequence of that relationship. The Tribunal considered that the fact that influence could exist as a consequence of a relationship between the relevant parties is sufficient. It is not necessary that the first person would be, or was, influenced in respect of the particular matter in order for them to be an Associated Person.

PENALTY:

The Tribunal considered that a financial penalty was not appropriate in this case based on the submissions from NZX that:

- (a) MMH had considered, and held an honest belief, that NRC was not an Associated Person of a Director of MMH; and
- (b) Under Rule 9.3.5, the Resolution was not impugned on the basis of the breach of Rule 9.3.1.

MMH was publicly censured.

COSTS:

No award of costs was made against MMH.

PUBLICATION:

The Tribunal released its determination and censure of MMH - [nzx.com/NZMDT/tribunal-decisions](https://www.nzx.com/NZMDT/tribunal-decisions).

NZMDT 9/14 NZX V DILIGENT BOARD MEMBER SERVICES, INCORPORATED (DIL)

Division: Don Holborow (division chairman), Kevin Baker and Christopher Swasbrook

Statement of Case served: 14 August 2014

Date of Determination: 5 September 2014

Rule Breached: NZX Main Board Listing Rules 10.3.1(b), 10.4.1 and 10.4.2

FACTS:

In August 2013, DIL notified NZX and the market that it had identified an error with its revenue recognition practice which required restatement of its financial statements for the fiscal years ending 31 December 2010, 2011, 2012 and the fiscal quarter ended 31 March 2013.

DIL was unable to complete its periodic reporting for the 2013 financial year until the restatement and revised audit for the earlier periods had been completed. DIL failed to meet its 2013 periodic reporting obligations under Rules 10.3.1(b), 10.4.1 and 10.4.2 (i.e. in relation to release of a half-year preliminary announcement, an interim report and an annual report).

TRIBUNAL FINDINGS:

The Tribunal considered DIL's failure to meet three successive reporting requirements to be very serious. The failure was as a direct consequence of an accounting error made by DIL. The error was significant, effectively taking DIL six months to rectify. During that six month period, investors continued to trade in the securities of DIL without the benefit of all the information they were entitled to have under the Rules.

The Tribunal noted that the periodic reporting requirements are fundamental to the integrity of the market. These requirements ensure that relevant, reliable financial information regarding an issuer is made available to the

market promptly and also mitigate the risk posed by information imbalance, where those “inside” the company are in possession of information not available to the market.

Accordingly, the Tribunal noted that it will continue to increase the penalties it imposes for breaches of the periodic reporting requirements.

The Tribunal approved a settlement agreement between NZX and DIL under which DIL accepted breaching the Rules and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

DIL was ordered to pay \$100,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

DIL was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of DIL - [nzx.com/NZMDT/tribunal-decisions](https://www.nzx.com/NZMDT/tribunal-decisions).

NZMDT 10/14 NZX V ISSUER C

Division: Trevor Janes (division chairman), Danny Chan and Mariëtte van Ryn

Statement of Case served: 3 September 2014

Date of Determination: 23 September 2014

Rule Breached: NZX Main Board Listing Rule 7.12.2

FACTS:

Issuer C announced its half year results for the period ending 31 January 2014 and the payment of an interim dividend, but did not release an Appendix 7 for its 2014 interim dividend until 2 Business Days before the Record Date.

Rule 7.12.2 provides that where any benefit is to be paid, an Issuer must give NZX, forthwith after any Director's recommendation and at least 10 Business Days before the Record Date to determine entitlements, full details of the benefit, including the information specified in that Rule in the form of an Appendix 7.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Issuer C under which Issuer C accepted breaching Rule 7.12.2 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

Issuer C was ordered to pay \$3,750 to the NZX Discipline Fund.

COSTS:

Issuer C was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Issuer C, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal saw no evidence to suggest that the breach by Issuer C had caused public harm, Issuer C had not been referred to the Tribunal previously nor did NZX advise the Tribunal of any other breaches of the Rules by Issuer C and the breach fell within penalty band 2 of the Tribunal Procedures. On that basis, the Tribunal considered that a private reprimand, as opposed to a public censure, was appropriate in this case.

NZMDT 11/14 NZX V PYNE GOULD CORPORATION LIMITED (PGC)

Division: Don Holborow (division chairman), Susan Peterson and Richard Keys

Statement of Case served: 9 October 2014

Date of Determination: 11 November 2014

Rule Breached: NZX Main Board Listing Rule 3.3.1(b)

FACTS:

On 29 July 2014, NZX became aware that PGC had failed to ensure that its Board included at least two Directors who were ordinarily resident in New Zealand in breach of Rule 3.3.1(b).

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and PGC under which PGC accepted breaching Rule 3.3.1(b) and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal considers breaches of the corporate governance provisions of the Rules a serious matter. The corporate governance provisions are important for the integrity of the market, and give investors confidence that directors have been appointed to represent shareholder interests. A breach of the corporate governance rules can bring NZX and the market into disrepute.

The Tribunal noted that while the breach continued for approximately seven weeks, PGC stated that the resignation of one of its New Zealand resident Directors had been unexpected and that it had moved quickly to rectify the breach and appoint a suitable new Director.

PENALITY:

PGC was ordered to pay \$8,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

PGC was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of PGC - nzx.com/NZMDT/tribunal-decisions.

NZMDT 12/14 NZX V BLIS TECHNOLOGIES LIMITED (BLT)

Division: Mark Freeman (division chairman), Alison Paterson and Len Ward

Statement of Case served: 4 November 2014

Date of Determination: 1 December 2014

Rule Breached: NZX Main Board Listing Rule 10.1.1(a) and 10.1.1(b)

FACTS:

At BLT's 2014 annual meeting, BLT noted that Sinopharm, the largest Chinese pharmaceutical company, was currently test-marketing consumer products with BLIS oral probiotics in 3 major cities through 30 pharmacies. By 19 August 2014, the BLT CEO had become aware that the number of pharmacies to which Sinopharm would distribute BLT products was going to increase from 30 to 600 (Sinopharm Trial).

On 19 August 2014, the CEO disclosed to a Fairfax Media journalist that the Sinopharm Trial would be increased to up to 600 pharmacies. On 24 August 2014, the Sunday Star Times published an article entitled "Dunedin manufacturer to launch probiotic in Asia". The article stated that "China's largest pharmaceutical company Sinopharm has said it will distribute Blis products in 600 stores in the next few weeks following a successful trial in three stores".

On 24 August 2014, discussions occurred between members of the BLT Board and it was decided that the extension of the Sinopharm Trial could potentially amount to Material Information. The Board also noted that the article inaccurately stated that the current trial had been in three stores, rather than thirty. On that basis, the Board decided to make an announcement clarifying the position as soon as possible on Monday, 25 August 2014. BLT provided the announcement to NZX at 9.59 am on 25 August 2014 and it was subsequently released to the market at 10.07 am.

On 25 August 2014, BLT shares opened at a price of \$0.022 (a 10% rise from the previous day's close) and the open match volume was 1,080,000 shares (compared to an average daily volume of 389,323 shares for the month of August 2014 up to and including 22 August 2014). BLT shares reached an intra-day high of \$0.031 (50% increase over the previous close) and closed at \$0.025 cents (25% increase over the previous close).

TRIBUNAL FINDINGS:

The Tribunal found that BLT had breached Rules 10.1.1(a) and 10.1.1(b).

The Tribunal considered that by 19 August 2014, BLT was aware of Material Information, namely the expansion of the Sinopharm Trial, which should have been immediately disclosed to the market. As the information was not released to the market until 10.07am on 25 August 2014, the Tribunal considers that BLT breached Rule 10.1.1(a).

It then followed that the Tribunal also considered that BLT breached Rule 10.1.1(b) by providing the Material Information to a member of the public (a Fairfax Media journalist) on 19 August 2014 before that information had been released to NZX on 25 August 2014.

The Tribunal noted that compliance with the continuous disclosure requirements in the Rules is of fundamental importance to the integrity of the market. Material Information must be immediately released to the market, unless a permitted exception applies and must not be released to a member of the public before its release to NZX. Any breach of the continuous disclosure requirements under the Rules brings the market into disrepute and will be punished accordingly.

PENALTY:

BLT was ordered to pay \$30,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

BLT was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

The Tribunal released its determination and censure of BLT - nzx.com/NZMDT/tribunal-decisions.

NZMDT 13/14 NZX V MARKET PARTICIPANT A

Division: Nick Hegan (division chairman), Noeline Munro and Geoff Brown

Statement of Case served: 14 November 2014

Date of Determination: 19 November 2014

Rule Breached: NZX Participant Rule 15.17.1

FACTS:

Due to a printing fault, Market Participant A failed to despatch written contract notes to its clients and the clients of two other Market Participants for trades executed on the ASX market. The fault went undetected for 63 business days.

Under Participant Rule 15.17.1, a Client Advising Participant must despatch a written contract note to a client no later than the day following the (a) completion of that client's instruction if that client is an Institutional Client; or (b) execution of part or all of that client's instruction if that client is a Retail Client, unless certain exceptions apply.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant A under which Market Participant A accepted breaching Rule 15.17.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal noted that the requirement under Rule 15.17.1 to promptly send out contract notes is a fundamental obligation with which all Client Advising Participants must comply. Contract notes are important as they provide evidence that a transaction has occurred.

PENALTY:

Market Participant A was ordered to pay \$3,500 to the NZX Discipline Fund.

COSTS:

Market Participant A was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant A, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal noted that in developing the Naming Policy, it took into account the need to ensure that its process was transparent and that parties brought before it were named. However, the Tribunal also took into account the punitive effect of naming parties, regardless of the seriousness of their breach. The Naming Policy seeks to strike a balance between the public interest in naming respondents and the detriment to the respondent from being named. It states that it is not likely that the name of a respondent will be published when the penalty for the respondent falls within Penalty Bands 1, 2 or 3 and where the breach is of minor importance and not systemic.

The Tribunal considered that the breach fell within Penalty Band 3 and was not systemic but rather the result of a "one-off" system error. However, the Tribunal was very concerned that the breach continued and remained undetected for a significant period of time (63 business days) and that a significant number of clients were affected (including the clients of two other Market Participants). The Tribunal noted the submissions from NZX that a private reprimand was appropriate, that it had seen no evidence to suggest that the breach had any detrimental impact on the clients involved and that the breach did not result in any settlement failures. Accordingly, although the relevant considerations were finely balanced, overall the Tribunal considered that a private reprimand in this case was consistent with the Naming Policy.

NZMDT 14/14 NZX V MARKET PARTICIPANT B

Division: Nick Hegan (division chairman), Noeline Munro and Geoff Brown

Statement of Case served: 14 November 2014

Date of Determination: 19 November 2014

Rule Breached: NZX Participant Rule 15.17.1

FACTS:

Market Participant B has an agreement with Market Participant A to despatch contract notes to Market Participant B's clients for trades executed on the ASX market. Due to a printing fault by Market Participant A, contract notes were not despatched to Market Participant B's clients for 63 business days.

Under Participant Rule 15.17.1, a Client Advising Participant must despatch a written contract note to a client no later than the day following the (a) completion of that client's instruction if that client is an Institutional Client; or (b) execution of part or all of that client's instruction if that client is a Retail Client, unless certain exceptions apply.

NZX advised the Tribunal that Market Participant B had previously breached Participant Rule 15.17.1 within the last 24 Months.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant B under which Market Participant B accepted breaching Rule 15.17.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

Market Participant B was ordered to pay \$2,500 to the NZX Discipline Fund.

COSTS:

Market Participant B was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant B, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal considered that the breach fell within Penalty Band 3 and was not systemic but rather the result of a "one-off" system error. However, the Tribunal was again very concerned that the breach continued and remained undetected for a significant period of time (63 business days) and that a significant number of clients were affected. The Tribunal noted the submissions from NZX that a private reprimand was appropriate, that it had seen no evidence to suggest that the breach had any detrimental impact on the clients involved and that the breach did not result in any settlement failures. Accordingly, the Tribunal considered that a private reprimand in this case was consistent with the Naming Policy.

NZMDT 15/14 NZX V MARKET PARTICIPANT C

Division: Nick Hegan (division chairman), Noeline Munro and Geoff Brown

Statement of Case served: 14 November 2014

Date of Determination: 19 November 2014

Rule Breached: NZX Participant Rule 15.17.1

FACTS:

Market Participant C has an agreement with Market Participant A to despatch contract notes to Market Participant C's clients for trades executed on the ASX market. Due to a printing fault by Market Participant A, contract notes were not despatched to Market Participant C's clients for 63 business days.

Under Participant Rule 15.17.1, a Client Advising Participant must despatch a written contract note to a client no later than the day following the (a) completion of that client's instruction if that client is an Institutional Client; or (b) execution of part or all of that client's instruction if that client is a Retail Client, unless certain exceptions apply.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant C under which Market Participant C accepted breaching Rule 15.17.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

Market Participant C was ordered to pay \$2,000 to the NZX Discipline Fund.

COSTS:

Market Participant C was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant C, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal considered that the breach fell within Penalty Band 3 and was not systemic but rather the result of a "one-off" system error. However, the Tribunal was again very concerned that the breach continued and remained undetected for a significant period of time (63 business days). The Tribunal noted the submissions from NZX that a private reprimand was appropriate, that it had seen no evidence to suggest that the breach had any detrimental impact on the clients involved and that the breach did not result in any settlement failures. Accordingly, the Tribunal considered that a private reprimand in this case was consistent with the Naming Policy.

NZMDT 16/14 NZX V PYNE GOULD CORPORATION LIMITED (PGC)

Division: David Flacks (division chairman), Susan Peterson and Geoff Brown

Statement of Case served: 12 December 2014

Date of Determination: 16 January 2015

Rule Breached: NZX Main Board Listing Rule 10.4.1

FACTS:

Under Rule 10.4.1, issuers listed on the NZX Main Board are required to provide an annual report to the market within three months of the end of the issuer's financial year. PGC's financial year-end is 30 June. Accordingly, its annual report was due to be provided to NZX and PGC's shareholders by no later than 30 September 2014.

PGC did not file its annual report until 3 November 2014, and in doing so breached Rule 10.4.1. As a result of the breach, trading in PGC's securities was suspended from 9 October 2014 until 3 November 2014.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and PGC under which PGC accepted breaching Rule 10.4.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal considers breaches of the periodic reporting requirements under the Rules to be a serious matter. Delays in the provision of material information, such as audited financial statements, are likely to unnerve investors and damage confidence both in the issuer's securities and in the market's integrity.

Any suspension of trading in an issuer's securities that arises from uncertainty surrounding an issuer's financial position also has the potential to damage the integrity of the market.

Accordingly, the Tribunal has previously highlighted that it will continue to increase the penalties it imposes for breaches of the periodic reporting requirements.

PENALITY:

PGC was ordered to pay \$50,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

PGC was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of PGC - nzx.com/NZMDT/tribunal-decisions.

NZMDT 17/14 NZX V SEALEGS CORPORATION LIMITED (SLG)

Division: David Flacks (division chairman), Susan Peterson and Geoff Brown

Statement of Case served: 17 December 2014

Date of Determination: 23 December 2014

Rule Breached: NZX Main Board Listing Rules 3.3.1(c), 3.6.2(b) and 3.6.2(c)

FACTS:

On 26 September 2014, NZX became aware that SLG had failed to comply with its obligations under Rule 3.3.1(c) by not having at least two Independent Directors, Rule 3.6.2(b) by not having at least three members sitting on its Audit Committee, and Rule 3.6.2(c) by not having a majority of Independent Directors on its Audit Committee.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and SLG under which SLG accepted breaching Rules 3.3.1(c), 3.6.2(b) and 3.6.2(c) and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALTY:

SLG was ordered to pay \$8,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

SLG was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of SLG - nzx.com/NZMDT/tribunal-decisions.

NZMDT 18/14 NZX V MARKET PARTICIPANT D

Division: David Flacks (division chairman), Susan Peterson and Geoff Brown

Statement of Case served: 19 December 2014

Date of Determination: 20 January 2015

Rule Breached: NZX Participant Rule 15.17.1

FACTS:

Due to a printing fault, contract notes were not despatched to Market Participant D's clients for nine business days.

Under Participant Rule 15.17.1, a Client Advising Participant must despatch a written contract note to a client no later than the day following the (a) completion of that client's instruction if that client is an Institutional Client; or (b) execution of part or all of that client's instruction if that client is a Retail Client, unless certain exceptions apply.

NZX advised the Tribunal that this was the third breach of Participant Rule 15.17.1 by Market Participant D within the last 24 Months.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant D under which Market Participant D accepted breaching Rule 15.17.1 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

PENALITY:

Market Participant D was ordered to pay \$3,500 to the NZX Discipline Fund.

COSTS:

Market Participant D was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant D, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal considered that the breach fell within Penalty Band 3 and was not systemic but rather the result of a "one-off" system error. The Tribunal considered that giving a private reprimand in this case would be consistent with the approach taken in the four previous cases involving a breach of Rule 15.17.1 by other Client Advising Participants. However, the Tribunal noted that should Market Participant D breach Rule 15.17.1 again it would be inclined to publicly censure them.



NZX REGULATION ANNUAL REPORT TO NZ MARKETS DISCIPLINARY TRIBUNAL

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS
REQUIRED BY NZMDT RULE 14.1.1 (a) - (c) WHICH PROVIDES:

“14.1.1 Following the end of each calendar year NZX shall collate the following information for that year and provide to the Tribunal as a report by the end of February of the following year:

- a) breaches of the NZX Market Rules identified by NZX;
 - b) complaints received by NZX in respect of Participants (other than Clearing Participants, Lending Clearing Participants or Depository Participants);
and
 - c) the use of the proceeds of the Disciplinary Fund.”
-



NZX Regulation

Annual Report to NZ Markets Disciplinary Tribunal for the period 1 January 2014 to 31 December 2014

19 February 2015



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1. Introduction

NZX Regulation (**NZXR**) performs the regulatory functions of NZX Limited (**NZX**) and has prepared this report for the NZ Markets Disciplinary Tribunal (**Tribunal**).

This report covers the calendar year 1 January 2014 to 31 December 2014.

This report contains:

- An overview of NZX's approach to enforcement;
- Information about breaches identified by NZXR of the NZX Market Rules (including the Main Board/Debt Market Listing Rules, the NZAX Listing Rules and the Fonterra Co-operative Group Limited FSM Rules (together the **Listing Rules**), the Participant Rules, and the Derivatives Market Rules);
- Information about complaints received by NZX in respect of Market Participants (other than Clearing Participants, Lending Clearing Participants or Depository Participants); and
- The use of the proceeds of the Discipline Fund.

This report does not cover referrals made by NZX to the Financial Markets Authority (**the FMA**) in respect of suspected breaches of legislation NZX detects while carrying out its regulation and surveillance duties (for example, referrals made to the FMA in respect of suspected insider trading or market manipulation).

2. NZXR's Enforcement Practices

NZXR investigates suspected breaches of the market rules and takes appropriate enforcement action in accordance with NZX's Enforcement Policy.

A copy of NZX's Enforcement Policy is available for download at:

<https://nzx.com/files/static/cms-documents/NZXEnforcementPolicy.pdf>

Matters for investigation are brought to NZXR's attention in a number of ways; including through NZX's own monitoring and surveillance work, on-site inspections, capital adequacy reviews and targeted investigations, as well as from external parties, such as enquiries and complaints from members of the public, and referrals from other regulators.

NZXR does not investigate matters concerning breaches of law, such as insider trading. NZXR refers these matters to the appropriate agency, for example the FMA.

NZXR will take immediate action if, in NZXR's opinion, immediate action is required for the operation of fair, orderly and transparent markets, or it is required in the best interests of the markets to take such action.

NZXR does not commence an enquiry in respect of every matter brought to its attention. NZXR will consider, amongst other matters, its enforcement priorities, the severity and extent of the alleged breach, the impact of the alleged breach including the risk and extent of possible loss, the nature and quality of available evidence, relevant precedent, whether another regulator has jurisdiction in respect of the matter, and the regulatory outcome that may be achieved if enforcement action was taken.

NZXR's enforcement priorities include:

- Matters that have a significant market impact – for example, loss to investors, or a disruption to trading;
- Suspected breaches of the continuous disclosure and periodic reporting rules;
- Corporate governance issues; and
- Responding to market developments, as required.

Once NZXR commences an enquiry it will seek information from the issuer or market participant concerned to establish if there is evidence of a breach and to gain an understanding of the surrounding circumstances.

NZXR will take into account a number of factors when considering what enforcement action to take in respect of an identified breach of the market rules. While not an exhaustive list, the factors NZXR may have regard to include:

- The impact of the breach;
- The market rule that has been breached;
- The person or entity that has breached the rule; and

- A variety of other considerations, including what effect taking enforcement action would have on the market, the regulatory outcome NZXR seeks to achieve by taking enforcement action and whether other remedial action is possible or has been taken.

There are a variety of enforcement tools available to NZXR. The tool NZXR will use in respect of a particular breach depends on the circumstances of the breach and the regulatory outcome NZXR seeks to achieve by taking enforcement action. The range of enforcement tools utilised by NZXR are:

- Issue an 'obligations' letter noting the breach and requiring the issuer or market participant to review its policies and procedures regarding its compliance framework and practice;
- Halt, or suspend the quotation of all or any of an issuer's securities;
- Increase the surveillance or monitoring of a particular issuer or market participant;
- Impose additional requirements on a issuer or market participant;
- Refer the matter to the Tribunal;
- Cancel an issuer's listing;
- Revoke an individual's designation as an NZX Advisor; and
- Suspend or revoke a firm's designation as a market participant.

A summary of the enforcement action NZXR took in 2014 is provided in the table below.

Table One: Overview of NZXR enforcement activity in 2014

Enforcement activity	Market Participants	Derivatives Market Participants	Issuers
Complaints brought forward from 2013	2	0	1
Complaints received during 2014	1	0	26
Complaints completed	3	0	27
Complaints ongoing as at 31 December 2014	0	0	0
Investigations brought forward from 2013	1	0	11
Investigations commenced	69	3	125
Investigations completed	67	3	130
Investigations ongoing as at 31 December 2014	3	0	6
Breaches identified	62	3	49
Breaches referred to the Tribunal	6	0	12
Breaches resolved (including obligations letters)	55	3	47
Breaches pending resolution as at 31 December 2014	2	0	2

Commentary on Table One:

The year ending 31 December 2014 saw NZXR complete 197 investigations into possible breaches of NZX's rules resulting in the identification of 111 breaches.

Of the 111 breaches of NZX's rules identified in 2014, NZXR referred 18 matters to the Tribunal, compared with 9 referred in the 2013 calendar year and 5 in 2012. These referrals represent 16% of the breaches identified by NZXR in the calendar year, up from approximately 10% in previous years.

During the year NZXR also completed the following enforcement initiatives:

- Introduced a new recording and case management system for investigations to improve tracking of enquiries and investigations;
- Updated its internal Enforcement Procedures;
- Updated NZXR's section of the NZX website to include more detail in relation to NZXR's enforcement function;
- Facilitated, in conjunction with the Tribunal, the update of the Tribunal's section of NZX.com;
- Increased market communications in relation to enforcement activities, including releasing announcements in relation to published Tribunal decisions;
- Entered into a Memorandum of Understanding with the FMA covering matters including a joint approach to communications in relation to enforcement matters and dealing with complaints;
- Embedded the process for oversight of enforcement decisions via the quarterly review of enforcement decisions by the Regulatory Governance Committee, including in-depth discussion of matters of interest to the Committee or which have had increased public exposure; and
- Updated NZX's internal service level guidelines for both issuer and participant enquiries.

3. NZX Market Participants and Derivatives Market Participants

A. Summary of breaches of the Participant Rules identified by NZXR

NZXR investigated 70 possible breaches of the Participant Rules by Market Participants during the year (including 1 possible breach which was ongoing from 2013).

NZXR concluded that of these 70 investigations, 62 matters were breaches, 5 matters were not breaches and 3 matters were ongoing as at 31 December 2014.

A summary of those matters and the enforcement action taken by NZXR is set out below.

Table Two: Summary of breaches of the Participant Rules identified in 2014

Capital Adequacy Requirement	16 breaches
<p>Sixteen breaches of various capital adequacy rules were observed during the year.</p> <p>Six breaches related to participants failing to provide notification of changes in their capital adequacy ratio by 50% or more. These participants continued to exceed the minimum capital requirements at all times. NZXR observed that these breaches were minor in nature. NZXR reminded the participants of their obligations and no further action was taken.</p> <p>Six breaches related to the inaccurate calculation of counterparty risk requirement in the capital adequacy calculation. Four of these breaches related to Advising Firms who do not hold client assets. NZXR reviewed the practices of these participants and provided guidance to ensure that future calculations were correct. One of these breaches was a self reported error by a participant. The impact of this error on the participant's capital ratio was insignificant and did not cause the participant to breach the minimum capital adequacy requirements. One was an error in the monthly return, which was corrected by the participant. The impact of the error on the participant's capital ratio was insignificant and did not cause the participant to breach the minimum capital adequacy requirements. Each participant updated their calculations to accurately reflect counterparty risk requirement. NZXR reminded the participants of their obligations and no further action was taken by NZXR.</p> <p>Three breaches arose due to foreign currency balances not being converted using daily rates in the capital adequacy calculation. NZXR observed that the impact of these breaches did not materially affect the participant's capital ratio and did not cause the participant to breach the minimum capital adequacy requirements. Participants updated their procedures to use daily rates. NZXR reminded the participants of their obligations and no further action was taken by NZXR.</p> <p>One breach arose due to a participant not calculating its position risk and primary market risk requirement correctly. NZXR observed that the impact of this breach did not materially affect the participant's capital ratio and did not cause the participant to breach the minimum capital adequacy requirements. The participant updated its procedures to include these calculations. NZXR reminded the participants of their obligations and no further action was taken by NZXR.</p>	
Client Funds	15 breaches
<p>Fifteen breaches of various rules in relation to client funds were observed during the year.</p>	

Seven breaches related to client funds accounts being in overdraft for different participants. NZXR observed that all of these breaches were self reported and immediate steps were taken by the participants to remedy the breaches by correcting the errors that had caused them, meaning that there was no actual impact on clients. Four of these breaches related to bank errors and three were due to staff errors. Bank statements and ledgers were supplied to NZXR confirming that all overdrafts were resolved. All of the overdrafts were resolved within one business day. NZXR reminded the participants of their obligations and no further action was taken in relation to these breaches.

Six breaches related to different participants that were late in reporting their daily client assets and outstanding obligations. NZXR observed that these breaches did not have a significant impact as they related only to late reporting and the participants continued to hold client assets in excess of their outstanding obligations. NZXR reminded the participants of their obligations and no further action was taken by NZXR.

One breach arose due to client funds (in relation to a single client) being transferred one day late into the relevant participant's trust account. NZXR observed that this was a one-off breach as it was due to staff working during an overseas holiday and not having adequate access to complete the transfer. Most of the firm's transactions settle Delivery versus Payment and therefore actual client receipts in the trust account do not occur often. The participant updated staff access rights to ensure that staff working during holidays can complete such transfers. The participant advised that the client was not impacted as the participant was awaiting instructions from the client on how these funds should be paid to the client. The breach was resolved by the next day. NZXR reminded the participant of its obligations and no further action was taken in relation to this breach.

One breach arose due to client funds being transferred in error to the participant's operating account. The participant self reported the breach and advised NZXR that there was no impact to clients as the participant had a buffer in the client funds account higher than the amount of the error. NZXR was satisfied that this was a genuine error and observed that the participant took immediate steps to remedy the breach. NZXR reminded the participant of its obligations and no further action was taken.

Contract Notes

7 breaches

Seven breaches related to participants that had not dispatched contract notes to clients within one business day.

Three breaches were due either to staff error or a localised system issue. In each of these three cases, the participant remedied the breach as soon as it was identified and there was no impact on client settlement. NZXR observed that the impact of these breaches was minor. In addition, NZXR noted that these breaches related to different participants who did not have previous breaches in relation to the printing of contract notes. NZXR was satisfied that the steps taken by the participants would prevent recurrence of these breaches. NZXR reminded the participants of their obligations and no further action was taken. NZXR notes that one of these three participants subsequently breached this rule again and was referred to the NZMDT (see below).

Three breaches arose due to a system issue at a trading participant which affected the distribution of contract notes for two advising firms that relied on the trading participant for trade execution, clearing, settlement and contract note distribution. NZXR observed that these breaches occurred over a three month period. All three breaches were referred to the NZMDT in November 2014. Information about these matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

One breach arose due to a staff error which resulted in contract notes not being sent to clients for a week. NZXR observed that the participant had previous breaches in relation to the printing of contracts notes (see above) and the matter was referred to the NZMDT in December 2014. Information about this matter is described under the heading "Statements of Case, Findings and

Penalties” in NZMDT’s Annual Report.

Employee and Prescribed Person Trading

5 breaches

Two breaches related to prescribed persons who traded through other participants. At the time of the relevant trades, NZXR observed that the participants were not aware or did not have a reasonable basis for knowing that the relevant clients were prescribed persons of another participant. NZXR recommended that the participants amend their terms and conditions to placing an obligation on the customer to notify the participant if the client becomes a prescribed person of another firm. This would allow the participant to close the relevant account upon receipt of the notification. NZXR reminded the participants of their obligations and no further action was taken in relation to these breaches.

One breach related to a family trust client account not being designated as a prescribed person by the participant. When the breach was identified, the participant designated this account as a prescribed person account in its system. The participant reviewed this account and confirmed that no transactions indicated a conflict of interest with client orders and the orders would have been authorised, had written requests for authorisation been submitted as per the firm’s procedures for prescribed persons. The participant confirmed that it did not have any other accounts that were also excluded from the prescribed person definition. NZXR reminded the participant of its obligations and no further action was taken in relation to this breach.

One breach related to an employee trading in securities without prior approval. NZXR observed that this breach related to an isolated incident where one employee executed three trades through another participant without seeking pre-approval from the compliance manager, and contrary to the participant’s policies and procedures. NZXR notes that this type of breach is difficult to prevent or detect as the employee did not disclose these details to the participant. As the employee does not hold an NZX accreditation, NZXR was unable to take direct disciplinary action against the employee. NZXR did not consider that the breach required further action as NZXR was satisfied that the participant took appropriate disciplinary action against the employee directly and there were insufficient grounds to pursue a case against the participant.

One matter related to a participant’s employees and prescribed persons breaching the minimum 10 business days holding period and participating in an initial public offering without the firm providing the necessary certification to NZXR. NZXR observed that the breaches were of a systemic nature and were serious. These breaches had the potential to bring the NZX and its markets into disrepute as trading restrictions for employees and prescribed persons are essential to the integrity of the NZX markets. NZXR observed that the participant’s employees and prescribed persons benefitted from these breaches. The participant’s conduct did not comply with good broking practice and was unfair to other NZX participants who complied with the rules. This matter was referred to the NZMDT in May 2014. Information about these matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Client Disclosure

5 breaches

Three breaches related to different participants that had issued custody reports which did not clearly disclose the location of the securities held in custody. NZXR observed that each of the participants implemented changes to the format of their reports to ensure that location details were presented clearly. NZXR reminded the participants of their obligations and no further action was taken in relation to these breaches.

One breach related to a participant that failed to disclose to clients that interest earned on the client funds account is retained by the participant. The participant primarily settles ‘delivery versus payment’ with institutional clients and there is rarely any actual client funds held in the account. The participant advised that the value of interest earned was very low (approximately \$30) and only three

institutional clients were affected. The participant made the required disclosure to the clients affected and established a separate client funds account that was not interest bearing. NZXR considered the background and the participant's responses in respect of this breach, NZXR reminded the participant of its obligations and determined not to take any further action as this breach was adequately addressed by the participant.

One breach related to a participant failing to disclose to clients the details of the firm's securities holding threshold in its procedures. NZXR noted that the participant had a security holdings threshold but that this was not clearly set out in its procedures. NZXR observed that the threshold was unusually high and recommended that this be revised to a level which was more appropriate. The participant set an appropriate threshold, updated its procedures and provided training to advisors to ensure that holdings above the threshold are disclosed to clients. In determining not to take further action, NZXR considered the breach in respect of its impact, the participant's internal controls, compliance procedures and the steps taken by the participant to implement NZXR's recommendation. NZXR reminded the participant of its obligations.

Common Shareholder Number

4 breaches

Three breaches related to different participants where common shareholder numbers were not entered into orders for a small number of retail clients.

NZXR observed that the breaches were minor as they related to a small number of trades and were not a systemic issue. NZXR reminded the participants of their obligations and no further action was taken.

One breach related to a participant, in relation to misreporting of common shareholder numbers, which is still being investigated. This matter was a breach identified pending action as at 31 December 2014.

Notifications

3 breaches

Three breaches related to late notifications of the departure of advisors and a change in the management structure.

NZXR observed that the breaches were minor. NZXR reminded the participants of their obligations and no further action was taken.

Trading Errors

2 breaches

Two unrelated breaches were noted at different participants where an order was entered to market in error.

One breach arose due to a dealer entering an order in error at market instead of using a limit price. The dealer immediately contacted NZX Surveillance to cancel the trade. However, the trade was not cancelled as it did not meet the criteria of a 'Market Impact' and the counterparties to the trade disagreed to the cancellation. The breach was self reported to NZXR by the participant and the firm covered any losses to the client as a result of the error. NZXR was satisfied that this was a genuine error as there was no evidence of an intention to manipulate the market. NZXR issued the participant with an obligations letter and no further action was taken.

One breach arose due to a dealer entering an order in error at market where the error was not notified to NZX. This matter was a breach identified pending action as at 31 December 2014.

Other Breaches**5 breaches**

There were five breaches of an unrelated nature in relation to four different participants.

One breach related to a participant that had no client agreements signed prior to trading for a group of clients. The participant was applying reduced KYC procedures in relation to certain client employee share schemes. The breach was self reported by the participant. NZXR did not refer the matter to the Tribunal because the participant complied with its AML and KYC requirements, performed customer due diligence and confirmed that there was no impact to clients as a result of the breach. The participant also took immediate steps to comply with the rules and was also granted a waiver by NZXR in relation to the employee share schemes. NZXR reminded the participant of its obligations and no further action was taken in relation to this breach.

One breach related to a DMA client who had entered a short sale order into the trading system without using the correct flag. NZXR observed that this was a minor technical breach of a requirement to flag short sale orders in the trading system. The participant self reported the breach as soon as it became aware that the client had short sold and took action to ensure that such orders were flagged correctly in future. NZXR reminded the participant of its obligations and no further action was taken in relation to this breach.

One breach arose due to a participant failing to report an off-market crossing into the trading system. NZXR observed that there was no market impact. The firm was reminded of its obligations and no further action was taken.

One breach arose due to a participant not complying with an instruction from a discretionary client to exclude investments related to a particular industry from the client's portfolio. NZXR notes that the participant notified the client of this error and divested the holdings without adversely impacting the client. The cause of the breach was that the client's restriction applied to all classes of securities in the specific industry, not just to equities. The participant noted that it had believed the restriction applied to equities only based on discussions with the client. The participant confirmed that the client received contract notes and periodic statements and did not raise concerns in relation to the holdings. The participant also reminded its advisers to be mindful that any restrictions are clearly recorded and adhered to. NZXR reminded the participant of its obligations and the matter was not referred for discipline because the client had been informed of the matter and the investment divested.

One breach related to an associate advisor where there was inadequate recording of information to evidence that market manipulation factors had been properly considered prior to placing an order. The participant noted that its advisor had considered market manipulation factors and had determined that no further information was necessary. NZXR was of the view that further inquiries were needed at the time and that better records should have been kept in relation to the factors considered at the time. NZXR was satisfied that the breach did not represent a systemic issue within the participant and that the participant's policies and procedures adequately covered this requirement. The participant had already taken steps to enhance its training in this area. On this basis, an improvement in the participant's practices was the best regulatory outcome in the circumstances. NZXR issued the participant with an obligations letter and did not take disciplinary action in relation to this matter.

B. Summary of complaints received by NZXR in respect of Market Participants

NZXR considered three complaints in respect of market participants during the year (including two complaints which were ongoing from 2013). A summary of these matters is set out below.

Table Three: Summary of complaints received about Market Participants in 2014

Good Broking Practice	2 complaints
<p>One complaint related to an allegation that a participant had sold the complainant's shares without authorisation and that the shares were sold below their market value. NZXR noted from discussions that occurred between the advisor, the complainant and the complainant's associate that it was reasonable in the circumstances for the advisor to form a view that the complainant wanted to transact through the associate and that the complainant had approved the trade even though it was the associate who communicated the final instructions to the advisor. NZXR observed that there was compelling evidence to indicate that the complainant intended to sell the shares at the time and was satisfied with the price achieved on the day. NZXR believed that the complainant suffered no loss that could be attributed to the lack of a written approval.</p> <p>NZXR did not believe there would be any benefit to investors or the market from taking disciplinary action in this case as NZXR was satisfied that the conduct did not represent a systemic issue within the participant and that the participant's policies and procedures adequately covered this requirement. In the specific circumstances, there was evidence that supported that the advisor had implied consent from the complainant to enter into the transaction and the complainant had suffered no loss that was attributable to the lack of a written approval. NZXR issued the participant with an obligations letter and no further action was taken.</p> <p>One complaint related to a complainant alleging that despite an instruction to sell an investment, an advisor did not execute the sale which resulted in a loss to the complainant. The complaint related to events that took place in 2007. NZXR noted that it was unclear from the facts of the complaint that the participant had breached the Participant Rules in respect of the matters raised. NZXR determined to refer the matter to the Tribunal due to a number of factual disputes that NZXR was unable to resolve.</p> <p>During the course of the Tribunal's proceedings, the complainant reached a settlement with the participant. The complainant and the participant agreed that NZXR should withdraw its action against the participant. NZXR subsequently withdrew its proceedings.</p>	
Contract Note Disclosure	1 complaint
<p>The FMA received a complaint in relation to a participant and forwarded this complaint to NZXR for review.</p> <p>The complaint related to a client who was unhappy that currency exchange rates were not displayed in sufficient detail on the participant's contract notes.</p> <p>NZXR contacted the client who was happy to discuss the matter directly with the participant's</p>	

compliance manager. The participant's compliance manager contacted the client and supplied the information requested. The client was satisfied with the participant's responses and the matter was resolved.

NZXR notified the FMA that the matter was resolved between the participant and the client directly.

C. Summary of breaches of the Derivatives Market Rules identified by NZXR

NZXR investigated three possible breaches of the Derivatives Market Rules by market participants and concluded that all three were breaches.

A summary of those matters and the enforcement action taken by NZXR is set out below.

Table Four: Summary of the breaches of the Derivatives Market Rules considered in 2014

Notification of change in Compliance Manager	1 breach
<p>One breach related to a participant failing to notify NZXR of a change in the participant's compliance manager within one business day of the change occurring. The breach was due to an oversight by the participant.</p> <p>NZXR concluded that the breach was minor. The participant provided the relevant details to NZXR, NZXR reminded the participant of its obligations and no further action was taken.</p>	
Voice Recording	1 breach
<p>One breach was self reported by a participant that had failed to meet voice recording requirements during a seven month period.</p> <p>The participant confirmed that there was no material impact on clients or its business as the breach was limited to only three NZX derivatives advisors; there were no client complaints or order taking errors associated with the three NZX derivatives advisors during that period; and all of the participant's advisors are required to repeat Orders to their clients.</p> <p>The participant moved the voice recording system to a new server to assist with monitoring and maintaining voice recording; commenced undertaking a weekly review of its voice recording software; and as part of any future move or server reconfiguration the participant will ensure that voice recording functionality is tested prior to 'going live'.</p> <p>NZXR determined not to take any further action in respect of this breach on the basis that the participant took reasonable steps to ensure that there are no further breaches and that there was no material impact on the participant's clients or its business. NZXR reminded the participant of its obligations.</p>	
No change in beneficial ownership	1 breach
<p>One breach was due to an order being placed by a DMA client which led to a trade that did not result in a change in beneficial ownership.</p>	

In this case the lack of a change in beneficial ownership was the result of a genuine error by the end client and the trade did not impact the market price.

The participant and the client took adequate steps to prevent recurrence. NZXR was satisfied with the changes made and no further action was taken.

D. Summary of complaints received by NZXR in respect of Derivatives Market Participants

NZXR did not receive any complaints in respect of Derivatives Market Participants in 2014.

4. NZX Issuers

A. Summary of breaches of the Listing Rules identified by NZXR in 2014

In 2014 NZXR considered 49 breaches of the Listing Rules by issuers.

A summary of those matters and the enforcement action taken by NZXR is set out below.

Table Five: Summary of the breaches of the Listing Rules considered in 2014

Information in annual report	11 breaches
<p>Eleven breaches related to the requirement to include prescribed information in an annual report.</p> <p>Four of these breaches related to a variety of matters such as failing to include a summary of waivers granted by NZXR, failing to include a summary of any matters referred to the NZMDT.</p> <p>Seven of these related to the requirement to include information on the gender breakdown of an issuer's directors and officers as at the issuer's balance date.</p> <p>The eleven breaches were minor in nature, had no market impact and there were no systemic compliance issues identified.</p> <p>In relation to these eleven minor breaches, NZXR asked each issuer to release the required information to the market and sent a letter reminding each issuer of their obligations under the Listing Rules.</p>	
Provide NZX with administrative information	15 breaches
<p>Fifteen breaches arose from issuers failing to provide NZX with administrative information as required by the Listing Rules.</p> <p>Five breaches arose when an issuer provided an update to the Companies Office or another exchange but failed to provide the information to NZX at the same time.</p> <p>Six breaches related to an issuer's failure to provide NZX with information sent to the issuer's shareholders.</p> <p>Two breaches related to an issuer's failure to provide NZX with signed director acknowledgements immediately following the director's appointment.</p> <p>One breach related to an issuer's failure to immediately notify NZXR of a change in the address of its registered office.</p> <p>One breach related to an issuer's failure to provide a completed Appendix 7 form.</p> <p>Fourteen breaches were minor in nature, had no market impact and no systemic compliance issues were identified. In these cases NZXR contacted each issuer, asked them to release the required information to the market and sent a letter reminding each issuer of their obligations under the Listing Rules.</p>	

One breach was serious in nature. NZXR investigated the circumstances leading up to the breach and referred the matter to the Tribunal in September 2014. Information about that matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Timely release of annual report or preliminary announcement

6 breaches

NZXR identified six instances where issuers failed to provide NZX with copies of either their annual report or preliminary report for release to the market within the time required under the Listing Rules.

Three matters were less serious as the issuer filed the report in question less than five days following the deadline. This meant that trading in the issuer’s securities was not suspended, as is NZXR’s usual practise when an issuer’s annual or preliminary report becomes more than five days overdue. NZXR sent a letter to each issuer reminding them of their obligations under the Listing Rules.

Three of these breaches resulted in the issuer’s securities being placed into suspension in accordance with NZX’s policy noted within footnote 2 of Listing Rule 5.4.3.

NZXR referred two of these matters to the Tribunal in August and December respectively. Information about these matters is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

In respect of one of the relevant issuers, NZXR exercised its discretion under the Listing Rules and cancelled the issuer’s listing.

NZX approval required before executing dividend reinvestment plan or extension

2 breaches

Two breaches related to failures to obtain approval from NZX prior to executing a dividend reinvestment plan, or for an extension to the closing date for a share purchase plan.

Both breaches were minor in nature, had no market impact and there were no systemic compliance issues.

NZXR sent a letter to each issuer reminding them of their obligations under the Listing Rules.

Release of material information to NZX

4 breaches

Four breaches related to failures to immediately release material information to NZX.

One breach was minor as it had no discernible market impact and there was no evidence of any harm being caused to investors. In this case, following discussions with the issuer, NZXR placed a trading halt on the issuer’s securities to prevent any trading until the issuer released the information in question. NZXR sent a letter to the issuer reminding it of its obligations under the Listing Rules.

Three breaches were considered serious because they had a discernible market impact.

In respect of the first of these serious matters, NZXR investigated the circumstances leading up to the release of the price sensitive information. NZXR referred the matter to the Tribunal in January 2014. Information about the matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

In respect of the second matter, NZXR investigated the circumstances leading up to the release of

the price sensitive information. NZXR referred the matter to the Tribunal in June 2014. Information about the matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

In respect of the third matter, NZXR immediately contacted the issuer and investigated the circumstances leading up to the release of the price sensitive information. Following its investigation NZXR referred the matter to the Tribunal in November 2014. Information about that matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Notification of allotment of securities

6 breaches

Six breaches related to failures to immediately notify NZX of an allotment of securities.

Four breaches were minor in nature as the number of securities allotted was a small percentage of the total number of shares on issue. All four breaches were one-off and no systemic compliance issues were identified.

In the case of the four minor breaches NZXR sent a letter to the issuers reminding them of their obligations under the Listing Rules and requested that the allotment notice be released to the market immediately.

Two breaches were considered serious because the number of securities allotted in both cases was a significant percentage of the total number of shares on issue. Both these breaches were referred to the Tribunal in June 2014. Information about these matters is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Failing to get shareholder approval for share issue

1 breach

One breach related to failure to get shareholder approval for the issue of convertible preference shares to a cornerstone shareholder.

The breach was considered minor, had no market impact and there was no systemic compliance issues.

NZXR sent a letter to the issuer reminding it of its obligations under the Listing Rules.

Minimum of two independent directors required

1 breach

One breach related to an issuer on the Main Board failing to maintain a minimum of two independent directors on its board.

NZXR investigated the circumstances leading up to the breach and referred the matter to the Tribunal in December 2014. Information about that matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Minimum of two directors ordinarily resident in New Zealand

1 breach

One breach related to an issuer on the Main Board failing to maintain a minimum of two directors on its board who were ordinarily resident in New Zealand.

NZXR investigated the circumstances leading up to the breach and referred the matter to the Tribunal in October 2014. Information about that matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Ceasing to operate a share registry	1 breach
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One breach related to an issuer announcing it was ceasing to maintain its share registry.

NZXR suspended the issuer’s securities. NZXR investigated the matter.

NZXR would normally have taken further enforcement action, however, the issuer subsequently delisted.

Miscellaneous breaches	1 breach
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One breach related to several breaches of requirements including: obtaining shareholder approval to the appointment of a director, providing to NZX for release to the market as soon as the information is first available as to a change in the issuer’s directors and also a change in the issuer’s address.

NZXR investigated the circumstances leading up to the breaches. When viewed together, the breaches indicated the issuer’s internal controls and procedures were insufficient to allow it to comply with the obligations of a listed issuer under the Listing Rules.

NZXR referred the matter to the Tribunal in April 2014. Information about the matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

B. Summary of complaints NZXR received in respect of Issuers

NZXR considered 27 complaints in respect of issuers during the period.

A summary of those matters is set out below.

Table Six: Overview of complaints NZXR received in respect of issuers in 2014

Continuous disclosure	15 complaints
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NZXR considered 15 complaints relating to the timely disclosure of material information.

Where appropriate, NZXR contacted the issuer to obtain further information before determining the complaint.

In all cases, there was insufficient evidence of a breach of the Listing Rules.

Information in a preliminary report	1 complaint
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NZXR received one complaint about information disclosed in an issuer’s preliminary report.

NZXR considered the complaint and contacted the issuer for further information.

In this case, there was insufficient evidence of a breach of the Listing Rules and NZXR took no further action.

Long term incentive plan

1 complaint

NZXR received one complaint about an issuer's long term incentive plan.

NZXR considered the complaint and contacted the issuer for further information.

Based on the information obtained by NZXR the issuer had complied with its obligations under the Listing Rules.

As there had been no breach of the Listing Rules no further action was taken. The complainant was notified as such.

Revenue collection

1 complaint

NZXR received one complaint relating to an issuer changing its method of revenue collection from its retail clients.

NZXR considered the complaint, but the complaint did not raise any issues relating to compliance with the Listing Rules. Therefore, the complaint fell outside of NZXR's jurisdiction.

As the matter fell outside of NZXR's jurisdiction no further action was taken.

Miscellaneous complaints

3 complaints

NZXR received three complaints in relation to the actions of issuers.

NZXR considered the three complaints. In each case the complaint did not raise any issue in relation to compliance with the Listing Rules. Therefore, the complaint fell outside of NZXR's jurisdiction.

As the matters fell outside NZXR's jurisdiction no further action was taken. The complainants were notified as such.

Director election and rotation

1 complaint

NZXR received one complaint that an issuer had failed to comply with its director election and rotation obligations under the Listing Rules.

NZXR considered the complaint and contacted the issuer for further information.

A breach was identified, and was referred to the Tribunal in April 2014. Information about the matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

Share buy-back programme	1 complaint
<p>NZXR received one complaint in relation to an issuer's share buy-back programme.</p> <p>NZXR considered the complaint and contacted the issuer for further information.</p> <p>In this case, the complaint concerned minority buy-out rights. This issue is not covered by the Listing Rules and therefore fell outside of NZXR's jurisdiction.</p> <p>As the matter fell outside of NZXR's jurisdiction no further action was taken. NZXR advised the complainant that the matter fell outside of its jurisdiction.</p> <p>NZXR referred the complaint to the FMA.</p>	
Information required in an issuer's notice of meeting	1 complaint
<p>NZXR received one complaint about an omission from an issuer's notice of meeting.</p> <p>NZXR considered the complaint, but found that the Listing Rules did not require inclusion of the matter in the issuer's notice of meeting. Therefore, the complaint fell outside of NZXR's jurisdiction.</p> <p>As the matter fell outside of NZXR's jurisdiction no further action was taken. The complaint had also been lodged with the FMA.</p>	
Suspension of trading in an issuer's ordinary shares	1 complaint
<p>NZXR received one complaint about the status of an issuer's ordinary shares. The issuer's ordinary shares had been placed in suspension by NZXR following an announcement by the issuer of a proposal for it to be liquidated.</p> <p>NZXR considered the complaint and contacted the issuer for further information.</p> <p>In this case, NZXR felt the suspension was correctly imposed and should be continued.</p>	
Bankruptcy proceedings	1 complaint
<p>NZXR received one complaint about an issuer initiating bankruptcy proceedings against an individual.</p> <p>NZXR considered the complaint, but the complaint did not raise any issues relating to compliance with the Listing Rules. Therefore, the complaint fell outside of NZXR's jurisdiction. NZXR notified the complainant.</p> <p>At the complainant's request, NZXR provided the letter of complaint to the FMA.</p>	
Associated persons	1 complaint
<p>NZXR received one complaint about an issuer failing to ensure that an associated person of a director did not cast a vote in favour of a resolution to increase the remuneration of the issuer's</p>	

directors.

NZXR considered the matter and contacted the issuer for further information.

A breach was identified, and was referred to the Tribunal in July 2014. Information about the matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.

Complaints under investigations as at 31 December 2014

0 complaints

There were no complaints under consideration as at 31 December 2014.

5. Discipline Fund

This section 5 details the use of the proceeds of the Discipline Fund, as set out in the Discipline Fund Accounts. Proceeds of the Discipline Fund may be used in accordance with NZMDT Rule 11.17.1.

NZXR notes that there is currently a surplus in the Discipline Fund as a result of recent enforcement activity. In accordance with NZMDT Rule 11.17.1, NZXR is exploring options for the use of some of the proceeds in the Discipline Fund for various education and policy opportunities in 2015.

Please see the attached pdf.

	12 Months to 31-Dec-11	12 Months to 31-Dec-12	2 Months to 31-Dec-13	12 Months to 31-Dec-14
Fines and costs	196,617	179,838	152,000	602,565
Expenses of NZ Markets Disciplinary Tribunal				
Appeal Member costs	-	-		
Executive Counsel costs	63,216	34,714	41,126	77,060
NZ Markets Disciplinary Tribunal Member costs	101,567	88,554	97,155	256,659
Legal Advisory costs	-	-		15,860
Rules Review costs	-	2,310	32,449	8,872
Disbursements	5,295	1,497	1,170	1,420
Educational Expenditure	5,000			
Other Incidentals	1,524	2,027	97	252
Bad Debts	-	22,703		6,000
Total Expenses	176,603	151,805	171,997	366,124
Interest Income	70	1,270	1,283	2,677
Surplus (Deficit) for the period	20,084	29,303	(18,714)	239,118
Accumulated Surplus (Deficit)	179,842	209,145	190,431	429,549



**NEW ZEALAND CLEARING ANNUAL
REPORT TO NZ MARKETS
DISCIPLINARY TRIBUNAL**

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS
REQUIRED BY NZMDT RULE 14.1.2 (a) - (b) WHICH PROVIDES:

“14.1.2 Following the end of each calendar year CHO shall collate the following information for that year and provide to the Tribunal as a report by the end of February of the following year:

- a) breaches of the Clearing and Settlement Rules identified by CHO; and
 - b) complaints received by CHO in respect of Clearing Participants or Lending Clearing Participants.”
-



New Zealand Clearing Limited

Annual Report to NZ Markets Disciplinary Tribunal for the period 1 January 2014 to 31 December 2014

19 February 2015



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1. Introduction

New Zealand Clearing Limited (“**CHO**”) provides clearing and settlement services to Clearing Participants and Lending Clearing Participants under the Clearing and Settlement Rules. The NZCDC Settlement System is a designated settlement system pursuant to the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010, which came into effect on 2 September 2010.

This report covers the calendar year 1 January 2014 to 31 December 2014.

This report contains:

- a. Information about breaches of the Clearing and Settlement Rules identified by CHO; and
- b. Information about complaints received by CHO in respect of Clearing Participants and Lending Clearing Participants.

2. CHO Enforcement Practices

A summary of the enforcement activity taken by CHO in 2014 is set out below:

Table One: Overview of CHO enforcement activity in 2014

Enforcement activity	Clearing Participant	Lending Clearing Participant
Complaints received	0	0
Investigation on-going as at 31 December 2014	0	0
Breaches identified	6	2
Breaches referred to the Tribunal	0	0
Breaches resolved (including obligation letters)	6	2

3. Breaches of the Clearing and Settlement Rules

Breaches of the Clearing and Settlement Rules identified by CHO in 2014

In 2014 CHO considered 8 breaches of the Clearing and Settlement Rules by Clearing Participants and Lending Clearing Participants.

A summary of those matters and the enforcement action taken by CHO is set out below.

Table Two: Summary of the breaches of the Clearing and Settlement Rules considered in 2014

Late Margin Call lodgement	6 breaches
<p>Six breaches were identified where Clearing Participants' failed to meet margin calls prior to 9:30am. Two breaches were related to margin calls associated with stock lending transactions while the other four breaches were for margin calls arising from settlement obligations for net open positions. In all instances, the relevant Clearing Participants and Lending Clearing Participants had provided sufficient cash but failed to transfer it to their respective margin accounts.</p> <p>In each case, the breaches were remedied by the relevant Clearing or Lending Participant immediately following notification from CHO.</p> <p>CHO reminded the Participants of their obligations under the Clearing and Settlement Rules to meet margin calls by 9:30am and where appropriate, requested the Participant update internal controls or monitoring procedures.</p> <p>CHO observed that none of these breaches had a significant market impact and neither did they evidence systemic issues.</p>	
Failure to meet USD MTM Obligation	1 breach
<p>One breach for a derivative Clearing Participant occurred when it failed to meet its daily USD mark to market cash settlement obligation for one of its accounts by the 10:00am cut off, as required by Clearing & Settlement Rule 4.2.9. The Clearing Participant held over \$1m surplus collateral at the time but had failed to transfer it to the required account.</p> <p>CHO observed that the breach did not have a significant market impact and neither did it evidence systemic issues.</p> <p>CHO reminded the Clearing Participant of its obligations under the Clearing and Settlement Rules and requested the Clearing Participant update its internal controls and monitoring procedures.</p>	

**Failure to provide sufficient cash for 10:30am
Failed Settlement Batch**

1 breach

One breach was identified where a Clearing Participant provided insufficient cash to complete the 10:30am Failed Settlement batch.

This was a procedural error which did not impact the market significantly and was remediated immediately following CHO's contacting the Clearing Participant.

4. Complaints

CHO did not receive any complaints in respect of Clearing Participants or Lending Clearing Participants in 2014.



REPORT ON SPECIAL DIVISION ACTIVITIES

The Special Division of the Tribunal exists to foster market confidence and to ensure that the Market Rules are applied to NZX or a Related Entity in an impartial and independent manner.

A summary of each matter considered by the Special Division in 2014 follows this report.

There have been no changes in the membership of the Special Division during the year.

The Division has reviewed numerous smart alerts concerning trading in shares of NZX and its related entities, and has made further inquiries in a small number of cases. It has not been considered necessary to take any further action. While the trigger for alerts is relatively low, the Division considers it important to err on the side of caution in order to ensure that any potential issues are picked up.

On two occasions, alerts which were triggered were not referred to the Division, and their existence was only discovered following an inquiry by the Division. NZX has taken appropriate steps to adjust its processes to ensure this does not happen in future.

The Division expects to have constructive engagement with the Conflicts Committee formed by NZX and sees this as a positive development in ensuring regulatory compliance.



Andrew Beck | SPECIAL DIVISION CHAIRMAN
23 April 2015

NZMDT SPECIAL DIVISION MATTERS – 1 JANUARY TO 30 DECEMBER 2014

The Special Division considered two applications for the approval of offer documents under Main Board Listing Rule 6.1.1. On 19 September 2014, the Special Division granted approval of the Prospectuses of each of the five funds managed by Smartshares Ltd and the combined Investment Statement. On 8 December 2014, the Special Division granted approval of the Prospectus, the Investment Statement and the Trust Deeds of two new funds managed by Smartshares Ltd - the Australian Property Index Trust and the Australian Dividend Index Trust. On 4 December 2014, the Special Division also granted various waivers in respect of the Australian Property Index Trust and the Australian Dividend Index Trust. The waiver decision can be viewed here <https://nzx.com/regulators/DISP/announcements/258666>.

During 2014, the Special Division received 28 referrals of SMARTS alerts from NZX Market Surveillance (NZXMS) regarding trading in NZX shares and units in the funds managed by Smartshares Ltd as outlined below.

DATE REFERRED	ISSUER	ACTION
17 January	MDZ, OZY	Considered the nature of the alert and determined that no further investigation was necessary.
12 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
19 February	MZY	Considered the nature of the alert and determined that no further investigation was necessary.
10 March	MZY	Considered the nature of the alert and determined that no further investigation was necessary.
21 March	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
2 May	OZY	Considered the nature of the alert and determined that no further investigation was necessary.
26 May	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
16 June	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
18 June	MZY	Considered the nature of the alert and determined that no further investigation was necessary.
24 June	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
9 July	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
8 August	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
25 August	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
2 September	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
26 September	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
21 October	NZX	Price Enquiry made. Following NZX's response, determined that no further action was necessary. See https://nzx.com/regulation/DISP/announcements

DATE REFERRED	ISSUER	ACTION
18 November	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
24 November	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
26 November	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
1 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
12 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
16 December	NZX, OZY	Considered the nature of the alert and determined that no further investigation was necessary.
18 December	NZX, OZY	Considered the nature of the alert and determined that no further investigation was necessary.
22 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
30 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.



DIRECTORY

NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL
PO BOX 105 269 AUCKLAND 1143

DAVID FLACKS | CHAIRMAN

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