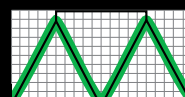
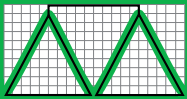


ANNUAL REPORT 2008/2009

NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL





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CHAIRMAN'S REPORT

CHAIRMAN'S REPORT

FUNCTION OF NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

New Zealand Markets Disciplinary Tribunal (NZMDT - formerly NZX Discipline¹) is an independent regulatory body established under the New Zealand Markets Disciplinary Tribunal Rules.

NZMDT's principal role is to determine whether there has been a breach of the NZX Conduct Rules² and the NZX Futures and Options Rules in matters referred to it by NZX Limited (NZX) and to assess and impose penalties in the event the Tribunal finds a breach has occurred.

Pursuant to Rule 3.2 to the NZMDT Rules there is a Special Division of NZMDT. The role of the Special Division is to administer the NZX Conduct Rules as they apply to NZX Limited as a listed company and the five listed funds that are managed by Smartshares Limited, a subsidiary of NZX Limited. A separate report of Special Division activities can be found at page 38.

This is the fourth annual report of NZMDT, but my first as its Chairman. I was appointed to NZMDT and elected Chairman at its annual meeting in June 2008.

REPORTING PERIOD

This report covers the period 1 May 2008 to 31 December 2008. On 29 January 2009 the NZX Discipline Rules were amended to become the New Zealand Markets Disciplinary Tribunal Rules and Procedures. As a consequence of these amendments the reporting period for NZMDT was amended. It is now required to report on a calendar year basis. As the last report of NZX Discipline covered the reporting period 1 May 2007 to 31 April 2008 this first report under the amended rules covers the period 1 May 2008 to 31 December 2008. Hereafter reports of the Tribunal will cover a full calendar year.

PROFESSOR DON TROW - CHAIRMAN 2004-2008

I would like to express NZMDT's appreciation to Professor Don Trow, whom I replaced as Chairman upon his resignation in June 2008. Professor Trow had led NZX Discipline with distinction since appointment as its inaugural chairman in May 2004. He made transition to me effortless, and provided wise counsel during that period. All members of NZMDT join me in recognising and thanking him for his leadership as the first Chairman of the Tribunal.

PROCESS AND RESOURCE CHANGES

Recognising the heavy burden the role of Chairman had carried, it was determined that an Executive Counsel with experience both as a legal practitioner and in securities markets should be appointed to assist the Chairman in the day to day running of NZMDT, and divisions appointed to consider breaches of NZX's rules. This model had been used to excellent effect by the Special Division of the Tribunal. Ms Elaine Campbell was appointed Executive Counsel in August 2008.

The appointment of an Executive Counsel has resulted in the re-assignment of a number of activities formerly performed by the Chairman or the chairs of divisions. Executive Counsel works on instruction from the Chairman or chairs of divisions.

During the first year of my tenure I have sought to streamline and improve the operation of the Tribunal. To this end, during the reporting period the Tribunal has:

- a) devised a procedures manual for members, which documents the process to be followed by divisions when determining proceedings before it. Consideration will be given to developing a public version of this, recognising that persons dealing with NZMDT are often unfamiliar with its processes, but are required to meet very short time deadlines³.
- b) enhanced its precedent database, providing more accessible data on determinations previously made by the Tribunal. This enables Executive Counsel to provide members with prompt precedent analysis in respect of new cases.
- c) provided more formal records of its interlocutory determinations.
- d) prepared a monthly bulletin to provide members with more immediate updates of work occurring across the group, access to determinations and briefings on matters of operational significance.
- e) developed a wiki site for members where all resources (precedent database, past determinations, bulletins, rules etc) are immediately accessible.
- f) undertaken more formal division selection procedures to ensure that the workload is spread more evenly across the Tribunal membership.

The Tribunal welcomed new members during 2008. A shortage of appointments in the legal appointee and market participant categories was remedied by the appointment of six further members in addition to my appointment: Mr David Flacks, Mr Shane Edmond, Mr David Boldt, Mr Andrew Beck, Mr Mark Freeman and Mr Don Holborrow. Each was appointed for a three-year term.

Four members have retired. Professor Trow I have already thanked. Other retirees were Messrs Roger Armstrong (listed issuer appointee), Geoff Brown and Bill Malthus (NZX appointees, whose terms ended shortly after the reporting period with the introduction of the new rules, which discontinued such appointments). All sat on a number of divisions during their membership terms, as well as serving in other respects. We thank them too for the considerable work they undertook in those capacities.

¹ The NZX Discipline Rules were amended on 29 January 2009. As a consequence of these amendments NZX Discipline, and the NZX Discipline Rules, have been renamed New Zealand Markets Disciplinary Tribunal and the New Zealand Markets Disciplinary Tribunal Rules, respectively. In some instances in this report, NZMDT will also be referred to as the Tribunal.

² The NZX Conduct Rules comprise (1) the NZX Participant Rules, which govern the conduct of market participants in NZX's three markets (a) the NZSX Market, (b) the NZDX Market and (c) the NZAX Market (NZX Markets) and (2) the NZX Listing Rules governing the conduct of issuers whose securities are listed on NZX's Markets.

³ The NZMDT procedures issued by NZX are intended to provide respondents' with a practical guide to the operation of the Tribunal. The Tribunal is considering developing a practical guide to its operations for the benefit of respondents.

The loss of two listed issuer appointees has emphasised the need to refresh the number of such appointees on NZMDT. Currently there are only two, the minimum under the rules. Listed issuer and market participant appointees quite regularly are unable to sit due to conflicts⁴. Operating with just two such members is non-optimal. NZMDT has made representations to NZX concerning the need to add to their number, and I am confident that this resource need will soon be rectified.

Fees payable to members were increased by NZX in September 2008, the first increase since the Tribunal was established. On the other hand, and as noted earlier, many tasks previously undertaken by members (in the absence of any staffing resource) will now be undertaken by Executive Counsel.

As required by New Zealand Markets Disciplinary Tribunal Rule 14.1.2(d) I confirm that adequate resources have been made available to the Tribunal for it to undertake its role under the New Zealand Markets Disciplinary Tribunal Rules.

During the reporting period there have been no hearings by the Appeals Panel⁵. Mr Euan Abernethy, the Chairman of the Appeals Panel, confirms that it has adequate resources to undertake its role under the New Zealand Markets Disciplinary Tribunal Rules.

POLICY CHANGES

The reporting period was a time of emerging policy. The Tribunal considered a number of cases that enabled it to develop its policy on a number of procedural matters. Of note are the following key policy positions:

Settlements

- a) the Tribunal will not accept public statements that identify third parties by implication or name where those public statements affect the rights of those parties and those parties are not parties to the proceeding.
- b) the Tribunal expects to receive substantive submissions from NZX at the time of submission of a proposed settlement where the penalty agreed in that settlement is substantially different from that sought in its statement of case. The rationale for agreeing to the terms of settlement should be included and explained.
- c) if NZX believes that a proposed settlement penalty is acceptable, then in the absence of compelling contrary reasons NZMDT is unlikely to award a different penalty.

Evidence

- e) NZMDT will not accept disputed submissions of the parties on matters of fact where there is no evidence before the Tribunal to support that submission. The Tribunal expects parties to call evidence to support statements made by the parties.

Costs

- f) NZMDT will award party costs to the successful party, subject to appropriate discounting. Principles for setting costs awards will generally be as follows:
- division size: a discount might be applied where the division has sat as a larger division than mandated by the rules;
 - an early guilty plea will not normally result in any reduction in costs as such plea reduces costs substantially in the first place and the matter of guilt being clear, a reduction in costs is not appropriate;
 - self-reporting goes to penalty, rather than costs, but might be recognised in both;
 - there is unlikely to be a discount for being a first offender (i.e. the first time the Tribunal is required to consider the issues), as opposed to being a first-time offender.
 - High court and arbitration practices, being of a civil nature, are not directly applicable.

⁴ NZMDT is subject to a Conflict Management Policy that can be found at <http://www.nzx.com/regulations>

⁵ Indeed it has never sat since inception.

THE YEAR AHEAD

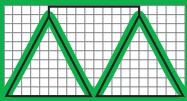
Looking ahead, NZMDT's focus during the 2009-2010 year will be on policy more broadly. In particular it will seek to gain a better understanding of its equivalent bodies in overseas jurisdictions, and commensurate disciplinary tribunals in New Zealand, and will consider improvements that could be made to the scope and execution of its jurisdiction.

CONDUCT OF NZMDT

I am pleased to acknowledge the contribution of a highly competent and skilled group of Tribunal members and similar support of Executive Counsel, Ms Elaine Campbell. In particular I wish to acknowledge the support of the Deputy Chairman Mr William Stevens, the Chairman of the Special Division, Mr Peter Wilson, and counsel to the Special Division, Ms Rachel Batters, throughout the reporting period.



J. STEPHEN KÓS | CHAIRMAN



MEMBERS

MEMBERS

MEMBERS OF NZMDT AS AT 31 DECEMBER 2008

LEGAL:

Andrew Beck, David Boldt, David Flacks, Mark Freeman, Victoria Heine, Don Holborrow, Derek Johnston, Stephen Kós QC (Chairman), Laurie Mayne, Simon McArley and Tim Williams.

Simon McArley was not available for the Tribunal during the period May-November 2008 when he was acting head of NZX Market Supervision.

LISTED ISSUER:

Patsy Reddy and Peter Wilson.

Roger Armstrong and Don Trow resigned during the reporting period.

MARKET PARTICIPANTS:

Shane Edmond, Michael Jeffs, William Stevens (Deputy Chairman) and Campbell Stuart.

NZX:

Geoff Brown and Bill Malthus.

Both retired from NZMDT shortly after the reporting period, upon the new rules coming into effect.

MEMBERS OF THE PUBLIC:

Falcon Clouston, John Loughlin, Phillip Meyer, Stephen Moir and Paul Ridley-Smith.

MEMBERS OF THE SPECIAL DIVISION AS AT 31 DECEMBER 2008

Peter Wilson (Chairman), Andrew Beck, Michael Jeffs and Paul Ridley-Smith.

Rachel Batters acts as Counsel to the Special Division.

MEMBERS OF THE APPEALS PANEL AS AT 31 DECEMBER 2008

Euan Abernethy (Chairman), Brian Allison, Peter Clapshaw, John Rattray, Bill Thurston and John Upton QC.



STATEMENTS OF CASE, FINDINGS AND PENALTIES

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

“14.1.2 The Tribunal shall create and provide an 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 above, and that collated by itself below:

- a) number of statements of case issued by NZX 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, 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;”
-

MATTERS CARRIED OVER FROM PREVIOUS YEARS:

NZXD 02/05 ACCESS BROKERAGE LIMITED (IN LIQUIDATION) AND PETER GERALD MARSHALL – FULL HEARING

Division: Stevens (Chair), Heine, Malthus and Stuart.

Statement of Case served: 13 April 2005

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Tribunal reported on the findings against Access Brokerage Limited (in Liquidation) in its last annual report.

In respect of Marshall:

Matters 1-4 in the Statement of Case related to the conduct of Access Brokerage Limited (in Liquidation). Matters 5-7 related to the conduct of Mr Marshall.

1. In the Fifth matter it was alleged that Mr Marshall, in his capacity as managing director of Access, has breached several NZX Participant Rules in that he controlled, personally carried out, procured, directed, and otherwise authorised the failures of Access. It was alleged that Access had failed to hold client funds on trust and had failed to maintain liquid capital at the prescribed level. It was alleged that Mr Marshall had personally signed inaccurate monthly reports to the NZX Inspector. In addition, between June 1998 and 3 September 2004 it was alleged that Mr Marshall directed the payment of advances totalling \$127,000 from the accounts of Access to his personal bank accounts. As a result of these matters it was alleged that Mr Marshall has breached the following Rules:
 - a) Breach of NZX Participant Rules 5.8.1(b)(iii) and 8.1.1(b)(iii) - Engaging in action or conduct reasonably likely to be detrimental to the wellbeing, or contrary to the interests, of any client.
NZX Discipline found Mr Marshall guilty of these breaches.
 - b) Breach of NZX Participant Rule 9.1(d) (and its predecessor rules, namely NZX Code of Practice ("NZX COP") r3.6(a) and sections of the Client Relationships heading of NZSE Code of Practice ("NZSE COP"), page 5) - Placing his own interests, or his employer's interests, above those of their clients.
NZX Discipline found Mr Marshall not guilty of these breaches
 - c) Breach of Rule 9.1(f) - Placing client assets at unreasonable risk from his employing Market Participant's business activities.
NZX Discipline found Mr Marshall guilty of these breaches.

- d) Breach of Rule 9.1(g) - Failure to take all steps necessary to properly protect client assets and ensure that these are separately identified from his employing Market Participant's own assets.

NZX Discipline found Mr Marshall guilty of these breaches.

2. In the Sixth Matter of the Statement of Case it was alleged that Mr Marshall had breached several NZX Participant Rules as the result of a refusal to attend an interview to discuss matters in relation to the failure of Access when directed to do so by NZX. By facsimile dated 24 February 2005, Mr Marshall declined to attend an interview. As a result of these matters, it was alleged that Mr Marshall has breached the following Rules:

- a) Breach of Rule 5.8.1(b)(i) - Engaging in conduct reasonably likely to be detrimental to the wellbeing of NZX or any of its markets.

NZX Discipline found Mr Marshall guilty of these breaches.

- b) Breach of Rule 5.8.1(b)(ii) - Engaging in conduct reasonably likely to be a discredit or generally bring NZX in to disrepute.

NZX Discipline found Mr Marshall guilty of these breaches.

- c) Breach of Rule 5.8.1(c) - Failure to comply fully with a direction given by NZX.

NZX Discipline found Mr Marshall guilty of these breaches.

3. In the Seventh Matter of the Statement of Case it was alleged that Mr Marshall breached several NZX Participant Rules in that he controlled, personally carried out, procured, directed and otherwise authorised the failure of Access to maintain proper ethical standards. As a result of these matters, it was alleged that Mr Marshall had breached the following Rules:

- a) Breach of Rules 5.8.1(a) and 8.1.1(a) (and their predecessor rules, namely Business Rule B5.1(a), NZX COP r3.3(b) and (c), NZSE Rule 8.1(a) and sections of the Business Practices heading of the NZSE COP) - Failure to observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency.

NZX Discipline found Mr Marshall guilty of these breaches.

- b) Breach of Rule 5.8.1(b)(i) (and its predecessor rules, namely Business Rule B5.1(b)(i) and NZSE Rule 8.1(b) - Engaging in action or conduct reasonably likely to be detrimental to the wellbeing or proper conduct of NZX and/or any of its markets.

NZX Discipline found Mr Marshall guilty of these breaches.

- c) Breach of Rules 5.8.1(b)(ii) and 8.1.1(b)(ii) (and their predecessor rules, namely Business Rule B5.1(b)(ii) and NZSE Rule 8.1(b)) - Engaging in action or conduct

reasonably likely to be a discredit or bring generally in to disrepute NZX, any Market Participant and/or any Advisor.

NZX Discipline found Mr Marshall guilty of these breaches.

- d) Breach of Rules 5.8.1(c) and 8.1.1(c) (and their predecessor rules, namely Business Rule B5.1(c) and (d), NZX COP r3.3(b), NZSE Rule 8.1(c) and sections of the Business Practices heading of the NZSE COP) - Failure to comply with all applicable Rules, Guidance Notes, and/or an direction given from time to time by NZX, and at all times observe Good Broking Practice.

NZX Discipline found Mr Marshall guilty of these breaches.

PENALTIES IMPOSED BY NZX DISCIPLINE:

The penalties imposed by NZX Discipline in respect of this matter were:

Fifth Matter

1. A public censure of Mr Marshall.
2. An order to pay NZX the sum of \$100,000 (required by the NZX Discipline Rules to be directed to the NZX Discipline Fund).

Sixth Matter

1. A public censure of Mr Marshall.
2. An order to pay NZX the sum of \$20,000 (required by the NZX Discipline Rules to be directed to the NZX Discipline Fund).

Seventh Matter

1. A public censure of Mr Marshall.
2. An order to pay NZX the sum of \$100,000 (required by the NZX Discipline Rules to be directed to the NZX Discipline Fund).

It was noted by NZX Discipline that Mr Marshall's status as an NZX Advisor had been revoked by NZX, effective from the date of the court sentence in April 2008.

COSTS:

Costs of \$77,500 plus GST were awarded with \$17,500 of this award payable to the NZX Discipline Fund to cover the costs and expenses of NZX Discipline. The remaining \$60,000 was an award of party costs in favour of NZX.

PUBLICATION:

NZX Discipline's determination was published in full and a public censure of Mr Marshall was published.

NZXD 05/06 NZX v VTL GROUP LIMITED – FULL HEARING

Division in respect of Settlement: Trow (Chair), Armstrong and Mayne.

Division in respect of Full Hearing: Kós (Chair), Ridley-Smith and Wilson.

Statement of Case served: 3 August 2006

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case alleged that VTL breached NZSX Listing Rule ("Rule") 3.4.3 in that when VTL entered into a transaction to provide a letter of credit as additional security for advances made by CapitalSource Finance, LLC ("CapitalSource") to All Seasons Holdings, Inc ("All Seasons") (the "transaction") a Director of VTL, namely Mervyn Doolan, voted on the board resolution of VTL to enter into the transaction in which he was "interested" within the meaning of Rule 3.4.3.

NZX alleged that a Resolution was passed by the Board of VTL to provide a letter of credit in favour of CapitalSource, a provider of finance to All Seasons, a company in which VTL held warrants and convertible notes that, if exercised and converted would give VTL 66.5% of the common stock in All Seasons. It was alleged that Mr Doolan formed part of the quorum of Directors that considered and authorised that transaction and that Mr Doolan voted in favour of the board resolutions authorising the transaction.

The Statement of Case alleged that Mr Doolan was interested in the transaction as that term is defined in Rule 3.4.3. It was alleged that Mr Doolan, therefore, breached Rule 3.4.3 by voting in favour of the board resolutions authorising the transaction.

The Statement of Case alleged that Mr Doolan's interest arose as a consequence of his relationship with the Boston Trust.

Mr Doolan was a discretionary beneficiary of the Boston Trust, a trust of which his wife, Joanne Doolan, was a trustee. In addition, under the Trust Deed for the Boston Trust Mr Doolan had the power to appoint and remove trustees of the Boston Trust, during his lifetime. Accordingly, Mr Doolan was in a position to influence the decision-making of the Boston Trust.

The Boston Trust itself held US\$1.23 million (approximately NZ\$1.9 million) of debt in All Seasons. The debt was of a subordinated nature and subordinated to the obligations All Seasons owed to CapitalSource under the CapitalSource funding facility. Joanne Doolan, in addition to being a trustee of the Boston Trust, was a discretionary beneficiary of the trust, by virtue of being the wife of Mr Doolan.

Settlement Agreement and the appeal:

NZX and VTL negotiated a settlement and submitted this to NZX Discipline for approval under the NZX Discipline Rules. In its determination NZX Discipline declined to approve under the settlement agreed between the parties under NZX Discipline Rule 10.

VTL initially appealed this decision via a notice of appeal and statement of case on appeal. On 24 November 2008 VTL advised NZX Discipline that it did not wish to proceed with its appeal and that the parties were in further settlement discussions.

As at 31 December 2008, being the end of the reporting period for this report, NZX Discipline had not received a revised settlement agreement from the parties. A hearing to determine the allegations in the Statement of Case had also not been held. However, in March 2009 this matter was concluded with NZMDT making its determination as follows:

Determination on Full Hearing:

NZMDT found VTL acted in breach of Rule 3.4.3. NZMDT found that as result of the structure of the Boston Trust and the letter of credit transaction, Mr Doolan, in his capacity as a beneficiary of the Boston Trust, was directly or indirectly materially interested in the transaction in terms of section 139(1)(e) of the Act. NZMDT found that the exception in s139 (2) did not apply here.

NZMDT found that Mr Doolan voted in favour of the transaction in breach of Rule 3.4.3.

NZMDT found that Mr Doolan was counted in the quorum for the purposes of consideration of the matter, in breach of Rule 3.4.3.

NZMDT found that the interest Mr Doolan had in the letter of credit transaction was sufficiently connected to constitute an indirect interest and the interest was a material interest. Mr Doolan was, therefore, interested in the transaction in terms of section 139(1) (e) of the Act and also, therefore, was interested in the transaction for the purposes of Rule 3.4.3.

PENALTIES IMPOSED BY NZMDT:

The penalties imposed by NZX Discipline were:

- A public censure of VTL in the form of an announcement by NZMDT to the market that it found VTL to be in breach of Rule 3.4.3 and is, accordingly, censured by NZX Discipline.
- An order that VTL pay to NZX a sum of \$30,000 by way of penalty. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.

COSTS:

NZMDT ordered that VTL pay costs as follows:

- a) to NZX the sum of \$10,000 as an award of party costs to NZX, being the party costs sought by NZX in its Statement of Case;
- b) all of the costs and expenses of NZMDT and its executive counsel in considering this matter since the Statement of Case was served on 3 August 2006 as invoiced to NZX by NZMDT.

PUBLICATION:

NZMDT's determination was published in full and a public censure of VTL was published.

NZXD 08/07 NZX v NOLA NORTON AND FORSYTH BARR LIMITED (FORD) – FULL HEARING

Division: Trow (Chair), Mayne and Stevens.

Statement of Case served: 28 January 2009

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case related to an alleged failure by Norton to have detected and questioned unusual trading by a client in respect of an issuer's securities (the "relevant securities") over a period between June 2006 and July 2007 (the "relevant period"). The Statement of Case alleged a failure on the part of FORD to have in place active trade monitoring processes to detect and deal with unusual trading patterns. In 2006 a person became a new client of FORD. That client's primary point of contact was Norton. During the relevant period Norton took orders from the client to trade in the relevant securities on an execution only basis over the telephone.

In June 2007 NZXR commenced an inquiry into the trading in the relevant securities over the relevant period. That enquiry established that a number of trades by the client were unusual in so far as the client was predominantly a seller of relevant securities over the relevant period but on a number of occasions on the same day that the client had sold relevant securities the client also purchased small parcels of relevant securities. Such purchases typically:

1. Followed purchases rather than preceded orders to sell the relevant securities; and
2. Were for smaller volumes than those previously sold and at a higher price; and
3. In some instances occurred close to the end of the day's trading.

In respect of Norton:

NZX alleged that Norton committed the following breaches of the NZX Participant Rules ("Rules") when placing a series of orders relating to the relevant securities on the NZSX market on behalf of a single client:

1. Breach of Rule A10.2.1 – placing orders on behalf of a client when Norton was either aware of should have reasonably suspected that the client intended to create a false or misleading appearance either:
 - a) Of active trading in the relevant securities; or
 - b) With respect to the market for, or the price/yield of, the relevant securities.
2. Breach of A10.2.2 – failing to take into account the mandatory considerations set out in Rules A10.2.2 (b), (d), (f) and (g) before accepting any of the client's orders:
 - a) A10.2.2(b) - Norton failed to consider whether the orders, for the execution of the orders would materially affect the market for or price/yield of the relevant securities.

- b) A10.2.2(d) – Norton failed to consider whether the client had a beneficial interest in creating a false or misleading market in, or the price/yield of the relevant securities.
 - c) A10.2.2(f) - Norton failed to consider whether the client’s series of orders, either on each individual day or during the 13-month period in question, had the effect of creating a false impression of the market in, or price/yield of the relevant securities.
 - d) A10.2.2(g) – Norton failed to consider whether the client had a legitimate commercial reason for placing orders in breach of A10.2.2(g).
3. Breach of Rule 8.1.1(b)(i) and (ii) acting in a manner which was or was reasonably likely to be detrimental to wellbeing or proper conduct of NZX or the NZSX and which discredited or brought NZX, or Norton or FORD generally into disrepute by using the market to manipulate the price of the relevant securities.

NZX Discipline approved a settlement agreement between the parties under which Nola Norton admitted breaching Participant Rule 8.1.1(c) in that she should have been prompted at some point (if not the first occasion on which a trade occurred) prior to accepting the orders for execution to either:

- ***Make a specific inquiry of the client as the purposes for such trading and be reasonably satisfied from the response from the client that the client had no intention to create any of the effects set out in Rule A10.2.1 and that the execution of the relevant trades would not have any of those effects; and/or***
- ***Refer the orders to FORD’s compliance officer for further guidance.***

NZX withdrew its charges under Participant Rule A10.2.1, A10.2.2 and 8.1.1(b).

In respect of Ford:

NZX alleged that FORD committed the following breaches of the NZX Participant Rules (“Rules”):

1. Breach of Rule A10.2.1 – placing orders on behalf of a client when FORD (acting through its employee, Norton) was either aware of should have reasonably suspected that the client intended to create a false or misleading appearance either:
 - a) Of active trading in the relevant securities; or
 - b) With respect to the market for, or the price/yield of, the relevant securities.
2. Breach of A10.2.2 – failing to take into account the mandatory considerations set out in Rules A10.2.2 (b), (d), (f) and (g) before accepting any of the client’s orders:
 - a) A10.2.2(b) - FORD (acting through its employee, Norton) failed to consider whether the orders, for the execution of the orders would materially affect the market for or price/yield of the relevant securities.

- b) A10.2.2(d) – FORD (acting through its employee, Norton) failed to consider whether the client had a beneficial interest in creating a false or misleading market in, or the price/yield of the relevant securities.
 - c) A10.2.2(f) - FORD (acting through its employee, Norton) failed to consider whether the client’s series of orders, either on each individual day or during the 13-month period in question, had the effect of creating a false impression of the market in, or price/yield of the relevant securities.
 - d) A10.2.2(g) – FORD (acting through its employee, Norton) failed to consider whether the client had a legitimate commercial reason for placing orders in breach of A10.2.2(g).
3. Breach of Rule 8.9.2 (revoked on 28/02/07) and 3.13 (introduced 28/02/07) failing to maintain adequate control of its employee, Norton.

NZX Discipline approved a settlement agreement between the parties under which FORD admitted breaching Participant Rule 8.9.2. FORD accepted that it had an obligation to ensure that its employees comply fully with all applicable rules and at all times observe "good broking practice". FORD accepted that in this instance it could have done more to ensure that its employees were more familiar with the detail of Rules A10.2.1 and A10.2.2 and of the procedures that should be followed by employees on receipt of orders such as those represented by the relevant trades.

NZX withdrew its charges under Participant Rule A10.2.1 and A10.2.2.

PENALTIES IMPOSED BY NZX DISCIPLINE IN RESPECT OF NORTON:

Under the terms of the Settlement Agreement approved by NZX Discipline FORD was required to pay NZX a sum of \$15,000. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.

PENALTIES IMPOSED BY NZX DISCIPLINE IN RESPECT OF FORD:

Under the terms of the Settlement Agreement approved by NZX Discipline Norton was required to pay NZX a sum of \$30,000. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.

COSTS:

Each party agreed to bear its own costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement and approved by NZX Discipline was published.

HEARINGS HELD SINCE 1 MAY 2008

NZXD 01/2008 NZX V A MARKET PARTICIPANT

Division: Jeffs (Chair), Johnston and Meyer.

Statement of Case served: 18 July 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case alleged that the Market Participant had breached NZX Participant Rule 14.7.1(g) by:

- Failing to reconcile the records of the Client Funds Account held by the Market Participant, who was a Market Participant Accepting Client Assets, with the records of the Bank holding the Client Funds Account in all currencies on a daily basis; and
- Failing to notify NZX that it was unable to perform a daily reconciliation as required by Rule 14.7.1(g).

The Market Participant's client fund account arrangements had changed immediately prior to the breach and the responsibility for the provision of the information required to perform the reconciliation had changed as a consequence. The breach was self-reported by the Market Participant, albeit with a two-day delay, and the accounts in question had only residual funds in them and bank account movements were being monitored.

NZX Discipline approved a settlement agreement between the parties under which the Market Participant admitted breaching Participant Rule 14.7.1(g).

PENALTIES IMPOSED BY NZX DISCIPLINE:

Under the terms of the Settlement Agreement approved by NZX Discipline the Market Participant was required to pay NZX a sum of \$10,000. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.

COSTS:

The Market Participant was required to pay all NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement and approved by NZX Discipline was published. This public statement, which did not name the Market Participant, was released to the market. NZX Discipline found that the breaches by the Market Participant fell into Penalty Band 3 of the NZX Discipline Penalty Bands Guidance Note and therefore a settlement that did not name the Market Participant fell within NZX Discipline's Policy on the Naming of Market Participants.

NZXD 02/2008 NZX V DOMINION FINANCE HOLDINGS LIMITED (DFH)

Division: Kós (Chair), Freeman, Malthus, Moir and Wilson.

Statement of Case Served: 20 August 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case alleged that Dominion Finance Holdings Limited had breached NZX Listing Rule ("Rules") 10.5.1 by failing to make available its annual report within three months of the end of its financial year, being 31 March 2008, both electronically to NZX and to each Quoted Security holder, as is required by Rule 10.5.2B. Dominion Finance Holdings Limited admitted that it did not provide its annual report within the time frames required by Rule 10.5.1 but submitted that if it had filed its annual report within the time frames required by Rule 10.5.1 it would have been impossible for the financial statements to be prepared in a way that presented a true and fair view and that those financial statements would have been misleading. DFH submitted that this would have caused a breach of the Listing Rules and the law as preparation of financial statements that do not show a true and fair view or are misleading are offences under the Financial Reporting Act 1993 and the Fair Trading Act 1986 and constitutes publishing misleading information under the Securities Markets Act 1998.

NZX Discipline found that DFH acted in breach of Rule 10.5.1.

NZX Discipline found that it was not impossible for DFH to file financial statements that complied with the financial reporting act 1993 within the timeframes specified in Rule 10.5.1.

NZX Discipline found that DFH failed to take the appropriate steps to enable it to comply with the time frames in Rule 10.5.1.

NZX Discipline found that DFH was aware of the changing market conditions well in advance of its March balance date.

PENALTIES IMPOSED BY NZX DISCIPLINE:

The penalties imposed by NZX Discipline were:

- A public censure of DFH in the form of an announcement by NZX Discipline to the market that NZX Discipline has found DFH to be in breach of Rule 10.5.1 and is, accordingly, censured by NZX Discipline.
 - An order that DFH pay to NZX a sum of \$65,000 by way of penalty. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.
-

COSTS:

Costs of \$33,000 were awarded.

PUBLICATION:

NZX Discipline's determination was published in full and a public censure of DFH was published.

NZXD 03/2008 NZX V STRATEGIC FINANCE LIMITED (SFL)

Division: Reddy (Chair), Beck and Stevens.

Statement of Case Served: 2 September 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE'S FINDINGS:

The Statement of Case alleged that SFL had breached NZX Listing Rule ("Rules") 10.1.1(b) by failing to disclose Material Information concerning SFL to NZX prior to disclosing that Material Information to other parties. In its Statement of Response submitted on 4 September 2008 SFL admitted it breached Rule 10.1.1(b) on 8 August 2008 by disclosing certain non-public information to certain brokers.

NZX Discipline found that SFL acted in breach of Rule 10.1.1(b). This breach arose on 7 August 2008 when SFL telephoned certain market participants regarding details of the sale of its parent, Strategic Investment Group Limited (the Company), by Allco HIT Limited ("the transaction"). At that point the Material Information (being details of the proposed transaction) was no longer confidential and therefore the exception to the requirement to disclose Material Information (found at Rule 10.1.1(a)(i) to (iii)) ceased to apply.

Once the obligation to disclose Material Information arose under Rule 10.1.1(a) because it was no longer confidential, SFL was obliged to release this information to NZX prior to releasing it to third parties pursuant to Rule 10.1.1(b) notwithstanding that it related to an incomplete proposal. In breach of that rule, SFL did not do so. The breach was in fact exacerbated by the distribution by SFL the following day (8 August 2008) of an email to a wider group outlining the proposed terms for the capital restructure of the Company. Extracts of this email were subsequently published in the media.

The breach continued until 11 August 2008, when SFL made an announcement to the market at 10.07am regarding the transaction.

PENALTIES:

The penalties imposed by NZX Discipline were:

- A public censure of SFL in the form of an announcement by NZX Discipline to the market that NZX Discipline has found DFH to be in breach of Rule 10.1.1(b) and is accordingly censured by NZX Discipline.
 - An order that SFL pay to NZX a sum of \$20,000 by way of penalty. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.
-

COSTS:

Costs of \$5,500 were awarded.

PUBLICATION:

NZX Discipline's determination was published in full and a public censure of SFL was published.

NZXD 04/2008 APPLICATION BY DOMINION FINANCE HOLDINGS LIMITED (DFH) FOR REVIEW OF NZX REGULATION WAIVER DECISION UNDER NZX DISCIPLINE RULE 4.12

Division: Kós (Chair).

Application: An application for review of an NZX Regulation (NZXR) waiver decision dated and published on 2 September 2008 was served on NZX Discipline on 12 September 2008. In its waiver decision NZXR had declined DFH's request for a retrospective waiver from NZSX Listing Rule 10.5.1.

DETERMINATION:

Pursuant to NZX Discipline Rule 4.12, the Chairman declined to consider the review application. The Chairman noted the following in his decision:

- ***It will only be in rare situations that NZX Discipline will assume jurisdiction to review under NZX Discipline Rule 4.12, having regard in particular to the principles of administration stated in paragraph 12 of the Foreword to the Listing Rules.***
 - ***Where the original waiver application is made under section 10 of the Listing Rules (as was the case here), and is therefore the subject of consultation with the Securities Commission under section 36ZM of the Securities Markets Act 1988, NZX Discipline will be especially cautious in exercising its discretion to consider applications for review under NZX Discipline Rule 4.12.***
 - ***NZX Discipline will not assume jurisdiction under NZX Discipline Rule 4.12 (as it was then drafted) unless the review application demonstrates a prima facie material error by NZX in considering the original waiver application. In this case NZX Discipline found that the review application did not demonstrate a material prima facie error by NZX in considering the original waiver application.***
-

NZXD 04A/2008 NZX V PACIFIC FINANCE GROUP LIMITED (PFG)

Division: Heine (Chair), Clouston and Stuart.

Statement of Case Served: 3 October 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE'S FINDINGS:

The Statement of Case alleged that PFG had breached NZAX Listing Rule ("Rules") 10.5.1 by failing to make available its annual report within three months of the end of the Respondent's financial year, being 31 March 2008, both electronically to NZX and to each Quoted Security holder, as is required by Rule 10.5.2B.

NZX acknowledged that PFG faced difficulties obtaining the required information to enable PFG to complete its annual report from the trustees of the propertyfinance securitisation programme.

NZX Discipline approved a settlement agreement between the parties under which PFG admitted breaching NZAX Listing Rule 10.5.1.

PENALTIES IMPOSED BY NZX DISCIPLINE:

Under the terms of the Settlement Agreement approved by NZX Discipline, PFG was required to pay NZX a sum of \$7,500. These moneys are required by the NZX Discipline Rules to be directed to the NZX Discipline Fund.

COSTS:

PFG was required to pay all of NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement naming PFG and approved by NZX Discipline was published.

NZXD 05/2008 NZX v DAISY PAN & MACQUARIE EQUITIES NEW ZEALAND LIMITED (MENW)

Division: Kós (Chair), Boldt, Brown, Edmond and Loughlin.

Statement of Case Served: 1 October 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE'S FINDINGS:

In respect of Pan:

The Statement of Case alleged that the Pan had breached NZX Participant Rules ("Rules"):

- a) A10.7.1, by dealing in Securities quoted on a market provided by NZX on behalf of a Prescribed Person without written authority to do so for each individual Order, as is required by that Rule;
- b) A10.7.7, by not holding Securities purchased for an account over which the Pan had a controlling interest, discretion or controlling influence on investment decisions for a minimum period of 10 Business Days ("the Holding Period") from and including the date of purchase or allotment, as appropriate (except for Discretionary Accounts of persons who are not Prescribed Persons), as is required by that Rule; and
- c) A10.7.2, by allowing a Prescribed Person to participate in an initial public offer that did not form part of a public pool in breach of that Rule.

All breaches of section 10 of the Rules related to trading on an account of a relative of Pan who was resident overseas. The account should have been designated as a Prescribed Person account in accordance with the Rules, but was not. Pan stated to NZX that she was not aware that the account should have been designated and managed as a Prescribed Account.

NZX accepted that the operation of the account was not undertaken for Pan's personal gain, but for the benefit of a relative.

NZX Discipline approved a Settlement Agreement between NZX and Pan under which Pan admitted breaching these Rules.

In respect of MENW:

The Statement of Case alleged that MENW had breached Rule 9.2.1 by failing to meet the minimum Know Your Client procedures.

Rule 9.2.1(d) relates to the requirement to enter into and record client agreements with every client, to ensure that appropriate investment advice and Securities recommendations are given.

All breaches were discovered and reported by MENW's internal compliance team.

The breach related to clients of a single NZX Associate Adviser employed by MENW, however, the obligation contained in Rule 9.2.1(d) rests with MENW.

The missing client records identified had since been located, further records sought or the account closed.

NZX Discipline approved a Settlement Agreement between NZX and MENW under which MENW admitted breaching Rule 9.2.1.

PENALTIES IMPOSED BY NZX DISCIPLINE IN RESPECT OF PAN:

Under the terms of the Settlement Agreement approved by NZX Discipline Pan was required to pay the NZX Discipline Fund a sum of \$12,500 and the amount of profit made in the initial public offering for Opus International Consultants Limited, which totalled \$4,100.

COSTS IN RESPECT OF PAN:

Pan was required to pay all NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION IN RESPECT OF PAN:

A public statement in the form attached to the Settlement Agreement naming Pan and approved by NZX Discipline was published.

PENALTIES IMPOSED BY NZX DISCIPLINE IN RESPECT OF MENW:

Under the terms of the Settlement Agreement approved by NZX Discipline MENW was required to pay the NZX Discipline Fund a sum of \$15,000.

COSTS IN RESPECT OF MENW:

MENW was required to pay all NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION IN RESPECT OF MENW:

A public statement in the form attached to the Settlement Agreement naming MENW and approved by NZX Discipline was published.

NZXD 06/2008 NZX v MICHAEL LI

Division: Kós (Chair), Boldt, Brown, Edmond and Loughlin.

Statement of Case Served: 1 October 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case alleged that Li had breached NZX Participant Rules ("Rules"):

- a) 11.2.1 by failing to maintain proper Order records;
- b) A10.7.1, by dealing in Securities quoted on a market provided by NZX on behalf of a Prescribed Person without written authority to do so for each individual Order, as is required by that Rule; and
- c) 5.8.1(b)(ii) by conducting action likely to discredit, or bring generally into disrepute, NZX, any Market Participant, or Advisors.

All breaches were discovered and reported by Li's employer, Macquarie Equities New Zealand Limited's, internal compliance team.

Li admitted the breaches. All breaches related to trading on an account that was established for an elderly relative of Li who was resident overseas. The account should have been designated as a Prescribed Person account in accordance with the Rules. It was not.

Li stated to NZX Regulation ("NZXR") that he was not aware that the account should have been designated and managed as that of a Prescribed Person, or that the obligations contained in Rule 11.12 applied when he was outside the office. Li stated that his actions, whilst being in breach of the Rules, were a result of his misunderstanding the particular Rules.

NZXR accepted that the operation of the account was not undertaken for the personal gain of Li, but for the benefit of an elderly relative.

NZX Discipline approved a Settlement Agreement between NZX and Li under which Li admitted breaching these Rules.

PENALTIES IMPOSED BY NZX DISCIPLINE:

Under the Settlement Agreement approved by NZX Discipline Li was required to pay the NZX Discipline Fund a sum of \$10,000.

COSTS:

Li was required to pay all NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement naming Li and approved by NZX Discipline was published.

NZXD 07/2008 NZX v ARTHUR LIM

Division: Kós (Chair), Boldt, Brown, Edmond and Loughlin.

Statement of Case Served: 1 October 2008

ALLEGATIONS IN STATEMENT OF CASE AND NZX DISCIPLINE FINDINGS:

The Statement of Case alleged that Lim had breached NZX Participant Rules ("Rules"):

- a) A10.7.1, by dealing in Securities quoted on a market provided by NZX on behalf of a Prescribed Person without written authority to do so for each individual Order, as is required by that Rule;
- b) A10.7.7, by not holding Securities purchased for an account over which Lim had a controlling interest, discretion or controlling influence on investment decisions for a minimum period of 10 Business Days ("the Holding Period") from and including the date of purchase or allotment, as appropriate (except for Discretionary Accounts of persons who are not Prescribed Persons), as is required by that Rule; and
- c) A10.7.2, by allowing a Prescribed Person to participate in an initial public offer that did not form part of a public pool in breach of that Rule.

All breaches were discovered and reported by Lim's employer, Macquarie Equities New Zealand Limited's, internal compliance team.

Lim admitted to breaching these rules. All breaches related to trading on an account that was for Lim's elderly relative who was resident overseas. Lim, who made all investment decisions for the account, operated the account on a discretionary basis. Accordingly, the account should have been designated as a Prescribed Person account in accordance with the Rules. It was not.

Lim has stated to NZX Regulation ("NZXR") that he was not aware that the account should have been designated and managed as that of a Prescribed Person.

NZXR accepted that the operation of the account was not undertaken for the personal gain of Lim, but for the benefit of an elderly dependent relative.

NZX Discipline approved a Settlement Agreement between NZX and Lim under which Lim admitted breaching these Rules.

PENALTIES IMPOSED BY NZX DISCIPLINE:

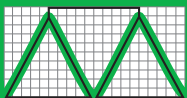
Under the Settlement Agreement approved by NZX Discipline Lim was required to pay \$25,000 by way of penalty plus the amount of profit made in the initial public offering for Rakon Limited, being \$14,440.

COSTS:

Lim was required to pay all NZX Discipline's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement naming Lim and approved by NZX Discipline was published.



NZX REGULATION ANNUAL REPORT
TO NEW ZEALAND MARKETS
DISCIPLINARY TRIBUNAL

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS REQUIRED BY NZMDT RULE 14.1.1 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 the following year:

- a) breaches of the Conduct Rules, Futures and Options Rules or any other rules or regulations of NZX from time to time identified by NZX;
 - b) complaints received by NZX in respect of Market Participants, Issuers and Futures and Options Participants; and
 - c) the use of the proceeds of the Disciplinary Fund.
-

1. MARKET PARTICIPANTS AND FUTURES AND OPTIONS PARTICIPANTS

A. SUMMARY OF BREACHES OF THE NZX PARTICIPANT RULES FROM TIME TO TIME IDENTIFIED BY NZX

i) Significant Breaches of the NZX Participant Rules

There were five cases of significant breaches of the NZX Participant Rules referred to NZX Discipline in the period between 30 April 2008 and 31 December 2008. These are described in this report in section entitled "Statements of Case, Findings and Penalties". This is a 25% increase in the number of cases referred to NZX Discipline in respect of the NZX Participant Rules for the period reviewed in the NZX Discipline 2008 Annual Report.

ii) Breaches Currently Being Investigated

In addition, NZXR is currently investigating three NZX Market Participants in respect of potential multiple Rule breaches to determine whether further action, including referral to the NZMDT, is necessary.

iii) Other Breaches of the NZX Participant Rules

In addition to the above cases, there were also a number of other minor, inadvertent or technical breaches of the NZX Participant Rules, which were not considered sufficiently serious to warrant referral to NZX Discipline.

Of these, various breaches were identified during NZX's on-site inspections of Market Participants. These breaches were subsequently highlighted to the relevant Market Participant as part of the NZX Regulation inspection report which contained action points for the Market Participant to resolve or implement within specified timeframes. In some cases, alternative action was taken including issuing warnings and fines to the relevant Market Participant.

Additionally, numerous trading breaches have also occurred. Between 30 April 2008 and 31 December 2008, a total of 15 breaches of Participant Rule D10.1 (Crossing outside the quotations) were identified.

These were all minor transgressions which resulted in an automatic fine by NZX. This was a 50% increase of this type of breach from the period reviewed in NZX Discipline's 2008 Annual Report. In the same period, a significant number of breaches relating to late settlement of trades occurred. These also resulted in an automatic fine by NZX.

As in the period reviewed in NZX Discipline's 2008 Annual Report, there were a number of breaches of Participant Rule 15.9.1 (daily Liquid Capital reports not submitted on time). These were all minor, inadvertent or technical in nature. These were resolved or clarified by communication with the relevant Market Participant.

A total of 48 breaches of Participant Rule 14.7.1(3) (Client Funds Account overdrawn) occurred during the period reviewed, a 40% reduction in this type of breach over the period evaluated in the 2008 Annual Report. These were largely self-reported by the Market Participant and a significant number of these were either as a result of time differences for international clients or a result of bank errors for which the Market Participant ultimately received good value. Another significant reason for these breaches were errors in processing bank transactions by the Market Participant's employees. All of the breaches were followed up by communication with the relevant Market Participant, including, where appropriate, putting the relevant Market Participant on notice and advising them that, in the absence of extraordinary circumstances as determined by NZX at its sole discretion, any future overdraw of the firm's Client Funds Accounts would be referred to NZX Discipline. One referral was made to NZX Discipline in relation to a Market Participant that accounted for approximately 33% of these breaches.

There were also two breaches of Participant Rule 14.4.2 (Client Assets need to exceed Outstanding Obligations). These two breaches were followed up by communication with the relevant Market Participant.

This was a reduction of 67% of the number of this type of breach since the period reviewed in the 2008 Annual Report.

B. SUMMARY OF COMPLAINTS RECEIVED BY NZX IN RESPECT OF MARKET PARTICIPANTS

NZX received a total of nine written complaints from members of the public in respect of Market Participants between 30 April 2008 and 31 December 2008, an increase of 28% in the number of complaints received since the period reviewed in the 2008 Annual Report.

Of these complaints:

- Two were closed due to the failure by the complainant to provide further information required to determine the complaint;
- Five did not appear to involve a breach of NZX's Participant Rules, and resulted in the closure of the matter. Of these one complaint resulted in a change to the operation of a Market Participant's internal procedures to limit the potential for recurrences of the same error by clients;
- One involved allegations of which there was insufficient evidence on which a matter could be brought before NZMDT; and
- One was outside NZX's jurisdiction to determine.

C. SUMMARY OF BREACHES OF THE NZX FUTURES & OPTIONS RULES FROM TIME TO TIME IDENTIFIED BY NZX

(i) Significant Breaches of the NZX Futures & Options Rules

In the period between 30 April 2008 and 31 December 2008, no breaches of the NZX Futures & Options Rules were identified.

However, NZXR notes that it has recently discovered possible breaches of the NZX Futures and Options Rules arising from an issue of Rule interpretation. NZXR is currently working with NZX Futures & Options Participants to resolve this.

(ii) SUMMARY OF COMPLAINTS RECEIVED BY NZX IN RESPECT OF FUTURES & OPTIONS PARTICIPANT

In the period between 30 April 2008 and 31 December 2008, NZX received three written complaints in respect of a Futures & Options Participant.

Of these complaints:

- One complaint related to the use of a Client Funds Account. Upon reviewing the complaint it was viewed that the alleged breach fell more readily within the jurisdiction of the Securities Commission and was accordingly referred to them; and
- Two were in respect of Forex trading and were considered to be outside NZX's jurisdiction.

D. PUBLICATIONS BY NZX COMPLIANCE

In addition to the routine on-site inspections of NZX Market Participants, NZX's Participant Compliance Team from time to time issues Compliance Briefing memoranda to Market Participants, highlighting both issues that have been identified during the NZX Compliance on-site inspections and addressing issues that have arisen throughout the year. Two Compliance Briefings have been issued since the last NZX Discipline Annual Report.

Additionally, following developments in global financial markets in 2008 NZX Compliance issued a Guidance Note in respect of the Reporting of Short Sales on 23 September 2008.

Finally on 15 December 2008, NZX released to NZX Market Participants draft amendments proposed to be made to the NZX Participant Rules. The proposed amendments sought to divide the NZX Participant Rules into four distinct books. NZX has received significant feedback on the proposed changes and is currently working with NZX Market Participants to assess if, and what form, these changes will be introduced.

2. LISTED ISSUERS

A. SUMMARY OF BREACHES OF THE LISTING RULES FROM TIME TO TIME IDENTIFIED BY NZXR

(i) Significant Breaches of the NZX Listing Rules

There were three significant breaches of the NZX Listing Rules referred to NZX Discipline in the period between 30 April 2008 and 31 December 2008. These are described in the section of the report entitled "Statements of Case, Findings and Penalties". Two of these related to the failure to comply with the periodic reporting requirements of the NZX Listing Rules and one related to a failure to comply with the Continuous Disclosure provisions of the Listing Rules.

(ii) Referrals to the Securities Commission

In accordance with Section 36ZL of the Securities Markets Act 1988, the Memorandum of Understanding between NZX and the Securities Commission, between 30 April 2008 and 31 December 2008, NZXR referred seven matters in respect of NZX Listed Issuers to the Securities Commission which were not also referred to NZX Discipline.

Of these referrals:

- Three related to the failure to comply with required Director's and Officer's ("D&O") disclosure requirements;
- One related to the failure to provide information regarding Substantial Security Holder's Holdings; and
- Three related to the failure to comply with the Continuous Disclosure requirements of the NZX Listing Rules and the Securities Markets Act, two of which were, in the view of NZX Regulation, such breaches that they potentially amounted to misleading statements, actionable under section 11 of the Securities Markets Act 1988.

Of these referrals, NZX has been advised by the Securities Commission that no further action will be taken by the Securities Commission in respect of one of continuous disclosure failures referred to it and two of the D&O notification failures referred to it.

(iii) Other Breaches of NZX Listing Rules

In addition to the above breaches NZXR identified 24 breaches of the NZX Listing Rules which were not considered sufficiently serious to warrant referral to NZX Discipline.

Of these breaches:

- 14 were in respect of failures to include information in the annual, or half yearly, report in respect of the Net Tangible Assets per security of the Issuer. The majority of these breaches arose as a result of Issuers using a pre July 2006 NZX Listing Rule amendment version of Appendix 1, which did not include the requirement for Net Tangible Asset information.
- Six were in relation to the minor late provision of annual and half year reports to NZX;
- One was a technical breach of NZX Listing Rule 11.1.1 in respect of an Executive Share Scheme;
- One was in respect of a failure to provide interim results within the required period; and
- Two were in respect of NZX Listing Rule 10.5.3 and the failure to include details of waivers provided to Issuers in their annual report.

B. SUMMARY OF COMPLAINTS RECEIVED BY NZX IN RESPECT OF ISSUERS

NZX received a total of 14 complaints in respect of NZX Listed Issuers between 30 April 2008 and 31 December 2009.

Of these complaints:

- Four were determined not to be breaches of the NZX Listing Rules;

- Three fell outside NZXR's jurisdiction and were subsequently referred onto the appropriate authority, namely the Serious Fraud Office or the Securities Commission;
- Two were in respect of NZX's website and the delay in the information availability restricting the ability to ensure the market was fully informed;
- One was in respect of a waiver granted by NZXR to a Listed Issuer, claiming that the waiver was erroneous and should not have been granted;
- Two were in respect of possible breaches by Listed Issuers in respect of which NZXR had already referred the matter to the Securities Commission;
- One resulted in subsequent clarification by the Issuer to the individual, resolving the matter; and
- One was in respect of the drop in an Issuer's share price which NZX considered did not require further action.

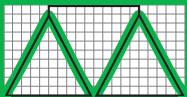
C. PUBLICATIONS BY NZX REGULATION

In the period from 30 April 2008 to 31 December 2008, NZXR published one draft Guidance Note in respect of Trading Halts for public consultation. NZXR received significant feedback in respect of this and is currently intending to release a further document for consultation shortly, taking into consideration submissions received.

Finally on 25 November 2008, NZXR released a Consultation Paper in respect of proposed amendments to the NZX Listing Rules. Significant feedback was received in respect of this and NZX subsequently released an Exposure Draft on 15 December 2008. As a result of the feedback received, and ongoing consultation with the Securities Commission, NZXR submitted the proposed new Rules to the Minister of Commerce, pursuant to Section 36J of the Securities Markets Act 1988, on 27 February 2009. These Rules were not disallowed by the Minister on 30 March 2009 and came into effect, on 3 April 2009.

3. DISCIPLINARY FUND ACCOUNTS

Disciplinary Fund Costs	12 MONTHS TO 31 DECEMBER 2007	4 MONTHS TO 30 APRIL 2008	7 MONTHS TO 31 DECEMBER 2008
Receipt of Fines and Costs	401022	13000	230629
Expenses of NZ Markets Disciplinary Tribunal			
Appeal Member Costs	683		
Executive Counsel Costs			60087
NZ Markets Disciplinary Tribunal Member Costs	94313	14248	105282
Legal Advisory	14500		
Rules Review		44752	1360
Disbursements			3717
Total Expenses	112942	59000	170446
Surplus (Deficit) for the Period	288080	-46000	60183
Accumulated Surplus (Deficit)	282054	236054	296237



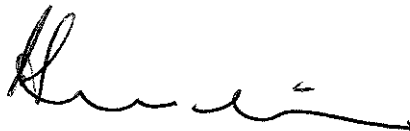
REPORT ON SPECIAL DIVISION ACTIVITIES

SPECIAL DIVISION CHAIRMAN'S REPORT

The Special Division considered 12 matters over the year, seven of which were at the request of NZX Limited and four for Smartshares Limited. The Division was in all cases able to meet the timeline requests from the applicants.

One matter was referred to the Special Division by a member of the public regarding his dealings with a Market Participant. The matter was determined to be outside the jurisdiction of the Special Division because it did not relate to the Market Participant's dealing or trading in the quoted securities of NZX Limited or a related entity.

During the year Andrew Beck was appointed to fill the position vacated by Nicolas Short. There have been no other changes to personnel or administrative arrangements.



PETER WILSON | CHAIRMAN

NZXD SPECIAL DIVISION MATTERS 1 JANUARY TO 31 DECEMBER 2008

Date Received	Issuer	Matter	Summary of Matter
02/05/08	NZX Ltd	Notification of changes in officer under NZSX Listing Rule 10.8.1(d)	The Special Division reviewed the procedure for the notification of changes in officer under Rule 10.8.1(d).
25/07/08	Smartshares Ltd	Approval of Notice of Special Meeting under NZSX Listing Rule 6.1	The Special Division reviewed and approved a Notice of Special Meeting for the funds managed by Smartshares Ltd containing a resolution relating to the introduction of a securities lending programme. The Special Meeting did not proceed.
01/09/08		Review of a complaint received from a member of the public regarding his dealings with a NZX Firm	The Special Division considered the complaint and determined that it was outside its jurisdiction.
15/09/08	Smartshares Ltd	Approval of Prospectuses under NZSX Listing Rule 6.1	The Special Division reviewed and approved the renewal of the Prospectuses for each of the five funds managed by Smartshares Ltd.
23/09/08	Smartshares Ltd	Review of SMARTS surveillance system alert	The Special Division investigated the circumstances of a SMARTS alert regarding trading in units of the smartTENZ fund.
13/11/08	NZX Ltd	Approval of waiver	The Special Division reviewed and approved an application for waiver made by NZX Ltd. The application and the Special Division's decision remain confidential under Rule 1.7.2.
21/11/08	NZX Ltd	Review of Independent Directors' Certificate provided under NZSX Listing Rule 9.2.4	The Special Division reviewed the provision of Independent Directors' Certificates provided under Rule 9.2.4.
26/11/08	NZX Ltd	Approval of waiver under NZSX Listing Rule 7.6.1	The Special Division reviewed and approved an application for waiver from Rule 7.6.1 in respect of the NZX Employee Share Plan.

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