NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

22 October 2014

ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL

PUBLIC CENSURE OF MR CHEE JOO (JIMMY) KOH (FORMER MANAGING PRINCIPAL OF KVB KUNLUN NEW ZEALAND LIMITED) BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACHES OF NZX PARTICIPANT RULES 3.3.2 AND 10.5.10.

1. The NZ Markets Disciplinary Tribunal ("**Tribunal**") has approved a settlement agreement between NZX Limited ("**NZX**") and Jimmy Koh ("**Mr Koh**") dated 25 September 2014 ("**Settlement Agreement**") in respect of breaches by Mr Koh of NZX Participant Rules ("**Rules**") 3.3.2 and 10.5.10.

Summary

2. Mr Koh was Managing Principal of KVB Kunlun New Zealand Limited "**KVBA**") from August 2011 until 4 April 2014. Mr Koh was bound by the Rules in his capacity as Managing Principal of KVBA.

Background

3. NZX Regulation ("**NZXR**") performed a desk based capital and prudential inspection of KVBA on 16 December 2013.

4. During this inspection NZXR observed that KVBA's Employees and Prescribed Persons had participated in the Z Energy IPO on 19 August 2013.

5. KVBA failed to provide the required certification to NZXR pursuant to Rule 10.5.4 for the Z Energy IPO, prior to the offer being made to its Employees and Prescribed Persons.

6. During the inspection of 16 December 2013, NZXR also observed that over a 7 month period from 10 May 2013 to 20 November 2013, there were 29 instances where KVBA's Employees and Prescribed Persons failed to hold securities purchased for a period of at least 10 business days as required by Rule 10.5.9 ("**Holding Period**"). These breaches occurred because Mr Koh approved the sale of these securities without first considering whether the requests for approval were made because of special personal circumstances unrelated to market prices, as required by Rule 10.5.10.

7. On 17 December 2013, NZXR spoke with Mr Koh to discuss NZXR's inspection of KVBA. During the course of that telephone discussion, NZXR informed Mr Koh that Rule 10.5.9 requires securities to be held for the Holding Period unless the requirements of Rule 10.5.10 are met.

8. On 21 May 2014, KVBA advised NZXR that it had discovered another instance of the Holding Period requirement not being met. On 19 December 2013, an employee of KVBA requested authorisation to sell securities within the prescribed Holding Period. The employee stated that the trade was required because the employee wanted to purchase property. However, Mr Koh improperly concluded that sufficient evidence in relation to that proposed property purchase existed to establish grounds of special personal circumstances for the purposes of Rule 10.5.10. This further breach was particularly concerning given the conversation between NZXR and Mr Koh as highlighted in paragraph 7 above.

Determination

9. The Tribunal considers Mr Koh's failures in this case to be very serious matters. Mr Koh has breached his own obligation under Rule 10.5.10 by approving trades within the Holding Period, despite insufficient grounds, but the Tribunal considers that Mr Koh's conduct has also contributed significantly to breaches of the Rules by KVBA.

10. The certification requirements under the Rules provide an important control in relation to the participation by Employees and Prescribed Persons in IPOs. The failure to provide the necessary certification meant that this control was not adhered to. This is significant because it appears that KVBA's clients' interests may have been prejudiced as a result of Employees and Prescribed Persons of KVBA participating in the Z Energy IPO. This was because KVBA's clients, and KVBA's Employees and Prescribed Persons, had their applications scaled back in response to excess demand for shares in that offering. On the basis of the material and information available to the Tribunal, it appears that a similar pattern was adopted in relation to a number of other IPOs that were the subject of the Holding Period breaches. The Tribunal considers this a particularly concerning feature of this case. It also points to the likelihood of a breach of the obligation to deal with the firm allocation of shares received by KVBA in the Z Energy IPO and a number of subsequent IPOs in accordance with good broking practice.

11. The Holding Period requirement under the Rules seeks to ensure that there are no actual, or perceived, concerns in relation to Employees and Prescribed Persons trading on a short term basis with better information than the rest of the market. This is an important protection in relation to maintaining the integrity of the market. This obligation also seeks to ensure that all Employees and Prescribed Persons are treated equally.

12. The Tribunal is also particularly concerned that all of the infringing trades where made within a short period after allotment – with the majority being in 1-2 business days immediately following allotment.

13. In determining to approve the Settlement Agreement, the Tribunal considered certain aggravating factors, including:

    a. Mr Koh's conduct led to repeated breaches of the Rules (both in his capacity as Managing Principal and separately by KVBA involving a significant number of the staff of what was a relatively small office, seemingly carried out for staff to make a quick profit against a backdrop of what appeared to be a culture of non-compliance;

    b. These breaches occurred over a period of May 2013 to December 2013;

    c. These breaches were not self-reported;

d. It appears that KVBAs client's interests may have been prejudiced as a result of Employees and Prescribed Persons of KVBA participating in the Z Energy IPO in August 2013 and the IPOs that were the subject of the Holding Period breaches;

e. The Holding Period requirements within the Rules are important for the integrity of the market. In this case, Employees and Prescribed Persons of KVBA are likely to have made gains which they would not otherwise have made had Mr Koh and KVBA complied with the Rules. To illustrate this point, if the relevant securities had been held by these individuals for the Holding Period, and sold immediately upon expiry of the Holding Period, these individuals would have made approximately $17,942 less than they otherwise did; and

f. What appears to have been only limited disclosure to the Senior Manager Compliance and the Surveillance Officer but failure to disclose the full extent of the breaches to KVBA's senior management and its directors at the time they were initially raised by NZX which was compounded by the fact that a further Holding Period breach occurred just 2 days after Mr Koh had been spoken to about a large number of breaches of the Holding Period obligation and then went unreported for a further 5 months.

14. In determining to approve the Settlement Agreement, the Tribunal considered the following mitigating factors:

a. Mr Koh admitted the breaches and has co-operated with NZX's enquiries; and

b. Mr Koh states that he did not benefit from the wrong exercise of his judgment involving the approval of transactions in breach of Rule 10.5.10.

Penalties

15. NZX and Mr Koh have reached a settlement and agreed that:

a. This public censure by the Tribunal will be made.

b. Mr Koh will pay the NZX Discipline Fund $25,000 (including GST, if any) in respect of the breaches of Rules 3.3.2 and 10.5.10.

c. Mr Koh will contribute to the costs of the Tribunal as agreed (plus GST, if any).

d. Mr Koh will contribute towards the costs of NZXR as agreed (plus GST, if any).

Approval

16. The Settlement Agreement is approved by the Tribunal pursuant to Rule 10 of the NZ Markets Disciplinary Tribunal Rules ("**NZMDT Rules**"), and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

17. The Tribunal hereby publicly censures Mr Koh for his breach of Rules 3.3.2 and 10.5.10.

The Tribunal

18. The Tribunal is a disciplinary body independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the NZMDT Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the market rules.