

USER GUIDE TO THE NZ MARKETS  
DISCIPLINARY TRIBUNAL RULES  
A Practice Note Prepared by the Tribunal  
for Parties Appearing before the Tribunal

14 July 2014



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## I. INTRODUCTION

This Guide has been prepared by the NZ Markets Disciplinary Tribunal (“Tribunal”) to assist parties, in particular Respondents, to understand the NZ Markets Disciplinary Tribunal Rules (“Rules”), the Tribunal Procedures (“Procedures”) and the processes of the Tribunal. The Rules and Procedures can be found on the NZX website at: <https://www.nzx.com/market-supervision/rules/nz-markets-disciplinary-tribunal-rules>

For many people their first encounter with the Rules and the Tribunal is when they are served with a Statement of Case (“SOC”) by NZX Limited (“NZX”). The Tribunal acknowledges that the Rules are prescriptive and the timeframes imposed tight. This Guide is intended to assist parties understand the procedures and timeframes that apply once a SOC is served.

This Guide states the Tribunal Rules and Procedures as at 14 July 2014.

This Guide is provided for information only. Respondents should review the Rules and Procedures and consider seeking legal advice.

## II. WHAT IS THE TRIBUNAL?

The Tribunal is a body established by the Rules. The Tribunal is a special function body independent of NZX and its subsidiaries. The Financial Markets Authority approves its members.

The membership of the Tribunal is broken into categories; listed issuer appointees, market participant appointees, legal appointees, clearing appointees, derivatives market appointees and members of the public. The list of current members of the Tribunal can be found at <https://www.nzx.com/regulators/DISP>

In considering cases the Tribunal sits in Divisions, usually of three members. The Rules<sup>1</sup> prescribe that certain appointee types must sit on Divisions considering certain breaches, e.g. a market participant appointee must sit on any alleged breach by a market participant and a legal appointee must sit on any Division hearing a matter under the Full Hearing procedure.

The Tribunal undertakes an independent, essentially judicial, role.

NZX is responsible for the identification and prosecution of breaches and the Tribunal does not engage in that task. Its role is to determine whether breaches have occurred and the consequences that follow if they have.

The Tribunal is not an alternative disputes resolution body and its function is not to compensate those adversely affected by breaches although the Tribunal may make orders, as part of the penalties imposed on a Respondent, requiring that a Respondent make restitution to a third party where that Respondent has profited from its breach at that third party's expense. Persons adversely affected by the conduct complained of do not have the right to see the materials submitted to the Tribunal. Nor do they have the right to appear before the Tribunal although they may apply to the Tribunal to make written submissions. Ordinarily their interests will be taken into account in NZX's submissions, however. There is a discussion of third party participation and access to information in section X. of this Guide.

The Tribunal is accordingly charged under the Rules with hearing and determining matters referred to it by NZX in relation to the conduct of parties regulated by the NZX Participant Rules, the NZX Listing Rules, the NZX Derivatives Market Rules, the Clearing and Settlement Rules of New Zealand Clearing Limited ("CHO") and the Fonterra Shareholders' Market Rules. Where the Tribunal finds a breach has occurred it may impose penalties on the party found to have been in breach. The Tribunal can be likened to the 'court' that brings to account the players in New Zealand's listed capital markets.

The Tribunal also has authority under the Rules to<sup>2</sup>:

- 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

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1 See Rule 3.1.3.

2 See Rule 4.5

- 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.

Section 4 of the Rules sets out the powers of the Tribunal to sit and determine cases. The range of penalties that the Tribunal can impose is set out in section 11 of the Rules. The Tribunal has the power to determine its own processes and procedures where these are not set out in the Rules. This Guide will assist persons coming before it to understand those processes and procedures.

All correspondence with the Tribunal should be sent to the Tribunal's Executive Counsel by email at [rachel.batters@nzmdt.com](mailto:rachel.batters@nzmdt.com).

### III. WHAT TYPE OF PROCEDURE APPLIES? [FULL OR SUMMARY]

#### A. INTRODUCTION

There are two procedures in the Rules by which disciplinary cases can be heard: Summary Hearing procedure or Full Hearing procedure.

The first step in any disciplinary proceeding is to determine the procedure that will apply to the case.

It is for NZX to determine in the first instance whether a matter is to be heard under the Full or Summary Hearing procedure<sup>3</sup>. A SOC served by NZX will state the procedure that NZX considers should apply. This will appear on the front page of the pleadings served by NZX. The essential difference is that the procedures for summary cases tend to be shorter and less formal, and the penalties therefore lower.

The procedure chosen by NZX determines the next steps to be followed in the disciplinary process. It determines the Rules applicable and accordingly the timeframes and procedures to be applied to the case.

#### B. HOW DOES NZX DECIDE WHAT TYPE OF PROCEDURE SHOULD APPLY?

Under the Rules the Full Hearing procedure is reserved for more serious matters<sup>4</sup>, while the Summary Hearing procedure is used where the alleged breaches are something more than frivolous, but not sufficiently serious to warrant use of the Full Hearing procedure<sup>5</sup>.

In determining whether the Summary Hearing procedure is the most appropriate procedure to apply to a case, the Rules require NZX to consider the markets need for speed and certainty of interpretation<sup>6</sup>.

The Procedures<sup>7</sup> provide guidance as to what matters are most appropriate for Summary Hearing, being breaches of:

1. The Participant Rules found in penalty bands 1-4 in Procedure 11 of the Procedures<sup>8</sup>; and
2. The Listing Rules found in penalty bands 1-3 in Procedure 11 of the Procedures<sup>9</sup>.

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3 See Rule 6.1.1

4 See Rule 7.1.1

5 See Rule 6.1.1

6 *ibid*

7 See Procedure 6.1

8 Generally these are matters relating to: (1) minor and/or inadvertent breaches brought about as a result of incorrect administrative practices or operational functions which are inconsistent with the NZX Participant Rules; (2) operational breaches of NZX Participant Rules of a minimal nature which do not create significant risk for the client or the market; (3) mainly operational breaches of the NZX Participant Rules (minimal to moderate breach) including failure to adhere to NZX Participant Rules due to poor administration or untrained staff ; and (4) operational breaches of a medium to moderate nature.

9 Generally these are: (1) breaches not affecting shareholders; (2) failures to gain necessary approvals from NZX; and (3) breaches of rules relating to Corporate Governance.

Matters falling outside the scope of the matters detailed in the penalty bands above are likely to be submitted by NZX to the Tribunal to be heard by way of the Full Hearing procedure.

C. WHAT IF I DISAGREE WITH THE PROCEDURE NZX HAS CHOSEN?

A Respondent may apply to the Tribunal to have a matter being heard under the Full Hearing procedure heard under the Summary Hearing procedure instead<sup>10</sup>.

Although the Full Hearing procedure may expose a Respondent to greater penalties a Respondent may still prefer the Full Hearing procedure because this procedure provides longer timeframes at each step of the process which might be desirable, the hearing process is more formal, and a determination at Full Hearing has limited appeal rights, which a Respondent may consider to be in its interest.

The Respondent is required to make this application in its statement of response. This application should set out the Respondent's substantive grounds in support of its application. The Tribunal Chairperson considers and determines any such application<sup>11</sup> and this determination is binding. The Chairperson has 3 Business Days to make a determination on applications for matters to be heard under the Summary vs. Full Hearing procedure.

D. WHAT IF THE TRIBUNAL DISAGREES WITH THE PROCEDURE NZX HAS CHOSEN?

Notwithstanding that NZX may refer a matter to the Summary Hearing procedure, the Tribunal may also refer that matter to the Full Hearing procedure<sup>12</sup> of its own volition. This can be done at the following stages of a hearing:

1. Before the hearing commences. This is a decision for the Chairperson of the Tribunal;
2. During the course of hearing a matter. This is a decision for the Chairman of the Division considering the matter;
3. At the end of a matter if the Division does not believe the Summary Hearing procedure penalties are sufficient.

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<sup>10</sup> See Rule 7.1.2

<sup>11</sup> See Rule 7.1.3

<sup>12</sup> See Rule 6.1.3



## IV. THE SUMMARY HEARING PROCEDURE

### A. THE BASIC STEPS AND TIMEFRAMES

The table below sets out the basic procedural steps (in order), and the timeframes for each, which apply to a matter being heard under the Summary Hearing procedure.

Rule 6 and Procedure 6 govern Summary Hearings.

STEP	ACTIVITY	TIMEFRAME
1	Rule 6.2.1 – <b>NZX’s</b> submission of SOC to party it believes has breached the rules	No specified limit from time of alleged breach (however there should be no undue delay)
2	Rule 6.2.2 – <b>Respondent</b> may submit Statement of Response (SOR) to NZX	Within 10 Business Days of receipt of SOC
3	Rule 6.2.2 – <b>Respondent</b> may file with the Tribunal a notice requesting more time to file SOR <sup>13</sup>	Within 8 Business Days of receipt of SOC
4	Rule 6.2.8 – <b>NZX’s</b> submission of SOC, SOR and relevant documents to the Tribunal	At expiry of 10 Business Days from date of service of SOC (except where there are amended pleadings in which case the amended pleading timeframes apply)
5	Rule 6.2.7 – <b>NZX’s</b> submission of rejoinder to SOR	3 Business Days of service of SOR on NZX
	<b>A. WHERE THERE ARE AMENDED PLEADINGS</b>	
5A	Rule 6.2.3 – <b>NZX or Respondent</b> may seek leave from the Tribunal to file an amended SOC or SOR	Any time prior to a hearing
5B	Rule 6.2.5 – Affected party’s response to amended pleadings, in the event of fresh claims	Within 3 Business Days of service of amended pleading
5C	Rule 6.2.6 – Affected party’s response to amended pleadings where no fresh claims	Within 2 Business Days of service of amended pleading

<sup>13</sup> All communications by the Respondent to the Tribunal should be directed to the Executive Counsel of the Tribunal by email at rachel.batters@nzmdt.com.

STEP	ACTIVITY	TIMEFRAME
	<b>B. IF AN ORAL HEARING REQUIRED</b>	
6	Rule 6.3.3 – <b>Tribunal</b> Notice of Oral Hearing to the parties <sup>14</sup>	The Tribunal must provide the parties not less than 2 and no more than 7 Business Days notice of the date for the Oral Hearing
7	Rule 6.3.2(a) – <b>Tribunal</b> sets date for Oral Hearing	The Tribunal must set a date for the Oral Hearing which is no later than 10 Business Days from the date that the Tribunal received notice from a party that an Oral Hearing is required, or such longer period determined by the Tribunal
8	Rule 6.3.2(b) – <b>Tribunal’s</b> determination following an Oral Hearing	10 Business Days following Oral Hearing
	<b>C. WHERE NO ORAL HEARING</b>	
6A	Rule 6.3.1 – <b>Tribunal</b> consideration of the documents and decision of the Tribunal	Within 5 Business Days after receipt of documents from NZX or, at the discretion of the Chairman of the Division, within 10 Business Days or within such other period not exceeding 15 Business Days as directed by the Tribunal Chairperson.  Once the decision is finalised it will be provided by Executive Counsel to NZX and the Respondent. The Tribunal does not issue a draft decision in advance.
7A	Rule 6.1.3 – <b>Tribunal</b> notice to Respondent and NZX of referral of matter to Full Hearing procedure rather than Summary Hearing procedure <sup>15</sup>	At the end of 5 Business Day notice period to be given to Respondent and NZX

<sup>14</sup> Where an oral hearing is to occur, the Tribunal will normally issue timetable orders setting out the timing for filing and exchange of submissions and evidence in support. The Tribunal will not normally vary those orders to permit additional evidence out of time. The hearing date may be vacated with reasonable notice of the substitute date: Rule 6.3.3. In setting a new hearing date the Tribunal will have regard to the rules concerning initial hearing dates; no more than 7 and no less than 2 Business Days notice.

<sup>15</sup> Matters under the Summary Hearing procedure can be referred to the Full Hearing procedure. The Chairperson may decline to hear a matter before the hearing commences and the chairman of a division can decline to continue to hear a matter before it and refer it to the Full Hearing procedure. Even at the end of a hearing, if the division does not believe the Summary Hearing penalties are sufficient the matter can be referred to the Full Hearing procedure for determination of penalty. Accordingly this referral can occur anywhere from receipt of SOC.

## B. PRACTICAL ISSUES

### (1) Hearings on the Papers

The SOC and SOR should contain the party's submissions and factual allegations (and in the case of the Respondent, its response to these). The Tribunal will also accept submissions from the parties as separate documents provided they accompany the submission of the SOC or SOR. Parties should attach to their SOC or SOR all documents that they consider necessary in support of their case.

### (2) Extensions of Time

Where an application for further time to file a SOR is being made to the Tribunal, the Tribunal would expect to receive substantive grounds in support of the application by the Respondent.

Examples of grounds in support of an extension might include the unavailability of key personnel essential for the Respondent to formulate its response or that the Respondent and NZX are in settlement discussions with a view to lodging a Settlement Agreement with the Tribunal (in which case this application should be supported by NZX).

The Tribunal notes that where an extension to negotiate a settlement is granted, where no settlement is forthcoming at the expiry of that extension, the Tribunal is likely to proceed to hear the matter. Multiple extensions to negotiate settlement terms are unlikely to be considered favourably by the Tribunal. Similarly, in circumstances where the Respondent has been provided an extension to file a SOR (in the absence of settlement negotiations occurring) it is only in exceptional circumstances that further extensions of time will be granted. The Rules are intended to provide an expeditious process for consideration of breaches and the Tribunal will endeavour to bring matters to a hearing as quickly as possible.

### (3) Summary Procedure Oral Hearing

A Respondent or NZX may require an Oral Hearing if it believes it is essential to establish all relevant facts: Rule 6.2.2(c) in the case of the Respondent, Rule 6.2.8 in the case of NZX. Parties should note that an Oral Hearing can only be requested as part of a compliant SOC or SOR (where either party requires an Oral Hearing it is obliged to set this out in its SOC or SOR, as applicable). Because the Rules provide that an Oral Hearing is only required where it is essential to establish the facts of the case, neither NZX nor a Respondent can reserve its case or defence for an Oral Hearing in circumstances where it is not fully articulated in its pleadings.

The process for an Oral Hearing is generally as follows:

DAY*	ACTION
<p>DAYS 1-3 Pre-hearing</p>	<p>(a) The Tribunal receives papers from NZX.</p> <p>(b) If request from either Respondent or NZX in its SOC/SOR for Oral Hearing the Tribunal must provide notice of date of Oral Hearing.</p> <p>(c) The Tribunal via Executive Counsel gives notice of Oral Hearing, not less than 2 and not more than 7 Business Days. Hearing will be held within 10 Business Days from date of the Tribunal receipt of SOC/SOR or such other period as determined by the Tribunal Chairperson. The date of the hearing is generally a negotiation (led by Executive Counsel) between the Tribunal (as to the availability of members of the division) and NZX and the Respondent (as to their (and counsel's) availability) (Rule 6.3.2 and 6.3.3). Note:</p> <ul style="list-style-type: none"> <li>i. The Tribunal determines the venue and location for the hearing (Rule 6.3.3).</li> <li>ii. Oral hearings may be adjourned if necessary (Rule 6.3.3)</li> <li>iii. The hearing process is intended to be informal and fast (Rule 6.5.1(a)).</li> <li>iv. The hearing is to take place in private, except that where the case has resulted from a complaint from a third party the Tribunal may, in its discretion, permit that complainant to attend (Rule 6.5.1(b)(i)).</li> <li>v. The Tribunal may, at its discretion, allow one legal representative for each of NZX and the Respondent (Rule 6.5.1(b)(ii)) to be present.</li> </ul>
<p>DAYS 3-10 The Hearing Itself</p>	<p>(a) The notice of Oral Hearing in addition to providing the date and place for the hearing will also provide the parties with notice of the process and format for the hearing, including indicative timeframes for each step<sup>16</sup>.</p> <p>(b) As a general rule, hearings will proceed on the basis that the Division has read the written papers.</p> <p>(c) Submissions will generally be received from NZX first and then from the Respondent.</p> <p>(d) The Tribunal will usually question witnesses first, allowing the party calling the witness, and then the opposing party, to question <i>following</i> the Tribunal's questioning.</p> <p>(e) Cross examination is the exception in Summary Hearings, but may be permitted at the discretion of the Chairman of the Division, on application from either party, usually ahead of the hearing. The Tribunal will likely find it useful to permit the parties to ask questions of the other first (under the Division Chairman's supervision), then the Tribunal will ask their own questions.</p> <p>(f) Right of reply to NZX is usual following the Respondent's submissions. This is strictly in reply to the Respondent, no new information is to be introduced. No rejoinder to Respondent, unless exceptional circumstances.</p>

<sup>16</sup> See Appendix A for example Notice of Oral Hearing.

DAY*	ACTION
DAYS 3-20 Post hearing	(a) Following the hearing Division members will meet to discuss and agree the Tribunal's determination. The Tribunal will then document and finalise its decision. (b) Once the decision is finalised it will be provided by Executive Counsel to NZX and Respondent. The Tribunal will <b>not</b> normally issue a draft decision in advance. (c) The decision must be issued within 10 Business Days of the hearing.

C. WHERE THE TRIBUNAL CONCERNED OF OTHER BREACHES NOT BEFORE IT

The Tribunal may become aware of further breaches of the rules during a hearing that it may wish to consider. Where the Division wishes to put these issues to the Respondent and NZX it may do so on notice to the parties. (See Rule 6.4.1).

## V. THE FULL HEARING PROCEDURE

### A. BASIC STEPS AND TIMEFRAMES

The table below sets out the basic procedural steps (in order), and the timeframes for each, which will apply once a matter is being heard under the Full Hearing procedure.

Rule 6 and Procedure 6, as amended by Rule 7 and Procedure 7, govern Full Hearings.

STEP	ACTIVITY	TIMEFRAME
1	Rule 6.2.1 and 7.1.1 – <b>NZX's</b> submission of SOC to party it believes has breached the rules	No specified limit from time of alleged breach (however there should be no undue delay)
2	Rule 6.2.2 and 7.2.1(a) – <b>Respondent</b> may submit SOR to NZX	Within 20 Business Days of Respondent's receipt of SOC or such other period (longer or shorter) as directed by the Tribunal
3	Rule 6.2.2 – <b>Respondent</b> may file with the Tribunal a notice requesting more time to file SOR <sup>17</sup>	Within 8 Business Days of receipt of SOC
4	Rule 6.2.8 and 7.2.1(a) – <b>NZX's</b> submission of SOC, SOR and relevant documents to the Tribunal	At expiry of 20 Business Days from date of service of SOC
5	Rule 7.1.2 – <b>Respondent</b> may apply to the Tribunal for matter to be heard under Summary Hearing Procedure instead.	At expiry of 20 Business Days from date of service of SOC. Application to be made in SOR. Submissions must be sought by the Tribunal from NZX before the Tribunal makes its determination.
6	Rule 6.2.7 – <b>NZX's</b> submission of rejoinder to SOR	4 Business Days from service of SOR on NZX

<sup>17</sup> All communications by the Respondent to the Tribunal should be directed to the Executive Counsel of the Tribunal by email at rachel.batters@nzmdt.com.

STEP	ACTIVITY	TIMEFRAME
7	Rule 7.1.3 – <b>Tribunal’s</b> determination and notification of determination by Chairperson of the Tribunal on application to have matter heard by way of Summary Procedure	3 Business Days from receipt of SOR by the Tribunal
<b>A. WHERE THERE ARE AMENDED PLEADINGS</b>		
7A	Rule 6.2.3 – Seeking leave of the Tribunal to file an amended SOC or SOR	Any time prior to a hearing
7B	Rule 6.2.5 – Affected party’s response to amended pleadings, in the event of fresh claims	Within 3 Business Days of service of amended pleading
7C	Rule 6.2.6 – Affected party’s response to amended pleadings where no fresh claims	Within 2 Business Days of service of amended pleading
<b>B. IF AN ORAL HEARING REQUIRED<sup>18</sup></b>		
8	Rule 6.3.3 and 7.2.1(d) – <b>Tribunal</b> Notice of Oral Hearing to the parties <sup>19</sup>	The Tribunal must provide the parties not less than 5 and no more than 15 Business Days notice of the date for the Oral Hearing.
9	Rule 6.3.2(a) – <b>Tribunal</b> Date for Oral Hearing <sup>20</sup>	The hearing must be held within 10 Business Days of the Tribunal receiving notice from a party that an Oral Hearing is required, or such longer period determined by the Tribunal

18 Any party may require an Oral Hearing if they believe it is essential to establish all relevant facts: (Rule 6.2.2 in the case of the Respondent, Rule 6.2.8 in the case of NZX). In practice, the Tribunal may also call for such a hearing.

19 Where an oral hearing is to occur, the Tribunal will normally issue timetable orders setting out the timing for filing and exchange of submissions and evidence in support. The Tribunal will not normally vary those orders to permit additional evidence out of time. The hearing date may be vacated with reasonable notice of the substitute date: Rule 6.3.3. In setting a new hearing date, the Tribunal will have regard to the rules concerning initial hearing dates; no more than 15 and no less than 5 business days notice.

20 There is a conflict in the Rules between the timeframes for notice of Oral Hearing, and date for Oral Hearing. Practically, provided the notice for Oral Hearing provision is followed this conflict can be overcome.

STEP	ACTIVITY	TIMEFRAME
10	Rule 6.3.2(b) and 7.2.1(c) - <b>Tribunal's</b> determination following an Oral Hearing	15 Business Days after date of the Oral Hearing
<b>C. WHERE NO ORAL HEARING</b>		
8A	Rule 6.3.1 and 7.2.1(b) – <b>Tribunal's</b> consideration of the documents and decision	<p>Within 30 Business Days after receipt by the Tribunal of documents from NZX or within such period as determined by the Tribunal.</p> <p>Once the decision is finalised it will be provided by Executive Counsel to NZX and the Respondent. The Tribunal does not issue a draft decision in advance.</p>

## B. PRACTICAL ISSUES

### (1) Hearings on the Papers

The SOC and SOR should contain the party's submissions and factual allegations (and in the case of the Respondent, its response to these). The Tribunal will also accept submissions from the parties as separate documents provided they accompany the submission of the SOC or SOR.

Parties should attach to their SOC or SOR all documents that they consider necessary in support of their case.

### (2) Extensions of Time

Where an application for further time to file a SOR is being made to the Tribunal, the Tribunal would expect to receive substantive grounds in support of the application by the Respondent.

Examples of grounds in support of an extension might include the unavailability of key personnel essential for the Respondent to formulate its response or that the Respondent and NZX are in settlement discussions with a view to lodging a Settlement Agreement with the Tribunal (in which case this application should be supported by NZX).

The Tribunal notes that where an extension to negotiate a settlement is granted, where no settlement is forthcoming at the expiry of that extension, the Tribunal is likely to proceed to hear the matter. Multiple extensions to negotiate settlement terms are unlikely to be considered favourably by the Tribunal. Similarly, in circumstances where the Respondent has been provided an extension to file a SOR (in the absence of settlement negotiations occurring) it is only in exceptional circumstances that further extensions of time will be granted. The Rules are intended to provide an expeditious process for consideration of breaches and the Tribunal will endeavour to bring matters to a hearing as quickly as possible.



(3) Full Procedure Oral Hearing

The process for an Oral Hearing is generally as follows:

DAY	ACTION
<p>DAYS 1-4 Pre - hearing</p>	<p>(a) The Tribunal receives papers.</p> <p>(b) If request from either Respondent or NZX for Oral Hearing the Tribunal must provide notice of date of Oral Hearing. Practically this request will be included in the SOC/SOR.</p> <p>(c) The Tribunal via Executive Counsel gives notice of the hearing, not less than 5 and not more than 15 Business Days. The date of the hearing is generally a negotiation between the Tribunal as to the availability of members of the Division and NZX and the Respondent as to their (and counsel's) availability.</p> <p><b>Note:</b></p> <p>i. The Tribunal determines the venue and location for the hearing (Rule 6.3.3).</p> <p>ii. Oral hearings may be adjourned if necessary (Rule 6.3.3)</p> <p>iii. The hearing process is intended to be informal and fast (Rule 6.5.1(a)).</p> <p>iv. The hearing is to take place in private, except that where the case has resulted from a complaint from a third party the Tribunal may, in its discretion, permit that complainant to attend (Rule 6.5.1(b)(ii)).</p> <p>v. The Rules provide for the attendance of two representatives for each of NZX and the Respondent (Rule 6.5.1(b) and 7.2.1(e)). The Tribunal can permit more than two representatives. The representatives are to be employees or directors of NZX/Respondent, or their legal representatives. The Chairman of the Division can approve other attendees.</p>
<p>DAYS 5-15 The Hearing Itself</p>	<p>(a) The notice of Oral Hearing will provide the parties with notice of the process and format for the hearing, including indicative timeframes for each step<sup>21</sup>.</p> <p>(b) As a general rule, hearings will proceed on the basis that the Division has read the written papers.</p> <p>(c) Submissions will generally be received from NZX first and then from the Respondent.</p>

<sup>21</sup> See Appendix A for example Notice of Oral Hearing.

DAY	ACTION
	<p>(d) The Tribunal will usually question witnesses first, allowing the party calling the witness, and then the opposing party, to question <i>following</i> the Tribunal's questioning.</p> <p>(e) Cross examination is permitted at Full Hearings at the discretion of the Chairman of the Division, on application from either party (usually ahead of the hearing). The Tribunal may find it useful to permit the parties to ask questions first (under the Division chairperson's supervision), then the Division members will ask their own questions.</p> <p>(f) Right of reply to NZX is usual following the Respondent's submissions. This is strictly in reply to the Respondent; no new information is to be introduced. No rejoinder to Respondent, unless exceptional circumstances.</p>
<p>DAYS 15-30 Post hearing</p>	<p>(a) Following the hearing Division members will meet to discuss and agree the Tribunal's determination. The Tribunal will then document its decision.</p> <p>(b) Once decision finalised it will be provided to NZX and Respondent. The Tribunal will not usually issue a draft decision in advance.</p> <p>(c) Decision must be issued within 15 Business Days of the hearing.</p>

C. WHERE THE TRIBUNAL CONCERNED OF OTHER BREACHES NOT BEFORE IT

The Tribunal may become aware of further breaches of the rules during a hearing that it may wish to consider. Where the Division wishes to put these issues to the Respondent and NZX it may do so on notice in accordance with Rule 6.4.1 (see section VIII Other Powers and Notices).

## VI. SUMMARY APPEAL PROCEDURE

### A. INTRODUCTION

Either party may appeal a decision of the Tribunal made at Summary Hearing. An appeal from a determination made by the Tribunal at a Summary Hearing is called a “summary appeal”. The appeal is heard by a new division of the Tribunal. The procedure governing summary appeals is found at Rule 8.

### B. BASIC STEPS AND TIMEFRAMES

The table below sets out the basic procedural steps, and the timeframes for each, that will apply once a summary appeal notice is filed.

STEP	ACTIVITY	TIMEFRAME
1	Rule 8.1.1 – <b>NZX or Respondent</b> submits notice in writing that appealing a Summary Hearing determination	Within 8 Business Days of receiving written notice of the Tribunal’s determination.
2	Rule 8.1.2 – <b>Tribunal Chairperson’s</b> consideration of whether appeal is frivolous or without merit. If not frivolous, provide statement of case to non-appealing party.	No later than 3 Business Days after receipt of the statement of case for summary appeal.
3	Rule 8.1.2 – <b>Tribunal Chairperson’s</b> notification to the appellant of Chairperson’s decision that summary appeal is frivolous or without merit (with reasons).	No later than 5 Business Days after receipt of the statement of case for summary appeal.
4	Rule 8.1.3 - <b>Summary appeal Respondent’s</b> submission of statement in response to appeal.	Within 5 Business Days of receipt of statement of case for summary appeal.
	<b>A. WHERE ORAL HEARING (NEW EVIDENCE ONLY)</b>	

STEP	ACTIVITY	TIMEFRAME
5	Rule 8.2 – <b>Tribunal’s</b> Notice of Oral Hearing in summary appeal procedure (new evidence only)	No less than 5 and not more than 15 Business Days
6	Rule 8.2- <b>Tribunal’s</b> determination	15 Days from date of Oral Hearing
<b>B. WHERE NO ORAL HEARING</b>		
5A	Rule 8.2 - <b>Tribunal’s</b> consideration of summary appeal hearing on the documents	Not more than 30 Business Days after receipt by the Tribunal of a statement of response to appeal
6A	Rule 8.2 - <b>Tribunal’s</b> determination	Not more than 30 Business Days after receipt by the Tribunal of a statement of response to appeal

## **NOTES**

1. A Summary Appeal is not a rehearing but a review of the findings at first instance. The Division must therefore determine the matter based on the facts accepted at Summary Hearing. The only exception is where new evidence<sup>22</sup> has been notified to the Tribunal by the party wishing it to be heard. This evidence is to be notified in their SOC on Appeal or SOR on Appeal, as the case may be. New evidence not notified in a SOC on Appeal or SOR on Appeal will not be heard.<sup>23</sup>
2. New evidence may be heard by way of a rehearing. In those circumstances the Full Hearing procedures will apply.

<sup>22</sup> New evidence is evidence that did not exist at the time the matter was first heard.

<sup>23</sup> See Rule 8.1.1(e) in the case of the Appellant and Rule 8.1.3(e) in the case of the Summary Appeal Respondent

## VII. FULL APPEAL PROCEDURE

### A. INTRODUCTION

There is a limited right of appeal from matters heard under the Full Hearing Procedure. This appeal is limited to determinations that include:

- (a) a penalty in the amount of:
  - (i) \$100,000 or more in the case of a non-natural person; or
  - (ii) \$50,000 or more in the case of a natural person, or
- (b) the suspension or revocation of a Market Participant’s designation or the suspension of quotation of trading of an Issuer’s Quoted Securities or class of Quoted Securities.
- (c) any decision of the Tribunal to publish and/ or identify any party to a Full Hearing.

An appeal from a determination made under the Full Hearing Procedure is heard by an Appeal Panel. An appeal from a Full Hearing Procedure determination is called a “Full Appeal”.

The Full Appeal process is commenced by a party entitled to appeal a determination made at Full Hearing submitting a statement of appeal to the Tribunal Chairperson. The appellant has 8 Business Days from the Tribunal’s determination being issued to file this statement of appeal (“SOA”).

### B. WHAT IS AN APPEAL PANEL?

An Appeal Panel will be convened upon the receipt by the Tribunal Chairperson of a SOA. Each Appeal Panel convened to consider a Full Appeal will comprise three members of the Tribunal who are appointed by the Tribunal Chairperson (or in his or her absence, or if they are conflicted, by the Tribunal Deputy Chairperson). The Tribunal members appointed to the Appeal Panel must be independent of the Tribunal members who sat on the Division for the Full Hearing and must have no other conflict of interest. Each Appeal Panel convened must include one member of the Tribunal who is a Legal Appointee.

### C. BASIC STEPS AND TIMEFRAMES

The table below sets out the basic procedural steps, and the timeframes for each, that will apply once a Full Appeal notice is filed.

STEP	ACTIVITY	TIMEFRAME
1	Rule 9.2.1 – <b>NZX or Respondent</b> <sup>24</sup> submits a SOA <sup>25</sup> in writing to Tribunal Chairperson	Within 8 Business Days of receiving written notice of the Tribunal’s determination.

<sup>24</sup> The Full Appellant

<sup>25</sup> The SOA is to include the following: (1) name of appealing party; (2) determination appealed against; (3) the grounds of the appeal; (3) material facts presented at Full Hearing that Full Appellant believes are relevant to Full Appeal; (4) whether new evidence will be relied upon and if so disclosing what that evidence is (if the SOA does not include notice that new evidence will

STEP	ACTIVITY	TIMEFRAME
2	Rule 9.2.2 – <b>Appeal Panel</b> considers whether appeal is frivolous or without merit. If not frivolous, Appeal Panel provides statement of case to non-appealing party.	No later than 3 Business Days after receipt of the SOA.
3	Rule 9.2.2 – <b>Appeal Panel Chairperson’s</b> notification to the appellant of Appeal Panel’s decision that summary appeal is frivolous or without merit (with reasons).	No later than 5 Business Days after receipt of the SOA.
4	Rule 9.2.3 – <b>Full Appeal Respondent’s</b> submission of statement in response to appeal <sup>26</sup> .	Within 5 Business Days of receipt of SOA.
<b>A. WHERE ORAL HEARING</b>		
5	Rule 9.3(d)- <b>Appeal Panel’s</b> Notice of Oral Hearing	No less than 5 and not more than 20 Business Days
6	Rule 6.3.2(b) and 7.2.1(c) – <b>Appeal Panel’s</b> determination	15 Days from date of Oral Hearing
<b>B. WHERE NO ORAL HEARING</b>		
5A	Rule 9.3.1(c) – <b>Appeal Panel’s</b> consideration of summary appeal hearing on the documents	Not more than 20 Business Days after receipt by the Appeal’s Panel of a SOR to appeal

be relied upon then this new evidence will not be able to be called; (5) whether the Full Appellant believes an Oral Hearing is necessary to establish the facts, and if so, a request for an oral hearing; (6) whether the Appeals Panel should order that any decision made by it for the Full Appeal should not be published, or whether publication should be delayed; and (7) all other documents that the Full Appellant believes are relevant to its Full Appeal.

26 The Full Appeal Respondent’s statement of response is to include the following: (1) material facts presented at Full Hearing that Full Appeal Respondent believes are relevant to Full Appeal; (2) whether new evidence will be relied upon and if so disclosing what that evidence is (if the Statement of Response does not include notice that new evidence will be relied upon then this new evidence will not be able to be called; (3) whether the Full Appeal Respondent believes an Oral Hearing is necessary to establish the facts, and if so, a request for an oral hearing; (4) whether the Appeal Panel should order that any decision made by it for the Full Appeal should not be published, or whether publication should be delayed; and (7) all other documents that the Full Appeal Respondent believes are relevant to the Full Appeal.

STEP	ACTIVITY	TIMEFRAME
6A	Rule 8.2 – <b>Appeal Panel's</b> determination	Not more than 30 Business Days after receipt by the Appeal Panel of a SOR to appeal

**NOTES**

1. A Full Appeal is not a rehearing but a review of the findings at first instance. The Appeals Panel must therefore determine the matter based on the facts accepted at Full Hearing. The only exception is where new evidence<sup>27</sup> has been notified to the Appeals Panel by the party wishing it to be heard. This evidence is to be notified in their SOA or SOR to Appeal, as the case may be. New evidence not so notified will not be heard<sup>28</sup>.

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27 New evidence is evidence that did not exist at the time the matter was first heard

28 See Rule 9.2.1(e) in the case of the Full Appellant and Rule 9.2.3(b) in the case of the Full Appeal Respondent

## VIII. OTHER POWERS AND NOTICES

### A. THE TRIBUNAL NOTICES

Below is a table detailing all notices and the timeframes for service that the Tribunal may serve on the parties during a matter before it.

NOTICE	NOTICE PERIOD
Rule 4.3.2 – <b>Tribunal</b> Notice to Issuer prior to making a Disclosure Order.	24 Hours
Rule 6.1.3- <b>Tribunal</b> Notice to Respondent and NZX of referral of matter for Full Hearing Procedure, rather than Summary Hearing Procedure.	Not less than 5 Business Days
Rule 6.3.3 – <b>Tribunal</b> Notice of Oral Hearing in Summary Procedure.	Not less than 2 and not more than 7 Business Days
Rule 6.3.3 – <b>Tribunal</b> Notice of vacation of Oral Hearing date.	Reasonable notice of substitute date
Rule 6.4 – <b>Tribunal</b> Notice of Additional Compliance Issues arising in course of hearing.	At least 5 Business Days
Rule 7.2.1(d) – <b>Tribunal</b> Notice of Oral Hearing in Full Hearing Procedure.	Not less than 5 and not more than 15 Business Days
Rule 8.2 – <b>Tribunal</b> Notice of Oral Hearing in summary appeal procedure (new evidence only).	Not less than 5 and not more than 15 Business Days



B. SUSPENSION ORDERS AND REVOCATION OF SUSPENSION ORDERS AND DISCLOSURE ORDERS

The Tribunal may suspend a participant’s designation, or quotation of an issuer’s securities, pending the hearing on the substantive case. An affected party may appeal the decision made by the Tribunal to suspend designation or quotation. This table sets out the process that is followed where an interim suspension is made.

STEP	ACTIVITY	TIMEFRAME
1	Rule 4.2.1 – <b>Tribunal Chairperson</b> may suspend a Market Participant or Derivatives Participant’s designation where that participant has been referred under the Full Hearing Procedure until the matter is heard. Order must be made in interests of NZX, CHO, CDO, other participants, the public or the market generally. Notice to be given on suspension unless exceptional circumstances exist.	Without notice
2	Application from Market Participant or Derivatives Participant for revocation of Interim Suspension Order	Anytime that Order is in effect
3	Rule 4.2.2 - <b>Tribunal’s</b> determination of application for revocation of Market Participant or Derivatives Participant’s Interim Suspension Order	No later than 3 days after receipt of application from Market Participant or Derivatives Participant by Chairman. Orders deemed revoked if no determination within 3 days.
1A	Rule 4.2.3 – <b>Tribunal Chairperson</b> may suspend trading in either an Issuer’s Quoted Securities or a class of the Issuer’s Quoted Securities where that issuer has been referred under the Full Hearing Procedure until the matter is heard. Order must be made in interests of people trading in those securities or market. Notice to be given on suspension.	Without notice
2A	Application from Issuer for revocation of Interim Suspension Order	Anytime that Order is in effect

STEP	ACTIVITY	TIMEFRAME
3A	Rule 4.2.4 - <b>Tribunal's</b> determination of application for revocation of Issuer's Interim Suspension Order	No later than 3 days after receipt of Issuer's application by Chairman. Orders deemed revoked if no determination within 3 days.
	Rule 4.3.1 - Where matter involves breach of continuous disclosure requirements, the <b>Tribunal</b> may direct Issuer to disclose and publish material information or publish corrective information to extent the Tribunal considers necessary to prevent development or subsistence of a market for that Issuer's securities that is materially influenced by false or misleading information.	24 hours. The Tribunal must provide terms and reasons.
	Rule 4.2.5 - <b>Tribunal Chairperson</b> may request CHO suspend a Clearing Participant where that participant has been referred under the Full Hearing Procedure until the matter is heard and disposed of. Request must be made in interests of NZX, CHO, CDO, Clearing Participants, the public or the market generally. CHO may accept or decline request in its sole discretion.	Without notice

## IX. SETTLEMENTS

It is common for parties before the Tribunal to endeavour to reach terms of settlement. Rule 10.1.1 provides that the parties may negotiate a proposed settlement and jointly submit it in writing to the Tribunal for approval.

Rule 10.1.1 also provides that if the Tribunal approves the terms of settlement agreed between the parties, or any variation to that proposed settlement agreed between the parties to the matter, the terms of that approved settlement become the determination of the Tribunal. Because a settlement becomes the determination of the Tribunal, the role of the Tribunal in approving settlements is different to the role of a court in both prosecutions and civil matters. The Tribunal must satisfy itself that a settlement is appropriate in the circumstances of each case.

Accordingly:

1. The Tribunal expects that terms of settlement will be negotiated promptly and put to the Tribunal. It is the Tribunal's policy not to provide multiple extensions of time for settlements to be negotiated, but to bring cases on for hearing if settlements are not achieved promptly.
2. While the Tribunal acknowledges that the parties to the settlement are not required to prove their case before a settlement is approved, the Tribunal will nevertheless not generally approve settlement terms that are fundamentally inconsistent with the parties' pleadings and evidence before it. Where the Tribunal is concerned that the evidence before it does not support a settlement, the Tribunal will not accept it.
3. The Tribunal will not be party to the release of a public statement forming part of a settlement that:
  - a. It believes is untrue or unreliable. Therefore, the Tribunal will not normally accept the form of public statement proposed as part of a settlement (even where that is approved by NZX) if it does not appropriately reflect the view of the Tribunal. If the Tribunal has reason on the evidence before it to conclude that the public statement is untrue or unreliable, it will give the parties the opportunity to clarify the matter before rejecting the form of public statement tendered; or
  - b. Identifies third parties by implication or name where those public statements adversely affect the rights of those parties and they are not parties to the proceeding.
4. The Tribunal will exercise its discretion to reject a settlement in appropriate cases. However, it is a pragmatic use of the Tribunal's powers to suggest amendments to a settlement that would enable the Tribunal to accept it and the Tribunal will suggest such amendments where it believes that a settlement can be approved with moderate changes being proposed by the Tribunal (and accepted by the parties).
5. To assist the Tribunal in considering settlements submissions from both parties will be sought.
6. In circumstances where the settlement contains a penalty substantially different to that sought by NZX in its SOC the Tribunal would expect the submissions from NZX to justify the difference between the penalty sought in its SOC and that agreed in the settlement. The rationale for agreeing to the terms of settlement should be included and explained.

7. Where the respondent does not accept the allegations in NZX's SOC, but nevertheless proposes to settle the matter, the Tribunal would expect to receive evidence on the disputed allegations. The Tribunal notes that where there is a significant divergence between what NZX has sought in its SOC and what it is accepting in a settlement, that submissions from the respondent, setting out its arguments in response to NZX's allegations, are required to assist the Tribunal to probe this divergence in order that it may satisfy itself that the settlement is appropriate.
8. The Tribunal requires that the Memorandum of Counsel submitting a settlement agreement for approval by the Tribunal be signed by both parties. This is to provide an opportunity for any areas of factual disagreement which may be relevant to the Tribunal's consideration of approval of the settlement to be brought to the Tribunal's attention.
9. The Tribunal requires a SOC to be provided in all cases, and where available, the SOR.
10. The Tribunal encourages settlements that incorporate remedial relief for third parties adversely affected by Rule infringements. The level of remedy offered will be considered in setting the penalty, although it remains important that the infringement itself is duly penalised regardless of any consequential compensation. In other words, the normal approach will be that compensation will attract some discount to the penalty, but not on a full "dollar for dollar" basis.
11. In the Tribunal's view it is open to the parties to agree settlement terms that deal with subsequent compliance matters that may have arisen since a SOC was served. The Tribunal notes that this is a commercially pragmatic response to avoid further disciplinary proceedings whilst addressing NZX's concerns with a Respondent's conduct. However, in these circumstances it must be transparent that this is what is occurring. The Tribunal will not approve terms of settlement that impose a penalty that is disproportionate to the conduct that is pleaded in the SOC unless the terms of settlement make it explicit that the settlement is also intended to deal with the subsequent conduct and the Tribunal receives an undertaking that NZX will not take further disciplinary action in respect of the subsequent conduct that the settlement is intended to address.
12. If the Tribunal does not accept the settlement agreed between the parties, the fact of the proposed settlement, and its terms remain confidential and the matter is referred to a new Division of the Tribunal to be heard by way of the usual hearing process (see Rule 10.2).

## X. THE POSITION OF THIRD PARTIES

### A. ACCESS TO INFORMATION

Under Rule 18 all material received or granted access to by a party in respect of a matter must be treated confidentially by members of the Tribunal, members of the Appeal Panel and any persons involved in that matter.

Material received or granted access to by a party in respect of a matter under the Rules may be made available to a third party if prior written consent of the party whose material is being disclosed is given under Rule 18.1.3(d).

Accordingly, the Tribunal may consider a request from a third party for information regarding a matter before it and seek consent from the appropriate party (or parties). Where the information requested contains material provided by more than one party, the consent of each party will be sought.

If consent is not given, the Tribunal cannot release the material requested to any third party. This includes a complainant (where NZX's SOC arises due to a complaint received from a third party).

The Tribunal may, however, consider it appropriate to provide general advice (not involving a disclosure of material received) such as providing an update on its progress in considering a particular matter.

### B. PARTICIPATION

Third parties do not have the right to appear before the Tribunal.

This includes persons adversely affected by the conduct complained of in a matter referred to the Tribunal. Such persons may apply to the Tribunal to make written submissions. However, the Tribunal is only likely to accept such submissions in limited circumstances, for example, where the Tribunal considers it necessary or desirable to inform its decision on a particular matter. Ordinarily, a complainant's interests will already have been taken into account in NZX's submissions.

### C. REMEDIES

The Tribunal's function is not to compensate those adversely affected by breaches of the Rules. However, the Tribunal encourages settlements agreed between parties which include the provision of compensation to a complainant. See paragraph 6 of section IX of this Guide.

The Tribunal also has the power in certain circumstances to impose penalties equivalent to treble the amount of the profit improperly earned by a respondent<sup>29</sup> and the additional power to order restitution of any actual improper profit to the third party who has suffered loss<sup>30</sup>.

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<sup>29</sup> See Rules 11.1.1(g), 11.3.1(g), 11.5.1(g) and 11.9.1(g)

<sup>30</sup> See Rules 11.1.1(h), 11.3.1(h), 11.5.1(h) and 11.9.1(h)

## XI. TRIBUNAL POLICIES

### A. NAMING MARKET PARTICIPANTS

The Tribunal has a published policy in respect of the publication of market participants' identity in its determinations. This policy is attached as Appendix B.

### B. PENALTIES

Procedure 11 of the Procedures contains guidance on the penalties applicable to breaches falling in certain penalty bands. It is the Tribunal's policy to set penalties with reference to this guidance. The Procedures can be viewed at <https://nzx.com/market-regulation/rules/nz-markets-disciplinary-tribunal-rules>.

### C. COSTS

#### *Award of Costs Against Respondent*

As a general rule, where a Respondent is found to have breached the rules the Tribunal is likely to award the actual costs of NZX and the Tribunal against that party, subject to any appropriate discounting. Because the Rules confer discretion on the Tribunal to award costs the Tribunal does not have a blanket policy in respect to costs. It will assess costs in the circumstances of each case. However, in determining any discount to be applied the Tribunal will consider the following:

- If, when taken together, penalty and costs are disproportionate to the respondent's conduct, it is appropriate that costs be discounted.
- A guilty plea will not normally result in any reduction in costs (as opposed to potential penalty) as such plea reduces costs substantially in the first place and the matter of guilt being clear, a reduction in costs is not appropriate;
- Responsible 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 dispute resolution nature, are not directly applicable.

To meet the requirement for the respondent to be "*heard on costs*" under Rule 12.1.1, approximate actual costs (both NZX and Tribunal) need to be known. Accordingly in seeking its costs NZX must provide to the Tribunal and the respondent a breakdown of approximate likely costs. The Tribunal will not accept pleadings from NZX that seek a general award of actual costs, without knowing what these costs are and assessing the reasonableness of these costs itself. The Tribunal is likely to award an actual monetary sum of costs, based on the costs breakdown provided.

### *Award of Costs Against NZX*

The Tribunal may only make an order that NZX, CDO or CHO pay the costs of a Respondent if NZX, CDO or CHO (as the case may be) has acted vexatiously, frivolously or unreasonably in making a decision which is the subject of a referral under Rule 4.5 or in bringing proceedings under the Rules (see Rule 12.1.3).

#### D. EVIDENCE

The Tribunal 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.

#### E. REJOINDERS

The Rules do not afford a Respondent the right to respond to an NZX rejoinder filed under Rule 6.2.7 as a matter of course. Accordingly, the Tribunal must exercise its discretion in each case to determine whether there are grounds for it to grant leave to allow an amended pleading to be filed by the Respondent. This discretion will usually only be exercised where the Respondent has demonstrated that exceptional circumstances exist.

The Rules impose strict time frames (five business days in the case of a summary hearing, unless the discretion to extend this time is exercised by the Tribunal) on the Tribunal to issue its determination following receipt of the SOC and SOR. At the time it receives these documents the Tribunal does not know whether a rejoinder will be filed by NZX. Accordingly, it proceeds to consider the matter immediately upon receipt of the SOC and SOR. Whilst the receipt of a rejoinder resets time frames the Tribunal notes that its own independent analysis conducted prior to its receipt of a rejoinder may have led it to have considered all matters raised by NZX in its rejoinder. Accordingly, in circumstances where an NZX rejoinder does not raise any matters not already considered by the Tribunal, the Tribunal will be reluctant to grant a Respondent leave to file an amended SOR.

Furthermore, given the time frames imposed upon the Tribunal to make its determination, it is in the interests of the parties to make application for leave to file a rejoinder to NZX's rejoinder as soon as possible. The Tribunal will act expeditiously to hear matters before it and once a determination is reached will not be in a position to grant leave under the Rules.

#### F. COMPLIANCE WITH TRIBUNAL'S INTERLOCUTORY ORDERS

Where the Tribunal has sought further submissions or evidence from a party, those submissions or that evidence must be provided to the Tribunal by the date ordered by the Tribunal in its minute. If a Respondent or NZX fails to comply with the timeframes for filing materials with Tribunal, and has not otherwise sought extensions of time for their provision, the Tribunal will proceed to make its determination on the materials before it. The Rules are intended to provide an expeditious process for consideration of breaches of the Conduct Rules. The Tribunal accordingly proceeds to determine matters on the evidence and materials before it on the expiry of dates provided in its interlocutory orders. Materials provided out of time are not considered.

#### G. CONFIDENTIALITY AND AVAILABILITY OF DETERMINATIONS

In circumstances where the Tribunal has approved a settlement agreement, and that agreement contains a provision stating that the only public statement to be made in respect of that settlement is an agreed form of public statement, the Tribunal cannot release its determination to any third party. This includes a complainant (where NZX's SOC arises due to a complaint received from a third party).

#### H. TIME EXTENSIONS

The time-frames in the Rules for respondents to file a SOR are tight. NZX, on the other hand, has usually had considerably longer than that to prepare its case. The Tribunal recognises this reality. Absent exceptional circumstances, where a respondent has acted efficiently but needs more time, the Tribunal will contemplate an extension of time. It will also do so sparingly where the parties are negotiating a settlement, but multiple applications in this context are not viewed favourably. The Rules are intended to provide an expeditious process for consideration of breaches, and the Tribunal will endeavour to bring matters to a hearing as quickly as possible.



## APPENDIX A: EXAMPLE NOTICE OF ORAL HEARING

**IN NZ MARKETS DISCIPLINARY TRIBUNAL  
SUMMARY HEARING PROCEDURE**

**NZMDT [NUMBER]**

**UNDER** the NZ Markets Disciplinary Tribunal Rules

**IN THE MATTER OF** alleged breach of [Rule]

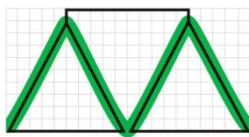
**BETWEEN** **NZX LIMITED**

**AND** **[NAME]**  
Respondent

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**NOTICE OF ORAL HEARING AND MINUTE OF NZ MARKETS  
DISCIPLINARY TRIBUNAL  
[DATE]**

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NEW ZEALAND MARKETS  
DISCIPLINARY TRIBUNAL

**Rachel Batters**  
**Executive Counsel**  
**NZ Markets Disciplinary Tribunal**  
**rachel.batters@nzmdt.com**

**Take notice that the matter *NZMDT [NUMBER] NZX Limited v [RESPONDENT]* will be heard and determined by way of an oral hearing to be held at [TIME] on [DATE] at [VENUE].**

1. Capitalised terms in this notice have the meanings given to them in the NZ Markets Disciplinary Tribunal Rules.
2. This matter is to be heard by a Division of the Tribunal comprising [DIVISION MEMBERS].
3. In accordance with Rule 6.5.1(a), the hearing will be conducted with as little formality and technicality, and as much expedition, as a proper consideration of the matters before the Tribunal permits.
4. Participants should proceed on the basis that the Division will have read the papers filed.
5. The intended format of the hearing will be as follows:

10.30 am - 11.00 am - submissions from Respondent on [x].

11.00am - 11.20 am – questions to Respondent from NZX and the Tribunal (in that order).

11.20am – 11.50 am – submissions from NZX.

11.50am – 12.00pm – any additional submissions from Respondent.

12.00pm – 12.10pm – any additional submissions from NZX.

12.10pm – 12.30pm – any further questions from the Tribunal to participants.

DATED [x]

Tribunal Chairperson

## APPENDIX B: NZ MARKETS DISCIPLINARY TRIBUNAL POLICY ON NAMING MARKET PARTICIPANTS

### **Introduction**

The disciplinary process should be transparent. An important part of that process is making public the name of the Respondent subject to adjudication by NZ Markets Disciplinary Tribunal.

In some circumstances, however, the harm arising from the naming of the Respondent, will exceed any benefits to the public from knowing the name of the party that has been subject to adjudication, and it is appropriate in these circumstances that the Respondent should not be named.

The excess of harm over benefit is more likely to arise when the Respondent is a Market Participant. The purpose of this paper, therefore, is to provide guidelines to members of NZ Markets Disciplinary Tribunal on the naming of Respondents when members are involved in preparing a determination, or are involved in deciding whether to approve a proposed settlement, and the Respondent is a Market Participant.

### **NZX Discipline to exercise discretion**

For each hearing, or review of a proposed settlement, the decision on whether the Respondent is to be named will be wholly at the discretion of the Division of NZ Markets Disciplinary Tribunal that has been involved in the hearing, or the review, of the circumstances of the particular case.

Except in exceptional circumstances, the discretion of the Division of NZ Markets Disciplinary Tribunal should be exercised in conformity with the guidelines that follow. In the event that there are exceptional circumstances, and the guidelines are not followed, these exceptional circumstances should be explained in the publication of the decision.

### **Circumstances when the name of the Respondent will not be published**

The name of the Respondent will not be published when:

- The Respondent has established grounds for maintaining confidentiality of the Division's decision and that Division has ordered that the decision not be published, or that publication should be delayed for a specified time period.

### **Circumstances when the name of the Respondent is not likely to be published**

The name of the Respondent is not likely to be published when:

- None of the findings of the Division have been adverse to the Respondent.

- The penalty for the Respondent falls within Penalty Bands 1, 2 or 3 of Procedure 11 (Penalty Band Guidance Procedure) of the NZ Markets Disciplinary Tribunal Procedures for breaches of the NZX Participant Rules, and where the breach can be considered to be of minor importance and not systemic.

### **Circumstances when the name of the Respondent is most likely to be published**

The name of the Respondent is most likely to be published when:

- The public has been harmed, or public confidence in the sector has been damaged.
- The Respondent has been involved in repeated offences, and shown disregard for the NZX Participant Rules.
- The penalty for the Respondent falls within Penalty Bands 4 to 8 of Procedure 11 (Penalty Band Guidance Procedure) of the NZ Markets Disciplinary Tribunal Procedures for breaches of the NZX Participant Rules.

### **Further guidance on the exercise of discretion**

The foregoing guidelines should be applied in a manner that recognises the following:

- The self-reporting by Market Participants of breaches of the NZX Participant Rules is to be encouraged.
- There will be a balance maintained between the regulatory outcome and the costs incurred by NZ Markets Disciplinary Tribunal.
- If a proposed settlement between NZX and the Respondent includes a provision that the Respondent is not to be named, and that provision falls outside the terms of these guidelines, then the Division of NZ Markets Disciplinary Tribunal that is reviewing the settlement should not approve the settlement that is proposed.

September 2007