





## ANNUAL REPORT OF NZX DISCIPLINE MAY 2007 - APRIL 2008

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**DISCIPLINE**

## **CHAIRMAN'S REPORT**

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### **The function of NZX Discipline**

NZX Discipline is a regulatory body established under the NZX Discipline Rules, which came in to force on 3 May 2004.

The principal activities of NZX Discipline are to hear matters involving Market Participants that are referred to it by New Zealand Exchange Limited ("NZX") under the NZX Participant Rules, and matters involving Listed Issuers referred to it by NZX under the NZX Listing Rules.

NZX Discipline acts independently of NZX (and its regulatory arm, NZX Regulation). NZX Discipline's role is essentially to determine, in relation to cases brought to it by NZX Regulation, whether there has been a breach of the stated rules, and the penalties to be imposed in the event that a breach is proven.

This is the third annual report of NZX Discipline, covering the twelve month period from 3 May 2007 to 30 April 2008. As required under Rule 12.1, the report summarises:

- (1) The hearings conducted by NZX Discipline to consider matters referred to it by NZX Regulation;
- (2) Breaches of the conduct rules and complaints in respect of Market Participants and Futures and Options Participants that have been considered by NZX Regulation;
- (3) Breaches of the NZX Listing Rules and complaints in respect of Listed Issuers that have been considered by NZX Regulation; and
- (4) The use of the proceeds of the Disciplinary Fund.

### **The Special Division of NZX Discipline**

The role of the Special Division is to ensure full compliance with the Listing Rules by the listed company, NZX, and the five listed funds that are managed by Smartshares Limited, a subsidiary of NZX.

The members of the Special Division are Messrs Peter Wilson (chairman), Michael Jeffs and Paul Ridley-Smith. This report also includes a summary of the matters dealt with by the Special Division during the reporting period.

### **A comment on the standard of behaviour in the markets**

It is pleasing to note that, during the period covered by this report, there were no serious instances of breaches of the Listing Rules by Listed Issuers.

In regard to Market Participants, it will be noted that there were a small number of instances of behaviour that were well below the standards required by the NZX Participant Rules. In general, however, it is clearly apparent that Market Participants maintain good quality standards of conduct. The activities of NZX Regulation and NZX Discipline have no doubt contributed to the maintenance of these standards.

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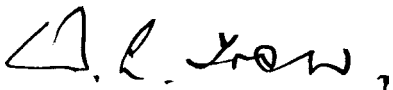
At the conclusion of the Oversight Review of NZX by the Securities Commission for 2006 (in June 2007), the Commission recommended that NZX Discipline should be seen to be transparent in exercising its discretion whether to publish decisions that identify Market Participants who have breached the NZX Participant Rules. The Commission asked that where the details of the Market Participant are not published, NZX Discipline should disclose its reasons for withholding this information. NZX Discipline has been pleased to follow this recommendation and, in September 2007, prepared a Policy Guideline on The Naming of Respondents to provide guidance for panel members involved in hearings from that time forward. This will be made available on [nzx.com](http://nzx.com) following the NZX Discipline Annual General Meeting.

### **The conduct of the activities of NZX Discipline**

I am pleased to acknowledge the contribution of a highly competent and efficient group of panel members to attend to the various activities of NZX Discipline. The support of the Deputy Chairman, Mr William Stevens, and the Chairman of the Special Division, Mr Peter Wilson, has been particularly appreciated.

There is a very good working relationship between NZX Regulation and NZX Discipline. The personnel in NZX Regulation have conducted their activities in a most competent and professional manner.

There have been no hearings to date by the NZX Discipline Appeal Panel. As required by NZX Discipline Rule 12.1(f), the Chairman of the Appeal Panel, Mr Euan Abernethy, and the Chairman of NZX Discipline confirm that they believe that adequate resources have been made available to the respective bodies to undertake their roles under the NZX Discipline Rules.



D. G. Trow

Chairman, NZX Discipline  
30 April 2008

## **MEMBERS OF NZX DISCIPLINE AT 30 APRIL 2008**

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### **Legal**

Victoria Heine, Derek Johnston, Laurie Mayne, Simon McArley and Tim Williams.

Nicolas Short resigned from NZX Discipline in August 2007.

### **Listed Issuers**

Patsy Reddy, Roger Armstrong, Don Trow and Peter Wilson.

### **Market Participants**

Michael Jeffs, Campbell Stuart and William Stevens (Deputy Chairman of NZX Discipline).

### **NZX**

Geoff Brown and Bill Malthus.

### **Members of the public**

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

## **MEMBERS OF THE SPECIAL DIVISION OF NZX AS AT 30 APRIL 2008**

Michael Jeffs, Peter Wilson (Chairman of the Special Division), Paul Ridley-Smith.

Rachel Batters acts as Solicitor to the Special Division.

Nicholas Short resigned from the Special Division in August 2007.

## **MEMBERS OF THE APPEALS PANEL AS AT 30 APRIL 2008**

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

Don Turkington, whose appointment to the Appeals Panel expires in 2008, has advised that he wishes to retire from the Panel.

## SECTION 1

# STATEMENTS OF CASE, FINDINGS AND PENALTIES FROM HEARINGS CONDUCTED BY NZX DISCIPLINE

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### CARRIED OVER FROM 2005/2006

#### NZXD 02/05

#### ACCESS BROKERAGE LTD (in liquidation) and PETER GERALD MARSHALL – Full Hearing

Division: Trow, Stevens, Stuart, Malthus and Heine.

Statement of Case: 13 April 2005.

In respect of Access Brokerage:

Determination: 5 March 2007.

Finding: Over a period of seven years, the firm had failed to hold client funds on trust, failed to maintain liquid capital, and failed to maintain ethical standards.

Approval of Settlement Agreement between NZX and the liquidators of the NZX Firm.

Payment: Payment of \$750,000.

Publication: Decision published in April 2008 following completion of hearing of SFO charges against Mr Marshall.

In its decision of 5 March 2007, NZX Discipline stated:

“NZX Discipline has accepted that the pecuniary penalty should be paid only if Access’ creditors are met in full as it believes it is appropriate that the funds that are available in the liquidation of Access be applied to its creditors. NZX Discipline emphasizes, however, that the breaches of the Rules in this particular instance were breaches of the most serious nature.”

In respect of Mr PG Marshall:

Status at April 2008: Hearing deferred until hearing of SFO charges in Court, completed in April 2008. Pending the hearing by NZX Discipline, Mr Marshall’s status as a Market Participant has been suspended.

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## **CARRIED OVER FROM 2006/2007**

### **NZXD 05/06**

### **VTL GROUP LIMITED – Full Hearing**

Division:	Trow, Armstrong and Mayne.
Statement of Case:	3 August 2006. Alleged breach of Listing Rule 3.4.2 in that a director of VTL Group Limited voted on a Board resolution to enter into a transaction in which he was interested within the meaning of that Rule.
Determination:	31 October 2006.
Finding:	Proposed Settlement Agreement between NZX and Vending Technologies Limited not accepted by NZX Discipline.
Status at April 2008:	Determination appealed under NZX Discipline Rule 8. This Appeal was not heard by a new division in 2007. It is expected the Appeal will be heard by a new division in 2008.

### **NZXD 03/07**

### **AN NZX FIRM AND AN NZX ADVISOR– Summary Hearing**

Division:	Trow, Stevens and McArley.
Statement of Case:	28 March 2007.
Determination:	30 May 2007.
Finding:	Failure by the Firm to hold the written acknowledgment of the trust status of seven Client Funds Accounts in the format required by Guidance Note 08/05 – Client Assets [Participant Rule 14.7.1].  Approval of Settlement Agreement between NZX Firm and NZX. In the settlement, the case against the NZX Advisor was withdrawn.
Penalties:	Payment of \$12,000 by the NZX Firm.
Publication:	Details advised to all Market Participants, without naming the NZX Firm involved.



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## **NZXD 04/07**

## **WOOL EQUITIES LIMITED (WEL) – Summary Hearing**

Division:	Trow, Ridley-Smith and Johnston.
Statement of Case:	26 March 2007.
Determination:	8 May 2007
Finding:	<p>Apparent breach of NZAX Listing Rule 9.1 in that Wool Equities Limited entered into a series of transactions to acquire assets in respect of which the gross value was in excess of 50% of WEL's Average Market Capitalisation without prior shareholder approval by ordinary resolution.</p> <p>Approval of Settlement Agreement between Wool Equities Limited and NZX in which WEL acknowledged that they may have committed a breach of NZAX Listing Rule 9.1.1.</p>
Penalties:	Payment of \$15,000 being NZX costs of investigating the breach and the costs of NZX Discipline in approving the settlement.
Publication:	Decision published.

## **HEARINGS HELD SINCE MAY 2007**

### **NZXD 06/07**

### **TWO NZX ADVISORS AND ABN AMRO CRAIGS LIMITED – Summary Hearing**

Division:	Trow, Jeffs and McArley.
Statement of Case:	5 June 2007.
Determination:	4 September 2007.
Finding:	<p>The Advisors undertook several transactions to buy or sell securities on their own account without first receiving approval of the firm's compliance manager. After the transactions, the Advisors received a warning from the compliance manager as to a breach of the Rules. At least 4 such warnings were given to each Advisor [Participant Rules A10.7.1, A10.7.7].</p> <p>In addition, the NZX Firm did not ensure that its employees complied fully with the Rules, and failed to act on continued breaches of the Rules [Participant Rules A8.1.2(a), A10.7.1 and A10.7.7].</p>

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Approval of Settlement Agreement between ABN AMRO Craigs Limited, the two NZX Advisors and NZX.

Penalties:

Payment of \$10,000 by First Advisor.

Payment of \$7,000 by Second Advisor.

Payment of \$20,000 by ABN AMRO Craigs Limited.

Publication:

The identities of the advisors were not published due to disproportionately severe prejudice associated with publication. Details advised to all Market Participants, without naming the NZX Advisors involved.

**NZXD 07/07**

**AN NZX FIRM AND AN NZX ADVISOR – Summary Hearing**

Division:

Stevens, Clouston and McArley.

Statement of Case:

8 August 2007.

Determination:

6 November 2007.

Finding:

The NZX Firm failed to ensure that the FINSIA exams being undertaken by its employees were properly supervised.

The NZX Firm also failed to ensure that its trainee advisors were adequately supervised prior to designation as Associate Advisors [Participant Rules 3.13, 8.1.1, 8.5, 8.9.1, 5.8.1(a)].

The Advisor failed to ensure that the FINSIA exams being undertaken by employees were properly supervised [Participant Rules 5.1(b), 5.8.1(c), 8.1.1, 8.5, 8.9].

Approval of Settlement Agreement between the NZX Firm, the NZX Advisor and NZX. There was no evidence of any exam candidate being advantaged or disadvantaged by the failure, or that the conduct affected the integrity of the exam results in any manner.

Penalties:

Payment of \$25,000 by NZX Firm.

Payment of \$25,000 by NZX Advisor.

NZX Advisor also placed on probation for a period of 12 months and required to undertake an ethics course offered by a provider approved by NZX.

Details advised to all Market Participants, without naming the NZX Firm or NZX Advisor involved. Settlement accepted on an anonymous basis to avoid prejudice to examination candidates.

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Details advised to all Market Participants, without naming the NZX Firm or NZX Advisor involved. Settlement accepted on an anonymous basis to avoid prejudice to examination candidates.

### **NZXD 08/07**

### **AN NZX FIRM AND AN NZX ADVISOR – Full hearing**

Division: Trow, Stevens, Clouston and Mayne.

Statement of Case: 22 November 2007. Alleged that the NZX Firm failed to maintain adequate controls of broking advisors in respect of that Firm.

Status at April 2008: Proposed Settlement Agreement between NZX Firm, NZX Advisor and NZX to be considered by NZX Discipline during May 2008.

### **NZXD 09/07**

### **A RESEARCH ANALYST – Summary Hearing**

Division: Trow, Stuart and Williams.

Statement of Case: 20 December 2007.

Determination: 1 February 2008 / 14 March 2008.

Finding: Breach of Participant Rule A10.7.1 in that the Research Analyst dealt in securities on his own account and on behalf of a Prescribed Person, without the required written approval of his employer. These included trades in a stock that he was covering as a Research Analyst.

Penalties: Payment of \$10,000.

Publication: Subject to the right of appeal, decision to be published.

Costs: Costs awarded to NZX.

Appeal Division: Jeffs, Ridley – Smith and Heine.

Grounds of Appeal: Determination appealed on the basis that adverse effects of disclosure of the name of the Advisor would outweigh the benefits that arise from publication.

Appeal Determination: 14 March 2008.

Finding: Grounds of appeal accepted. Publication of the name of the Advisor to be withheld.

Costs: At 30 April 2008, yet to be determined.

## **MARKET PARTICIPANTS AND FUTURES AND OPTIONS PARTICIPANTS**

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### **A. Summary of breaches of the NZX Participant Rules identified by NZXR from time to time**

#### **SIGNIFICANT BREACHES OF THE NZX PARTICIPANT RULES**

There were four cases of significant breaches of the NZX Participant Rules referred to NZX Discipline in the period between 3 May 2007 and 30 April 2008. These are described in Section 1. This is a 20% reduction in the number of cases referred to NZX Discipline in the period reviewed in the NZX Discipline 2007 Annual Report.

#### **BREACHES CURRENTLY BEING INVESTIGATED**

In addition, since January 2008, three breaches identified by NZXR are currently being investigated by NZX to determine whether further action, including referral to NZX Discipline, is necessary. Of these breaches:

- One relates to Participant Rule 8.3.1 (Provision of information to NZX)
- One relates to Participant Rule 9.2 (Client identification requirements)
- One relates to Participant Rule A10.7.1A(c) (Reviews of Prescribed Person trading)

#### **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 Participant Rules, which were not considered sufficiently serious to warrant referral to NZX Discipline.

Of these, various breaches were identified during NZXR's on-site inspections of Market Participants. These breaches were subsequently highlighted to the relevant Market Participant as part of the NZXR inspection report for the relevant firm with action points which the Market Participant was required to implement within a specified timeframe. In some cases, alternative action was taken including issuing warnings and fines to the relevant Market Participant.

Trading conduct breaches have also occurred. Since 3 May 2007 to 30 April 2008, 10 breaches of Participant Rule D10.1 (Crossing outside the quotations) were identified. These were almost all minor transgressions which resulted in an automatic fine by NZX. This was a 68% reduction in this type of breach from the period reviewed in NZX Discipline's 2007 Annual Report. In the same period, a significant number of breaches relating to late settled trades occurred. These also resulted in an automatic fine by NZXR.

As in the period reviewed in NZX Discipline's 2006-2007 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.

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82 breaches of Participant Rule 14.7.1(3) (Client Funds Account overdrawn) occurred, a 5 % increase in this type of breach over the period evaluated in the 2007 Annual Report. These were self-reported by the Market Participant and a significant cause was bank error for which the Market Participant received good value from the bank. The other main reason for these instances is error 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, in appropriate cases, 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, future overdraw of the firm's Client Funds Accounts would be referred to NZX Discipline.

There were also 6 breaches of Participant Rule 14.4.2 (Client Assets need to exceed Outstanding Obligations). The majority of these were self-reported by the Market Participant. All of these were followed up by communication with the relevant Market Participant. There was no change to the number of this type of breach since the period reviewed in the 2006-2007 Annual Report.

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

NZXR received a total of seven written complaints from Members of the Public in respect of Market Participants between 3 May 2006 and 30 April 2007, a 55% reduction in the number of complaints received since the period reviewed in the 2006-2007 Annual Report.

Of these complaints:

- One was not in respect of the NZX Participant Rules or NZX Market Participants. This was resolved by correspondence outlining why no breach was detected.
- Five related to the conduct of the Market Participant towards the client. Three related specifically to failings by the Market Participants to follow client instructions about trading. These were settled between the Market Participants and clients involved. Two related to the conduct of the Market Participant generally and are the subject of continuing investigation.
- One related to the duties of an Organising Participant. The complainant failed to respond to NZXR's queries and NZXR was unable to identify a breach of the Participant Rules.

## **C. Summary of breaches of the NZX Futures & Options Rules identified by NZX from time to time.**

In the period between 3 May 2007 and 30 April 2008, no breaches of the NZX Futures & Options Rules were identified.

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## **D. Summary of complaints received by NZXR in respect of Futures and Options Participants**

In the period between 3 May 2007 and 30 April 2008 NZXR received no written complaints in respect of Futures and Options Participants.

## **PUBLICATIONS BY NZX COMPLIANCE**

In addition to the routine on-site inspections of NZX Market Participants, NZX's Participant Compliance Team regularly issues Compliance Briefing memorandums to Market Participants highlighting recurring issues that have been identified during the NZX Compliance on-site inspections. The purpose of these Briefings is to provide guidance to the industry on common issues identified for improvement in the inspections through creating uniformity throughout the industry.

NZXR issued the following new Guidance Notes to Market Participants between 3 May 2007 and 30 April 2008:

- GN0013/07 Conflict Management procedures
- GN0014/07 Compliance Monitoring Plans
- GN0015/08 Market Manipulation

In addition, following the changes to the NZX Participant Rules in 2007, NZXR reviewed and reissued the existing Guidance Notes and Practice Notes under the existing numbers.

- GN0001/04 Know Your Client: Section 9
- GN0002/04 Trading on behalf of a client
- GN0003/04 Capital Adequacy
- GN0004/04 Schedule of Registers, Records and Training
- GN0005/04 Delivery and Settlement
- GN0006/04 NZX Sponsors
- GN0007/04 Direct Full Time Control of Broking Offices and Supervision of Advisors yet to be Accredited
- GN0008/05 Client Assets
- GN0009/05 One-Off Sales
- GN0010/06 Monthly ICC
- GN0011/06 Stands in the Market
- GN0012/07 Information controls at NZX Market Participants

## **ISSUERS**

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### **A. Summary of breaches of the Listing Rules identified by NZXR from time to time**

Between 3 May 2007 and 30 April 2008, NZXR has advised the market that it has identified a total of 4 breaches of the Listing Rules.

#### **DISCLOSURE (PERIODIC AND CONTINUOUS)**

All of these breaches related to disclosure and more particularly the late filing of preliminary announcements, half-yearly reports or annual reports pursuant to NZSX Listing Rules 10.4 and 10.5. Of these disclosure breaches, trading in the securities of one Issuer was subsequently suspended until the relevant Listing Rule was complied with.

In addition, between 3 May 2007 and 30 April 2008, NZXR issued six public price enquiries with respect to the Listing Rules on continuous disclosure.

In accordance with its obligations under the Memorandum of Understanding between NZX and the Securities Commission NZXR provided further information it saw fit to the Securities Commission under section 36ZL of the Securities Markets Act 1999 in respect of four Issuers between 3 May 2007 and 30 April 2008.

#### **OTHER DISCLOSURE REQUESTS**

In light of market conditions towards the end of 2007, NZXR wrote to all Listed finance companies and Listed companies with material finance company subsidiaries, all Listed structured debt issuers and Listed building societies requesting that the companies confirm by the requested date that they are complying with their continuous disclosure obligations. All of these companies responded by the timeframe. Trading in one of the companies was halted at the request of the company just prior to the relevant confirmation date in order for the company to finalise a release of Material Information.

#### **OTHER BREACHES**

In the period between 3 May 2006 and 30 April 2007, twenty breaches of the NZX Listing Rules and securities legislation requiring referral to the Securities Commission under the Memorandum of Understanding, were brought to the attention of, or identified by, NZXR but were not considered serious enough to warrant referral to NZX Discipline.

3 related to NZSX Listing Rule 10.8.2. 2 were in respect of failures to release to the market a Notice of Meeting and Offer Documentation respectively, at the same time it was released to shareholders. The other was a failure to provide to NZX announcements at the same time the announcement was released on the Australian Stock Exchange (“ASX”). This information was subsequently provided to NZX and released to the market and the Issuers were reminded of their responsibilities.

1 related to a breach of NZSX Listing Rule 5.1.6(c) and the failure by the Issuer to provide to NZX an announcement at the same it was provided to its Home Exchange.

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4 related to breaches of the NZX Listing Rules in providing information and announcements about corporate actions. Of these:

- 2 related to a breach of NZSX Listing Rule 7.12.2 and the equivalent NZAX Listing Rule 7.11.2 and the requirement to provide to NZX 10 Business Days notice before the Record Date for the payment of any benefit on Quoted Securities.
- 1 related to a breach of 7.12.7 by announcing an incorrect supplementary dividend amount and failing to correct this until after the Record Date.
- 1 related to a breach of 7.12.1 by providing a late allotment notice to NZX.

1 related to a breach of NZSX Listing Rule 10.5.3(f) and the requirement to disclose a waiver in the Issuer's half yearly report. This was remedied by an announcement by the Issuer as to why the oversight had occurred.

2 breaches related to the failure to release a substantial security holders (SSH) notice to the market about beginning to hold more than 5% of the securities in an Issuer. These were referred to the Securities Commission. The SSH notices were subsequently provided.

4 related to NZSX Listing Rule 10.1.1 and the failure of an Issuer to comply with continuous disclosure requirements and release Material Information to the market as soon as the Issuer becomes aware of it. In 2 of these instances, the information had been released to the media prior to release to NZX. The Issuers provided announcements explaining how this had occurred. A further breach related to a failure by an issue to make announcements about other companies associated with transactions the Issuer was making.

1 related to incorrect information provided in respect of the price of the Issuer's securities. The Issuer released an announcement about how this had occurred.

1 related to a breach of NZSX Listing Rule 7.3.1 and the prohibition on issuing Equity Securities unless approved by ordinary resolution of the shareholders or in compliance with the Rules. This was in relation to a Unit Trust's payment scheme for the Manager. NZXR granted a waiver on the basis that unitholders had already approved the issue at point of listing and noted compliance with the Rules going forward was a priority.

1 breach related to NZSX Listing Rule 11.1.1 in respect of the Issuer placing a hold on a shareholder's securities.

2 breaches related to the content of a Notice of Meeting that was not fully disclosed to NZX for the purposes of approval under NZSX Listing Rule 6.1.1. In one instance a resolution that had been added but not approved was withdrawn from the Notice following correspondence with the Issuer. The other was outside the jurisdiction of NZXR as a resolution had been left out of the Notice and accordingly was a matter between the complainant and the Issuer.

1 breach related to a suspected breach of NZSX Listing Rule 9.1.2 (transactions with Related Parties) in



## ISSUERS CONTINUED

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respect of payment of a major shareholder for services to the Issuer. This was cleared up by correspondence with the Issuer explaining why the transactions did not breach the threshold established by the Rule.

### NZX DISCIPLINE REFERRALS

No breaches of the Listing Rules in the period between 3 May 2007 and 30 April 2008 were considered sufficiently serious to warrant referral to NZX Discipline.

#### B. Summary of complaints received by NZX in respect of Issuers

NZXR received a total of 24 written complaints in respect of Issuers between 3 May 2007 and 30 April 2008, a 9% increase in the number of complaints received since the period reviewed in the 2007 Annual Report.

Of these complaints:

- Seven were general complaints over which no action was taken because the complaints were determined to be frivolous, insubstantial or because no breach of the NZX Listing Rules was identifiable.
- Ten were determined not to have breached the Listing Rules.
- One was referred to the Issuer involved as it was an issue between the company and complainant shareholder about receiving interest payments on time.
- One was in relation to incorrect information in the market. The Issuer subsequently released further announcements correcting the information.
- Five fell outside NZXR jurisdiction and were referred to the appropriate authority. One was referred to the Takeovers Panel, four to the Securities Commission, and one to the Australian Stock Exchange.

### PUBLICATIONS BY NZX REGULATION

In the period between 3 May 2007 and 30 April 2008, NZXR published the following Guidance Notes for the benefit of Issuers:

- NZDX Debt Market Conventions Note (21 November 2007)
- Debt Security Issues Guidance Note (17 December 2007)

## SECTION 4: SPECIAL DIVISION REPORT

### A: CHAIRMAN'S REPORT

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#### ACTIVITIES

A schedule of the Division's activities follows this report.

#### PERSONNEL

Nicholas Short resigned from the division in August 2007 and a replacement is being addressed by the Chairman of NZX Discipline.

When appointed this will bring Division numbers back to four which is considered sufficient for the Division's needs.

#### RESOURCES

Rachel Batters continues to provide excellent support services to the Division and this arrangement enhances the Division's ability to provide timely responses.

#### RULE CHANGE RECOMMENDATION

Under the current NZX Discipline Rules any financial penalty imposed on an Issuer by NZX Discipline must be paid to NZX. The Special Division does not consider that the payment to NZX of any penalty imposed on NZX itself as an Issuer (or any Related Entity of NZX) by NZX Discipline constitutes a penalty in the spirit contemplated under the NZX Discipline Rules.

Accordingly, the Special Division has requested that NZX review the Rules. This change has not been implemented.



Peter Wilson  
Chairman, Special Division  
30 April 2008

## **B: SUMMARY OF MATTERS DEALT WITH BY SPECIAL DIVISION**

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The Special Division of NZX Discipline considered the following matters between 3 May 2007 and 30 April 2008:

### **1. APPROVAL OF DOCUMENTS AND WAIVERS, being the review and approval of:**

- Waivers from Rules 10.4.1, 10.5.1 and 10.5.2 confirming that the class waivers granted by New Zealand Exchange Ltd on 3 November 2005 relating to the extension to the timeframe for releasing preliminary announcements and half-yearly and annual reports for Issuers adopting NZIFRS for the first time apply to each of the funds managed by Smartshares Ltd.
- Renewal of five prospectuses for funds managed by Smartshares Ltd.
- Appointment of Simmons Corporate Finance Ltd to provide the Appraisal Report in respect of the proposed remuneration package for the Chief Executive Officer of New Zealand Exchange Ltd.
- Notice of Special Meeting of New Zealand Exchange Ltd held on 6 September 2007. This Notice contained a resolution relating to the issue of securities to the Chief Executive Officer as part of his remuneration package and was accompanied by an Appraisal Report. This included the granting of a waiver from Rule 7.6.6A(b) so that the financial assistance provided under the Chief Executive Officer Share Scheme is not required to be completed within 12 months of the resolution at the Special Meeting being passed.
- Investment Statement, amendments to Prospectuses and Trust Deeds for the funds managed by Smartshares Ltd. The amendments were primarily as a result of the decision to enter the funds in the Portfolio Investment Entity (“PIE”) tax regime. This included granting an approval under Rule 11.1.5 to permit restrictions on unit holdings in the funds to ensure compliance with the PIE tax regime.
- Investment Statement and Prospectus relating to the offer of shares to selected employees of New Zealand Exchange Ltd.
- Waiver from Rule 7.6.1 in relation to the redemption of shares issued by New Zealand Exchange Ltd to certain senior executives under an equity incentive scheme.
- Approval by the Special Division Solicitor under delegated authority from the Special Division of various Advertisements in respect of the funds managed by Smartshares Ltd.
- At the end of the Annual Report period the Special Division was considering an application from Smartshares Ltd for a waiver from Rule 7.12.2 for distributions made by the constituent companies of the SmartOZZY Fund managed by Smartshares Ltd and a waiver to permit a modified form of notice to be made in respect of the bi-annual distributions made to SmartOZZY unitholders.

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## **2. OTHER MATTERS, as set out below:**

- The Special Division received correspondence from the Securities Commission and investigated the non-reporting of waivers granted by the Special Division in respect of the smartTENZ Fund managed by Smartshares Ltd.
- The Special Division investigated the circumstances of a SMARTS alert regarding trading in the shares of New Zealand Exchange Ltd. The Special Division determined that no further action was required.
- The Special Division investigated the circumstances of a SMARTS alert regarding trading in units of the smartOZZY Fund managed by Smartshares Ltd. The Special Division referred the late filing of a Substantial Security Holder Notice to the Securities Commission.
- The Special Division investigated the circumstances of a SMARTS alert regarding trading in the shares of a listed issuer conducted on behalf of the smartMIDZ Fund managed by Smartshares Ltd. The Special Division determined that no further action was required.

## SECTION 5

### DISCIPLINARY FUND ACCOUNTS

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	18 MONTHS TO 31 DEC 2006	12 MONTHS TO 31 DEC 2007	4 MONTHS TO APRIL 2008
<b>Receipt of Fines &amp; Costs</b>	<b>\$ 174,750</b>	<b>401,022</b>	<b>13,000</b>
<b>Expenses of NZX Discipline:</b>			
Appeal member costs	1,927	683	
NZX Discipline member costs	55,226	94,313	14,248
Legal Advisory	18,493	14,500	44,752
Accounting Advisory			
Rules review	14,385	14,500	–
<b>Total expenses</b>	<b>\$ 90,031</b>	<b>112,942</b>	<b>59,000</b>
Surplus (Deficit) for the period	\$ 84,719	288,080	(46,000)
Accumulated Surplus (Deficit)	(6,026)	282,054	236,054

## DIRECTORY

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