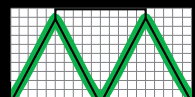


ANNUAL REPORT 2011

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# NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

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# CHAIRMAN'S REPORT

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# CHAIRMAN'S REPORT

## REPORTING PERIOD

This report covers the period 1 January 2011 to 31 December 2011.

## FUNCTION OF NZ MARKETS DISCIPLINARY TRIBUNAL

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

### *Principal role*

The Tribunal's principal role is to determine whether there has been a breach of the NZX Conduct Rules<sup>1</sup>, the NZX Derivatives Market Rules and the Clearing and Settlement Rules of New Zealand Clearing Limited (*CHO*) in matters referred to it by NZX Limited (*NZX*).

In addition, during the reporting period, the Tribunal's role included determining whether there had been a breach of the NZX Futures and Options Rules in matters referred to it by NZX. However, NZX ceased to regulate Futures and Options Participants under the NZX Futures and Options Rules as of 30 September 2011.

The Tribunal does not deal directly with members of the public. However, its membership includes members of the public.

In the event that the Tribunal finds a breach, its secondary role is to assess and impose penalties.

The Tribunal serves in an adjudicative role. It is not an inspectorate of market conduct. That role is performed by NZX Market Supervision. The Financial Markets Authority (*FMA*) is responsible for oversight of NZX's discharge of that responsibility, having assumed that responsibility from the Securities Commission as of 1 May 2011.

The Tribunal also has authority under the NZMDT Rules to:

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

*Special Division*

Under Rule 3.2 of the NZMDT Rules there is a Special Division of the Tribunal. The Role of the Special Division is to administer the NZX Conduct Rules as they apply to NZX as a listed company and the five listed funds managed by Smartshares Limited, a subsidiary of NZX. A separate report of the Special Division's activities can be found at page 42 of this annual report.

**FINANCIAL MARKETS AUTHORITY**

As anticipated in last year's annual report:

- a) the Financial Markets Authority Act establishing the FMA came into force on 1 May 2011;
- b) the FMA has assumed the functions previously undertaken by the Securities Commission and parts of the Ministry of Economic Development; and
- c) the role of the Tribunal has continued largely unchanged under the new legislation.

**RELATIONSHIP WITH NZX**

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

The Tribunal maintains a cooperative operational relationship with NZX in relation to matters referred to it for determination.

**MATTERS HANDLED BY THE TRIBUNAL**

During the reporting period four matters were referred to the Tribunal. All were completed during the reporting period and each was completed within one month of referral by NZX.

Details of each of these matters can be found in the section of this annual report entitled 'Statements of Case, Findings and Penalties'<sup>2</sup>.

In addition, during the reporting period the Tribunal completed its consideration of two other matters which had been referred to it during the previous reporting period. One of these matters was completed within a two month period, the other in a shade over two months because of the intervening Christmas holiday period. Details of each of these matters can be found in last year's annual report.

The Tribunal was not called on to consider any matters arising under the NZX Derivatives Market Rules, the NZX Futures and Options Rules or CHO's Clearing and Settlement Rules during the reporting period.

The Tribunal was also not called on to review any decisions made by NZX, CHO or CDO in respect of a waiver or ruling determination made by it or to review any decision made by CHO under the Clearing and Settlement Rules.

As noted above, a separate report on the activities of the Special Division of the Tribunal can be found later in this report<sup>3</sup>.

1. The NZX Conduct Rules comprise 1) the NZX Participant Rules, which govern the conduct of market participants in NZX's three markets – the NZSX Market, the NZAX Market and the NZDX Market; and 2) the NZX Listing Rules governing the conduct of issuers whose securities are quoted on NZX's markets.

2. Page 16.

3. Page 42.

## BREACHES OF PERIODIC REPORTING REQUIREMENTS

In last year's annual report the former Chairman recorded the concern as to the number of breaches of periodic reporting requirements that had been referred to the Tribunal. He also signalled the likelihood of the Tribunal substantially increasing the penalties imposed for this sort of infringement given the importance of timely reporting for effective operation of the market.

One of the four cases referred to the Tribunal during this reporting period involved a breach of the periodic reporting requirements and the amount of the settlement approved by the Tribunal in this referral reflected the approach previously signalled by the Tribunal.

A further breach of the periodic reporting requirements has been referred to the Tribunal after the expiry of the reporting period.

The Tribunal will continue to address breaches of the periodic reporting requirements consistently with this signalled approach.

## PROCEDURAL DEVELOPMENTS

During the reporting period, three of the four matters referred to the Tribunal ultimately resulted in settlement agreements being approved by the Tribunal. Three aspects of these settlements are of note from a procedural perspective:

1. Compensation: Provision for payment of compensation to affected parties was a feature of two of the settlements approved. The Tribunal is generally supportive of settlements that include remedial relief for adversely affected third parties, given that the Tribunal does not itself have the power to award compensation to affected parties. The level of compensation offered will be considered by the Tribunal in approving a settlement agreement, although it remains important that, as a general rule, the infringement itself is appropriately penalised, irrespective of any compensation to be paid.
2. Amount claimed by NZX does not operate as a cap: In one case, the Tribunal did not consider the amount of the penalty initially proposed by the parties in a settlement agreement to be sufficient having considered the nature and circumstances of the offence and relevant precedent. The parties agreed to increase the penalty and the settlement was subsequently approved by the Tribunal. The Tribunal will not be bound by the amount agreed by the parties when considering the appropriateness of a penalty payment proposed in a settlement agreement submitted to it for approval. Similarly, the Tribunal does not consider itself capped in the amount of a penalty which it may award by the amount sought by NZX in a statement of case.
3. Procedure for seeking approval of settlements: In one case that came before the Tribunal, it became apparent to the Tribunal after it had approved the settlement that there was a factual disagreement between NZX and the Respondent of which the Tribunal was not aware when approving the settlement. In future, the Tribunal will require any Memorandum of Counsel submitting a settlement agreement for approval by the Tribunal to be signed by both counsel. This will 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.



## DIVISIONS

The Tribunal sits in Divisions of three. The Tribunal Chairman normally only chairs Divisions hearing cases under the Full Hearing Procedure. No matters were heard under the Full Hearing Procedure during the 2011 reporting period. All matters were heard under the Summary Hearing Procedure.

I express my appreciation to all members of the Tribunal who have sat in 2011.

## MEMBERSHIP CHANGES

Stephen Kós, the former Chairman of the Tribunal, retired from the Tribunal in April 2011 consequent upon his appointment as a judge of the High Court. The Tribunal is indebted to Stephen for his leadership of the Tribunal over the 3 year period of his chairmanship. In particular, the Tribunal is grateful for the legacy which Stephen has left by overseeing the establishment and formalisation of procedures for the Tribunal. These provide clear procedures for all parties dealing with the Tribunal.

I also wish to thank our Deputy Chairman, William Stevens, for his contribution as Acting Chairman until the completion of the 2011 annual meeting of the Tribunal in June 2011.

The Tribunal was pleased to welcome Jo Appleyard, a lawyer and company director from Christchurch as an Issuer Appointee and Noeline Munro, an NZX client adviser and company director from Dunedin as a Market Participant Appointee to the Tribunal in 2011.

## RESOURCING

NZMDT Rule 14.1.2(d) requires a statement from the Tribunal confirming whether or not it believes that adequate resources have been made available to it to undertake its role under the NZMDT Rules. I so confirm. NZX has provided all the assistance which the Tribunal has needed in the performance of its role.

For the future effective operation of the Tribunal, on-going review of the composition of the Tribunal is essential. As at the end of the reporting period, the Tribunal comprised five Public Appointees, four Issuer Appointees, eight Legal Appointees and four Market Participant Appointees.

The term of appointment of four of the five Public Appointees and that of one of the Legal Appointees expires in 2012. None of these appointees is eligible for appointment for a further term.

The term of appointment of three of the Issuer Appointees, one of the Legal Appointees and one of the Market Participant Appointees expires in 2013. Of these appointees whose terms expire in 2013, only one of the Issuer Appointees is eligible for appointment for further terms.

The NZMDT Rules also require that the Tribunal have one Clearing Appointee and one Derivatives Market Appointee to ensure that the Tribunal has sufficiently experienced members to consider such a rule infringement should it be referred. The Tribunal did not have a Clearing Appointee or a Derivatives Market Appointee during or at the end of the reporting period.

The Tribunal is, consequently, working with NZX to see that further suitable appointments are made to the Tribunal so that it has the full range of necessary skills and experience available to it and can continue to perform its role to a consistently high level.

### DISCIPLINARY FUND

The NZMDT Rules restrict the use that may be made of money paid into the Disciplinary Fund to enforcement action, the costs of the Tribunal and Appeals Panel (and their staff), educational initiatives relevant to the regulation of NZX's markets and the futures and options industry, rules revision and any other use approved by the FMA.

The Disciplinary Fund accounts can be found at page 33 of this annual report.

The decrease in operational expenditure reflects the comparatively quieter year for the Tribunal, particularly in the number of matters referred. It also reflects the lack of bad debts, with no unpaid penalties having to be written off in respect of the reporting period.

As noted in the Tribunal's annual report of 2010, the Tribunal had suggested to NZX that in future the Discipline Fund be reported on a cash, not accruals, basis. In response to this suggestion, NZX has advised that it is continuing to account for the Discipline Fund on an accruals basis for consistency with its other accounting systems.

### AGED DEBTORS

As at the end of the reporting period a total of \$120,046.72 was owing to the Disciplinary Fund by parties in respect of which determinations had previously been made by the Tribunal. A significant proportion of this was attributable to the determination made against RIS Group Limited on 21 December 2011. The balance related to matters involving market participants, one of which was disputed and the other of which was being paid on the basis of an agreed instalment plan. As at 26 March 2012, the balance outstanding regarding determinations made by the Tribunal before 30 December 2011 had reduced to \$61,863.61.

### APPEALS PANEL

The Appeals Panel is responsible for determining appeals made against determinations of the Tribunal. The Appeals Panel is independent of both NZX and the Tribunal. Members of the Appeals Panel are appointed by the FMA.

During the reporting period, no appeals have been made against determinations of the Tribunal requiring referral to the Appeals Panel.

The Appeals Panel convened once during the reporting period to consider submissions on costs regarding a matter brought before the Panel in the previous reporting period. That matter involved an appeal by a market participant against a determination made by the Tribunal to publicly censure the participant for breaches of the NZX Participant Rules. In its determination, the Panel found that the market participant's statement of appeal was without merit. A summary of the case can be found in the Tribunal's 2010 annual report.

In its determination on costs, the Appeals Panel ordered that the market participant pay to NZX the costs of the Panel on a full indemnity basis. The Panel noted that:

*An award of costs and or expenses under the [NZMDT Rules] is at the discretion of the Appeal Panel. As a general rule costs will follow the event. Accordingly where the Appeals Panel finds a Full Appellant unsuccessful in its appeal the Appeal Panel is likely to award the actual costs of NZX (if any) and the Appeal Panel against that party, subject to any appropriate discounting.*

...

*In circumstances where an appeal is dismissed by the Appeal Panel under NZMDT Rule 9.2.2 the Appeal Panel considers it appropriate that the full costs of that appeal be borne by the Full Appellant, without any discounting being applied.*

#### Resources

Mr Euan Abernethy, the Chairman of the Appeals Panel, also confirms that it has had adequate resources to undertake its role under the NZMDT Rules during the reporting period.

## EXECUTIVE COUNSEL

The Tribunal was extremely fortunate to secure the services of Rachel Batters as Executive Counsel to replace Elaine Campbell. Rachel consistently provides a high standard of support to the Tribunal in a very professional and timely manner. The Tribunal and I, in particular as Chairman, are extremely grateful for Rachel's dedication and professionalism.

## CONCLUSION

The Tribunal is extremely fortunate to be comprised of a group of high calibre and dedicated members. I thank all of them for their work throughout 2011. In particular, I express my thanks to the Deputy Chairman, William Stevens and the Chairman of the Special Division, Peter Wilson.



Derek Johnston | CHAIRMAN  
20 April 2012



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# MEMBERS

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# MEMBERS

## MEMBERS OF THE TRIBUNAL AS AT 31 DECEMBER 2011

### LEGAL

Derek Johnston (Chairman), Andrew Beck, David Boldt, David Flacks, Mark Freeman, Don Holborow, Simon McArley and Tim Williams.

### LISTED ISSUER

Peter Wilson (Special Division Chairman), Jo Appleyard, Falcon Clouston and Alison Paterson.

### MARKET PARTICIPANTS

William Stevens (Deputy Chairman), Shane Edmond, Noeline Munro and Campbell Stuart.

### MEMBERS OF THE PUBLIC

Michael Jeffs, Phillip Meyer, Stephen Moir, Patsy Reddy and Paul Ridley-Smith.  
Rachel Batters acts as Executive Counsel to the Tribunal.

### MEMBERS OF THE SPECIAL DIVISION AS AT 31 DECEMBER 2011

Peter Wilson (Chairman), Andrew Beck, Michael Jeffs and Paul Ridley-Smith.  
Rachel Batters acts as Counsel to the Special Division.

### MEMBERS OF THE APPEALS PANEL AS AT 31 DECEMBER 2011

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





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# STATEMENTS OF CASE, FINDINGS AND PENALTIES

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

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

- a) number of statements of case issued by NZX and CHO and the type of matters addressed in those statements of case;
  - b) the findings of the Tribunal and the Appeal Panel in respect of each statement of case issued by NZX and CHO, provided such disclosures are consistent with any decision on publication made by the Tribunal;
  - c) any penalties imposed by the Tribunal and the Appeal Panel; and...”
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## NZMDT 01/11 NZX V FORSYTH BARR LIMITED (FORSYTH BARR)

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*Division:* Stevens (Chair), McArley and Moir

Statement of Case served: 28 February 2011

Date of Determination: 23 March 2011

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### ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The statement of case alleged that Forsyth Barr had breached NZX Participant Rule 11.3.1(b) in respect of an order placed by a retail client of Forsyth Barr for the sale of a security.

NZX's investigation of this matter arose from a complaint made to it.

***NZMDT approved a settlement agreement between the parties under which Forsyth Barr admitted breaching NZX Participant Rule 11.3.1(b). As contemplated by section 10 of the NZMDT Rules, the settlement agreement became the determination of the Tribunal.***

***A public statement agreed by the parties, and approved by the Tribunal, recorded that:***

***The client provided Forsyth Barr with a written instruction to convert their entire portfolio into cash "as soon as possible".***

***A security, which formed part of the client's portfolio, was not put on market. The Forsyth Barr advisor, operating under an assumed discretion under Rule 11.3.2, determined that it was not in the client's best interests to sell the security at that time.***

***Forsyth Barr's failure to bring the trade to market was a breach of NZX Participant Rule 11.3.1(b). Although Rule 11.3.2 allows a Client Advising Participant to execute orders at its discretion if it has obtained instructions to do so, this Rule cannot be used to validate a situation where a client order was never executed.***

***Forsyth Barr has admitted this breach. NZX acknowledges that Forsyth Barr believed that it was acting in the best interests of the client.***

***Under the terms of the settlement agreement, Forsyth Barr was required to make an offer to the client to make good their loss and to review their procedures more generally and take appropriate remedial action as agreed with NZX.***

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### PENALTY:

Under the terms of the settlement agreement, Forsyth Barr was required to pay NZX \$5,000 by way of penalty (required by the NZMDT Rules to be directed to the Discipline Fund).

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### COSTS:

Forsyth Barr was required to pay the costs of the Tribunal and NZX in considering the matter.

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### PUBLICATION:

A public statement in the form attached to the settlement agreement, and approved by the Tribunal, was realised to the market. This public statement named Forsyth Barr.

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## NZMDT 02/11 NZX V A MARKET PARTICIPANT

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*Division:* Stuart (Chair), McArley and Reddy

Statement of Case served: 16 March 2011

Date of Determination: 6 April 2011

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### ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The statement of case alleged that the Market Participant had breached former NZX Participant Rule 14.14.1 (currently NZX Participant Rule 18.15.1) because it considered that the Market Participant had been holding securities on behalf of its client (*the Complainant*) in a custody account without sufficient written authority as required under that Rule.

The Complainant had entered into a client services agreement with the Market Participant which did permit its shares to be held by a custodian, but the agreement did not adequately specify the rights and obligations of the parties with respect to how corporate actions were to be managed. These details were included in the Market Participant's standard custody agreement for clients with a full custody service, but the Complainant had not signed a custodial agreement and was not receiving full custodial services.

***NZMDT approved a settlement agreement between the parties under which the Market Participant admitted breaching NZX Participant Rule 14.14.1. As contemplated by section 10 of the NZMDT Rules, the settlement agreement became the determination of the Tribunal.***

***Under the terms of the settlement agreement, the parties agreed that:***

- a) A public statement outlining the case and outcome would be sent to NZX Managing Principals and Compliance Managers. The Market Participant would not be named in that public statement; and***
  - b) The Market Participant would review its client services agreement to ensure that the provisions relating to securities held in custody are fully compliant with NZX Participant Rules.***
- 

### PENALTY:

Under the terms of the settlement agreement, approved by the Tribunal, the Market Participant was not required to pay a penalty. In approving the settlement, the Tribunal took into consideration that (a) the Market Participant and the Complainant had reached a settlement under which the Complainant had received compensation; and (b) the remedial action proposed, including the review of the Market Participant's client services agreement and the public statement to other NZX Firms to review their own practice in this area.

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#### COSTS:

The Market Participant was required to pay all of the costs of the Tribunal and to contribute towards the costs of NZX up to an agreed cap.

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#### PUBLICATION:

A public statement, in the form attached to the settlement agreement, was sent by email to NZX Managing Principals and Compliance Managers. The public statement noted that the Market Participant's client services agreement contained a generic clause for the provision of a custody service, but that this did not constitute sufficient written authority from the client in respect of the custody service provided and was accordingly, a breach of NZX Participant Rule 14.14.1(a).

The public statement did not name the Market Participant. The Tribunal's Policy Guideline on the Naming of Respondents (*the Policy*) states that the name of the Respondent is unlikely to be published when the penalty for the Respondent falls within Penalty Bands 1, 2 or 3 of Procedure 11 of the NZ Markets Disciplinary Tribunal Procedures (*the Procedures*) for breaches of the NZX Participant Rules, and where the breach can be considered to be of minor importance and not systemic.

Here, the Tribunal considered that the conduct of the Market Participant fell within Penalty Band 3 of the Procedures which covers "Breach of the NZX Participant Rules of a moderate nature". For Penalty Band 3, the Procedures provide the example of "Failure to have Terms of Business or similar agreement in place with a client". The Tribunal considered that not naming the Market Participant was appropriate as it was consistent with the Policy, given the Penalty Band into which the conduct fell, and because of mitigating factors, including that the Market Participant had co-operated with the investigation by NZX and had already agreed a settlement with the Complainant.

The Tribunal also noted that the parties agreed that the public statement would be sent by email to NZX Managing Principals and Compliance Managers, but would not be released on the Market Announcements Platform. The Tribunal understood that the purpose of the statement was to signal to other NZX Firms to review their own practices in respect of Rule 18.15.1, rather than as a means of penalty. Accordingly, the Tribunal considered that the release of the public statement to NZX Firms was sufficient to achieve this aim, but noted that that this would put the matter into the public arena in any event.

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## NZMDT 03/11 NZX V SKELLERUP HOLDINGS LIMITED (SKL)

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Division: Wilson (Chair), Beck and Jeffs

Statement of Case served: 14 April 2011

Date of Determination: 10 May 2011

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### ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The statement of case alleged that SKL had breached, and remained in breach of, NZSX Listing Rules 3.3.1(c), 3.6.2(b) and 3.6.2(c). Rule 3.3.1(c) requires a minimum of two Independent Directors on the Board of an Issuer. Rule 3.6.2(b) requires the Audit Committee of an Issuer to have a minimum of three members, and Rule 3.6.2(c) requires that a majority of Audit Committee members be Independent Directors.

On 30 June 2010, Mr D Stewart resigned from the SKL Board. The SKL Board then comprised two Independent Directors (Ms E Coutts and Mr D Mair) and two Directors with a Disqualifying Relationship (Sir Selwyn Cushing and Mr J Thompson). SKL sought waivers from NZX from the Rules as it intended appointing Mr Mair its Chief Executive Officer. As a result, Mr Mair would cease to be an Independent Director and the Board of SKL would comprise only one Independent Director.

On 15 July 2010, NZX granted SKL a temporary waiver from the Rules for 3 months, expiring on 15 October 2010. From 15 October 2010, SKL failed to comply with the Rules and remained in breach at the time the statement of case was filed. SKL offered reasons in mitigation for the on-going breach of the Rules which involved commercially sensitive information.

***The Tribunal noted that it takes the breach of these Rules very seriously. The corporate governance provisions of the Rules are of vital importance to the integrity of the market and to give investor's confidence in the directors who are appointed to represent their interests. In addition, an appropriately comprised audit committee is critical in ensuring that an Issuer maintains a robust audit process.***

***The Tribunal considered that the breach of the Rules by SKL warranted the imposition of a financial penalty at the upper end of the scale for an offence of this nature. While SKL did not dispute the breach, the Tribunal considered that there were a number of aggravating factors including that:***

- a) SKL had been in breach of the Rules for far too long – over 9 months including the 3 month waiver period;***
- b) A breach of these Rules for such a length of time is likely to bring both NZX and the market into disrepute;***
- c) SKL has breached more than one Rule and the Tribunal takes the breach of each of these Rules seriously;***
- d) SKL appeared to have taken no action before the referral of the matter to the Tribunal to rectify the breaches;***

- e) The Tribunal was not satisfied with the reasons advanced by SKL as to why the appointment of an Independent Director has been delayed for such a significant length of time; and**
- f) SKL had failed to reply within reasonable timeframes to the investigation by NZX into the breaches of the Rules.**
- 

PENALTY:

The penalties imposed by the Tribunal were:

- a) An order to pay to NZX (required by the NZMDT Rules to be directed to the Discipline Fund):
- i. \$15,000 for the breach of Rule 3.3.1(c);
  - ii. \$5,000 for the breach of Rule 3.6.2(b); and
  - iii. \$5,000 for the breach of Rule 3.6.2(c).
- b) That SKL rectify the breaches within 20 Business Days of the date of its decision; and
- c) A public censure of SKL.
- 

COSTS:

SKL was required to pay the costs of the Tribunal and NZX in considering the matter.

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PUBLICATION:

The Tribunal's determination was not released as it contained information commercially sensitive to SKL. Instead, the Tribunal released a public statement which named SKL, contained the particulars of the breaches, the rationale for the Tribunal's decision and details of the penalties imposed.

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## NZMDT 04/11 NZX V RIS GROUP LIMITED (RIS)

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Division: Beck (Chair), Clouston and Munro

Statement of Case served: 23 November 2011

Date of Determination: 21 December 2011

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### ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The statement of case alleged breaches of NZAX Listing Rules 3.2.1, 10.4.1 and 10.5.1. Rule 3.2.1 requires the Board of an issuer to include at least two directors who are ordinarily resident in New Zealand. On 20 April 2011, the only New Zealand resident directors of RIS resigned from the RIS board. RIS remained in breach of Rule 3.2.1 at the time the statement of case was filed.

Rule 10.4.1 requires an issuer to provide its preliminary announcement to the market within 75 days of its financial year end. RIS was required to file its preliminary report by 13 September 2011, but did not file this until 1 December 2011.

Rule 10.5.1 requires an issuer to provide its annual report to the market within four months of its financial year end. RIS was required to file its annual report by 31 October 2011. RIS remained in breach of Rule 10.5.1 at the time the statement of case was filed.

NZX suspended quotation of RIS's securities on 21 September 2011 and they remained suspended at the time the statement of case was filed.

***NZMDT approved a settlement agreement between the parties under which RIS accepted the breach of Rules 3.2.1, 10.4.1 and 10.5.1. As contemplated by section 10 of the NZMDT Rules, the settlement agreement became the determination of the Tribunal.***

***The Tribunal noted that it takes the breaches of these Rules very seriously.***

***The Tribunal has repeatedly stated that the periodic reporting requirements are fundamental to the integrity of the market in ensuring that relevant reliable financial information regarding an issuer is made available to the market promptly. Those requirements also mitigate the risk posed by information imbalance, where those "inside" the company are in possession of information not available to the market. The Tribunal had advised the market in its last decision regarding breaches of the periodic reporting requirements (NZMDT 08/10 NZX v Investment Research Group Ltd) and in its 2010 Annual Report that it would substantially increase penalties to enhance deterrence.***

***The Tribunal also noted that the corporate governance provisions of the Rules are of vital importance to the market and ensure that issuers who have a primary listing on the NZAX market have directors who are available and responsible for the actions of the issuer to both New Zealand resident shareholders and the New Zealand regulatory authorities.***

***Under the terms of the settlement agreement, RIS was required to release its annual report (as required under Rule 10.5.1) to the market on or before 18 January 2012 and to comply with Rule 3.2.1 on or before 31 January 2012.***

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**PENALTY:**

Under the terms of the settlement agreement, RIS was ordered to pay NZX \$70,000 (required by the NZMDT Rules to be directed to the Discipline Fund) being an aggregate of:

- a) \$10,000 for the breach of Rule 3.2.1;
  - b) \$30,000 for the breach of Rule 10.4.1; and
  - c) \$30,000 for the breach of Rule 10.5.1.
- 

**COSTS:**

RIS was required to pay all of the costs of the Tribunal and to contribute towards the costs of NZX up to an agreed cap.

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**PUBLICATION:**

A public statement in the form attached to the settlement agreement and approved by the Tribunal was released to the market. This public statement named RIS.

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**NZX MARKET SUPERVISION  
ANNUAL REPORT TO NZ MARKETS  
DISCIPLINARY TRIBUNAL**

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

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

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

## 1. INTRODUCTION

NZX Market Supervision ("**NZXMS**") is the supervisory body of NZX Limited ("**NZX**"). NZXMS is responsible for the front line regulation of NZX's markets in accordance with its Market Rules as required by Section 36G of the Securities Markets Act 1988 ("**SMA**"), the NZX Futures and Options Rules ("**FOX Rules**") and the NZX Derivatives Market Rules (the "**Derivatives Rules**"). NZX ceased to regulate Futures and Options Participants under the FOX Rules as of 30 September 2011.

The NZ Markets Disciplinary Tribunal (the "**Tribunal**") is an independent disciplinary body charged with determining and providing remedy for referrals made to it by NZXMS.

NZXMS provides this report to the Tribunal pursuant to Rule 14.1.1 of the NZ Markets Disciplinary Tribunal Rules (the "**NZMDT Rules**"). Pursuant to NZMDT Rule 14.1.1, NZX must submit to the Tribunal by 29 February 2012 a report for the 2011 calendar year, which contains the following information:

- a) breaches of the Market Rules (including the NZSX/NZDX and NZAX Listing Rules (together the "**Listing Rules**") and the NZX Participant Rules), the FOX Rules, the NZX Derivatives Market Rules and any other rules or regulations of NZX from time to time identified by NZX;
- b) complaints received by NZX in respect of Participants (other than Clearing Participants, Lending Clearing Participants or Depository Participants); and
- c) the use of the proceeds of the Discipline Fund.

This report provides information for the period 1 January 2011 to 31 December 2011 (the "**Period**").

Capitalised terms used in this report that are not otherwise defined in this Report have the meanings given to them in the NZMDT Rules.

During the Period, the Financial Markets Authority Act 2011 disestablished the Securities Commission (the "**Commission**") and established the Financial Markets Authority (the "**FMA**"). This report does not refer to referrals made by NZXMS to the Commission or the FMA for breaches of the SMA it detects while carrying out its regulation and surveillance duties (for example, in respect of suspected insider trading, market manipulation or director and officer disclosure).

## 2. MARKET PARTICIPANTS, FUTURES AND OPTIONS PARTICIPANTS AND DERIVATIVES MARKET PARTICIPANTS

This section 2 summarises:

- i) the breaches identified by NZXMS in respect of the NZX Participant Rules, the FOX Rules and the Derivatives Rules; and
- ii) the complaints received by NZXMS in respect of Market Participants, Futures and Options Participants (including Advisors) and Derivatives Market Participants.

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

### i) *Significant breaches of the NZX Participant Rules*

There were 2 cases representing significant breaches of the NZX Participant Rules referred to the Tribunal during the Period. These cases are described under the heading "Statement of Case, Findings and Penalties" in NZMDT's Annual Report.

### ii) *Other breaches of the NZX Participant Rules*

In addition to the above cases, NZXMS identified a number of breaches of the NZX Participant Rules which were either not considered sufficiently serious to warrant referral to the Tribunal or in respect of which a referral has not yet been made.

Of these, various breaches were identified during NZX's onsite inspections, capital adequacy reviews and other targeted investigations. These breaches were subsequently highlighted to the relevant Market Participant, either as part of an NZXMS inspection report or in letter format (containing, as appropriate, action points for Market Participants to resolve, or implement, within specified timeframes).

A total of 23 breaches of NZX Participant Rule 18.6.1(d) (Client Funds Account overdrawn) occurred. These were largely self-reported by the relevant Market Participant. A significant number of these breaches were as a result of bank errors for which the Market Participant ultimately received good value. Error in processing bank transactions by the Market Participant's employees was another significant reason for these breaches. All of the breaches were followed up by communication with the relevant Market Participant.

There were also 7 breaches of NZX Participant Rule 19.3.6, due to late reporting by Market Participants of their capital adequacy position. One Market Participant was issued a warning for breaching this rule on a number of occasions.

One breach of NZX Participant Rule 8.1.1(a) by an Advisor was identified further to an investigation by NZXMS of a written complaint (see section B below).

Three suspected breaches relating to Direct Market Access (NZX Participant Rules 4.5.2, 10.2.2 and 10.8.1) were identified during the Period and are currently under investigation.

Other minor breaches noted during the period included late submissions of notifications and periodic reporting to NZX, late issue of contract notes and an employee's failure to obtain pre-approval for a trade by a Prescribed Person.

## B. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF MARKET PARTICIPANTS

NZXMS received a total of 4 written complaints in respect of Market Participants during the Period. Of these complaints:

- Two involved insufficient evidence that the NZX Participant Rules had been breached, and resulted in the closure of the matter;
- One was determined not to be a breach of the NZX Participant Rules; and
- One resulted in the Advisor concerned being given a warning as to their behaviour.

#### C. SUMMARY OF BREACHES OF THE FOX RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

During the Period, there were a small number of minor, inadvertent or technical breaches of the FOX Rules, which were not considered sufficiently serious to warrant referral to the Tribunal.

In addition, NZXMS suspended the designation of one Futures and Options Participant, at that Participant's request.

NZX ceased to regulate Futures and Options Participants on 30 September 2011.

#### D. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF FUTURES AND OPTIONS PARTICIPANTS

NZXMS received 2 written complaints in respect of Futures and Options Participants during the Period.

Of these complaints:

- One involved insufficient evidence that the FOX Rules had been breached, and resulted in the closure of the matter; and
- One was withdrawn by the Complainant, as both parties had come to an agreement after ongoing discussions.

#### E. SUMMARY OF BREACHES OF THE DERIVATIVES MARKET RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

A number of minor, inadvertent or technical breaches of the Derivatives Market Rules were identified by NZXMS during the Period, which were not considered sufficiently serious to warrant referral to the Tribunal.

Of these, various breaches were identified during NZX's onsite inspections. These breaches were subsequently highlighted to the relevant Derivatives Participant as part of an NZXMS inspection report (containing, as appropriate, action points for Derivatives Participants to resolve, or implement, within specific timeframes).

In addition, there was one breach of Derivatives Market Rule 4.28.6 relating to late Capital Adequacy reporting, and one breach of Derivatives Market Rule 10.5.2 due to a failure to enter a Cross Transaction into the Trading System in the manner prescribed by Procedure. Both of these breaches were followed up by communication with the relevant Derivatives Participant.

#### F. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF DERIVATIVES MARKET PARTICIPANTS

NZXMS did not receive any complaints in respect of Derivatives Participants during the Period.

### 3. NZX ISSUERS

This section 3 summarises:

- a) breaches identified by NZXMS in respect of the Listing Rules; and
- b) complaints received by NZXMS in respect of Issuers.

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

##### i) *Significant breaches of the Listing Rules*

There were two cases representing significant breaches of the Listing Rules that were referred to the Tribunal during the Period. These related to the breaches described under the heading "Statement of Case, Findings and Penalties" in NZMDT's Annual Report.

##### ii) *Listing Rule breaches referred to the Commission and FMA pursuant to sections 36ZD and 36ZL of the SMA*

During the Period, NZXMS referred 40 Listing Rule breaches to the Commission and FMA that fall within the scope of this Report (including those matters in respect of which a referral was made to the Tribunal).

Of these referrals:

- One related to an Issuer's compliance with the requirement that shareholder approval be obtained for issuances of convertible securities;
- Two related to the involvement of Issuers' Related Parties in respect of takeover offers;
- One related to an Issuer's failure to ensure that its Board included the number of Independent Directors required by the Listing Rules;
- Two related to Issuers' failures to ensure that the Board composition requirements contained in the Rules were met;
- Three related to Issuers' failures to have a correctly comprised Audit Committee;
- One related to an Issuer's failure to provide its notice of meeting to the market at the time the notice was sent to shareholders;
- Twenty two related to Issuers' general compliance with the continuous disclosure requirements of the Listing Rules;
- Four related to Issuers' compliance with continuous disclosure requirements following unusual price of volume activity in the relevant Issuer's securities; and
- Four related to Issuers' failures to comply with the periodic reporting requirements of the Listing Rules.



iii) *Other breaches of NZX Listing Rules*

In addition to the above breaches, NZXMS identified 17 breaches of the Listing Rules which were not considered sufficiently serious to warrant referral to the Tribunal, or in respect of which a determination is yet to be made as to whether referral to the Tribunal is appropriate.

Of these breaches:

- One related to an Issuer's failure to disclose in its notice of meeting that a related party was involved in an asset acquisition and the Issuer's consequential failure to ensure that an appraisal report accompanied the notice of meeting in which approval for the transaction was sought;
- One related to an Issuer's failure to provide all of the information required by the Listing Rules in its annual report;
- Four related to Issuers' failures to make announcements to the market at the same time that information was sent to shareholders;
- Four related to Issuers' failures to provide the market with information regarding corporate events within the timeframes specified by the Rules;
- One related to an Issuer's failure to notify the market of the expiry of a series of options;
- One related to an Issuer's failure to make the required announcement in respect of securities that it had bought back;
- One related to an Issuer's failure to provide the market with the information required in respect of an allotment;
- One related to an Issuer's failure to make a full year preliminary announcement within the required timeframe;
- One related to an Issuer's failure to provide a complete annual report to the market;
- One related to an Issuer's failure to notify the market regarding a change to its Officers; and
- One related to an Issuer whose Director failed to retire by rotation as required by the Listing Rules.

## B. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF ISSUERS

NZX received a total of 22 complaints in respect of Issuers during the Period.

Of these complaints:

- 20 were determined not to be breaches of the Listing Rules. Of these:
  - a) One related to concerns around the exchange rate used by an Overseas Listed Issuer in respect of its dividend payment;
  - b) Nine related to Issuers' compliance with the continuous disclosure requirements of the Listing Rules;
  - c) One related to an Issuer's alleged failure to disclose a buy-back of securities in the manner required by the Listing Rules;
  - d) Two related to share consolidations undertaken by Issuers;
  - e) One related to an Issuer's alleged failure to comply with the director's and officer's disclosure requirements;
  - f) Two related to whether an Issuer was in compliance with the restrictions on material transactions with related parties;
  - g) One related to the completeness of a substantial security holder notice;
  - h) One related to the content of an offer made under the Takeover's Code;
  - i) One related to an Issuer's payment of a dividend; and
  - j) One related to the date on which an Issuer's annual meeting was to be held.
- One related to an Issuer's failure to comply with the timetable for corporate actions prescribed by the Rules. NZXMS wrote to the Issuer concerned, and the Issuer confirmed that it had put procedures in place to ensure that it would comply with the timetable requirements of the Rules in future; and
- One related to an Issuer's notice of meeting not containing accurate information, this Issuer's conduct was referred to the Tribunal.

#### 4. USE OF PROCEEDS OF THE DISCIPLINE FUND

This section 4 details the use of the proceeds of the Discipline Fund, as set out in the Discipline Fund Accounts. Proceeds of the Discipline Fund may be used in accordance with NZMDT Rule 11.21.1.

| <b>Disciplinary Fund Costs</b>                      | 4 Months to<br>30-Apr-08 | 8 Months to<br>31-Dec-08 | 12 Months to<br>31-Dec-09 | 12 Months to<br>31-Dec-10 | 12 Months to<br>31-Dec-11 |
|---|--------------------------|--------------------------|---------------------------|---------------------------|---------------------------|
| Fines and Costs                                     | 13,000                   | 230,629                  | 411,237                   | 341,957                   | 196,617                   |
| <b>Expenses of NZ Markets Disciplinary Tribunal</b> |                          |                          |                           |                           |                           |
| Appeal Member Costs                                 | -                        | -                        | -                         | -                         | -                         |
| Executive Counsel Costs                             | -                        | 60,087                   | 109,112                   | 136,192                   | 63,216                    |
| NZ Markets Disciplinary<br>Tribunal Member Costs    | 14,248                   | 105,282                  | 44,171                    | 166,919                   | 101,567                   |
| Legal Advisory                                      | -                        | -                        | -                         | 8,145                     | -                         |
| Rules Review  | 44,752                   | 1,360                    | 595                       | 5,161                     | -                         |
| Disbursements                                       | -                        | 3,717                    | 11,234                    | 6,711                     | 5,295                     |
| Educational Expenditure                             | -                        | -                        | -                         | 61,109                    | 5,000                     |
| Other Incidentals                                   | -                        | -                        | -                         | 1,440                     | 1,524                     |
| Bad Debts   | -                        | -                        | -                         | 342,728                   | -                         |
| <b>Total Expenses</b>                               | 59,000                   | 170,446                  | 165,112                   | 728,405                   | 176,603                   |
| Interest Income                                     | -                        | -                        | -                         | 3,844                     | 70                        |
| <b>Surplus (Deficit) for<br/>the period</b>         | (46,000)                 | 60,183                   | 246,125                   | (382,604)                 | 20,084                    |
| <b>Accumulated Surplus<br/>(Deficit)</b>            | 236,054                  | 296,237                  | 542,362                   | 159,758                   | 179,842                   |



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

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

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

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

## 1. INTRODUCTION

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

The NZ Markets Disciplinary Tribunal (the "**Tribunal**") is an independent disciplinary body charged with determining and providing remedies for referrals made to it by CHO under the Clearing and Settlement Rules.

CHO provides this report to the Tribunal pursuant to Rule 14.1.2 of the NZ Markets Disciplinary Tribunal Rules (the "**NZMDT Rules**"). Pursuant to NZMDT Rule 14.1.2, CHO must submit to the Tribunal by 28 February 2011 a report for the 2011 calendar year which contains the following information:

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

This report provides information for the period 1 January 2011 to 31 December 2011 (the "**Period**"). NZX also provides information about CHO in its Annual Report, available on its website, [www.nzclearingcorp.com](http://www.nzclearingcorp.com).

Capitalised terms used in this report which are not otherwise defined in this Report have the meanings given to them in the NZMDT Rules.

## 2. BREACHES OF THE CLEARING AND SETTLEMENT RULES

This section 2 summarises breaches of the Clearing and Settlement Rules by Clearing Participants and Lending Clearing Participants identified by CHO during the Period.

### A. SIGNIFICANT BREACHES OF THE CLEARING AND SETTLEMENT RULES IDENTIFIED BY CHO FROM TIME TO TIME

No significant breaches of the Clearing and Settlement Rules were referred to the Tribunal during the Period.

### B. OTHER BREACHES OF THE CLEARING AND SETTLEMENT RULES IDENTIFIED BY CHO FROM TIME TO TIME

There were a number of minor, inadvertent or technical breaches of the Clearing and Settlement Rules, which were not considered sufficiently serious to warrant referral to the Tribunal. Of these, various breaches were identified during CHO's onsite inspections of Clearing Participants. These breaches were subsequently highlighted to the relevant Clearing Participant as part of a CHO inspection report (containing, as appropriate, action points for Clearing Participants to resolve, or implement, within specified timeframes).

There were two breaches of Clearing and Settlement Rule 3.12.3, on each occasion due to a Clearing Participant's late delivery of Eligible Collateral to CHO. In both instances sufficient surplus cash was held by CHO to cover the margin call.

There was one breach of Clearing and Settlement Rule 2.17.2 (Monthly reporting of Capital Adequacy Calculations), relating to late submission of the required information by a Clearing Participant.

In addition, there was a breach of Clearing and Settlement Rule 4.29 arising from a Clearing Participant failing to have sufficient cleared funds in its designated settlement account on a settlement day to meet its obligation for derivatives mark to market settlement. At all times sufficient collateral was held to meet this shortfall.



### 3. COMPLAINTS

This section 3 summarises complaints received by CHO in respect of Clearing Participants and Lending Clearing Participants during the Period.

#### A. SUMMARY OF COMPLAINTS RECEIVED BY CHO IN RESPECT OF CLEARING PARTICIPANTS

CHO did not receive any complaints in respect of Clearing Participants during the Period (2010: 0 complaints).

#### B. SUMMARY OF COMPLAINTS RECEIVED BY CHO IN RESPECT OF LENDING CLEARING PARTICIPANTS

CHO did not receive any complaints in respect of Lending Clearing Participants during the Period. (2010: 0 complaints).



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# REPORT ON SPECIAL DIVISION ACTIVITIES

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The Special Division considered twenty eight matters during the year. A summary of each matter follows this report. In all cases the Special Division was able to respond promptly.

### SMARTS SURVEILLANCE SYSTEM ALERTS

Twenty five matters considered by the Special Division related to the referral of SMARTS surveillance system alerts regarding trading in the quoted securities of NZX Ltd and the listed funds managed by its subsidiary, Smartshares Ltd.

The number of alerts reflects, in part, the volatility of the market during 2011.

The Special Division investigated the circumstances surrounding SMARTS surveillance alerts it received in June and July 2011, including media comment regarding the Clear Grain business and related announcements and comments made by NZX. The Special Division sought an explanation from NZX for the price movements and confirmation of compliance with the NZSX Listing Rules, including regarding continuous disclosure. Following its review of the material and confirmation from NZX that it had complied, and remained in compliance, with the Listing Rules, the Special Division determined that no further action on its part was necessary. The Special Division also noted that the matter was under consideration by the Financial Markets Authority.

On 3 October 2011, the Special Division received a referral from NZX Market Surveillance regarding several SMARTS alerts relating to abnormally large trading in the units of the smartTENZ Fund managed by Smartshares Ltd. The Special Division investigated the circumstances of the alerts, which arose as a result of Smartshares releasing an incorrect basket composition to the market. The Special Division referred this matter and its correspondence with Smartshares to the Financial Markets Authority.

### PERSONNEL

There have been no changes to personnel or administrative arrangements during the year.

I thank the members of the Special Division for their service.



Peter Wilson | CHAIRMAN  
20 April 2012

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## NZMDT SPECIAL DIVISION MATTERS – 1 JANUARY TO 30 DECEMBER 2011

| DATE REFERRED  | ISSUER  | MATTER                                     | SUMMARY OF MATTER  |
|--|---------|--|--|
| 5/1/11   | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 5 January 2011. The alert resulted from a price change over 10 days of \$0.17 or 11.9% from \$1.43 to \$1.60. This is more than the 10 day threshold of \$0.10 or 8%.   |
| 13/1/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 13 January 2011. The alert resulted from a price change over 20 days of \$0.17 (11.8%) from \$1.46 to \$1.63, larger than the 20 day benchmark of \$0.15 (10%).   |
| 19/1/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of SMARTS alerts for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 18 January 2011 and 19 January 2011. The alert on 18 January 2011 resulted from a price change of \$0.22 (15.2%) over 20 days from \$1.45 to \$1.67. This is more than the 20 day threshold of \$0.21 (14%). The alert on 19 January 2011 resulted from a price change of \$0.27 (18.9%) over 20 days from \$1.43 to \$1.70. This is more than the 20 day threshold of \$0.22 (16%). |
| 26/1/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 26 January 2011. The alert resulted from a price change of \$0.19 over 10 days from \$1.58 to \$1.77 an increase of 12.03%. This is more than the 10 day threshold of \$0.17 (12%).   |
| <p>The Special Division investigated the circumstances surrounding the alerts in January 2011 and sought from NZX an explanation for the price movements and confirmation of compliance with the NZSX Listing Rules, including regarding continuous disclosure. Following its review of the material and confirmations from NZX, the Special Division determined that no further action on its part was necessary.</p> |         |  |  |
| 1/2/11   | NZX Ltd | Review of SMARTS surveillance system alert | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" which resulted from 1,500,528 NZX shares being traded over the last 20 days, more than the 20 day threshold of \$1,500,000 NZX shares.</p> <p>The Special Division considered the nature of the alert and determined that no further investigation was necessary.</p>  |

| DATE REFERRED | ISSUER          | MATTER                                     | SUMMARY OF MATTER  |
|---------------|-----------------|--|--|
| 9/2/11        | Smartshares Ltd | Review of SMARTS surveillance system alert | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" which resulted from 2,330,930 units in the smartTENZ fund trading over 10 days which is more than the threshold of 2,000,000.</p> <p>The Special Division considered the nature of the alert and determined that no further investigation was necessary.</p>   |
| 9/2/11-       | NZX Ltd         |  | <p>The Special Division received correspondence from NZX regarding the determination of its CEO's remuneration for the ensuing year. NZX also provided a Listing Rule 9.2.4 certificate in respect of the CEO's remuneration. Its receipt was noted by the Division.</p>   |
| 1/3/11        | NZX Ltd         | Review of SMARTS surveillance system alert | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 1 March 2011. The alert resulted from a price change over 3 days of \$0.15 or 9.3% from \$1.62 to \$1.77. This is more than the 3 day threshold of \$0.09 or 8%.</p> <p>The Special Division considered the nature of the alert and determined that no further investigation was necessary.</p>  |
| 3/3/11        | NZX Ltd         | Review of SMARTS surveillance system alert | <p>The Special Division received a referral from NZX Market Surveillance of SMARTS alerts for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 2 March 2011 and 3 March 2011. The alert on 2 March 2011 resulted from a price change over 3 days from \$1.61 to \$1.81; this exceeded the 3 day rolling benchmark of \$0.19 (or 12%). The alert on 3 March 2011 resulted from a \$0.14 (or 8.2%) price change over 10 days from \$1.70 to \$1.84; this exceeded the 10 day rolling benchmark of \$0.12 (or 8%).</p> <p>The Special Division considered the nature of the alert and determined that no further investigation was necessary.</p> |
| 4/3/11        | Smartshares Ltd | Review of SMARTS surveillance system alert | <p>The Special Division received a referral from NZX Market Surveillance of SMARTS alerts for "Unusual Volume Inter-Day" which resulted from volume of 8,111,313 smartTENZ units trading over one day which is more than the threshold of 2,100,000.</p> <p>The Special Division considered the nature of the alert and obtained advice from the Market Participant involved. The Special Division determined that no further action was necessary.</p>  |

| DATE REFERRED | ISSUER  | MATTER  | SUMMARY OF MATTER  |
|---------------|---------|---|--|
| 10/3/11       | NZX Ltd | Review of SMARTS surveillance system alert                      | <p>The Special Division received a referral from NZX Market Surveillance of SMARTS alerts for "Inter-day Price Movement" in NZX shares on 4, 8, 9 and 10 March 2011 and an alert for "Unusual Volume Inter-Day" on 10 March 2011.</p> <p>The Special Division sought from NZX an explanation for the price movements and confirmation of compliance with the NZSX Listing Rules, including regarding continuous disclosure. Following its review of the material and confirmations from NZX, the Special Division determined that no further action on its part was necessary.</p> |
| 24/3/11       | NZX Ltd | Review of SMARTS surveillance system alert                      | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" in NZX shares on 24 March 2011.</p> <p>The Special Division considered the nature of the alert and determined that no further investigation was necessary.</p>   |
| 2/4/11        | NZX Ltd | Application for approval of Investment Statement under Rule 6.1 | The Special Division reviewed and approved the Investment Statement for the NZX Employee Share Plan - Team and Results.  |
| 5/5/11        | NZX Ltd | Review of SMARTS surveillance system alert                      | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" which resulted from 1,014,240 NZX shares trading in the last 10 days. This is more than the 10 day alert threshold of 1,000,000 NZX shares.   |
| 13/5/11       | NZX Ltd | Review of SMARTS surveillance system alert                      | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" which resulted from 1,616,296 NZX shares trading in the last 20 days. This is more than the 20 day alert threshold of 1,600,000 NZX shares.   |
| 19/5/11       | NZX Ltd | Review of SMARTS surveillance system alert                      | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" which resulted from a price change of \$0.15 over 3 days from \$2.28 to \$2.43 an increase of 6.6%. This is more than the 3 day threshold of \$0.10 (5%).   |
| 23/5/11       | NZX Ltd | Review of SMARTS surveillance system alert                      | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" on 20 May 2011 for movements above threshold across various inter-day periods.</p> <p>The Special Division considered the nature of the alerts received in May 2011 and determined that no further investigation was necessary.</p>  |

| DATE REFERRED  | ISSUER  | MATTER                                     | SUMMARY OF MATTER   |
|--|---------|--|---|
| 24/6/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" which fired after a trade of 2,000,000 on 24 June 2011 conducted on behalf of the NZX CEO.   |
| 11/7/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Price Driver Down" which resulted from trading in NZX shares on 8 July 2011. Over the day the price of NZX shares decreased 4% from \$2.50 to \$2.40.  |
| 15/7/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" for trading in NZX ordinary shares occurring on 15 July 2011. Over the previous twenty days the price of NZX shares decreased 6.53% from \$2.45 to \$2.29. This is larger than the alert threshold of 6.50% over the corresponding period. |
| 19/7/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" trading in NZX ordinary shares occurring on 19 July 2011. Over the day the price of NZX shares decreased 5.4% from \$2.22 to \$2.10. Over the previous twenty days NZX share price decreased by 11% from \$2.36 to \$2.10.                 |
| 22/7/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" trading in NZX ordinary shares occurring on 22 July 2011. Over a three day period, the NZX share price increased \$0.28 or 13.2% from \$2.12 to \$2.40. This is higher than the three day alert threshold of \$0.23 or 9.8%.               |
| <p>The Special Division investigated the circumstances surrounding the alerts received in June/July 2011, including media comment regarding the Clear Grain business and announcements and comments made by NZX. The Special Division also wrote to NZX seeking an explanation for the price movements and confirmation of compliance with the NZSX Listing Rules, including regarding continuous disclosure. Following its review of the material and confirmations from NZX, the Special Division determined that no further action on its part was necessary.</p> |         |  |   |
| 18/8/11  | NZX Ltd | Review of SMARTS surveillance system alert | The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-Day" trading in NZX ordinary shares occurring on 15 August 2011. Over a ten day period the volume of trading in NZX shares was 1,096,815, higher than the ten day alert threshold of 1,000,000.   |



| DATE REFERRED | ISSUER          | MATTER   | SUMMARY OF MATTER  |
|---------------|-----------------|--|--|
| 24/8/11       | NZX Ltd         | Review of SMARTS surveillance system alert                                       | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-Day" trading in NZX ordinary shares occurring on 24 August 2011. Over a 20 day period the volume of trading in NZX shares was 1,831,121, higher than the 20 day alert threshold of 1,800,000.</p> <p>The Special Division considered the nature of the alerts received in August 2011 and determined that no further investigation was necessary.</p>   |
| 3/09/11       | Smartshares Ltd | Application for approval of Prospectuses and Investment Statement under Rule 6.1 | <p>The Special Division reviewed and approved the amended Prospectuses and the Investment Statement for each of the ETF funds managed by Smartshares Ltd.</p>  |
| 11/10/11      | Smartshares Ltd | Review of SMARTS surveillance system alert                                       | <p>The Special Division received a referral from NZX Market Surveillance regarding several SMARTS alerts relating to abnormally large trading in the units of the smartTENZ Fund on 3 October 2011.</p> <p>The Special Division investigated the circumstances of the alerts, which arose as a result of Smartshares releasing an incorrect basket composition to the market.</p> <p>The Special Division referred this matter and its correspondence with Smartshares to the FMA.</p>   |
| 14/10/11      | NZX Ltd         | Review of SMARTS surveillance system alert                                       | <p>The Special Division received a referral from NZX Market Surveillance of SMARTS alerts for trading in NZX shares of "Unusual Volume Inter-day" on 7 October 2011 and "Unusual Price Movement Inter-day" on 11 October and 12 October 2011.</p> <p>The Special Division investigated the circumstances of the alerts, including announcements made by NZX and wrote to NZX seeking an explanation for the price movements and confirmation of compliance with the NZSX Listing Rules, particularly regarding continuous disclosure. Following its review of the material and confirmations from NZX, the Special Division determined that no further action on its part was necessary.</p> |
| 29/12/11      | NZX Ltd         | Review of SMARTS surveillance system alert                                       | <p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Marking the Close" which resulted from a Market Participant's amendment to an existing ask order on 28 December 2011.</p> <p>The Special Division investigated the circumstances of the alert, including submissions from the Market Participant involved. The Special Division determined that no further action was necessary.</p>   |

# DIRECTORY

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