

ANNUAL REPORT 2015

NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL



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CHAIRMAN'S REPORT

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FUNCTION OF NZ MARKETS DISCIPLINARY TRIBUNAL

The NZ Markets Disciplinary Tribunal (*the Tribunal*) is an independent regulatory body established under the NZ Markets Disciplinary Tribunal Rules (*Tribunal Rules*). The Tribunal serves in an adjudicative role. It is not an inspectorate of market conduct. That role is performed by NZX Regulation.

The Tribunal's principal role is to determine whether there has been a breach of the NZX Conduct Rules¹, the NZX Derivatives Market Rules, the Clearing and Settlement Rules of New Zealand Clearing Limited (*CHO*) and the Fonterra Shareholders' Market (*FSM*) Rules (together the *Market Rules*) in matters referred to it by NZX Limited (*NZX*).

The number of referrals from NZX to the Tribunal during 2015 reduced to 13 (from 18 in 2014) and there were no oral hearings (there were two in 2014). Five referrals involved issuers and eight involved market participants. Three of the referrals involved breaches of the Clearing and Settlement Rules (the first such referrals to the Tribunal under the Rules).

The Tribunal also has authority under the Tribunal Rules to:

- (a) review decisions made by NZX, CHO or New Zealand Depository Limited, as the context requires, in respect of a waiver or ruling application made under the Market 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.

The Tribunal did not receive any requests for such a review during 2015.

PENALTIES

In the event that the Tribunal finds a breach of the Market Rules, it must assess the appropriate penalty. As noted last year, a significant review of the penalties guidelines was undertaken by NZX Regulation and the Tribunal and, after consultation with the market, this led to the adoption of new Tribunal Rules and Procedures with effect from 29 February 2016.

The new penalties guidelines provide a simpler penalties regime with three penalty bands – minor breaches, moderate breaches and serious breaches. There is also provision for a new Infringement Notice regime whereby NZX Regulation is able to issue fines for minor breaches with respondents having the right to appeal to the Tribunal.

¹ The NZX Conduct Rules comprise 1) the NZX Participant Rules, which govern the conduct of market participants in NZX's markets – the Main Board, Debt Market, NZAX Market and the NXT Market; and 2) the NZX Listing Rules governing the conduct of issuers listed on NZX's markets.

RELATIONSHIP WITH NZX

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

As I noted last year, the Tribunal's working relationship with NZX is good. Regular meetings continue to take place between the Chair and Executive Counsel of the Tribunal with NZX Regulation and the Head of Market Supervision both on policy matters and operational issues.

During 2015, the Executive Counsel and I also met with the FMA board and discussed the Tribunal's role and our relationship with NZX.

MEMBERS

The Tribunal is fortunate to have a stable membership with 24 experienced members comprising 8 public appointees, 6 legal appointees, 7 representing issuers and 3 market participants, 2 clearing participants and 1 derivatives market appointee. Two members cover more than one category of appointment. During the year, there were no retirements or new appointees, with 9 members being reappointed by NZX.

My thanks to Shane Edmond as Deputy Chair of the Tribunal and particular thanks to Rachel Batters as Executive Counsel for her ongoing efficiency and dedication, and to Stephen Layburn as Assistant Executive Counsel. Thanks also to the members of the Tribunal for their assistance and involvement throughout the year.

SPECIAL DIVISION

Tribunal Rule 3.2 establishes a Special Division which is tasked with administering the NZX Conduct Rules as they apply to NZX as a listed issuer and any of its Related Entities. I would again like to acknowledge the contributions of Andrew Beck as Chair of the Special Division and the other members of the Special Division as their work load continues to expand.

RESOURCING

As required by the Tribunal Rules, the Tribunal confirms that it believes it has adequate resources available to it to undertake its role under the Tribunal Rules, and that NZX has continued to provide all the assistance which the Tribunal requires to undertake its role.

DISCIPLINARY FUND

The NZX Discipline Fund accounts indicate that there is an accumulated surplus of \$512,540 as at 31 December 2015, with bad debt provisions of \$8,350. NZX and the Tribunal continue to discuss how best to utilise these funds to provide issuers and market participants with appropriate market education opportunities.



David Flacks | CHAIRMAN
27 April 2016



MEMBERS

MEMBERS

MEMBERS OF THE TRIBUNAL AS AT 31 DECEMBER 2015

LEGAL

David Flacks (Chairman), Andrew Beck, David Boldt, Mark Freeman, Don Holborow and Rachael Reed.

LISTED ISSUER

Jo Appleyard, Kevin Baker, Trevor Janes, James Ogden, Alison Paterson, Susan Peterson and Christopher Swasbrook.

MARKET PARTICIPANTS

Shane Edmond (Deputy Chairman), Geoff Brown and Nick Hegan.

MEMBERS OF THE PUBLIC

Richard Bodman*, Danny Chan, Richard Keys, David Kreider, Richard Leggat, Noeline Munro, Mariëtte van Ryn and Leonard Ward.

CLEARING PARTICIPANTS

Richard Bodman and Geoff Brown

DERIVATIVES PARTICIPANTS

Richard Bodman

MEMBERS OF THE SPECIAL DIVISION AS AT 31 DECEMBER 2015

Andrew Beck (Chairman), Kevin Baker, Shane Edmond and James Ogden.

Rachel Batters and Stephen Layburn act as Executive Counsel to the Tribunal.

* Richard Bodman's membership classification changed during 2015 from Market Participant to Public Appointee.



STATEMENTS OF CASE, FINDINGS AND PENALTIES

STATEMENTS OF CASE, FINDINGS AND PENALTIES

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS REQUIRED BY TRIBUNAL 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...”
-

NZMDT 1/2015 NZX V RIS GROUP LIMITED (RIS)

Division: Mark Freeman (division chair), Richard Leggat and James Ogden

Statement of Case served: 25 February 2015

Date of Determination: 1 April 2015

Rule Breached: NZAX Listing Rule 10.5.1

FACTS:

NZAX Listing Rule 10.5.1 requires each NZAX Listed Issuer to deliver to NZX, and make available to each Quoted Security holder, an annual report within four months after the end of its financial year.

RIS' financial year end is 30 June. Accordingly, RIS' 2014 annual report was due to be provided to NZX and its shareholders by 31 October 2014. RIS did not file its annual report until 24 November 2014.

TRIBUNAL FINDINGS:

The Tribunal found that RIS had breached NZAX Listing Rule 10.5.1.

The Tribunal continues to stress the importance of Issuers meeting the periodic reporting requirements in the Rules. These Rules are fundamental to maintaining market integrity and investor confidence.

The Tribunal noted that it was greatly concerned that this was the third such breach by RIS. Listing is a privilege and it is incumbent on all Issuers to comply with the Rules if they want to remain listed.

The Tribunal takes any breach of the periodic reporting requirements very seriously and has previously advised the market that it will continue to increase the penalties it imposes for such breaches. The Tribunal has previously imposed a \$50,000 penalty on Pyne Gould Corporation Limited for filing its annual report approximately five weeks late and a \$100,000 penalty on Diligent Corporation for its breach of three successive reporting requirements over a significant period.

The Tribunal also noted that the ability of an Issuer to pay any penalty imposed should they breach the Rules, is not of itself a reason to discount the amount which the Tribunal would otherwise consider appropriate having regard to the seriousness of the breach and the conduct of the Issuer.

PENALTY:

RIS was ordered to pay \$80,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

RIS was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

The Tribunal released its determination and censure of RIS - nzx.com/NZMDT/tribunal-decisions.

NZMDT 2/2015 NZX V PYNE GOULD CORPORATION LIMITED (PGC)

Division: Don Holborow (division chair), Kevin Baker and Richard Keys

Statement of Case served: 6 March 2015

Date of Determination: 2 April 2015

Rule Breached: NZX Main Board Listing Rules 3.3.1(c) and 3.6.2(c)

FACTS:

On 3 November 2014, NZX became aware that PGC had failed to comply with its obligations under NZX Main Board Listing Rule 3.3.1(c) by failing to ensure that PGC had at least two Independent Directors and Rule 3.6.2(c) by not having a majority of Independent Directors on its Audit Committee.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and PGC under which PGC accepted breaching Rules 3.3.1(c) and 3.6.2(c). Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

In approving the Settlement Agreement, the Tribunal considered certain mitigating factors, including that the former director's resignation was sudden and unexpected and that the breach only continued for five business days during which time no Board or Audit Committee meetings were planned or held.

PENALTY:

PGC was publicly censured.

COSTS:

PGC was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of PGC - nzx.com/NZMDT/tribunal-decisions.

NZMDT 3/2015 NZX V FIRST NZ CAPITAL SECURITIES LIMITED (FIRST NZ)

Division: Andrew Beck (division chair), Shane Edmond and Christopher Swasbrook

Statement of Case served: 27 March 2015

Date of Determination: 22 April 2015

Rule Breached: NZX Participant Rules 8.8.1 and 10.15.2

FACTS:

On 28 July 2014, First NZ entered an order into the trading system in error which resulted in a market impact on the securities of an Issuer. First NZ failed to notify NZX of the error and sought to restore the market itself.

NZX Participant Rule 10.15.2 requires that if a Trading Participant becomes aware that an Error has occurred in respect of a Trade and the Error may have a Market Impact, then the Trading Participant must immediately notify NZX. Under Rule 8.8.1, a market participant must ensure its conduct promotes and helps maintain an orderly market, including at all times observing Good Broking Practice.

TRIBUNAL FINDINGS:

The Tribunal found that First NZ had breached NZX Participant Rules 8.8.1 and 10.15.2.

The Tribunal noted that the requirement to notify NZX immediately of an error where a market impact may have occurred is critical for NZX to ensure that a false market does not exist in relation to any security and that trading is conducted in a fair, orderly and transparent manner. Immediate notice of an error allows NZX to take prompt remedial action, if necessary, to minimise any impact on market participants and their clients.

The Tribunal also noted that a decision to take corrective action in relation to a trading error rests solely with NZX. A market participant taking matters into its own hands has the potential to impact on market integrity and bring both the market and NZX into disrepute.

The Tribunal considered as mitigating factors in this case that the error was unintentional and that no clients were adversely affected. The Tribunal also noted First NZ's advice that it would communicate promptly with NZX if a future error occurred before acting.

PENALTY:

First NZ was ordered to pay \$15,000 to the NZX Discipline Fund and was publicly censured.

COSTS:

First NZ was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

The Tribunal released its determination and censure of First NZ - nzx.com/NZMDT/tribunal-decisions.

NZMDT 4/2015 NZX V MARKET PARTICIPANT A

Division: Nick Hegan (division chair), Noeline Munro and Alison Paterson

Statement of Case served: 22 April 2015

Date of Determination: 4 May 2015

Rule Breached: NZX Participant Rules 9.10.3 and 15.17.1

FACTS:

On 3 March 2015, Market Participant A self-reported the breach of Rules 9.10.3 and 15.17.1 to NZX Regulation, advising NZXR that due to a process failure by its third party service provider, it had failed to print 299 contract notes affecting 166 clients. The fault went undetected for 7 business days.

Under NZX Participant Rule 15.17.1, a Client Advising Participant must despatch a written contract note to a client no later than the day following the (a) completion of that client's instruction if an Institutional Client; or (b) execution of part or all of that client's instruction if a Retail Client, unless certain exceptions apply. Under NZX Participant Rule 9.10.3, for all Hold Mail Accounts, contract notes are required to be provided to the NZX Advisor responsible for the account and the Compliance Manager.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement between NZX and Market Participant A under which Market Participant A accepted breaching Rules 9.10.3 and 15.17.1 and agreed to pay the penalty set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

In approving the settlement agreement, the Tribunal considered certain mitigating factors, including that Market Participant A had promptly self-reported the breach, that there was no evidence to suggest that the breach had a detrimental impact on the affected clients and that Market Participant A had implemented additional control measures.

PENALTY:

Market Participant A was ordered to pay \$3,500 to the NZX Discipline Fund.

COSTS:

Market Participant A was required to pay the costs of the Tribunal and to contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant A, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal has published guidelines to explain its policy on the naming of respondents (*Naming Policy*). The Tribunal noted that in developing the Naming Policy, it took into account the need to ensure that its process was transparent and that parties brought before it were named. However, the Tribunal also took into account the punitive effect of naming parties, regardless of the seriousness of their breach. The Naming Policy seeks to strike a balance between the public interest in naming respondents and the detriment to the respondent from being named. It states that it is not likely that the name of a respondent will be published when the penalty for the respondent falls within penalty bands 1, 2 or 3 of the Tribunal Procedures and where the breach is of minor importance and not systemic.

The Tribunal considered that a private reprimand was appropriate in this case. The Tribunal noted that the breach fell within penalty band 3, arose from an unintended process failure and was not systemic, there was no evidence that it had an adverse impact on clients and not naming Market Participant A was consistent with the five previous Tribunal decisions for a similar breach.

NZMDT 5/2015 NZX V CLEARING PARTICIPANT A

Division: David Flacks (division chair), Geoff Brown and Trevor Janes

Statement of Case served: 29 April 2015

Date of Determination: 18 May 2015

Rule Breached: Clearing and Settlement Rule 4.2.3

FACTS:

On 26 January 2015 at 2.55 pm (the Settlement Closing for the 3.00 pm Settlement Time), Clearing Participant A failed to hold sufficient clear and available funds in its settlement account to settle its net open positions. As a result, New Zealand Clearing Limited (CHO) halted the 3.00 pm settlement batch. Once advised by CHO of the shortfall in its settlement account, Clearing Participant A deposited further funds allowing the settlement batch to be successfully completed at 3.13 pm.

Clearing and Settlement Rule 4.2.3 requires that before each Settlement Closing a clearing participant must ensure that its settlement account holds sufficient clear and available funds required for settlement of its Net Open Positions at the relevant settlement time.

TRIBUNAL FINDINGS:

The Tribunal found Clearing Participant A in breach of Clearing and Settlement Rule 4.2.3.

The Tribunal noted that ensuring the settlement process occurs on time, and in an orderly manner, is fundamental to the integrity of the clearing and settlement system operated by CHO. The Tribunal considers a breach of the Rules regarding settlement to be very serious.

The Tribunal also noted its concern that Clearing Participant A did not appear to have had adequate systems and procedures in place to prevent such a breach. In particular, Clearing Participant A was not aware of the shortfall in its settlement account until it was contacted by CHO.

The Tribunal considered as mitigating factors in this case that the breach involved an unintended 13 minute time delay to the relevant settlement batch, that Clearing Participant A had sufficient funds available so that when notified of the shortfall it was able to rectify the problem immediately, that the breach did not result in settlement failure and submissions from NZXR and Clearing Participant A that the delay did not have a detrimental effect on clients.

PENALTY:

Clearing Participant A was ordered to pay \$15,000 to the NZX Discipline Fund.

COSTS:

Clearing Participant A was required to pay the costs of the Tribunal and NZX.

PUBLICATION:

Clearing Participant A sought not to be named by the Tribunal. In accordance with the Naming Policy, it submitted that there had been no public harm as a result of its breach and that public confidence in the market, NZX and CHO had not been eroded. These submissions were not contested by NZX.

The Tribunal noted that having taken into account the mitigating factors outlined above, it considered that a private reprimand in this instance was appropriate.

NZMDT 6/2015 NZX V CRAIGS INVESTMENT PARTNERS LIMITED (CRAIGS) AND A DEALER

Division: Andrew Beck (division chair), Nick Hegan and Rachael Reed

Statement of Case served: 8 May 2015

Date of Determination: 29 May 2015

Rule Breached: NZX Participant Rule 8.1.1(c) and 15.5

FACTS:

During the course of carrying out its routine surveillance activity, NZX determined that Craigs and its Dealer had failed to comply with NZX Participant Rule 15.5 by not ensuring that all retail client orders were entered into NZX's trading system with a Common Shareholder Number (CSN), and accordingly Rule 8.1.1(c) by failing to at all times comply fully with the Rules and observe Good Broking Practice.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX, Craigs and the Dealer under which they accepted breaching NZX Participant Rule 15.5 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal noted that the provisions requiring the accurate reporting of trading data are of critical importance because they allow NZX to carry out its statutory obligations, including its monitoring obligations in respect of potential market misconduct such as insider dealing and market manipulation. A breach of these Participant Rules can bring NZX and the market into disrepute.

The Tribunal also noted that Craigs and its Dealer had an obligation to be familiar with and meet these obligations under the Rules.

The Tribunal was very concerned that despite being directed by NZX in 2013 to address its compliance in this area, the breaches of Participant Rule 15.5 by Craigs continued until September 2014. The Tribunal considered that Craigs had lacked the internal controls expected of a market participant to adequately oversee its compliance in this area.

PENALTY:

Craigs was ordered to pay \$30,000 to the NZX Discipline Fund.

COSTS:

Craigs was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of Craigs - nzx.com/NZMDT/tribunal-decisions.

Under the terms of the settlement, the parties agreed that the Tribunal would privately reprimand the Dealer. The Tribunal agreed that a private reprimand was appropriate given that Craigs would be publicly censured, that the Dealer would pay a significant penalty, that NZX considered the proposed settlement to be adequate and maintained the integrity of its markets and that the Dealer had not had the opportunity to make submissions regarding whether or not he should be publicly censured.

NZMDT 7/2015 NZX V MARKET PARTICIPANT B

Division: Don Holborow (division chair), Richard Bodman and David Kreider

Statement of Case served: 5 May 2015

Date of Determination: 20 May 2015

Rule Breached: NZX Participant Rule 3.13(c)

FACTS:

During the course of carrying out its routine 2015 on-site inspection, NZX identified instances in which employees of Market Participant B had traded securities in a manner inconsistent with the proposed trades that had been approved by its compliance department (that is, trading in different volumes and buying when they had obtained approval to sell, or vice versa). In each instance, the employee advised Market Participant B that they had made an unintended error when entering the trade.

NZX Participant Rule 10.5.1 requires market participant employees who wish to deal in any Quoted Securities on their own personal account to obtain written authority from the participant's Compliance Manager, its Managing Principal or Responsible Executive, or a delegate of those individuals, for each individual order to buy or sell any security. NZX Participant Rule 3.13(c) requires a market participant to ensure that its employees comply fully with all applicable Rules, any directions given from time to time by NZX, and at all times observe Good Broking Practice.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant B under which it accepted breaching NZX Participant Rule 3.13(c) and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal noted its concern that, despite a number of similar breaches having been identified during NZX's 2014 on-site inspection (which were not referred to the Tribunal), breaches of Rule 10.5.1 by Market Participant B's employees continued to occur.

However, the Tribunal noted Market Participant B's intention to implement new control measures to prevent future breaches and to instigate a three month stand down period for employees who do breach the requirements. The Tribunal also noted the assurances given by Market Participant B to NZXR that no loss or harm was suffered by any client, that all of the breaches by its employees were inadvertent oversights and that no other Participant Rules were breached.

PENALTY:

Market Participant B was ordered to pay \$3,500 to the NZX Discipline Fund.

COSTS:

Market Participant B was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant B, as permitted under Tribunal Rule 11.5.1(a).

The Tribunal noted that while the breaches by employees in this case indicated a systemic failure, having considered the submissions from NZX that it considered the proposed settlement to be adequate and maintained the integrity of NZX's markets and the assurances given to NZXR, the Tribunal agreed to privately reprimand Market Participant B.

NZMDT 8/2015 NZX V DILIGENT CORPORATION (DIL)

Division: Don Holborow (division chair), Susan Peterson and Mariëtte van Ryn

Statement of Case served: 5 June 2015

Date of Determination: 26 June 2015

Rule Breached: NZX Main Board Listing Rule 3.3.1(b)

FACTS:

NZX Main Board Listing Rule 3.3.1(b) requires Issuers to have a minimum of two New Zealand resident directors at all times. From 9 April 2015 to 29 April 2015, DIL had only one New Zealand resident director.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and DIL under which DIL accepted breaching NZX Main Board Rule 3.3.1(b). Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal considers breaches of the corporate governance provisions of the Rules to be a serious matter. The corporate governance provisions are important for the integrity of the market, and give investors confidence that directors have been appointed to represent shareholder interests.

However, the Tribunal noted (as it has done in previous cases) that directors, for various reasons, may have to resign without warning. The Tribunal recognises that the appointment process for directors must be robust and that Boards need sufficient time to identify and select suitable candidates.

The Tribunal considered as mitigating factors in this case that DIL engaged with NZX prior to the breach, DIL self-reported the breach, the breach was rectified promptly, NZXR was not aware of any investors being adversely affected and that the former director's resignation was arguably sudden.

PENALTY:

DIL was publicly censured.

COSTS:

DIL was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

The Tribunal released its censure of DIL - nzx.com/NZMDT/tribunal-decisions.

NZMDT 9/2015 NZX V CLEARING PARTICIPANT B

Division: Mark Freeman (division chair), Richard Bodman and Danny Chan

Statement of Case served: 6 August 2015

Date of Determination: 25 August 2015

Rule Breached: Clearing and Settlement Rule 4.2.3

FACTS:

Clearing and Settlement Rule 4.2.3 requires that before each Settlement Closing a Clearing Participant must ensure that its settlement accounts hold sufficient clear and available funds required for settlement of their Net Open Positions for that Settlement Time. The settlement time in this case was 10.00 am.

Clearing Participant B breached Rule 4.2.3 on two occasions, on 30 March 2015 and 3 July 2015, by failing to hold sufficient cash in its settlement account to meet its settlement obligations at the relevant settlement time. The shortfalls were subsequently remedied by Clearing Participant B by the transfer of additional funds.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Clearing Participant B under which Clearing Participant B accepted breaching Clearing and Settlement Rule 4.2.3 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal was concerned in this case that, in respect of the first breach, Clearing Participant B did not advise CHO of the impending shortfall when it first became aware of the issue and that CHO was unable to contact Clearing Participant B for some 90 minutes after the settlement failure occurred. The Tribunal was also concerned that in both instances of breach, Clearing Participant B did not appear to have adequate systems and procedures in place to ensure sufficient clear funds were available for settlement at the relevant settlement time.

However, the Tribunal accepted the submissions from NZX that there was no evidence that the breaches had a detrimental effect on Clearing Participant B's clients or the public, or that public confidence in the market, NZX or CHO had been eroded.

PENALTY:

Clearing Participant B was ordered to pay \$27,000 to the NZX Discipline Fund.

COSTS:

Clearing Participant B was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Clearing Participant B, as permitted under Tribunal Rule 11.5.1(a).

Having taken into account the submissions from NZX, the Tribunal agreed that a private reprimand in this instance was appropriate. NZX submitted that it had seen no evidence to suggest that the breaches by Clearing Participant B had caused any harm to the public or that public confidence in the market, NZX or CHO had been eroded by the breaches. The Tribunal also noted that Clearing Participant B had not been referred to it for previous breaches of the Rules.

NZMDT 10/2015 NZX V ISSUER A

Division: Jo Appleyard (division chair), David Boldt and Alison Paterson

Statement of Case served: 11 September 2015

Date of Determination: 7 October 2015

Rule Breached: NZX Main Board Listing Rule 7.12.1

FACTS:

NZX Main Board Listing Rule 7.12.1 requires an Issuer to give NZX details of the issue of Quoted Securities for release to the market “forthwith” after the issue.

Due to an administrative error, Issuer A did not release an allotment notice to the market until 53 business days after the issue of ordinary shares under its Dividend Reinvestment Plan.

TRIBUNAL FINDINGS:

The Tribunal found Issuer A in breach of NZX Main Board Listing Rule 7.12.1.

PENALTY:

Issuer A was ordered to pay \$5,000 to the NZX Discipline Fund.

COSTS:

Issuer A was required to pay the costs of the Tribunal and of NZX.

PUBLICATION:

NZX submitted that a private reprimand was appropriate in this case.

The Tribunal agreed, noting that it had seen no evidence to suggest that the breach by Issuer A had caused public harm, that Issuer A had not been referred to the Tribunal previously and that the breach in this instance fell within penalty band 2.

NZMDT 11/2015 NZX V CLEARING PARTICIPANT C

Division: Richard Bodman (division chair), Richard Keys and Susan Peterson

Statement of Case served: 18 September 2015

Date of Determination: 29 September 2015

Rule Breached: Clearing and Settlement Rule 4.2.3

FACTS:

Clearing and Settlement Rule 4.2.3 requires that before each Settlement Closing a Clearing Participant must ensure that its Settlement Accounts hold sufficient clear and available funds required for settlement of their Net Open Positions for that settlement time.

Clearing Participant C breached Clearing and Settlement Rule 4.2.3 because at the relevant settlement time on 10 August 2015, it failed to hold sufficient cash in its Settlement Account to meet its settlement obligations. The shortfall was remedied by Clearing Participant C 40 minutes after the settlement time.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Clearing Participant C under which Clearing Participant C accepted breaching Clearing and Settlement Rule 4.2.3 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal noted that any breach of the Rules regarding settlement is serious. Ensuring that the settlement process occurs on time, and in an orderly manner, is fundamental to the integrity of the clearing and settlement system operated by CHO.

However, the Tribunal noted that the shortfall at the relevant settlement time was the result of an operational error rather than a matter of liquidity and that Clearing Participant C sought to rectify the matter promptly.

PENALTY:

Clearing Participant C was ordered to pay \$18,000 to the NZX Discipline Fund.

COSTS:

Clearing Participant C was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Clearing Participant C, as permitted under Tribunal Rule 11.5.1(a).

Having taken into account the submissions from NZX, the Tribunal agreed that a private reprimand in this instance was appropriate. NZX submitted that it had seen no evidence to suggest that the breaches by Clearing Participant C had caused any harm to the public or that public confidence in the market, NZX or CHO had been eroded by the breaches. The Tribunal also noted that Clearing Participant C had not been referred to it for previous breaches of the Rules.

NZMDT 12/2015 NZX V ISSUER B

Division: James Ogden (division chair), Richard Leggat and Rachael Reed

Statement of Case served: 13 November 2015

Date of Determination: 30 November 2015

Rule Breached: NZX Main Board Listing Rule 7.12.1

FACTS:

NZX Main Board Listing Rule 7.12.1 requires an Issuer to give NZX details of the issue of Securities Convertible into Equity Securities for release to the market “forthwith” after the issue.

Issuer B failed to release an allotment notice to NZX forthwith in respect of 110 allotments of options on 43 separate dates since 1 January 2014 (when Rule 7.12.1 was amended to specifically extend to Convertible Securities).

TRIBUNAL FINDINGS:

The Tribunal found Issuer B in breach of NZX Main Board Listing Rule 7.12.1.

PENALTY:

Issuer B was ordered to pay \$8,000 to the NZX Discipline Fund.

COSTS:

Issuer B was required to pay the costs of the Tribunal and of NZX.

PUBLICATION:

NZX submitted that a private reprimand was appropriate in this case.

The Tribunal agreed, noting that it had seen no evidence to suggest that the breach by Issuer B had caused public harm, that Issuer B had not been referred to the Tribunal previously and that the breach in this instance fell within penalty band 2.

RECOMMENDATION TO NZX:

The Tribunal noted in its decision that NZX had recently reminded all Issuers of the need to comply with Rule 7.12.1 in its October 2015 Issuer Up-date. The Tribunal suggested that, following this case, NZX may also like to remind Issuers that the obligation under Rule 7.12.1 to notify the market extends to cover the issue or exercise of Securities which may convert into Equity Securities. In addition, as noted in previous decisions of the Tribunal, NZX may also like to give Issuers guidance as to what it considers the word "forthwith" in Rule 7.12.1 to require. The Tribunal noted NZXR's advice to Issuer B that "forthwith" has the same meaning as "immediately" and accordingly, notices under Rule 7.12.1 are expected to be received within one business day.

NZMDT 13/2015 NZX V MARKET PARTICIPANT C

Division: David Flacks (division chair), Shane Edmond and Geoff Brown

Statement of Case served: 2 December 2015

Date of Determination: 22 December 2015

Rule Breached: NZX Participant Rule 10.12.4

FACTS:

NZX Participant Rule 10.12.4 prohibits the Short Selling of Securities if NZX has received a takeover notice, as defined in the Takeovers Code, in relation to that Security, until the relevant offer has lapsed or been withdrawn.

During a three month period, Market Participant C undertook Short Selling in the ordinary shares of an Issuer while it was under a takeover notice. 88 Short Sales were identified during this period, 75 of which occurred after NZX Surveillance (NZXS) advised a Dealer of Market Participant C that Short Selling while an Issuer is under a takeover notice is not permitted.

TRIBUNAL FINDINGS:

The Tribunal approved a settlement agreement between NZX and Market Participant C under which Market Participant C accepted breaching Rule 10.12.4 and agreed to pay a penalty as set out below. Under section 10 of the Tribunal Rules, the settlement agreement became the determination of the Tribunal.

The Tribunal noted that it was concerned that the breaches continued to occur after advice to Market Participant C's Dealer from NZXS that Short Selling is prohibited while a takeover notice is in place. The Tribunal also noted that it is incumbent on market participants to understand and comply with the Rules. It therefore did not consider the "incorrect interpretation" of Rule 10.12.4 by Market Participant C to be a mitigating factor. However, given the nominal value derived from the trading, the Tribunal was inclined to agree with NZX's view that Market Participant C's conduct fell within penalty band 3 with the breaches seemingly due to poor controls.

PENALTY:

Market Participant C was ordered to pay \$8,500 to the NZX Discipline Fund.

COSTS:

Market Participant C was required to pay the costs of the Tribunal and contribute to the costs of NZX.

PUBLICATION:

Under the terms of the settlement, the parties had agreed that the Tribunal privately reprimand Market Participant C, as permitted under Tribunal Rule 11.5.1(a).

NZX submitted that despite the continuation of the breaches after guidance from NZXS and the number of breaches in total, it had seen no evidence to suggest that Market Participant C's breach caused any harm to their clients nor any evidence that public confidence in the market or NZX had been eroded by the breach. NZX also noted that this was Market Participant C's first referral to the Tribunal and that it considered that the breach fell within penalty band 3. Given these factors, the Tribunal agreed that a private reprimand was appropriate.



NZX REGULATION ANNUAL REPORT TO NZ MARKETS DISCIPLINARY TRIBUNAL

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.”
-



NZX Regulation

Annual Report to NZ Markets Disciplinary Tribunal for the period 1 January 2015 to 31 December 2015

19 February 2016



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1. Introduction

NZX Regulation (**NZXR**) performs the regulatory functions of NZX Limited (**NZX**) and has prepared this report for the NZ Markets Disciplinary Tribunal (**Tribunal**).

This report covers the calendar year 1 January 2015 to 31 December 2015.

This report contains:

- a. An overview of NZX's approach to enforcement;
- b. Information about breaches identified by NZXR of the NZX Market Rules (including the Main Board/Debt Market Listing Rules, the NXT Market Rules, the NZAX Listing Rules and the Fonterra Co-operative Group Limited FSM Rules (together the **Listing Rules**), the Participant Rules, and the Derivatives Market Rules);
- c. Information about complaints received by NZX in respect of Market Participants (other than Clearing Participants, Lending Clearing Participants or Depository Participants), and Issuers; and
- d. The use of the proceeds of the Discipline Fund.

This report does not include referrals made by NZX to the Financial Markets Authority (**FMA**) in respect of suspected breaches of legislation NZX detects while carrying out its regulation and surveillance duties (for example, referrals made to FMA in respect of suspected insider trading or market manipulation).

2. NZXR's Enforcement Practices

NZXR investigates suspected breaches of the market rules and takes appropriate enforcement action in accordance with NZX's Enforcement Policy. A copy of NZX's Enforcement Policy is available for download at:

<https://nzx.com/files/static/cms-documents/NZXEnforcementPolicy.pdf>

Matters for investigation are brought to NZXR's attention in a number of ways; including through NZX's own monitoring and surveillance work, on-site inspections, capital adequacy reviews and targeted investigations, as well as from external parties, such as enquiries and complaints from members of the public, and referrals from other regulators.

NZXR does not investigate matters concerning breaches of law, such as insider trading. NZXR refers these matters to the appropriate agency, for example, FMA.

NZXR will take immediate action if, in NZXR's opinion, immediate action is required for the operation of fair, orderly and transparent markets, or it is required in the best interests of the markets to take such action.

NZXR does not commence an enquiry in respect of every matter brought to its attention. NZXR will consider, amongst other matters, its enforcement priorities, the severity and extent of the alleged breach, the impact of the alleged breach including the risk and extent of possible loss, the nature and quality of available evidence, relevant precedent, whether another regulator has jurisdiction in respect of the matter, and the regulatory outcome that may be achieved if enforcement action was taken.

NZXR's enforcement priorities include:

- Matters that have a significant market impact – for example, loss to investors, or a disruption to trading;
- Suspected breaches of the continuous disclosure and periodic reporting rules;
- Corporate governance issues; and
- Responding to market developments, as required.

Once NZXR commences an enquiry it will seek information from the Issuer or Market Participant concerned to establish if there is evidence of a breach and to gain an understanding of the surrounding circumstances.

NZXR will take into account a number of factors when considering what enforcement action to take in respect of an identified breach of the market rules. While not an exhaustive list, the factors NZXR may have regard to include:

- The impact of the breach;
- The market rule that has been breached;
- The person or entity that has breached the rule; and

- A variety of other considerations, including what effect taking enforcement action would have on the market, the regulatory outcome NZXR seeks to achieve by taking enforcement action and whether other remedial action is possible or has been taken.

There are a variety of enforcement tools available to NZXR. The tool NZXR will use in respect of a particular breach depends on the circumstances of the breach and the regulatory outcome NZXR seeks to achieve by taking enforcement action. The range of enforcement tools utilised by NZXR are:

- Issue an ‘obligations’ letter noting the breach and requiring the Issuer or Market Participant to review its policies and procedures regarding its compliance framework and practice;
- Undertake practical engagement with the Issuer regarding best practices;
- Halt, or suspend the quotation of all or any of an Issuer’s securities;
- Increase the surveillance or monitoring of a particular Issuer or Market Participant;
- Impose additional requirements on an Issuer;
- Refer the matter to the Tribunal;
- Cancel an Issuer’s listing;
- Revoke an individual’s designation as an NZX Advisor; and/or
- Suspend or revoke a firm’s designation as a Market Participant.

A summary of the enforcement action NZXR took in 2015 is provided in the table below.

Table One: Overview of key NZXR enforcement activity in 2015

Enforcement activity	Market Participants	Derivatives Market Participants	Issuers
Complaints considered	4	0	24
Investigations commenced	69	2	135
Investigations completed	70	2	132
Matters where breaches were identified	48	1	75
Matters where breaches were referred to the Tribunal	5 ¹	0	5
Breaches resolved (including obligations letters)	43	1	59

¹ Includes 2 breaches that were pending resolution as at 31 December 2014, but were referred to the Tribunal and determined in 2015.

Commentary on Table One:

The year ending 31 December 2015 saw NZXR complete 204 investigations into possible breaches of NZX's rules. This included the completion of a number of matters that were brought forward from 2014. These investigations resulted in the identification of 124 matters involving a breach. This represents an approximate 12% increase in breaches identified compared to 2014.

Of the 124 matters involving breaches of NZX's rules identified in 2015, NZXR referred 10 matters to the Tribunal, compared with 18 referred in the 2014 calendar year and 9 in 2013. These referrals represent approximately 8% of the breaches identified by NZXR in the calendar year. In addition, 4 breaches of the Clearing and Settlement Rules were referred to the Tribunal.²

During the year NZXR also carried out the following initiatives which have a bearing on NZXR's enforcement function:

- NZX's Policy team commenced a review of the penalties available under the NZ Markets Disciplinary Tribunal Rules (**Rules**) and Procedures, as a result of which the Rules will be amended with effect from 29 February 2016. NZXR contributed to the consultation process and has subsequently reviewed the Enforcement Policy and various internal documents, and introduced new procedures, to reflect the changes to the Rules and Procedures (most particularly, the introduction of the infringement notice regime and changes to the penalty bands).
- NZXR significantly increased the extent of engagement it had with Issuers and Market Participants in respect of best practice issues, including facilitating Issuers to think proactively about their own compliance measures so as to prevent breaches from arising, and increasing NZXR's awareness of the types of issues that present Issuers with problems from a compliance perspective.
- In addition, NZXR and FMA have established a trading conduct working group to provide guidance and detail regulatory expectations to the securities industry on trading practices and conduct. The working group's objective is to define the scope of acceptable trading conduct and highlight practices that NZXR, and the FMA, consider are, or may be, indicative of potential market manipulation.
- Regulation workshop sessions were introduced at the annual NZX Issuer Forum in October 2015, and in addition NZXR commenced a series of Issuer workshops and one-on-one meetings with Issuers in main centres.
- Developed engagement protocols to support the Memorandum of Understanding with the FMA, and engaged with FMA on potential enforcement matters in accordance with those Protocols.
- Developed and refined the scope of the information that is provided to the Regulatory Governance Committee (which is responsible for monitoring the quality of regulatory

² Two breaches were combined into one NZMDT referral (NZMDT 09/15).

decision-making, including in respect of enforcement matters) as part of the committee's review function.

Looking forward to 2016, the infringement notice regime, to be introduced pursuant to the amended Rules, is anticipated to be an efficient regulatory tool which will reduce costs for both NZXR and respondents in the event of a minor breach, and as such will serve as an appropriate enforcement mechanism in respect of a wider range of breaches.

Engagement with Issuers and Market Participants will be further enhanced during 2016. NZXR will continue to target key risks and structure engagement in such a way that Issuers receive the type of information and support from NZXR that is most relevant to them in their efforts to be compliant with the NZX Market Rules, and in their own engagement with existing and potential security holders.

The work of the trading conduct working group will continue in 2016 and will result in joint guidance from NZXR and the FMA, clarifying the scope of permissible trading conduct.



3. NZX Market Participants and Derivatives Market Participants

A. Summary of breaches of the Participant Rules identified by NZXR

NZXR concluded 72 investigations into possible breaches of the Participant Rules by Market Participants during the year (including a number of investigations which were ongoing from 2014).

NZXR concluded that following these 72 investigations, 48 matters involved breaches. A summary of those matters and the enforcement action taken by NZXR is set out below.

Table Two: Summary of breaches of the Participant Rules identified in 2015

Trading Related Breaches	18 breaches
18 breaches of various Participant Rules in relation to trading activity were observed during the year.	
Trading that led to a disorderly market	
Four breaches arose in which Participants failed to maintain an orderly market.	
One breach was due to an error which resulted in the price of a security increasing by 6.6%. This was the Participant's first breach of this nature and an obligations letter was sent to the Participant.	
The second breach resulted in the price of a security increasing by 3.3%. This was considered a material impact given the security's trading history and liquidity. As there was no intention to create a disorderly market for the security, an obligations letter was sent to the Participant.	
The third breach resulted from a client order triggering a DMA filter which was later authorised by a DMA dealer. The DMA dealer who reviewed the order incorrectly believed the order to be a sell order and, based on an understanding of the market circumstances at the time, the DMA dealer believed there was sufficient demand in the order book for the order to fully trade at the last traded price. This caused a 14.3% movement in the share price. As this was deemed to be a genuine error, and the Participant had reminded its dealers of the importance of careful order review, an obligations letter was sent to the Participant.	
The fourth breach resulted from 196 algorithm-driven DMA buy trades that increased the price of a security by more than 19%. This breach was pending action at year-end.	
Unnecessary trading or trading to impact the price	
Three breaches arose in which the Participants placed orders that led to the appearance of unnecessary trading or trading to impact the share price.	
One Participant appeared to have traded for volume by unnecessarily intermediating both buy and sell transactions, when there was sufficient liquidity to execute the transaction on-market. This resulted in an inflated trading volume in a security. The Participant did not appear to have taken any actual price or market risk in executing the transaction. On this basis, the Participant's facilitation orders did not appear to represent genuine supply and demand. The matter was concluded as part of the onsite inspection. An obligations letter was sent to this Participant in relation to this breach. NZXR and NZX Surveillance conducted a targeted onsite visit to review the Participant's facilitation practices in greater depth. From this onsite review it was concluded that there were no systemic issues arising from Participant's conduct.	

The second breach related to a Participant inaccurately reporting crossings to which it had been a party. This was the Participant's first breach of this nature, and the Participant has improved its processes and procedures in order to prevent further breaches of this nature. An obligations letter was sent to this Participant in relation to this breach.

The third breach related to a Participant that appeared to be trading with a view to holding down the price of a quoted security. This matter was a breach identified pending action at year-end.

Late or unreported off-market trades

Three breaches were noted in which a crossing or off-market trade was not reported through the trading system or was reported late. In each of these instances, it was determined that the failure to report the trade would not have materially affected the security's price. It was also determined that the failure to report was due to genuine oversight and the relevant Participants were aware of their obligations regarding reporting of the required trades. No further regulatory action was deemed necessary.

Short selling securities during a takeover notice

Three breaches related to Participants short selling securities that were subject to takeover under the Takeovers Code.

One breach involved the execution of 233 trades by a single DMA client over a two week period, following a reminder by NZX Surveillance to the Participant of the relevant rules. The Participant had reminded its DMA clients of the requirements of the relevant rule prior to the trading, had implemented a system-driven block on short selling of securities subject to a takeover, and had subsequently implemented daily monitoring to detect further breaches. Due to these factors, NZXR deemed an obligations letter to be the appropriate regulatory outcome.

The second breach involved one trade that was placed by a Participant's institutional desk. The Participant reminded its dealers of the importance of reviewing orders that are flagged as short sales. As this short sale was determined to be a genuine oversight and was the Participant's first referred breach of the relevant rules, no further regulatory action was deemed necessary.

The third breach resulted from 88 short sales of securities that were subject to a takeover under the Takeovers Code. Initial instances of the short selling had been identified by NZX Surveillance, and a reminder was provided to the Participant. Following this, however, further short selling was identified, with the Participant advising that the breaches were the result of a misunderstanding by one of its dealers regarding the application of the relevant rule. No clients, other than the client where the Participant crossed stock to complete the client's buy order, had been directly affected by the breaches. The orders were entered as principal orders using the Participant's DMA system. The relevant dealer was reminded of the requirements under the relevant rule, and the Participant implemented solutions to avoid future breaches of the rule. NZXR referred this matter to the NZMDT.

No change in beneficial ownership

Two breaches were ongoing from 2014 in which trading was conducted that resulted in no change in beneficial ownership. Both these breaches were made by the same Participant. No further regulatory action was taken in response to one breach as referrals had already been made to the FMA and a resulting investigation was being conducted by the FMA relating to this breach. One of these breaches was determined to be due to human error by a junior dealer, and an obligations letter was issued to the Participant.

Not adequately considering the impact of an order

One breach was due to an order that moved the price of a security down by 2.99%, which was deemed material in the context of the security. Given the relatively limited price movement (less than

3%), an obligations letter was deemed to be the appropriate regulatory outcome.

Client order priority

One breach arose due to a Participant failing to ensure that client order priority was maintained in relation to orders that were brought to market. As this was the Participant's first breach of this kind, and the impact to the client was small, NZXR sent an obligations letter to remind all of the Participant's dealers of the importance of ensuring that client interests are always put ahead of the interests of the principal book when entering orders into the trading system. NZXR also required that this Participant undertake a full review of its approach to the management of client and house orders, to document its processes in this regard, and to provide training to dealers in respect of any new procedures.

Acting in a client's best interests

One breach arose due to a Participant trading in a way that was likely to be detrimental to the wellbeing or contrary to the best interests of a client. NZXR noted that given the liquidity of the security and the share price in this trade on the relevant day, the trade did not materially affect the share price or the market for the security. Given the particular circumstances in this matter, and steps taken by the Participant to prevent recurrence, NZXR issued an obligations letter to this Participant.

Client Funds

10 breaches

Ten breaches of various rules in relation to client funds were observed during the year.

Four breaches related to client funds accounts being in overdraft for different Participants. NZXR observed that all of these breaches were self-reported by the Participants and immediate steps were taken to remedy the breaches by correcting the errors that had caused them. Two of these breaches related to bank errors and two were due to staff errors. All of the overdrafts were resolved within one business day. An obligations letter was sent in relation to three of these breaches. No further regulatory action was taken in relation to one of the breaches because the overdraft was solely due to a bank error which was outside of the Participant's control. NZXR noted that there were no other recent instances noted of client funds account overdrafts for this Participant.

Two breaches related to Participants that were late in reporting their daily client assets and outstanding obligations to NZX. NZXR observed that these breaches did not have a significant impact as they related only to late reporting and the Participants continued to hold client assets in excess of their outstanding obligations. An obligations letter was sent to the relevant Participant for one of these breaches, which was detected by NZXR. No further regulatory action was taken by NZXR for the second breach as this breach was self-reported by the Participant.

Two breaches arose due to client assets being exceeded by client obligations. The first of these breaches was due to a bank error. Sufficient funds were transferred into the Participant's client funds account to cover the deficit on the following business day. NZXR noted that the error did not result in any of the Participant's client funds accounts being overdrawn at any time. NZXR was satisfied that this breach did not indicate a systemic issue or warrant further regulatory action due to its nature and low impact. The second of these breaches resulted from genuine human error; however, NZXR expected such mistakes to be identified by the reviewer of this process. An obligations letter was sent to the relevant Participant in relation to this breach. NZXR also recommended that the Participant include in its process a more robust maker-checker sign-off procedure to ensure instances of human error are identified before confirming each day's final figures.

One breach arose due to client funds being transferred in error to the Participant's operating account instead of the client funds account. NZXR detected this breach during the review of the Participant's monthly return. There was no impact to clients as the Participant had a buffer in the client funds account which was higher than the amount of the funds transferred in error. NZXR was satisfied that

this was a genuine error and observed that the Participant took immediate steps to remedy the breach. An obligations letter was sent in relation to this breach.

One breach arose due to the transfer of initial public offering subscription monies from the client funds account instead of the capital account. NZXR raised the matter during the Participant's onsite inspection and noted that the error had been rectified in a timely manner. NZXR was satisfied that as the breach was the result of a genuine error and the Participant had improved its compliance and management oversight of errors, no further regulatory action was warranted.

Employee and Prescribed Person Trading

10 breaches

Ten breaches in relation to employees and prescribed person trading were observed during the year.

Five breaches related to employees or prescribed persons trading in securities without prior approval. NZXR observed that these breaches related to isolated incidents where one employee executed trades through another Participant without seeking pre-approval from the Participant's compliance manager, and contrary to the Participant's policies and procedures. NZXR notes that this type of breach is difficult to prevent or detect as the employees did not disclose these details to the Participant. For two of these breaches, an obligations letter was sent to the relevant Participant. For the three remaining breaches, NZXR did not consider that further regulatory action was required.

Three breaches related to prescribed persons who traded through other Participants. At the time of the relevant trades, NZXR observed that the Participants were not aware, or did not have a reasonable basis for knowing, that the relevant clients were prescribed persons of another Participant. All three breaches were self-reported by the Participants. NZXR deemed that it was not necessary to take further regulatory action in relation to two of these breaches. An obligations letter was sent to a Participant in relation to the remaining breach because the Participant had breached the same rule twice previously.

One breach was noted in relation to nine instances where a Participant's employees traded in a manner that was inconsistent with the approvals that they had obtained. These instances included trading in different volumes, or buying shares when they had obtained approval to sell. The Participant confirmed that the breaches did not result in any loss or harm to clients. The Participant amended its processes so that if an employee trades without approval, or in a manner which is inconsistent with any approval obtained, the employee will be prohibited from trading for a period of three months. NZXR referred this matter to the NZMDT.

One breach related to a Participant's employees and prescribed persons breaching the minimum 10 business days holding period. This breach was self-reported by the Participant. To prevent recurrence, an alert system was instigated on securities held by the Participant that have been either recently issued or have been the subject of corporate actions that involved participation in additional securities. The breach appears to have been due to a genuine oversight and no clients were affected by the breach; therefore, no further regulatory action was taken.

Capital Adequacy Requirement

3 breaches

Seven breaches of various capital adequacy rules were observed during the year. Four of these have been reported in the New Zealand Clearing Limited Annual Report to the NZMDT, as they relate to Clearing Participants. The remaining three are set out below.

One breach related to a Participant failing to provide notification of changes in their capital adequacy ratio by 50% or more. This Participant continued to exceed the minimum capital requirements at all times. NZXR observed that this breach was minor in nature and no further regulatory action was taken.

One breach was ongoing from 2014 and related to a Participant's capital ratio falling below 100%, due to a change in its accounting process for accruing expenses. After self-reporting the breach to NZXR, the Participant immediately took steps to introduce more capital into its business. NZXR met with the Participant at their office to discuss the breach and the Participant's plans to avoid future breaches of this nature. NZXR noted that the breach did not create an increased risk to the market because the Participant is only an advising Participant that does not accept client assets, and it only deals with institutional clients that settle on a delivery versus payment basis. An obligations letter was sent to the Participant in relation to this breach.

One breach related to a balance sheet error that impacted a Participant's capital adequacy calculation. The error was due to a liability not being included in the capital adequacy calculation. The impact of the error was noted to be 1% of the Participant's ratio. No further regulatory action was taken in relation to this breach.

Contract Notes

5 breaches

Five breaches related to Participants that had not dispatched contract notes to clients within one business day.

Two breaches were due either to staff errors or a localised system issue. In each of these cases, there was no impact on client settlement. NZXR observed that the impact of these breaches was minor. NZXR was satisfied that steps were taken by the Participants to prevent recurrence of the breaches, and no further regulatory action was taken.

Two breaches arose due to a systems issue at the same Participant which affected the distribution of contract notes. The first breach was self-reported by the Participant and affected two clients who did not receive their contract notes within the prescribed timeframe. The second breach was identified by the Participant as a result of a previous failure to issue contract notes that had occurred during the month. As a result of the earlier breach, the Participant introduced a manual review to ensure that all contract notes from that day have been generated and issued to clients. This allowed detection of the relevant breach. The firm confirmed that settlement was not affected by the breach, and that contract notes were issued within three days of completion of the client's instruction. Obligations letters were sent to this Participant in relation to these breaches. NZXR conducted a targeted onsite inspection. Based on the onsite review, NZXR was able to gain comfort in respect of the limited nature of the issue, the limited impact on clients and the additional controls introduced by the Participant to prevent further breaches. All delayed contract notes were dispatched to the clients within three business days.

One breach related to a Participant failing to dispatch 299 contract notes in total for 166 clients (270 contract notes were for 158 retail clients and 29 contract notes were for 8 hold mail clients). A third party service provider had failed to manually send the contract notes to the Participant's contract notes printer in order for staff at the firm to collect and mail the contract notes. The breach was identified by the third party service provider, who in turn notified the Participant, who then self-reported the breach to NZXR. A significant number of contract notes were not dispatched and a significant number of clients were affected. The firm confirmed that the delay in dispatching the contract notes did not impact client settlement. This breach was referred to NZMDT.

Notification Breach

2 breaches

Two breaches in relation to notifications were observed during the year.

One breach related to the late submission of an annual return. The return was due on 31 December 2014 and was submitted on 23 January 2015. The relevant Participant's procedures were amended to prevent further breaches. A late filing fee was imposed which was deemed an appropriate regulatory outcome and no further regulatory action was deemed necessary.

One breach was noted during the review of a Participant's annual return. A Participant had lodged an amended constitution with the Companies Office but NZXR was not notified of the amended constitution. NZXR noted that this was clearly an oversight by the Participant. NZXR was satisfied that the Participant was aware of its obligations and no further regulatory action was taken.

B. Summary of complaints considered by NZXR in respect of Market Participants

NZXR considered 4 complaints in respect of Market Participants during the year. A summary of these matters is set out below.

Table Three: Summary of complaints considered in relation to Market Participants in 2015

Good Broking Practice	2 complaints
<p>One complaint related to an allegation that a Participant had delayed executing the client's orders on 3 occasions. NZXR noted that while the Participant Rules prohibit a Participant from delaying the execution of a client's orders, the Participant Rules do allow for this if this is set out in the client agreement. NZXR noted that the relevant Participant had such terms in its client agreement. NZXR requested further information to assist with its review of this matter. However, the client did not respond to NZXR and the matter was eventually closed and determined not to be a breach.</p> <p>One complaint related to a Participant's brokerage fees in relation to the client's trading. Fee disputes are outside the scope of the Participant Rules unless there is an impact on good broking practice. NZXR noted that there was no breach and the client later confirmed that this matter had been resolved directly with the Participant.</p>	
Client Details	1 complaint
<p>One complaint related to a client who was concerned about the Participant's request for the client to sign a new contract which included the loading of the client's bank account details into the Participant's system.</p> <p>The client wanted NZXR to confirm whether the loading of the client's bank account was part of the Participant Rules. NZXR sought further information from the client including documentation in relation to this matter. NZXR reviewed the information provided by the client, and provided details of the relevant NZX rule that requires the Participant to obtain information regarding a client's bank account. The client was advised that there did not appear to be a breach of the Participant Rules and the client was provided with the contact details for the Participant's Compliance Manager.</p>	
Conflict Management Procedures	1 complaint
<p>One complaint related to whether a Participant's research analyst should disclose their connection with a perceived competitor of the company that was being researched.</p> <p>The analyst was the chairman and shareholder of a perceived competitor. NZXR analysed the relevant research report, the Participant's conflict management policy and procedure, details of conflicts disclosed by the analyst, and steps taken by the Participant to ensure that the conflicts management procedure is implemented in respect of all associations and investments. It was determined that while both entities operate in the same broader industry, there was no direct competition between them. NZXR noted that the Participant's procedure complied with the relevant rule.</p> <p>In order to avoid any future possibility of a perception of such a conflict, NZXR accepted the Participant's offer to include a disclosure that the analyst is a director and small shareholder as part of any similar work undertaken in the future. No breach of the Participant Rules was noted.</p>	

C. Summary of breaches of the Derivatives Market Rules identified by NZXR

NZXR investigated 2 possible breaches of the Derivatives Market Rules by Market Participants and concluded that 1 was a breach.

A summary of that breach and the enforcement action taken by NZXR is set out below.

Table Four: Summary of the breaches of the Derivatives Market Rules considered in 2015

Notification Breach	1 breach
One breach was noted in which the relevant Participant failed to inform NZXR within 5 business days of a change to its business name. The change was subsequently notified to NZXR. NZXR was satisfied that this breach did not indicate a systemic issue and due to its nature and low impact, no further regulatory action was taken.	

D. Summary of complaints received by NZXR in respect of Derivatives Market Participants

NZXR did not receive any complaints in respect of Derivatives Market Participants in 2015.

4. NZX Issuers

A. Summary of breaches of the Listing Rules identified by NZXR in 2015

NZXR concluded 132 investigations into possible breaches of the Listing Rules by Issuers during the year (including a number of investigations which were ongoing from 2014).

NZXR concluded that following these 132 investigations, 75 matters involved breaches of the Listing Rules.

A summary of those matters and the enforcement action taken by NZXR is set out below.

Table Five: Summary of the breaches of the Listing Rules considered in 2015

Release of material information	14 breaches
<p>Fourteen breaches related to failures to immediately release material information to NZX.</p> <p>There were nine breaches where there was no discernible market impact or evidence of harm caused to investors. These related, variously, to the quality of information contained in the announcement provided, an Issuer's failure to immediately provide interim updates, timeliness of announcements and failing to provide material information to NZX before the information was made publicly available.</p> <p>NZXR sent letters to Issuers in respect of six of these breaches, reminding them of their obligations under the Listing Rules. Of the remaining breaches, one of was of a technical nature and accordingly NZXR engaged directly with the Issuer to remind it of the best practice approach. In respect of the two remaining breaches, NZXR provided guidance and support regarding the interpretation of the Listing Rules, and further advice as to NZXR's expectations.</p> <p>One breach was due to the reliance on information provided by NZX Client Market and Services which caused the announcement to be released incorrectly. In this case, following discussions with the Issuer, NZXR placed a trading halt on the Issuer's securities to prevent any trading until the Issuer released the information in question. NZXR sent a letter to the Issuer clarifying the appropriate action to be taken should similar circumstances arise again in the future.</p> <p>Four of the fourteen breaches were considered serious because they had a discernible market impact. NZXR investigated the circumstances leading up to the release of the price sensitive information.</p> <p>In the first of the serious matters, after discussions with the Issuer, it acknowledged that the situation could have been avoided with a trading halt. In the second, third and fourth serious matters, after NZXR's investigation, the respective Issuers acknowledged the announcements contained material information.</p> <p>In these four cases, based on the information provided by the relevant Issuer, NZXR determined the appropriate response was to issue an obligations letter and to provide best practice advice regarding the process of releasing material information, including the use of trading halts.</p>	
Information in annual and half year report	15 breaches
<p>Fifteen breaches related to the requirement to include prescribed information in an annual report.</p> <p>Ten of these related to the requirements regarding the disclosure of the gender breakdown of an</p>	

Issuer's directors and officers as at the Issuer's balance date.

Four breaches related variously to the Issuer failing to include a summary of waivers granted or trading halts imposed during the year, state its current credit rating status or specify its independent directors in its annual report.

NZXR sought clarification from each Issuer and requested each Issuer, where applicable, to rectify the reporting in updated versions of their annual reports. All the matters were minor in nature and had no impact on the market.

One breach related to an Issuer's failure to provide the correct information in its preliminary report. NZXR engaged with the Issuer immediately and an amended report was submitted to NZX the same day. NZXR took no further regulatory action as the breach was remedied but engaged with the Issuer to discuss the reason for the initial breach.

Provide NZX with administrative information

21 breaches

Twenty one breaches arose from Issuers failing to provide NZX with administrative information as required by the Listing Rules. All of the breaches were minor in nature, they did not have any market impact and no systemic compliance issues were identified.

Eleven breaches related to an Issuer's failure to provide NZX with information sent to the Issuer's shareholders, at the same time as it was sent to the shareholders.

In three matters, based on the information provided by the respective Issuers NZXR took no further action. In the other eight breaches, NZXR sent a letter reminding each Issuer of their obligations under the Listing Rules.

Four breaches arose when the Issuer provided an update to another stock exchange but failed to provide the information to NZX at the same time. Three of the matters related to an Issuer who had failed to provide announcements on different occasions. The Issuer had engaged with NZXR on each occasion and provided evidence of procedural changes to prevent future breaches. NZXR took no further action on the first two instances and provided an obligations letter to the Issuer on the third instance.

In respect of the fourth matter, the Issuer did not release the announcement it had released to another exchange on NZX. The failure was the result of an oversight by the employee responsible for providing the announcement to NZX. After considering the circumstances in this case, NZXR sent an obligations letter to the Issuer.

Four breaches related to Issuers' failures to provide an announcement regarding the appointment of new directors or officers. In the first instance, the Issuer advised NZXR that it had waited one day for the Board to appoint the CEO, therefore releasing one comprehensive announcement. Based on the information provided, NZXR took no further action, but reminded the Issuer of the obligation to provide an announcement as soon as the information was first available, and the need to plan accordingly. In the other three cases, the breach arose as a result of an administrative oversight and obligations letters were issued accordingly.

One breach related to an Issuer failing to release information about any changes to credit ratings of the Issuer as soon as the information became available.

One breach related to an Issuer's failure to immediately notify NZXR of a change in the address of its registered office.

In the latter two cases NZXR discussed the breach with the relevant Issuer, including any best practice guidance, and sent a letter reminding each Issuer of their obligations under the Listing Rules.

Timely release of annual report or preliminary announcement	3 breaches
<p>NZXR identified three instances where Issuers failed to provide NZX with copies of either their annual report or preliminary announcement for release to the market within the time required under the Listing Rules.</p> <p>One matter was minor as the Issuer filed the report in question less than five days following the deadline. This meant that trading in the Issuer's securities was not suspended, as is NZXR's usual practice when an Issuer's annual or preliminary report becomes more than five days overdue. NZXR sent a letter to the Issuer reminding them of their obligations under the Listing Rules.</p> <p>In respect to the second matter, trading in the Issuer's securities was suspended on 8 October 2015. As at 31 December 2015, the matter is ongoing.</p> <p>NZXR investigated the circumstances leading up to the third matter and referred the matter to the Tribunal in February 2015. Information about that matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.</p>	
Notification of allotment of securities	14 breaches
<p>Fourteen breaches related to failures to notify NZX of an allotment of securities.</p> <p>Seven breaches were minor in nature as the number of securities allotted was a small percentage of the total number of shares on issue and/or the length of the breach was inconsequential. All breaches were one-off and no systemic compliance issues were identified.</p> <p>In respect of six of those minor breaches NZXR sent a letter to the relevant Issuers reminding them of their obligations under the Listing Rules.</p> <p>In the seventh minor breach, NZXR took no further action as the breach was triggered due to the conduct of a Participant handling the Issuer's shares acquisition under a buyback via an off market crossing. NZXR discussed the breach with the Issuer and the Participant who acquired the shares on behalf of the Issuer. NZXR Enforcement indicated to the Issuer that it would be taking no further action. Participant Compliance engaged with the Participant in respect of its conduct in relation to the acquisition.</p> <p>Two breaches were considered serious because of the length of the delay in filing the allotment notices. These breaches were referred to the Tribunal, in September and November 2015 respectively. Information about these matters is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.</p> <p>There were five minor breaches which are ongoing enforcement investigations as at 31 December 2015.</p>	
Minimum of two independent directors required	2 breaches
<p>Two breaches related to an Issuer on the Main Board failing to maintain a minimum of two independent directors on its board.</p> <p>NZXR investigated the circumstances leading up to the first breach and referred the matter to the Tribunal in March 2015. Information about that matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.</p> <p>The second breach is ongoing, and as at 31 December 2015 NZXR's investigation is continuing.</p>	

Minimum of two directors ordinarily resident in New Zealand	2 breaches
<p>Two breaches related to an Issuer failing to maintain a minimum of two directors on its board who were ordinarily resident in New Zealand.</p> <p>NZXR investigated the circumstances leading up to the breach and referred the first matter to the Tribunal in June 2015. Information about that matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.</p> <p>The second breach is ongoing, and as at 31 December 2015 NZXR’s investigation is continuing.</p>	
Minimum number of directors	1 breach
<p>One breach related to an Issuer’s failure to have the minimum number of directors required. The Issuer had the minimum number of directors immediately prior to when the breach occurred. Two of the three directors resigned over two days. NZXR enquired with the Issuer and it stated that it had mistakenly resigned two directors in advance of appointing directors. On the same day as discussing with NZXR, two new directors were appointed.</p> <p>Based on the information provided, the brevity of the length of the breach and the action taken by the Issuer, NZXR issued the Issuer with a letter reminding it of its obligations.</p>	
Miscellaneous breaches	3 breaches
<p>There were three miscellaneous breaches during 2015.</p> <p>One breach related to an Issuer’s failure to send letters of entitlement relating to a placement within 5 days of the Record Date. NZXR considered the matter and from the information provided, it was determined that the breach had not disadvantaged holders of rights and the Issuer was acting in accordance with its legal advice. The Issuer put in place measures in its offer to ensure holders had sufficient time to consider their entitlements.</p> <p>One breach related to an Issuer’s failure to provide its Net Tangible Asset value per share in its preliminary interim report as required by Alternative Board Listing Rule 10.4.2.</p> <p>Based on the information provided by the two Issuers, NZXR sent a letter to each Issuer reminding them of their obligations.</p> <p>One breach related to an announcement that was not dated, was not released on company letterhead and which did not contain sufficient information regarding the matter to which it related. NZXR contacted the Issuer and ascertained that the announcement was being prepared by an external public relations company on behalf of the Issuer. NZXR reminded the Issuer of its obligations over a phone discussion with the Chief Executive Officer.</p>	

B. Summary of complaints NZXR considered in respect of Issuers

NZXR considered 24 complaints in respect of Issuers during the period.

A summary of those matters is set out below.

Table Six: Overview of complaints NZXR considered in respect of Issuers in 2015

Continuous disclosure	16 complaints
<p>NZXR considered 16 complaints relating to the timely disclosure of material information.</p> <p>Where appropriate, NZXR contacted the Issuer to obtain further information before determining the complaint. In all cases, there was insufficient evidence of a breach of the Listing Rules.</p>	
Information in a preliminary report	1 complaint
<p>NZXR received one complaint about information disclosed in an Issuer's preliminary report.</p> <p>NZXR considered the complaint and contacted the Issuer for further information. In this case, there was insufficient evidence of a breach of the Listing Rules. The complainant was notified accordingly.</p>	
Corporate governance	1 complaint
<p>NZXR received one complaint relating to an Issuer and its intention to delist from NZX.</p> <p>NZXR considered the complaint, but the complaint did not raise any issues relating to compliance with the Listing Rules. The complainant was notified accordingly.</p>	
Miscellaneous complaints	6 complaints
<p>NZXR received six miscellaneous complaints in relation to the actions of Issuers.</p> <p>NZXR considered the six complaints. In three cases the respective complaints did not raise any issue in relation to compliance with the Listing Rules. Therefore, the complaints fell outside of NZXR's jurisdiction. The complainants were notified accordingly.</p> <p>In the fourth matter, NZXR considered the complaint and contacted the Issuer. On the basis of the information received from the Issuer, there was no evidence of a breach of the Listing Rules. NZXR took no further action and notified the complainant of the outcome.</p> <p>In the fifth matter, the complaint was more appropriately addressed by direct action by the Issuer. Accordingly, NZXR sought the complainant's permission to forward the complaint to the relevant Issuer.</p> <p>In the sixth matter, NZXR considered the complaint and investigated. On the basis of the information arising from that investigation, no evidence of a breach of the Listing Rules was found. NZXR took no further action and notified the complainant of the outcome.</p>	

5. Discipline Fund

This section 5 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.

	12 Months to 31-Dec-11	12 Months to 31-Dec-12	12 Months to 31-Dec-13	12 Months to 31-Dec-14	12 Months to 31-Dec-15
Fines and costs	196,617	179,838	152,000	602,565	364,126
Expenses of NZ Markets Disciplinary Tribunal					
Appeal Member costs	-	-	-	-	-
Executive Counsel costs	63,216	34,714	41,126	77,060	63,292
NZ Markets Disciplinary Tribunal Member costs	101,567	88,554	97,155	256,659	126,080
Legal Advisory costs	-	-	-	15,860	13,387
Rules Review costs	-	2,310	32,449	8,872	30,935
Disbursements	5,295	1,497	1,170	1,420	7,446
Educational Expenditure	5,000	-	-	-	-
Other Incidentals	1,524	2,027	97	252	687
Market Education	-	-	-	-	12,583
Bad Debts	-	22,703	-	6,000	8,350
Total Expenses	176,603	151,805	171,997	366,124	262,759
Interest Income	70	1,270	1,283	2,677	13,807
Tax expense	-	-	-	-	32,183
Surplus (Deficit) for the period	20,084	29,303	(18,714)	239,118	82,991
Accumulated Surplus (Deficit)	179,842	209,145	190,431	429,549	512,540



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

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.”
-



New Zealand Clearing Limited

Annual Report to NZ Markets Disciplinary Tribunal for the period 1 January 2015 to 31 December 2015

19 February 2016



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1. Introduction

New Zealand Clearing Limited (**NZX Clearing**) provides clearing and settlement services to 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.

This report covers the calendar year 1 January 2015 to 31 December 2015.

This report contains:

- a. Information about breaches of the Clearing and Settlement Rules identified by NZX Clearing; and
- b. Information about complaints received by NZX Clearing in respect of Clearing Participants.

2. NZX Clearing Enforcement Practices

A summary of the enforcement activity taken by NZX Clearing in 2015 is set out below:

Table One: Overview of NZX Clearing enforcement activity in 2015

Enforcement activity	Clearing Participant
Complaints received	0
Investigations commenced during 2015	12
Investigations completed during 2015	11
Matters where breaches were identified	11
Matters where breaches were referred to the Tribunal	4 ¹
Breaches resolved (including obligation letters)	7

¹ Two matters were combined into one NZMDT referral (NZMDT 09/15)

3. Breaches of the Clearing and Settlement Rules

Breaches of the Clearing and Settlement Rules identified by NZX Clearing in 2015

In 2015 NZX Clearing considered 12 possible breaches of the Clearing and Settlement Rules by Clearing Participants.

It was concluded that of these 12 investigations, 11 matters were breaches. One matter was ongoing as at 31 December 2015.

A summary of those matters and the enforcement action taken by NZX Clearing is set out below.

Table Two: Summary of the breaches of the Clearing and Settlement Rules considered in 2015

Capital Adequacy Requirement	4 breaches
Four breaches of various capital adequacy rules were observed during the year. These matters were also breaches of the Participant and/or Derivatives Rules.	
Two breaches related to Participants failing to provide notification of changes in their capital adequacy ratio by 50% or more. These Participants continued to exceed the minimum capital requirements at all times. NZX Regulation (NZXR) observed that these breaches were minor in nature and no further regulatory action was taken.	
Two breaches related to the inaccurate calculation of counterparty risk requirement in the capital adequacy calculations. NZXR reviewed the practices of these Participants and provided guidance to ensure that future calculations were correct.	
One of these breaches was a self-reported error by a Participant. The impact of this error on the Participant's capital ratio was insignificant and did not cause the Participant to breach the minimum capital adequacy requirements. This error occurred during a period when the capital adequacy calculations were being temporarily performed by staff in Australia. The Participant updated its procedures and provided additional training to the Australian preparers and reviewers of the reports. To provide additional assurance, staff in New Zealand also reviewed the daily capital adequacy calculations when these calculations are prepared by staff in Australia. An obligations letter was sent to the Participant.	
Another error was identified during a Participant's desk-based inspection. The impact of the error on the Participant's capital ratio was insignificant and did not cause the Participant to breach the minimum capital adequacy requirements. No further regulatory action was taken in relation to this breach.	
Late Margin Call Lodgement	2 breaches
Two breaches were identified where a Participant failed to meet margin calls prior to 9:30am. These breaches occurred for an overseas Participant where the margin call was made and required meeting outside of the Participant's normal business hours. NZX Clearing observed that the margin call amounts were eventually received after the New Zealand specified time. For both of these breaches, obligations letters were issued.	

NZX Clearing observed that neither of these breaches had a significant market impact and no systemic issues were noted.

Failure To Meet Mark-To-Market (MTM) Obligation

2 breaches

Two breaches occurred when a Participant failed to meet its daily USD MTM cash settlement obligation for one of its accounts by 10:00am.

On both occasions the Participant failed to move sufficient funds overnight to meet the following morning's MTM settlement obligation.

In one instance a default was declared when post the MTM settlement the Participant was unable to transfer the funds required to close the accounts deficit position in a time frame acceptable to NZX Clearing.

On the second occasion the Participant closed the deficit position following the MTM settlement by transferring funds from another of its settlement accounts within the Depository. The credited funds had resulted from a positive MTM settlement movement and were only available to the Participant once the MTM settlement process had completed. No default was declared on this occasion.

Both of these breaches were referred to the NZMDT.

Failure to Meet Settlement Obligations

2 breaches

Two breaches occurred when Participants failed to hold sufficient funds in their settlement accounts prior to the settlement batch to meet their obligations.

One instance occurred where a Participant failed to hold sufficient cash to meet its settlement obligation in the final settlement batch at 3:00pm. On this occasion NZX Clearing held the settlement batch until 3:13pm, by which time the Participant lodged additional cash into its settlement account to meet its obligation. Following this the settlement batch completed successfully.

A second instance occurred where a Participant failed to transfer sufficient funds into its settlement account to meet its obligations within the 11:00am settlement batch. NZX Clearing did not hold the settlement batch and the Participant failed settlement. This was deemed to be a declared default and the Participant's securities were transferred to a NZX Clearing holding account in line with the default procedures. The Participant transferred funds to NZX Clearing by 11:39am and successfully completed settlement.

Both of these breaches were referred to the NZMDT.

Notification Breach

1 breach

One breach related to the late submission of a Participant's half yearly return.

The submission was received six days late and the Participant was levied a late filing fee. The Participant amended its procedures to prevent similar breaches recurring. No further regulatory action was taken in relation to this breach.

Complaints

NZX Clearing did not receive any complaints in respect of Clearing Participants or Depository Participants in 2015.



REPORT ON SPECIAL DIVISION ACTIVITIES

The Special Division of the Tribunal exists to foster market confidence and to determine that the Market Rules are applied to NZX or a Related Entity in an impartial and independent manner.

A summary of each matter considered by the Special Division in 2015 follows this report. As with previous years, the Special Division considered a number of SMARTS alerts referred to it by NZX Surveillance. The Special Division also reviewed and approved a number of offer documents and waivers relating to the offer of funds managed by Smartshares Limited. Copies of the Special Division's waiver decisions can be viewed at <https://nzx.com/NZMDT/special-division>.

The Special Division and the Financial Markets Authority (FMA) have agreed on a series of protocols for engagement between Special Division and FMA. The protocols acknowledge that the Special Division exercises the powers and functions of NZX Regulation as they apply to NZX and any Related Entity (such as Smartshares Limited) as listed issuers. The Special Division therefore assumes the role of 'licensed market operator' for the purposes of certain sections of the Financial Markets Conduct Act 2013 (FMCA). The protocols set out a process for interaction between the Special Division and FMA in these circumstances. For example, if the Special Division receives an application from NZX or a Related Entity for a waiver from the continuous disclosure provisions of the Listing Rules, the Special Division must consider feedback from FMA before granting or declining the waiver.

There have been no changes in the membership of the Special Division during the year. I thank Kevin Baker, Shane Edmond and James Ogden for their work on the Division.



Andrew Beck | SPECIAL DIVISION CHAIRMAN
27 April 2016

NZMDT SPECIAL DIVISION MATTERS – 1 JANUARY TO 30 DECEMBER 2015

During 2015, the Special Division received 26 referrals from NZX Surveillance regarding trading in NZX shares and units in the funds managed by Smartshares Ltd as outlined below.

DATE REFERRED IN 2015	ISSUER	ACTION
10 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
12 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
16 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
18 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
26 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
27 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
27 March	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
16 April	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
13 May	ASR	Considered the nature of the alert, sought information from Smartshares Limited and determined that no further investigation was necessary.
26 May	FNZ	Considered the nature of the alert and determined that no further investigation was necessary.
3 June	MZY	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
23 June	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
24 June	ASP	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
2 July	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further action was necessary.
3 July	FNZ	Considered the nature of the alert and determined that no further investigation was necessary.
8 July	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
24 August	NZX	Considered the nature of the alert and determined that no further investigation was necessary.

DATE REFERRED IN 2015	ISSUER	ACTION
1 September	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
4 September	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
21 September	NZX, USF, EUF	Considered the nature of the alert and determined that no further investigation was necessary.
6 October	ASD	Considered the nature of the alert and determined that no further investigation was necessary.
2 November	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
9 November	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
15 December	USF, APA, EUF	Considered the nature of the alert and determined that no further investigation was necessary.
18 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
23 December	TNZ	Considered the nature of the alert and determined that no further investigation was necessary.



DIRECTORY

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