

NZX Limited
NZ Markets Disciplinary Tribunal
Procedures

5 March 2013



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NZ Markets Disciplinary Tribunal Procedures

Section 1: Introduction and General Provisions

Amendment Procedure

Procedures for Rule 1.3.1

1.1 Amendment of Rules

1.1.1 NZX may, from time to time at its discretion, initiate a review or amendment of the Rules by giving written notice to Participants. Any such notice will set out:

- (a) the Rule or Rules to be reviewed;
- (b) the nature issues that have arisen which necessitate the review or amendment;
- (c) the policy result NZX desires to achieve from the review or amendment;
- (d) in the case of an amendment, the amendment proposed;
- (e) in the case of a review, the scope of the review;
- (f) to the extent it differs from the timetable set out in this Procedure 1.1.3, the timetable for the review or amendment; and
- (g) any other information NZX believes is relevant.

1.1.2 A review will comprise a broad policy based proposal for modification of the Rules without a specific amendment proposed. The specific amendment will be developed in the process of the review after consultation. An amendment will be narrower in focus and will propose a specific amendment.

1.1.3 A review or amendment of the Rules will, except to the extent NZX determines otherwise follow the following indicative time following issue of the notice by NZX for the amendment procedure:

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| (a) NZX to receive submissions on proposed review or amendment | 15 Business Days following notice by NZX |
| (b) NZX to consider submissions, give Notice to Participants of its decisions on issues raised and in the case of a review, proposals for draft | 15 Business Days following closing of submissions |

	amendments to the Rules.	
	(c) NZX to receive submissions on NZX response and, in the case of a review, proposed amendments.	10 Business Days
	(d) NZX to consider submissions and provide final amendments (if any) to the Financial Markets Authority in accordance with Section 36J of the Securities Markets Act 1988.	10 Business Days
1.1.4	NZX may give notice to such other interested parties as it considers fit.	
1.1.5	Where NZX believes it is appropriate having regard to the nature of the amendment (but not otherwise) it may adopt the procedures set out in this Procedure when making amendment to Procedures.	
1.1.6	NZX reserves the right to depart from the process set out in this Procedure in unusual circumstances.	
1.1.7	In addition to the procedures set out in this Procedure, NZX must comply with the requirements of Section 36H of the Securities Markets Act 1988 when amending the Rules.	

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Section 2: Membership of Tribunal

No procedures made.

Section 3: Divisions

Selection Procedure

Procedures for Rule 3.1.1

3.1 Selection

3.1.1 The Chairperson or Deputy Chairperson (as the case may be), in selecting members of a Division for any hearing, shall consider the matter being called for consideration, the issues that will likely be raised and shall select the quorum, after determining any conflicts based on the expertise of Tribunal members relative to the matter for consideration.

3.2 Substitution

3.2.1 At the hearing of any matter by the Tribunal, if the Chairman of that Division is the member no longer sitting on that Division, the Chairperson of the Tribunal shall appoint a Chairman for that Division from the remaining two members and that newly appointed Chairperson of that Division shall have a casting vote.

3.3 Conflict

3.3.1 No member of the Tribunal who is concerned with, or implicated in, or who is a director, shareholder or employer of a person interested in, or implicated in, or is an advisor to a person interested in, or implicated in, that matter (or has been so concerned or held such appointment within the past 24 months from the date of the act or omission giving rise to the matter), shall be eligible to be selected in a Division to hear and determine that matter or shall be eligible to attend any meeting of the Tribunal in respect of that matter. If a member of the Tribunal is concerned with, is interested in, or implicated in, or is a director, shareholder or employer of a competitor of the person implicated in a matter (except in the case of the Market Participant Appointees, Clearing Participant Appointees or Derivatives Market Appointees, who may be selected in a Division whether or not they are competitors) such member shall also be ineligible to be selected in a Division to hear and determine that matter and shall be ineligible to attend any meeting of the Tribunal in respect of that matter.

3.3.2 All members of the Tribunal shall, as soon as is practicable after being advised of a matter to be heard and determined by the Tribunal, declare any interest in connection with the parties to, or the subject matter of, that matter. In such a case, that member shall not be eligible to attend any hearing or meeting of the Tribunal in respect of that matter.

Section 4: Power of the Tribunal

No procedures made.

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Section 5: Appeal Panel

No procedures made.

Section 6: Summary Hearing

Summary Hearing Selection Procedure

Procedures for Rule 6.1.1

6.1 Example

6.1.1 An example where the requirement for speed and certainty may result in a matter being referred to Tribunal under the Summary Hearing Procedure is where a transaction must proceed within a particular time period which prevents the notice requirements of the Full Hearing Procedure being complied with and there are allegations that the transaction or aspects of the transaction do not comply with any of the NZX Markets Rules or the Clearing and Settlement Rules, or any other rules or regulations of NZX or CHO, as the context requires, from time to time. In order for the transaction to proceed, the allegations must be dealt with and the Summary Hearing Procedure is, in NZX's opinion, the appropriate forum for this.

6.1.2 Without limiting NZX's discretion to refer a matter to the Summary Hearing Procedure or the Full Hearing Procedure, those breaches of:

- (a) the NZX Participant Rules found in penalty bands 1-4 of part A of the Penalty Band Guidance Procedure in Procedure 11.2.1; and
- (b) the Listing Rules found in penalty bands 1-3 of part B of the Penalty Band Guidance Procedure in Procedure 11.3.1; and
- (c) the Clearing and Settlement Rules found in penalty bands 1-4 of the Penalty Band Guidance Procedure in Procedures 11.4; and
- (d) the Derivatives Market Rules found in penalty bands 1-4 of the Penalty Band Guidance Procedure in Procedures 11.5 ,

will ordinarily be referred to the Summary Hearing Procedure

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Section 7: Full Hearing

No procedures made.

Section 8: Summary Appeal

No procedures made.

Section 9: Full Appeal

No procedures made.

Section 10: Settlement

No procedures made.

Section 11: Penalties

Penalty Band Guidance Procedure

Procedures for Rule 11.20.1(f)

11.1 Penalty Bands

11.1.1 This Procedure provides a guide as to the appropriate financial penalties to be imposed by the Tribunal in respect of breaches of the NZX Participant Rules by Market Participants, the NZX Listing Rules by Listed Issuers, the Clearing and Settlement Rules by Clearing Participants and Derivatives Market Rules by Derivatives Participants (respectively). The applicable penalties are divided into bands. Each of the penalty bands provides examples of types of breaches and the recommended financial penalty for such breach. The Procedure also sets out mitigating factors for consideration by the Tribunal in setting the penalty. The penalty bands are not an attempt to indicate the penalty that should be imposed for every breach of the NZX Markets Rules and/ or the Clearing and Settlement Rules. The Procedure is not determinative and the Tribunal will ultimately use its discretion in imposing any penalty under Rule 11.

11.2 Breach of NZX Participant Rules

11.2.1 The table below details the eight penalty bands that apply for breaches of the NZX Participant Rules. Ultimately, it is for the Tribunal or the Appeal Panel (as the case may be) to decide a penalty. However, this table sets out a guide of the penalties applicable to particular breaches of the NZX Participant Rules. Which band will be applicable for a particular breach will be determined through an assessment of the factors surrounding the breach including a review of any mitigating factors as set out in Procedure 11.2.2. For example if a Trading Participant fails to report a trade, a one-off monetary penalty may not be appropriate (instead a letter may be sent outlining the Trading Participant's obligations to report all trades), however if the same Trading Participant continually fails to report its trades then a monetary penalty will be appropriate (and will increase in value depending on how long the trades go unreported and whether the failure to report the trades is intentional). In addition, a breach of the NZX Participant Rules may fall into more than one penalty band. If so, the Tribunal or the Appeal Panel (as the case may be) may choose the most appropriate band to apply to that breach.

Penalty Band 1

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
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<ul style="list-style-type: none"> • Minor and/or inadvertent breaches brought about as a result of incorrect administrative practices or operational functions which are inconsistent with the NZX Participant Rules 	<ul style="list-style-type: none"> • Incorrect use of forms • Failure to have a registered office at an authorised location • Failure to provide NZX with copies of filings with the New Zealand Companies Office 	<ul style="list-style-type: none"> • No monetary penalty imposed. Offending Market Participant advised by letter of breach and given a period of time to remedy breach 	<ul style="list-style-type: none"> • Market efficiency
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Penalty Band 2

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Operational breaches of NZX Participant Rules of a minimal nature which do not create significant risk for the client or the market • Majority will be administrative breaches 	<ul style="list-style-type: none"> • Failure to report trades/late filing of trades (for which the penalty should be applied per day) • Bundling of orders • Failure to pay NZX Fees • Failure to advise NZX when a Responsible Executive, Managing Principal or NZX Advisor leaves the employment of the Market Participant • Failure to meet the minimum requirements of Know Your Client 	<ul style="list-style-type: none"> • Up to \$2,000 per offence for an individual; or • Up to \$4,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Market efficiency • Market liquidity

Penalty Band 3			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Mainly operational breaches of the NZX Participant Rules (minimal to moderate breach) • Failure to adhere to NZX Participant Rules due to poor administration or untrained staff 	<ul style="list-style-type: none"> • Failure to request Authority to Act • Failure to issue a written contract note the day after the execution of a client's instruction • Failure to have Terms of Business or similar agreement in place with a client • Failure to meet the minimum requirements of Know Your Client on an ongoing basis 	<ul style="list-style-type: none"> • Up to \$5,000 per offence for an individual; or • Up to \$10,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Market liquidity • Public perception of NZX and market • Market structure
Penalty Band 4			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Operational breach of the NZX Participant Rules of a medium to moderate nature 	<ul style="list-style-type: none"> • Failure to disclose to client the material interest of the Market Participant in the services or product on which they are making recommendations • Failure to disclose a potential conflict • Client funds account is 	<ul style="list-style-type: none"> • Up to \$10,000 per offence for an individual; or • Up to \$20,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Market integrity

	overdrawn		
Penalty Band 5			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of the NZX Participant Rules of a moderate nature • Market Participant should adhere to Good Broking Practice, have procedures in place to prevent a breach of the Rules 	<ul style="list-style-type: none"> • Acting in a manner which is detrimental to NZX or puts NZX into disrepute • Failure to hold client assets in trust at all times (as a result of an error, e.g. due to the fact that money was applied to the wrong account) • Failure to maintain liquid capital requirements • Client funds overdrawn on a regular basis and the amount the fund is overdrawn is substantial • Failure to address and resolve a complaint in an appropriate manner 	<ul style="list-style-type: none"> • Up to \$25,000 per offence for an individual; or • Up to \$50,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Public perception of NZX and market • Market integrity
Penalty Band 6			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of NZX Participant Rules of a moderate nature 	<ul style="list-style-type: none"> • Failure to create or adhere to Chinese Wall to manage conflicts • Client assets used as 	<ul style="list-style-type: none"> • Up to \$75,000 per offence for an individual; or • Up to \$150,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Market integrity • Public perception of NZX and the market

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	<p>security for Market Participant</p> <ul style="list-style-type: none"> • Communication of false/misleading information to clients • Failure to hold client assets in trust as required by NZX Participant Rules • Failure to ensure that a person providing client advice or investment advice has the requisite NZX accreditation and approval • Failure to provide NZX with information requested 		
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Penalty Band 7

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of the NZX Participant Rules of a moderate to high nature 	<ul style="list-style-type: none"> • Market Participant found to have engaged in manipulative practices • Market Participant has brought the market or NZX into disrepute • Failure to maintain Liquid Capital requirements (is applicable to the Market Participant) 	<ul style="list-style-type: none"> • Up to \$100,000 per offence for an individual; or • Up to \$200,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Market integrity • Public perception of NZX and market

	Client funds overdrawn		
Penalty Band 8			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
	<ul style="list-style-type: none"> • Fraudulent behaviour (e.g. use of client monies for personal use or insider trading) • Market Participant found to have engaged in manipulative practices on an ongoing basis • Market Participant continues to put NZX into disrepute 	<ul style="list-style-type: none"> • Up to \$500,000 per offence for an individual or a non-individual. 	<ul style="list-style-type: none"> • Market integrity • Public perception of NZX and market

11.2.2 Each breach of the NZX Participant Rules is to be considered by the Tribunal or the Appeal Panel on a case by case basis considering all mitigating factors in relation to the breach. A review and/or investigation, if necessary, into the mitigating factors surrounding a breach will be fundamental to determine what penalty band fits the breach. In determining the exact level of severity of the breach, while bands are a guide, other factors will also be considered such as the following mitigating factors:

- (a) How severe is the breach?
- (b) Was the breach intentional?
- (c) Was the breach the result of human error?
- (d) Has the breach put client funds at risk?
- (e) Has the breach placed NZX and the market into disrepute?
- (f) How long has the breach existed?
- (g) Was the breach brought to the attention of NZX by the Market Participant or was NZX advised of the breach as a result of its inspection process or information from the public/another NZX Firm?

- (h) If the breach was highlighted by another Market Participant, is there an alternative motive for that Market Participant advising of the breach of the NZX Participant Rules by the Market Participant at fault?
- (i) What has been the impact of the breach on the market/NZX/client?
- (j) Was the breach remedied by the Market Participant as soon as the breach was discovered?
- (k) Is the breach a recurring breach?
- (l) Is there a pattern of breaches by the Market Participant?
- (m) Has the Market Participant put processes in place to ensure future breaches of the same NZX Participant Rules do not occur?

11.3 Breach of Listing Rules

11.3.1 The table below details the six penalty bands that apply for breaches of the Listing Rules. Ultimately, it is for the Tribunal or the Appeal Panel (as the case may be) to decide a penalty. However, this table sets out a guide of the penalties applicable to particular breaches of the Listing Rules. Which band will be applicable for a particular breach will be determined through an assessment of the factors surrounding the breach including a review of any mitigating factors as set out below. For example, if a Listed Issuer mistakenly is late in advising NZX of a change in its Directors a monetary penalty may not be appropriate (instead a letter may be sent outlining the Issuer's obligations to advise of all changes in its Directors), however if the same Listed Issuer continually fails to advise NZX of changes to its Directors then a monetary penalty will be appropriate (and will increase in value depending on how long the reporting is delayed and whether the failure to report the change in Directors is intentional). In addition, a breach by a Listed Issuer may fall into more than one penalty band. If so, the Tribunal or the Appeal Panel (as the case may be) may choose the most appropriate band to apply to that breach.

Penalty Band 1

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach not affecting shareholders (where 	<ul style="list-style-type: none"> • Breach of spread requirements • Failure to pay 	<ul style="list-style-type: none"> • Up to \$5,000 per offence 	<ul style="list-style-type: none"> • Operational

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not covered in other penalty bands)	NZX Fees		
Penalty Band 2			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
Failure to obtain required approval from NZX	<ul style="list-style-type: none"> • Notices of Meeting • Constitution or Trust Deed • Independent Solicitor Approval • Appraiser Advertisements 	Up to \$10,000	<ul style="list-style-type: none"> • Operational Compliance
Penalty Band 3			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
Corporate Governance	<ul style="list-style-type: none"> • Rotation of independent auditor • Establishment of an Audit Committee • Board composition (independent directors) • Failure to adequately disclose differences with Corporate Governance Best Practice Code • Failure to disclose the Issuer's corporate governance practices in the annual report 	Up to \$20,000	<ul style="list-style-type: none"> • Market Information • Market Integrity • Public perception of NZX and the market

Penalty Band 4			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of terms of a ruling or waiver 	<ul style="list-style-type: none"> • Failure to observe the terms of a waiver 	<ul style="list-style-type: none"> • Varies, depending on the principle that has been affected 	<ul style="list-style-type: none"> • Public perception of NZX and market • Market Integrity
Penalty Band 5			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breaches affecting shareholders (where not covered in other penalty bands) 	<ul style="list-style-type: none"> • Issuing equity securities without shareholder approval • Conducting buybacks, redemptions or financial assistance without shareholder approval • Related Party transactions • Major Transactions under Listing Rule 9.1 • Sale of minimum holdings • Directors remuneration and retirement • Failure to produce transfer statements • Failing to apply correct voting disqualifications 	<ul style="list-style-type: none"> • Up to \$500,000 	<ul style="list-style-type: none"> • Shareholder rights • Investor confidence • Public perception of NZX and market
Penalty Band 6			

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Failure to provide timely, accurate and complete disclosure 	<ul style="list-style-type: none"> • Periodic reporting • Continuous Disclosure • Directors disclosure of relevant interest • Pre Break Disclosure 	<ul style="list-style-type: none"> • Up to \$500,000 	<ul style="list-style-type: none"> • Market information • Market integrity • Investor confidence • Public perception of NZX and the market

11.3.2 Each breach of the Listing Rules is to be considered by NZX Discipline or the Appeal Panel (as the case may be) on a case by case basis considering all mitigating factors in relation to the breach. A review and/or investigation, if necessary, into the mitigating factors surrounding a breach will be fundamental to determine what penalty band fits the breach. In determining the exact level of severity of the breach, while bands are a guide, other factors will also be considered such as the following mitigating factors:

- (a) How severe is the breach?
- (b) Has the breach put security holders at risk?
- (c) Has the breach placed NZX and the market into disrepute?
- (d) Was the breach intentional?
- (e) Was the breach the result of human error?
- (f) How long has the breach existed?
- (g) Was the breach brought to the attention of NZX by the Issuer or was NZX advised of the breach as a result of its market surveillance activities or information from the public/another Issuer?
- (h) If the breach was highlighted by another Issuer, is there an alternative motive for that Issuer advising of the breach of the Listing Rules by the Issuer at fault?
- (i) What has been the impact of the breach on the market/NZX/the Issuer's security holders?
- (j) Was the breach remedied by the Issuer as soon as the breach was discovered?
- (k) Is the breach a recurring breach?

- (l) Is there a pattern of breaches by the Issuer?
- (m) Has the Issuer put processes in place to ensure future breaches of the same Listing Rules do not occur?

11.4 Breach of the Clearing and Settlement Rules

11.4.1 The table below details the eight penalty bands that apply for breaches of the Clearing and Settlement Rules. Ultimately, it is for the Tribunal or the Appeal Panel (as the case may be) to decide a penalty. However, this table sets out a guide of the penalties applicable to particular breaches of the Clearing and Settlement Rules. Which band will be applicable for a particular breach will be determined through an assessment of the factors surrounding the breach including a review of any mitigating factors as set out below. For example, if a Clearing Participant fails to file any required forms or notify CHO of any changes that it is required to make, a one-off monetary penalty may not be appropriate (instead a letter may be sent outlining the Clearing Participant’s obligations to file such forms or report such matters). However if the same Clearing Participant continually fails to fail such forms or provide such required notification, then a monetary penalty will be appropriate (and will increase in value depending on the recurrence of the failure and whether the failure is intentional). In addition, a breach of the Clearing and Settlement Rules may fall into more than one penalty band. If so, the Tribunal or the Appeal Panel (as the case may be) may choose the most appropriate band to apply to that breach.

Penalty Band 1

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Minor and/or inadvertent breaches brought about as a result of incorrect administrative practices or operational functions, which are inconsistent with the Clearing and Settlement Rules. 	<ul style="list-style-type: none"> • Incorrect use of forms • Failure to provide CHO with copies of filings with the New Zealand Companies Office 	<ul style="list-style-type: none"> • No monetary penalty imposed. Offending Clearing Participant advised by letter of breach and given a period of time to remedy breach 	<ul style="list-style-type: none"> • Clearing House efficiency

Penalty Band 2			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Operational breaches of Clearing and Settlement Rules of a minimal nature which do not create significant risk for CHO or other Clearing Participants Majority will be administrative breaches 	<ul style="list-style-type: none"> Failure to settle trades/late settle of trades (for which the penalty should be applied per day) Failure to pay CHO Fees Failure to advise CHO when Responsible Executive leaves the employment of the Clearing Participant 	<ul style="list-style-type: none"> Up to \$2,000 per offence for an individual; or Up to \$4,000 per offence for a non-individual 	<ul style="list-style-type: none"> Clearing House efficiency and transparency Clearing House risk management
Penalty Band 3			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Mainly operational breaches of the Clearing and Settlement Rules (minimal to moderate breach) Failure to adhere to Clearing and Settlement Rules due to poor administration or untrained 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Up to \$5,000 per offence for an individual; or Up to \$10,000 per offence for a non-individual 	<ul style="list-style-type: none"> Clearing House risk management Public perception of CHO and Clearing House Clearing structure Clearing House integrity

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staff			
Penalty Band 4			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Operational breach of the Clearing and Settlement Rules of a medium to moderate nature 	Failure to meet required margin call	<ul style="list-style-type: none"> Up to \$10,000 per offence for an individual; or Up to \$20,000 per offence for a non-individual 	Clearing House integrity
Penalty Band 5			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Breach of the Clearing and Settlement Rules of a moderate nature 	<ul style="list-style-type: none"> Acting in a manner which is detrimental to CHO or puts CHO into disrepute Failure to meet required margin calls on an ongoing basis Failure to maintain liquid capital requirements Settlement Failure on a regular basis and the amount is substantial Failure to address and resolve a complaint in an appropriate manner 	<ul style="list-style-type: none"> Up to \$25,000 per offence for an individual; or Up to \$50,000 per offence for a non-individual 	<ul style="list-style-type: none"> Public perception of CHO and Clearing House Clearing House integrity
Penalty Band 6			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected

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<ul style="list-style-type: none"> • Breach of Clearing and Settlement Rules of a moderate nature 	<ul style="list-style-type: none"> • Failure to create or adhere to Chinese Wall to manage conflicts • Failure to meet required margin calls • Failure to provide the CHO with information requested 	<ul style="list-style-type: none"> • Up to \$75,000 per offence for an individual; or • Up to \$150,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Clearing House integrity • Public perception of CHO and Clearing House
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Penalty Band 7

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of Clearing and Settlement Rules of a moderate to high nature 	<ul style="list-style-type: none"> • Clearing and Settlement Participant found to have engaged in fraudulent practices • Clearing Participant has brought the Clearing House, CHO or NZX into disrepute • Failure to maintain Liquid Capital requirements • Credit Event 	<ul style="list-style-type: none"> • Up to \$100,000 per offence for an individual; or • Up to \$200,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Clearing House integrity • Public perception of CHO and Clearing House

Penalty Band 8

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
Severe breach of the Clearing and Settlement Rules	<ul style="list-style-type: none"> • Fraudulent behaviour (e.g. use of client monies or securities for house position) • Clearing Participant continues to 	Up to \$500,000 per offence for an individual or a non-individual.	<ul style="list-style-type: none"> • Clearing House and Market integrity • Public perception of CHO, the Clearing House, or any of NZX's

	put CHO or the Clearing House into disrepute		Markets.
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11.4.2 Each breach of the Clearing and Settlement Rules is to be considered by the Tribunal or the Appeal Panel (as the case may be) on a case by case basis considering all mitigating factors in relation to the breach. A review and/or investigation, if necessary, into the mitigating factors surrounding a breach will be fundamental to determine what penalty band fits the breach. In determining the exact level of severity of the breach, while bands are a guide, other factors will also be considered such as the following mitigating factors:

- (a) How severe is the breach?
- (b) Has the breach put CHO, the Clearing House, client's funds/ securities at risk?
- (c) Has the breach placed CHO, CDO, NZX and/ or any of NZX's markets into disrepute?
- (d) Was the breach intentional?
- (e) Was the breach the result of human error?
- (f) How long has the breach existed?
- (g) Was the breach brought to the attention of CHO by the Clearing Participant or was CHO advised of the breach as a result of information from NZX, the public/another Clearing Participant?
- (h) If the breach was highlighted by another Clearing Participant, is there an alternative motive for that Clearing Participant advising of the breach of the Clearing and Settlement Rules by the Clearing Participant at fault?
- (i) What has been the impact of the breach on the Clearing House / CHO/ CDO/ NZX/ clients?
- (j) Was the breach remedied by the Clearing Participant as soon as the breach was discovered?
- (k) Is the breach a recurring breach?
- (l) Is there a pattern of breaches by the Clearing Participant?
- (m) Has the Clearing Participant put processes in place to ensure future breaches of the same Clearing and Settlement

Rules do not occur?

11.5 Breach of the Derivatives Market Rules

11.5.1 The table below details the eight penalty bands that apply for breaches of the Derivatives Market Rules. Ultimately, it is for the Tribunal or the Appeal Panel (as the case may be) to decide a penalty. However, this table sets out a guide of the penalties applicable to particular breaches of the Derivatives Market Rules. Which band will be applicable for a particular breach will be determined through an assessment of the factors surrounding the breach including a review of any mitigating factors as set out below. For example, if a Derivatives Participant fails to file any required forms or notify NZX of any changes that it is required to make, a one-off monetary penalty may not be appropriate (instead a letter may be sent outlining the Derivatives Participant’s obligations to file such forms or report such matters), however if the same Derivatives Participant continually fails to fail such forms or provide such required notification, then a monetary penalty will be appropriate (and will increase in value depending on the recurrence of the failure and whether the failure is intentional). In addition, a breach of the Derivatives Market Rules may fall into more than one penalty band. If so, the Tribunal or the Appeal Panel (as the case may be) may choose the most appropriate band to apply to that breach.

Penalty Band 1

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Minor and/or inadvertent breaches brought about as a result of incorrect administrative practices or operational functions, which are inconsistent with the Derivatives Market Rules. 	<ul style="list-style-type: none"> Incorrect use of forms Failure to provide NZX with copies of filings with the New Zealand Companies Office 	<ul style="list-style-type: none"> No monetary penalty imposed. Offending Derivatives Participant advised by letter of breach and given a period of time to remedy breach 	<ul style="list-style-type: none"> Derivatives Market efficiency and transparency

Penalty Band 2

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
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<ul style="list-style-type: none"> Operational breaches of Derivatives Market Rules of a minimal nature which do not create significant risk for NZX, the Derivatives Market or other Derivatives Participants Majority will be administrative breaches 	<ul style="list-style-type: none"> Failure to settle trades/late settlement of trades (for which the penalty should be applied per day) Failure to pay NZX Fees Failure to advise NZX when Responsible Executive or Compliance Manager leaves the employment of the Derivatives Participant 	<ul style="list-style-type: none"> Up to \$2,000 per offence for an individual; or Up to \$4,000 per offence for a non-individual 	<ul style="list-style-type: none"> Derivatives Market efficiency and transparency
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Penalty Band 3

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Mainly operational breaches of the Derivatives Market Rules (minimal to moderate breach) Failure to adhere to Derivatives Market Rules due to poor administration or untrained staff 	<ul style="list-style-type: none"> Failure to issue a written contract note the day after the execution of a client's instruction Failure to have Client Agreement and Risk Disclosure and Acknowledgement in place with a client Failure to meet the minimum 	<ul style="list-style-type: none"> Up to \$5,000 per offence for an individual; or Up to \$10,000 per offence for a non-individual 	<ul style="list-style-type: none"> Derivatives Market efficiency and transparency Public perception of NZX and Derivatives Market

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	requirements of Know Your Client on an on-going basis		
Penalty Band 4			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Operational breach of the Derivatives Market Rules of a medium to moderate nature 	<ul style="list-style-type: none"> Failure to meet required margin call; Clients Funds account overdrawn 	<ul style="list-style-type: none"> Up to \$10,000 per offence for an individual; or Up to \$20,000 per offence for a non-individual 	Derivatives Market integrity
Penalty Band 5			
Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> Breach of the Derivatives Market Rules of a moderate nature 	<ul style="list-style-type: none"> Acting in a manner which is detrimental to NZX or brings NZX into disrepute Failure to meet required margin calls on an ongoing basis Failure to meet capital adequacy requirements Failure to hold Client funds on trust Failure to address and resolve a complaint in an appropriate manner 	<ul style="list-style-type: none"> Up to \$25,000 per offence for an individual; or Up to \$50,000 per offence for a non-individual 	<ul style="list-style-type: none"> Public perception of NZX and Derivatives Market Derivatives Market integrity
Penalty Band 6			

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Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of Derivatives Market Rules of a moderate nature 	<ul style="list-style-type: none"> • Failure to create or adhere to Chinese Wall to manage conflicts • Failure to meet required margin calls • Failure to provide NZX with information requested 	<ul style="list-style-type: none"> • Up to \$75,000 per offence for an individual; or • Up to \$150,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Derivatives Market integrity • Public perception of NZX and Derivatives Market

Penalty Band 7

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
<ul style="list-style-type: none"> • Breach of Derivatives Market Rules of a moderate to high nature 	<ul style="list-style-type: none"> • Derivatives Participant found to have engaged in fraudulent practices • Derivatives Participant has brought NZX or the Derivatives Market into disrepute • Failure to meet Prescribed Minimum Capital Adequacy requirements • Failure to comply with Rules concerning Client Funds 	<ul style="list-style-type: none"> • Up to \$100,000 per offence for an individual; or • Up to \$200,000 per offence for a non-individual 	<ul style="list-style-type: none"> • Derivatives Market integrity • Public perception of NZX and Derivatives Market

Penalty Band 8

Summary of Offences	Examples	Range of Financial Penalty	Business Area Affected
Severe breach of the	<ul style="list-style-type: none"> • Fraudulent behaviour 	Up to \$500,000 per offence for an	<ul style="list-style-type: none"> • Derivatives Market

Derivatives Market Rules	(e.g. use of client monies or securities for house position <ul style="list-style-type: none"> • Derivatives Participant continues to bring NZX and the Derivatives Market into disrepute • Breach of Market Manipulation provisions 	individual or a non-individual.	integrity <ul style="list-style-type: none"> • Public perception of NZX and Derivatives Market.
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11.5.2 Each breach of the Derivatives Market Rules is to be considered by the Tribunal or the Appeal Panel (as the case may be) on a case by case basis considering all mitigating factors in relation to the breach. A review and/or investigation, if necessary, into the mitigating factors surrounding a breach will be fundamental to determine what penalty band fits the breach. In determining the exact level of severity of the breach, while bands are a guide, other factors will also be considered such as the following mitigating factors:

- (a) How severe is the breach?
- (b) Has the breach put the Derivatives Market, client's funds/ Contracts at risk?
- (c) Has the breach placed NZX, CHO, CDO or the Derivatives Market into disrepute?
- (d) Was the breach intentional?
- (e) Was the breach the result of human error?
- (f) How long has the breach existed?
- (g) Was the breach brought to the attention of NZX by the Derivatives Participant or was NZX advised of the breach as a result of information from CHO, the public or another Derivatives Participant?
- (h) If the breach was highlighted by another Derivatives Participant, is there an alternative motive for that Derivatives Participant advising of the breach of the Derivatives Market

Rules by the Derivatives Participant at fault?

- (i) What has been the impact of the breach on the Derivatives Market / NZX/ CHO/ clients?
- (j) Was the breach remedied by the Derivatives Participant as soon as the breach was discovered?
- (k) Is the breach a recurring breach?
- (l) Is there a pattern of breaches by the Derivatives Participant?
- (m) Has the Derivatives Participant put processes in place to ensure future breaches of the same Derivatives Market Rules do not occur?

Section 12: Costs and Expenses

No procedures made.

Section 13: Failure to Pay Penalties or Costs

No procedures made

Section 14: Annual Regulatory Report

No procedures made

Section 15: Remuneration

No procedures made

Section 16: Annual and Other Meetings

No procedures made

Section 17: Indemnification

No procedures made

Section 18: Confidentiality

No procedures made