IN NZ MARKETS DISCIPLINARY TRIBUNAL
SUMMARY HEARING PROCEDURE **NZMDT 12/14**

UNDER	the NZ Markets Disciplinary Tribunal Rules
IN THE MATTER OF	breach of NZX Main Board Listing Rules 10.1.1(a) and 10.1.1(b)
BETWEEN	**NZX LIMITED**
AND	**BLIS TECHNOLOGIES LIMITED** Respondent

DETERMINATION OF NZ MARKETS DISCIPLINARY TRIBUNAL
1 DECEMBER 2014

NEW ZEALAND MARKETS
DISCIPLINARY TRIBUNAL

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1. This is a determination of a division of the NZ Markets Disciplinary Tribunal (*the Tribunal*) comprising Mark Freeman (division chairman), Alison Paterson and Leonard Ward.

2. Capitalised terms that are not defined in this determination have the meanings given to them in the NZX Main Board Listing Rules (*the Rules*).

Background

3. BLIS Technologies Limited (*BLT*) is an Issuer with ordinary shares Quoted on the NZX Main Board. BLT is subject to the Rules.

4. On 21 October 2014, NZX Limited (*NZX*) notified BLT that it intended to file a statement of case against it alleging a breach of the Rules.

5. On 4 November 2014, NZX filed a statement of case (*SOC*) alleging that BLT had breached Rules 10.1.1(a) and 10.1.1(b).

6. At the request of BLT, on 18 November 2014, the Tribunal granted a one business day extension to allow the BLT Board time to approve the intended response to the Tribunal. NZX supported the extension requested.

7. On 19 November 2014, BLT filed a statement of response (*SOR*).

8. On 24 November 2014, NZX filed a rejoinder to the SOC (*Rejoinder*).

Factual Background

9. In the SOC, NZX set out the following material facts:

   a. At BLT's 2013 annual meeting, BLT noted that it had "*recently reached a major milestone with the appointment of Sinopharm to market oral health products containing BLIS's probiotics*".

   b. At BLT's 2014 annual meeting, BLT noted that "*Sinopharm (the largest pharmaceutical company in China) is currently test-marketing consumer products with BLIS oral probiotics in 3 major cities through 30 pharmacies*".

   c. Between 15 August 2014 to 19 August 2014, confidential discussions were held between a Sinopharm intermediary and BLT CEO, Dr Richardson (*the CEO*). During the course of these discussions the CEO became aware that the number of pharmacies Sinopharm would be distributing BLT products to would increase from 30 to 600 (*Sinopharm Trial*).

   d. On 19 August 2014, the CEO was approached by, and conducted an interview with, a journalist from Fairfax Media in relation to an article it was preparing regarding one of BLT's trade partners. During that conversation, the CEO disclosed that the Sinopharm Trial would be increased to up to 600 pharmacies.

   e. At the time that information was disclosed to the Fairfax Media journalist, BLT says that the CEO did not consider that information to be Material Information as there were no orders and hence no guarantee of success and had not discussed the information with the BLT Directors.

   f. After the interview the CEO decided to release an announcement to NZX about BLT's Register of Risk Management Programme (*RMP*).

g. On 20 August 2014, BLT released an announcement noting that it had successfully completed its final audit and was now cleared to export dairy products. At the time of the 20 August 2014 announcement, the CEO did not consider the comments he had made about the Sinopharm Trial to be material.

h. At noon on 22 August 2014, papers were provided to the BLT Board that included a reference to the extension of the Sinopharm Trial.

i. On 24 August 2014, the Sunday Star Times published an article entitled *"Dunedin manufacturer to launch probiotic in Asia"* (*the Article*). The Article stated that *"China's largest pharmaceutical company Sinopharm has said it will distribute Blis products in 600 stores in the next few weeks following a successful trial in three stores"*.

j. On the evening of 24 August 2014, discussions occurred between certain members of the BLT Board and it was decided that the extension of the Sinopharm Trial could potentially amount to Material Information. The Board also noted that the Article inaccurately stated that the current trial had been in three stores, rather than thirty. On that basis, the Board decided to make an announcement clarifying the position as soon as possible on Monday, 25 August 2014.

k. BLT sought to provide the announcement to NZX in time to ensure that it was available for release to NZX before trading commenced on Monday, 25 August 2014.

l. BLT's protocol required the CEO to discuss the release with a BLT Director. The announcement could only be released to the market once it had been discussed with, and agreed to by, one of BLT's Directors. BLT have advised that *"once there was a discussion with a director the announcement was promptly prepared, agreed with the director and released to the market. Unfortunately this was not as early on Monday as intended."*

m. BLT provided the announcement to NZX at 9.59am on Monday, 25 August 2014 (*the Announcement*). The Announcement was subsequently released to the market at 10.07am on 25 August 2014.

n. On 25 August 2014, BLT shares opened at a price of $0.022. This represented a 10% rise from the previous day's close of $0.020. The open match volume for BLT shares was 1,080,000 shares. This is compared to an average daily volume of 389,323 shares for the month of August 2014 up to and including 22 August 2014. By 12.30pm on 25 August 2014, the volume of shares traded was 6.9 million, and had reached an intra-day high of $0.031. This intra-day high represented a price increase of approximately 50% from the previous close.

10. In the SOR, BLT admitted certain of the facts set out in the SOC and summarised in paragraph 9 above, but noted that:

a. The announcement made on 20 August 2014 re-affirmed information provided at the AGM which had not been widely appreciated in the market.

b. The Sinopharm Trial was one of a number of matters referred to in the Article.

c. Not all BLT Directors were available to finalise the announcement to be made on 25 August 2014 due to overseas travel commitments.

d. NZX did not designate the Announcement as containing Price Sensitive Information.

e. BLT's share price volatility was not due to the actions or inactions of BLT and in any event the closing price that day was $0.025 which was 25% over the previous closing.

11. In the Rejoinder, NZX noted that:

a. It was not clear why the fact that some Directors were unavailable due to overseas travel commitments would have inhibited BLT's ability to release the information to the market earlier on 25 August 2014 because BLT's protocol required approval from only one BLT Director before release to NZX.

b. It uses its best endeavours to identify whether an announcement contains price sensitive information, but given the large number of announcements, NZX cannot guarantee that it will identify price sensitive information in every case. Regardless, NZX's classification of an announcement is not determinative of whether the announcement contains price sensitive information.

c. While the closing price of BLT shares on 25 August 2014 is a valid consideration, the more valid measure of the full impact of that information is the intra-day high of BLT shares on 25 August 2014 as it represents the highest price at which investors decided to trade BLT's shares.

d. The information regarding the RMP had been in the market since 20 August 2014, during which time BLT's share price volatility had not moved outside of its average range. Therefore the only new information available to the market on 25 August 2014 was that relating to the Sinopharm Trial which had been released in the Article and provided by BLT to NZX at 9.59am on 25 August 2014.

Rules

12. Rules 10.1.1(a) and 10.1.1(b) provide that:

Without limiting any other Rule, every Issuer shall:

(a) once it becomes aware of any Material Information concerning it, immediately release that Material Information to NZX, provided that this Rule shall not apply when:

(i) a reasonable person would not expect the information to be disclosed; and

(ii) the information is confidential and its confidentiality is maintained; and

(iii) one or more of the following applies:

(A) the release of information would be a breach of law; or

(B) the information concerns an incomplete proposal or negotiation; or

(C) the information comprises matters of supposition or is insufficiently definite to warrant disclosure; or

(D) the information is generated for the internal management purposes of the Issuer; or

(E) the information is a trade secret.

In this Rule 10.1.1, an Issuer is aware of information if a Director or an executive officer of the Issuer (and in the case of a Managed Fund, a Director or executive

officer of the Manager) has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer.

(b) not disclose any Material Information to the public, other Recognised Stock Exchanges (except as provided for in Rule 10.2.3(c)(i)) or other parties except in circumstances where the proviso to Rule 10.1.1(a) applies:

(i) prior to disclosing that Material Information to NZX; and 6

(ii) prior to an acknowledgement from NZX of receipt of that Material Information.

13. "Material Information" is defined in the Rules as information in relation to the Issuer that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the Issuer.

Submissions on the breach

14. In the SOC, NZX submitted that:

a. By no later than 19 August 2014, the CEO, and by attribution BLT, became aware that Sinopharm was going to increase distribution of BLT products from 30 to 600 pharmacies. That information was Material Information for the purposes of the Rules.

b. None of the provisos to Rule 10.1.1(a) applied.

c. By failing to provide the Material Information to NZX as soon as BLT became aware of it, BLT breached Rule 10.1.1(a).

d. On 19 August 2014, BLT provided the Material Information to a Fairfax Media journalist. In doing so, BLT provided Material Information to the public before releasing it to NZX and before receiving a confirmation of receipt from NZX.

e. By providing the Material Information to the public before disclosing it to NZX, BLT breached Rule 10.1.1(b).

f. The manner in which the market reacted on 25 August 2014 is indicative of the materiality of the information relating to the Sinopharm Trial.

15. In the SOR, BLT submitted that:

a. While the CEO was aware by 19 August 2014 that Sinopharm were going to increase market testing of BLT products from 30 to 600 pharmacies, at that time this information was **not** regarded by BLT as Material Information for the purposes of the Rules.

b. It admits that none of the provisos in Rule 10.1.1(a) applied (paragraph 25 of the SOR).

c. It admits that by failing to provide the Material Information to NZX as soon as BLT became aware of it, BLT breached Rule 10.1.1(a) (paragraph 26 of the SOR).

d. It admits that on 19 August 2014 it disclosed information to a Fairfax Media journalist which it did not appreciate at the time could be considered to be Material Information but later came to appreciate that the information could be considered to be Material Information. It admits that in doing so this had the consequence of making information available to the public before it being released to NZX and before receiving a confirmation of receipt from NZX.

e. It admits that by providing the Material Information to the public before disclosing it to NZX, BLT breached Rule 10.1.1(b) (paragraph 28 of the SOR).

f. It denies that the manner in which the market reacted on 25 August 2014 is indicative of the materiality of the information relating to the Sinopharm distribution. It submits instead that on 25 August 2014, the market reacted to a number of matters referred to in the Article the most material one of which involved the reaffirmation of the announcement about the RMP which had not been widely appreciated at the time of the AGM.

Submissions on Penalty

16. In the SOC, NZX submitted that the breach by BLT falls within Penalty Band 6 of the Tribunal Procedures, as continuous disclosure is expressly cited as an example of conduct falling within this Penalty Band. Penalty Band 6 indicates that a financial penalty of up to $500,000 is appropriate. However, for matters brought under the Summary Hearing Procedure, such as this one, the maximum penalty which can be imposed is $250,000.

17. NZX submitted that a penalty of $30,000, a public censure and costs is appropriate in this case. In support of this level of penalty, NZX noted that the obligation to disclose Material Information to NZX on a continuous basis is a fundamental obligation of Issuers under the Rules. The policy behind the continuous disclosure Rules is to ensure that Material Information is released in a timely manner so that the market can operate on a fully informed basis. NZX submitted that BLT's failure to release the Material Information to NZX immediately resulted initially in an uninformed market. This error was compounded because BLT's selective disclosure of information to the public then resulted in an imbalance of information in the market. This resulted in some investors being able to trade on information that the rest of the market may not have been privy to.

18. NZX considered that the following mitigating factors are relevant to why a penalty in the lower quartile of the band is appropriate:

a. BLT has cooperated with NZX in respect of its enquiries into the matter;

b. BLT released an announcement containing the Material Information before NZX was required to intervene; and

c. There is no evidence that this was a deliberate breach of Rule 10.1.1.

19. NZX considered that the following aggravating factors are relevant:

a. The facts disclose two breaches of the Rules;

b. BLT failed in the first instance to realise that the information was material;

c. Although the CEO became aware of the Material Information by 19 August 2014, and the BLT Board become aware of the information on 22 August 2014, the Announcement was not released until 25 August 2014; and

d. BLT's protocols for releasing Material Information did not ensure the timely release of the Material Information once a decision had been made to release an announcement to NZX.

20. In the SOR, BLT denied that the penalties requested by NZX are appropriate in the circumstances and stated that a more appropriate fine for the level of breach and financial consequences of that breach would be $10,000.

21. BLT agreed that there was initially a potentially uninformed market on 25 August 2014, but states that this was for a very short period of time. It does not accept that there was a

"selective disclosure" of information to the public in the sense that those words suggest deliberate actions designed to distort the market.

22. BLT noted that there was other information conveyed in the Article and other information that was disclosed to NZX and among that information was the information in question. In the circumstances there was a very limited opportunity for investors to be able to trade on information that the rest of the market may not have been privy to.

23. BLT also noted that any breach was not deliberate. The BLT Board took immediate action as soon as it was aware that there was an issue with this information and it had hoped to inform the market before the market opened.

24. In respect of the aggravating factors cited by NZX, in the SOR BLT:

    a. admitted the facts disclosed two potential breaches of the Rules.

    b. denied that BLT failed in the first instance to realise that the information was material and states that the information was potentially seen to be material when it was published in the Article.

    c. stated that although the CEO was aware of information that could potentially be Material Information by 19 August 2014, the BLT Board did not become aware of this information on 22 August 2014 and was only aware of it on 24 August 2014 when it was published in the Article.

    d. denied that BLT's protocols for releasing Material Information did not ensure timely release once a decision had been made to make an announcement and stated that its protocols were designed to ensure effective governance and decision-making.

25. In addition, BLT submitted that the following mitigating factors need to be taken into account:

    a. The CEO was caught unprepared by a telephone enquiry. Normally direct calls did not go straight through to him but on this occasion the call did and it caught him unprepared. He faced a range of questions and the Sinopharm Trial was only one of them. Changes have been made to ensure that no-one will give impromptu interviews and that it will be a requirement that what is being published is reviewed by BLT first.

    b. The information concerning the Sinopharm Trail was already in the marketplace as a result of earlier releases but the media had not given it any attention.

    c. The Article got the facts wrong when it referred to an expansion from three to 600 pharmacies. This would give the reader the impression of an increase by a factor of 200. In reality it was an increase by a factor of 20 which is quite different. This is not the fault of BLT.

    d. No orders had been placed and there had been no written confirmation of the extension of the trial.

    e. BLT saw no reason to change its guidance to the market as a result of this information.

    f. As can be seen from the CEO's report in the Board papers consideration was given by the CEO to material information released in relation to RMP. That was clearly regarded as a milestone but in the overall circumstances Sinopharm did not feature. What this means is that the issue of material information was being considered.

g. The share price was highly volatile in the circumstances of a low starting price and limited volume and this means that it is easy to have a high percentage swing even though there is low dollar value trading. Indeed the share price has been highly volatile over a considerable period of time and such swings have been not uncommon.

h. The CEO had been briefed on continuous disclosure obligations earlier that month by BLT's solicitors.

i. The available Directors appreciated that there could be a problem on 24 August 2014 and they moved quickly to discharge their responsibilities in that regard. Although the Board papers had been despatched to them at noon on 22 August 2014 one would not expect them to have read those papers immediately, and some would not have received these due to overseas travel.

j. There are very high levels of awareness of the disclosure obligations by BLT.

k. The Board has appointed an Executive Director, Tony Offen, in direct response to this incident in order to take the pressure off the CEO.

26. In the Rejoinder, NZX noted, among other things, that:

a. From 19 August 2014, being the date the expansion of the Sinopharm Trial was confirmed to BLT (at the latest) to 10.07am 25 August 2014 when the Announcement was made, the market was not operating on a fully informed basis.

b. Selective disclosure does not need to be deliberate to have a market impact and that is why the test for whether information is Material Information is an objective test. The fact that the Material Information was disclosed by BLT to a Fairfax media journalist, without being released to NZX at that time, was selective disclosure which caused a market impact.

27. Both NZX and BLT made submissions on the applicability of recent decisions made by the Tribunal regarding breaches of the continuous disclosure requirements. We discuss these precedents below.

Tribunal Determination

28. The Tribunal finds that BLT breached Rules 10.1.1(a) and 10.1.1(b).

29. The Tribunal notes that BLT admits that it breached Rules 10.1.1(a) and 10.1.1(b) (paragraphs 26 and 28 of the SOR), but appears to dispute that BLT was aware by 19 August 2014 that the information regarding the increase in the Sinopharm Trial was Material Information.

Reasons for Determination

30. Under Rule 10.1.1(a), once an Issuer becomes aware of any Material Information concerning it, it must immediately release that Material Information to NZX unless one of the provisos applies.

31. Both parties agree that none of the provisos in Rule 10.1.1(a) apply in the current case.

32. BLT has admitted in its SOR that:

a. by failing to provide information regarding the increase in the Sinopharm Trial to NZX as soon as it became aware of the information, it breached Rule 10.1.1(a); and

b. by providing that information to the public (the Fairfax Media journalist) before disclosing it to NZX, BLT breached Rule 10.1.1(b).

33. Despite these admissions, BLT appears to have suggested that information regarding the increase in the Sinopharm Trial may not have been Material Information at the time it was received by its CEO or when it was disclosed to the journalist.

34. In the circumstances, the Tribunal considers that it should set out its view on (1) whether information on the increase in the Sinopharm Trial was Material Information; and (2) if so, when BLT became aware of it.

35. "Material Information" is defined in the Rules as information in relation to the Issuer that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the Issuer. BLT had previously made announcements to the market regarding its "major milestone" in the appointment of Sinopharm to market oral health products containing BLT probiotics (30 August 2013) and again on 25 July 2014 when it advised the market that Sinopharm was test-marketing consumer products with BLT oral probiotics in 3 major cities through 30 pharmacies. Given the previous information provided to the market, the Tribunal considers that a significant increase in the Sinopharm Trial from 30 to 600 pharmacies in China is information that a reasonable person would expect to have a material effect on the price of BLT shares. As it transpired, there was a significant increase in the BLT share price on 25 August 2014 after that information had been released to the market.

36. Under Rule 10.1.1, an Issuer is aware of information if a Director or an executive officer of the Issuer has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer. BLT admits that by 19 August 2014, the CEO became aware that the number of pharmacies involved in the Sinopharm Trial was going to increase from 30 to 600 pharmacies. Accordingly, under Rule 10.1.1(a), BLT became aware of the information through the attributed knowledge of the CEO. It is irrelevant that the CEO did not appreciate at the time that the information was Material Information.

37. Accordingly, the Tribunal considers that by 19 August 2014, BLT was aware of Material Information, namely the expansion of the Sinopharm Trial, which should have been immediately disclosed to the market. As the information was not released to the market until 10.07am on 25 August 2014, the Tribunal considers that BLT breached Rule 10.1.1(a).

38. It follows then, that the Tribunal also considers that BLT breached Rule 10.1.1(b) by providing the Material Information to a member of the public (a Fairfax Media journalist) on 19 August 2014 before that information had been released to NZX.

Penalty

39. In determining the appropriate penalty to impose for the breaches by BLT, the Tribunal must consider the matters prescribed in Tribunal Rule 11.16.1, including the conduct of BLT over the previous 24 month period, the severity of the matter, any benefit obtained or detriment suffered as a consequence of the breach, the reputational impact of the penalty being imposed and any other mitigating factors.

Conduct of BLT

40. There has been no suggestion that BLT deliberately breached the Rules. However, it is incumbent on all Issuers and their senior management to understand the requirements of the Rules and to comply with them. The Tribunal is concerned that:

a. The CEO did not recognise that the increase in the Sinopharm Trial was, or at least could have been perceived to be, Material Information at the time of his discussions with Sinopharm.

b. The Directors of BLT do not appear to have been advised of the information regarding the increase in the Sinopharm Trial until 22 August 2014 when the information was provided to them as part of their board papers, which was three days after the CEO provided the information to a journalist.

c. The Material Information was released to a journalist some 6 days before the Announcement was made.

d. Despite BLT's protocol only requiring approval to an announcement from one Director, BLT failed to release the Material Information before the market opened on 25 August 2014.

41. The Tribunal notes that this is the first occasion a breach of the Rules by BLT has been referred to the Tribunal.

Severity of the breach

42. Any breach of the continuous disclosure provisions of the Rules is a very serious matter given the potential for the breach to affect market integrity and investor confidence. The Tribunal notes that the breach is particularly serious in this case because not only did BLT fail to recognise that the expansion of the Sinopharm Trial was Material Information, it released that information to a member of the public (a Fairfax journalist) before releasing it to the market, with the result that the market was not operating on a fully informed basis (albeit for what appears to be only a relatively short period of time).

Benefit obtained/detriment suffered

43. Neither NZX nor BLT have made submissions regarding the potential detriment to BLT shareholders. However, on 25 August 2014 BLT shares opened at $0.022, representing a 10% rise from the previous day's close of $0.020. The open match volume for BLT shares was 1,080,000 shares compared to an average daily volume of 389,323 shares for the month August 2014 up to and including 22 August 2014. The Tribunal was not provided with trading information in order to determine the total possible loss to BLT shareholders before 10.07am when the Announcement was made. However, given the low share price, the dollar value of any loss is unlikely to be significant.

Reputational Impact

44. While BLT did not make any submissions on the reputational impact on BLT should the Tribunal make an adverse finding, the Tribunal notes that any ruling against an Issuer is likely to be detrimental to its market reputation. The Tribunal takes its responsibilities very seriously and is very mindful of the possible consequences to an Issuer of adverse findings.

Other mitigating factors

45. Both NZX and BLT have submitted that there are a number of mitigating factors in this case (as noted above).

46. The Tribunal notes that once the Article was published, BLT did move relatively quickly, of its own volition, to make an announcement, albeit failing to do so before trading commenced on 25 August 2014. In the Tribunal's view, that announcement should have been made to NZX in time for release to the market before trading commenced on 25 August 2014. The Tribunal also notes that there is no evidence (or at least no evidence was provided) that anyone in the market had access to the information before the Article was published. Finally, the Tribunal notes that as a direct result of this incident BLT has appointed an Executive Director to take the pressure off the CEO.

Financial Penalty

47. NZX has sought a penalty of $30,000. NZX appears to have used two recent decisions made by the Tribunal regarding a breach of Rule 10.1.1 (*NZMDT 5/2013 NZX v Energy Mad Ltd* and *NZMDT 1/2014 NZX v Rakon Ltd*) as a benchmark. A penalty of $30,000 was also imposed in both cases. NZX also referred to two other decisions made by the Tribunal which it considered may be relevant to the current case. In *NZMDT 3/2008 NZX v Strategic Finance Ltd* a penalty of $20,000 was imposed for a breach of Rule 10.1.1. The Tribunal considered that decision to have limited precedent value to the current case given it was made over six years ago. In *NZMDT 5/2014 NZX v Fonterra Co-operative Group Ltd* a settlement of $150,000 was approved by the Tribunal. The Tribunal also considered that decision to have limited precedent value to the current case given the circumstances and nature of the alleged breach in that case and the expectations that the market has of a large and prominent company such as Fonterra.

48. The breach of Rule 10.1.1 in *NZX v Energy Mad Ltd* (*MAD*) continued for a considerably longer period of just over one month (although the intervening Christmas period was a contributing factor). In that case, MAD incorrectly considered (based in part on oral legal advice they had received) that the disclosure of information which could affect the company being able to achieve its IPO financial forecast was not required on the basis that any shortfall could be recovered through other potential revenue streams. The Tribunal accepted that MAD had not sought to deliberately breach the Rules. The Tribunal notes that the parties agreed a settlement in that case. It is the Tribunal's policy that where NZX has negotiated a settlement with a respondent it is a matter for NZX in the first instance to assess an appropriate financial penalty. As a general rule, it is only on rare occasions that the Tribunal would disagree with the financial penalties agreed between the parties.

49. The breach of Rule 10.1.1 in *NZX v Rakon Ltd* (*RAK*) continued for approximately 1.5 hours. In that case RAK incorrectly considered that an agreement it had entered into to sell assets was not complete and therefore was not required to be disclosed. The Tribunal found that the agreement was complete at the time of execution by the parties on the evening of 4th July 2013, and was required to be immediately disclosed by RAK at that time. In practice, this should have occurred before the market opened in New Zealand on 5 July 2013. There was no suggestion that RAK had deliberately breached the Rules having considered that, until the deposit was received in cleared funds, no disclosure was required.

50. BLT submitted that a more appropriate fine for the level of breach and the financial consequences of that breach would be $10,000. The Tribunal considers that a penalty of $10,000 would be manifestly insufficient given the serious nature of the breach and the fact that two Rules were breached by BLT.

51. Accordingly, given the circumstances of this case and the precedents noted above, the Tribunal considers that a penalty of $30,000 (as recommended by NZX) is appropriate. Although there are two breaches in this case, the breaches are related incidents and in essence arise out of the same act or conduct – namely, the failure on the part of the CEO to appreciate that information about the increase in the Sinopharm Trial was (or could be) Material Information. On that basis, the Tribunal considers that a single (or concurrent) penalty of $30,000 for both breaches is appropriate.

52. In imposing this penalty, the Tribunal wishes to emphasise that compliance with the continuous disclosure requirements in the Rules is of fundamental importance to the integrity of the market. Material Information must be immediately released to the market, unless a permitted exception applies and must not be released to a member of the public before its release to NZX. Any breach of the continuous disclosure requirements under Rules brings the market into disrepute and will be punished accordingly.

Public Censure

53. NZX has sought a penalty of public censure. The Tribunal considers that the public naming of BLT is entirely appropriate in this case given the nature of the breach.

Summary of Orders

54. The Tribunal imposes the following penalties:

    a. A public censure in the form of an announcement by the Tribunal to the market that BLT has been found in breach of Rules 10.1.1(a) and 10.1.1(b).

    b. An order that BLT pay to NZX $30,000 by way of penalty within 20 Business Days of the date of an invoice from NZX;

    c. An order that BLT pay the costs incurred by the Tribunal in considering this matter within 20 Business Days of the date of an invoice from NZX; and

    d. An order that BLT pay the costs incurred by NZX in relation to this matter within 20 Business Days of the date of an invoice from NZX.

55. The Tribunal recommends that this decision be released to the market in full under Tribunal Rule 6.6.

DATED 1 DECEMBER 2014

Mark Freeman, Division Chairman, NZ Markets Disciplinary Tribunal

NEW ZEALAND MARKETS
DISCIPLINARY TRIBUNAL

[x] December 2014

ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL

PUBLIC CENSURE OF BLIS TECHNOLOGIES LIMITED BY THE NZ MARKETS DISCIPLINARY TRINUBAL FOR A BREACH OF NZX MAIN BOARD LISTING RULE 10.1.1(A) AND (B)

1. In a determination of the NZ Markets Disciplinary Tribunal (*the Tribunal*) dated 1 December 2014, the Tribunal found that BLIS Technologies Limited (*BLT*) breached NZX Main Board Listing Rule (*Rule*) 10.1.1(a) and (b).

2. What follows is a high level summary. The facts of this matter and the Tribunal's detailed reasoning are set out in its decision.

Background

3. At BLT's 2013 annual meeting, BLT noted that it had "*recently reached a major milestone with the appointment of Sinopharm to market oral health products containing BLIS's probiotics*".

4. At BLT's 2014 annual meeting, BLT noted that "*Sinopharm (the largest pharmaceutical company in China) is currently test-marketing consumer products with BLIS oral probiotics in 3 major cities through 30 pharmacies*".

5. By 19 August 2014, the BLT CEO had become aware that the number of pharmacies to which Sinopharm would distribute BLT products was going to increase from 30 to 600 (*Sinopharm Trial*).

6. On 19 August 2014, the CEO was approached by, and conducted an interview with, a journalist from Fairfax Media. During that conversation, the CEO disclosed that the Sinopharm Trial would be increased to up to 600 pharmacies.

7. On 20 August 2014, BLT released an announcement noting that it had successfully completed its final audit and was now cleared to export dairy products. At the time of the 20 August 2014 announcement, the CEO did not consider the comments he had made about the Sinopharm Trial to be material.

8. At noon on 22 August 2014, papers were provided to the BLT Board that included a reference to the extension of the Sinopharm Trial.

9. On 24 August 2014, the Sunday Star Times published an article entitled "*Dunedin manufacturer to launch probiotic in Asia*" (*the Article*). The Article stated that "*China's largest pharmaceutical company Sinopharm has said it will distribute Blis products in 600 stores in the next few weeks following a successful trial in three stores*".

10. On the evening of 24 August 2014, discussions occurred between members of the BLT Board and it was decided that the extension of the Sinopharm Trial could potentially amount to Material Information. The Board also noted that the Article inaccurately stated that the current trial had been in three stores, rather than thirty. On that basis, the Board decided to make an announcement clarifying the position as soon as possible on Monday, 25 August 2014.

11. BLT's protocol required that an announcement could only be released to the market once it had been discussed with, and agreed to by, one of BLT's Directors.

12. BLT provided the announcement to NZX at 9.59 am on Monday, 25 August 2014 (*the Announcement*). The Announcement was subsequently released to the market at 10.07 am on 25 August 2014.

13. On 25 August 2014, BLT shares opened at a price of $0.022. This represented a 10% rise from the previous day's close of $0.020. The open match volume for BLT shares was 1,080,000 shares. This is compared to an average daily volume of 389,323 shares for the month of August 2014 up to and including 22 August 2014. By 12.30 p.m. on 25 August 2014, BLT's volume was 6.9 million shares, and had reached an intra-day high of $0.031. This intra-day high represented a price increase of approximately 50% from the previous close. BLT's shares closed that day at $0.025 cents which was a 25% increase over the previous closing price.

Determination

56. The Tribunal finds that BLT breached Rules 10.1.1(a) and 10.1.1(b).

Reasons for Determination

57. Under Rule 10.1.1(a), once an Issuer becomes aware of any Material Information concerning it, it must immediately release that Material Information to NZX unless one of the provisos applies.

58. Both parties agree that none of the provisos in Rule 10.1.1(a) apply in the current case.

59. BLT admitted that:

    a. by failing to provide information regarding the increase in the Sinopharm Trial to NZX as soon as it became aware of the information, it breached Rule 10.1.1(a); and

    b. by providing that information to the public (the Fairfax Media journalist) before disclosing it to NZX, BLT breached Rule 10.1.1(b).

60. Despite these admissions, BLT appeared to suggest that information regarding the increase in the Sinopharm Trial may not have been Material Information at the time it was received by its CEO or when it was disclosed to the journalist.

61. In the circumstances, the Tribunal considers that it should set out its view on (1) whether information on the increase in the Sinopharm Trial was Material Information; and (2) if so, when BLT became aware of it.

62. "Material Information" is defined in the Rules as information in relation to the Issuer that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the Issuer. BLT had previously made announcements to the market regarding its "major milestone" in the appointment of Sinopharm to market oral health products containing BLT probiotics (30 August 2013) and again on 25 July 2014 when it advised the market that Sinopharm was test-marketing consumer products with BLT oral probiotics in 3 major cities through 30 pharmacies. Given the previous information provided to the market, the Tribunal considers that a significant increase in the Sinopharm Trial from 30 to 600 pharmacies in China is information that a reasonable person would expect to have a material effect on the price of BLT shares. As it transpired, there was a significant increase in the BLT share price and volume traded on 25 August 2014 after that information had been released to the market.

63. Under Rule 10.1.1, an Issuer is aware of information if a Director or an executive officer of the Issuer has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer. BLT admits that by 19 August 2014, the CEO became aware that the number of pharmacies involved in the Sinopharm Trial was going to increase from 30 to 600 pharmacies. Accordingly, under Rule 10.1.1(a), BLT became aware of the information through the attributed knowledge of the CEO. It is irrelevant that the CEO did not appreciate at the time that the information was Material Information.

64. The Tribunal considers that by 19 August 2014, BLT was aware of Material Information, namely the expansion of the Sinopharm Trial, which should have been immediately disclosed to the market. As the information was not released to the market until 10.07am on 25 August 2014, the Tribunal considers that BLT breached Rule 10.1.1(a).

65. It follows then, that the Tribunal also considers that BLT breached Rule 10.1.1(b) by providing the Material Information to a member of the public (a Fairfax Media journalist) on 19 August 2014 before that information had been released to NZX on 25 August 2014.

Penalty

14. In determining the appropriate penalty to impose the Tribunal considered the matters prescribed in Tribunal Rule 11.16.1, including the conduct of BLT over the previous 24 month period, the severity of the matter, any benefit obtained or detriment suffered as a consequence of the breach, the reputational impact of the penalty being imposed and any other mitigating factors. The Tribunal also considered its recent decisions in *NZMDT 5/2013 NZX v Energy Mad Ltd* and *NZMDT 1/2014 NZX v Rakon Ltd* as a benchmark. A penalty of $30,000 was also imposed in both cases.

66. Accordingly, given the circumstances of this case and the precedents noted above, the Tribunal considers that a penalty of $30,000 (as recommended by NZX) is appropriate. Although there are two breaches in this case, the breaches are related incidents and in essence arise out of the same act or conduct – namely, the failure on the part of the CEO to appreciate that information about the increase in the Sinopharm Trial was (or could be) Material Information. On that basis, the Tribunal considers that a single (or concurrent) penalty of $30,000 for both breaches is appropriate.

67. In imposing this penalty, the Tribunal wishes to emphasise that compliance with the continuous disclosure requirements in the Rules is of fundamental importance to the integrity of the market. Material Information must be immediately released to the market, unless a permitted exception applies and must not be released to a member of the public before its release to NZX. Any breach of the continuous disclosure requirements under Rules brings the market into disrepute and will be punished accordingly.

Public Censure

15. The Tribunal considers that the public naming of BLT is entirely appropriate in this case given the nature of the breach.

Orders

16. The Tribunal imposed the following penalties:

    (a) A public censure in the form of this announcement;

    (b) An order that BLT pay $30,000;

    (c) An order that BLT pay the actual costs and expenses incurred by the Tribunal; and

    (d) An order that BLT pay the actual costs and expenses incurred by NZX.

The Tribunal

17. The Tribunal is a disciplinary body independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the market rules.

ENDS