

ANNUAL REPORT 2013

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# NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

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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's principal role is to determine whether there has been a breach of the NZX Conduct Rules<sup>1</sup>, the NZX Derivatives Market Rules, 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*).

In the event that the Tribunal finds a breach, it must assess the appropriate penalty. The penalties the Tribunal may impose are set out in the Tribunal Rules. The Tribunal, in conjunction with NZX, has established procedures to give guidance to parties dealing with the Tribunal (*the Procedures*). The Procedures also inform Tribunal members when determining the appropriate penalty to be imposed.

The Tribunal Rules and Procedures can be viewed at <https://www.nzx.com/market-supervision/rules/nz-markets-disciplinary-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 Financial Markets Authority (*FMA*) is responsible for reviewing how well NZX is meeting its obligations.

The Tribunal also has authority under the Tribunal Rules to:

- a) review decisions made by NZX, CHO or New Zealand Depository Limited (*CDO*), as the context requires, in respect of a waiver or ruling application made under the 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 does not deal directly with members of the public.

## MEMBERS

The Tribunal is composed of various categories of member, representing different interest groups and experience. Members include lawyers, Market Participant representatives, Issuer representatives, members with knowledge of clearing and derivatives, and members of the public who have particular areas of expertise. Members are appointed by NZX, subject to approval by FMA, for an initial term of 3 years. Members may then be reappointed (without the need for further FMA approval) for 2 further terms of 3 years.

The Tribunal ordinarily works through divisions comprising at least 3 members who do not have a conflict of interest and who have relevant expertise in respect of the matter under consideration.

## 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.

## SPECIAL DIVISION

Tribunal Rule 3.2 establishes a Special Division. The Special Division administers the NZX Conduct Rules as they apply to NZX as a listed issuer and the five listed funds managed by Smartshares Limited, a subsidiary of NZX.

## APPEAL PANEL

The Tribunal Rules establish a separate Appeal Panel, independent of the Tribunal, which may hear appeals from determinations of the Tribunal.

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

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# CHAIRMAN'S REPORT

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# CHAIRMAN'S REPORT

The Tribunal had a significant increase in activity in 2013. Nine matters were referred by NZX to the Tribunal in 2013, up from five referrals in 2012. Eight matters related to breaches of the Listing Rules by issuers and one matter related to a breach of the Participant Rules by a market participant.

The increase in referrals in 2013 demonstrates, in my view, an increased willingness by NZX to ensure that the Tribunal is better utilised as an efficient and effective means of promoting compliance with the Market Rules and ensuring that if the Market Rules are breached, there are transparent and consistent consequences.

The NZX Regulation (*NZXR*) Annual Report to the Tribunal is on pages 37 to 56 of this report (*the NZXR Report*). I thank NZXR for implementing a new format for this report and for providing more information about its enforcement activities and the nature of the breaches of the Market Rules which it identified during the course of its work in 2013.

While the number of referrals from NZX has increased, the proportion of the matters being referred to the Tribunal remains the same - around 10% of the breaches identified and resolved by NZX. However, the vast majority of breaches identified by NZX during 2013 were minor in nature, for example there were 51 recorded instances of issuers not including all the prescribed information in their annual report or failing to provide NZX with administrative information. The NZXR Report identifies that all serious breaches, other than matters still under investigation as 31 December 2013, have been referred to the Tribunal (there were 15 investigations still on-going as at 31 December 2013).

The nature of the matters referred to the Tribunal by NZX has also broadened. In my report of 2012, I noted that the Tribunal was not only an effective forum for serious breaches but also for addressing more minor or technical breaches. One referral in 2013 related to a minor technical breach of a Participant Rule where the issuer failed to provide contract notes to clients within the prescribed time. That matter resulted in the Tribunal issuing a reminder to all NZX Trading and Advising Firms of their obligations with respect to that Rule.

At the other end of the spectrum, NZX has also shown a willingness to refer more difficult matters, where the potential breach was not "cut and dried", to the Tribunal. The Tribunal received a referral in 2013, submitted under the Full Hearing Procedure, regarding an alleged breach of the continuous disclosure rules in the Main Board/Debt Market Listing Rules. This was the first referral to the Tribunal of an alleged breach of the continuous disclosure requirements since 2008. While the matter resulted in a settlement, up until the time of its referral to the Tribunal both parties were in disagreement over whether in fact a breach had occurred.

Unfortunately, the increase in referrals in 2013 also reflects the continued breach by some issuers of the periodic reporting requirements in the Market Rules. Four of the nine matters referred in 2013 involved the late filing of annual reports by issuers. The Tribunal was dismayed to find three issuers in breach of these requirements for a second time – in two of these cases for the second consecutive year. The Tribunal has (in accordance with its previous signals to the market) increased, and will continue to, increase, the penalties it imposes for such breaches. However, the Tribunal has also recommended that NZX consider whether such a pattern of conduct is a matter that triggers a need for further remedial action by NZX, for example, reviewing an issuer's listing.

In my 2012 report I expressed my concern regarding the significant period of time which had, in some cases, elapsed between when NZX became aware of an alleged breach and when the matter was ultimately referred to the Tribunal. I also highlighted the need for timely investigations to ensure that the objective of the Tribunal's Rules, to consider matters in an efficient and expedient manner, is met. The median time between NZX becoming aware of an alleged breach in 2013 and when the matter was referred to the Tribunal was approximately 4 months – less than the 8 months taken for cases referred in 2012. The average investigation time for cases referred in 2013 remained the same at 7 months due to three matters which took 11, 13 and 18 months respectively to refer. When these three matters are not included when calculating the average investigation time in 2013, the average improved to 5 months.

The Tribunal wrote to NZX expressing its concern over the length of time it had taken to investigate some of the matters referred in 2013. In response, NZX noted that it takes its enforcement obligations very seriously and has focussed on improving its performance in this area during the year. These efforts include:

- publishing an Enforcement Policy. This provides a guide to NZX's approach to enforcement matters, including when it will refer a matter to the Tribunal - available at: <https://nzx.com/files/static/cms-documents/NZXEnforcementPolicy.pdf>;
- increasing resources within the enforcement area;
- introducing quarterly reporting of enforcement metrics; and
- forming a new board sub-committee, the Regulatory Governance Committee, to provide additional oversight of NZX's regulatory function, including enforcement.

NZX has shown a willingness to take remedial action for repeated breaches of the Market Rules. NZX exercised its discretion to delist Insured Group Limited on 7 March 2014 due to recurring failures to comply with the Main Board Listing Rules, in particular in relation to periodic reporting.

NZX has also focussed on improving its internal service levels in relation to investigating potential breaches of the Market Rules. The Tribunal is encouraged by the heightened focus on enforcement by NZX and looks forward to seeing the benefits of that increased focus in the coming year.

All matters referred in 2013 were completed by the Tribunal within two months of referral by NZX.

Details of each matter considered by the Tribunal can be found in the section "Statements of Case, Findings and Penalties" on pages 16 to 35.

As with the previous year, the Tribunal was not called on to consider any matters arising under the NZX Derivatives Market Rules, the Clearing and Settlement Rules or the FSM Rules during the reporting period.

I note that the NZ Clearing and Depository Ltd (*NZCD*) Annual Report to the Tribunal (contained on pages 59 to 66 of this report) refers to four breaches of the Clearing and Settlement Rule 2.18.1 where on each occasion a Clearing Participant exceeded their position limit. NZX has advised the Tribunal that these breaches all occurred within a short time period and it took participants time to fix these issues within their internal control frameworks. We understand that since then, participants have largely improved their position limit monitoring and control processes and there have been no position limit breaches detected since April 2013. Should other recurring breaches occur, NZCD may wish to consider using the Tribunal as an effective forum for addressing them.

### FMA GENERAL OBLIGATIONS REVIEW OF NZX

FMA released its General Obligations Review of NZX in June 2013. The report contained a number of observations and recommendations in respect of the way NZX conducts its regulatory responsibilities. FMA highlighted enforcement as a particular area requiring focus by NZX and made several recommendations with respect to this area as it relates specifically to the Tribunal. These included NZX using its enforcement resources more efficiently and effectively, utilising the Tribunal for lower level rule breaches and considering ways of providing the market with information on enforcement activity, including points of interest resulting from determinations of the Tribunal.

NZX appears to have responded positively to the recommendations in the Review as evidenced by the increase in referrals to the Tribunal in 2013 and the additional enforcement measures noted above.

The Tribunal has asked NZX to consider whether there are steps which could be taken to further increase the visibility to the market of the Tribunal's decisions. I understand NZX is considering ways to do this, including with respect to its work in the enforcement area in general.

### RELATIONSHIP WITH NZX

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

The Tribunal's working relationship with NZX continued to strengthen over the course of 2013. Regular dialogue between NZXR and the Chair and Executive Counsel of the Tribunal on operational matters has continued. In addition, NZX has sought input from the Tribunal on various policy matters including the development of its Enforcement Policy, the terms of reference for the NZX Board Regulatory Governance Committee, the appointment process for the Tribunal's new members, proposed amendments to the Tribunal Rules and the intended restructure of the Appeal Panel (outlined below).

### TRIBUNAL RULES REVIEW

The Tribunal's Rules Sub-Committee has been particularly active this year. At the request of NZX, the Rules Sub-Committee considered the structure of the Appeal Panel to assess whether any changes to the structure were desirable. The review was considered timely given that all of the Panel's members were



required to retire at the end of 2013 and that, since its inception, the Panel had only been called upon to consider one appeal. The Rules Sub-Committee recommended that rather than having a standing Appeal Panel, a more flexible approach be adopted. This would involve the Tribunal Chair (or where the Chair was absent or conflicted, the Tribunal's Deputy Chair) appointing an Appeal Panel for each appeal from among the current Tribunal members who were free of conflicts, being independent of both the parties to the matter and the members of the division who considered the matter in the first instance.

The Rules Sub-Committee also considered that it was desirable to amend the Tribunal Rules to give the Tribunal Chair discretion to extend the time in which the Tribunal must make a decision from 5 to 10 business days if necessary and to amend the Tribunal Rules to make it clear that the Tribunal does not have the power to make an award of costs against NZX.

These recommendations were made by the Tribunal to NZX which agreed with the changes proposed. NZX has also proposed an amendment to the length of time on which members may serve on the Tribunal. Under the present Tribunal Rules, members may only serve for a maximum of nine years (three terms of three years). One third of members must also retire by rotation each year. NZX propose removing the restriction on the 9-year maximum term so that NZX may appoint members for consecutive terms of up to three years each, subject to FMA approval of reappointment once a term of nine years is reached. The amendments will also remove the rotation requirement.

NZX released a public consultation document detailing the proposed Tribunal Rule amendments on 31 January 2013 – see <https://nzx.com/files/static/cms-documents/Consultation%20Memorandum.pdf> for further details. These proposed amendments have now been submitted to FMA for approval.

The Tribunal also recommended to NZX this year that, in its view, the level of penalties which may be imposed under the Tribunal Rules and the amounts indicated in the penalty bands in the Procedures should be reviewed to ensure they remain appropriate having regard to, among other things, international standards. The level of penalties has not been reviewed since the Tribunal was established in 2004. I hope this review will be undertaken in the near future.

## RESOURCING

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

The NZX Disciplinary Fund accounts are on page 56 of this report. No bad debts were written off by NZX in 2013. However, we understand from NZX that two issuers have so far failed to pay penalties which were imposed by the Tribunal in early 2013. NZX is in the process of recovering these amounts.

## MEMBERS FORUM

Each year the Tribunal holds an annual meeting. At its 2013 annual meeting, members indicated a desire to meet more regularly. In response, the Tribunal held a members' forum in November 2013. The forum provided an opportunity for members to discuss appropriate approaches to imposing penalties should a party be found to have breached the Market Rules and the factors which they may consider when determining the appropriate penalty. The Tribunal plans to continue to hold regular forums in the future.

## MEMBERSHIP

NZX, in consultation with the Tribunal, undertook a public nominations process in the first half of 2013 to identify suitably qualified candidates for Tribunal membership. This process resulted in the appointment of six new Tribunal members in 2013.

Geoff Brown is an Area Manager at Craigs Investment Partners. Previously Mr Brown was the Director of Institutional Securities at ANZ New Zealand Securities Limited and was employed at NZX, where he had a number of senior management roles. He holds a Diploma of Business Studies from Massey University, a Master of Science from the London School of Economics and a Bachelor of Commerce and Administration (Honours) from Victoria University. Mr Brown is both a Market Participant Appointee and a Clearing Appointee.

Richard Keys is the Chief Operating Officer / Chief Financial Officer at Abano Healthcare Group Limited. He has held senior leadership roles in the healthcare sector, with the last 11 years in the listed company environment. He holds a Bachelor of Commerce from the University of Auckland. Mr Keys is a Public Appointee.

David Kreider is an independent International Arbitrator and an AMINZ Arbitration Fellow. He was previously the General Counsel to Vodafone New Zealand Limited. He also has extensive experience in securities regulation with both the United States SEC and the Hong Kong SFC. He holds a Diploma in International Commercial Arbitration from the Chartered Institute of Arbitrators in London, a Juris Doctor from the University of Miami School of Law and a Bachelor of Arts from Muhlenberg College. Mr Kreider is a Public Appointee.

Richard Leggat holds a number of directorships in private companies. He has significant experience in securities markets. He holds a Bachelor of Science in Economics from the University of Canterbury. Mr Leggat is a Public Appointee.

Rachael Reed is a Barrister, with expertise in serious fraud and other complex cases involving financial evidence. She is a member of the Serious Fraud Office Prosecution Panel and the Crown Panel. Rachael was previously employed as a prosecutor with the Serious Fraud Office before joining Meredith Connell as a Crown Prosecutor. She holds a Bachelor of Business Studies and a Bachelor of Law (First Class Honours) from Victoria University. Ms Reed is a Legal Appointee.

Christopher Swasbrook is Managing Director of Elevation Capital Management Limited. He was previously employed at Goldman Sachs JB Were, most recently as the Co-Head of Institutional Equities. He holds a Bachelor of Commerce from the University of Auckland. Mr Swasbrook is an Issuer Appointee.

A number of founding Tribunal members retired at the 2013 annual meeting. I express my gratitude again to William Stevens, Peter Wilson, Tim Williams, Falcon Clouston and Phillip Meyer for their service to the Tribunal over a number of years.

Following William Stevens retirement, Shane Edmond was elected as Deputy Chairman of the Tribunal at its 2013 annual meeting.

At the end of the reporting period, the Tribunal comprised eight Public Appointees, six Issuer Appointees, eight Legal Appointees, four Market

Participant Appointees, two members who qualify as a Clearing Appointee and one member who qualifies as a Derivatives Market Appointee. I consider the Tribunal's membership to currently be at full complement.

I express my appreciation to all members of the Tribunal who have sat in 2013 for the responsiveness and commitment which they have shown in dealing with Tribunal matters (often on short notice) and the valuable contribution which they have made.

I wish, in particular, to acknowledge the contribution of Campbell Stuart, a founding member of the Tribunal, who retires from the Tribunal this year after 10 years' service on the Tribunal. Campbell has made a valuable contribution to the work of the Tribunal during his tenure.

### APPEAL PANEL

This year I have asked the new Chair of the Appeal Panel, Tim Williams, to prepare an account of the Panel's activities. His report is on page 73 of this report.

### EXECUTIVE SUPPORT

The Tribunal is extremely fortunate to have the services of Rachel Batters as Executive Counsel. She consistently provides a very high level of support to the Tribunal and has provided invaluable support to me in my role as Chairman.

In addition, the Tribunal is fortunate to have the benefit of the services of Stephen Layburn, an Auckland barrister, who acts as Assistant Executive Counsel and provides additional support to the Executive Counsel when required.

I thank each of Rachel and Stephen for their significant on-going contribution to the effective operation of the Tribunal.

### CONCLUSION

This will be my last Annual Report as I will retire from the Tribunal at the 2014 annual meeting after serving for 10 years on the Tribunal. It has been a privilege to serve on the Tribunal and to have been Chair for the last 3 years.

The Tribunal is now an established and respected part of the regulatory infrastructure which is designed to ensure that the New Zealand capital markets operate effectively and provide confidence to investors. It comprises a highly respected, well qualified and experienced group of individuals who bring a valuable breadth of experience and insight to deliberations of the Tribunal.

I leave the Tribunal with the confidence that it will continue to play an active and effective role in contributing to the effectiveness of New Zealand's capital markets in the future.



Derek Johnston | CHAIRMAN  
23 April 2014



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# MEMBERS

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# MEMBERS

## MEMBERS OF THE TRIBUNAL AS AT 31 DECEMBER 2013

### LEGAL

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

### LISTED ISSUER

Jo Appleyard, Trevor Janes, James Ogden, Alison Paterson, Susan Peterson\* and Christopher Swasbrook\*.

### MARKET PARTICIPANTS

Shane Edmond (Deputy Chairman), Richard Bodman, Geoff Brown and Campbell Stuart.

### MEMBERS OF THE PUBLIC

Kevin Baker, 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 2013

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

Rachel Batters acts as Executive Counsel to the Tribunal and the Special Division.

## MEMBERS OF THE APPEAL PANEL AS AT 31 DECEMBER 2013

Tim Williams (Chairman), Simon McArley (Deputy Chairman), Annabel Cotton, William Stevens and Don Trow.

\* Susan Peterson and Christopher Swasbrook's membership classifications were changed with the consent of NZX from Public Appointee to Issuer Appointee in November 2013 following their appointments as directors of issuers.



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# STATEMENTS OF CASE, FINDINGS AND PENALTIES

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## STATEMENTS OF CASE, FINDINGS AND PENALTIES

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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...”
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## NZMDT 1/13 NZX V SAVOY EQUITIES LIMITED (SVY)

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*Division:* David Flacks (division chairman), Mariëtte van Ryn and James Ogden

*Statement of Case served:* 18 January 2013

*Date of Determination:* 6 March 2013

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### FACTS:

The Tribunal approved a settlement agreement between the parties under which SVY accepted breaching NZSX Listing Rules 3.3.1(c), 3.3.3(a), 3.6.2(c) and 6.1.1 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.

Rule 3.3.1(c) requires the Board of an Issuer listed on the NZX Main Board to include a minimum number of two Independent Directors. Rule 3.3.3(a) requires the Board to determine which of its Directors are Independent and to announce those names no later than 10 Business Days after the Issuer's annual meeting. Rule 3.6.2(c) requires that an Issuer's Audit Committee have a majority of members that are Independent Directors. Rule 6.1.1 requires that certain notices of meeting must be approved in writing by NZX before being circulated to the Issuer's securities holders.

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### TRIBUNAL FINDINGS:

The Tribunal considers any breach of the corporate governance provisions to be serious. They are of vital importance to the integrity of the market and give investors confidence that directors have been appointed to represent shareholder interests. In addition, an appropriately comprised audit committee is critical in ensuring that an Issuer maintains a robust audit process. The Tribunal also noted that a breach of Rule 6.1.1 can undermine the objective of the Rules of ensuring that shareholders have sufficient information to understand the effect of a resolution proposed by an Issuer.

In approving the settlement agreement, the Tribunal considered certain mitigating factors, including that:

- a) SVY had difficulty in recruiting directors at that time as it was unable to pay director fees.
- b) SVY had since appointed an Independent Director and accordingly, was no longer in breach of each of Rules 3.3.1(c), 3.3.3(a) and 3.6.2(c).

- c) In relation to the breach of Rule 6.1.1, SVY provided an Appraisal Report to its shareholders containing information to assist them in understanding the terms of the transaction proposed.

The Tribunal also noted certain aggravating factors, including that SVY had failed to ensure its contact details were accurate and up-to-date and that the notice of meeting stated that NZX had approved it, which it had not.

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#### PENALTY:

SVY was ordered to pay \$15,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of SVY – a copy is available at <https://nzx.com/files/static/cms-documents/172075.pdf>.

## NZMDT 2/13 NZX V INSURED GROUP LIMITED (INS)

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*Division:* Peter Wilson (division chairman), Jo Appleyard and Tim Williams

*Statement of Case served:* 4 February 2013

*Date of Determination:* 1 March 2013

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### FACTS:

NZSX Listing Rule 10.5.1 requires an Issuer to release its annual report to the market within three months of its financial year end. INS' 2012 financial year ended on 30 June 2012. INS was therefore required to release its annual report by 30 September 2012. On 24 January 2013, INS released its annual report. The report did not contain all the information required under the Rules. Following discussions with NZX the report was re-released on 30 January and again on 31 January to address those matters. Trading in INS' securities was suspended from 8 October 2012 until 24 January 2013.

The Tribunal approved a settlement agreement between the parties under which INS 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.

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### TRIBUNAL FINDINGS:

The Tribunal noted that any breach of Rule 10.5.1 is serious and had indicated in past cases that the penalties it imposes for such breaches would be increased. The periodic reporting requirements are fundamental to the integrity of the market in ensuring that relevant reliable financial information regarding an Issuer is made available to the market promptly. Those requirements also mitigate the risk posed where those "inside" the Issuer possess information not available to the market. Any delay in providing audited accounts can unnerve investors and damage confidence in both the Issuer's securities and in the market.

The Tribunal considered that there were a number of aggravating factors in this case, including that INS was the subject of disciplinary action by the Tribunal in 2012 for a breach of the same Rule (a penalty of \$30,000 was imposed in that instance), the 2012 annual report was released approximately four months late and INS had failed to keep the market informed about the delay in finalising its annual report.

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**PENALITY:**

INS was ordered to pay \$45,000 to the NZX Disciplinary Fund and was publicly censured.

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**COSTS:**

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

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**PUBLICATION:**

The Tribunal released its censure of INS – a copy is available at <https://nzx.com/files/static/cms-documents/171826.pdf>.

## NZMDT 3/13 NZX V RIS GROUP LIMITED (RIS)

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*Division:* Peter Wilson (division chairman), Jo Appleyard and Tim Williams

*Statement of Case served:* 4 February 2013

*Date of Determination:* 1 March 2013

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### FACTS:

NZAX Listing Rule 10.5.1 requires an Issuer to release its annual report to the market within four months of its financial year end. RIS' 2012 financial year ended on 30 June 2012. RIS was therefore required to release its annual report by 31 October 2012.

RIS did not release a complete annual report until 4 December 2012. As a result of the breach, trading in RIS' securities was suspended from 8 November 2012 until 5 December 2012.

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### TRIBUNAL FINDINGS:

The Tribunal has stated on numerous occasions that an Issuer's compliance with the periodic reporting requirements in the Rules is fundamental.

The Tribunal was dismayed to find RIS in breach of Rule 10.5.1 for the second consecutive year. The Tribunal noted in its decision that it was reprehensible that RIS had again failed to release its annual report when due. The Tribunal also noted that in response to the previous breach, RIS had provided assurances to NZX that it had implemented changes to its financial arrangements to mitigate the risk of further or similar breaches of the periodic reporting requirements, yet a breach had occurred again.

However, in determining the appropriate penalty to impose, the Tribunal considered as mitigating circumstances that RIS had advised NZX in early October 2012 that it was likely to breach Rule 10.5.1 and had engaged in discussions with NZX in the period leading up to and immediately after the reporting deadline, including seeking a waiver to extend the time by which the annual report was due.

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**PENALTY:**

RIS was ordered to pay \$40,000 to the NZX Disciplinary Fund and was publicly censured.

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**COSTS:**

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

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**PUBLICATION:**

The Tribunal released its censure of RIS and its determination in full – copies are available at <https://www.nzx.com/companies/RIS/announcements/234178>.

## NZMDT 4/13 NZX V A NZX TRADING AND ADVISING FIRM (NZX FIRM)

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*Division:* William Stevens (division chairman), Susan Peterson and Danny Chan

*Statement of Case served:* 22 April 2013

*Date of Determination:* 14 May 2013

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### FACTS:

NZX Participant Rule 15.17.1 requires the dispatch of written contract notes to clients no later than the day following completion of that client's transaction instruction (unless certain prescribed exceptions apply).

Due to human error, contract notes were not printed and mailed to clients of the NZX Firm for 10 business days. Once the error was detected, the NZX Firm immediately notified NZX of its breach of Rule 15.17.1 and reviewed its procedures in light of the breach.

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### TRIBUNAL FINDINGS:

The requirement under Rule 15.17.1 to promptly send out contract notes is a fundamental obligation which all Client Advising Participants must comply. Contract notes are important as they provide evidence that a transaction has occurred.

The Tribunal considered that there were significant mitigating circumstances in this case including that the breach was the result of a minor operational error and did not involve any settlement failure, there was no evidence before the Tribunal to suggest that the breach had a detrimental impact on the clients affected, the breach was promptly self-reported and the NZX Firm had reviewed its procedures.

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#### PENALTY:

The NZX Firm was ordered to pay \$1,000 to the NZX Disciplinary Fund.

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#### COSTS:

The NZX Firm was required to pay the costs of the Tribunal and NZX.

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#### PUBLICATION:

The Tribunal released a public statement advising the market of the breach and to remind Client Advising Participants of their obligations around issuing contract notes and to encourage them to review their own systems to ensure a similar breach of Rule 15.17.1 does not occur. A copy is available at <https://www.nzx.com/regulators/DISP/announcements/236731>.

The Tribunal's Policy Guideline on the Naming of Respondents (*the Policy*) 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 Procedure 11.2.1 of the Tribunal Procedures and where the breach can be considered to be of minor importance and not systemic.

In this case, the breach fell within Penalty Band 3 and was considered by the Tribunal to have been minor. Accordingly, the Tribunal considered that not naming the NZX Firm was consistent with the Policy.

## NZMDT 5/13 NZX V ENERGY MAD LIMITED (MAD)

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*Division:* Andrew Beck (division chair), Kevin Baker and James Ogden

*Statement of Case served:* 15 August 2013

*Date of Determination:* 11 October 2013

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### FACTS:

On 23 January 2012, MAD announced a significant reduction in its forecast EBITDA from that contained in its IPO documents. MAD's share price immediately fell by 21.4%.

Rule 10.1.1 requires an Issuer to immediately release material information to NZX as soon as the Issuer is aware of it, unless one of the exceptions in the Rules applies. A change in an Issuer's financial forecast is highlighted as information which is likely to be material information for the purpose of Rule 10.1.1, under the footnote to Rule 10.1.1.

Following an investigation by NZX Regulation, MAD acknowledged that a disclosure obligation existed on 20 December 2011 when the directors and executive officers of MAD were in possession of material information regarding production and dispatch delays at the Chinese factory manufacturing its light bulbs. Although MAD believed that it would be able to pursue alternative revenue streams, the alternative measures were not guaranteed resulting in at least a reasonable risk as to whether MAD could deliver its EBITDA forecast contained in its IPO prospectus.

The Tribunal approved a settlement agreement between the parties under which MAD accepted breaching NZSX Listing Rule 10.1.1 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.

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### TRIBUNAL FINDINGS:

The Tribunal noted in its decision that a breach of the continuous disclosure provisions of the Rules is a very serious matter. The obligation to disclose material information in a timely manner is a fundamental obligation placed on issuers under the Rules.

Timely disclosure of market sensitive information is essential to maintaining the integrity of the market. Compliance with continuous disclosure requirements ensures that the market is informed of relevant information at all times. These provisions are designed to promote the equality of information

in the market so that all investors are able to make informed investment decisions. It is a critical part of ensuring that NZX's markets are efficient, transparent and fair.

The Tribunal noted that financial projections and forecasts can be inherently commercially difficult, particularly for new Issuers. However, it is vitally important that all Issuers constantly assess their financial performance against any announced financial projections, forecasts or expectations and keep the market fully informed of any matters which may be material to their progress in achieving them.

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#### PENALITY:

MAD was ordered to pay \$30,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of MAD – a copy is available at <https://nzx.com/files/attachments/183257.pdf>.

## NZMDT 6/13 NZX V DILIGENT BOARD MEMBER SERVICES, INC (DIL)

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*Division:* Jo Appleyard (division chairman), Alison Paterson and Nick Hegan

*Statement of Case served:* 16 August 2013

*Date of Determination:* 6 September 2013

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### FACTS:

DIL is a Delaware incorporated company governed by US law. It provides online software to compile and archive board materials. DIL's securities began trading on the NZX Main Board on 12 December 2007 and DIL has been subject to the Listing Rules since that time. In January 2013, DIL wrote to NZX advising that it had identified a number of potential breaches of the Listing Rules following an internal compliance review.

The Tribunal approved a settlement agreement between the parties under which DIL accepted breaching NZSX Listing Rules 2.2.2, 3.5.1, 7.3.1, 7.12.1, 7.12.9 and 10.8.2 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.

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### TRIBUNAL FINDINGS:

The Tribunal considered the individual breaches of Rules 2.2.2, 7.12.1, 7.12.9 and 10.8.2 to be relatively minor in nature but the breaches of Rules 3.5.1 and 7.3.1 to be more serious. The Tribunal noted that compliance with these Rules is fundamentally important, as they are designed to protect the integrity of the market and investor confidence.

In deciding to approve the settlement agreement, the Tribunal considered certain mitigating factors, including that DIL had self reported the majority of the breaches, NZX was satisfied that DIL has taken steps to address the breaches and that DIL had improved its internal processes.

In respect of the breach of Rule 3.5.1, the Tribunal also considered as mitigating factors that directors' remuneration was authorised by DIL's board before its Listing and disclosed in its prospectus, the amount payable per annum to the directors had not been increased since DIL listed and that DIL's shareholders had since ratified the amount paid.

In respect of the breach of Rule 7.3.1, the Tribunal considered as mitigating factors that DIL had taken steps to address the breaches by cancelling options invalidly issued under US law and obtaining shareholder approval for the substitute remuneration to be provided reducing the number of options issued in breach of the limits in Rule 7.3.6(c), and that shareholders had approved the terms and conditions of a replacement incentive plan.

The Tribunal also noted certain aggravating factors, including the large number of breaches over a considerable period of time and that DIL had insufficient internal controls and procedures to ensure compliance with the Rules.

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#### PENALITY:

DIL was ordered to pay \$15,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of DIL – a copy is available at [https://nzx.com/files/static/cms-documents/000000010-181300\\_\\_1\\_.pdf](https://nzx.com/files/static/cms-documents/000000010-181300__1_.pdf).

## NZMDT 7/13 NZX V JASONS TRAVEL MEDIA LIMITED (JTM)

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*Division:* Mark Freeman (division chairman), Alison Paterson and Richard Leggat

*Statement of Case served:* 23 October 2013

*Date of Determination:* 28 November 2013

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### FACTS:

NZAX Listing Rule 3.2.1 provides that the minimum number of directors of an issuer is three. Rule 10.7.1(d) requires an issuer to announce a director's resignation as soon as that information is first available.

From 28 June 2013 until 9 August 2013 JTM had only two directors. On 28 February 2013, a director of JTM resigned. However, his resignation was not announced to the market by JTM until 12 March 2013.

The Tribunal approved a settlement agreement between the parties under which JTM accepted breaching Rules 3.2.1 and 10.7.1(d) 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.

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### TRIBUNAL FINDINGS:

The Tribunal noted that breaches of the corporate governance provisions of the Rules were a serious matter. These Rules are of vital importance to the integrity of the market and to give investors confidence that directors have been appointed to represent shareholder interests. A breach of the corporate governance Rules can bring NZX and the market into disrepute.

The Tribunal also noted that all issuers and their directors must understand the obligations the Rules impose and ensure compliance with them.

In deciding to approve the settlement agreement, the Tribunal considered certain mitigating factors, including that JTM took steps to recruit a suitable replacement director, the resignation of one of its directors was unexpected, difficult financial and business circumstances hindered JTM's ability to find a replacement director, this is the first such offence for JTM and that JTM had co-operated with NZX.

The Tribunal also considered that there were certain aggravating factors, including the duration of the breach and lack of communication with NZX about the difficulty JTM was having in finding a replacement director.

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#### PENALITY:

JTM was ordered to pay \$6,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of JTM – a copy is available at <https://www.nzx.com/regulators/DISP/announcements/244463>.

## NZMDT 8/13 NZX v NZF GROUP LIMITED (NZF)

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*Division:* Andrew Beck (division chairman), Susan Peterson and  
Christopher Swasbrook

*Statement of Case served:* 29 November 2013

*Date of Determination:* 17 January 2014

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### FACTS:

NZSX Listing Rule 10.5.1 requires an Issuer to release its annual report to the market within three months of its financial year end. NZF's 2013 financial year ended on 31 March 2013. NZF was therefore required to release its annual report by 30 June 2013. NZF did not release its annual report until 20 November 2013. As a result of the breach, trading in NZF's securities was suspended from 8 July 2013 until 20 November 2013.

The Tribunal approved a settlement agreement between the parties under which NZF accepted breaching Rule 10.5.1 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.

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### TRIBUNAL FINDINGS:

The Tribunal's view on an issuer's compliance with the periodic reporting requirements has already been outlined above. The Tribunal noted in this decision that a delay in the provision of audited financial statements can unnerve investors and damage confidence in both the issuer's securities and in the market generally. A suspension in trading in an issuer's securities, particularly one that lasts for four and a half months and arises from an uncertainty about the issuer's financial position, damages the integrity of the market.



The purpose of Rule 10.5.1 is to ensure that relevant, reliable, financial information in relation to the financial performance and financial position of an Issuer is promptly available to the market following the completion of its financial year. The failure by NZF to provide its 2013 annual report when required meant that objective was not met.

In deciding to approve the settlement agreement, the Tribunal considered certain mitigating factors, including that NZF had contacted NZX self-reporting that the 2013 annual report would not be provided to the market on time, had notified the market that the annual report would be delayed and had sought to keep the market informed on timing for its release.

The Tribunal also considered certain aggravating factors, including that the market was uninformed for over four and half months and that while NZF provided guidance to the market and NZX on when the 2013 annual report would be released, it failed to meet that guidance.

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#### PENALTY:

NZF was ordered to pay \$35,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of NZF – a copy is available at <https://www.nzx.com/regulators/DISP/announcements/246196>.

## NZMDT 9/13 NZX v VETILOT LIMITED (VET)

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*Division:* Andrew Beck (division chairman), Susan Peterson and  
Christopher Swasbrook

*Statement of Case served:* 6 December 2013

*Date of Determination:* 17 January 2014

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### FACTS:

NZAX Listing Rule 10.5.1 requires an Issuer to release its annual report to the market within four months of its financial year end. VET's 2012 financial year ended on 31 March 2013. VET was therefore required to release its annual report by 31 July 2013. VET did not release a complete annual report until 15 August 2013. As a result of the breach, trading in VET's securities was suspended from 8 August 2013 until 15 August 2013.

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### TRIBUNAL FINDINGS:

The Tribunal has stated in a number of determinations that it is of particular importance that an Issuer's reporting deadlines are met. In addition in this case, the Tribunal noted that it expects Issuers who are going to miss a financial reporting deadline, to notify NZX and the market of a likely delay as soon as it becomes apparent.

The Tribunal was dismayed to find VET in breach of Rule 10.5.1 for a second time in a relatively short period – with VET (or IRG as it then was) having already been the subject of disciplinary action by the Tribunal for breaches of obligations under the Rules with respect to periodic reporting in March 2011.

The Tribunal noted that the only mitigating factor in favour of VET was that the breach continued for only approximately two weeks. By contrast, the

Tribunal considered that there were a number of aggravating factors, including that VET did not provide an update or explanation to the market concerning the delay in finalising the annual report, VET's explanation that the delay was a result of it disposing of its operating assets and placing a number of its subsidiaries into liquidation was insufficient explanation, VET failed to provide a timely response to NZX's enquiries and this is the second such breach by VET of the Rules with respect to periodic reporting.

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#### PENALTY:

VET was ordered to pay \$40,000 to the NZX Disciplinary Fund and was publicly censured.

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#### COSTS:

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

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#### PUBLICATION:

The Tribunal released its censure of VET and its determination – copies are available at <https://www.nzx.com/regulators/DISP/announcements/246175>.



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# NZX REGULATION ANNUAL REPORT TO NZ MARKETS DISCIPLINARY TRIBUNAL

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

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

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



# NZX Regulation

Annual Report to NZ Markets Disciplinary Tribunal for the period 1 January 2013 to 31 December 2013

28 February 2014



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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 2013 to 31 December 2013.

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 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
- d. The use of the proceeds of the Discipline Fund.

This report does not refer to referrals made by NZX to 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's enforcement practices involve investigating suspected breaches of the market rules and taking 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 the law, such as insider trading. NZXR refers these matters to the appropriate agency, for example, FMA.

Sometimes immediate action is required. 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 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;
- 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 a Issuer or Market Participant;
- Refer the matter to the Tribunal;
- Cancel an Issuer's listing;
- Revoke an individual's designation as an NZX Advisor; and
- Suspend or revoke a firm's designation as a Market Participant.

A summary of the enforcement action NZXR took in 2013 is provided in the table below.

**Table One: Overview of NZXR enforcement activity in 2013**

Enforcement activity	Market Participants	Derivatives Market Participants	Issuers
Complaints received	9	0	35
Investigations commenced	18	2	125
Investigations completed	14	2	114
Investigations on-going as at 31 December 2013	4	0	11
Breaches identified	34	2	73
Breaches referred to the Tribunal	1	0	8
Breaches resolved (including obligations letters)	32	2	63
Breaches pending resolution as at 31 December 2013	1	0	2

### 3. NZX Market Participants and Derivatives Market Participants

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

In 2013 NZXR considered 34 breaches of the Participant Rules by Market Participants.

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 2013**

Client funds account requirements	15 breaches
<p>15 breaches were self-reported by Market Participants in relation to a client funds account ledger or bank balance being overdrawn.</p> <p>Nine breaches were the result of an error in processing bank transactions by a Market Participant's employees and six breaches were the result of bank errors.</p> <p>NZXR observed that all of these breaches were one-off in nature, had no significant market impact, did not evidence systemic compliance issues and had been remedied by the Market Participant promptly by either updating the ledger or depositing funds into the account.</p> <p>NZXR reminded the Market Participants of their obligations under the Participant Rules.</p>	
Employees and prescribed persons of market participants trading	7 breaches
<p>Six breaches were detected during NZXR's inspections and one was self-reported by a Market Participant.</p> <p>Three breaches related to employees of Market Participants trading through other firms without receiving prior approval from NZXR.</p> <p>Two breaches related to employees and prescribed persons of Market Participants failing to obtain approval from the Market Participant prior to trading.</p> <p>One breach related to participation in an initial public offer by employees and prescribed persons without the Market Participant first providing the necessary certification to NZXR.</p> <p>NZXR observed that in none of these cases was there a significant market impact, nor was there evidence of systemic compliance issues. NZX sent the Market Participants and (in some cases) the employee or prescribed person, a letter reminding them of the requirements of the Participant Rules.</p> <p>One breach arose when employees and prescribed persons of a Market Participant did not hold Securities for the minimum holding period (10 Business Days) before selling. As at 31 December 2013 NZXR was considering what enforcement action to take in respect of this breach.</p>	

**Capital adequacy calculations****3 breaches**

Two breaches occurred when Market Participants incorrectly included deferred tax assets and prepayments in a capital adequacy calculation.

One breach arose where the Market Participant used foreign exchange rates from the previous month-end instead of using daily foreign exchange rates.

NZXR observed that in these cases there was no evidence of systemic compliance issues and there was no material impact on the capital adequacy calculations for the Market Participants. NZXR reminded the Market Participants of their obligations under the Participant Rules.

**Common shareholder numbers****2 breaches**

Two breaches of the requirements to enter Common Shareholder Numbers (“CSN”) into the trading system with orders for retail clients were identified by NZXR from a sample review of trades.

NZXR observed that neither breaches had a significant market impact nor evidenced a systemic compliance issue. NZXR sent a letter to a Market Participant requesting that immediate steps be taken to ensure compliance with this Rule.

NZXR reminded both Market Participants of their obligations and requested details of the controls or compliance monitoring procedures which were in place to ensure compliance with the CSN reporting requirements.

**Trading errors register****2 breaches**

Two breaches were identified where Market Participants’ Trading Errors Registers did not comply with the prescribed format. Both breaches were minor in nature, and neither had a significant market impact nor evidence systemic compliance issues.

NZXR reminded the Market Participants of their obligations under the Participant Rules and the Market Participants updated the Trading Errors Registers to comply with the prescribed format.

**Client assets****2 breaches**

Two breaches were identified relating to client assets.

One breach related to the name of a client funds trust account not complying with the name prescribed in the Participant Rules. The other breach related to monies in relation to both Securities and Derivatives being held in a combined client funds account. NZXR observed that both of these breaches were minor in nature as they did not evidence any systemic compliance issues and did not have any significant impact on clients.

NZXR reminded the Market Participants of their obligations under the Participant Rules.

Trading errors by operators	1 breach
<p>One breach related to several trading errors by a Market Participant. One of these was a keying error and the others were due to Operators failing to ensure the accuracy of messages entered into the Trading system.</p> <p>There was no discernible pattern in the type of errors or the Operators concerned and the errors had no significant impact on the market.</p> <p>NZXR sent a letter to the Market Participant requesting that procedures be reviewed to prevent recurrence of these breaches.</p>	
Consideration of the market impact of an order	1 breach
<p>One breach related to an employee failing to consider market impact before placing an order.</p> <p>NZXR investigated the circumstances leading to the breach and noted there was no significant impact on the market or evidence of systemic compliance issues.</p> <p>NZXR sent a letter to the Market Participant reminding it of its obligations under the Participant Rules and requesting that the Market Participant review its policies for ensuring compliance with the Rules in this area.</p>	
Dispatch of written contract notes	1 breach
<p>One breach related to a Market Participant failing to dispatch written contract notes within one day of completing transactions.</p> <p>NZXR investigated the circumstances leading to the breach and referred this matter to the Tribunal in April 2013. Information about this matter is described under the heading “Statements of Case, Findings and Penalties” in NZMDT’s Annual Report.</p>	

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

NZXR considered 9 complaints in respect of Market Participants during the period.

A summary of those matters is set out below.

**Table Three: Summary of complaints received about Market Participants in 2013**

Good Broking Practice	4 complaints
<p>NZXR received a complaint alleging an NZX Advisor did not comply with Good Broking Practice in that the Advisor did not execute an order in accordance with the client’s instruction.</p> <p>The Market Participant advised the client operated a transactional account and that the NZX Advisor could only execute Trades based on the client’s instruction. The Market Participant confirmed that</p>	

the NZX Advisor repeated the order to the client as a reconfirmation procedure before placing the order. Transaction details were provided by the Market Participant as supporting evidence.

No breach of the Participant Rules was determined and the matter was closed.

The three other complaints are under consideration as at 31 December 2013.

#### **Account set-up**

**2 complaint**

Two complaints relating to minor processing errors when setting up client accounts were made directly to NZXR. These matters had not been raised with the Market Participant prior to NZXR receiving the complaint.

The Market Participant resolved both matters promptly when NZX contacted the Market Participant's Compliance Manager. No breach of the Participant Rules was identified and the matters were closed.

#### **Sale of securities**

**1 complaint**

NZXR received a complaint that a Market Participant had sold an incorrect number of securities for a client.

NZXR obtained voice recordings from the Market Participant. Those voice recordings confirmed that the Market Participant had sold the number of securities as instructed by the client.

No breach of the Participant Rules was identified and the matter was closed.

#### **Inconvenience of using FINs**

**1 complaint**

NZXR received a complaint about the inconvenience of using FINs.

The required complaints form was not completed.

No breach of the Participant Rules was identified and the matter was closed.

#### **Execution of a client order**

**1 complaint**

NZXR received a complaint alleging that a Market Participant should not have executed a client order, as the client did not understand what Board the Securities were listed on.

The Market Participant does not provide advice as it offers execution only services and confirmed that the order was placed in accordance with the client's instruction.

No breach of the Participant Rules was identified and the matter was closed.

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

In 2013 NZXR considered 2 breaches of the Derivatives Market Rules by Market Participants.

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

**Table Four: Summary of the breaches of the Derivatives Market Rules considered in 2013**

15 Seconds requirement for entry of pre-negotiated trades	2 breaches
<p>Two breaches occurred when Market Participants did not wait until the minimum time period of 15 seconds expired before entering matching orders on the trading platform for pre-negotiated trades in derivatives contracts.</p> <p>When notified by NZXR of these breaches, the Market Participants implemented internal controls and procedures to prevent recurrence.</p> <p>NZXR observed no significant impact on the market and there was no evidence of systemic compliance issues. NZXR sent each Market Participant a letter reminding them of their obligations under the Derivatives Market Rules.</p> <p>NZXR continues to monitor the trading of pre-negotiated derivatives contracts for compliance with this requirement.</p>	

### 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 2013.



## 4. NZX Issuers

### A. Summary of breaches of the Listing Rules identified by NZXR in 2013

In 2013 NZXR considered 73 breaches of the Listing Rules by Issuers.

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 2013**

Information in annual report	35 breaches
<p>35 breaches related to the requirement to include prescribed information in an annual report.</p> <p>18 of these breaches related to a variety of matters such as failing to include a summary of waivers granted by NZXR or information about the remuneration of employees and directors.</p> <p>17 of these related to the requirement to include information on the gender breakdown of an Issuer's directors and officers as at the Issuer's balance date.</p> <p>All breaches were minor in nature, had no market impact and there were no systemic compliance issues identified.</p> <p>NZXR asked each Issuer to release the required information to the market and sent a letter reminding each Issuer of their obligations under the Listing Rules.</p>	
Provide NZX with administrative information	16 breaches
<p>Five breaches arose when an Issuer provided an update to the Companies Office or another exchange but failed to provide the information to NZX at the same time.</p> <p>Four breaches related to an Issuer's failure to provide NZX with information sent to the Issuer's shareholders.</p> <p>Three breaches related to an Issuer's failure to immediately notify NZX of a change in directors, officers or auditors.</p> <p>Three breaches related to an Issuer's failure to immediately provide information relating to the Issuer's credit rating.</p> <p>One breach related to an Issuer's failure to provide a completed Appendix 7 form.</p> <p>All breaches were minor in nature, had no market impact and no systemic compliance issues were identified.</p> <p>NZXR contacted each Issuer, asked them to release the required information to the market and sent a letter reminding each Issuer of their obligations under the Listing Rules.</p>	

**Timely release of annual report or preliminary announcement****7 breaches**

NZXR identified six instances where an Issuer failed to provide NZX with a copy of its annual report for release to the market within the time required under the Listing Rules.

Two matters were less serious as trading in the Issuer's securities did not need to be suspended as a result of the breach. NZXR sent a letter to each Issuer reminding them of their obligations under the Listing Rules.

In respect of four of these breaches, NZXR placed the Issuer's securities into suspension and referred the matters to the Tribunal. Information about these matters is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

The seventh matter relates to a delay in the release of a preliminary half year announcement and half-year report resulting from an Issuer's decision to restate its historical financial statements to address accounting errors in previous accounting periods. NZX determined not to take enforcement action in respect of the delay on the basis that the impact of the accounting errors was limited to an historical revenue recognition issue and to the extent possible that issue had been fully disclosed to the market and on the basis that the Issuer provided performance information to the market. However, NZX may consider further action if the preliminary half year announcement and half-year report are not released by 28 February 2014 or if the impact of the accounting errors is not limited as explained.

**NZX approval required before executing minor amendments to a trust deed, dividend reinvestment plan or constitution****4 breaches**

Four breaches related to an Issuer's failure to obtain approval from NZX prior to executing an amendment to a trust deed or a constitution.

All breaches were minor in nature, had no market impact and there were no systemic compliance issues.

NZXR sent a letter to each Issuer reminding them of their obligations under the Listing Rules.

**Release of material information to NZX****3 breaches**

Three breaches related to an Issuer's failure to immediately release material information to NZX.

All three breaches were significant as they had a discernible market impact.

Shortly after the first matter was identified, the Issuer was placed into liquidation and its listing was cancelled.

In the second matter, NZXR investigated the circumstances leading up to the release of price sensitive information. NZXR referred the matter to the Tribunal in August 2013. Information about the matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

In respect of the third matter, NZXR immediately contacted the Issuer and imposed a trading halt on the Issuer's securities until information was released. NZXR investigated the matter and referred it to the Tribunal in January 2014.

**Notification of allotment of securities**

**2 breaches**

Two breaches related to an Issuer's failure to immediately notify NZX of an allotment of securities.

Both breaches were minor in nature as the number of securities allotted was a small percentage of the total number of shares on issue. Both breaches were one-off and no systemic compliance issues were identified.

NZXR sent a letter to the Issuer reminding them of their obligations under the Listing Rules and requested that the allotment notice be released to the market immediately.

**Minimum of three directors on the board required**

**2 breaches**

Two matters related to an Issuer's failure to maintain a minimum of three directors on the board.

Both breaches were significant as they related to the governance of an Issuer.

NZXR investigated the circumstances leading up to one breach. NZXR also received a complaint in respect of this breach. NZXR referred the matter to the Tribunal in October 2013. Information about the matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

The other breach would ordinarily have been referred to the Tribunal. However, given the Issuer's lack of financial resources and systemic compliance issues, NZX cancelled that Issuer's listing.

**Minimum of two independent directors required**

**1 breach**

One breach related to an Issuer on the Main Board failing to maintain a minimum of two independent directors on the board.

NZXR investigated the circumstances leading up to the breach and referred the matter to the Tribunal in January 2013. Information about that matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

**Confirmation of identity of the independent directors to the market**

**1 breach**

One breach related to an Issuer failing to update the market concerning its independent directors following the Issuer's annual meeting.

The breach was minor as the requisite number of independent directors on the board had been maintained, there was no significant impact on the market and no systemic compliance issues were identified.

NZXR wrote to the Issuer to remind them of their obligations under the Listing Rules.

**Notification to NZX of a change in circumstances**

**1 breach**

One breach related to an Issuer failing to notify NZXR that the circumstances on which NZXR had granted a waiver had changed.

NZXR investigated the matter, and determined that the change in circumstances meant the waiver was no longer valid.

NZXR did not refer this matter to the Tribunal, as NZXR would likely have extended the waiver if it had been notified of the change in circumstances.

All breaches were minor in nature, had no market impact and there were no systemic compliance issues.

NZXR sent a letter to the Issuer reminding it of its obligations under the Listing Rules

**Multiple minor breaches**

**1 breach**

One matter related to several breaches of requirements including: providing directors' acknowledgement forms to NZX, ensuring shareholders authorised directors' remuneration by ordinary resolution, obtaining shareholder approval prior to issuing shares, notifying NZX of the acquisition of securities and conversion of options, and providing NZX with a copy of a notice of meeting when it was sent to shareholders.

NZXR investigated the matter and referred it to the Tribunal in August 2013. Information about that matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.

**B. Summary of complaints NZXR received in respect of Issuers**

NZXR considered 35 complaints in respect of Issuers during the period.

A summary of those matters is set out below.

**Table Six: Overview of complaints NZXR received in respect of Issuers in 2013**

**Continuous disclosure**

**12 complaints**

NZXR considered 12 complaints relating to the timely disclosure of material information.

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.

Information in an annual report	3 complaints
<p>NZXR received three complaints about information disclosed in an Issuer’s annual report.</p> <p>NZXR considered the three complaints and contacted the Issuer in all cases for further information.</p> <p>In all cases, there was insufficient evidence of a breach of the Listing Rules.</p>	
Disclosure in offer documents	3 complaints
<p>NZXR received three complaints that an Issuer had failed to disclose material risks in its offer document.</p> <p>NZXR considered the three complaints and contacted the Issuer in all cases for further information.</p> <p>In all cases, there was insufficient evidence of a breach of the Listing Rules.</p> <p>However, in one case NZXR requested the Issuer to release an update to the market.</p>	
Disclosure concerning amalgamation proposal	2 complaints
<p>NZXR received two complaints that an Issuer had inadequately disclosed information about an amalgamation proposal.</p> <p>NZXR considered both complaints and contacted the Issuer for further information.</p> <p>In all cases, there was insufficient evidence of a breach of the Listing Rules.</p>	
Provide NZX with required administrative information	2 complaints
<p>NZXR received two complaints that an Issuer failed to provide NZXR with administrative information.</p> <p>NZXR considered both complaints and contacted the Issuer in both cases for further information.</p> <p>In both cases, there was insufficient evidence of a breach of the Listing Rules.</p>	
International Financial Reporting Standards	2 complaints
<p>NZXR considered two complaints relating to whether an Issuer’s financial reporting complied with International Financial Reporting Standards.</p> <p>NZXR considered both complaints and contacted the Issuer where appropriate for further information.</p> <p>In both cases, there was insufficient evidence of a breach of the Listing Rules.</p>	

<b>Shareholder approval for a major transaction with a related party</b>	<b>1 complaint</b>
<p>NZXR received one complaint that an Issuer had failed to seek shareholder approval for a major transaction with a related party.</p> <p>NZXR considered the complaint and contacted the Issuer for further information.</p> <p>There was insufficient evidence of a breach of the Listing Rules.</p>	
<b>Minimum shareholding requirement</b>	<b>1 complaint</b>
<p>NZXR received one complaint about NZXR's determination of an Issuer's minimum shareholding.</p> <p>NZXR considered the complaint and contacted the Issuer where appropriate for further information.</p> <p>There was insufficient evidence of a breach of the Listing Rules.</p>	
<b>Minimum of three directors on the Board required</b>	<b>1 complaint</b>
<p>NZXR received one complaint that an Issuer had failed to maintain a minimum of three directors on its Board.</p> <p>NZXR considered the complaint and contacted the Issuer for further information.</p> <p>A breach was identified (as described in Table 5 above) and was referred to the Tribunal in October 2013. Information about this matter is described under the heading "Statements of Case, Findings and Penalties" in NZMDT's Annual Report.</p>	
<b>Information required in an Issuer's notice of meeting</b>	<b>1 complaint</b>
<p>NZXR received one complaint about an Issuer's notice of meeting.</p> <p>NZXR considered the complaint and contacted the Issuer for further information.</p> <p>There was insufficient evidence that there had been a breach of the Listing Rules.</p>	
<b>Disclosure of a FIN number</b>	<b>1 complaint</b>
<p>NZXR received one complaint that a shareholder's FIN number had been emailed.</p> <p>NZXR considered the complaint and contacted the Issuer for further information.</p> <p>There was insufficient evidence of a breach of the Listing Rules, however, NZXR suggested that the Issuer and the share registry amend the process relating to the emailing of FIN numbers.</p>	

<b>Information contained in a Trust Deed</b>	<b>1 complaint</b>
<p>NZXR received one complaint about information contained in a Debt Issuer's Trust Deed.</p> <p>NZXR considered the complaint and contacted the Issuer for further information.</p> <p>There was insufficient evidence of a breach of the Listing Rules and NZXR provided the complainant with information about the requirements for Trust Deeds under the Listing Rules.</p>	
<b>Query about the settlement of a matter referred to the Tribunal</b>	<b>1 complaint</b>
<p>NZXR received one complaint about a matter that NZXR had referred to the Tribunal and settled with the Issuer.</p> <p>NZXR considered the complaint and provided the complainant with further information about the Tribunal process.</p>	
<b>Complaints under investigations as at 31 December 2013</b>	<b>4 complaints</b>
<p>Four complaints were still under consideration as at 31 December 2013.</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-10	12 Months to 31-Dec-11	12 Months to 31-Dec-12	12 Months to 31-Dec-13
Fines and costs	341,957	196,617	179,838	152,000
<b>Expenses of NZ Markets Disciplinary Tribunal</b>				
Appeal Member costs	-	-	-	
Executive Counsel costs	136,192	63,216	34,714	41,126
NZ Markets Disciplinary Tribunal Member costs	166,919	101,567	88,554	97,155
Legal Advisory costs	8,145	-	-	
Rules Review costs	5,161	-	2,310	32,449
Disbursements	6,711	5,295	1,497	1,170
Educational Expenditure	61,109	5,000		
Other Incidentals	1,440	1,524	2,027	97
Bad Debts	342,728	-	22,703	
<b>Total Expenses</b>	<b>728,405</b>	<b>176,603</b>	<b>151,805</b>	<b>171,997</b>
Interest Income	3,844	70	1,270	1,283
<b>Surplus (Deficit) for the period</b>	<b>(382,604)</b>	<b>20,084</b>	<b>29,303</b>	<b>(18,714)</b>
<b>Accumulated Surplus (Deficit)</b>	<b>159,758</b>	<b>179,842</b>	<b>209,145</b>	<b>190,431</b>







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

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

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

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



# New Zealand Clearing Limited

Annual Report to NZ Markets Disciplinary Tribunal for the  
period 1 January 2013 to 31 December 2013

28 February 2014



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# 1. Introduction

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

This report covers the calendar year 1 January 2013 to 31 December 2013.

This report contains:

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



## 2. CHO Enforcement Practices

A summary of the enforcement activity taken by CHO in 2013 is set out below:

**Table One: Overview of CHO enforcement activity in 2013**

Enforcement activity	Clearing Participant	Lending Clearing Participant
Complaints received	0	0
Investigation on-going as at 31 December 2013	0	0
Breaches identified	8	0
Breaches referred to the Tribunal	0	0
Breaches resolved (including obligation letters)	8	0



### 3. Breaches of the Clearing and Settlement Rules

#### Breaches of the Clearing and Settlement Rules identified by CHO in 2013

In 2013 CHO considered 8 breaches of the Clearing and Settlement Rules by Clearing Participants and Lending Clearing Participants.

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

**Table Two: Summary of the breaches of the Clearing and Settlement Rules considered in 2013**

Position Limit breaches	4 breaches
<p>Four breaches were identified where Clearing Participants' net open position exceeded a prescribed multiple of the Clearing Participant's Net Tangible Current Assets (NTCA) as stated in the Accreditation Letter.</p> <p>CHO reminded the Clearing Participants of their obligations under the Clearing and Settlement Rules and where appropriate, requested the Clearing Participant to update internal controls or monitoring procedures.</p> <p>CHO observed that none of the breaches had a significant market impact and neither did they evidence systemic issues. The breaches were remedied by the Clearing Participant updating their monitoring procedures.</p>	
Late delivery of eligible collateral	3 breaches
<p>Three breaches were identified where Clearing Participants failed to deliver eligible collateral to the Clearing House by the 9:30am cut-off time.</p> <p>CHO reminded the Clearing Participants of their obligations under the Clearing and Settlement Rules and where appropriate, requested the Clearing Participant to update the internal controls or monitoring procedures.</p> <p>CHO observed that none of these breaches had a significant market impact and neither did they evidence systemic issues. The breaches were remedied by the Clearing Participant updating their monitoring procedures.</p>	

**Incorrect NTCA calculation****1 breach**

One breach was identified where a Clearing Participant incorrectly calculated the NTCA.

This was a procedural error which was immaterial to the overall NTCA position. At CHO's request, the Clearing Participant updated its calculations.





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# REPORT ON SPECIAL DIVISION ACTIVITIES

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

The Special Division considered 42 matters during the year. A summary of each matter follows this report.

## FMA GENERAL OBLIGATIONS REVIEW OF NZX

The Special Division exercises the powers and functions of NZXR in relation to NZX or any Related Entity. The Tribunal Rules define a Related Entity as “any Participant in an NZX Market, or person who applies to NZX to become a Participant, which has a connection or relationship with NZX such that the Special Division is satisfied that in the circumstances there would be a reasonable apprehension or suspicion of bias by NZX in relation to that Participant or that person”.

During 2013, the only entities subject to supervision by the Special Division were NZX and Smartshares Limited, a wholly owned subsidiary of NZX, which manages five exchange traded funds listed on the NZX Main Board.

FMA noted in its General Obligations Review of NZX that the definition of a Related Entity allows for application beyond the NZX group and recommended that NZX carry out a regular review of the list of Related Entities, in conjunction with the Special Division, to determine whether other entities may appropriately be considered to be related, and therefore to fall within the Special Division’s jurisdiction.

NZX has yet to engage with the Special Division on this matter.

## SMARTS SURVEILLANCE SYSTEM ALERTS

As with the previous year, the majority of matters referred to the Special Division related to SMARTS surveillance system alerts regarding trading in the quoted securities of NZX and the listed funds managed by its subsidiary, Smartshares. These matters are outlined in the following table.

## PERSONNEL

Peter Wilson retired from the Special Division at the Tribunal’s annual general meeting in June 2013. Peter made a significant contribution to the Special Division as its Chairman since 2006. His insight, experience and professionalism were highly valued.

We welcomed James Ogden as a member of the Special Division following Peter’s retirement.



## NZMDT SPECIAL DIVISION MATTERS – 1 JANUARY TO 30 DECEMBER 2013

The Special Division considered two applications for the approval of offer documents under Main Board Listing Rule 6.1.1. It granted approval on 7 July 2013 for the Investment Statement and Prospectus NZX Employee Share Plan - Team and Results and again on 11 July 2013 and 19 September 2013 in respect of a revised Investment Statement and Prospectus. On 20 September 2013, the Special Division granted approval of the Prospectuses of each of the five funds managed by Smartshares Ltd and the combined Investment Statement.

The Special Division also considered 40 SMARTS alerts referred to it by NZX Market Surveillance (NZXMS).

DATE REFERRED	ISSUER	ACTION
10 January	MZY	Considered the nature of the alert and determined that no further investigation was necessary.
16 January	TNZ	Considered the nature of the alert and determined that no further investigation was necessary.
28 January	NZX	Sought explanation from NZX for the price movements and confirmation of compliance with the Listing Rules, including regarding continuous disclosure. Following receipt of confirmations from NZX, determined that no further action necessary.
22 February	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
4 March	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
6 March	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
12 March	OZY	Considered the nature of the alert and determined that no further investigation was necessary.
26 March	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
5 April	OZY, TNZ	Considered the nature of the alert and determined that no further investigation was necessary.
16 April	MZY, MDZ	Considered the nature of the alert and determined that no further investigation was necessary.
26 April	MDZ	Considered the nature of the alert and determined that no further investigation was necessary.
30 April	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
2 May	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
17 May	NZX	Obtained advice from the market participant involved regarding the trade. Determined that no further investigation was necessary.
24 May	NZX	Considered the nature of the alert and advice from NZXMS and determined that no further investigation was necessary.
10 June	OZY, MZY	Considered the nature of the alert and determined that no further investigation was necessary.
16 July	OZY	Considered the nature of the alert and determined that no further investigation was necessary.
21 August	NZX	Considered the nature of the alert, sought information from the market participant involved and determined that no further investigation was necessary.

DATE REFERRED	ISSUER	ACTION
3 September	NZX	Sought explanation from NZX for the price movements and confirmation of compliance with the Listing Rules, including regarding continuous disclosure. Following receipt of confirmations from NZX, determined that no further action necessary.
5 September	NZX	Sought explanation from NZX for the price movements and confirmation of compliance with the Listing Rules, including regarding continuous disclosure. Following receipt of confirmations from NZX, determined that no further action necessary.
10 September	MZY	Considered the nature of the alert and determined that no further investigation was necessary.
3 October	OZY, NZX	Considered the nature of the alert and determined that no further investigation was necessary.
23 October	OZY	Considered the nature of the alert and determined that no further investigation was necessary.
7 November	MDZ	Considered the nature of the alert and determined that no further investigation was necessary.
28 November	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
4 December	NZX, MZY	Considered the nature of the alert and determined that no further investigation was necessary.
6 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
12 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
12 December	NZX	Considered the nature of the alert and determined that no further investigation was necessary.
13 December	NZX, OZY, MZY	Considered the nature of the alert and determined that no further investigation was necessary.
17 December	MZY, OZY	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.





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# APPEAL PANEL REPORT

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## APPEAL PANEL REPORT

The Appeal Panel is the body, independent of NZX and the NZ Markets Disciplinary Tribunal, responsible for determining appeals of NZ Markets Disciplinary Tribunal determinations.

## ACTIVITY

During the reporting period, from 1 January 2013 to 31 December 2013, no Tribunal determination was appealed to the Appeal Panel. This is not the first year the Appeal Panel has been without hearings, and the reoccurrence of this phenomenon has prompted the review of the Appeal Panel's functions and the proposed changes referred to below.

## CHANGES IN MEMBERSHIP

On 31 December 2013, all the Appeal Panel's then current members (Euan Abernethy (Chairman), Brian Allison, Bill Thurston and John Upton QC) retired, having served their maximum term.

I wish to acknowledge the contribution of these former members, all of whom have been members of the Appeal Panel since its establishment, and thank them for their availability and attendances.

From 1 January 2014, a fresh Appeal Panel was appointed of Tim Williams (Chairman), Simon McArley (Deputy Chairman), Annabel Cotton, Professor Don Trow and William Stevens. Brief biographical details of the new members are included immediately below:

Tim Williams (Chairman): I am a former Tribunal member (2004 to 2013), a partner at Chapman Tripp with 28 years commercial legal practice, a certified member of the Institute of Financial Professionals New Zealand Inc., a member of the Financial Services Counsel and its legislation committee, and a director of three companies. I have an LLB and BCA from Victoria University.

Simon McArley (Deputy Chairman), is a former Tribunal member (2004 to 2013) and an accredited director of the Institute of Directors. Simon was an acting chief executive and director of the Serious Fraud Office, an acting Director Primary Markets at the Securities Commission, an acting Head of Regulation at NZX and a partner at Kensington Swan with 19 years commercial legal practice there and a further 6 years practice as a sole practitioner. Simon has an LLB (Hons) from Victoria University, and is a past convenor of NZ Law Society's Business and Commercial Law Committee.

Annabel Cotton, is an investor relations consultant, a director of Waikato Regional Airport Limited and Australasian Investor Relations Association Pty Limited, a member of the External Reporting Board (an independent Crown

Entity responsible for accounting, auditing and assurance standards in New Zealand), an investment committee member of The Professionals Club LP, and a Trustee and Chair of the Investment Committee of Momentum Foundation (a Waikato regional community trust). Annabel was a member of the Securities Commission (2002-2011), a Commissioner for Financial Advisers and a director of Kingfish Limited, Barramundi Limited, Marlin Global Limited and Genesis Power Limited. Annabel has a BMS from University of Waikato. She is an Associate Chartered Accountant, an Accredited Member of the Institute of Directors and a Certified Securities Analyst Professional of the Institute of Finance Professionals New Zealand Inc.

Professor Don Trow, is a former Tribunal Chairman (2004 to 2008) and holds the position of Emeritus Professor of Accountancy at Victoria University. Don has a long standing involvement with the accountancy profession and has the distinction of being a Life Member of the Institute of Chartered Accountants as well as being elected a Distinguished Fellow of the Institute of Directors. Don's previous directorships include the New Zealand Stock Exchange, the Northland Co-Operative Dairy Company Limited, Smartshares Limited (Chairman), and Ryman Healthcare Limited.

William Stevens, is a former Tribunal Deputy Chairman (2004 to 2013), a director Craigs Investment Partners and Chairman of Trustees of the Dingwall Trust for Children. William has a BBS from Massey University, a NZSE Diploma, and is an Authorised Financial Adviser and NZX Adviser. He is a former director of Merrill Lynch (NZ) Limited and Lieutenant Commander in the Royal New Zealand Navy.

## ANTICIPATED CHANGES TO THE APPEAL PANEL

As Derek has mentioned in his Chairman's report, since its inception over 9 years ago, the Appeal Panel has been called upon to consider only one appeal. It is therefore understandable that the Tribunal's Rules Sub-Committee has recommended that, rather than having a standing Appeal Panel, the Tribunal Chairman (or the Tribunal's Deputy Chairman when the Chairman is absent or conflicted) should appoint an Appeal Panel for each appeal from among the current Tribunal members who are not conflicted.

The change will allow Appeal Panel members the opportunity to draw on some recent Tribunal experience when considering appeals, and potentially allow a greater pool of experienced Tribunal members to be available to make Tribunal determinations.

That proposal is supported by the current Appeal Panel with the suggestion that, unless there is good reason not to, the Tribunal Chairman selects senior members of the Tribunal to the Appeal Panel when exercising the Chairman's appointment power.

It is anticipated that the Appeal Panel will soon cease in its current form, and that the proposed Rules will soon commence. For that reason, the FMA's approval of the current members of the Appeal Panel expires on 30 June 2014.

## RESOURCES

The Appeal Panel has had adequate resources available to it to undertake its role under the NZMDT Rules during the reporting period.

## ACKNOWLEDGEMENTS

I wish to express my appreciation to the current members of the Appeal Panel, for their availability and attendances to date.

With his pending retirement, I would also like to acknowledge the valuable contribution Derek has made as Chairman of the Tribunal. With his steady hand at the tiller during his three year tenure as chairman, Derek has ensured the Tribunal has continued to perform its important function ably, and to develop the effective manner in which it operates.



Tim Williams | CHAIRMAN: APPEAL PANEL  
23 April 2014

# DIRECTORY

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