



9 April 2019

**PUBLIC CENSURE OF INTL FCSTONE FINANCIAL INC
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACHES OF
NEW ZEALAND CLEARING LIMITED CLEARING AND SETTLEMENT RULES 3.12.1 AND
4.2.3 (1 DECEMBER 2017 VERSION) AND NEW ZEALAND CLEARING LIMITED CLEARING
AND SETTLEMENT PROCEDURES 3.13.2 AND 4.2.2 (4 DECEMBER 2017 VERSION)**

1. The NZ Markets Disciplinary Tribunal (*the Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*) and INTL FCStone Financial Inc (*FCSU*) dated 18 March 2019 (*the Settlement Agreement*).

Background

2. FCSU is based in the United States of America and is an NZX Derivatives Trading and Advising Firm, General Clearing Participant and Depository Participant and is, accordingly, subject to the New Zealand Clearing Limited (*CHO*) Clearing and Settlement Rules (*Rules*) and New Zealand Clearing Limited Clearing and Settlement Procedures (*Procedures*).
3. Rule 3.12.1 requires each Clearing Participant to deliver Eligible Collateral to CHO in respect of its Settlement Accounts.
4. Rule 4.2.3 states that prior to each Settlement Closing, each Clearing Participant must ensure that its Settlement Accounts hold sufficient clear and available funds required for settlement of their Net Open Positions.
5. Procedure 3.13.2 requires that a Clearing Participant deliver the required amount of Eligible Collateral to CHO before 9.30 am on the Business Day it is required to be delivered.
6. Procedure 4.2.2 outlines the Settlement Times for Net Open Positions for Clearing Participants. The Settlement Time for Net Open Positions for Derivatives Contracts is 10.00 am.
7. FCSU breached Rule 4.2.3 and Procedure 4.2.2 on 5 July 2018 by failing to meet its Mark-to-Market Settlement obligation within the CHO Clearing House System (*BaNCS*) by 10.00 am.
8. FCSU breached Rule 3.12.1 and Procedure 3.13.2 on 10 and 12 September 2018 by failing to meet its Initial Margin obligation within BaNCS by 9.30 am.
9. These breaches represented FCSU's fifth, sixth and seventh breaches of the Rules and Procedures since FCSU became a Clearing Participant in November 2015. While each of FCSU's seven breaches were Credit Events, these breaches did not relate to the creditworthiness of FCSU as they were of an operational nature.

Determination

10. The clearing and settlement provisions of the Rules and Procedures are important to the integrity of the market. Any breach of the Rules and Procedures regarding settlement is serious. Ensuring that the settlement process occurs on time, and in an orderly manner, is fundamental to the integrity of the clearing and settlement system operated by CHO.
11. FCSU was reckless because it had a significant number of breaches since its accreditation as a Clearing Participant in November 2015 and did not have adequate processes to prevent the recurrence of its breaches.
12. The Tribunal considered that there were a number of aggravating factors in this case, including that:
 - a. FCSU's breaches relate to fundamental obligations concerning the orderliness of NZX's markets and resulted in Credit Events. These breaches had an operational impact on CHO and recurring breaches of this nature pose a risk to the confidence and integrity of the NZX markets;
 - b. FCSU was reckless because it did not take adequate steps to prevent the recurrence of the breaches, despite being reminded several times by NZX and CHO to meet its clearing and settlement obligations at their respective New Zealand times. This engagement with FCSU should have given it the opportunity to review and improve its overall processes for satisfying its CHO obligations;
 - c. Apart from the three Credit Events considered as part of this matter, FCSU had four other historic Credit Events which are aggravating factors;
 - d. FCSU did not have effective processes in place and its breaches formed a pattern of non-compliance with its clearing and settlement obligations to CHO;
 - e. While the three breaches in this matter occurred over short periods, FCSU's breaches overall occurred over a longer period; and
 - f. Although the breaches did not have an impact on clients, investors or the market, the recurrence of the breaches resulted in inconvenience to the market as CHO had to implement escalation procedures and chase for timely payments.
13. The Tribunal considered that there were a number of mitigating factors in this case, including advice from NZX that:
 - a. FCSU cooperated with NZX Regulation's investigation of this matter;
 - b. FCSU did not breach the Rules and Procedures to seek a benefit or advantage;
 - c. FCSU's breaches were not intentional and did not impact the market because FCSU had adequate funds in its clearing accounts overall; and
 - d. FCSU confirmed that it has since taken steps to prevent recurrence of these breaches, and FCSU has not had any further Credit Events since these breaches arose.

Penalties

14. Without FCSU admitting or denying any of the findings or conclusions herein, NZX and FCSU have reached a settlement relating to FCSU's breaches of Rules 3.12.1 and 4.2.3 and Procedures 3.13.2 and 4.2.2.
15. NZX and FCSU have agreed that:
 - a. A public censure by the Tribunal will be made;
 - b. FCSU will pay a financial penalty of NZ\$40,000;
 - c. FCSU will pay the costs of the Tribunal (plus GST, if any); and
 - d. FCSU will pay NZ\$5,400 being the costs of NZX (plus GST, if any).

Approval

16. The Settlement Agreement is approved by the Tribunal pursuant to NZ Markets Disciplinary Tribunal Rule 8, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

17. The Tribunal hereby censures FCSU for its breach of Rules 3.12.1 and 4.2.3 and Procedures 3.13.2 and 4.2.2.

The Tribunal

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

ENDS