



2 September 2025

**PUBLIC CENSURE OF BEING AI LIMITED
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACHES OF
NZX LISTING RULES (*RULES*) 2.1.1(a), 2.1.1(c), 2.13.2(b), 2.13.2(c) AND 2.13.2(d)**

1. The NZ Markets Disciplinary Tribunal (*the Tribunal*) has approved a settlement agreement between NZX Limited (acting through NZ RegCo) and Being AI Limited (*BAI*) dated 26 August 2025 (*Settlement Agreement*).

Background

2. Under Rule 2.1.1, BAI's Board must have (excluding alternate Directors):
 - a. at least three Directors;
 - b. at least two Directors who are ordinarily resident in New Zealand; and
 - c. at least two Directors who are Independent Directors.
3. Under Rule 2.13.1, BAI must have an Audit Committee. Rule 2.13.2 requires that Audit Committee to:
 - a. be comprised solely of BAI Directors;
 - b. have at least three members;
 - c. have a majority of Independent Directors; and
 - d. have at least one member with an accounting or financial background.
4. Under Rule 2.9.1, where BAI has less than three Directors, the continuing Directors may only act to remedy the shortfall in Directors or convene an Equity Security holders' meeting.
5. On 31 January 2025, BAI's Independent Directors, Andrew Higgs and Brett O'Riley, resigned. Following their resignation, BAI's Board comprised two Executive Directors - David McDonald and Katherine Allsopp-Smith (with Evan Christian as her alternate Director) - and BAI's Audit Committee had one member - Ms Allsopp-Smith, who does not have an accounting or financial background.
6. On 3 February 2025, NZ RegCo suspended the quotation of BAI's ordinary shares as BAI no longer met the governance requirements in the Rules for board and audit committee composition.
7. On 31 March 2025, the BAI Board appointed Greg Cross, Steve Phillips and Michael Stiassny as Independent Directors. Mr Stiassny was appointed Board Chair and each of the Independent Directors was appointed to the Audit Committee, with Mr Phillips as Committee Chair.

8. On 14 April 2025, following the release of a trading update by BAI on 11 April 2025, NZ RegCo lifted the suspension on BAI's ordinary shares and trading resumed.

Settlement Agreement

9. Under the terms of the Settlement Agreement, BAI admitted breaching Rules 2.1.1(a), 2.1.1(c), 2.13.2(b), 2.13.2(c), and 2.13.2(d) (*the breaches*) and agreed to pay a financial penalty of \$50,000, pay the costs of NZX and the Tribunal, and be publicly censured.
10. The Tribunal has approved the Settlement Agreement in accordance with Tribunal Rule 8, having been satisfied that the penalties agreed by the parties are appropriate in the circumstances of this matter.

Tribunal assessment of penalty

11. The Tribunal Procedures provide guidance to the Tribunal on assessing the appropriate financial penalty for a breach of the Rules¹.

Step 1: Factors relevant to the breach

12. The Tribunal considered that the following penalty band factors were relevant to the breaches:

Penalty Band 1 factors

- a. NZ RegCo identified no loss arising from the breaches.
- b. The breaches are unlikely to have had any financial benefit for BAI.

Penalty Band 2 factors

- c. The breaches had at least a moderate impact on investors and the market. During the period BAI was in breach its Board was prevented from governing the business and making decisions at a time when BAI was experiencing significant challenges. This included the inability of the Board to agree an extension of a loan facility and to progress other matters, including raising capital. The suspension in trading of BAI's ordinary shares prevented investors from being able to trade for two months and likely damaged confidence in the integrity of the market.
- d. The breaches continued for two months, a duration of moderate length.

Penalty Band 3 factors

- e. The breaches were serious compliance breaches, with BAI in breach of five core governance requirements in the Rules. BAI did not have the required minimum number of Directors, had no Independent Directors and an Audit Committee with only an Executive Director, who did not have an accounting or financial background. The governance requirements in the Rules are intended to provide security holders with important safeguards and protections. Compliance with them is a fundamental obligation on all Issuers of Equity Securities.
- f. The breaches had the potential to cause a significant impact on investors and the market. The potential harm to investors in BAI's Board being unable to act during a tumultuous time for its business was significant. The breaches, and

¹ The Procedures are available here <https://www.nzx.com/regulation/nzmd-tribunal-regulation>.

subsequent suspension of trading, had the potential to significantly undermine confidence in the market's integrity and the credibility of reverse listings.

- g. The breaches continued once discovered, although BAI appeared to have made every effort to rectify them.
- 13. When weighing up all the applicable factors, the Tribunal considered that the breaches fell within Penalty Band 2 and that the appropriate starting point penalty was \$85,000. While the breaches were a serious compliance failure and had the potential to significantly impact investors and the market, these factors are balanced by NZ RegCo not having identified any loss as a result.

Step 2: Factors relevant to BAI

- 14. To determine the final level of penalty, the Tribunal must adjust the starting point penalty to reflect the aggravating and mitigating factors relevant to BAI.

Aggravating factors

- 15. NZ RegCo found two previous instances of Rule breaches in 2024, for which BAI was issued Obligations Letters. NZ RegCo's previous findings of Rule breaches are aggravating and particularly concerning given BAI has only been Listed since April 2024.

Mitigating factors

- 16. BAI self-reported and admitted the breaches, co-operated fully with NZ RegCo, has appointed an additional Independent Director to mitigate against future breaches and reached a settlement with NZ RegCo.
- 17. When weighing up the aggravating and mitigating factors, the Tribunal considered that a final penalty of \$50,000 was appropriate in this case and sufficient to deter BAI and other Issuers from future breaches of the Rules.

Censure

- 18. The Tribunal hereby censures BAI for breaches of Rules 2.1.1(a), 2.1.1(c), 2.13.2(b), 2.13.2(c) and 2.13.2(d).

The Tribunal

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

ENDS