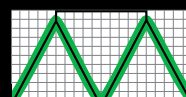
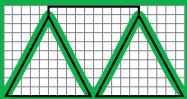


ANNUAL REPORT 2010

NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL





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CHAIRMAN'S REPORT

CHAIRMAN'S REPORT

REPORTING PERIOD

This report covers the period 1 January 2010 to 31 December 2010.

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 (*NZMDT Rules*).

Principal role

The Tribunal's principal role has been to determine whether there has been a breach of the NZX Conduct Rules¹ and the NZX Futures and Options Rules in matters referred to it by NZX Limited (*NZX*). The Tribunal does not deal direct with members of the public. However, its membership includes members of the public.

In the event the Tribunal finds a breach, its secondary role is to assess and impose penalties.

The Tribunal serves in an adjudicative role, therefore. It is not an inspectorate of market conduct. That role is performed by NZX Market Supervision. The Securities Commission is responsible for oversight of NZX's discharge of that responsibility.

Additional role

During the reporting period, the NZMDT Rules were amended to broaden the jurisdiction of the Tribunal in conjunction with the establishment by NZX of a new clearing and settlement system operated by New Zealand Clearing Limited (*CHO*). The Tribunal has now also assumed the role of determining whether there has been a breach of the NZX Derivatives Market Rules and the CHO Clearing and Settlement Rules (together the Rules). The Tribunal also has authority under the NZMDT 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 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.

To date, the Tribunal has not had cause to exercise its new role.

Special Division

Under Rule 3.2 of the NZMDT Rules there is a Special Division of the Tribunal. The role of the Special Division is to administer the NZX Conduct Rules as they apply to NZX as a listed company and the five listed funds managed by Smartshares Limited, a subsidiary of NZX. A separate report of the Special Division's activities can be found at page 52 of this annual report.

FINANCIAL MARKETS AUTHORITY

During the reporting period, the Government has made several announcements regarding the direction it intends to take to improve regulation of New Zealand's financial markets. These announcements come after the findings of the Capital Markets Development Taskforce (*Taskforce*) were reported in December 2009. Among these has been the intention to establish the Financial Markets Authority (*FMA*) which will consolidate the functions currently undertaken by the Securities Commission and parts of the Ministry of Economic Development.

Financial Markets (Regulators and KiwiSaver) Bill

The Financial Markets (Regulators and KiwiSaver) Bill (*the Bill*) was introduced to Parliament on 14 September 2010. Subject to the passage of the Bill, the FMA is intended to be established by May 2011. Officials from the Ministry of Economic Development consulted extensively with the Tribunal prior to introduction of the Bill. The Bill proposed that the Tribunal's functions be transferred to a smaller, statutorily-constituted rulings panel. It also proposed a reserve power vested in the Government to make market integrity regulations that could override the rules of registered exchanges.

The Commerce Select Committee reported back to Parliament on the Bill on 1 March 2011. Of particular relevance to the Tribunal is the Committee's recommendation to focus regulation on registered markets and to omit provisions in the original Bill establishing both the statutory rulings panel and the power to make market integrity regulations. The Committee recommended that the Bill be strengthened to compel registered exchanges to establish a sufficiently independent adjudicative body in respect of their registered markets. The Tribunal is such a body, and is now expected to continue largely unchanged post-operational commencement of the FMA.

The Minister of Commerce has signalled his agreement with this response and noted that further work on improving the regulatory regime for exchanges will be done as part of the intended review of securities law.

Tribunal's response

The Tribunal welcomes these developments. As my last report noted, the Tribunal concurred with the view of the Taskforce that some regulatory functions should remain with NZX, as it is best placed through its operational and monitoring functions to detect breaches of the NZX Conduct Rules. It operates under the oversight of the Securities Commission—soon the FMA—and it is for that body to scrutinise the disciplinary detection and disposition functions of NZX. The Tribunal, as NZX's attached report² makes clear, has immediate visibility of only those detected infringements referred to it.

As noted above, it appears that the role of the Tribunal will continue under the new FMA regime. The Tribunal is confident that it remains an appropriate forum to continue to consider the matters referred to it in an efficient and timely manner. As the Summary of Tribunal Determinations produced later in this report³ shows, in all but one instance the Tribunal issued its determination within two months of the statement of case being referred. The exception was a complex matter, which went to a contested Full Hearing. It was resolved within a shade over three months.

1. The NZX Conduct Rules comprise 1) the NZX Participant Rules, which govern the conduct of market participants in NZX's three markets—the NZSX Market, the NZDX Market and the NZAX Market; and 2) the NZX Listing Rules governing the conduct of issuers whose securities are listed on NZX's Markets.

2. Page 40.

3. Page 18.

RELATIONSHIP WITH NZX

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

The Tribunal maintains a cooperative operational relationship with NZX in relation to matters referred to it for determination. There have been differences of opinion as to the extent of the Tribunal's remit to consider and recommend policy changes directly relevant to the NZMDT Rules. Those Rules provide expressly for the Tribunal to recommend changes to the Rules. The Tribunal will continue to perform its responsibilities in that regard in 2011.

The independence of the Tribunal from NZX is of fundamental importance to investors, issuers and advisers. The essential necessity for such independence is now reinforced by the recent recommendations of the Commerce Select Committee, noted earlier in this report.

The Tribunal notes that NZX's submissions to the Taskforce recorded that it considered that the Tribunal "functions extremely well", and made particular comment on the quality of the Tribunal's membership.

BREACHES OF PERIODIC REPORTING REQUIREMENTS

In my 2009 report I highlighted four cases where the Tribunal had considered breaches of the periodic reporting requirements. During this 2010 reporting period the Tribunal has considered a further three such cases. In the 2011 reporting period we have already considered two further cases of this nature.

It is worth therefore repeating a passage from the latest 2011 decision⁴, which is intended to send a signal to the market generally:

There have been too many periodic reporting failures coming before the Tribunal. Penalty Band 6 of Procedure 11.3.1 of the NZ Markets Disciplinary Tribunal Rules Procedures enables a maximum fine of \$250,000 on a summary hearing. The Tribunal has imposed fines of up to \$65,000 for breaches of Rule 10.5.1 alone. The Tribunal is concerned that more lenient penalties sought and imposed in the past are not sufficient to deter this sort of offending, and are contrary to market and public interests. Future offenders should not expect their conduct to be viewed by the Tribunal through a similarly lenient lens.

In that case the Tribunal imposed a penalty greater than that sought by NZX. The Tribunal is likely to substantially increase the penalties imposed for this sort of infringement, in order to enhance deterrence. Historic decisions of the Tribunal henceforth will provide only limited assistance in the setting of penalties.

4. NZMDT 08/2010 NZX v Investment Research Group Limited.

5. Ten business days for a Summary Hearing, twenty for a Full Hearing.

PROCEDURAL DEVELOPMENTS

Over this reporting period there were a number of cases where the Tribunal made key procedural decisions:

1. *Settlement Agreements*: it is common for parties to agree to settlement terms that are then put before the Tribunal for approval under Rule 10. Usually the settlement agreement will include the form of a public statement that the parties have agreed to as part of that settlement. The approved agreement becomes the substantive determination of the Tribunal. The Tribunal therefore must be satisfied with the settlement arrangement—including the public statement. In one case within the reporting period the Tribunal was called upon to approve the wording of a public statement, including an exculpatory passage, agreed to by both the respondent and NZX. Having considered the evidence before it, the Tribunal was not satisfied the passage was correct. The Tribunal required the parties to amend the public statement to remove the passage. It would not approve the settlement without that change. The Tribunal has of course the discretion to reject a settlement altogether. Normally, however, it will make pragmatic suggestions as to amendments that would enable the Tribunal to approve settlement.
2. The Tribunal will normally also probe the reasons for any significant divergence between what NZX sought by way of penalty in its statement of case and what it is proposing to accept in settlement. The Tribunal's overriding task is to be satisfied that the settlement is in fact appropriate, whatever the parties' views on the subject.
3. *Adjournments*: The time-frames in the NZMDT Rules for respondents to file a statement of response are tight⁵. NZX, on the other hand, has usually had considerably longer than that to marshal its case. The Tribunal recognises this reality. Absent exceptional circumstances, where a respondent has acted efficiently but needs more time, the Tribunal will contemplate a single short adjournment. It will also do so sparingly where the parties are negotiating settlement, but multiple applications in this context are not viewed favourably. The NZMDT Rules are intended to provide an expeditious process for consideration of breaches of the NZX Conduct Rules, and the Tribunal will endeavour to bring matters to a hearing as quickly as possible.
4. *Oral hearings*: The NZMDT Rules permit oral hearings only where essential to establish the facts of a case—i.e. where there are contested factual allegations, or where the Tribunal considers it is necessary to probe beyond uncontested assertions.
5. *Further evidence*: Where an oral hearing is to occur, the Tribunal will normally issue timetable orders setting out the timing for filing and exchange of submissions and evidence in support. The Tribunal will not normally vary those orders to permit additional evidence out of time.

6. *Procedure at oral hearings:* The Tribunal heard one Full Hearing matter during 2010. Participants may assume that the Division sitting is thoroughly familiar with the papers filed. In the past the Tribunal has proceeded at Full Hearings on the basis that NZX goes first, makes submissions and calls any witnesses (who may then be questioned—rather than cross-examined—by the respondent). And then vice versa. In future, the Tribunal is likely to take a more central role in questioning witnesses, allowing the party calling the witness, and then the opposing party, to question following the Tribunal's questioning. It is considered that this will be a more efficient use of time.
7. *Naming of respondents:* The NZMDT Policy on Naming Market Participants (*Policy*) provides that where the penalty falls in the Bands 4-8 of the Penalty Band Guidance Procedure, the respondent's name is likely to be published; where it is below that publication is not likely. The Tribunal has followed that Policy throughout the reporting period. As the Summary of Determinations following⁶ this report demonstrates, on two occasions a guilty market participant was not named. Each involved a Penalty Band 2 infringement, and non-naming therefore was consistent with the Policy. The Policy was expressly discussed at the NZMDT Annual General Meeting on 21 June 2010. After discussion it was endorsed by the Tribunal without change.
8. *Costs:* The NZMDT Rules provide for the Tribunal to exercise discretion on costs. The Tribunal does not apply a blanket policy that costs follow the event, rather the Tribunal will exercise its discretion based on the circumstances of each particular case. The Tribunal may find it appropriate to discount costs if, taken together, the penalty and costs are disproportionate to the conduct viewed overall. The Tribunal does not however believe that penalties should be discounted in such a situation, because the Tribunal has to be able to compare penalties from case to case.

Finally, as the Tribunal hears the parties on costs, it is necessary for it to know the approximate actual costs of NZX and the Tribunal before setting costs. Costs should therefore be addressed in statements of case and response.

These procedural developments will appear in the next edition of the Tribunal User Guide. That is an invaluable guide for participants before the Tribunal, and provides useful direction on the Tribunal's processes. It is available online⁷.

DIVISIONS

The Tribunal sits in Divisions of three. The Tribunal Chairman normally only chairs Divisions hearing cases under the Full Hearing Procedure. As noted earlier, one matter in the 2010 reporting period was heard under the Full Hearing Procedure⁸. I chaired that Division. The remaining matters were all considered under the Summary Hearing Procedure.

I express my appreciation to all members of the Tribunal who have sat in 2010.

6. Page 18.

7. http://static.stuff.co.nz/files/NZMDT_User_Guide.pdf

8. NZMDT 04/2010 NZX v McDouall Stuart Securities Ltd.

9. Several matters were referred to the Tribunal at the end of 2009—including two between Christmas and New Year—and were therefore dealt with in the 2010 year.

MEMBERSHIP CHANGES

During the 2009 reporting period the following members of the Tribunal retired: John Loughlin, Geoff Brown and Bill Malthus.

During the 2010 reporting period, members Laurie Mayne, Victoria Heine and Mark Verbiest retired from the Tribunal.

I express the Tribunal's appreciation to each of them for the service they gave to the Tribunal, and thereby to New Zealand's capital markets.

The Tribunal was glad to welcome Alison Paterson, a very experienced company director and chairman, as a listed issuer appointee in 2010.

RESOURCING

NZMDT 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 NZMDT Rules.

I so confirm. NZX has provided all the assistance the Tribunal has needed in the performance of its principal, operational role.

As the role of the Tribunal looks likely to continue under the new FMA regime, it is necessary to review the number of both market participant and issuer appointees on the Tribunal. NZMDT Rules require a minimum of two members in each category. At the end of the reporting period there were three members in each category. The Tribunal considers that number too few to perform efficiently, given difficulties that may arise in appointing members to divisions because of unavailability or conflict of interest. The Tribunal and NZX have agreed to boost the number of market participant and issuer appointees to four in each case. Appropriate new appointees are currently being considered. It is not considered that further legal members need to be appointed to replace those who have retired.

DISCIPLINARY FUND

The NZMDT Rules restrict the use that may be made of money paid into the Disciplinary Fund to enforcement action, the costs of the Tribunal and Appeals Panel (and their staff), educational initiatives relevant to regulation of NZX's markets and the futures and options industry, rules revision and any other use approved by the Securities Commission.

The Disciplinary Fund accounts are to be found at page 45 of this Annual Report. I note two features.

First, the increase in operational expenditure in 2010 reflects a busier year, both in terms of matters referred⁹ and the complexity of those matters.

Secondly, I note the substantial level of bad debts in 2010. More than 50% of the write-off is attributable to unpaid penalties imposed on Peter Gerald Marshall in 2008. The unfortunate reality is that recovery from some respondents is not possible, actually or economically. The Tribunal has suggested to NZX

that the Fund be reported on a cash, rather than accruals, basis in future. The recovery of penalties is a matter for NZX, under the oversight of the Securities Commission, not the Tribunal. However, the Tribunal takes an interest in NZX's recovery actions because the effectiveness of monetary penalties as a deterrent is dependent on those sums generally being recovered and paid into the Fund.

APPEALS PANEL

The Appeals Panel is responsible for determining appeals made against determinations of the Tribunal. The Appeals Panel is independent of both NZX and the Tribunal. Members of the Appeals Panel are appointed by the Securities Commission.

During the reporting period the Appeals Panel convened once to consider an appeal from a market participant against a determination made by the Tribunal. The appeal related to the Tribunal's decision to publicly censure the participant for breaches of the NZX Participant Rules. A summary of the case can be found at page 36 of this annual report.

The Appeals Panel noted that the Tribunal exercises a discretion in determining a penalty of public censure. The Appeals Panel stated that in circumstances where an appeal relates to the exercise of a discretion, it will only hear that appeal under NZMDT Rule 9.2.2 where it considers, based on the statement of appeal before it, that the decision of the Tribunal might be manifestly wrong. That was not the case in that appeal, and it was dismissed.

Resourcing

Mr Euan Abernethy, the Chairman of the Appeals Panel, also confirms that it has had adequate resources to undertake its role under the NZMDT Rules.

ELAINE CAMPBELL

The Tribunal has been extremely fortunate to have had Elaine Campbell as its first Executive Counsel. Elaine served in this role from July 2008, until resigning in August 2010 to take on a position as Special Counsel at the Securities Commission. Even then, we managed to retain Elaine's services, via secondment from the Commission, until the end of 2010. I am grateful to the Chairman of the Commission, Jane Diplock, and its General Counsel, Liam Mason, for agreeing to that course. Elaine's vast knowledge of the securities markets, and common sense approach to administration of disciplinary proceedings made her an ideal first Executive Counsel for the Tribunal. The improvements made in efficient dispatch of business and communications with NZX, other parties and Tribunal members are very much attributable to her.

CONCLUSION

The Tribunal is fortunate to have members of such a high calibre. I thank them for their work in 2010. I express my particular appreciation to the Deputy Chairman, William Stevens, and the Chairman of the Special Division, Peter Wilson.

I also welcome Rachel Batters, hitherto our very capable Special Division Counsel, to her new role of Executive Counsel to the Tribunal. We are fortunate to have Rachel take up that important role.

A handwritten signature in black ink, appearing to read 'Stephen Kós', with a stylized flourish at the end.

J Stephen Kós QC | CHAIRMAN
10 March 2011



MEMBERS

MEMBERS

MEMBERS OF THE TRIBUNAL AS AT 31 DECEMBER 2010

LEGAL

Stephen Kós QC (Chairman), Andrew Beck, David Boldt, David Flacks, Mark Freeman, Don Holborow, Derek Johnston, Simon McArley and Tim Williams.

LISTED ISSUER

Peter Wilson (Special Division Chairman), Falcon Clouston and Alison Paterson.

MARKET PARTICIPANTS

William Stevens (Deputy Chairman), Shane Edmond and Campbell Stuart.

MEMBERS OF THE PUBLIC

Phillip Meyer, Stephen Moir, Patsy Reddy, Paul Ridley-Smith and Michael Jeffs.

MEMBERS OF THE SPECIAL DIVISION AS AT 31 DECEMBER 2010

Peter Wilson (Chairman), Andrew Beck, Michael Jeffs and Paul Ridley-Smith.
Rachel Batters acts as Counsel to the Special Division.

MEMBERS OF THE APPEALS PANEL AS AT 31 DECEMBER 2010

Euan Abernethy (Chairman), Brian Allison, Peter Clapshaw, John Rattray,
Bill Thurston and John Upton QC.



STATEMENTS OF CASE, FINDINGS AND PENALTIES

THIS SECTION OF THE REPORT ADDRESSES THOSE MATTERS REQUIRED BY RULE 14.1.2 (A) - (C) WHICH PROVIDES:

"14.1.2 The Tribunal shall create and provide an 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 above, and that collated by itself below:

- a) number of statements of case issued by NZX 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, 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
 - d) a statement from the Tribunal and the Appeal Panel stating whether or not they believe that adequate resources have been made available to them, to undertake their role under these Tribunal Rules."
-

NZMDT 01/2010 NZX V GOLDMAN SACHS JB WERE (NZ) LIMITED (GSJBW)

Division: Stevens (Chair), Boldt and Meyer

Statement of Case served: 25 March 2010

Date of Determination: 25 May 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged breaches of the NZX Participant Rules in respect of a debt security order placed by a retail client of GSJBW (Client) for the sale of Babcock & Brown Limited subordinated notes (BNB Notes) on 26 February 2008.

The NZX Market Supervision (NZXMS) investigation of this matter arose from a complaint made to NZXMS by the Client.

NZMDT approved a Settlement Agreement between the parties and accordingly, as contemplated by section 10 of the NZMDT Rules, the Settlement Agreement becomes the determination of NZMDT.

THE SETTLEMENT AGREEMENT PROVIDED AS FOLLOWS:

Breach One – NZX Participant Rule 11.3.1(b) (currently NZX Participant Rule 15.4.1(b))

- a) On 26 February 2008, the Client provided GSJBW with a written order by email to sell BNB Notes.
- b) The Client's sell order was not entered on the NZDX market.
- c) NZXMS's review of the trading in BNB Notes for the relevant time period showed no sell order corresponding to the Client's sell order being placed on the NZDX Market by GSJBW.
- d) GSJBW's failure to enter the order for the BNB Notes to the NZDX Market was a breach of NZX Participant Rule 11.3.1(b). NZX Participant Rule 11.3.1(b) required that:

"Subject to Rules 11.3.2, 11.3.3 and 11.3.5, a Client Advising Participant must submit any Order, which is at market or at a fixed price limit, straight to market via the Trading System. For the avoidance of doubt pursuant to this Rule 11.3.1 a Client Advising Participant must not, for any market or fixed price limited Order:

...

(b) Delay executing client Orders; or..."
- e) GSJBW has admitted this breach. NZXMS accepts that this breach resulted from an administrative oversight by GSJBW.

Breach Two – NZX Participant Rule 8.1.1(c) (currently NZX Participant Rule 5.8.1(c))

- a) GSJBW stated in a letter to the Client, dated 19 August 2009, that "Your order was placed on [the NZX] platform on 26 February, however in the 6 week period from 26 February to 8 April 2008, there were no on market bidders for your BNB Notes and consequently none were sold."

- b) In light of Breach One, this statement was not accurate.
- c) NZXMS considers that the statement in paragraph (a) above made to the Client amounted to a breach of NZX Participant Rule 8.1.1(c). NZX Participant Rule 8.1.1(c) required that:

"Each Market Participant and each Advisor must at all times:

...

(c) Comply fully with all applicable Rules, any directions given from time to time by NZX and at all times observe Good Broking Practice."

- d) GSJBW has admitted this breach. NZXMS accepts the contention of GSJBW that this breach resulted from an inaccurate recall of information given the passage of time between the Client's order being placed with GSJBW and the date on which GSJBW responded to the Client's complaint.

PENALTIES IMPOSED BY TRIBUNAL:

Under the terms of the Settlement Agreement approved by the Tribunal, GSJBW was ordered to:

- a) Pay NZX \$30,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund); and
- b) Have the Client's complaint reviewed within 20 business days of the settlement being approved by NZMDT.

COSTS:

GSJBW was required to contribute towards the costs incurred and invoiced by both NZXMS and NZMDT up to an agreed cap.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement and approved by the Tribunal was released to the market. This public statement named GSJBW.

NZMDT 02/2010 NZX V CREDIT SAIL LIMITED (CSL)

Division: Wilson (Chair), Beck and Ridley-Smith
Statement of Case served: 27 April 2010
Date of Determination: 27 May 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged that CSL had breached NZDX Listing Rule 10.4.1(a) by failing to file its preliminary announcement to the market, pursuant to NZDX Listing Rule 10.4.2, within 60 days of its financial yearend, being 31 December 2010.

CSL admitted the breach and entered a plea in mitigation.

CSL notified NZX on 27 February 2010 that it could not provide its preliminary announcement to the market when due on 1 March 2010. On 1 March 2010, NZX advised CSL that if its preliminary announcement was not released to the market by 8 March 2010, CSL's securities would be suspended on 9 March 2010. On 2 March 2010, CSL provided NZX with its "draft" financial statements. At 5pm on 8 March 2010, CSL's securities were suspended. CSL first became aware of the suspension of its securities on 16 March 2010, and immediately contacted NZX to query why the suspension was in place. NZX advised CSL that its securities had been suspended as NZX had not yet received CSL's preliminary announcement. CSL was under the misapprehension that it had satisfied the requirements by filing its "draft" financial statements. CSL immediately re-filed the financial statements on 16 March 2010 without the "draft" watermark and the suspension was lifted.

NZMDT approved a Settlement Agreement between the parties under which CSL admitted breaching NZDX Listing Rule 10.4.1(a). As contemplated by section 10 of the NZMDT Rules, the Settlement Agreement became the determination of NZMDT.

The Tribunal noted that the periodic reporting rules are fundamental to the integrity of the market and to achieving fairness and equity for all investors. While the Tribunal considers that any breach of those rules is serious, the penalties imposed must reflect the seriousness of that breach. CSL's genuine misapprehension that it had complied with NZDX Listing Rule 10.4.1(a) by filing "draft" financial statements was a significant factor in the Tribunal determining the adequacy of the penalty.

The Tribunal also noted that a greater penalty would likely have been imposed if CSL had not been in communication with NZX prior to and during the period of its breach.

PENALTIES IMPOSED BY TRIBUNAL:

Under the terms of the Settlement Agreement approved by the Tribunal no financial penalty was imposed.

COSTS:

CSL was required to pay all the Tribunal's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement in the form attached to the Settlement Agreement and approved by the Tribunal was realised to the market. This public statement named CSL.

NZMDT 03/2010 NZX V A MARKET PARTICIPANT

Division: Mayne (Chair), Edmond and Reddy.
Statement of Case served: 2 May 2010
Date of Determination: 2 June 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged that the Market Participant had breached NZX Participant Rules E10.15.1(f) (currently NZX Participant Rule 14.13.1(f)) and 11.16.5(b) (currently NZX Participant Rule 15.17.5(b)) in respect of trading by a client of the Market Participant (Client).

NZX Participant Rule E10.15.1(f) provided that "All Trades shall be reported in the Trading System on a gross basis excluding any reasonable brokerage or fees incurred". NZX Participant Rule 11.16.5(b) provided that "Each Client Advising Participant must disclose on a client's contract note...the full extent of any commission and margin charge...".

An NZXMS investigation of the NZDX market found that, over a two month period, the Market Participant reported 19 trades to market at a price which included its brokerage fees. This breached NZX Participant Rule E10.15.1(f).

Following this trading activity, the Market Participant also provided the Client with contract notes, which while they included the brokerage charged, did not disclose the full extent of any commission or margin charges. This breached NZX Participant Rule 11.16.5(b).

The Market Participant admitted the breaches. In mitigation, the Market Participant contended that the breaches had resulted from the specific request of the Client, who had required the brokerage to be presented in that way.

NZMDT approved a Settlement Agreement between the parties under which the Market Participant admitted breaching NZX Participant Rules E10.15.1(f) and 11.16.5(b). As contemplated by section 10 of the NZMDT Rules, the Settlement Agreement became the determination of NZMDT.

PENALTIES IMPOSED BY TRIBUNAL:

Under the terms of the Settlement Agreement approved by the Tribunal the Market Participant was required to pay NZX \$6,500 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

COSTS:

The Market Participant was required to pay all the Tribunal's costs as a term of the Settlement Agreement.

PUBLICATION:

A public statement, in the form attached to the Settlement Agreement, was released to the market and also sent by email to NZX Managing Principals and Compliance Managers. The public statement noted that NZXMS does not consider it appropriate for Market Participants to contract out of the NZX Participant Rules without express permission from NZXMS.

The public statement did not name the Market Participant. The Tribunal's Policy Guideline on the Naming of Respondents states that the name of the Respondent is unlikely to be published when the penalty for the Respondent falls within Penalty Bands 1, 2 or 3 of Procedure 11 of the NZ Markets Disciplinary Tribunal Procedures (the Procedures) for breaches of the NZX Participant Rules, and where the breach can be considered to be of minor importance and not systemic.

Here, the Tribunal considered that the conduct of the Market Participant fell within Penalty Band 2. This penalty band covers "breaches of an operational nature that do not create significant risk for the market or client". The Procedures state that the business area affected by conduct falling within Penalty Band 2 is market efficiency. In its statement of response NZX noted that the Market Participant's conduct affected market efficiency and that the breaches likely arose due to poor administration and/or untrained staff. While breaches of an administrative nature fall within both Penalty Bands 2 and 3, the Tribunal considered that the breach was analogous to examples given in the Procedures for breaches falling within Penalty Band 2 including the "failure to report trades/late filing of trades". The Tribunal considered that not naming the Market Participant was appropriate given the Penalty Band into which the conduct fell and because of the participant's co-operation with NZX. The Tribunal was of the view that the non-publication of the Market Participant's identity fell within the Tribunal's existing policies.

NZMDT 04/2010 NZX V MCDOUALL STUART SECURITIES LIMITED – FULL HEARING

Division: Kós (Chair), Edmond, Jeffs and Wilson

Statement of Case served: 24 August 2010

Date of Determination: 1 December 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

McDouall Stuart was formerly an NZX Trading and Advising Firm and an NZX Delivery and Settlement Participant. From 20 August 2008 to 10 March 2010, McDouall Stuart was under what NZX termed “Intense Oversight” after self-reporting a breach of the capital adequacy requirements under section 15 of the NZX Participant Rules. Two successive waivers were granted to McDouall Stuart prescribing the limits of liquid capital it was required to maintain (Waiver). The Waiver noted that “NZXR maintains a high level of continued oversight of McDouall Stuart, with detailed daily reporting to NZXR of profits, client balances and global trading activity. This information will be considered in a real time assessment of whether the continuation of this waiver is appropriate”.

The Statement of Case alleged that McDouall Stuart breached the following NZX Participant Rules and/or the terms of the Waiver:

- a) Breach One—Rule 15.1.2 and Breaches of the Waiver on 9 occasions, being failure to meet Liquid Capital thresholds as required under the Waiver.

The Tribunal found McDouall Stuart guilty of these breaches. McDouall Stuart admitted these breaches.

- b) Breach Two—Rules 15.5.1 and 8.1.1(c) (currently Rule 5.8.1(c)), being inclusion of a subordinated securities loan (Subordinated Loan) in its capital adequacy calculation contrary to a direction from NZXMS that it did not approve the loan agreement for the Subordinated Loan and that the Rules did not contemplate such a loan.

The Tribunal found McDouall Stuart guilty of these breaches. The Tribunal accepted that McDouall Stuart genuinely believed its position concerning the Subordinated Loan was correct. However, the Tribunal found that NZX was permitted under the Rules to reject the Subordinated Loan and, once it did, McDouall Stuart was not able to include that loan in its liquid capital calculation. The Tribunal also found that the form of agreement used by McDouall Stuart to document the Subordinated Loan was patently unsuitable for that purpose—that form of agreement was only suitable for a loan of cash.

- c) Breach Three—Rule 14.4.1 on 13 occasions, being failure to maintain Client Assets in excess of Client Obligations at all times.

The Tribunal found McDouall Stuart guilty of these breaches. The Tribunal found that the \$300,000 bond held by NZX could not be included in McDouall Stuart’s Client Assets for the purposes of calculating whether its Client Assets exceeded its Client Obligations.

- d) Breach Four—Rule 14.5, being failure to hold Client Assets on trust at all times, breach of Rule 14.7.1, being a failure to obtain from the Bank holding the Client Funds Account a written acknowledgement of the trust status of that account, and breach of Rule 16.9(d) being a failure to produce for inspection information requested by NZX to evidence the trust status of the account.

The Tribunal found McDouall Stuart guilty of these breaches and noted that at the Oral Hearing McDouall Stuart had admitted the breaches.

- e) Breach Five—Rule 8.1.1(c) and breaches of the Waiver, being failure to ensure that any excess Client Funds were paid to clients where possible.

The Tribunal found that McDouall Stuart had breached the terms of the Waiver by failing to ensure that excess Client Funds are paid to clients where possible. However, the Tribunal did not find an associated breach of Rule 8.1.1(c) because there was no evidence that a clear direction was given by NZX to McDouall Stuart to repatriate client funds.

PENALTIES IMPOSED BY TRIBUNAL:

Breach One

1. A public censure of McDouall Stuart.
2. An order to pay NZX \$25,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

Breach Two

3. A public censure of McDouall Stuart.

Breach Three

4. A public censure of McDouall Stuart.
5. An order to pay NZX \$13,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

Breach Four

6. A public censure of McDouall Stuart.
7. An order to pay NZX \$30,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

Breach Five

8. A public censure of McDouall Stuart.
 9. An order to pay NZX \$15,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).
-

COSTS:

The costs of the Tribunal and NZX in considering the matter were awarded.

PUBLICATION:

The Tribunal's determination was published in full.

NZMDT 05/2010 NZX V A MARKET PARTICIPANT

Division: Flacks (Chair), Beck and Stuart
Statement of Case served: 24 August 2010
Date of Determination: 13 September 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged 179 breaches of NZX Participant Rule E10.15.1(a) (currently NZX Participant Rule 13.1.1(a)) by the Market Participant during the period 25 February 2010 to 25 May 2010 by failing to report through the Trading System:

- a) 120 Crossings where the Market Participant had purchased Debt Securities from a financial institution counterparty on principal account and then sold the Debt Securities from principal account to its clients, but only the sale of Debt Securities to the client was reported to NZDX; and
- b) 59 Crossings in which the sale of Debt Securities from the Market Participant's principal account to the clients were not reported to NZDX.

NZX Participant Rule E10.15.1(a) provides that for all Securities quoted on the NZDX market that "All Crossings must be reported by a Trading Participant through the Trading System in accordance with the requirements of the Trading System;"

NZMDT approved a settlement agreement between the parties under which the Market Participant admitted breaching NZX Participant Rule E10.15.1(a) on the occasions described above.

PENALTIES IMPOSED BY TRIBUNAL:

Under the terms of the Settlement Agreement approved by the Tribunal the Market Participant was ordered to pay NZX \$11,900 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

COSTS:

The Market Participant was required, as a term of the Settlement Agreement, to bear all the costs and expenses of the Tribunal in considering this matter.

PUBLICATION:

A public statement, in the form attached to the Settlement Agreement, was published. This statement did not name the Market Participant. The Tribunal's Policy Guideline on the Naming of Respondents states that it is not likely that the name of the Respondent will be published when the penalty for the Respondent falls within Penalty Bands 1, 2 or 3 of Procedure 11 (Penalty Band Guidance Procedure) of the NZ Markets Disciplinary Tribunal Procedures for breaches of the NZX Participant Rules, and where the breach can be considered to be of minor importance and not systemic. In this case the Tribunal considered that the conduct of the Market Participant fell within Penalty Band 2 of the Penalty Band Guidance Procedure to the NZMDT Rules. Whilst the breaches were not self-reported, but instead identified by the participant during the course of an NZX inquiry, NZX had advised the Tribunal that not naming the Market Participant was appropriate given the Penalty Band into which the conduct falls and because of the participant's co-operation with NZX. The Tribunal was of the view that the non-publication of the Market Participant's identity, fell within the Tribunal's existing policies. Accordingly it approved, as part of the Settlement Agreement, the form of public statement, which described the offending and the penalties imposed, but did not name the Market Participant concerned.

NZMDT 06/2010 NZX V INSURED GROUP LIMITED (INS)

Division: McArley (Chair), Clouston and Freeman

Statement of Case served: 25 August 2010

Date of Determination: 22 September 2010

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged INS had breached NZSX Listing Rule 3.3.1(b) by having only one Director ordinarily resident in New Zealand from 11 June 2010 to 11 July 2010. On 24 February 2010, INS (formerly named Lombard Group Limited) was granted a conditional waiver by NZXMS from Rule 3.3.1(b) to permit the Board of INS to have only one Director who was ordinarily resident in New Zealand for a three month period whilst the company conducted a reverse listing and associated takeover.

NZSX Listing Rule 3.3.1(b) provides that "The composition of the Board shall include the following:...(b) at least two Directors shall be ordinarily resident in New Zealand; and...".

The Tribunal found that INS breached NZSX Listing Rule 3.3.1(b).

The breach of NSX Listing Rule 3.3.1(b) arose on 11 June 2010 when the waiver INS had been granted from this rule expired and continued until 11 July 2010 when INS appointed a second director who was ordinarily resident in New Zealand.

INS argued that its breach of NZSX Listing Rule 3.3.1(b) was caused by a misunderstanding that the waiver period expired on 12 July 2010, INS having mistakenly thought that the waiver was granted on the basis of it covering the expected period of non-compliance. INS also argued that the terms and conditions of the waiver were not drawn to its attention, by implication suggesting that it is NZX's responsibility to do this. The Tribunal did not accept that implication. As part of its waiver process, NZX issues applicants with a draft determination for their review before it is finalised, and then final documents. The Tribunal noted that in its opinion, NZX should not be required to do more.

The Tribunal noted that it is an issuer's responsibility to ensure that it reviews and understands the terms of the waiver granted by NZX and to comply with its terms.

PENALTY:

The penalties imposed by the Tribunal were:

- a) An order to pay to NZX \$7,500 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund); and
 - b) A public censure of INS.
-

COSTS:

The full costs and expenses of the Tribunal in considering the matter were awarded. The Tribunal also ordered that INS pay, within 20 Business Days of the date of an invoice from NZX, the costs and expenses incurred by NZX in relation to this matter, which are not, in any event, to exceed \$4,000 (plus GST, if any).

PUBLICATION:

The Tribunal's determination was published in full.

NZMDT 07/2010 NZX V CYNOTECH HOLDINGS LIMITED (CYT)

Division: Boldt (Chair), Paterson and McArley
Statement of Case served: 23 December 2010
Date of Determination: 9 February 2011

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged that CYT had breached NZAX Listing Rule 10.5.1 by failing to make available its annual report within four months of the end of its financial year, being 31 March 2010, both electronically to NZX and to each Quoted Security holder, as is required by that rule.

It was alleged that this breach continued from 1 August 2010 to 30 August 2010, when the 2010 Annual Report was made available. Trading in CYT's securities was suspended from 10 August 2010 to 30 August 2010.

CYT admitted that it did not provide its annual report within the time frame required by NZAX Listing Rule 10.5.1. It made a plea in mitigation of its breach.

The Tribunal found that CYT breached NZAX Listing Rule 10.5.1.

The Tribunal noted that while the duration of CYT's breach, at one month, was shorter than in other cases considered by the Tribunal and that there was no suggestion that CYT's audited accounts, when released, contained anything unexpected, any breach of Rule 10.5.1 was always serious, especially if they resulted in the suspension of trading in an issuer's securities. The Tribunal also noted that it was of particular importance in this case given the present economic climate where any delay in the provision of audited accounts is likely to unnerve investors and damage confidence both in the company's securities and in the market's integrity. Here, because of a change to the end of CYT's financial year, shareholders had not seen audited accounts which dealt with the company's performance since the end of 2008.

The Tribunal did not consider that the departure of CYT's CFO was a mitigating factor because the CFO had left almost three months before the annual report was due. Issuers are expected to deal with routine changes in personnel without jeopardising their compliance with the Listing Rules. Similarly, CYT's application for a waiver made less than quarter of an hour before the deadline expired for releasing its annual report did not entitle it to any credit. For a waiver application to be meaningful in this context, it is important that it is made in sufficient time for NZX to consider it before the company falls into breach.

The Tribunal also noted that it was unfortunate that CYT had made no communication to the market during the period 13 August 2010 (when it had previously advised the market that its annual report would be released) and 30 August 2010. It would have mitigated the breach if CYT had informed the market of the reasons for the ongoing delay, and of when the annual report might now be expected.

PENALTIES IMPOSED BY TRIBUNAL:

The penalties imposed by the Tribunal were:

- a) A public censure of CYT; and
- b) An order to pay NZX \$15,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).

COSTS:

The full costs and expenses of the Tribunal and NZX in considering the matter were awarded.

PUBLICATION:

The Tribunal's determination was published in full.

NZMDT 08/2010 NZX V INVESTMENT RESEARCH GROUP LIMITED (IRG)

Division: Boldt (Chair), Paterson and McArley
Statement of Case served: 24 December 2010
Date of Determination: 7 March 2011

ALLEGATIONS IN STATEMENT OF CASE AND TRIBUNAL FINDINGS:

The Statement of Case alleged that IRG had breached:

- a) NZAX Listing Rule 10.4.1 by failing to file its preliminary announcement within 75 days of the end of its 2010 financial year; and
- b) NZAX Listing Rule 10.5.1 by failing to make available its annual report within four months of the end of its financial year, both electronically to NZX and to each Quoted Security holder.

IRG's financial year-end is 31 March. IRG's 2010 preliminary announcement was due by 14 June 2010, and its 2010 annual report was due by 31 July 2010. The charges arose because IRG did not file its preliminary announcement until 12 October 2010, and did not file and distribute its annual report until 13 October 2010. As a consequence, trading in IRG's securities was suspended from 22 June to 14 October 2010.

IRG admitted the breaches and entered a plea in mitigation.

The Tribunal found that IRG acted in breach of NZAX Listing Rules 10.4.1 and 10.5.1.

The Tribunal has repeatedly stressed the vital importance of compliance with periodic reporting requirements, and Rule 10.5.1 in particular. These rules ensure that relevant and reliable financial information is made available to the market soon after the end of each listed issuer's financial year. It also mitigates the risks posed by information imbalance, where those "inside" a company are in possession of better information about its financial position than the wider market.

In addition, any trading halt – particularly one which lasts for weeks or months – arising from uncertainty surrounding an issuer's financial position damages the market's integrity. The primary purpose of an exchange is to provide facilities for investors in listed companies to trade their securities. Trading halts undermine the fundamental purpose of the exchange and deny shareholders one of the key benefits that investing in a listed company otherwise provides.

The Tribunal did not regard the mitigating factors identified by IRG as particularly compelling. They consisted, in large part, of broad assertions which were not accompanied by significant detail or verifying information. In the absence of a compelling explanation for the breaches, the fact that IRG's directors were experienced, and had a previously good record, could carry very little weight; seasoned directors should be even more alert to the possibility that their company is sailing into difficult waters, and of the need to respond accordingly. Nor did IRG offer an explanation for its failure, before either breach, to seek a waiver from NZX.

IRG did communicate with the market during the period of the breach, but the announcements provided little in the way of explanation for the breaches, and the assurances contained in all three proved unreliable. The Tribunal noted that it is critical, if companies do fall into breach, that they inform the market in an open and frank way of the difficulties they are encountering, and take great care, when committing to a timeframe for compliance, that their revised estimates are achievable and accurate.

The Tribunal noted also:

"There have been too many periodic reporting failures coming before the Tribunal. Penalty Band 6 of Procedure 11.3.1 of the NZ Markets Disciplinary Tribunal Rules Procedures enables a maximum fine of \$250,000 on a summary hearing. The Tribunal has imposed fines of up to \$65,000 for breaches of Rule 10.5.1 alone. The Tribunal is concerned that more lenient penalties sought and imposed in the past are not sufficient to deter this sort of offending, and are contrary to market and public interests. Future offenders should not expect their conduct to be viewed by the Tribunal through a similarly lenient lens."

PENALTIES IMPOSED BY TRIBUNAL:

The penalties imposed by the Tribunal were:

- a) A public censure of IRG; and
 - b) An order to pay NZX \$25,000 (required by the NZMDT Rules to be directed to the NZMDT Discipline Fund).
-

COSTS:

The full costs and expenses of the Tribunal and NZX in considering the matter were awarded.

PUBLICATION:

The Tribunal's determination was published in full.

APPEALS PANEL 01/2010 MCDOUALL STUART SECURITIES LIMITED v NZX

Division: Abernethy (Chair), Thurston and Upton, QC

Statement of Appeal filed: 13 December 2010

Date of Determination: 17 December 2010

STATEMENT OF APPEAL AND PANEL FINDINGS

On 13 December 2010 the Appeals Panel received a statement of appeal from the Full Appellant appealing against a determination made by the Tribunal. The appeal related to the Tribunal's decision to publicly censure the Full Appellant for certain breaches of the NZX Participant Rules.

NZMDT Rule 9.2.2 provides that the Appeals Panel must determine whether the Full Appellant's statement of appeal provided under NZMDT Rule 9.2.1 is not frivolous or without merit, before providing that statement of appeal to NZX, for its response under NZMDT Rule 9.2.3.

Where the Appeals Panel considers that a statement of appeal is frivolous or without merit, the chairperson of the Appeals Panel must notify the Full Appellant of that fact no later than 5 Business Days after receipt of that statement of appeal, setting out its reasons.

The Appeals Panel found that the Full Appellant's statement of appeal was without merit and dismissed the Full Appellant's appeal.

The Appeals Panel noted that the Tribunal, when determining the penalty of public censure, had exercised its discretion in accordance with NZMDT Rule 11.1.1. The Appeals Panel stated that in circumstances where an appeal relates to the exercise of a discretion the Appeals Panel will only hear that appeal under NZMDT Rule 9.2.2 where it considers, based on the statement of appeal before it, that the decision of the Tribunal might be manifestly wrong. This aligns with the threshold that must be met by appellants before the courts in cases of appeals from discretionary decisions: see *Browne v Canwest TV Works Ltd [2008] 1 NZLR 654 at paragraph 20 where Wild J states:*

The appellant must show that the decision maker acted on the wrong principle, failed to take into account some relevant matter, took into account some irrelevant matter, or was plainly wrong.

The Appeals Panel also noted that in exercising its discretion to impose the penalty of public censure the Tribunal was acting consistently with its published policy position contained in "NZ Markets Disciplinary Tribunal Policy on Naming Market Participants". This policy provides that:

For each hearing, or review of a proposed settlement, the decision on whether the Respondent is to be named will be wholly at the discretion of the Division of NZ Markets Disciplinary Tribunal that has been involved in the hearing, or the review, of the circumstances of the particular case.

Except in exceptional circumstances, the discretion to the Division of NZ Markets Disciplinary Tribunal should be exercised in conformity with the guidelines that follow. In the event that there are exceptional circumstances, and the guidelines are not followed, these exceptional circumstances should be explained in the publication of the decision.

The Appeals Panel found that the Tribunal was also exercising its discretion consistent with precedent where the conduct fell within Penalty Band 4 or above and the Tribunal determined to publish the identity of the respondent.

The Appeals Panel noted that the Full Appellant had not provided it with any evidence of exceptional circumstances that would justify a departure from the Tribunal's general policy as described above.

Therefore, the Appeals Panel found that there was nothing to persuade it that the Tribunal's determination, specifically its decision to impose the penalty of public censure, was plainly wrong, or that the Tribunal had acted on the wrong principle, failed to take into account some relevant matter or had taken into account some irrelevant matter. Accordingly, it was the Appeals Panel's view that the Full Appellant's case was without merit under NZMDT Rule 9.2.2.



**NZX MARKET SUPERVISION
ANNUAL REPORT TO
NEW ZEALAND MARKETS
DISCIPLINARY TRIBUNAL**

FOR THE PERIOD 1 JANUARY
TO 31 DECEMBER 2010

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 Conduct Rules, Futures and Options Rules or any other rules or regulations of NZX from time to time identified by NZX;
 - b) complaints received by NZX in respect of Market Participants, Issuers and Futures and Options Participants; and
 - c) the use of the proceeds of the Disciplinary Fund.”
-

NZX MARKET SUPERVISION ANNUAL REPORT TO NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

1. INTRODUCTION

NZX Market Supervision (*NZXMS*) is the supervisory body of NZX Limited (*NZX*). NZXMS is responsible for the front line regulation of NZX's markets in accordance with its Conduct Rules, enacted pursuant to Section 36G of the Securities Markets Act 1988 (*SMA*), the NZX Futures and Options Rules (*FOX Rules*) and the NZX Derivatives Market Rules (the *Derivatives Rules*).

The NZ Markets Disciplinary Tribunal (the *Tribunal*) is an independent disciplinary body charged with determining and providing remedy for referrals made to it by NZXMS and regulation of NZX as a Listed Issuer under NZX's Conduct Rules.

NZXMS provides this report to the Tribunal pursuant to Rule 14.1.1 of the NZ Markets Disciplinary Tribunal Rules (the *NZMDT Rules*). Pursuant to NZMDT Rule 14.1.1, NZX must submit to the Tribunal by 28 February 2011 a report for the 2010 calendar year which contains the following information:

- a) breaches of the Conduct Rules, the FOX Rules, the NZX Derivatives Market Rules and any other rules or regulations of NZX from time to time 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 Discipline Fund.

This report provides information for the period 1 January 2010 to 31 December 2010 (the *Period*). NZXMS notes that the Derivatives Rules came into effect on 10 September 2010 and the Derivatives Market launched on 8 October 2010.

Capitalised terms used in this report which are not otherwise defined in this Report have the meanings given to them in the NZMDT Rules.

This report does not refer to referrals made by NZXMS to the Securities Commission (the *Commission*) for breaches of the SMA it detects when carrying out its regulation and surveillance duties (for example, in respect of suspected insider trading, market manipulation or director and officer disclosure).

2. MARKET PARTICIPANTS, FUTURES AND OPTIONS PARTICIPANTS AND DERIVATIVES MARKET PARTICIPANTS

This section 2 summarises:

- i) the breaches identified by NZXMS in respect of the NZX Participant Rules, the FOX Rules and the Derivatives Rules; and
- ii) the complaints received by NZXMS in respect of Market Participants, Futures and Options Participants (including Advisors) and Derivatives Market Participants.

A. SUMMARY OF BREACHES OF THE NZX PARTICIPANT RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

- i) *Significant breaches of the NZX Participant Rules*
There were four cases representing significant breaches of the NZX Participant Rules referred to the Tribunal during the Period. Over 235 breaches of the NZX Participant Rules were referred. These cases are described in Section 1.
- ii) *Breaches currently being investigated*
In addition, NZXMS is currently in the process of referring two separate matters involving a Market Participant to the Tribunal for suspected breaches of the NZX Participant Rules during the Period.

iii) *Other breaches of the NZX Participant Rules*

In addition to the above cases, there were also a number of other minor, inadvertent or technical breaches of the NZX Participant Rules, which were not considered sufficiently serious to warrant referral to the Tribunal.

Of these, various breaches were identified during NZX's Capital and Prudential Inspections (introduced in 2009 as a form of desk based inspection), capital adequacy reviews and other targeted investigations. These breaches were subsequently highlighted to the relevant Market Participant, either as part of an NZXMS inspection report or in letter format (containing, as appropriate, action points for Market Participants to resolve, or implement, within specified timeframes).

Additionally, numerous trading breaches have occurred. During the Period, a total of 12 breaches of NZX Participant Rule D10.1 (Crossing and Reporting) (as of 6 September 2010, NZX Participant Rule 13.1) were identified, where Crossings were executed outside the quotes. These were all minor transgressions that resulted in an automatic fine by NZX. One Market Participant was issued a letter of warning for breaching this rule on a number of occasions. In the same Period, a significant number of breaches relating to late settlement of trades occurred. These also resulted in an automatic fine by NZX.

As in the period reviewed in NZMDT's 2009 and 2008 Annual Reports, there were a number of breaches of NZX Participant Rule 15.9.1 (Daily Liquid Capital reports not submitted on time). These were all minor, inadvertent, or technical in nature. These were resolved following correspondence with the relevant Market Participant if previous authorisation was not obtained prior to the breach. As of 6 September 2010, with the launch of the NZ Clearing Corp clearing and settlement system, the requirements for the reporting of capital adequacy changed with the introduction of new capital adequacy rules.

A total of 17 breaches of NZX Participant Rule 14.7.1(e) (Client Funds Account overdrawn) (as of 6 September 2010, NZX Participant Rule 18.6.1(d)) occurred. These were largely self-reported by the relevant Market Participant. A significant number of these breaches were either as a result of time differences for international clients, or a result of bank errors for which the Market Participant ultimately received good value.

Another significant reason for these breaches was errors in processing bank transactions by the Market Participant's employees. All of the breaches were followed up by communication with the relevant Market Participant.

There were also three breaches of NZX Participant Rule 14.4.2 (Client Assets need to exceed Outstanding Obligations). These were self-reported by the relevant Market Participant and positions were corrected within the day on all but one occasion. All of these were followed up by communication with the relevant Market Participant. The majority of these breaches were caused by timing issues with international cash transfers. NZXMS made one referral to the Tribunal in relation to Rule 14.4.2, as noted in Section 1.

B. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF MARKET PARTICIPANTS

NZXMS received a total of 11 written complaints in respect of Market Participants during the Period.

Of these complaints:

- Three involved insufficient evidence that the NZX Participant Rules had been breached, and resulted in the closure of the matter;
- Two were closed due to the failure by the complainant to provide sufficient information for investigation of the complaint;
- One was determined not to be a breach of the NZX Participant Rules;
- Two resulted in the Market Participant concerned being given a warning as to their behaviour;
- Two are in the process of being referred to the Tribunal; and
- One continues to be investigated by NZX.

C. SUMMARY OF BREACHES OF THE FOX RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

During the Period, there were a number of minor, inadvertent or technical breaches of the FOX Rules, which were not considered sufficiently serious to warrant referral to the Tribunal.

The majority of these breaches were identified during NZX's on-site inspections and Capital and Prudential Inspections of Futures and Options Participants.

These breaches were subsequently highlighted to the relevant participant as part of the NZXMS inspection report which contained action points for that participant to resolve, or implement within specified timeframes. In some cases, alternative action was taken, including issuing warnings to, and completing further spot onsite inspections of, the relevant participant.

D. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF FUTURES AND OPTIONS PARTICIPANTS

During the Period, NZXMS received two written complaints in respect of Futures and Options Participants. In addition, NZXMS received a significant number of complaints in respect of other members of the group of companies of which a Futures and Options Participant was part. These complaints were outside the ambit of the FOX Rules and were referred to other regulatory and enforcement agencies.

Of these complaints investigated by NZXMS:

- One involved insufficient evidence that the FOX Rules had been breached, and resulted in the closure of the matter.
- One was resolved with the Complainant, but there was insufficient evidence to refer the matter to the Tribunal.

E. SUMMARY OF BREACHES OF THE DERIVATIVES MARKET RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

During the Period (since the launch of the Derivatives Market on 8 October 2010), no breaches of the Derivatives Rules have been identified.

F. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF DERIVATIVES MARKET PARTICIPANTS

During the Period (since the launch of the Derivatives Market on 8 October 2010), NZXMS has not received any complaints in respect of Derivatives Market Participants.

G. PUBLICATIONS BY NZXMS COMPLIANCE

During the Period, NZXMS has issued guidance to Market Participants on topical issues. This has been particularly prevalent with the need for timely guidance on the changes resulting from the introduction of the Clearing House and the new capital adequacy regime. This guidance has normally been issued via email to Compliance Managers and Managing Principals. Where appropriate, NZXMS has also met with Market Participants to provide training on the updated capital adequacy requirements.

3. NZX ISSUERS

This section 3 summarises:

- i) breaches identified by NZXMS in respect of the NZSX Listing Rules and the NZAX Listing Rules; and
- ii) complaints received by NZXMS in respect of Issuers.

A. SUMMARY OF BREACHES OF THE LISTING RULES IDENTIFIED BY NZXMS FROM TIME TO TIME

- i) *Significant breaches of the Listing Rules*
There were four significant breaches of the Listing Rules referred to the Tribunal during the Period. These are described in Section 1.
- ii) *Referrals to the Commission*
In accordance with the Memorandum of Understanding between NZX and the Commission and sections 36ZD and 36ZL of the SMA, NZXMS referred 16 matters in respect of Issuers to the Commission during the Period.

Of these referrals:

- Three related to the failure by an Issuer to comply with the periodic reporting requirements of the Listing Rules;
- One related to the Issuer's failure to ensure that the composition of its board of directors ("Board") included at least two directors who were ordinarily resident in New Zealand;
- Two related to possibly false or misleading statements being released to the market;
- Nine related to compliance with continuous disclosure requirements following unusual price or volume activity in the Issuer's securities; and
- One was in respect of a price movement of an Issuer's securities in relation to index announcements.

- iii) *Other breaches of NZX Listing Rules*
In addition to the above breaches, NZXMS identified 17 breaches of the Listing Rules which were not considered sufficiently serious to warrant referral to the Tribunal or which a determination is yet to be made as to whether to refer to the Tribunal.

Of these breaches:

- Seven related to the failure to release information required by the periodic reporting requirements within the timeframes prescribed by the Listing Rules;
 - Three related to the failure to provide to NZX the same information and notices the Issuer is required to provide its Home Exchange, at the same time as it is required to give such information and notices to its Home Exchange;
 - One related to the failure of an Issuer to include a summary of a waiver granted to it in its annual report;
 - One related to the length of appointment of the Issuer's executive director;
 - One was in respect of a failure to accurately record Substantial Security Holder figures in the Issuer's annual report;
 - One related to a failure to provide the required notice of the Record Date for payment of the Issuer's full year dividend;
 - One related to the failure by the Issuer to have the required number of independent directors;
 - One was in respect of the distribution of an unapproved document; and
 - One related to the failure to provide NZX with a copy of a notice at the same time as it was provided to security holders.
- b) Three were in respect of an Issuer's compliance with continuous disclosure obligations;
 - c) Two were in respect of concerns regarding possible insider trading;
 - d) One related to concerns with the operation of an Issuer's share purchase plan and the subsequent effect on the Issuer's share price;
 - e) One was in respect of the actions and performance of an Issuer's Chairman;
 - f) One related to the adequacy of an appraisal report provided by an Issuer for the purpose of considering a resolution tabled at a meeting of shareholders;
 - g) One related to the financial information tabled at a meeting of shareholders. Although the conduct the subject of the complaint did not amount to a breach of the Listing Rules, the same Issuer was subsequently the subject of disciplinary proceedings as a result of a failure to comply with its periodic reporting requirements;
 - h) One related to suspected market manipulation; and
 - i) One was in respect of the Issuer offering a share placement to "Eligible Persons" only.
- Two related to false or misleading statements and/ or compliance with continuous disclosure obligations. NZXMS referred these matters to the Commission.
 - Two were in respect of events occurring prior to an Issuer listing, or subsequent to the Issuer delisting, and which therefore were determined to be outside of NZXMS' regulatory jurisdiction.
 - Two were in respect of an Issuer's notice of meeting or proxy form.
 - One related to an Issuer's compliance with its continuous disclosure obligations under the Listing Rules.

B. SUMMARY OF COMPLAINTS RECEIVED BY NZXMS IN RESPECT OF ISSUERS

NZX received a total of 22 complaints in respect of Issuers during the Period.

Of these complaints:

- 15 were determined not to be breaches of the Listing Rules. Of these:
 - a) Four were in respect of misleading announcements, two of which resulted in a referral to the Commission for possible false and misleading statements;

C. PUBLICATIONS BY NZX MARKET SUPERVISION –
ISSUER REGULATION

NZXMS has not published any Guidance Notes during the Period. In 2010, NZXMS conducted a review of the Continuous Disclosure Guidance Note – this is expected to be published in the first quarter of 2011. In August 2010, changes to the Listing Rules were made to facilitate the launch of the NZ Clearing Corp clearing and settlement system, including to amend the definition of “Ex-Date”. Other minor amendments included the correction of minor typographical errors and amendments to ensure consistency with current legislation and regulations.

Amendments were also made to the NZMDT Rules, including to extend its jurisdiction to persons subject to the Clearing and Settlement Rules, the Depository Operating Rules and the Derivatives Rules.

4. USE OF PROCEEDS OF THE DISCIPLINE FUND

This section 4 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.

DISCIPLINARY FUND COSTS	4 MONTHS TO 30-APR-08	8 MONTHS TO 31-DEC-08	12 MONTHS TO 31-DEC-09	12 MONTHS TO 31-DEC-10
Fines and Costs	13,000	230,629	411,237	341,957
EXPENSES OF NZ MARKETS DISCIPLINARY TRIBUNAL				
Appeal Member Costs	-	-	-	-
Executive Counsel Costs	-	60,087	109,112	136,192
NZ Markets Disciplinary Tribunal Member Costs	14,248	105,282	44,171	166,919
Legal Advisory	-	-	-	8,415
Rules Review	44,752	1,360	595	5,161
Disbursements	-	3,717	11,234	6,711
Educational Expenditure	-	-	-	61,109
Other Incidentals	-	-	-	1,440
Bad Debts	-	-	-	342,728
Total Expenses	59,000	170,446	165,112	728,405
Interest Income	-	-	-	3,844
Surplus (Deficit) for the period	(46,000)	60,183	246,125	(382,604)
Accumulated Surplus (Deficit)	236,054	296,237	542,362	159,758



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

FOR THE PERIOD 6 SEPTEMBER
TO 31 DECEMBER 2010

NEW ZEALAND CLEARING LIMITED ANNUAL REPORT TO NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

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. CHO is part of the New Zealand Clearing and Depository Corporation Limited Group (*NZCDC*). The Settlement System operated by NZCDC 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.

The NZ Markets Disciplinary Tribunal (the *Tribunal*) is an independent disciplinary body charged with determining and providing remedies for referrals made to it by CHO under the Clearing and Settlement Rules.

CHO provides this report to the Tribunal pursuant to Rule 14.1.2 of the NZ Markets Disciplinary Tribunal Rules (the *NZMDT Rules*). Pursuant to NZMDT Rule 14.1.2, CHO must submit to the Tribunal by 28 February 2011 a report for the 2010 calendar year which contains the following information:

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

This report provides information for the period 6 September 2010 to 31 December 2010 (the "Period"). The NZCDC Settlement System commenced operations 6 September 2010.

Capitalised terms used in this report which are not otherwise defined in this Report have the meanings given to them in the NZMDT Rules.

2. BREACHES OF THE CLEARING AND SETTLEMENT RULES

This section 2 summarises breaches of the Clearing and Settlement Rules by Clearing Participants and Lending Clearing Participants identified by CHO during the Period.

A. SIGNIFICANT BREACHES OF THE CLEARING AND SETTLEMENT RULES IDENTIFIED BY CHO FROM TIME TO TIME

No significant breaches of the Clearing and Settlement Rules were referred to the Tribunal during the Period.

B. BREACHES OF THE CLEARING AND SETTLEMENT RULES CURRENTLY BEING INVESTIGATED

There are no breaches of the Clearing and Settlement Rules currently being investigated.

C. OTHER BREACHES OF THE CLEARING AND SETTLEMENT RULES IDENTIFIED BY CHO FROM TIME TO TIME

During its review of monthly reporting returns, CHO and NZXMS identified breaches of a waiver granted to a Clearing Participant. The waiver conditions required the Clearing Participant to maintain certain levels of Capital Adequacy outside of the requirements detailed in the Clearing and Settlement Rules. CHO did not consider the magnitude of the breach warranted referral to NZMDT. The Clearing Participant has since injected further capital into the business and continues to be supported by a parental guarantee, well in excess of the Capital Adequacy requirements in the Clearing and Settlement Rules. CHO continues to closely monitor the Clearing Participant's Capital Adequacy position.

During the course of on-site inspections we have identified instances where Clearing Participants have failed to provide notification of changes to personnel who have been provided access to the Clearing House System (Clearing and Settlement Rule 2.92(e)). This is not considered a material breach. CHO will issue a general communication reminding all Clearing Participants of this notification obligation and the manner in which notification is requested.

3. COMPLAINTS

This section 3 summarises complaints received by CHO in respect of Clearing Participants and Lending Clearing Participants during the Period.

A. SUMMARY OF COMPLAINTS RECEIVED BY CHO IN RESPECT OF CLEARING PARTICIPANTS

CHO did not receive any complaints in respect of Clearing Participants during the Period.

B. SUMMARY OF COMPLAINTS RECEIVED BY CHO IN RESPECT OF LENDING CLEARING PARTICIPANTS

CHO did not receive any complaints in respect of Lending Clearing Participants during the Period.



REPORT ON SPECIAL DIVISION ACTIVITIES

REPORT ON SPECIAL DIVISION ACTIVITIES

The Special Division considered twenty three matters during the year. A summary of each matter follows this report. In all cases the Special Division was able to respond promptly.

SMARTS SURVEILLANCE SYSTEM ALERTS

Eleven matters related to the referral of SMARTS surveillance system alerts regarding trading in the quoted securities of NZX and the funds managed by Smartshares Limited (*Funds*). NZXMS is required to refer all SMARTS alerts and any abnormal trading activity (in circumstances where no alert has fired) for securities issued by NZX to the Special Division. During the year, the Special Division reviewed the procedures regarding the referral of trading activity in the units of the Funds. The purpose of the review was to clarify when SMARTS alerts and abnormal trading activity (in circumstances where no alert has fired) in the units of the Funds should be referred to the Special Division to exclude trading activity which is in the ordinary course of business of the Funds. Following consultation with NZXMS, the "NZX Market Surveillance Procedures" were amended so that:

- a) SMARTS alerts for "High Long Term Volume" involving the creation or redemption of in excess of 20 baskets of units in a Fund; and
- b) any abnormal trading activity regarding units in a Fund whether or not an alert is fired,

must be referred to the Special Division on the same day, or as soon as practically possible.

In addition, the Special Division is to receive quarterly reports:

- a) Reconciling the number of basket creations and redemptions, and the consequent effect on the number of units on issue, for each of the Funds;
- b) Confirming that the number of units on issue matches the underlying securities held in respect of each of the Funds; and
- c) Confirming that any abnormal trading activity in the listed securities issued by NZX and any related entity (including the Funds), whether a SMARTS alert has fired or not, has been referred to the Special Division.

RELATED PARTY WAIVERS

During the year, NZX introduced a new clearing and settlement system (*CSS*). Smartshares, as manager of the Funds, intended to use the services provided by the *CSS*, including the depository holding legal title to the securities held by the Funds, lending Fund securities through the depository and buying and selling Fund securities on market through NZX Market Participants. Smartshares and the entities which operate the *CSS* are Related Parties for the purposes of the NZSX Listing Rules. The rulings and waivers were sought to permit these transactions as they arguably fell within the ambit of NZSX Listing Rules 9.1.1 and 9.2. The Special Division granted waivers to Smartshares to permit the proposed transactions involving the *CSS*. The Special Division's decision was released to the market in full on 2 September 2010.

COMPLAINTS OUTSIDE OF JURISDICTION

During the year, the Special Division received four complaints from members of the public. Two complaints related to issuers other than NZX and its related entities, one complaint regarded the actions of an investment adviser and one related to the offer by interests associated with Bernard Whimp to purchase shares in a listed company for a price significantly below their market value. In each case the Special Division determined that the complaint was outside its jurisdiction and the complainants were advised on how to take their complaint to the Securities Commission.

There have been no changes to personnel or administrative arrangements during the year. Once again, I have been very ably assisted by the members of the Special Division.



Peter Wilson | CHAIRMAN

NZMDT SPECIAL DIVISION MATTERS

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
12/02/10	NZX Ltd	Review of Announcement	The Special Division investigated the circumstances surrounding the timing of an announcement made by NZX Ltd. The Special Division referred correspondence regarding the matter to the Securities Commission who also monitors issuer compliance with the continuous disclosure regime.
20/02/10	-	Review of a complaint received from a member of the public	<p>The Special Division received a complaint from an investor regarding the reversal of a decision by NZX to include Allied Farmers Ltd in the NZX 50 Index.</p> <p>The Special Division considered the complaint and determined that it was outside its jurisdiction because the matter related to decisions made by NZX regarding an issuer who was not NZX or a related entity.</p> <p>The complainant was advised that the matter was outside the Special Division's jurisdiction and the complaint was referred to the Securities Commission for its review.</p>
5/03/10	Smartshares Ltd	Application for approval of Prospectuses and Investment Statement under Rule 6.1	The Special Division reviewed and approved under Rule 6.1 the amended Prospectuses and Deeds of Modification for each of the five funds managed by Smartshares Ltd (Funds) and the amended Investment Statement.
23/03/10	NZX Ltd	Application for approval of waivers from Rule 7.6.1 and 7.6.4(b)(iii)	<p>The Special Division reviewed and approved a waiver application from NZX to waive Rule 7.6.1 so that shares issued under NZX's proposed new employee share plan may be redeemed by NZX in accordance with the terms of the plan and section 74(1) of the Companies Act 1993. The Special Division's decision was released to the market on 24 May 2010.</p> <p>An application from NZX for a waiver from Rule 7.6.4(b)(iii) was withdrawn by NZX before the Special Division had made a determination.</p>
13/4/10	-	Review of a complaint received from a member of the public	<p>The Special Division received a complaint from an investor in issuer Sunseeker Energy Ltd. The Special Division considered the complaint and determined that it was outside its jurisdiction because the matter related to an issuer who was not NZX or a related entity.</p> <p>The complainant was advised that the matter was outside the Special Division's jurisdiction and was given advice on how to make a complaint to NZX Market Supervision and the Securities Commission.</p>

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
29/4/10	NZX Ltd	Application for approval of a Prospectus and Investment Statement under Rule 6.1	The Special Division reviewed and approved under Rule 6.1 the Prospectus and Investment Statement for NZX's employee share plan.
26/5/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 24 May 2010.</p> <p>The Special Division investigated the circumstances of the alert. Following a review of a disclosure notice released to the market by a former officer of NZX regarding the sale of NZX shares and submissions from the Market Participant involved, the Special Division determined that no further investigation was necessary.</p>
14/06/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 11 June 2010.</p> <p>The Special Division investigated the circumstances of the alert and related trading data. The Special Division determined that no further investigation was necessary as there was nothing to indicate that the trades did not constitute normal market activity.</p>
25/06/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 25 June 2010.</p> <p>The Special Division investigated the circumstances of the alert, related trading data and substantial security holder notices released to the market. Following the review of the material and correspondence from the Market Participant involved the Special Division determined that no further investigation was necessary.</p>

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
13/07/10	Smartshares Ltd	Application for rulings and waivers from NZSX Listing Rules 9.1.1 and 9.2	<p>Smartshares, as manager of the Funds, applied for rulings and waivers as a result of the establishment of the central counterparty clearing and settlement system (CSS) by NZX. Smartshares and the entities which operate the CSS are Related Parties for the purposes of the Rules.</p> <p>Smartshares intended to use the services provided by the CSS, including the depository holding legal title to the securities held by the Funds, lending Fund securities through the depository and buying and selling Fund securities on market through an NZX Market Participant. The rulings and waivers were sought to permit these transactions as they arguably fell within the ambit of Rules 9.1.1 and 9.2.</p> <p>The Special Division granted waivers to Smartshares to permit the proposed transactions involving the CSS. The Special Division's decision was released to the market on 2 September 2010.</p> <p>As a result of the advent of securities lending by the Funds, the Special Division reviewed its decisions dated 14 October 2004 and 29 March 2005 to grant waivers so that the Board of Smartshares (as manager of the Funds) is not required to include a minimum number of Independent Directors as specified under Rule 3.3.1(c), nor to comply with the associated procedural requirements in Rules 3.3.2 to 3.3.4. The waivers were granted primarily because of the passive nature of the Funds which track their respective indices meaning that the directors have no discretion with respect to the investment decisions. The Special Division considered that there were therefore unlikely to be decisions for directors to make in respect of each Fund that could be influenced by any relationship contemplated in the definition of Disqualifying Relationship.</p> <p>Following a review of material provided by Smartshares, the Special Division determined that the waivers granted to Smartshares from Rules 3.3.1(c), and 3.3.2 to 3.3.4 could continue.</p>

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
15/07/10	Smartshares Ltd	Application for approval of Prospectuses and Investment Statement under Rule 6.1	The Special Division reviewed and approved amended Prospectuses, Deeds of Modification and Investment Statement for each Fund.
31/08/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 30 August 2010.</p> <p>The Special Division investigated the circumstances of the alert, related trading data and substantial security holder notices. Following a review of the material and correspondence from the Market Participant involved, the Special Division determined that no further investigation was necessary.</p>
31/08/10	Smartshares Ltd	Application for approval of amendments to Trust Deeds under Rule 6.1.3	The Special Division reviewed and approved Deeds of Modification to the trust deeds of each of the Funds. The amendments related primarily to the lending of Fund securities through the CSS.
7/09/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 2 September 2010.</p> <p>The Special Division investigated the circumstances of the alert, related trading data and substantial security holder notices. Following a review of the material provided by NZX Market Supervision, the Special Division determined that no further investigation was necessary.</p>
9/9/10	Smartshares Ltd	Application for approval of Prospectuses and Investment Statement under Rule 6.1	The Special Division reviewed and approved amended Prospectuses and the Investment Statement for each Fund.

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
20/9/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "High Long Term Volume" trading in NZX ordinary shares occurring on 20 September 2010.</p> <p>The Special Division investigated the circumstances of the alert and related trading data. Following a review of the material and correspondence from the Market Participant involved, the Special Division determined that no further investigation was necessary.</p>
18/10/10	Smartshares Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Insider Trading Participant Profile" trading in smartTENZ units occurring on 5 October 2010.</p> <p>The Special Division investigated the circumstances of the alert and related trading data. Following a review of the material provided by NZX Market Supervision, the Special Division determined that no further investigation was necessary.</p>
28/10/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Volume Inter-day" and "Large Order" trading in NZX ordinary shares occurring on 28 October 2010.</p> <p>The Special Division investigated the circumstances of the alerts and related trading data. The Special Division determined that no further investigation was necessary.</p>
5/11/10	Smartshares Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance regarding trading in smartTENZ units occurring on 5 October 2010.</p> <p>The Special Division investigated the circumstances of the alert, related trading data and correspondence from the Market Participant. As a result of this investigation the Special Division identified a breach of Rule 7.12.2 by Smartshares in that it did not file an Appendix 7 at least 10 business days before the record date for determining entitlements to a distribution from the Funds. Smartshares identified and remedied the breach 6 days after the record date. The Special Division accepted submissions from Smartshares that its procedures have been up-dated to ensure that a similar breach does not occur again.</p>

DATE REFERRED	ISSUER	MATTER	SUMMARY OF MATTER
15/11/10	NZX Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" as a result of trading in NZX shares which resulted in a price decline of 8.5% over 20 trading days.</p> <p>The Special Division investigated the circumstances of the alert and related trading data and sought confirmation from NZX that it continued to comply with Rule 10.1.1 and if NZX was aware of any reasons for the share price decline.</p> <p>NZX confirmed that it continued to comply with Rule 10.1.1 and that NZX was not aware of any specific reasons for the share price decline.</p>
23/11/10	Smartshares Ltd	Review of SMARTS surveillance system alert	<p>The Special Division received a referral from NZX Market Surveillance of a SMARTS alert for "Unusual Price Movement Inter-Day" trading in MZY units occurring on 18 November 2010 and 23 November 2010.</p> <p>The Special Division investigated the circumstances of the alert and related trading data. Following a review of correspondence from the Market Participants, the Special Division determined that no further investigation was necessary.</p>
29/11/10	-	Complaint	<p>The Special Division received a complaint from a member of the public regarding their dealings with an investment adviser. The Special Division was advised that the complaint had been considered by NZX, but that the complainant was dissatisfied with the outcome, their complaint having been dismissed.</p> <p>The Special Division considered the complaint and determined that it was outside its jurisdiction. The matter did not relate to decisions made by NZX regarding NZX or a related entity.</p> <p>The complainant was given advice on how to make a complaint to the Securities Commission.</p>

DIRECTORY

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