

**IN NZ MARKETS DISCIPLINARY TRIBUNAL
SUMMARY HEARING PROCEDURE**

NZMDT 1/2015

UNDER the NZ Markets Disciplinary Tribunal Rules

IN THE MATTER OF breach of NZAX Listing Rule 10.5.1

BETWEEN **NZX LIMITED**

AND **RIS GROUP LIMITED**
Respondent

**DETERMINATION OF NZ MARKETS DISCIPLINARY TRIBUNAL
1 APRIL 2015**



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1. This is a determination of a division of the NZ Markets Disciplinary Tribunal (*the Tribunal*) comprising Mark Freeman (division chairman), Richard Leggat and James Ogden.
2. Capitalised terms that are not defined in this determination have the meanings given to them in the NZAX Listing Rules (*the Rules*).

Background

3. RIS Group Limited (*RIS*) is an Issuer with ordinary shares Quoted on the NZAX Market. *RIS* is subject to the Rules.
4. On 25 February 2015, NZX Limited (*NZX*) filed a statement of case (*SOC*) alleging a breach of Rule 10.5.1 by *RIS*.
5. On 11 March 2015, *RIS* asked the Tribunal to grant a three business day extension of time to enable *RIS* to file its statement of response by 16 March 2015. On 11 March 2015, the Tribunal granted the extension requested.
6. On 16 March 2015, *RIS* filed a statement of response (*SOR*).
7. On 19 March 2015, *NZX* advised the Tribunal that it would not be filing a rejoinder.

Rule 10.5.1

8. Rule 10.5.1 requires each Issuer to deliver to *NZX*, and make available to each Quoted Security holder, an annual report within four months of the end of the Issuer's financial year.
9. *RIS*' financial year end is 30 June. Accordingly, under Rule 10.5.1, *RIS*' 2014 annual report had to be released by 31 October 2014.

Statement of Case

Material facts

10. The *SOC* set out the following material facts:
 - a. On 29 October 2014, *RIS* notified *NZX* Regulation (*NZXR*) that it could not release its annual report by 31 October 2014. *RIS* advised that it was conducting a major capital raising critical to ensuring its future as a going concern. Consequently, *RIS*' auditors were unwilling to sign-off on its accounts.
 - b. On 3 November 2014, *NZXR* announced that, in accordance with the policy set out in Footnote 2 of Rule 5.4.3, if *RIS* did not release its annual report by 7 November 2014, trading in *RIS* ordinary shares would be suspended.
 - c. *RIS*' annual report was not released by 7 November 2014 and *NZX* suspended trading in *RIS* ordinary shares on 10 November 2014.
 - d. On 11 November 2014, *NZXR* advised *RIS* to update the market on the reason for the delay in filing its annual report and when it expected to release it.
 - e. On 13 November 2014, *RIS* advised the market that it had completed an issue of convertible notes, and accordingly, now expected to complete and release its annual report on or before 21 November 2014.
 - f. On 19 November 2014, *NZXR* advised *RIS* of its concern that it had breached the periodic reporting requirements for the third time and other matters, including outstanding monies owed by *RIS* to *NZX*. *NZXR* also advised *RIS* that it was considering whether to exercise its power to cancel *RIS*' listing under Rule 5.4.2(a).

- g. On 24 November 2014, RIS released its annual report. Trading in RIS ordinary shares resumed on 24 November 2014 following the release.
- h. On 26 November 2014, RIS advised NZXR of measures that it was either in the process of implementing, or planned to implement, in order to address NZXR's concerns. RIS noted that the ultimate objective of its restructuring proposal was to seek to convince NZXR that it should not exercise its power to cancel RIS' listing on the NZAX Market.
- i. On 28 November 2014, NZXR advised RIS that given the proposed measures, it would not exercise its power to cancel RIS' listing, but that decision was contingent upon RIS making timely progress on its proposed initiatives.

Financial penalty

- 11. A breach of the periodic reporting requirements falls within Penalty Band 6 of Procedure 11.3.1 of the Tribunal Procedures (*the Procedures*), which means that on a summary hearing the maximum fine the Tribunal can impose is \$250,000.
- 12. NZX submitted that the breach by RIS falls within the middle range of conduct falling within Penalty Band 6.
- 13. NZX submitted that the following mitigating factors are relevant in determining the appropriate penalty:
 - a. RIS contacted NZX on 29 October 2014, self-reporting that its annual report would not be released by 31 October 2014; and
 - b. While in breach of Rule 10.5.1, RIS provided the market with an update on progress in releasing its annual report.
- 14. NZX submitted that the following aggravating factors are relevant in determining the appropriate penalty:
 - a. The annual report was approximately 15 business days late; and
 - b. This was RIS' third breach of Rule 10.5.1 and RIS' third referral to the Tribunal for such breaches.
- 15. NZX submitted that the appropriate penalty was a public censure of RIS, a fine of \$80,000, and an order that RIS pay the costs of both NZX and the Tribunal. NZX noted that its costs incurred so far were \$960 (excluding GST).

Statement of Response

- 16. In the SOR, RIS noted that it did not dispute having breached Rule 10.5.1.
- 17. However, RIS believed that there were a number of mitigating factors which the Tribunal should consider and take into account when assessing the proposed penalty.
- 18. In the SOR, RIS submitted, in summary, that:
 - a. There had been a number of changes in its Board during 2014 with key people resigning including the two directors primarily responsible for all accounting, finances and management of RIS and that RIS had difficulties in recruiting new Directors;
 - b. In September 2014, the RIS Board advised the market of RIS' dire financial circumstances and the need to raise additional capital;
 - c. RIS' auditor (BDO) had advised RIS that it could not sign off any audit until the results of any capital raising had been completed;

- d. In November 2014, the RIS Board secured additional funding via an issue of convertible notes to a third party. Following this, BDO was able to complete and sign-off on its audit of RIS and the RIS annual report was subsequently released;
- e. The RIS Board had continually updated both the NZX and made market announcements regarding the financial circumstances of RIS and the reasons for the delays in filing its annual report;
- f. The RIS Board regrets that it did not complete the requisite financial filings in accordance with the Rules, but considers it moved with all reasonable haste that it could given the information and financial constraints that the Board was faced with;
- g. While understanding the need for the NZX to uphold market integrity around due dates and timing for information release, RIS shares are relatively illiquid so any delays in releasing the annual report had no major impact or bearing on the share price and its movement;
- h. Over 30% of the capital recently raised was used to pay in full any outstanding monies to NZX, and in addition to this, RIS wrote to the NZX advising them that during 2015, it would make efforts to bring better governance and a change in Board and opportunities to the business; and
- i. The majority of the RIS Board is intended to be replaced in the coming months with new directors with specific expertise in the capital markets and listed company sector. These directors will assist in facilitating greater corporate governance (including but not limited to ensuring compliance with the Rules) and in developing a full and comprehensive capital and organisational restructure of RIS.

Financial penalty

- 19. RIS submitted that it considered the penalty recommended by NZX of \$80,000 to be excessive having regard to:
 - a. The background circumstances leading to the breach of the Rules;
 - b. The current financial position of RIS which means that it does not have the funds to pay such a penalty;
 - c. The impact that the imposition of such a large fine would have on the shareholders of RIS and the recent investor in the convertible notes. It was quite likely that in the absence of the ability of RIS to raise new capital, RIS may need to be placed into liquidation due to the imposition of such a significant liability;
 - d. The imposition of such a large penalty may well act as a deterrent to a third party investing new capital in RIS in the future; and
 - e. The imposition of such a large penalty may act as a deterrent to a third party agreeing to sell their business operations into RIS via a reverse listing acquisition transaction, the most likely prospect of restructuring RIS.

NZ Markets Disciplinary Tribunal Determination

- 20. RIS has admitted that it breached Rule 10.5.1. Accordingly, the Tribunal is simply required to determine the penalty that is to be imposed on RIS for breaching that Rule.

Penalty

21. The Tribunal continues to stress the vital importance of Issuers complying with the periodic reporting requirements in the Rules. These Rules are fundamental to maintaining market integrity and investor confidence.
22. Accordingly, the Tribunal takes any breach of the periodic reporting requirements very seriously and has previously advised the market that it will continue to increase the penalties it imposes for such breaches. Most recently, the Tribunal imposed a:
 - a. \$50,000 penalty on Pyne Gould Corporation Limited for filing its annual report approximately five weeks after it was due (announced 19 January 2015); and
 - b. \$100,000 penalty on Diligent Board Member Services, Inc. for its breach of three successive reporting requirements over a significant time period (announced 5 September 2014). The Tribunal considered this case to be very serious, particularly given the three breaches of the periodic reporting requirements.
23. In determining the appropriate penalty in any case, the Tribunal considers any mitigating or aggravating factors based on the information presented to it.
24. The Tribunal has considered the following mitigating factors in this case:
 - a. RIS has experienced significant changes in its board composition, which may have affected its ability to release its annual report when due;
 - b. RIS was experiencing serious financial difficulties which contributed to the delay in releasing its annual report; and
 - c. RIS sought to keep the market informed during the period it was in breach, albeit failing to meet its own expected timeframe.
25. The Tribunal notes that while RIS did self-report its likely failure to provide its annual report when required, it only did so two days before the annual report was required to be sent to NZX and to RIS' shareholders.
26. The Tribunal also considered the following aggravating factors:
 - a. This is the third occasion RIS has breached Rule 10.5.1; and
 - b. The delay in releasing the annual report was approximately three weeks.
27. The Tribunal is greatly concerned that this is the third such breach by RIS. Listing is a privilege and it is incumbent on all Issuers who wish to maintain their listing to comply with the Rules. On the first occasion (considered by the Tribunal in December 2011), RIS provided assurances to NZX that it had implemented changes to its financial arrangements to mitigate the risk of further or similar breaches of the periodic reporting requirements. Despite those assurances, RIS has now breached the periodic reporting requirements on two further occasions. In its decision of 1 March 2013, the Tribunal noted that it was "*reprehensible that RIS has again failed to release its annual report when due*". It is unacceptable for RIS to have committed a third breach of the periodic reporting requirements over what is a comparatively short period of time.
28. The Tribunal acknowledges that the penalty of \$80,000 sought by NZX in this matter is a significant amount in terms of RIS' financial circumstances. However, having considered the serious nature of the breach (which falls within Penalty Band 6), the previous conduct of RIS (this being the third such breach) and the factors noted above, the Tribunal considers that on balance the \$80,000 penalty recommended by NZX is appropriate in this case.

29. In coming to this view, the Tribunal notes that the ability of an Issuer to pay any penalty imposed should they breach the Rules, is not of itself a reason to discount the amount which the Tribunal would otherwise consider an appropriate penalty having regard to the seriousness of the breach and the conduct of the Issuer.
30. The Tribunal is mindful of RIS' financial position and understands that the penalty it has imposed is a significant amount for RIS to pay. It also understands that NZX has been willing in the past to accept the payment of penalties on an instalment basis. Accordingly, the Tribunal recommends that NZX discuss with RIS the possibility of RIS paying the penalty in instalments over such period of time as NZX considers appropriate and reasonable having regard to RIS' financial circumstances.

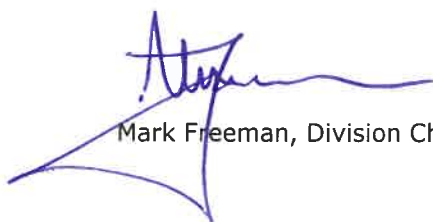
Public Censure

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

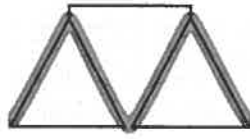
Orders

32. The Tribunal orders that RIS:
- a. Be publicly censured in the form of the announcement attached to this decision;
 - b. Pay \$80,000 to the NZX Discipline Fund;
 - c. Pay the costs and expenses incurred by the Tribunal in considering this matter; and
 - d. Pay the costs and expenses incurred by NZX in considering this matter.
33. The Tribunal recommends that NZX discuss the implementation of a payment plan with RIS such that the penalty and costs imposed in this case can be paid in instalments over a specified time period.
34. The Tribunal recommends that this decision be released to the market in full under Tribunal Rule 6.6.

DATED 1 APRIL 2015



Mark Freeman, Division Chairman, NZ Markets Disciplinary Tribunal



NEW ZEALAND MARKETS
DISCIPLINARY TRIBUNAL

[x] 2015

ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL

PUBLIC CENSURE OF RIS GROUP LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF NZAX LISTING RULE 10.5.1

1. In a determination of the NZ Markets Disciplinary Tribunal (*the Tribunal*) dated [x] March 2015, the Tribunal found that RIS Group Limited (*RIS*) breached NZAX Listing Rule (*Rule*) 10.5.1.

Background

2. RIS Group Limited (*RIS*) is an Issuer with ordinary shares Quoted on the NZAX Market. RIS is subject to the Rules.
3. Rule 10.5.1 requires each Issuer to deliver to NZX, and make available to each Quoted Security holder, an annual report within four months after the end of the Issuer's financial year.
4. RIS' financial year end is 30 June. Accordingly, its 2014 annual report was due to be provided to NZX and RIS' shareholders by 31 October 2014.
5. RIS did not file its annual report until 24 November 2014, and in doing so breached Rule 10.5.1.

Determination

6. The Tribunal continues to stress the vital importance of Issuers complying with the periodic reporting requirements in the Rules. These Rules are fundamental to maintaining market integrity and investor confidence.
7. Accordingly, the Tribunal takes any breach of the periodic reporting requirements very seriously and has previously advised the market that it will continue to increase the penalties it imposes for such breaches. Most recently, the Tribunal imposed a \$50,000 penalty on Pyne Gould Corporation Limited for filing its annual report approximately five weeks after it was due and a \$100,000 penalty on Diligent Board Member Services, Inc. for its breach of three successive reporting requirements over a significant time period.
8. In determining the an appropriate penalty in any case, the Tribunal considers any mitigating or aggravating factors based on the information presented to it.
9. The Tribunal has considered the following mitigating factors in this case:
 - a. RIS has experienced significant changes in its board composition which may have affected its ability to release its annual report when due;
 - b. RIS was experiencing serious financial difficulties which contributed to the delay in releasing its annual report; and
 - c. RIS sought to keep the market informed during the period it was in breach, albeit failing to meet its own expected timeframe.

10. The Tribunal also considered the following aggravating factors:
 - a. This is the third occasion RIS has breached Rule 10.5.1; and
 - b. The delay in releasing the annual report was approximately three weeks.
11. The Tribunal is greatly concerned that this is the third such breach by RIS. Listing is a privilege and it is incumbent on all Issuers who wish to maintain their listing to comply with the Rules.
12. The Tribunal notes that the ability of an Issuer to pay any penalty imposed should they breach the Rules, is not of itself a reason to discount the amount which the Tribunal would otherwise consider an appropriate penalty having regard to the seriousness of the breach and the conduct of the Issuer.

Penalties

13. The Tribunal orders that RIS:
 - a. Be publicly censured in the form of this announcement;
 - b. Pay \$80,000 to the NZX Discipline Fund;
 - c. Pay the costs and expenses incurred by the Tribunal in considering this matter; and
 - d. Pay the costs and expenses incurred by NZX in considering this matter.
14. The Tribunal recommends that NZX discuss the implementation of a payment plan with RIS such that the penalty and costs imposed in this case can be paid in instalments over a specified time period.

Censure

15. The Tribunal hereby publicly censures RIS for its breach of Rule 10.5.1.

The Tribunal

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

Dated [x] 2015