



# NZX Limited

NZ Markets Disciplinary Tribunal Rules

Exposure Draft: Market Maker Amendments

17 October 2022[XX] 2024



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# NZ Markets Disciplinary Tribunal Rules

## Section 1: Introduction and General Provisions

### 1.1. The NZ Markets Disciplinary Tribunal

- 1.1.1. The Tribunal is an independent disciplinary body charged with determining and providing remedies for referrals made to it by NZX or CHO, as the case may be, under:
- (a) the NZX Markets Rules, that are market rules for the purposes of section 327 of the FMC Act; and
  - (b) CHO's Clearing and Settlement Rules,
- or in respect of Referrals made under Rule 4.5.
- 1.1.2. The Tribunal is a separate body appointed under Rule 2 of these Rules, and is the body formerly called "NZX Discipline" appointed under the NZX Discipline Rules.
- 1.1.3. While the Tribunal operates independently of NZX it remains legally part of NZX. NZX remains liable for all liabilities or obligations properly incurred by the Tribunal in the performance of its functions. The Tribunal also operates independently of CHO and CDO and any other subsidiaries and/or or Related Entities of NZX.
- 1.1.4. The principal function of the Tribunal is to hear and determine, without bias and after giving the parties fair consideration, any matter involving:
- (a) a Participant (other than a Clearing Participant) referred to it by NZX under any of the NZX Markets Rules;
  - (b) a Clearing Participant referred to it by CHO under the Clearing and Settlement Rules;
  - (c) any other person referred to it by NZX or by CHO under any rules, procedures and regulations of NZX or CHO, as the context requires, from time to time;
  - (d) a Referral in accordance with Rule 4.5;
  - (e) an Appeal of a decision of the Tribunal from a Hearing in accordance with Section 7;
  - (f) an Appeal of an Infringement Notice issued by NZX or CHO, as the case may be, in accordance with Section 7; and
  - (g) any right, power or discretion of NZX delegated by NZX to the Tribunal in accordance with Rule 4.4.1 other than those matters set out in Rule 1.1.5.
- 1.1.5. NZX, CHO or CDO must not delegate to the Tribunal and the Tribunal shall not have power to review any decision of NZX, CDO or CHO in respect of:
- (a) the approval of new Listings or Quotation of any Class of Financial Products under the Listing Rules;

- (b) the designation of any right or interest in property, a Commodity or a Derivatives Contract, as an Approved Product in accordance with the Clearing and Settlement Rules;
- (c) the designation of any right or interest in property, including a Commodity or a Derivatives Contract, as an Admitted Product in accordance with the Depository Operating Rules;
- (d) any designation or accreditation by NZX of any person as a Market Participant or a Derivatives Participant or other participant (however defined) in any other NZX Market;
- (e) any designation and/or accreditation of any person as a Clearing Participant and/or a Lending Clearing Participant under the Clearing and Settlement Rules;
- (f) any designation and/or accreditation of any person as a Depository Participant under the Depository Operating Rules;
- (g) any designation or determination by CHO of a Declared Default, a Default Declaration Date, a Suspension and/or a termination pursuant to the Clearing and Settlement Rules;
- (h) any designation or determination by CDO of a Declared Default, a Default Declaration Date, a Suspension and/or a termination pursuant to the Depository Operating Rules;
- (i) amendments or changes to any of the NZX Markets Rules, the Clearing and Settlement Rules, the Depository Operating Rules and/or any other rules and regulations and procedures of NZX, CHO or CDO as the context requires;
- (j) its policy decisions as set out in any guidance notes or other documents, other than where such review is in accordance with Rule 4.5;
- (k) a trading halt under any of the Listing Rules;
- (l) any decision made by CDO other than in respect of waivers and rulings of CDO in accordance with Rule 4.5;
- (m) any determination or decision by CHO in respect of a claim for compensation under rule 4.4 of the Clearing and Settlement Rules other than in respect of rule 4.4.7(b), which may be the subject of a Referral pursuant to Rule 4.5; and/or
- (n) NZX's, CDO's or CHO's pricing or other commercial terms, including, without limitation, the exercise by CHO of its discretions in respect of the clearing and settlement of any Transactions.

1.1.6. NZX, CHO or CDO may act by and through RegCo in performing any function or discharging any power set out in these Rules. RegCo shall have the authority to exercise any rights, powers, authorities and discretions under any delegated authority granted to it by NZX, CHO or CDO.

1.1.7 For the avoidance of doubt, Lending Clearing Participants, CDO and Depository Participants are only party to these Rules for the purposes of Referrals pursuant to Rule 4.5.

## **1.2. Status of Rules**

1.2.1. These Rules:

- (a) form part of the market rules for the purposes of Section 327 of the FMC Act; and
- (b) should be read in conjunction with the NZX Markets Rules, the Clearing and Settlement Rules and the Depository Operating Rules, as applicable.

1.2.2. These Rules and any Procedures made in accordance with Rule 1.4.1 constitute a contract between NZX and each Participant, between CHO and each Clearing Participant and Lending Clearing Participant and between CDO and each Depository Participant.

1.2.3. Under Section 336 of the FMC Act, these Rules are not regulations for any purpose.

1.2.4. Any agreement entered into between:

- (a) any Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Participants and is enforceable by NZX;
- (b) any Clearing Participants and/or Lending Clearing Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Clearing Participants and/or Lending Clearing Participants, as the context requires, and is enforceable by CHO; and
- (c) any Depository Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Depository Participants and is enforceable by CDO.

1.2.5. Each Participant covenants with NZX and each other Participant to observe these Rules and the Procedures and to perform the obligations which these Rules and Procedures purport to impose on Participants, in the manner provided in these Rules.

1.2.6. Each Clearing Participant and Lending Clearing Participant covenants with CHO and each other Clearing Participant and Lending Clearing Participant to observe these Rules and Procedures and to perform the obligations which these Rules and Procedures purport to impose on Clearing Participants and Lending Clearing Participants, in the manner provided in these Rules.

1.2.7. Each Depository Participant covenants with CDO and each other Depository Participant to observe these Rules and Procedures and to perform the obligations which these Rules and Procedures purport to impose on Depository Participants, in the manner provided in these Rules.

### **1.3. Amendment of Rules**

1.3.1. Subject to Rule 1.3.2, NZX may from time to time amend these Rules, in accordance with the relevant Procedure. Amendments to these Rules will become binding on Participants upon the later of:

- (a) 20 Business Days after Participants have been given notice of the amendments;
- (b) the date the amendments have effect in accordance with section 329 of the FMC Act; and
- (c) the time (if any) specified in the notice to Participants.

1.3.2. Before amending these Rules, NZX must consult with the Tribunal in relation to the proposed amendments.

1.3.3. Before amending these Rules, to the extent any amendment is material and directly affects:

- (a) CHO and the Clearing and Settlement Rules, NZX must consult with CHO in relation to the proposed amendment; and
- (b) CDO and the Depository Operating Rules, NZX must consult with CDO in relation to the proposed amendment.
- (c) For the avoidance of doubt, NZX does not need to consult with CHO or CDO in respect of any amendment to these Rules in respect of an NZX Market.

### **1.4. Procedures**

1.4.1. NZX may from time to time approve written Procedures relating to the operation of the Tribunal. Procedures may not be inconsistent with the Rules. In the event of inconsistency between any Rule and any Procedure, the Rules will prevail.

1.4.2. The Procedures do not form part of the Rules. However, if a Rule requires compliance with any part of the Procedures, failure to comply with that part of the Procedures is a contravention of the Rule.

### **1.5. Effect of Amendment**

1.5.1. Unless expressly stated otherwise, where a Rule or Procedure is amended, deleted, or lapses or otherwise ceases to have effect that circumstance does not:

- (a) revive anything not in force or existing at the time at which that circumstance takes effect;
- (b) affect the previous operations of that Rule or Procedure or anything done under that Rule or Procedure;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or Procedure;



- (d) affect any penalty, forfeiture, suspension, expulsion or disciplinary action taken or incurred in respect of any contravention of that Rule or Procedure; or
- (e) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, expulsion or disciplinary action in respect of that Rule or Procedure (including in respect of contravention of that Rule or Procedure),

and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, expulsion or disciplinary action may be imposed as if the circumstance had not taken effect.

## **1.6. Service of documents and notices**

1.6.1. Any of the following methods may be used for serving a document or notice that is required by these Rules to be served:

- (a) postal service which provides for delivery on the next business day; or
- (b) email.

The preferred method of service is by way of email.

1.6.2. When a document or notice is served in accordance with Rule 1.6.1, a document or notice is deemed to have been served:

- (a) in the case of Rule 1.6.1(a), on the first business day following the date of posting;
- (b) in the case of Rule 1.6.1(b), when acknowledged as received by a Participant or a Respondent by return email.

1.6.3. Service after 5.30 pm on a Business Day, or on a day that is not a Business Day, shall be deemed to have been done at 8.30 am on the next Business Day.

1.6.4. The Rules contained in Rule 1.6 apply to any notice that is required to be filed with the Tribunal.

## **1.7. Interpretation**

1.7.1. In these Rules the following terms bear the following meanings;

**Additional Compliance Issues** has the meaning given in Rule 6.6.1;

**Advisor** means an NZX Adviser and an NZDX Adviser as defined in the NZX Participant Rules;

**Annual Regulatory Report** has the meaning given in Rule 12.1.3;

<b>Appeal</b>	has the meaning given in Rule 7.1.1;
<b>Appeal Respondent</b>	has the meaning given in Rule 7.3.2;
<b>Appellant</b>	has the meaning given in Rule 7.1.2(a);
<b>Business Day</b>	means a time between 8.30 a.m and 5.30 p.m on a day on which NZX is open for trading;
<b>CDO</b>	means New Zealand Depository Limited or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of CDO;
<b>Chairperson</b>	means the chairperson of the Tribunal appointed under Rule 2.3 or the chairperson of a Division appointed under Rule 2.3;
<b>CHO</b>	means New Zealand Clearing Limited or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of CHO;
<b>Clearing Participant</b>	has the meaning given in the Clearing and Settlement Rules and includes a Responsible Person;
<b>Clearing and Settlement Rules</b>	means CHO's Clearing and Settlement Rules as amended, supplemented or novated by CHO from time to time;
<b>Compensation Referral</b>	review of a decision made by CHO in respect of a claim for compensation in accordance with Rule 4.5.1;
<b>Complainant</b>	has the meaning given in Rule 6.7.1(b);
<b>Deputy Chairperson</b>	means the deputy chairperson of the Tribunal appointed under Rule 2.3;
<b>Depository Operating Rules</b>	means CDO's Depository Operating Rules as amended, supplemented or novated by CDO from time to time;
<b>Depository Participant</b>	has the meaning given in the Depository Operating Rules;
<b>Derivatives Advisor</b>	means an NZX Derivatives Adviser as defined in the Derivatives Market Rules;
<b>Derivatives Market Rules</b>	means NZX's Derivatives Market Rules as amended from time to time;
<b>Derivatives Participant</b>	means a Participant <u>or a Designated Market Maker</u> as defined in the Derivatives Market Rules;
<b>Discipline Fund</b>	has the meaning given in Rule 9.5.1;
<b>Disclosure Order</b>	has the meaning given in Rule 4.3.1;

<b>Division</b>	means a division of the Tribunal appointed in accordance with Rule 3.1.1;
<b>Financial Markets Authority</b>	means the body of that name established under the Financial Markets Authority Act 2011 and includes any successor thereof;
<b>Financial Product</b>	has the meaning given in the Listing Rules;
<b>FMC Act</b>	means the Financial Markets Conduct Act 2013;
<b>Hearing</b>	means a Hearing conducted by a Division under Section 6 or an Appeal Hearing conducted by a Division under Section 7;
<b>Independent Member</b>	means a member of the Special Division who; <ul style="list-style-type: none"> <li>(a) is not a director or employee; and</li> <li>(b) does not hold or control any Equity Securities, of NZX or any member of any group of companies and/or other entities of which NZX is the holding company or has a controlling interest;</li> </ul>
<b>Infringement Breach</b>	means a breach of any rules referred to in Rule 1.1.1 by a Participant that is determined by NZX or CHO, as the case may be, to be a minor breach in accordance with Section 9 of the Procedures;
<b>Infringement Fee</b>	means an amount, not exceeding \$10,000, that is payable in respect of an Infringement Breach for which an Infringement Notice has been issued;
<b>Infringement Notice</b>	means a notice that is issued to a Participant under Rule 5.1.1 in respect of an Infringement Breach;
<b>Interest Rate</b>	means in relation to any amount, the current Inland Revenue use of money interest rate;
<b>Issuer</b>	has the meaning given in the Listing Rules and means any person which is, or has been, Listed on an NZX Market (and where applicable has the extended meaning given in Rule 1.7.4(d));
<b>Issuer Appointees</b>	has the meaning given in Rule 2.1.1(c);
<b>Legal Appointees</b>	has the meaning given in Rule 2.1.1(a);
<b>Lending Clearing Participant</b>	has the meaning given in the Clearing and Settlement Rules;



<b>Listing Rules</b>	means, as the context requires, the NZX Listing Rules and/or any other listing rules governing the operation of an NZX Market as advised to the Tribunal by NZX from time to time;
<b>Market Participant</b>	has the meaning given in the NZX Participant Rules and for the purposes of these Rules includes Employees (as that term is defined in the NZX Participant Rules) thereof, <del>and</del> <u>Advisors, and Designated Market Makers;</u>
<b>Market Participant Appointees</b>	has the meaning given in Rule 2.1.1(b);
<b>NZCDC</b>	means New Zealand Clearing and Depository Corporation Limited and includes its successors, transferees and assigns;
<b>NZX</b>	means NZX Limited or its predecessors, successors or assigns, and as the context permits includes any duly authorized delegate of CHO;
<b>NZX Board</b>	means the Board of Directors of NZX;
<b>NZX Markets</b>	means a market, exchange or facility for the trading of Financial Products, Derivatives Contracts and/or Commodities operated by NZX or a subsidiary of NZX from time to time as advised by NZX to the Tribunal that such market, exchange or facility should be subject to these Rules and includes, without limitation, the Main Board and the Debt Market, and the derivatives market;
<b>NZX Markets Rules</b>	means the Listing Rules, the NZX Participant Rules, the Derivatives Market Rules and any other rules and regulations of any other NZX Market and/or of NZX from time to time and as amended by NZX from time to time;
<b>NZX Participant Rules</b>	means the NZX Participant Rules governing Market Participants, as amended by NZX from time to time;
<b>Oral Hearing</b>	means a Hearing which the parties may attend and participate in, either in person or virtually (by way of audio or audio-visual technology);
<b>Participant</b>	means: <ul style="list-style-type: none"> <li>(a) an Issuer;</li> <li>(b) a Market Participant;</li> <li>(c) an Advisor;</li> <li>(d) a Derivatives Participant;</li> <li>(e) a Derivatives Advisor;</li> </ul>

- (f) a Clearing Participant;
- (g) a Lending Clearing Participant;
- (h) a Depository Participant; and/or

any other person referred to under any NZX Markets Rules or other rules, and regulations of NZX from time to time as being subject to the jurisdiction of the Tribunal;

<b>Procedure</b>	means a procedure to these Rules in accordance with Rule 1.4, as amended by NZX from time to time;
<b>Quoted Financial Products</b>	means, in respect of all classes of an Issuer's Financial Products for which NZX provides a market to quote bids and offers;
<b>Referral</b>	means a Waiver and Ruling Referral or a Compensation Referral, as the context requires;
<b>RegCo</b>	means NZX Regulation Limited or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of RegCo;
<b>RegCo CEO</b>	means the person occupying the position of Chief Executive Officer of RegCo;
<b>RegCo Personnel</b>	means any person designated by the RegCo CEO as holding a position with RegCo;
<b>Respondent</b>	means a Participant who is served with a statement of case or an Infringement Notice;
<b>Related Entity</b>	<p>means any Participant in an NZX Market, or person who applies to NZX to become a Participant:</p> <ul style="list-style-type: none"> <li>(a) which is a related company of NZX within section 2(3) of the Companies Act 1993; or</li> <li>(b) in which (i) NZX; (ii) any subsidiary of NZX; or (iii) NZX and its subsidiaries in aggregate, holds a relevant interest equal to or in excess of 50% of a class of voting products of the issuer.</li> </ul> <p>For the purposes of this definition, "relevant interest" "quoted" and "issuer" bear the meanings contained in the FMC Act;</p>
<b>Rules</b>	means these NZ Markets Disciplinary Tribunal Rules as amended by NZX from time to time;
<b>Special Division</b>	means that division of the Tribunal constituted under Rule 3.2.1 for the purpose of regulating NZX and Related Entities;



<b>Trading Participant (NZX Trading Participant)</b>	has the meaning given in the NZX Participant Rules (called 'NZX Trading Participant') and for the purposes of these Rules include Employees (as that term is defined in the NZX Participant Rules) and Advisors;
<b>Tribunal</b>	means the NZ Markets Disciplinary Tribunal appointed under Rule 2 and except where otherwise specified or required by the context includes the Chairperson, Deputy Chairperson, each Division and each member;
<b>Waiver and Ruling Referral</b>	means a review of a decision made by NZX, CDO or CHO, as the context requires, in respect of a waiver or ruling application in accordance with Rule 4.5.1(a); and
<b>Writing</b>	includes representing or reproducing words, figures, or symbols.

1.7.2. **Capitalised terms:** Unless otherwise defined in these Rules and as the context requires, the definitions in the NZX Markets Rules, the Clearing and Settlement Rules and the Depository Operating Rules shall apply to capitalised terms in these Rules.

1.7.3. In these Rules any reference to:

- (a) headings to clauses are for reference only and are not an aid in interpretation;
- (b) statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time;
- (c) a person is to that person and that person's successors and permitted assigns;
- (d) all periods of time include the day on which the period commences and also the day on which the period ends;
- (e) any date which is not a Business Day, upon or by which anything is due to be done by any person, will be deemed to be a reference to the next Business Day;
- (f) words importing the plural include the singular and vice versa and words importing gender import all genders;
- (g) conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement. Unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting suffering or authorising the act or thing to be done or the refusal or omission to occur;
- (h) all warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person will be deemed to have been given or entered into jointly and severally;

- (i) any statement in these Rules stated to be to the best of a person's knowledge or to be so far as a person is aware (or any similar expression) will be deemed to include an additional statement that it has been made after due and careful enquiry;
- (j) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (k) a Rule (e.g. Rule 2.4) includes a reference to all sub-Rules included under that Rule (e.g. Rule 2.4.3) and a reference to a Section (e.g. Section 2) includes a reference to all Rules and sub-Rules within that Section;
- (l) time is a reference to New Zealand time; and
- (m) if the name of a person or body is changed in accordance with the law (whether or not the body is incorporated) or the name of an office is changed by law then a reference in these Rules to the person, body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to that person, body or office under the new name.

1.7.4. In these Rules the following rules of interpretation apply:

- (a) an "agreement" also includes a contract, deed, licence, franchise, undertaking or other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;
- (b) "consent" also includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration (and references to obtaining consents are to be construed accordingly);
- (c) a "director" includes:
  - (i) a person occupying the position of management and control of a Participant, by whatever name called;
  - (ii) a person in accordance with who's directions or instructions the Participant, or any person referred to in (i) is accustomed or required to act.
- (d) an "Issuer" in the Rules shall, as the context permits, extend to include all members (other than another Issuer entity or a subsidiary thereof) of any group of companies and/or other entities of which the Issuer is the holding company, or in which the Issuer otherwise has a controlling interest, to the extent that such extension is necessary to ensure that the object of the Rules is not frustrated or avoided by reason of the separate legal personality of members of the group. In relation to the disclosure of information for this purpose the group includes any Associated Persons of the Issuer of which the Issuer has control in law or in fact, other than any such Associated Person which is another Issuer or a subsidiary thereof. Assessment of the materiality of any information in relation to such group shall be treated as if the group constituted one business;

- (e) a “law” includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any relevant jurisdiction (and “lawful” and “unlawful” shall be construed accordingly);
- (f) “rights” includes authorities, discretions, remedies, powers and causes of action;
- (g) a “holding company” means a company of which another company is a subsidiary;
- (h) a “person” includes any individual natural person, a company, corporation, corporation sole, partnership, joint venture, association (whether incorporated or unincorporated), trust, Government department, state or agency of a state (in each case whether or not having separate legal personality);
- (i) “subsidiary” means a subsidiary of that company as defined in the Companies Act 1993 and includes an “in substance subsidiary” and any other company treated as a subsidiary of a company in accordance with Generally Accepted Accounting Practice, provided that the definition of “company” includes a company wherever incorporated;
- (j) “tax” includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding imposed, assessed or levied by any governmental agency (whether state or local), and any interest, penalties, fines, costs, charges, and other liabilities arising from or payable in respect of such tax; and
- (k) In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction which would not promote that purpose or object.

1.7.5 These Rules are governed by, and construed in accordance with, the law of New Zealand.



## Section 2: Membership of Tribunal

### 2.1. Composition and Appointment

- 2.1.1. The members of the Tribunal must be appointed by NZX and must consist of:
- (a) Legal Appointees, comprising at least five current or former barristers and/or solicitors of the High Court of New Zealand; and
  - (b) Market Participant Appointees, comprising:
    - i. at least five current or former Employees (as that term is defined in the NZX Participant Rules) of current or former Market Participants, two of which must be current or former Employees of current or former Trading Participants; and
    - ii. up to three members of the public appointed on the basis of their reputation and demonstrated knowledge and expertise in relation to one or more of the following market disciplines (A) funds management, (B) corporate finance, (C) investment analysis, and/or (D) investor protection; and
  - (c) Issuer Appointees, comprising at least five current or former directors or officers of current or former Issuers.
- 2.1.2. In considering any matter brought to the Tribunal, the Chairperson, the Deputy Chairperson or the Chairperson of the relevant Division, may, in order to obtain advice and guidance on practical market operational matters, consult with any NZX representatives or, as the context requires in respect of Clearing Participants, Lending Clearing Participants and the Clearing and Settlement Rules, CHO representatives, or as the context requires in respect of Depository Participants and the Depository Operating Rules, CDO, in each case who are considered appropriate to provide the requisite advice or guidance.
- 2.1.3. Subject to Rule 2.1.5, the appointment of any member of the Tribunal by NZX must be confirmed by the Financial Markets Authority.
- 2.1.4. Each member of the Tribunal shall be appointed for a term of up to five years.
- 2.1.5. NZX may appoint any retiring member of the Tribunal for a further term or terms. Such a re-appointment shall require the confirmation of the Financial Markets Authority under Rule 2.1.3 for any appointment of aggregate terms of more than ten years.
- 2.1.6. Employees, officers and directors of NZX or any entity of which NZX is the holding company or has a controlling interest shall be ineligible for appointment as a member of the Tribunal or a temporary Division member under Rule 3.1.5.

### 2.2. Removal and Retirement

- 2.2.1. NZX may, from time to time, remove from office, upon confirmation of that removal by the Financial Markets Authority, any member of the Tribunal where that member:
- (a) is incapacitated from acting for a period of more than three months in any 12 month period or less; or
  - (b) has, in NZX's opinion, neglected his or her duty; or

(c) is found by NZX to have engaged in misconduct.

2.2.2. Subject to Rule 2.2.3, any member of the Tribunal may resign as a member of the Tribunal by providing 60 days' written notice to NZX. Any member of the Tribunal who resigns under this Rule 2.2.2 shall provide to NZX a statement of the reasons for such resignation, in writing, and NZX shall provide a copy of that statement to the Financial Markets Authority.

2.2.3. The resignation of a member of the Tribunal under Rule 2.2.2 shall not be effective until either:

- (a) matters before any Division on which that member is currently sitting are disposed of; or
- (b) that member is replaced by the Chairperson on any Division on which that member is currently sitting; or
- (c) the quorum for all Divisions on which that member is currently sitting have been reduced in accordance with Rule 3.1.2.

2.2.4. The retirement of a member of the Tribunal under Rule 2.1.4 shall not be effective until either:

- (a) matters before any Division on which that member is currently sitting are disposed of; or
- (b) that member is replaced by the Chairperson on any Division on which that member is currently sitting; or
- (c) the quorum for all Divisions on which that member is currently sitting have been reduced in accordance with Rule 3.1.2.

### **2.3. Chairperson and Deputy Chairperson**

2.3.1. The members of the Tribunal will select the Chairperson from the persons appointed under Rule 2.1.1(a) and a Deputy Chairperson from all members of the Tribunal.

2.3.2. Any power or duty conferred on the Chairperson under these Rules may be exercised or performed by the Deputy Chairperson where the Chairperson is unable to act through absence, illness, conflict of interest or other similar cause.

2.3.3. The Chairperson (or in his or her absence the Deputy Chairperson) shall among other things:

- (a) determine the composition of Divisions referred to in Rule 3.1.1 including the Chairperson of each Division; and
- (b) conduct meetings or hearings, as the case may be, which he or she attends; and
- (c) determine whether or not any member of the Tribunal has a conflict of interest in relation to a particular matter, in accordance with these Rules and any Procedures.

- 2.3.4. The Chairperson and Deputy Chairperson will cease to hold that position on retirement of membership in accordance with Rule 2.1.4. If a Chairperson or Deputy Chairperson is re-appointed in accordance with Rule 2.1.5 they may on reappointment offer themselves for re-election as Chairperson or Deputy Chairperson.

## **2.4. Vacancy and Change of Status**

- 2.4.1. NZX may appoint a person to fill any vacancy in the Tribunal's membership to the extent such appointment complies with Rules 2.1.1 to 2.1.6 (inclusive).
- 2.4.2. Where the status of a member of the Tribunal has changed such that he or she no longer comes within the class of his or her original appointment under Rule 2.1.1, he or she shall be deemed to be no longer a member of the Tribunal once all hearings with which that member is involved are concluded, unless:
- (a) he or she is also eligible for appointment as another class of appointee under Rule 2.1.1; and
  - (b) NZX consents to the change of class and appointment; and
  - (c) The composition of the Tribunal satisfies the requirements of Rule 2.1.1 after the change of appointment date;

then the member may continue as a new class of appointee to the Tribunal.

## Section 3: Divisions

### 3.1. Quorum and Appointment

- 3.1.1. The Tribunal shall ordinarily act through Divisions. Subject to Rule 3.1.2, the quorum for each Division shall comprise three members who, in each case, do not have a conflict of interest and who, subject to Rule 3.1.3, are selected, in relation to each matter falling for consideration, by the Chairperson (or in his or her absence the Deputy Chairperson) in accordance with the Procedure (if any) for that purpose.
- 3.1.2. The quorum required under Rule 3.1.1 may be reduced to two Tribunal members if required due to unavailability of the Tribunal members over holiday periods, conflicts of interest, illness, accident, or other unavoidable causes, or the expiration of a Tribunal member's term or the resignation or removal of office of a member of the Tribunal. Where the quorum for a Division is reduced to two Tribunal members under this Rule 3.1.2, the Chairperson of that Division shall have a casting vote. If the Chairperson of that Division is the member no longer sitting on that Division, the Chairperson (or in his or her absence the Deputy Chairperson) shall appoint a Chairperson for that Division from the remaining two members and the newly appointed Chairperson of that Division shall have a casting vote.
- 3.1.3. Each Division constituted in accordance with Rule 3.1.1 or 3.1.2 to consider:
- (a) a breach of the NZX Participant Rules, the Clearing and Settlement Rules or the Derivatives Market Rules shall include at least one Market Participant Appointee appointed under Rule 2.1.1(b)(i);
  - (b) a breach of the Listing Rules shall include at least one Issuer Appointee; and
  - (c) an Appeal shall include at least one Legal Appointee.
- 3.1.4. If no Market Participant Appointee, Issuer Appointee or Legal Appointee is available to act through absence or any other cause (including conflict) such that the requirements of Rule 3.1.3 cannot be met, the Chairperson (or the Deputy Chairperson in his or her absence) can appoint any other member of the Tribunal to hear that matter and, if so, that member will be the requisite Market Participant Appointee, Issuer Appointee or Legal Appointee of that Division.
- 3.1.5. The Chairperson (or the Deputy Chairperson in his or her absence) may appoint to a Division any person whom he or she considers appropriate, when having regard to the criteria set out in Rule 2.1, to replace any member who is unavailable to act through absence or any other cause (including conflict) or the expiration of a member's term or the resignation or removal of office of a member of the Tribunal, provided that there are no other members of the Tribunal available to act. Any such appointment only extends to such time as the determination of the relevant Division is finalised.
- 3.1.6. For the avoidance of doubt, where a non-member is appointed to a Division under Rule 3.1.5, that Division must still have two Tribunal members sitting and satisfy the quorum requirements of Rule 3.1.3, except that where a person is appointed to a Division under Rule 3.1.4 they will be deemed to have satisfied the requirements of 3.1.3.

## **3.2. Special Division**

- 3.2.1. The Tribunal shall establish a Special Division which comprises at least three Independent Members who do not have a conflict of interest, selected by the Chairperson (or in his or her absence the Deputy Chairperson). The members of the Special Division shall be confirmed by the Financial Markets Authority.
- 3.2.2. The Tribunal may, subject to confirmation of that removal by the Financial Markets Authority, from time to time, remove from office any member of the Special Division, by a 75% majority of the members of the Tribunal voting to so remove that member.
- 3.2.3. The objective of the Special Division is to foster market confidence that the NZX Markets Rules, and these Rules are applied in respect of NZX or a Related Entity in an impartial and independent manner.

## **3.3. Powers and Functions of Special Division**

- 3.3.1. The Special Division has the following powers and functions in relation to NZX or a Related Entity:
- (a) the powers and functions that NZX has:
    - (i) in relation to a Participant under these Rules;
    - (ii) under the Listing Rules in relation to any application for Listing, or Quotation of any Class of Financial Products;
    - (iii) under any of the NZX Markets Rules in relation to any application for accreditation or designation as a participant (including as a Market Participant or a Derivatives Participant) under those rules;
    - (iv) in respect of any waiver applications or Ruling applications under the NZX Markets Rules;
    - (v) in respect of a Market Participant under these Rules, to the extent that that Market Participant's conduct the subject of the enquiry or charge is in relation to dealing in, or trading in, the Quoted Financial Products of NZX or a Related Entity; and
  - (b) For the avoidance of doubt the Special Division does not have any power to make, amend or change any NZX Markets Rules, the Clearing and Settlement Rules or the Depository Operating Rules.
- 3.3.2. Where it is not inconsistent with the objective in Rule 3.2.3 to do so, the Special Division may delegate any of its powers or functions under this Rule to any person, including RegCo Personnel, except in relation to:
- (a) the approval or cancellation of any Listing where the Issuer is NZX or a Related Entity; and
  - (b) the approval, cancellation or suspension of the Quotation of any Class of Financial Products of NZX or a Related Entity; and
  - (c) the approval, suspension or revocation of a designation of NZX or a Related Entity as a Market Participant or a Derivatives Participant; and

- (d) the power to make Rulings and waive the application of any one or more of the provisions of the NZX Markets Rules in relation to NZX or a Related Entity; and
- (e) the power to determine whether or not to bring a charge against a Market Participant under the NZX Participant Rules for breach of those rules in respect of the conduct referenced in Rule 3.3.1(a)(v); and
- (f) the power to determine whether or not to bring a charge against a Participant under the NZX Participant Rules or the Derivatives Market Rules for a breach of those NZX Markets Rules where the relevant participant (however defined) is NZX or a Related Entity.

3.3.3. NZX shall not exercise any powers or functions it has under any of the NZX Markets Rules that this Rule gives to the Special Division, except under a delegation from the Special Division.

#### **3.4. Rights and obligations of NZX and Related Entity**

3.4.1. NZX and a Related Entity, as an applicant for Listing, have all the rights and obligations that any other applicant for Listing has under the Listing Rules, except that the Special Division acts in the place of NZX and references in the Listing Rules to NZX shall be deemed to be references to the Special Division.

3.4.2. If Listed, NZX or a Related Entity has all the rights and obligations that another Issuer has, except that the Special Division acts in the place of NZX and references in the Listing Rules to NZX shall be deemed to be references to the Special Division.

3.4.3. NZX and a Related Entity, as an applicant for designation as a Participant (other than as an Issuer), have all the rights and obligations that any other applicant has under the NZX Markets Rules (other than the Listing Rules), except that the Special Division acts in the place of NZX and references in the NZX Markets Rules (other than the Listing Rules) to NZX shall be deemed to be references to the Special Division.

3.4.4. If designated as a Participant (other than as an Issuer), NZX or a Related Entity has all the rights and obligations that another Participant has, except that the Special Division acts in the place of NZX and references in the NZX Markets Rules (other than the Listing Rules), to NZX shall be deemed to be references to the Special Division.

## Section 4: Power of the Tribunal

### 4.1. Hearing and determination of matters

4.1.1. Without limiting or derogating from any other provision of these Rules, the Tribunal shall have power to:

- (a) hear and determine any matter involving a Participant referred to it by NZX under the NZX Markets Rules, including a proposed settlement submitted under Rule 8.1.1; and
- (b) hear and determine any matter involving a Clearing Participant referred to it by CHO under the Clearing and Settlement Rules, including a proposed settlement submitted under Rule 8.1.1; and
- (c) hear and determine any matter involving any other person referred to it by NZX under any other rules and regulations of NZX from time to time; and
- (d) hear and determine a Referral in accordance with Rule 4.5.1; and
- (e) determine an Appeal in accordance with Rule 7; and
- (f) issue an Infringement Notice; and
- (g) delegate the power in Rule 4.1.1(f) to NZX or CHO, as the case may be;
- (h) impose any of the penalties listed in Rule 9; and
- (i) engage advisors and such other experts on terms and conditions it thinks fit; and
- (j) suggest to NZX and consult with NZX on the amendment of these Rules in accordance with Rule 1.3 or the creation or amendment of Procedures in accordance with Rule 1.4

and shall have all necessary or desirable ancillary powers to give full effect to the specific powers set out in this Rule 4, including the power for the Tribunal to determine its own processes and procedures to the extent that such processes and procedures are not set out in these Rules or the Procedures.

4.1.2. The Tribunal shall have the power to receive in evidence any statement, document, information or matter that may in its opinion assist it to deal effectively with any matter before it, whether or not it would otherwise be admissible in a court of law. The Tribunal may, by notice in writing signed by its Chairperson or by any person nominated by its Chairperson, require any person, including any Responsible Executive, Responsible Person, Managing Principal or any director, officer, employee, consultant, contractor or other professional service provider of a Participant (as the case may be) or a Complainant:

- (a) to attend and give evidence before it at an Oral Hearing of a matter involving that person and the notice issued under this Rule 4.1.2 shall specify the time and place of hearing; and/or

- (b) to provide affidavits or other written evidence of a matter involving that person and the notice issued under this Rule 4.1.2 shall specify the date by which the evidence requested under this Rule 4.1.2(b) must be furnished; and/or
- (c) to produce for inspection all books, records, tapes, documents, and any information held on any other media that are in the custody or under the control of that person that are relevant to the subject matter of any such hearing, which shall be particularised in the notice issued under this Rule 4.1.2.

4.1.3. Where the Tribunal requires attendance, evidence or information under Rule 4.1.2 from a person that NZX, CDO or CHO, as the context requires, does not have a contractual relationship with that enforces such attendance, evidence or information being provided, that Participant must use its best endeavours to procure such attendance, evidence or information from its directors, officers, employees, consultants, contractors or other professional service providers.

## **4.2. Suspension of Participants**

4.2.1. At any time after a matter involving a Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant, a Depository Participant or an RMA Provider) which is referred for hearing and determination, the Chairperson (or in his or her absence the Deputy Chairperson) may of his or her own motion and without the necessity of giving any prior notice to that Participant, make an order suspending that Participant's designation as applied to that Participant under the rules applicable to it until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence the Deputy Chairperson) may only make such order where he or she considers suspension is necessary in order to protect the interests of NZX, CHO, CDO, Participants, the public or in the interests of the market generally. Following the suspension of a Participant's designation under this Rule 4.2.1, the provisions relating to the suspension of that Participant under the rules to which it is subject, shall apply to such Participant. The Tribunal shall give public notice of an interim suspension order under this Rule 4.2.1, unless the Chairperson (or in his or her absence the Deputy Chairperson) believes there are extraordinary circumstances which justify postponing that public notice.

4.2.2. A Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant, a Depository Participant or an RMA Provider) in respect of whom an order for interim suspension under Rule 4.2.1 has been made may, at any time, apply in writing to the Chairperson to revoke that interim suspension order. Upon receiving an application for revocation of an interim suspension under Rule 4.2.1, the Chairperson (or in his or her absence the Deputy Chairperson) shall constitute a Division to hear and determine the application and that Division may grant, on such terms and subject to such conditions as it thinks fit, or refuse that application. The Division of Tribunal hearing the application to revoke the interim suspension order under this Rule 4.2.2 must determine that application no later than three Business Days after its receipt by the Chairperson. Where the Division hearing the application does not notify that Participant of its determination under this Rule 4.2.2, within three Business Days of an application from that Participant, that Division is deemed to have accepted that application and the interim suspension order of that Participant is revoked.

4.2.3. At any time after a matter involving an Issuer which is referred for hearing and determination, the Chairperson (or in his or her absence the Deputy Chairperson)



may of his or her own motion and without the necessity of giving any prior notice to that Issuer make an order suspending the quotation of trading in the Quoted Financial Products or a particular class of Quoted Financial Products of that Issuer, until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence the Deputy Chairperson) may only make such order where he or she considers suspension is necessary in the public interest to protect people trading in Financial Products, or the class of Financial Products, of that Issuer, or is in the interests of the market generally. The Chairperson (or in his or her absence the Deputy Chairperson) shall give public notice of a trading suspension under this Rule 4.2.3.

- 4.2.4. An Issuer in respect of whom an order for interim trading suspension under Rule 4.2.3 has been made may, at any time, apply in writing to the Chairperson to revoke that interim trading suspension order. Upon receiving an application for revocation of an interim suspension under Rule 4.2.3 the Chairperson (or in his or her absence the Deputy Chairperson) shall constitute a Division to hear and determine the application and that Division may grant, on such terms and subject to such conditions as it thinks fit, or refuse that application. The Division hearing the application to revoke the interim suspension order under this Rule 4.2.4 must determine that application no later than three Business Days after its receipt by the Chairperson. Where the Division hearing the application does not notify an Issuer of its determination under this Rule 4.2.4 within three Business Days of an application from that Issuer, that Division is deemed to have accepted that application and the interim trading suspension order of that Issuer is revoked.
- 4.2.5. At any time after a matter involving a Clearing Participant which is referred for hearing and determination, the Chairperson (or in his or her absence the Deputy Chairperson) may of his or her own motion and without the necessity of giving any prior notice to that Clearing Participant, request that CHO Suspend that Clearing Participant until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence the Deputy Chairperson) may only make such request where he or she considers Suspension is necessary in order to protect the interests of NZX, CHO, CDO, Clearing Participants, the public or in the interests of the market generally. CHO may accept or decline such request in its sole discretion.
- 4.2.6. At any time after a matter involving an RMA Provider which is referred for hearing and determination, the Chairperson (or in his or her absence the Deputy Chairperson) may of his or her own motion and without the necessity of giving any prior notice to that RMA Provider, request that NZX suspend that RMA Provider under the NZX Participant Rules until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence the Deputy Chairperson) may only make such request where he or she considers suspension is necessary in order to protect the interests of NZX, Participants, the public or in the interests of the market generally and NZX has sought suspension or revocation of designation in the relevant statement of case.

#### **4.3. Disclosure Orders for Issuers**

- 4.3.1. At any time after a matter involving an Issuer has been referred for hearing and determination by the Tribunal, and that matter alleges non-compliance with the continuous disclosure Listing Rules, the Division hearing that matter may, provided it complies with Rule 4.3.2 and 4.3.3, direct that Issuer in writing to:

- (a) disclose and publish such Material Information; or
- (b) publish certain corrective information,

to the extent that Division considers necessary to prevent development or subsistence of a market for that Issuer's Quoted Financial Products or class of Quoted Financial Products, which is materially influenced by false or misleading information (Disclosure Order). A Disclosure Order must specify the terms of and reasons for that Disclosure Order.

4.3.2. The Division hearing a matter must give an Issuer 24 hours' notice before making a Disclosure Order, specifying:

- (a) the information to be disclosed; and
- (b) the reasons requiring the disclosure; and
- (c) any other terms or conditions for the disclosure.

4.3.3. The Division of the Tribunal hearing a matter must give an Issuer an opportunity to make written submissions in response to a Disclosure Order within the 24-hour notice period set out in Rule 4.3.2. That Division must have regard to any such written submissions when making a Disclosure Order under Rule 4.3.1.

#### **4.4. Delegation to the Tribunal**

4.4.1. Subject to Rule 1.1.5, the Tribunal shall:

- (a) have, and be entitled to exercise, such powers, rights or discretions of:
  - (i) NZX as may from time to time be delegated to the Tribunal under the NZX Markets Rules from time to time; or
  - (ii) CHO as may from time to time be delegated to the Tribunal under the Clearing and Settlement Rules; or
  - (iii) CDO as may from time to time be delegated to the Tribunal under the Depository Operating Rules; and
- (b) have authority to deal with such specific matters as may from time to time be delegated to the Tribunal pursuant to the NZX Markets Rules, the Depository Operating Rules and/or the Clearing and Settlement Rules;
- (c) be entitled to exercise all the powers of NZX, CDO or CHO, as the context requires, in matters delegated to, or dealt with by, the Tribunal in accordance with this Rule 4.4.1, or as otherwise conferred on the Tribunal under any of the NZX Markets Rules, the Depository Operating Rules or the Clearing and Settlement Rules.

4.4.2. NZX, CDO or CHO, as the case may be, may at any time revoke or vary any delegation under Rule 4.4.1 to the extent that revocation or variance otherwise complies with these Rules.

## 4.5. Review of NZX Action, CDO Action or CHO Action

### 4.5.1. Subject to Rule 1.1.5:

- (a) an applicant for a waiver or ruling under:
  - (i) any of the NZX Markets Rules, may apply to the Tribunal for review of the decision made by NZX;
  - (ii) the Clearing and Settlement Rules, may apply to the Tribunal for review of the decision made by CHO; or
  - (iii) the Depository Operating Rules, may apply to the Tribunal for review of the decision made by CDO,in respect of that waiver or ruling application (each a **“Waiver or Ruling Referral”**); or
- (b) a Clearing Participant or a Lending Clearing Participant who has lodged a claim under rule 4.4.2 of the Clearing and Settlement Rules who alleges that CHO has failed to determine its claim in good faith as required by rule 4.4.4 of the Clearing and Settlement Rules, may apply to the Tribunal for a determination by the Tribunal as to whether CHO has failed to determine that claim in good faith (a **“Compensation Referral”**).

### 4.5.2. A Referral may only be sought on the following bases:

- (a) a Waiver and Ruling Referral shall be sought only on the basis that the decision:
  - (i) was irrational having regard to the evidence available to NZX, CDO or CHO, as the context requires, and the circumstances at the time NZX, CDO or CHO, as the context requires, made the decision; or
  - (ii) was made in circumstances where NZX, CDO or CHO, as the context requires, did not observe the rules of procedural fairness in making such decision; or
  - (iii) was made in circumstances when NZX, CDO or CHO, as the context requires, has refused to consider information submitted by an applicant for a waiver or ruling;
- (b) a Compensation Referral may only be sought on the basis that:
  - (i) the relevant Clearing Participant or Lending Clearing Participant alleges that CHO has failed to determine its claim lodged under rule 4.4.2 of the Clearing and Settlement Rules in good faith as required by rule 4.4.4 of the Clearing and Settlement Rules; and
  - (ii) any compensation payable in respect of such claim shall be as determined by CHO in accordance with rule 4.4.7(b) of the Clearing and Settlement Rules.

### 4.5.3. Notwithstanding any other Rule, new evidence shall not be received on a Referral.

- 4.5.4. A Referral shall be made in writing to the Chairperson stating the grounds for the Referral. The Chairperson may:
- (a) reasonably refuse to consider a Referral. Where the Chairperson (and his or her absence the Deputy Chairperson) refuses to consider a Referral it shall provide the applicant of that Referral with written reasons for such refusal; or
  - (b) determine that the Referral be dealt with by the Tribunal in accordance with the procedures set out in Rule 6, with any modifications to those hearing procedures as the Division constituted to hear and determine that matter considers appropriate; or
  - (c) determine that the Referral be referred back to NZX, CDO or CHO, as the context requires, for NZX, CDO or CHO, as the context requires, to reconsider the application for the waiver or ruling afresh or in respect of CHO, to recalculate and redetermine the claim for compensation, as the context requires.

#### **4.6. Tribunal Precedence**

- 4.6.1. A determination made by the Tribunal shall be binding on NZX to the extent that NZX exercises its powers to grant waivers and make rulings under any of the NZX Markets Rules.
- 4.6.2. Subject to Rule 4.5.1, a waiver granted or ruling made by NZX under any of the NZX Markets Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.
- 4.6.3. A waiver granted or ruling made by NZX under any of the NZX Markets Rules which is subsequently overturned by the Tribunal shall not affect the rights of the parties who relied on that waiver or ruling from the time that waiver or ruling was made up until the time of the determination by the Tribunal overturning that waiver or ruling.
- 4.6.4. Subject always to Rule 1.1.5, a determination made by the Tribunal shall be binding on CHO to the extent that CHO exercises its powers to grant waivers and make rulings under the Clearing and Settlement Rules.
- 4.6.5. Subject to Rule 4.5.1, a waiver granted or ruling made by CHO under the Clearing and Settlement Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.
- 4.6.6. A waiver granted or ruling made by CHO under the Clearing and Settlement Rules which is subsequently overturned by the Tribunal shall not affect the rights of the parties who relied on that waiver or ruling from the time that waiver or ruling was made up until the time of the determination by the Tribunal overturning that waiver or ruling.
- 4.6.7. Subject always to Rule 1.1.5, a determination made by the Tribunal shall be binding on CDO to the extent that CDO exercises its powers to grant waivers and make rulings under the Depository Operating Rules.

4.6.8. Subject to Rule 4.5.1, a waiver granted or ruling made by CDO under the Depository Operating Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.

4.6.9. A waiver granted or ruling made by CDO under the Depository Operating Rules which is subsequently overturned by the Tribunal shall not affect the rights of the parties who relied on that waiver or ruling from the time that waiver or ruling was made up until the time of the determination by the Tribunal overturning that waiver or ruling.

#### **4.7. Default Determination**

4.7.1. If the Respondent fails to file a statement of response within the time frames permitted under these Rules or those directed by the Tribunal after receiving an application for an extension or otherwise, NZX or CHO, by application, and accompanied by proof of service, may request a determination of breach by default. Such an application must also be served on the Respondent in accordance with Rule 1.6.

4.7.2. If the Respondent opposes the application, the Tribunal may, on determining that the Respondent had adequate reason for the failure to file the statement of response, direct the Respondent to promptly file a statement of response. If the default application is unopposed, or the Tribunal finds that the Respondent did not have adequate reason to fail to file a statement of response, or the Respondent failed to file a statement of response after being given an opportunity to do so, the Tribunal may make a default determination and determine a penalty.

4.7.3. If a Respondent shows that service of the statement of case and application for default determination was not effected, or can otherwise show good reason for the failure to provide the statement of response, and a default determination has been entered into, the Tribunal may set aside the determination if it considers that it is fair and reasonable to do so.

#### **4.8. Failures amounting to a breach**

4.8.1. Every Participant, commits a breach of the NZX Markets Rules, the Depository Operating Rules and/or the Clearing and Settlement Rules to which it is subject (as relevant) if, without lawful justification, it refuses or fails to:

- (a) attend and give evidence when required to do so by the Tribunal; or
- (b) answer truly and fully any question put to it by a member of the Tribunal; or
- (c) produce for the Tribunal any book, tape, document, paper or other record (in whatever medium) required of it.

## Section 5: Infringement Notices

### 5.1. Infringement Notices

- 5.1.1. The Tribunal delegates to NZX or CHO, as the case may be, the power to issue an Infringement Notice to a Participant if NZX or CHO, as the case may be, believes on reasonable grounds that the Participant has committed an Infringement Breach.
- 5.1.2. NZX or CHO, as the case may be, may revoke an Infringement Notice before the Infringement Fee is paid by giving written notice to the Participant.

### 5.2. Procedural requirements for Infringement Notices

- 5.2.1. An Infringement Notice may be served on a Participant in accordance with Rule 1.6.
- 5.2.2. The Infringement Notice must contain:
  - (a) details of the alleged Infringement Breach;
  - (b) the amount of the Infringement Fee, which must not exceed \$10,000;
  - (c) the time within which the Infringement Fee must be paid;
  - (d) details of the dispute and Appeal process; and
  - (e) a statement that Section 11 will apply if the Participant does not pay the Infringement Fee and does not seek an Appeal.
- 5.2.3. Subject to Rule 5.2.6, an Infringement Fee must be paid on or before the twentieth Business Day after receipt of the Infringement Notice.
- 5.2.4. If the Participant disputes the Infringement Notice, the Participant may serve a notice to NZX or CHO (Participant's Notice), as the case may be, on or before the fifth Business Day after receipt of the Infringement Notice stating why the Infringement Notice should be revoked or varied.
- 5.2.5. NZX or CHO, as the case may be, must serve a notice of determination to the Participant on or before the fifth Business Day after receipt of the Participant's Notice advising whether or not the Infringement Notice is to remain due, be revoked or varied.
- 5.2.6. If a Participant is not satisfied with the determination made by NZX or CHO, as the case may be, under Rule 5.2.5, a Participant may seek an Appeal of the decision on or before the eighth Business Day after receipt of the notice of determination from NZX or CHO, as the case may be in accordance with Section 7. An Infringement Fee will not be payable until a decision is made under 7.3.4 or a determination is made by the Tribunal under Rule 7.8.2.

### 5.3. Determining the Infringement Fee

- 5.3.1. The amount of the Infringement Fee must not exceed \$10,000.
- 5.3.2. Section 9 of the Procedures shall be used to determine the amount of the Infringement Fee.

**5.4. Proceeds of Infringement Fees**

5.4.1. Rule 9.6.1 applies in respect of any Infringement Fee imposed on a Participant under this Rule 5.

**5.5. Failure to pay Infringement Fee**

5.5.1. Section 11 applies where a Participant fails, within the time stated, to pay an Infringement Fee.



## Section 6: Hearing of the Tribunal

### 6.1. Referral by NZX or CHO

6.1.1. NZX or CHO may refer a matter to the Tribunal for hearing and determination which is to be conducted in accordance with this Rule 6 (Hearing) by serving a statement of case on a Participant that complies with Rule 6.2.1 in accordance with Rule 1.6 and filing a copy with the Tribunal.

6.1.2. Any matter referred by NZX or CHO under Rule 6.1.1 where the Respondent is:

- (a) a Participant (other than an Issuer), may include allegations as to conduct or omission by any natural person employed by, contracted to, or officer in, that Participant; and
- (b) an Issuer, may include allegations as to conduct or omission by directors and/or officers of that Issuer.

### 6.2. Statement of Case

6.2.1. A statement of case must set out the following:

- (a) the matter to be referred to the Tribunal; and
- (b) all material facts taken into account by NZX or CHO, as the context requires; and
- (c) whether NZX or CHO, as the case may be, believes that an Oral Hearing of that matter is essential to establish all the facts relevant to that matter and, if so, a request for an Oral Hearing; and
- (d) the penalty NZX or CHO, as the case may be, considers appropriate for the matter; and
- (e) whether NZX or CHO, as the case may be, believes that the Tribunal should order that any decision made by the Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
- (f) copies of all documents NZX or CHO, as the case may be, believes are relevant to that matter shall be attached.

### 6.3. Statement of Response

6.3.1. The Respondent may, on or before the tenth Business Day after receipt of a statement of case served under Rule 6.1.1 or such other period as directed by the Chairperson of the Division hearing the matter, serve on NZX or CHO, as the context requires, and file with the Tribunal a statement of response setting out the following:

- (a) all material facts in response to that statement of case, including the proposed penalty; and



- (b) any mitigating factors in response to the statement of case, including the proposed penalty; and
  - (c) whether the Respondent believes that an Oral Hearing of that matter is essential to establish all the facts relevant to that matter and, if so, a request for an Oral Hearing; and
  - (d) whether the Respondent believes the Tribunal should order that any decision made by the Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
  - (e) copies of all documents the Respondent believes are relevant to that matter shall be attached.
- 6.3.2. A Respondent may, on or before the fifth Business Day after receipt of the statement of case, file a notice to the Tribunal requesting more time to serve and file a statement of response setting out why additional time is required and provide a copy of that notice to NZX or CHO, as the case may be.
- 6.3.3. The Chairperson of the Division must notify a Respondent and NZX or CHO, as the case may be, on or before the second Business Day after receipt of a notice under Rule 6.3.2 on whether or not additional time is granted.
- 6.3.4. The Chairperson of the Division has the discretion to grant additional time to serve and file a statement of response notwithstanding that the time limit in Rule 6.3.2 may have expired.
- 6.4. Amended Pleadings**
- 6.4.1. Any party may at any time before a hearing, seek leave from the Tribunal to file an amended statement of case or response with the Tribunal and serve a copy on the other party.
- 6.4.2. An amended statement may introduce a fresh claim whether or not that claim has arisen since the filing of the statement of case, or a fresh ground of defence, whether as an alternative or not.
- 6.4.3. Where an amended statement introduces a fresh claim, if the other party wishes to file and serve a defence, it must be done on or before the third Business Day after receipt of the amended statement, or within such other time as directed by the Tribunal.
- 6.4.4. Where an amended statement does not introduce a fresh claim, the other party (if he or she wishes) may, on or before the second Business Day after receipt of the amended pleading, or within such other period as directed by the Tribunal, file and serve an amended response.
- 6.4.5. NZX or CHO, as the context requires, may file a rejoinder to the statement of response, commenting on key aspects of that statement of response, provided that the rejoinder is served on the Respondent and filed with the Tribunal on or before the third Business Day after receipt of the statement of response.

## **6.5. Hearings**

- 6.5.1. Subject to Rule 6.5.2, matters referred to the Tribunal for hearing and determination shall take place through the consideration of the documents with no Oral Hearing in accordance with Rule 6.5.5.
- 6.5.2. If a party notifies the Tribunal that it believes an Oral Hearing of a matter is essential to establish all the facts relevant to that matter in accordance with Rule 6.2.1(c) or 6.3.1(c):
- (a) that matter shall be heard by way of an Oral Hearing on or before the fifteenth Business Day after the expiry of the period in:
    - (i) Rule 6.4.5; or
    - (ii) Rule 6.3.1 if a Respondent does not serve a statement of response; and
  - (b) the Tribunal shall deliver its Hearing determination on or before the fifteenth Business Day after the date of the Oral Hearing or within such other period as directed by the Chairperson of the Division hearing the matter.
- 6.5.3. The Chairperson of the Division shall provide not less than five Business Days notice of the date, time and venue for an Oral Hearing, or such lesser period with the agreement of the parties. The Chairperson of the Division may vacate an Oral Hearing date at his or her discretion and appoint a substitute date provided that reasonable notice of that substitute date is given to the parties. The Chairperson of the Division may also adjourn and reconvene an Oral Hearing as it thinks fit.
- 6.5.4. All parties shall be entitled to attend and be heard at any Oral Hearing of a matter, but an Oral Hearing may proceed in the absence of one or more of the parties.
- 6.5.5. Subject to Rule 6.5.6, the consideration and determination of a matter under Rule 6.5.1 with no Oral Hearing shall occur on or before the fifth Business Day after the expiry of the period in:.
- (a) Rule 6.4.5; or
  - (b) Rule 6.3.1 if a Respondent does not serve a statement of response.
- 6.5.6. The Chairperson of the Division may, at his or her discretion, direct that a determination of a matter under Rule 6.5.1 shall occur:
- (a) on or before the tenth Business Day after the expiry of the period in Rule 6.4.5 or Rule 6.3.1 if a Respondent does not serve a statement of response; or
  - (b) within such other period not to exceed fifteen Business Days.
- 6.5.7. Where the Tribunal receives amendments to the statement of case or statement of response in accordance with Rule 6.4.1 or a rejoinder to the statement of response in accordance with Rule 6.4.5, the timeframes for the hearing of the matter will be reset.

## **6.6. Additional notice required of new matters**

6.6.1. Where a Division constituted to hear and determine a matter becomes aware, during the course of hearing or considering a matter, of further breaches of any of the NZX Markets Rules or the Clearing and Settlement Rules, as applicable (Additional Compliance Issues) which are not breaches before that Division and that Division seeks to determine those Additional Compliance Issues as part of the matter currently before it, that Division shall give at least five Business Days written notice to the Respondent and NZX or CHO, as the context requires, setting out those Additional Compliance Issues. The parties shall be provided an opportunity to respond to those Additional Compliance Issues in accordance with the procedures set out in these Rules, as though those Additional Compliance Issues were new matters before that Division.

## **6.7. Hearing and consideration procedures**

6.7.1. A Hearing, whether considered on the documents submitted to the Tribunal in accordance with Rules 6.5.1 or by way of an Oral Hearing, shall:

- (a) be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Tribunal permit; and
- (b) take place in private except that a Hearing that is to be heard and determined by an Oral Hearing pursuant to Rule 6.5.4 resulting from a complaint received by NZX or CHO, as the context requires, from a third party (Complainant), the Complainant may, in the sole discretion of the Tribunal, be invited to attend parts or all of the Oral Hearing in respect of that Complaint, provided the Complainant has delivered to the Tribunal a confidentiality undertaking in respect of that Hearing in a form acceptable to the Tribunal.

6.7.2. The Tribunal may have its legal advisors present and NZX or CHO, as the case may be, and the Respondent may each have two representatives at the Oral Hearing (or more with the prior permission of the Tribunal) who have the ability to make submissions. Those representatives may be:

- (a) an employee or director of the party represented; or
- (b) a barrister and/or solicitor of the High Court of New Zealand; or
- (c) any other person approved by the Chairperson of the Division constituted to hear and determine the matter.

6.7.3. The Chairperson of the Division constituted to hear and determine a matter may require that any oral evidence at the Hearing of that matter be received only after the witness providing that oral evidence has taken an appropriate oath or affirmation.

6.7.4. The Tribunal may conduct a Hearing without all members of the Division constituted to hear and determine a matter being in the physical presence of one another provided that all members of that Division are able to participate in and properly consider the evidence provided at that Hearing.

6.7.5. The decision of the Tribunal shall be determined according to a simple majority of votes of the members of the Division constituted to hear and determine a matter. Each member of a Division shall have and shall exercise a deliberative vote and the Chairperson of that Division shall, subject to Rule 3.1.2, have a deliberative but not a casting vote.

**6.8. Determination of Hearing**

- 6.8.1. Each Division constituted to hear and determine a matter shall provide the parties with a written statement of its reasons for any decision it makes in determining a matter and its choice of any penalty imposed.



## Section 7: Appeal

### 7.1. Right of Appeal

7.1.1. A party may appeal (Appeal) to the Tribunal against a determination:

- (a) by a Division of a Hearing under Section 6; or
- (b) made by NZX or CHO, as the case may be, in respect of an Infringement Notice under Section 5.

### 7.2. Initiation of Appeal

7.2.1. An Appeal must be initiated by submitting a statement of appeal in writing to the Chairperson on or before the eighth Business Day after receipt of the determination that is the subject of the Appeal.

7.2.2. A statement of appeal must (as applicable)

- (a) give the name of the party appealing (Appellant);
- (b) identify the determination appealed against;
- (c) set out the grounds of the Appeal;
- (d) set out all material facts presented at the Hearing or in respect of the Infringement Notice that the Appellant believes are relevant to the Appeal;
- (e) indicate whether the Appellant seeks leave to introduce any new evidence at the Appeal and, if so, what that new evidence is. Any such application must indicate why the evidence was not made available at the Hearing, or to NZX or CHO, as the case may be, in relation to an Infringement Notice, and what its relevance is to the issues in the Appeal;
- (f) if the Appellant believes that an Oral Hearing of the Appeal is essential given the issues raised by the Appeal, explain why and request an Oral Hearing;
- (g) state whether the Appellant believes the Division conducting the Appeal Hearing should order that any decision it makes not be published, or that publication should be delayed for a specified time period; and
- (h) attach copies of all other documents the Appellant believes are relevant to the Appeal.

### 7.3 Frivolous or meritless Appeals

7.3.1. On receiving a statement of appeal in accordance with Rules 7.2.1 and 7.2.2, the Chairperson must consider whether the Appeal is frivolous or without merit.

7.3.2. Where the Chairperson considers that the statement of appeal is not frivolous or not without merit, the Chairperson must provide, no later than three Business Days after receipt of a statement of appeal, a copy of that statement of appeal to the other party (Appeal Respondent).

7.3.3. Where the Chairperson considers a statement of appeal is frivolous or without merit, the Chairperson must notify the Appellant of that no later than five Business Days after receipt of that statement of appeal, setting out his or her reasons, and must provide a copy to the Appeal Respondent.

7.3.4. The Chairperson's decision under Rules 7.3.1 to 7.3.3 (inclusive), will be final and binding on all parties.

#### **7.4 Statement in Response to Appeal**

7.4.1. The Appeal Respondent may, on or before the tenth Business Day after receipt of a statement of appeal under Rule 7.3.2 or such other period as directed by the Chairperson of the Division dealing with the Appeal, submit to that Chairperson and the Appellant a statement in response to appeal in writing.

7.4.2. A statement in response to appeal must (as applicable):

- (a) set out any material facts presented at the Hearing or in respect of the Infringement Notice that the Appeal Respondent believes are relevant to the Appeal but are not adequately set out in the Appellant's statement of appeal;
- (b) indicate whether the Appeal Respondent seeks leave to introduce any new evidence at the Appeal Hearing and, if so, what that new evidence is. Any such application must indicate why the evidence was not made available at the Hearing, or to NZX or CHO, as the case may be, in relation to an Infringement Notice, and what its relevance is to the issues in the Appeal;
- (c) if the Appeal Respondent believes that an Oral Hearing of the Appeal is essential given the issues raised by the Appeal, explain why and request an Oral Hearing;
- (d) indicate whether the Appeal Respondent believes the Division conducting the Appeal Hearing should order that any decision it makes not be published, or that publication should be delayed for a specified time period; and
- (e) attach copies of other documents the Appeal Respondent believes are relevant to the Appeal but are not attached to the Appellant's statement of appeal.

#### **7.5 New Evidence and Oral Hearings**

7.5.1 Applications for leave to adduce new evidence at an Appeal and requests for an Oral Hearing of an Appeal will be determined by the Chairperson of the Division hearing the Appeal, or by the Division hearing the Appeal, as the Chairperson directs.

7.5.2 When determining whether to grant leave to introduce new evidence on an Appeal, the Chairperson or the Division hearing the Appeal, as the case may be, must consider:

- (a) why the new evidence was not made available at the Hearing or to NZX or CHO, as the case may be, in relation to an Infringement Notice; and
- (b) whether the new evidence is credible and, if so, is relevant to the issues in the Appeal.

New evidence may be admitted on a provisional or a final basis.

7.5.3 A request for an Oral Hearing must be granted unless the Chairperson or the Division hearing the Appeal, as the case may be, is satisfied that the request for an Oral Hearing was made in bad faith.

7.5.4. The Chairperson or the Division hearing the Appeal may, of their own motion:

- (a) order either or both of the Appellant and the Appeal Respondent to provide further evidence at the Appeal Hearing (whether or not one of them has sought leave to adduce new evidence); and/or
- (b) order that the Appeal be heard by way of an Oral Hearing (whether or not one of the parties has requested an Oral Hearing).

## **7.6. Appeal Procedure**

7.6.1. Rules [6.5.1](#) to [6.8](#) (inclusive) relating to Hearings apply, with any necessary modifications, to Appeal Hearings, except that:

- (a) Appeals under Rule 7.1.1 must be conducted as reviews and not as rehearings. Subject to Rule 7.6.1(c), the Division conducting an Appeal Hearing must hear and determine the Appeal based on the facts either as accepted by the Division that conducted the Hearing under appeal or as presented on the papers in the case of the Infringement Notice under appeal;
- (b) a party may submit new evidence at an Appeal only (i) where leave to introduce that new evidence was sought in accordance with Rule [7.2.2\(e\)](#) or [7.4.2\(b\)](#) and has been granted under Rules 7.5.1 and 7.5.2 on either a provisional or a final basis or (ii) where there has been an order under Rule 7.5.4(a) that the evidence be provided;
- (c) where new evidence is introduced at an Appeal Hearing, the Division considering the Appeal must assess that evidence and consider whether, and if so, how, it affects the determination of the Division, or of NZX or CHO, under appeal. If it considers that the new evidence materially affects the determination, the Division considering the Appeal must take that into account in determining the Appeal; and
- (d) any member of the Tribunal who sat on the Division whose determination is under appeal will be ineligible to sit on the Division considering the Appeal.

## **7.7. Effect of Hearing determination**

7.7.1. Pending the completion of an Appeal for a matter under this Rule 7, the determination of the Division that conducted the Hearing has full force and effect, except to the extent that the determination includes a suspension or revocation of a Participant's designation under Rule 9 or the suspension of the quotation of trading of an Issuer's Quoted Financial Products or a class of Quoted Financial Products under Rule 9.

## **7.8. Determination of Appeal**

7.8.1. The Division conducting an Appeal Hearing may:

- (a) affirm the determination of the Division that conducted the Hearing; or
- (b) vary or set aside the determination where it considers that the determination resulted from either a misinterpretation or an erroneous application of the

relevant NZX Markets Rules, the Clearing and Settlement Rules and/or the Depository Operating Rules, as the context requires.

7.8.2. The Division hearing and determining an Appeal against a determination made by NZX or CHO, as the case may be, in relation to an Infringement Notice may:

- (a) affirm the determination;
- (b) vary or set aside the determination where it considers the determination to be inconsistent with Section 9 of the Procedures.

7.8.3 There is no appeal against a determination made under Rules 7.8.1 or 7.8.2 by a Division conducting an Appeal.





## Section 8: Settlement

### 8.1. Approval of settlement

- 8.1.1. At any time after NZX or CHO, as the case may be, has decided to refer a matter to the Tribunal, the parties to that matter may, without prejudice, negotiate a proposed settlement and jointly submit it in writing to the Tribunal for approval.
- 8.1.2. The proposed settlement must include sufficient information on the matter in order for the Tribunal to consider the proposed settlement.
- 8.1.3. If that Division of the Tribunal constituted to hear and determine the matter which is the subject of the settlement approves a proposed settlement under Rule 8.1.1 or any variation to that proposed settlement agreed between the parties to that matter, the terms of that approved settlement shall be the determination of that Division as if it was the determination of it as a hearing at first instance, except there is no right of appeal and the terms of the approved settlement have immediate effect.
- 8.1.4. The procedures set out in Rule 6, including the time for submitting documents and for consideration of documents or convening an oral hearing, shall not be affected by the parties to a matter entering into settlement negotiations under Rule 8.1.1.

### 8.2. Proposed Settlement confidential

- 8.2.1. If the Tribunal does not approve a proposed settlement:
  - (a) there shall be no reference in any documents or Oral Hearing before the Tribunal to the negotiations, the proposed settlement or the submissions to the Tribunal, all of which are confidential; and
  - (b) any member of the Division constituted to consider a proposed settlement must not sit on the Division constituted to hear and determine the matter the subject of that proposed settlement.

## Section 9: Penalties

### 9.1. Penalties for breach of NZX Participant Rules, Clearing and Settlement Rules and Derivatives Market Rules

9.1.1. The Tribunal may impose one or more of the orders in Rule 9.1.2 without limiting any other remedies available to the Tribunal, if, after hearing any matter it determines that:

- (a) a Market Participant has been in breach of any NZX Participant Rule; or
- (b) a Clearing Participant or a Responsible Person has been in breach of any Clearing and Settlement Rule; or
- (c) a Derivatives Participant has been in breach of any Derivatives Market Rule.

9.1.2. In any case to which Rule 9.1.1 applies, the Tribunal may:

- (a) issue a private reprimand to that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant; and/or
- (b) issue a public censure that that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant has acted in breach of the NZX Participant Rules, Clearing and Settlement Rules or the Derivatives Market Rules and that censure may:
  - (i) state that no further action will be taken; and/or
  - (ii) criticise the conduct of that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant; and/or
- (c) subject to Rule 9.1.3, revoke that Market Participant's, Clearing Participant's or Derivatives Participant's designation; and/or
- (d) subject to Rule 9.1.3, suspend that Market Participant's, Clearing Participant's or Derivatives Participant's designation for a stated period; and/or
- (e) order that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant to pay to NZX (for and on behalf of CHO in the case of a Clearing Participant or Responsible Person) within a specified time a sum by way of penalty not exceeding \$500,000, and where that party has profited, or avoided a loss, from the breach to pay to NZX (for and on behalf of CHO in the case of a Clearing Participant or Responsible Person) an additional fine equal to the profit derived from, or loss avoided by, the breach multiplied by three notwithstanding that the total fine imposed may exceed \$500,000; and/or
- (f) require that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant to make restitution to a third party where that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant has profited from, or avoided a loss by, a breach at that third party's expense; and/or

- (g) require that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant, where the breach is capable of being remedied, to take such remedial action as the Tribunal may direct; and/or
- (h) in the case of a non natural person, require that Market Participant, Clearing Participant or Derivatives Participant to undertake, in a form directed by NZX or CHO as the case may be, or upgrade to the satisfaction of NZX or CHO as the case may be, an education or compliance programme designed to prevent future breach; and/or
- (i) in the case of a natural person, require that Market Participant, Responsible Person or Derivatives Participant to undertake such training as NZX or CHO as the case may be, may direct, such training being designed to prevent a future breach; and/or
- (j) require that Market Participant, Clearing Participant, Responsible Person or Derivatives Participant to pay the total commission or gross commission or part thereof arising from any transaction giving rise to a breach to NZX (for and on behalf of CHO in the case of a Clearing Participant or a Responsible Person), which shall be deposited by NZX into the Discipline Fund; and/or
- (k) order a probationary period whereby certain terms and conditions as determined by the Division are attached to that Market Participant's, Clearing Participant's, Responsible Person's or Derivatives Participant's designation; and/or
- (l) in the case of a Market Participant who is not a natural person, it may order:
  - (i) in the case of a matter involving NZX Participant Rule 21.1.3(d)(i) that the partner concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the NZX Participant Rules by that Employee of that Market Participant; or
  - (ii) in the case of a matter involving NZX Participant Rule 21.1.3(d)(ii), that the Employee concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the NZX Participant Rules by that Employee of the Market Participant; and/or
- (m) in the case of a Clearing Participant who is not a natural person in respect of any matter involving Clearing and Settlement Rule 6.8.1(c), it may order that the Employee or person who the Clearing Participant is in association or contractual relationship with undertake, in a form directed by CHO, or upgrade to the satisfaction of CHO an education or compliance programme designed to prevent future contravention of the Clearing and Settlement Rules by that Employee of that Clearing Participant; and/or
- (n) in the case of a Derivatives Participant who is not a natural person, it may order:
  - (i) in the case of a matter involving Derivatives Market Rule 14.5.1(d)(i) that the partner concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance

programme designed to prevent future contravention of the Derivatives Market Rules by that Employee of that Derivatives Participant; and/or

- (ii) in the case of a matter involving Derivatives Market Rule 14.5.1(d)(ii) that the Employee concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX an education or compliance programme designed to prevent future contravention of the Derivatives Market Rules by that Employee of that Derivatives Participant.

9.1.3. The Tribunal may only revoke or suspend the designation of a:

- (a) Market Participant who is an RMA Provider where NZX has sought suspension or revocation of designation in the relevant statement of case; and
- (b) Clearing Participant with the consent of CHO (which CHO may withhold in its discretion); and
- (c) Responsible Person with the consent of CHO (which CHO may withhold in its discretion).

9.1.4. If a Market Participant or Derivatives Participant fails to carry out an order of the Tribunal, made under Rule 9.1.1, in the period determined by or otherwise satisfactory to that Division, that Division of the Tribunal may, without limiting any other remedies or sanctions available to the Tribunal, suspend that Market Participant's or Derivatives Participant's designation until that order is complied with.

9.1.5. If a Clearing Participant or Responsible Person fails to carry out an order of the Tribunal, made under Rule 9.1.1, in the period determined by or otherwise satisfactory to that Division, that Division of the Tribunal may, without limiting any other remedies or sanctions available to the Tribunal, request CHO to suspend that Clearing Participant's or Responsible Person's designation until that order is complied with. CHO may in its discretion accept or decline that request.

## **9.2. Penalties for breach of Listing Rules**

9.2.1. The Tribunal may impose one or more of the orders in Rule 9.2.2 without limiting any other remedies available to the Tribunal, if, after hearing any matter it determines that an Issuer has been in breach of any Listing Rule.

9.2.2. In any case to which Rule 9.2.1 applies, the Tribunal may:

- (a) issue a private reprimand; and/or
- (b) subject to Rule 9.2.3, issue a public censure that that Issuer or director or former director of that Issuer has acted in breach of the Listing Rules and that censure may:
  - (i) state that no further action will be taken; and/ or
  - (ii) criticise the conduct of that Issuer or director or former director of that Issuer; and/or

- (iii) state that the retention of the office of director and/or executive of that Issuer by a named individual is prejudicial to the interests of investors; and/or
  - (c) suspend the Quotation of a Class or all Classes of that Issuer's Quoted Financial Products for a stated period; and/or
  - (d) cancel that Issuer's Listing; and/or
  - (e) cancel Quotation of any Class or all Classes of that Issuer's Quoted Financial Products; and/or
  - (f) order that Issuer to pay to NZX, within a specified time, a sum by way of penalty not exceeding \$500,000; and/or
  - (g) order that Issuer to make restitution to a third party where that Issuer has profited from, or avoided a loss by, a breach of the Listing Rules at that third party's expense; and/or
  - (h) require that Issuer, where such breach is capable of being remedied, to take such remedial action as the Tribunal may direct.
- 9.2.3. The Tribunal may only impose a public censure if the relevant party has been individually joined to the proceedings (as though they were a Participant in their own right).
- 9.2.4. If an Issuer fails to carry out an order of the Tribunal made under Rule 9.2.1 in the period determined by or otherwise satisfactory to that Division, that Division may, without limiting any other remedies or sanctions available to the Tribunal, suspend the Quotation of any or all Classes of that Issuer's Quoted Financial Products until the order is complied with.
- 9.3. Penalties for failure to comply with requirement to provide information or document**
- 9.3.1. A person who receives notice under Rule 4.1.2, must comply with the requirement stated in the notice in the manner within the period (being not less than five Business Days or such other period advised by the Tribunal after the notice is given to the person) specified in the notice.
- 9.3.2. Every Participant referred to in Rule 4.1.3 is liable for a fine that may be imposed by the Tribunal, not exceeding \$10,000, who, where a notice is given under Rule 4.1.2, fails to ensure that the person on whom notice is served:
- (a) complies with that notice (except where either the Participant or the person on whom the notice is service has a reasonable excuse); or
  - (b) provides information that is a true and correct in all material particulars.
- 9.4. Public censures**
- 9.4.1. Any determination to make a public censure made by the Tribunal under this Rule 9 shall not be made until the time period for appeal against that determination has expired, or the right of appeal has been waived, whichever is the earlier.

## **9.5. Factors to consider in determining penalty**

9.5.1. When a Division is considering imposing any of the penalties under this Rule 9, and in considering the extent of that penalty, that Division may take into consideration the following factors:

- (a) the prior conduct of the party to which the penalty will be imposed; and
- (b) the matter before it; and
- (c) the severity of the matter; and
- (d) any benefit obtained or detriment suffered as a consequence of the breach; and
- (e) the reputational impact of the penalty being imposed; and
- (f) any Procedure in relation to guidance for application of penalties (including Section 9 of the Procedures); and
- (g) any other mitigating factors that Division considers appropriate; and
- (h) any other penalty or sanction actually, or likely to be, imposed on the party by any other body or power for the matter before it.

## **9.6. Proceeds of penalties imposed**

9.6.1. Any penalty imposed on a Participant under these Rules shall be a debt due to NZX enforceable by action in the name of NZX (including, for the avoidance of doubt, penalties imposed on a Clearing Participant). All amounts received by NZX in payment of any penalty imposed on a Participant under these Rules shall be kept in a separate account of NZX (Discipline Fund). Proceeds in the Discipline Fund may only be used by NZX against money paid or payable by NZX in respect of:

- (a) enforcement of any NZX Markets Rules and the Clearing and Settlement Rules, and any other rules and regulations of NZX or CHO from time to time; and/or
- (b) the costs and expenses of the Tribunal, including any remuneration payable under Rule 10; and/or
- (c) seminars and other education initiatives in respect of regulation of NZX Markets and regulation of the futures and options industry; and/or
- (d) redrafting the NZX Markets Rules and the Clearing and Settlement Rules and any other rules and regulations of NZX or CHO or CDO from time to time; and/or
- (e) any other use with the prior written consent of the Financial Markets Authority.

## **9.7. No set-off**

9.7.1. Monetary orders imposed on Participants under these Rules cannot be set-off against any other monies owed by NZX or CHO, as the context requires, to the party against whom the penalty has been imposed. All payments made to NZX under these Rules shall be made in New Zealand dollars (unless NZX agrees otherwise) and shall be made without (and free and clear of any deduction for) set-off or counterclaim.

## Section 10: Costs and Expenses

### 10.1. Costs and Expenses Awards

- 10.1.1. Subject to Rule 10.1.3, the Tribunal may order any party, to pay such reasonable costs as it thinks fit, regardless of any finding or the outcome of the case. Such costs may include the remuneration and expenses of members of the Tribunal, Counsel to the Tribunal and any temporary appointee to a Division and NZX staff assisting the Tribunal, and any costs incurred by NZX, CDO or CHO in the preparation and presentation of its case. Such order, which may be made at the same time as the determination, or following the determination, will be made after the parties have been heard on costs.
- 10.1.2. An order for costs under Rule 10.1.1 may include:
- (a) the costs and expenses of a hearing, including, the fees and expenses of and incidental to the Tribunal conducting the hearing, and any other expenses related to the hearing (including any amount payable under Rule 10.2.1) shall be as fixed and allocated by the Tribunal in its discretion; and
  - (b) where the order is made in favour of NZX, CDO or CHO, the costs and expenses incurred by NZX, CDO or CHO, as the case may be, in the preparation and presentation of its case.
- 10.1.3. If the Tribunal considers that in making a decision, which is the subject of a Referral under Rule 4.5, or to bring proceedings under these Rules, NZX, CDO or CHO has acted vexatiously, frivolously or unreasonably, it may make an order under Rule 10.1.1 that NZX, CDO or CHO as the context requires, pay another party to the proceedings, the fees and expenses of and incidental to the preparation and presentation of its case.
- 10.1.4. In the absence of an award under Rule 10.1.1, fixing and allocating the costs and expenses of the hearing, each party shall be responsible for the legal and other expenses of that party and for an equal share of the fees and other expenses relating to that hearing including an expert's costs, and costs of any counsel assisting the Tribunal.
- 10.1.5. Any order for costs made by the Tribunal, in terms of Rule 10.1.1, shall be paid within 30 days of receipt of the notification in writing of the amount payable.
- 10.1.6. For the avoidance of doubt, the Rules contained in this Section 10 also apply to an Appeal.

### 10.2. Evidence Costs and Expenses Awards

- 10.2.1. Every person (other than NZX, CDO, CHO, a Respondent, an applicant under Rule 4.5 or an officer or employee of NZX, CDO or CHO or such Respondent or applicant or any other person who gives evidence on behalf of NZX or a Respondent or applicant) who gives evidence, or attends to give evidence, at a hearing conducted by the Tribunal, will be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:
- (a) determined by the Tribunal;

- (b) paid by NZX; and
- (c) recoverable in terms of any order the Tribunal may make under Rule 10.1.1.





## Section 11: Failure to Pay Penalties or Costs

### 11.1. Consequences of failure

11.1.1. A Respondent (or an applicant under Rule 4.5) that fails, within the time stated in any determination or period otherwise satisfactory to the Tribunal, NZX or CHO as the case may be, to pay any Infringement Fee or sum ordered to be paid by way of penalty or costs and expenses:

- (a) may, where the Respondent (or applicant) is a Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant or a Depository Participant), have its designation as a participant and/or advisor (howsoever defined), as the case maybe, under the applicable NZX Markets Rules suspended by NZX; or
- (b) may, where the Respondent is an Issuer, have Quotation of any Class or all of its Quoted Financial Products suspended by NZX; or
- (c) may, where the Respondent is a Clearing Participant or the applicant under Rule 4.5 is a Lending Clearing Participant, have its designation as a Clearing Participant or a Lending Clearing Participant suspended by CHO; or
- (d) may, where applicant under Rule 4.5 is a Depository Participant, have its designation as a Depository Participant suspended by CDO.

11.1.2. A Respondent (or an applicant under Rule 4.5) that fails, within the time stated in any determination or period otherwise satisfactory to the Tribunal, to pay any sum ordered to be paid by way of penalty or costs and expenses shall be liable to NZX (CDO or CHO, as the context requires) for interest at the Interest Rate, calculated on a daily basis on the amount the Respondent was ordered to pay from the time that amount was due for payment as stated in the determination or period otherwise satisfactory to the Tribunal, until payment in full is made.

11.1.3. Should any part of that sum remain unpaid for one month following the date of such suspension, in the absence of any circumstance which, in the opinion of NZX (or as the context requires, CHO or CDO) provides reasonable justification for such failure to pay, NZX, CHO or CDO as the context requires, may thereafter, at its complete discretion and without limiting any other remedies or sanctions available to it, promptly:

- (a) in the case of a Participant (other than an Issuer or a Clearing Participant, a Lending Clearing Participant or Depository Participant) revoke that Participant's designation as a participant and/or advisor (howsoever defined), as the case maybe, under the applicable NZX Markets Rules;
- (b) in the case of an Issuer, cancel that Issuer's Listing;
- (c) in the case of a Clearing Participant or Lending Clearing Participant, NZX may request, and CHO may require, the revocation of that Clearing Participant's or Lending Clearing Participant's designation as a Clearing Participant or Lending Clearing Participant as the case may be; or
- (d) in the case of a Depository Participant, NZX may request, and CDO may require, the revocation of that Depository Participant's designation as a Depository Participant.

## Section 12: Annual Regulatory Report

### 12.1. Content of report

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

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

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

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

12.1.3. The Tribunal shall create and provide an annual regulatory report (the Annual Regulatory Report) to the public by the end of April of the following year using as a minimum the information from the report in respect of each year provided to the Tribunal by NZX and CHO above, and that collated by itself below:

- (a) number of statements of case issued by NZX and CHO and the type of matters addressed in those statements of case;
- (b) the findings of the Tribunal in respect of each statement of case issued by NZX and CHO, provided such disclosures are consistent with any decision on publication made by the Tribunal;
- (c) any penalties imposed by the Tribunal; and
- (d) a statement from the Tribunal stating whether or not they believe that adequate resources have been made available to them, to undertake their role under these the Tribunal Rules.

### 12.2. Review by NZX and CHO

12.2.1. The Annual Regulatory Report shall be provided by the Tribunal to NZX and CHO one month prior to it being made publicly available and both NZX and CHO shall be entitled to provide to the Tribunal comments on the Annual Regulatory Report. The Tribunal is not required to make changes to the Annual Regulatory Report based on comments received from NZX and CHO.

## Section 13: Remuneration

### 13.1. Remuneration

13.1.1. Members of the Tribunal and any temporary appointees to a Division shall be entitled to be reimbursed for reasonable expenses incurred when engaged on the business affairs of the Tribunal and each member of the Tribunal shall be paid by way of remuneration such sums as NZX may from time to time agree with that member.

### 13.2. Remuneration Review

13.2.1. The remuneration of the Tribunal shall be reviewed every two years from 30 June 2008. The remuneration review committee will consist of the RegCo CEO and the Chairperson of the Tribunal. That committee shall make a recommendation to the NZX Board. The NZX Board shall determine the rate of remuneration payable to members and may accept, reject or alter that recommendation, provided that the NZX Board may not reduce the rate of remuneration payable to members without prior approval of the Financial Markets Authority.

## Section 14: Annual and Other Meetings

### 14.1. Meetings

- 14.1.1. The members of the Tribunal shall meet at least once annually and NZX shall be entitled to call additional meetings of the Tribunal where it considers such meetings are necessary for operational reasons and members of the Tribunal shall attend such meetings unless excused. Not all members of the Tribunal must be in the physical presence of one another for any meeting of the Tribunal provided that all members involved in the proceedings are able to participate in discussion at that meeting.

## Section 15: Indemnification

### 15.1. Limitation of Liability

15.1.1. None of NZX, CHO, CDO, the Tribunal, any member of the Tribunal, or any temporary appointees to a Division, any director, officer or employee of NZX, CHO, CDO, or the Tribunal, or any delegate of NZX, CHO, CDO, RegCo or the Tribunal, shall be liable in tort, contract, or otherwise for any action taken or not taken in exercise or purported exercise in good faith of the powers or discretions conferred by these Rules.

### 15.2. Indemnity

15.2.1. Each Participant shall indemnify each of NZX, CHO, CDO, the Tribunal, any member of the Tribunal, any temporary appointees to a Division, each employee, director or officer of NZX, CHO, CDO, and the Tribunal and each delegate of NZX, CHO, CDO, RegCo or the Tribunal, against all liabilities and claims which may arise (notwithstanding the limitation in Rule 17.1) in relation to any action or inaction by any such person in connection with that Participant (as the case may be), which action or inaction have been taken or not taken in good faith and in response to circumstances for which that Issuer or Participant should bear the responsibility in whole or in part. This indemnity shall be for all or such part of the liabilities and claims as the Tribunal, determines in the circumstances.

## Section 16: Confidentiality

### 16.1. Materials provided confidential

- 16.1.1. Subject to Rule 16.1.3, all material received or granted access to by a party in respect of a matter under these Rules will be treated confidentially by members of the Tribunal, temporary appointees to a Division and any persons involved in that matter of those entities.
- 16.1.2. Subject to Rule 16.1.3, any written records or copies of documents relating to a party in respect of a matter under these Rules will be stored by the Tribunal and all other persons involved in that matter in a manner to ensure such records or documents remain secure and confidential to that party.
- 16.1.3. A party may make any material received or granted access to by another party in respect of a matter under these Rules available and not require such material to be secure in accordance with Rule 16.1.2, where such disclosure is:
- (a) in a manner otherwise permitted by these Rules; or
  - (b) in respect of information already in the public domain or has ceased to be confidential at the time of its disclosure, other than by a breach of this Rule 16; or
  - (c) to a government body or Court pursuant to a request from that body made within the apparent scope of its authority, or by a registered exchange provided that the party making such disclosure has used its best endeavours to advise the party whose material is being disclosed of such request at least two Business Days prior to such disclosure; or
  - (d) required by law or is permitted or required pursuant to a Reciprocal Arrangement or by or to an Alternative Regulator as the context requires; or
  - (e) with the prior written consent of the party whose material is being disclosed.