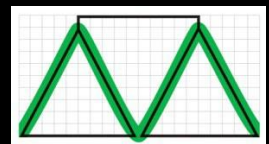


ANNUAL REPORT 2024

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# NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

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# CONTENTS

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4	TRIBUNAL CHAIR’S REPORT
9	MEMBERS
11	REFERRAL
15	SPECIAL DIVISION CHAIR’S REPORT
18	DIRECTORY

This report covers the period 1 January 2024 to 31 December 2024. Terms capitalised in this report have the meanings given to them in the NZX Market Rules.

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## TRIBUNAL CHAIR'S REPORT

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2024 was a quiet year for the Tribunal, with only one matter referred by NZ RegCo. This likely reflects both improved market compliance, particularly with the corporate governance requirements following targeted efforts by NZ RegCo, and subdued market activity.

My following report outlines the role of the Tribunal and its activities in 2024.

### Role of the NZ Markets Disciplinary Tribunal

The NZ Markets Disciplinary Tribunal (*Tribunal*) is an independent body established under the NZ Markets Disciplinary Tribunal Rules (*Tribunal Rules*). NZX Regulation Limited (*NZ RegCo*) appoints the members of the Tribunal and NZX Limited (*NZX*) makes the Tribunal Rules which set out the Tribunal's powers and functions, subject to approval by the Financial Markets Authority (*FMA*).

The Tribunal fulfills a narrow, but important, adjudicative role. The Tribunal's primary responsibility is to determine whether there has been a breach of the NZX Participant Rules, the NZX Listing Rules (*Rules*), the NZX Derivatives Market Rules and the Clearing and Settlement Rules of New Zealand Clearing Limited (*NZX Market Rules*) in matters referred to it by NZ RegCo. Only NZ RegCo can refer a potential breach of the NZX Market Rules to the Tribunal for consideration. If a breach is established, the Tribunal must determine what, if any, penalties should be imposed, having regard to the Tribunal Rules and Procedures.

The Tribunal may also review decisions made by NZ RegCo in respect of a waiver or ruling in matters referred to it by the applicant, provided certain grounds are met, including where the decision was irrational given the evidence available, or the rules of procedural fairness were not observed. A third party, such as a shareholder, cannot refer a decision made by NZ RegCo to the Tribunal.

The Tribunal does not monitor or investigate market conduct. That role is performed by NZ RegCo and the FMA. The Tribunal does not make the NZX Market Rules, nor is it involved in the development of capital markets policy. The NZX Market Rules are made by NZX, subject to approval from the FMA.

## Tribunal Procedures

The penalties the Tribunal may impose, if a breach of the NZX Market Rules is established, are set out in the Tribunal Rules. They include the power to impose a fine of up to \$500,000. The Tribunal Procedures provide guidance to the Tribunal when assessing the appropriate financial penalty up to this maximum amount. The Tribunal Procedures set out a two-step process for the Tribunal to follow:

Step 1 – identify a starting point penalty by assessing the factors relevant to the breach; and

Step 2 – adjust that starting point penalty to reflect the aggravating and mitigating factors relevant to the participant who has been referred.

### *Step 1: Factors relating to the breach*

The Tribunal Procedures set out three starting point penalty bands, within which the Tribunal will identify a starting point penalty:

Penalty Band	Range of Financial Penalty
<b>Penalty Band 1 – Minor Breaches</b>	\$0 to \$40,000
<b>Penalty Band 2 – Moderate Breaches</b>	\$30,000 to \$250,000
<b>Penalty Band 3 – Serious Breaches</b>	\$200,000 to \$500,000

The Tribunal will determine the appropriate penalty band for a breach of the NZX Market Rules based on an overall assessment of the seriousness of the breach in each matter. Tribunal Procedure 9.2.2 sets out factors which fall within each penalty band which the Tribunal may consider when assessing the most appropriate penalty band and the starting point penalty within that band. These factors all relate to the obligation breached and the impact or potential impact of the breach. It is unlikely that all the factors within one penalty band will be present in a particular matter. In most cases, a matter will likely have a combination of factors from one or more penalty bands. It is also possible for a matter to fall within a penalty band where only one factor exists. The Tribunal will use its discretion to weigh up all the factors present to ensure that they are appropriately balanced.

*Step 2: Factors relevant to the participant*

Once the Tribunal has determined the appropriate penalty band and the starting point penalty, it must determine the final penalty by adjusting the starting point penalty to reflect any aggravating and mitigating factors relevant to the participant. The Tribunal Procedures set out a non-exhaustive list of factors which are likely to lower or increase (or reduce the ability to lower) the starting point penalty. The Tribunal will weigh up all the relevant factors and apply an uplift or discount as appropriate, depending on the circumstances of the particular matter. Because of this adjustment, it is possible that the final financial penalty for a breach may fall outside of (above or below) the starting point penalty band initially identified by the Tribunal.

### Referral

One matter was referred by NZ RegCo to the Tribunal in early 2024, down from seven matters referred during 2023. That matter is summarised on pages 11 to 13. As with five of the seven matters referred in 2023, it also involved breaches of the corporate governance requirements.

### NZ RegCo

NZ RegCo is responsible for monitoring and enforcing the NZX Market Rules. NZ RegCo published its Oversight Report for 2024 on 28 February 2025 – see [here](#). The report includes information on the investigation and enforcement activity undertaken by NZ RegCo during 2024 and was provided to the Tribunal in connection with NZX's annual regulatory reporting requirements under the Tribunal Rules.

Under the Tribunal Rules, NZ RegCo has the power to issue fines of up to \$10,000 for minor breaches of the NZX Market Rules. NZ RegCo did not issue an Infringement Notice in 2024.

### Members

Tribunal and Special Division member Dave Robertson passed away in January 2025. Dave made a significant contribution to the Tribunal during his 3½-year term. He will be greatly missed.

The term of Tribunal member, Hon Sir Terence Arnold KC, ends in May this year. Sir Terence has been a highly valued member, bringing his significant legal expertise to the application of the Tribunal's Rules and Procedures.

NZ RegCo has recently appointed Craig Lindberg as a Market Participant member of the Tribunal.

The Tribunal's membership currently comprises 9 women and 9 men.

### Special Division

Matt Blackwell was appointed Special Division Chair following the end of James Ogden's membership term in May 2024. Matt's report on the activities of the Special Division during 2024 can be found on page 15.

Alan Isaac and Sarah Miller were appointed as Special Division members in April 2024. Gretchen Williamson was appointed as a Special Division member in February 2025.

### Resourcing

As required by the Tribunal Rules, the Tribunal confirms that it believes it has adequate resources available to it to undertake its role under the Tribunal Rules and that NZX has continued to provide all the assistance which the Tribunal requires to undertake its role.

The NZX Discipline Fund accounts (which are included in the NZ RegCo Oversight Report for 2024) record an accumulated surplus of \$303,529 on 31 December 2024.

I thank all the Tribunal members for their work and ongoing commitment to the Tribunal. As always, special thanks to Rachel Batters who has continued to provide exceptional support to me, Special Division and all other Tribunal members over the last year.



Deemle Budhia | Chair  
10 April 2025

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# MEMBERS

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## Members of the Tribunal as at 31 December 2024

### LEGAL

Deemle Budhia (Chair), Hon Sir Terence Arnold KC, John Dixon KC,  
Rachel Dunne, Kristy McDonald ONZM KC, Daniel Wong

### ISSUER

Charles Bolt, Kirsty Campbell, Nicola Greer, Alan Isaac CNZM, Sarah Miller,  
Jennifer Page

### MARKET PARTICIPANT

David Lane (Deputy Chair), Matt Blackwell, Darren Manning, Rachael Newsome,  
Dave Robertson, Gretchen Williamson

Rachel Batters and Stephen Layburn act as Executive Counsel to the Tribunal.

## Members of the Special Division as at 31 December 2024

Matt Blackwell (Chair), Alan Isaac CNZM, Sarah Miller, Rachael Newsome,  
Dave Robertson

Rachel Batters acts as Executive Counsel to the Special Division.

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## REFERRAL

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## NZMDT 1/2024 NZX V GENEVA FINANCE LIMITED (GFL)\*

*Division:* James Ogden (Division Chair), Alan Isaac and Sarah Miller

*Statement of Case filed:* 30 January 2024

*Settlement Agreement dated:* 5 March 2024

*Date of Determination:* 20 March 2024

*Rules Breached:* NZX Listing Rules 2.1.1(c), 2.13.2(b), 2.13.2(c), 3.8.1(a), 3.8.1(b) and 3.8.1(e)

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### FACTS

GFL was required to have at least two Independent Directors on its Board (Rule 2.1.1(c)), and an Audit Committee comprising at least three members and a majority of Independent Directors (Rules 2.13.2(b) and 2.13.2(c)).

Between 31 July 2023 and 7 September 2023, GFL had only one Independent Director and its Audit Committee did not have three members or a majority of Independent Directors (*the Governance breaches*). GFL self-reported the Governance breaches to NZ RegCo on 5 September 2023.

GFL's annual reports were required to (i) disclose the extent to which it had followed the NZX Corporate Governance Code (*the Code*) recommendations (Rule 3.8.1(a)); (ii) where it had not followed a Code recommendation, explain its non-compliance (Rule 3.8.1(b)); and (iii) identify its Independent Directors and the factors relevant to that determination (Rule 3.8.1(e)).

GFL's annual reports for the financial years ended 31 March 2019 to 31 March 2023 did not disclose the extent to which GFL had complied or not complied with the Code recommendations in breach of Rules 3.8.1(a) and 3.8.1(b) and did not sufficiently state the factors relevant to its determination of a Director's independence in breach of Rule 3.8.1(e). GFL's 2019 annual report also failed to identify its Independent Directors (together *the Annual Report breaches*).

### FINDINGS

The Tribunal approved a settlement agreement between NZX and GFL under which GFL accepted its breach of Rules 2.1.1(c), 2.13.2(b), 2.13.2(c), 3.8.1(a), 3.8.1(b) and 3.8.1(e), agreed to pay a financial penalty of \$80,000, pay the costs of NZX and the Tribunal, and be publicly censured.

The Tribunal was satisfied that the penalties agreed by the parties were appropriate in the circumstances of this matter based on the following factors.

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\* GFL is no longer Listed.

*Step 1: Factors relevant to the breach*

The Tribunal considered that the following penalty band factors were relevant to GFL's breaches:

*Penalty Band 1 factors*

- NZ RegCo identified no loss arising from GFL's breaches.
- The Governance breaches did not have a financial benefit. While Director fees were not incurred, this amount was minimal and likely outweighed by the time spent identifying a replacement Independent Director.
- The Governance breaches likely had no, or minimal, impact on investors and the market. GFL's Board Chair was an Independent Director and Audit Committee member, and there was no evidence that the matters discussed, or decisions made, by the Board and Audit Committee were influenced by the Governance breaches.

*Penalty Band 2 factors*

- The Annual Report breaches had a financial benefit for GFL. GFL did not incur the costs of assessing its compliance with the Code recommendations and disclosing that information in its annual reports over five reporting periods.
- The Annual Report breaches had a moderate impact on investors and the market given GFL did not disclose its compliance with the Code recommendations or adequately disclose the factors it considered when determining which Directors were independent, since it migrated to the Main Board in 2019.
- The Governance breaches continued for a moderate period – 5½ weeks.

*Penalty Band 3 factors*

- GFL's breaches were serious compliance breaches given the importance of a properly constituted Board and Audit Committee, and GFL's complete omission to report against the Code recommendations.
- GFL's breaches had the potential to cause a significant impact on investors and the market. The potential harm of the Governance breaches was that GFL's Board and Audit Committee lacked sufficient independent perspective to decision-making and that GFL's Audit Committee was less robust and not sufficiently separate from GFL's management. GFL's failure to report against the Code recommendations had the potential to harm investors who were not adequately informed of its corporate governance practices and to damage the market's confidence in the effectiveness of the Code's 'comply or explain' regime.

- The Governance breaches continued once discovered. Although GFL engaged with potential candidates before the breach occurred, the breach continued for 5½ weeks.
- The Annual Report breaches continued for an extended period - 2019 to 2023.

When weighing up all the applicable factors, the Tribunal considered that GFL's breaches fell within the mid-range of Penalty Band 2. The Tribunal considered that a starting point penalty of \$110,000 was appropriate (\$60,000 for the Annual Report breaches and \$50,000 for the Governance breaches).

#### *Step 2: Factors relevant to GFL*

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

#### *Aggravating factors*

The Tribunal considered that the Annual Report breaches were negligent given GFL's failure to report against the Code recommendations since its migration to the Main Board in 2019. GFL had insufficient compliance procedures and controls in place, having continued to use the same reporting template it had used for the NZAX market over the 2019 to 2023 financial years, despite NZ RegCo drawing GFL's attention to its disclosure obligations on several occasions.

#### *Mitigating factors*

GFL self-reported the Governance breaches, admitted the Annual Report breaches at the earliest opportunity, co-operated fully with NZ RegCo's investigation, committed to improving its compliance practices and reached a settlement with NZ RegCo.

When weighing up the aggravating and mitigating factors, the Tribunal considered that a reduction in the starting point penalty was warranted and that a final penalty of \$80,000 was appropriate (\$45,000 for the Annual Report breaches and \$35,000 for the Governance breaches).

#### PENALTY

GFL was ordered to pay \$80,000 to the NZX Discipline Fund.

#### COSTS

GFL was ordered to pay the costs of NZX and the Tribunal.

#### PUBLICATION

Under the terms of the settlement agreement, GFL accepted the penalty of a public censure for its breach of the Rules. See [here](#) for copies of the Tribunal decisions.

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## SPECIAL DIVISION CHAIR'S REPORT

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## Role of Special Division

Special Division is a division of the Tribunal constituted under the Tribunal Rules to regulate NZX and its Related Entities' compliance with the NZX Market Rules. As at the date of my report, NZX's Related Entities are NZX Wealth Technologies Ltd (a Depository Participant) and Smartshares Ltd (the manager of currently 44 listed exchange traded funds (*SMART ETFs*)). Special Division's objective is to foster market confidence that the NZX Market Rules and the Tribunal Rules are applied to NZX and its Related Entities in an impartial and independent manner.

Engagement with the FMA in respect of Special Division's regulatory oversight of NZX and its Related Entities was further enhanced this year by the adoption of updated protocols in August 2024.

## Monitoring of trading activity

Special Division is responsible for assessing trading activity in the quoted securities of NZX and its Related Entities. On behalf of Special Division, NZ RegCo Surveillance (*NZRS*) conducts front-line monitoring of trading on the exchange in the securities of NZX and any Related Entity. NZRS refers system generated alerts from its SMARTS surveillance software and any other abnormal trading activity to Special Division within agreed protocols. Special Division and NZRS further refined these protocols in February 2024 so that SMARTS alerts in the Smart ETFs are only referred where NZRS has identified a potential issue or concern with the trading activity. Any such SMARTS alerts continue to be reported to Special Division quarterly.

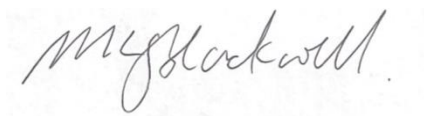
In 2024, Special Division considered 47 referrals from NZRS in relation to trading in the securities of NZX (a similar number to 2023, when it considered 44 referrals). Special Division did not consider that any of the referrals raised concerns or warranted further investigation on the basis that the activity was consistent with permissible trading (in one instance, further information from NZRS was sought and obtained). A list of referrals follows this report.

## Other activities

Special Division approved listing applications and reviewed Product Disclosure Statements for four new Smart ETFs during 2024.

Special Division granted a conditional waiver to Smartshares Ltd to permit the continued use of its own form when notifying the market of the issue or acquisition of Smart ETF units, rather than the prescribed form as required under Rule 3.13.1. The waiver decision can be viewed [here](#).

I would like to thank the members of the Special Division for their work.

A handwritten signature in black ink, reading "mblackwell.", is centered on the page. The signature is written in a cursive, lowercase style.

Matt Blackwell | Special Division Chair  
10 April 2025



## NZRS REFERRALS – 1 JANUARY 2024 TO 31 DECEMBER 2024

MONTH	ISSUER	DATE REFERRED
January	-	-
February	NZX	26, 28
March	NZX	18, 25, 28
April	NZX	2, 4, 5, 9, 10, 11, 12, 15, 16
May	-	-
June	NZX	21, 24
July	NZX	1, 12, 15, 16, 18
August	NZX	8, 14*, 15, 19, 20, 21, 28
September	NZX	6, 13, 23, 24
October	NZX	15, 16, 22, 30, 30
November	NZX	1, 5, 8, 11, 15, 18, 19, 27
December	NZX	6, 18

\* Sought further information from NZRS and determined no further action required.

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## DIRECTORY

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NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

<https://www.nzx.com/regulation/nzmd-tribunal-regulation>

[rachel.batters@nzmdt.com](mailto:rachel.batters@nzmdt.com)