

NZ RegCo

NZ'S LISTED
MARKET REGULATOR

2023 Oversight Report



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Message from the NZ RegCo Chairman and Chief Executive Officer

2023 marked the third year of NZ RegCo operating as the independently-governed regulator of NZX's markets.

This report provides insights on:

- our oversight activities for the 2023 review year;
- delivery in 2023 of key corporate plan initiatives; and
- our areas of strategic focus for the coming year.

Operating and governance arrangements

Following an external review, further enhancements were made to NZ RegCo's governance arrangements in early 2023 to demonstrate the independence of NZ RegCo's operating and governance framework. This included amending the director and chair appointment process to be matters for NZ RegCo Board approval, subject to NZX confirmation of "non-objection".

The annual licensed market operator review of NZX Limited, published by the Financial Markets Authority in June 2023, concluded that the arrangements between NZX and NZ RegCo effectively support NZX's compliance with its market operator obligations. The FMA noted that the 2023 changes demonstrated NZ RegCo's trend towards increased self-governance and independent mindset. In that report, the FMA also positively highlighted our clearly defined strategy and reporting, and the environmental scanning work that enables us to proactively identify and respond to market risks and domestic and international regulatory themes and market trends.

NZ RegCo was pleased to announce the appointment of Pip Dunphy as a director in May. Her experience as a professional director and background in financial markets and investment banking have added further depth to the NZ RegCo Board.

In May, NZ RegCo also finalised a Memorandum of Understanding (**MoU**) with the FMA, setting out a framework for engagement and co-operation between our agencies for the regulation of New Zealand's capital markets. The MoU formalises protocols and arrangements between the parties,

covering strategic and operational engagement. Those arrangements recognise our shared interests and commitment to promote confidence in the New Zealand capital markets, through enhanced regulatory cooperation and collaboration.

2023 – year in review

NZ RegCo referred several corporate governance breaches to the NZ Markets Disciplinary Tribunal (**Tribunal**) during the year, relating to board and audit committee composition, and disclosure against the recommendations of the NZX Corporate Governance Code (**Code**).

In addition to those Tribunal referrals, a number of infringement notices were also issued for breaches of audit committee composition requirements.

The extent and duration of the breaches observed was concerning. The NZX Listing Rule corporate governance settings, and the requirements for issuers to report on a "comply or explain" basis against the Code, are long-standing. Issuers and their boards should be familiar with those obligations. NZ RegCo expects that issuers have in place succession planning arrangements appropriate for their business, and apply processes to validate that their periodic reporting meets the content requirements of the Listing Rules. NZ RegCo will continue to refer matters to the Tribunal if appropriate, in line with our enforcement policy. Oversight of issuers' corporate governance will continue to be a focus for NZ RegCo into 2024.

There is an expectation that issuers operating in the public listed markets – acting by and through their boards and management teams – have sufficient working knowledge of the Listing Rules and operate accordingly. The development of our issuer training framework, and the establishment of the "authorised issuer representative" regime, are designed to reinforce those expectations.

Against a backdrop of continued volatility in global and domestic markets, and a challenging operating and financial environment, there was an ongoing focus by NZ RegCo over 2023 on (i) issuer disclosure practices, and (ii) oversight of the accredited brokers servicing NZX's markets, with particular emphasis on ensuring brokers met their

trading conduct, client asset and prudential obligations.

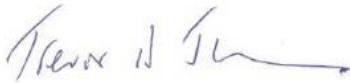
NZ RegCo also continued to work collaboratively with the FMA on detecting and pursuing suspected cases of insider trading and market manipulation. A record 49 matters were referred to the FMA last year by NZ RegCo's Surveillance team. This represents a continued increase in the number of referrals over recent years, and is up from 40 referrals in 2022 and 28 in 2021. Market surveillance is a critical part of our work underpinning market integrity and confidence by investors and market participants in on-market trading. There will be continued vigilance of our monitoring of trading on NZX. That work is supported by ongoing investment in our surveillance infrastructure and domestic and

international network connections (including our participation in the global Intermarket Surveillance Group).

The year ahead

We continue to proactively monitor developing issues and trends that may impact New Zealand's capital markets. That work has informed the development of our areas of regulatory focus – both across our ongoing core work, and the strategic initiatives we will pursue in 2024. Further detail on our key 2024 strategic initiatives is set out on pages 11 and 12 below.

The NZ RegCo Board and management team are committed to driving best practice, and a regulatory environment which supports market integrity and investor confidence.



Trevor Janes
NZ RegCo Board Chairman



Joost van Amelsfort
NZ RegCo CEO

About NZ RegCo

As a licensed market operator under the Financial Markets Conduct Act 2013 (**FMC Act**), the exchange must, to the extent that is reasonably practicable, do all things necessary to ensure that the operation of each of its licensed markets is fair, orderly and transparent.

NZ RegCo plays a vital role in supporting NZX to meet this statutory obligation. NZ RegCo operates as a separate, independently governed entity in performing the exchange's regulatory functions.

Our purpose is to ensure that investors, issuers, and market participants have confidence in the integrity and regulatory oversight of NZX's markets.

In pursuing this purpose, we aim to be a leading, innovative, regional securities exchange regulator that enhances the reputation of, and promotes the development and success of, the New Zealand capital markets and NZX.

Under our charter, NZ RegCo's corporate objectives are to:

- promote and facilitate the fair, orderly, and transparent operation of NZX's markets;
- lead NZX Group efforts to meet the market operator license obligations under the Financial Markets Conduct Act 2013 that relate to the regulation of NZX's markets;
- ensure regulatory activity is risk-based, collaborative and effective, and drives compliance focussed outcomes;
- ensure the delivery of cost-efficient regulatory outcomes reflecting the evolving size of NZX's markets; and
- ensure the delivery of its functions takes into account domestic and international regulatory, market and legal trends relevant to the oversight of NZX's markets.

Investigations and Enquiries

Our investigation and enquiry work is a key way in which we provide oversight of the market.

We become aware of matters that may require investigation in a number of ways. Usually this results from our own compliance monitoring and surveillance work, on-site inspections, capital adequacy reviews and targeted investigations. We also receive enquiries and complaints from members of the public, NZX Participants, and receive referrals from other regulators.

Our response to alleged breaches of the NZX market rules depends on a number of factors, including NZ RegCo's enforcement priorities, the severity of the alleged breach and the impacts it may have on investors and the market, the available evidence, relevant precedent, whether other regulators have jurisdiction over the conduct, and the regulatory outcome that we may achieve if we took enforcement action.

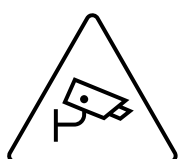


Surveillance

Issuer Regulation

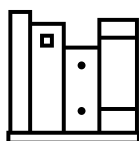
Participant Compliance

Market Conduct



The **Surveillance team** conducts front-line monitoring and investigation of trading on NZX’s listed markets, through a combination of real-time operational oversight of orders and trades, and post-trade reviews. This oversight enables the Surveillance team to:

- identify and respond to situations as they arise during a trading day, for example trading errors, market queries and price enquiries
- monitor activity that may indicate market misconduct, which can include anything from technical rule breaches to potentially unlawful conduct such as market manipulation and insider trading



The **Issuer Regulation team** administers the NZX Listing Rules and FSM Listing Rules. Principal activities undertaken by the Issuer Regulation team include:

- considering applications for new listings
- considering applications for waivers and rulings in relation to the NZX Listing Rules
- reviewing documents for compliance with the NZX Listing Rules
- managing trading halt applications, and
- general assistance and advice in relation to Listing Rule compliance



The **Participant Compliance team** administers the NZX Participant Rules, NZX Derivatives Market Rules, Clearing & Settlement Rules and Depository Operating Rules. The team supervises compliance with those rules by market participants.

Principal activities undertaken in Participant Compliance include:

- considering applications for accreditation as a market participant
- considering applications for waivers and rulings
- capital and prudential inspections and
- investigating rule breaches

The Participant Compliance team performs regular on-site and desk-based inspections to check whether participants are meeting their obligations.



The **Market Conduct team** is responsible for delivery of oversight, monitoring, investigation and enforcement activity, as well as education and project initiatives that support conduct outcomes. Market conduct work includes:

- seeking to facilitate compliance by issuers and participants with their NZX market rules obligations, through engagement and guidance
- investigating suspected breaches of NZX’s market rules and taking action in accordance with NZ RegCo’s enforcement policy

Strategic framework



Our Purpose

To ensure that investors, issuers, and market participants have confidence in the integrity and regulatory oversight of NZX's markets.



Our Vision

Be a leading, innovative, regional securities exchange regulator that enhances the reputation of, and promotes the development and success of, the New Zealand capital markets and NZX.



**Compliant
markets**



**Market
development
and structure**



**Regulatory
empowerment**



**Staffing and
capability**

COMPLIANT MARKETS

We support a compliant NZX markets eco-system, through oversight and enforcement action

NZX's market rules set standards that underpin the operation of fair, orderly and transparent markets. NZ RegCo monitors and enforces the obligations of issuers and participants under NZX's market rules. NZ RegCo activity seeks to deter misconduct by reinforcing conduct expectations that apply under NZX market rules, guidance and market best practice.

We undertake surveillance of trading on NZX's markets to detect possible trading misconduct (insider trading and market manipulation), and we provide timely and effective support to the Financial Markets Authority with its investigation and enforcement of such misconduct.

Outcomes sought

- Issuers and Participants proactively meet their NZX market rule obligations, with behaviours aligned to best practice market expectations and guidance
- Risk-based oversight enables misconduct to be identified, and action to be taken in accordance with NZ RegCo's enforcement policy
- Proportionate enforcement action that advances regulatory outcomes – both punitive and educative
- Confident and informed participation in NZX's markets as a venue for raising and exchanging capital

MARKET DEVELOPMENT AND STRUCTURE

We promote regulatory settings that support market integrity and the ongoing development of NZX's markets and product suite

NZ RegCo contributes to the policy design and implementation process, in support of ongoing investor protections and the operation of fair, orderly and transparent markets.

NZ RegCo provides specialist technical support for:

- onboarding prospective issuers and participants
- the development of new markets and tradable financial products

We bring insights that draw from our frontline activities, and from our environmental scanning of domestic and international market, regulatory and legislative trends.

Outcomes sought

- Market settings that align with best practice, and reflect (i) NZX's position as a regional securities exchange and (ii) the evolving size of NZX's markets
- Regulatory policy strikes a balance between market development / innovation and investor protections

REGULATORY EMPOWERMENT

We provide tools and support that enable issuers and participants meet their NZX market obligations efficiently and effectively

NZ RegCo recognises that the vast majority of the entities that we regulate seek to comply with their NZX market rules obligations. By way of context, NZ RegCo acknowledges that (i) NZX's market settings are subject to change, and (ii) there is a spectrum of capabilities, sophistication and resourcing across the issuer and participant population.

We provide support, resources, and guidance so that issuers and participants:

- have a clear and consistent understanding of their NZX market rule obligations, guidance and market best practice expectations
- are empowered and capable – irrespective of their size or resourcing – to meet their compliance obligations.

Outcomes sought

- We assist our regulated population to comply with their regulatory obligations - and drive improved compliance – by supporting market understanding and awareness of rule obligations, guidance and best practice expectations
- A reduction in the cost of compliance
- Technology solutions and tools facilitate greater automation and efficiency in regulatory interactions with NZ RegCo, and in the way that issuers and participants access and use the NZ market rules

STAFFING AND CAPABILITIES

We attract, develop and retain the employees and capabilities needed to advance our objectives and deliver on our vision and purpose

Domestic and international capital markets are constantly evolving - influenced by market, regulatory and legislative trends and changes in policy settings. It is important that NZ RegCo is across key developments relevant to NZX's markets.

NZ RegCo operates in a competitive environment for talent.

NZ RegCo needs to attract, develop and retain employees, skills and capabilities, that support our ability to advance our objectives and deliver on our vision and purpose.

Outcomes sought

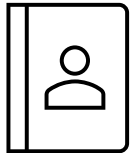
- Ongoing development of team and individual capabilities and capacity
- "Employer of choice" status / desirable place of work
- Improved management access to external expertise

2023 highlights



Trade with caution

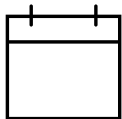
In Q4 2023, NZ RegCo implemented a “trade with caution” alert regime, that supplements its existing price enquiry process. The new alert was introduced to further mitigate the potential risks to market integrity where NZ RegCo considers (i) there may be risk of a disorderly market developing in the trading of securities that hasn’t been adequately addressed through a price enquiry process, or (ii) trading in an issuer’s securities is being affected by ongoing market manipulation. There were no “trade with caution” alerts in 2023.



Regulatory policy development

NZX is responsible for developing and setting the market rules under which NZX's markets operate. During the year, NZ RegCo provided significant technical support to NZX for regulatory policy development initiatives, including:

- review of the Major and Related Party Transaction Guidance Note
 - targeted review of the Listing Rules capital raising settings
 - implementation of enhanced risk management recovery tool settings in the Clearing and Settlement Rules
 - amendments to the NZX Participant Rules and Trading Conduct Guidance Note, to support the introduction of NZX Dark (NZX’s anonymous ‘unlit’ order book) and to enhance NZX’s self-match prevention tool through the introduction of booking purposes only transaction functionality
 - implementation of changes to the NZX Corporate Governance Code and NZX ESG Guidance Note, following the phase II review of NZX’s corporate governance settings
 - “deep dive” of the exchange’s policy settings relating to director independence
 - implementation of amendments to the Prescribed Person Guidance Note
 - recommending changes to the prudential requirements for broker and client crypto assets and emissions unit exposures under the NZX Participant Rules, Derivatives Rules and Clearing and Settlement Rules
-



Market incident planning

NZ RegCo led work to develop formal crisis management protocols relevant to the operation of NZX’s markets. This included a framework for circumstances in which NZ RegCo would likely halt market trading, to ensure NZX can continue to meet its market operator obligations. These protocols were implemented in Q4 2023.



Tribunal penalty setting

NZ RegCo advocated for amendments to methodology for assessing and setting penalties under the Tribunal Rules, to better align with orthodox regulatory practice. Following a policy consultation process in late 2022, NZ RegCo undertook significant work to embed the revised regime in our enforcement procedures. That work is reflected in the Tribunal’s public determinations for the year.

2024 strategic initiatives



Issuer training framework

In 2024, NZ RegCo will launch its online issuer training framework, comprising modules on core listing obligations:

- Continuous disclosure
- Corporate governance
- Periodic reporting
- Issuing securities and raising capital
- Issuer meetings
- Major and Related Party transactions
- Trading halts and suspensions
- NZX regulatory landscape



Markets development

NZ RegCo will provide regulatory support for key market development initiatives over 2024, including:

- “go live” of NZX DARK, the exchange’s new anonymous ‘unlit’ market, on which trades will execute at the mid-point of the current spread of Orders in NZX central limit order book
- the S&P/NZX20 equity derivatives market – focusing on market rules and guidance implementation, review of the market making framework, and surveillance infrastructure
- targeted review of the World Federation of Exchanges’ “green equity” principles regime, including potential application of that regime under NZX Listing Rules and regulatory settings relevant to green equity assurance and designation



Issuer market integrity settings

In 2023, NZ RegCo championed several proposals to improve issuer compliance standards, issuer engagement, and to provide greater transparency on our regulatory approach.

Following market consultation, NZ RegCo will lead work in 2024 to implement the introduction of:

- mandatory training requirements for listed equity issuers
- a revised regime for publication of all trading halt applications, to provide the market with access to information provided directly from the Issuer on the circumstances and rationale for the halt
- requirements for issuers to have a dedicated “authorised representative” to act as a point of contact for the issuer on matters relating to NZX Listing Rule obligations
- a new Guidance Note outlining the expectations that will apply if an issuer seeks to delist from NZX, and when NZ RegCo may exercise discretion to cancel the listing of an issuer under the Rules



Index rebalance thematic review

In recognition of the increased criticality of index days for portfolio rebalancing activity given the ongoing growth in passive funds, NZ RegCo will undertake a thematic review of intra-day and inter-day trading behaviour and volatility around key index rebalance days.



Market trade settings

NZ RegCo will provide regulatory support for the targeted market trade settings review, including development of policy recommendations, market engagement and rules/guidance drafting and implementation workstreams, across:

- Price ticks
 - Price setting trades
 - Order type review (“at market” orders)
 - Trading system order tags
 - Crossing rules (incl. off market threshold)
 - Order expiry
-



Participant rules and guidance

NZ RegCo will undertake targeted reviews of key guidance relevant to market participant obligations under the NZX Participant Rules:

- Trading Conduct Guidance Note
 - Capital Adequacy Guidance Note
 - Client Assets Guidance Note
-

Surveillance oversight

The Surveillance team conducted 121 investigations in relation to potential market abuse and disclosure breaches in 2023.



The following graph represents the different types of SMARTS alerts reviewed by Surveillance in 2023.

Number of Alerts by Category



	%	Number
Unusual Volume Inter-Day	18%	3,198
Unusual Price Movement Inter-Day	16%	2,773
High Order Rate	15%	2,602
Unusual Price Movement Intra-Day	10%	1,852
Large Order	7%	1,318
Momentum Ignition	4%	729
Marking the Close	2%	361
Layering Repeat	1%	225
Painting the Tape	1%	195
Multiparty Collusion	1%	118
Retired Alerts (spoofing)	22%	3,940
Other	2%	374
		17,685

Unusual price movement intra-day	This alert identifies unusual price movements against security specific, volatility-based, benchmarks for multiple intra-day time ranges.
Unusual price movement inter-day	This alert identifies unusual price movements against security specific, volatility-based, benchmarks for multiple inter-day time ranges.
Unusual volume	This alert identifies unusual levels of trading volume against security specific benchmarks.
High Order Rate	This alert identifies participants who enter a large number of orders in a short period of time.
Large order	Highlights participants and clients who enter unusually large orders.
Layering Repeat	This alert highlights accounts that enter multiple orders at multiple price steps on one side of the order book, effectively influencing the market in the desired direction, and then trades against any orders so influenced.
Painting the tape	Highlights accounts which enter orders to execute trades at sequentially higher prices—thus “painting the tape”—and which then attempt to unwind or reverse their position by selling stock. This alert also works in reverse.
Marking the Close	Highlights “excessive” price movements between the regular session close and the closing auction.
Momentum Ignition	Identifies participants endeavouring to trigger other participants (or algos) to trade by “igniting” a rapid price movement in a stock.
Multiparty Collusion	Identifies participants who may be involved in collusive wash trading.
Other	Other alerts, which fire relatively infrequently, include Pump and Dump; Trash and Cash; Phishing; Pinging; and Insider alerts.

In 2023, the Surveillance team conducted 121 investigations arising out of its monitoring and oversight activity, compared to 146 in 2022.

There is a very high correlation between market turnover and the number of alerts received. The number of investigations undertaken reflects the fall in market turnover in 2023 when compared with 2022.

If an investigation warrants escalation, the Surveillance team may refer the investigation to:

- the FMA, if the matter relates to misconduct prohibited under the FMC Act;
- the NZ RegCo Participant Compliance team, if the matter relates to misconduct by accredited market Participants under NZX rules; or
- the Special Division of the NZ Markets Disciplinary Tribunal (Tribunal), if the matter relates to trading in the securities of, or any related entity of, NZX. This includes trading in Smartshares exchange traded funds.

Investigation Factors

The action that is taken in respect of a SMARTS alert, or any other matter identified by the Surveillance team directly, is dependent on the circumstances of the alert. Surveillance considers a number of factors when deciding whether to conduct an in-depth review or commence an investigation. These factors include:

Liquidity

The liquidity of securities trading on the market varies significantly. The levels of liquidity in smaller issuers will often explain abnormal and/or short term price movements.

Underlying client orders and their intentions

Surveillance is interested in alerts that evidence an abnormal trading pattern for a single client. It will seek to understand the motivation for that trading, and investigate the client and its order instructions.

Volume, value and frequency of trades

Surveillance seeks to understand the reason for orders for small quantities being entered over an extended duration, or being entered at or near market close. It also reviews abnormal trading activity around corporate events or key dates, such as month-, quarter- and year-end.

Orders at close

Surveillance monitors the timing and nature of orders entered in the pre-close session, as well as trading activity near the end of each day's regular trading session for activity that has the potential to influence the closing price of a security. It takes particular interest in large orders and orders entered late in the pre-close session, as well as orders entered or cancelled which have an outsize effect on the simulated clearing price of the upcoming closing auction.

Change of beneficial ownership

Surveillance will review trading that appears not to result in a change of beneficial ownership in the relevant security.

Materiality

The following factors will be considered in assessing materiality:

- a volatility-based benchmark of the past trading history of a specific security
- the absolute value of a price impact
- the percentage price or volume movement
- the market capitalisation of the issuer
- the liquidity of the issue, typically measured as the average daily volume; and
- any subsequent market reaction.

FMA Referrals

The FMA has primary responsibility for investigation and prosecution under the FMC Act of (i) alleged breaches of the insider trading and market manipulation provisions, and (ii) alleged breaches of the substantial product holder and/or director and officer disclosure provisions.

NZ RegCo Surveillance referred 49 matters to the FMA for further investigation in 2023, compared to 40 in 2022.

32 referrals related to potential insider trading (up from 19 in 2022) and 6 related to potential market manipulation. The balance generally related to apparent breaches of substantial product holder and directors' and officers' relevant interest disclosure obligations. Surveillance liaises closely with the FMA, both pre- and post-referral, providing it with analytical and quantitative information to support the FMA's enquiries.

Case Study - Oceania Natural Limited

In 2016, Surveillance referred to the FMA a suspected case of market manipulation in Oceania Natural Limited (ONL), then listed on the NXT market. The referral alleged that four individuals, all directly or indirectly involved with the company, had sought to manipulate the ONL share price higher via "circular" and "wash" trading, and by other means.

The FMA commenced civil proceedings against the individuals in 2019.

In 2022, the FMA announced that two of the individuals had admitted to several market manipulation breaches, and had been ordered to pay pecuniary penalties of \$180,000 and \$130,000 respectively.

In April 2023, the High Court found that seven causes of action for market manipulation were proven against the other two defendants - Wei (Walker) Zhong and Lei (Regina) Ding. They were ordered to pay a total of \$2.09 million in penalties.

<https://www.fma.govt.nz/news/all-releases/media-releases/breaches-relating-to-oceania-natural/>

<https://www.fma.govt.nz/news/all-releases/media-releases/penalties-for-oceania-natural-limited-defendants/>

Case Study - Pushpay Holdings Limited

In July 2018, Surveillance referred to the FMA trading by a number of entities in Pushpay Holdings Limited (PPH), for potential breaches of the insider trading prohibition under the FMC Act.

In 2022, the FMA filed proceedings against two individuals as a result of this referral.

In August 2023, an individual was found guilty of insider trading in a criminal trial and was sentenced to six months community detention and a fine of \$100,000. Both individuals remain subject to civil proceedings.

<https://www.fma.govt.nz/news/all-releases/media-releases/guilty-verdict-in-pushpay-insider-trading-case/>

<https://www.fma.govt.nz/news/all-releases/media-releases/fma-acknowledges-insider-trading-sentence/>

Special Division referrals

The Special Division of the NZ Markets Disciplinary Tribunal exercises the powers and functions of NZ RegCo as they apply to NZX Limited and any related entity of NZX. This includes Smartshares, as the issuer of Exchange Traded Funds (ETFs) listed on the NZX Main Board. The Special Division's role is to foster market confidence that the market rules are applied to NZX and any related entity in an impartial and independent manner.

Alerts triggered in the SMARTS surveillance system in relation to the securities of NZX and Smartshares, and other potentially abnormal trading activity in those securities detected by the Surveillance team, are referred to the Special Division of the Tribunal for further analysis. In 2023, the Surveillance team referred 45 matters for further investigation compared to 70 referrals in 2022.

The decline in referrals reflects both lower market turnover in 2023 versus 2022, and further enhancements to the operating protocols which Surveillance and the Special Division have in place to support referrals and reporting.

As part of the 2023 review, amendments were also made to these protocols following the accreditation of NZX Participants as official market makers in the Smartshares ETFs, and the introduction of new SMARTS alerts.

Participant Compliance referrals

In 2023, the Surveillance team referred 11 matters to Participant Compliance, compared with 14 referrals in 2022 and 21 in 2021. Most of these referrals related to potential “disorderly markets” events, or to alleged breaches of NZX Participant rules related to reporting of Negotiated Deals.

Referrals alleging breaches of the NZX Participant Rules have continued to decline over recent years.

As part of Surveillance’s market engagement plan, it has actively reinforced regulatory and best practice expectations on trading conduct with broker dealing teams.

Surveillance liaises closely with Participant Compliance, both pre- and post-referral, providing it with analytical and quantitative information in support of investigations.

Price Enquiries

Surveillance may issue a price enquiry to an Issuer if there has been trading in that Issuer’s securities that cannot be explained to NZ RegCo’s satisfaction by reference to publicly available information or market data.

In determining whether to issue a price enquiry, the Surveillance team assesses:

- the size of the price increase or decrease
- any company announcements
- historic volatility of the stock
- whether the price movement was gradual or sudden
- any industry data, broker recommendations or research analysis

As a result, not every material price movement warrants a price enquiry.

In 2023, Surveillance issued two issuer price enquiries, compared to three in 2022.

Trade with Caution

The issuer Price Enquiry process is intended to act as a cleansing mechanism to support moderation of any potentially anomalous price action of a security.

In 2023, Surveillance introduced a new Trade with Caution alert for instances where this process does not satisfactorily moderate trading, or for situations where it considers there may be ongoing manipulation in the security.

This alert, which will take the form of a third-party material (price sensitive) announcement published to market against the issuer's ticker, is designed as a "second level heightened alert" designed to suggest to investors that they should exercise additional diligence and examine their premise for trading before doing so.

Surveillance regulatory engagement

The Surveillance team interacts with NZX Participants on a daily basis, generally on real-time issues related to the Participant's orders and trading.

The Surveillance team continued delivery of an education programme targeted at the trading

desks and client advisors of NZX Participants, presenting to over 300 NZX Participant dealers and advisors in 2023. This programme provides insight into Surveillance infrastructure, monitoring practices, best practice expectations and the approach to referrals of suspected misconduct.

Algorithmic Trading

NZ RegCo continues to observe an increasing volume of algorithmic trading on NZX's markets, both by general execution algorithms, and by High Frequency Trading firms (HFTs) arbitraging fractional price differences in NZX/ASX dual listed securities.

Surveillance monitoring throughout 2023 did not identify any instances of disorderly trading resulting from HFT algorithmic trading.

There were four instances in 2023 where Surveillance engaged with NZX Participants after identifying execution algorithms not operating optimally. Surveillance notes that none of these instances caused any disorderly trading, but was concerned that, given a slightly different set of circumstances, they had the potential to do so.

Most of these issues related to minor bugs in the algorithms themselves, and most related to their actions during the pre-open and pre-close sessions of the trading day. These algorithms occasionally appeared to enter into a "loop" with themselves, reacting to their own orders when trying to maintain a certain percentage of the volume in the opening or closing auctions.

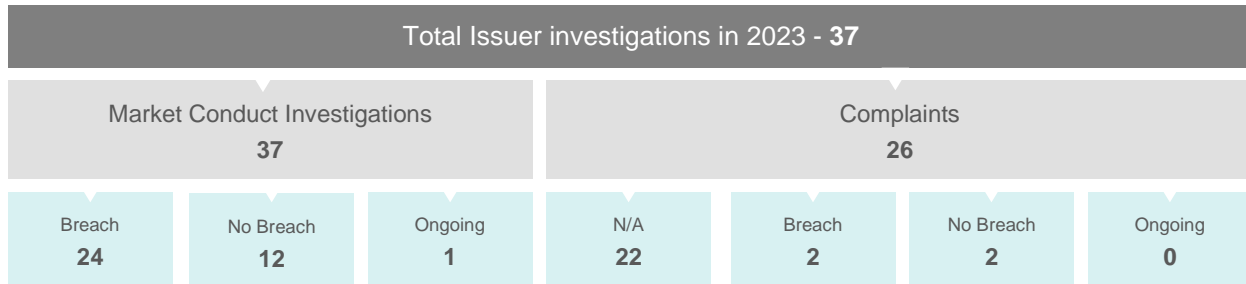
Surveillance found that end user clients (frequently offshore brokers) were open to constructive engagement on these issues and, in all cases, fixed the bugs, or made the changes requested.



Issuer oversight

The Market Conduct team conducted 37 investigations in 2023, in relation to conduct by listed Issuers.

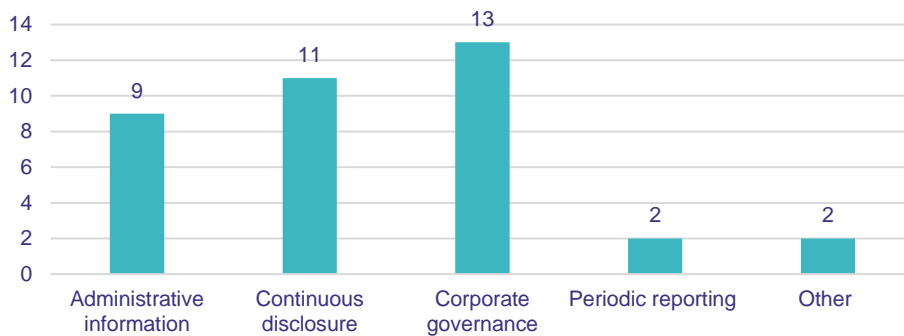
Issuer investigations



In 2023, Market Conduct conducted 37 investigations. A number of these investigations stemmed from complaints lodged with NZ RegCo. One investigation remained ongoing at year end.

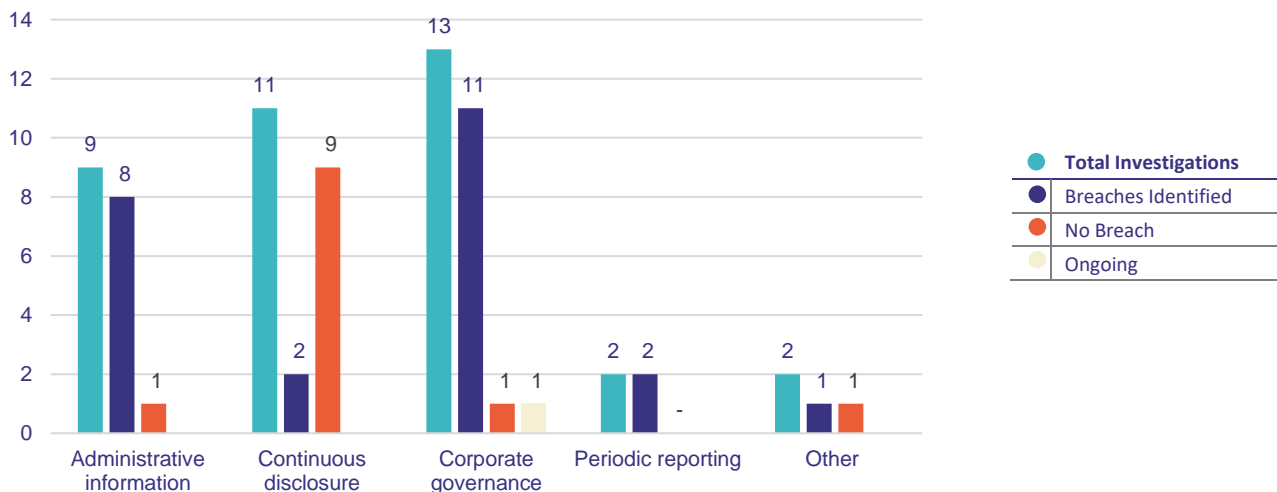
There was a marked increase in the number of investigations into issuer conduct over 2023. That increase was primarily represented by work that followed a targeted review of issuer corporate governance practices in mid-2023.

Issuer Investigations



Of the 36 investigations concluded during 2023, 24 resulted in breaches being identified.

Investigation outcomes



Corporate governance

There was a material increase in the number of investigations and breach findings related to issuers' corporate governance obligations in 2023.

During the year, Market Conduct undertook a targeted review of equity issuers' governance practice, which focused on validating issuers' compliance with Board and audit committee composition obligations under the Listing Rules. That review identified a number of issuers with improperly constituted audit committees. In a number of instances, the nature and extent of the breaches warranted enforcement action via the NZ Markets Disciplinary Tribunal. In four instances, NZ RegCo determined to impose infringement notices on the relevant issuers – see further the Enforcement section below. In all cases, NZ RegCo ensured affected issuers remedied the relevant breach.

Continuous disclosure

NZ RegCo completed 11 investigations into continuous disclosure matters in 2023. Two matters were determined to have been in breach of the Listing Rules. One matter was referred to the NZ Markets Disciplinary Tribunal – see further the Enforcement section below. The other matter was, based on the very specific factors that applied, addressed via an obligations letter. As with previous years, Market Conduct's continuous disclosure investigations required analysis and assessment of complex fact patterns, and the exercise of judgement by boards and management teams.

There was an increase in engagement with the FMA in relation to the outcomes of continuous disclosure investigations, which stemmed from new procedures developed under the NZ RegCo and FMA MoU.



Issuer monitoring framework

To support issuer oversight, the Market Conduct team has a comprehensive issuer monitoring framework in place. That framework includes arrangements for:

- oversight of events relevant to assessing issuers’ continuous disclosure, including (i) media monitoring, and (ii) reviews triggered by automated price movement alerts, with tiered trigger thresholds based on issuers’ market capitalisation and index status
- sample and targeted review of financial statements and annual reports (including the quality of disclosures against the NZX Corporate Governance Code)
- oversight of disclosures by ASX Foreign Exempt issuers on their home exchange – to monitor compliance with issuers’ obligations to contemporaneously release announcements across ASX and NZX
- an “issuer risk list”, with additional tailored oversight activities undertaken for issuers assessed by NZ RegCo as being subject to particular conduct, operational, financial, or sector specific risks (such as a history of compliance or financial reporting issues).

Complaints about Issuers

NZ RegCo received 26 complaints in relation to Issuer conduct in 2023. Four of these complaints resulted in formal investigations by Market Conduct. Although the level of complaints represents a material increase on the 13 complaints received in the prior year, it is noted that eight complaints were made by one complainant in respect of one specific issuer.

Complaints received by NZ RegCo which allege a breach of the Listing Rules, and meet the threshold for investigation, are investigated in accordance with NZ RegCo’s enforcement policy.

Many complaints related to matters outside NZ RegCo’s remit. If NZ RegCo receives a complaint alleging matters which are not regulated by the Listing Rules (for example, corporate law or obligations under the FMC Act), NZ RegCo will refer it to the regulator with the appropriate regulatory mandate. In some cases, there is no further action that can be taken.

Of the matters investigated arising from complaints, two resulted in referrals to the NZ Markets Disciplinary Tribunal and one in the issuance of an obligations letter.

Applications and transactions

Under the NZX Listing Rules, NZ RegCo is required to review various documents prior to publication by the Issuer and also to consider applications for quotation of new securities. NZ RegCo has the power to grant waivers and rulings from Listing Rule obligations. NZ RegCo can also grant designations on request from issuers in respect of quoted securities, for example in relation to green bonds or sustainability bonds. This type of transactional work makes up a relatively large proportion of the day to day work of the Issuer Regulation team.

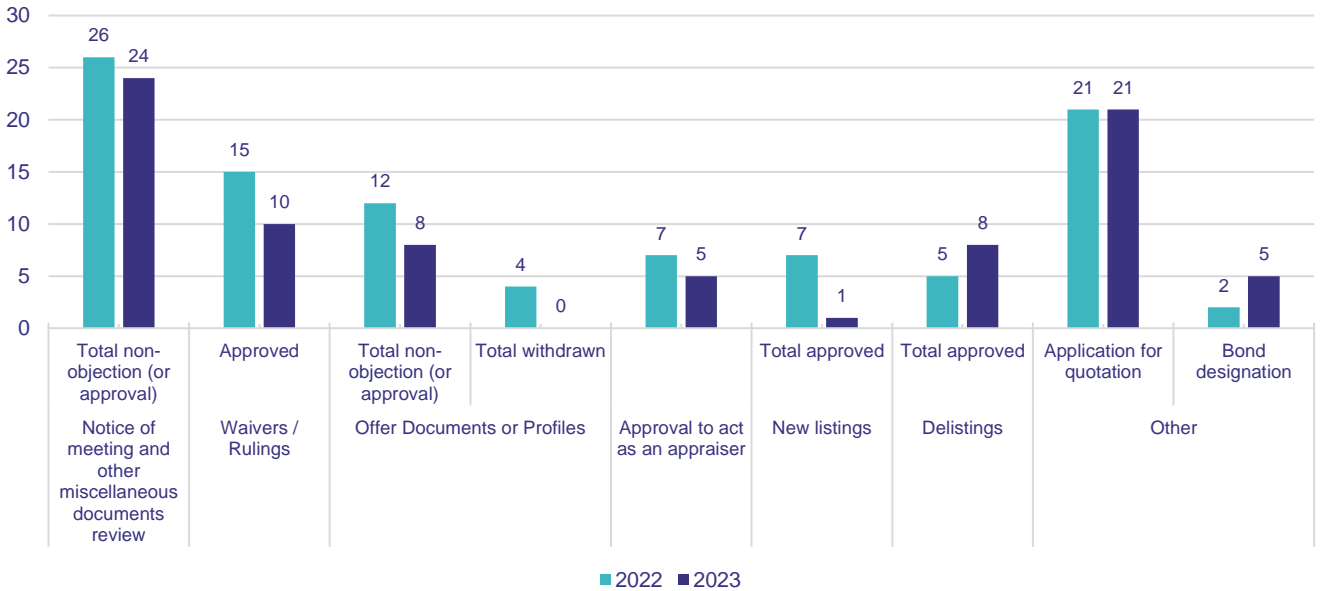
Transaction reviews often involve significant engagement with Issuers and their advisers, for example in relation to technical waivers. NZ RegCo’s operating and governance procedures also provide for escalation of certain matters to the NZ RegCo CEO for consideration, and certain prescribed “reserved matters” under the NZ RegCo Charter require NZ RegCo Board approval.

NZ RegCo will also engage with other regulators, such as the Financial Markets Authority or the Takeovers Panel, in relation to certain applications.

In 2023, Issuer Regulation undertook the following application and transactional work. The number of applications reviewed by NZ RegCo in 2023 was slightly down on previous years

reflecting market activity. Market conditions also impacted the number of waiver and ruling decisions related to corporate transactions.

Issuer applications

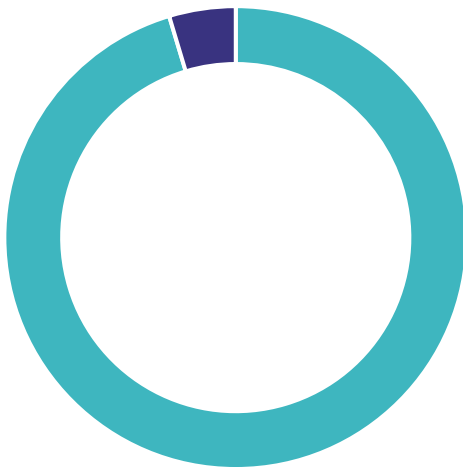


Trading halts and suspensions

Trading halts and suspensions are important tools for NZ RegCo to ensure the fair, orderly and transparent operation of NZX’s markets. During 2023, NZ RegCo applied 41 trading halts, and two

suspensions. This represents a slight increase from last year, but is broadly in line with average numbers for each year.

Trading halts and suspensions



	2022	2023
Trading Halts	32	41
Suspensions	2	2

During 2023, NZ RegCo approved trading halt applications in relation to:

- the bookbuild component of capital raises;
- issuers requiring time to consider and correct information in the market;
- issuers requiring time to consider and respond to announcements by third party regulators; and
- foreign exempt issuers releasing financial reports to their home exchange.

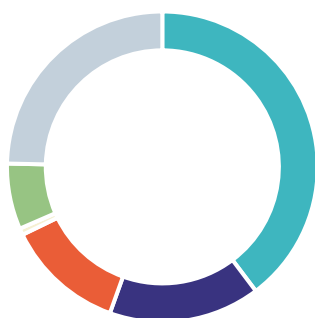
NZ RegCo also has discretion under the Listing Rules to apply trading halts and suspensions. During 2023, NZ RegCo exercised that discretion in a number of situations to enable issuers to manage their continuous disclosure obligations. That included circumstances where issuers were required to assess and respond to third party information, correct material information previously released, and in response to announcement of a reverse listing transaction.

Issuer engagement initiatives

Issuers, advisors and wider capital markets stakeholders continue to engage with NZ RegCo on issuer related queries. These queries are managed by both the Issuer Regulation and Market Conduct

teams. In 2023, NZ RegCo received 146 formal queries regarding application of the Listing Rules or other Issuer related matters.

Regulatory queries



● NZX issuer or prospective issuer	58
● Law firm	23
● Member of the public	18
● Regulator	1
● Other (for example market participant or accountancy firm)	10
● Internal NZX query (seeking subject matter expertise)	36
Total	146

Queries provide NZ RegCo valuable insight into how the market is interpreting certain Listing Rules and published guidance, and using NZX templates. These insights support NZ RegCo advocacy work with NZX Policy, to ensure the form of NZX's market rules and published guidance are achieving desired regulatory outcomes.

NZ RegCo is proactive in monitoring market announcements and matters that may impact issuers. Work undertaken in 2023 to further assist the market includes:

- Presenting on key trends and strategic initiatives at the NZX Issuer Forum;

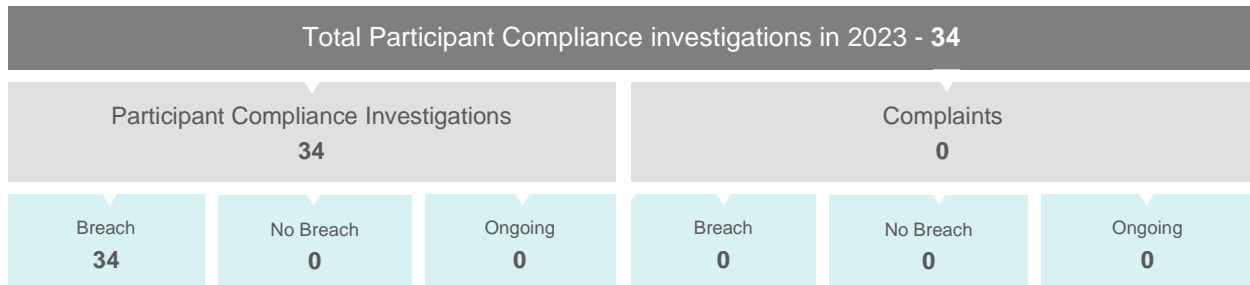
- Reviewing and updating NZ RegCo Practice Notes, and making templates more accessible to users¹;
- Drafting new Practice Notes to support the revised Listing Rules in relation to capital raises;
- Drafting new Practice Notes to assist Fund Issuers and Wholesale Debt Issuers with Listing Rule compliance; and
- Providing wider market guidance in the NZX Issuer Updates that are published quarterly.²

¹ <https://www.nzx.com/regulation/nzx-rules-guidance/nzx-mo-announcements/practice-notes>

² <https://www.nzx.com/regulation/nzregco/publications>

Participant oversight

The Participant Compliance team conducted 34 investigations in 2023, in relation to conduct by accredited NZX Participants.



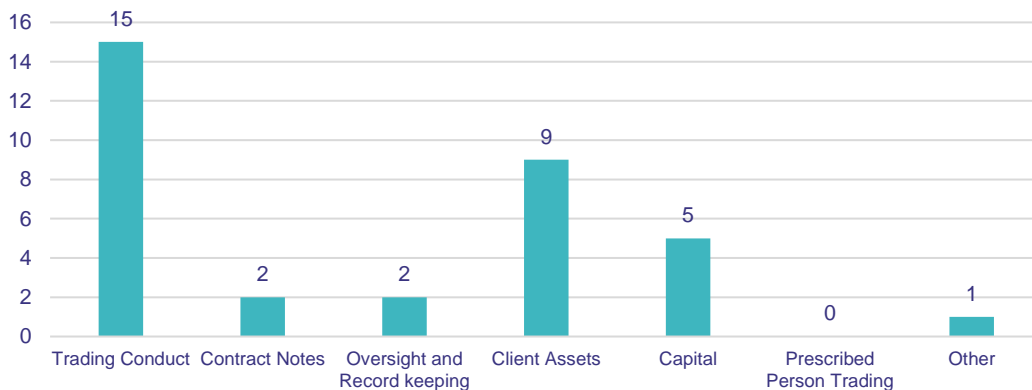
Participant investigations

The Participant Compliance team investigated 34 matters during 2023, relating to a range of compliance issues. All of the investigations were concluded during the year.

Of the 34 investigations conducted, 30 were specific to the Participant Rules, while two investigations related to conduct covered under both the Participant Rules and the Clearing & Settlement Rules and Procedures and two related to conduct covered under each of the Participant Rules, Derivatives Market Rules and the Clearing & Settlement Rules and Procedures.

NZ RegCo continued to actively engage with Participants throughout 2023, with a focus on the correct application of the Rules, timely reporting of potential breaches and assisting Participants to improve policies and controls in order to support best practice.

Participant investigations



A significant proportion of the investigations for 2023 related to trading conduct, client assets and capital adequacy, reflecting the complexity and importance placed on these areas. As with 2022, no credit events arose during 2023.

In each of the investigations concluded during 2023, NZ RegCo determined there to have been breaches of the relevant NZX Rules.

Trading Conduct

Similar to 2022, trading conduct matters accounted for approximately 40% of all investigations conducted in 2023, although the total number of investigations for the period reduced from the previous year. Trading conduct remains a critical area of focus for NZ RegCo. This reflects the importance of trading behaviours to the fair, orderly and transparent operation of the markets.

The significant majority of breaches in relation to trading conduct represented relatively minor breaches of the rules. 11 investigations warranted no further regulatory action, while three matters resulted in obligations letters being issued, formally recording details of the relevant breach, reminding the Participant of its compliance obligations, and requiring improvements to their processes. One matter was referred to the NZ Markets Disciplinary Tribunal (see further Enforcement, below).

Client Assets

NZ RegCo identified nine breaches relating to client assets in 2023. NZ RegCo observed some incidents of inadvertent operational errors being made by a Participant or their bank giving rise to breaches. In such cases, NZ RegCo's focus is to ensure that the Participants involved held

Inspection regime

In 2023, the Participant Compliance team conducted inspections of 12 Participants.

Inspections were carefully targeted and placed particular focus on high-risk areas of a few fundamental topics, with a tailored approach applied to any increased risk level for a particular Participant. The inspection programme focussed on the management of these risks, identifying industry trends and looking more closely at key risks specific to the Participant's business and compliance history. A focussed review of the selected areas of Participants' businesses was conducted, including verifying and testing the mechanical accuracy of key calculations/reconciliations and explored the specific controls and monitoring in particular areas of higher risk both across the industry and specific to each Participant's business model. The inspections captured all applicable NZX Rule sets and included both industry wide considerations and Participant specific ones, so they could be tailored to each Participant's business and particular risks.

aggregate asset balances that were greater than their payment obligations, ensuring that their clients were not exposed to actual risk. Seven investigations warranted no further regulatory action, while there were two instances where NZ RegCo issued obligations letters to Participants requiring that specific enhancements be made to their processes.

Capital Adequacy

NZ RegCo saw fewer investigations related to capital adequacy in 2023, with a total of five breaches identified. All five were determined to warrant no further regulatory action, although NZ RegCo reinforced its conduct expectations in each case.

Clearing and Settlement: Credit Events

A credit event is generally declared when a Clearing Participant has not met one of its margin or settlement obligations. This could be due to a range of reasons and does not necessarily indicate an issue with liquidity, however credit events are a key focus for NZ RegCo due to the potential risk to the market. No Credit Events arose during 2023

Complaints about Participants

Participant Compliance received no complaints in relation to a Participant in 2023.

Topics covered included trading conduct (incorporating direct market access and prescribed person trading), risk management practices and compliance monitoring. NZ RegCo also conducted inspections of other key areas such as capital adequacy, client assets, clearing & settlement processes and market making activity, where relevant to the Participant.

NZ RegCo continued to work with Participants in support of their understanding and meeting best practice compliance standards. NZ RegCo introduced a revised report format in 2023 which includes more comprehensive coverage of the inspection process and findings.

NZ RegCo identified one breach during the 2023 inspection programme (compared to five the previous year) and made 10 good practice recommendations. The focus of the good broking practice recommendations was client assets and capital adequacy related matters. These remain areas of significant importance to NZ RegCo as they help to ensure controls and procedures are

operating as they should, which in turn helps to protect clients and their assets as well as contributing to market integrity.

Participant regulatory engagement Accreditations and designations

Participant Compliance received 62 applications for accreditation and designation in 2023.

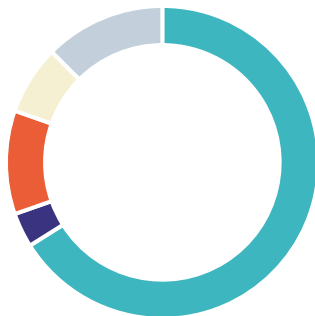
The team considered 56 applications for designation from individuals. These designations included various categories of:

- advisers, which allow the designated individuals to provide advice regarding NZX listed products;
- dealers, which allow the designated individuals to enter orders directly into the exchange’s trading system; and

- management designation, which allow the designated individuals to hold a particular position of responsibility within a Participant.

An individual can hold more than one designation at any time therefore the number of applications considered does not necessarily reflect the number of individuals who received designations during 2023.

Approved Designation Applications



NZX Advisor	37
Derivatives Adviser	2
Dealer	6
FSM Dealer	4
Other	7
Total	56

NZ RegCo assessed six Participant accreditation applications in 2023, one for recognition as a Depository Participant, four for recognition as Market Makers and one combined application for recognition as a Trading and Advising, Clearing

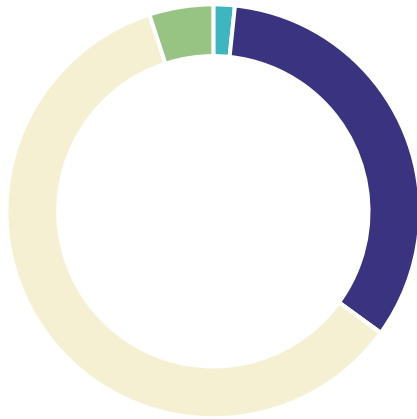
and Depository Participant. NZ RegCo declined this combined application, on the basis that it was not satisfied that the applicant met, and could confidently be expected to meet on an ongoing basis, the obligations of such an accreditation.

Regulatory applications

Regulatory applications cover approvals, exemptions, permissions, rulings and waivers. In

2023 Participant Compliance considered and approved 60 applications.

Participant regulatory applications



● Approval	1
● Permission	20
● Ruling	0
● Subordinated debt	36
● Waiver	3
Total	60

Enforcement

NZ RegCo takes into account a number of factors when considering what outcome is appropriate if we identify a breach of NZX’s market rules. While not an exhaustive list, such factors include the:

- Nature of the breach and whether it relates to an enforcement priority
- Impact of the breach
- Market rule that has been breached and precedent
- Person or entity that has breached the rule
- Respondent’s level of cooperation with NZ RegCo’s investigation
- Effect that enforcement action could have on the market, the regulatory outcome we would seek to achieve by taking enforcement action, and whether other remedial action is possible or has been taken

Enforcement activity	Participants	Issuers	Total
Matters where breaches were referred to the Tribunal	1	6	7
Infringement notices issued	0	4	4

The NZ RegCo Enforcement Policy sets out NZ RegCo’s enforcement goals and priorities, our process for investigating potential Rule breaches, the factors we consider when deciding whether to take enforcement action, and an overview of what our investigation process looks like. The Enforcement Policy is subject to period review. The current version of the policy can be found [here](#).

Referrals to the Tribunal

NZ RegCo referred seven Rule breaches to the Tribunal in 2023. This was a material increase on 2022, when only one matter was referred, but is broadly in line with historic average referral rates.

All matters referred to the Tribunal during the year were subject to the revised two-stage penalty assessment regime under the Tribunal rules and procedures, which was implemented in October 2022.

Tribunal determinations

Issuer / Participant	Summary of Case	Key Learnings
<p>Hallenstein Glasson Holdings Limited (HLG)</p> <p>NZMDT 1/2023</p>	<p>Governance Requirements</p> <p>Obligations relating to Director independence and Audit Committee</p> <p>HLG breached:</p> <ul style="list-style-type: none"> NZX Listing Rule (Listing Rule) 2.6.3 – relating to the obligation to disclose an amended determination regarding Director independence; and Listing Rule 2.13.2(c) – relating to the obligation to have a majority of Independent Directors on its Audit Committee. <p>The breaches stemmed from the Board making a determination that a Director was an Independent Director but not announcing that change for three weeks. HLG’s Audit Committee did not have a majority of Independent Directors for four years, although the potential impact of the breach was reduced as its Audit Committee was chaired by an Independent Director and comprised only non-Executive Directors, and no actual harm or market impact was identified.</p> <p>The Tribunal ordered a public censure, a \$75,000 penalty, and a costs award.</p>	<p>The Audit Committee requirement to have a majority of Independent Directors is an important shareholder safeguard. The requirement supports an unbiased and robust audit process and ensures sufficient separation from an issuer’s management.</p> <p>A breach of Listing Rule 2.13.2(c) has the potential to cause significant impact on investors and the market. Audit Committee deficiencies may lead to a lack of confidence in the price discovery process, which is an important component of market integrity.</p> <p>Accordingly, issuers should ensure they keep under regular review their Audit Committee composition requirements set out in Listing Rule 2.13.2, including whether the majority of that committee are Independent Directors.</p> <p>While administrative disclosure breaches may not be significant in isolation, they can still be relevant to an issuer’s overall conduct in the context of wider breaches, and so may be considered by the Tribunal in its penalty assessment.</p> <p>This case also highlights the importance for issuers to conduct thorough and robust compliance checks each year on the information to be included in their annual reports to ensure their disclosure obligations are met.</p> <p><i>Tribunal Procedures</i></p> <p>This matter was the first to be determined by the Tribunal following changes to the penalty setting regime made in October 2022.</p> <p>The Tribunal reinforced that:</p> <ul style="list-style-type: none"> the Procedures for assessing penalty do not operate in a fixed or mechanical way; the Tribunal will ultimately exercise its discretion to determine the appropriate penalty when considering the overall circumstances of the matter; the Procedures provide a framework, which identifies some, but not all, factors relevant to penalty-setting; and legacy decisions of the Tribunal (i.e. which preceded the 2022 Tribunal Rules and Procedures changes) are of limited value as a comparison for assessing penalties. <p>Generally, in assessing whether there was potential harm to investors or the market from a Rule breach, the Tribunal will look at the nature of the harm that the relevant Rule is seeking to prevent and to assess the potential for that harm to occur at the time of the breach.</p> <p>Note, discounts were given for mitigating factors, including early admission of the breach, cooperating fully with NZ RegCo’s investigation, committing to taking steps ensure compliance with the Listing Rules and NZX Corporate Governance Code, and having a good compliance history.</p>
<p>2 Cheap Cars Group Limited (2CC)</p> <p>NZMDT 2/2023</p>	<p>Governance Requirements</p> <p>Obligations relating to Composition of Board of Directors and Audit Committee</p> <p>2CC breached:</p> <ul style="list-style-type: none"> Listing Rule 2.1.1(c) – relating to the obligation to have at least two Independent Directors on a Board; and Listing Rule 2.13.2(c) – relating to the obligation to have a majority of Independent Directors on an Audit Committee. 	<p>The policy intention behind Listing Rule 2.1.1(c) is to ensure there is sufficient independent perspective to Board decision-making and to give confidence to investors that their interests will be represented.</p> <p>Issuers should be mindful of the requirements for qualifying as an Independent Director. If a director enters into a contract or transaction with an issuer, the issuer should consider whether both limbs of the Independent Director definition remain satisfied – no Disqualifying Relationship and not an Employee. Both “Disqualifying Relationship” and “Employee” are defined in the Listing Rules.</p> <p>Issuers should keep under regular review their Board composition, including reviewing the impact of any director relationships or transactions which may impact on the director’s independence.</p>

Issuer / Participant	Summary of Case	Key Learnings
	<p>The breach stemmed from a member of the Audit Committee acting as a contractor, and therefore Employee, of a 2CC subsidiary for an eight-week period. The potential impact of the breach was reduced given 2CC’s Board was Chaired by an Independent Director, who was also a member of the Audit Committee, and that the Director who was an Employee did not have a Disqualifying Relationship. No actual harm or market impact was identified as a result of the breach.</p> <p>The Tribunal was also concerned by statements in 2CC’s annual report. One statement referred to 2CC having considered the Director to be an Independent Director at the balance date and one statement referred to the Board having the requisite two Independent Directors as at 31 May 2023, which was after the 2CC balance date. While both statements may have been true, they had the potential to give false impression that 2CC had complied with the Listing Rules when it had not.</p> <p>The Tribunal ordered a public censure, a \$40,000 penalty, and a costs award.</p> <p>The Tribunal’s determination was affirmed on appeal.</p>	<p>The requirement to have at least two Independent Directors is central to the Board composition Listing Rules. If an issuer has only the minimum number of Independent Directors, it must be particularly cognisant of these requirements to ensure ongoing compliance. The risk from having a minimum number of Independent Directors should be mitigated, where possible, through the appointment of additional Independent Directors.</p> <p><i>Tribunal Procedures</i></p> <p>All issuers are required to comply with the Rules, regardless of size. When investors trade on the NZX they expect that the Rules apply to all issuers (unless they are designated Non-Standard). This is particularly important in respect of the Listing Rules intended to protect interests of shareholders, such as the corporate governance requirements.</p> <p>There may be circumstances when an issuer’s size is a contributing factor relevant to assessing penalty. However, an issuer’s size is not, by itself, a fact which should contribute to the assessment of the seriousness of the breach given that all issuers are required to comply with the Listing Rules.</p> <p>Similarly, an issuer’s size may be relevant when assessing mitigating or aggravating factors, but size is not, by itself, a mitigating or aggravating factor.</p>
<p>Participant A NZMDT 3/2023</p>	<p>Access to Trading System</p> <p>Participant A breached NZX Participant Rules 3.13(a), 3.13(c), 4.5.1, 4.5.2, 4.5.5, 10.7.1 and 21.7.1, relating to employee supervision, preventing unauthorised access to the Trading System, and promptly notifying NZX of a breach of the Rules.</p> <p>The breaches stemmed from a new employee, who was not a Dealer, being granted access to Participant A’s order entry system, which must be restricted to Dealers only under the Participant Rules.</p> <p>The employee had access to the Trading System for eight weeks.</p> <p>The Tribunal approved a settlement agreement, including a private reprimand, a \$30,000 penalty, and costs.</p>	<p>The NZX Participant Rules relevant to this case are intended to ensure that only appropriately qualified people who have been accredited by NZX and who understand all the applicable Rules relating to trading conduct, Good Broking Practice and the relevant Guidance Notes, can access the Trading System.</p> <p>The requirement that only Dealers (or DMA Authorised Persons) may have direct access to the Trading System is important. Unauthorised use of the Trading System can disrupt an orderly market and impact market integrity. Trading Participants must ensure they maintain and enforce appropriate security procedures and controls to prevent unauthorised use of the Trading System.</p> <p>Participants should ensure its Employees are adequately supervised, to prevent unauthorised access to the Trading System.</p> <p>Participants should also ensure prompt reporting of breaches as required under NZX Participant Rule 21.7.1, even when a Participant’s own investigation is being conducted. Further information can be provided once that investigation is conducted.</p> <p><i>Tribunal Procedures</i></p> <p>When assessing the duration of a breach, the Tribunal will have regard to the nature of the breach. Some rules are more time sensitive than others. Where an individual has unauthorised access to the Trading System, the longer the breach continues, the greater the risk to market integrity as more orders are entered.</p> <p>The time taken to remedy a breach is also a relevant consideration to the duration of a breach.</p>

Issuer / Participant	Summary of Case	Key Learnings
<p>Millennium & Copthorne Hotels NZ Limited (MCK)</p> <p>NZMDT 4/2023</p> <p>CDL Investments New Zealand Limited (CDI)</p> <p>NZMDT 5/2023</p>	<p>Governance Requirements and Disclosure</p> <p>Obligations relating to Audit Committee and Further Annual Report content for Issuers of Equity Securities</p> <p>MCK and CDI each breached:</p> <ul style="list-style-type: none"> Listing Rule 2.13.2(b) – relating to the obligation to have an Audit Committee of at least three members; Listing Rule 3.8.1(b) – relating to the obligation for “comply or explain” disclosure against the NZX Corporate Governance Code; and Listing Rule 3.8.1(d) – relating to disclosure of evaluation of an issuer’s performance with respect to its diversity policy. <p>The Audit Committee breaches stemmed from an Executive Director stepping down from MCK and CDI’s Audit Committees. MCK and CDI also failed to fully comply with their annual report disclosure requirements over six successive reporting periods.</p> <p>The Tribunal ordered a public censure, a \$50,000 penalty (\$35,000 for the Audit Committee breach and \$15,000 for the Annual Report breaches), and a costs award against for each issuer.</p>	<p>Having an Audit Committee with at least three members is an important component to ensuring a robust Audit Committee. It is intended to ensure there are sufficient different perspectives to perform an Audit Committee’s responsibilities. The potential harm is that a two-member Audit Committee is less robust.</p> <p>As noted in the above determinations, an issuer should keep under regular review its Board and Audit Committee composition. Issuers should ensure they have a plan to ensure ongoing compliance with the Audit Committee requirements of the Listing Rules, whenever a director steps down from the Audit Committee changes.</p> <p>Annual report disclosure requirements are intended to ensure investors and the market receive sufficient information about an issuer’s governance practices where they differ from Code recommendations and to assess an issuer’s performance against its diversity policy, where it has chosen to adopt one. This information is important in ensuring investors and the market can make informed decisions and can engage in corporate governance matters.</p> <p>The potential harm is that investors and the market are not adequately informed. An isolated failure by an issuer to report against a NZX Corporate Governance Code recommendation will likely constitute a minor compliance breach. However, failing to report against several Code recommendations and to report on performance against a diversity policy over several successive reporting periods can amount to a moderate compliance breach for the purposes of the penalty assessment factors.</p> <p>Issuers should implement thorough and robust compliance checks each year on information included in their annual reports, and engage internally and with external advisers to keep these checks up to date for each reporting period. This includes validating the issuer has met the annual report content requirements under the Listing Rules.</p> <p><i>Tribunal Procedures</i></p> <p>These were the first penalties imposed for breaches of the Listing Rules and NZX Corporate Governance Code “comply or explain” regime. The “comply or explain” regime has been in place since 2017. The Tribunal noted that, while there may have been initial tolerance to non-compliance while the regime was imbedded, and the Code underwent further refinement, issuers should be fully aware by now of the reporting requirements.</p> <p>While an issuer is not required to self-report a breach under the Listing Rules, doing so is a potential mitigating factor.</p>
<p>Enprise Group Limited (ENS)</p> <p>NZMDT 6/2023</p>	<p>Continuous Disclosure</p> <p>Release of material information</p> <p>ENS breached Listing Rule 3.1.1 – relating to the obligation to release material information promptly and without delay.</p> <p>The breach of Listing Rule 3.1.1 stemmed from the delayed release of Material Information by ENS on 1 August 2022, when it should have released the Material Information promptly and without delay after becoming Aware of the Material Information on 27 May 2022. The Tribunal did not consider that ENS was in an on-going negotiation of the type contemplated by Listing Rule 3.1.2(a)(ii).</p> <p>The Tribunal ordered a public censure, a \$60,000 penalty, and a costs award.</p>	<p>The requirement under Rule 3.1.1 to immediately disclose Material Information to the market is a fundamental obligation for issuers. The Listing Rules are intended to ensure that New Zealand’s listed capital markets are efficient, transparent and fair. Given the importance of continuous disclosure to market integrity, a breach of Listing Rule 3.1.1 is a serious compliance breach.</p> <p>When issuers become Aware of information that is potentially Material Information, they must consider their continuous disclosure obligations at that time.</p> <p>The exception in Rule Listing 3.1.2(a)(ii), that “the information concerns an incomplete proposal or negotiation”, is intended to ensure parties are not forced to disclose information to the market at a time when it may prejudice ongoing negotiations before an agreement is struck. The exception ceases to apply once the proposal or negotiation is complete, which is generally considered to be when both parties sign an agreement to implement or give effect to a transaction or arrangement. The Tribunal considered the exception may also apply in circumstances where there is an existing agreement between parties, but both parties are negotiating a</p>

Issuer / Participant	Summary of Case	Key Learnings
	<p>In determining the penalty, the Tribunal gave particular weight to ENS’s genuine belief that it was in an incomplete negotiation in complex circumstances and to ENS’s ongoing commercial viability.</p>	<p>variation to that agreement, or a new agreement, which requires both parties’ consent to implement.</p> <p>Issuers should make contemporaneous records, so it can evidence its consideration of whether the information is Material Information and of whether any safe harbour provisions applied.</p> <p><i>Tribunal Procedures</i></p> <p>In assessing whether a continuous disclosure breach caused any loss or had an impact on investors or the market, the Tribunal will consider whether harm arose from the delayed release of the relevant information, not whether the harm arose from the Material Information itself, in circumstances of an illiquid stock where the Material Information was subsequently released and no trading occurred during a period of information asymmetry.</p> <p>The Tribunal Procedures include as a possible mitigating factor, the starting point penalty having an adverse effect on the ongoing commercial viability of the Respondent. The Tribunal confirmed this mitigating factor does not relate to the issuer’s size. Rather, it relates to the financial position of the issuer and whether the starting point penalty would adversely affect its ongoing commercial viability. A relatively high threshold is required before this mitigating factor will apply, given the penalties imposed by the Tribunal are intended to be punitive.</p>
<p>TruScreen Group Limited (TRU) NZMDT 8/2023</p>	<p>Governance Requirements</p> <p>Obligations relating to Audit Committee</p> <p>TRU breached Listing Rule 2.13.2(b) – relating to the obligation to have, at all times, an Audit Committee comprised of at least three members.</p> <p>The breach stemmed from a director ceasing to be a member of the Audit Committee. While TRU’s Audit Committee had only two members for nearly three years, TRU did comply with the other requirements of Listing Rule 2.13.2. Both members were Independent Directors and at least one member had an accounting background, reducing the seriousness of the breach.</p> <p>The Tribunal ordered a public censure, a \$25,000 penalty, and a costs award.</p>	<p>As noted in the MCK (NZMDT 4/2023) and CDI (5/2023) determinations, having an Audit Committee with at least three members is an important component to ensuring a robust Audit Committee. Issuers should have procedures in place for replacing directors on key committees in the event that a director steps down.</p> <p>If a corporate governance breach is identified, issuers should act urgently to rectify the breach rather than wait for its next scheduled Board meeting.</p>

Infringement notices

Under the infringement notice regime, NZ RegCo can issue fines of up to \$10,000 for minor breaches of the market rules.³ These are an effective enforcement tool for NZ RegCo and avoid the cost and time that might otherwise be incurred if the breach required a formal Tribunal determination, but still permit a financial penalty

to be imposed.

NZ RegCo issued four notices in 2023 (2022: five).

In each case, the infringement notice related to issuers failing to meet the minimum membership requirements for their audit committees under the Listing Rules.

³ Penalty Band 1 breaches under the NZ Markets Disciplinary Tribunal Rules.

Discipline Fund

This section details the use of the proceeds of the Discipline Fund, as set out in the Discipline Fund accounts.

Proceeds of the Discipline Fund may be used in accordance with Tribunal Rule 9.5.1. These uses of the Discipline Fund include:

- seminars and other education initiatives in respect of regulation of NZX’s markets;
- redrafting NZX’s markets rules and any other rules and regulations of NZX, the Clearing House or the Depository;
- enforcement of NZX’s markets rules and any other rules and regulations of NZX, the Clearing House or the Depository;

- the costs and expenses of the Tribunal; and
- any other use with the prior written consent of the Financial Markets Authority.

In 2023, the Discipline Fund was utilised to support:

- rules review processes affecting the NZX Listing Rules and Clearing and Settlement Rules;
- non-recoverable costs of the Tribunal members (including where the Tribunal imposed capped costs awards);
- external advisory support for complex investigations relating to issuers’ continuous disclosure and periodic disclosure; and
- development of the issuer training modules.

12 Months to	31-Dec-23
Fines and costs	475,971
Expenses of NZ Markets Disciplinary Tribunal	
Executive Counsel costs	106,890
NZ Markets Disciplinary Tribunal Member costs	121,382
Legal Advisory costs	72,018
Rules Review costs	55,056
Disbursements	128
Educational Expenditure	23,691
Other Incidentals	2,787
Market Education	33,960
Investigations	-
Ongoing procedures	3,765
Bad/Doubtful Debts	-
Bank fees	4
Total Expenses	419,682
Interest Income	16,247
Tax expense	18,744
Surplus (Deficit) for the period	53,792
Accumulated Surplus (Deficit)	415,166