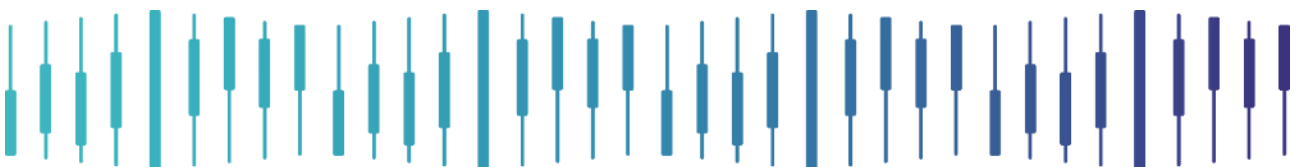


NZ RegCo

NZ'S LISTED
MARKET REGULATOR

NZ RegCo Approach to Enforcement

June 2024



Introduction

NZX Limited (**NZX**) operates its securities market under a license granted by the Financial Markets Authority (**FMA**) under the Financial Markets Conduct Act 2013 (**FMC Act**). As a licensed market operator, NZX is required to have arrangements in place to enforce compliance with its market rules.

NZX's market regulation functions are performed by NZX Regulation Limited (**NZ RegCo**), an independent regulatory agency governed by a separate board. NZ RegCo is made up of four key functions:

- **Surveillance** – this team monitors price movements, trading volumes, market releases (on NZX and other exchanges) and other media information to ensure trading on NZX's markets remains fair, orderly and transparent. The Surveillance team refers matters relating to trading misconduct prohibited by the FMC Act (such as potential insider trading and market manipulation) to the FMA for investigation and action, if appropriate;
- **Issuer Regulation** – this team administers the NZX Listing Rules and Fonterra Shareholders' Market (**FSM**) Listing Rules, deals with applications under those rules and provides guidance to listed issuers on their obligations;
- **Participant Compliance** – this team administers the Participant Rules, Clearing and Settlement Rules, Depository Operating Rules and Derivatives Market Rules, and supervises compliance with those rules by NZX market participants; and
- **Market Conduct** – this team monitors and investigates listed issuers' compliance with the NZX Listing Rules and the FSM Listing Rules, and undertakes enforcement action in respect of both listed issuers and NZX market participants.

This document describes how NZ RegCo approaches investigating and enforcing NZX's market rules, which comprise:

- NZX Listing Rules;
- NZX Participant Rules;
- NZX Derivatives Market Rules;
- New Zealand Clearing Limited Clearing and Settlement Rules;
- New Zealand Depository Limited Depository Operating Rules; and
- FSM Listing Rules,

(together, the **Rules**).

What does this document cover?

This document explains:

- our goals and priorities;
- our process for investigating potential breaches of the Rules;
- what we consider when deciding whether or not to take enforcement action; and
- what happens when we take enforcement action.

We will review this document from time to time. Please note that this is not a legally binding document and, because of the various types of matters that we investigate, it doesn't cover everything we might consider when we are deciding whether to investigate compliance with the Rules or take enforcement action.

Enforcement goals

NZ RegCo's enforcement goals are to:

- promote and facilitate the operation of fair, orderly and transparent markets;
- promote and uphold the reputation and integrity of NZX's markets;
- encourage a culture of compliance and contribute to the protection of investors;
- educate participants in NZX's markets about the importance of complying with the Rules; and
- effectively uphold the protections under NZX's market rules and deter future breaches.

We achieve those goals in two key ways:

- We seek to assist listed issuers and NZX market participants (together, **Participants**) to develop a compliance culture through proactive engagement and a focus on best practice by:
 - engaging with Participants to provide support and guidance and to discuss issues (including in real time when applicable); and
 - providing information and guidance through periodic updates to Participants, guidance notes, practice notes, investigation reports, case studies and thematic reviews.
- We complement proactive engagement by investigating possible breaches of the Rules and, where necessary, taking enforcement action to respond to breaches by Participants in a manner that is fair, considered and consistent.

Engaging with Participants and assessing our enforcement of the market provides us with useful information to better target education initiatives for Participants and other stakeholders. For example, where we see recurring breaches of a Rule or Participants encountering difficulty with applying a Rule in practice, we can use that information to develop guidance or consider changes to the Rules to make compliance more straightforward.

Engaging with Participants

We are likely to engage with Participants:

- where our own monitoring and surveillance functions detect conduct that doesn't align with best practice, or which indicates a potential breach of the Rules; or
- where we receive a query or complaint about a Participant from a member of the public, the media or another regulator, such as the FMA or the Takeovers Panel.

How we first engage with Participants

Our initial engagement with a Participant may be informal (for example, a phone call or email to help us to understand a Participant's internal processes), or may be a formal request for information to support our investigation into possible misconduct.

We will also engage with Participants if they wish to self-report a potential compliance issue, or have questions about our approach to enforcing the Rules. Getting involved with Participants as events are unfolding enhances our ability to better understand the context of relevant events, work with the Participant to achieve pragmatic solutions and, where possible, help Participants avoid a breach of the Rules.

What matters will we investigate?

We investigate conduct or complaints that indicate a potential breach of the Rules. If the conduct or complaint is outside the scope of NZ RegCo's jurisdiction, we will endeavour to identify the appropriate regulator.

Does the breach need to have caused harm?

We are not limited to taking action in respect of breaches of the Rules that have caused harm or loss. We may engage with Participants regarding minor breaches of the Rules, particularly where it appears the breach may have arisen from a misunderstanding of the Rule or as a result of the Participant's chosen course of action.

Will every breach be investigated?

It's not always possible for us to investigate and enforce every alleged breach of the Rules. To best utilise our resources, we have identified the following enforcement priorities:

- **Market impact** – issues which have, or have the potential for, a significant market impact, including investor loss or which may pose a risk to the reputation and integrity of NZX's markets;
- **Prudential breaches** – credit events or defaults that pose a risk to the clearing system operated by New Zealand Clearing Limited, and capital breaches by accredited NZX market participants;
- **Client asset breaches** – matters that pose a risk to the management and protection of client assets by NZX market participants;
- **Disclosure breaches** – matters that relate to keeping the market informed, including:
 - listed issuers' continuous disclosure obligations; and
 - listed issuers' periodic and financial reporting obligations;
- **Trading conduct** – trading conduct that impacts the fair, orderly and transparent operation of NZX's markets or which is manipulative;
- **Governance breaches** – failures by listed issuers to comply with governance provisions in the NZX Listing Rules; and
- **Breaches reflecting market developments** – responding to conduct that may indicate developing systemic trends across Participants.

We're focused on these priorities because they are vital for ensuring the fair, orderly and transparent operation of NZX's markets and supporting investor confidence.

What to expect when we investigate

No two matters are the same, so we need to make proper enquiries to help us understand the key factors in each matter. Our investigations may start with a request for a phone call so that we can discuss the conduct we're concerned about. We may request information to help us understand the matter we're assessing to reach an appropriate outcome. If we have a more complex set of events to discuss, or several queries, we may first send those in writing.

Depending on the nature of our investigation, we might ask multiple rounds of questions. We expect a Participant will share all relevant information that it has. Being open, honest, cooperative, and forthcoming with information and providing detailed explanations in response to our queries can help reduce the time an investigation takes. It also ensures that we understand the Participant's own view of the conduct.

Once we have gathered the information we need, and we've discussed that information with the Participant to ensure it is complete, we consider whether the Rules were breached. We will notify the Participant in writing of our view.

What factors do we take into account?

Where a breach of the Rules has occurred, we consider what enforcement action is appropriate. We consider various factors when we make that decision. Those factors are reflected in the NZ Markets Disciplinary Tribunal (**Tribunal**) Procedures, and relate both to the Participant that has breached as well as the nature of the breach itself, including in no particular order:

- the seriousness of the administrative, operational and/or compliance breach;
- the impact the breach has had on investors, clients and/or the market, and whether the breach has caused any loss;
- the potential impact the breach could have had on investors, clients and/or the market;
- the period of time for which the breach continued and whether the breach continued to occur once discovered;
- the financial benefit and/or commercial advantage the Participant obtained as a result of the breach;
- whether the Participant committed the breach to obtain a financial benefit and/or commercial advantages;
- whether the breach was inadvertent, intentional, reckless or negligent;
- whether and when the breach was admitted and/or self-reported;
- the level of cooperation received from the Participant during the investigation of the breach;
- steps taken to prevent the breach or prevent future equivalent breaches;
- whether it is a recurring breach and the overall compliance history of the Participant;
- whether the breach indicates serious or systemic weaknesses in the Participant's procedures, processes and systems;
- disgorgement of, or agreement to disgorge, any gains made or loss avoided; and
- payment of, or agreement to pay, compensation to any aggrieved third party.

We also consider what we hope to achieve by taking enforcement action, including the education and deterrence of other Participants, relevant precedents, market developments, and whether enforcement action supports us achieving our enforcement goals.

The diagram in Appendix 1 summarises the different enforcement actions we may take in the case of a breach.

We will communicate with the Participant to explain our reasons for taking a particular approach and to explain the next steps, if any.

Potential significant contraventions

Section 352 of the FMC Act requires NZX, as a licenced market operator, to notify the FMA if the NZX knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of the Rules; or the FMC Act or the Takeovers Act 1993, or any enactment made under either of those Acts.

The FMA and NZ RegCo have a memorandum of understanding (**MoU**) in place. The MoU sets out the framework for engagement and cooperation between the FMA and NZ RegCo, taking into account their complementary regulatory responsibilities for New Zealand's capital markets.

The FMA and NZ RegCo have a protocol in place under the MoU for NZ RegCo notifying the FMA of potential significant contraventions. If, following that notification, the FMA informs NZ RegCo that the FMA will undertake its own inquiries, the FMA's investigation supersedes that of NZ RegCo, and we will close our investigation.

How long will it take?

We appreciate that being subject to a regulatory investigation can cause uncertainty for Participants. We endeavour to complete investigations as efficiently as possible.

We aim to conclude investigations that we determine do not need to be referred to the Tribunal within four months of commencing an investigation. That outcome is then communicated to the Participant.

If we decide to refer a matter to the Tribunal or to issue an infringement notice, we aim to notify the Participant of that enforcement action, and the relevant next steps, within five months of commencing an investigation.

Various factors may impact these targeted timeframes. They include the nature of the alleged breach (which may relate to administrative matters, or matters that are novel or complex) and the timeliness and sufficiency of responses to our queries by Participants. We'll aim to keep the Participant informed about the expected timeframe for completing the investigation as it progresses.

How we deal with complaints and queries

Investors and other members of the public can contact us if they have complaint or concerns or if they want to understand how the Rules apply. We consider that one of the features of a confident investing public is their willingness to engage with the market regulators, and their interest in understanding the obligations of Participants.

We can only take enforcement action for a breach of the Rules. If a complaint doesn't relate to the Rules, we'll try to identify other regulators that might be able to assist the complainant. If the complaint does not relate to the Rules but relates to an offer or advertising of financial products, we're likely to refer that directly to the FMA and notify the complainant that we've done so.

If we receive a complaint that relates to the Rules, we aim to complete our enquiries and notify the complainant of the outcome within three months. We treat complaints and queries in the same way we treat referrals from the FMA and internal investigations.

If a Participant is the subject of a complaint or query by a member of the public or other party, and we find we need to investigate the matter, we will contact the Participant to obtain information. We don't identify who made the complaint unless the complainant has consented to this disclosure.

Where a complaint results in an investigation and enforcement action, we aim to notify the complainant when that enforcement action is complete and the outcome is publicly available.

Can investors be compensated for their losses?

NZ RegCo's enforcement process is not compensatory. We can't require Participants to compensate investors who have suffered a loss due to a breach of the Rules.

What happens to financial penalties imposed by the Tribunal or NZ RegCo?

All financial penalties are paid to the NZX Discipline Fund. Under the NZ Markets Disciplinary Tribunal Rules, the NZX Discipline Fund can only be used for specific purposes including as furthering market education and engagement with Participants, reviewing the Rules, and meeting the costs of the Tribunal.

What do we publish about our enquiries?

We don't usually comment publicly on specific enforcement activities or investigations. We want Participants and members of the public to be able to communicate with us openly and frankly without worrying that the information they provide us may be used in a way they didn't expect. Maintaining confidentiality during an investigation is important in ensuring we respect due process.

There are instances where information about an investigation will be published. These include:

- where a Participant has been publicly censured by the Tribunal as part of the penalty for a breach of the Rules;
- in summaries of our enforcement work, which we publish annually;
- if we've issued an infringement notice, in the NZX Issuer Update or NZX Participant Update as relevant (this information is anonymised); and
- for particularly novel investigations, or those that are likely to have an educational value, case studies or investigation reports. These do not identify Participants, except in the limited circumstances where this is necessary to ensure that NZX's markets are fair, orderly and transparent.

Where a conduct matter may involve a significant market impact, NZ RegCo may publicly confirm that it is investigating that matter.

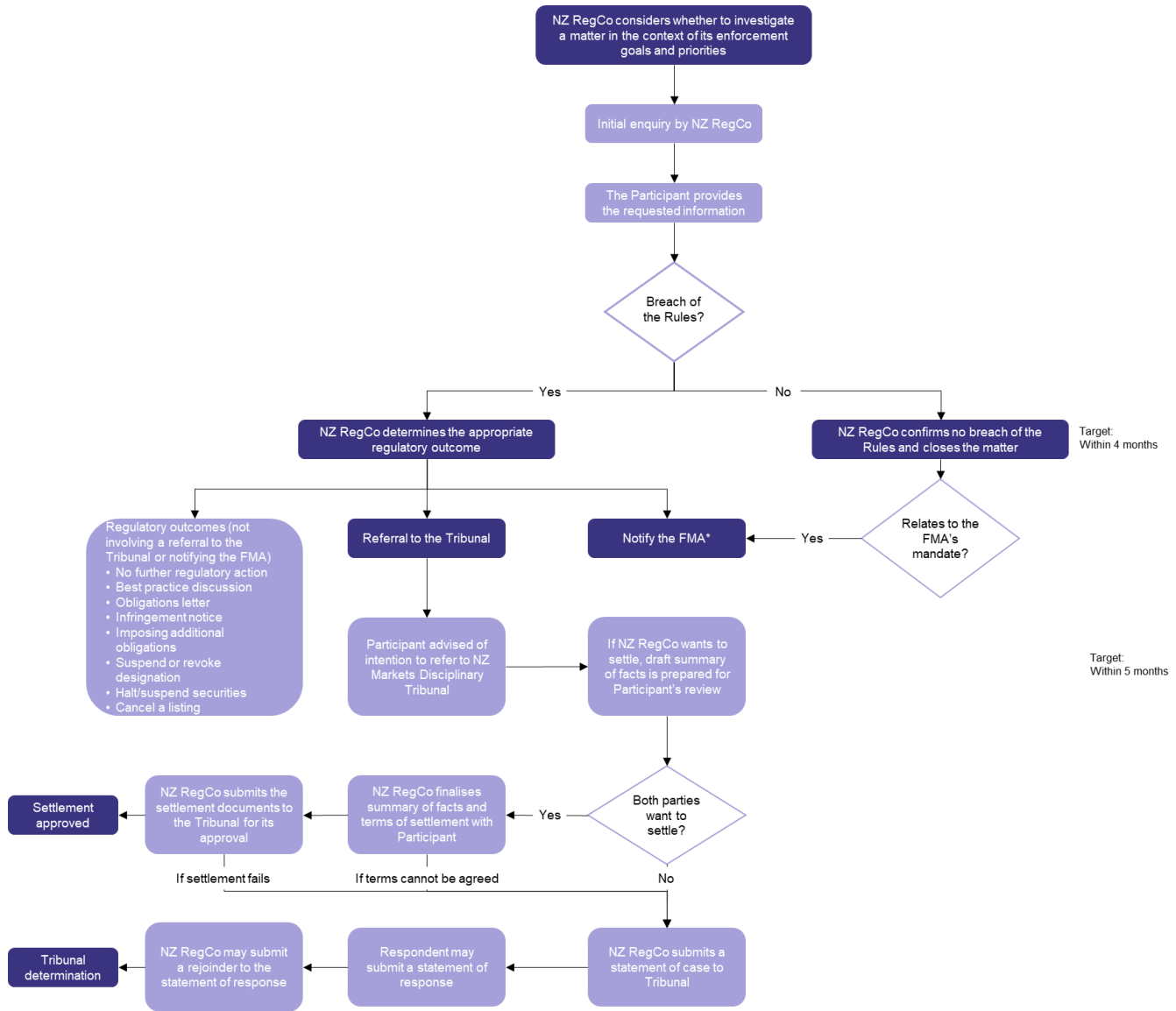
We may provide information to the FMA in the context of our engagement with Participants, or notify the FMA of disciplinary action or a potential significant contravention in accordance with section 352 of the FMC Act and the MoU.

How can you contact us?

If you would like to make a complaint about a Participant, please read the detailed information about our complaints process set out [here](#).

If you have a general enquiry relating to any of the matters covered by this document, or if you are a Participant who would like to talk to us about an investigation or enforcement matter, please email conduct@nzregco.com.

Appendix 1. Enforcement process



*NZ RegCo will notify the FMA if it knows or suspects a significant contravention of the Rules, or the FMC Act or the Takeovers Act 1993, or any enactment made under either of those Acts