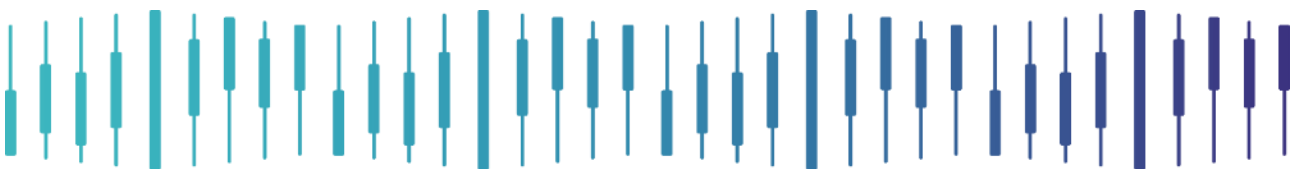


NZ RegCo

NZ'S LISTED
MARKET REGULATOR

NZ RegCo Approach to Enforcement

May 2022



Introduction

NZX Limited (**NZX**) operates its securities market under licenses granted by the Financial Markets Authority (**FMA**) under the Financial Markets Conduct Act 2013 (**FMCA**). 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, us or we**), 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 misconduct prohibited under the Financial Markets Conduct Act 2013 (such as potential insider trading or market manipulation) to the Financial Markets Authority for investigation and action, if appropriate;
- **Issuer Regulation:** this team administers the Listing Rules and Fonterra Co-operative Group Limited FSM Rules, deals with applications under the Listing 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 market participants; and
- **Market Conduct:** this team monitors listed issuers' compliance with the Listing Rules, and undertakes enforcement action in respect of both listed issuers and market participants.

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

- 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
- Fonterra Co-operative Group Limited FSM 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 enforcing the Rules.

Enforcement goals

NZX'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;
- Provide tools that 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 try to achieve those goals in two key ways:

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

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

Engaging with market participants

We are likely to engage with market participants:

- Where our internal monitoring and surveillance functions have detected conduct that doesn't align with best practice, or which indicates a potential breach of the Rules; and/or
- Where we receive a query or complaint about a market participant from members of the public or other regulators, such as the FMA or the Takeovers Panel.

How we first engage with market participants

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

We will also engage with market participants if they wish to alert us to a potential compliance issue, or have questions about our approach to enforcing the Rules. Getting involved with market participants as events are unfolding enhances our ability to work with them to achieve pragmatic solutions, and helps us to better understand the context of relevant events.

What matters will we investigate?

We investigate conduct or complaints that indicate a potential breach of NZX's Rules. If the conduct or complaint is outside the scope of NZ RegCo's jurisdiction, we will notify 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 market participants regarding minor breaches of the Rules, particularly where it seems that the breach may have arisen from a misunderstanding of the Rule or because of the practical implications of the market 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 participants;
- **Client asset breaches** – breaches that pose a risk to the management and protection of client assets by NZX Participants;
- **Disclosure breaches** – matters that relate to keeping the market informed, including:
 - o issuers' continuous disclosure obligations
 - o issuers' periodic and financial reporting obligations;
- **Trading breaches** – trading conduct that impacts the fair, orderly and transparent operation of NZX's markets and/or which is manipulative;
- **Governance breaches** – failures by 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 issuers and/or participants.

We're focused on these priorities because they are vital for ensuring the operation of fair, orderly and transparent NZX 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 to understand the key factors at play 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 in order to reach an appropriate regulatory action. If we have a more complex set of events to discuss, or several queries, we may send those in writing first.

Depending on the nature of our investigation, we might ask multiple rounds of questions. We expect that the market participant will share any and all of the information that it has. Being open, honest,

cooperative, and upfront with information and providing detailed explanations in response to our queries can help to reduce the time an investigation takes. It also ensures that we understand the market participant's own view of the conduct.

Once we've gathered all the information we need, and we've discussed that information with the market participant to make sure it's complete, we will need to decide whether or not the Rules were breached. We will notify the market participant in writing of our view.

What factors do we take into account?

Where a breach has arisen, we'll then need to 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 Procedures, and relate both to the market participant that has breached as well as the nature of the breach itself, including (in no particular order):

- Whether or not the market participant cooperates with NZ RegCo's investigation, and the attitude to compliance they demonstrate during the course of the investigation;
- The impact on the price, volume traded or liquidity of a security;
- Whether the breach was inadvertent, intentional, reckless or negligent;
- The effect of the breach on public confidence or the perception of the market;
- The Rule that was breached and what that Rule is intended to achieve (or what harm it is intended to prevent);
- The market participant's compliance history, and their efforts made to avoid the breach and (where possible) to remedy the breach;
- What we hope to achieve by taking enforcement action, including the education of other market participants, relevant precedents, market developments, deterring breaches by other market participants 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 affected market participant to explain our reasons for taking a particular approach and to explain the next steps (if any).

How long will it take?

We appreciate that being subject to a regulatory investigation can cause uncertainty for market 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 NZ Markets Disciplinary Tribunal (**Tribunal**) within four months of commencing an enquiry. That outcome is then communicated to the market participant.

If we determine to refer a matter to the Tribunal or to issue an infringement notice, we aim to notify the market participant of that outcome, and the relevant next steps, within five months of commencing an enquiry.

Various factors may impact these targeted timeframes. They include, for example, the nature of the alleged breach (which may relate to administrative matters, or matters which are novel or complex) and the timeliness and sufficiency of responses to our queries by market participants. We'll make sure to keep the market participant informed as to how our investigation is progressing and discuss likely timeframes as we go.

How we deal with complaints and queries

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

We can only take enforcement action for a breach of our Rules. If a complaint doesn't relate to the Rules, we'll try to identify other regulators who might be able to assist the complainant. If the complaint relates to an offer document or advertisement, or insider trading or other market misconduct, we're likely to refer that directly to the FMA, and notify the complainant that we've done so.

When 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 will provide updates throughout the enquiries should anything arise. We will treat complaints and enquiries in the same way we treat referrals from the FMA or internal investigations into market participants.

If a market 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 market participant to collect some information. We don't identify who made the complaint unless the complainant has consented to this disclosure.

Can investors be compensated for their losses?

No, NZ RegCo's enforcement process is non-compensatory. We can't require market participants to compensate investors that 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 market participants, reviewing the NZX Rules, and meeting the costs of the Tribunal.

What do we publish about our enquiries?

We don't usually comment publicly on our enforcement work. We want market participants and members of the public to be able to communicate with us openly and frankly, without worrying that the information they provide to us may be used in a way they didn't foresee. Maintaining confidentiality during an investigation is important to making sure we respect due process.

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

- Where a market participant has been publicly censured by the Tribunal as part of the penalty for a breach;
- In the context of the summary of our enforcement work, which we publish annually (this information is anonymised, so market participants are not identified);
- If we've issued an infringement notice, we will provide a summary in the NZX Issuer Update or NZX Participant Update (as relevant) (again, this is anonymised); and
- We may use particularly novel investigations, or those that are likely to have an educational value, to create case studies or investigation reports. These do not identify market participants, except in the limited circumstances where this is necessary to ensure that our markets are fair, orderly and transparent.

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

NZX and FMA have a Memorandum of Understanding (**MoU**) in place. The MoU sets out the framework for engagement and co-operation between the FMA and NZX, taking into account their complementary regulatory responsibilities for New Zealand's capital markets. Accordingly, we may provide information to FMA in the context of our engagement with market participants.

How can you contact us?

If you would like to make a complaint about a market 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 market participant who would like to talk to us about an investigation or enforcement matter, please email conduct@nzregco.com

Appendix 1

