



14 March 2019

**PUBLIC CENSURE OF MACQUARIE SECURITIES (NZ) LIMITED
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF
NZX PARTICIPANT RULES 4.5.2, 10.8.1 AND 10.14.9 (DATED 7 MARCH 2016)**

1. The NZ Markets Disciplinary Tribunal (*the Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*) and Macquarie Securities (NZ) Limited (*MAQA*) dated 14 February 2019 (*the Settlement Agreement*).

Background

2. MAQA is a NZX Trading and Advising Firm and is, accordingly, subject to the NZX Participant Rules (*Rules*). MAQA provides Direct Market Access (*DMA*) to a number of DMA Authorised Clients. This allows those clients to submit orders and trade on New Zealand markets, including on behalf of underlying clients. MAQA retains certain responsibilities and obligations in respect of this trading by its DMA Authorised Clients under the Rules.
3. Following an investigation conducted in 2018, NZX Regulation (*NZXR*) established that 102 trades had occurred over a ten month period where an underlying client of MAQA's DMA Authorised Client was on both sides of the trade due to issues with different algorithmic trading strategies employed by the underlying client making opposing decisions about a particular stock (*NCBO Trades*).
4. MAQA breached Rule 10.14.9 because the NCBO Trades did not result in a change in Beneficial Ownership.
5. MAQA breached Rule 4.5.2 by not having appropriate filters in place to achieve the objective of ensuring the integrity and bona fides of all trading messages which are entered into the Trading System.
6. MAQA breached Rule 10.8.1 by not ensuring that it and any DMA Authorised Person:
 - a. Complied with all applicable Rules (as evidenced by the breaches of Rules 4.5.2 and 10.14.9);
 - b. Observed Good Broking Practice, including by having appropriate filters and post-trade monitoring in place; and
 - c. Did not interfere with the efficiency and integrity of the markets operated by NZX in their use and access to DMA.

Determination

7. Under Rule 10.14.9, orders entered into the Trading System by a DMA Authorised Person who is a client of the Trading Participant must result in a change of Beneficial Ownership. The Rules prohibit trades where there is no change in Beneficial Ownership because they may

mislead investors by creating a false appearance of trading interest in the securities being bought and sold. Such trades have the potential to undermine the integrity of the market.

8. The trading conduct and Good Broking Practice provisions of the Rules are important to the integrity of the market. The underlying policy of those Rules is to ensure that the NZX markets remain fair, orderly and transparent. Any breach of the Rules regarding trading conduct and Good Broking Practice is serious.
9. In this case, while MAQA made an effort to ensure that the DMA Authorised Person and its underlying client had appropriate filters and controls in place to prevent trading in breach of the Rules, the filters it had in place and those of the DMA Authorised Person, were inadequate to prevent the NCBO Trades.
10. The Tribunal considered that there were a number of aggravating factors in this case, including that:
 - a. The breaches relate to the fundamental obligations of trading conduct and Good Broking Practice;
 - b. The real-time monitoring and post-trade monitoring that MAQA had in place was not adequate to prevent trades below certain volume thresholds that did not result in a change of beneficial ownership, and would not have detected ongoing breaches had NZX Surveillance not raised a query regarding the trading it detected;
 - c. The breaches occurred over an extended period of almost 10 months;
 - d. The Tribunal has stated that adequate systems are particularly important given the increase in automated trading, including through the use of algorithms; and
 - e. MAQA has previously been referred to the Tribunal for a breach of its trading obligations.
11. The Tribunal considered that there were a number of mitigating factors in this case, including advice from NZX that:
 - a. The NCBO Trades did not materially affect the price of the underlying securities and did not have an identifiable impact on the market, investors or clients (the NCBO Trades had a low value, nominal price and volume impact and represented a small proportion of the overall trades by the DMA Authorised Person);
 - b. The NCBO Trades did not have the potential to impact the market as MAQA's existing filters would have detected any material price or volume impacts and MAQA would have been in a position to intervene;
 - c. MAQA undertook steps prior to deactivating non-match filters to establish that its DMA Authorised Person, and their underlying client, had controls in place that would prevent trading in breach of the Rules;
 - d. Once the NCBO Trades were discovered, MAQA took immediate steps to reinstate non-match filters and introduced manual checks and controls to prevent further trading with no change in Beneficial Ownership until a permanent fix could be found;
 - e. MAQA took steps to establish and enhance its permanent controls for trading with no change in Beneficial Ownership. This included enhancing its DMA filters and reconfirming its DMA obligations and undertakings with its DMA Authorised Person;

- f. MAQA coordinated an underlying client ID system that prevents any further trades where there is no change in Beneficial Ownership by underlying clients. This fix is unique to MAQA and makes it a leader in the industry; and
- g. MAQA's correspondence and cooperation with NZXR throughout its investigation was forthcoming, comprehensive and assisted in the assessment of the matter.

Penalties

- 12. NZX and MAQA have reached a settlement under which MAQA admits that it breached Rules 4.5.2, 10.8.1 and 10.14.9.
- 13. NZX and MAQA have agreed that:
 - a. A public censure by the Tribunal will be made;
 - b. MAQA will pay a financial penalty of \$20,000;
 - c. MAQA will pay the costs of the Tribunal (plus GST, if any); and
 - d. MAQA will pay \$5,400 being the costs of NZX (plus GST, if any).

Approval

- 14. The Settlement Agreement is approved by the Tribunal pursuant to NZ Markets Disciplinary Tribunal Rule 8, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

- 15. The Tribunal hereby censures MAQA for its breach of Rules 4.5.2, 10.8.1 and 10.14.9.

The Tribunal

- 16. The Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the NZ Markets Disciplinary Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the NZX market rules.

ENDS