



3 September 2018

**PUBLIC CENSURE OF FIRST NZ CAPITAL SECURITIES LIMITED
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF
NZX PARTICIPANT RULES 8.1.1(b)(iii), 8.8.1, 10.1.1, 10.2.2(a), 10.2.2(b) AND
10.12.5**

1. The NZ Markets Disciplinary Tribunal (*Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*) and First NZ Capital Securities Limited (*FNZW*) dated 28 August 2018 (*the Settlement Agreement*).

Background

2. FNZW is a Trading Participant and is, accordingly, subject to the NZX Participant Rules (*Rules*).
3. Rule 8.1.1(b)(iii) requires a Market Participant to, at all times, refrain from any conduct that is reasonably likely to be detrimental to the wellbeing or contrary to the best interests of any client.
4. Rule 8.8.1 requires a Market Participant to ensure that their conduct promotes and helps maintain an orderly market.
5. Rule 10.1.1 requires a Trading Participant to conduct and report Trading in accordance with Good Broking Practice.
6. Rule 10.2.2(a) requires that when accepting an Order, a Trading Participant must consider whether that Order is consistent with recent trading in the Security, taking into account market conditions.
7. Rule 10.2.2(b) requires that when accepting an Order, a Trading Participant must consider whether that Order or its execution will materially affect the market for, or the price of, the Security.
8. Rule 10.12.5 relates to restrictions on Short Selling, which includes the NZX Guidance Note 16/08 requirement that all short sales must be flagged as short sales.
9. On 30 December 2016, the last trading day of 2016, NZX had an abbreviated trading day with a Pre-Close session of 12:45 p.m. to 1:00 p.m. FNZW received a client Order at 11:52 a.m. to sell 698,956 Auckland International Airport Limited (*AIA*) ordinary shares (*the Order*). *AIA*'s share price at the time the Order was received was \$6.54.
10. FNZW accepted the Order, which included complex execution instructions, and entered several orders to complete the Order. The Order was complex because it was not a simple buy/sell order and it had volume and price restrictions, specific timeframes, and limits on how the Order could be traded.
11. FNZW was also trading as Principal in *AIA* on the day. *AIA* ordinary shares closed at \$6.25 on the day, a decline in the price of 4.4% from the time the Order was received. FNZW's trading on this day was also inconsistent with the market for *AIA* ordinary shares over the short and medium term. FNZW also failed to flag all relevant sales for its facilitation account as short sales.

Determination

12. The trading conduct provisions of the Rules are important to the integrity of the market. The underlying policy of these Rules is to ensure that the NZX markets remain fair, orderly and transparent. Trading Participants must ensure that their trading conduct promotes and helps maintain an orderly market.
13. FNZW's trading in AIA on 30 December 2016 was inconsistent with recent trading in AIA's ordinary shares, impacted the market for AIA's securities with the price of AIA's ordinary shares declining 4.4% from receipt of the Order to market close on the last trading day of 2016, negatively impacted the year end valuation of AIA's ordinary shares and was not in accordance with Good Broking Practice given the potential conflict of interest in FNZW also trading as Principal.
14. The Tribunal considered that there were a number of aggravating factors in this case, including that:
 - a. the manner in which FNZW traded in AIA was negligent as FNZW, although unintentionally, failed to appreciate the risks of proceeding with a complex order within the limited timeframe available, which led to a disorderly market.
 - b. FNZW failed to specifically disclose beforehand its conflict of interest to the client, in respect of FNZW using its principal book to facilitate the Order;
 - c. FNZW's trading conduct is likely to have had an impact on AIA and its shareholders given the 4.4% decline in share price and the affect this had on the year end valuation of AIA's ordinary shares; and
 - d. FNZW's breaches did not comply with Good Broking Practice because the trades were not undertaken in an orderly manner.
15. The Tribunal considered that there were a number of mitigating factors in this case, including that:
 - a. FNZW cooperated with NZXR's investigation surrounding the breach and provided all the information requested by NZXR;
 - b. NZX has advised that FNZW did not intend to cause a disorderly market;
 - d. FNZW did not benefit financially from its trading for its client; and
 - e. NZX has advised that FNZW's breaches in this case were an isolated single event rather than conduct which indicated broader systemic issues with FNZW's trading.

Penalties

16. NZX and FNZW have reached a settlement under which FNZW admits that it breached Rules 8.1.1(b)(iii), 8.8.1, 10.1.1, 10.2.2(a), 10.2.2(b) and 10.12.5.
17. NZX and FNZW have agreed that:
 - a. A public censure by the Tribunal will be made;
 - b. FNZW will pay a financial penalty of \$45,000;
 - c. FNZW will pay the costs of the Tribunal (plus GST, if any); and
 - d. FNZW will pay \$18,000 being the costs of NZX (plus GST, if any).

Approval

18. The Settlement Agreement is approved by the Tribunal pursuant to Rule 8 of the Tribunal Rules, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

19. The Tribunal hereby censures FNZW for its breach of Rules 8.1.1(b)(iii), 8.8.1, 10.1.1, 10.2.2(a), 10.2.2(b) and 10.12.5.

The Tribunal

20. The NZ Markets Disciplinary Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the 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 market rules.

ENDS