



24 October 2018

**PUBLIC CENSURE OF CRAIGS INVESTMENT PARTNERS LIMITED  
BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF  
NZX PARTICIPANT RULES 3.9, 4.5.2, 10.8.1(a) AND 10.14.9**

1. The NZ Markets Disciplinary Tribunal (*Tribunal*) has approved a settlement agreement between NZX Limited (NZX) and Craigs Investment Partners Limited (AACA) dated 3 October 2018 (*the Settlement Agreement*).

**Background**

2. AACA is a Trading Participant and is, accordingly, subject to the NZX Participant Rules (*Rules*).
3. Rule 3.9 requires each Market Participant to ensure compliance with all applicable Rules, any directions given from time to time by NZX and at all times observe Good Broking Practice.
4. Rule 4.5.2 states that a Trading Participant is responsible for ensuring the accuracy of the details, the integrity and bona fides of all trading messages which are entered into the Trading System using that Trading Participant's identification code. A Trading Participant allowing access to the trading system via Direct Market Access (DMA) must ensure that it has the appropriate filters, screens and security measures in place.
5. Rule 10.8.1(a) requires that each Trading Participant that provides DMA to its DMA Authorised Persons must at all times ensure that it, any DMA Authorised Person and any DMA Dealer, complies with all applicable Rules, any directions issued from time to time by NZX and at all times observes Good Broking Practice, including ensuring that the appropriate filters screens and security measures are established and maintained by that Trading Participant.
6. Rule 10.14.9 requires that all Orders entered into the Trading System by a Dealer, or DMA Dealer or DMA Authorised Person for his or her Trading Participant who is Acting as Principal or for an NZX Advising Firm who is Acting as Principal must result in a change in Beneficial Ownership. Where the DMA Authorised Person is a client of the Trading Participant orders entered by that DMA Authorised Person must result in a change in Beneficial Ownership.
7. AACA provides DMA to a client that is a DMA Authorised Person which trades as principal. AACA's client submits orders using trading algorithms and this client has been a DMA Authorised Person since June 2016.
8. AACA has various obligations under the Rules to ensure that Orders entered by a DMA client comply with the Rules.
9. On 11 occasions between 15 May 2017 and 25 October 2017, AACA's client entered Orders into the Trading System that resulted in trades in the ordinary shares of an S&P/NZX 50 Index Issuer with no change in beneficial ownership. These trades were in breach of Rule 10.14.9.

10. AACA did not have adequate filters in place to prevent these trades and did not act on alerts generated by its post-trade monitoring system, SMARTS. AACA's failure to prevent trading in breach of the Rules resulted in the additional breaches of Rules 3.9, 4.5.2, and 10.8.1(a).

### **Determination**

11. 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.
12. AACA did not make any effort to review or audit the efficacy of the filters it had in place, despite the post-trade alerts generated by its SMARTS monitoring system.
13. AACA did not ensure that it had the appropriate filters, screens and security measures in place to ensure the accuracy of the details, the integrity and bona fides of all trading messages which were entered into the Trading System using its identification code by AACA's client. As a result, Orders were entered into the Trading System that did not result in a change of beneficial ownership.
14. AACA also failed to meet its broad obligation to ensure compliance with all applicable Rules, any directions given from time to time by NZX and to at all times observe Good Broking Practice. While AACA had in place systems to conduct post-trade monitoring, its approach to this monitoring in the case of AACA's client was well outside of what would be considered Good Broking Practice.
15. The Tribunal considered that there were a number of aggravating factors in this case, including that:
  - a. The breach relates to fundamental obligations that have a direct impact on the fairness, orderliness and transparency of NZX's markets. The nature of algorithmic trading and high frequency trading is such that it gives rise to potentially heightened risks that must be managed through the use of effective filters and other technological controls;
  - b. AACA did not have in place effective filters, made no apparent effort to review or audit those filters for efficacy, turned off intra-day monitoring and ignored information arising from end of day post-trade monitoring that should have otherwise alerted it to the ineffectiveness of its filters. AACA was negligent at best, approaching recklessness, as a reasonable person would have expected AACA to have effective filters;
  - c. AACA was not required to report the underlying client trading to NZX (as the Rules only require Participants to notify NZX of material rule breaches). However, the evidence suggests that AACA did not identify the breaches and would not have been in a position to report these had they been material;
  - d. The trades without a change in beneficial ownership occurred over several months, and two trades took place on or after the date on which AACA was alerted to them by NZX;
  - e. While AACA consistently engaged with NZX throughout the investigation, its responses to NZX's information requests contained inconsistencies, required much clarification, or were at times passed on directly from AACA's client without an assessment from AACA Compliance being added. However, NZX noted that, while this resulted in the investigation taking longer than is desirable, it was not deliberate or designed to frustrate NZX's investigation; and

- f. AACA has not yet developed a filter to prevent this type of trading, but in conjunction with AACA's client, has implemented other controls to avoid breaches of a similar nature.
16. The Tribunal considered that there were a number of mitigating factors in this case, including that:
- a. The breach did not result in a financial benefit and/or commercial advantage to AACA or AACA's client;
  - b. The breach has not brought the market, NZX, Issuers or any Participant into disrepute as there was no market impact and the market was not aware of these breaches;
  - c. There was no actual impact on investors or the market, as the trades without a change in beneficial ownership did not impact ATM's share price; and
  - d. AACA's client stated that it had no intention to self-match and it has taken steps to reduce the likelihood of this scenario arising again in future.

#### **Penalties**

17. NZX and AACA have reached a settlement under which AACA admits that it breached Rules 3.9, 4.5.2, 10.8.1(a) and 10.14.9.
18. NZX and AACA have agreed that:
- a. A public censure by the Tribunal will be made;
  - b. AACA will pay a financial penalty of \$35,000;
  - c. AACA will pay the costs of the Tribunal (plus GST, if any); and
  - d. AACA will pay \$6,480 being the costs of NZX (plus GST, if any).

#### **Approval**

19. 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**

20. The Tribunal hereby censures AACA for its breach of Rules 3.9, 4.5.2, 10.8.1(a) and 10.14.9.

#### **The Tribunal**

21. 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**