



4 October 2021

PUBLIC CENSURE OF QEX LOGISTICS LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACH OF NZX LISTING RULE 3.1.1

1. The NZ Markets Disciplinary Tribunal (*Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*), acting by and through NZX Regulation Limited (*NZ RegCo*), and QEX Logistics Limited (*QEX*) dated 24 September 2021 (*Settlement Agreement*).

Summary

2. QEX is a New Zealand incorporated company, with its ordinary shares quoted on the NZX Main Board. QEX is a Listed Issuer and is therefore bound by the NZX Listing Rules (*Rules*).
3. After an investigation, NZX found that QEX had breached Rule 3.1.1 by failing to release Material Information to the market “promptly and without delay”.

Background

4. On 28 October 2020, QEX made an announcement to the market via MAP advising that an estimated \$4million of inventory had been removed from its secured China Customs bonded warehouse without authorisation. QEX’s announcement confirmed that:
 - a. It had reached the conclusion that the stock had been stolen.
 - b. It was actively investigating whether any of it could be recovered.
 - c. A failure to recover the missing inventory would have a materially adverse impact on its financial performance.
5. The announcement was accompanied by the ‘P’ Flag, denoting Material Information.
6. Following the announcement, QEX shares experienced a sharp decline, falling from \$0.47 the day before the announcement to \$0.30 at the close of trading on the day of the announcement. This represented a 36% reduction in QEX’s share price.
7. NZX investigated the information held by QEX prior to the announcement for the purpose of assessing whether QEX had failed to comply with any of the Listing Rules. As a Listed Issuer QEX is required under Rule 3.1.1 to release Material Information to the market promptly and without delay.
8. After conducting its investigation, NZX concluded that:
 - a. The information contained in QEX’s announcement on 28 October 2020 was Material Information, because a reasonable person would expect the information to have a material effect on the price of QEX’s quoted financial products. The missing stock included infant formula, which QEX had stated in its 2020 Annual Report was a main revenue driver for the company.
 - b. When the QEX Board learnt of a possible discrepancy in its inventory in the warehouse on 11 October 2020, it instructed its Chinese-based auditors to conduct a further detailed stocktake of the inventory and also instructed its CEO, who had travelled to China and was in COVID-19 quarantine, to undertake a personal investigation as soon as possible.
 - c. The auditor’s further stocktake was completed on 19 October 2020 and provided to the QEX Board. It confirmed that the stock was missing from QEX’s leased area of the warehouse. The CEO commenced his investigation as soon as he was released from quarantine on 23 October 2020. He concluded that the stock was missing and unlikely to be recovered and advised the QEX Board of this on 27 October 2020, after which the QEX Board determined that it had likely been stolen and advised the market on 28 October 2020.

- d. QEX became Aware of the Material Information on 19 October 2020, when its auditors completed the requested second stocktake and confirmed that the stock was missing from QEX's leased area. QEX did not have complete information at that stage but it had enough to trigger its disclosure obligations.
- e. There was a period of five Business Days between QEX becoming Aware of the Material Information on the evening of 19 October 2020 and the announcement being made on 28 October 2020 (noting that 26 October 2020 was a public holiday in New Zealand). Accordingly, QEX did not release the relevant Material Information to the market promptly and without delay and thereby breached its obligations under Rule 3.1.1.

Determination

9. QEX accepts the findings by NZX that it failed to release Material Information promptly and without delay, and thereby breached Rule 3.1.1. QEX accepts that a penalty should be imposed by the Tribunal for this breach.
10. The Tribunal considers that a breach of the Rules relating to continuous disclosure is a breach of a fundamental obligation. Compliance with this Rule by Issuers is essential for maintaining market integrity and investor confidence.
11. Accordingly, the Tribunal considers that the breach is serious and fall within Penalty Band 3 of Procedure 9 of the Tribunal Procedures. Under Penalty Band 3, a financial penalty of between \$0 and \$500,000 may be imposed.
12. The Tribunal considered that there were aggravating factors in this case:
 - a. The breach related to a fundamental obligation on QEX.
 - b. Late disclosure of Material Information adversely affected NZX's markets and posed a risk to the confidence and integrity of those markets.
 - c. The substance of the Material Information was materially adverse for QEX and resulted in a significant adverse share price movement. The information was highly relevant for investors.
 - d. The duration of the breach as a result of the delay (five Business Days) was lengthy.
 - e. Investors who bought QEX shares in the relevant period will have suffered loss.
13. The Tribunal also considered that there were mitigating factors:
 - a. QEX was aware of its disclosure obligations and took reasonable steps to determine what the position was in relation to the missing stock in difficult circumstances.
 - b. Assessing when the obligation to disclose arises in a situation of incomplete or emerging information may not be straightforward. The Tribunal does not consider that QEX's breach was intentional, but rather reflects the fact that in a developing situation, it can be difficult to determine when the obligation to disclose is triggered.
 - c. QEX cooperated with NZX's investigations.
 - d. The breach did not form a pattern of misconduct by QEX.
 - e. There was no financial benefit or commercial advantage to QEX as a result of the breach.

14. Taking these aggravating and mitigating factors into account, the Tribunal considers that, while the breach comes within Penalty Band 3 of its procedures, a sanction at the lower to middle end of the available range is appropriate.

Penalties

15. NZX and QEX have agreed that:
 - a. A public censure will be made by the Tribunal.
 - b. QEX will pay to the NZX Discipline Fund a financial penalty of \$80,000 for the breach of Rule 3.1.1.
 - c. QEX will pay the costs incurred by the Tribunal (plus GST, if any).
 - d. QEX will pay the costs incurred by NZX (plus GST, if any) in bringing this proceeding.
 - e. QEX will pay the external legal costs incurred by NZX (plus GST, if any) in bringing this proceeding.

Approval

16. 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

17. The Tribunal hereby censures QEX for a breach of Rule 3.1.1.

The Tribunal

18. 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