



NZX Limited

NZ Markets Disciplinary Tribunal Procedures

Exposure Draft for Consultation
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NZ Markets Disciplinary Tribunal Procedures

Section 1: Introduction and General Provisions

Procedures for Rule 1.3.1

1.1. Amendment of Rules

1.1.1. NZX may, from time to time at its discretion, initiate a review or amendment of the Rules by giving written notice to Participants. Any such notice will set out:

- (a) the Rule or Rules to be reviewed;
- (b) the nature issues that have arisen which necessitate the review or amendment;
- (c) the policy result NZX desires to achieve from the review or amendment;
- (d) in the case of an amendment, the amendment proposed;
- (e) in the case of a review, the scope of the review;
- (f) to the extent it differs from the timetable set out in this Procedure 1.1.3, the timetable for the review or amendment; and
- (g) any other information NZX believes is relevant.

1.1.2. A review will comprise a broad policy based proposal for modification of the Rules without a specific amendment proposed. The specific amendment will be developed in the process of the review after consultation. An amendment will be narrower in focus and will propose a specific amendment.

1.1.3. A review or amendment of the Rules will, except to the extent NZX determines otherwise follow the following indicative time following issue of the notice by NZX for the amendment procedure:

- | | |
|--|---|
| (a) NZX to receive submissions on proposed review or amendment. | 15 Business Days following notice by NZX |
| (b) NZX to consider submissions, give Notice to Participants of its decisions on issues raised and in the case of a review, proposals for draft amendments to the Rules. | 15 Business Days following closing of submissions |
| (c) NZX to receive submissions on NZX response and, in the case of a review, proposed amendments. | 10 Business Days |
| (d) NZX to consider submissions and provide final amendments (if any) to the Financial | 10 Business Days |

Markets Authority in accordance with
Section 331 of the FMC Act.

- 1.1.4. NZX may give notice to such other interested parties as it considers fit.
- 1.1.5. Where NZX believes it is appropriate having regard to the nature of the amendment (but not otherwise) it may adopt the procedures set out in this Procedure when making amendment to Procedures.
- 1.1.6. NZX reserves the right to depart from the process set out in this Procedure in unusual circumstances.
- 1.1.7. In addition to the procedures set out in this Procedure, NZX must comply with the requirements of Section 328 of the FMC Act when amending the Rules.

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Section 2: Membership of Tribunal

2.1. No Procedures made

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Section 3: Divisions

Procedures for Rule 3.1.1

3.1. Selection

3.1.1. The Chairperson or Deputy Chairperson (as the case may be), in selecting members of a Division for any hearing, shall consider the matter being called for consideration, the issues that will likely be raised and shall select the quorum, after determining any conflicts based on the expertise of Tribunal members relative to the matter for consideration.

3.2. Substitution

3.2.1. At the hearing of any matter by the Tribunal, if the Chairperson of that Division is the member no longer sitting on that Division, the Chairperson of the Tribunal shall appoint a Chairperson for that Division from the remaining two members and that newly appointed Chairperson of that Division shall have a casting vote.

3.3. Conflict

3.3.1. No member of the Tribunal who is concerned with, or implicated in, or who is a director, shareholder or employer of a person interested in, or implicated in, or is an advisor to a person interested in, or implicated in, that matter (or has been so concerned or held such appointment within the past 24 months from the date of the act or omission giving rise to the matter), shall be eligible to be selected in a Division to hear and determine that matter or shall be eligible to attend any meeting of the Tribunal in respect of that matter. If a member of the Tribunal is concerned with, is interested in, or implicated in, or is a director, shareholder or employee~~er~~ of a competitor of the person implicated in a matter (except in the case of the Market Participant Appointees, ~~Clearing Participant Appointees or Derivatives Market Appointees~~, who may be selected in a Division whether or not they are competitors) such member shall also be ineligible to be selected in a Division to hear and determine that matter and shall be ineligible to attend any meeting of the Tribunal in respect of that matter.

3.3.2. All members of the Tribunal shall, as soon as is practicable after being advised of a matter to be heard and determined by the Tribunal, declare any interest in connection with the parties to, or the subject matter of, that matter. In such a case, that member shall not be eligible to attend any hearing or meeting of the Tribunal in respect of that matter.

Section 4: Power of the Tribunal

4.1. No procedures made

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Section 5: Infringement Notices

5.1. No procedures made

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Section 6: Hearing of the Tribunal

6.1. No procedures made

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Section 7: Appeal

7.1. No procedures made

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Section 8: Settlement

8.1. No procedures made

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Section 9: Penalties

Penalty Band, Financial Penalty and Public Censure Guidance Procedure

Procedures for Rule 9

9.1. Penalty Bands and Financial Penalty

9.1.1. This procedure provides a guide as to the appropriate financial penalties to be imposed by the Tribunal in respect of breaches of the NZX Markets Rules and the Listing Rules, NZX Participant Rules, Clearing and Settlement Rules and Derivatives Market Rules. ~~The applicable penalties are divided into three bands.~~ The Tribunal will consider the overall conduct when determining the appropriate starting point penalty band and the ultimate financial penalty for such breach. This requires the Tribunal to take into account all relevant factors surrounding the breach, including mitigating and aggravating factors related to both the breach and the Respondent. The factors that the Tribunal may take into account are set out in this procedure but are not exhaustive. Not all of the factors may be applicable in a particular case and there may be other factors not listed which are relevant. To promote consistency, and to allow better comparison of starting points for similar breaches, the Tribunal will:-

- (a) Step 1: identify a starting point penalty by assessing all of the factors relevant to the breach and the impact or potential impact of the breach; and
- (b) Step 2: adjust that starting point penalty to reflect all the aggravating and mitigating factors relevant to the Respondent.

The ultimate financial penalty for the breach that is determined by the Tribunal may fall outside of the starting point penalty band that is initially identified by the Tribunal when considering the breach.

9.1.1.9.1.2. This procedure is not determinative and the Tribunal will ultimately use its discretion in determining the appropriate starting point penalty band, starting point penalty and ultimate penalty.

9.1.2.9.1.3. The table below details the three starting point penalty bands that apply: ~~and the range of the financial penalties available within a penalty band.~~

Penalty Band	Range of Financial Penalty
Penalty Band 1 – Minor Breaches	\$0 to \$20 40,000
Penalty Band 2 – Moderate Breaches	\$30,000 to \$200 250,000
Penalty Band 3 – Serious Breaches	\$0-200,000 to \$500,000

~~The factors that may be taken into account by the Tribunal when determining the penalty band and the financial penalty will usually fall into the following two categories:~~

~~factors relating to the obligation breached and the impact or potential impact of the breach; and~~

~~other factors relating to the conduct of the Respondent.~~

~~9.1.3. Factors relating to the obligation breached and the impact or potential impact of the breach include but are not limited to the following factors:~~

~~(a) the obligation breached;~~

~~(b) the benefit gained by the Respondent as a result of the breach;~~

~~(c) the loss or potential loss caused to clients or investors;~~

~~(d) the inconvenience or distress caused to clients or investors; and~~

~~(e) the adverse effect on NZX Markets, including the fairness, orderliness and transparency of NZX Markets and any other damage or risk to the confidence and integrity of NZX Markets.~~

~~9.1.4. Factors relating to the conduct of the Respondent include but are not limited to the following factors:~~

~~(a) the intent, recklessness or negligence of the Respondent;~~

~~(b) how the breach was reported, disclosed and/or detected;~~

~~(c) steps taken to prevent the breach;~~

~~(d) the duration of the breach and the time taken to remedy the breach;~~

~~(e) whether it is a recurring breach and the overall compliance history of the Respondent;~~

~~(f) the level of cooperation received from the Respondent during the investigation of the breach; and~~

~~(g) whether the breach indicates serious or systemic weaknesses in the Respondents procedures, processes and systems.~~

~~9.1.5:9.1.4. In determining the level of the financial penalty, the Tribunal may also ~~has the discretion to take into account that consider what the~~ amount of ~~the~~ financial penalty ~~that is likely to could~~ deter future breaches by the Respondent and ~~to~~ deter other parties from breaching the same or a similar obligation.~~

9.2. Breach of the NZX Markets Rules and the Listing Rules, NZX Participant Rules, Clearing and Settlement Rules and Derivatives Market Rules

Step 1: Factors relating to the breach

9.2.1. The appropriate starting point penalty band for a breach of the NZX Markets Rules and the Listing Rules, NZX Participant Rules, Clearing and Settlement Rules and Derivatives Market Rules will be determined on the basis of the an overall assessment of the seriousness of the breach conduct of the Respondent in each case.

- (a) Factors relating to the obligation breached and the impact or potential impact of the breach include, but are not limited to, the following:
- (b) the obligation breached;
- (c) how the breach was reported, disclosed and/or detected;
- (d) the duration of the breach and the time taken to remedy the breach;
- (e) the benefit gained, or the loss avoided, by the Respondent as a result of the breach;
- (f) the loss or potential loss caused to clients or investors;
- (g) the harm or inconvenience caused to any other party as a direct consequence of the breach;
- (h) the adverse effect on NZX Markets, including the fairness, orderliness and transparency of NZX Markets and any other damage or risk to the confidence and integrity of NZX Markets; and
- (i) the adverse effect on the Clearing House or Depository (as defined in the Clearing and Settlement Rules), including the sound, orderly and stable operation of the Clearing House or Depository.

9.2.1-9.2.2. The following table provides a guide as to which factors are likely to be considered by the Tribunal to fall within a particular starting point penalty band and what the Tribunal may consider when assessing the starting point penalty within that penalty band. It is unlikely that all of the factors noted within the penalty bands below will exist in a particular case. In most cases, an appropriate penalty band will be one where 2 or 3 factors are present to a greater or lesser degree. If only one factor within a penalty band exists in a particular case the breach may still fall within that penalty band or it may fall within the penalty band where the most factors exist. Therefore, an assessment will need to be made based on the circumstances of each case.

Penalty Band	Factors
Penalty Band 1 Minor Breaches	<ul style="list-style-type: none">• The breach is a minor administrative, operational and/or compliance breach.— The breach has not caused any loss.•— <u>The breach and</u> has not had an impact on or has only had a minor

	<ul style="list-style-type: none"> • impact on market, investors, clients, and/or the market. • or other direct material impact. • The breach was unintentional and/or inadvertent. • The breach was promptly self-reported. • The breach has not occurred previously. • The breach occurred despite effective processes, systems and procedures. • The breach was promptly addressed. • The breach did not result in a financial benefit and/or commercial advantage to the Respondent.
<p>Penalty Band 2 Moderate Breaches</p>	<ul style="list-style-type: none"> • The breach is a moderate administrative, operational^{al} and/or compliance breach. • The breach has caused a moderate impact on investors, <u>or had a moderate impact on clients, and/</u> or the market. • or tThe breach had the potential to cause a moderate impact on investors, <u>clients, and/or or to have a moderate impact on clients and</u> the market. • The breach is reoccurring. • The breach was not promptly self-reported. • The breach <u>occurred for a short period of time</u>continued to occur once discovered. • Processes, systems and procedures were not adequate. • Prompt redress of any impact caused as a result of the breach did not occur. • The breach was unintentional but occurred as result of negligence. • The breach resulted in a <u>minor to moderate</u> financial benefit and/or commercial advantage to the Respondent.
<p>Penalty Band 3 Serious Breaches</p>	<ul style="list-style-type: none"> • The breach <u>is a serious administrative, operational and/or compliance breach</u>relates to a fundamental obligation. • <u>The breach has caused significant impact on investors, clients and/</u> or

had a significant impact on clients or the market.

- ~~I or the breach had the potential to cause significant impact on investors, or to have a significant impact on clients and/or the market.~~
- ~~The breach was intentional or arose as a result of recklessness or negligence.~~
- ~~The Respondent failed to report the breach.~~
- ~~The breach continued for an extended period of time.~~
- ~~The breach forms a pattern of misconduct.~~
- ~~Effective processes, systems and procedures are not in place.~~
- ~~The Respondent failed or delayed in providing redress for any impact caused as a result of the breach.~~
- ~~The Respondent hindered the investigation surrounding the breach.~~
- ~~The breach continued to occur once discovered.~~
- ~~The breach resulted in a significant financial benefit and/or commercial advantage to the Respondent.~~
- ~~The Respondent committed the breach to obtain a financial benefit and/or a commercial advantage.~~

Step 2: Factors relating to the Respondent

9.2.3. Once the Tribunal has determined the starting point penalty band and starting point penalty, it will then be necessary to ~~consider-determine~~ the final level of the financial penalty by adjusting the starting point penalty to reflect all aggravating and mitigating factors relevant to the Respondent, including any admission of the breach. ~~The Tribunal will consider the overall conduct of the Respondent to determine the appropriate level of the financial penalty that will be imposed on the Respondent and the same factors listed in Procedure 9.1.5 and 9.1.6 are to be taken into account. The table below sets out a guide as to the factors that are likely to reduce the penalty and factors that are likely to increase the penalty.~~

9.2.4. Factors relating to the Respondent include, but are not limited to the following:

(a) whether the breach was intentional or arose as a result of recklessness;

(b) whether and when the breach was admitted and/or self-reported;

(c) the level of cooperation received from the Respondent during the investigation of the breach;

- (d) steps taken to prevent the breach or prevent future equivalent breaches;
- (e) whether it is a recurring breach and the overall compliance history of the Respondent;
- (f) whether the breach indicates serious or systemic weaknesses in the Respondents procedures, processes and systems;:-
- (g) disgorgement of, or agreement to disgorge, any gains made, or loss avoided; and
- (h) payment of, or agreement to pay, compensation to any aggrieved third party.

9.2.5. The table below sets out a guide as to the following non-exhaustive factors relating to the Respondent may be considered by the Tribunal as factors that that are likely to lower the starting point penalty: and factors that are likely to increase the starting point penalty or reduce the ability to lower it.

- (a) The Respondent admitted the breach at an early stage, and/or self-reported the breach;
- (b) The Respondent cooperated fully and openly with NZX or CHO (as the case may be) with any investigation surrounding the breach and provided all material facts;
- (c) The Respondent has implemented or has undertaken to implement or enhance processes, systems, or procedures to prevent similar future breaches;
- (d) The breach occurred even though effective compliance / administrative / operational processes were in place;
- (e) The Respondent provided prompt redress for any harm caused as a result of the breach;
- (f) The breach is a one-off event and does not form part of a pattern of behaviour or conduct;
- (g) The Respondent has a good compliance history; and
- (h) where applicable, the Respondent obtained independent legal, accounting or professional advice that the conduct did not constitute a breach and reasonably relied upon that independent advice.

9.2.6. The following non-exhaustive factors relating to the Respondent may be considered by the Tribunal as factors that are likely to increase the starting point penalty or reduce the ability to lower it:

- (a) The breach was caused intentionally by the Respondent, or through the Respondent's recklessness;
- (b) The Respondent hindered NZX or CHO (as the case may be) with any investigation surrounding the breach and did not provide all material facts;
- (c) The Respondent should reasonably have been aware that the breach could occur and did not implement or undertake to implement or enhance processes, systems or procedures to prevent similar future breaches;

- (d) The Respondent was aware that its compliance / administrative / operational processes were not adequate or ineffective and failed to rectify them;
- (e) The Respondent failed or delayed in providing redress for any harm caused as a result of the breach;
- (f) The breach is a recurring breach, or forms part of a pattern of behaviour or conduct;
- (g) The Respondent has a poor compliance history; and
- (h) Where applicable, the Respondent either failed to seek independent legal, accounting or professional advice or acted contrary to legal, accounting or professional advice obtained that the conduct did constitute a breach.

Lower end of the penalty band <u>Mitigating factor</u>	Higher end of the penalty band <u>Aggravating factor</u>
<u>The Respondent admitted the breach at an early stage, and/or self-reported the breach. The Respondent promptly reported the breach.</u>	<u>The Respondent did not admit the breach or admitted the breach at a late stage. The Respondent failed or delayed to report the breach or the breach was brought to the attention of NZX or CHO as a result of its inspection process or information from the public/another NZX Firm or as result of its market surveillance activities or information from the public/another Issuer.</u>
<u>The breach did not continue once discovered.</u>	<u>The breach continued to occur once discovered.</u>
<u>The Respondent cooperated fully and openly with NZX or CHO (as the case may be) with any investigation surrounding the breach and provided all material facts.</u>	<u>The Respondent did not cooperate fully with, hindered, NZX or CHO (as the case may be) with any investigation surrounding the breach and did not provide all material facts.</u> <u>The Respondent hindered NZX or CHO (as the case may be) and any investigation surrounding the breach</u>
<u>The Respondent has implemented or has undertaken to implement or enhance processes, systems, or procedures to ensure the same breach does not occur in the future.</u>	<u>The Respondent has not implemented or undertaken to implement or enhance processes, systems or procedures to ensure the same breach does not occur in the future.</u>
<u>The breach was unintentional and/or inadvertent.</u>	<u>The breach was intentional or arose as a result of recklessness or negligence.</u>
<u>The breach occurred even though effective</u>	<u>The breach occurred as effective compliance/administrative/operational processes were not in place.</u>

compliance/administrative/operational processes were in place.	
The breach did not result in a financial benefit or commercial advantage to the Respondent.	The breach resulted in a financial benefit or commercial advantage to the Respondent.
The Respondent provided prompt correction of redress for any harm caused as a result of the breach.	The Respondent failed or delayed in providing redress for any harm caused as a result of the breach.
The breach occurred over a short period of time.	The breach occurred over an extended period of time.
The breach is an isolated event, and does not form a pattern, and the Respondent has a good compliance history.	The breach is a recurring breach, or forms a pattern, and the Respondent has a poor compliance history.
The breach is an isolated event.	The breach is a recurring breach.
Where applicable, the Respondent obtained independent legal, accounting or professional advice that the conduct did not constitute a breach and reasonably relied upon that independent advice.	Where applicable, the Respondent either failed to seek independent legal, accounting or professional advice or acted contrary to legal, accounting or professional advice obtained that the conduct did constitute a breach.

9.2.7—The Tribunal may also consider the willingness of the Respondent to actively engage with NZX or CHO in an open and responsive manner in relation to reaching a settlement in respect of the breach, as part of its determination of the final penalty that is to apply to the breach.

9.3. Public Censure

9.3.1 This procedure provides guidance on when the Tribunal may be likely to exercise its power under the Rules to publicly censure a Respondent.

- 9.3.2 The name of a Respondent will not be published when NZX or CHO, as the case may be, issues an Infringement Notice in accordance with Section 5 of the Rules.
- 9.3.3 The name of a Respondent will not likely be published when:
- (a) none of the findings of the Tribunal have been adverse to the Respondent; or
 - (b) the Respondent has established grounds for maintaining confidentiality of the Tribunal's decision and the Tribunal has ordered that the decision not be published, or that publication should be delayed for a specified time period; or
 - (c) the Respondent committed a breach that falls within Penalty Band 1 of Procedure 9.
- 9.3.4 The name of a Respondent is likely to be published when:
- (a) the impact of the breach has caused the public to be harmed and/or has damaged public confidence in the sector or the breach had the potential to cause harm to the public or the potential to damage public confidence in the sector; and/or
 - (b) the Respondent has been involved in repeated breaches and shown disregard for the NZX Markets Rules or the Clearing and Settlement Rules, as applicable; and/or
 - (c) the Respondent committed a breach that falls within Penalty Band 2 or Penalty Band 3 of Procedure 9.
- 9.3.5 This Procedure is not determinative and the Tribunal will use its discretion in imposing a penalty of public censure under the Rules. When deciding whether to impose a public censure, the Tribunal will have regard to the overall conduct of the Respondent in relation to the breach as set out in this Procedure.

Section 10: Costs and Expenses

10.1. No procedures made

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Section 11: Failure to Pay Penalties or Costs

11.1. No procedures made

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Section 12: Annual Regulatory Report

12.1. No procedures made

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Section 13: Remuneration

13.1. No procedures made

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Section 14: Annual and Other Meetings

14.1. No procedures made

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Section 15: Indemnification

15.1. No procedures made

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Section 16: Confidentiality

16.1. No procedures made

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