

**NZ RegCo**

NZ'S LISTED  
MARKET REGULATOR

# Oversight & Engagement Report

2021



## NZ RegCo Oversight & Engagement Report

We are pleased to publish the NZ RegCo Oversight and Engagement Report for the 2021 review year.

NZ RegCo is responsible for monitoring and enforcing the rules under which NZX's markets operate, and frontline surveillance of trading on those markets.

2021 saw NZ RegCo's first full year of operations, following structural separation of the exchange's regulatory functions into a stand-alone, independently governed agency in late 2020. NZ RegCo reached an important milestone in July, with the end of our establishment phase and transition to a permanent board. That board comprises Trevor Janes as chair, with continuing members Annabel Cotton, Elaine Campbell, John Hawkins and Mike Heron QC.

2021 also saw the appointment of:

- John Dixon QC, Pip Dunphy, Dave Robertson and Rachael Newsome to the NZ Markets Disciplinary Tribunal in June
- Jennifer Bunbury and Rob Hamilton to the Listing Subcommittee – following the retirement of Prof. Don Trow in October

These appointments reflect NZ RegCo's focus on ensuring high calibre talent and depth of market experience to support NZ RegCo's oversight of NZX's markets.

NZ RegCo continued to work collaboratively with the FMA on detecting and pursuing suspected cases of insider trading and market manipulation activity. 28 matters were referred to the FMA last year by NZ RegCo's Surveillance team. This represents a continued increase in referral numbers, with 22 matters being referred in 2020. Our surveillance capabilities were further enhanced during the year, with additional proprietary tools supplementing our existing infrastructure.

We continue to prioritise monitoring and oversight activity on conduct that poses the greatest risk to direct investor harm and to the financial stability of the exchange and clearinghouse.

During the year, the NZ Markets Disciplinary Tribunal issued five determinations on breaches of issuers' continuous disclosure obligations. These are fundamental obligations. Ensuring compliance with issuers' disclosure obligations – as well as best practice – will remain an ongoing focus of our issuer monitoring work, in support of a market that relies

on timely disclosure of material information to enable investors to make informed investment decisions. This is particularly relevant given the economic climate, and potential challenges to issuers' financial and operational performance.

Although NZX did not experience the same level of market volatility in 2021 compared to 2020, a significant proportion of our broker investigations related to trading conduct, management of client assets, and credit events under the NZX Clearinghouse. This reflects the importance placed by NZ RegCo on these areas, underpinning the integrity of market trading.

Although NZ RegCo will refer matters to the Tribunal if appropriate, we actively use the other enforcement tools at our disposal where we observe minor breaches and poor conduct. That proactive approach – while proportionate – is intended to prevent lower-level conduct issues escalating and increasing the risks of more significant investor harm. During 2021, there were a number of instances where we required brokers to assess, test and implement specific improvements to core processes to mitigate such risks. This work will continue to be supported in 2022 through NZ RegCo's inspection programme. That targeted programme focuses on how brokers are managing developing market and industry risks, and the risks we consider most relevant given brokers' business and compliance history.

### *The year ahead*

We continue to proactively monitor developing issues and market trends that may impact the New Zealand capital markets landscape. That work informs how we think about our areas of regulatory focus and strategic objectives.

Our 2022 planning has centred on four strategic objectives:

#### **SO1: Compliant markets**

*Our work supports a compliant NZX markets ecosystem, through oversight and enforcement action.*

#### **SO2: Market development and structure**

*We support the ongoing development of NZX's markets and product suite, and the regulatory framework that underpins them.*

#### **SO3: Regulatory empowerment**

*We provide tools and support to enable issuers and participants to efficiently and effectively meet their NZX market obligations.*

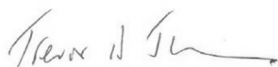
#### **SO4: Staffing and Capabilities**

*We attract, develop and retain the employees and capabilities needed to advance our objectives and deliver on our vision and mission.*

These strategic objectives underpin NZ RegCo's 2022 corporate plan, and the initiatives and projects that we will pursue this year in addition to our ongoing core activity.

Those initiatives include:

- assessing additional tools to support the price enquiry process, including the viability of "trade with caution" arrangements
- reviewing other potential "circuit breaker" controls to manage market volatility
- supporting the ongoing corporate governance thematic review
- reviewing the regulatory approach to managing trading halt applications
- supporting NZX's product and market development initiatives, including the proposed NZX20 futures market



**Trevor Janes**

NZ RegCo Board Chairman

- developing an issuer training framework
- review of proposed online tools for issuers, in support of NZX's digital transformation
- ongoing support for implementation of NZX Dark, the exchange's mid-point order book
- embedding the outcomes of the current penalties regime review under the NZ Markets Disciplinary Tribunal Rules

We would like to acknowledge issuers and participants for the constructive engagement with NZ RegCo over 2021.

The NZ RegCo board and management team remain committed to driving best practice, and a regulatory environment which supports market integrity and investor confidence.



**Joost van Amelsfort**

NZ RegCo CEO

# Contents

<b>Oversight</b>	<b>1</b>
Market surveillance	6
Issuer Oversight	13
Participant Oversight	16
<b>Enforcement</b>	<b>20</b>
<b>Engagement</b>	<b>26</b>
Surveillance	26
Issuer Regulation	27
Participant Compliance	31
<b>Discipline Fund</b>	<b>33</b>

## Oversight

As a licensed market operator under the Financial Markets Conduct Act 2013 (FMC Act), the exchange must, to the extent that is reasonably practicable, do all things necessary to ensure that the operation of each of its licensed markets is fair, orderly and transparent.

NZ RegCo plays a vital role in supporting NZX to meet this statutory obligation, through its monitoring and oversight activities. This includes not only enquiry and investigation work, but the frontline monitoring of announcements and trading activity, an annual Participant inspection programme, oversight and review of regulated transactions, and market engagement.



## Summary of Investigations and Enquiries

Our investigation and enquiry work is a key way in which we provide oversight of the market.

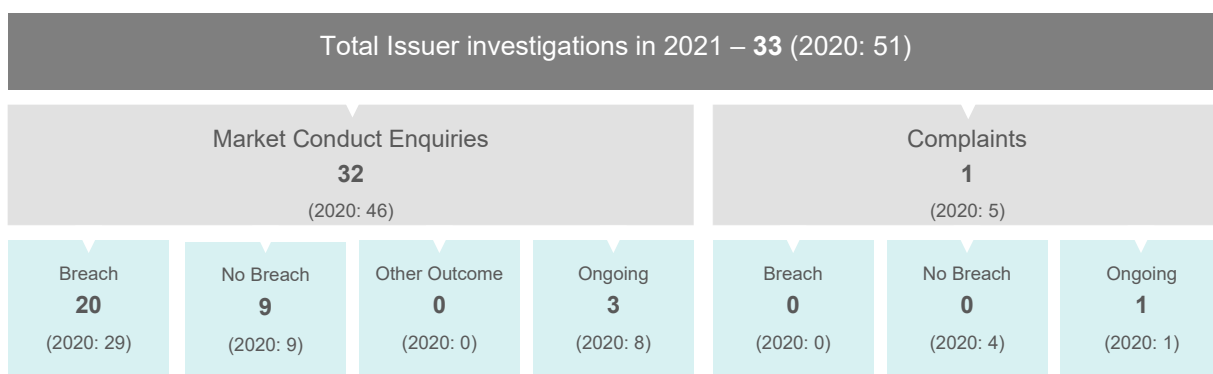
We become aware of matters that may require investigation in a number of ways. Usually this results from our own compliance monitoring and surveillance work, on-site inspections, capital adequacy reviews and targeted investigations. We also receive enquiries and complaints from members of the public, and referrals from other regulators.

We do not commence an enquiry into every matter that comes to our attention. It depends on a number of factors, including NZ RegCo’s enforcement priorities, the severity of the alleged breach and the impacts it may have on investors and the market, the available evidence, relevant precedent, whether other regulators have jurisdiction over the conduct, and the regulatory outcome that we may achieve if we took enforcement action.

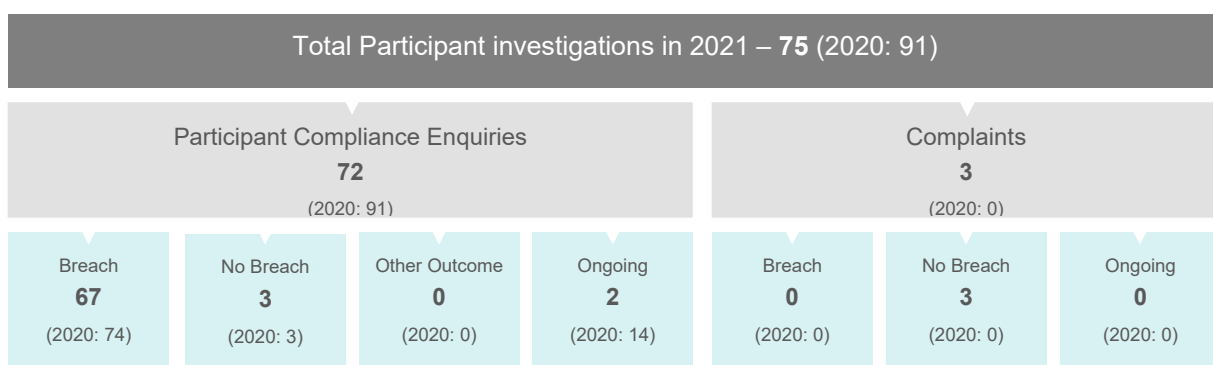
The Surveillance team conducted 181 investigations in relation to potential market abuse in 2021. Further details are set out on pages 6 to 12.



The Market Conduct team conducted 33 investigations in 2021, in relation to conduct by listed Issuers. Further details are set out on pages 13 to 15.



The Participant Compliance team conducted 75 investigations in 2021, in relation to conduct by accredited NZX Participants. Further details are set out on pages 16 to 19.



## Market surveillance

The Surveillance team conducts front-line monitoring and investigation of trading on NZX’s listed markets, through a combination of real-time operational oversight of orders and trades, and post-trade reviews. This oversight enables the Surveillance team to:

- identify and respond to situations as they arise during a trading day, for example trading errors, market queries and price enquiries; and
- monitor activity that may indicate market misconduct, which can include anything from technical rule breaches to potentially unlawful conduct such as market manipulation and insider trading.

### Surveillance monitoring and investigations

To support its monitoring and oversight work, the Surveillance team draws on a number of sources including:

- system generated alerts from its SMARTS Surveillance software;
- proprietary tools;
- market feedback from members of the public and market participants;
- referrals made by the Financial Markets Authority (FMA), and other NZ RegCo teams;
- ongoing/continuous observation (including media and social media sources) and trade monitoring; and
- systematic post-trade review of trading ahead of market announcements by Issuers.

### SMARTS Surveillance

SMARTS Surveillance software is a purpose-built surveillance and market analytics tool, used globally by a number of exchanges, market regulators and trading firms. Its modular system provides detailed quantitative and graphic data, and is configured to highlight potentially anomalous orders or trades, by comparing market volume or price movements, for example, against user configurable criteria. In addition to market-based criteria (price, volume etc) it also highlights potentially anomalous trading situations where, for example,

the same client may be quoting on both sides of the market, or the same client may have multiple bids or offers at multiple prices in the market. These “alerts” are then investigated.

#### SMARTS Alerts Analysis

If a SMARTS alert is triggered, the Surveillance team undertakes an initial review. This is primarily to identify, and discard, false positive alerts. The remaining alerts are then subjected to a more in-depth assessment process.

The action that is taken in respect of a SMARTS alert, or any other matter identified by the Surveillance team directly, is dependent on the circumstances of the alert. Surveillance considers a number of factors when deciding whether to conduct an in-depth review or commence an investigation. These factors include:

#### **Liquidity**

The liquidity of securities trading on the market varies significantly. The levels of liquidity in smaller issuers will often explain abnormal and/or short term price movements.

#### **Underlying client orders and their intentions**

Surveillance is interested in alerts that evidence an abnormal trading pattern for a single client. It will seek to understand the motivation for that trading, and investigate the client and its order instructions.

#### **Volume, value and frequency of trades**

Surveillance seeks to understand the reason for orders for small quantities being entered over an extended duration, or being entered at or near market close. It also reviews abnormal trading activity around corporate events or key dates, such as month-, quarter- and year-end.

#### **Orders at close**

Surveillance monitors the timing and nature of orders entered in the pre-close session, as well as trading activity near the end of each day's regular trading session for activity that has the potential to influence the closing price of a security. It takes particular interest in large orders and orders entered late in the pre-close session, as well as orders entered or cancelled which have an outsize effect on the simulated clearing price of the upcoming closing auction.

#### **Change of beneficial ownership**

Surveillance will review trading that appears not to result in a change of beneficial ownership in the relevant security.

#### **Materiality**

The following factors will be considered in assessing materiality:

- a (usually volatility-based) benchmark of the past trading history of a specific security;
- the absolute value of a price impact;
- the percentage price or volume movement;
- the market capitalisation of the issuer; and
- any subsequent market reaction.



The following graph represents the different types of SMARTS alerts reviewed by Surveillance in 2021.

Number of Alerts by Category - 2021



	% 2021	% 2020
● SPOOFING	47%	15%
● UNUSUAL PRICE MOVEMENT INTER-DAY	23%	15%
● UNUSUAL VOLUME INTER-DAY	10%	8%
● LARGE ORDER	10%	7%
● UNUSUAL PRICE MOVEMENT INTRA-DAY	3%	8%
● LAYERING REPEAT	1%	2%
● PAINTING THE TAPE	1%	1%
● OTHER	5%	1%
● BAIT AND SWITCH	0%	34%
● HIGH ORDER RATE	0%	9%

The high order rate and bait & switch alerts were retired in July 2020, and replaced with revised spoofing alert parameters

Unusual price movement intra-day	This alert identifies unusual price movements against security specific, volatility-based, benchmarks for multiple intra-day time ranges.
Unusual price movement inter-day	This alert identifies unusual price movements against security specific, volatility-based, benchmarks for multiple inter-day time ranges.
Spoofing	This alert is designed to highlight orders which appear not to be genuine attempts to trade, but instead appear to be placed with the intent to influence the market higher or lower to benefit either existing positions, or orders placed on the opposite side of the market.
Unusual volume	This alert identifies unusual levels of trading volume against security specific benchmarks.
Large order	Highlights participants and clients who enter unusually large orders.
Layering Repeat	This alert highlights accounts that enter multiple orders at multiple price steps on one side of the order book, effectively influencing the market in the desired direction, and then trades against any orders so influenced.
Painting the tape	Highlights accounts which enter orders to execute trades at sequentially higher prices—thus “painting the tape”—and which then attempt to unwind or reverse their position by selling stock. This alert also works in reverse.
Other	Other alerts, which fire relatively infrequently, include Pump and Dump; Trash and Cash; Phishing; Marking the Close; Pinging; and Insider alerts.

When the Surveillance team investigates trading on NZX’s markets, it generally engages directly with NZX Participants to request information such as details of order records, order instructions, phone recordings, electronic communications, and end client information.

In 2021, the Surveillance team conducted 181 investigations arising out of its monitoring and oversight activity, compared to 315 in 2020.

This number represents a “return to normal” after 2020’s COVID-induced volatility saw a substantial uptick in investigation numbers relative to prior years. NZ RegCo anticipates an increase in alerts in 2022 in conjunction with increased market volatility, driven by the potential impacts of the macro-economic environment on equity markets.

If an investigation warrants escalation, the Surveillance team may refer the investigation to:

- the FMA, if the matter relates to misconduct prohibited under the FMC Act;
- the Participant Compliance team, if the matter relates to misconduct by accredited market Participants under NZX Participant Rules; or
- the Special Division of the NZ Markets Disciplinary Tribunal (Tribunal), if the matter relates to trading in the securities of, or any related entity of, NZX. This includes trading in Smart-shares exchange traded funds.

## FMA Referrals

The FMA has primary responsibility for investigation and prosecution of alleged breaches of the insider trading and market manipulation provisions of the FMC Act.

On 30 April 2020, Surveillance referred a suspected case of market manipulation to the FMA. In this referral, Surveillance noted that the individual in question had placed a sell order in a stock at a price substantially above its last traded price. This individual then placed a buy order with the intent, in Surveillance’s view, to move the last traded price significantly higher, and closer to the level at which the individual’s sell order was offered, to encourage other buyers to buy the stock, to the eventual benefit of this sell order.

The FMA agreed, and concluded that the individual had “likely created a false or misleading appearance regarding the demand for, and price of, shares of a listed company, which is a breach of the Financial Markets Conduct Act”.

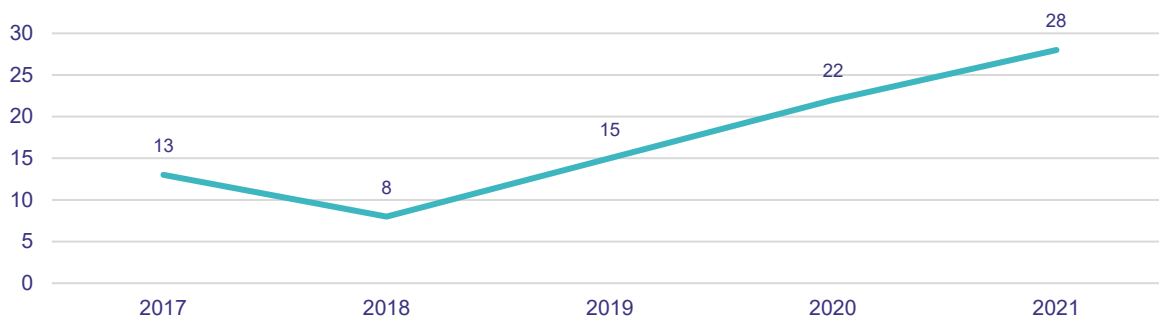
The FMA issued a formal warning to this individual, after taking into account the small size and low value of the trade, the individual’s personal circumstances and trading history.  
[\(https://www.fma.govt.nz/news-and-resources/media-releases/formal-warning-market-manipulation/\)](https://www.fma.govt.nz/news-and-resources/media-releases/formal-warning-market-manipulation/)

If, as a result of its investigations, the Surveillance team identifies trading behaviour that indicates potential insider trading or market manipulation, it refers that trading to the FMA. This may include trading in advance of market announcements, or trading behaviour that suggests an attempt to influence the price of a security.

NZ RegCo Surveillance referred 28 matters to the FMA for further investigation in 2021, compared to 22 in 2020. Twelve referrals related to potential insider trading and four related to potential market manipulation. The balance generally related to improper disclosures by directors and major shareholders. Surveillance liaises closely with the FMA, both pre- and post-referral, providing it with analytical and quantitative information.

The outcome of a referral to the FMA will depend on various factors, including the nature of the evidence able to be gathered and the type of alleged market misconduct. Not all matters referred by NZ RegCo will result the FMA taking investigation or enforcement action.

### FMA Referrals



## Special Division referrals

The Special Division of the NZ Markets Disciplinary Tribunal exercises the powers and functions of NZ RegCo as they apply to NZX Limited and any related entity of NZX. This includes Smartshares, as the issuer of Exchange Traded Funds (ETFs) listed on the NZX Main Board. The Special Division's role is to foster market confidence that the market rules are applied to NZX and any related entity in an impartial and independent manner.

Alerts triggered in the SMARTS surveillance system in relation to the securities of NZX and Smartshares, and other potentially abnormal trading activity in those securities detected by the Surveillance team, are forwarded to the Special Division for further analysis. In 2021, the Surveillance team referred 92 matters for further investigation compared to 195 referrals in 2020. This reflects a reduction in broader market volatility observed in 2021.

The Special Division reports annually on the outcome of its investigations into matters referred to it.

Surveillance and the Special Division have in place operating protocols to support referrals and reporting. As part of a 2021 review, amendments were made to those protocols to ensure more effective engagement relating to alerts generated in relation to the creation and redemption of Smartshares ETFs by a specific group of accounts owned by Smartshares itself, or which arise from market-making activities in these ETFs.

## Participant Compliance referrals

Daily trade surveillance may also identify potential breaches of NZX Participant Rules by accredited NZX Participants. This may include disorderly trading or trading which is in breach of certain timing or reporting rules.

Such matters may be referred to the Participant Compliance team for investigation. In 2021, the Surveillance team referred 20 matters to Participant Compliance, compared with 43 referrals in 2020.

Many of these referrals related to either potential “disorderly markets” events, or to potential breaches of NZX Participant rules related to reporting of Negotiated Deals.

Surveillance liaises closely with Participant Compliance, both pre- and post-referral, providing it with analytical and quantitative information in support of investigations.

## Price Enquiries

Surveillance may issue a price enquiry to an Issuer if there has been trading in that Issuer’s securities that cannot be explained to NZ RegCo’s satisfaction by reference to publicly available information or market data.

In determining whether to issue a price enquiry, the Surveillance team assesses:

- the size of the price increase or decrease;
- any company announcements;
- historic volatility of the stock;
- whether the price movement was gradual or sudden; and
- any industry data, broker recommendations or research analysis.

As a result, not every material price movement warrants a price enquiry.

In 2021, Surveillance issued 10 issuer price enquiries, compared to 12 in 2020.

NZ RegCo reiterates that confirmation by an Issuer that it is in compliance with its continuous disclosure obligations does not mean that the Issuer does not hold Material Information. Issuers may confirm compliance, and be relying on an exception from immediate disclosure under the Listing Rules – such as where the information relates to an incomplete transaction or proposal.

The price enquiry process incorporates two key steps: a public enquiry and a confidential enquiry. The additional information received under the confidential enquiry will assist NZ RegCo in determining whether the Issuer remains in compliance with its continuous disclosure obligations, while maintaining confidentiality of the Issuer’s information.

### Public Enquiry

Surveillance issues a price enquiry to the Issuer, seeking confirmation of whether that Issuer remains in compliance with its continuous disclosure

obligations. This price enquiry letter, and the Issuer’s response, are released to the market via the NZX markets announcement platform.

### Confidential Enquiry

Surveillance also issues a confidential request for information to the Issuer. That request asks the Issuer to provide more detailed information about its compliance with its continuous disclosure obligations on a confidential basis.

In this confidential request, Issuers are specifically asked to:

- Confirm whether they are in possession of Material Information (as defined in the NZX Listing Rules);
- If so, confirm whether or not it is relying on an exception from immediate disclosure; and
- If so, explain the basis on which it is relying on that exception.

NZ RegCo is particularly interested in how the Issuer has maintained confidentiality, as this is expected to inform an assessment of the risk that an information imbalance has developed in the market for an Issuer’s securities.

## Algorithmic Trading

NZ RegCo continued to observe an increase in the volume of algorithmic trading on NZX's markets in 2021, including general execution algorithms.

There were eight instances in 2021 where Surveillance engaged with NZX Participants after identifying execution algorithms not operating optimally. Most operating issues encountered with algorithms in 2021 continued to arise from "stale data", where algorithmic orders and amendments/cancellations were responding to bid and offer data that had been superseded. Following

NZX's trading system upgrade to Nasdaq ME in 2021 there has been a material reduction in such data issues being encountered with algorithmic orders.

2021 saw a continuation of significant arbitrage trading in NZX/ASX dual listed securities by High Frequency Trading firms (HFTs).

Surveillance monitoring throughout 2021 did not identify any instances of disorderly trading resulting from HFT algorithmic trading.



## Issuer Oversight

The Market Conduct team monitors Issuers’ compliance with the Listing Rules. Principal activities undertaken by the Issuer Compliance team include:

- engaging with Issuers concerning continuous disclosure and market releases;
- market monitoring and investigating any suspected rule breaches; and
- undertaking enforcement work through its market conduct function for NZ RegCo.

### Issuer investigations

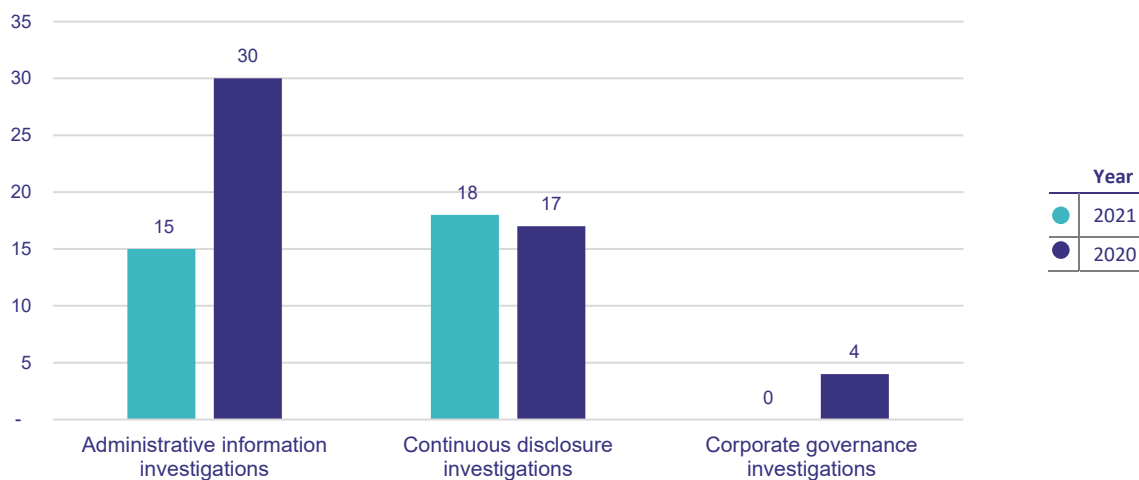
In 2021, the Market Conduct team conducted 33 investigations, which included one initiated as a result of complaints. There were four investigations ongoing at year end.

The overall number of investigations into issuer conduct declined in 2021, in part as a result of the continued focus by NZ RegCo on issuer support

and education which has reduced the number of administrative breaches. This work remains ongoing, and forms part of a broader issuer training initiative being developed by NZ RegCo in 2022.

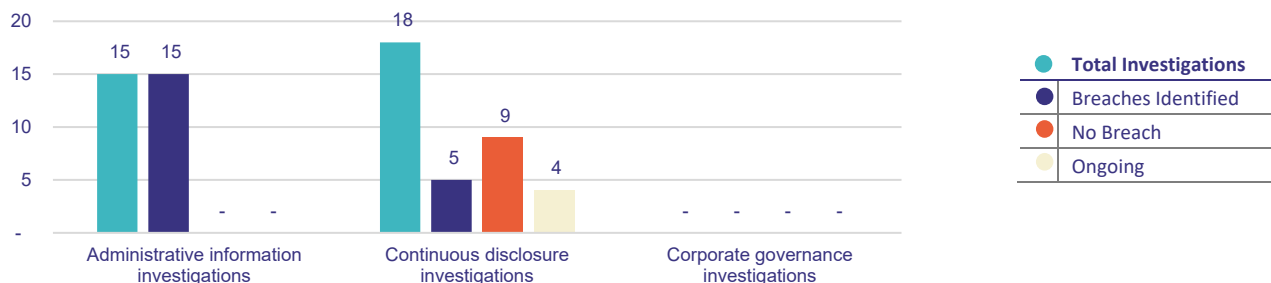
Market Conduct continues to engage with Issuers on best practice under the Listing Rules and guidance.

#### Issuer Investigations 2021



Of the 29 investigations concluded during 2021, 20 resulted in breaches being identified.

### Investigation Outcomes 2021



#### Continuous disclosure

Oversight of issuers’ compliance with their continuous disclosure obligations remains a high priority for NZ RegCo. This reflects a central tenet of NZX’s markets, which rely on timely disclosure of material information to enable investors to make informed investment decisions.

NZ RegCo undertook and completed 14 investigations into continuous disclosure matters in 2021, down from 17 in 2020. Those investigations continued to involve analysis and assessment of complex fact patterns and exercise of judgement on the part of issuer boards and management.

During 2021, NZ RegCo enhanced its internal continuous disclosure procedures, to ensure greater consistency across investigations. NZ RegCo continues to engage with the FMA in relation to continuous disclosure matters.

#### Administrative announcements

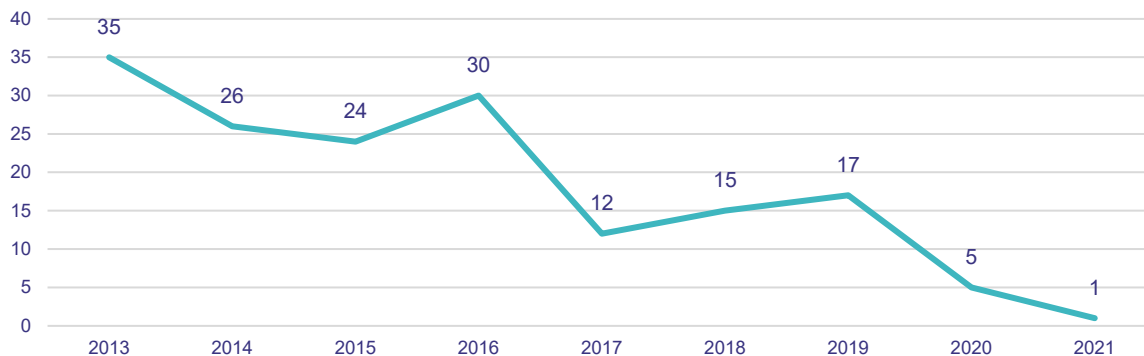
Administrative announcements are required to be released at particular times and contain specific information, and accordingly a number of breaches related to the timing of administrative announcements or to inadvertently omitted content (particularly data not being entered into the MAP).

The number of administrative breaches investigated by NZ RegCo has continued to reduce, reflecting policies put in place during 2020 to apply a materiality threshold before matters are referred to Market Conduct. This policy, combined with a greater emphasis on Issuer training, has seen benefits in reducing the number of low level investigations that consume considerable resource, both for Issuers and for NZ RegCo, for matters that have limited impact on the market.



## Issuer complaints

### Complaints



NZ RegCo received only one complaint in relation to Issuer conduct under the Listing Rules in 2021. This continues a longer-term trend.

Complaints received by NZ RegCo which allege a breach of the Listing Rules are investigated in accordance with NZ RegCo’s enforcement policy.

If NZ RegCo receives a complaint alleging matters which are not regulated by the Listing Rules (for example, corporate law or obligations under the FMC Act), NZ RegCo will refer it to the regulator with the appropriate regulatory mandate. In some cases, there is no further action that can be taken.



## Participant Oversight

The Participant Compliance team administers the NZX Participant Rules and NZX Derivatives Market Rules, and supervises compliance with those Rules, together with the Clearing and Settlement Rules and Depository Operating Rules. Principal activities include:

- Capital and prudential and onsite inspections; and
- Investigating suspected rule breaches.

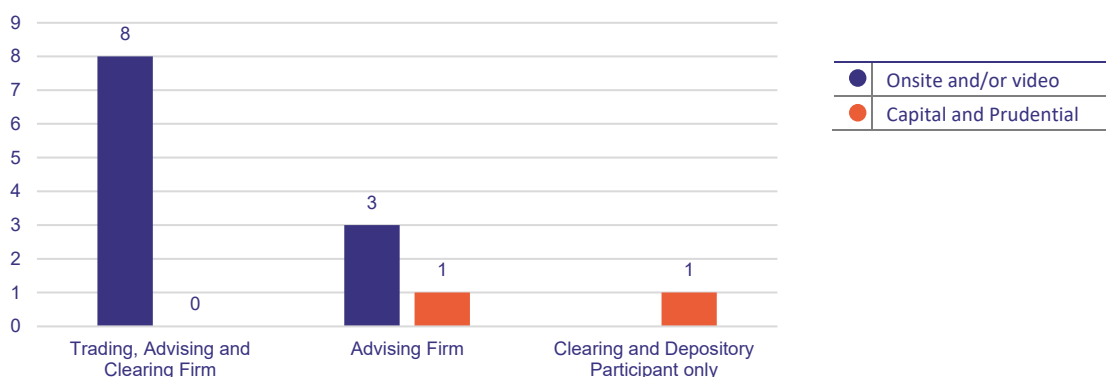
### Inspection Regime

In 2021, the Participant Compliance team conducted inspections of 13 Participants. Inspections were targeted to high-risk areas. The inspection programme maintained a compliance monitoring focus on the management of these risks, identifying industry trends and key risks specific to the Participant’s business and compliance history. The inspections captured all applicable NZX Rule sets and included both industry wide considerations

and Participant specific ones, so they could be tailored to each Participant’s business and particular risks.

Topics covered included trading conduct (incorporating both direct market access and “prescribed person” trading), risk management practices and compliance monitoring. NZ RegCo also conducted inspections of other key areas such as capital adequacy, client assets and clearing & settlement processes, where relevant to the Participant.

#### Inspections 2021



As was the case in 2020, NZ RegCo undertook a combination of desk-based and onsite inspections due to the impacts of COVID-19. NZ RegCo continued to work with Participants in support of their understanding and meeting best practice compliance standards.

NZ RegCo identified three breaches during the 2021 inspection programme and made 24 good practice recommendations. A focus of the good broking practice recommendations was compliance monitoring. This remains a matter of significant importance to NZ RegCo as it helps to ensure controls and procedures are operating as they should, which in turn helps to protect clients and their assets as well as contributing to market integrity.

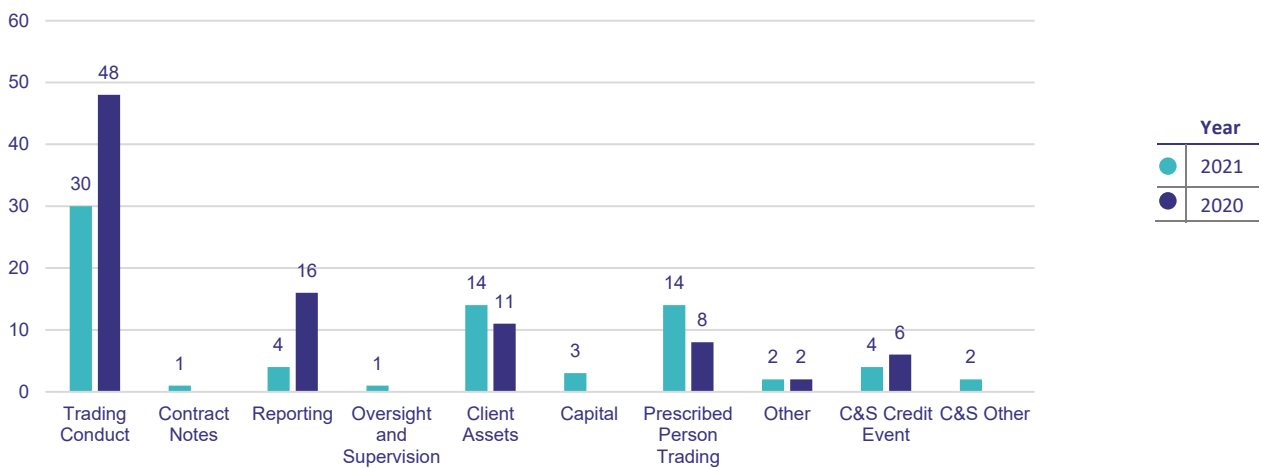
## Participant investigations

The Participant Compliance team investigated 75 matters during 2021, relating to a broad range of compliance issues. Two investigations remained ongoing at the end of the year.

Of the 75 investigations conducted, seven were specific to the Derivatives Market Rules, four specific to the Clearing & Settlement Rules and 55 were specific to the Participant Rules. The remaining nine investigations related to conduct that straddled multiple rule sets.

NZ RegCo continued to actively engage with Participants throughout 2021, with a focus on the correct application of the Rules, timely reporting of potential breaches and assisting Participants to improve policies and controls in order to support best practice.

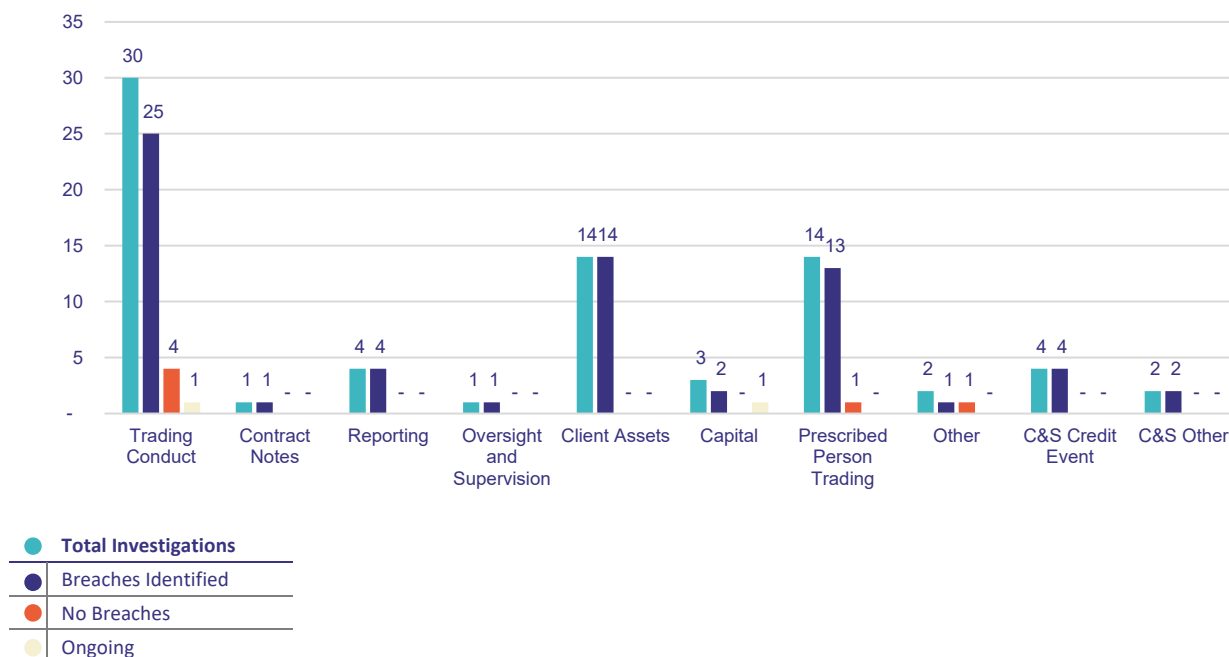
### Participant Investigations



A significant proportion of the investigations for 2021 related to trading conduct, client assets and credit events, reflecting the complexity and importance placed on these areas. NZ RegCo also encountered a notable increase in investigations relating to trading by “prescribed persons” of NZX Participants.

67 breaches by NZX Participants of NZX Rules were identified in 2021.

## Participant Investigation Outcomes



### Trading Conduct

Trading conduct remains a critical area of focus for NZ RegCo. This reflects the importance of trading behaviours to the fair, orderly and transparent operation of the markets. There was a notable decrease in the number of trading conduct investigations undertaken in 2021, given the reduction in market volatility relative to 2020.

The significant majority of breaches in relation to trading conduct represented relatively minor breaches of the rules. Eight matters resulted in obligations letters being issued, formally recording details of the relevant breach, reminding the Participant of its compliance obligations, and requiring improvements to their processes. There were two matters that NZ RegCo referred to the Financial Markets Authority.

### Client Assets

The number of breaches identified in 2021 relating to client assets were consistent with the previous year. NZ RegCo continued to observe a number of inadvertent operational errors being made by a Participant or their bank giving rise to breaches. In such cases, NZ RegCo’s focus is to ensure that the Participants involved held aggregate asset balances that were greater than their payment obligations, ensuring that their clients were not exposed to actual risk. There were two instances where NZ RegCo issued obligations letters to Participants requiring that specific enhancements be

made to their processes. Two client asset breaches were referred by NZ RegCo to the Financial Markets Authority.

### Clearing and Settlement: Credit Events

A credit event is generally declared when a Clearing Participant has not met one of its margin or settlement obligations. This could be due to a range of reasons and does not necessarily indicate an issue with liquidity, however credit events are a key focus for NZ RegCo due to the potential risk to the market.

Prescribed Persons are people who work for NZX Participants and certain family members or associated entities (such as family companies or family trusts) of these people.

The Rules place certain restrictions on the trading undertaken by Prescribed Person and require additional oversight of their trading by the NZX Participant.

These additional requirements are to assist in managing any potential conflict that may arise between the trading for Prescribed Persons on their own behalf and any trading they may be involved in in respect of clients of the NZX Participant. In addition, it assists in ensuring that information that Prescribed Persons may be exposed to as a result of their links to the NZX Participant, such as non-public price sensitive information, or information about the trading intentions of clients of the NZX Participant, is not misused.

These requirements are in place as part of NZX's commitment to market integrity.

NZ RegCo engaged with Participants to ensure that they reviewed and amended their existing processes to reduce the potential for similar credit events going forward and issued one Participant an obligations letter directing specific enhancements be made to their processes.

### Reporting

NZ RegCo saw a significant reduction in the number of breaches relating to late reporting of mandatory information. This followed significant engagement by NZ RegCo with Participants in 2020 on its expectations and the requirements for mandatory reporting. Such information includes notification of changes in capital position, corporate and personnel, and financial filings. All of the breaches identified were primarily caused by inadvertent oversight by a Participant and were self-reported by the Participants. NZ RegCo requires timely reporting of certain information as part of its oversight of Participants. NZ RegCo issued an obligations letter to one Participant requiring improvements to their processes.

### Prescribed Person Trading

NZ RegCo received a number of self-reports from Participants relating to prescribed persons of the Participant maintaining trading accounts with other Participants without the requisite notifications or permissions. NZ RegCo issued four obligations letters in 2021 requiring Participants to implement specific enhancements to their processes. In addition, two Infringement Notices were issued – see further details below. NZ RegCo issued reminders to all Participants clarifying the specific requirements.

### Capital

NZ RegCo identified three instances of Participants incorrectly calculating their capital adequacy in 2021. NZ RegCo issued an obligations letter to one Participant requiring that specific enhancements be made to their processes, and an Infringement Notice was to another Participant.

### Complaints about Participants

Participant Compliance received three complaints in relation to Participants in 2021. Of these, one related to voting in respect of overseas Securities, and two complaints related to trading conduct matters.

Complaints received by NZ RegCo which allege a breach of the market rules are investigated in accordance with NZ RegCo's enforcement policy. None of the complaints investigated by NZ RegCo in 2021 resulted in breaches of the Participant Rules being identified.

NZ RegCo takes into account a number of factors when considering what outcome is appropriate if we identify a breach of NZX’s market rules. While not an exhaustive list, such factors include the:

- Nature of the breach and whether it relates to an enforcement priority;
- Impact of the breach;
- Market rule that has been breached and precedent;
- Person or entity that has breached the rule;
- Respondent’s level of cooperation with NZ RegCo’s investigation; and
- Effect that enforcement action could have on the market, the regulatory outcome we would seek to achieve by taking enforcement action, and whether other remedial action is possible or has been taken

## Enforcement

### Overview of key NZ RegCo enforcement activity in 2021

Enforcement activity	Market Participants	Issuers	2021 Total	2020 Total
Matters where breaches were referred to the Tribunal	1	6	7	3
Infringement notices issued	3	0	3	1

### Referrals to the Tribunal

NZ RegCo referred seven Rule breaches to the Tribunal in 2021. This was an increase from 2020 (three referrals), but more consistent with 2019 (ten referrals) and 2018 (seven). Referral numbers will tend to fluctuate from year to year, with the relatively small numbers involved making for more volatility.

Of these referrals, one was for a Participant conduct matter (involving a disorderly market). The other six referrals related to Issuer conduct matters. Five of these six referrals were for continuous disclosure breaches, with two issuers (NZME Limited and QEX Logistics Limited) being referred to the Tribunal on two matters each, and the fifth continuous disclosure referral relating to breaches by Geneva Financial Limited. The sixth Issuer conduct matter referred to the Tribunal during 2021 was a breach of disclosure requirements by Blackwell Global Holdings Limited.

## Key learnings from Tribunal determinations

Issuer / Participant	Summary of Case	Key Learnings
<p>NZME Limited NZMDT 1/2021</p>	<p><b>Continuous Disclosure</b></p> <p><b>Obligation to release Material Information promptly and without delay</b></p> <p><b>Obligation to notify market of a decision to change a director promptly and without delay</b></p> <p>NZME Limited (NZM) scheduled its annual shareholder meeting (ASM) for 11 June 2020, supporting the re-election of its then Chair, Peter Cullinane.</p> <p>At 11.36am on 11 June Mr Cullinane submitted a letter of resignation with immediate effect.</p> <p>NZM did not release an announcement to the market of Mr Cullinane’s resignation until 2.44pm, 16 minutes before the scheduled start of the ASM.</p> <p>NZM accepted that it had breached NZX Listing Rules (Rules) 3.1.1 and 3.20.1 in respect of the announcement of Mr Cullinane’s resignation, by not releasing the announcement promptly and without delay.</p> <p>The Tribunal approved a settlement agreement, including a public censure, \$20,000 penalty, and costs award.</p>	<p>Breaches of continuous disclosure obligations are regarded as breaches of a fundamental obligation.</p> <p>NZM breached its continuous disclosure obligations by not disclosing Mr Cullinane’s resignation promptly and without delay. NZX Guidance recognises that some time will be required to prepare and approve an announcement, and that the time reasonably required will vary from time to time. However, in disclosing “promptly and without delay” means doing it as quickly as it can be done in the circumstances, and not deferring, postponing or putting it off to a later time. That includes not delaying the release of material information until it can be combined with, or released at the same time as, another (non-material) announcement.</p> <p>NZ RegCo considers that issuers can mitigate the risk of such a breach by acting promptly, and releasing relevant information to the market as soon as possible, in line with the expectations set out in NZX’s relevant Guidance Note on Continuous Disclosure.</p>
<p>NZME Limited NZMDT 2/2021</p>	<p><b>Continuous Disclosure</b></p> <p><b>Obligation to release Material Information promptly and without delay</b></p> <p><b>Obligation to release information to prevent the development or subsistence of a false market</b></p> <p>During the course of 2019 and early 2020 NZM was engaged in discussions with Stuff Limited’s (Stuff) then owner, Nine Entertainment Co Holdings Limited (Nine) over a potential purchase of Stuff.</p> <p>Nine informed NZM on 7 May 2020 that it had Nine received an alternative offer to purchase Stuff.</p> <p>At 9.31am on 11 May 2020 NZM released an announcement describing an offer it had made to acquire Stuff, which was silent as to the competing bid</p> <p>At 10.52am Nine made an announcement to the ASX advising that it had terminated engagement with NZM.</p> <p>At 12.11pm NZM released a further announcement stating that in its view it remained in a binding exclusivity period with Nine.</p> <p>NZ RegCo determined, and NZM accepted, that the 9.31am announcement breached that it had breached Rule 3.1.1 by reason of giving a misleading impression in its announcement through not noting the risk</p>	<p>Continuous disclosure obligations require issuers to disclose all material information, and an announcement that omits material information will not meet those obligations.</p> <p>An aggravating factor, as noted by the Tribunal, was that NZM was on notice of the materiality of the Stuff negotiations, as indicated by its announcement to the market on 19 November 2019.</p> <p>NZ RegCo considers that issuers can mitigate these risks when discussing complex negotiations by considering all information that might be required to give context to an announcement, and erring on the side of disclosure in the case of uncertainty.</p>

	<p>presented to an NZM / Nine transaction by a rival bid.</p> <p>NZ RegCo also determined, and NZM accepted, that NZM had breached Rule 3.2.1. The partial release of information had led to an increase in NZM’s share price, creating an obligation on NZM to make a corrective announcement. While the 12.11pm announcement gave some further information to the market, it was silent on the competing bid.</p> <p>The Tribunal approved a settlement agreement including a public censure, \$80,000 penalty, and costs award.</p>	
<p>Jarden Securities Limited NZMDT 3/2021</p>	<p><b>Disorderly Market</b></p> <p><b>Failure to properly consider potential price effect of orders</b></p> <p><b>Failure to have appropriate filters in place</b></p> <p>On 26 June 2020, Jarden Securities Limited (Jarden) entered a series of orders to sell Mainfreight Limited (MFT) shares. Execution of this order resulted in a 9.2% decline in MFT’s share price. NZ RegCo considered Jarden’s actions created a disorderly market.</p> <p>A key Jarden pre-trade filter had been deactivated, albeit that Jarden had previously advised NZ RegCo it was operational. NZ RegCo determined, and Jarden accepted, that if the appropriate filters had been active the trades would have been brought to the attention of a Jarden Dealer, and that a reasonable Dealer would have questioned the instructions.</p> <p>The Tribunal approved a settlement agreement including a public censure, \$40,000 penalty, and costs award.</p>	<p>NZX Participants are required to have appropriate filters in place and operational at all times, in order to maintain an orderly market. Breaches of these obligations that lead to the development of a disorderly market are considered fundamental breaches of the NZX Participant Rules.</p> <p>It is important for Participants to monitor the operation and effectiveness of filters as part of their compliance monitoring programme, and adhere to best practice recommendations from the inspection process.</p>
<p>Blackwell Global Holdings Limited NZMDT 4/2021</p>	<p><b>Administrative Breaches</b></p> <p><b>Failure to correctly enter financial information when releasing interim results</b></p> <p>Blackwell Global Holdings Limited (BGI) mistakenly entered incorrect Net Tangible Asset per share (NTA) data when releasing its interim results announcement on 22 June 2020. This also resulted in BGI’s NTA being incorrectly displayed on nzx.com. The error inflated BGI’s NTA by a factor of 100 – stating it as \$0.15 rather than \$0.0015.</p> <p>During the period from 9 June to 23 July 2020 BGI’s share price increased from \$0.007 to \$0.093, or more than 1,300%. This prompted two price enquiries from NBZ RegCo. On both occasions BGI advised that it was not aware of any matter to explain the increased price.</p> <p>When NZ RegCo identified the incorrect NTA and rectified the error, BGI’s share price dropped sharply, losing 80% of its value.</p> <p>NZ RegCo determined, and BGI accepted, that BGI had breached its reporting obligations under Rules 3.5.1 and 3.26.1.</p>	<p>Issuers should have appropriate internal processes to review and validate the content of announcements being released to the market via MAP.</p> <p>NZ RegCo expects issuers (as appropriate at Board and management level) to be diligent in assessing and responding to price enquiries received from NZ RegCo.</p>

	<p>The Tribunal approved a settlement agreement including a public censure, \$40,000 penalty, and costs award.</p>	
<p>QEX Logistics Limited NZMDT 5/2021</p>	<p><b>Continuous Disclosure</b></p> <p><b>Obligation to release Material Information promptly and without delay</b></p> <p>QEX Logistics Limited (QEX) released an announcement on 28 October 2020 advising that an estimated \$4 million of inventory had been removed from its Shanghai warehouse.</p> <p>NZ RegCo conducted an investigation and concluded that QEX was Aware, as defined in the Rules, of the missing inventory on 19 October 2020, and had not released the information to market promptly and without delay.</p> <p>The Tribunal approved a settlement agreement including a public censure, \$80,000 penalty, and costs award.</p>	<p>This continuous disclosure investigation and referral provides an example of Issuer obligations when dealing with incomplete information.</p> <p>If an issuer determines (or is reasonably able to determine) that it holds material information based upon initial or incomplete information alone, that information must be disclosed promptly and without delay to the market, regardless of the fact that there may be additional information to follow. They cannot simply wait until they have received all information concerning a material event before a disclosure obligation will arise.</p> <p>Issuers have the option to make multiple announcements to inform the market as matters develop.</p>
<p>Geneva Finance Limited NZMDT 6/2021</p>	<p><b>Continuous Disclosure</b></p> <p><b>Obligation to release Material Information promptly and without delay</b></p> <p>Geneva Finance Limited (GFL) released earnings guidance for its financial year ending 31 March 2021 on 15 March 2021.</p> <p>GFL projected a net profit before tax in the range of \$6.3 to \$6.5 million, an increase of 56% on the previous financial year. This led to a marked increase in GFL's share price.</p> <p>NZ RegCo assessed that the earnings guidance was material information as it represented a material deviation from market expectations on earnings, that GFL had become Aware of the material information no later than 2 March 2021, and that GFL had not released that information promptly and without delay.</p> <p>The Tribunal determined GFL had breached its continuous disclosure obligations and ordered a public censure, \$65,000 penalty, and costs award.</p>	<p>This determination related to issuers' obligations to notify the market of a material deviation of earnings performance from market expectations.</p> <p>Issuers must assess whether a deviation from the market's expectations of their earnings, whether actual or projected, is likely to have a material effect on the price of their quoted securities. If a deviation would be likely to have such an effect, it is material information and the issuer will need to release it to the market promptly and without delay.</p> <p>NZX's guidance clarifies how issuers should assess market expectations, with the most relevant basis for those expectations being an issuer's own published earnings guidance and outlook statements. NZX considers that a deviation of 10% or more from an issuer's own guidance will be material information. In the absence of such guidance, issuers should have regard to the following in determining market expectations:</p> <ul style="list-style-type: none"> <li>• outlook statements and other disclosures published by the issuer to the market in respect of the relevant reporting period;</li> <li>• the earnings forecasts of any analysts that cover the issuer;</li> <li>• the earnings results of the issuer for the prior comparable period; and</li> <li>• the impact on the issuer of external events known to the market.</li> </ul> <p>The process that issuers should follow in assessing market expectations and deviations from those expectations is discussed in detail in the NZX guidance.</p> <p>Issuers should be mindful of the need to escalate Material Information promptly to Boards, and have appropriate systems and processes in place to do so.</p>
<p>QEX Logistics Limited NZMDT 7/2021</p>	<p><b>Continuous Disclosure</b></p> <p><b>Obligation to release Material Information promptly and without delay</b></p> <p>This second Tribunal referral related to three separate areas of breach by QEX. These were:</p> <ul style="list-style-type: none"> <li>• QEX's multiple breaches of financial covenants with its banker Westpac during 2020 and 2021</li> </ul>	<p>Issuers should consider whether pending or actual breaches of financial covenants are material information, and thus give rise to a continuous disclosure obligation. Issuers should also note the Tribunal's statements that a decision by a lender not to exercise its rights does not affect the assessment of materiality – the breach of a financial covenant points to possible financial concerns, even if the lender does not act on them. Similarly multiple breaches, even if not individually considered to be material, may be material in the aggregate if reflecting a deteriorating financial situation.</p> <p>Issuers should also consider non-financial factors when assessing the potential materiality of information. In the case of the criminal</p>



<ul style="list-style-type: none"> <li>• Charges brought against QEX’s subsidiary company New Y Trading Limited and QEX’s CEO personally by the Ministry of Primary Industries (MPI) in November 2020</li> <li>• The resignation of QEX’s Independent Directors in February 2021</li> </ul> <p>The director resignations were announced to the market on 18 February 2021.</p> <p>QEX released an announcement on 18 February 2021 regarding one of the financial covenant breaches, and another breach had been disclosed in QEX’s interim financials, but three further prospective or actual breaches had not been notified to the market.</p> <p>QEX released an announcement to the market concerning the MPI charges on 23 February 2021.</p> <p>NZ RegCo assessed QEX as having repeatedly failed to disclose Material Information promptly and without delay.</p> <p>The Tribunal issued a determination that included a public censure, \$150,000 penalty, and costs award.</p>	<p>charges, while the potential financial penalties were limited, the nature of the charges may suggest systemic problems, of considerable concern for an issuer. That may be material for issuers operating in a highly regulated industry, e.g. banking, insurance, or export sectors.</p>
--	--

## Infringement notice regime

Under the infringement notice regime, NZ RegCo can issue fines of up to \$10,000 for minor breaches of the market rules.<sup>1</sup> These are an effective enforcement tool for NZ RegCo, and avoid the cost and time that might otherwise be incurred if the breach required a formal Tribunal determination, but still permit a financial penalty to be imposed.

## Other enforcement tools

NZ RegCo has other enforcement tools available to it, in addition to Tribunal referrals and infringement notices. The enforcement tool NZ RegCo may use if there is a Rule breach depends on the circumstances of the breach and the regulatory outcome we want to achieve. The full range of enforcement tools utilised by NZ RegCo is set out on the [website](#).

NZ RegCo issued three notices in 2021, up from one in 2020 and two in 2019. Two of the infringement notices involved breaches of the Prescribed Person trading requirements in the NZX Participant Rules, while the third involved a Participant's breach of its capital requirements.

During the year, NZ RegCo issued a number of obligations letters to Issuers and Participants.

---

<sup>1</sup> Penalty Band 1 breaches under the NZ Markets Disciplinary Tribunal Rules.

## Engagement

### Surveillance

The Surveillance team interacts with NZX Participants on a daily basis, generally on real-time issues related to the Participant's orders and trading.

In 2021, Surveillance continued to enhance its engagement with key counterparts at the FMA on its core monitoring and referral work.

The Surveillance team introduced, in 2019, an educational programme targeted at the trading desks

and client advisors of NZX Participants and domestic institutions. That programme provides insight into Surveillance infrastructure, monitoring practices and the approach to referrals of suspected misconduct. While COVID-19 impacted this activity in 2021, sessions were held with various stakeholders. Surveillance also presented at the 2021 Financial Markets Law Conference.



## Issuer Regulation

In addition to its market monitoring, oversight and enforcement work, Issuer Regulation engages with issuers and the market if it:

- receives an application under the Listing Rules; and
- provides guidance and support to issuers and advisers in their understanding and application of the Listing Rules.

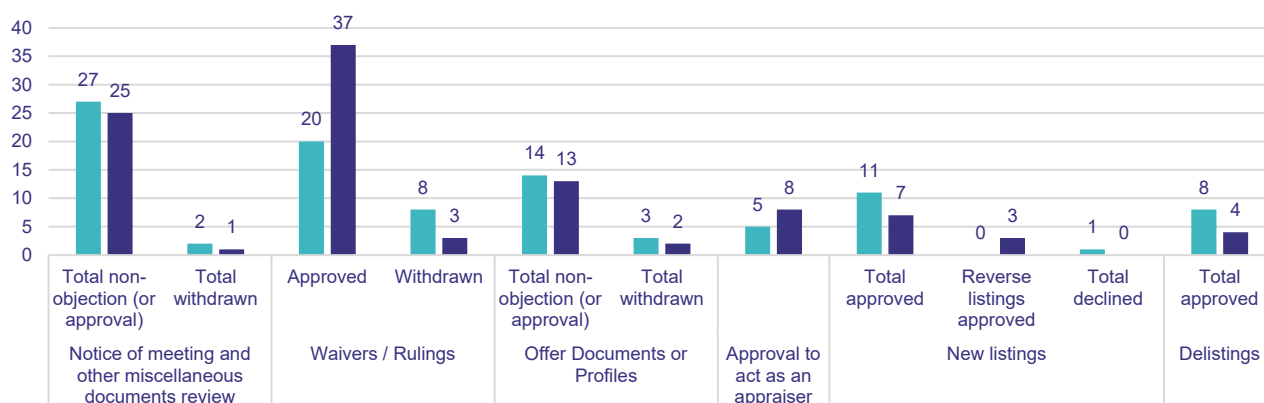
### Applications and transactions

Under the NZX Listing Rules, NZ RegCo is required to review various documents prior to publication by the Issuer. NZ RegCo also has the power to grant waivers and rulings from Listing Rule obligations. This type of transactional work makes up a

relatively large proportion of the day to day work of the Issuer Regulation team.

In 2021, Issuer Regulation undertook the following application and transactional work.

#### Issuer Applications managed in 2021



Year	
●	2021
●	2020

Review processes often involve significant engagement with Issuers and their advisers. Higher profile or more technical matters require escalation to the NZ RegCo CEO for consideration, and there are prescribed “reserved matters” under the NZ RegCo Charter that require NZ RegCo Board approval.

Under the Listing Rules, waivers and rulings are published over the Issuer’s ticker and also the NZ RegCo ticker by default. Issuers may apply for a decision to remain confidential until the relevant transaction crystallises or has been announced to market.

The chart above highlights that a number of applications were withdrawn in 2021, prior to NZ RegCo making a formal decision. Sometimes a matter is withdrawn due to a change in structure of a transaction, or a transaction no longer proceeding. From time to time Issuers change the structure of a transaction after receiving preliminary guidance from NZ RegCo that a waiver application is unlikely to be successful. During 2021, waiver and ruling applications that were withdrawn included:

- An Issuer who had sought a waiver from the requirement to seek shareholder approval for

a major transaction. Based on the relevant circumstances, NZ RegCo had indicated it would not be inclined to grant the waiver as there was no compelling policy basis to override the obligation to seek shareholder approval;

- An Issuer who had sought a ruling that a divestment transaction was not a transaction that would significantly change the nature of the Issuer’s business, for the purposes of the Listing Rule major transaction requirements. Following assessment and escalation to the NZ RegCo Board, NZ RegCo confirmed a preliminary view that the proposed transaction was a significant change to the Issuer’s business. The Issuer subsequently sought shareholder approval;
- An Issuer amended the structure of its capital raise after NZ RegCo had indicated it was not prepared to grant a waiver to allow for underwriting of a share purchase plan; and
- A waiver that had been sought from the restriction that shareholders who are participating in a share placement cannot vote to approve the issue of those shares. This application was withdrawn after NZ RegCo outlined

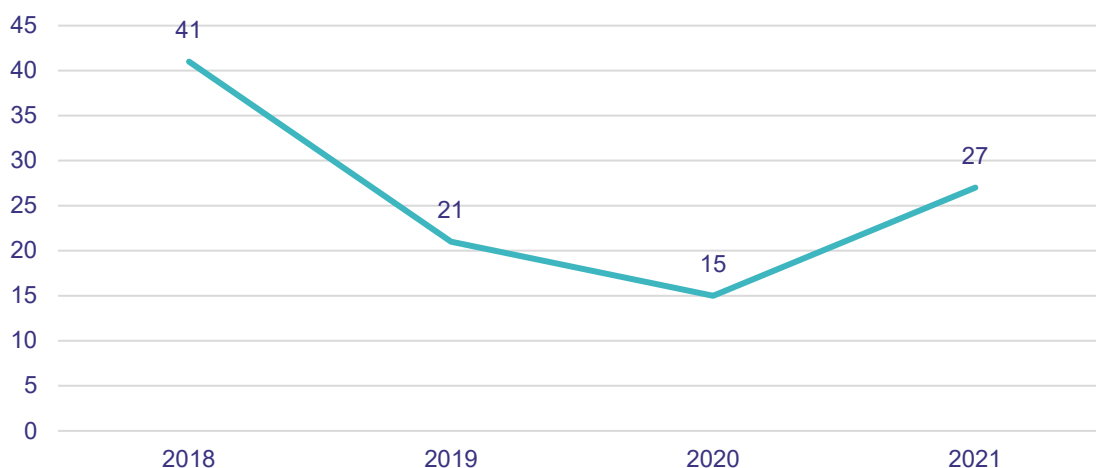
the policy behind this restriction and that a waiver request was unlikely to be successful.

### Service levels

Issuer Regulation considers and manages applications in accordance with service levels. These service levels ensure Issuers and advisers receive comments and decisions in a timely manner and can have certainty of transaction timetables. Broadly, NZ RegCo seeks to complete reviews of notices of meetings and waiver applications in 10 business days, and complete new listing applications in 20 business days. Further information about NZ RegCo service levels is set out in the NZX Guidance Note “Issuer Engagement with NZX”.

NZ RegCo is also able to accommodate urgent reviews, however agreeing to urgency is at NZ RegCo’s discretion. 2021 saw a slight increase in urgent work but was broadly in line with previous years. Requests for urgency usually occur when an Issuer is seeking to complete a transaction quickly for various commercial reasons.

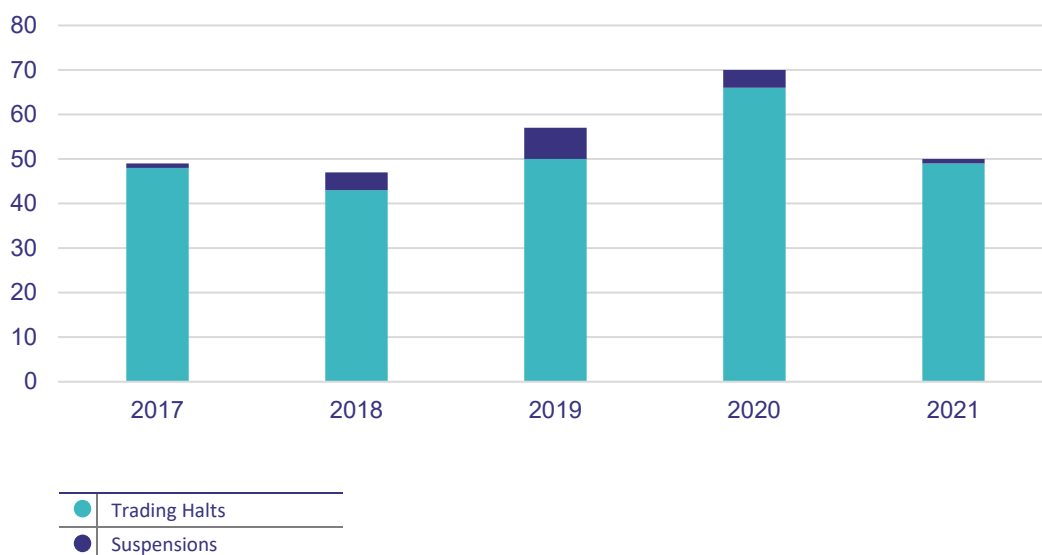
### Urgent Applications



## Trading halts and suspensions

During 2021, NZ RegCo exercised its powers to halt trading in, or suspend quotation of, various Issuers’ securities. NZ RegCo considered 49 trading halt applications, and one suspension. This represented a decrease from 2020 (66 trading halt requests) however the total was broadly in line with previous years.

### Trading Halts and Suspensions



In line with previous years, trading halts were frequently granted to facilitate Issuers raising capital. A number of urgent trading halts applications were granted in 2021, to enable Issuers time to consider and finalise the release of information in connection with their continuous disclosure obligations.

## Issuer engagement initiatives

NZ RegCo continued to engage with Issuers and the wider market in 2021, including providing training sessions for Issuers and their external legal counsel. This engagement included topics such as NZX Listing Rule obligations, MAP data entry requirements, changes to forms and templates under the NZX Listing Rules, and other key issuer requirements such as continuous disclosure.

NZ RegCo also granted a class ruling and waiver in relation to perpetual preference shares issued by Registered Banks that qualify as additional Tier 1 (AT1) capital for the purposes of Reserve Bank of New Zealand capital requirements<sup>2</sup>. This class ruling and waiver was published after NZX conducted

consultation with the market about the treatment of securities. The class decision defined certain AT1 instruments as Debt Securities under the Listing Rules meaning, due to the AT1 instruments equity treatment by law, that Issuers would not need to seek shareholder approval for the issue of AT1 securities. This was considered appropriate given the nature of the AT1 instruments, including that under the Reserve Bank requirements, AT1 holders do not have the right to vote except in relation to amendments relating to the rights, privileges, limitations and conditions attached to the AT1 instruments.

<sup>2</sup> <https://www.nzx.com/regulation/nzx-rules-guidance/nzx-mo-announcements/class-waivers-and-rulings>

### Queries from the market

Issuers, advisors and wider capital markets stakeholders continue to engage with Issuer Regulation. Over 2021, Market Conduct and Issuer Regulation received 229 queries regarding application of the Listing Rules or other Issuer related matters.

#### Types of Queries in 2021



	2021	2020
NZX issuer or prospective issuer	78	88
Law firm	73	69
Member of the public	19	26
Other regulator	0	1
Other (for example market participant or accountancy firm)	13	15
Internal NZX query (seeking subject matter expertise)	46	55
<b>TOTAL</b>	<b>229</b>	<b>254</b>

Queries provide NZ RegCo valuable insight into how the market is interpreting certain Listing Rules and published guidance. This supports NZ RegCo advocacy work with NZX Policy, to ensure the form of NZX’s market rules and published guidance are achieving desired regulatory outcomes. In 2021, this included the Issuer Regulation team collaborating with NZX Policy on the hygiene review of the Listing Rules.

NZ RegCo is proactive in monitoring market announcements and matters that may impact issuers. Work undertaken in 2021 to further assist the market includes:

- Publishing new Practice Notes about Bond Designations and Capital Reconstructions<sup>3</sup>;
- Providing wider market guidance in the NZX Issuer Updates that are published quarterly<sup>4</sup>;
- Covering common questions in the Regulatory Issuer Forum session; and
- Publishing one off Issuer Updates seeking wider input from the market to assist with understanding the impact of COVID. This included on whether Issuer’s could meet their periodic reporting requirements and guidance on what to do if a meeting was impacted due to COVID restrictions.

3 <https://www.nzx.com/regulation/nzx-rules-guidance/nzx-mo-announcements/practice-notes>

4 <https://www.nzx.com/regulation/nzregco/publications>

## Participant Compliance

### Accreditations and Designations

Participant Compliance received 65 applications for accreditations and designations in 2021.

The team considered 63 applications for designation from individuals. These designations included various categories of:

- advisers, which allow the designated individuals to provide advice regarding NZX listed products;
- dealers, which allow the designated individuals to enter orders directly into the exchange’s trading system; and

- management designation, which allow the designated individuals to hold a particular position of responsibility within a Participant.

An individual can hold more than one designation at any time therefore the number of applications considered does not necessarily reflect the number of individuals who received designations during 2021.

#### Approved Designation Applications



	2021	2020
NZX Advisor	40	37
Dealer	2	15
FSM Dealer	11	7
Derivatives Dealer	2	2
Other	-	6
Derivatives Adviser	8	0

NZ RegCo considers an individual’s education and experience, and their relevance to our markets, when assessing an application.

Applicants are required to demonstrate a number of areas of capability, aligned with the obligations that apply to the category of participation being applied for. Those include financial strength, appropriate controls and processes, management arrangements, good compliance history and

practices, adequate resourcing and suitable technology. Accreditation is at the discretion of the exchange, and may be withheld if the applicant does not meet all of the necessarily high requirements.



### Participant Accreditation Applications



	2021	2020
Trading and Advising Firm*	1	1
Individual Clearing Participant*	1	1
Depository Participant*	1	1
New DMA System	1	1
NZX Sponsor	0	1

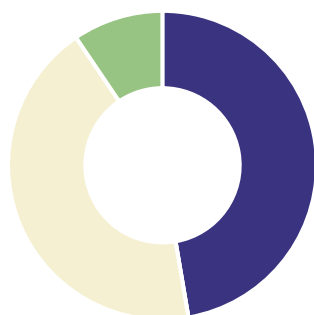
\* Relate to a single entity application which was declined

### Regulatory applications

Regulatory applications cover approvals, exemptions, permissions, rulings and waivers. In 2021 Participant Compliance considered 80 applications.

Of those, 74 were approved and six applications were withdrawn.

### Participant Regulatory Applications



	2021	2020
Approval	0	2
Permission	35	11
Ruling	0	1
Subordinated debt	32	32
Waiver	7	5

The number of regulatory applications received in 2021 was greater than those received in 2020, this was largely caused by an increase in permission requests related to Prescribed Persons trading through other Participants.

Participant Compliance considered no class applications that apply to all Participants in 2021.

## Discipline Fund

This section details the use of the proceeds of the Discipline Fund, as set out in the Discipline Fund accounts.

Proceeds of the Discipline Fund may be used in accordance with Tribunal Rule 9.5.1. These uses of the Discipline Fund include:

- seminars and other education initiatives in respect of regulation of NZX's markets;
- redrafting NZX's markets rules and any other rules and regulations of NZX, the Clearing House or the Depository;
- enforcement of NZX's markets rules and any other rules and regulations of NZX, the Clearing House or the Depository;

- the costs and expenses of the Tribunal; and
- any other use with the prior written consent of the Financial Markets Authority.

In 2021, NZX utilised approximately \$47,000 of the Discipline Fund in relation to Rule amendments, arising from amendments made to the NZX Derivatives Market Rules and work relating to the Tribunal Rules penalties regime review.

Spend relating to external legal support and specialist advisory costs was up in 2021, in relation to a number of complex investigations.

12 Months to	31-Dec-20	31-Dec-21
Fines and costs	559,401	499,339

### Expenses of NZ Markets Disciplinary Tribunal

Executive Counsel costs	62,991	93,764
NZ Markets Disciplinary Tribunal Member costs	107,717	140,551
Legal Advisory costs	102,541	131,601
Rules Review costs	15,151	47,287
Disbursements	1,519	1,526
Educational Expenditure	14,699	6,535
Other Incidentals		
Market Education	232	2,861
Investigations		24,808
Ongoing procedures	2,251	
Bad/Doubtful Debts		
Bank fees	5	6
<b>Total Expenses</b>	<b>307,106</b>	<b>448,938</b>
Interest Income	2,507	1,946
Tax expense	51,320	14,657
<b>Surplus (Deficit) for the period</b>	<b>203,483</b>	<b>37,689</b>
<b>Accumulated Surplus (Deficit)</b>	<b>541,731</b>	<b>579,420</b>