

NZ MARKETS DISCIPLINARY TRIBUNAL USER GUIDE

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1. INTRODUCTION

This Guide has been prepared by the NZ Markets Disciplinary Tribunal (*Tribunal*) to assist respondents in understanding the Tribunal's processes.

This Guide is provided for information only. You should review the Tribunal Rules and Procedures (<https://www.nzx.com/regulation/nzmd-tribunal-regulation/tribunal-publications>) and consider seeking legal advice.

2. THE TRIBUNAL

The Tribunal is an independent body established under the Tribunal Rules.

The Tribunal's main role is to determine whether an issuer or participant (*a respondent*) has breached NZX's market rules in any matter referred to it by NZX.

NZX is responsible for identifying and referring potential breaches of its market rules to the Tribunal. The Tribunal considers each matter referred to it by NZX and determines whether a breach has occurred. If a breach is found, the Tribunal will then assess the appropriate penalty. The range of penalties the Tribunal may impose is set out in the Tribunal Rules.

Each matter referred by NZX is considered by a division of the Tribunal, usually comprising three members, appointed by the Tribunal Chairperson. A list of current Tribunal members can be found at <https://www.nzx.com/regulation/nzmd-tribunal-regulation/tribunal-members>.

All correspondence with the Tribunal should be sent by email to its Executive Counsel at rachel.batters@nzmdt.com.

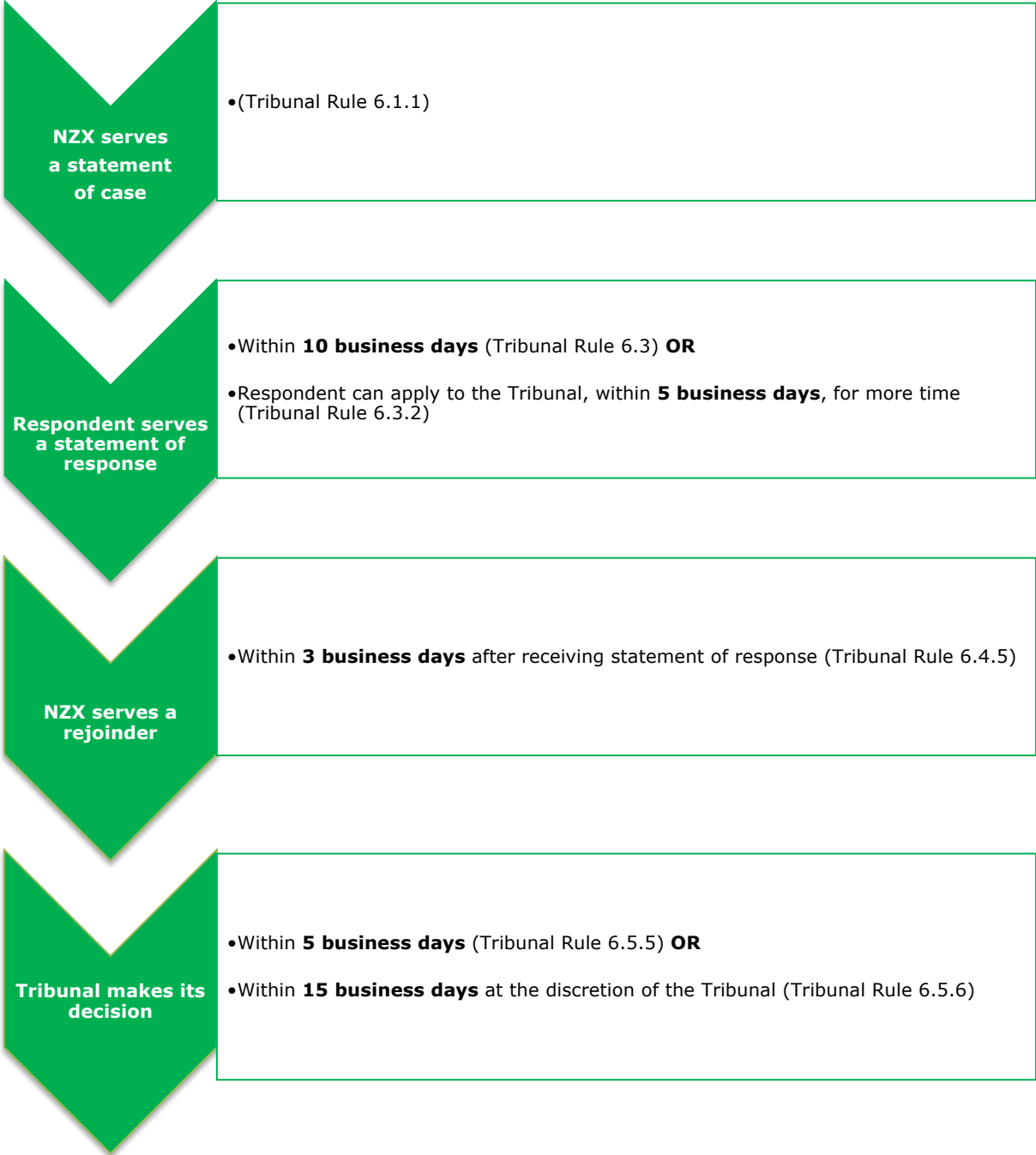
More information on the Tribunal, including recent decisions, can be found at <https://www.nzx.com/regulation/nzmd-tribunal-regulation>.

3. HEARING PROCEDURE

Section 6 of the Tribunal Rules sets out the Hearing procedures. The following is a summary only.

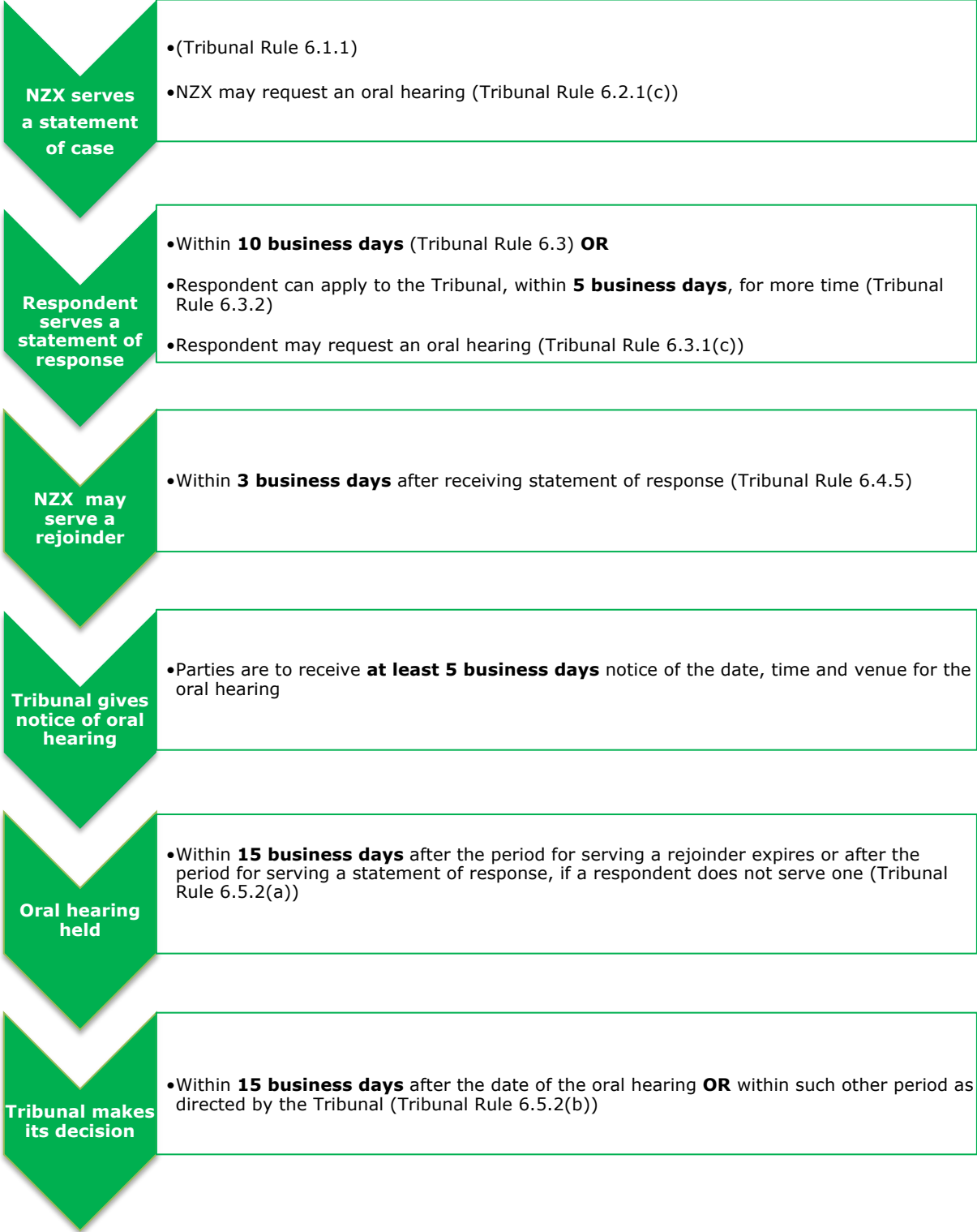
BASIC STEPS AND TIMEFRAMES WITH NO ORAL HEARING

The table below sets out the basic procedural steps and timeframes which apply to a matter being heard under the Tribunal Rules where neither NZX nor the respondent requests an oral hearing:



BASIC STEPS AND TIMEFRAMES WITH AN ORAL HEARING

A respondent or NZX may request an oral hearing if it believes it is essential to establish all the relevant facts. The table below sets out the basic procedural steps and timeframes which apply to a matter if an oral hearing is requested by either NZX or the respondent:



NOTES ON HEARING PROCEDURES

a. Hearings on the Papers

The Tribunal considers matters referred to it based on the papers provided. A respondent should ensure that its statement of response contains all the information set out in Rule 6.3.1. This includes all material facts in response to NZX's statement of case, any mitigating factors it considers relevant and whether it believes that the Tribunal's decision should not be published.

Respondents should attach to their statement of response all documents that they consider necessary to support their case.

b. Extensions of Time

Respondents can apply to the Tribunal for more time to submit their statement of response. This request needs to be made within 5 business days of the respondent receiving the statement of case.

Respondents need to provide grounds to support a time extension. Such grounds might include the unavailability of key personnel essential for the respondent to prepare its response or that the respondent and NZX are in settlement discussions (in which case this application should be supported by NZX).

Where a respondent has been provided a time extension, it is only in exceptional circumstances that further extensions of time will be granted by the Tribunal.

c. Oral Hearings

A respondent or NZX may request an oral hearing if it believes it is essential to establish all the relevant facts.

Some points to note on oral hearings are:

- The date of the hearing is generally a negotiation between the Tribunal (as to the availability of division members), NZX and the respondent (as to their (and counsel's) availability).
- The Tribunal determines the venue and location for the hearing. The parties may attend and participate either in person or virtually.
- Hearings may be adjourned if necessary.
- The hearing process is intended to be informal and fast.
- Hearings take place in private, except that where the case has resulted from a complaint from a third party the Tribunal may, in its discretion, permit that complainant to attend all or part of the hearing.

- The respondent and NZX may each have two representatives present (or more at the discretion of the Tribunal).
- The Tribunal's notice of oral hearing, in addition to providing the date and place for the hearing, will also provide the parties with notice of the process and format for the hearing, including indicative timeframes for each step.

d. Amendments

Either NZX or a respondent may seek leave of the Tribunal to file an amended statement of case or statement of response at any time before a decision is made. This amendment can introduce a fresh claim or fresh defence, in which case, the other party is given the opportunity to respond to the amendment within 3 business days. If the amendment does not involve a fresh claim or defence, then the other party has 2 business days to respond.

4. APPEAL PROCEDURE

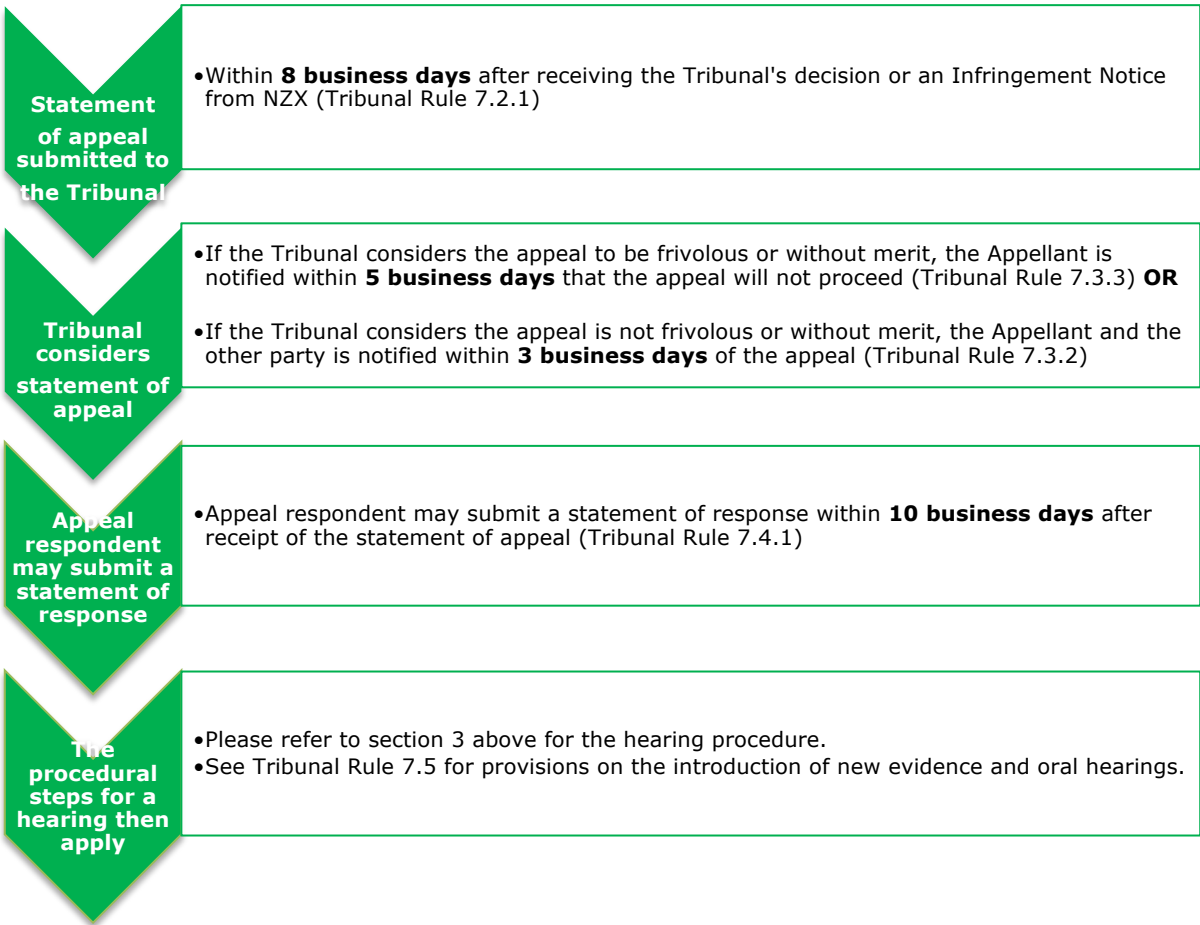
Either NZX or a respondent may appeal a decision of the Tribunal. The appeal is heard by a new division of the Tribunal.

A respondent may also appeal an Infringement Notice issued by NZX to the Tribunal.

Section 7 of the Tribunal Rules sets out the appeal procedures. The following is a summary only.

BASIC STEPS AND TIMEFRAMES

The table below sets out the basic procedural steps and timeframes that will apply once an appeal is made.



REVIEW OF FINDINGS

An appeal is not a rehearing but a review of the findings of the Tribunal. The new division considering the appeal must therefore determine the appeal based on the facts accepted at the hearing. The only exception is where a party has been granted leave to introduce new evidence or has been ordered by the Tribunal to provide further evidence. Any new evidence will be assessed by the division considering the appeal who will consider whether, and if so, how, it affects the determination.

5. PENALTIES

TYPES OF PENALTIES

Tribunal Rule 9 sets out the penalties the Tribunal may impose if it finds a respondent has breached NZX's market rules. These include:

- private reprimand;
- public censure;
- penalty of up to \$500,000;
- suspending or revoking a participant's designation;
- suspending or cancelling an issuer's listing or quotation of its securities; and
- restitution to a third party if a respondent has profited from a breach at that party's expense.

FINANCIAL PENALTIES

Tribunal Procedure 9 gives guidance to the Tribunal on the level of financial penalty to impose if it finds a breach has occurred. The Tribunal uses a 2-step process to:

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
2. adjust that starting point penalty to reflect all the aggravating and mitigating factors relevant to the respondent.

Tribunal Procedure 9 sets out three penalty bands into which a breach may fall depending on how serious the breach is.

Penalty Band 1	Penalty Band 2	Penalty Band 3
<ul style="list-style-type: none">• Minor Breaches• \$0 to \$40,000	<ul style="list-style-type: none">• Moderate Breaches• \$30,000 to \$250,000	<ul style="list-style-type: none">• Serious Breaches• \$200,000 to \$500,000

Once the Tribunal determines which penalty band applies, it will determine how much to impose after considering factors which are likely to reduce or increase the penalty. Tribunal Procedure 9 sets out the factors the Tribunal may consider <https://www.nzx.com/regulation/nzmd-tribunal-regulation/tribunal-publications>.

C. PUBLIC CENSURE

Tribunal Procedure 9.3 also gives guidance to the Tribunal on when to publicly censure a respondent.

Generally, a respondent will not be named when:

- (a) none of the Tribunal's findings have been adverse to the respondent; or
- (b) the respondent has established grounds for maintaining confidentiality of the Tribunal's decision and the Tribunal orders that the decision not be published or that publication should be delayed; or
- (c) the respondent committed a breach that falls within penalty band 1.

Generally, a respondent will be named when:

- (a) the breach has caused public harm or damage to public confidence in the sector or had the potential to cause public harm or damage to public confidence; and/or
- (b) the respondent has been involved in repeated breaches and shown disregard for NZX's market rules; and/or
- (c) the respondent committed a breach that falls within penalty bands 2 or 3.

6. SETTLEMENTS

It is common for NZX and a respondent to try and reach a settlement. The parties may negotiate a settlement and jointly submit it in writing to the Tribunal for approval at any stage of the hearing process.

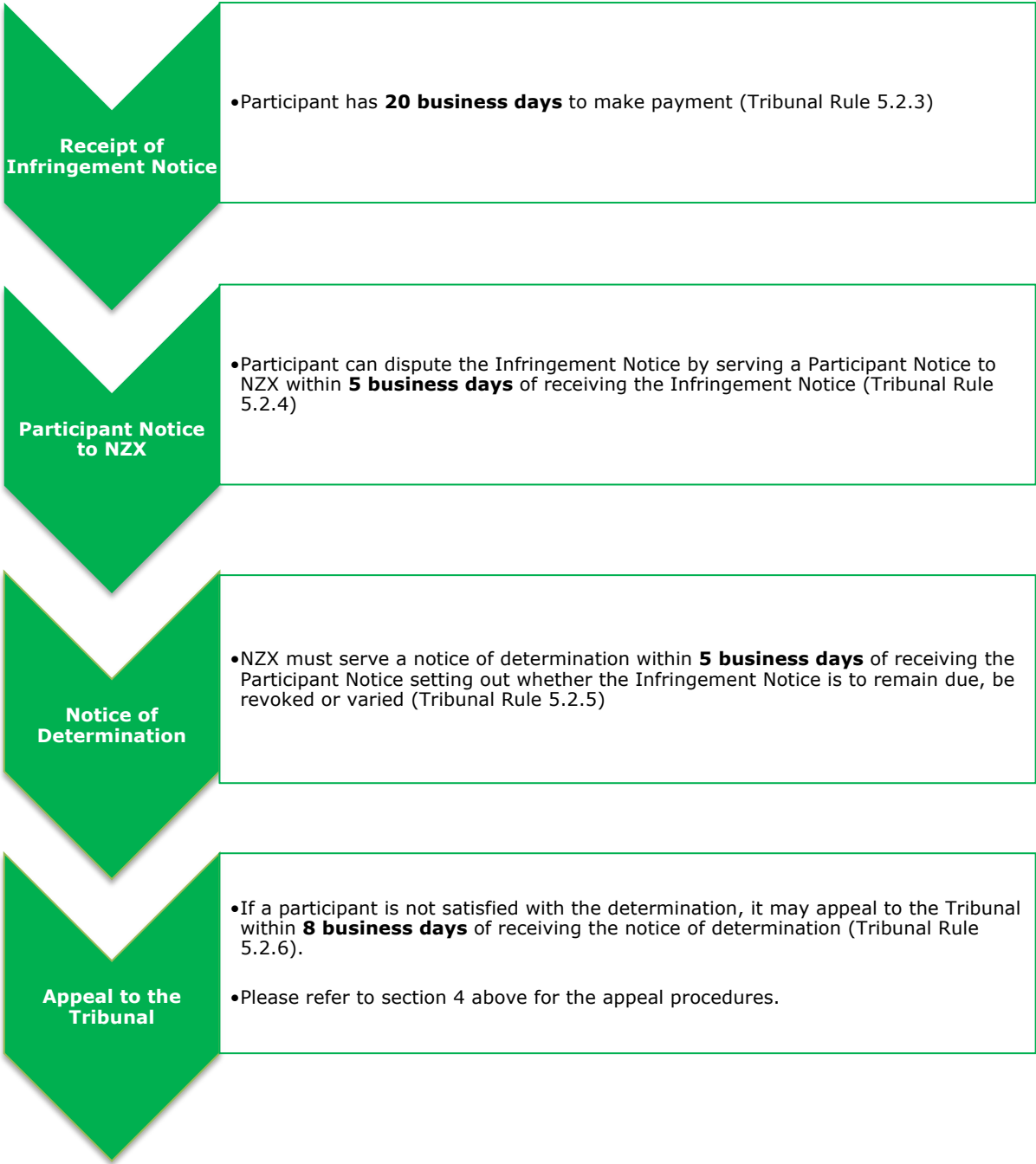
Under the Tribunal Rules, if the Tribunal approves the terms of settlement agreed between the parties, the settlement becomes the determination of the Tribunal. Accordingly, the Tribunal must satisfy itself that a settlement is appropriate in the circumstances of each case.

Some points to note on settlements are:

- The Tribunal expects that a settlement will be negotiated promptly. The Tribunal will not generally provide multiple extensions of time for settlements to be negotiated.
- The Tribunal will generally exercise its discretion to suggest amendments to a settlement that would enable the Tribunal to accept it, rather than rejecting the settlement at first instance.
- The Tribunal will not approve the release of a public censure agreed by the parties which it considers is untrue, unreliable or incomplete, or where a third party is implicated or named and they have not been party to the proceeding. The Tribunal will, however, give the parties the opportunity to amend any public censure to enable the Tribunal to accept it.
- While the parties to the settlement are not required to prove their case before a settlement is approved, the Tribunal will nevertheless not approve settlement terms that are fundamentally inconsistent with the evidence before it.
- The Tribunal requires sufficient information in order to consider and approve a settlement. Accordingly, the memorandum of counsel submitting a settlement agreement should explain NZX's rationale for agreeing to the terms of settlement and where the settlement contains a penalty substantially different to that sought in NZX's statement of case, the Tribunal would expect submissions from NZX to justify the difference.
- The Tribunal encourages settlements that incorporate remedial relief for third parties adversely affected by the breach.
- Where the Tribunal approves a settlement which provides that the only public censure to be made is an agreed form of public censure, the Tribunal cannot release its determination to any third party. This includes a complainant (where NZX's statement of case arises due to a complaint received from a third party).
- If the Tribunal does not accept the settlement agreed between the parties, the fact of the proposed settlement and its terms remain confidential and the matter is referred to a new division of the Tribunal to be heard by way of the usual hearing process.

7. INFRINGEMENT NOTICES

Section 5 of the Tribunal Rules sets out the Infringement Notice rules. The Tribunal has delegated the power to issue Infringement Notices to NZX. The following is a summary only.



8. OTHER MATTERS

COSTS

a. Award of costs against respondent

Generally, where a respondent is found to have breached NZX's market rules the Tribunal is likely to award the actual costs of NZX and the Tribunal against that party. However, the Tribunal will assess costs in the circumstances of each case.

In seeking its costs, NZX should provide to the Tribunal and the respondent a breakdown of approximate likely costs in its statement of case.

b. Award of costs against NZX

The Tribunal may only make an order that NZX pay the costs of a respondent if NZX has acted vexatiously, frivolously or unreasonably in bringing proceedings under the Rules.

ACCESS TO INFORMATION

All information received or granted access to by a party in respect of a matter before the Tribunal must be treated confidentially by members of the Tribunal and any persons involved in that matter.

Any information received or granted access to by a party may only be released with their prior written consent. If consent is not given, the Tribunal cannot release the material to any third party, including a complainant (where NZX's statement of case arises due to a complaint received from a third party). The Tribunal may, however, consider it appropriate to provide general advice (not involving a disclosure of material received) such as giving an update on its progress in considering the matter.

NO RIGHT TO PARTICIPATION BY THIRD PARTY

Third parties do not have the right to appear before the Tribunal. This includes persons adversely affected by the conduct complained of in a matter referred to the Tribunal. Such persons may apply to the Tribunal to make written submissions. However, the Tribunal is only likely to accept such submissions in limited circumstances, for example, where the Tribunal considers it necessary or desirable to inform its decision on a particular matter. Ordinarily, a complainant's interests will already have been taken into account in NZX's submissions.

REMEDIES

The Tribunal's function is not to compensate those adversely affected by breaches of NZX's market rules. However, the Tribunal encourages settlements agreed between parties which include the provision of compensation to a complainant.

The Tribunal also has the power in certain circumstances to impose penalties equivalent to treble the amount of the profit improperly earned by a respondent and the additional power to order restitution of any actual improper profit to the third party who has suffered loss.