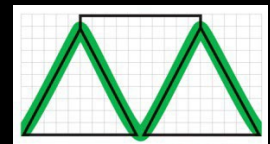


ANNUAL REPORT 2022

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# NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

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*This report covers the period 1 January 2022 to 31 December 2022.*

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# TRIBUNAL CHAIR'S REPORT

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# TRIBUNAL CHAIR'S REPORT

## NZ Markets Disciplinary Tribunal

The NZ Markets Disciplinary Tribunal (*Tribunal*) is an independent body established under the NZ Markets Disciplinary Tribunal Rules (*Tribunal Rules*). The Tribunal serves in an adjudicative role. It is not an inspectorate of market conduct. That role is performed by NZ RegCo (acting on behalf of NZX Limited (*NZX*)) and the Financial Markets Authority (*FMA*).

The Tribunal's principal role is to determine whether there has been a breach of the NZX Participant Rules, the NZX Listing Rules, the NZX Derivatives Market Rules, the Clearing and Settlement Rules of New Zealand Clearing Limited or the Fonterra Shareholders' Market Rules (*NZX Market Rules*) in matters referred to it by NZ RegCo. If a breach of the NZX Market Rules is established, the Tribunal must determine what, if any, penalties should be imposed. The Tribunal may also review decisions made by NZ RegCo in respect of a waiver or ruling in matters referred to it by the applicant, provided the basis for such a referral are met, for example where the decision was irrational having regard to the evidence available or where NZ RegCo did not observe the rules of procedural fairness.

## NZ RegCo

NZ RegCo is responsible for monitoring and enforcing the NZX Market Rules. NZ RegCo published its Oversight Report for 2022 on 28 February 2023 – see [here](#). This report includes information on the investigation and enforcement activity undertaken by NZ RegCo during 2022 and was provided to the Tribunal in connection with NZX's annual regulatory reporting requirements under the Tribunal Rules.

Under the Tribunal Rules, NZ RegCo has the power to issue fines of up to \$10,000 for minor breaches of the NZX Market Rules. NZ RegCo issued five Infringement Notices in 2022 – see [here](#).

## Referral

One matter was referred by NZ RegCo to the Tribunal during 2022, down from seven matters referred during 2021. NZ RegCo said, when releasing its Oversight Report, that this reduction reflects – in part – NZ RegCo's educative work in recent years with Issuers and Participants and enhancements to the regulatory tools available to them to support their compliance obligations. It may also reflect reduced market activity given the ongoing effects of the COVID-19 pandemic.

The one matter referred to the Tribunal involved a temporary breach by a Participant of its capital adequacy requirements. NZ RegCo and the Participant reached a settlement in relation to the breach, which was approved by the Tribunal. The Participant was publicly censured by the Tribunal. Details on the referral can be found on pages 10 to 13 of this report.

## Tribunal Rules and Procedures

Following public consultation in 2021, the Tribunal Rules and Procedures were amended on 17 October 2022 - see [here](#).

The amended Tribunal Procedures: (a) set out a two-step process for assessing the appropriate penalty for a breach of the NZX Market Rules; (b) include a revised range of financial penalty for each of the three penalty bands; and (c) provide more guidance on the aggravating and mitigating factors likely to be considered when determining the level of penalty.

At the time of writing, the Tribunal had not yet considered a referral from NZ RegCo under the amended Tribunal Rules and Procedures.

## Members

In June 2022, NZX appointed five new Tribunal members – Charles Bolt, Jennifer Page, Darren Manning, Sarah Miller and Gretchen Williamson.

Sarah Miller's term on the Tribunal ended on 31 December 2022 upon her appointment as an NZX Future Director from 1 January 2023.

The membership terms of Richard Leggat and Christopher Swasbrook ended in June 2022 and the membership term of Simon Vodanovich ended in March 2023. I thank Richard, Chris and Simon for their service to the Tribunal.

## Special Division

James Ogden's report on the activities of the Special Division during 2022 can be found on page 15 of this report.

## Resourcing

As required by the Tribunal Rules, the Tribunal confirms that it believes it has adequate resources available to it to undertake its role under the Tribunal Rules and that NZX has continued to provide all the assistance which the Tribunal requires to undertake its role.

The NZX Discipline Fund accounts (which are included in the NZ RegCo Oversight Report for 2022) indicate that there was an accumulated surplus of \$361,374 as at 31 December 2022.

I would like to thank all members of the Tribunal for their continued support and in particular Rachel Batters, James Ogden, David Lane and Rachael Reed KC for all their assistance with my new role as Chair.



Deemple Budhia | CHAIR  
14 April 2023

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## MEMBERS

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## MEMBERS

### Members of the Tribunal\* (on 31 December 2022)

#### LEGAL

Deemple Budhia (Chair), Hon Sir Terence Arnold KC, John Dixon KC, Rachel Dunne, Kristy McDonald ONZM KC, Rachael Reed KC and Simon Vodanovich\*\*

#### ISSUER

Charles Bolt, Kirsty Campbell, Pip Dunphy, Nicola Greer, Richard Keys, Sarah Miller\*\*\*, James Ogden, Jennifer Page, Mariëtte van Ryn

#### MARKET PARTICIPANT

David Lane (Deputy Chair), Matt Blackwell, Geoff Brown, Darren Manning, Rachael Newsome, Dave Robertson, Gretchen Williamson

Rachel Batters and Stephen Layburn act as Executive Counsel to the Tribunal.

### Members of the Special Division (on 31 December 2022)

James Ogden (Chair), Matt Blackwell, Rachael Newsome, Dave Robertson, Mariëtte van Ryn

Rachel Batters acts as Executive Counsel to the Special Division.

#### Notes:

- \* The Tribunal Rules were amended on 17 October 2022 to reduce the membership categories to Legal, Market Participant and Issuer appointees, with broader qualifying requirements for each group.
- \*\* Simon Vodanovich's term on the Tribunal ended in March 2023.
- \*\*\* Sarah Miller's term on the Tribunal ended on 31 December 2022 upon her appointment as an NZX Future Director from 1 January 2023.



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## REFERRAL

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## NZMDT 1/2022 NZX V UBS NEW ZEALAND LIMITED

*Division:* Rachel Dunne (Division Chair), Matt Blackwell and Dave Robertson

*Statement of Case filed:* 12 October 2022

*Settlement Agreement dated:* 10 November 2022<sup>1</sup>

*Date of Determination:* 17 November 2022

*Rules Breached:* NZX Participant Rule 19.1.1 and New Zealand Clearing Limited Clearing and Settlement Rule 9.1.1

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### FACTS:

UBS New Zealand Limited (*UBS*) is an NZX Trading and Advising Participant and an Individual Clearing Participant.

UBS' obligations under both the Participant Rules and the C&S Rules include a requirement to ensure that its Net Tangible Current Assets (*NTCA*) are maintained at all times at a level equal to, or greater than, its Prescribed Minimum Capital Adequacy (*PMCA*). This requirement is expressed as a Capital Adequacy Ratio (*CAR*), with an NZX Participant's *CAR* being determined by dividing its *NTCA* by its *PMCA* – a *CAR* below 100% breaches the Participant Rules and C&S Rules.

The Participant Rules and C&S Rules permit an NZX Participant to exclude Subordinated Debt from the calculation of *NTCA* when approved by NZX and New Zealand Clearing Limited (*CHO*).

At 4:25pm on the relevant day (Day 0), a member of UBS' dealing team sought approval of a large sell order for an offshore client (*the Block Trade*). At that time UBS held sufficient capital to cover the Block Trade, based on its *NTCA* calculation completed earlier that afternoon.

At approximately 4:35pm, the Dealer advised UBS Compliance that the potential size of the Block Trade had increased substantially. Initial calculations indicated that UBS' participation in the Block Trade at the increased size would not be permitted, with the capital implications of the resulting exposure modelled to cause UBS' *CAR* to fall below 100%. Revised calculations were undertaken at 5:11pm, following further information being provided by the Dealer. The revised calculations indicated that UBS could transact the Block Trade with *CAR* remaining above 100%, but that, nonetheless, UBS would make a drawdown of Subordinated Debt to be confident of remaining above required capital levels for the following day's (Day 1) trading activities.

At 6:32pm, after the Block Trade had been agreed and reported to the market, UBS completed its internal procedures to enable it to apply for the exclusion of the Subordinated Debt from its liabilities as permitted under the Participant Rules and C&S Rules. UBS did not submit that application on that day,

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<sup>1</sup> The parties sought and were granted an extension of time to allow settlement discussions to occur. The Tribunal made its determination within 5 business days of receiving the settlement agreement.

but deferred the application until Day 1 in the belief that it continued to remain at all times in excess of its capital requirements.

At approximately 8:23am on Day 1, UBS applied for approval to exclude the Subordinated Debt from its liabilities. Later that morning, UBS completed its Capital Adequacy calculations for Day 0 and determined that its participation in the Block Trade had resulted in a breach of its capital requirements, with UBS' CAR having fallen to 86% at the close of business on Day 0. The breach was escalated internally to UBS management at 12:10pm on Day 1 and reported to NZ RegCo at 12:24pm. The breach was remedied as soon as the exclusion of Subordinated Debt request was approved by NZ RegCo at 1:46pm.

NZ RegCo determined that UBS had breached Participant Rule 19.1.1 and C&S Rule 9.1.1, when UBS' NTCA as a percentage of UBS' PMCA for Day 0 was 86% (when it was required to be 100% or higher), with the breach of C&S Rule 9.1.1 also constituting a Credit Event under C&S Rule 7.1.1 (noting that CHO determined not to treat the Credit Event as a Declared Default because the breach was rectified promptly, and CHO remained comfortable with UBS' ability to continue its financial and operational duties as a Clearing Participant).

#### FINDINGS:

As this matter was referred to the Tribunal before 17 October 2022, it was considered under the Tribunal Rules dated 10 December 2020 and the Tribunal Procedures dated 29 February 2016.

The Tribunal approved a settlement agreement between NZX and UBS under which UBS accepted its breach of Participant Rule 19.1.1 and C&S Rule 9.1.1.

The Tribunal noted that compliance with the capital adequacy requirements at all times, including maintaining an acceptable level of liquidity, is a key protection mechanism for the integrity of the market and the maintenance of investor confidence. The Tribunal considered that this matter fell within Penalty Band 2 of Procedure 9 of the Tribunal Procedures because:

- (a) the breaches were of a moderate operational nature, with inaccurate modelling resulting in UBS believing it was operating within its Capital Adequacy limits; and
- (b) NZ RegCo had not advised of any impact on investors, clients or the market arising from the breaches.

In determining the appropriate penalty, the Tribunal considered that there were aggravating factors in this case:

- (a) while UBS considered it prudent to apply for approval to exclude Subordinated Debt, it did not seek that approval until the morning of Day 1, after the Block Trade had been reported; and
- (b) UBS did not have a sufficient peer review process, which contributed to the breaches because although UBS reviewed the outputs of its CAR modelling, it did not revalidate the assumptions and inputs made in relation to the risk exposures.

The Tribunal considered that there were also mitigating factors in this case:

- (a) the breaches were of short duration;
- (b) the breaches were not intentional or reckless;
- (c) the breaches were promptly self-reported;
- (d) UBS cooperated with NZ RegCo during the course of the investigation;
- (e) the breaches were an isolated event and did not form a pattern of non-compliance;
- (f) since the breach occurred, UBS had:
  - (i) clarified the process for large transaction notifications to ensure timely escalation of expected transactions and that accurate information is obtained and communicated between the relevant parties involved in the large transaction assessment;
  - (ii) undertaken education and training for all relevant parties to ensure that the approval process for large transactions is clear;
  - (iii) clarified its communication timelines and approvals required for large transactions; and
  - (iv) re-assessed the structure and level of capital that is appropriate for UBS based on historical and current market conditions.

Taking these aggravating and mitigating factors into account, the Tribunal considered that a penalty at the lower end of Penalty Band 2, together with a public censure, was appropriate.

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#### PENALTY:

UBS was ordered to pay \$20,000 to the NZX Discipline Fund.

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#### COSTS:

UBS was ordered to pay the costs of the Tribunal and NZX.

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#### PUBLICATION:

Under the terms of the settlement agreement, UBS accepted the penalty of a public censure for its

breach of the Rules.

The Tribunal's public censure can be viewed [here](#)

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# SPECIAL DIVISION REPORT

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# SPECIAL DIVISION REPORT

## Special Division

The Special Division is a division of the Tribunal constituted under the Tribunal Rules to regulate NZX and its Related Entities' compliance with the NZX Market Rules. As at the date of my report, NZX's Related Entities are NZX Wealth Technologies Ltd (a Depository Participant) and Smartshares Ltd (the manager of currently 35 listed exchange traded funds). The objective of the Special Division is to foster market confidence that the NZX Market Rules and the Tribunal Rules are applied to NZX and its Related Entities in an impartial and independent manner.

The FMA is responsible for ensuring that NZX meets its obligations as a licensed market operator.

## Monitoring of trading activity

The Special Division is responsible for assessing trading activity in the quoted securities of NZX and its Related Entities. On behalf of the Special Division, NZ RegCo Market Surveillance (*NZMS*) conducts front-line monitoring of trading on the exchange in the securities of NZX and any Related Entity. NZMS refers system generated alerts from its SMARTS Surveillance software and any other abnormal trading activity to the Special Division for consideration.

The Special Division considered 69 referrals from NZMS in 2022. This number of referrals is comparable to the number received in 2021. A summary of each referral to the Special Division follows this report. In most instances, the Special Division did not consider that the alert raised any concerns or warranted further investigation on the basis that the activity was consistent with permissible trading. In some instances, the Special Division sought further information from NZMS or the Market Participant involved (these referrals are identified with an \* or \*\* respectively in the following summary).

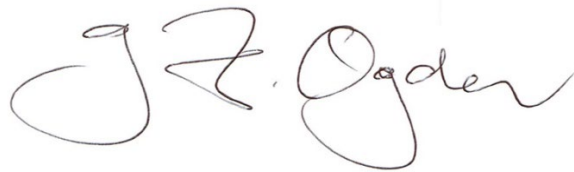
## Other activities

The Special Division's activities in 2022 also included:

- (a) considering a complaint, which resulted in no Listing Rule breach being identified;
- (b) investigating administrative breaches related to MAP data entry errors, which resulted in an Obligations Letter being issued;

- (c) considering requests for trading halts from NZX in relation to its pro-rata accelerated renounceable entitlement offer in February and March 2022; and
- (d) considering a waiver application from Listing Rule 4.19.1 to permit a staggered settlement to allow NZX's largest shareholder, Aberdeen Standard Investments (Asia) Limited and Aberdeen Asset Management Limited (*Aberdeen*), to take up their pro rata entitlement under NZX's pro-rata accelerated renounceable entitlement offer with a settlement on the institutional settlement date and the retail settlement date, so that at no stage did Aberdeen exceed the control limit restricting any person from holding or controlling more than 10% of NZX voting rights. Special Division granted the waiver on 16 February 2022 subject to several conditions. The waiver was announced on 17 February 2022 following NZX's announcement of the rights offer - see [here](#).

I would like to thank the members of the Special Division – Matt Blackwell, Rachael Newsome, Dave Robertson and Mariëtte van Ryn - for their work during 2022.

A handwritten signature in black ink, appearing to read 'J. Ogden', written in a cursive style.

James Ogden | SPECIAL DIVISION CHAIR  
14 April 2023



## NZMS REFERRALS – 1 JANUARY 2022 TO 31 DECEMBER 2022

During 2022, the Special Division received 69 referrals from NZMS as outlined below. Some referrals may involve more than one alert and more than one ETF.

MONTH 2022	ISSUER	DATE REFERRED
January	NZX	19, 24
	LIV	10
	ASR, USA, USG	25
	NPF, USA	26
	ASD, ASR**, FNZ	28
February	NZX	4, 22, 23, 24, 25, 28
	USF	3
	EUF	4
	ASR	10
	MDZ	28
March	NZX	1, 9, 18
	APA, EMF, EUF, TWH, USF, USG, USV	1
	EMF, EUG	8
	EUG	9, 12**
	NPF	12*
	EMF	18
	NZG	29
April	NZX	5*, 21*, 21*, 26, 27*, 28*, 28, 28
	OZY	29
May	NZX	6*, 9, 9, 18
June	NZX	9
	ASR	15
July	NZX	15
August	NZX	5, 9, 18, 19, 22, 23

MONTH 2022	ISSUER	DATE REFERRED
	ESG	29
	NZG	29*
September	NZX	1, 19, 22
	ASR	27
October	NZX	5, 27
November	NZX	16
December	NZX	1, 19*
	LIV	2
	DIV	19**
	NPF	19
	NZB	23

\* Sought further information from NZMS and determined no further action required.

\*\* Sought further information from the Market Participant involved and determined no further action required.

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# DIRECTORY

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NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

<https://nzx.com/NZMDT>

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