



30 August 2021

**PUBLIC CENSURE OF JARDEN SECURITIES LIMITED BY THE NZ MARKETS
DISCIPLINARY TRIBUNAL FOR BREACH OF NZX PARTICIPANT RULES 8.8.1,
10.2.2(a), (b) AND (f), AND 10.8.1(a)**

1. The NZ Markets Disciplinary Tribunal (*Tribunal*) has approved a settlement agreement between NZX Limited (*NZX*), acting by and through NZX Regulation Limited (*NZ RegCo*), and Jarden Securities Limited (*Jarden*) dated 12 August 2021 (*Settlement Agreement*).

Background

2. Jarden is a Trading and Advising Participant and is bound by the Rules. Jarden provides Direct Market Access (*DMA*) to a number of DMA Authorised Clients who can submit orders and trade on New Zealand markets using Jarden's order entry system. Jarden has responsibilities and obligations in respect of this trading under the Rules.
3. Client A is a DMA Authorised Client of Jarden who submits orders by DMA on its own behalf and on behalf of its underlying clients using Jarden's order entry system.
4. On 26 June 2020, an underlying client of Client A used a volume weighted average price (*VWAP*) algorithm to execute orders in Mainfreight Limited (*MFT*) using Client A's DMA account with Jarden:
 - a. between 10:18am and 12:52pm, 32 orders to sell MFT shares were entered resulting in 54 trades of 1,266 MFT shares. MFT's share price moved from \$40.06 to \$40.38, then back down to \$40.15. Client A accounted for 39% of the total volume sold during this period. At 12:52pm, the last traded price for MFT was \$40.17; and
 - b. between 12:59pm and 1:38pm, 52 orders to sell MFT shares were entered resulting in 96 trades of 14,353 MFT shares (*the MFT Trades*). In this period of about 40 minutes, MFT's share price moved down through 26 price levels, from \$40.17 to \$36.25, a decrease of \$3.92 or 9.8%. The MFT Trades did not themselves occur as low as \$36.25 and were responsible for 12 of the 26 downward price movements. However, the MFT Trades accounted for 83% of all the shares sold during this period and NZ RegCo considers they likely influenced trading by other sellers in the market (including other algorithms).
5. This trading activity was observed by a senior member of Jarden's dealing team who contacted Client A to question the trading. Client A confirmed that its client had mistakenly put the order into a VWAP algorithm without applying a volume cap (a volume cap would have meant that the algorithm was controlled to selling a certain percentage of the volume that traded, and not all the volume). Independently of this exchange, the MFT Trades triggered four SMARTS alerts which were reviewed by Jarden's compliance team who considered that the trades raised "no concerns" as the price of MFT shares had stepped down within acceptable levels. No consideration was given to the cumulative effect that the series of orders had on MFT's share price when reviewing the SMARTS alerts.

6. NZ RegCo began an investigation into the MFT Trades after it also received a SMARTS alert following the rapid decline in MFT's share price. During the course of NZ RegCo's investigation, Jarden advised that its "% from previous close" filter (*the Filter*), which it would have expected to have prevented some of this activity, was not activated at the time of the MFT Trades. Had the Filter been activated, the orders would likely have been stopped and diverted to a Dealer to be reviewed and either authorised or rejected.
7. Jarden advised NZ RegCo that the Filter had been deactivated on 24 July 2019 after an issue was identified and assistance sought from Iress. Jarden had failed to implement any checks or controls in its place, had failed to follow-up on this issue and had incorrectly advised NZ RegCo on 25 June 2020, as part of NZ RegCo's regular pre-inspection request for information, that the Filter was in place believing that it was operational (Jarden corrected this advice following its investigation into this matter). Jarden had also not conducted regular reviews of its DMA filters as part of its compliance monitoring programme, despite NZ RegCo previously highlighting the need for Jarden to specifically monitor key areas including DMA in its onsite inspection reports of 2018 and 2019. The Filter had remained deactivated until the investigation into the MFT Trades.
8. NZ RegCo found that Jarden had breached:
 - a. Rule 8.8.1 by not ensuring its conduct promoted and helped maintain an orderly market;
 - b. Rules 10.2.2(a), (b) and (f) by accepting Client A's orders without considering whether the orders were consistent with recent trading in MFT, whether they would materially affect MFT's share price and whether they may have formed a series of orders (and if so, the effect of that series of orders); and
 - c. Rule 10.8.1(a) by not ensuring it had appropriate DMA filters in place.

Determination

9. The Tribunal considers that the breaches by Jarden relate to a number of fundamental obligations under the Rules, including the need to maintain an orderly market and to ensure appropriate DMA filters are in place. The Tribunal is also concerned that the MFT Trades highlighted a number of compliance system failures within Jarden (as noted above), which the Tribunal considers did not meet the standards expected of a Trading Participant. Jarden acknowledged that the internal monitoring of its DMA filters had not been adequate. The Tribunal determined that the breaches fell within Penalty Band 3 of the Tribunal Procedures.
10. The Tribunal considered that there were a number of aggravating factors in this case:
 - a. Jarden failed to ensure the maintenance of an orderly market with the MFT Trades significantly contributing to a 9.8% fall in MFT's share price over a 40 minute period on 26 June 2020;
 - b. Jarden did not have appropriate DMA filters in place for almost 12 months;
 - c. Jarden's compliance monitoring of its DMA was inadequate despite being advised by NZ RegCo to address this on two previous occasions;
 - d. Jarden's post-trade monitoring failed to consider the cumulative effect of the MFT Trades; and
 - e. Jarden has been the subject of previous enforcement action by NZ RegCo regarding a failure to have adequate filters in place.
11. The Tribunal also considered that there were mitigating factors:
 - a. Jarden has now established a compliance monitoring task to regularly check the assignment of its DMA filters; and

- b. Jarden has updated its post-trade monitoring policies and procedures to ensure greater detail and rationale of the action it is taking is included when addressing alerts.
12. Taking these aggravating and mitigating factors into account, the Tribunal considers that, while the breaches fall within Penalty Band 3 of the Tribunal Procedures, a penalty at the lower end of the available penalty range is appropriate, together with this public censure.

Penalties

13. NZX and Jarden have reached a settlement under which Jarden accepts the findings by NZ RegCo that it breached Rules 8.8.1, 10.2.2(a), (b) and (f), and 10.8.1(a).
14. NZX and FNZW have agreed that:
- a. A public censure will be made by the Tribunal;
 - b. Jarden will pay a financial penalty of NZ\$40,000;
 - c. Jarden will pay the costs incurred by the Tribunal (plus GST, if any); and
 - d. Jarden will pay the costs incurred by NZX (plus GST, if any) in bringing this proceeding.

Approval

15. The Settlement Agreement is approved by the Tribunal pursuant to NZ Markets Disciplinary Tribunal Rule 8, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

16. The Tribunal hereby censures Jarden for its breach of Rules 8.8.1, 10.2.2(a), (b) and (f), and 10.8.1(a).

The Tribunal

17. The Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the NZ Markets Disciplinary Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the NZX market rules.

ENDS