



NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL PUBLISHES 2023 ANNUAL REPORT

24 April 2024 – The New Zealand Markets Disciplinary Tribunal (NZMDT) today published its Annual Report for the year ended 31 December 2023.

2024 marks the 20th anniversary of the establishment of the NZMDT. Inaugural Chair, Mr Donald G. Trow, stated in the NZMDT’s first annual report that its success was largely due to the commitment and willing contribution of its members. NZMDT Chair, Deemle Budhia, noted that this sentiment is still true 20 years later. “The NZMDT has been fortunate to include within its membership a breadth of experience and knowledge over the years. I believe the quality of its decisions, relative informality and speed of its hearing process will ensure that the NZMDT continues to be an integral part of the regulatory framework of the New Zealand capital markets”.

Role of the NZMDT

The NZMDT is an independent adjudicative body. Its primary responsibility is to determine whether there has been a breach of the NZX Market Rules in matters referred to it by NZ RegCo. If a breach is established, the Tribunal can impose penalties, having regard to the NZMDT Rules and Procedures.

The NZMDT may also review decisions made by NZ RegCo in respect of a waiver or ruling in matters referred to it by the applicant, provided certain grounds are met. A third party, such as a shareholder, cannot refer a decision made by NZ RegCo to the NZMDT for review.

The NZMDT does not monitor or investigate market conduct. That role is performed by NZ RegCo and the FMA. The NZMDT does not make the NZX Market Rules, nor is it involved in the development of capital markets policy.

NZ RegCo appoints the members of the NZMDT and NZX Ltd makes the NZMDT Rules which set out its powers and functions, subject to approval by the FMA.

Annual Report 2023

The 2023 Annual Report sets out the NZMDT’s activities in 2023 and its approach to penalty setting under the revised NZMDT Procedures.

Seven matters were referred to NZMDT by NZ RegCo in 2023, up from one matter referred in 2022. One appeal was also considered – the first appeal since 2018. The penalties imposed by the NZMDT in 2023 under the revised NZMDT Procedures ranged from \$25,000 to \$75,000. While several matters were found to have involved serious compliance breaches, NZ RegCo found that none had caused a significant impact on investors or the market.

Five of the seven matters referred involved breaches of the Board and/or Audit Committee composition requirements under the NZX Listing Rules (including four which involved historical breaches of significant duration). These breaches were disappointing given the requirements are long-standing. Two of these matters also involved breaches of the annual reporting requirements under the NZX Listing Rules where Issuers failed to fully report on their compliance with the NZX Corporate Governance Code recommendations, the first such referrals to the NZMDT of this kind. A concerning theme arising from these referrals was the inaccurate and incomplete governance disclosures in Issuers' annual reports. The NZMDT noted that Issuers should undertake robust compliance checks on the information included in their annual reports each year to ensure it is accurate and complete.

One referral involved a breach of the continuous disclosure requirements and centered on when the obligation to disclose Material Information arose and whether the safe harbour exception for an incomplete proposal or negotiation applied. The NZMDT noted that Boards should carefully consider their continuous disclosure obligations and record their deliberations.

Only one matter was referred against a Trading Participant. That matter involved unauthorised access to the Trading System by an employee who was not a Dealer or a DMA Authorised Employee and who had inadvertently been given access. NZ RegCo found that there was no impact on clients or the market as a result of the breach.

NZMDT Special Division

The Special Division is a division of the NZMDT which exercises the powers and functions of NZ RegCo as they apply to NZX Ltd and any related entity (currently Smartshares Ltd and NZX Wealth Technologies Ltd). The Special Division's role is to ensure that the NZX Market Rules are applied to NZX and its related entities in an impartial and independent manner.

The term of Special Division Chair, James Ogden, ends in May 2024. Ms Budhia said "James has made a significant contribution to the Tribunal over his 12-year term, and he will be sorely missed".

Ms Budhia has appointed Matt Blackwell to succeed James as Special Division Chair.

The term of Tribunal and Special Division member, Mariëtte van Ryn, ends in July 2024. Ms Budhia noted that Mariëtte has been a valued member of the NZMDT and Special Division.

NZMDT members

Ms Budhia thanked the NZMDT members and executive counsel for their contribution to New Zealand's capital markets.

The NZMDT's members are:

Issuer appointees: Charles Bolt, Kirsty Campbell, Nicola Greer, Alan Isaac CNZM, Sarah Miller, James Ogden, Jennifer Page and Mariëtte van Ryn.

Market Participant appointees: David Lane (NZMDT Deputy Chair), Matt Blackwell, Darren Manning, Rachael Newsome, Dave Robertson and Gretchen Williamson.

Legal appointees: Deemle Budhia (NZMDT Chair), Hon Sir Terence Arnold KC, John Dixon KC, Rachel Dunne, Kristy McDonald ONZM KC and Daniel Wong.

ENDS

For further information on the NZMDT see [here](#).