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**DISCIPLINE**



## **ANNUAL REPORT OF NZX DISCIPLINE** MAY 2006 - APRIL 2007

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**DISCIPLINE**

## CHAIRMAN'S REPORT

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This is the second annual report of NZX Discipline. This report covers the twelve month period from May 2006 to 30 April 2007.

### The nature of the regulation of the markets

Complaints about Market Participants, Futures and Options Participants, and Listed Issuers are first considered by NZX Regulation (NZXR), the regulatory arm of New Zealand Exchange Limited (NZX). NZXR determines whether the complaint alleges a breach of the Rules for Market Participants (NZX Participant Rules), for Futures and Options Participants (NZX Futures and Options Rules) and for Listed Issuers (the rules for issuers with their securities quoted on the NZSX or NZDX markets being known as the NZSX/NZDX Listing Rules and the rules for issuers with their securities quoted on the NZAX market being known as the NZAX Listing Rules, together the Listing Rules). NZXR also has a role in actively supervising compliance with the NZX Participant Rules and NZX Futures and Options Rules, and apparent breaches may be found as a result of this supervisory activity. All of these rules together are referred to as the Conduct Rules.

In respect of many of the apparent breaches of the respective Rules that have been identified by NZXR, NZXR may determine to refer the conduct to NZX Discipline. NZX Discipline is a separate regulatory body with its own set of governing rules, the NZX Discipline Rules. NZX Discipline acts independently of NZX Regulation when determining whether there has been a breach of the applicable rules, and when determining the penalties to be imposed in the event that a breach is proven.

An additional power of NZX Discipline is to review, on application from a party who has applied to NZXR for a waiver or ruling under the Conduct Rules, the NZXR decision in respect of that application. There has been one review conducted by NZX Discipline during the reporting period - and information on this review is provided in Section 1 of this report.

As required by Rule 12.1 of the NZX Discipline Rules, this report provides a summary of all those activities described in the previous three paragraphs.

### The Special Division of NZX Discipline

One of the companies listed on the NZSX market is New Zealand Exchange Limited. Smartshares Limited, a subsidiary of NZX, also manages five exchange traded funds that are listed on the NZSX market. The role of the Special Division of NZX Discipline is to ensure that there is full compliance with the NZSX/NZDX Listing Rules by New Zealand Exchange Limited and the five funds that are managed by Smartshares Limited.

The members of the Special Division are Messrs Peter Wilson (chairman), Michael Jeffs, Paul Ridley-Smith and Nicolas Short. A number of issues and requests for waivers from the NZSX/NZDX Listing Rules have been considered by the Special Division in a competent and timely manner. A breach of the NZSX/NZDX Listing Rules by the smartOZZY fund, has been referred to NZX Discipline, and this is documented as case 05/07 in Section 1 of this report.

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## The operations of NZX Regulation and NZX Discipline

I am pleased to report that there is an excellent working relationship between NZX Regulation and NZX Discipline. From the point of view of NZX Discipline, the personnel in NZX Regulation have conducted their activities in a most competent and professional manner.

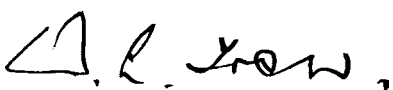
As chairman of NZX Discipline, I have been most fortunate to have an energetic, highly competent and efficient group of panel members to attend to the various activities. This has led to the competent and efficient attention to matters referred to NZX Discipline that is envisaged by the NZX Discipline Rules. The support and willing involvement of the deputy chairman Mr William Stevens has been particularly appreciated.

As required by NZX Discipline Rule 12.1(f) the Chairman of NZX Discipline and the Chairman of the Appeal Panel, Mr Euan Abernethy confirm that they believe that adequate resources have been made available to the respective bodies to undertake their roles under the NZX Discipline Rules. There have been no hearings to date by the NZX Discipline Appeal Panel.

## The quality of the conduct in the markets operated by NZX

A review of the information in this report will reveal that there have been some isolated instances of the behaviour of NZX Advisors, NZX Market Participants and Listed Issuers that is well below the standard that is expected from those operating in NZX's markets. During the twelve month period, however, there has certainly been no deterioration in the over all standard of conduct, and the general quality of behaviour by Market Participants, NZX Advisors and Listed Issuers remains most commendable.

I have no doubt that the continuing activities of NZXR and NZX Discipline have generated an awareness of the requirements for good conduct, and made a real contribution to maintaining the high standard of conduct in the markets in New Zealand.



D. G. Trow  
Chairman, NZX Discipline  
30 April 2006

## **MEMBERS OF NZX DISCIPLINE AT 30 APRIL 2007**

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### **Legal**

Victoria Heine, Derek Johnston, Laurie Mayne, Simon McArley<sup>1</sup>, Nicolas Short and Tim Williams.

### **Listed Issuers**

Roger Armstrong, Patsy Reddy, Don Trow (Chairman) and Peter Wilson.

### **Market Participants**

Michael Jeffs, Campbell Stuart and William Stevens (Deputy Chairman of NZX Discipline).

Tim Preston resigned from NZX Discipline in November 2006.

### **NZX**

Geoff Brown and Bill Malthus.

### **Members of the public**

Falcon Clouston, John Loughlin, Phillip Meyer, Stephen Moir and Paul Ridley-Smith.

Peter Hays resigned from NZX Discipline at the 2006 Annual Meeting of NZX Discipline.

## **MEMBERS OF THE SPECIAL DIVISION OF NZX AS AT 30 APRIL 2007**

Nicolas Short, Michael Jeffs, Paul Ridley-Smith, Peter Wilson (Chairman)

Rachel Batters is the Solicitor appointed to the Special Division.

Peter Hays, the former chairman of the Special Division, resigned from NZX Discipline at the 2006 Annual Meeting of NZX Discipline.

## **MEMBERS OF THE APPEALS PANEL AS AT 30 APRIL 2007**

Euan Abernethy (Chairman), Brian Allison, Peter Clapshaw, John Rattray, Bill Thurston, John Turkington, John Upton QC.

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<sup>1</sup> Simon McArley has been available for NZX Discipline matters since May 2006 after he finished with NZX as acting Head of Regulation.

## CHAIRMAN OF THE SPECIAL DIVISION'S REPORT

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### Personnel

Peter Hays retired as Chairman of the Special Division following the 2006 Annual General Meeting of NZX Discipline and I was appointed Chairman.

Paul Ridley-Smith was appointed to the Division to replace Peter Hays.

### Review of the Special Division's Structure and Activities

The Securities Commission undertook a review of the Special Division's activities in 2006 and proposed a number of amendments to organisational structures and procedures. These recommendations were considered by NZX and by the Special Division members and a number of changes were agreed. The essence of the changes was to provide greater separation from NZX and to ensure adequacy of reporting processes and specialist resource. The implementation of agreed changes was completed in late 2006.

I have recently met with the Securities Commission and stated that the Special Division is happy with its processes and resources.

### Matters dealt with by the Special Division

See Section 5 of this Annual Report for a summary of matters dealt with by the Special Division over the last year.

The Special Division noted that penalties assessed against issuers are payable to NZX. Where NZX is the issuer this would incur no cost to the issuer. The Special Division has suggested a change to the NZX Discipline Rules.

Peter Wilson  
Chairman, Special Division

## SECTION 1

### STATEMENTS OF CASE, FINDINGS AND PENALTIES FROM HEARINGS CONDUCTED BY NZX DISCIPLINE

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#### CARRIED OVER FROM 2005/2006

##### NZXD 02/05

##### ACCESS BROKERAGE LIMITED (in liquidation) and PETER GERALD MARSHALL – Full Hearing

Division: Trow, Stevens, Stuart, Malthus and Heine.

Statement of Case: 13 April 2005.

In respect of Access Brokerage:

Determination: 12 March 2007.

Finding: The finding and penalties in this matter have not been made public pending determination of an application by Mr Marshall to stay publication on the basis that publication will be prejudicial to a fair hearing in his upcoming prosecution by the Serious Fraud Office.

In respect of Mr PG Marshall:

Status at April 2007: Hearing adjourned sine die until completion of hearing of SFO charges in the Court, expected before the end of 2007.

##### NZXD 13/05

##### REVIEW OF DECISION OF NZX REGULATION UNDER NZX DISCIPLINE RULE 4.12

Division: Trow, Johnston and Reddy.

Review requested by Peter Yealands Investments Limited on 21 April 2006 following decision of NZX Regulation dated 12 September 2005. This decision related to a ruling under the continuous disclosure provisions of the NZAX Listing Rules in respect of the non-disclosure of certain information by Oyster Bay Marlborough Vineyards Limited.

Determination: 29 November 2006.

Finding: Decision of NZX Regulation upheld.

Publication: Redacted decision published.

Costs: Costs awarded against Peter Yealands Investments to NZX in the sum of \$43,000 and to Oyster Bay Marlborough Vineyards Limited in the sum of \$54,000.

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## HEARINGS HELD SINCE MAY 2006

### NZXD 05/06

### A LISTED ISSUER – Full Hearing

Division:	Trow, Armstrong and Mayne.
Statement of Case:	3 August 2006. Alleged breach of Listing Rule 3.4.2 in that a director of the Listed Issuer voted on a board resolution to enter into a transaction in which he was interested within the meaning of that Rule.
Determination:	31 October 2006.
Finding:	Proposed Settlement Agreement between NZX and the Listed Issuer not approved by NZX Discipline.
Status at April 2007:	Determination appealed under NZX Discipline Rule 8. Appeal to be heard by a new division.

### NZXD 06/06

### AN NZX ASSOCIATE ADVISOR – Summary Hearing

Division:	Stevens, McArley and Williams.
Statement of Case:	28 August 2006.
Determination:	12 September 2006.
Finding:	Breach of: <ul style="list-style-type: none"><li>• Participant Rule 9.4.2 by operating client accounts as discretionary accounts without first obtaining written authorisation of client; and</li><li>• Rules relating to observance of proper ethical standards and compliance with Good Stockbroking Practice.</li></ul>
Penalties:	Censure of Advisor to be published to Market Participants. Payment of \$5,000.
Publication:	Details advised to all Market Participants, without naming Participant involved.
Costs:	Costs awarded to NZX on 6 October 2006 in the sum of \$3,750.

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## HEARINGS HELD SINCE MAY 2006 CONTINUED

### NZXD 07/06

### AN NZX FIRM – Summary Hearing

Division:	Trow, Jeffs and McArley.
Statement of Case:	17 November 2006.
Determination:	30 November 2006.
Finding:	Breach of Participant Rule 3.8.3(a) in that during a period of one month, an office of the Firm was not under direct full time control of an NZX Advisor or an NZX Associate Advisor as required by that Rule.
Penalties:	Payment of \$3,000.
Publication:	Details advised to all Market Participants, without naming the Firm involved.
Costs:	No costs awarded.

### NZXD 08/06

### MEDIA TECHNOLOGY GROUP LIMITED – Summary Hearing

Division:	Trow, Clouston and Ridley-Smith.
Statement of Case:	8 December 2006.
Determination:	20 December 2006.
Finding:	Breach of NZAX Listing Rules B1.1.1 and B1.8.1 by disclosing material information to the public prior to disclosing the same information to NZX as required by that Rule.
Penalties:	Public censure. Payment of \$5,000.
Publication:	Decision published.
Costs:	Costs awarded to NZX in the sum of \$1,200.

### NZXD 09/06

### AN NZX ADVISOR AND AN NZX FIRM – Full Hearing

Division:	Stevens, Brown, Jeffs, Loughlin and McArley.
Statement of Case:	21 February 2007.
Determination:	4 April 2007.

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Finding:	<p>Breach of Participant Rules A10.2.1, A10.2.2, 8.1.1(b)(ii) and 8.1.1(c) by NZX Advisor and NZX Firm when placing an order on behalf of a client to influence the closing price of a security.</p> <p>Approval of Settlement Agreement between NZX and NZX Advisor and NZX Firm.</p>
Penalties:	<p>Public censure.</p> <p>Payment of \$70,000 by the NZX Advisor.</p> <p>Payment of \$10,000 by the NZX Firm.</p> <p>In addition, the NZX Firm is required to provide mandatory training to all its NZX Advisors and NZX Associate Advisors in relation to the requirements of Participant Rules A10.2.1 and A10.2.2 and the imminent amendments to the Securities Markets Act 1988 in relation to market manipulation within three months of the date of publication of the decision (being 18 April 2007).</p>
Publication:	<p>Details advised to all Market Participants, without naming NZX Firm or NZX Advisor involved.</p>
Costs:	<p>No costs awarded.</p>

## **NZXD 01/07**

## **AN NZX FIRM AND THREE NZX ADVISORS– Full Hearing**

Division:	Trow, Brown, Jeffs, Loughlin and McArley.
Statement of Case:	23 January 2007.
Determination:	30 April 2007.
Finding:	<p>Breach of:</p> <ul style="list-style-type: none"> <li>• Participant Rule A10.7.3 by an NZX Firm and named advisors by allowing employees and other prescribed persons to participate in subscription to an IPO ahead of clients, without obtaining the necessary exemption from NZX.</li> <li>• Participant Rule 3.11.1 and 3.11.4 in that the current compliance manager for the Firm was not adequately experienced or qualified to perform the role.</li> </ul> <p>Approval of Settlement Agreement.</p>

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## HEARINGS HELD SINCE MAY 2006 CONTINUED

Penalties:	Public censure. Private censure of the NZX Advisors.  Payment to NZX of approximately \$111,000 representing the profit made by the respondents as a result of the participation in the IPO, plus a further \$50,000.  NZX concerns about compliance practices to be addressed by replacement of compliance manager and completion of a full review of the Firm's compliance practices and procedures by an independent party approved by NZX.
Publication:	Details advised to all Market Participants, without naming NZX Firm or NZX Advisors involved.

### NZXD 02/07

### AN NZX FIRM - Summary hearing

Division:	Stevens, Jeffs and McArley.
Statement of Case:	27 February 2007.
Determination:	7 March 2007.
Finding:	Breach of Participant Rule 11.16 in that over an extended period of time, the Firm failed to prepare contract notes no later than the day of execution of the client's instructions.
Penalties:	Payment of \$9,000.
Publication:	Details advised to all Market Participants without naming the Firm involved.
Costs:	Costs awarded to NZX on 23 March 2007 in the sum of \$1,500.

### NZXD 03/07

### AN NZX ADVISOR AND AN NZX FIRM – Summary Hearing

Division:	Trow, Stevens and McArley.
Statement of Case:	29 March 2007. Alleged breach of Participant Rule 14.7.1 by the respondents failing to hold written acknowledgment of the trust status of several Client Funds Accounts.
Status at April 2007:	Hearing in progress.

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## **NZXD 04/07**

## **A LISTED ISSUER – Summary Hearing**

Division:	Trow, Ridley-Smith and Johnston.
Statement of Case:	26 March 2007. Breach of Listing Rule 9.1 in that the Issuer entered into a series of transactions to acquire assets to be held by the Issuer in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer.
Status at April 2007:	Hearing in progress.

## **NZXD 05/07**

## **SMARTSHARES LIMITED: NZX AUSTRALIAN 20 LEADERS INDEX FUND (smartOZZY) – Summary Hearing**

Division:	Stevens, Mayne and Stuart.
Statement of Case:	27 March 2007.
Determination:	2 May 2007.
Finding:	<p>Breach of Listing Rule 10.4 by failing to provide a preliminary announcement and half yearly report for the six months to 30 September 2006 within the timeframe prescribed in the NZSX/NZDX Listing Rules.</p> <p>Approval of Settlement Agreement between Smartshares Limited and the Special Division of NZX Discipline.</p>
Penalties:	Payment of \$10,000 to an organisation approved by the Special Division of NZX Discipline for the purpose of market education. It is a condition of this payment that the application of these funds must not relate to expenditure that would customarily be made by Smartshares Limited or New Zealand Exchange Limited.
Publication:	Details of the Settlement announced to the market by the Special Division.

## SECTION 2 – THIS SECTION OF THIS REPORT WAS PREPARED BY NZX REGULATION

### MARKET PARTICIPANTS AND FUTURES AND OPTIONS PARTICIPANTS

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#### A. Summary of breaches of the NZX Participant Rules identified by NZX

##### **SIGNIFICANT BREACHES OF THE NZX PARTICIPANT RULES**

There were six cases of significant breaches of the NZX Participant Rules referred to NZX Discipline in the period between 3 May 2006 and 30 April 2007. These are described in Section 1.

##### **BREACHES CURRENTLY BEING INVESTIGATED**

In addition, since January 2007, six breaches identified by NZX Regulation are currently being investigated by NZX to determine whether further action, including referral to NZX Discipline, is necessary. Of these breaches:

- One relates to Participant Rule 11.15 (Participant's staff orders for Securities cannot take precedence over unexecuted order on the same terms as a client).
- One relates to Participant Rule D10.1 (Crossing outside the quotations).
- Two relate to Participant Rule 11.16.1 (Transaction to be evidenced by issuing a contract note by the following day).
- One relates to Participant Rule A10.7 (Employees of Participants wishing to deal in Securities must obtain written authority).
- One relates to a breach of requirements for exam supervision for advisors.

##### **OTHER BREACHES OF THE NZX PARTICIPANT RULES**

In addition to the above cases, there were also a number of other minor, inadvertent or technical breaches of the Participant Rules, which were not considered sufficiently serious to warrant referral to NZX Discipline.

Of these, various breaches were identified during NZX's on-site inspections of Market Participants. These breaches were subsequently highlighted to the relevant Market Participant as part of the NZX Regulation inspection report for the relevant firm with action points which the Market Participant was/is required to implement within a specified timeframe. In some cases, alternative action was taken including issuing warnings and fines to the relevant Market Participant.

Trading conduct breaches have also occurred. Since 3 May 2006 to 30 April 2007, 22 breaches of Participant Rule D10.1 (Crossing outside the quotations) were identified. This was a 66% reduction in this type of breach from the period reported upon in NZX Discipline's 2006 Annual Report. These were almost all minor transgressions which resulted in an automatic fine by NZX. In the same period, a significant number of breaches relating to late settled trades occurred. These also resulted in an automatic fine by NZX, in accordance with the process specified in the NZX Participant Rules.

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There were a number of breaches of Participant Rule 15.9.1 (daily Liquid Capital reports not submitted on time). These were all minor, inadvertent or technical in nature. These were resolved or clarified by communication with the relevant Market Participant.

78 breaches of Participant Rule 14.7.1(3) (Client Funds Account overdrawn) occurred, a 25 % reduction in this type of breach over the period evaluated in the 2006 Annual Report. These were self-reported by the Market Participant and a significant cause was bank error for which the Market Participant received good value from the bank. The other main reason for these instances is error in processing bank transactions by the Market Participant's employees. All of the breaches were followed up by communication with the relevant Market Participant, including, in appropriate cases, putting the relevant Market Participant on notice and advising them that, in the absence of extraordinary circumstances as determined by NZX at its sole discretion, future overdraw of the firm's Client Funds Accounts would be referred to NZX Discipline.

There were also 6 breaches of Participant Rule 14.4.2 (Client Assets need to exceed Outstanding Obligations). The majority of these were self-reported by the Market Participant. All of these were followed up by communication with the relevant Market Participant.

In June 2006, one breach relating to the failure to observe Good Broking Practice through improper use of the NZX Settlement System and processes for uplifting Securities in Austraclear was referred to the Securities Commission.

## **B. Summary of complaints received by NZX in respect of Market Participants**

NZX received a total of eleven written complaints in respect of Market Participants between 3 May 2006 and 30 April 2007, a 65% reduction in the number of complaints received during the period reviewed in the 2006 Annual Report.

Of these complaints:

- Five were from members of the public which were not in respect of Market Participants or NZX Participant Rules or were outside the jurisdiction of NZX. Two related to the terms of the Securities specified in the complaint. These were resolved by correspondence outlining why no breaches were detected and where appropriate, direction to the relevant authority.
- Four related to the conduct of the Market Participant toward the client. Of these:
  - One complaint related to the trading arm of a bank. No action was taken due to insufficient information.
  - One complaint queried charges on a contract note. This was resolved with correspondence outlining the charges.
  - One complaint related to incorrect use of client details as a result of two people of the same name

## MARKET PARTICIPANTS AND FUTURES AND OPTIONS PARTICIPANTS CONTINUED

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but different addresses. This was resolved by the Market Participant concerned.

- One complaint was addressed towards apparent failings in the Market Participant's procedures. This was resolved by correspondence with the complainant and Market Participant concerned.
- One complaint was from an NZX Advisor against a Market Participant and raised issues in relation to exam supervision and advisor training. This complaint is currently being investigated by NZX as set out above.
- One complaint was from a member of the public against an NZX Advisor, a Market Participant and NZX. The complaint that his consent was not obtained by the NZX Advisor in opening a joint sharebroking account and that a false portfolio valuation had been produced for this account. The Market Participant concerned has since admitted that the NZX Advisor did provide an inaccurate portfolio valuation and apologized for the error. NZX considers that no further action is necessary.

### C. Summary of breaches of the NZX Futures & Options Rules identified by NZX from time to time.

#### **SIGNIFICANT BREACHES OF THE NZX FUTURES & OPTIONS RULES**

At the time of publication of the NZX Discipline Annual Report 2006, one significant breach of the NZX Futures & Options Rules was being investigated by NZX to assess whether it warranted referral to NZX Discipline. This case was self-reported by the Futures & Options Participant concerned. The Participant concerned took further action to remedy the breach identified and on this basis NZX considered that referral to NZX Discipline was not necessary.

In the period between 3 May 2006 and 30 April 2007, no other breaches of the NZX Futures & Options Rules were identified.

### D. Summary of complaints received by NZX in respect of Futures and Options Participants

In the period between 3 May 2006 and 30 April 2007 NZX received no written complaints in respect of Futures and Options Participants.

## SECTION 3 – THIS SECTION OF THE REPORT WAS PREPARED BY NZX REGULATION

### ISSUERS

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#### A. Summary of breaches of the Listing Rules identified by NZX from time to time

Between 3 May 2006 and 30 April 2007, NZX has advised the market that it has identified a total of 22 breaches of the Listing Rules.

##### **DISCLOSURE (PERIODIC AND CONTINUOUS)**

Of these breaches, eight related to disclosure and more particularly the late filing of preliminary announcements, half-yearly reports or annual reports pursuant to NZSX Listing Rules 10.4 and 10.5. Of these disclosure breaches, trading in the securities of two Issuers was subsequently suspended, one by NZX and the other by the Special Division of NZX Discipline, until the relevant Listing Rule was complied with.

In addition, between 3 May 2006 and 30 April 2007, NZXR issued ten public price enquiries with respect to the Listing Rules on continuous disclosure.

In accordance with its obligations under the Memorandum of Understanding between NZX and the Securities Commission, NZXR provided further information as it saw fit to the Securities Commission under section 36ZL of the Securities Markets Act 1999 in respect of nine Issuers between 3 May 2006 and 30 April 2007.

##### **OTHER BREACHES**

In the period between 3 May 2006 and 30 April 2007, fourteen breaches were brought to the attention of or identified by NZXR but were not considered serious enough to warrant referral to NZX Discipline.

Three related to NZSX Listing Rule 10.8.2 by Issuers failing to provide to NZX an announcement at the time the announcement was released on the Australian Stock Exchange (“ASX”).

One related to the failure by an Issuer to announce the conversion of their securities on the date they converted.

Two related to a breach of NZSX Listing Rule 7.12.2 and the equivalent NZAX Listing Rule A3.7.2 and the requirement to provide to NZX 10 Business Days notice before the Record Date for the payment of any benefit on Quoted Securities.

Three related to breaches of NZSX Listing Rule 6.1 and the failure of an Issuer to obtain the final approval of NZX in relation to its Notice of Meeting or Offer Documents.

One related to a breach of NZSX Listing Rule 7.3.1 and the prohibition on issuing Equity Securities unless approved by ordinary resolution of the shareholders or in compliance with the Rules. In respect of this breach, NZXR granted a retrospective waiver to the Issuer, released on 10 March 2006.

Two breaches also related to NZSX Listing Rule 10.8.2 by failing to provide to NZX the announcements of the Issuer at the same time the announcement was released to shareholders.

## ISSUERS CONTINUED

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At April 2007, two of these breaches are still under investigation by NZXR. The first of these breaches relates to NZSX Listing Rule 10.5.3(f) and the failure by an Issuer to summarise a waiver granted by NZXR in their half-yearly report. The second relates to complying with the continuous disclosure requirements in NZSX Listing Rule 10.1.

### NZX DISCIPLINE REFERRALS

Of the total number of breaches of the Listing Rules in the period between 3 May 2006 and 30 April 2007, four were referred to NZX Discipline. These are described in Section 1.

#### **B. Summary of complaints received by NZX in respect of Issuers**

NZX received a total of 22 written complaints in respect of Issuers between 3 May 2006 and 30 April 2007, a 19% reduction in the number of complaints received since the period reviewed in the 2006 Annual Report.

Of these complaints:

- Three were general complaints over which no action was taken.
- Eight were determined to relate to conduct that was not in breach of the Listing Rules.
- One was referred to the Issuer involved.
- Nine fell outside NZX jurisdiction and were referred to the appropriate authority. One was referred to the Takeovers Panel and eight to the Securities Commission.
- The other complaint raised issues that were included in the matter that was dealt with by NZX Discipline (see Section 1, NZXD 04/07).

## SECTION 4

### DISCIPLINARY FUND ACCOUNTS

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	18 MONTHS TO 31 DEC 2005	12 MONTHS TO 31 DEC 2006	4 MONTHS TO APRIL 2007
<b>Receipt of Fines &amp; Costs</b>	<b>\$ 131,188</b>	<b>174,750</b>	<b>277,700</b>
<b>Expenses of NZX Discipline:</b>			
Appeal member costs	2,846	1,927	683
NZX Discipline member costs	46,864	55,226	47,291
Legal Advisory	46,894	18,493	14,500
Accounting Advisory	68,242		
Rules review	57,087	14,385	2,389
<b>Total expenses</b>	<b>\$ 221,933</b>	<b>90,031</b>	<b>64,863</b>
Surplus (Deficit) for the period	\$ (90,745)	84,719	212,837
Accumulated Surplus (Deficit)	(90,745)	(6,026)	206,811

## SECTION 5

### SUMMARY OF MATTERS DEALT WITH BY THE SPECIAL DIVISION

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The Special Division of NZX Discipline considered the following matters during between 3 May 2006 and 30 April 2007.

#### **A. APPROVAL OF DOCUMENTS, WAIVERS AND APPOINTMENTS, being the review and approval of:**

- Renewal of four prospectuses for funds operated by Smartshares Limited.
- Amended offer document and trust deed for the SmartOZZY fund operated by Smartshares Limited. This included the granting of a waiver from Rule 7.1.11 to allow issue of SmartOZZY units under the Regular savings Plan and a Direct Cash Purchase Facility to unitholders which constitute less than a minimum holding.
- Investment Statement for the NZX Restricted Stocks Schemes.
- Investment Statement relating to the offer of shares to selected employees of New Zealand Exchange Limited.
- Appointment of Ms Helene Higbee to provide the Appraisal Report in respect of the proposed remuneration package for the Chief Executive Officer of New Zealand Exchange Limited.
- Notice of Annual General Meeting for New Zealand Exchange Limited for 2007. This notice contained a resolution relating to the issue of securities to the Chief Executive Officer as part of his remuneration package and was accompanied by an Appraisal Report.

#### **B. OTHER MATTERS, as set out below:**

- Consideration of a complaint from an individual regarding changes by New Zealand Exchange Limited to its listing fees. The Special Division determined that it did not have jurisdiction to consider the matter.
- Consideration of whether the Special Division should formally investigate whether the decision by New Zealand Exchange Limited to phase-in previously announced listing fee increases constituted material information under Rule 10.1. The Special Division concluded that this was not material information in either a technical or legal sense, and there was not the need to institute a formal enquiry in to the matter.

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- Receipt of information from Smartshares Limited that it had failed to provide a preliminary announcement and half yearly report for the six months to 30 September 2006 in respect of SmartOZZY within the time frames prescribed under Rules 10.4.1 and 10.5.2 respectively. In accordance with the policy contained in footnote 2 to Rule 5.4.3, the Special Division notified the market of the failure to provide the half yearly report and suspended trading in the units of SmartOZZY on 1 March 2007, pending release of the report. The suspension was lifted on 2 March 2007 following the market release of the half yearly report. The Special Division determined to refer this breach of the Rules to NZX Discipline for determination by way of the summary Hearing procedure and issued a Statement of Case on 23 March 2007. The Special Division and Smartshares Limited subsequently reached a settlement, and this settlement was approved by NZX Discipline in accordance with Rule 10.1 of the NZX Discipline Rules. The details of this settlement are documented in case NZXD 05/07 in Section 1 of this report.

## NOTES

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