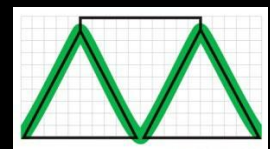


ANNUAL REPORT 2025

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NEW ZEALAND MARKETS  
DISCIPLINARY TRIBUNAL

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This report covers the period 1 January 2025 to 31 December 2025. Terms capitalised in this report have the meanings given to them in the NZX Markets Rules.

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# TRIBUNAL CHAIR'S REPORT

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### Role of the NZ Markets Disciplinary Tribunal

The NZ Markets Disciplinary Tribunal (Tribunal) is an independent body established under the Tribunal Rules. Subject to approval by the Financial Markets Authority (FMA), NZX Regulation Limited (NZ RegCo) appoints the members of the Tribunal and NZX Limited (NZX) makes the Tribunal Rules which set out its powers and functions.

The Tribunal performs an adjudicative role. Its primary function is to determine whether there has been a breach of the NZX Markets Rules in matters referred to it by NZ RegCo. If the Tribunal finds a breach, it can impose penalties having regard to the [Tribunal Rules and Procedures](#).

The Tribunal can 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, including where the decision was irrational given the evidence available, or the rules of procedural fairness were not observed. A third party, such as a security holder, cannot refer a decision made by NZ RegCo to the Tribunal for review.

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

### Matters referred under the Tribunal Rules

Two matters were referred to the Tribunal by NZ RegCo in 2025 (compared to one matter in 2024 and seven matters in 2023).

Continuing the trend of recent years, both matters involved the corporate governance provisions in the NZX Listing Rules. Market awareness appears to have improved however, as in both instances the Issuers involved were aware of the requirements - that has not always been the case in previous matters.

In the first matter considered by the Tribunal, Being AI Limited (BAI) was found to have breached multiple board and audit committee composition requirements following the resignation of its Independent Directors. The Tribunal has not previously considered such a serious breach of these Rules, with BAI failing to have the minimum number of Directors on its Board and none who were independent. While in breach, BAI's Board was unable to act, except to restore the number of Directors or call a shareholders' meeting, preventing it from governing the business and making decisions. The potential for harm in such circumstances is significant and highlights the importance of ensuring compliance with the NZX Markets Rules.

In the second matter considered by the Tribunal, NZ RegCo alleged that an Issuer had breached the board and audit committee composition requirements because a Director, who the Issuer's Board had determined to be an Independent Director, was not in fact independent because they had a Disqualifying Relationship. After considering the submissions of both parties on the nature of the Director's interests in the context of the Issuer overall, the Tribunal was not satisfied that a reasonable person would consider that the Director's interests could materially influence, or be seen to materially influence, their capacity to bring an independent view to decisions in relation to the Issuer as a whole, to act in the Issuer's best interests or to represent the interests of shareholders. NZ RegCo also alleged that the Issuer had breached the requirement to announce promptly and without delay its decision to appoint the Director. Based on evidence provided in an affidavit from the Issuer's Chair, the Tribunal did not find a breach.

While the Tribunal did not find a breach of the Rules, it noted poor procedural practices. The Tribunal encourages all Issuers to:

1. detail the factors considered during a Board's assessment of independence and record why the Board determined a Director to be independent, or not, in its meeting minutes; and
2. have adequate processes in place when appointing new Directors and Senior Managers, including being cognisant of NZX Listing Rule 3.20.1 which requires a prompt and without delay announcement when the decision is made, not when the appointment becomes effective.

The Tribunal did not name the Issuer or release its full decision based on the guidance in the Tribunal Procedures that a respondent will not be named if the Tribunal makes no adverse findings.

This is the first matter referred in some time where the Tribunal has not found the respondent in breach of the NZX Markets Rules. The Tribunal encourages NZ RegCo to refer more difficult matters which are not necessarily cut and dried. Given the expertise of its members, the Tribunal is an effective forum for assessing potential breaches and furthering understanding of the Rules.

Both referrals are summarised on pages 11 to 16.

Infringement Notices carrying a fine of up to \$10,000 for minor breaches of the NZX Markets Rules may be issued under the Tribunal Rules. One Infringement Notice was issued in 2025 to an Issuer who did not promptly and without delay announce its decision to appoint a Director in accordance with NZX Listing Rule 3.20.1. The Tribunal encourages all market participants to make use of the free [Issuer Training Modules](#) developed by NZ RegCo to better their understanding of the NZX Listing Rules and to prevent inadvertent Rule breaches.

### Members

The overall number of Tribunal members has reduced through attrition over recent years, from a high of 23 members in 2022 to 17 members currently. This better reflects the workload of the Tribunal, while ensuring that a sufficient number of expert members are available to consider the matters referred.

Rachel Dunne's term as a Tribunal member ended in March this year. I thank Rachel for her contribution to the Tribunal over many years.

NZ RegCo recently appointed Polly Pope as a Legal member of the Tribunal.

The Tribunal's membership currently comprises 9 women and 8 men.

### Special Division

Special Division is a separate division of the Tribunal which acts in place of NZ RegCo in respect of matters regarding NZX and its Related Entities under the NZX Markets Rules. The report of Special Division Chair, Matt Blackwell, on the activities of Special Division during 2025 can be found on page 18.

### NZ RegCo

NZ RegCo is responsible for monitoring and enforcing the NZX Markets Rules. NZ RegCo published its [Oversight Report for 2025](#) on 27 February 2026. The report includes information on the investigation and enforcement activity undertaken by NZ RegCo during 2025 and was provided to the Tribunal in connection with NZX's annual regulatory reporting requirements under the Tribunal Rules.

### Resourcing

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

The NZX Discipline Fund accounts (which are included in the NZ RegCo Oversight Report for 2025) record an accumulated surplus of \$193,920 as of 31 December 2025.

I thank all our members for their continued participation in the Tribunal. In addition, I would like to acknowledge and thank Rachel Batters for her continued support to the Tribunal, Special Division and me over the last 12 months.



Deemple Budhia | Chair  
2 April 2026



# MEMBERS



## Members of the Tribunal as at 31 December 2025

### LEGAL

Deemple Budhia (Chair), John Dixon KC, Rachel Dunne\*, Kristy McDonald ONZM KC, Daniel Wong

### ISSUER

Charles Bolt, Kirsty Campbell, Nicola Greer, Alan Isaac CNZM, Sarah Miller, Jennifer Page

### MARKET PARTICIPANT

David Lane (Deputy Chair), Matt Blackwell, Craig Lindberg, Darren Manning, Rachael Newsome, Gretchen Williamson

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

## Members of Special Division as at 31 December 2025

Matt Blackwell (Chair), Alan Isaac CNZM, Sarah Miller, Rachael Newsome, Gretchen Williamson

Rachel Batters acts as Executive Counsel to Special Division.

\* Rachel Dunne's term ended in March 2026.  
Polly Pope was appointed to the Tribunal as a Legal member in March 2026.

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# REFERRALS

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**NZMDT 1/2025 NZX V BEING AI LIMITED (BAI)**

*Division:* Kristy McDonald KC (Division Chair), Sarah Miller and Daniel Wong

*Approved Settlement Agreement filed:* 26 August 2025

*Date of Determination:* 1 September 2025

*NZX Listing Rules Breached:* 2.1.1(a), 2.1.1(c), 2.13.2(b), 2.13.2(c), 2.13.2(d)

**FACTS**

Under the NZX Listing Rules, BAI must have a Board comprising at least three Directors and at least two Independent Directors (Rules 2.1.1(a) and 2.1.1(c)), and an Audit Committee comprising at least three members, a majority of Independent Directors and at least one member with an accounting or financial background (Rules 2.13.2(b), 2.13.2(c) and 2.13.2(d)).

On 31 January 2025, BAI's Independent Directors resigned leaving BAI's Board with only two Executive Directors and its Audit Committee with only one member who did not have an accounting or financial background. Following the resignations, NZ RegCo used its power under the Rules to suspend trading in BAI's ordinary shares.

The Rule breaches were rectified on 31 March 2025 when the BAI Board appointed three Independent Directors. Following the release of a trading update by BAI, NZ RegCo lifted the suspension on BAI's ordinary shares and trading resumed on 14 April 2025.

**FINDINGS**

The Tribunal approved a settlement agreement between NZX and BAI under which BAI accepted its breach of the NZX Listing Rules, agreed to pay a financial penalty of \$50,000, pay the costs of NZX and the Tribunal, and be publicly censured.

The penalties the Tribunal may impose for any breach of the NZX Markets Rules are set out in the Tribunal Rules and include the power to impose a fine of up to \$500,000. The Tribunal Procedures set out a two-step process for the Tribunal to follow when assessing the appropriate financial penalty.

*Step 1: the Tribunal identifies a starting point penalty within a penalty band by assessing factors relevant to the breach and its impact or potential impact*

<b>Penalty Band</b>	<b>Range of Financial Penalty</b>
<b>Penalty Band 1 – Minor Breaches</b>	\$0 to \$40,000
<b>Penalty Band 2 – Moderate Breaches</b>	\$30,000 to \$250,000
<b>Penalty Band 3 – Serious Breaches</b>	\$200,000 to \$500,000

The Tribunal considered that the following penalty band factors were relevant to BAI's breaches:

*Penalty Band 1 factors*

- NZ RegCo identified no loss arising from the breaches.
- The breaches were unlikely to have resulted in a financial benefit for BAI.

*Penalty Band 2 factors*

- The breaches had at least a moderate impact on investors and the market. During the period BAI was in breach, its Board was prevented from governing the business and making decisions at a time when BAI was experiencing significant challenges. This included the inability of the Board to agree an extension of a loan facility and to progress other matters, including raising capital. The suspension of BAI's ordinary shares prevented investors from being able to trade and likely damaged confidence in the market's integrity.
- The breaches continued for two months.

*Penalty Band 3 factors*

- There was a serious compliance failure, with BAI in breach of five core governance requirements in the Rules - BAI did not have the required minimum number of Directors, had no Independent Directors and an Audit Committee with only an Executive Director, who did not have an accounting or financial background. The governance requirements in the Rules are intended to provide investors with important safeguards and protections. Compliance with them is a fundamental obligation on all Issuers of Equity Securities.
- The breaches had the potential to cause a significant impact on investors and the market. The potential harm to investors in BAI's Board being unable to act during a tumultuous time for its business was significant. The breaches, and subsequent suspension of trading, had the potential to significantly undermine confidence in the market's integrity and the credibility of reverse listings.
- The breaches continued once discovered, although BAI appeared to have made every effort to rectify them.

When weighing up all the applicable factors, the Tribunal considered that the breaches fell within Penalty Band 2 and that the appropriate starting point penalty was \$85,000. While the breaches were a serious compliance failure and had the potential to significantly impact investors and the market, these factors were balanced by NZ RegCo not having identified any loss as a result.

*Step 2: determine the final penalty by adjusting the starting point penalty to reflect the aggravating and mitigating factors*

*Aggravating factor*

NZ RegCo found two previous instances of Rule breaches in 2024, for which BAI was issued Obligations Letters. The Tribunal considered the previous Rule breaches an aggravating factor and particularly concerning given BAI had only been Listed since April 2024.

*Mitigating factors*

BAI self-reported and admitted the breaches, co-operated fully with NZ RegCo, appointed an additional Independent Director to mitigate against future breaches and reached a settlement with NZ RegCo.

When weighing up the aggravating and mitigating factors, the Tribunal considered that a final penalty of \$50,000 was appropriate in this case and sufficient to deter BAI and other Issuers from future breaches of the Rules.

PENALTY

BAI was ordered to pay \$50,000 to the NZX Discipline Fund.

COSTS

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

PUBLICATION

Under the terms of the settlement agreement, BAI accepted the penalty of a [public censure](#) for its breach of the Rules.

More information on how the Tribunal assesses penalties is available [here](#).

## NZMDT 2/2025 NZX V ISSUER A

*Division:* John Dixon KC (Division Chair), Alan Isaac and Jennifer Page

*Statement of Case filed:* 30 September 2025

*Date of Determination:* 19 November 2025

*Relevant NZX Listing Rules:* 2.1.1(c), 2.13.2(c), 3.20.1(a)

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### SUMMARY

The following is a high level summary highlighting key points in this decision. Whether a Director is an Independent Director must be considered based on the facts of each specific case.

*Alleged breach of Rules 2.1.1(c) and 2.13.2(c)*

NZ RegCo alleged that Issuer A had breached the board and audit committee composition requirements in the NZX Listing Rules by failing to have the requisite number of Independent Directors. NZ RegCo alleged that a Director, who Issuer A's Board determined to be an Independent Director, was not in fact independent because they had a Disqualifying Relationship.

#### Who is an Independent Director?

A Board must determine which of its Directors are Independent Directors, having regard to the non-exhaustive factors described in the NZX Corporate Governance Code (Code) that may impact director independence (Rule 2.6.1).

An Independent Director is a Director who is not an Employee of the Issuer and who has no Disqualifying Relationship.

Whether a Disqualifying Relationship exists is a reasonable person test - objectively, would a reasonable person consider that a Director's interests, positions, associations or relationships could materially influence, or be perceived to materially influence, their capacity to bring an independent view to decisions about the Issuer, act in the Issuer's best interests, or represent the interests of Financial Product holders generally, having regard to the Code.

While the test broadly captures any interest, position, association or relationship a Director may have in relation to an Issuer, regard must be had to materiality - the mere existence of an interest, position, association or relationship is not sufficient to constitute a Disqualifying Relationship. A Director's interests, positions, associations or relationships must influence, or be perceived to influence, their capacity to be independent in a material way.

The Code was amended in January 2025 to specifically state that an Issuer's determination on independence should be made without regard to its conflict management arrangements. The Tribunal noted that the possibility of a conflict does not in and of itself determine a Director's status as an Independent Director.

If the materiality test is to be applied only to the relevant aspects of an Issuer's business, then any conflict, no matter how minor, could mean a Director is no longer independent. Regard must be had to materiality in the context of the Issuer overall.

#### Was Issuer A in breach of the Rules?

This matter turned on whether the Director in question had a Disqualifying Relationship. Both Issuer A and NZ RegCo agreed that the Director had various interests, positions and associations in respect of Entity B (*the Director's interests*). Given that Issuer A also held shares in Entity B, the Tribunal considered that the Director's interests should be assessed to determine whether there was a Disqualifying Relationship.

The Tribunal noted that the Disqualifying Relationship test required consideration of the Director's capacity to bring an independent view to decisions in the context of Issuer A overall, rather than being limited to their capacity to bring an independent view to decisions in relation to Issuer A's investment in Entity B. Given the minor nature of Issuer A's investment in Entity B and the apparent lack of connection between Issuer A and Entity B's business operations, the Tribunal was not convinced that a reasonable person would consider that the Director's interests could materially influence, or be seen to materially influence, their capacity to bring an independent view to decisions in relation to Issuer A overall, to act in Issuer A's best interests or to represent the interests of Issuer A's shareholders.

The Tribunal was also not convinced that a reasonable person would consider that the associations the Director had arising through Entity B (the 'group think' concern) could in the circumstances of this matter materially influence, or be seen to materially influence, the Director's capacity to bring an independent perspective to Issuer A board decision making overall.

Based on the facts disclosed by the parties, the Tribunal was not satisfied that the Director's interests gave rise to a Disqualifying Relationship. Accordingly, the Tribunal did not find Issuer A in breach of Rules 2.1.1(c) and 2.13.2(c).

#### *Alleged breach of Rule 3.20.1(a)*

NZ RegCo alleged that Issuer A had breached the requirement to announce the Director's appointment promptly and without delay. Disclosure is required under Rule 3.20.1(a) when the decision is made, in this case to appoint a Director, regardless of whether the appointment is effective at a later date.

Based on an affidavit provided by Issuer A's Chair and subsequent correction to the Companies Register, the Tribunal accepted that the decision to appoint the Director was made shortly before the announcement of his appointment was released to the market. Accordingly, the Tribunal did not find Issuer A in breach of Rule 3.20.1(a).

## PENALTY

As Issuer A was not found to have breached the NZX Listing Rules, no penalty was imposed by the Tribunal.

## COSTS

Generally, where a respondent is found to have breached the NZX Markets Rules, the Tribunal is likely to award the costs of NZX and the Tribunal against that party. As Issuer A was not found to have breached the Rules, the Tribunal did not order Issuer A to pay the costs of NZX or the Tribunal. The Tribunal stipulated that each party would meet its own costs.

Issuer A subsequently sought an award for its external legal costs. After considering submissions from both parties, the Tribunal determined not to make a costs award in favour of Issuer A. Under the Tribunal Rules, the Tribunal may only order NZX to pay the costs of another party if it considers that NZX has acted vexatiously, frivolously or unreasonably in bringing proceedings. The Tribunal did not consider that NZX (acting through NZ RegCo) had acted vexatiously, frivolously or unreasonably in this case, noting that:

- (a) given the Director's interests, the inquiry into their independence was valid; and
- (b) there was a lack of written evidence to support the Board's decision on independence and the process undertaken when the Director was appointed.

## PUBLICATION

Based on the guidance in Tribunal Procedure 9.3.3 that the name of a respondent will not likely be published when the Tribunal makes no adverse findings, the Tribunal determined that its decision would remain confidential.

The Tribunal encouraged NZ RegCo to provide additional guidance to Issuers on the matters raised in its decision.

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# SPECIAL DIVISION CHAIR'S REPORT

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### Role of Special Division

Special Division is a separate division of the Tribunal constituted under the Tribunal Rules. It is comprised of Tribunal members whose appointment has been confirmed by the FMA.

Special Division's objective is to foster market confidence that the NZX Markets Rules are applied to NZX and any Related Entities in an impartial and independent manner. NZX's Related Entities are currently NZX Wealth Technologies Ltd (a Depository Participant) and Smartshares Ltd (the manager of 44 listed exchange traded funds – the Smart ETFs).

### Issuer oversight

Special Division is tasked with the regulatory oversight of NZX and its Related Entities under the NZX Markets Rules, acting in place of NZ RegCo. This includes monitoring compliance with the NZX Listing Rules by NZX and the Smart ETFs and any investigations into potential breaches.

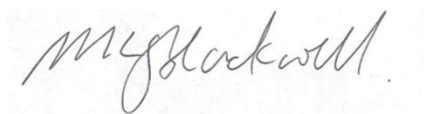
Special Division conducted two investigations during 2025. Neither matter was considered of sufficient seriousness to warrant referral to the Tribunal.

### Surveillance oversight

Special Division also has regulatory responsibility for the conduct of market participants trading in the quoted securities of NZX and the Smart ETFs. On behalf of Special Division, NZ RegCo Surveillance (NZRS) conducts front-line monitoring of trading (as it does in respect of all other securities traded on NZX's markets) and refers system generated alerts from its surveillance software to Special Division within agreed protocols. Following amendments made in 2024, further refinements were made to the protocols in June 2025 so that system generated alerts in the securities of NZX and the Smart ETFs are referred where NZRS has identified a potential issue or concern with the trading activity. The adjusted settings are intended to strike an appropriate balance between continued oversight of trading activity and reducing the number of 'false positive' alerts (i.e. trading which, while a system generated alert may have been triggered, raises no potential issues or concerns under the NZX Markets Rules) that require a formal referral. Any abnormal trading activity, whether or not a system generated alert has been triggered, continues to be referred to Special Division. NZRS continues to report all system generated alerts to Special Division on a quarterly basis, ensuring that Special Division continues to have oversight of this trading activity.

In 2025, Special Division considered 39 referrals from NZRS in relation to trading in the securities of NZX and one referral in relation to trading in the securities of a Smart ETF. The majority of referrals were received in the first half of 2025, before the changes made to the protocols noted above. Special Division sent two referrals to the FMA for its consideration under the Financial Markets Conduct Act 2013. In respect of the remaining referrals, Special Division did not consider that any raised concerns or warranted further investigation on the basis that the activity was consistent with permissible trading (in one instance, following investigation of the market participant involved).

I thank the members of Special Division for their continued contribution.

A handwritten signature in black ink that reads "Matt Blackwell". The signature is written in a cursive, flowing style.

Matt Blackwell | Special Division Chair  
2 April 2026

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# DIRECTORY

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NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

<https://www.nzx.com/regulation/nzmd-tribunal-regulation>

[rachel.batters@nzmdt.com](mailto:rachel.batters@nzmdt.com)