



JUNE 2023

# Market operator obligations review

## NZX Limited

Findings from the FMA's review of how well NZX is meeting its  
licensed market operator obligations, for the period 1 January to  
31 December 2022

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# Executive summary

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## About this report

The Financial Markets Conduct Act 2013 (**FMC Act**) requires the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) to carry out a review and report on how well NZX is meeting its licensed market operator obligations. One of the key objectives of these reviews is to ensure that potential conflicts between regulatory and commercial functions of NZX, as a self-regulating organisation, are appropriately managed. The FMA may carry out this review at any time, but must do so at least once a year.

This report provides information on the review of NZX undertaken for the period from 1 January to 31 December 2022 (referred to as **the review period**).

## How we approached this review

Each year we select the areas of focus for our review, with consideration given to our monitoring activities undertaken throughout the review period. During this review period we engaged regularly with NZX to assess its compliance with its market operator obligations, and undertook targeted engagement with wider market participants. Overall this included:

- review of NZ RegCo regulatory reporting
- sample testing of regulatory enquiries made by NZ RegCo, and of NZ RegCo's processes
- monthly NZX updates covering key policy projects and initiatives
- specific discussions and information provided regarding continued uplift in the technology capabilities following prior-year implementation of the NZX action plan
- consideration of proposed NZX rule changes in line with the FMC Act, along with engagement on changes to market guidance
- market participant surveys and discussions
- desk-based review of documentation provided by NZX and NZ RegCo in response to our requests
- on-site discussions with representatives of the NZX and NZ RegCo Boards, NZX Board Committees, and key staff of NZX and NZ RegCo
- feedback and intelligence gathered from discussions with industry.

In addition to the above, the scope of this year's review was influenced by:

- events occurring and notifications received during the review period
- other areas noted in our previous review for the year ended 31 December 2021 (referred to as the **June 2022 report**)
- any feedback provided to NZX or NZ RegCo during the review period.

We employ a risk-based approach to monitoring, and while this is a review of NZX's overall compliance with its licensed market operator obligations, we have exercised judgement in selecting areas of focus, and the level and detail of work performed in each. This report highlights our main findings and observations from the focused review and, as with any risk-based approach, has inherent limitations. Our assessment, recommendation, findings and observations are based on the information we have received, collected and reviewed.

## Overall assessment

Our overall conclusion is that NZX complied with its licensed market operator obligations during the review period. Key highlights include:

- effective integration of the central risk management function within the broader organisation, providing uplift in understanding and managing risk
- recognised importance of robust conflict of interest arrangements being well understood and embedded, and adequacy of these arrangements continuing to be subject to an independent review
- further maturity of the NZ RegCo model, with continued and enhanced independence from the NZX commercial function
- continued uplift and investment in technology systems and resources
- system performance remaining stable during the review period
- retention of key senior staff members.

We consider that the retention of senior and experienced staff members, complemented by the creation of new risk management roles, has contributed to the uplift and continuing momentum across the organisation. While NZX has continued to focus on enhancements, we would like to reinforce the following focus areas:

- Key person risk: While we note that NZX is uplifting internal staff capability and onboarding additional resource in key areas, there are still some areas where key person risk could become an issue (for example, the NZX Policy function, technology areas, and NZ RegCo).
- Technology capability: NZX should continue to concentrate on uplifting technology capability across the business by delivering on planned activities and maintaining focus on the future of technology and risks.
- Financial reporting capability: NZ RegCo should continue to focus on, and be aware of, financial reporting capability within the Market Conduct and Issuer Regulations teams to further strengthen the team's ability to detect issues, in order to seek further external advice where appropriate.

We acknowledge and thank NZX and NZ RegCo staff for their constructive engagements during 2022, and our on-site review in 2023.

## Recommendation

In addition to the observations in relation to focus areas noted above, we have one recommendation to enhance NZX's Crisis Management Framework:

Who	Area	Recommendation	Rating
NZX	Significant market events	NZX should continue to develop its crisis management framework to include crisis simulations where NZX's systems are unable to be recovered, and there is significant uncertainty as to the ability and timing of recovery.	Medium

## Obligations

NZX is responsible for ensuring it meets all of its obligations set out in the FMC Act. NZX outsources its regulatory functions (such as monitoring of its markets) to NZX Regulation Limited (**NZ RegCo**), a subsidiary of NZX which has its own Board, management, and staff. As such, our review is separated into different focus areas for NZX and NZ RegCo. In this part of the report we focus on the commercial aspects of NZX, including its strategy, infrastructure, and overall performance in the context of the following market operator obligations:

- To the extent that is reasonably practicable, doing all things necessary to ensure that its licensed markets were fair, orderly, and transparent (**FOT obligation**)
- To have adequate arrangements to notify disclosures made to it under a disclosure obligation, and continuing to make those disclosures available
- To have adequate arrangements for handling conflicts between its commercial interests and the need to ensure its markets operate in a fair, orderly and transparent way
- To have sufficient resources (including financial, technological and human resources) to properly operate its licensed markets

Within the above general obligations, we had the following key areas of focus:

- Central risk management function
- Conflicts management
- Approach to market settings
- Arrangements for making disclosures available
- Technology capability uplift

We also followed up on areas where further enhancements were recommended in the June 2022 report.

## Central risk management function

### ***Background and review***

We considered NZX's central risk management function, and changes made to this function throughout the review period. We note that robust risk management processes form a key foundation for how NZX can ensure it meets its market operator obligations, in particular its FOT obligation and the requirement to have sufficient resources to properly operate its licensed markets.

During our review we considered in particular:

- NZX's use of the "three lines of defence" risk framework approach and embedding of its central risk management team as the "second line" of defence
- changes to the risk management function during the period
- future focus of the risk management function.

During the review period we considered a variety of information, including board and board committee reporting and minutes, policy and process documents, and examples of NZX's "live" risk register. Additionally, we spoke with NZX's key risk management personnel and the Chair of the Audit and Risk Committee. We also engaged with NZX and NZ RegCo staff more generally as the "first-line" owners of risk at a business unit level to understand how new arrangements were operating at this level.

Key changes that were made by NZX during the review period included the following:

- Enhancements to the risk management framework, including rearticulation of risks and mapping of risks via risk hierarchy, documentation of controls against the risks, and refreshing the NZX risk appetite statement.
- The central risk function provided significant education across the business, including in-depth workshops held with first-line business units in relation to discrete risk registers to understand, accurately capture, and articulate the risks.
- Implementation of a control testing process, with assurance activity taking place.
- Streamlining risk reporting to the Audit and Risk Committee, including providing first-line business units the opportunity to attend and present directly to the committee.
- Recommendations arising from audits and assurance reviews being tracked through a consolidated audit register with the number of outstanding actions to be resolved trending down.
- Continued focus on the future, including initiating an independent review of the second line of defence and looking at technology to further support the development of the risk function.

### ***FMA's observations***

We consider NZX's central risk management function continues to mature and supports compliance with its market operator obligations. From the ongoing reporting throughout the review period, along with documentation reviewed and discussions held, we observed that:

- risk management arrangements continued to mature throughout recent reviews, with notable uplift occurring during this review period
- the three lines of defence approach has been further embedded into the organisation, including more resourcing of the "second line" of defence with the creation of a new senior role (GM Risk) and recruitment of an analyst to support that role
- the risk function appears to have more visibility and a heightened level of engagement across the organisation due to the effort in training and uplifting first-line business units
- NZX's third line of defence continues to be outsourced to an external provider, which is appropriate.



## Conflicts management

### **Background and review**

NZX is required to have adequate arrangements in place to manage any actual or perceived conflict of interest between its regulatory responsibilities and its commercial interests. It is particularly important for NZX's conflict of interest arrangements to remain appropriate, as it is both the market operator and the provider of frontline regulation of its markets (by way of NZ RegCo). As this is an area that is pivotal to market confidence, we consider NZX's conflict management arrangements in each year's review.

This year we focused on the operation of NZX's conflict management processes during the review period, and the consideration of market operator obligations when looking at new commercial initiatives. This followed on from last year's review where we considered resourcing and how regulatory obligations were considered as part of a new business case.

As part of our review, we considered an external review of NZX's conflicts arrangements, reporting on uplift and changes made to processes during the review period and how NZX and NZ RegCo engage at different levels of the organisation, and had discussions with the NZX Board on consideration of conflicts of interest (or the perception of such) when considering new initiatives.

### **FMA observations**

We consider NZX's conflict management arrangements, which continue to be subject to independent review, adequately support compliance with its market operator obligations. We observed that:

- the NZ RegCo structure appears to have further embedded understanding of the separation between commercial and regulatory function across the business, with information-sharing protocols in place and well understood
- NZX continued to appropriately fund NZ RegCo's operations
- NZX enhanced its business case process for new initiatives, requiring business cases to include express consideration of whether an initiative would negatively affect NZX's obligation to maintain adequate resources to properly operate its licensed markets
- NZX directors and management demonstrated cognisance of the role they play in a broader capital markets ecosystem and that both the potential impact of new initiatives on NZX's role as market operator and its regulatory obligations are considered.

## Approach to market settings

### **Background and review**

As part of its FOT obligation, NZX should regularly review its market settings to ensure they continue to be fit for purpose. This includes regularly reviewing and updating the suite of NZX market rules and guidance. Reviews and amendments to the NZX market rules (made up of the NZX Listing Rules, Participant Rules, Derivative Rules, and FSM Rules) are led by the NZX Policy team, with proposed changes being considered in consultation with NZ RegCo (as the frontline regulator and enforcer of such rules).

In prior review periods, we considered policy development from different angles, including protocols in place for prioritising between commercial and regulatory policy initiatives. This year we considered the processes

for consulting with the market, how and why changes to regulatory settings were considered, the approach and engagement from the NZX Board and NZ RegCo Board, and interaction between NZ Reg Co and the NZX Policy function.

For this review period, we reviewed documentation demonstrating the processes followed specific to an NZX rule change and associated consultation that took place, as well as interaction between the relevant parties within NZX and NZ RegCo. Throughout the year, we also engaged regularly with the NZX Policy function on its workplan and discussed the approach for prioritisation of work.

### ***FMA observations***

We consider the NZ RegCo and NZX Policy engagements reflect a good working relationship, with a healthy degree of formality, in support of compliance with its market operator obligations. We observed the following:

- The NZX Policy function has a developed workplan, and has made good progress on initiatives.
- Documentation reviewed suggests active consideration of market settings and how these can be improved.
- The consultation process is thorough and involves a mixture of workshops, written submissions, and meetings to collect feedback from stakeholders, with due consideration given to this feedback.
- Extensive consultation undertaken by NZX and the varied nature of its stakeholders can at times prolong the consultation process, however we acknowledge that determining an outcome involves ongoing dialogue with the stakeholders and a careful balancing exercise, given the role NZX plays in the markets ecosystem.
- The policy initiative we sampled demonstrated good record-keeping practices.
- The NZX Policy agenda remains busy, and NZX has demonstrated a good balance of priorities when considering commercial and regulatory initiatives. While we have not identified instances where the workplan was materially impacted, resourcing in this area is something NZX should continually assess against its planned initiatives given the Policy agenda often contains multiple competing and complex matters.

## Arrangements for making disclosures available to the market

### ***Background and review***

NZX is required to have adequate arrangements for notifying disclosures made under a disclosure obligation and for:

- continuing to make those disclosures available
- ensuring such arrangements cover the timeliness of disclosures
- ensuring there are adequate back-up alternatives should these arrangements fail.

Additionally, to meet its FOT obligation NZX must ensure the market has timely access to accurate information. We considered these requirements, and NZX's arrangements, as part of this year's scope.

During the review period there were no material issues or outages on NZX's licensed markets. Where non-material incidents did occur (on both the Market Announcement Platform and NZX.com), back-up arrangements were initiated to prevent significant market impact. While back-up arrangements operated largely as anticipated, post-incident reports indicated areas where further action would be taken to prevent similar incidents reoccurring.

### ***FMA observations***

We consider NZX's market disclosure arrangements adequately support compliance with its market operator obligations. Our observations are:

- NZX continues to have back-up arrangements in place to ensure that disclosures remain available to the market if there are issues with its main website.
- Where actions were identified following incidents to mitigate potential recurrences, these actions were implemented within an appropriate timeframe.
- NZX is considering further enhancements to its Market Announcement Platform, as well as additional training to be offered to issuers.

## **Technology uplift**

### ***Background and review***

During 2020, the FMA completed a targeted review regarding NZX's technology capability across its people, processes, and platforms. NZX subsequently developed and worked through an action plan to address our findings as confirmed in the June 2022 report.

During the review period, we met with and received reporting from NZX regarding its continued technology uplift since the action plan was completed. At that time, it was communicated to NZX that we considered the uplift in its technology capability as a continuing journey that did not end once the initial action plan elements had been completed. We noted that in order to meet its obligation to have sufficient technology resources to operate its markets, NZX should follow an approach of continuous improvement and uplift in its technology capability in 2022 and onwards.

The reporting we received from NZX during the review period demonstrated ongoing progress in various areas of technology capability, including governance, conformance standards, testing, cyber security, disaster recovery, risk management, and incident response. We also met with management during the period to discuss key initiatives and progress in this space.

### ***FMA observations***

We consider that NZX has continued to mature its technology capability to support compliance with its market operator obligations, and has not taken a 'set-and-forget' approach following completion of the action plan. In particular:

- there has been continued engagement with industry throughout the review period to ensure the wider capital markets ecosystem is brought on the journey
- investment continued to be made into uplifting technology capability, particularly in the areas of architecture governance and testing

- cyber security continues to be embedded as a business-as-usual activity, building new capability on a continuous basis, and including international threat scanning
- further areas for ongoing development and uplift are being identified and prioritised appropriately by NZX.

## Follow up on recommendations from June 2022 report

### **Background and review**

Our June 2022 report provided a number of recommendations to NZX, in particular regarding:

- risk management
- technology
- significant market events.

The first two have been covered in the focus areas above. With regard to significant market events, we followed up on NZX's progress to mature and refine its Crisis Management Framework and arrangements for managing significant market events. This included reviewing key updated documentation (including policies and processes), and discussions with NZX and NZ RegCo management.

During the review period NZX and NZ RegCo continued to improve crisis management arrangements, including by developing scenario planning arrangements in consultation with its Technology Working Group, and completing a tabletop crisis simulation event which involved wider industry participants, and was observed by a third party.

The scenario planning was released for consultation to the market at the end of the review period and included protocols for when NZX would be likely to halt market trading.

### **FMA observations**

We consider that NZX has continued to mature its arrangements for crisis management to support compliance with its market operator obligations, and is better positioned to deal with adverse events. In particular:

- the crisis management framework provides a good overview of the relationship with other crisis planning documents, and a link to the risk and assurance activities
- simulation events being carried out have a more encompassing approach in terms of engagement with market participants
- there is improved understanding of roles, responsibilities, and processes by staff, resulting in a more structured approach to the response
- NZ RegCo was appropriately engaged throughout the development of scenario planning and the crisis simulation event
- engaging an independent reviewer for the crisis simulation provided comfort that NZX has arrangements in place to help identify weaknesses in its processes and approach.

We note that the independent review of the crisis simulation contained areas where NZX can make further improvements to its crisis management approach and response – this should continue to be an area of focus for NZX.

We also recommend NZX continue to focus on understanding and clarifying roles and responsibilities, and on communication during a crisis. This should include consideration of further scenarios where NZX's systems are unable to be recovered and there is significant uncertainty as to the ability and timing of recovery, to further strengthen NZX's ability to respond to a crisis.

## Arrangements for appointing new directors

### ***Background and review***

Appropriate governance arrangements are a key pillar of the operation of fair, orderly, and transparent markets. During the review period, the NZX Board appointed a new NZX director. Given the subsequent withdrawal of its support for that director to be appointed Chair, we requested information from NZX to allow us to consider its processes for appointing new directors and for responding to emerging information.

### ***FMA observations***

We consider that:

- NZX's processes for appointing directors are adequate, and its Fit and Proper Policy includes use of external providers for identifying and assessing candidates, and verification checks
- NZX demonstrated adherence to its policies and processes throughout the review period, and responded in a robust manner to issues as they emerged.

# NZX Regulation Limited (NZ RegCo)

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## Obligations

NZX outsources its regulatory functions (such as monitoring of its markets) to NZ RegCo, a subsidiary of NZX which has a separate Board, management, and staff.

NZ RegCo is subject to a charter setting out its objectives, responsibilities, and overall operational framework.

In this part of the report, we focus on the following obligations of NZX as relevant to the NZ RegCo function:

- To the extent that is reasonably practicable, do all things necessary to ensure that its licensed markets were fair, orderly and transparent (FOT obligation)
- Have adequate arrangements for monitoring the conduct of participants on or in relation to the markets (monitoring obligation)
- Have adequate arrangements for enforcing compliance with the relevant market rules
- Have sufficient resources (including financial, technological and human resources) to properly operate its licensed markets

Within the above general obligations, we had the following key areas of focus:

- Effectiveness of NZ RegCo governance arrangements
- Monitoring of market participants
- Continuous disclosure

We also followed up on areas where further enhancements were recommended in the June 2022 report.

### **General observations**

We consider the arrangements between NZX and NZ RegCo effectively support NZX's compliance with its market operator obligations.

In addition to the key areas of focus considered in more detail below, we had broad observations that apply more generally across NZ RegCo, including:

- a continued uplift in maturity generally, including a clearly defined strategy and reporting against the strategy
- trends towards increased self-governance and NZ RegCo continuing to demonstrate an independent mindset
- developments in risk and trend identification, including engagement with the central risk management function to provide testing and recommendations
- retention of senior staff and commitment to continuous improvement, including developing broader external engagements.

## Governance arrangements

### **Background and review**

This has been the second full year of operation for NZ RegCo. For the majority of the review period, the NZ RegCo board was made up of five directors, four of whom were independent and one who is a crossover director between NZX and NZ RegCo. On 31 December 2022, one of the independent directors retired by rotation, leaving three independent directors and one crossover director. A further independent director was appointed on 1 May 2023.

As part of our review we considered:

- the level of independence demonstrated by NZ RegCo Board from NZX commercial functions
- escalations to the NZ RegCo Board
- engagement and challenge provided by the NZ RegCo Board
- general operation of the NZ RegCo structure.

We reviewed the content of board reporting, including specific files that were escalated to the NZ RegCo Board along with the relevant correspondence, as well as key process and strategy documents, and communications with NZX's Policy function. We also met with the Chair of the NZ RegCo Board, the crossover NZX director, and the CEO of NZ RegCo.

During the review period, NZ RegCo initiated an external review of its key corporate documents as they relate to the governance of NZ RegCo. As a result of this review, the procedures for appointing NZ RegCo directors were updated as follows:

- NZ RegCo directors are selected for appointment by the NZ RegCo Board, subject to confirmation of non-objection to the proposed appointment by the NZX Board (previously appointments were solely approved by the NZX, in its capacity as shareholder).
- The NZ RegCo Board will select one of its members as Chairperson, subject to confirmation of non-objection from the NZX Board (previously appointment of Chairperson was subject to NZX Board approval).
- NZX has the right to appoint one director to the NZ RegCo Board who is also a director of NZX (previously NZ RegCo was required to include at least one director who was also an NZX director).

As part of our review, we selected and received files where decision-making was escalated from NZ RegCo management to the NZ RegCo Board. These escalations included "reserved matters" which require escalation to the NZ RegCo Board in accordance with its Delegated Authority Policy, as well as other matters where management considered there was sufficient public interest or complexity that would benefit from an additional level of oversight.

### **FMA observations**

From our discussions and review of documentation, we have the following observations:

- The changes made to the appointment of NZ RegCo directors provides for enhanced independence from the NZX commercial function.

- Escalations to the NZ RegCo Board were done in accordance with relevant policies and procedures, with judgement being exercised appropriately where sensitive matters sit outside the matters required to be escalated.
- The NZ RegCo Board was responsive and engaged when issues were escalated, with correspondence demonstrating the benefits of the Board members' combined experience to support robust decision-making.

## Monitoring of market participants

### **Background and review**

NZX must have adequate arrangements for monitoring the conduct of participants in NZX's markets. NZX outsources this function to NZ RegCo, which then undertakes such monitoring through a number of functions.

As part of our review we selected and received a number of case files, as well as policies and procedures supporting NZ RegCo's monitoring functions. We note that compliant markets is a key strategic objective in the NZ RegCo – FY2023 Strategy and Corporate Plan. This strategic objective is supported by each function of NZ RegCo, as described below.

### **Participant Compliance**

The Participant Compliance team is responsible for supervising market participants and their compliance with the NZX Participant Rules, Clearing & Settlement Rules, Depository Operating Rules, and Derivatives Market Rules. As part of our scope this year we considered Participant Compliance's processes for monitoring market participants, along with the team's monitoring and engagement activities throughout the review period. In particular we considered:

- the Participant Compliance annual inspection plan and summary of findings
- sample files of monitoring activities throughout the review period
- general engagement with market participants throughout the review period.

We also interviewed management about the team's activities, capacity, key trends in the market and engagement with other NZ RegCo teams and the wider NZX.

During the review period, Participant Compliance completed its annual inspection plan which included on-site visits to 10 participants, and desk/video-based reviews of the remaining two. The inspection plan identified key areas of focus, which are updated each year (with some fundamental areas always included in the inspection scope). The findings of these inspections are reported up to the NZ RegCo CEO and NZ RegCo Board, and inform participant risk profiles that provide the team with information on which to base their monitoring activities.

In addition to direct engagement with participants, the Participant Compliance team provided updates to the market by way of Participant Updates and engaged proactively with participants where issues arose.

Our observations from the review period include:

- Participant Compliance delivered its inspection plan, largely by on-site visits to participants



- documentation reviewed along with discussions with management and the market indicate robust monitoring practices, supported by an appropriate level of resourcing
- trend monitoring is being undertaken by Participant Compliance, along with the wider NZ RegCo teams, and is supported by cross-team engagement on trends that present risks.

### ***Market Conduct***

The Market Conduct team is responsible for monitoring and investigating potential breaches of the NZX Listing Rules by listed issuers, and supporting other NZ RegCo teams where a case needs to be referred to the NZ Markets Disciplinary Tribunal (**NZMDT**). As part of our review we considered Market Conduct's processes for monitoring listed issuers, along with its processes and approach to conducting investigations. We selected and received a sample of case files for review, with a particular focus on investigations that related to potential breaches of continuous disclosure obligations.

During the review period the Market Conduct team continued to enhance and embed its issuer monitoring framework and issuer risk list, both of which inform the team's monitoring approach.

From our review and conversations with NZ RegCo management we noted:

- the Market Conduct team is continuing to mature its approach to monitoring listed issuers, supported by further development of internal processes
- the files reviewed demonstrated a comprehensive approach to investigations, as well as consistent record-keeping and appropriate escalation
- the Market Conduct team continues to engage the support of external financial reporting capability, when this is judged as necessary, to ensure the depth of reviews is appropriate to the type of enquiries being made. Following training in the prior year, the team has embedded processes to help identify financial reporting issues requiring an enquiry. We recommend this is enhanced by further training to strengthen surveillance activity in identifying deficiencies and lack of appropriate financial reporting disclosure
- a proactive approach was taken during the review period to ensure guidance was being provided to the market where the team was seeing repeated issues, including providing training opportunities where potential uplift was identified.

### ***Issuer Regulation***

The Issuer Regulation team is responsible for engaging with listed issuers on applications and transactional work, including considering offer documents, listings and de-listings, and waiver applications. As part of our scope we considered Issuer Regulation's processes for assessing applications, sampled case files, and engaged with management to discuss the team's activities in more detail.

As part of our file review, we focused in particular on instances where the Issuer Regulation team considered applications to waive shareholder approval requirements. We note that internal process documents state that NZX Listing Rules requiring shareholder approval would require compelling reasons before a decision would be made to grant the waiver, and external guidance provides that a waiver will only be granted where such a waiver does not offend the policy behind the rule being waived. Documentation to support decision-making was comprehensive and demonstrated consistent application of the principles underlying the rules.

We observed that:

- robust challenge was provided by the NZ RegCo Board as a result of effective escalation, providing a valuable mechanism when considering more complex matters. We note that there should be a review mechanism to ensure that any learnings arising from NZ RegCo Board feedback are taken forward
- in line with NZ RegCo processes, advice was sought throughout the period from the listing sub-committee
- the issuer training framework is being progressed to provide further education on issuer obligations in the market
- similar to the Market Conduct team, the Issuer Regulation team continues to engage support of external financial reporting capability when deemed necessary. As above, we recommend this is enhanced by further training to strengthen the team's ability to test and understand the financial information provided by issuers in support of applications.

### **Surveillance**

The Surveillance team provides frontline monitoring of the trading activity occurring on NZX's markets. As part of this review we considered the team's approach to monitoring the market, supported by internal processes as well as key systems (including the SMARTS Alerts suite for market surveillance).

We observed that:

- the active monitoring of trends in both New Zealand and overseas informs the team's monitoring approach
- a periodic review was undertaken to update the SMARTS Alerts suite to provide more effective alerting
- engagement with the wider market continued to be strong, providing participants with real-time support when they have questions
- while resourcing is lighter than during the last review period and there is still some reliance on a single, highly experienced resource, the team overall has suitable experience and takes a collaborative approach to workflow, allowing team members to be exposed to a broad range of issues.

## **Follow-up on recommendations from June 2022 report**

### **Background and review**

In our June 2022 report we provided two recommendations for NZ RegCo in relation to:

- significant market events
- referrals to the NZMDT

The first of these is covered in the NZX section of this report under "*Follow-up on recommendations from June 2022 Report*". The second related to the timeliness of referrals to the NZMDT, as extended timeframes to complete investigations and make referrals could undermine the value of NZMDT's findings for the market.

We note that during the review period there was only one referral provided to NZMDT. As part of our review, we looked at the case file for this referral, and had a discussion with the Chair and Executive Counsel of NZMDT.

***FMA observations***

There were no concerns with the timeline on the referral made to NZMDT, and NZ RegCo continues to have discussions with NZMDT on pipelines for referrals. While it was a quieter year in the market overall, there were no issues identified with the timeliness of engagement with NZMDT or with the exercise by NZ RegCo of NZMDT's delegation for issuing infringement notices.

# Appendix 1: Our role in reviewing NZX

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## Our role

The FMA is an Independent Crown Entity and one of two main regulators of New Zealand's financial markets. Our purpose is to promote and facilitate the development of fair, efficient and transparent financial markets.

Under the FMC Act, we are required to review, at least annually, how well a licensed market operator is meeting its obligations. We are also required to publish a written report of the review.

If we consider, after carrying out a review, that a licensed market operator has failed or is failing to meet any one or more of its market operator obligations, we may, by written notice, require the licensed market operator to submit an action plan to the FMA.

## Market operator obligations

In the FMC Act, 'market operator obligations' means:

- the general obligations in respect of licensed markets (section 314):
  - to ensure, to the extent that is reasonably practicable, that each of its licensed markets is a fair, orderly and transparent market
  - to have adequate arrangements for notifying disclosures made to it from participants in its markets, and for continuing to make those disclosures available
  - to have adequate arrangements for handling conflicts between its commercial interests and the need to ensure its markets operate in a fair, orderly and transparent manner
  - to have adequate arrangements for monitoring the conduct of participants in its markets
  - to have adequate arrangements for enforcing compliance with market rules
  - to have sufficient resources (including financial, technological and human resources) to operate its licensed markets properly
- an obligation to respond to a request from the FMA to make changes to market rules (section 333)
- an obligation to give the FMA an annual self-assessment of compliance with its obligations (section 337)
- an obligation to act on the directions of the FMA or the Minister, if the operator is found to be failing to meet any of its obligations (sections 340 to 342)
- any obligation imposed as a condition of a market operator's licence.

## NZX licensed markets

NZX is licensed to operate the following markets in New Zealand:

- NZX Main Board
- NZX Debt Market
- Fonterra Shareholders' Market
- NZX Derivatives Market

Details of NZX's licence is on [our website](#).

## Our oversight of NZX

Our ongoing oversight of NZX in this review period included:

- monitoring of NZX's progress with its action plan and subsequent enhancements
- workshops on specific topics, particularly in relation to NZX's action plan and subsequent enhancements
- operational meeting with NZ RegCo representatives
- reviews of NZ RegCo regulatory reporting and select matters
- discussions about market matters arising, as required
- consulting on NZX policies and proposed rule changes where appropriate
- providing feedback on NZ RegCo referrals made to the FMA under the FMC Act.

For purposes of this review, we also reviewed and considered documents and information provided to us including:

- corporate structure and governance arrangements
- minutes of select Board and committee meetings
- NZX's 'Market Assessment Report' setting out self-assessment of its compliance with market operator obligations
- NZ RegCo's 'Oversight and Engagement Report'
- NZMDT's Annual Report 2022
- risk management framework
- various policies and procedures
- various supporting documents.

## Appendix 2: Ratings explained

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The following rating scale has been used to demonstrate the significance of our recommendations:

Rating	Definition
Low	Minor process or control issue identified, however unlikely to have had a material impact on the overall effectiveness of the systems and the entity's ability to comply with its obligations.
Medium	Process or control issue, with the potential to have a moderate impact on the overall effectiveness of the systems and the entity's ability to comply with its obligations.
High	Process or control issue requiring immediate attention that did, or may have, a significant effect on the overall effectiveness of the systems and the entity's ability to comply with its obligations, given its significance or systemic nature.

Action plans to implement changes should be prioritised by the rating of each finding with remediation of high-level findings requiring more immediate priority.

