

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CIV-2021-404-1266
[2024] NZHC 1353**

UNDER the Financial Markets Conduct Act 2013

BETWEEN FINANCIAL MARKETS AUTHORITY
Plaintiff

AND MATTHEW GEOFFREY HILL
Defendant

Hearing: 19 February 2024

Counsel: A Luck and A D Gormack for the Plaintiff
M A Cavanaugh for the Defendant

Judgment: 27 May 2024

JUDGMENT OF GAULT J

*This judgment was delivered by me on 27 May 2024 at 4:00 pm
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

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Solicitors:

Mr N F Flanagan and Mr A Luck, Meredith Connell, Office of the Crown Solicitor, Auckland
Mr A D Gormack, Financial Markets Authority, Auckland
Mr W A Holden, Mr C M Laband and Mr M A Cavanaugh, Wotton + Kearney, Auckland

Introduction

[1] The Financial Markets Authority (FMA) seeks a declaration of contravention and a pecuniary penalty against Mr Hill for contravening s 22(d) of the Financial Markets Conduct Act 2013 (FMCA).

[2] By notice of admissions dated 24 January 2024, Mr Hill has admitted to making false and/or misleading representations in breach of the FMCA by publishing a series of anonymous posts (under two pseudonyms) on an internet discussion forum or bulletin board dedicated to trading in financial products (Sharetrader).

[3] The conduct arose from Mr Hill's posts regarding a publicly listed company, New Talisman Gold Mines Ltd (New Talisman). At the time of the posts, Mr Hill was the Chief Executive Officer of New Talisman, as well as a shareholder and director.

[4] In his posts published over a period of several years, Mr Hill typically either praised the performance of New Talisman, its management and its investment potential, or derogated other users who presented less positive views about New Talisman's prospects. A number of the posts also contained elements which conveyed the impression that Mr Hill was someone who had significant industry knowledge but who was unaffiliated with New Talisman. Mr Hill's posts only stopped when an administrator of the website discovered his identity and suspended his accounts.

[5] The FMA and Mr Hill have agreed to recommend that the Court impose a pecuniary penalty of \$100,000 on Mr Hill, but acknowledged that the amount of any pecuniary penalty to be imposed is a matter for the Court. The parties provided helpful written and oral submissions.

[6] This judgment addresses the appropriate declaration of contravention and pecuniary penalty.

Agreed facts

[7] The parties filed a detailed agreed statement of facts. The following is a summary from the FMA's submissions, with which Mr Hill agreed (subject to two additions noted below).

Background

[8] New Talisman is a company listed on the New Zealand stock exchange and the Australian stock exchange. Its business broadly involves gold mining and exploration. At all relevant times, Mr Hill was a director, shareholder, and Chief Executive Officer of the company. Broadly, Mr Hill was responsible for overseeing New Talisman's day-to-day operations and capital-raising initiatives.

[9] In early 2013, Mr Hill began publishing posts on Sharetrader, which is a New Zealand-based online discussion board dedicated to discussions of investments and investment opportunities. Sharetrader's target audience includes professional and non-professional investors alike.

[10] The conduct continued until July 2020. In that time Mr Hill posted under two pseudonyms: 'Bullish' and 'Epithermal'.¹ The latter profile was created during a period in which Mr Hill did not have access to the former profile.

[11] Given the duration of the conduct, Mr Hill's posts spanned periods before and after the commencement of Part 2 of the FMCA on 1 April 2014. Of the 136 posts, 46 were posted prior to commencement of Part 2 (the Pre-FMCA Posts) and the remaining 90 were posted thereafter (FMCA Posts).

Content of the Sharetrader posts²

[12] Mr Hill's posts praised the performance of New Talisman and its management, and provided technical information and commentary which generally conveyed that the users of the profiles were familiar with the complexities of the gold mining

¹ A term for a particular kind of gold deposit.

² The errors in the posts reproduced below are those in the originals.

industry as well as New Talisman's business. Illustrative examples included the following:

(a) In June 2013:

Seems these guys are bucking the trend. All other juniors or even mid tiers are shutting down projects dumping ground and sending staff home. I am quite pleased with the activity to date. NTL is a far cry from the old heritage and appear to communicate only when they have made progress or are about to. I sense there must be something going on re Congo as we haven't heard any update while they do due diligence, and with Gold plummeting which effects low grade plays first I wont be surprised if they hold for a minute.

The great thing about their Talisman project is they have high grade ore which in a plummeting gold price environment allows companies to drop their cost per ounce [...]

Underpriced in NZ based on Aus price of 1.2Cents. Seems the Aussies are taking the lead on this co for once. Once Gold starts trading with a stable again we should see it stabilize but short term it certainly looks gloomy and impacts all gold juniors. Somehow these guys go up while everyone else craps out. Go NTL.

(b) In April 2014:

I do agree it is commendable that in a short space of time this company has seemingly transitioned from an explorer with very differing skillsets to a very skilled management team able to attract continued investment and progress a project while many many projects are closing down in this market.

I do hope we can apply for overs in the issue. Shareholders are the clear winners by a country mile in this!!!

(c) In June 2019, in response to a post by another user ('Silverback') which referred (among other matters) to the "volatility and risks involved" in investing in gold mining companies:

Silverback all good points for larger companies but its pretty hard measuring apples to apples. NZ has one underground gold mine - TALISMAN. one listed NZ company with an underground gold mine - NTL . NZ really has no exploration industry majors like OGC explore and Juniors like NTL "go it alone into development and production". Whereas in Australia explorers sell projects once resouces built into measured and go off exploring again. Not trying to tell you how to suck eggs at all silverback was bringing colour to your insights with regard to th NZ minerals industry.

[The post then continued with data on NTL's performance, concluding with the comment:]

Interested in yours and others thoughts to work out where this unique play sits value wise

[13] At times, Mr Hill's posts encouraged other users to invest in New Talisman, while also disparaging any users who expressed negative, or even cautious, views about New Talisman's investment potential. By way of example, Mr Hill published posts:

(a) In April 2015, asking other users to send him copies of all the commentary made by a particular user, which Mr Hill described as "quite inflammatory and defamatory", so that those comments could be sent to New Talisman.

(b) In June 2015, in response to another user who expressed a reserved view on New Talisman:

...

Certainly looks like your either a sad bitter and twisted trader who has lost money (we have all seen this type before) or a nimby playing down ramp games having withdrawn from the judicial review.

Either way you are clearly not paying any attention to the facts. Robbo³ has patiently tried to step you through it but your focussed on the down ramp.

If you can't factually back up your dialogue stop wasting our time as this is a forum for intelligent discussion on one of the highest grade lowest entry cost of any mining project in NZ.

...

(c) In March 2017, in response to another user (who posted as 'Stock Rooster'):

Your not a shareholder stock rooster just a protester looking for info while downramping which is a breach of securities laws. Thankfully NZX look at these forums so hopefully they will touch base with you. SR why are you actually here if you have no shares?

³ Another user who expressed positive sentiments regarding New Talisman.

- (d) In his final post on 1 July 2020, suggesting that another user had engaged in conduct which breached the disclosure-based prohibition on market manipulation. Mr Hill's post included the text of ss 262 and 264 of the FMCA.

[14] In the course of publishing those posts, Mr Hill cultivated the impression that the users of the Bullish and Epithermal profiles were separate individuals who were not connected with New Talisman or its management. In other words, Mr Hill deliberately concealed his identity in order to make it appear that his posts about (and repeated endorsements of) New Talisman were impartial. Examples included the following:

- (a) In July 2013:

From my read they are very active and even where gold looks are moving milestones while everyone else is shutting stuff down.

What's your guys view. I like that new tal are focussed.

Anyone know these guys running it?

- (b) In April 2016, in response to another user's opinion about delays in New Talisman actually starting mining activities, stating:

...

Seems they have stated what they are doing and appear to be knocking every brick out of the way on their way to the start of the project.

...

Seems a good couple of results for these guys. TMP - last consent needed. Sale of BPL shares which seem to have moved from 2 cents to 5.5 cents.

Good on ya NTL keep on plugging away.

- (c) In July 2017, on the subject of himself and his father (Geoffrey Hill):

And from the board there appears to be Hills in them their golds...
...they get the job done thats for sure. Look at PAK, COB and BPL.
The CEO took up a lot of rights in the issue early last year. Hes the top 4th largest shareholder and Geoff Hill was chairman for years.

Identification of Mr Hill

[15] Mr Hill's conduct persisted until Sharetrader's administrator discovered that he was the user behind the Bullish and Epithermal Profiles, at which point the accounts were suspended and Mr Hill was banned from the website. The conduct became public shortly thereafter, at which point it came to the attention of the FMA.

Mr Hill's additions

[16] The breach of s 22(d) of the FMCA concerns Mr Hill's 90 posts from 30 April 2014 to 1 July 2020. Mr Hill posted 46 times before this (between 6 February 2013 and 20 December 2013), prior to commencement of Part 2 of the FMCA. While these Pre-FMCA Posts are not contravening conduct, Mr Hill accepts they may be of wider relevance when assessing penalty.

[17] Further, the breach admitted, and the basis for which the penalty is sought to be imposed, is limited to the fact that Mr Hill failed to disclose his identity or affiliations with New Talisman. That is the extent of the allegation and admissions as to falsity.

Declarations of contravention

[18] It is common ground that under s 486 of the FMCA, the Court may make a declaration of contravention if it is satisfied that a person has contravened a civil liability provision or has been involved in a contravention of a civil liability provision.

[19] In this case, the relevant provision is s 22(d) of the FMCA, which provides:

22 False or misleading representations

A person must not, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services, make a false or misleading representation—

...

- (d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or

[20] Section 22 of the FMCA is a civil liability provision, as defined in s 485.⁴

[21] A declaration of contravention must state:⁵

- (a) the civil liability provision to which the contravention or involvement in the contravention relates; and
- (b) the person who engaged in the contravention or was involved in the contravention; and
- (c) the conduct that constituted the contravention or the involvement in the contravention and, if a transaction constituted the contravention, the transaction; and
- (d) the issuer, offeror, or service provider to which the conduct relates (if relevant).

[22] As part of the resolution, Mr Hill's notice of admissions dated 24 January 2024 admitted the facts pleaded and the cause of action in the FMA's amended statement of claim of the same date.

[23] Given the notice of admissions, I am satisfied that Mr Hill has contravened s 22(d), a civil liability provision, by publishing 90 posts on Sharetrader relating to New Talisman Gold Mines Ltd. A declaration under s 486 of the FMCA is appropriate.

Pecuniary penalty

[24] Section 489(2)(c) of the FMCA provides that the Court may order a person to pay to the Crown a pecuniary penalty that the Court considers appropriate if it is satisfied that the person has contravened, or has been involved in a contravention of, a civil liability provision.

⁴ Financial Markets Conduct Act 2013, ss 38 and 485(a).

⁵ Section 488.

[25] Section 492 provides:

492 Considerations for court in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, including—

- (a) the purposes stated in sections 3 and 4 and any other purpose stated in this Act that applies to the civil liability provision; and
- (b) the nature and extent of the contravention or involvement in the contravention; and
- (c) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in contravention or who was involved in the contravention, because of the contravention or involvement in the contravention; and
- (d) whether or not a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of the contravention; and
- (e) the circumstances in which the contravention, or involvement in the contravention, took place; and
- (f) whether or not the person in contravention, or who was involved in the contravention, has previously been found by the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct; and
- (g) in the case of section 534 (directors treated as having contravened), the circumstances connected with the director's appointment (for example, whether the director is a non-executive or an independent director); and
- (h) the relationship of the parties to the transaction constituting the contravention.

[26] Although deterrence is not expressly set out as a factor, deterrence is a relevant consideration when determining a pecuniary penalty.⁶ As said in *Financial Markets Authority v CBL Corp Ltd (in liq)*,⁷ deterrence – both specific to the individual defendants and general to other boards and senior officers of listed entities – is especially important given the main purposes of the FMCA, which are to:⁸

⁶ *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [44]-[45] and [55]; and *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [83]. See also *Financial Markets Authority v Warmingier* [2017] NZHC 1471, (2017) 11 NZCLC 98-054 at [35]-[36], under the preceding s 42Y of the Securities Markets Act 1988.

⁷ *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [83].

⁸ Financial Markets Conduct Act 2013, s 3.

- (a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (b) promote and facilitate the development of fair, efficient, and transparent financial markets.

Agreed penalties

[27] As indicated, the FMA and Mr Hill have agreed the quantum of an appropriate penalty to recommend but acknowledge that the amount of any pecuniary penalty to be imposed is a matter for the Court.

[28] The task for the Court in cases where a recommended penalty has been agreed between the parties is not to embark on its own enquiry of what would be an appropriate figure, but to consider whether the proposed penalty is within the proper range. This is because there is a significant public benefit when reporting entities acknowledge wrongdoing, thereby avoiding time-consuming and costly investigation and/or litigation. The Court should play its part in promoting such resolutions by accepting a penalty within the proposed range.⁹

[29] The Court must be satisfied that the proposed agreed pecuniary penalty satisfies the objectives of the FMCA and reflects the particular circumstances of the case before it. When assessing whether the final figure proposed is within the proper range, the Court need not accept each step of the methodology proposed – it is the final amount that matters.¹⁰

⁹ *Commerce Commission v Kuehne + Nagel International AG* [2014] NZHC 705 at [21]; *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [30]-[32]; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47]; *Financial Markets Authority v Tiger Brokers (NZ) Ltd* [2023] NZHC 1625 at [36]; and *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [85].

¹⁰ *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [32], citing *Commerce Commission v Air New Zealand Ltd* [2013] NZHC 1414, (2013) 13 TCLR 618 at [27]; and *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [86].

Approach to fixing pecuniary penalties

[30] The three-stage approach to fixing pecuniary penalties is well-settled, and applies to the FMCA. The Court:¹¹

- (a) determines the maximum penalty;
- (b) sets a starting point for the conduct, in light of the relevant factors in s 492 bearing on the contravener's culpability, and by reference to the applicable maximum penalty; and
- (c) adjusts the starting point by applying an uplift or a discount on the basis of considerations personal to the defendant.

Maximum penalty

[31] The maximum pecuniary penalty for a contravention of s 22(d) is the greatest of:¹²

- (a) the consideration for the transaction that constituted the contravention (if any); and
- (b) if it can be readily ascertained, three times the amount of the gain made or the loss avoided by the person who contravened the provision; and
- (c) \$1 million in the case of a contravention, or involvement in a contravention, by an individual or \$5 million in any other case.

[32] It is common ground that the maximum penalty for the breach in this case is under s 490(1)(c), that is \$1 million.

¹¹ *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [37]; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [49]; *Financial Markets Authority v Zhong* [2022] NZHC 480 at [58]; *Financial Markets Authority v Zhong* [2023] NZHC 2196 at [21]; and *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [87].

¹² Financial Markets Conduct Act 2013, ss 38(2) and 490(1).

Starting point

[33] The parties submit that the appropriate starting point for Mr Hill's conduct is a pecuniary penalty of \$120,000.

[34] Mr Luck, for the FMA, submitted that the purpose of the FMCA with particular relevance in this case is promoting the confident and informed participation of consumers in the financial markets.¹³ As he submitted, and Mr Cavanaugh for Mr Hill accepted, Mr Hill's conduct undermined that purpose. In that sense, Mr Hill acknowledged that his breach was serious. The public are entitled to expect high standards of conduct from the senior executives of listed companies. Mr Hill's conduct is of a type that erodes public confidence in the fairness and transparency of financial markets. This factor aggravates the conduct to a moderate degree.

[35] In relation to the nature and extent of the contravention,¹⁴ as the FMA submitted, the relevant conduct in this case was lengthy, spanning a period of over seven years in total, and more than six years after the commencement of Part 2 of the FMCA. Although the Pre-FMCA Posts do not constitute part of the contravening conduct, it is accepted they form part of the relevant context to the breach (and the posts remained on the website throughout the entirety of the relevant period). The conduct was covert and remained undetected for an extended period. Mr Hill's identity was only discovered by the forum's administrators by chance. It was only then that the conduct ceased. The conduct was also frequent: 90 times since commencement of Part 2 of the FMCA; on average, at least once a month. When Mr Hill could not access the Bullish profile for a time, he created the second profile in order to continue posting. Mr Hill then continued to publish posts from both profiles.

[36] Mr Luck submitted that the content of the posts is also an aggravating feature, whereas Mr Cavanaugh disputed that. I accept that the admissions are limited to the fact that Mr Hill failed to disclose his identity or affiliations with New Talisman, rather

¹³ Financial Markets Conduct Act 2013, ss 3(a) and 492(a).

¹⁴ Financial Markets Conduct Act 2013, s 492(b).

than the substantive accuracy of the posts about the company's performance or Mr Hill's intention in relation to that. I make no findings in that regard.

[37] Even so, the posts concealed Mr Hill's connection with New Talisman, in some cases seeking other users' opinions on the management team and expressing a desire to meet them. In other instances, the posts responded aggressively to other forum members who did not share the same positive outlook on the company (or questioned the accuracy of Mr Hill's posts), going so far as to suggest other users' opinions were being made in breach of securities laws. As the FMA submitted, the effect of that would have been to drive contrary voices from the New Talisman discussion thread, creating a more positive impression of the company's prospects overall. That impression was important given the niche nature of New Talisman's business (a small, exploratory mining company with inherently speculative long-term prospects).

[38] There are no similar cases, but deliberate conduct – here, anonymous posts about company performance by a director/senior executive – is generally more serious than unintended systems errors.

[39] As the FMA submits and Mr Hill accepts (despite the limited admissions), the nature and extent of the contravention are highly aggravating features of the conduct.

[40] The FMA acknowledges that there is no evidence of any financial gain made by Mr Hill, or of loss or damage suffered by others as a result of the Sharetrader posts.¹⁵ Other Part 2 cases have involved significant gains to an organisation and loss to their customers. I have already addressed the harm to the wider market and the FMA accepts that this should not be double-counted.

[41] However, the FMA submitted that there was a gain to Mr Hill's reputation which was inherently tied to the performance and public perception of New Talisman, and that the posts were directed at advancing a positive perception of New Talisman, including by responding to other users when Mr Hill did not agree with their opinions. Mr Hill did not accept this given the limited admissions. I accept that at least to some

¹⁵ Financial Markets Conduct Act 2013, s 492(c).

extent such personal reputational gain assumes that the posts were substantively inaccurate, which has not been tested.

[42] As to the circumstances in which the contravention took place,¹⁶ Mr Hill was a senior officer at a publicly listed company. He held several relevant professional qualifications. As the FMA submitted, individuals who hold management roles at such companies are entrusted by the public and investors to act professionally, and to provide information to the market in a manner that does not conceal relevant context. By promoting New Talisman while obscuring his identity, Mr Hill breached both aspects of that trust.

[43] A number of the posts demonstrated that Mr Hill was familiar with securities law. In circumstances where New Talisman was subject to stringent disclosure rules (as are all publicly listed companies), Mr Hill ought to have been personally and intimately familiar with those rules, the reasons for them, and the seriousness of any breach. In the usual course, any communications by a listed company would be subject to the rigours of internal processes and procedures. As the FMA submitted, Mr Hill ought to have known better. He accepted that his conduct fell short of that expected of such a senior and experienced leader. This factor also aggravates the conduct to a high degree.

[44] While there are no directly comparable cases, it is helpful to consider Mr Hill's conduct by reference to previous FMCA pecuniary penalty cases. Mr Hill's conduct is serious for the reasons indicated, but did not have the direct financial consequences of the previous s 22 cases involving major systems errors by corporate defendants.¹⁷ Nor is Mr Hill's conduct as serious as other deliberate conduct by individuals that directly involved market trading. For example, the FMA acknowledged that Mr Hill's conduct is less serious than the market manipulation cases of *Financial Markets Authority v Zhong* and *Financial Markets Authority v Warmingier*.¹⁸

¹⁶ Financial Markets Conduct Act 2013, s 492(e).

¹⁷ I refer to the FMA's helpful summary of the previous cases set out in *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [108].

¹⁸ *Financial Markets Authority v Zhong* [2022] NZHC 480; and *Financial Markets Authority v Warmingier* [2017] NZHC 1471, (2017) 11 NZCLC 98-054. See also *Financial Markets Authority v Zhong* [2023] NZHC 2196, referred to in the FMA's summary of the previous cases in *Financial Markets Authority v CBL Corp Ltd (in liq)* [2023] NZHC 3842 at [108].

[45] Given the aggravating features of the conduct (tempered by the extent of the admissions as indicated), the need for deterrence to ensure public trust and confidence in directors and senior executives of listed companies, and the previous cases, I accept that the proposed starting point of \$120,000 is within the appropriate range.

Adjustment for personal circumstances

[46] The FMA acknowledged that there are no aggravating factors specific to Mr Hill that would require an uplift to the starting point.

[47] The FMA also acknowledged that Mr Hill is entitled to a discount which appropriately reflects his co-operation with the FMA's investigation and his admissions. The FMA proposed a discount of one-sixth or 16.66 per cent. Mr Cavanaugh submitted that a discount greater than 10 per cent but less than 20 per cent is appropriate but agreed with the FMA's one-sixth proposal. The parties differed as to some aspects of Mr Hill's co-operation and admissions, which I address briefly.

[48] The FMA acknowledged that, although Mr Hill did not self-report his conduct, he co-operated with the FMA during the early stages of its investigation, including by attending an interview. The FMA acknowledged that co-operation ought to be recognised and encouraged, and that Mr Hill is also entitled to some discount for his admissions, albeit they have come late in the piece. Mr Hill's admissions were given as part of an agreed settlement between the parties which was concluded shortly before a four-day trial, after discovery and the provision of the FMA's proposed evidence-in-chief. The proceeding was commenced in October 2021 and there have been procedural delays caused, the FMA says, by Mr Hill, including:

- (a) a failure to accept service at the commencement of the proceeding, which culminated in the Court granting orders for substituted service in October 2021; and
- (b) delays relating to the completion of Mr Hill's discovery, which in February 2023 resulted in the Court placing Mr Hill's counsel on notice that unless orders were likely if Mr Hill had not met his discovery obligations in full by the next appearance date.

[49] Mr Hill accepted responsibility for some slippage in the proceeding with his discovery but took issue with any suggestion that he was solely responsible for the time taken in the proceeding. He resisted the FMA's assertion that the order for substituted service was borne of a failure to accept service, and in relation to the timing of admissions referred to the FMA's amended claim ceasing a market manipulation component.

[50] The need for substituted service was unfortunate but I do not consider it undermines Mr Hill's co-operation with the FMA's investigation. I also accept that the timing of Mr Hill's admissions in the proceeding coincided with the FMA amending its claim. Nevertheless, the discount to which he is entitled for co-operation and admissions needs to be tempered given the timing. I consider that a 10 per cent discount would be appropriate.

[51] This is Mr Hill's first contravention of the FMCA.¹⁹ While Mr Luck acknowledged that there may ordinarily be some limited discount available for this factor, and Mr Cavanaugh submitted that a discount of up to 10 per cent is available for a first contravention,²⁰ any available discount must also be tempered where Mr Hill's conduct was long-running and involved steps to conceal his identity. I consider that a five per cent discount for previous good character would be appropriate.

[52] Stepping back, as Mallon J said in *Cigna*, absent special or unusual features, discounts should not be so large as to remove the deterrence objective of pecuniary penalties.²¹

[53] Overall, I consider that the proposed one-sixth discount, that is \$20,000, for Mr Hill's personal circumstances is within range.

¹⁹ Financial Markets Conduct Act 2013, s 492(f).

²⁰ Citing *Financial Markets Authority v Zhong* [2022] NZHC 480 where 10 per cent discounts were applied.

²¹ *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [71].

Conclusion

[54] For these reasons, I conclude the proposed penalty of \$100,000 is within the proper range.

[55] The FMA also seeks an order under s 493 of the FMCA that the pecuniary penalty must be applied first to pay the FMA's costs in bringing this proceeding. This is not opposed. Such an order is appropriate. The FMA does not seek any further order as to costs.

Result

[56] I make a declaration that Mr Hill contravened s 22(d) of the FMCA by publishing 90 posts on Sharetrader relating to New Talisman Gold Mines Ltd.

[57] I order Mr Hill to pay a pecuniary penalty of \$100,000.

[58] I make an order under s 493 of the FMCA that the penalty be applied first to the FMA's costs in bringing this proceeding. Otherwise, there is no order as to costs.

Gault J