

**IN NZ MARKETS DISCIPLINARY TRIBUNAL
SUMMARY HEARING PROCEDURE**

NZMDT 006/09

UNDER the NZ Markets Disciplinary Tribunal Rules

IN THE MATTER OF alleged breaches of the NZAX Listing Rules

BETWEEN **NZX LIMITED**

AND **PLUS SMS (HOLDINGS) LIMITED**
Respondent

**DETERMINATION OF NZ MARKETS DISCIPLINARY TRIBUNAL
22 February 2010**



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1. This is a determination of a division of the NZ Markets Disciplinary Tribunal ("*the Tribunal*") comprising Simon McArley (Division chairman), Falcon Clouston and David Boldt.

Background

2. The Respondent was served by NZX Limited ("*NZX*") with a Statement of Case dated 31 December 2009.

Statement of Case

3. The Statement of Case alleged that the Respondent had breached:
 - a. NZAX Listing Rule ("*Rules*") 10.4.1 by failing to file its preliminary announcement within 75 days of the end of its financial year, as required by that rule; and
 - b. Rule 10.5.1 by failing to make available its annual report within four months of the end of the Respondent's financial year both electronically to NZX and to each Quoted Security holder, as is required by Rule 10.5.3,

(the "*breaches*").

4. The Respondent's financial year-end is 31 March.
5. As at the date of this determination neither the Respondent's preliminary announcement nor its annual report for the financial year-end 31 March 2009 has been filed with NZX.
6. The preliminary announcement was due to be filed on 14 June 2009.
7. The annual report was due to be filed on 31 July 2009.
8. NZX suspended the Respondent's securities from trading on 11 June 2009. This suspension was initially imposed due to announcements made by the Respondent that all its directors had resigned [the Rules require a minimum of 3 directors]. The Respondent's securities would have been placed into suspension on 15 June 2009 because of the Respondent's failure to file its preliminary announcement, had they not already been suspended. This suspension remains in place.

Statement of Response

9. On 31 December 2009 the Tribunal issued a minute providing the Respondent until 5 February 2010 to file its Statement of Response, which would otherwise have fallen due on 18 January 2010.
10. On 5 February 2010 two pieces of correspondence, one from Mr Murray Allot and one from Mr Robert Hunter, both directors of the Respondent, were submitted to the Tribunal as the Respondent's Statement of Response.
11. The Statement of Response set out the circumstances giving rise to the breaches by the Respondent and the Respondent's plea in mitigation of the breaches.

Tribunal's Request for further submissions and evidence from the Respondent

12. On 9 February 2010 the Tribunal issued a minute requesting further evidence and submissions from the Respondent on two key areas of its plea in mitigation of the breach.
13. First, it sought evidence as to the Respondent's financial position, as the Respondent had claimed in its Statement of Response that any financial penalty would have a debilitating effect on the Respondent.
14. Second, the Tribunal sought submissions from the Respondent as to why it had not advised the market and NZX, both prior to its breaches arising and during the period of its breaches, that it anticipated it would breach the rules and of the steps it was taking to remedy these breaches. The Tribunal sought submissions as to why it has so far taken 16 months between the resignation/dismissal of the CEO and CFO [being the parties the Respondent pointed to in its plea of mitigation as responsible for the breaches occurring] for the Respondent to be in a position to file its accounts. The Tribunal also asked why the Respondent had not sought a waiver.
15. The Respondent sought, and was granted, an extension of time to provide this information. On the expiry of that extension no evidence as to the Respondent's financial position had been provided. The Respondent noted that it would provide the financial information by 2pm on Monday 15 February 2010, but no extension of time was sought from the Tribunal. In any event, no financial information was provided at that time. Submissions were received from the Respondent on the second matter. On Wednesday 17 February 2010 the Respondent provided an unaudited statement of financial position to the Tribunal. The Tribunal received this after it had met to consider the matter and its determination was made. Accordingly, the Tribunal was not able to take this into account when determining this matter.

Penalty and plea of mitigation

16. NZX made the following submissions as to the appropriate penalty to be imposed for the breaches.
17. NZX submitted that the appropriate penalty for the Respondent's breaches is:
 - a. An order to pay a financial penalty in the sum of \$35,000;
 - b. A public censure of the Respondent;
 - c. An order to pay the costs of the Tribunal; and
 - d. An order to pay a sum equal to the costs incurred by NZX in relation to this matter.
18. NZX submitted the following aggravating factors are relevant to the determination of penalty in respect of the breaches:

- a. The Respondent has been suspended from trading since 11 June 2009 and has taken no action to have the suspension removed. NZX submit that the Respondent has thus shown a complete disregard for the Rules and a lack of urgency to remedy its breaches and the prolonged halt in its securities arising from the uncertainty in its financial position has damaged the integrity of the NZAX market and has undermined investor confidence. NZX noted this is the second prolonged halt in the securities of the Respondent (see paragraph 18[] below);
- b. The Respondent has not communicated with the market at all with respect to the provision of either its preliminary announcement or its annual report for the 2008 financial year and accordingly, its financial position. The Respondent has released only three announcements since 12 June 2009, being two Directors and Officers Disclosure Notices on 16 June 2009 and 17 June 2009 respectively and an Allotment Notice on 30 July 2009. The Respondent has not communicated with the market at all since 30 July 2009;
- c. The Respondent has previously breached the periodic disclosure rules. In particular:
 - i. The Respondent was due to release its preliminary half yearly report for the period ending 31 September 2008 on 14 December 2008. On 16 December 2008, NZXR announced, in accordance with Footnote 2 to Rule 5.4.3, that if the Respondent did not provide its 2008 half yearly report by 22 December 2008, its securities would be suspended on 23 December 2008. The Respondent failed to provide that report and its securities were suspended on 23 December 2008; and
 - ii. The Respondent's half-yearly report for the period ending 30 September 2008 was due for release by 31 January 2009. The Respondent also failed to file by the required date; and
 - iii. The Respondent did not provide its preliminary half year report pursuant to Rule 10.4.1, or half yearly report, pursuant to Rule 10.5.1, for the period ending 30 September 2008 until 4 March 2009.

NZX submits that given these prior interactions with it, the Respondent can be in no doubt as to its obligations under the Rules and has continued to breach the Rules.

- d. The purpose of Rules 10.4.1 and 10.5.1 is to ensure that relevant, reliable financial information in relation to financial performance and the financial position of a listed issuer is available promptly to the market following completion of its financial year. This has not been achieved in this case. The actual financial position of the Respondent cannot be ascertained given no preliminary or audited financial information for the financial year has been provided;
- e. The breaches have significant potential to bring the NZAX market into disrepute and to undermine investor confidence.

19. NZX also submitted that, in determining penalty for the breach of Rule 10.4.1, it is relevant to consider that preliminary announcements are vital to ensure that shareholders have access to sufficient information to assess and value an Issuer's securities. NZX submits that this information provides comfort to shareholders, as well as the wider market, by aiding transparency within the market and removing opportunities for inequality of information and insider trading.
20. NZX submitted that overall it considers the Respondent's conduct to be at the upper end of the spectrum of conduct falling within Penalty Band 6 of Procedure 11.3.1 of the **NZ Markets Disciplinary Tribunal Rules Procedures** (in the case of a full hearing the guideline indicates that a fine of up to \$500,000 is appropriate for a breach falling within Band 6, though on a summary hearing the Tribunal is confined to a maximum fine of \$250,000). It submitted that there is evidence of multiple failures to comply with the Respondent's periodic reporting requirements, despite earlier warnings. NZX noted it is referring this matter for consideration by the Securities Commission and that the failure to submit the annual report is also being referred to the National Enforcement Unit of the Ministry of Economic Development as a breach of the Companies Act 1993.
21. Finally, as to penalty NZX noted that in recommending an appropriate quantum for the financial penalty it has considered the recent determination of *NZX v Cooks Food Group Limited* (NZMDT 003/09), and the need to balance imposing a penalty which reflects the gravity of the conduct but which does not unduly impact upon shareholders and creditors and to impose a penalty which reflects the relative size of the issuer. NZX stated that the Respondent appears to be relatively widely held and has more than 100 shareholders, with no one named entity holding more than 10% of the shares. A \$15,000 bond is lodged with NZX to meet its liabilities, such as delisting fees. The Respondent is ranked 24th out of 28 NZAX Issuers by full market capitalisation as at 24 December 2009. In comparison, *Cooks Food Group Limited* was ranked 18th. In recommending the quantum of penalty NZX noted that it would have preferred a far higher figure to reflect the serious and repetitive nature of the Respondent's breaches but, in suggesting a fine of only \$35,000, was mindful of the above factors.
22. The Respondent, in mitigation, notes the following circumstances:
- a. That the breaches arise against the backdrop of the resignation and termination of the Respondent's CEO and CFO. The Respondent contends that the former CEO embarked upon a litigious path against various employees, directors and consultants. This litigation is ongoing and has involved the CEO taking out restraining orders over various company assets;
 - b. The company has been unable to meet its financial reporting obligations as a result of the CEO failing to return various company records and financial information;
 - c. The CFO was undertaking his role from his home on the Isle of Man;

- d. The company structure was such that it was difficult, if not impossible for the board to gain company records for subsidiary companies based in overseas jurisdictions as the directors of the Respondent are not directors of any of its subsidiaries and therefore had no right of access to the company financial records;
- e. That the board was not willing to accept defeat and over many months pieced together all the pieces accessing records to prepare a set of financial statements for the year ended 31 March 2009, these are currently being audited and queries are being attended to and should be completed in the next few weeks;
- f. The company has been in a position to release its preliminary results for the 2009 year but is awaiting the conclusion of the audit;
- g. That the Board's efforts to prepare the company's financial statements were totally frustrated by the former CEO and CFO;
- h. That the Respondent's auditors did not make the board aware that the former CFO retained company financial records at his personal residence on his home computer or properly draw to the Board's attention the lack of normally accepted procedures for the security, retention and back up of company data;
- i. The company has had a lack of financial resources to replace what was previously an extensive, costly and disjointed financial reporting function in no fewer than 7 different countries. However, due to the Board's efforts the accounting reporting has been brought under control;
- j. The directors have been consumed by the CEO and CFO litigation, preparing the financial statements and re-focusing the business;
- k. All unprofitable businesses have been closed down. The overheads of the business have been substantially reduced so as to avoid incurring trading losses and not erode working capital. This has left the board with little executive support;
- l. That the company has businesses in Latin America;
- m. There has been a concerted media leaking campaign of the CEO's false allegations to discredit the company so as to aid and abet his own legal actions being taken in the USA. Throughout this the company has continued to manage its offshore telecommunication companies;
- n. That remaining in suspension is in the Respondent's best interests until there is clarity on the state of the company and the CEO litigation;
- o. The actions of the CEO have caused great financial hardship and work strain on the entire Board;
- p. The company has expended significant energy and financial resources in defending the CEO and CFO claims;

- q. The company is in the process of taking legal action against CEO and CFO for their numerous breaches of duties and fiduciary responsibilities;
 - r. The company has suffered significantly as a result of the Global Financial Crisis and has found it extremely difficult to raise necessary working capital (particularly given the media attention to the actions of the CEO and CFO);
 - s. The Board has attempted to safeguard the interests of all shareholders by correctly defending the company from the CEO. In particular his illegal claim and demand for an additional 13 million shares in the company, which ultimately led to his demise and his subsequent attempt to harm the company;
 - t. The incurrance of any substantial penalties or costs will severely disadvantage investors.
23. In response to the Tribunal's requests for further submissions on why it did not communicate with the market or NZX during the period of breach and why a waiver was not sought the Respondent replied that it was not aware that it could seek a waiver from the Rules. It also noted that:
- a. It wrote to shareholders advising them of problems and complications concerning missing records; and
 - b. Updated shareholders of the reason for delay in providing financial statements at its May 2009 EGM.
24. The Tribunal notes that the last update released to the market by the Respondent was in March 2009 when the half year accounts for the period ending 30 September 2008 were filed, together with a Board update. This update preceded the breach of these Rules, as did the May 2009 EGM. No subsequent communication or updates were, if they occurred, released to the market.

Relevant Rules

25. Rule 10.4.1 provides that:

"Each NZAX Issuer shall make an announcement pursuant to Rule 10.4.2 through NZX for public release, in the manner prescribed by Rule 10.2, as soon as the Material Information is available, and in any event;

(a) before the release of each annual report, and not later than 75 days after the end of the financial year to which that report relates; and

(b) before the release of each half-yearly report and not later than 75 days after the end of the financial half year to which that report relates."

26. Rule 10.5.1 states:

"Subject to Rule 10.5.2, each NZAX Issuer shall within four months of the end of each Issuer's financial year:

- (a) *Deliver to NZX electronically, in the format specified by NZX from time to time; and*
- (b) *Make available to each Quoted Security holder in accordance with Rule 10.5.3, an annual report. That annual report shall be delivered to before or at the same time as it is made available to Quoted Security holders in accordance with Rule 10.5.3, and shall contain all information:*
- (c) *required by law;*
- (d) *required in a preliminary announcement by Rule 10.4.2; and*
- (e) *required by Rules 10.5.5 and 10.5.6.*

The financial statements in that annual report shall be audited and shall be accompanied by an audit report in accordance with the requirements of the Financial Reporting Act 1993.”

Determination of NZ Markets Disciplinary Tribunal

27. The Tribunal **finds** (and the Respondent did not dispute) that the Respondent **acted in breach of Rule 10.4.1 and Rule 10.5.1.**
28. The breach of Rule 10.4.1 arose when the Respondent failed to file its preliminary results by 14 June 2009, as required by Rule 10.4.1 and continues as at the date of this determination.
29. The breach of Rule 10.5.1 arose when the Respondent failed to file its 2009 Annual Report by 31 July 2009 as required by Rule 10.5.1 and continues at the date of this determination.
30. The Tribunal notes that it is incumbent on directors of listed companies to understand the listing rules that they have agreed, on behalf of the listed entity, to comply with. In this case, the Respondent's offending is aggravated by the fact that its underlying difficulties arose in late 2008, and that whilst it initially advised the market of the problems it was encountering (in its March 2009 Board report) thereafter it neither continued to inform the market of the on-going nature of these problems and the impact that the departures of key personnel had on its ability to comply with the rules nor sought a waiver of the requirement that the documents should be filed. The Respondent has now been in breach of Rule 10.4.1 for approximately 7 months and Rule 10.5.1 for approximately 6 months. The Tribunal **finds** that the Respondent's conduct – and in particular its failure to inform the market even that it would be unable to file either of the documents in question – demonstrates an indifference towards the vital importance of compliance with its disclosure obligations.
31. The Respondent argues that its breach was caused by the actions and/or omissions of its former CEO and CFO. Even assuming that these actions did make it impossible for the Respondent to comply with its obligations under the Rules (and a well governed listed company should have in place systems and procedures that would enable it to comply with its obligations notwithstanding the unexpected circumstances it encountered), there was no reason why the Respondent could not have kept the market informed regarding its difficulties. Further, if it was impossible for the Respondent to comply with Rules 10.4.1 and 10.5.1 it was open to the Respondent to apply for a waiver from those rules prior to the Respondent breaching

them. In the Tribunal's opinion if the Respondent were able to demonstrate in a waiver application that compliance with Rules 10.4.1 and 10.5.1 was impossible, or indeed very difficult, there was a very high likelihood that a waiver would have been granted. If not by NZX at first instance, then on review by the Tribunal.

32. The Tribunal notes that these employees, on whose conduct the Respondent relies to explain its breaches of the Rules and why its breaches persist to this day, were dismissed 16 months ago. The Respondent did not have in place systems and procedures that would have enabled it to comply with its obligations notwithstanding the unexpected circumstances encountered. The Respondent's board was seemingly unaware of the working arrangements of the CFO and the impact those arrangements had on the Respondent's ability to meet its obligations. In the Tribunal's view the Respondent lacked appropriate governance arrangements to ensure that the conduct that gave rise to the breach such as holding company records at personal residences, did not occur. While the board of a listed issuer may utilise employees, external accountants and auditors, the maintenance and availability of accounting and business records remains the responsibility of the directors. The Tribunal views this failure of governance as a serious aggravating factor.
33. Further, as noted above, the Respondent has pleaded that it was unaware of its ability to seek a waiver as a mitigation of its breach. Rather than mitigating its breach, in the Tribunal's view this is an aggravating factor. It is, as already noted, incumbent upon directors to ensure that they are familiar with all relevant rules. For professional directors of a listed company, ignorance of the Rules is unacceptable.
34. The Tribunal **finds** that the Respondent has not taken adequate steps to mitigate its breach. In particular the Respondent has failed throughout the period of its breach to adequately communicate with either of NZX or the market. In the Tribunal's view this is also a serious aggravating factor.
35. The purpose of the Rule 10.5.1 is to ensure that relevant reliable financial information in relation to the financial performance and the financial position of a listed issuer is available promptly to the market following completion of its financial year. Here this objective has not been met.
36. In addition, a prolonged trading halt arising from uncertainty surrounding a listed issuer's financial position damages the market's integrity. The primary purpose of an exchange is to provide facilities for investors in listed companies to trade their securities. It follows that prolonged trading halts undermines the fundamental purpose of an exchange and denies shareholders in listed companies a benefit that investing in a listed company otherwise provides.
37. Finally the Tribunal notes with concern that the Respondents submissions suggest that it may have informed its shareholders of the problems it was experiencing, without passing the same information to the market. The Tribunal believes that this requires further investigation by NZX as to compliance by the Respondent with Rules 10.1.1 (b) and 10.7.2.

Penalties

38. The Tribunal imposes the following penalties in respect of both breaches:

- a. A **public censure** of the Respondent in the form of an announcement by the Tribunal to the market the Tribunal has found the Respondent to be in breach of Rules 10.4.1 and 10.5.1 and is, accordingly, censured by the Tribunal for such non-compliance.
- b. An order that the Respondent pay to NZX, within 20 Business Days of the date of this decision, a **sum of \$50,000** by way of penalty.
- c. An **order** under Tribunal Rule 11.5.1(i) that the Respondent **remedy its breaches** of Rule 10.4.1 and 10.5.1 by filing the documents required by those Rules within 20 Business Days of this determination.
- d. An **order** that the Respondent pay, within 20 Business Days of the date of an invoice from NZX, the actual costs and expenses incurred by the Tribunal in considering this matter.
- e. An **order** that the Respondent pay, within 20 Business Days of the date of an invoice from NZX, NZX's actual costs and expenses incurred by NZX in relation to this matter.

Publication of Decision

39. The Tribunal recommends that this decision be released to the market in full under Tribunal Rule 6.6.

Reason for NZ Market Disciplinary Tribunal's decision on penalties

40. In coming to its decision to impose the penalties set out in paragraph 36 the Tribunal considered the following matters:

- a. The conduct of the Respondent, being a breach of the Periodic Reporting Rules, falls within Penalty Band 6 of Section 11 (*Penalty Bands Guidance Procedure*) of the **NZ Markets Disciplinary Tribunal Rules Procedures**. This Penalty Band covers: "*Failure to provide timely, accurate and complete disclosure*". Failure to comply with the Periodic Reporting Rules is expressly cited as an example of conduct falling within this Penalty Band. This is the most severe Penalty Band for breaches of the Rules by Issuers, and merits imposition of financial penalties of up to \$500,000 in the case of Full Hearings. In this case NZX has pleaded its case as a Summary Hearing and Rule 11.6.1(c) of the **NZ Markets Disciplinary Tribunal Rules** states that a penalty for matters heard by Summary Hearing shall not exceed \$250,000 plus GST or other applicable taxes. Accordingly, the maximum penalty that could be imposed here is \$250,000. The Tribunal notes that these rules are fundamental to the integrity of the market and to achieving fairness and equity for all investors. The penalty to be imposed must, therefore, reflect the importance of these rules.
- b. The Tribunal considers the Respondent's conduct more egregious than the conduct it considered in *NZMDT 03/2009 NZX v CFG* and *NZMDT 04/2009 NZX v PFG*. Specifically, the Tribunal notes that here the Respondent:

- i. Did not seek any relief from compliance with the Rules prior to falling into breach of them;
- ii. Did not seek to communicate with NZX, or the market, during the period of its breach; and
- iii. Has not remedied its breach.

These are serious aggravating factors, which were not present in either of *CFG* or *PFG*. The Tribunal also considers the Respondent's conduct more egregious than the conduct considered in *NZMDT 05/2009 NZX v SSE* as here the Respondent has been in breach of the Rules for a longer period of time. This case can also be distinguished from *NZMDT 05/2009 NZX v SSE* as in that case the Tribunal had evidence before it that SSE was insolvent.

- c. It is a further serious aggravating factor that the Respondent has made no substantive market announcements since filing its financial report for the half year ended 30 September 2008 on 4 March 2009, together with a Board update. The market has been deprived with any audited view on the company's financial position for over 19 months and no updates have been provided by the Board as to the company's financial position since March 2009. The Tribunal notes the Respondent's submission that it has been communicating to shareholders during the period of its breach. None of these communications have been released to the market. The Tribunal recommends that NZX examine whether these direct communications with shareholders, which have not been released to it or the market, represent further breaches of the Rules.
- d. The Respondent has not adequately sought to inform itself of its obligations as a listed company or to put in place adequate systems and procedures to enable it to comply with those obligations. As noted above, it is incumbent on directors of listed companies to understand the listing rules that they have agreed, on behalf of the listed entity, to comply with and to exercise their governance of the listed entity in a manner that ensures the listed entity is able to comply, regardless of adverse circumstances. Here the Respondent has been in breach for in excess of six months, and the Tribunal believes that this breach arises from factors that ought to have been within the control of the listed issuer. The Respondent also failed to comply with rulings made by the Tribunal in the conduct of this case and demonstrated in its dealings with the Tribunal a lack of understanding of both the Rules and the **NZ Markets Disciplinary Tribunal Rules**. The Tribunal considers that NZX should review the Respondent's governance arrangements and its suitability to remain listed.
- e. NZX provided evidence with its Statement of Case that the Respondent has breached its Periodic Reporting Requirements in the past. This past record of non-compliance is a relevant consideration in determining the appropriate penalty.
- f. The deadlines provided in the Rules exist in part to compel issuers to confront adverse circumstances efficiently and to ensure that all shareholders and potential shareholders have access to up to date information. The long silences from the company, in the face of serious internal difficulties, demonstrate that this did not occur here.

- g. The Tribunal considers that any material breach of the Periodic Reporting Rules brings the market into disrepute, as these Rules are essential to the good governance of the market. The publication of this decision, by demonstrating that breaches are detected and punished, is intended to help restore the reputation of the market.
- h. In the Tribunal's view, a prolonged trading halt arising from uncertainty surrounding a listed issuer's financial position damages the market's integrity. The primary purpose of an exchange is to provide facilities for investors in listed companies to trade their securities. It follows that prolonged trading halts undermines the fundamental purpose of an exchange and denies shareholders in listed companies a benefit that investing in a listed company otherwise provides.
- i. The Tribunal notes that its determination involves a balancing act to impose a penalty that reflects the gravity of the conduct but which does not unduly impact upon shareholders and creditors, particularly in circumstances where the financial viability of an issuer would be affected by the imposition of a financial penalty. Here the Tribunal has no evidence before it to substantiate the Respondent's claim that the imposition of a significant financial penalty would have a potentially debilitating effect on the Respondent.
- j. Notwithstanding this lack of evidence, the Tribunal has nonetheless carefully considered the respective rights of shareholders and creditors and the necessity to impose a penalty that reflects the severity of the Respondent's breach.
- k. A further factor considered by the Tribunal is the relative size of the Respondent compared to other listed issuers. It is intended the penalty ordered is reflective of the seriousness of the Respondent's conduct compared to the Respondent's relative size.
- l. The fine the Tribunal has imposed exceeds the \$35,000 sought by NZX. This is not a conclusion the Tribunal has reached lightly, however the Tribunal is now in possession of more information than NZX had at the time it filed its statement of case. As will be apparent from the discussion above, the Tribunal also regards a number of the Respondent's statements in response to NZX's case and the Tribunal's questions as aggravating rather than mitigating the Respondent's breaches. It is very important that the fine imposed reflects the serious nature of the conduct in question. Nonetheless, the Tribunal is mindful of the ongoing difficulties the Respondent and its shareholders face. But for these, the fine would have been considerably higher.
- m. Having regard to the maximum penalty that could be imposed, the Tribunal's view of the seriousness of the breach, the penalty sought by NZX, the additional aggravating factors identified by the Tribunal, relevant precedents and the circumstances of the Respondent, the Tribunal is of the view that a financial penalty of \$50,000 is appropriate.

- n. The Tribunal is of the view that if its remedial order is not complied with, NZX should consider exercising its discretion under the Rules to cancel the Respondent's listing.

DATED 22 February 2010

A handwritten signature in black ink, appearing to read 'Simon McArley', with a large, stylized initial 'S' and a long horizontal flourish extending to the right.

Simon McArley Division Chairman, NZ Markets Disciplinary Tribunal