



## Issuer Rules Enforcement Policy

This version of our issuer rules enforcement policy is effective from 21 June 2021.

### Purpose

This policy provides guidance on Catalist's approach to enforcement of the Catalist Public Market Issuer Rules and other misconduct. It applies to all issuers listed on the Catalist Public Market and is intended to give issuers and investors greater certainty about how we will apply the Issuer Rules and help ensure consistency of treatment.

Catalist is legally required to have arrangements in place to enforce compliance with the Catalist Public Market Issuer Rules. These arrangements give investors and issuers confidence they will be treated fairly when interacting through the market and therefore benefit everyone.

To ensure the Catalist Public Market remains fair, orderly and transparent we monitor trading through a mixture of automated and human monitoring. The Financial Markets Authority (FMA) also has regulatory oversight over our monitoring and enforcement role.

This policy does not have the force of law and is not prescriptive of the enforcement outcomes that will always be followed. Each case will be assessed on its merits, but this guidance describes:

- The priorities and approaches we will take to enforcement
- The types of circumstances we will take into account to determine an appropriate enforcement approach
- The possible outcomes of any enforcement action
- The disputes resolution mechanism in relation to any infringement notices

### Enforcement Priorities

It may not always be possible for us to investigate and enforce every alleged breach of the Issuer Rules. In choosing to take enforcement action we will prioritise investigations and

enforcement outcomes that help to keep the Catalist Public Market fair, orderly and transparent for all investors and issuers.

This means, amongst other things, we will prioritise investigation and enforcement if:

- The alleged breach has potentially caused loss to investors
- There is an alleged breach of the insider trading provisions in subpart 2 of Part 5 of the Financial Markets Conduct Act 2013 (the Act) or of the manipulation provisions in subpart 3 of Part 5 of the Act
- There is an alleged breach of the disclosure requirements in the issuer rules, including but not limited to Rule 6 (*Disclosure of Material Information*)

## Investigations

We have an internal investigations procedure, which we will follow whenever we know or have a reasonable suspicion that there has been a breach of our rules, the Financial Markets Conduct Act 2013, the Takeovers Act 1993 or any enactment under that legislation. Our internal investigations procedure has been agreed with the FMA and is subject to their regulatory oversight.

Investigations are undertaken by Catalist staff who do not have a conflict of interest in relation to the relevant issuer. Investigations are overseen by the Catalist Board, which contains a majority of independent non-executive directors.

Catalist has powers to gather information from issuers under Issuer Rule 15.

## Enforcement approach

Where we determine that an issuer has breached the issuer rules Catalist may take a range of enforcement action including any one or more of the following:

- Engagement with the issuer to assist understanding of their obligations and raise compliance standards
- Suspend or delay auctions of the issuer's financial products, for example to enable information disclosure to be corrected
- Private or public reprimand, which may be issued together with guidance for the issuer, or issuers in general, to help improve future compliance
- Infringement fee of up to \$5000 per breach
- Order that the issuer must take any specified action necessary to remedy and/or mitigate the impact of the breach, which may include disclosure of additional information
- Order that the Issuer must hold an additional auction, at the issuer's cost, to allow investors to take account of any additional information that has become available

- Reporting conduct to the FMA, who may take further action in relation to breaches of the Act or other applicable legislation
- Termination of service, potentially allowing one final auction to allow investors a final trading opportunity if appropriate
- Civil action for breach of contract terms

In determining the appropriate enforcement response, Catalist will always consider the actual or potential harm to investors which has, or could have, been caused by a breach. We will also consider any mitigating or aggravating circumstances relating to a particular breach.

Mitigating circumstance that will be taken into account include but are not limited to:

- Issuers have taken reasonable action to avoid the possible breach
- Breach was caused by circumstances that were not reasonably foreseeable
- Genuine mistakes that are proactively mitigated by the issuer
- Breaches that are self-identified and reported and the impacts minimised by the issuer
- The breach is not a repeat offence

Aggravating circumstance that will be taken into account include but are not limited to:

- The breach was a result of the deliberate or reckless conduct of the issuer or its directors or senior managers
- The breach is a repeat of a previous similar breach by the same issuer

## **Infringement notices**

Catalist may issue an infringement notice to an issuer by following the procedure described in Issuer Rule 16 (*Infringement Notices*).

Infringement notices may include the imposition of an infringement fee. We will use the following guiding principles to assess the starting point for any infringement fee. These starting points may then be increased or decreased based on any mitigating or aggravating circumstances, up to the maximum of \$5000 per breach.

- For any breach where the loss suffered by investors and/or the financial gain to the issuer resulting from the breach can be quantified with reasonable accuracy, the starting point will be an infringement fee of three times the greater of investor loss or the issuer gain, unless a higher starting point would apply under one of the following guiding principles, up to a maximum of \$5000 per breach.
- Where an issuer fails to maintain at least one independent director or to comply with the residence requirements for directors, the starting point will be an infringement

fee of \$1000 per month or part thereof for which failure is maintained, up to max \$5000 for each incident.

- Where an issuer is in breach of Issuer Rule 6 (*Disclosure of material information*) the starting point is an infringement fee of \$5000.
- Where a breach has been caused by the deliberate or reckless action of the issuer, which has caused, or was likely to cause, investor harm the infringement fee will be \$5000 per breach.

Infringement fees paid by issuers can only be used by Catalist to cover the costs of any investigations and enforcement activity or for investor education activities.

Infringement notices will be published in accordance with the policy set out in Issuer Rule 16.4 (*Publication of Infringement Notices*).

## **Dispute of infringement notices**

Any dispute by an issuer relating to any infringement notice must be notified to Catalist and resolved in accordance with the procedures set out in the Appendix (*Procedure for disputing infringement notices*) of this Issuer Rules Enforcement Policy. This provides for an independent expert to rule on any dispute.

## Appendix: Procedure for disputing infringement notices

1. Capitalised terms defined in the Issuer Rules will have the same meaning in this procedure.
2. If an Issuer believes Catalist has not complied with the Issuer Rules in relation to an Infringement Notice, or has made a determination that is not reasonably justifiable, the Issuer may dispute the infringement notice by serving a notice ("*notice of dispute*") on Catalist no later than 10 business days after receipt of the finalised Infringement Notice under Issuer Rule 16 (*Infringement Notices*).
3. Disputes will be referred to an independent expert appointed by Catalist for such purpose, who will be a current or former barrister and/or solicitor with at least ten years' legal experience. The independent expert will be appointed by Catalist on the basis of their reputation and demonstrated knowledge and expertise in relation to capital markets.
4. The independent expert must not have any financial interest in the issuer or Catalist or their affiliates.
5. An issuer serving a notice of dispute must agree and acknowledge that:
  - a) The dispute is to be determined by the independent expert promptly and cost effectively, with the objective that the dispute is determined fairly and in a manner which is proportionate to the issues in dispute.
  - b) The expert is to determine the dispute acting as an expert and not as an arbitrator.
  - c) In determining the dispute, the expert is to consider whether Catalist has complied with the Issuer Rules in relation to the Infringement Notice, or has made a determination that is not reasonably justifiable. The expert is not to consider whether they would have come to a different conclusion to that reached by Catalist.
  - d) In determining the dispute, the expert is to act independently and impartially, and shall otherwise comply with the AMINZ Code of Ethics, published by the Arbitrators' and Mediators' Institute of New Zealand (AMINZ), and shall discharge the duties of the expert in accordance with all guidance notes, protocols and relevant procedures issued by AMINZ from time to time.
  - e) The expert shall adopt procedures commensurate with the objectives outlined in paragraph 5(a) above, including:
    - (i) organising preliminary conferences,
    - (ii) calling for submissions, disclosure of documents and provision of witness statements, from the parties,
    - (iii) scheduling a conference of the parties, to enable the expert to discuss the dispute and to clarify any issues raised by the dispute,

- (iv) conducting any investigations, and
  - (v) any other measure reasonably required to enable the expert to determine the dispute.
- f) The parties acknowledge that the determination of the dispute by the expert is to be conducted in private.
  - g) The expert is to provide a decision on the dispute, where possible, within 45 days of confirmation of the expert's appointment. In reaching the decision, the expert is to take account of the submissions and other supporting information provided by the parties, the expert's own investigations, the expert's own knowledge and expertise in relation to the matters in dispute, and any other issue which the expert considers relevant.
  - h) If the expert determines that Catalist has not complied with the Issuer Rules in relation to the Infringement Notice, or has made a determination that is not reasonably justifiable, the Infringement Notice will be set aside and the expert may make a recommendation as to the fairest course of action.
  - i) The issuer shall pay 50% of any and all costs associated with the appointment of the expert where such costs are incurred prior to the expert's decision. The appointment of the expert is conditional upon the issuer's payment of these costs and expenses.
  - j) The expert is to provide a decision on whether the Issuer or Catalist shall pay the costs and expenses of the expert, or whether they should be shared and in what proportion. This decision shall override the sharing of costs prior to the expert's decision as set out in paragraph 5(i). Where the expert finds that Catalist has complied with the Issuer Rules in relation to the Infringement Notice and has made a determination that is reasonably justifiable, then the expert must determine that the Issuer shall pay the entire costs and expenses of the expert.
  - k) The expert is to provide a decision on whether the Infringement Notice should be published. This decision is to be made in accordance with Issuer Rule 16.4 (*Publication of Infringement Notices*).
  - l) The decisions of the expert on the dispute shall be final and binding on the parties.