



12 December 2014

ANNOUNCEMENT OF NZ MARKETS DISCIPLINARY TRIBUNAL

PUBLIC CENSURE OF BLIS TECHNOLOGIES LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR A BREACH OF NZX MAIN BOARD LISTING RULE 10.1.1(A) AND (B)

1. In a determination of the NZ Markets Disciplinary Tribunal (*the Tribunal*) dated 1 December 2014, the Tribunal found that BLIS Technologies Limited (*BLT*) breached NZX Main Board Listing Rule (*Rule*) 10.1.1(a) and (b).
2. What follows is a high level summary. The facts of this matter and the Tribunal's detailed reasoning are set out in its decision.

Background

3. At BLT's 2013 annual meeting, BLT noted that it had "*recently reached a major milestone with the appointment of Sinopharm to market oral health products containing BLIS's probiotics*".
4. At BLT's 2014 annual meeting, BLT noted that "*Sinopharm (the largest pharmaceutical company in China) is currently test-marketing consumer products with BLIS oral probiotics in 3 major cities through 30 pharmacies*".
5. By 19 August 2014, the BLT CEO had become aware that the number of pharmacies to which Sinopharm would distribute BLT products was going to increase from 30 to 600 (*Sinopharm Trial*).
6. On 19 August 2014, the CEO was approached by, and conducted an interview with, a journalist from Fairfax Media. During that conversation, the CEO disclosed that the Sinopharm Trial would be increased to up to 600 pharmacies.
7. On 20 August 2014, BLT released an announcement noting that it had successfully completed its final audit and was now cleared to export dairy products. At the time of the 20 August 2014 announcement, the CEO did not consider the comments he had made about the Sinopharm Trial to be material.
8. At noon on 22 August 2014, papers were provided to the BLT Board that included a reference to the extension of the Sinopharm Trial.
9. On 24 August 2014, the Sunday Star Times published an article entitled "*Dunedin manufacturer to launch probiotic in Asia*" (*the Article*). The Article stated that "*China's largest pharmaceutical company Sinopharm has said it will distribute Blis products in 600 stores in the next few weeks following a successful trial in three stores*".
10. On the evening of 24 August 2014, discussions occurred between members of the BLT Board and it was decided that the extension of the Sinopharm Trial could potentially amount to Material Information. The Board also noted that the Article inaccurately stated that the current trial had been in three stores, rather than thirty. On that basis, the Board decided to make an announcement clarifying the position as soon as possible on Monday, 25 August 2014.

11. BLT's protocol required that an announcement could only be released to the market once it had been discussed with, and agreed to by, one of BLT's Directors.
12. BLT provided the announcement to NZX at 9.59 am on Monday, 25 August 2014 (*the Announcement*). The Announcement was subsequently released to the market at 10.07 am on 25 August 2014.
13. On 25 August 2014, BLT shares opened at a price of \$0.022. This represented a 10% rise from the previous day's close of \$0.020. The open match volume for BLT shares was 1,080,000 shares. This is compared to an average daily volume of 389,323 shares for the month of August 2014 up to and including 22 August 2014. By 12.30 p.m. on 25 August 2014, BLT's volume was 6.9 million shares, and had reached an intra-day high of \$0.031. This intra-day high represented a price increase of approximately 50% from the previous close. BLT's shares closed that day at \$0.025 cents which was a 25% increase over the previous closing price.

Determination

1. The Tribunal finds that BLT breached Rules 10.1.1(a) and 10.1.1(b).

Reasons for Determination

2. Under Rule 10.1.1(a), once an Issuer becomes aware of any Material Information concerning it, it must immediately release that Material Information to NZX unless one of the provisos applies.
3. Both parties agree that none of the provisos in Rule 10.1.1(a) apply in the current case.
4. BLT admitted that:
 - a. by failing to provide information regarding the increase in the Sinopharm Trial to NZX as soon as it became aware of the information, it breached Rule 10.1.1(a); and
 - b. by providing that information to the public (the Fairfax Media journalist) before disclosing it to NZX, BLT breached Rule 10.1.1(b).
5. Despite these admissions, BLT appeared to suggest that information regarding the increase in the Sinopharm Trial may not have been Material Information at the time it was received by its CEO or when it was disclosed to the journalist.
6. In the circumstances, the Tribunal considers that it should set out its view on (1) whether information on the increase in the Sinopharm Trial was Material Information; and (2) if so, when BLT became aware of it.
7. "Material Information" is defined in the Rules as information in relation to the Issuer that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of Quoted Securities of the Issuer. BLT had previously made announcements to the market regarding its "major milestone" in the appointment of Sinopharm to market oral health products containing BLT probiotics (30 August 2013) and again on 25 July 2014 when it advised the market that Sinopharm was test-marketing consumer products with BLT oral probiotics in 3 major cities through 30 pharmacies. Given the previous information provided to the market, the Tribunal considers that a significant increase in the Sinopharm Trial from 30 to 600 pharmacies in China is information that a reasonable person would expect to have a material effect on the price of BLT shares. As it transpired, there was a significant increase in the BLT share price and volume traded on 25 August 2014 after that information had been released to the market.

8. Under Rule 10.1.1, an Issuer is aware of information if a Director or an executive officer of the Issuer has come into possession of the information in the course of the performance of his or her duties as a Director or executive officer. BLT admits that by 19 August 2014, the CEO became aware that the number of pharmacies involved in the Sinopharm Trial was going to increase from 30 to 600 pharmacies. Accordingly, under Rule 10.1.1(a), BLT became aware of the information through the attributed knowledge of the CEO. It is irrelevant that the CEO did not appreciate at the time that the information was Material Information.
9. The Tribunal considers that by 19 August 2014, BLT was aware of Material Information, namely the expansion of the Sinopharm Trial, which should have been immediately disclosed to the market. As the information was not released to the market until 10.07am on 25 August 2014, the Tribunal considers that BLT breached Rule 10.1.1(a).
10. It follows then, that the Tribunal also considers that BLT breached Rule 10.1.1(b) by providing the Material Information to a member of the public (a Fairfax Media journalist) on 19 August 2014 before that information had been released to NZX on 25 August 2014.

Penalty

14. In determining the appropriate penalty to impose the Tribunal considered the matters prescribed in Tribunal Rule 11.16.1, including the conduct of BLT over the previous 24 month period, the severity of the matter, any benefit obtained or detriment suffered as a consequence of the breach, the reputational impact of the penalty being imposed and any other mitigating factors. The Tribunal also considered its recent decisions in *NZMDT 5/2013 NZX v Energy Mad Ltd* and *NZMDT 1/2014 NZX v Rakon Ltd* as a benchmark. A penalty of \$30,000 was also imposed in both cases.
11. Accordingly, given the circumstances of this case and the precedents noted above, the Tribunal considers that a penalty of \$30,000 (as recommended by NZX) is appropriate. Although there are two breaches in this case, the breaches are related incidents and in essence arise out of the same act or conduct – namely, the failure on the part of the CEO to appreciate that information about the increase in the Sinopharm Trial was (or could be) Material Information. On that basis, the Tribunal considers that a single (or concurrent) penalty of \$30,000 for both breaches is appropriate.
12. In imposing this penalty, the Tribunal wishes to emphasise that compliance with the continuous disclosure requirements in the Rules is of fundamental importance to the integrity of the market. Material Information must be immediately released to the market, unless a permitted exception applies and must not be released to a member of the public before its release to NZX. Any breach of the continuous disclosure requirements under Rules brings the market into disrepute and will be punished accordingly.

Public Censure

15. The Tribunal considers that the public naming of BLT is entirely appropriate in this case given the nature of the breach.

Orders

16. The Tribunal imposed the following penalties:
 - (a) A public censure in the form of this announcement;
 - (b) An order that BLT pay \$30,000;
 - (c) An order that BLT pay the actual costs and expenses incurred by the Tribunal; and
 - (d) An order that BLT pay the actual costs and expenses incurred by NZX.

The Tribunal

17. The Tribunal is a disciplinary body independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the market rules.

ENDS