

## SECTION 8

### GENERAL OBLIGATIONS OF ALL MARKET PARTICIPANTS AND ADVISORS

#### 8.1 CONDUCT OF MARKET PARTICIPANTS AND ADVISORS

8.1.1 Each Market Participant and each Advisor must at all times:

- (a) Observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency;
- (b) Refrain from any action, conduct, matter or thing which is, or is reasonably likely to be:
  - (i) Detrimental to the wellbeing or proper conduct of NZX, any of its markets and/or any Market Participant or Advisor;  
*(Amended 28/2/07)*
  - (ii) A discredit or bring generally into disrepute NZX, any Market Participant and/or any Advisor; or
  - (iii) Detrimental to the wellbeing, or contrary to the best interests of, any client or person who has similar rights to the Securities as that client (e.g. joint account holders); or
- (c) Comply fully with all applicable Rules, any directions given from time to time by NZX and at all times observe Good Broking Practice.  
*(Amended 28/2/07)*
- (d) Deal with NZX in an open and co-operative manner and, not limiting its obligations under **Rule 17.10**, keep NZX promptly informed of anything that a reasonable person may reasonably be expected to disclose to NZX as a Registered Securities Exchange. In the event that a Market Participant or Advisor is in doubt about whether or not a matter may involve a significant breach or likely breach for the purposes of **Rule 17.10** the Market Participant or Advisor, as the case may be, may inform NZX of the matter under this **Rule 8.1.1(d)**.  
*(Inserted 28/2/07)*

8.1.2 *(Revoked 28/2/07)*

- 8.1.3 For the avoidance of doubt, **Rule 8.1.1** does not prohibit a Market Participant or an Advisor from taking any proper action to inform NZX or any appropriate regulatory authority of a potential, suspected or actual breach of these **Rules** or any piece of legislation by another Market Participant, Advisor or client.

## 8.2 COMMENTS TO THE MEDIA

When making comments to any news media or other parties, whether for quotation or otherwise, on any matters related to Securities listed on a market provided by NZX, finance, Issuers, Market Participants, Advisors, NZX or the industry generally, Market Participants and Advisors must always identify themselves and, in the case of Advisors, the Market Participant which employs or contracts with that Advisor, and shall not request or agree that their identity be withheld from any reporting of those comments.

## 8.3 SUPPLY OF INFORMATION TO NZX

- 8.3.1 NZX may, at any time and at its complete discretion, request in writing any information from a Market Participant or Advisor to enable NZX to determine whether the Market Participant or Advisor is complying with all applicable Rules, directions given from time to time by NZX, the observance of Good Broking Practice, and/or to ensure compliance by NZX with any obligations it has under a Reciprocal Arrangement. *(Amended 28/2/07)*

- 8.3.2 Pursuant to **Rule 8.3.1** and subject to **Rule 8.4**, Market Participants and Advisors are required to supply information requested by NZX, in the media specified by NZX, within the time specified by NZX in its written request for that information provided that such time frame is reasonable, having regard to the information requested. *(Amended 28/2/07)*

- 8.3.3 For the avoidance of doubt, NZX may request that information is provided electronically in excel or word, by e-mail, facsimile or post.

## 8.4 CONFIDENTIALITY OF INFORMATION

- 8.4.1 NZX shall take all reasonable measures to protect the information provided to NZX pursuant to **Rule 8.3** from any unauthorised use or disclosure. For the avoidance of doubt, the disclosure of information to a party with whom NZX has a Reciprocal Arrangement shall not constitute unauthorised use or disclosure of that information.

8.4.2 Upon receipt of a request for information from NZX pursuant to **Rule 8.3.1** a Market Participant or Advisor may appeal in writing to NZX for that information not to be disclosed to any specific person(s). NZX will reasonably consider such request but is not obliged to accept such request if NZX considers that access to that information by the persons whom the Market Participant or Advisor has requested that that information not be disclosed is necessary for NZX to fulfil its role as regulator of the markets provided by NZX including, but not limited to, fulfilling any obligations it has under a Reciprocal Arrangement or at law.

8.4.3 NZX will advise the relevant Market Participant or Advisor, who has provided information pursuant to **Rule 8.3**, when the requested information has been received by NZX.

## 8.5 GOOD BROKING PRACTICE

8.5.1 Each Market Participant or Advisor must observe Good Broking Practice  
(Amended 28/2/07)

8.5.2 (Revoked 28/2/07)

## 8.6 DESCRIPTION OF MARKET PARTICIPANT'S CONDUCT

Each Market Participant who is in any way associated with any person(s) whose functions or purposes include providing any services in New Zealand of any sort falling within the role, object or functions of NZX, shall, clearly identify to all other persons with whom that Market Participant may be dealing, and all other persons who may become aware of that Market Participant's conduct, the distinction between conduct undertaken by that Market Participant as a Market Participant, and conduct undertaken in the course of, or by virtue of, that Market Participant's association with that other person.  
(Amended 28/2/07)

## 8.7 SERVICES PROVIDED BY NZX

8.7.1 In relation to disseminating information or providing access to NZX facilities (including, but not limited to the FASTER System and the Trading System) (the **Services**), each Market Participant or Advisor acknowledges that the Services:  
(Amended 28/2/07)

- (a) Are provided to the Market Participant or Advisor on the basis of the costs and fees set out in NZX’s Market Participant fee schedule as amended from time to time by NZX;
- (b) May incorporate or rely upon intellectual property which is owned by, or licensed to, NZX;
- (c) May be subject to additional terms and conditions to be agreed between that Market Participant or that Advisor and NZX including, but not limited to, Service Level Agreements; and
- (d) May incorporate information produced for the confidential use of Market Participants or Advisors only, without it being specifically delineated but in circumstances that require each Market Participant or Advisor to respect absolutely that confidentiality.

**8.7.2** If NZX is satisfied that a Market Participant or Advisor is misusing any NZX Services, including for the purpose of promoting or conducting business in the course of its association with any person, group or association other than NZX, NZX may at any time and from time to time at the cost of that Market Participant or Advisor restrict or suspend that Market Participant’s or Advisor’s access to the Services.

## **8.8 BENEFICIAL OWNERSHIP OF MARKET PARTICIPANT**

**8.8.1** With the exception of Market Participants who are also listed Issuers, each Market Participant that is a company or, in the case of a Market Participant that is a partnership, any of whose partners is a company, must:

- (a) In the case of a Market Participant that is a company provide NZX with a schedule of its shareholders, and in the case of a Market Participant that is a partnership, provide NZX with a schedule of the shareholders of each company that is a partner; and
- (b) Identify the Beneficial Owners of the shares provided in the schedule under **Rule 8.8.1(a)** and the number of shares held by each Beneficial Owner. *(Amended 28/2/07)*

**8.8.2** Each Managing Principal or Responsible Executive of a Market Participant (as applicable) shall maintain an up-to-date and accurate register containing the information required by **Rule 8.8.1**. *(Amended 28/2/07)*

8.8.3 Where there is a change in the legal or Beneficial Ownership of any shares in either a Market Participant that is a company or in the company partners of a Market Participant that is a partnership, each Managing Principal or Responsible Executive of that Market Participant (as applicable) shall as soon as practicable, and in any event within **5 Business Days** of the change being made, notify NZX in writing of the change, such notice to give full details of the changes and confirm the identity of the Beneficial Owner of such shares. The register referred to in **Rule 8.8.2**, must also be updated as soon as possible and in any case within **5 Business Days** of the change being made. *(Amended 28/2/07)*

8.8.4 For the avoidance of doubt, **Rule 8.8** does not apply to Market Participants who are also listed Issuers. *(Amended 28/2/07)*

## 8.9 ORDERLY MARKET

8.9.1 Each Market Participant and Advisor must ensure their conduct promotes and helps maintain an orderly market. For the purposes of this **Rule**, each Market Participant and Advisor must ensure that their actions comply with:

- (a) The obligations of Market Participants or Advisors (whichever is applicable) as set out in these **Rules**; and
- (b) Any directions given from time to time by NZX and at all times observe Good Broking Practice. *(Amended 28/2/07)*

8.9.2 *(Revoked 28/2/07)*

## 8.10 DEALING PRIOR TO APPROVAL OF LISTING AND QUOTATION

Where a prospectus or investment statement for an initial public offer or a subsequent public offer states that an application has been made under the Listing Rules to list an Issuer, or to quote that Issuer's Securities on a market provided by NZX, no Market Participant or Advisor shall deal in the secondary market in the Securities concerned, either Acting as Principal or on behalf of a client, until the Issuer has been listed by NZX, or the Securities are quoted on a market provided by NZX. *(Amended 28/2/07)*

## 8.11 FIDELITY GUARANTEE FUND

8.11.1 NZX shall make arrangements for a fidelity guarantee fund (the **Fidelity Guarantee Fund**) for the purpose of meeting just claims from persons who have suffered pecuniary loss from a broking transaction as a result of any Market Participant Accepting Client Assets (“**Insured Persons**”) being unable to meet its financial obligations, **provided that** nothing in this **Rule**, or in establishing and maintaining the Fidelity Guarantee Fund, shall constitute a legal obligation to any such person. *(Amended 28/2/07)*

8.11.2 The Fidelity Guarantee Fund shall be managed and controlled solely by NZX, which may at its complete discretion constitute a Fidelity Guarantee Fund Committee to assist with such management. If so constituted, the Fidelity Guarantee Fund Committee shall be accountable to NZX and shall have such powers as NZX may determine from time to time.

## 8.12 MARKET PARTICIPANT AND ADVISOR FEES

8.12.1 Each Market Participant and Advisor shall pay to NZX:

- (a) Such annual contribution; and
- (b) Such additional levy,

in each case, in the manner and on such terms as are from time to time fixed by NZX.

8.12.2 In setting any amount payable by any class of Market Participant or Advisor, NZX may differentiate between classes of Market Participant and each Market Participant or Advisor, at its complete discretion. No person shall be entitled to a refund of any contributions or levies paid under this **Rule 8.12**.

## 8.13 INSURANCE

8.13.1 NZX may enter into insurance contracts which may supplement, replace or otherwise contribute to any payment made from the Fidelity Guarantee Fund as a result of any just claim being met, or to reduce the risk of such a claim being made against the Fidelity Guarantee Fund.

8.13.2 The premium for such insurance may, at the complete discretion of NZX, be paid from the capital of the Fidelity Guarantee Fund, the income of the Fidelity Guarantee Fund, levies upon Market Participants or upon market transactions, or any combination thereof.

## 8.14 LIMIT ON CLAIMS

8.14.1 Subject to **Rule 8.14.2**, a person claiming to have suffered a loss under **Rule 8.11.1** and seeking reimbursement from the Fidelity Guarantee Fund or any related scheme of insurance shall not be entitled to receive more than \$20,000 (or such greater amount as NZX may at its complete discretion determine in that particular case) in respect of any loss suffered as a result of the acts or defaults of any one or more Insured Person.

8.14.2 The total amount payable out of the Fidelity Guarantee Fund or any related scheme of insurance, to meet claims (as limited by **Rule 8.14.1**) arising out of the inability of any one or more Insured Person to meet its financial obligations shall be limited to the lesser of:

- (a) The amount/s claimed; or
- (b) \$500,000; or
- (c) Such amount as may be from time to time determined by NZX under **Rule 8.14.3**.

8.14.3 NZX at its sole discretion shall determine the extent (if any) to which any claim on the Fidelity Guarantee Fund shall be met.

## 8.15 DISPUTES BETWEEN MARKET PARTICIPANTS

8.15.1 Disputes between Market Participants may be referred in writing for determination to NZX at the option of the parties in dispute who shall nominate a person to act as arbitrator in respect of that dispute.

8.15.2 All disputes referred to NZX under **Rule 8.15.1** must be kept confidential between the disputing parties and NZX until such time as the parties agree otherwise.

8.15.3 Any determination made by the arbitrator appointed under **Rule 8.15.1** shall be final and binding on the Market Participants in dispute.

**8.15.4** An arbitrator appointed under **Rule 8.15.1**:

- (a) May prepare and circulate to each Market Participant or to any selection of Market Participants as the arbitrator thinks fit, a statement of its findings on any dispute; and
- (b) May make such order as it considers fit regarding the payment of costs of the hearing of any dispute.

**8.15.5** Any action in respect of a matter referred to NZX under this **Rule 8.15** shall be commenced only to enforce the decision given under these **Rules** and then only after the Market Participant the complaint has been laid against has, after **10 Business Days'** prior notice in writing, refused or neglected to carry out such decision. In any such action, no Market Participant shall dispute the correctness of such decision or award, or the fact that it was given in accordance with these **Rules**.

## **8.16 BUSINESS CONTINUITY PLAN AND EMERGENCY PROCEDURES**

**8.16.1** Each Market Participant must establish a business continuity plan and Emergency Procedures for the short, medium and long term disruption of that Market Participant's Broking Business.

**8.16.2** For the avoidance of doubt, each Market Participant's business continuity plan and Emergency Procedures must as a minimum include;

- (a) The management framework for implementation of that Market Participant's business continuity plan and Emergency Procedures;
- (b) The resource requirements, including people, systems and other assets and arrangements for how these resources will be obtained;
- (c) The recovery priorities for that Market Participant's operational processes affected by the disruption;
- (d) Communication arrangements in relation to the disruption and how this will be communicated to internal and external parties;
- (e) System processes for determining the integrity of the information affected by the disruption; and



- (f) Processes to test the adequacy and effectiveness of that Market Participant's business continuity plan and Emergency Procedures.

**8.16.3** Each Market Participant must notify NZX in writing if any emergency arises (such as, but not limited to, the failure of a Market Participant's accounting system), which results in that Market Participant being unable to comply with the requirements as set out in the Rules. As part of this notification, each Market Participant must advise NZX of the specific steps the Market Participant is undertaking to deal with and, if possible, remedy that emergency.

## **8.17 PAYMENT OF FEES**

Each Market Participant must pay such fees, levies and other charges incurred by or on behalf of that Market Participant as shall from time to time be fixed by NZX. *(Amended 28/2/07)*