

NZX Participant Guidance Note

Prescribed Person Trading

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This Guidance Note has been issued by NZX Limited (**NZX**) to promote market certainty and assist market participants. This Guidance Note sets out NZX's general approach to the subject, but is not to be regarded as a definitive statement of the application of the NZX Participant Rules or NZX Derivatives Market Rules in every situation. Examples set out in this Guidance Note are limited and are not designed to cover all eventualities. NZX may replace Guidance Notes and Practice Notes at any time and an NZX Participant should ensure it has the most recent versions of these documents. Guidance Notes do not constitute legal advice. NZX recommends that NZX Participants take advice from qualified persons.



1. Introduction

The purpose of this Guidance Note is to provide information for NZX Participants in respect of the Rules outlined under Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19 (**Prescribed Person Trading Rules**), regarding Prescribed Persons that trade NZX Quoted Products or Derivatives over NZX Quoted Products including describing what NZX will view as “reasonable steps” in order for an NZX Participant to meet the relevant requirements of the Rules relating to its non-Employee Prescribed Persons.

The Prescribed Person Trading Rules seek to detect and deter market misconduct (or the perception of this occurring), which includes insider trading and aim to balance the personal investment interests of Prescribed Persons with the responsibilities of NZX Participants to ensure that conflicts of interest are managed appropriately.

Good practices in respect of Prescribed Persons contribute to fair, orderly and transparent markets and assist NZX Participants in managing potential conflicts of interest and monitoring the effectiveness of information barriers.

1.1 Scope of this Guidance Note

This Guidance Note addresses considerations relating to Prescribed Persons under both the Participant Rules and the Derivatives Market Rules.

Please note that any examples set out in this Guidance Note have been provided for illustrative purposes, are limited and are not designed to cover all eventualities.

References to NZX Participants in this Guidance Note include:

- Participants, other than Advisers, as defined in the Derivatives Market Rules; and
- Trading Participants and NZX Advising Firms as defined in the Participant Rules,

as specified in each relevant Rule.

Capitalised terms which are not defined in this Guidance Note have the same meanings given to them in the Rules.

Under Participant Rule 21.4.1 and Derivatives Market Rule 14.13.1, NZX may act by and through NZX Regulation Limited (**NZ RegCo**) in performing any function or discharging any power set out in the Rules. References in this Guidance Note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

2. Prescribed Persons

The definitions of “Prescribed Person”, “Broking Business”, “Employee”, “Immediate Family”, “Family Company” and “Family Trust” are the primary definitions that set out who is required to comply with Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19. These definitions are supported by other definitions within the Rules, such as “Independent Director”.

2.1 Definition of Prescribed Persons

A **Prescribed Person** of an NZX Participant means:

- (a) an Employee of that NZX Participant;
- (b) the Immediate Family of an Employee of that NZX Participant;
- (c) a Family Company or Family Trust of a person referred to in (a) or (b); and
- (d) any company, body corporate or other entity controlled by any one or more of the persons referred to in paragraphs (a) to (c) (where "control" has the meaning set out in clause 48 of Schedule 1 of the FMC Act);

But does not include the NZX Participant itself.

2.2 Primary supporting definitions

Broking Business includes:

- (a) trading in Securities when Acting as Principal, or for and on behalf of, or as agent for, any other person;
- (b) giving investment advice relating to NZX Quoted Products to any other person for remuneration; and/or
- (c) any other business performed by a Market Participant which relates to Securities and which impacts on the financial position of the Market Participant including, but not limited to, settlement and delivery of Securities.

An **Employee** of an NZX Participant includes all persons engaged by that NZX Participant and includes Directors, partners, employees, officers, Agents, Dealers, Advisers and contractors of that NZX Participant, but does not include an Independent Director of the NZX Participant.

A **Family Company** means, in relation to an Employee or the Immediate Family of an Employee, a company or other body corporate:

- (a) controlled by that Employee and/or any one or more of that Employee's Immediate Family, or
- (b) in which that Employee and/or any one or more of that Employee's Immediate Family is beneficially entitled to more than 50% of the issued capital or holds or controls more than 50% of the voting power.

A **Family Trust** means, in relation to an Employee or the Immediate Family of an Employee, a trust:

- (a) of which that Employee and/or any one or more of that Employee's Immediate Family is the sole or major beneficiary (where a "major beneficiary" is a beneficiary potentially able to receive a benefit under the trust of 33% or more of the value of the assets of the trust); or
- (b) under which that Employee and/or any one or more of the Employee's Immediate Family, as a trustee or otherwise, has the power to distribute 33% or more of the value of the trust assets to a beneficiary;

and, in either case, in relation to which that Employee and/or any one or more of that

Employee's Immediate Family has the ability to remove all or a majority of the trustees and replace those trustees with their own nominees.

Independent Director means a director of a Market Participant who is not an executive officer or employee of the Market Participant and is not involved in the day to day Broking Business of the Market Participant.

Immediate Family includes the spouse or de facto partner and dependent children of an individual.

2.3 Scope of 'Employee'

The Prescribed Persons Trading Rules apply to Prescribed Persons which includes an Employee of an NZX Participant, including those employees that do not perform Broking Business activities. A contractor should only be interpreted as an Employee for the purposes of the Prescribed Person requirements where that contractor performs Broking Business (as defined) activities.

NZX considers that "Broking Business" activities include (but are not limited to) the following duties:

- trading in Securities in accordance with clause (a) of the Broking Business definition;
- giving investment advice in accordance with clause (b) of the Broking Business definition;
- research analysis;
- investment banking;
- compliance/regulatory activities;
- operations/settlement activities; and
- financial services.

NZX considers that a person who carries out administrative services that are purely administrative in nature, human resources, or information technology functions for an NZX Participant will not be carrying out Broking Business where the NZX Participant physically segregates that person from Employees who conduct Broking Business activities. NZX considers that such segregation should include access to systems and information (such as directories, and any form of meeting or electronic communication used to discuss client Orders and trade ideas), as well as physical separation (with no access to trading areas occupied by client traders).

2.3 Scope of 'Independent Director'

NZX considers that participation by a Director in standard Board meetings and/or voting on resolutions arising out of them is not involvement in the "day to day Broking Business of the Participant", for the purposes of the definition of "Independent Director".

In addition, NZX considers that participation by a Director on a Board committee that has delegated responsibility from the Board to make governance decisions (including internal risk appetite related decisions in a particular area, involving approving and testing relevant proposed management recommendations) but no involvement in the management decision itself, is also not involved in the "day to day Broking Business of the Participant", for the purposes of the definition of "Independent Director". The NZX Participant will need to satisfy itself, and evidence its position, with respect to the relevant committee.



2.4 Definition of 'Control'

Control is defined in clause 48 of Schedule 1 of the FMC Act. Under this clause, a person controls an entity (in this case a Family Company or a Family Trust) if they are the entity's holding company; or have the capacity to determine the outcome of decisions about the entity's financial and operating policies.

A person has capacity to determine the outcomes of a decision if they:

- are able to exert practical influence; and
- that same person has a practice or pattern of behaviour which affects the entity's financial or operating policies.

For the avoidance of doubt, a person does *not* control the entity just because the person and a third person jointly can determine the outcome of decisions about the entity's financial and operating policies.

3. Making Employees & Non-Employees Aware

3.1 Informing Employees & non-Employees about the Prescribed Person requirements

Under Participant Rule 10.5.5(a) and Derivatives Rule 4.18.6(a), each NZX Participant must ensure that its Employees are aware of the obligations of the NZX Participant in relation to Prescribed Person trading under Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19.

NZX expects that an NZX Participant will ensure that new Employees are provided with internal policies and procedures in respect of the Prescribed Person requirements immediately on, or prior to, the commencement of their employment. In addition, an explanation of these requirements should be provided to the new starter within two Business Days of the commencement date of the new Employee. The explanation should include a discussion of who else is captured as a Prescribed Person in respect of that new Employee as a result of their employment, and should clearly express that no Trading is permitted on any accounts of either the Employee or their related non-Employee Prescribed Persons until the employing NZX Participant advises otherwise.

Under Participant Rule 10.5.5(b) and Derivatives Rule 4.18.6(b) the NZX Participant must also take reasonable steps to inform its Prescribed Persons who are not its Employees that they are captured as Prescribed Persons and the requirements that are associated with this.

3.2 Reasonable steps to inform non-Employee Prescribed Persons

The particular method used to inform non-Employee Prescribed Persons will be specific to each NZX Participant. However, the information that must be provided will be the same. In addition, records should be kept confirming that communications have occurred.

A method that could be adopted is to prepare a standard form document setting out:

- that the person is now captured as a Prescribed Person;

- what a Prescribed Person is;
- the requirements for Prescribed Persons, covering:
 - the need to provide the relevant NZX Participant with details of any trading accounts and how these will need to be managed;
 - when and how to arrange to trade elsewhere;
 - the requirement to obtain pre-approval in writing for all relevant Orders and how to obtain this approval;
 - the restrictions around primary market activity;
 - the holding period requirements; and
 - what to do if they have any questions.

This standard form document can then be provided to the non-Employee Prescribed Persons, either by sending it directly to them if appropriate or by having the Employee to whom they are related provide it to them and obtaining confirmation from the Employee that they have done so. Confirmation from the Employee that any additional relevant non-Employee Prescribed Persons have also been provided the document could then be provided as part of the annual undertakings required by Participant Rule 10.5.5(c) or Derivatives Market Rule 4.18.6(c).

NZX Participants should not wait until the non-Employee Prescribed Person opens an account to provide this information, steps should be taken to ensure that non-Employee Prescribed Persons are aware of the trading restrictions as soon as possible after the new Employee starts, but in any case within three Business Days of the commencement date of the relevant Employee. It is noted that these timeframes reflect best practice and that Participants may expect enquiry from NZX, should certain actions take longer. Although NZX recognises that there are circumstances where it will not be relevant to immediately notify all non-Employee Prescribed Persons, for example dependent children that are minors.

4. Written Authority

4.1 Employee Prescribed Persons must have written authority

Under Participant Rule 10.5.2 and Derivatives Rule 4.18.2, an NZX Participant must ensure that its Employee obtains its written authority before an Order to which the Prescribed Person Trading Rules apply is placed for the account of that Employee.

This requirement for an NZX Participant to ensure that its Employee obtains its written authority prior to placing their Order for the account of that Employee applies whether the Order is placed with that NZX Participant, by an alternative executing NZX Participant, or elsewhere.

An NZX Participant can only permit its Employees and non-Employee Prescribed Persons to place Orders, to which the Prescribed Person Trading Rules apply, through another NZX Participant when it meets its obligations under Participant Rule 10.5.14 or Derivatives Rule 4.19.1. Section 5 of this Guidance Note provides further detail in relation to trading on behalf of a Prescribed Person of another NZX Participant.



4.2 Who should provide the written authority

Authority in writing must come from one of the following:

- the Compliance Manager of the NZX Participant; or
- the Managing Principal or Responsible Executive (as applicable);
- a Delegate of the Compliance Manager, Managing Principal or Responsible Executive who has the authority to authorise Prescribed Person trading; or
- an automated system that meets the requirements of the Procedures.

Orders to which the Prescribed Person Trading Rules apply cannot be placed if written authority is not provided by a person set out above, or provided through an automated system that meets the requirements of NZX Participant Procedure 5.1 or NZX Derivatives Market Procedure 4.1.

Each NZX Participant that chooses to use an automated system to provide written authority for a Prescribed Person's Order is responsible for setting its own conditions within the automated system to enable the NZX Participant to be satisfied that it has sufficient oversight of the Order for which approval is sought. An NZX Participant is responsible for any written authority provided via an automated system.

4.3 Non-Employee Prescribed Persons – reasonable steps for written authority

Under Participant Rule 10.5.3 and Derivatives Rule 4.18.3, an NZX Participant must ensure that it takes reasonable steps to ensure that a Prescribed Person who is not its Employee, obtains its written authority, before an Order to which the Prescribed Person Trading Rules apply, is placed for the account of that person.

The obligation to meet this requirement belongs to the NZX Participant rather than the non-Employee Prescribed Person.

Where an NZX Participant provides written authority for an Order of a Prescribed Person who is not its Employee, the NZX Participant does not additionally need to provide written authority in respect of that Order to the Employee whose relationship caused that person to be a Prescribed Person.

NZX will regard an NZX Participant to be 'taking reasonable steps' to ensure that its non-Employee Prescribed Person obtains its written authority to place Orders for the account of that non-Employee Prescribed Person where the NZX Participant follows the processes for informing its Prescribed Person of their obligations as set out in section 3 of this Guidance Note, and takes steps to remind its Prescribed Person of the requirement to obtain pre-approval where a failure to do so is detected as part of the Participant's daily monitoring of Prescribed Person trading (including where approval has been obtained but the value or volume of the subsequent trade differs from the approval).

NZX recognises that it will not always be possible for an NZX Participant to ensure that its non-Employee Prescribed Person obtains its written authority before it places an Order for the non-Employee Prescribed Person's account, particularly where this is done through another NZX Participant or an overseas entity. NZX expects that an NZX Participant will take reasonable

steps to ensure that its non-Employee Prescribed Persons are aware of, and comply with the requirement to obtain the NZX Participant's prior written authority.

4.4 Written authority obligations for certain types of Orders and transactions

The requirement for written authority applies to each individual Order to buy or sell any applicable Security or product for the account of the Prescribed Person as set out in Participant Rule 10.5.1 and Derivatives Market Rules 4.18.1.

The Prescribed Person Trading Rules only apply to Orders for certain types of financial products and include specific exclusions from the requirements, including in relation to Orders relating to KiwiSaver schemes and Discretionary Accounts in certain circumstances. In addition Participant Rule 10.5.1(f) and Derivatives Rule 4.18.1(f) exclude Orders to buy or sell Fund Securities in an Index-tracking Fund that has been designated by NZX from the Prescribed Person Trading Rules. The list of designated Index-tracking Funds is available on NZX's website [here](#).

The requirements for NZX Participants relating to written authority apply also to primary market transactions such as participation in an initial public offer or a placement, but do not apply to corporate actions that are made available on a pro-rata basis (such as a dividend reinvestment, rights issue or shares allocated through an employee share plan). However, subsequent trading of the shares acquired through the corporate actions will require written authority.

An auto-invest Order is a standing instruction given to an NZX Participant to regularly repeat an Order. Where a Prescribed Person wishes to set up a standing auto-invest Order for that person's own account, an NZX Participant may provide written authority for the standing Order without the need to provide written authority each time the Order is placed, provided the parameters of the Order do not change.

Example One

Participant C employs Jane. Jane wishes to set up an auto-invest Order through an account held with Participant C, buying \$50 worth of Company X shares on a weekly basis.

Participant C is required to provide the required written authority for Jane's auto-invest Order, but is not required to provide written authority for subsequent individual Orders placed as part of the auto-invest Order.

Jane now wishes to alter her auto-invest Order to buying \$50 worth of Company X shares and \$50 worth of Company Y shares on a fortnightly basis.

The changes to the parameters of Jane's auto-invest Order require Participant C to provide written authority for the change to the auto-invest Order that relates to Company Y's shares, but written authority is not required for subsequent individual Orders placed as part of the revised auto invest Order.

4.5 Record keeping

Under Participant Rule 10.5.8 and Derivatives Rule 4.18.7 an NZX Participant must retain

records of all requests for written authority, whether granted or not.

Where an NZX Participant uses an automated system to provide approval for an Order, it must ensure that appropriate records are kept that meet the requirements of the Rules.

5. Trading on behalf of a Prescribed Person of another NZX Participant

5.1 Obligations of authorising NZX Participant

Under Participant Rule 10.5.14 and Derivatives Rule 4.19.1 each NZX Participant must not permit its Prescribed Person to place Orders that are subject to Participant Rule 10.5.2 and 10.5.3 and Derivatives Rule 4.18.2 and 4.18.3 through another NZX Participant unless it:

- arranges for the executing NZX Participant to provide copies of contract notes to its Compliance Manager;
- maintains a register of each Prescribed Person permitted to hold accounts with another NZX Participant; and
- has arrangements in place to provide pre-approval for its Prescribed Persons' Orders.

5.2 Obligations of executing NZX Participant

An NZX Participant who executes an Order for a Prescribed Person of another NZX Participant is obligated to provide a contract note to that NZX Participant. This supports the ability for NZX Participants to comply with their obligations under Participant Rule 10.5.14 and Derivatives Rule 4.19.1 to have arrangements in place for an executing NZX Participant to provide copies of contract notes before allowing their Prescribed Persons to place Orders through another NZX Participant.

Under Participant Rule 10.5.15 and Derivatives Rule 4.19.2, each NZX Participant who executes an Order for the account of a Prescribed Person of another NZX Participant must ensure that its Client Agreement with the Prescribed Person enables it to meet its obligation to provide a contract note to that other authorising NZX Participant within the timeframe specified in Participant Rule 15.16 and Derivatives Rule 9.8.

Where an NZX Participant has existing general terms in its Client Agreement which allow it to disclose client information for the purposes of complying with NZX's Rules, NZX considers that this will be sufficient for an executing NZX Participant to comply with its obligation under Participant Rule 10.5.15(a) and Derivatives Rule 4.19.2.

5.3 Arrangements for non-Employee Prescribed Persons

NZX acknowledges the reduced level of authority able to be exercised by an NZX Participant over its non-Employee Prescribed Persons, and that written authority may not be able to be obtained directly by a non-Employee Prescribed Person.

An NZX Participant should include in its policies and procedures that it is required to maintain under Participant Rule 10.5.11 and Derivatives Rule 4.18.10, a description of the arrangements

it has in place to ensure that its non-Employee Prescribed Persons obtain written authority for Orders placed for accounts of that person. These required policies and procedures must be consistent with the NZX Participant's obligations under the Rules.

5.4 Written authority for Prescribed Person of another NZX Participant

An NZX Participant must provide written authority for Orders for the accounts of its Employees' Orders, and take reasonable steps (see section 4.3 of this Guidance Note) to ensure that its non-Employee Prescribed Persons obtain its written authority, including where the Order is placed through an alternative NZX Participant. This is because the NZX Participant to whom the Prescribed Person is related is the entity through which the Prescribed Person is most likely to be exposed to material information or subject to a conflict of interest (rather than the NZX Participant who executes its Orders).

The NZX Participant who provides the written authority must also maintain the record of information required by Participant Rule 10.5.8 and Derivatives Rule 4.18.7.

Example Two

Participant A employs Theo. Theo's son Jason is 15 years old. Theo wants to expose Jason to the capital markets and wishes to set up an online trading account for Jason with Participant B, through which Trades in securities Quoted on NZX's markets will be undertaken.

Participant A is required to take reasonable steps to ensure that Jason obtains its written authority in relation to Jason's Orders, and record the approvals and Order details for those Trades, as Theo is employed by Participant A.

Participant B is required to ensure that it provides duplicate contract notes from Jason's Orders to Participant A within the specified timeframe.

In the rare case where a person is a Prescribed Person of two NZX Participants it will be necessary for the employing NZX Participant to provide its written authority for the Order and for both NZX Participants to receive contract notes where they do not execute the Order on behalf of the Prescribed Person. The non-employing NZX Participant will also need to take reasonable steps to ensure its written authority is provided for the Order.

Example Three

Participant A employs Theo. Theo's wife Mary is employed by Participant B. Mary wishes to trade products Quoted on NZX's markets.

Mary is a non-Employee Prescribed Person of Participant A, through the operation of clause (b) of the Prescribed Person definition given her relationship with Theo. Mary is also a Prescribed Person of Participant B through her employment relationship with Participant B.

In this example Participant B must provide the required written authority for Mary, and Participant A must take reasonable steps to ensure Mary has obtained its written authority.

Participant A and Participant B must ensure that the executing Trading Participant sends them a duplicate contract note in relation to Mary's Orders.

The executing Trading Participant must ensure that it sends both Participant A and Participant B duplicate contract notes in relation to Mary's Orders.

Example Four

The same scenario as example three, except that Theo rather than Mary wishes to trade products Quoted on NZX's markets.

Theo is a Prescribed Person of Participant A through his employment relationship with Participant A. Theo is also a non-Employee Prescribed Person of Participant B, through the operation of clause (b) of the Prescribed Person definition given his relationship with Mary.

In this example Participant A must provide the required written authority for Theo, and Participant B must take reasonable steps to ensure Theo has obtained its written authority.

Participant A and Participant B must ensure that the executing Trading Participant sends them a duplicate contract note in relation to Theo's Order.

The executing Trading Participant must ensure that it sends both Participant A and Participant B duplicate contract notes in relation to Theo's Orders.

6. Holding Period

A Prescribed Person is required to hold all Securities, excluding Derivatives Contracts, purchased for a minimum period of 5 Business Days (the **Holding Period**) from and including the date of purchase or allotment. If, because of special personal circumstances, a Prescribed Person needs to sell their Securities during the Holding Period then they must make an application in writing, as permitted by Participant Rule 10.5.13, to the appropriate person referred to in section 4 of this Guidance Note and written authority must be obtained prior to placing an Order.

6.1 Special Personal Circumstances

Special personal circumstances do not include changes in market prices or other market events. Under Participant Rule 10.5.13 each NZX Participant must retain a record of any such requests which must at a minimum include a copy of the dated written request and the special personal circumstances, whether the request was granted and any conditions imposed on the Prescribed Person making the request.

7. Public and Non-public Offers

Prescribed Persons of the NZX Participant cannot participate in or request allocation of Securities in any initial public offer, subsequent public offer or non-public offer (such as a book build) (**offers**) by an Issuer.

This restriction only applies where the employing NZX Participant is engaged by the Issuer in a role which gives the NZX Participant an influence over allocation of Securities under the offer - whether as a lead manager, joint lead manager, manager, underwriter or otherwise.

An NZX Participant that is engaged by the Issuer in a capacity set out above *may* offer an

identified percentage of Securities as part of the offer, to Prescribed Persons if the Managing Principal or Responsible Executive (as applicable) and the Compliance Manager certifies in writing to NZX the matters set out in Participant Rule 10.5.7.

Where the employing NZX Participant is not engaged by the Issuer, but submits a bid to those who are engaged by the Issuer for a firm allocation, the NZX Participant may include Prescribed Person requests in this bid. However, in allocation of the firm allotment, the NZX Participant will still need to ensure it gives priority to client Orders.

Prescribed Persons may participate in:

- any public pool of any new offer of Securities by an Issuer; and/or
- any new offer of Securities if the Prescribed Person has a pre-existing right in the new offer of Securities.

8. Dealer Restrictions

There are additional restrictions on what Dealers are permitted to do in respect of Prescribed Person Orders. These relate to their execution function and prohibit their involvement in the execution of Orders for their own account, or the Orders for accounts of non-Employee Prescribed Persons who are associated with them. These restrictions include other accounts that the Dealer may have authority in respect of, such as discretionary accounts.

9. Compliance Monitoring

NZX Participants must have established policies and procedures in relation to Trading by Prescribed Persons, and must advise Employees of those policies and procedures. These policies and procedures must include controls and monitoring in respect of the client order priority requirements that apply to Prescribed Person Orders, as set out in Participant Rule 15.15 and Derivatives Market Rule 9.8. (See also Trading Conduct Guidance Note.)

An NZX Participant must establish and maintain up-to-date internal procedures to monitor Trading by its Prescribed Persons, which enable the NZX Participant to discover any breaches of its policies and procedures and the Rules promptly and, in any case, within one Business Day of any breach.

NZX Participants must obtain an annual written undertaking from each of its Employees confirming that they have at all times complied with their obligations in respect of Prescribed Person Trading to ensure compliance with Participant Rule 10.5.5(c) and Derivatives Market Rule 4.18.6(c).

Under Participant Rule 10.5.5(d) and Derivatives Rule 4.18.6(d), NZX Participants must perform a daily reconciliation check on the approval(s) sought and the trading by its Prescribed Persons to ensure compliance with Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19. This reconciliation must include trading undertaken by Prescribed Persons through other NZX Participants and should include a check between approvals sought against contract notes received for trades through other NZX Participants.