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Disclaimer

This practice note has been issued by NZX to promote market certainty and assist Market Participants. This practice 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 Rules in every situation. NZX may replace Guidance Notes and Practice Notes at any time and a Market Participant should ensure it has the most recent versions of those documents. This does not constitute legal advice. NZX recommends that Market Participants take advice from qualified persons.

PRACTICE NOTE PN 03/05 – CLIENT AGREEMENTS

INTRODUCTION

This Practice Note is published to provide information to Client Advising Participants in relation to the implementation of Rules 9.6 and 9.7 of the Participant Rules (Rules).

Requirement to enter into Client Agreements – Rules 9.6 and 9.7

Pursuant to Rule 9.6, all Client Advising Participants are required to have entered into a signed written Client Agreement with all post-January 1999 clients. A Client Advising Participant must not trade on behalf of a client without first obtaining a signed written Client Agreement with that client (Rule 9.7)

Minimum Prescribed Terms in Client Agreement

Rule 9.6 sets out a minimum set of prescribed terms that each Client Agreement must contain. These are listed below:

- The Client Advising Participant's terms of business;
- Details of the means by which the client's instructions will be accepted by the Client Advising Participant;
- Risk Warnings in relation to the class of Security and/or Financial Instrument in respect of which the Client Advising Participant provides advice and/or executes Orders, particularly in relation to instructions on Short Selling of Securities or dealings in Derivatives or warrants or any other Security as advised from time to time by NZX;
- Details of the Client Advising Participant's arrangements, if any, with a Trading Participant to facilitate Trades for that client which must, at a minimum, include the matters in Rule 5.15.2;
- Details of the Client Advising Participant's arrangements with a Delivery and Settlement Participant, if any, in relation to the delivery and settlement of Trades for that client which must, at a minimum, include the matters in Rule 11.8.1(b); and
- If the Client Advising Participant is facilitating a Short Sale on behalf of a client, details of any additional Margin Cover that may be required if there is a rise in the market price of the Security the subject of the Short Sale.

Amendment or Deletion of Other Terms

NZX Compliance has been contacted by some clients who have raised concerns about certain terms contained in their broker's Client Agreement, in particular, "disclaimers". When the client has suggested amendment of the Client Agreement, or deletion of a particular term, these clients have apparently been told that they have to sign a form of Client Agreement because of the Rules and if they do not, their broker can no longer act on their behalf.

The purpose of this Practice Note is to advise Client Advising Participants that they should not be citing the requirement to obtain a signed Client Agreement as the reason as to why they are unwilling to consider suggested amendments or deletions to their Client Agreement, where the terms the client wishes to negotiate are not those terms that it is mandatory for the Client Agreement to contain. The two issues are clearly not the same.

A Client Advising Participant may decide that it does not wish to negotiate terms and conditions with a client, say due to the time and cost involved or due to an unwillingness to create different categories of clients. If this is the reason, then NZX strongly suggests that this should be clearly expressed to clients.

Common Law and Statutory Requirements

NZX also takes this opportunity to remind Client Advising Participants that the terms and conditions in their Client Agreement should be consistent with common law and statutory requirements. For example, the terms and conditions should not infringe upon any relevant provisions of the Fair Trading Act 1986. For this reason, NZX strongly suggests that Client Advising Participants should prepare their terms and conditions on the basis of legal advice.

If you have any questions in relation to the NZX Participant Rules and/or compliance with these rules, please contact NZX Participant Compliance at compliance@nzx.com.