

SECTION 5

CLIENT ADVISING PARTICIPANTS

5.1 APPLICABLE CLIENT ADVISING PARTICIPANTS

5.1.1 For the purpose of these **Rules**, all:

- (a) NZX Advising Firms;
- (b) NZX Trading and Advising Firms; and
- (c) Bank Only Participants,

shall be deemed to be Client Advising Participants and must comply with this **Section 5**.

5.1.2 Nothing in **Rule 5.1.1** prohibits NZX from appointing an Approved Organisation as a Client Advising Participant pursuant to **Rule 3.18**.

5.2 REQUIREMENT TO BE AN NZX ADVISOR OR NZX ASSOCIATE ADVISOR TO ADVISE CLIENTS

Each Client Advising Participant must ensure that all persons who provide advice to clients on transactions in relation to Securities (including Short Selling and margin trading), Financial Instruments or any other instrument quoted on the NZSX, NZAX or NZDX (and any other market provided by NZX that NZX advises is subject to **this Rule**) and/or deals in any one or more of the NZSX, NZAX and NZDX (and any other market provided by NZX that NZX advises is subject to **this Rule**) are designated NZX Advisors or NZX Associate Advisors. *(Amended 28/2/07)*

5.3 EXCEPTION TO RULE 5.2 – CLIENT ADVISING PARTICIPANTS IN THE NZDX MARKET

5.3.1 Notwithstanding **Rule 5.2** and subject to **Rule 5.4**, each Client Advising Participant, must ensure that all persons who provide advice to clients on transactions in relation to Securities, Financial Instruments or any other instrument quoted on the NZDX only or deals in the NZDX only (and does not provide advice or deal in respect of any other market operated by NZX) is

an NZX Advisor or an NZX Associate Advisor or is an Employee of the Client Advising Participant who: *(Amended 28/2/07)*

- (a) Has a minimum of **6 months** on the job training with a suitably qualified person;
- (b) Has a tertiary qualification in finance, economics, accounting or any other tertiary qualification directly related to the Securities market or has achieved a pass or such a grade or percentage as may be required from time to time by NZX in such examinations as NZX may from time to time prescribe;
- (c) Has appropriate work experience in the area of the financial markets;
- (d) Has made a written application to NZX for designation as an NZDX Advisor and NZX has approved that application. Applications shall be in the form and contain all information and provide all supporting documentation required by the form provided in **Appendix 3C**. The application shall be accompanied by a statutory declaration from that NZDX Advisor in the form provided in **Appendix 3D**; and
- (e) Has not got a history of bankruptcy, dishonesty or fraudulent activities; and
- (f) Has undertaken any training NZX may require from time to time. *(Inserted 28/2/07)*

5.3.2 In addition to **Rule 5.3.1**, each Client Advising Participant's Managing Principal or Responsible Executive (whichever is applicable) must provide an undertaking as provided for in **Appendix 3E** on behalf of any NZDX Advisor who wishes to be permitted to provide advice to clients under **Rule 5.3.1** requesting and supporting the designation of that person as an NZDX Advisor of that Client Advising Participant. *(Amended 28/2/07)*

5.3.3 Upon NZX designating a person as an NZDX Advisor in accordance with **Rule 5.3**, these **Rules** shall form a binding contract between the designated NZDX Advisor and NZX.

5.3.4 *(Revoked 28/2/07)*

5.4 NZX DISCRETION IN RELATION TO NZDX ADVISORS

NZX may, at its complete discretion, require as a condition of designation as an NZDX Advisor that the applicant undergo the accreditation and training required to be designated as an NZX Advisor or NZX Associate Advisor.

(Amended 28/2/07)

5.5 APPLICATIONS FOR NZX ADVISOR AND NZX ASSOCIATE ADVISOR

5.5.1 Applications by any natural person for designation as an NZX Advisor or an NZX Associate Advisor (**candidate**) shall be made in writing and shall provide all the information and supporting documentation required by the form provided in **Appendix 3** and shall be submitted to NZX for consideration by NZX. The application shall be accompanied by a statutory declaration by the candidate in the form provided in **Appendix 3A** and by an undertaking from the Market Participant that employs or otherwise contracts the candidate in the form provided in **Appendix 3B**. *(Amended 28/2/07)*

5.5.2 *(Revoked 28/2/07)*

5.5.3 Upon NZX designating a candidate as an NZX Associate Advisor in accordance with **Rule 5.6** or an NZX Advisor in accordance with **Rule 5.7**, these **Rules** shall form a binding contract between the designated NZX Associate Advisor or NZX Advisor (as the case may be) and NZX.

5.6 DESIGNATION AS AN NZX ASSOCIATE ADVISOR

5.6.1 NZX may at its complete discretion designate a candidate as an NZX Associate Advisor a when:

(a) The Applicant supplies evidence satisfactory to NZX to the effect that the candidate: *(Amended 28/2/07)*

(i) Has obtained a pass or achieved such a grade or percentage as may be required from time to time by NZX in such educational courses prescribed from time to time by NZX;

(Amended 28/2/07)

(ii) Is currently working under the supervision of an NZX Advisor, and has had Full Time experience for a continuous period of at

least the previous **six months** under the supervision of an NZX Advisor, or has had equivalent Securities industry experience (to be determined by NZX at its discretion); *(Amended 28/2/07)*

- (iii) Has delivered to NZX a statutory declaration in the form provided in **Appendix 3A**; *(Amended 28/2/07)*
 - (iv) Has provided to NZX in writing and, if required by NZX by statutory declaration, such other information as NZX may request; and
 - (v) Has provided an undertaking from the Client Advising Participant that employs or otherwise contracts the candidate in the form provided in **Appendix 3B** signed by the Managing Principal or Responsible Executive of that Client Advising Participant (whichever is applicable); *(Amended 28/2/07)*
- (b) Does not have a history of bankruptcy, dishonesty or fraudulent activities; and
- (c) Holds a sharebroker's licence where required to do so by law.

5.6.2 In exceptional circumstances NZX may consider and accept evidence of experience or qualifications and exempt a candidate from the educational course requirements of **Rule 5.6.1(a)(i)**. *(Amended 28/2/07)*

5.6.3 *(Revoked 28/2/07)*

5.7 DESIGNATION AS AN NZX ADVISOR

5.7.1 NZX may at its complete discretion designate a candidate as an NZX Advisor if the candidate:

- (a) Supplies evidence satisfactory to NZX to the effect that the candidate:
 - (i) Has obtained a pass or achieved such a grade or percentage as may be required from time to time by NZX in such educational course as prescribed from time to time by NZX; *(Amended 28/2/07)*

- (ii) Has been employed or otherwise contracted Full Time for a total of not less than **three years** in the **five year period** immediately preceding the receipt by NZX of the application in a Broking Office of a Client Advising Participant or of a member of a Recognised Securities Exchange, or has had equivalent Securities industry experience (to be determined by NZX at its discretion);
 - (iii) Has delivered to NZX a statutory declaration in the form provided in **Appendix 3A**;
 - (iv) Has provided to NZX in writing and, if required by NZX by statutory declaration, such other information as NZX may request; and
 - (v) Has provided an undertaking from the Client Advising Participant that employs or otherwise contracts the candidate in the form provided in **Appendix 3B** signed by the Managing Principal or the Responsible Executive of that Client Advising Participant (which ever is applicable); *(Amended 28/2/07)*
- (b) Does not have a history of bankruptcy, dishonesty or fraudulent activities; and
- (c) Holds a sharebroker's licence where required to do so by law.

5.7.2 In exceptional circumstances, NZX may consider and accept evidence of experience or qualifications, either for an exemption from the educational course requirements of **Rule 5.7.1(a)(i)** or in reduction of the **three year** full time employment requirement or extension of the **five year period** set out in **Rule 5.7.1(a)(ii)**, but not both. *(Amended 28/2/07)*

5.7.3 *(Revoked 28/2/07)*

5.8 CONTINUING REQUIREMENTS FOR ADVISORS

5.8.1 Every Advisor must at all times:

- (a) Observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency and within that person's competence;

- (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 Participants or Advisors; 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 holder);
- (c) Comply fully with all applicable Rules, any direction given from time to time by NZX, and at all times observe Good Broking Practice; and
(Amended 28/2/07)
- (d) Comply with such continuing professional development requirements as may be prescribed from time to time by NZX.

5.8.2 For the avoidance of doubt, **Rule 5.8.1** does not prohibit an Advisor or Market Participant from taking any proper action to inform NZX or other appropriate regulatory authority of a potential, suspected or actual breach of law or these **Rules** by another Advisor.

5.8.3 Each Advisor must undertake such ongoing training as required from time to time by NZX from an NZX Trainer or otherwise and must be accredited by the NZX Trainer at such intervals as determined by NZX.

5.9 NOTIFICATION OF CHANGES TO ADVISORS

5.9.1 Each Client Advising Participant shall:

- (a) Ensure that NZX has, at all times, an up-to-date list of Advisors employed by, or contracted to, that Client Advising Participant; and
- (b) Immediately notify and provide an amended list to NZX whenever an Advisor:
 - (i) Commences employment or contractual relations with; or

- (ii) Ceases to be employed by or contracted to,
that Client Advising Participant.

5.9.2 The notification made pursuant to **Rule 5.9.1(b)(ii)** must also contain the resigning Advisor's contact details (if able to be obtained) for the 6 month period after that Advisor ceases employment with that Client Advising Participant. *(Amended 28/2/07)*

5.10 PAYMENT OF FEES

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

5.10.2 If a Client Advising Participant's Advisor fails to comply with his or her obligations pursuant to **Rule 5.10.1** the Client Advising Participant who employs or contracts that Advisor will be responsible for meeting that Advisor's obligations pursuant to **Rule 5.10.1**.

5.11 ANTI MONEY LAUNDERING

5.11.1 Each Client Advising Participant must, in assessing the potential money laundering risk of a client, consider as a minimum the following:

- (a) That client's background (as known by that Client Advising Participant or the Employees thereof);
- (b) That client's past and present business activities;
- (c) That client's investment requests and requirements; and
- (d) The source and nature of that client's funds.

5.11.2 Each Client Advising Participant must have in place controls and procedures to mitigate the risk of introducing laundered funds. Each Client Advising Participant must ensure that its Employees are adequately trained to recognise and report to the Client Advising Participant's Compliance Manager or person designated as the anti-money laundering reporting officer suspected money laundering activities by a client. *(Amended 28/2/07)*

5.12 ADVICE IN AREAS OF ACCREDITATION ONLY

5.12.1 An Advisor of a Client Advising Participant must only provide advice to the clients of that Client Advising Participant in the Securities, Financial Instruments or products for which that Advisor is individually accredited by NZX for those markets where NZX requires an Advisor to be accredited.

5.12.2 For the avoidance of doubt this does not preclude an Advisor from providing advice to a client where that Advisor is competent to do so in respect of Securities or markets not provided by NZX.

5.13 *(Revoked 28/2/07)*

5.14 REVOCATION AND RE-DESIGNATION OF AN ADVISOR'S DESIGNATION *(Inserted 28/2/07)*

5.14.1 An Advisor may have his or her designation as an Advisor revoked immediately by NZX (which may be without further notice to the person), if:

- (a) That person has not been employed or contracted as an Advisor by a Client Advising Participant Full Time for a total of six months, unless granted leave of absence by NZX. Such leave of absence must be applied for in writing to NZX prior to the commencement of the six month period;
- (b) That person made a false or misleading declaration to NZX when applying for designation as an Advisor or in the course of performing that person's obligations as an Advisor;
- (c) That person is found guilty of any breach of the provisions of the Securities Act 1978, Securities Market Act 1988, an offence under the Companies Act 1993 or other companies or securities legislation or crime involving dishonesty (as defined in Section 2 of the Crimes Act 1961); and/or
- (d) That person fails to pay any fees, levies or other charges set by NZX which are due and payable as a condition of designation as an NZX Advisor.

5.14.2 An Advisor will have his or her designation as an Advisor revoked if NZX

Discipline declares that Advisor designation to be revoked.

5.14.3 Any Advisor that has had his or her designation as an Advisor revoked by NZX under **Rule 5.14.2** may:

- (a) Apply in writing to NZX for the reasons for the revocation and NZX shall, upon such a request, provide those reasons to the Advisor; and/or
- (b) Apply in writing to NZX for that decision to be reversed stating in full, the reasons supporting the reversal. NZX will reasonably consider such a written request but is not obliged to reverse the decision. In the event that NZX does not reverse the decision, the Advisor may apply in writing for NZX to refer the matter to NZX Discipline and NZX shall refer any such decision to NZX Discipline.

5.14.4 Revocation of a person's designation as an Advisor means that the person concerned is no longer an Advisor, and in particular that person shall no longer be entitled to:

- (a) Hold himself or herself out to the public as an Advisor;
- (b) Have access to any services provided to him or her by NZX by virtue of his/her designation as an Advisor; and
- (c) Otherwise operate as an Advisor, except to honour pre-existing third party obligations.

5.14.5 Revocation does not affect any accrued rights which NZX or any other Market Participant or Advisor may have against the Advisor and/or any obligation the Advisor may owe either to NZX or any Market Participant or Advisor.

5.14.6 Any Advisor that has his or her designation as an Advisor revoked may subsequently apply for re-designation as an Advisor under **Rule 5.6 or 5.7** (as appropriate).

5.15 TRADING AGREEMENTS *(Inserted 28/2/07)*

5.15.1 An NZX Advising Firm who is not a Trading Participant must enter into and maintain a written Trading Agreement with a Trading Participant setting out the terms and conditions governing their relationship.

5.15.2 Each NZX Advising Firm entering into a Trading Agreement with a Trading Participant must include in that Trading Agreement:

- (a) Whether the Trading Participant acts as the NZX Advising Firm's Delivery and Settlement Participant; or
- (b) That the Trading Participant will enter or has entered into a Post Trade Agreement with a Post Trade Participant, to provide delivery and settlement services in respect of the NZX Advising Firm's Trades.