

NEW ZEALAND EXCHANGE LIMITED (“NZX”) CODE OF PRACTICE

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1. INTRODUCTION

1.1 For many decades, “good stockbroking practice” has been the generally understood and observed ethics and code of operation of securities firms and their investment advisers. Self-regulation within a particular peer group has long been the accepted and efficient form of establishing and enforcing these codes of conduct.

1.2 With the growing complexity of today’s finance and securities industry and the lowering of barriers to entry, there is a generally perceived need to codify many of these long-standing standards and practices and to include new ones or modify them to reflect the technology and complexity of a modern competitive marketplace.

1.3 This is not a move towards more regulation, but an indication in a more open and uncertain environment of the commitment of participants to the highest standards of integrity, honesty, fairness, openness and efficiency in their conduct and business practice. It reflects the commitment to maintain standards, in the interests of the market, and so reduce the risks (and hence costs) to clients of obtaining investment advice and the services of NZX Firms in a freely competitive market.

1.4 This Code of Practice:

- (a) is a statement of required practice for NZX Firms; and
- (b) provides a high level overview of the requirements in the Rules and the Regulations for the conduct and practice of NZX Brokers, NZX Associate Brokers and NZX Firms.

It is written for general advice to the public and clients.

1.5 The obligations in this Code of Practice complement, and in some cases are additional to, those contained in the NZX Rules and Regulations.

1.6 NZX Firms undertake, in the Rules, to observe at all times good stockbroking practice. The Rules define “good stockbroking practice” as the practices, procedures and requirements of the Rules, this Code of Practice, and the Regulations. Breaches of this Code of Practice will accordingly be treated by the Board as breaches of the requirement to observe good stockbroking practice, and the disciplinary provisions of the Rules will apply to breaches of this Code of Practice.

- 1.7** It is a condition of designation as an NZX Firm of the NZX that the firm agrees in writing to comply with, and be bound by, the Rules, the Regulations and this Code of Practice. NZX Firms must also ensure that their employees (including NZX Brokers and NZX Associate Brokers) comply with these requirements.
- 1.8** The Board, from time to time, makes rulings on the interpretation of this Code of Practice and approves changes to this Code of Practice. The Board will give all NZX Brokers, NZX Associate Brokers, and NZX Firms at least 20 business days written notice of any amendments to this Code of Practice prior to such amendment coming into force. Amendments to this Code of Practice will be subject to the New Zealand Stock Exchange Restructuring Act 2002.
- 1.9** By and large, the principles and practices set out in this Code of Practice are common to most developed securities markets. They provide the assurance that New Zealand's standards are internationally acceptable and consistent with the recommendations of IOSCO and the WFE.

2. DEFINITIONS

- 2.1** **Definitions:** Unless the context requires otherwise, **Rules 1.1 of Part A** and **Part B** of the Rules apply to this Code of Practice, and in particular;

Board means the board of directors from time to time of the NZX appointed in accordance with the constitution;

Code of Practice means this NZX Limited Code of Practice, as amended from time to time;

IOSCO means the International Organisation of Securities Commissions;

Issuer has the meaning given in section 2 of the Securities Act 1978;

Regulations means the NZX Limited Regulations for NZX Firms, as amended from time to time;

representative includes a principal, employee and agent of an NZX Firm, and for the avoidance of doubt, includes NZX Brokers and NZX Associate Brokers;

Rules means the NZX Limited Business Rules as amended from time to time;

WFE means the World Federation of Exchanges.

2.2 Interpretation: Unless the context requires otherwise, **Rules 1.2 of Part A** and **Part B** of the Rules apply to this Code of Practice.

3. NZX BROKERS AND NZX ASSOCIATE BROKERS

3.1 Personal Character:

- (a) NZX Brokers and NZX Associate Brokers shall be fit and proper persons without any record of dishonest or fraudulent activities. In particular, candidates applying for designation as NZX Brokers and NZX Associate Brokers are required to state whether or not they have:
 - (i) been excluded from any other organisation which is equally committed to high standards of professional conduct; or
 - (ii) committed an act of bankruptcy; or
 - (iii) been of unsound mind; or
 - (iv) been prohibited from being a director or promoter of, or managing a company;
 - (v) been found liable for insider trading or any other breach of the provisions of the Securities Amendment Act 1988, or for an offence under the Companies Acts 1955 or 1993 or other companies or securities legislation; or
 - (vi) been an officer of a company that has been ordered by the Court to be wound up or put in liquidation, in each case because it is insolvent while that person was an officer of the company.
- (b) A false declaration, or subsequent occurrence of the events described in **clause 3.1(a)**, may be grounds for an immediate revocation of designation as an NZX Broker or NZX Associate Broker (as the case may be), without release from any outstanding obligations at that time.

3.2 Qualifications and Experience: Candidates applying for designation as:

- (a) NZX Associate Brokers must supply satisfactory evidence that they:

- (i) hold a sharebroker's licence where required to do so by law;
 - (ii) have obtained a pass in such examinations as the NZX may prescribe; and
 - (iii) are currently working under the supervision of an NZX Broker, and have had an acceptable level of industry experience as determined by the NZX.
- (b) NZX Brokers must supply satisfactory evidence that they:
- (i) hold a sharebroker's licence where required to do so by law;
 - (ii) have attained, in the last five years, at least three years full time relevant industry experience, as determined by the NZX; and
 - (iii) have passed examinations at the level set by the NZX or an equivalent level of relevant ordination qualification accepted by the NZX.

3.3 Business Practices: NZX Brokers and NZX Associate Brokers:

- (a) must undertake in writing to comply fully with the requirements of the Rules and at all times to observe good stockbroking practice;
- (b) shall at all times fully observe the highest standards of honesty, integrity, fairness and market conduct, and the conduct of business practice requirements of their NZX Firm in compliance with the Rules, Regulations, this Code of Practice and the procedures of the NZX;
- (c) shall at all times act with due skill and care, diligence and efficiency, and within their competence; and
- (d) may not advise on, or trade, securities or any financial instrument for, or on behalf of, any person, other than as a representative of a trading firm.

3.4 Disclosure: NZX Brokers and NZX Associate Brokers should avoid conflicts of interest where possible. When conflicts do arise, NZX Brokers and NZX Associate Brokers should disclose these fully to any persons having dealings with their NZX Firm on matters that are the subject of such conflict. All conflicts should be managed in such a way

that ensures the clients' interests are not disadvantaged. In particular, NZX Brokers and NZX Associate Brokers must:

- (a) when acting as investment advisers, comply with the requirements of the Investment Advisers (Disclosure) Act 1996 and provide the information specified in that Act;
- (b) fully disclose to clients any material interests they or their NZX Firm may have in respect of any products or services on which recommendations are made to clients;
- (c) where potential conflicts arise in an NZX Broker's or NZX Associate Broker's investment banking, research or advisory activities:
 - (i) manage such conflicts by obtaining the informed consent of clients; and
 - (ii) ameliorate such conflicts by creating Chinese walls where appropriate, so that sensitive information is isolated from areas where its possession could lead to conflicts.

3.5 Duty of Care: NZX Brokers and NZX Associate Brokers:

- (a) have a professional duty of care:
 - (i) to ensure that advice is properly researched;
 - (ii) not to initiate rumours; and
 - (iii) to properly qualify any information provided to clients; and
- (b) must always identify themselves with any comments related to the industry made to the media or others, and must ensure that their identity not be withheld from any subsequent reporting of those comments.

3.6 Client Relationships: NZX Brokers and NZX Associate Brokers:

- (a) shall at all times place the interests of their clients above their own, or that of their NZX Firm;
- (b) shall respect and ensure the confidentiality of client information and its use for the purposes for which it was provided; and

- (c) are entitled to expect clients to accept the need to provide all such information as is determined by the NZX Firm as being necessary to authorise, verify, transact or otherwise properly conduct the client's business.

4. NZX FIRMS

Note: These requirements follow the format established by the WFE and IOSCO.

4.1 Honesty and Fairness:

- (a) *Unfair advantage*
 - (i) NZX Firms shall not take unfair advantage of other NZX Firms.
- (b) *Integrity of the pricing mechanism*
 - (i) NZX Firms shall ensure that their representatives act to support achieving the NZX's objectives of fairness, openness and efficiency of market operations, and honour the integrity of the pricing mechanism of the NZX. This includes supporting the setting of prices in the market wherever possible, rather than the setting of prices against the market as a benchmark.
- (c) *Avoiding misleading or deceptive acts or representations*
 - (i) NZX Firms and their representatives:
 - (aa) shall refrain from any action which would hinder or disrupt the fair, efficient and orderly functioning of the market;
 - (bb) shall not communicate groundless or false information or rumours and may not undertake any activities, including advertising, which are misleading or deceptive or would mislead or deceive others about the true state of the market;
 - (cc) shall not engage in any manipulative practices such as trades which involve no change in beneficial ownership, or which falsely indicate activity.

- (ii) The NZX will not discourage new trading strategies **provided that** they are not prohibited by law (such as insider trading) and they do not diminish the fairness, openness or efficiency of the market.

(d) *Transparency*

- (i) NZX Firms shall report all transactions fully and promptly to the NZX.

4.2 Diligence

(a) *Best execution*

- (i) NZX Firms shall be diligent in effecting the best execution of client orders. This means prompt execution at the best available price.
- (ii) NZX Firms must disclose the capacity in which they act (i.e. as agent or principal), whether or not they are paid by both parties to a transaction, and the full extent of any commission or margin charged or any other benefit to the NZX Firm or its representatives arising from the transaction.

(b) *Adequate and reliable information about the Issuer and nature of the security instrument*

- (i) Any recommendations by NZX Firms or their representatives as to the purchase or sale of securities shall be based on adequate and reliable information about the Issuer and the nature of the security instrument.
- (ii) NZX Firms acting as underwriters shall exercise due diligence with regard to an Issuer's business affairs and financial condition in connection with an offering.
- (iii) In completing a transaction in a security for a client, NZX Firms shall ensure that the client is given all information necessary to enable the client to exercise effective judgement in relation to the decision, and such information should also take account of the client's circumstances and investment needs.

- (c) *Due skill and care with respect to involuntary sales*
 - (i) Where an involuntary sale of a client's securities must be made (due to failure to make payment, a margin call, or for other reasons), NZX Firms should conduct that sale with due skill and care.
- (d) *Client Relations*
 - (i) NZX Firms which engage in unsolicited contacts must:
 - (aa) ensure such contacts are made in a manner consistent with the highest standards expected of an NZX Firm;
 - (bb) ensure the investor is in no doubt as to the identity of the NZX Firm making the approach; and
 - (cc) at all times be sensitive to the investor's requirements.
 - (ii) An NZX Firm which withdraws in whole or in part from any market or supply of services must take all reasonable steps to protect its clients' outstanding positions.

4.3 Capabilities

- (a) *Professional qualifications*
 - (i) NZX Firms shall ensure that all representatives:
 - (aa) are properly skilled and trained for the work in which they are employed; and
 - (bb) in the position of advising clients are NZX Brokers or NZX Associate Brokers,in accordance with the Rules.
 - (ii) Principals of NZX Firms must be NZX Brokers. A majority of the directors of NZX Firms which are companies must be NZX Brokers.

- (b) *Financial responsibility*
 - (i) NZX Firms:
 - (aa) shall take reasonable steps to ensure that the levels of business and business risk they undertake are commensurate with their financial resources;
 - (bb) shall not undertake any transaction which puts at risk that firm's own preservation;
 - (cc) shall not place client assets at risk from that firm's own business activities; and
 - (dd) shall take all steps necessary to properly protect assets held on behalf of a client and ensure that these are separately identified from that firm's own assets.
 - (ii) The Rules and the Regulations include the following mandatory requirements for managing NZX Firms:
 - (aa) capital adequacy requirements related to the level of business and business risk undertaken by NZX Firms;
 - (bb) regularly calculating, monitoring and reporting liquidity and financial position on a risk adjusted basis to a firm of national inspectors, and inspecting an NZX Firms' operations;
 - (cc) requirements to maintain a high level of financial management of NZX Firms' activities, including accounting;
 - (dd) requirements for regularly reporting the structure and performance of NZX Firms;
 - (ee) requirements to comply with the NZX's risk-reducing procedures for handling settlement of transactions;
 - (ff) requirements to prevent NZX Firms who handle client assets from exposing these to other risks within the NZX Firm; and

- (gg) indemnities and insurance intended to take over any residual risk of fraud within NZX Firms.

4.4 Information about clients

- (a) Before making any recommendation to clients about investments suitable for a client and before conducting any business on behalf of that client, NZX Firms shall take all reasonable steps to obtain such information as may be necessary for properly and appropriately providing advice and services that is in the best interests of the client.
- (b) NZX Firms shall pay special attention to the adage “know your client”. The Regulations require NZX Firms to establish and verify the identity of clients and their addresses and bank accounts in relation to its procedures for the sale and transfer of securities.
- (c) NZX Firms must comply with the Financial Transactions Reporting Act 1996 which facilitates preventing, detecting, investigating and prosecuting money laundering. NZX Firms must report any suspicious transactions and any cash transactions above the amount specified in the legislation.
- (d) Clients should be aware that the supply of personal information is for their protection against fraudulent sales. NZX Firms are obliged to maintain the confidentiality and privacy of any non-public information supplied and to use it only for the purposes of providing financial and investment services for which it was supplied.
- (e) NZX Firms shall ensure that the necessary legal documentation to support transactions on behalf of their clients is obtained in accordance with the Rules and the Regulations.
- (f) NZX Firms may exercise powers of discretion in trading a client’s assets only where the express written authority of the client for such action is held (excepting circumstances where an involuntary sale of client assets is fully justified).

4.5 Information for clients: NZX Firms:

- (a) are required to provide contract notes to clients setting out the details of every transaction, with such disclosures as are necessary to assure fair dealing;

- (b) must comply with the requirements of the Investment Advisers (Disclosure) Act 1996 and ensure that their representatives who act as investment advisers comply with the requirements of that Act;
- (c) shall provide any clients with a description of their procedures for handling client assets (including any information required by the Investment Advisers (Disclosure) Act 1996) before receiving any assets on behalf of those clients;
- (d) must have, and must provide to clients at least on request, a statement of their terms of business, including any general disclosures of interest, and provide details of at least:
 - (i) the business (address, activities, structure, membership and qualifications of representatives);
 - (ii) any conflicts, interests or circumstances which could impair an NZX Firm's independence in its dealings with clients, including for example any relationships with the issuers or suppliers of products;
 - (iii) the manner of remuneration;
 - (iv) agency/power of attorney arrangements;
 - (v) professional indemnity insurance (where the policy permits such disclosure);
 - (vi) disclaimers to be made;
 - (vii) how to provide instructions;
 - (viii) all the individual prices of the purchases or sales of securities for which a client places an order which have been averaged under the NZX Firm's allocation policy; and
 - (ix) any other information required by the Investment Advisers (Disclosure) Act 1996 or otherwise by law; and
- (e) must keep and maintain a sufficient record concerning each order and any subsequent trade to be able to respond to clients or the NZX concerning best execution.

4.6 Conflicts of interest

- (a) NZX Firms shall avoid conflicts of interest where possible. When conflicts of interest arise:
 - (i) they shall be managed in such a way that clients are not disadvantaged; and
 - (ii) clients shall be informed and their informed consent obtained and recorded, before any affected transaction proceeds.
- (b) NZX Firms:
 - (i) may adopt appropriate practices for handling such conflicts as may arise from the activities of different sections of their business, such as “Chinese Walls”; and
 - (ii) shall be especially sensitive to the conflicts which they have between their trading activities and other operations.
- (c) Recommendations to clients must be based on the interests of clients and not on a desire to increase or reduce an NZX Firm’s trading position.

4.7 Client Precedence: NZX Firms and their representatives are not permitted:

- (a) to effect trades for their own account or the accounts of associated persons ahead of client orders; or
- (b) to act on the basis of information received in the course of handling client orders,

so as to place their own interests ahead of the interests of clients whose instructions have not been completed.

4.8 Compliance: NZX Firms:

- (a) shall ensure that their partners, officers and directors are sufficiently active in the firm’s affairs so as to ensure the firm’s compliance with statutory and self-regulatory obligations;
- (b) must have in place systems for supervising accounts and representatives, and for compliance with applicable regulations. In this regard, NZX Firms must nominate a

compliance officer to ensure the firm's on-going compliance with established internal processes for handling client orders and external regulatory requirements. The NZX, through its Inspectors, monitors NZX Firms to check whether such systems are being enforced;

- (c) may not handle transactions on behalf of representatives of another NZX Firm. For the avoidance of doubt this clause 4.8(c) does not prevent an NZX Firm providing settlement or clearing services on behalf of another NZX Firm;
- (d) and the NZX shall have in place rules for authorising and recording securities transactions on behalf of representatives or their families;
- (e) representatives and employees must hold all securities purchased for any account over which they may have a controlling interest, discretion or controlling influence on investment decisions for a minimum period of 10 business days; and
- (f) are required to keep accurate and detailed records and ensure that all reports made to the NZX are honest.

4.9 Complaints and Discipline

- (a) NZX Firms shall recognise the authority of the NZX under the Rules to adjudicate in any dispute between NZX Firms and to cancel any transaction between NZX Firms where it is considered the transaction is unfair.
- (b) The Rules provide disciplinary procedures for hearing and determining complaints or charges that NZX Firms have breached the Rules, the Regulations or this Code of Practice. Complaints or concerns should be addressed in the first instance to the NZX Firm concerned. Complaints may be addressed to:

The Managing Director
NZX Limited
PO Box 2959
WELLINGTON