

Key Notes

- Introduction
- Background
- Stand policy
- Stand practice

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Disclaimer

This guidance note has been issued to promote commercial certainty and assist market participants. It provides guidance to Market Participants and their advisors on NZX's interpretation of the NZX Participant Rules. 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 Rules in every situation. Guidance Notes do not constitute legal advice and are only a guide to NZX's policy & practice. NZX recommends that Market Participants take advice from qualified professionals.

GUIDANCE NOTE GN0011/06 – STANDS IN THE MARKET

INTRODUCTION

This Guidance Note is published to provide guidance to Trading Participants in the interpretation of those NZX Participant Rules that relate to stands in the market.

BACKGROUND

Participant Rule D.10.7.1 requires a proportion (20%) of significant (i.e. more than 10% of the issued capital of the issuer) share purchase orders placed with Trading Participants to be offered to the market via the trading screen. This will have the consequence of many stands being conducted on-market in respect of a significant order that could possibly have been filled off-market. There are, however, exceptions to the requirement to hold a stand at D.10.7.1(a) and (b).

The policy behind the rule to date, as is reflected at Participant Rule D.10.7.2, is to ensure retail participation.

A practice was developed by NZX and was in place for some time of requiring a CSN to be provided on entry of the order. This has been reflected until now in the standard NZX stand terms. Its purpose included the desire to level the playing field between retail and institutional investors in respect of the manner of order entry.

STAND POLICY

NZX has conducted focussed consultation on its policy for stands in the market. At this time, NZX intends to make no change to the requirement to offer 20% of a substantial purchase to the market. However, NZX understand that participants have a preference for a general stand policy that seeks to facilitate *broader* participation in such transactions which usually occur at a premium to recent market price rather than a policy which seeks to specifically ensure retail participation. NZX has analysed the issue and agrees with the merits of making such a change to current stand policy.

Until further advised by NZX (which would be by Guidance Note or Participant Rule revision) the implication of the reference to the requirement that NZX be satisfied that the conduct of a stand “recognises Retail Investors” at D.10.7.2 shall be limited to consideration of the consent available under that provision. Accordingly, availability of the Special Order Facility and the management of stands generally will reflect an underlying policy of broad rather than retail participation. This would not prevent a stand applicant from, say, insisting upon retail participation in its own (as opposed to the standard) stand terms or conditions.

STAND PRACTICE

The refinement to NZX policy regarding stands in the market outlined above will have the following practice consequences:

- (1) CSN requirements relating to entering orders into a stand will be the same as for “general” trading i.e. those at Participant Rule 11.4. The stand term referring to CSNs that has existed for some time has been deleted. For the avoidance of doubt, this practice permits the use of the “m” flag and other legitimate exceptions from the requirement to enter a CSN. NZX will conduct surveillance to ensure that these “general” trading requirements relating to CSNs are being met. NZX considers that the use of the “m” flag in an effort to warehouse a sale at the stand price in respect of clients not yet identified is an abuse of the opportunity to participate in the stand and a breach of Good Broking Practice. A client that has not given a sell order to the Trading Participant (either specifically or generally in the context of, say, a nominee or custody service) will not be an identifiable client at the time that the order has been placed.
- (2) Short selling shall be governed by the standard rules relating to that issue in force from time to time. These rules are currently at A10.14 of the Participants Rules.

Other than outlined herein, no additional change to stand policy or practice has been made at this time.