

24 March 2011

NZX Market Supervision Public Statement

Introduction

The NZ Markets Disciplinary Tribunal (“**NZMDT**”) has considered a Settlement Agreement in respect of a Statement of Case brought by NZX Market Supervision (“**NZXMS**”) against Forsyth Barr Limited (“**Forsyth Barr**”).

The Statement of Case related to an alleged breach of NZX Participant Rule 11.3.1(b) in respect of an order placed by a retail client of Forsyth Barr (the “**Client**”) for the sale of a Security on 17 March 2008.

The NZXMS investigation of this matter arose from a complaint made to NZXMS.

NZX Participant Rules

NZX Participant Rule 11.3.1(b) requires that:

Subject to Rules 11.3.2, 11.3.3 and 11.3.5, a Client Advising Participant must submit any Order, which is at market or at a fixed price limit, straight to market via the Trading System. For the avoidance of doubt pursuant to this Rule 11.3.1 a Client Advising Participant must not, for any market or fixed price limited Order:

- (a)
- (b) *Delay executing client Orders; or*
- (c)

NZX Participant Rule 11.3.2 states that:

A Client Advising Participant may, upon obtaining instructions from its client to do so (which may be by means of an e-mail, facsimile, letter from that client, a written transcript by the Advisor for that Client Advising Participant of that client’s instructions received by telephone or the inclusion of standing instructions in the client agreement in prominent lettering), execute an Order for a client at that Client Advising Participant’s discretion.

If standing instructions are obtained via a client agreement, the client agreement must allow that client to override the standing instructions detailed in the client agreement at the time the Order is placed.

Description of Breach

- (a) The Client provided Forsyth Barr with a written instruction to convert their entire portfolio into cash “as soon as possible”.
- (b) A Security, which formed part of the Client’s portfolio, was not put on market. The Forsyth Barr Advisor, operating under an assumed discretion under Rule 11.3.2,

determined that it was not in the Client's best interests to sell the Security at that time.

- (c) Forsyth Barr's failure to bring the trade to market was a breach of NZX Participant Rule 11.3.1(b). Although Rule 11.3.2 allows a Client Advising Participant to execute orders at its discretion if it has obtained instructions to do so, this Rule cannot be used to validate a situation where a client order was never executed.
- (d) Forsyth Barr has admitted this breach. NZXMS acknowledges that Forsyth Barr believed that it was acting in the best interests of the Client.

Decision

NZXMS and Forsyth Barr have reached a settlement in respect of the above breach that:

- (a) a penalty of \$5000 be imposed on Forsyth Barr for the above breach and that such penalty shall be paid into the NZX (Discipline) Fund;
- (b) Forsyth Barr will meet the costs incurred and invoiced for both NZXMS and the NZMDT;
- (c) Forsyth Barr will make an offer to the Client to make good their loss, on the terms specified in the Settlement Agreement;
- (d) Forsyth Barr will review their procedures more generally and take appropriate remedial action as agreed with NZXMS; and
- (e) this public statement will be published.

The settlement has been approved by the NZMDT, as contemplated by section 10 of the NZMDT Rules, and as such, the Settlement Agreement is the determination of NZMDT.