

SECTION 17

NZX POWERS

17.1 POWERS ARE ADDITIONAL

17.1 A For the purpose of this **Section 17** the defined term “Market Participant” includes Employees and directors of the Market Participant.

(Inserted 28/2/07)

17.1.1 The powers of NZX under these **Rules** are in addition to the powers of NZX under NZX’s constitution and at law.

17.1.2 NZX may, in its complete discretion and after making such enquiries (if any) as it thinks fit, submit a statement of case under the NZX Discipline Rules against a Market Participant if, in the opinion of NZX, the Market Participant may have:

(Amended 28/2/07)

- (a) Breached any of these **Rules**, or directions issued from time to time by NZX; *(Amended 28/2/07)*
- (b) Failed to observe Good Broking Practice;
- (c) Been guilty, of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX or its markets. For the avoidance of doubt this does not prevent Market Participants from taking any proper action to inform NZX or any appropriate regulatory authority of suspected or actual breaches of law or of these **Rules**; or *(Amended 28/2/07)*
- (d)
 - (i) been, or is, in partnership with a person; or
 - (ii) engaged a person as an Employee; or
 - (iii) been, or is, in association or contractual relationship with a person;

who has been guilty of conduct which, if committed by that Market Participant, would justify NZX Discipline imposing on that Market

Participant any of the penalties available to it under the **NZX Discipline Rules**. *(Rule 17.1.2(d) Amended 28/2/07)*

17.1.3 NZX shall refer any such statement of case to NZX Discipline which shall hear the matter in accordance with the **NZX Discipline Rules**, which rules are hereby incorporated by reference into these **Rules**. *(Amended 28/2/07)*

17.2 POWERS TO RECEIVE AND CONSIDER COMPLAINTS

NZX shall have power to:

- (a) Receive and consider complaints and consider concerns (which may be concerns of NZX) about a Market Participant or the conduct of a Market Participant; and *(Amended 28/2/07)*
- (b) reject summarily any complaints which appear to be insubstantial or frivolous; and
- (c) Consider and/or investigate a complaint or concern and submit a statement of case against a Market Participant under these **Rules** as a result of such complaint, or concerns, which matters shall be heard by NZX Discipline under the **NZX Discipline Rules**. *(Amended 28/2/07)*

17.3 Deleted 2004

17.4 Deleted 2004

17.5 FURTHER POWERS OF NZX

Without limiting NZX's powers under **Rule 17.2**, NZX shall have power to:

- (a) Impose on any or all Market Participants such fees, levies and other charges, including as a condition of designation as a Market Participant, as it sees fit. For the avoidance of doubt, NZX may differentiate between Market Participants as regards the amount of such fees, levies and other charges at its complete discretion;
- (b) Take such other action as may, in the opinion of NZX, be required for the operation of fair and orderly Securities markets, and to secure compliance with these **Rules**, directions issued from time to time by NZX, and/or Good Broking Practice; and *(Amended 28/2/07)*

- (c) Make rulings as to the interpretation of these **Rules** and grant waivers from these **Rules**, on such terms and conditions as NZX, in its complete discretion, thinks fit. Any waiver granted by NZX pursuant to this **Rule 17.5(c)** and in force prior to the commencement of these **Rules** shall continue in force notwithstanding the introduction of these Rules. *(Amended 28/2/07)*

17.6 DELEGATION OF POWERS

NZX shall have power to delegate to any person, sub-committee of NZX or other committee or body, whether incorporated or unincorporated, any of the powers, rights and discretions of NZX including the power of delegation on such terms and conditions, if any, as NZX may from time to time think fit.

(Amended 28/2/07)

17.7 DEFAULTING MARKET PARTICIPANTS

17.7.1 A Market Participant is a defaulter (**Defaulter**) if:

- (a) It fails to deliver Securities or pay money demanded of it pursuant to any **Rule** relating to delivery and settlement and NZX declares that Market Participant a Defaulter;
- (b) NZX, having made such enquiries (if any) as it thinks fit, considers that that Market Participant is, or is reasonably likely to become, in difficulty or has failed, or is reasonably likely to fail, to meet its actual or prospective (including contingent) liabilities;
- (c) It is insolvent or has called a meeting of its creditors or has made a arrangement with its creditors or an assignment for the benefit of its creditors; or *(Amended 28/2/07)*
- (d) NZX, having made such enquiries (if any) as it thinks fit, considers other circumstances exist which justify that Market Participant being considered a Defaulter in order to protect the financial interests of all other Market Participants or of the investing public or for such other reasons as may be considered to be relevant in the interests of the well-being and proper conduct of the markets provided by NZX.

17.7.2 Where a Market Participant is a Defaulter under this **Rule 17.7**, NZX shall notify all other Market Participants of that fact.

- 17.7.3 NZX may declare any Market Participant a Defaulter in accordance with this **Rule 17.7**, and may revoke or suspend that Market Participant's designation as a Market Participant for such time as it thinks fit.
- 17.7.4 If a Market Participant is declared a Defaulter, or NZX is considering and/or investigating whether a Market Participant is a Defaulter, NZX may remain at that Market Participant's premises for such a time period as it thinks fit.
(Inserted 28/2/07)
- 17.7.5 If a Market Participant is declared a Defaulter, NZX may work with any third party assuming responsibility for that Market Participant, including without limitation, a receiver, a liquidator or administrator appointed to assist in the orderly wind down of the Defaulter's business, including the distribution of Client Assets.
(Inserted 28/2/07)

17.8 CONTRACTS AND DEFAULTERS

- 17.8.1 Subject to the provisions of these **Rules**, every uncompleted contract with a Market Participant shall be deemed to be rescinded, closed and terminated as from the time that Market Participant is declared a Defaulter and, where the contract is partially incomplete, that contract shall be deemed to be rescinded, closed and terminated as to the incomplete balance.
(Amended 28/2/07)
- 17.8.2 NZX (whose decision shall be final) shall determine the market price for any Securities the subject of an incomplete contract on the day the relevant Market Participant is declared a Defaulter and any surplus or deficiency in respect of such incomplete contract or balance shall be determined accordingly.
(Amended 28/2/07)
- 17.8.3 Each Defaulter shall be liable to the counterparty Market Participants for any deficiency in respect of an incomplete contract or balance rescinded and each such counterparty Market Participant shall account to the relevant Defaulter for any surplus.
(Amended 28/2/07)
- 17.8.4 Each Market Participant involved in a rescinded contract shall promptly inform the NZX of the details of that rescinded contract.

17.9 Deleted 2004

17.10 MARKET PARTICIPANT'S OBLIGATION TO REPORT

If a Market Participant becomes aware that it or another Market Participant has breached, or is likely to breach any of its obligations under these **Rules** and that the breach or likely breach is significant, that Market Participant shall promptly notify NZX in writing of the circumstances of that breach or likely breach. Failure to notify NZX of such breach or likely breach is itself a breach of these **Rules**. Factors to be considered by a Market Participant when determining whether a breach, or likely breach, is significant include:

(Amended 28/2/07)

- (a) The number or frequency of similar previous breaches;
(Inserted 28/2/07)
- (b) The impact of the breach or likely breach on the Market Participant's ability to comply with the **Rules** or to conduct its business;
(Inserted 28/2/07)
- (c) The extent to which the breach or likely breach indicates that Market Participant's arrangements to ensure compliance with the Rules are inadequate; and
(Inserted 28/2/07)
- (d) The actual or potential financial loss to clients, to the Market Participant, or to other Market Participants, arising from the breach or likely breach.
(Inserted 28/2/07)

17.11 NZX TO INVESTIGATE

Upon being notified that a Market Participant has failed, or is likely to fail, to meet its obligations, NZX may:

(Amended 28/2/07)

- (a) investigate the matter; and
(Amended 28/2/07)
- (b) upon completing the investigation, advise the result of such investigation to any person NZX considers relevant. *(Amended 28/2/07)*

17.12 MARKET PARTICIPANTS TO FACILITATE INQUIRIES

Where any inquiries as to the credit, competence, performance or position of any Market Participant are being made by NZX, each Market Participant

shall, on request, facilitate such inquiries and make all necessary inquiries into dealings with the Market Participant which is being investigated.

17.13 SUSPENDING DESIGNATION AS A MARKET PARTICIPANT

17.13.1 A Market Participant may have its designation as a Market Participant suspended by:

- (a) NZX in accordance with the **Rules**; or
- (b) NZX Discipline in accordance with the **NZX Discipline Rules**.

17.13.2 For the purposes of any **Rule** which provides for suspending a participant's designation as a Market Participant, **suspension** means that, for the period of suspension, that Market Participant shall: *(Amended 28/2/07)*

- (a) Not be entitled to hold itself out to the public as a Market Participant; *(Amended 28/2/07)*
- (b) Have its trading permission withdrawn (if applicable); *(Amended 28/2/07)*
- (c) Not be entitled to have access to any services provided to Market Participants by NZX; and *(Amended 28/2/07)*
- (d) Not be entitled to otherwise operate as a Market Participant, except to honour pre-existing third party obligations. *(Amended 28/2/07)*

17.13.3 Suspension of a designation as a Market Participant shall not excuse a Market Participant from meeting any contractual obligations owed by it to NZX under these **Rules**, including the obligation to pay all fees, levies or other charges as and when they fall due or any obligations owed to third parties.

17.14 APPLICATION TO LIFT SUSPENSION

Any Market Participant that has had its designation as a Market Participant suspended by NZX under these **Rules** may apply in writing to NZX for that suspension to be lifted. NZX will reasonably consider such a written request but is not obliged to lift the suspension of a Market Participant.

17.15 REVOKING DESIGNATION AS A MARKET PARTICIPANT

17.15.1 A Market Participant may have its designation as a Market Participant immediately revoked by NZX (which may be without further notice to the entity) if: *(Amended 28/2/07)*

- (a) The Managing Principal, Responsible Executive, any director or partner of the Market Participant made a false or misleading declaration to NZX when the Market Participant applied for designation as a Market Participant; or *(Amended 28/2/07)*
- (b) *(Revoked 28/2/07)*
- (c) *(Revoked 28/2/07)*
- (d) *(Moved to 17.15.2 - 28/2/07)*
- (e) The Market Participant fails to pay any fees, levies or other charges set by NZX which are due and payable as a condition of designation as a Market Participant; or *(Amended 28/2/07)*
- (f) The Market Participant 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). *(Inserted 28/2/07)*

17.15.2 A Market Participant shall have its designation as a Market Participant immediately revoked if NZX Discipline declares that Market Participant's designation is revoked. *(Inserted 28/2/07)*

17.15.3 Any Market Participant that has had its designation as a Market Participant revoked by NZX under these Rules may apply in writing to NZX for that decision to be reversed. NZX will reasonably consider such a written request but is not obliged to reverse the decision. In the event that NZX decides not to reverse the decision, the Market Participant may then apply in writing for NZX to refer the matter to NZX Discipline and NZX shall refer any such decision to NZX Discipline. *(Inserted 28/2/07)*

17.16 EFFECT OF REVOCATION

17.16.1 For the purposes of any **Rule** which provides for revocation of a participant's designation as a Market Participant, **revocation** means that the entity concerned is no longer a Market Participant, and in particular that entity shall no longer be entitled to: *(Amended 28/2/07)*

- (a) Hold itself out to the public as a Market Participant;
- (b) Execute new transactions on the Trading System (if applicable); *(Amended 28/2/07)*
- (c) Have access to any services provided to it by NZX by virtue of its prior designation as a Market Participant; and *(Amended 28/2/07)*
- (d) Otherwise operate as a Market Participant, except to honour pre-existing third party obligations.

17.16.2 Revocation shall not excuse a Market Participant from meeting any contractual obligations owed by it to the NZX under these **Rules**, including the obligation to pay all outstanding fees, levies or other charges as and when they fall due or any obligations owed to third parties.

17.17 CONDITIONS FOR RE-DESIGNATION AS A MARKET PARTICIPANT

Any Market Participant that has its designation as a Market Participant revoked may subsequently apply for re-designation as a Market Participant under **Rule 3.1**. Any such application will be considered by NZX as if that application is a new application for designation as a Market Participant.