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Disclaimer

This Guidance Note has been issued by NZX to promote market certainty and to assist Market Participants. It sets out NZX's general approach to the interpretation of the NZX Participant Rules, but is not to be regarded as a definitive statement of the application of the Rules in every situation. NZX may replace Guidance Notes at any time and a Market Participant should ensure it has the most recent version. This does not constitute legal advice. NZX recommends that Market Participants take advice from qualified persons.

GUIDANCE NOTE 0007/04 – Direct Full Time Control of Broking Offices and Supervision of Advisors yet to be Accredited

Introduction

This Guidance Note is published to provide guidance to Market Participants in the interpretation of those NZX Participant Rules (“Rules”) that relate to:

- direct full time control of broking offices (Principal Broking Offices and other offices) under Rule 3.8.3; and
- the supervision of persons yet to be accredited as either an NZX Advisor or NZX Associate Advisor. (While NZX policy is outlined here with reference to NZX Advisors and NZX Associate Advisors, we confirm that the same policy generally applies to NZDX Advisors).

Background

Market Participants operate their businesses in a regulated arena. Obligations arise at law and are also imposed by NZX in the form of the Rules. NZX has imposed these obligations where it considers there to be a need and/or where a benefit will accrue.

NZX obligations include the need for Market Participants to be accredited with NZX. A successful application to be a Market Participant indicates to the public that the applicant is considered fit and proper to be awarded NZX accreditation. Routine monitoring and inspections seek to ascertain whether the participant remains fit and proper with reference to its regulatory obligations, in particular the Rules.

Accreditation as a Market Participant allows a participant to carry the NZX logo in its signage and marketing material. This logo denotes to the public that the participant has met NZX requirements. This is a significant point of difference to firms providing similar services that are not subject to such accreditation requirements or ongoing supervision.

Direct Full Time Control of Broking Offices – Rule 3.8.3

Under Rule 3.8.3 the Principal Broking Office of a Market Participant must be under the direct full time control of its Managing Principal or Responsible Executive (whichever is applicable). This requirement envisages that the named Managing Principal or Responsible Executive is the predominant, responsible officer of the participant and that he/she is based at its headquarters.

It does not, however, seek to preclude business travel, the attendance of meetings out of the office or even the Managing Principal or Responsible Executive from taking annual leave. In fact, NZX wishes to see appropriate segregation of duties and responsibilities within a Market Participant rather than these residing wholly with the Managing Principal or Responsible Executive. This will require a management structure in place within the participant appropriate to its size and even a designated alternate to the current Managing Principal or Responsible Executive for business continuity purposes.

Under Rule 3.8.3, any office of a Market Participant other than the Principal Broking Office must be under the direct full time control of either an NZX Advisor or an NZX Associate Advisor (or if the Market Participant is not an NZX Firm, under the direct full time control of a person appointed by the Responsible Executive). Similar to the Managing Principal or Responsible Executive in respect of the Principal Broking Office, this “controller” will be the predominant, responsible officer of the participant at those premises.

In this context, NZX’s policy is that direct full time control involves an appropriately qualified person being located at that office. Direct full time control may not be conducted from another office, no matter how close. Accordingly, any person may only control one office for the purposes of Rule 3.8.3. However, this will not prevent, say, a regional manager managing two or more offices pursuant to a participant’s management structure so long as there is either a NZX Advisor or NZX Associate Advisor in direct full time control of each and every branch office.

The presence of an office of a Market Participant in a town or city implicitly publicises that it is being run in accordance with the Rules. In the case of an NZX Firm, this will mean that the office is under the direct full time control of an appropriately qualified person (an NZX Advisor or an NZX Associate Advisor) and also that staff providing advice on securities transactions to clients are qualified to do so per NZX’s individual accreditation requirements or those staff are supervised by someone qualified to do so (as discussed below).

Supervision of Advisors yet to be Accredited – Rules 5.2 and 5.6.1(a)(ii)

Rule 5.2 provides that each Client Advising Participant must ensure that all persons who provide advice to clients on transactions in relation to securities are designated NZX Advisors or NZX Associate Advisors. The benefit of this rule is that it gives clients the comfort that a person at a Market Participant providing advice to them on securities is appropriately qualified to do so. This is an additional point of difference between NZX Advisors and NZX Associate Advisors on the one hand and others in the marketplace providing similar advice and services.

The criteria to become accredited with NZX as an Advisor (used here and hereafter to denote both NZX Advisors and NZX Associate Advisors) include both academic qualifications and experience. A person will generally start on the path to become an accredited Advisor by working under the supervision of an NZX Advisor. NZX’s policy is that such supervision should include a high level of maintenance in order to provide the level of training required in order to become qualified.

The supervisor should be seated in close proximity to the supervised person in order to provide regular guidance. Any advice and recommendations to clients must be reviewed by the supervisor in advance. Telephone conversations with clients by the supervised person must be made within hearing of the supervisor. Written communications must also be reviewed and approved by the supervisor before despatch.

Given Rule 5.2, any advice of the supervised person is effectively being provided by the supervisor.

Similar to direct full time control, NZX does not consider that supervision can be achieved remotely from another office. The individuals should be sitting in close proximity, ideally beside or opposite one another. Where the supervisor is away from his/her desk, another NZX Advisor must be designated to supervise any interaction with clients.

On inspections NZX Compliance staff may assess supervision arrangements and request to see records of approved communications.

There are many reasons why NZX considers supervision of Advisors yet to be accredited to involve such a high level maintenance. Primarily, accreditation of both participants and individuals is an important component of the regulation conducted by NZX. This regulation adds value and credibility to the markets operated by NZX and also the services provided by Market Participants.

In addition, clients dealing with a Client Advising Participant are entitled to rely on the fact that their Advisor has demonstrated his/her fitness and propriety to be individually accredited in order to provide such advice. This is what being an NZX Advisor or NZX Associate Advisor constitutes. Any draw on a participant's resources caused by supervision should be short lived, and may be limited to six months if the Advisor candidate satisfies the academic criteria within that time.

Exemptions Available for Individual Accreditation – Rules 5.6.2 and 5.7.2

Rules 5.6.2 and 5.7.2 contain provisions by which NZX may consider exempting applicants from certain of the individual accreditation criteria. Exemptions will be granted where appropriate and on a case by case basis. For example, persons with relevant experience and/or qualifications obtained overseas may be entitled to some relief. However, such persons will need to undergo a form of apprenticeship to enable them to make the transition to local securities law, NZX regulatory requirements and knowledge of local securities. As a minimum, such persons must complete those papers of the NZX Diploma relevant to local laws and market.

Overuse of NZX's discretion to grant exemptions may weaken the value generated by individual accreditation. NZX expects participants to only seek exemptions in respect of applicants when entirely necessary and appropriate. Exemptions should and will remain the exception to the rule that NZX accredited Advisors should fulfil in full the academic and experience requirements.