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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 GN0005/04 – DELIVERY AND SETTLEMENT

## Introduction

This **Guidance Note** is published to provide guidance to Delivery and Settlement Participants in the interpretation of those **NZX Participant Rules (Rules)** that relate to the settlement and delivery of trades on behalf of a Trading Participant. This **Guidance Note** outlines NZX's expectations in relation to compliance and best practice on the part of a Delivery and Settlement Participant.

Under **Section 1** of the **Rules** a Delivery and Settlement Participant is defined as:

*“A Market Participant accredited by NZX to provide delivery and settlement services in relation to the transfer and delivery of Securities and who accepts primary responsibility for the settlement of the transfer of those Securities and includes:*

- (a) *Post Trade Participants;*
- (b) *FASTER Participants; or;*
- (c) *Any other organisation, firm, company or corporation designated or approved as a Delivery and Settlement Participant from time to time by NZX pursuant to **Rule 3.18**”.*

Under **Section 1** of the **Rules** a Post Trade Participant is defined as:

*“A Market Participant accredited as a Post Trade Participant by NZX who facilitates the delivery, settlement and transfer of ownership of Securities for Trading Participants”.*

Under **Section 1** of the **Rules** a FASTER Participant is defined as:

*“A Market Participant who has been approved and designated by NZX as a FASTER Participant authorised to access the FASTER System”.*

This **Guidance Note** should be read in conjunction with **Guidance Note GN0002/04** which provides Trading Participants with guidance on trading on behalf of a client.

It is important to note that the majority of this **Guidance Note** is focused on Post Trade Participants who will be the main category of Delivery and Settlement Participant active in the markets provided by NZX.

This Guidance Note covers some of the obligations that a Delivery and Settlement Participant must fulfil before delivering and settling a trade including: the collection and retention of client FINs and client address reconciliations. It is important to note that this Guidance Note is not an exhaustive list of a Delivery and Settlement Participant's obligations under the **Rules** but guidance on particular obligations that NZX has received requests for clarification on.

## Background

Under the previous NZX Business Rules and Regulations (Regulations) the assumption was that all existing Firms undertook both the trading of a client order as well as the delivery and settlement of that trade for that client. Under the new structure the activities of trading and delivery and settlement have been separated. These activities have been separated to:

- (a) Allow specialist Post Trade Participants into the New Zealand markets;
- (b) Recognise the use of the FASTER System for the purpose of making enquiries and settling and transferring securities by FASTER Participants; and
- (c) Allow Trading Participants the option of outsourcing the activity of delivering and settling its trades.

## Post Trade Agreement – Post Trade Participants and Trading Participants

Under **Rules 4.8** and **6.8** Delivery and Settlement Participants (but not FASTER Participants) and Trading Participants must enter into a Post Trade Agreement outlining the obligations of both parties. **Appendix 5** to the **Rules** sets out the minimum requirements that must be contained in all Post Trade Agreements. NZX has not prescribed all of the terms of a Post Trade Agreement as it is up to each Delivery and Settlement Participant and Trading Participant to determine the obligations of their relationship.

## FASTER Identification Numbers (FINs) – Rule13.16

**Rule 13.16.4** relates specifically to the recording and storage of a client's FASTER Identification Number or FIN. Under this **Rule**, a client's FIN cannot be retained by a Delivery and Settlement Participant without written consent from that client. Any FIN retained by a Delivery and Settlement Participant must be encrypted. If a client's consent to retain its FIN cannot be obtained then that client's FIN must be destroyed at the completion of the trade delivered and settled by a Delivery and Settlement Participant. For the avoidance of doubt, the completion of a trade is considered to have occurred when settlement of a transaction is completed.

The requirements for the retention and storage of a client's FINs may be satisfied by a client entering into a written agreement with a Client Advising Participant that allows the Client Advising Participant to provide the FIN to the Trading Participant and the Trading Participant to provide it to the Delivery and Settlement Participant. The Client Advising Participant, Trading Participant and Delivery and Settlement Participant can retain the FIN on the condition that it is encrypted and protected from unauthorised use and or access.

The written consent on the retention of that client's FIN must:

- (a) Detail the storage and use of that client's FIN;

- (b) Contain a client risk warning in relation to the possible consequence of unauthorised access to that client's FIN and the consequence of such unauthorised access;
- (c) Contain an acknowledgement that the Delivery and Settlement Participant will have unlimited access to the securities held by that client if that client's FIN is retained by the Delivery and Settlement; and
- (d) Contain an undertaking by the Delivery and Settlement Participant that it will at all times protect that client's FIN from unauthorised use and/or access.

If a FIN cannot be destroyed (for example if the FIN is obtained on a legal document that the Delivery and Settlement Participant must retain) **Rule 13.16.4A** allows for that FIN to be retained on the condition that a Delivery and Settlement Participant establish procedures to prevent any unauthorised access of that FIN.

For the avoidance of doubt, if the relationship is with an Intermediary, the written authority from that Intermediary to retain the FIN of the underlying client or the Intermediary must meet the requirements of **Rule 13.16**.

Authority to retain a client's FIN cannot be obtained by means of negative consent. Written confirmation from that client allowing their FIN to be retained must be obtained by a Delivery and Settlement Participant (or a Client Advising Participant depending on the terms and conditions of the Post Trade Agreement). Such written consent can be obtained by means of a letter, fax or e-mail or, as indicated, by including the right to retain an encrypted client's FIN within an executed client agreement.

### **Daily Exceptions Report of Client Addresses – Rule 13.42.2**

Under **Rule 13.42.2** a Delivery and Settlement Participant must undertake a daily reconciliation of client addresses with the records contained in its internal records and the records of a client's address at the Issuers' Registry. Ideally a daily reconciliation of client addresses should be done for all clients. However the obligations of this **Rule** will be met if the daily reconciliation is completed only for those clients who have Client Inward Transfers completed that day.

### **Register of Transfers of Securities – Rule 13.16.7**

Under **Rule 13.16.7** Delivery and Settlement Participants must maintain a register of all transfers of securities which includes as a minimum:

- (a) The name of the Trading Participant for whom the Delivery and Settlement Participant is delivering and settling securities for;
- (b) The quantity and type of securities to be delivered and settled;
- (c) The date when the instructions from the Trading Participant were received by the Delivery and Settlement Participant;

- (d) The name of the client who the securities will be transferred to or from ;
- (e) Copies of the relevant client details obtained by the Trading Participant; and
- (f) The date when delivery and settlement of the securities was completed.

In relation to (e) above, details to be obtained should be (but is not limited to) such details as the clients:

- (i) Registered name and address; and
- (ii) CSN.

It is up to the Trading Participant (who will also be a Client Advising Participant for the purpose of this **Rule**) and the Post Trade Participant to determine what information obtained on a client under **Rule 9.2** will be provided to the Delivery and Settlement Participant to enable that participant to meet its obligations under **Rule 13.16.7**.

### **Training of FASTER Settlement Officers**

Under **Rule 6.3** NZX requires all FASTER Settlement Officers to complete training on the FASTER System to ensure that their working knowledge of the FASTER System is up to date. NZX recognises the experience of a number of existing NZX Settlement Officers in the functions and operations of the FASTER System and accordingly will allow Delivery and Settlement Participants to meet the obligations of **Rule 6.3.3** by:

- (a) Having all its FASTER Settlement Officers undergo training on the FASTER System by an NZX Trainer (with the Delivery and Settlement Participant meeting the costs of this training); or
- (b) Have one of its FASTER Settlement Officer trained by an NZX Trainer on the FASTER System (a NZX trained FASTER Settlement Officer) and for that NZX trained FASTER Settlement Officer to train all of the Delivery and Settlement Participant's intended FASTER Settlement Officers. NZX needs to be advised of the individual who the Delivery and Settlement Participant intends to take on the position of the NZX trained FASTER Settlement Officer. If an NZX trained FASTER Settlement Officer leaves the employment of the Delivery and Settlement Participant a new employee who the Delivery and Settlement Participant wishes to take on the position as the NZX trained FASTER Settlement Officer must undergo training on the FASTER System from an NZX Trainer before training any intended FASTER Settlement Officers of the Delivery and Settlement Participant.