



# NZX Participant Guidance Note

Prescribed Person Trading

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This Guidance Note has been issued by NZX Limited (**NZX**) to promote market certainty and assist market participants. 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 Participant Rules or Derivatives Market Rules in every situation. Examples set out in this Guidance Note are limited and are not designed to cover all eventualities. NZX may replace Guidance Notes and Practice Notes at any time and an NZX Participant should ensure it has the most recent versions of these documents. Guidance Notes do not constitute legal advice. NZX recommends that NZX Participants take advice from qualified persons.



# 1. Introduction

The purpose of this Guidance Note is to provide information for NZX Participants in respect of the Rules outlined under Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19, regarding Prescribed Persons that trade on NZX's markets or other Recognised Securities Exchanges, including describing what NZX will view as "reasonable steps" in order to meet the requirements of the Rules.

Good practices in respect of Prescribed Persons contribute to fair, orderly and transparent markets and assist NZX Participants in managing potential conflicts of interest and monitoring the effectiveness of information barriers.

## 1.1 Scope of this Guidance Note

This Guidance Note addresses considerations relating to Prescribed Persons under both the Participant Rules and the Derivatives Market Rules.

Please note that any examples set out in this Guidance Note have been provided for illustrative purposes, are limited and are not designed to cover all eventualities.

References to NZX Participants in this Guidance Note include:

- Participants, other than Advisers, as defined in the Derivatives Market Rules; and
- Trading Participants and NZX Advising Firms as defined in the Participant Rules,

as specified in each relevant Rule.

Capitalised terms which are not defined in this Guidance Note have the same meanings given to them in the Rules.

Under Participant Rule 21.4.1 and Derivatives Market Rule 14.14.1, NZX may act by and through NZX Regulation Limited (**NZ RegCo**) in performing any function or discharging any power set out in the Rules. References in this Guidance Note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

# 2. Prescribed Persons

The definitions of "Prescribed Person", "Employee", "Immediate Family", "Family Company" and "Family Trust" are the primary definitions that set out who is required to comply with Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.20. These definitions are supported by other definitions within the Rules, such as "Independent Director".

## 2.1 Definition of Prescribed Persons

A **Prescribed Person** of an NZX Participant means:

- (a) an Employee of that NZX Participant;

- (b) the Immediate Family of an Employee of that NZX Participant;
  - (c) a Family Company or Family Trust of a person referred to in (a) or (b); and
  - (d) any company, body corporate or other entity controlled by any one or more of the persons referred to in paragraphs (a) to (c) (where "control" has the meaning set out in clause 48 of Schedule 1 of the FMC Act);
- But does not include the NZX Participant itself.

## 2.2 Primary supporting definitions

An **Employee** of an NZX Participant includes all persons employed by that NZX Participant and includes Directors, partners, employees, officers, Agents, Dealers, Advisers and contractors of that NZX Participant, but does not include an Independent Director of the NZX Participant.

**Immediate Family** includes the spouse or de facto partner and dependent children of an individual.

**Independent Director** means a director of a Market Participant who is not an executive officer or employee of the Market Participant and is not involved in the day to day Broking Business of the Market Participant.

A **Family Company** means, in relation to an Employee or the Immediate Family of an Employee, a company or other body corporate:

- (a) controlled by that Employee and/or any one or more of that Employee's Immediate Family, or
- (b) in which that Employee and/or any one or more of that Employee's Immediate Family is beneficially entitled to more than 50% of the issued capital or holds or controls more than 50% of the voting power.

A **Family Trust** means, in relation to an Employee or the Immediate Family of an Employee, a trust:

- (a) of which that Employee and/or any one or more of that Employee's Immediate Family is the sole or major beneficiary (where a "major beneficiary" is a beneficiary potentially able to receive a benefit under the trust of 33% or more of the value of the assets of the trust); or
- (b) under which that Employee and/or any one or more of the Employee's Immediate Family, as a trustee or otherwise, has the power to distribute 33% or more of the value of the trust assets to a beneficiary;

and, in either case, in relation to which that Employee and/or any one or more of that Employee's Immediate Family has the ability to remove all or a majority of the trustees and replace those trustees with their own nominees.

## 2.3 Scope of 'Independent Director'

NZX considers that participation by a Director in standard Board meetings and/or voting on resolutions arising out of them is not involvement in the "day to day Broking Business of the Participant", for the purposes of the definition of "Independent Director".

In addition, NZX considers that participation by a Director on a Board committee that has delegated responsibility from the Board to make governance decisions (including internal risk appetite related decisions in a particular area, involving approving and testing relevant proposed management recommendations) but no involvement in the management decision itself, is also not involvement in the “day to day Broking Business of the Participant”, for the purposes of the definition of “Independent Director”. The Participant will need to satisfy itself, and evidence its position, with respect to the relevant committee.

## **2.4 Definition of ‘Control’**

Control is defined in clause 48 of Schedule 1 of the FMC Act. Under this clause, a person controls an entity (in this case a Family Company or a Family Trust) if they are the entity’s holding company; or have the capacity to determine the outcome of decisions about the entity’s financial and operating policies.

A Person has capacity to determine the outcomes of a decision if they:

- are able to exert practical influence; and
- that same person has a practice or pattern of behaviour which affects the entity’s financial or operating policies.

For the avoidance of doubt, a person does *not* control the entity just because the person and a third person jointly can determine the outcome of decisions about the entity’s financial and operating policies.

# **3. Making Employees & Non-Employees Aware**

## **3.1 Informing Employees & non-Employees about the Prescribed Person requirements**

Each NZX Participant must ensure that its Employees are aware of their obligations and take reasonable steps to inform its non-Employee Prescribed Persons of the requirements under Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19.

In respect of Employees, it is expected that an NZX Participant will ensure that new Employees are provided with internal policies and procedures in respect of the Prescribed Person requirements immediately on commencement. In addition, an explanation of these requirements should be provided to the new starter as part of their first day induction. The explanation should include a discussion of who else is captured as a Prescribed Person in respect of that new Employee as a result of their employment.

The NZX Participant must also take reasonable steps to inform any non-Employee Prescribed Persons that they are captured as Prescribed Persons and what the requirements are that are associated with this.



### 3.2 Reasonable steps

The particular method used to inform non-Employees will be specific to each NZX Participant. However, the information that must be provided will be the same. In addition, records should be kept confirming that communications have occurred.

A method that could be adopted is to prepare a standard form document setting out:

- that the person is now captured as a Prescribed Person;
- what a Prescribed Person is;
- the requirements for Prescribed Persons, including:
  - the need to trade through the employing Participant and how to go about setting this up;
  - when and how to arrange to trade elsewhere;
  - the requirement to obtain pre-approval for all Orders and how to obtain this approval, irrespective of where the trading occurs;
  - the restrictions around primary market activity;
  - the holding period requirements; and
  - what to do if they have any questions.

This standard form document can then be provided to the non-Employee Prescribed Persons, either by sending it directly to them if appropriate or by having the Employee provide it and obtaining confirmation from the Employee that they have provided it to all relevant non-Employee Prescribed Persons. Confirmation that any additional relevant non-Employee Prescribed Persons have also been provided the document could then be provided as part of the Rule 10.5.2 or Derivatives Market Rule 4.18.4 annual undertaking.

NZX Participants should not wait until the Prescribed Person opens an account to provide this information, steps should be taken to ensure that Prescribed Persons are aware of the trading restrictions as soon as the new Employee starts. Although NZX recognises that there are circumstances where it will not be relevant to immediately notify all non-Employee Prescribed Persons, for example dependent children that are minors.

## 4. Trading on behalf of a Prescribed Person of another NZX Participant

Each NZX Participant must take reasonable steps to ensure that its Prescribed Persons do not have accounts with another NZX Participant and that they do not operate an account for a Prescribed Person of another NZX Participant. There are some exceptions to these requirements.



## 4.1 Exceptions

The exceptions to Prescribed Persons of one NZX Participant operating an account through another NZX Participant are:

- If the Prescribed Person has an account with an NZX Participant which is in the same Group as the employing NZX Participant.
- Where an NZX Participant does not offer products or services, then that NZX Participant can permit a Prescribed Person to maintain an account with another NZX Participant in respect of those products or services. The employing NZX Participant must:
  - notify NZX of who the Prescribed Person is, the products or services in question and which other NZX Participant is involved, before granting permission; and
  - arrange for the executing NZX Participant to send duplicate contract notes to the Compliance Manager of the employing NZX Participant, within the time frame specified under Rule 15.16 or Derivatives Market Rule 9.9.
- Where NZX has granted specific permission for a Prescribed Person to open an account with an NZX Participant other than the employing NZX Participant.

The exceptions are specific to where the account is operated and do not exempt the person from all other requirements for Prescribed Person trading, including the pre-approval requirement.

Where a person is a Prescribed Person of more than one NZX Participant it will be necessary to seek permission from NZX.

## 4.2 Reasonable steps

Taking reasonable steps to ensure that Prescribed Persons do not have accounts with another NZX Participant will be covered by the processes for informing them of their obligations as set out in section 3 of this Guidance Note.

An NZX Participant taking reasonable steps to ensure that it does not operate an account for a Prescribed Person of another NZX Participant, will require the NZX Participant to ensure that all its clients are informed. The most straightforward way that NZX Participants can do this is to include in their new client account documentation the following:

- a specific question regarding whether or not the client is a Prescribed Person of an NZX Participant;
- details of what a Prescribed Person of an NZX Participant is; and
- a requirement to notify the executing NZX Participant if they become a Prescribed Person of an NZX Participant.

## 4.3 Accounts with non-NZX Participants

While accounts that are held with brokers that are not NZX Participants, for example overseas brokers, are not captured under Rule 10.5.11 or Derivatives Market Rule 4.19, NZX Participant must have sufficient controls in place to ensure all Prescribed Persons with such accounts are

meeting all other obligations under Rule 10.5 and Derivatives Market Rules 4.18 to 4.19, such as Rule 10.5.1 and Derivatives Market Rule 4.18.1.

## 5. Written Authority

NZX Participants must ensure that written authority is obtained before an Order is placed by, or on behalf of, a Prescribed Person of that NZX Participant. This applies whether the Order is placed with that NZX Participant or not.

The requirement applies to each individual Order to buy or sell any applicable Security or product as set out in Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19.

Authority in writing must come from one of the following:

- the Compliance Manager of the NZX Participant; or
- the Managing Principal or Responsible Executive (as applicable); or
- a Delegate of the Compliance Manager, Managing Principal or Responsible Executive who has the authority to authorise Prescribed Person trading.

If none of the above can be located or agree to provide authority, the Order cannot be placed.

NZX recognises that it will not always be possible to ensure that non-Employee Prescribed Persons obtain written authority before they place an Order, particularly where this is done through another NZX Participant or an overseas entity. NZX expects that NZX Participants will take reasonable steps to ensure that non-Employee Prescribed Persons are aware of, and comply with the requirement to obtain prior approval.

The requirement to obtain written authority applies also to primary market transactions such as participation in an initial public offer or a placement, but does not apply to corporate actions that are made available on a pro-rata basis (such as a dividend reinvestment or a rights issue).

NZX Participants must retain records of all requests for written authority, whether granted or not.

## 6. Holding Period

A Prescribed Person is required to hold all Securities purchased for a minimum period of 10 Business Days (the **Holding Period**) from and including the date of purchase or allotment. If, because of special personal circumstances, a Prescribed Person needs to sell their Securities during the Holding Period then they must make an application in writing, as permitted by Participant Rule 10.5.10, to the appropriate person referred to in section 5 of this Guidance Note prior to placing an order.





## 6.1 Special Personal Circumstances

Special personal circumstances do not include changes in market prices or other market events. Each NZX Participant must retain a record of any such requests which must at a minimum include a copy of the dated written request and the special personal circumstances, whether the request was granted and any conditions imposed on the Prescribed Person making the request.

## 7. Public and Non-public Offers

Prescribed Persons of the NZX Participant cannot participate in or request allocation of Securities in any initial public offer, subsequent public offer or non-public offer (such as a book build) (**offers**) by an Issuer.

This restriction only applies where the employing NZX Participant is engaged by the Issuer in a role which gives the NZX Participant an influence over allocation of Securities under the offer - whether as a lead manager, joint lead manager, manager, underwriter or otherwise.

Where the employing NZX Participant is not engaged by the Issuer, but submits a bid to those who are engaged by the Issuer for a firm allocation, the NZX Participant may include Prescribed Person requests in this bid. However, in allocation of the firm allotment, the NZX Participant will still need to ensure it gives priority to client Orders.

Prescribed Persons may participate in:

- any public pool of any new offer of Securities by an Issuer; and/or
- any new offer of Securities if the Prescribed Person has a pre-existing right in the new offer of Securities.

An NZX Participant that is engaged by the Issuer in a capacity set out above *may* offer an identified percentage of Securities as part of the offer, to Prescribed Persons if the Managing Principal or Responsible Executive (as applicable) and the Compliance Manager certifies in writing to NZX the matters set out in Participant Rule 10.5.4.

## 8. Dealer Restrictions

There are additional restrictions on what Dealers are permitted to do in respect of Prescribed Person Orders. These relate to their execution function and prohibit their involvement in the execution of their own Orders, or the Orders of non-Employee Prescribed Persons who are associated with them. These restrictions include other accounts that the Dealer may have authority in respect of, such as discretionary accounts.



## 9. Compliance Monitoring

NZX Participants must have established policies and procedures in relation to Trading by Prescribed Persons, and must advise Employees of those policies and procedures. These policies and procedures must include controls and monitoring in respect of the client order priority requirements that apply to Prescribed Person Orders, as set out in Participant Rule 15.15 and Derivatives Market Rule 9.8. (See also Trading Conduct Guidance Note.)

An NZX Participant must establish and maintain up-to-date internal procedures to monitor Trading by its Prescribed Persons, which enable the NZX Participant to discover any breaches of its policies and procedures and the Rules promptly and, in any case, within one Business Day of any breach.

NZX Participants must obtain an annual written undertaking from each of its Employees confirming that they have at all times complied with their obligations in respect of Prescribed Person Trading.

NZX Participants must perform a daily reconciliation check on the approval(s) sought and the trading by its Prescribed Persons to ensure compliance with Participant Rule 10.5 and Derivatives Market Rules 4.18 to 4.19.

