



NZX Participant Guidance Note

Management Arrangements – DRAFT

November 2017



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This Guidance Note has been issued by NZX to promote market certainty and assist NZX 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 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 Participants on the appropriate management and supervision arrangements for its Broking Offices.

1.1. Scope of this Guidance Note

This Guidance Note assists Participants in relation to the requirements of NZX Participant Rules (the **Rules**) 3.8 and Rule 3.10 in respect of the Management and oversight of its Broking Offices. Under these Rules, a Participant's arrangements must account for:

- The direct full time oversight of the Principal Broking Office;
- The oversight of all additional Broking Offices; and
- Ensure the Management structures are appropriate for the Participant's business.

This Guidance Note also covers NZX's expectations in respect of any outsourcing or offshoring arrangements Participants may have in place.

References to Participants in this Guidance Note include all those captured under the definition of Market Participant in the Rules.

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



2. Management Structures and Oversight of Broking Offices

Rule 3.10 requires that Participants must establish appropriate Management structures for its business. In putting in place these arrangements, Participants must ensure its Directors, partners, Principals, and senior executive staff are appropriately qualified and competent. The appointments of these persons must take into consideration the nature of the Broking Business the firm engages in and the size and scale of its operations.

Rule 3.8 outlines the requirements for a Participant in respect of the oversight and supervision of its Broking Offices, which Participants should consider when establishing their Management structure.

2.1. Principal Broking Office

Under Rule 3.8.2, if a Participant has more than one Broking Office it must designate one as its Principal Broking Office. This Broking Office must be under the direct full time oversight of the Managing Principal or Responsible Executive (as applicable) as required by Rule 3.8.4.

This requirement envisages that the appointed Managing Principal or Responsible Executive is the predominant, responsible officer of the Participant and that he/she is primarily based at the Participant's headquarters and Principal Broking Office.

NZX encourages Participants to designate an alternate individual to undertake the Managing Principal or Responsible Executive's responsibilities in his or her absence from the Principal Broking Office for business continuity purposes.

2.2. Additional Broking Offices

Under Rule 3.8.3, if a Participant has more than one Broking Office, it is required to have management and supervision arrangements in place to ensure that each Broking Office conducts its Broking Business in accordance with the Rules and Good Broking Practice.

The structure and appointments of the management arrangements a Participant puts in place for the oversight and supervision of its Broking Offices should take into account:

- The size and number of Broking Offices in the Participant's organisation;
- The nature of the Broking Business conducted by a Broking Office or group of Broking Offices;
- The Employee head count and geographic location of each Broking Office;
- Supervision requirements for all Employees, including Advisers and Dealers; and
- The ability to communicate in an efficient and timely manner with each Broking Office's personnel.

Arrangements should include regular reporting and communication to the Compliance Manager, Managing Principal/Responsible Executive and senior management on matters relating to compliance with the Rules.

NZX recommends that a Participant's compliance monitoring programme includes an annual task for ensuring the effectiveness of its Broking Offices' structure and supervision.

2.3. Appropriately Qualified and Experienced Employees

Under Rule 3.8.4(a), a Participant must appoint appropriately qualified and experienced Employees to have oversight of a particular Broking Office, or group of Broking Offices.

In appointing an appropriate Employee, a Participant must take into account the nature of the Broking Business conducted at that Broking Office or Broking Offices. Similar to the Managing Principal or Responsible Executive, this individual will be the predominant responsible individual for the Participant at those premises.

An appointed Employee will be the Compliance Manager's first port of call for ensuring and monitoring compliance with the Rules and Good Broking Practice at that Broking Office, or Broking Offices. The appointed Employee will also need to contribute to any regular compliance reports that are provided by the Compliance Manager to the Managing Principal or Responsible Executive.

In this context, a Participant must be able to demonstrate that such persons have appropriate qualifications, experience and knowledge of the functions of the Participant's Broking Business that are carried out at the Broking Office or Broking Offices which they oversee. For example:

An additional Broking Office opened by a Market Participant for the purpose of locating its NZX Advisers in a particular region for client advisory purposes, will need to be overseen by a responsible Employee who has qualifications and experience attributing to the provision of securities advice and NZX's applicable rule sets.

However, where an additional Broking Office is established for the purpose of housing its back-office operations, NZX would expect oversight of the Broking Office to be given to an individual with the appropriate experience and background in the Participant's back-office function and systems.

Where an additional Broking Office is established for the purposes of both the provision of advice and to perform back-office functions, the oversight of that office may be split between two suitably qualified and experienced individuals.

Participants may appoint a "regional manager", responsible for the oversight of two or more offices pursuant to a Participant's Management structure. Such arrangements must be incorporated into the Participant's Management structure required to be maintained under Rule 3.10.2, as well as into its supervision and reporting regime established for Management oversight of all Broking Offices.

2.4. Notification Requirements

2.4.1. Management Structure and Arrangements

Under Rule 3.10.3, if a Participant's Management structure changes, NZX must be provided notice of the change as soon as is reasonably practicable, but no later than 5 Business Days after the change being made. Any such change must be made in writing and include:

- (a) A current Organisation Chart; and
- (b) The names, job title and primary location of each of the senior Management team; and
- (c) Where any such change has affected the oversight and supervision of the Participant's Broking Offices, details of how this has been maintained.

NZX would expect any Employee responsible for oversight of two or more Broking Offices to be recorded within its Management structure.

2.4.2. Broking Office Oversight

Under Rule 3.8.4(b), a Participant must notify NZX of the Employee(s) responsible for oversight of each Broking Office, and any changes to these Employees, within one Business Day of any such appointment. In doing so, the Participant must provide to NZX:

- (a) The address of the Broking Office;
- (b) Where a new Broking Office is established, the nature of the Broking Business conducted at that Broking Office;
- (c) The full name and job title of the Employee appointed as responsible for the oversight of the Broking Office; and
- (d) Details of the Employee's qualifications and experience relevant to overseeing the conduct of the Broking Office in accordance with the Rules and Good Broking Practice.

2.4.3. Opening Further Broking Offices

Under Rule 3.21(a), where a Participant wishes to open an additional Broking Office, it must provide notice to NZX at least 15 Business Days prior to opening the Broking Office for business.

In notifying NZX, Participants should provide the information specified above for Rule 3.8.4(b) under (a)-(d), as well as the proposed opening date of the Broking Office.

Participants should also provide an updated management structure incorporating the new Broking Office.

2.4.4. Changes in Broking Office Location

With respect to the location of a Participant's Broking Offices, Rule 3.29(c) requires notification to NZX 10 Business Days prior to an intended change of address for any of the Participant's Broking Offices.

Any changes to oversight of a Broking Office associated with a move also requires notification under Rule 3.8.4(b).

2.5. Overseas Broking Offices

As detailed under Rule 3.22, the Rules and the information provided in this Guidance Note apply equally to any Broking Offices situated outside New Zealand, including the NZX Supervision provisions specified under Section 20 of the Rules.

Should a conflict arise between the Rules and any applicable statutory or regulatory requirements that apply in the jurisdiction in which an overseas Broking Office is located, a Participant must notify NZX as soon as is reasonably practicable.

3. Outsourcing and Offshoring Arrangements

Under the Rules, a Participant is required to have adequate resources, monitoring and processes including appropriate Management arrangements under Rule 3.10. This applies to all of a Participant's activities, including any that it may have offshored or outsourced.

Outsourcing and offshoring arrangements include situations where a Participant enters into an arrangement for another party to conduct a function of the Participant's business on a temporary or ongoing basis. That other party may be another entity within the Participant's group structure or an unrelated third party.

NZX requests that Participants provide prior written notice of any outsourcing or offshoring arrangements entered into with another party, related or otherwise. Such notice should detail the business activity being outsourced or offshored, the parties involved and a summary of the oversight arrangements the Participant will implement with respect to the outsourced or offshored business activity.

NZX notes that any outsourcing or offshoring arrangements a Participant may have in place with another party do not change any of the Participant's obligations under the Rules, and responsibility for conducting any such activities in accordance with the Rules and Good Broking Practice shall remain with the Participant.

Participants should be aware that the Clearing and Settlement Rules and the Depository Operating Rules¹ have different obligations and notification requirements in relation to outsourcing and offshoring arrangements than under the Rules.

3.1. Impact of Outsourcing or Offshoring Arrangements

NZX has the power to investigate the conduct of any Participant in relation to the Participant's obligations under the Rules. These powers also include the services or activities performed under any outsourcing or offshoring arrangements. As such, NZX has the ability to visit any office where these outsourced or offshore services are performed.

A Participant should consider the impact of any outsourcing or offshoring arrangements on other policies, procedures and processes the Participant may have, including its Compliance Monitoring Programme and Business Continuity Plan.

¹ See Clearing & Settlement Rule 2.8 and Depository Operating Rule 2.6.