

NZX DISCIPLINE

POLICY GUIDELINE ON THE NAMING OF RESPONDENTS

Introduction

The disciplinary process should be transparent. An important part of that process is making public the name of the Respondent subject to adjudication by NZX Discipline.

In some circumstances, however, the harm arising from the naming of the Respondent, will exceed any benefits to the public from knowing the name of the party that has been subject to adjudication, and it is appropriate in these circumstances that the Respondent should not be named.

The excess of harm over benefit is more likely to arise when the Respondent is a Market Participant. The purpose of this paper, therefore, is to provide guidelines to members of NZX Discipline on the naming of Respondents when members are involved in a preparing a determination, or are involved in deciding whether to approve a proposed settlement, and the Respondent is a Market Participant.

NZX Discipline to exercise discretion

For each hearing, or review of a proposed settlement, the decision on whether the Respondent is to be named will be wholly at the discretion of the Division of NZX Discipline that has been involved in the hearing, or the review, of the circumstances of the particular case.

Except in exceptional circumstances, the discretion of the Division of NZX Discipline should be exercised in conformity with the guidelines that follow. In the event that there are exceptional circumstances, and the guidelines are not followed, these exceptional circumstances should be explained in the publication of the decision.

Circumstances when the name of the Respondent will not be published

The name of the Respondent will not be published when:

- The Respondent has established grounds for maintaining confidentiality of the Division's decision and that Division has ordered that the decision not be published, or that publication should be delayed for a specified time period.

Circumstances when the name of the Respondent is not likely to be published

The name of the Respondent is not likely to be published when:

- None of the findings of the Division have been adverse to the Respondent.
- The penalty for the Respondent falls within Penalty Bands 1, 2 or 3 of the NZX Discipline Rules Penalty Band Guidance Notes for breaches of the NZX Participant Rules, and where the breach can be considered to be of minor importance and not systemic.

Circumstances when the name of the Respondent is most likely to be published

The name of the Respondent is most likely to be published when:

- The public has been harmed, or public confidence in the sector has been damaged.
- The Respondent has been involved in repeated offences, and shown disregard for the NZX Participant Rules.
- The penalty for the Respondent falls within Penalty Bands 4 to 8 of the NZX Discipline Rules Penalty Band Guidance Notes for breaches of the NZX Participant Rules.

Further guidance on the exercise of discretion

The foregoing guidelines should be applied in a manner that recognises the following:

- The self reporting by Market Participants of breaches of the NZX Participant Rules is to be encouraged.
- There will be a balance maintained between the regulatory outcome and the costs incurred by NZX Discipline.
- If a proposed settlement between NZX and the Respondent includes a provision that the Respondent is not to be named, and that provision falls outside the terms of these guidelines, then the Division of NZX Discipline that is reviewing the settlement should not approve the settlement that is proposed.