

25 May 2010

NZX Market Supervision Public Statement

Introduction

The NZ Markets Disciplinary Tribunal (“**NZMDT**”) has considered a Settlement Agreement in respect of a Statement of Case brought by NZX Market Supervision (“**NZXMS**”) against Goldman Sachs JBWere (NZ) Limited (“**Goldman Sachs JBWere**”).

The Statement of Case related to alleged breaches of NZX Participant Rule 11.3.1(b) and NZX Participant Rule 8.1.1(c) in respect of a debt security order placed by a retail client of Goldman Sachs JBWere (the “**Client**”) for the sale of Babcock & Brown Limited subordinated notes (“**BNB Notes**”) on 26 February 2008.

The NZXMS investigation of this matter arose from a complaint made to NZXMS by the Client.

NZX Participant Rules

NZX Participant Rule 11.3.1(b) requires that:

Subject to Rules 11.3.2, 11.3.3 and 11.3.5, a Client Advising Participant must submit any Order, which is at market or at a fixed price limit, straight to market via the Trading System. For the avoidance of doubt pursuant to this Rule 11.3.1 a Client Advising Participant must not, for any market or fixed price limited Order:

(b) Delay executing client Orders;

NZX Participant Rule 8.1.1(c) requires that:

Each Market Participant and each Advisor must at all times:

(c) Comply fully with all applicable Rules, any directions given from time to time by NZX and at all times observe Good Broking Practice.

Description of Breaches

1. Breach One – NZX Participant Rule 11.3.1(b)

- (a) On 26 February 2008, the Client provided Goldman Sachs JB Were with a written order by email to sell BNB Notes.
- (b) The Client’s sell order was not entered on the NZDX market.
- (c) NZXMS’s review of the trading in BNB Notes for the relevant time period showed no sell order corresponding to the Client’s sell order being placed on the NZDX Market by Goldman Sachs JBWere.

- (d) Goldman Sachs JBWere's failure to enter the order for the BNB Notes to the NZDX Market was a breach of NZX Participant Rule 11.3.1(b).
- (e) Goldman Sachs JBWere has admitted this breach. NZXMS accepts that this breach resulted from an administrative oversight by Goldman Sachs JBWere.

2. Breach Two – NZX Participant Rule 8.1.1(c)

- (a) Goldman Sachs JBWere stated in a letter to the Client, dated 19 August 2009, that:

"Your order was placed on [the NZX] platform on 26 February, however in the 6 week period from 26 February to 8 April 2008, there were no on market bidders for your BNB Notes and consequently none were sold"

- (b) In light of Breach One, this statement was not accurate.
- (c) NZXMS considers that the statement in paragraph (a) above made to the Client amounted to a breach of NZX Participant Rule 8.1.1(c).
- (d) Goldman Sachs JBWere has admitted this breach. NZXMS accepts the contention of Goldman Sachs JBWere that this breach resulted from an inaccurate recall of information given the passage of time between the Client's order being placed with Goldman Sachs JBWere and the date on which Goldman Sachs JBWere responded to the Client's complaint.

Decision

NZXMS and Goldman Sachs JBWere have reached a settlement in respect of the above breaches that:

- (a) a penalty of \$30,000 be imposed on Goldman Sachs JBWere for the above breaches in aggregate and that such penalty shall be paid into the NZX (Discipline) Fund;
- (b) Goldman Sachs JBWere will contribute towards the costs incurred and invoiced for both NZXMS and the NZMDT up to an agreed cap;
- (c) Goldman Sachs JBWere will have the Client's complaint reviewed within 20 business days of the settlement being approved by NZMDT; and
- (d) this public statement will be published.

The settlement has been approved by the NZMDT, as contemplated by section 10 of the NZMDT Rules, and as such, the Settlement Agreement is the determination of NZMDT.