

SECTION 16

NZX SUPERVISION

16.1 MARKET PARTICIPANT'S ACCOUNTS, AUDIT AND SUPPLY OF INFORMATION

Each Market Participant shall keep books of account and records containing complete and accurate records and explanations of the affairs and transactions of its business. The books, records and explanations must be:

(Amended 28/2/07)

- (a) Kept separate and distinct so as to distinguish the books, explanations and records for its Broking Business from the books, explanations and other records of any other business in which the Market Participant may be involved; *(Amended 28/2/07)*
- (b) In the form specified in, and contain the information required by, **Rule 16.6** and such other information as NZX shall from time to time determine; and *(Amended 28/2/07)*
- (c) Sufficient to enable the Market Participant to be subject to audit as required by **Rule 16.2 or Rule 16.5**. *(Amended 28/2/07)*

16.2 ASSURANCE CERTIFICATE AND REPORT

16.2.1 When considered necessary by NZX and at its complete discretion,, a Market Participant must, within the time specified in such notice, supply to NZX an assurance certificate and report from a practising chartered accountant who shall be appointed by: *(Amended 28/2/07)*

- (a) Agreement of the Market Participant and NZX; or *(Amended 28/2/07)*
- (b) Failing agreement of the Market Participant and NZX, appointed by NZX at the complete discretion of NZX and at the expense of the Market Participant. *(Amended 28/2/07)*

16.2.2 The assurance certificate and report shall, as determined by NZX in its complete discretion, include any or all of following matters of a Market Participant:

- (a) The Market Participant's balance date;
- (b) Whether all books and records required for the purpose of the report have been regularly and properly kept;
- (c) Whether any Securities held in a Custody Account have been pledged in any way;
- (d) Whether all Securities held for safe custody (if any) have been examined;
- (e) If a client is financed, whether the market value of the Securities held cover the amount of the advance;
- (f) Whether all Securities:
 - (i) lodged by clients for sale; and
 - (ii) Securities purchased for clients and paid for by them, were held, unencumbered;
- (g) Whether the market value of assets, as shown by the books, exceeded that Market Participant's commitments at the date of the audit;
- (h) Whether the assets taken into account were readily realisable;
- (i) Whether the statement of assets includes private assets not usually included with business assets;
- (j) Whether there are any contingent liabilities and, if so, of what amount;
- (k) Whether there are any other matters or circumstances which, in the practicing chartered accountant's opinion, affect the financial position of that Market Participant;
- (l) Whether all the necessary information available to enable this assurance certificate and report has been given;
- (m) Whether Client Assets have been fully accounted for and safeguarded at all times;

- (n) The adequacy of accounting systems and internal controls; and
- (o) Such other matters as NZX shall determine at its complete discretion.
(Inserted 28/2/07)

16.3 *(Revoked 28/2/07)*

16.4 INSPECTION OF RECORDS

NZX shall have full and absolute power at any time to:

- (a) Require a Market Participant to produce promptly, for inspection by NZX or the practicing chartered accountant appointed pursuant to **Rule 16.2**, all books, records, other documents (including in electronic form) and any other information relating to any transaction or to that Market Participant's business; and
(Amended 28/2/07)
- (b) Require a Market Participant to make its Employees available to appear before NZX at any reasonable time, and to give such information as may be required in connection with that Market Participant's business.
(Amended 28/2/07)

16.4A DETERMINING COMPLIANCE WITH THE RULES

16.4A.1 NZX or a practicing chartered accountant appointed pursuant to **Rule 16.2**, may at any time, determine whether or not a Market Participant is complying with the Rules or has observed Good Broking Practice. That Market Participant shall make available to NZX, or the practicing chartered accountant appointed pursuant to **Rule 16.2** as the case may be, any account, books, explanations and other records of, or relating to, that Market Participant including, where applicable, its Post Trade Participant/s, which are within the power of the Market Participant to provide and which are relevant to the enquiry or are required by NZX or practicing chartered accountant appointed pursuant to **Rule 16.2**, as the case may be.
(Amended 28/2/07)

16.4A.2 NZX may act under **Rules 17.1** and **17.5** if the inquiry undertaken pursuant to **Rule 16.4A.1**, in the opinion of NZX, discloses: *(Amended 28/2/07)*

- (a) A failure by a Market Participant to comply with any provision of these **Rules**; or

- (b) A failure by a Market Participant to observe Good Broking Practice.

16.5 FINANCIAL STATEMENTS

16.5.1 Subject to **Rule 16.5.3**, each Market Participant shall provide to NZX when they are complete and in any event no later than 90 days of its balance date:

(Inserted 28/2/07)

- (a) Copies of its financial statements prepared in accordance with the requirements of the Financial Reporting Act 1993; *(Inserted 28/2/07)*
- (b) Such certificates signed by the Managing Principal or Responsible Executive, as the case may be, of the Market Participant relating to the conduct of the Market Participant's business during the accounting period for which the financial statements referred to in **Rule 16.5.1(a)** are prepared, as NZX may require; *(Inserted 28/2/07)*
- (c) A copy of the audit report in respect of the financial statements referred to in **Rule 16.5.1(a)** having the content prescribed by section 16 (1) of the Financial Reporting Act 1993 and addressing such matters in relation to the preparation of the certificate referred to in **Rule 16.5.1(b)** as NZX may require; and *(Inserted 28/2/07)*
- (d) Any other information as requested by NZX from time to time. *(Inserted 28/2/07)*

16.5.2 The audit report referred to in **Rule 16.5.1(c)** shall be provided by a person who is qualified to act as an auditor of a company in accordance with section 199 of the Companies Act 1993, and has been approved by NZX as being independent of the Market Participant. The audit of the Market Participant shall be undertaken in accordance with the auditing standards issued by the New Zealand Institute of Chartered Accountants. *(Inserted 28/2/07)*

16.5.3 A Market Participant that does not accept Client Assets shall not be required to provide the audit report referred to in **Rule 16.5.1(c)**. *(Inserted 28/2/07)*

16.5.4 The Market Participant must immediately notify NZX of a qualified audit opinion in respect of the financial statements referred to in **Rule 16.5.1(a)**. *(Inserted 28/2/07)*

16.6 FORM AND DETAIL OF MARKET PARTICIPANT'S ACCOUNTING RECORDS

16.6.1 ACCOUNTING RECORDS AND CONTROLS

- (a) Each Market Participant must maintain accounting records in respect of its business activities and in respect of the assets, liabilities and transactions in its control or for which it is accountable. These records must be prepared in accordance with Generally Accepted Accounting Practice so as to give a true and fair view of the ability of the Market Participant to meet its financial obligations. It shall be the responsibility of the Market Participant's Management to ensure that this **Rule 16.6** is complied with at all times. *(Amended 28/2/07)*
- (b) The records to be maintained in accordance with **Rule 16.6.1(a)** must be sufficient to capture and record (in a memorandum account where appropriate), on a timely basis and in an orderly fashion, each transaction and commitment that that Market Participant enters into, and in each case, with sufficient information to explain its nature and the asset(s) and/or liability(ies), actual and contingent, which arise or may arise from it.
- (c) The records to be maintained in accordance with **Rule 16.6.1(a)** must be maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate fashion, the financial and business information that will enable that Market Participant's Management to:
 - (i) Identify, quantify, control and manage that Market Participant's risk exposures;
 - (ii) Make timely and informed decisions;
 - (iii) Monitor the performance of all aspects of that Market Participant's business; *(Amended 28/2/07)*
 - (iv) Monitor the quality of that Market Participant's assets; and
 - (v) Safeguard that Market Participant's assets, including assets belonging to clients for which that Market Participant is responsible.

- (d) The accounting and other records of each Market Participant to be maintained in accordance with **Rule 16.6.1(a)** must contain details of exposure limits authorised by Management which are appropriate to the type, nature and volume of business undertaken by that Market Participant. Management must ensure that the information contained in the records is capable of being summarised in a way that enables actual exposures to be readily and regularly measured against these limits.
- (e) The accounting records should show the assets, liabilities, events and transactions in the Market Participant’s control or for which it is accountable. Accounting records must be kept so as to ensure that the Market Participant:
 - (i) Correctly records and explains the events and transactions occurring in the course of its business activities;
 - (ii) Can at any time determine its financial position with reasonable accuracy; and
 - (iii) Can prepare financial statements that comply with the Financial Reporting Act 1993 that can be readily and properly audited.
(Amended 28/2/07)
- (f) Each Market Participant must:
 - (i) Maintain clear and up-to-date documentation of all accounting systems and internal controls, including a record of all material changes made to those systems and controls and the dates on which those changes were implemented; and
 - (ii) Provide such explanations of the systems and controls maintained under **Rule 16.6** to NZX as may be requested. *(Amended 28/2/07)*
- (g) Each Market Participant shall notify NZX promptly of any changes to the systems and controls that might reasonably affect NZX’s assessment of the adequacy of such systems and controls.
(Amended 28/2/07)

16.6.2 CONTENT OF ACCOUNTING RECORDS

The accounting records of a Market Participant must, as a minimum, contain:

- (a) Entries from day to day of all sums of money received and expended and the matters in respect of which they are received and expended;
- (b) A record of all income and expenses explaining their nature;
- (c) A record of all assets and liabilities, including any commitments or contingent liabilities;
- (d) Entries from day to day of all purchases and sales of investments on that Market Participant's own account and separately by that Market Participant acting as agent for another party;
- (e) Entries from day to day of the receipt and despatch of all investments or documents of title in the possession or control of that Market Participant, whether owned by that Market Participant or by another party;
- (f) An up-to-date record of all investments or documents of title in the possession or the control of that Market Participant, showing the physical location, the beneficial owner, the purpose for which they are held, and whether they are subject to any charge;
- (g) Entries from day to day of all receipts of clients' money and payments of clients' money held in Client Funds Accounts or passed on to third parties; and
- (h) An up-to-date record of the transaction and balances of each individual account stating the name of each client and the amounts held or received for that client.

16.6.3 GENERAL

NZX does not consider it possible to prepare an exhaustive and prescriptive list of accounting requirements applicable to all Market Participants. The detailed requirements will vary according to, amongst other things:

- (a) The manner in which the business of each Market Participant is structured, organised and managed;
- (b) The size of the business of each Market Participant; and

- (c) The nature, volume and complexity of the transactions and commitments of each Market Participant,

the overriding principle, however, is that the records and systems must be adequate to fulfil the general requirements set out in **Rule 16.1**.

16.7 *(Moved to Rule 16.2.2 - 28/2/07)*

16.8 NZX SUPERVISION RESOURCES

16.8.1 NZX will appoint one or more persons or an appropriate firm to exercise the supervision powers of NZX. Such personnel may be employees or contractors of NZX. *(Amended 28/2/07)*

16.8.2 *(Revoked 28/2/07)*

16.8.3 *(Revoked 28/2/07)*

16.8.4 *(Revoked 28/2/07)*

16.9 POWERS OF NZX

NZX shall have power: *(Amended 28/2/07)*

- (a) To inspect the financial records and related documents of each Market Participant at any time NZX considers necessary; *(Amended 28/2/07)*
- (b) To require from any Market Participant an explanation of any item or state of affairs whatsoever in relation to that Market Participant's business which, in the opinion of NZX, appears to need an explanation or to be at variance with these **Rules**, directions issued from time to time by NZX or with Good Broking Practice; *(Amended 28/2/07)*
- (c) To access information concerning any Market Participant's assets either private or of another business if, in NZX's opinion, such information is necessary to demonstrate that Market Participant's overall solvency or compliance with the Rules, directions issued from time to time by NZX or with Good Broking Practice; *(Amended 28/2/07)*
- (d) To call upon a Market Participant to produce, without delay for inspection, all books and records relating to the business of that Market

Participant and to require that Market Participant and its Employees to appear before NZX at any time and to give such information as may be required relating to the Market Participant's business to enable NZX to determine whether that Market Participant continues to comply with the accreditation criteria and is complying with these **Rules**;

(Amended 28/2/07)

- (e) To inspect and/or access, at any time, such information, network, system, equipment or process of a Market Participant as NZX, in its complete discretion, considers necessary to ensure that that Market Participant or its Employees comply with the Rules, directions issued from time to time by NZX and comply with Good Broking Practice; and
(Amended 28/2/07)
- (f) To ensure that each Market Participant is complying with its responsibilities under **Rule 16** by:
 - (i) *(Revoked 28/2/07)*
 - (ii) inspecting the separate accounting and internal control records of each Market Participant to determine if that Market Participant is carrying out its duties under these **Rules**; *(Amended 28/2/07)*
 - (iii) reviewing the Security trading records and, where that Market Participant's solvency depends on the present value of Securities held, consider the current market value of such investments in relation to their book value; *(Amended 28/2/07)*
 - (iv) reviewing the procedures relating to reconciliations, internal controls, systems and management of portfolios;
(Amended 28/2/07)
 - (v) carrying out sample verification of that market Participant's accounts (the extent of that verification to be at NZX's complete discretion); *(Amended 28/2/07)*
 - (vi) considering the financial capacity of that Market Participant in relation to any underwriting arrangement entered into by that Market Participant; and
(Amended 28/2/07)

(vii) requiring each Market Participant that is a partnership or sole trader, if necessary, to complete a statement of the assets and liabilities of each partner or sole trader; *(Amended 28/2/07)*

(viii) *(Revoked 28/2/07)*

16.10 MAINTENANCE OF RECORDS AND INTERNAL SYSTEMS

16.10.1 Each Market Participant must: *(Amended 28/2/07)*

(a) Satisfy NZX that its accounts and the accounts of its Group companies are being maintained in a satisfactory and systematic manner and are kept up to date; *(Amended 28/2/07)*

(b) Establish and maintain systems of internal control within that Market Participant; *(Amended 28/2/07)*

(c) Ensure that, in determining the nature of internal controls, its Management consider (among other things):

(i) The size of that Market Participant's business;

(ii) The diversity of that Market Participant's operations;

(iii) The volume and size of transactions conducted by that Market Participant;

(iv) The degree of risk associated with each area of the Market Participant's operations;

(v) The amount of control by Management over day-to-day operations; and

(vi) The degree of centralisation and the methods of data processing adopted by that Market Participant.

(Rule 16.10.1(c) Inserted 28/2/07)

(d) Ensure that the internal controls are designed to ensure that:

- (i) All transactions and commitments entered into are recorded and are within the scope of authority of the person entering into such transactions or commitments;
- (ii) There are procedures to safeguard assets and control liabilities;
- (iii) There are measures, so far as is reasonably practicable, to minimise the risk of losses to the business from irregularities, fraud or error and identify such matters if they occur so that prompt remedial action may be taken by that Market Participant's Management; and
- (iv) There are procedures for the maintenance, security, privacy and preservation of the records so that that Market Participant is reasonably safeguarded against loss, unauthorised access, alteration or destruction.

(Rule 16.10.1(d) Inserted 28/2/07)

16.10.2 In addition, all records must be:

- (a) Maintained in sufficient detail and with sufficient cross-references to establish an adequate audit trail. The audit trail must include all records, working papers and schedules supporting the production of annual financial statements and all financial reporting statements;
- (b) Arranged, filed and indexed in such a manner as to permit ready access to any particular record. Where that Market Participant maintains its records in any manner other than on paper in an easily legible form, then it shall also provide facilities for the prompt access to these records and for the prompt production of copies of these records on paper in such easily legible form; and
- (c) Adequate to demonstrate compliance with these Rules.

(Rule 16.10.2 Inserted 28/2/07)

16.11 SUPPLY OF INFORMATION TO NZX

Each Market Participant shall supply to NZX such information as may be requested by NZX in order for NZX to determine compliance with the Rules and/or Good Broking Practice, to promote an orderly market and to fulfil its

function as a Registered Exchange as defined in the Securities Markets Act 1988. *(Amended 28/2/07)*

16.12 FAILURE TO COMPLY

Failure to comply with this **Rule 16** shall render the Market Participant liable for immediate suspension of its designation as a Market Participant by NZX. *(Amended 28/2/07)*

16.13 REPORTING REQUIREMENTS

Each Market Participant must: *(Amended 28/2/07)*

- (a) Provide to NZX no later than the **10th Business Day** of each month, a copy of a trial balance as at the last day of the preceding month. Such trial balance shall provide details as to the name or nature of each balance; *(Amended 28/2/07)*
- (b) Set out the trial balances filed under **Rule 16.13(a)** in the format of forms FF1 and FF2 (as set out in the Guidance Notes issued from time to time by NZX) so as to provide immediate information as to the solvency of the business and that Market Participant's compliance with **Rules 3, 8 and 15**. Those forms must include a statement, signed by the Managing Principal or Responsible Executive (whichever is applicable) of that Market Participant, that that Market Participant is complying with the **Rules**, and that the accounting records are up to date as at the time of signing the statement; *(Amended 28/2/07)*
- (c) Reconcile all balances outside of the FASTER System on the last Business Day of each month, whether debit or credit, and in all currencies with all Market Participants and other parties, including overseas brokers/advisors. *(Amended 28/2/07)*
- (d) *(Revoked 28/2/07)*
- (e) *(Revoked 28/2/07)*
- (f) *(Revoked 28/2/07)*
- (g) *(Revoked 28/2/07)*

- (h) *(Revoked 28/2/07)*
- (i) *(Revoked 28/2/07)*
- (j) *(Moved to Rule 16.10 - 28/2/07)*
- (k) *(Moved to Rule 16.10 - 28/2/07)*

16.14 POSSIBLE CLAIMS AGAINST THE FIDELITY GUARANTEE FUND

Where for any reason NZX becomes aware of any unsatisfactory feature, or any situation which in its opinion could give rise to a claim on the Fund, NZX may give notice to the Market Participant concerned requiring the Market Participant to correct the situation or otherwise satisfy NZX that the Fund is not at risk within such period as is determined by NZX.
(Amended 28/2/07)

16.15 Deleted 2004

16.16 NZX OBLIGATIONS

16.16.1 *(Revoked 28/2/07)*

16.16.2 NZX shall not be considered by a Market Participant as an auditor nor should the functions of NZX be considered an audit. *(Amended 28/2/07)*

16.16.3 Any material received or granted access to by NZX in relation to the business or businesses of the Market Participant will be treated confidentially by NZX.
(Amended 28/2/07)

16.16.4 For the avoidance of doubt, any written records or copies of documents relating to a Market Participant's business or businesses will be stored by NZX in a manner to ensure such documents remain secure and confidential to that Market Participant and NZX and any other regulator that NZX must provide such information to. *(Amended 28/2/07)*

16.16.5 NZX shall carry out its supervision function in a manner which, NZX, in its discretion, considers appropriate to promote an orderly market and which enables NZX to fulfil its functions and obligations as a registered exchange

under the Securities Markets Act 1988. NZX accepts no liability to any party in seeking to rely on this supervision function. *(Inserted 28/2/07)*

16.17 MARKET PARTICIPANT'S LIABILITY FOR NZX COSTS

Each Market Participant shall be liable for the full costs for any and all work carried out by or on behalf of NZX in ensuring compliance with these **Rules**. The administrative liability under this **Rule 16.17** does not in any case prevent the bringing of disciplinary charges. Failure to pay any demand under this **Rule 16.17** within **10 Business Days** shall render the relevant Market Participant's Trading Permission liable for suspension.

(Amended 28/2/07)

16.18 PENALTIES FOR LATE FILING OF RETURNS OR RECORDS

Each Market Participant failing to supply, by the specified date, any returns or records required by NZX under these **Rules** shall be liable for a late filing fee as determined by NZX from time to time.

(Amended 28/2/07)

16.19 *(Revoked 28/2/07)*