NZX Participant Guidance Note

Client Assets

Notification version

October 2026

~~December 2020~~

The purpose of this guidance note is to provide guidance to Market Participants in relation to the interpretation of Section 18 of the NZX Participant Rules (**Rules**).

Under Rule 21.4.1, NZX Limited (**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.

This guidance note replaces the previous Client Assets Guidance Note issued in December 2015, and the Bank Reconciliation Standards and Client Funds Overdraft Reporting Practice Notes issued in December 2017.

Contents

This Guidance Note has been issued by 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 Rules in every situation. NZX may replace Guidance Notes and Practice Notes at any time and a Market Participant should ensure it has the most recent versions of these documents. Guidance Notes do not constitute legal advice. NZX recommends that Market Participants take advice from qualified persons.

1. Introduction

A Market Participant may hold Client Assets in the normal course of its business. Where it does so, it is considered a Market Participant Accepting Client Assets (referred to as a **Market Participant** in this Guidance Note) under the NZX Participant Rules (**Rules**).

A Market Participant~~When it does so, it will be~~ acts in a fiduciary capacity~~, acting~~ as agent for its clients where it receives C~~c~~lient A~~a~~ssets. This requires high standards of custodianship and associated record keeping. s~~S~~Section 18 of the ~~NZX Participant~~ Rules ~~(**Rules**)~~ recognises the position of trust under which these assets are held and sets minimum standards for ~~Market Participants~~Market Participants in discharging ~~this~~ their fiduciary dut~~y~~ies.

~~It is also recognised that it may be necessary for a Market Participant Accepting Client Assets to deposit its own funds in its Client Funds Accounts for the purposes of facilitating settlement and managing any shortfalls that may arise when carrying out such transactions.~~

~~A Market Participant is responsible for establishing and maintaining adequate accounting systems and records, and effective internal controls that ensure that this fiduciary duty is met at all times. At a minimum, this requires:~~

- ~~Proper handling of client assets;~~
- ~~Payments into and withdrawal from Client Funds Accounts being for authorised purposes in line with client instructions; and~~
- ~~Compliance with reconciliation, record keeping, and notification requirements.~~

~~1.1 Background~~

This Guidance Note has been developed to provide additional clarification of the key obligations under s~~S~~ection 18 of the Rules covering Client Assets. Key ~~areas included in this~~obligations covered by this Guidance Note are:

- ~~Key Definitions;~~requirements to hold Client Assets on trust;
- ~~Calculation of Outstanding Obligations~~requirements in relation to Client Funds Accounts;
- Client Asset reconciliation requirements;
- ~~Client Assets Reconciliation Obligations and Standards;~~
- circumstances where a Market Participant's own funds can be held together with Client Funds; and~~Buffer Maintenance; and~~
- notification obligations in relation to breaches of section 18. ~~Requirements for Client Funds Bank Accounts.~~

~~Custody (covered in Rule 18.15) is specifically excluded from this Guidance Note.~~

Please note that the capitalised terms used in this Guidance Note have the meaning given in the Rules.

2. ~~Key definitions~~Obligation to hold Client Assets on trust

~~The purpose of this section of the Guidance Note is to explain certain key definitions used in Rule 18. It is essential that Market Participants fully understand the meaning of defined terms to understand the obligations imposed upon them.~~

Market Participants are required to ~~hold~~ ensure that Client Assets, including monies and property, are held on trust for their clients at all times. This is a fundamental obligation underpinning the protection of Client Assets, and aligns with requirements contained in the Financial Markets Conduct Act 2013 (**FMC Act**).

Client Assets are Client Funds and clients' Securities received by a Market Participant to be held on behalf of a client. This includes, for example, money or Securities transferred to the Market Participant to facilitate a sell or buy order. Monies transferred by a client to a Market Participant to pay for services, or that the client does not intend ~~are otherwise not intended~~ to be held by the Market Participant on behalf of the client, are not considered a Client Asset.

The Rules also specify that Client Assets must not be used as payment or security for, or to otherwise discharge, any obligation of the Market Participant or any other person.[1] This includes that one client's assets may not be used against an obligation owing by another client. It is not acceptable for a Market Participant to use, for example, Securities being held on behalf of client A to meet settlement obligations of client B in order to avoid late settlement fees. Any assets held for Client A are held exclusively for Client A, and cannot be used for the benefit of any other person.[2] ~~Client Assets~~

The Rules permit Client Assets to be held by Market Participants in a Depository Account. Where a client's Client Assets will be held by a Market Participant in a Depository Account, it must ensure that it provides the disclosure required by Rule 18.11. NZX expects this disclosure to be made at the point of onboarding or, if a Market Participant starts depositing Client Assets into a Depository Account after a client has already been onboarded, as soon as reasonably possible after the Market Participant starts using the Depository Account.~~*18.1.1 "**Client Assets**" means:*~~

The obligation for a Market Participant to hold Client Assets on trust is discharged at the point:[3]~~*Client Funds received and held by a Market Participant Accepting Client Assets for undelivered buy contracts or received and held on account including, but not limited to, Margin Cover, funds on deposit, call accounts and application monies; and*~~

[1] Rule 18.2.2.

[2] We note that Rule 18.2.2 is not intended to take away or affect any lawful lien or claim that a Market Participant who holds Client Assets has against the Client Funds or client's Securities insofar as such lien or claim is permitted by law.

[3] Rule 18.2.3.

(a) that client receives its funds as clear funds from the Market Participant;

(b) the legal title of the relevant Securities are registered into that client's name, or other person as instructed by the client; or

(c) the Client Funds have been applied in accordance with Rule 18.5.

Section 3.5 below provides additional guidance in relation to (c) above on the application of Client Funds in accordance with Rule 18.5.

~~*(a) Client's Securities received and held by a Market Participant Accepting Client Assets for delivered unpaid sell contracts."*~~

~~NZX notes that Client Assets are not limited to funds or Securities received by a Market Participant for settling a share transaction, but include all assets of a Market Participant's client that have been transferred to that Market Participant by that client or otherwise. However, it is expected that the most common type of Client Asset held by a Market Participant will be either Securities or funds.~~

~~"**Securities**" is defined in section 1.1 of the Rules and includes unlisted securities (debt and equity).~~

~~**2.1** Buffers~~

~~"**Buffer**" is defined in Rule 18.3.3 as follows:~~

~~*"Money belonging to the Market Participant Accepting Client Assets which is deposited into a Client Funds Account and retained for the purposes of facilitating settlement and to manage any shortfalls that may arise in respect of settlement."*~~

~~NZX recognises that it may be reasonably necessary for a Market Participant Accepting Client Assets to deposit its own funds in Clients Funds Accounts to ensure it is able to satisfy its daily settlement obligations where the Market Participant may not yet have received certain Client Assets, and also for example to mitigate against other unforeseen transactions outside the Market Participant's control.~~

~~A Market Participant Accepting Client Assets must calculate and maintain its Buffer on a daily basis in order to distinguish its property from that of its clients within its Client Funds Accounts.~~

~~For the purposes of determining what is a Client Asset where a Market Participant operates a Nominee account for a client, only those Securities still requiring settlement, not all nominee holdings of that client, are considered Client Assets. The requirements imposed on Market Participants for longer term Nominee holdings (also known as Custody) are set out in Rule 18.15 and are not covered by this Guidance Note.~~

~~**2.2** Client Funds Account~~

~~*18.3.1 "**Client Funds Account**" means*~~

~~*(a) a trust account held by a Market Participant Accepting Client Assets solely for the benefit of its clients at a Bank approved by NZX; and*~~

~~(b) a Depository Account held by a Market Participant Accepting Client Assets solely for the benefit of its clients."~~

~~Under this definition, a Client Funds Account represents a single trust account or Depository Account which has recognised status as being for the benefit of the clients of that Market Participant. In practice, multiple client funds bank accounts may be operated, such as foreign currency accounts and interest earning deposit and call accounts. Where multiple bank accounts are operated, Section 18 of the Rules applies to each of these Client Funds Accounts (Rule 18.3.2). For the purposes of account operation each account must be treated individually and mapped to an individual ledger account and individually reconciled, but the accounts may be aggregated and converted to $NZ in order to demonstrate that Total Client Assets held equal or exceed Outstanding Obligations.~~

3. Client Funds Accounts ~~Calculation of Outstanding Obligations~~

3.1 Client Funds Account Set Up

General

A Client Funds Account is defined as:

(a) a trust account held at a Bank approved by NZX by a Market Participant or the Market Participant's Nominee Company, that meets the requirements of Rule 18.4; or

(b) a Depository Account held by a Market Participant, or the Market Participant's Nominee Company;

which is held solely for the benefit of the Market Participant's clients.~~.~~

For a Depository Account to meet this definition, it must only be used for funds being held for the Market Participant's clients.

A Market Participant must open and maintain at least one Client Funds Account in each currency for which it accepts funds.[4] Section 18 of the Rules applies to each Client Funds Account maintained by a Market Participant.

It will be common practice for Market Participants to maintain several Client Funds Accounts. I~~I~~n order to demonstrate the segregation of Client Funds and funds belonging to the Market Participant, recommended good practice is that Client Funds Accounts and house accounts are set up under different bank account numbers as opposed to a different suffix.

Market Participants must ensure that the words "Client Funds Account", "Client Trust Account", or other similar words as required by legislation appear in the bank account name of each Client Funds Account.[5]

[4] Rule 18.3.1.

[5] Rule 18.4.1(b).

Client ~~Although no prescriptive list of approved banks is set out in this Guidance Note, Client~~ Funds Accounts in New Zealand must be held with a r~~R~~egistered Bank (which means a registered bank in terms of the Reserve Bank Act 1989). In overseas jurisdictions, banks regulated by the recognised banking supervisor in that jurisdiction, such as Reserve Bank of Australia/Australian Prudential Regulatory Authority in Australia or the Prudential Regulation Authority in the United Kingdom, are acceptable to NZX.

Bank acknowledgement

With the exception of Depository Accounts, the Rules require e~~e~~ach Market Participant ~~must~~to obtain from the Bank holding the Client Funds Account, a written acknowledgement of the trust status of the bank account in a form that is acceptable to NZX.[6] The Market Participant must ~~and~~ provide ~~such~~ the Bank's acknowledgement to NZX.[7]

NZX considers an acceptable acknowledgement will be one where the Bank confirms the trust nature of the account, rather than providing a confirmation that the Market Participant has notified the bank that the account is a trust account. The Appendix to this Guidance Note provides some standard wording examples that NZX considers are acceptable for the purposes of meeting the requirements of this Rule.

We note that a Market Participant~~s~~ must obtain the written acknowledgement from its bank, provide this acknowledgement to NZX, and receive confirmation that the acknowledgement is in a form acceptable to NZX, before using the account as a Client Funds Account.

Interest bearing Bank account as a Client Funds Account

The designation of an interest bearing account as a Client Funds Account is acceptable provided that:

(a) t~~T~~he account is in the name of the ~~Market Participant Accepting Client Assets~~Market Participant;

(b) a~~A~~ll monies are deposited at ~~call with~~ a registered B~~b~~ank, either at call or (at the client's request) in a term deposit; and

(c) a~~A~~ll other requirements for Client Funds Accounts are met.

For example, ~~Client Funds held in~~ an interest bearing deposit product offered by that Market Participant, where deposits are held in a r~~R~~egistered Bank, can be designated as a Client Funds Account, ~~(~~provided all requirements ~~as per Section 18~~ of the Rules are met ~~in full).~~ ~~whereas~~ In contrast, a deposit with a finance company that is not a registered B~~b~~ank cannot be designated as a Client Funds Account. Market Participants should ~~obtain clearance from~~seek further guidance from NZX directly if there is doubt as to whether a Client Funds Account meets this standard.

In addition, where ~~a Market Participant Accepting Client Assets~~a Market Participant retains interest earned on client monies held in a Client Funds Account, this must be disclosed to its clients.

[6] Rule 18.4.1(a).

[7] Rule 18.4.1(c).

~~The following are key prescriptive requirements for all Market Participants Accepting Client Assets:~~

- ~~Each Market Participant Accepting Client Assets must have a Client Funds Account of the type referred to in Rule 18.3.1(a) for each currency it accepts *(Rule 18.3.2)*.~~
- ~~With the exception of Depository Accounts, each Market Participant must obtain from the bank holding the Client Funds Account a written confirmation acknowledging the trust status of the bank account and ensure that the words "Client Funds Account' (or similar words as required by legislation) appear in the bank account name. In addition, the written acknowledgement must be provided to NZX Compliance *(Rule 18.6.1(a)(ii))*. Refer to Appendix 3 for standard wording of the acknowledgement. Market Participants must obtain the written acknowledgement from its bank before using the account as a Client Funds Account.~~
- ~~Client Funds can only be deposited into a bank account if that account is designated a Client Funds Account *(Rule 18.6.1(b))*. No Client Funds can be deposited into any other account.~~
- ~~Each Market Participant must ensure that the Client Funds Account is not overdrawn at either the general ledger or the physical bank account *(Rule 18.6.1(e))*.~~
- ~~Each Market Participant must not use funds in the Client Funds Account for security *(Rule 18.6.1(f))*.~~
- ~~Each Market Participant must reconcile the ledger records of each bank account with the Bank records on a daily basis. This covers all bank accounts, including foreign currency Client Funds Bank Accounts *(Rule 18.6.1(g))*. NZX's expectations as to bank reconciliation standards are detailed below in section 6.4.~~

~~In addition, in order to demonstrate the segregation of client funds and Market Participant funds, recommended good practice is that Client Funds Accounts are set up under different bank account numbers as opposed to a different suffix.~~

3.2 Receiving Client Funds

Each Market Participant must ensure that Client Funds are held in a Client Funds Account, and not deposit Client Funds into any account that is not a Client Funds Account. Where Client Funds are received by a Market Participant into an account that is not a Client Funds Account, a Market Participant must ensure the Client F~~f~~unds are deposited into a Client Funds Account as soon as reasonably possible.

In most cases, NZX considers 'as soon as reasonably possible' to mean immediately upon receipt, however ~~notes that~~ where Client Funds are received outside of banking hours, it is reasonable for them to be deposited into a Client Funds Account first thing the following Business Day.

3.3 Client Funds Account Overdrafts

Each Market Participant must ensure that its Client Funds Accounts are never overdrawn, and the associated general ledger bank book is not overdrawn at the end of each Business Day.[8] Market Participants must notify NZX immediately if this obligation is breached, and include in the notification the information required by the Procedures.[9]

NZX is concerned primarily with any physical bank overdrafts, or any overdraft or understatement in a general ledger book at the end of a Business Day (as highlighted by the reconciliations required under Rule 18.6).

NZX understands that there may be timing issues relating to how a Market Participant's accounting systems recognise transactions, which mean that a general ledger could be overdrawn for a short period of time intraday. NZX would not expect notification of an intraday overdraft of the general ledger account that has resulted from a timing difference of this nature, and which had not resulted in the physical bank balance being overdrawn at any time. ~~Rule 18.6.1(e) specifically states that each Market Participant Accepting Client Assets must:~~

~~*"Ensure that each Client Funds Account is not overdrawn at any time, for the purposes of this Rule 18.6.1(e) this includes both the general ledger bank book and the physical Bank account. For the avoidance of doubt, a Client Funds Account in credit cannot be used to offset a deficit in another Client Funds Account;"*~~

~~In addition, Rule 18.6.2 requires each Market Participant Accepting Client Assets to notify NZX immediately, should the Client Funds Account become overdrawn for any reason. When notifying NZX of an overdraft, the Market Participant Accepting Client Assets must complete the template provided in Appendix 4.~~

~~NZX is concerned primarily with any physical bank overdraws, or any overdraw or understatement in a general ledger at the end of a Business Day (as highlighted by the reconciliations required under Rule 18.6.1(g)). NZX understands that there may be timing issues in respect of the manner in which Market Participant's accounting systems recognise transactions, which mean that a general ledger could be overdrawn for a short period of time intraday. NZX would not expect notification of an intraday overdraft of the general ledger that has resulted from a timing difference of this nature and which had not resulted in the physical bank balance being overdrawn at any time.~~

~~All overdraws (either physical or book) will be critically assessed by NZX for possible disciplinary action. Disclosure to NZX of overdraft pursuant to Rule 18.6.2 will not necessarily limit disciplinary action, but may be taken into consideration as a mitigating factor when NZX recommends an appropriate penalty to the NZ Markets Disciplinary Tribunal for the matter. NZX expects that the NZ Markets Disciplinary Tribunal will not look favourably upon a situation where a Market Participant fails to disclose an overdrawn account that is subsequently detected by NZX on inspection or otherwise.~~

[8] Rule 18.4.2

[9] Rule 18.4.4 and Procedure 6.1.

~~It is not acceptable to seek to avoid general ledger overdraw by mapping two physical bank accounts to a single general ledger code.~~

~~Market Participants should be aware that~~In order to comply with these requirements Market Participants will ~~require~~ need to implement and maintain processes to limit the likelihood of any overdraft occurring~~ to be~~, ~~in place,~~ which may include the following:

(a) ~~Daily Funding Requirements –~~ Where there is any uncertainty as to the likelihood of receipt of expected funds~~ overnight~~, these monies should not be included in funding calculations. In determining whether uncertainty exists, Market Participants should have confirmation of dispatch of the funds and consider the nature of the counterparty and past reliability.

(b) Each ~~Removal of Netting – for the purposes of assessing an overdraw event, each~~ bank account must be treated individually. For example, it is not acceptable for a Market Participant ~~Market Participant~~ to operate two Client Funds ~~bank accounts~~Accounts, one of which is in overdraft and the other in ~~significant~~ surplus (either physical or general ledger) for which the net of the two is positive. Therefore, cash must move simultaneously in line with ledger bookings.

(c) Processes to verify available funds prior to payments being made.

(d) Where a client requests a funds movement but does not have sufficient funds in the Client Funds Account, the funds movement should not be made. ~~Unpresented Bank Items – Market Participants Accepting Client Assets must not allow for presentation delay when deciding when to transfer funds between Client Funds bank accounts. For example, a situation where a cheque is written, but funds are not transferred to cover that cheque until 2 days later because it is not expected that the cheque will be presented is not acceptable. As outlined above, cash must move simultaneously in line with ledger bookings.~~

NZX recognises that errors can occur that are outside the control of a Market Participant and there are occasions where a third party ~~error, omission or activity~~ causes a Market Participant's Client Funds Account to become overdrawn (for example a Bank error). It is the Market Participant's responsibility to take reasonable steps to confirm that the counterparties they deal with have procedures in place to prevent errors occurring and to enable early detection of errors should they occur. As detailed below in section 5, a Market Participant~~s~~ should also factor such considerations into the level of Buffer it holds within its Client Funds Accounts in order to prevent a shortfall.

~~Where these errors occur on an infrequent basis and the third party has accepted responsibility for the error, NZX will assess the materiality, case by case, based on the risk to overall Client Funds. However, it is the firm's responsibility to ensure that the counterparties and Banks they deal with have procedures in place to prevent errors occurring and to enable early detection of errors should they occur. As detailed above in section 5, Market Participants should also factor such considerations into the level of Buffer it holds within its Client Funds Accounts.~~

NZX notes that a third party error which results in an overdraft must be reported in the same manner as any other overdraft, even if the error will be corrected~~ with good value~~.

~~If the error is caused by a third party (for example, a Bank) the Market Participant should ask that third party to confirm the cause of the overdraft occurring and that the error was theirs. This provides NZX with greater ability to assess the level of seriousness of the overdraft and to take into account circumstances that were outside of the Market Participant's control.~~

3.4 Client Funds Account reconciliation ~~CFA Bank Reconciliations~~

Market Participants must maintain an individual general ledger for each Client Funds Account[10] and reconcile these ledger records against the records of the Bank or CDO (as applicable) on a daily basis.[11]

Reconciliations should be completed the morning following the Business Day to which the reconciliation relates, in order to prove that:

(a) all Client Funds Accounts have continued to hold the correct amount of funds as a result of overnight processing; and

(b) Client Assets have been adequately protected at all times.

The information provided by the reconciliation is required for the Market Participant to complete the Client Asset reconciliation required by Rule 18.7 (discussed further at section 4 below).

~~With respect to the daily reconciliations required under Rule 18.6.1(g),~~ NZX expects that the controls over reconciliation processes that a Market Participant has in place should, at a minimum, include:

(a) d~~D~~ocumented processes and procedures, including a summary of all bank accounts and details of account signatories and processes for managing reconciling items;

(b) a~~A~~ppropriate segregation of duties between entry creation and reconciliation duties;

(c) a~~A~~ssignment of responsibility for reconciliations at an appropriate level; and

i~~I~~ndependent review at an appropriate level.

(d)

Independent review, undertaken by a person not involved in maintaining the general ledger, is ~~the most~~a critical element to ensuring the effectiveness of ~~bank~~ the Client Funds Account reconciliation ~~s~~ as a key control.- Critical components of this review include:

(a) ensuring r~~R~~econciling items are valid and supported by sufficient explanation and supporting documentation;

(b) e~~E~~nsuring reconciling items clear within a reasonable time period;

(c) e~~E~~nsuring outstanding items are investigated and resolved; and

~~Stale cheques are followed up with the client / vendor concerned;~~

m~~M~~anual entries to the general ledger are valid.

(d)

[10] Rule 18.4.5.

[11] Rule 18.6.1.

NZX recognises that both manual and system-generated reconciliations ~~are common~~(or components of reconciliations) are used by Market Participants. There is no difference in the standards that apply. Keeping manual data entry to a minimum will help reduce the risk of human error or data manipulation. It is now common practice to automate the import of bank account transactions into a reconciliation programme.

Regardless of the method of preparation, there should be sufficient information available to demonstrate how the matching of items occurs.

Transactions within the reconciliation should be unalterable except for adding comments on the item to allow anyone to be able to pick up the reconciliation in the absence of the usual reconciler, for example:

(a) o~~O~~utstanding items should be explained along with action taken to resolve them if they are outstanding for an unreasonable length of time;

(b) a~~A~~ny large or unusual items should be annotated; and

d~~D~~ifferences awaiting correction should be annotated and not netted off.

(c)

Copies of all completed reconciliations must be kept as evidence of completion and to verify the calculation of Client Assets for each Business Day.

NZX expects that, as a key control, bank reconciliations and associated records are kept for a minimum of 7 years in accordance with Participant Rule 3.27.1.

3.5 Application of Client Funds and payments out of Client Funds Accounts

~~18.7 must be held upon trust by the Market Participant Accepting Client Assets and applied:~~

~~(a) For the purposes of settlement of, or reimbursement in respect of the settlement of the purchase of Securities for a client;~~

~~(b) In payment of the sale price for a Client's Securities transferred into a Market Participant Accepting Client Assets Transfer Account;~~

~~(c) In payment to any other person for whom Client Funds have been held in the Client Funds Account; and~~

~~(d) In payment of brokerage and other charges properly payable to the Market Participant Accepting Client Assets by its clients for transactions under Rules 18.10 (a) and (b)~~

~~18.10.2 To the extent a Market Participant Accepting Client Assets has deposited its own funds into a Client Funds Account that Market Participant Accepting Client Assets may withdraw those assets provided that Rule 18.4.1 continues to be met."~~The Rules allow Client Funds to be applied in the following ways:[12]

[12] Rule 18.5.

~~In summary, valid transfers out of a Client Funds Account include:~~

(a) ~~Fulfilling market settlement obligations or reimbursement of a settled purchase~~to reimburse the Market Participant for the settlement of the purchase of S~~s~~ecurities for a client, where those S~~s~~ecurities are registered in the client's name (or other person's name as instructed by the client);

(b) ~~Payment of sale proceeds to a selling client~~to facilitate the settlement of a purchase of Securities for that client, where the Client Funds are being transferred into a Settlement Account for this purpose;

~~(b)~~(c) to facilitate the settlement of a purchase of Securities on an offshore exchange for that client, where the Client Funds are transferred to an overseas intermediary for the purposes of such settlement, where the conditions of Rule 18.5.2 have been met;

~~(c)~~(d) ~~Payment to any person, such as a third party. This must be based on an instruction from a client or authorised person on that client's account~~for the purpose of buying units for a client in a Registered MIS directly from the manager of that Registered MIS;

(e) in p~~P~~ayment of brokerage and any other charges properly payable to the Market Participant by ~~the~~the client ~~who has deposited funds into the Client Funds Account~~;

~~(d)~~(f) for the purposes of returning Client Funds back to the relevant client, where those Client Funds are transferring to a Bank account verified in accordance with Rule 18.9; and

~~(e)~~(g) for any other reason as expressly directed by the client in writing~~Reducing the Buffer held in the Client Funds Account, while remaining in compliance with Rule 18.4.1~~.

Transfers to overseas intermediaries

We note for the purposes of 18.5.1(c) above, the purchase of Securities on an offshore exchange may be on market or off-market, in accordance with the rules of that exchange.

Where Client Funds are transferred to overseas intermediaries for ~~-~~the purpose of settling a purchase on an offshore exchange, prior to making such transfer a Market Participant must:[13]

(a) take reasonable steps to ensure that the overseas intermediary is required to hold the funds in accordance with generally equivalent protections to those provided for in Rule 18.2 and the Client Funds Legislation;

(b) provide the client with the name, address, and contact information of the intermediary its Client Funds are being transferred to;

[13] Rule 18.5.2.

(c) provide the client with a warning statement notifying it that its Client Funds will no longer be held in the Market Participant Accepting Client Assets' Client Funds Account, and provide a description of the nature of the client funds protections that will apply.

NZX considers generally equivalent protections for the purposes of Rule 18.5.2(a) must include at a minimum that:

- the Client Funds are required to be:

  held on trust, and not used for a purpose other than facilitating the client's purchase of Securities;

  ○

  ○ segregated from the overseas intermediary's own house monies; and

- ~~-~~appropriate records that identifying client money and client property are required to be maintained.

These requirements may be in accordance with the laws of the overseas jurisdiction or provided for in the contract between the Market Participant and intermediary.

Where the warning statement required at 18.5.2(c) is provided in the client agreement, the statement must be prominently displayed.

Rule 18.5.2(c) requires a Participant to provide a description of the nature of the alternative client funds protections to its client. NZX expects this to comprise a summary of the relevant overseas client funds protections identified by the Participant through the due diligence undertaken for the purposes of Rule 18.5.2(a), to ensure that those requirements are generally equivalent. NZX does not expect a Participant to provide an opinion on the adequacy of those protections.

NZX does not expect a separate disclosure to be made at the time of every overseas transaction in order to meet the requirements of 18.5.2(b) and (c), rather these requirements may be met by way of standing disclosure through the client agreement on a jurisdictional basis.

If a Market Participant has not met the requirements of 18.5.2, it must not transfer Client Funds to the overseas intermediary. Where a Market Participant uses house monies to settle an overseas transaction, and reimburses itself in accordance with 18.5.1(a) once the Securities are registered in the client's name, it does not need to meet the requirements of Rule 18.5.2.

Application of Client Funds at the express direction of the client

For the purposes of Rule 18.5.1(g), NZX expects that an express direction of a client should be specific and informed. Where a client directs a Market Participant to transfer its funds to another party, the Market Participant should ensure that the client is informed that its funds may not be protected to the same standards as required by the Rules once transferred.

Any other payments out of a Client Funds Account

Payment of funds out of a Client Funds Account for any other purpose not listed above and provided for by Rule 18.5 will be ~~is likely to be~~ a breach of the Rules, including where such payments are made from Buffer held in the account by the Market Participant under Rule 18.8~~regardless of whether surplus Market Participant funds are held in that account~~. For example, a Market Participant ~~Accepting Client Assets~~ must not pay for business expenses from Buffer ~~surplus Market Participant cash~~ retained in a Client Funds ~~Bank~~ Account. Similarly, a Market Participant must not make non-settlement related payments on request of a client from Buffer retained in a Client Funds Account where that client does not hold sufficient funds in the Client Funds Account. Rather, for these types of payments Buffer should be withdrawn in accordance with Rule 18.8.9~~87~~ and, where relevant, payment should be made from the Market Participant's house bank account.

NZX recognises that mixed remittances to a Client Funds Account may occur. A mixed remittance is where a party may pay a combination of Client Funds and ~~operational remittances~~funds that are payable to the Market Participant (such as brokerage and other fees) into a Client Funds Account in a single payment. Where mixed remittances are identified, the Market Participant Accepting Client Assets must transfer such operational monies to its own bank accounts as soon as practicable. ~~In the normal course of events, a Client Funds Account should not be used to receive operational income.~~

3.6 Notification of changes to NZX

A Market Participant~~s~~ must notify NZX of any material change to its Client Funds Accounts,[14] including where the Market Participant has:

(a) opened a new Client Funds Account;

(b) closed a Client Funds Account;

(c) made changes to the name of a Client Funds Account, and/or

(d) become aware that a matter has arisen that causes the bank acknowledgment provided under Rule 18.4.1 to be inaccurate.~~.~~

~~2.3~~1.1 ~~Outstanding Obligations~~

~~*18.2.1 Outstanding Obligations means an agreement or arrangement between a Market Participant Accepting Client Assets and its client where:*~~

~~*(a) Securities of that client have been transferred into the Transfer Account of a Legal Title Transfer Depository Participant as a result of direct instructions from that client's Trading Participant and the funds owing for the transfer of those Securities to the buying client on the sale or proposed sale of those Securities have not yet been received by the Relevant Clearing Participant. Securities may not be transferred from a Transfer Account until such time as the Trading Participant has received an NZX confirmed trade; or*~~

~~*(b)*~~*(a)* ~~*That client is a buying client and has paid money to the Market Participant Accepting Client Assets prior to those Securities being registered into that client's or its Nominee Company's name. This includes funds received by the Trading Participant prior to a Trading Participant entering that client's Order into the Trading System; or*~~

[14] Rule 18.4.6.

~~*(c)*~~*(a)* ~~*That client has paid money to a Market Participant Accepting Client Assets for any other purpose, and the amount paid has not been applied (less reasonable brokerage or commission) for that purpose.*~~

~~In essence, Outstanding Obligations reflects the aggregate of Securities or funds held by a Market Participant Accepting Client Assets as a result of an agreement or arrangement where:~~

~~(a) Securities of a selling client have been transferred (legal title has passed) to a Legal Title Transfer Depository Participant for, or in advance of, sale or settlement, where that client is yet to be paid money;~~

~~(b)~~(a) ~~A buying client has paid money to the Market Participant Accepting Client Assets for, or prior to a purchase of securities, prior to those securities being registered in that client's name; and~~

~~(c)~~(a) ~~A client has paid money to the Market Participant Accepting Client Assets for any other purpose.~~

~~In calculating Outstanding Obligations, it is important to recognise that any Client Asset received by a Market Participant Accepting Client Assets will have a corresponding obligation. Accordingly, an obligation will not arise where the Market Participant Accepting Client Assets is yet to receive such Client Assets, regardless of whether a client's transaction has been executed on market as instructed by the client.~~

~~Given the definitions of Client Assets and Outstanding Obligations, NZX notes that in the normal course of business (i.e. absent any errors) these two figures will equal each other. Therefore, it is essential that Market Participants have sufficiently robust systems and processes for calculating Outstanding Obligations to identify which assets in its possession are Clients' Assets, with the remaining assets belonging to the Market Participant (i.e. the Buffer).~~

~~In calculating the level of Outstanding Obligations, the following should be noted:~~

~~2.4~~1.1 ~~Gross Segregation~~

~~The calculation of the Outstanding Obligations is based on gross segregation, therefore a client's individual trades must be analysed for inclusion in the calculation of Outstanding Obligations. For example, a delivered but unpaid sell order should not be netted off against an unregistered buy order.~~

~~In addition, clients cannot be netted against one another. A Market Participant Accepting Client Assets must provide for Outstanding Obligations without the inclusion of client debtor balances.~~

~~2.5~~1.1 ~~Trades on Other Exchanges~~

~~The obligations on a Market Participant under Rule 18 are the same regardless of the exchange on which the transaction is executed. However, in practice it may be uncommon for a Market Participant Accepting Client Assets who is trading on other exchanges to hold Client Assets in the form of Securities and therefore the Market Participant may only need to protect cash.~~

~~For example:~~

~~(i) **ASX Buy Transaction** – a client provides money in advance of a settlement of a buy transaction. These monies are held by the Market Participant through to settlement date in Australia (currently T+3, however this is changing to T+2 in March~~

~~2016), then transferred to an Agent in Australia for settlement. In addition the Market Participant provides registration details of the underlying client to its Agent. The Market Participant must protect these client monies in its Client Fund Account from the point it received funds from the client until the Securities are registered in the client's name.~~

~~(ii)~~(i) ~~**ASX Sell Transaction** – a client places a sell order. This order is then passed to an Australian Agent of the Market Participant. The Market Participant also provides registration details for the client. On settlement (currently T+3, however this is changing to T+2 in March 2016), the Securities of that client are uplifted by the Australian Agent and exchanged for cash. These funds are repaid into the Market Participant's AUD Client Funds Account. The Outstanding Obligation arises once the Securities have been uplifted by the Australian Agent and are no longer registered in the client's name and is extinguished when the sale proceeds have been paid to the client.~~

~~2.6~~1.1 ~~Securities settled outside the Legal Title Transfer System~~

~~Market Participants may undertake transactions outside the Legal Title Transfer System when acting as Agent. Specific examples include unlisted Securities (Debt or Equity) and Government Stock. As with trades on other exchanges, it will be uncommon for such Securities to be held in the Market Participant's name and therefore the Outstanding Obligation may only arise in cash.~~

~~For example:~~

~~(i) ***Unlisted Debt Buy Transaction (counterparty is Institutional Bank Ltd)*** – a client provides cash to a Market Participant to transact a debt product purchase. Funds are then passed to Institutional Bank Ltd who registers the client's ownership of the specific debt product. The Market Participant must protect this client's assets in the form of cash from the point of receipt of funds into the Market Participant's Client Funds Account until such time as the debt securities are registered in that client's name.~~

~~(ii)~~(i) ~~***Unlisted Debt Sell Transaction (counterparty is Institutional Bank Ltd)*** – a client provides a debt certificate and signed transfer form to a Market Participant to transact a debt product sale. These are then passed to Institutional Bank Ltd who de-registers the client's ownership interest in the specific debt product and passes cash back to the Market Participant in order to settle with the client. The Market Participant must protect this client asset from such time that Market Participant is provided with the signed transfer form and debt certificate until the client has received clear funds from that Market Participant.~~

~~2.7~~1.1 ~~Delivery versus Payment (DVP)~~

~~DVP is defined as "the contemporaneous exchange of Securities for funds on the settlement of a Trade or a transaction in Securities". Transactions settled DVP with a client should not be included in the calculation of Outstanding Obligations because, as there is simultaneous settlement of Securities and cash, the Market Participant does not hold client assets at any point. This includes, for example, Institutional trades settled through Austraclear.~~

~~2.8~~1.1 ~~Protection of Client Assets~~

~~*"18.5.2 Each Market Participant Accepting Client Assets must protect Client Assets from the time of receipt of those Client Assets. Each Market Participant Accepting Client Assets' obligations in relation to Client Funds are not discharged until:*~~

~~*a. That client has received clear funds from the Market Participant Accepting Client Assets; or*~~

~~*b.*~~*a.* ~~*The legal title of the Securities has been registered into that client's name on the Issuer's Securities Register."*~~

~~The calculation of Outstanding Obligations must include unpresented cheques, as the obligation is not discharged until clear funds are received by the client. Similarly where transfer of title is being done via a securities transfer form, it is not discharged until the client's name is on the register.~~

~~3.~~4. Client Asset~~s~~s~~ and~~ reconciliation ~~requirements~~

4.1 ~~Outstanding Obligations~~Reconciliation requirement

The requirement for a Market Participant~~s~~ to undertake daily reconciliations in order to determine whether its total Client Assets held are equal to its Outstanding Obligations is essential to ensuring the continued monitoring of Client Assets received by that Market Participant.

The Client Asset reconciliations must be completed for each currency in which Client Assets are held or Outstanding Obligations are owed, including NZD. NZX recognises that timing differences can cause a delay in relation to currency conversions, and Market Participants may have a shortfall in one currency which is then covered by funds held in another currency. NZX considers that such circumstances are only acceptable in the short term, and should be rectified the following Business Day to ensure that the correct currency is being held.

After completing this step, Market Participants must convert to NZD across the board for the overall calculation of total Client Assets and Outstanding Obligations.

~~*18.2.1 Outstanding Obligations means an agreement or arrangement between a Market Participant Accepting Client Assets and its client where:*~~

~~Securities of that client have been transferred into the Transfer Account of a Legal Title Transfer Depository Participant as a result of direct instructions from that client's Trading Participant and the funds owing for the transfer of those Securities to the buying client on the sale or proposed sale of those Securities have not yet been received by the Relevant Clearing Participant. Securities may not be transferred from a Transfer Account until such time as the Trading Participant has received an NZX confirmed trade; or~~

~~That client is a buying client and has paid money to the Market Participant Accepting Client Assets prior to those Securities being registered into that client's or its Nominee Company's name. This includes funds received by the Trading Participant prior to a Trading Participant entering that client's Order into the Trading System; or~~

~~That client has paid money to a Market Participant Accepting Client Assets for any other purpose, and the amount paid has not been applied (less reasonable brokerage or commission) for that purpose.~~

~~In essence, Outstanding Obligations reflects the aggregate of Securities or funds held by a Market Participant Accepting Client Assets as a result of an agreement or arrangement where:~~

~~Securities of a selling client have been transferred (legal title has passed) to a Legal Title Transfer Depository Participant for, or in advance of, sale or settlement, where that client is yet to be paid money;~~

~~A buying client has paid money to the Market Participant Accepting Client Assets for, or prior to a purchase of securities, prior to those securities being registered in that client's name; and~~

~~A client has paid money to the Market Participant Accepting Client Assets for any other purpose.~~

~~In calculating Outstanding Obligations, it is important to recognise that any Client Asset received by a Market Participant Accepting Client Assets will have a corresponding obligation.~~ A Market Participant's Outstanding Obligations must equal its total Client Assets at the end of each Business Day.[15]

NZX considers it best practice for reconciliations to be completed **before 12pm** each Business Day (as at close of business the previous Business Day) using the Client Funds Account balances determined by the bank reconciliations required under Rule 18.6 (and discussed at section 3.4 above). The records of the bank balance for each Client Funds Account recorded in the bank statements should be used in the Client Assets Reconciliation.

4.2 Calculating Outstanding Obligations

A Market Participant's Outstanding Obligations reflect~~s~~ the aggregate of Securities and Client Funds received and required to be held by a Market Participant, on behalf of its clients, or otherwise owing to its clients. Any Client Asset received by a Market Participant will have a corresponding obligation, against which an asset should be held (or a transfer to an intermediary recorded in accordance with Rule 18.7.4(d)).

A Market Participant must have sufficiently robust systems and processes in place to allow it to track and calculate its Outstanding Obligations on a client-by-client basis. Whenever a Market

[15] Rule 18.7.1.

Participant receives funds or assets from a client, this should be recorded in sufficient detail to capture and record each commitment that the Market Participant has to each of its clients.

Where a Market Participant has received funds and assets from a client, and these funds or assets have not been applied in accordance with the Rules, these funds and assets form part of the Market Participant's Outstanding Obligations. An ~~Accordingly, an~~ obligation will not arise where the Market Participant ~~Accepting Client Assets is yet to~~has not receive~~ such~~d Client Assets, regardless of whether a client's transaction has been executed on market as instructed by the client.

The calculation of the Outstanding Obligations is calculated on a gross basis per client, and obligations owed to one client cannot be netted against obligations owed to another client. The obligation to each client is also calculated on a gross basis and transactions cannot be netted at the client level either, except where there is a purchase and sale of the same securities for the same client on the same day.

Items received on the bank statement but not yet allocated into the correct general ledger account are deemed Client Assets until identified as non-client money, and should be factored into the Client Asset reconciliations required under Rule 18.7~~ as such~~. ~~Given the definitions of Client Assets and Outstanding Obligations, NZX notes that in the normal course of business (i.e. absent any errors) these two figures will equal each other. Therefore, it is essential that Market Participants have sufficiently robust systems and processes for calculating Outstanding Obligations to identify which assets in its possession are Clients' Assets, with the remaining assets belonging to the Market Participant (i.e. the Buffer).~~

~~In calculating the level of Outstanding Obligations, the following should be noted:~~

~~Gross Segregation~~

~~The calculation of the Outstanding Obligations is based on gross segregation, therefore a client's individual trades must be analysed for inclusion in the calculation of Outstanding Obligations. For example, a delivered but unpaid sell order should not be netted off against an unregistered buy order.~~

~~In addition, clients cannot be netted against one another. A Market Participant Accepting Client Assets must provide for Outstanding Obligations without the inclusion of client debtor balances.~~

~~Trades on Other Exchanges~~

~~The obligations on a Market Participant under Rule 18 are the same regardless of the exchange on which the transaction is executed. However, in practice it may be uncommon for a Market Participant Accepting Client Assets who is trading on other exchanges to hold Client Assets in the form of Securities and therefore the Market Participant may only need to protect cash.~~

~~For example:~~

- ~~**ASX Buy Transaction** – a client provides money in advance of a settlement of a buy transaction. These monies are held by the Market Participant through to~~

~~settlement date in Australia (currently T+3, however this is changing to T+2 in March 2016), then transferred to an Agent in Australia for settlement. In addition the Market Participant provides registration details of the underlying client to its Agent. The Market Participant must protect these client monies in its Client Fund Account from the point it received funds from the client until the Securities are registered in the client's name.~~

~~**ASX Sell Transaction** – a client places a sell order. This order is then passed to an Australian Agent of the Market Participant. The Market Participant also provides registration details for the client. On settlement (currently T+3, however this is changing to T+2 in March 2016), the Securities of that client are uplifted by the Australian Agent and exchanged for cash. These funds are repaid into the Market Participant's AUD Client Funds Account. The Outstanding Obligation arises once the Securities have been uplifted by the Australian Agent and are no longer registered in the client's name and is extinguished when the sale proceeds have been paid to the client.~~

~~Securities settled outside the Legal Title Transfer System~~

~~Market Participants may undertake transactions outside the Legal Title Transfer System when acting as Agent. Specific examples include unlisted Securities (Debt or Equity) and Government Stock. As with trades on other exchanges, it will be uncommon for such Securities to be held in the Market Participant's name and therefore the Outstanding Obligation may only arise in cash.~~

~~For example:~~

~~***Unlisted Debt Buy Transaction (counterparty is Institutional Bank Ltd)*** – a client provides cash to a Market Participant to transact a debt product purchase. Funds are then passed to Institutional Bank Ltd who registers the client's ownership of the specific debt product. The Market Participant must protect this client's assets in the form of cash from the point of receipt of funds into the Market Participant's Client Funds Account until such time as the debt securities are registered in that client's name.~~

~~***Unlisted Debt Sell Transaction (counterparty is Institutional Bank Ltd)*** – a client provides a debt certificate and signed transfer form to a Market Participant to transact a debt product sale. These are then passed to Institutional Bank Ltd who de-registers the client's ownership interest in the specific debt product and passes cash back to the Market Participant in order to settle with the client. The Market Participant must protect this client asset from such time that Market Participant is provided with the signed transfer form and debt certificate until the client has received clear funds from that Market Participant.~~

~~Delivery versus Payment (DVP)~~

~~DVP is defined as "the contemporaneous exchange of Securities for funds on the settlement of a Trade or a transaction in Securities". Transactions settled DVP with a client should not be included in the calculation of Outstanding Obligations because, as there is simultaneous~~

~~settlement of Securities and cash, the Market Participant does not hold client assets at any point. This includes, for example, Institutional trades settled through Austraclear.~~

~~Protection of Client Assets~~

~~*"18.5.2 Each Market Participant Accepting Client Assets must protect Client Assets from the time of receipt of those Client Assets. Each Market Participant Accepting Client Assets' obligations in relation to Client Funds are not discharged until:*~~

- ~~*That client has received clear funds from the Market Participant Accepting Client Assets; or*~~
- ~~*The legal title of the Securities has been registered into that client's name on the Issuer's Securities Register."*~~

~~The calculation of Outstanding Obligations must include unpresented cheques, as the obligation is not discharged until clear funds are received by the client. Similarly where transfer of title is being done via a securities transfer form, it is not discharged until the client's name is on the register.~~

4.3 Calculating total Client Assets

A Market Participant's total Client Assets include Client Funds that are held in a Client Funds Account (excluding any Buffer deposited by the Market Participant in accordance with Rule 18.8.3), Securities held on behalf of a client in either a Nominee Account, or a Transfer Account (where the Market Participant is also a Legal Title Transfer Depository Participant), and any Client Funds transferred to an intermediary in accordance with Rule 18.5.1(c).

Only Securities held on behalf of a client may be considered as part of a Market Participant's total Client Assets. This requires the ~~In essence, client Securities held in the~~ Market Participant ~~'s Transfer Account may be included in the assessment of Client Assets held provided that they can be~~ to be able to attribute the Securities held in its Transfer Account or Depository Account~~d~~ to a client ~~-~~on a line-by-line basis~~. This requires that:~~, meaning that:

(a) t~~T~~he total balance of a specific Security must be able to be split by individual client; and

(b) t~~T~~here is a one to one match of a specific client's Securities held by that Market Participant to an obligation arising through the pending transfer of those Securities.

~~Where Securities cannot be included in Client Assets, the equivalent amount must be held in cash where an Outstanding Obligation exists.~~

~~Client Securities will be held in a Market Participant's Transfer Account as a result of either:~~

- ~~A delivered, but unpaid sell contract; or~~
- ~~A paid, but unregistered buy contract.~~

~~For the purposes of this Client Assets Reconciliation, Securities held in the Transfer Account should be valued in the same manner as the Outstanding Obligation.~~

~~In short, Outstanding Obligations must be represented by segregated Client Assets in either Securities or cash, but not both. In addition, the Securities or cash must relate to the client for which assets are to be protected.~~

~~3.1 Client Assets, Buffers and Outstanding Obligations~~

~~A Market Participant Accepting Client Assets has the following requirement:~~

~~"18.4.1 Total Client Assets held in a Transfer Account of a Legal Title Transfer Depository Participant, Nominee Account and Client Funds Account by a Market Participant Accepting Client Assets (as the case may be) taken together with any Buffer must, at all times, equal or exceed that Market Participant's total Outstanding Obligations."~~

~~The obligation under **Rule 18.4.1** is intended to recognise that during the course of a normal Business Day, circumstances may arise intra-day where, temporarily, a Market Participant Accepting Client Assets may need to rely on its Buffer to ensure that sufficient funds and Securities are held in Client Funds Accounts and a Transfer Account so that taken together Clients Assets and Buffers continually equal or exceed Outstanding Obligations.~~

~~This is a fundamental obligation, which expressed simply, requires Client Assets and any Buffer held in the Market Participant's Client Funds Account and Transfer Account to **equal or exceed** Outstanding Obligations **at all times**. The purpose of this requirement is to ensure that a Market Participant Accepting Client Assets has sufficient Client Assets and Buffer to meet settlement obligations (on behalf of clients and itself as principal) as they fall due.~~

~~Where a Market Participant Accepting Client Assets is also a Clearing Participant, Client Assets transferred to the Clearing Participant's Settlement Account with CHO/CDO in anticipation of a clearing and settlement obligation may be included in Total Client Assets for the purposes of Rule 18.4.1.~~

~~3.2 The Client Assets reconciliation~~

~~A Market Participant Accepting Client Assets also has the following obligation in respect of daily reconciling, recording and reporting:~~

~~"18.4.2 Total Client Assets held in a Transfer Account of a Legal Title Transfer Depository Participant, Nominee Account and Client Funds Account by a Market Participant Accepting Client Assets (as the case may be) taken together but excluding any Buffer must, at the end of each Business Day, equal that Market Participant's total Outstanding Obligations."~~

~~The obligation under Rule 18.4.2 is monitored by Market Participants Accepting Client Assets being required to perform a daily "**Client Assets Reconciliation**" under Rule 18.6.1(h) for the previous Business Day, in order to:~~

- ~~(a) Demonstrate that the Market Participant held sufficient Client Assets to meet its Outstanding Obligations; and~~
- ~~(b) Identify, using its calculation of Outstanding Obligations, what money and Securities held in the Market Participant's Client Funds Account and Transfer Account are Client Assets;~~

~~**as at** the previous Business Day's close.~~

~~"18.6.1(h) Each Market Participant Accepting Client Assets must: Using data from Rule 18.6.1(g), perform reconciliations as required, in accordance with relevant Guidance Notes,~~

~~Procedures and Good Broking Practice, in order to monitor compliance with Rule 18.4.2, including a reconciliation as at the end of each Business Day assessing and determining compliance with Rule 18.4.2;"~~

~~The underlying principle behind the requirement at Rule 18.4.2 and the accompanying reconciliation requirement is that, absent any errors, Client Assets and Outstanding Obligations should always equal each other.~~

~~Unless there are exceptional circumstances, the reconciliation should be completed **before 12pm** each Business Day (as at close of business the previous Business Day) using the Client Funds Account balances determined by the bank reconciliations required under Rule 18.6.1(g). The records of the bank balance for each Client Funds Account should be used in the Client Assets Reconciliation.~~

~~Unidentified items received on the bank statement but not yet receipted into the general ledger are deemed Client Assets until identified as non-client money, and should be factored into a Market Participant's Outstanding Obligations for the purposes of Rule 18.4.2.~~

~~3.3 Inclusion of Securities in Total Client Assets~~

~~In relation to inclusion of Securities in Total Client Assets, Rule 18.4.3 states:~~

~~"Each Market Participant Accepting Client Assets may only recognise those Securities that belong to clients in its calculation of Total Client Assets pursuant to Rule 18.4.1 and 18.4.2. Securities belonging to the Market Participant Accepting Client Assets and client Securities that do not require protection that are held in either a Transfer Account of a Legal Title Transfer Depository Participant or Nominee Account may not be included in the calculation of Total Client Assets under Rule 18.4.1 and 18.4.2".~~

~~In essence, client Securities held in the Market Participant's Transfer Account may be included in the assessment of Client Assets held provided that they can be attributed to a client on a line-by-line basis. This requires that:~~

- ~~The total balance of a specific Security must be able to be split by individual client; and~~
- ~~There is a one to one match of a specific client's Securities held by that Market Participant to an obligation arising through the pending transfer of those Securities.~~

~~Where Securities cannot be included in Client Assets, the equivalent amount must be held in cash where an Outstanding Obligation exists.~~

~~Client Securities will be held in a Market Participant's Transfer Account as a result of either:~~

~~(i) A delivered, but unpaid sell contract; or~~

~~(ii)~~(i) ~~A paid, but unregistered buy contract.~~

~~For the purposes of this Client Assets Reconciliation, Securities held in the Transfer Account should be valued in the same manner as the Outstanding Obligation.~~

~~In short, Outstanding Obligations must be represented by segregated Client Assets in either Securities or cash, but not both. In addition, the Securities or cash must relate to the client for which assets are to be protected.~~

4.4 Record keeping and reporting to NZX

Client Asset reconciliations must be prepared in accordance with the requirements of Rule 18.7.6 and Appendix C and D of the Rules. In order to demonstrate compliance with the obligations under the Rules, daily Client Asset reconciliations, as well as records required under Rule 20.7, must be retained for a minimum of 7 years in accordance with Rule 3.27.1.

Market Participants are required to report to NZX on a monthly basis the information required by Appendix C and D. This requires Market Participants to complete the forms set out at Appendix C and D to reflect Client Asset reconciliations that have been completed on the last day of the month, as well as a daily log for the month. ~~In order to demonstrate compliance with the obligations under Rule 18.4.2, Client Assets Reconciliations must be recorded daily and retained for a minimum of three (3) years (in at least electronic format). Client Assets Reconciliations must be prepared according to the form set out in Appendix 1 and Appendix 2 of this Guidance Note. This information should be provided on a monthly basis, with Appendix 1 reflecting the last day of the month and Appendix 2 reflecting a daily log for that month.~~

~~3.4 Bank balances~~

~~In monitoring compliance with Rule 18.4.1, a Market Participant should use the current ledger balance of each bank account, provided that the ledger is kept current and accurately reflects all transactions.[16] In completing the Client Assets Reconciliation in accordance with 18.6.1(h) for the previous Business Day (as discussed under section 4.2 above), reconciled bank balances should be used from the reconciliations required under Rule 18.6.1(g).~~

~~Bank reconciliation processes should take place on the morning following the current trading day; in order to prove that:~~

- ~~All bank accounts have continued to hold the correct amount of funds as a result of overnight processing; and~~
- ~~Client Assets have been adequately protected at all times.~~

~~3.5~~4.5 Notifications

A Market Participant ~~Accepting Client Assets~~ must provide immediate notification to NZX where:[17]

~~(a) Its bank book ledger balance, any physical Bank account or Depository Account balance for any of its Client Funds Accounts become overdrawn for any reason (Rule 18.6.1(e));~~

~~[16] For the purposes of managing required funds under Rule 18.4.1, all unpresented cheques should be added back into the ledger balances due to the obligation not yet being discharged under Rule 18.5.2.~~

[17] Rule 18.7.7.

(a) t~~T~~he Market Participant has been unable to perform the reconciliations required by Rule 18.7.2; or

(b) the Client Assets r~~R~~econciliation performed under Rule 18~~.6.1(h~~.7.2~~)~~ reveals ~~any non-compliance with Rule 18.4.2;~~that the total Client Assets held by the Market Participant are not equal to its Outstanding Obligations.

~~(c) There has been any breach of Rule 18.4.1; and~~

~~(d) There has been a breach of Rule 18.6.1(b).~~

The n~~N~~otification~~s~~ should include an explanation of the context for the event being notifie~~dation~~, and details of either when the reconciliation required by Rule 18.7.2 will be completed, or details of the investigation steps the Market Participant is taking in order to determine the reason for Client Assets and Outstanding Obligations not being reconcilable. ~~the action taken to rectify the breach, along with a summary of the measures implemented to prevent reoccurrence in future.~~

~~In addition, a Market Participant Accepting Client Assets must periodically notify NZX whether it intends to deposit Buffers in its Client Funds Accounts and advise NZX of the basis on which such Buffers will be calculated. NZX will seek these regular notifications as part of the annual inspection process.~~

~~NZX expects that such Buffers will be calculated in accordance with the principles outlined in section 5 of this Guidance Note and in accordance with Good Broking Practice. These notifications should be provided to NZX at least annually (which, following initial notification, will be achieved via requests for this information as part of routine pre-inspection requests for information), together with all situations when a Market Participant Accepting Client Assets materially amends the basis on which it intends to calculate its proposed Buffers.~~

~~3.6 Brokerage Sweep~~

~~NZX recognises that common practice amongst Market Participants is to "sweep' accumulated brokerage and other charges the Market Participant levies its clients on a day-to-day basis with the Client Assets Reconciliation determining the amount of funds to be protected in cash. This approach is acceptable, provided that the Market Participant can demonstrate that the aggregate of monies swept from the Client Funds Accounts is not more than the amount earned by the Market Participant in brokerage and other charges, and such sweeps would not cause Outstanding Obligations to exceed Client Assets. This proof must be able to be produced for NZX to review immediately on request. Where a Market Participant conducts its brokerage sweep less frequently than daily, the brokerage that remains in the Client Funds Account should be accounted for within the Buffer.~~

~~4.~~5. ~~Buffer Maintenance~~ Market Participant holding own funds in Client Funds Account

5.1 Requirements under Client Funds Legislation

The FMC Act requires Client Assets to be held separately to the assets of a provider of client money and property services.[18] The Rules also prohibit a Market Participant from depositing its own money into a Client Funds Account, except to the extent allowed by the Client Funds Legislation.

~~"18.3.3 A Client Funds Account held by a Market Participant Accepting Client Assets may include a "Buffer", being money belonging to the Market Participant Accepting Client Assets which is deposited into a Client Funds Account and retained for the purposes of facilitating settlement and to manage any shortfalls that may arise in respect of settlement.~~

The Client Funds Legislation provides for prescribed circumstances where client money can be held together with money of a Market Participant, being where this is required for the purpose of:

(a) facilitating or arranging the settlement of 1 or more financial product transaction for a client;[19] or

(b) rectifying, or reducing the risk of, a shortfall arising in the client money held for a client in the account.[20]

In both cases, the Market Participant may only rely on the above exclusions insofar as it is satisfied, on reasonable grounds, that it has adequate systems and procedures in place to ensure it complies with the requirements of Schedule 21C of the Financial Markets Conduct Regulations 2014 (referred to as **Schedule 21C**).

5.2 Holding Buffer in a Client Funds Account

The requirements of the Rules align with the position in legislation, where NZX acknowledges that it may be reasonably necessary for a Market Participant to hold its own money in its Client Funds Accounts as a Buffer. Where Buffer is held, the Market Participants must meet the requirements of the Client Funds Legislation as well as Section 18 of the Rules.

Where a Market Participant holds its own funds in a Client Funds Account in accordance with Rule 18.8.3, these funds may be withdrawn so long as the total Client Assets calculated under Rule 18.7.4 continues to equal or exceed the Market Participant's Outstanding Obligations calculated under Rule 18.7.5. Any Buffer held in a Client Funds Account will be treated as Client Funds until the Buffer is withdrawn in accordance with the Rules.

5.3 Requirements for holding Buffer – Reasonably necessary

~~18.3.4 Any Buffer deposited in a Client Funds Account by a Market Participant Accepting Client Assets must be reasonable in the circumstances and in accordance with relevant Guidance Notes, Procedures and Good Broking Practice."~~

[18] Section 431ZC(2) of the FMC Act.

[19] Financial Markets Conduct Regulations 2014, regulation 229Y

[20] Financial Markets Conduct Regulations 2014, regulation 229ZA.

~~As clarified in previous sections of this Guidance Note, NZX acknowledges that it may be reasonably necessary for a Market Participant Accepting Client Assets to deposit its own money in its Client Funds Accounts as a Buffer.~~~~[21]~~ Any Buffer held in a Client Funds Account must be reasonable in the circumstances and align with the requirements of the Client Funds Legislation. This includes that it must be ***reasonably necessary*** for the Buffer to be held in the Client Funds Account, which Schedule 21C outlines as being if the Market Participant:

(a) has taken reasonable steps to investigate alternatives that would overcome or reduce the extent to which the Market Participant's own money or property is held together with Client Assets; and

(b) is satisfied on reasonable grounds that either there are no alternatives available, or that any such alternatives:

i. would pose undue risk to the prudent and orderly conduct of ~~their~~ its financial product transaction business; or

ii. are not able to be accessed or implemented without exposing the Market Participant or its clients to an unreasonable level of cost or delay or risk; or

iii. would be contrary to the best interest of ~~their~~ its clients in being able to undertake financial product transactions in a timely and prudent manner.

5.4 Requirements for holding Buffer – Reasonable amount

Where a Market Participant includes a Buffer in a Client Funds Account the amount held should be no more than is reasonably necessary to ensure either:

(a) the prudent and orderly settlement of a client's transactions; or

(b) rectify or reduce the risk of a shortfall occurring in the Client Funds Account.

~~it is necessary for the amount of the Buffer to be reasonable based on~~NZX considers that the Market Participant should take into account its own~~'s~~ circumstances when assessing what is reasonable, including:

(a) the nature of the Market Participant's business,

(b) ~~and~~ its need to rely on B~~b~~uffers within its Client Funds Accounts in the past, and

(c) what is a reasonable amount of Buffer for that day.

Rule 18.8.5 requires a Market Participant to calculate its Buffer on a daily basis in order to ensure the Buffer is no more than reasonably necessary. Market Participants should also ensure the amount of Buffer money held in its Client Funds Accounts is maintained at a level considered reasonable for that day.

~~NZX recognises that a Market Participant's Buffer may fluctuate daily given a number of factors outside of its control, and as per the requirements of Rule 18.6.1(h), Market Participants will calculate this amount during the morning of each Business Day (for the previous Business Day).~~

~~[21] NZX notes that some Market Participants may have less need for a Buffer.~~

NZX appreciates that, given the range of factors which may vary between Market Participants (such as settlement policies, processes, systems and differences in client bases), what is ~~considered "~~reasonable~~ in the circumstances"~~ for the purpose of Rule 18.8~~3~~.4 will differ between Market Participants. NZX would expect a Market Participant's procedures for determining and maintaining its Buffer at a reasonable level to ~~at least~~include consideration ~~(but not be limited to) the~~of following factors, as a ~~minumum~~minimum:

(a) ~~i~~~~Its~~the method ~~clients' adopted method~~ of settlement adopted by its clients and the associated settlement risk (e.g. Retail or~~vs.~~ Institutional clients; ~~Free-Of-Payment (FOP) vs. D~~ DVP settlement;~~VP,~~ custodial or~~vs.~~ non-custodial ~~client~~settlements);

(b) h~~H~~istoric settlement obligations, taking into account such items as past debit settlement obligations, proportion of client failure to pay or deliver;

(c) u~~U~~pcoming settlement obligations (T+1,T+2~~,T+3~~) and current market activity (e.g. significant transactions or exceptional events);

(d) p~~P~~otential internal or external (third party) errors and timing differences;

(e) f~~F~~ees and charges, both periodic and unforeseen; and

- m~~M~~ixed remittances and un-swept brokerage accumulation.

(f) ~~In the absence of an extraordinary transaction or circumstance, Market Participants Accepting Client Assets who wish to maintain a Buffer may want to establish a maximum level of Buffer for their business, to be determined as either a fixed amount or percentage of Outstanding Obligations.~~

5.5 Requirements for holding Buffer – Notification

~~In addition, a~~A Market Participant ~~Accepting Client Assets~~ must periodically notify NZX whether it intends to deposit Buffers in its Client Funds Accounts and advise NZX of the basis on which such Buffers will be calculated. NZX will seek these regular notifications as part of the annual inspection process.~~,~~

~~NZX expects that such Buffers will be calculated in accordance with the principles outlined in section 5 of this Guidance Note and in accordance with Good Broking Practice.~~ These notifications should be provided to NZX at least annually (which, following initial notification, will be achieved via requests for this information as part of routine pre-inspection requests for information).

Additionally, a ~~, together with all situations when a~~ Market Participant must notify NZX as soon as reasonably practicable if it ~~Accepting Client Assets~~ materially amends the basis on which it ~~intends to~~ calculates its proposed Buffer~~s~~. This notification requirement only applies to material changes to the calculation methodology and is not intended to require notification where there are material changes to the Buffer amount itself.

~~**Buffers**~~

~~"**Buffer**" is defined in Rule 18.3.3 as follows:~~

~~*"Money belonging to the Market Participant Accepting Client Assets which is deposited into a Client Funds Account and retained for the purposes of facilitating settlement and to manage any shortfalls that may arise in respect of settlement."*~~

~~NZX recognises that it may be reasonably necessary for a Market Participant Accepting Client Assets to deposit its own funds in Clients Funds Accounts to ensure it is able to satisfy its daily settlement obligations where the Market Participant may not yet have received certain Client Assets, and also for example to mitigate against other unforeseen transactions outside the Market Participant's control.~~

~~A Market Participant Accepting Client Assets must calculate and maintain its Buffer on a daily basis in order to distinguish its property from that of its clients within its Client Funds Accounts.~~

~~For the purposes of determining what is a Client Asset where a Market Participant operates a Nominee account for a client, only those Securities still requiring settlement, not all nominee holdings of that client, are considered Client Assets. The requirements imposed on Market Participants for longer term Nominee holdings (also known as Custody) are set out in Rule 18.15 and are not covered by this Guidance Note.~~

6. ~~Requirements for Bank Accounts~~Notification of breaches of Section 18

Protection of Client Assets is fundamental to NZX's operation of fair, orderly, and transparent markets. As such, NZX considers that any breach of the requirements of Section 18 would be a significant breach for the purposes of Rule 21.7.1, and as such must be promptly notified to NZX in writing.

~~5.~~

~~5.11.1~~ ~~Client Funds Account Overdrafts~~

~~Rule 18.6.1(e) specifically states that each Market Participant Accepting Client Assets must:~~

~~*"Ensure that each Client Funds Account is not overdrawn at any time, for the purposes of this Rule 18.6.1(e) this includes both the general ledger bank book and the physical Bank account. For the avoidance of doubt, a Client Funds Account in credit cannot be used to offset a deficit in another Client Funds Account;"*~~

~~In addition, Rule 18.6.2 requires each Market Participant Accepting Client Assets to notify NZX immediately, should the Client Funds Account become overdrawn for any reason. When notifying NZX of an overdraft, the Market Participant Accepting Client Assets must complete the template provided in Appendix 4.~~

~~NZX is concerned primarily with any physical bank overdraws, or any overdraw or understatement in a general ledger at the end of a Business Day (as highlighted by the reconciliations required under Rule 18.6.1(g)). NZX understands that there may be timing issues in respect of the manner in which Market Participant's accounting systems recognise transactions, which mean that a general ledger could be overdrawn for a short period of time intraday. NZX would not expect notification of an intraday overdraft of the general ledger that has resulted from a timing difference of this nature and which had not resulted in the physical bank balance being overdrawn at any time.~~

~~All overdraws (either physical or book) will be critically assessed by NZX for possible disciplinary action. Disclosure to NZX of overdraft pursuant to Rule 18.6.2 will not necessarily limit disciplinary action, but may be taken into consideration as a mitigating factor when NZX recommends an appropriate penalty to the NZ Markets Disciplinary Tribunal for the matter. NZX expects that the NZ Markets Disciplinary Tribunal will not look favourably upon a situation where a Market Participant fails to disclose an overdrawn account that is subsequently detected by NZX on inspection or otherwise.~~

~~It is not acceptable to seek to avoid general ledger overdraw by mapping two physical bank accounts to a single general ledger code.~~

~~Market Participants should be aware that these requirements will require processes to be in place, which may include the following:~~

- ~~Daily Funding Requirements – where there is any uncertainty as to the likelihood of receipt of funds overnight, these monies should not be included in funding calculations. In determining whether uncertainty exists, Market Participants should consider the nature of the counterparty and past reliability.~~

- ~~Removal of Netting – for the purposes of assessing an overdraw event, each bank account must be treated individually. For example, it is not acceptable for a Market Participant to operate two Client Funds bank accounts, one of which is in overdraft and the other in significant surplus (either physical or general ledger) for which the net of the two is positive. Therefore cash must move simultaneously in line with ledger bookings.~~

- ~~Unpresented Bank Items – Market Participants Accepting Client Assets must not allow for presentation delay when deciding when to transfer funds between Client Funds bank accounts. For example, a situation where a cheque is written, but funds are not transferred to cover that cheque until 2 days later because it is not expected that the cheque will be presented is not acceptable. As outlined above, cash must move simultaneously in line with ledger bookings.~~

~~NZX recognises that errors can occur that are outside the control of a Market Participant and there are occasions where a third party error, omission or activity causes a Market Participant's Client Funds Account to become overdrawn (for example a Bank error).~~

~~Where these errors occur on an infrequent basis and the third party has accepted responsibility for the error, NZX will assess the materiality, case by case, based on the risk to overall Client Funds. However, it is the firm's responsibility to ensure that the counterparties and Banks they deal with have procedures in place to prevent errors occurring and to enable early detection of errors should they occur. As detailed above in section 5, Market Participants should also factor such considerations into the level of Buffer it holds within its Client Funds Accounts.~~

~~NZX notes that a third party error which results in an overdraft must be reported in the same manner as any other overdraft, even if the error will be corrected with good value.~~

~~If the error is caused by a third party (for example, a Bank) the Market Participant should ask that third party to confirm the cause of the overdraft occurring and that the error was theirs. This provides NZX with greater ability to assess the level of seriousness of the overdraft and to take into account circumstances that were outside of the Market Participant's control.~~

~~5.21.1 CFA Bank Reconciliations~~

~~With respect to the daily reconciliations required under Rule 18.6.1(g), NZX expects that the controls over reconciliation processes that a Market Participant has in place should, at a minimum, include:~~

~~(a) Documented processes and procedures, including a summary of all bank accounts and details of account signatories;~~

~~(b)~~(a) ~~Appropriate segregation of duties between entry creation and reconciliation duties;~~

~~(c)~~(a) ~~Assignment of responsibility for reconciliations at an appropriate level; and~~

~~(d)~~(a) ~~Independent review at an appropriate level.~~

~~Independent review is the most critical element to ensuring the effectiveness of bank reconciliations as a key control. Critical components of this review include:~~

~~(a) Reconciling items are valid and supported by sufficient explanation and supporting documentation;~~

~~(b)~~(a) ~~Ensuring reconciling items clear within a reasonable time period;~~

~~(c)~~(a) ~~Ensuring outstanding items are investigated and resolved;~~

~~(d)~~(a) ~~Stale cheques are followed up with the client / vendor concerned;~~

~~(e)~~(a) ~~Manual entries to the general ledger are valid.~~

~~NZX recognises that both manual and system-generated reconciliations are common. There is no difference in the standards that apply. Keeping manual data entry to a minimum will help reduce the risk of human error or data manipulation. It is now common practice to automate the import of bank account transactions into a reconciliation programme.~~

~~Regardless of the method of preparation, there should be sufficient information available to demonstrate how the matching of items occurs.~~

~~Transactions within the reconciliation should be unalterable except for adding comments on the item to allow anyone to be able to pick up the reconciliation in the absence of the usual reconciler, for example:~~

~~(a) Outstanding items should be explained along with action taken to resolve them if they are outstanding for an unreasonable length of time;~~

~~(b)~~(a) ~~Any large or unusual items should be annotated; and~~

~~(c)~~(a) ~~Differences awaiting correction should be annotated and not netted off.~~

~~Copies of all completed reconciliations must be kept as evidence of completion and to verify the calculation of Client Assets for each Business Day.~~

~~NZX expects that, as a key control, bank reconciliations and associated records are kept for a minimum of 7 years in accordance with Participant Rule 3.27.1.~~

~~Appendix 1 – Client Assets Reconciliation template~~

~~NAME OF PARTICIPANT:~~ -

~~DATE:~~

	~~Client Assets & Outstanding Obligations~~					
-	**~~NZD~~**	**~~AUD~~**	**~~USD~~**	**~~EUR~~**	**~~GBP~~**	**~~JPY~~**
~~Outstanding Obligations~~	-	-	-	-	-	-
~~Items as per Client Funds Report~~	-	-	-	-	-	-
~~Other Client Assets Held~~	-	-	-	-	-	-
~~Total Outstanding Obligations~~	-	-	-	-	-	-
-	-	-	-	-	-	-
~~Client Fund Cash Balances~~	-	-	-	-	-	-
~~Securities in Transfer Account~~	-	-	-	-	-	-
~~Total Assets Held~~	-	-	-	-	-	-
-	-	-	-	-	-	-
~~Client Assets~~	-	-	-	-	-	-
~~Buffer~~	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-

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~~Appendix 2 – Client Assets Log~~

NZX

~~**PARTICIPANT:**~~ -

~~**MONTH ENDED:**~~ -

~~Client Assets & Outstanding Obligations~~				
~~Date~~	~~Outstanding Obligations~~	~~Cash (CFA) and Clients' Securities~~	~~Client Assets~~	~~Buffer~~
~~1/12/2015~~	-	-	-	-
~~2/12/2015~~	-	-	-	-
~~3/12/2015~~	-	-	-	-
~~4/12/2015~~	-	-	-	-
~~7/12/2015~~	-	-	-	-
~~8/12/2015~~	-	-	-	-
~~9/12/2015~~	-	-	-	-
~~10/12/2015~~	-	-	-	-
~~11/12/2015~~	-	-	-	-
~~14/12/2015~~	-	-	-	-
~~15/12/2015~~	-	-	-	-
~~16/12/2015~~	-	-	-	-
~~17/12/2015~~	-	-	-	-
~~18/12/2015~~	-	-	-	-
~~21/12/2015~~	-	-	-	-
~~22/12/2015~~	-	-	-	-
~~23/12/2015~~	-	-	-	-
~~24/12/2015~~	-	-	-	-
~~29/12/2015~~	-	-	-	-
~~30/12/2015~~	-	-	-	-
~~31/12/2015~~	-	-	-	-
-	-	-	-	-

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Appendix ~~3 –~~ – ~~Prescribed~~ Sample wording for ~~inclusion in Bank Trust letters~~Bank acknowledgement letter required under Rule 18.4.1

The below samples provide wording that would be acceptable to NZX for the written bank acknowledgement required under Rule 18.4.1.

NZX notes that it may accept alternative wording, and a Market Participant should engage with NZX if it intends to use wording that differs from the samples provided below.

Sample 1

"~~"~~Re Bank Account XX-XXXX-XXXXXXX-XXX

We acknowledge that in accordance with NZX Participant Rule 18.4~~6~~.1, the~~e~~ above bank account is designated as a "Client Funds Account", and

- this is a trust account for the benefit of clients of ~~XXXX~~ <PARTICIPANT> and the bank is not entitled to combine the account with any other account(s), or to exercise any right of set-off or counterclaim against the money in this account in respect of any sum owed to it on any other account of ~~XXXX~~<PARTICIPANT>, or that of any other person; and

the title of the accounts sufficiently distinguishes the account from any other account that belongs to <PARTICIPANT>~~XXXX"~~."

Sample 2

"<BANK> (**the Bank**) acknowledges that:

a) <PARTICIPANT> will be designated in the Bank's records as trustee in relation to the accounts listed below (**the Accounts**), and the Bank does not consider itself entitled to combine the Accounts with any other accounts or to exercise any right of set-off or counterclaim against any money in the Accounts in respect of an sum owed to the Bank by <PARTICIPANT> in its own right.

b) The Accounts will be designated in the Bank's records as "Client Funds Accounts", and that designation will distinguish the Accounts from any accounts held with the Bank by <PARTICIPANT> in its own right.

While acknowledging the effect of the designation of the Accounts as "Client Funds Accounts", the Bank accepts no responsibility for the correctness of efficacy of the designation, nor for the propriety of withdrawals from the Accounts which comply with the mandates governing the Accounts from time to time."

Sample 3

"We, <BANK>, acknowledge that in accordance with NZX Participant Rule 18.4.1 the accounts set out in Schedule 1 of this letter (the **Accounts**) are designated as Client Funds Accounts.

At your request, we hereby provide our acknowledgement in accordance with NZX Participant Rule 18.4.1 that:

a) All moneys deposited in the Accounts are held on trust by <PARTICIPANT> for its customers and we cannot exercise any right of set-off or counterclaim against the moneys in respect of any sum owed by <PARTICIPANT> to us; and

b) The Accounts are designated as trust accounts, or customer's or customers' accounts, which shall be designated and maintained separately from any other account in which <PARTICIPANT> deposits its own moneys.

Please note that you remain liable to pay the charges associated with the Accounts. We will debit these charges from your billing accounts (detailed in Schedule 2 of this letter) maintained with us in accordance with the existing billing arrangements which you have agreed to. For the avoidance of doubt, no debit of any such charges shall be from any of the Accounts."

Sample 4

"Re: <PARTICIPANT> Client Funds Accounts (**Accounts**) listed below:

XXXXXXXXXXXX

We confirm in accordance with NZX Participant Rule 18.4.1 (**Rule**) that:

- the above accounts of <PARTICIPANT> with <BANK> designated <PARTICIPANT> – Client Funds Accounts are, for the purposes of the Rule, Client Funds Accounts of <PARTICIPANT>; and

- all monies standing to the credit of the Accounts are held by <PARTICIPANT> as trustee and <BANK> is not entitled to combine the Accounts with any other account(s) or to exercise any right of set -off or counterclaim against the money in the Accounts in respect of any sum owed to it on another account of <BANK>, <PARTICIPANT>, or that of any other person; and

- the title of the Accounts sufficiently distinguishes the Accounts from any account/s containing money that belongs to <PARTICIPANT>."

~~Appendix 4 – Client Funds Account Overdraft Reporting~~

~~Information required~~	~~Information from the Market Participant~~
~~Participant~~	
~~Date of overdraft~~	
~~Date overdraft identified and reported~~	
~~CFA general ledger name and number of the overdrawn account(s)~~	
~~Bank, branch, account name and account number of the overdrawn CFA~~	
~~Amount and currency of the overdraft~~	
~~Details of the transaction causing the overdraft (date, amount, other party/account)~~	
~~Did the overdraft occur on the physical Bank account or the general ledger, or both?~~	
~~Did the overdraft occur intraday only, or was the CFA overdrawn at the end of a Business Day?~~	
~~Did the overdraft result in Client Assets being less than Outstanding Obligations?~~	

~~Details of the how the overdraft occurred – what happened, why it happened, and the parties involved~~	
~~What is being done to resolve the problem and is the firm being given backdated value for the funds?~~	
~~The time frame to resolution and any actions to be taken pending resolution?~~	
~~Actions being taken to prevent an overdraft occurring again~~	

~~Where reporting any CFA overdraft, please include:~~

- ~~The CFA's Bank statement for the affected Business Days~~
- ~~The CFA's general ledger statement for the affected Business Days~~
- ~~The Client Assets Reconciliation in the form of Appendix 1~~