

NZX Participant Guidance Note

Client Assets

Exposure draft

CLEAN

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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

Contents	2
1. Introduction	4
2. Obligation to hold Client Assets on trust.....	4
3. Client Funds Accounts.....	5
3.1 Client Funds Account Set Up.....	5
3.2 Receiving Client Funds.....	6
3.3 Client Funds Account Overdrafts.....	7
3.4 Client Funds Account reconciliation.....	8
3.5 Application of Client Funds and payments out of Client Funds Accounts	9
3.6 Notification of changes to NZX	10
4. Client Assets reconciliation.....	10
4.1 Reconciliation requirement	10
4.2 Calculating Outstanding Obligations.....	10
4.3 Calculating total Client Assets	11
4.4 Record keeping and reporting to NZX.....	11
4.5 Notifications.....	12
5. Market Participant holding own funds in Client Funds Account.....	12
5.1 Requirements under Client Funds Legislation	12

5.2	Holding Buffer in a Client Funds Account	12
5.3	Requirements for holding Buffer – Reasonably necessary.....	13
5.4	Requirements for holding Buffer – Reasonable amount.....	13
5.5	Requirements for holding Buffer – Notification.....	14
6.	Notification of breaches of Section 18	14
Appendix – Sample wording for Bank acknowledgement letter required under Rule 18.4.1 .		15

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 acts in a fiduciary capacity as agent for its clients where it receives Client Assets. This requires high standards of custodianship and associated record keeping. Section 18 of the Rules recognises the position of trust under which these assets are held and sets minimum standards for Market Participants in discharging their fiduciary duties.

This Guidance Note has been developed to provide additional clarification of the key obligations under section 18 of the Rules covering Client Assets. Key obligations covered by this Guidance Note are:

- requirements to hold Client Assets on trust;
- requirements in relation to Client Funds Accounts;
- Client Asset reconciliation requirements;
- circumstances where a Market Participant's own funds can be held together with Client Funds; and
- expectations to notify NZX of a breach of section 18.

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

2. Obligation to hold Client Assets on trust

Market Participants are required to 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 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 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. 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.

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.

The obligation for a Market Participant to hold Client Assets on trust is discharged at the point:

- (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.

3. Client Funds Accounts

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) Depository Account held by a Market Participant solely for the benefit of its clients;

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. 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. In order to demonstrate the segregation of client funds and funds belonging to the Market Participants, 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.

Client Funds Accounts in New Zealand must be held with a registered 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 each Market Participant 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. The Market Participant must provide the Bank's acknowledgement to NZX.

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 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) the account is in the name of the Market Participant;
- (b) all monies are deposited at a registered Bank, either at call or (at the client's request) in a term deposit; and
- (c) all other requirements for Client Funds Accounts are met.

For example, an interest bearing deposit product offered by that Market Participant, where deposits are held in a registered Bank, can be designated as a Client Funds Account, provided all requirements of the Rules are met. In contrast, a deposit with a finance company that is not a registered Bank cannot be designated as a Client Funds Account. Market Participants should 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 retains interest earned on client monies held in a Client Funds Account, this must be disclosed to its clients.

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 Funds 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 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 and general ledger bank book are never overdrawn.¹ Market Participants must notify NZX immediately if any of its Client Funds Accounts or associated general ledger bank books become overdrawn for any reason, and include in the notification the information required by the Procedures.²

NZX is concerned primarily with any physical bank overdrafts, or any overdraft or understatement in a general ledger account 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.

In order to comply with these requirements Market Participants will need to implement and maintain processes to limit the likelihood of any overdraft occurring, which may include the following:

- (d) where there is any uncertainty as to the likelihood of receipt of expected funds, 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.
- (e) each bank account must be treated individually. For example, it is not acceptable for a Market Participant to operate two Client Funds Accounts, one of which is in overdraft and the other in 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.
- (f) processes to verify available funds prior to payments being made.
- (g) 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.

NZX recognises that errors can occur that are outside the control of a Market Participant and there are occasions where a third party causes a Market Participant's Client Funds Account to become overdrawn (for example a Bank error). It is the Market Participant's responsibility to ensure 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 should also factor such considerations into the level of Buffer it holds within its Client Funds Accounts in order to prevent a shortfall.

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.

¹ Rule 18.4.2

² Rule 18.4.3 and Procedure 6.1

3.4 Client Funds Account reconciliation

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

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).

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 and processes for managing reconciling items;
- (b) appropriate segregation of duties between entry creation and reconciliation duties;
- (c) assignment of responsibility for reconciliations at an appropriate level; and
- (d) independent review at an appropriate level.

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

- (a) ensuring reconciling items are valid and supported by sufficient explanation and supporting documentation;
- (b) ensuring reconciling items clear within a reasonable time period;
- (c) ensuring outstanding items are investigated and resolved; and
- (d) manual entries to the general ledger are valid.

NZX recognises that both manual and system-generated reconciliations (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) outstanding items should be explained along with action taken to resolve them if they are outstanding for an unreasonable length of time;
- (b) any large or unusual items should be annotated; and
- (c) 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.

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

The Rules allow Client Funds to be applied in the following ways:

- (a) to reimburse the Market Participant for the settlement of the purchase of Securities for a client, where those Securities are registered in the client's name (or other person's name as instructed by the client);
- (b) 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;
- (c) for the purpose of buying units for a client in a Registered MIS directly from the manager of that Registered MIS;
- (d) in payment of brokerage and any other charges properly payable to the Market Participant by the client;
- (e) 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
- (f) for any other reason as expressly directed by the client in writing.

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.

Payment of funds out of a Client Funds Account for any other purpose not listed above will 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. For example, a Market Participant must not pay for business expenses from Buffer retained in a Client Funds 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 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 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.

3.6 Notification of changes to NZX

A Market Participant must notify NZX of changes to its Client Funds Accounts,³ including where the Market Participant has:

- (a) opened a new Client Funds Account;
- (b) closed a Client Funds Account; and/or
- (c) made changes to the name of a Client Funds Account.

4. Client Assets reconciliation

4.1 Reconciliation requirement

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

A Market Participant's Outstanding Obligations should equal its total Client Assets at the end of each Business Day.

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 would only be acceptable in the short term, and should be rectified the following Business Day to ensure that the correct currency is being held.

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 (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 the aggregate of Securities and Client Funds received and required to be held by a Market Participant, on behalf of its clients. Any

³ Rule 18.4.5.

Client Asset received by a Market Participant will have a corresponding obligation, against which an asset should be held.

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 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 or the client's instructions, these funds and assets form part of the Market Participant's Outstanding Obligations. An obligation will not arise where the Market Participant has not received 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.

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), and 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).

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

- (a) the total balance of a specific Security must be able to be split by individual client; and
- (b) 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.

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.

4.5 Notifications

A Market Participant must provide immediate notification to NZX where:

- (a) the Market Participant has been unable to perform the reconciliations required by Rule 18.7.2; or
- (b) the Client Assets reconciliation performed under Rule 18.7.2 reveals that the total Client Assets held by the Market Participant are not equal to its Outstanding Obligations.

The notification should include an explanation of the context for the event being notified, 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.

5. 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.⁴ 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.

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;⁵ or
- (b) rectifying, or reducing the risk of, a shortfall arising in the client money held for a client in the account.⁶

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

⁴ Section 431ZC(2) of the FMC Act.

⁵ Financial Markets Conduct Regulations 2014, regulation 229Y

⁶ Financial Markets Conduct Regulations 2014, regulation 229ZA.

Funds Accounts as a Buffer. Where Buffer is held, the Market Participant 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

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 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 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.

NZX considers that the Market Participant should take into account its own circumstances when assessing what is reasonable, including:

- (a) the nature of the Market Participant's business,
- (b) its need to rely on Buffers 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 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 reasonable for the purpose of Rule 18.8.4 will differ between Market Participants. NZX would expect a Market Participant's procedures for determining and maintaining its Buffer at a reasonable level to include consideration of following factors, as a minimum:

- (a) the method of settlement adopted by its clients and the associated settlement risk (e.g. Retail or Institutional clients; DVP settlement; custodial or non-custodial settlements);
- (b) historic settlement obligations, taking into account such items as past debit settlement obligations, proportion of client failure to pay or deliver;
- (c) upcoming settlement obligations (T+1,T+2) and current market activity (e.g. significant transactions or exceptional events);
- (d) potential internal or external (third party) errors and timing differences;
- (e) fees and charges, both periodic and unforeseen; and
- (f) mixed remittances and un-swept brokerage accumulation.

5.5 Requirements for holding Buffer – Notification

A Market Participant 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.

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 Market Participant must notify NZX as soon as reasonably practicable if it materially amends the basis on which it calculates its proposed Buffer. 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.

6. 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.

NZX notes that, in accordance with section 3.3 of this Guidance Note, it would not expect an intra-day overdraft of a Client Funds Account's general ledger account which has not resulted in the physical bank balance being overdrawn at any time to be notified under Rule 21.7.1.

Appendix – Sample wording for 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-XXXXXXXX-XXX

We acknowledge that in accordance with NZX Participant Rule 18.4.1, the above bank account is designated as a “Client Funds Account”, and

- this is a trust account for the benefit of clients of <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 <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>.”

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>."