

## Summary

- Introduction
- What Rules can NZX give a waiver for?
- When is a waiver or ruling required?
- Do I need a lawyer to apply for a waiver or ruling?
- Who do we apply to for a waiver or ruling?
- What is required in an application for a waiver or ruling?
- Format of an application for a waiver or ruling.
- What are the charges?
- How long does it take?
- What steps are involved?
- Publication of Waivers and Rulings
- Revocation of Waivers

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## Disclaimer

This practice note has been issued by NZX to promote market certainty and assist Market Participants. This practice 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 those documents. This does not constitute legal advice. NZX recommends that Market Participants take advice from qualified persons.

# GUIDANCE NOTE – WAIVERS AND RULINGS

## Introduction

NZX has the power to make rulings or grant waivers from the NZX Participant Rules (the “Rules”).

The most commonly asked questions about seeking a waiver or ruling from NZX, and answers to them, are detailed below together with a format for applying for a waiver or ruling.

## What Rules can NZX grant a waiver from?

Market Participants may apply to NZX for a waiver from any provision in the Rules. However, where waivers are granted, they will usually have conditions attached to ensure that the policy behind the Rules will not be adversely affected.

Rule 17.5(c) provides:

*“NZX shall have the power to make rulings as to the interpretation of the Rules and grant waivers from these Rules, on such terms and conditions as NZX, in its complete discretion, thinks fit. Any waiver granted by NZX pursuant to this Rule 17.5(c) and in force prior to the commencement of these Rules shall continue in force notwithstanding the introduction of these Rules”*

## When is a waiver or ruling required?

NZX does not provide legal opinions on how the relevant law or Rules apply or whether in given circumstances a waiver or ruling is required. Market Participant should make their own interpretation when deciding whether to apply for a waiver or ruling (this should be set out their application as suggested in the Application Format section below, where an application for a waiver or ruling is made).

NZX considers that its power to grant rulings applies in situations where the Rules provide a discretion to NZX. Regardless of whether mischief might not apply, NZX will not make a rule that is inconsistent with the wording of a rule. Where a Market Participant desires certainty they may wish to approach NZX to obtain this in the form of a ruling.

Where an application seeks to achieve something distinct from what is provided in the Rules, a waiver must be sought from NZX.

## Do I need a lawyer to apply for a waiver or ruling?

Compliance with the Rules more often than not involves complex issues surrounding interpretation and application of the Rules. While NZX often receives applications directly from a Market Participant, in some cases Market Participant may benefit from seeking advice before making an application.

## Who do we apply to for a waiver or ruling?

Applications for waivers and/or rulings from the NZX Participant Rules should be in writing and addressed to the NZX Compliance team. Our postal and facsimile addresses are listed below. If you prefer you can send your application by email to [compliance@nzx.com](mailto:compliance@nzx.com).

NZX Compliance  
P O Box 2959  
**WELLINGTON**  
Facsimile: +64 4 473 3181

## What is required in an application for a waiver or ruling?

Set out below is a suggested format for a waiver or ruling application. Following the format to ensure that all the necessary information is provided and delays caused by an incomplete application are avoided.

You should bear in mind that the purpose of the application is to clearly establish and document the necessity for the waiver or ruling sought. In preparing a waiver or ruling application you should clearly state:

- The Participant Rules concerned
- The full details of the transactions or circumstances in relation to the waiver or ruling is sought
- The application of the Participant Rules without the waiver or ruling;
- The hardship or mischief that will result from that application;
- The policy objective behind the Participant Rule concerned;
- The basis upon which that policy objective continues to be addressed by or is not affected by the waiver or ruling sought;
- The manner in which the interests of clients are protected or preserved by the proposed waiver or ruling;
- Any other reasons the applicant considers relevant to consideration of the application;
- Any application for confidentiality or limits on publication of the waiver application or the decision.

It is also worth noting that:

- (1) Waivers and rulings which are granted on the basis of the information provided and on the assumption that the information is full and accurate in all material respects.
- (2) Any waiver granted may be rendered void from the outset if NZX considers it was granted on the basis of incorrect information.

## Format of an application for a waiver or ruling:

When applying for a waiver or ruling, give the full name of the Market Participant seeking the waiver or ruling and provide any relevant documents to support your application. The application should contain all information material to the matter.

### (a) Background

Describe the background to the matter in respect of which the waiver or ruling is sought. It is helpful to include the generic background to the situation or events in question followed by the material details, e.g., details of transactions, etc.

### (b) Waiver or ruling sought

Give the specific rules for which the waiver or the ruling is sought and any conditions of the waiver or ruling which you consider appropriate.

**(c) Reasons for seeking the waiver or ruling**

Explain for each provision of the Rules from which the waiver or ruling is sought why the waiver or ruling is wanted and give full reasons which may justify the waiver or ruling.

**(d) Precedents**

Identify any existing waiver or ruling decisions which are similar to the waiver or ruling sought and which may provide a precedent for your application. State how the notices are similar to, and different from, the waiver or ruling you are seeking.

**(e) Impact**

Describe how your proposed waiver or ruling may affect clients, including any costs and benefits to them and the Market Participant.

**(e) The timeframe**

If your application is urgent, specify the date by when a determination is needed and the reason/s why you require the application to be considered on an urgent basis.

**(f) Confidentiality**

If you consider that any decision from NZX should not be published when it is made, you should give good reasons for this. NZX will often consent to matters being held confidential where a waiver relates to commercially sensitive information, provided that adequate justification is given.

**What are the charges?**

The Participant Fee Schedule as amended from time to time, sets out NZX's fees. At the date of this Guidance Note, the standard regulatory fees are \$250.00 per hour for NZX personnel. For "urgency", NZX personnel charge \$400.00 per hour. Urgency rates generally apply when a decision is required from NZX in less than 10 Business Days. Different hourly rates may also apply in respect of any professional advisors who may be engaged by NZX.

There is a minimum fee of \$250.00 for each matter.

Market Participants will be sent an account for costs at the conclusion of NZX work, or on a monthly basis where necessary.

Please note that a charge will be incurred even where the waiver or ruling request is declined.

**How long does it take?**

All applications for waivers and rulings should be submitted to NZX at least 10 Business Days prior to the Market Participant requiring a determination. If a determination is required in less than 10 Business Days a Market Participant may apply to have the application dealt with on an urgent basis.

Timing may be influenced by the quality of the application and the thoroughness with which it has been prepared. If an application is urgent a timeframe should be provided within which determination is needed accompanied by the reasons for the request for urgent consideration. While NZX will always endeavour to meet an applicant's timeframe, the ability to meet urgent timetables will be subject to NZX resource availability.

**What steps are involved?**

- The application is considered by NZX personnel, who meet in divisions of three. Communication with the applicant will take place through a lead compliance officer who will be identified to the applicant.
- After an initial appraisal, the applicant may be asked to provide further information.
- The lead compliance officer will draft a decision which is agreed and finalised by the NZX division.
- Applicants are given notice before the decision is announced to the market. Unless confidentiality has been applied for, and NZX accepts those reasons, the decision will be announced after half a business day's notice to the applicant.

### **Publication of Waivers and Rulings**

NZX has determined to publish all decisions in relation to requests for waivers from the NZX Participant Rules, unless:

- the Participant applicant establishes, to the satisfaction of NZX, grounds for maintaining confidentiality of NZX's decision with respect to a waiver or ruling application made by the Market Participant; or
- NZX determines in its sole discretion not to publish its decision with respect to a ruling or waiver application.

In the event that a Market Participant wishes a waiver or ruling decision to be kept confidential, this will need to be noted in the original waiver request, setting out the policy reason why the decision should not be published, or alternatively why publication should be delayed for a period of time.

In its decision NZX will publish the identity of the Market Participant, the facts of that application, the determination made by NZX in response to that application and the grounds for determining the application. Applicants will be provided with decisions at least one half Business Day prior to their public release. The waiver to be provided is a final decision and will not be for comment by the Market Participant. The waiver is provided to facilitate the Market Participant dealing with the publication of the waiver by NZX.

#### Grounds on which Confidentiality may be obtained

NZX will generally consider that rulings or waivers sought in anticipation of a transaction will be grounds for confidentiality until such transaction is announced to the market. If the transaction does not proceed, the waiver or ruling sought will not lose its confidentiality.

#### Where will decisions by NZX be published?

All decisions will be released by NZX via its Market Announcement Platform under the NZXR code. These announcements are received by all subscribers to NZX's data feed. The most recent 50 NZXR announcements are also posted on the NZX website at [http://www.nzx.com/market/market\\_announcements/reg\\_announcements](http://www.nzx.com/market/market_announcements/reg_announcements).

### **Revocation of Waivers**

Any waiver granted by NZX may be revoked at any time by NZX by written notice to the Market Participant concerned and such revocation shall have effect from the date stated in the notice (which may be before the date of the notice if NZX considers that the waiver was granted on the basis of incorrect information).