

Summary

- This Practice Note provides guidance to Market Participants in relation to engaging with NZ RegCo on waivers or rulings. This guidance includes information as to the content of applications and the process for engaging with NZ RegCo, including the timeframes required to process applications.

Relevant Rules:

- NZX Participant Rule 21.3.1(c)
- Derivatives Market Rule 14.2.1
- Clearing and Settlement Rule 6.7.1
- Depository Operating Rule 6.6.1

(the **Rules**). References in this Practice Note to NZX also include NZ RegCo in relation to any regulatory activity or discretion.

Introduction

NZ RegCo has the power to make rulings or grant waivers from the Rules.

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

What Rules can NZ RegCo grant a waiver from?

Market Participants may apply 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.

Who do we apply to for a waiver or ruling?

Applications for waivers and/or rulings from the Rules should be in writing and submitted through the Participant Portal.

What should the application include?

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

Information to include in an application

Keep 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 Rule(s) concerned
- The full details of the transactions or circumstances in relation to which the waiver or ruling is sought
- The application of the Rule(s) without the waiver or ruling
- The hardship or mischief that will result from that application
- The policy objective behind the Rule(s) 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 factors 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 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 NZ RegCo considers it was granted on the basis of incorrect information.

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

Format of an application for a waiver or ruling:

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

Format for Application	
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.
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.
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.
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. However, it should also be noted that waivers are granted on a case-by-case basis and the fact that NZ RegCo has granted a waiver in circumstances which the applicant considers analogous to its own does not guarantee that NZ RegCo will grant a similar waiver to the applicant.
Impact	Describe how your proposed waiver or ruling may affect clients, including any costs and benefits to them and the Market Participant.
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.
Confidentiality	If you consider that any decision from NZ RegCo should not be published when it is made, you should give good reasons for this. NZ RegCo will often consent to matters being held confidential where a waiver relates to commercially sensitive or personal information, provided that adequate justification is given.

Charges

Fees payable in respect of applications made to NZ RegCo are set out in the fee schedule at: <https://www.nzx.com/services/market-participants/participant-fees>.

Urgency rates generally apply when a decision is required from NZ RegCo in less than 10 Business Days.

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

Timeframe

We encourage Market Participants to engage with NZ RegCo as early as possible in relation to the application process. For example, if you are aware that a waiver on which you rely is due to expire, we would expect to receive a renewal application well in advance of the expiry date. As a general rule all applications must be submitted to NZ RegCo at least 10 Business Days prior to the Market Participant requiring a determination. NZ RegCo recommends that Market Participants allow several additional Business Days to respond to any questions and comments raised on an application and to prepare revised documents. NZ RegCo does not recommend that a Market Participant submits its initial application allowing only 10 Business Days in its timetable to resolve the application, if at all possible.

Market Participants are also invited to engage with NZ RegCo in advance of submitting an application under the Rules. This will allow NZ RegCo to provide preliminary guidance on operational or regulatory matters that may be relevant to the application, and helps ensure a smooth process for all parties. However, this engagement is not intended to be or include a draft review.

NZ RegCo's ability to complete a review of an application within this timeframe will ultimately depend on:

- The quality and completeness of the application;
- The issues raised by our review; and
- The timeliness within which any comments or requests for further information are addressed.

Urgency

In limited circumstances, NZ RegCo may be able to consider an application more quickly than within the timeframes set out above. However, whether an application can be considered under urgency will be at the discretion of NZ RegCo.

Requests for urgency must be made in writing to NZ RegCo, together with supporting commercial reasons.

NZ RegCo will usually only consider applications under urgency if events have arisen that are outside the control of a Market Participant, or where the lack of an urgent decision by NZ RegCo will have a significant impact. Applications for urgency which result from inadequate planning or which are submitted otherwise than for reasons of genuine commercial need, are likely to be declined. NZ RegCo expects Market Participants to ensure NZ RegCo has adequate time to consider an application by incorporating the timeframes described above into the timetable for any matter requiring NZ RegCo approval.

If NZ RegCo considers your application under urgency, urgency rates set out in the fee schedule will be payable.

Publication of Waivers and Rulings

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 NZ RegCo will publish the identity of the Market Participant, the facts of that application, the determination made by NZ RegCo in response to that application and the grounds for determining the application.

NZ RegCo 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.

Any decisions released will be released via the NZX Market Announcement Platform under the “RegCo” ticker. These announcements are received by all subscribers to NZX’s data feed.

Revocation of Waivers and Rulings

Any waiver or ruling granted may be revoked at any time by NZ RegCo 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 it is considered that the waiver was granted on the basis of incorrect information).

This Practice Note has been issued 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.