

SECTION 14

CLIENT ASSETS

14.1 CLIENT ASSETS

Client Assets means:

- (a) Client Funds received and held by a Market Participant Accepting Client Assets for undelivered buy contracts;
- (b) Client's Securities received and held by a Market Participant Accepting Client Assets for delivered unpaid sell contracts; and
(Amended 28/2/07)
- (c) All funds received and held on account including but not limited to funds on deposit, call accounts and application monies.

14.2 OUTSTANDING OBLIGATIONS

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 by a selling client's Delivery and Settlement Participant, into its FASTER Transfer Account as a result of direct instructions from that client's Trading Participant. 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 paid by the buying client's Delivery and Settlement Participant. Securities may not be transferred from a FASTER Transfer Account until such time as the Trading Participant has received an NZX confirmed trade; or
(Amended 28/2/07)
- (b) That client is a buying client and has paid money into the selling client's Delivery and Settlement Participant's Client Funds Account prior to those Securities being registered into that client's or its Nominee's name. This includes funds received by the Delivery and Settlement Participant prior to a Trading Participant entering that client's Order into the Trading System; or
(Amended 28/2/07)

- (c) That client is a buying client and 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. *(Amended 28/2/07)*

14.3 CLIENT FUNDS ACCOUNT

- 14.3.1 Client Funds Account** means a trust account held by a Market Participant Accepting Client Assets for the benefit of its clients. *(Amended 28/2/07)*
- 14.3.2** Each Market Participant Accepting Client Assets must maintain a Client Funds Account for the purposes of **Rule 14.3.1**.
- 14.3.3** Each Market Participant Accepting Client Assets must have a Client Funds Account for each currency for which it accepts funds.
- 14.3.4** Reference to “money”, “funds” and “amounts” in this **Rule 14** refers to money, funds or amounts in all currencies.

14.4 CLIENT ASSETS TO EXCEED OUTSTANDING OBLIGATIONS

- 14.4.1** Total Client Assets held in a FASTER Transfer Account, Nominee Account and Client Funds Account by a Market Participant Accepting Client Assets (as the case may be) **taken together** must equal or exceed that Market Participant’s total Outstanding Obligations. *(Amended 28/2/07)*
- 14.4.2** 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 14.4.1**. Securities belonging to the Market Participant Accepting Client Assets and client Securities that do not require protection that are held in either a FASTER Transfer Account or Nominee Account may not be included in the calculation of Total Client Assets under **Rule 14.4.1**. *(Amended 28/2/07)*

14.5 CLIENT ASSETS HELD ON TRUST

- 14.5.1** Each Market Participant Accepting Client Assets must hold Client Assets on trust for its clients at all times.
- 14.5.2** Each Market Participant Accepting Client Assets must protect Client Assets from the time of receipt of those funds. Each Market Participant Accepting

Client Assets obligations in relation to Client Funds are not discharged until:
(Amended 28/2/07)

- (a) That client has received clear funds from the Market Participant Accepting Client Assets; or *(Amended 28/2/07)*
- (b) The legal title of the Securities has been registered into that client's name on the Issuer's Securities Register.

14.5.3 All Securities recorded as being held in a Market Participant Accepting Client Assets' FASTER Transfer Account shall be held by that Market Participant on trust for its clients with delivered unpaid sell contracts. These client's Securities may be held in either the FASTER Transfer Account or registered Nominee Account maintained for that client. *(Amended 28/2/07)*

14.6 MARKET PARTICIPANT ACCEPTING CLIENT ASSETS TO HAVE CLIENT FUNDS ACCOUNTS

Each Market Participant Accepting Client Assets shall open and maintain a Client Funds Account at a Bank approved by NZX. If a Market Participant Accepting Client Assets has more than one Client Funds Account, this **Rule 14** shall apply to each of those Client Funds Accounts.

14.7 REQUIREMENTS FOR CLIENT FUNDS ACCOUNTS

14.7.1 Each Market Participant Accepting Client Assets must:

- (a) Obtain from the Bank holding the Client Funds Account a written acknowledgement of the trust status of the account, and must ensure that the words "Client Funds Account" appear in the account name of that Client Funds Account;
- (b) Supply to NZX current copies of the written acknowledgement of the trust status of the Client Funds Account. *(Amended 28/2/07)*
- (c) Not deposit Client Funds into an account that is not a designated Client Funds Account; *(Amended 28/2/07)*
- (d) Notify NZX immediately of any changes to its Client Funds Account; *(Amended 28/2/07)*

- (e) Ensure that each Client Funds Account is not overdrawn at any time, for the purposes of this **Rule 14.7.1(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; *(Amended 28/2/07)*
- (f) Not use funds in the Client Funds Account as security for any obligation of the Market Participant Accepting Client Assets or any other person;
- (g) Reconcile the records of the Client Funds Account held by the Market Participant Accepting Client Assets with the records of the Bank holding the Client Funds Account in all currencies on a daily basis. Each Market Participant Accepting Client Assets must immediately notify NZX if, for any reason, the Market Participant Accepting Client Assets is unable to perform a daily reconciliation pursuant to this **Rule 14.7.1(g)**; and *(Amended 28/2/07)*
- (h) Record movements in and out of the Client Funds Account for all FASTER System transactions on a transaction by transaction basis. *(Amended 28/2/07)*

14.7.2 Each Market Participant Accepting Client Assets must immediately notify NZX if its bank book ledger balance or the physical Bank account balance for its Client Funds Account becomes overdrawn for any reason. *(Amended 28/2/07)*

14.8 PAYMENTS INTO CLIENT FUNDS ACCOUNTS

Each Market Participant Accepting Client Assets shall pay directly into a Client Funds Account immediately upon receipt: *(Amended 28/2/07)*

- (a) All amounts received from, or on account of, any client for Securities purchased or to be purchased;
- (b) All amounts received for, or on account of, any person for Securities sold and not paid to or as directed by that person; and
- (c) All application monies or call money payable or any other payment received from, or on account of, any person and not paid direct to the person entitled to such application or call money.

14.9 FUNDS RECEIVED OUTSIDE BANK TRADING HOURS

All amounts that are required to be paid into a Market Participant Accepting Client Assets' Client Funds Account pursuant to **Rule 14.8** but which are received by a Market Participant Accepting Client Assets after its Bank's trading hours shall be paid into a Client Funds Account as soon as possible on the **1st Business Day** following the date of receipt. *(Amended 28/2/07)*

14.10 APPLICATION OF FUNDS

14.10.1 All Client Funds required to be paid into a Client Funds Account under **Rule 14.8** must be held upon trust by the Market Participant Accepting Client Assets and applied: *(Amended 28/2/07)*

- (a) In reimbursing that Market Participant Accepting Client Assets for any amount paid by it in settling the purchase of Securities for a client including transfer to an intraday same day funds settlement account for that Market Participant Accepting Client Assets operated by NZX in the FASTER System for true DVP settlement where those funds are to be applied to the payment against the transfer of Securities purchased by that client to that Market Participant Accepting Client Assets FASTER Transfer Account; *(Amended 28/2/07)*
- (b) In payment of the sale price for Securities transferred into a Market Participant Accepting Client Assets FASTER Transfer Account by a client; *(Amended 28/2/07)*
- (c) In payment to any other person for whom Client Funds have been held in the Client Funds Account; and *(Amended 28/2/07)*
- (d) In payment of brokerage and other charges properly payable to the Market Participant Accepting Client Assets by its clients for transactions under Rules 14.10 (a) and (b). *(Amended 28/2/07)*

14.10.2 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 14.4.1 continues to be met. *(Inserted 28/2/07)*

14.11 METHOD OF PAYMENT

14.11.1 Payments to a client from a Client Funds Account for Securities sold by that Market Participant Accepting Client Assets for that client shall be made directly to an account with a Bank in the name of that client (as recorded in the Issuer's Securities Register) by means of: *(Amended 28/2/07)*

- (a) A not transferable cheque or other bank instrument made out in the name of that client and delivered to the address of that client as recorded on the Issuer's Securities Register or the client's postal address as recorded and verified by the Market Participant; or *(Amended 28/2/07)*
- (b) An electronic transfer as directed and approved by that client. *(Amended 28/2/07)*

On the written instruction of that client, or a person who holds a power of attorney for that client, the payment may be made into a different account in accordance with the instructions of that client or its attorney.

(Amended 28/2/07)

14.11.2 For the avoidance of doubt no payment from a Market Participant Accepting Client Assets to a client, or a person who holds a power of attorney for that client, may be paid in cash.

14.11A METHOD OF RECEIPT

Funds received by a Market Participant Accepting Client Assets for Securities bought, or to be bought, on behalf of a client must be made directly into the Market Participant Accepting Client Assets' designated Client Funds Account. *(Amended 28/2/07)*

14.12 DISTRIBUTION OF CLIENT ASSETS

If a Market Participant Accepting Client Assets ceases to carry on business as a Market Participant and is unable to honour its Outstanding Obligations, the Client Assets of that Market Participant Accepting Client Assets will be held as a pool of unallocated assets for clients to whom that Market Participant Accepting Client Assets has Outstanding Obligations. The applicable Securities will be sold and the proceeds, together with funds in that Market Participant Accepting Client Assets Client Funds Account, shall be paid to that Market Participant Accepting Client Assets client's pro-rata in relation to

the amount owing by that Market Participant Accepting Client Assets to them. *(Amended 28/2/07)*

14.13 MONEY HANDLING PROCEDURES

Each Market Participant Accepting Client Assets must, as a minimum, when handling Client Funds:

- (a) Meet its obligations under the Financial Transactions Reporting Act 1996; and
- (b) Maintain accurate and up-to-date records in sufficient detail to show details of all money received and paid including Client Funds Account receipts required pursuant to **Rule 14.13(a)** and payments made by the Market Participant Accepting Client Assets in the ordinary course of its Broking Business.

14.14 CUSTODY

14.14.1 Each Market Participant Accepting Client Assets that provides custody services must ensure that: *(Amended 28/2/07)*

- (a) Written authority has been obtained from each client for whom custody services are provided outlining the terms and conditions under which the Custody Account may be operated, including, in particular, the respective rights and obligations of all parties to the written authority; *(Amended 28/2/07)*
- (b) A separate Nominee Company is established for the purpose of providing Custody Accounts pursuant to this **Rule 14.14**; *(Amended 28/2/07)*
- (c) A record of the day-to-day movements of the Securities or a receipt and dispatch of the documents of title that are in the possession and control of the Market Participant Accepting Client Assets is maintained; *(Amended 28/2/07)*
- (d) Each client for whom custody is provided is advised of all material changes in Securities or funds held on behalf of that client at the time of such a change, or otherwise at the time as agreed between the parties; *(Amended 28/2/07)*

(e) It reconciles its Custody Accounts on a monthly basis and has controls in place to monitor un-reconciled items; and *(Amended 28/2/07)*

(f) A lien letter is obtained from sub-custodians.

14.14.2 Each Market Participant Accepting Client Assets who, pursuant to **Rule 14.14.1** manages Custody Accounts for clients, shall prepare and forward reports to each of those clients on at least a quarterly basis or as otherwise agreed between the parties (the reporting date) but in any event at **least every six months** . For the avoidance of doubt, a report to a client on the Custody Account held by the Market Participant Accepting Client Assets does not need to be provided to a client if the information set out in **Rule 14.14.3** has already been provided to that client prior to the reporting date.

(Amended 28/2/07)

14.14.3 Reports produced pursuant to **Rule 14.14.2** must contain, as a minimum, the following information, which is to cover the period since the last report was provided under **Rule 14.14.2**:

(Amended 28/2/07)

(a) A record of all investments or documents of title in the possession or control of the Market Participant Accepting Client Assets for that client showing:

(i) the location of the Securities;

(ii) the Beneficial Owner of the Securities;

(iii) the purpose for which those Securities are held; and

(iv) whether those Securities are subject to charge (and if so what type of charge);

(b) A schedule of all movements relating to the reporting period showing details of the total costs incurred where these details have not already been provided to the client by way of contract note; and

(Amended 28/2/07)

(c) A schedule of all cash-related transactions of income, dividends, foreign exchange and settlements with cash or bank accounts;

(d) *(Moved to Rule 14.14.5 - 28/2/07)*

14.14.4 Reports produced pursuant to **Rule 14.14.2** must be forwarded to each client of a Market Participant Accepting Client Assets whose Securities are in custody not later than **20 Business Days** (or such other time period that Market Participant Accepting Client Assets and that client agree in writing) after the end of the period determined pursuant to **Rule 14.14.2**.

(Amended 28/2/07)

14.14.5 Each Market Participant Accepting Client Assets who, pursuant to **Rule 14.14.1** manages Custody Accounts for clients, shall, unless these details have already been provided to the client, prepare and forward to each of those clients an end-of-year summary of income and dividends, including resident withholding tax, imputation credits, withholding tax and management fees, which must be provided to the client by no later than any Inland Revenue deadlines.

(Moved from 14.14.3(d) and amended 28/2/07)