

**Reprint
as at 1 December 2020**



Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015

(LI 2015/298)

Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015: revoked, on the close of 30 November 2020, by clause 3.

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

2 Commencement

This notice comes into force on 1 December 2015.

3 Revocation

This notice is revoked on the close of 30 November 2020.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Financial Advisers Act 2008

client money trust account means a trust account required by section 77P(1)(b) of the Act

financial product transaction means a transaction involving the acquisition or disposal, or the variation of the terms of an acquisition or disposal, of a financial product or other dealing in relation to a financial product

financial product transaction business means the business of facilitating or arranging the settlement of financial product transactions on behalf of, or for the benefit of, clients

firm money means money held by or for an NZX broker on his, her, or its own account

firm property means property held by or for an NZX broker on his, her, or its own account

good NZX broker practice means exercising the care, diligence, and skill that a reasonable NZX broker would exercise in the conduct of a financial product transaction business in the same circumstances

NZX broker means a broker that is a Market Participant Accepting Client Assets (or that has any equivalent replacement designation) within the meaning of the NZX Participant Rules

NZX Participant Rules means the NZX Participant Rules made by NZX Limited.

- (2) For the purposes of this notice, a practice or an action of an NZX broker that involves client money or client property being held together with firm money or firm property is reasonably necessary if—

(a) the broker has taken reasonable steps to investigate alternatives that would overcome or reduce the extent to which client money or client property is held together with firm money or firm property; and

(b) the broker is satisfied on reasonable grounds either that, in the circumstances, there are no alternatives available or that any such alternatives—

(i) would pose an undue risk to the prudent and orderly conduct of his, her, or its financial product transaction business; or

- (ii) are not able to be accessed or implemented without exposing the NZX broker or his, her, or its clients to an unreasonable level of cost or delay or risk; or
 - (iii) would be contrary to the best interests of his, her, or its clients in being able to undertake financial product transactions in a timely and prudent manner.
- (3) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

5 Exemption from obligation to hold client money and client property separately in order to facilitate settlements

Every NZX broker is exempt from section 77P(1A) of the Act to the extent that—

- (a) client money or client property is held otherwise than as required by that section for the purpose of facilitating or arranging the settlement of 1 or more financial product transactions for a client of the NZX broker; and
- (b) it is reasonably necessary for client money or client property to be held together with firm money or firm property.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that, except to the extent permitted by clauses 7 and 8,—

- (a) client money or client property relating to a particular client must be held together with firm money or firm property for no longer than is reasonably necessary to ensure the prudent and orderly settlement of 1 or more financial product transactions for that client; and
- (b) the NZX broker must take all reasonable steps to ensure that client money and client property remains separately identifiable from firm money and firm property; and
- (c) client money or client property must not be held together with firm money or firm property for any purpose other than the settlement of 1 or more financial product transactions for a client of the NZX broker.

7 Exemption from obligation to hold client money and client property separately in order to reduce risk of client money shortfalls

Every NZX broker is exempt from section 77P(1A) of the Act to the extent that it is reasonably necessary for firm money to be held together with client money in a client money trust account in order to reduce the risk of a shortfall arising in the client money held for a client in that account.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) firm money must be held together with client money only to the extent that is reasonably necessary for the purposes of the NZX broker conducting his, her, or its financial product transaction business in a prudent and orderly fashion; and
- (b) the NZX broker must not place firm money into the client money trust account for any purpose other than facilitating or arranging the settlement of 1 or more financial transactions for a client or reducing the risk of a shortfall arising in the client money held for a client in that account; and
- (c) the NZX broker must take reasonable steps to ensure that the amount of firm money in a client money trust account is no more than an amount that is reasonably necessary to facilitate or arrange the settlement of 1 or more financial transactions for a client and to cover the risk of a shortfall arising in the client money held for his, her, or its clients at any time; and
- (d) the NZX broker must take all reasonable steps to ensure that client money remains separately identifiable from firm money; and
- (e) the NZX broker must document, implement, and monitor processes that are consistent with good NZX broker practice and that are appropriate to manage the risks to clients associated with not separating firm money from client money, in reliance on the exemption in clause 7, in the context of the NZX broker's financial product transaction business.

Dated at Auckland this 24th day of November 2015.

Joanne Davis-Calvert,
Head of Governance, Policy, and Strategy.

Statement of reasons

This notice, which comes into force on 1 December 2015 and is revoked on the close of 30 November 2020, exempts certain brokers, on conditions, from section 77P(1A) of the Financial Advisers Act 2008 (the **Act**). Section 77P(1A) is the requirement under the Act that money and property held by or on behalf of the NZX broker on his, her, or its own account (**firm money** and **firm property**) must be held separately from client money and client property.

The exemptions apply to brokers who or that are a Market Participant Accepting Client Assets (or any equivalent replacement designation) within the meaning of the NZX Participant Rules (an **NZX broker**).

The notice grants 2 exemptions: firstly, to permit the operation of gateway accounts (which are accounts used specifically for transacting with particular settlement systems) and secondly, to permit a buffer of firm money to be kept in those accounts.

The exemptions will permit the co-mingling of client money and client property with firm money and firm property to the extent that it is reasonably necessary to do so in order to—

- facilitate or arrange the settlement of financial product transactions in a prudent and orderly fashion; or
- reduce the risk of a shortfall arising in a client money trust account.

A practice or action will be regarded as reasonably necessary if the NZX broker—

- has taken reasonable steps to investigate alternatives that would overcome or reduce the extent to which client money or client property is held together with firm money or firm property; and
- is satisfied on reasonable grounds that, in the circumstances, there are no alternatives available or that any such alternatives would pose an undue risk to the prudent and orderly conduct of his, her, or its business or are not able to be accessed or implemented without exposing the NZX broker or his, her, or its clients to an unreasonable level of cost or delay or risk, or would be contrary to the best interests of his, her, or its clients in being able to undertake financial product transactions in a timely and prudent manner.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 148(2) of the Act, considers it appropriate to grant the exemptions set out in the notice for the following reasons:

- the co-mingling of client money and client property with firm money and firm property is an inherent feature of the way financial markets settlement systems operate, both domestically and internationally. In many situations, such co-mingling is practically unavoidable if settlements of financial product transactions are to proceed in an orderly and timely fashion. Allowing co-mingling to occur in the circumstances outlined recognises the practicalities involved:
- client money trust accounts are exposed to the risk of shortfalls for a variety of reasons, including the imposition of third party charges, timing issues in the settlement process, failure by third parties to fulfil their obligations, foreign exchange rate fluctuations, and operational errors. Such shortfalls, if they occurred, would result in NZX brokers breaching their trust account obligations or having insufficient funds available to settle financial product transactions on behalf of clients. Allowing NZX brokers to hold buffers of firm money in client money trust accounts enables those brokers to effectively manage the risk of shortfalls arising, without impeding the efficient and orderly operation of financial markets:
- the costs of compliance with section 77P(1A) of the Act, including modifications to systems and processes involved in settling financial product transactions, would be unreasonable and would not be justified by the benefit of com-

pliance. For financial product settlements that are reliant on overseas settlement systems, full compliance would remain impractical, irrespective of the amount invested in domestic systems changes to facilitate separation:

- the risks arising from the proposed co-mingling are appropriately reduced by the scope and conditions of the exemption, and allowing the exemption would ultimately offset more significant risks to consumers arising from transaction failure:
- the exemptions are available only to NZX brokers who are subject to a high degree of industry regulation under the NZX Participant Rules and who are already subject to good broking conduct obligations. In addition, new NZX Participant Rules that have been progressed in parallel with the exemptions in this notice will enhance NZX's primary supervisor function in respect of NZX brokers in this area of business (for example, new requirements will require participants to notify NZX Limited if they are keeping a buffer of firm money and will provide the basis on which the buffer is calculated):
- co-mingling of client money or client property with firm money or firm property is permitted only where that co-mingling is reasonably necessary in order to facilitate the settlement of financial product transactions or to reduce the risk of a shortfall arising in the client money held for a client in a client money trust account, and is not permitted for any other purpose:
- client money or client property may not be held together with firm money or firm property for longer than is reasonably necessary for the prudent and orderly conduct of a financial product transaction business:
- market participants relying on the exemptions must take all reasonable steps to ensure that client money and client property remain separately identifiable and must otherwise document, implement, and monitor processes consistent with good practice to manage the risks involved. Participants must also ensure that the amount of firm money held in a client money trust account is no more than is reasonably necessary to cover the risk of a shortfall arising:
- requiring NZX brokers to comply with a requirement to separate client money and client property from firm money and firm property would impair the efficient and timely operation of New Zealand's financial markets. It may also unduly constrain investor participation in markets and the ability of NZX brokers to assist clients to settle transactions on some overseas markets, with compliance potentially increasing the extent of client exposure to broker failure.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Advisers (NZX Brokers—Client Money and Client Property) Exemption Notice 2015 (LI 2015/298): clause 3