Reprint
as at 1 May 2011

Futures Industry (Client Funds) Regulations 1990

(SR 1990/227)

Paul Reeves, Governor-General

Order in Council

At Wellington this 3rd day of September 1990

Present:
His Excellency the Governor-General in Council

Pursuant to section 41(1) of the Securities Amendment Act 1988 and section 70 of the Securities Act 1978, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and in accordance with a recommendation of the Securities Commission, hereby makes the following regulations.

Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Economic Development.

Contents

Regulations

1 Title and commencement

(1) These regulations may be cited as the Futures Industry (Client Funds) Regulations 1990.

(2) These regulations shall come into force on 1 October 1990.

2 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Securities Markets Act 1988

auditor means a qualified auditor within the meaning of the Securities Act 1978

client, in relation to a dealer, means any person (including another dealer) on behalf of whom the dealer deals, or from whom the dealer accepts instructions to deal, in futures contracts, but does not include—

(a) the dealer; or

(b) a related party of the dealer

client bank account, in relation to a dealer, means a bank account that is established and maintained by a dealer in accordance with regulation 3 for the purpose of receiving, holding, and disbursing client money

client funds account, in relation to a dealer, means an account that is established and maintained by a dealer in accordance with regulation 9 for the purpose of effecting transactions in relation to futures contracts between a dealer acting on behalf of clients and any clearing house, other dealer, or futures broker

client money, in relation to a dealer, means money of any currency which in the course of carrying on business as a dealer in futures contracts—

(a) the dealer or any other person on its behalf holds for, or receives from or on behalf of, clients and which is not immediately due and payable on demand to the dealer or the other person for its own account; or

(b) the dealer pays into a client bank account in pursuance of an obligation to do so under regulation 18

client property, in relation to a dealer, means property of any kind, including credit facilities, title documents, and other securities but not including money, which in the course of carrying on business as a dealer in futures contracts the dealer or any other person on its behalf holds for, or receives from or on behalf of, clients, and includes any specified client investments and any other property acquired with client money

client records, in relation to a dealer, means the accounting and other records which the dealer is required to keep pursuant to regulation 23

dealer—

(a) means a person who is authorised under section 38(1)(a) of the Act, or approved under section 38(1)(b) of the Act, to carry on the business of dealing in futures contracts; but

(b) does not include—

(i) a person who deals in futures contracts solely on the person's own behalf; or

(ii) a recognised clearing house

overseas bank means, in respect of any country other than New Zealand, a bank licensed or otherwise authorised by the central banking authority of the country to carry on banking business in the country

recognised clearing house means a person who carries on business in New Zealand as a clearing house for an authorised futures exchange

registered bank has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989

related party, in relation to a dealer, means,—

(a) where the dealer is an individual, the dealer's spouse, civil union partner, or de facto partner, or any child of the dealer:

(b) where the dealer is a partnership,—

(i) any partner or body corporate who or which directly or indirectly holds, controls, or beneficially owns a majority of the voting rights, or of the capital, of the partnership, or otherwise has effective control of the partnership; or

(ii) any body corporate or other entity in which a majority of the voting rights, or of the capital, is directly or indirectly held, controlled, or beneficially owned by the partnership or which is otherwise effectively controlled by the partnership:

(c) where the dealer is a body corporate,—

(i) any individual or body corporate who or which directly or indirectly holds, controls, or beneficially owns a majority of the voting rights, or of the capital, of the body corporate, or otherwise has effective control of the body corporate; or

(ii) any body corporate which is related to the body corporate within the meaning given to that expression by section 2(5) of the Companies Act 1955, or is otherwise effectively controlled by the body corporate

Reserve Bank means the Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1989

specified client investment, in relation to a dealer, means any investment that is made on behalf of a client in accordance with the written authority, whether general or specific, of the client and in accordance with regulation 22 in any of the following types of property:

(a) government stock, treasury bills, and any other public security as defined in the Public Finance Act 1989:

(b) stock, loans, investments, or securities issued by any local authority as defined in the Local Authorities Loans Act 1956:

(c) transferable certificates of deposit or negotiable certificates of deposit which are issued by a registered bank or in respect of which a registered bank is liable for repayment or redemption:

(d) bills of exchange, promissory notes, bonds, or other investments or instruments issued, drawn, accepted, or endorsed by a registered bank:

(e) any other securities in respect of which payment or redemption is to be made by or is guaranteed by a registered bank or any local authority as defined in the Local Authorities Loans Act 1956:

(f) any other type of property that is designated by the FMA, by notice in the *Gazette*, for the purposes of these regulations.

(2) In these regulations, a reference to depositing any property in safe custody means depositing the property in accordance with regulation 14.

(3) Any term or expression which is not defined in these regulations, but which is defined in the Act or the Securities Act 1978, shall, unless the context otherwise requires, have the meaning given to it by the Act or the Securities Act 1978.

(4) In these regulations, a reference to a numbered form is a reference to the form so numbered in the Schedule.

Regulation 2(1) **Act**: amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Regulation 2(1) **dealer**: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Regulation 2(1) **related party** paragraph (a): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 2(1) **specified client investment** paragraph (f): amended, on 1 May 2011, by section 84(4) of the Financial Markets Authority Act 2011 (2011 No 5).

Client bank accounts

3 Client bank accounts

(1) Every dealer shall establish and maintain 1 or more client bank accounts in New Zealand with 1 or more registered banks.

(2) A dealer may establish and maintain 1 or more client bank accounts outside New Zealand with 1 or more overseas banks.

(3) Every client bank account—

(a) shall be maintained by the dealer in the name of the dealer; and

(b) shall include in its title the description "client bank account".

4 Acknowledgment of client bank account

(1) Subject to subclause (2), no dealer shall pay any client money into a client bank account unless the dealer has obtained a written statement in form 1 signed by the person with whom the account is to be maintained acknowledging—

(a) that the account is one to which these regulations apply; and

(b) that all money that is at any time in the account is held by the dealer on behalf of clients of the dealer; and

(c) that the person is not entitled to combine the account with any other account, except with other client bank accounts maintained by the dealer with the person in respect of the dealer's business as a futures dealer; and

(d) that the person is not entitled to exercise any right of set-off or counterclaim against money in the account in respect of any amount owed to the person by the dealer.

(2) If any person outside New Zealand declines to give such an acknowledgment, the dealer shall not pay any client money into the client bank account with the person unless the dealer has first—

(a) advised the client entitled to the money that the money may not have the protection afforded by regulation 20; and

(b) obtained the written agreement of the client in form 2 that, notwithstanding such advice, the money may be paid into the client bank account with the person.

5 Operation of client bank accounts

Every dealer shall ensure—

(a) that each of its client bank accounts is not overdrawn; and

(b) that no money other than client money is paid into or held in its client bank accounts, except as permitted by regulation 17 or regulation 18; and

(c) that no money is paid out of its client bank accounts except in accordance with regulation 8.

6 Client money to be paid into client bank account

All client money received by a dealer shall, immediately after it is received, be paid into a client bank account.

7 Money to be held on same day call

Every dealer shall ensure that all client money deposited in or credited to a client bank account is held on same day call.

8 Disbursements of client money from client bank account

(1) Every dealer shall ensure that no money is paid out of a client bank account except for the purpose of—

(a) making a payment for, or in connection with, the entering into, margining, or settling of a futures contract by the dealer on behalf of the client entitled to the money; or

(b) acquiring a specified client investment on behalf of the client entitled to the money, in accordance with the written authority, whether general or specific, of the client; or

(c) acquiring any property (other than a specified client investment) on behalf of the client entitled to the money, in accordance with the specific written authority of the client; or

(d) making a payment to the client entitled to the money; or

(e) making a payment to another person specified by the client entitled to the money in accordance with the specific written authority of the client; or

(f) meeting the amount of any fees, commissions, or other charges properly payable by a client to the dealer in respect of any dealing in futures contracts on behalf of the client; or

(g) making a payment to the dealer in reimbursement for any payment made by the dealer to or on behalf of a client for which the dealer is entitled to be reimbursed by the client; or

(h) withdrawing an amount pursuant to regulation 17 or regulation 18(2).

(2) Every dealer shall ensure that no money is paid out of a client bank account in respect of a client unless there is standing to the credit of the client in the account sufficient funds to cover the payment.

Client funds accounts

9 Client funds accounts

(1) A dealer may establish and maintain 1 or more client funds accounts—

(a) in New Zealand with a recognised clearing house or with another dealer:

(b) outside New Zealand with a clearing house for a futures exchange or with a futures broker.

(2) Every client funds account—

(a) shall be maintained by the dealer in the name of the dealer; and

(b) shall include in its title the description "client funds account".

10 Acknowledgment of client funds account

(1) Subject to subclause (2), no dealer shall pay any client money to any clearing house for a futures exchange or to another dealer or futures broker for crediting to a client funds account unless the dealer has obtained a written statement in form 3 signed by the person with whom the account is to be maintained acknowledging—

(a) that the account is one to which these regulations apply; and

(b) that all money that is at any time standing to the credit of the account is held by the dealer on behalf of clients of the dealer; and

(c) that the person is not entitled to combine the account with any other account, except with other client funds accounts maintained with the person in respect of the dealer's business as a futures dealer; and

(d) that the person is not entitled to exercise any right of set-off or counterclaim against money credited to the account in respect of any amount owed to the person by the dealer.

(2) If any person outside New Zealand declines to give such an acknowledgment, the dealer shall not pay any client money for crediting to the client funds account with the person, unless the dealer has first—

(a) advised the client entitled to the money that the money may not have the protection afforded by regulation 20; and

(b) obtained the written agreement of the client in form 2 that, notwithstanding such advice, the money may be credited to the client funds account with the person.

11 Notification by dealer that money must be credited to client funds account

(1) Where a dealer, or any person acting for or at the request of a dealer, pays or credits money on behalf of a client of the dealer to a clearing house for a futures exchange or to another dealer or futures broker, the dealer or other person shall ensure that an instruction is given to the clearing house, dealer, or futures broker to whom the money is paid or credited that the money is client money and must be credited to the client funds account of the dealer.

(2) Every person who receives money or a credit for money with an instruction that it must be credited to a client funds account of a dealer with the person shall ensure that the money is credited to the account immediately after it is received.

12 Obligations of dealer by whom client funds account is maintained

Every dealer who maintains a client funds account with a clearing house for a futures exchange or with another dealer or futures broker—

(a) shall not authorise any amount to be credited to the account other than amounts in respect of client money; and

(b) shall not authorise any amount to be debited to the account other than the amounts of any payments made—

(i) for, or in connection with, the entering into, margining, or settling of futures contracts on behalf of clients; or

(ii) to the dealer for the credit of a client bank account of the dealer.

13 Obligations of person with whom client funds account is maintained

Every clearing house, dealer, or futures broker with whom a client funds account is maintained in respect of another dealer shall ensure—

(a) that no amount is credited to the account other than in accordance with an instruction given under regulation 11; and

(b) that no amount is debited to the account other than the amounts of any payments made—

(i) for, or in connection with, the entering into, margining, or settling of futures contracts on behalf of clients of the dealer in respect of whom the account is maintained; or

(ii) to the dealer for whom the account is maintained for the credit of a client bank account of the dealer.

Client property

14 Client property to be placed in safe custody

All client property received by a dealer which is capable of deposit in safe custody shall, immediately after it is received, be deposited in safe custody on behalf of the client entitled to the property with—

(a) the Reserve Bank; or

(b) a registered bank in New Zealand; or

(c) an overseas bank outside New Zealand; or

(d) a recognised clearing house; or

(e) a person who is designated by the FMA, by notice in the *Gazette*, as a person with whom or which client property

may be deposited in safe custody for the purposes of these regulations.

Regulation 14(e): amended, on 1 May 2011, by section 84(4) of the Financial Markets Authority Act 2011 (2011 No 5).

15 Acknowledgment that client property will be held in safe custody

(1) Subject to subclause (2), no dealer shall deposit any client property in safe custody with a person unless the dealer has obtained a written statement in form 4 signed by the person acknowledging—

(a) that all client property deposited at any time in safe custody by the dealer with the person—

(i) will be property to which these regulations apply; and

(ii) will be held, in the case of a recognised clearing house, on behalf of the clients of the dealer and, in the case of other persons, on behalf of the client entitled to the property; and

(b) that the person will not be entitled to combine any client property deposited in safe custody by the dealer with the person with any other property, except, in the case of a recognised clearing house, with other client property deposited by the dealer with the person in respect of the dealer's business as a futures dealer; and

(c) that the person will not be entitled to exercise any right of set-off or counterclaim against any client property deposited in safe custody by the dealer with the person in respect of any amount owed to the person by the dealer, except amounts owed by the dealer in respect of the deposit of the property.

(2) If any person outside New Zealand declines to give such an acknowledgment, the dealer shall not deposit any client property in safe custody with the person unless the dealer has first—

(a) advised the client entitled to the property that the property may not have the protection afforded by regulation 20; and

(b) obtained the written agreement of the client in form 2 that, notwithstanding such advice, property of the client may be deposited in safe custody with the person.

16 Dealing with client property

(1) No dealer shall deal with any client property otherwise than in accordance with the terms and conditions on which the property was received by the dealer or in accordance with a specific written direction of the client entitled to the property.

(2) No person with whom any client property is deposited in safe custody by a dealer, or by whom any other client property of the dealer is held, shall deal with the property otherwise than in accordance with the terms and conditions agreed to between the dealer and the person for the deposit or holding of the client property or in accordance with a specific written direction of the dealer.

(3) If any person with whom any client property is deposited in safe custody by a dealer, or by whom any other client property of the dealer is held, has express notice in writing that the terms and conditions on which the property was received by the dealer (as modified by any subsequent specific written direction of the client entitled to the property) conflict with the terms and conditions agreed to between the dealer and the person for the deposit or holding of the client property (as modified by any subsequent specific written direction of the dealer), the person shall hold the property in trust for the client entitled to the property until such time as—

(a) the dealer and the client entitled to the property jointly advise the person in writing as to the terms and conditions for the deposit or holding of the property; or

(b) a court gives directions to the person as to the deposit, holding, or release of the property.

General provisions relating to client bank accounts, client funds accounts, and client property

17 Payments that include client money

Whenever any money is paid to a dealer and the money includes client money, the dealer shall pay the money into a client bank account and shall, immediately the funds are cleared for payment, withdraw from the account the money which is not client money.

18 Dealer to deposit money in account to prevent shortfall

(1) Where, on any day, the amount of total liabilities of a dealer to all of the dealer's clients in respect of dealings in futures contracts exceeds the aggregate of—

(a) the client money in client bank accounts and client funds accounts of the dealer; and

(b) the net realisable value of the specified client investments of the dealer; and

(c) the net realisable value of other client property deposited in safe custody by the dealer,—

the dealer shall immediately deposit in a client bank account of the dealer an amount of money equal to the amount of the excess, and the amount so deposited shall for the purposes of these regulations be deemed to be client money.

(2) Where—

(a) a dealer has deposited money in a client bank account pursuant to subclause (1); and

(b) the aggregate of—

(i) the client money in client bank accounts and client funds accounts of the dealer; and

(ii) the net realisable value of the specified client investments of the dealer; and

(iii) the net realisable value of other client property held or deposited in safe custody by the dealer,—

subsequently exceeds the amount of total liabilities of the dealer to all of the dealer's clients in respect of dealings in futures contracts, the dealer may withdraw from the account so much of the money deposited by the dealer in accordance

with subclause (1) as is no longer required to meet any excess under that subclause.

(3) For the purposes of this regulation, the expression "net realisable value" means on any day the net amount which the dealer could reasonably expect to realise on that day for the specified client investments, or other client property deposited in safe custody, as the case may be, which the dealer is authorised to realise on behalf of the clients for whom they are held.

(4) For the purposes of this regulation, the amount of any liability of a dealer that is designated in a foreign currency shall be calculated by applying the rate of exchange at which, on the day in question, the dealer could have purchased New Zealand dollars with the relevant foreign currency.

19 Position where dealer is also a bank

For the avoidance of doubt, it is hereby declared that any dealer that is a registered bank or an overseas bank shall be required to comply in all respects with these regulations, and any client bank account or client funds account that is established and maintained in accordance with these regulations with the dealer, either in respect of its own clients or by any other dealer in respect of the clients of the other dealer, shall be regarded as an account that complies with these regulations.

Further protection of client money and client property

20 Client money and client property not available to meet liability of dealer or other person

(1) Subject to subclause (2), no client money, no specified client investment, and no other client property—

(a) shall be available for the payment of a debt, or for meeting any liability, of any dealer or any person with whom any client bank account or client funds account is maintained, investment is held, or other property is deposited or otherwise held, or of any other person other than the client entitled thereto:

(b) shall be liable to be attached or taken in execution under the order or process of any court at the instance of a person suing in respect of any such debt or liability,—

notwithstanding any other law or enactment.

(2) Nothing in subclause (1) affects—

(a) the right of a client of a dealer to recover money, investments, or other property to which the client is entitled; or

(b) any claim or lien which the dealer has against or on the money, investments, or other property of any client; or

(c) the right of a dealer to withdraw any money from a client bank account for the purpose of making a payment on behalf of any client in accordance with regulation 8(1), whether to itself or any other person; or

(d) the right of any person with whom a client funds account is maintained by a dealer to debit the account for the purpose of making a payment in accordance with regulation 13(b), whether to itself or to any other person; or

(e) any claim or lien which any custodian of an investment or other property has in respect of the deposit or holding of the investment or property.

(3) Notwithstanding subclause (2),—

(a) no person with whom a client bank account is maintained by a dealer shall—

(i) combine the account with any other account, except with other client bank accounts maintained by the dealer with the person in respect of the dealer's business as a futures dealer; or

(ii) exercise any right of set-off or counterclaim against money in the account in respect of any amount owed to the person by the dealer:

(b) no person with whom a client funds account is maintained by a dealer shall—

(i) combine the account with any other account, except with other client funds accounts maintained by the dealer with the person in respect of the dealer's business as a futures dealer; or

(ii) exercise any right of set-off or counterclaim against money credited to the account in respect of any amount owed to the person by the dealer:

(c) no person with whom any specified client investment or other client property is deposited in safe custody by a dealer, or otherwise held in respect of a dealer, shall—

(i) combine the property with any other property, except, in the case of a recognised clearing house, with other client property deposited by the dealer with the person in respect of the dealer's business as a futures dealer; or

(ii) exercise any right of set-off or counterclaim against the property in respect of any amount owed to the person by the dealer, except amounts owed by the dealer in respect of the deposit or holding of the property.

21 Protection of client money and client property where dealer is insolvent

(1) This regulation applies to and in relation to every dealer or futures broker or clearing house for a futures exchange—

(a) who has been adjudged bankrupt; or

(b) that is a company to which section 189A(1) of the Companies Act 1955 applies; or

(c) who is deceased and whose estate is being administered under Part 6 of the Insolvency Act 2006; or

(d) that is a corporation or an associated person or a subsidiary of a corporation to which an Order in Council made under section 38 of the Corporations (Investigation and Management) Act 1989 applies; or

(e) that is a registered bank or an associated person of a registered bank or a subsidiary of a registered bank to which an Order in Council made under section 117 of the Reserve Bank of New Zealand Act 1989 applies; or

(f) who or that has been expelled or suspended from membership of an authorised futures exchange.

(2) Subject to subclause (5), money in or credited to a client bank account or client funds account of any person to whom this regulation applies shall, as from the time and date at which

this regulation commences to apply to the person, be subject to a single trust in favour of all of the clients for whom or on whose behalf the money is being held in the account or from whom the money was received for payment to the account, as the case may be.

(3) Specified client investments or other client property deposited in safe custody or otherwise held by any person to whom this regulation applies shall, as from the time and date at which this regulation commences to apply to the person, be subject to a single trust in favour of all of the clients for whom or on whose behalf the property is being held or from whom the property was received, as the case may be.

(4) In any case where the person to whom this regulation applies is a dealer or a futures broker or a clearing house that maintains a client bank account or a client funds account in respect of another dealer or that holds client property on behalf of clients of another dealer, the trust shall not be in favour of the dealer client, but instead shall be in favour of all of the relevant clients of the dealer.

(5) Nothing in subclause (2) shall affect the right of any person with whom a client funds account is maintained by a dealer to debit the account for the purpose of making a payment in accordance with regulation 13(b), whether to itself or any other person.

(6) Any trust created by this regulation shall be administered,—

(a) in the case of a person who or that is a member of an authorised futures exchange, by 1 or more persons appointed by the chairperson of the exchange in that behalf:

(b) in the case of a person who or that was, immediately before that person became a person to whom this regulation applies, a member of an authorised futures exchange, by 1 or more persons appointed by the chairperson of the exchange in that behalf:

(c) in the case of any other person, by 1 or more persons appointed by the chairperson of the board of the FMA.

(7) Where 2 or more persons are appointed to administer any trust under subclause (6), the notice of appointment shall state whether the powers of administration of the trust shall

be exercised by those persons acting together or may be exercised individually.

Regulation 21(1)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Regulation 21(6)(c): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Miscellaneous provisions

22 Specified client investments

(1) All specified client investments shall be held in the name of—

(a) the client entitled thereto; or

(b) the dealer.

(2) Where a specified client investment is made by a dealer in the name of the dealer—

(a) the investment shall be and remain the property of the client entitled thereto; and

(b) the dealer shall take all reasonable steps to ensure that the investment is designated or identified as a client investment by the issuer of the investment or any custodian or other person having control of the investment.

(3) Every dealer shall ensure that no specified client investment of the dealer is combined with any other investment of the dealer which is not a specified client investment of the client entitled thereto.

(4) Notwithstanding this regulation but subject to regulation 16, the issuer or custodian of a specified client investment, and any other person having control of a specified client investment, shall act in relation to the investment on the instructions of the dealer.

23 Accounting and other records

(1) Every dealer shall at all times keep, in relation to the clients of the dealer, in such manner as will enable the audit thereof to be conveniently and properly carried out, accounting and other records that are separate from any other records of the dealer and correctly record and explain—

(a) particulars of all amounts deposited in, and of all amounts withdrawn from, each client bank account:

(b) separately from, but in addition to, the particulars referred to in paragraph (a) of this subclause, particulars of all amounts deposited in, and of all amounts withdrawn from, each client bank account pursuant to regulation 18:

(c) particulars of all amounts credited or debited to each client funds account:

(d) particulars of all specified client investments of the dealer:

(e) particulars of all other client property deposited in safe custody or held by the dealer:

(f) particulars of all dealings of each client with the dealer, including details of all amounts credited or debited to each client in each client bank account and each client funds account:

(g) separately from, but in addition to, the particulars referred to in paragraph (f), where the client is another dealer who maintains a client funds account with the dealer, particulars of all amounts credited or debited by the dealer in respect of the client funds account of the other dealer.

(2) Every dealer shall ensure that the client records of the dealer are available on request for inspection by its auditor and by any person authorised by any authorised futures exchange of which the dealer is a member.

24 Audit

(1) Every dealer shall ensure, in respect of each financial year of the dealer, that its client records are audited by an auditor in order to ascertain whether—

(a) the client records have been properly maintained:

(b) the dealer has complied with the provisions of the Act and these regulations.

(2) Subject to subclause (4), for the purposes of carrying out such an audit for each financial year, the auditor shall examine the client records of the dealer—

(a) on at least 1 occasion during each of the first, second, and third quarters of that financial year; and

(b) on at least 1 occasion within 3 months after the close of that financial year.

(3) Forthwith after completion of each examination of the client records of the dealer, the auditor shall—

(a) prepare a report of the results of the examination; and

(b) send a copy of that report to the dealer; and

(c) if the report discloses any breach of the Act or these regulations by the dealer, send a copy thereof to the FMA and any authorised futures exchange of which the dealer is a member.

(4) Paragraph (a) of subclause (2) shall not apply in respect of any financial year to any dealer who is a member of an authorised futures exchange if the exchange carries out inspections of the client records of the dealer in respect of the financial year at intervals no greater than those specified in that paragraph.

Regulation 24(3)(c): amended, on 1 May 2011, by section 84(4) of the Financial Markets Authority Act 2011 (2011 No 5).

25 Offences

(1) Any person who without reasonable justification or excuse contravenes, or fails to comply with, any provision of these regulations commits an offence, and is liable on summary conviction to a fine not exceeding $5,000.

(2) Where an offence is committed under this clause by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this clause in the same manner and to the same extent as if he or she had personally committed the offence.

(3) Notwithstanding anything in subclause (2), where any proceedings are brought by virtue of that subclause, it shall be a good defence to the charge if the defendant proves that the offence was committed without his or her knowledge or that he or she took all reasonable steps to prevent the commission of the offence and to remedy any effects of the act or omission giving rise to the offence.

(4) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like

offence if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Transitional provisions

26 Transitional provisions

(1) For the purposes of these regulations, all client money and all client property that is, at the date of commencement of these regulations, held by a dealer or by any other person on its behalf shall be deemed to have been received by the dealer or other person on that date, and the provisions of these regulations shall apply in all respects to the money and property on and after that date.

(2) Nothing in regulation 4 or regulation 10 or regulation 15 shall apply to any client money or client property that has already, at the date of commencement of these regulations, been paid into a client bank account or credited to a client funds account or deposited in safe custody with any person.

Schedule
Forms

Form 1

r 4(1)

Acknowledgment in respect of client bank accounts

To be given pursuant to regulation 4(1) of the Futures Industry (Client Funds) Regulations 1990

To [*full name of futures dealer*]

Re: [*full title of account*]

You have opened with us the above-mentioned client bank account in respect of your business as a futures dealer.

As required by regulation 4(1) of the Futures Industry (Clients Funds) Regulations 1990, we acknowledge that—

(a) the provisions of those regulations apply to the account; and

(b) all money that is at any time in the account will be held by you on behalf of your clients; and

(c) we will not be entitled at any time to combine the account with any other account, except with other client bank accounts maintained by you with us in respect of your business as a futures dealer; and

(d) we will not be entitled at any time to exercise any right of set-off or counterclaim against money in the account in respect of any amount owed to us by you.

Dated at: [*place, date*]

Full name of body giving the acknowledgment:

Address:

Signature of manager or other duly authorised officer:

Form 2

rr 4(2), 10(2), 15(2)

Acknowledgment by client in respect of overseas persons

To be given pursuant to the Futures Industry (Client Funds) Regulations 1990

To [*full name of futures dealer*]

I/We: [*full name(s) of client(s)*]

acknowledge, in accordance with regulations 4(2), 10(2), and 15(2) of the Futures Industry (Client Funds) Regulations 1990, that—

1 You have advised me (*or* us) that, in the course of your dealings in futures contracts, you will or may from time to time, on my (*or* our) behalf,—

(a) pay client money to your client bank account:

(b) credit client money to your client funds account:

(c) deposit client property in safe custody,—

with the following persons outside New Zealand: [*names*]

2 You have also advised me (*or* us)—

(a) that none of those persons has given the acknowledgments required by regulations 4(1), 10(1), and 15(1); and

(b) that, as a consequence, the money or property may not have the protection afforded by regulation 20.

3 Notwithstanding that advice, you are hereby authorised—

(a) to pay money to the client bank account maintained by you with any of those persons:

(b) to credit money to the client funds account maintained by you with any of those persons:

(c) to deposit any of my (*or* our) property in safe custody with any of those persons,—

until such time as this authority is expressly revoked by me (*or* us) by notice in writing to you.

Dated at: [*place, date*]

Signature of client(s):

Form 3

r 10(1)

Acknowledgment in respect of client funds accounts

To be given pursuant to regulation 10(1) of the Futures Industry (Client Funds) Regulations 1990

To [*full name of futures dealer*]

Re: [*full title of account*]

You have opened with us the above-mentioned client funds account in respect of your business as a futures dealer.

As required by regulation 10(1) of the Futures Industry (Client Funds) Regulations 1990, we acknowledge that—

(a) the provisions of those regulations apply to the account; and

(b) all money that is at any time standing to the credit of the account will be held by you on behalf of your clients; and

(c) we will not be entitled at any time to combine the account with any other account, except with other client funds accounts maintained by you with us in respect of your business as a futures dealer; and

(d) we will not be entitled at any time to exercise any right of set-off or counterclaim against money credited to the account in respect of any amount owed to us by you.

Dated at: [*place, date*]

Full name of body giving the acknowledgment:

Address:

Signature of manager or other duly authorised officer:

Form 4

r 15(1)

Acknowledgment that deposits of client property will be held in safe custody

To be given pursuant to regulation 15(1) of the Futures Industry (Client Funds) Regulations 1990

To [*full name of futures dealer*]

You have indicated that you would like from time to time to deposit in safe custody with us client property held by you in respect of your business as a futures dealer.

As required by regulation 15(1) of the Futures Industry (Client Funds) Regulations 1990, we acknowledge that—

(a) All client property deposited at any time in safe custody by you with us—

(i) will be property to which those regulations apply; and

*(ii) [*in the case of an acknowledgment given by a recognised clearing house*] will be held on behalf of your clients; and

*(iii) [*in the case of an acknowledgment given by any other person*] will be held on behalf of the client entitled to the property; and

(b) we will not be entitled at any time to combine any client property deposited in safe custody by you with us with any other property, (except *[*in the case of an acknowledgment given by a recognised clearing house*] with other client property deposited by you with us in respect of your business as a futures dealer); and

(c) we will not be entitled at any time to exercise any right of set-off or counterclaim against any client property deposited in safe custody by you with us in respect of any amount owed to us by you, except amounts owed by you in respect of the deposit of the property.

Dated at: [*place, date*]

Full name of body giving the acknowledgment:

Address:

Form 4—*continued*

Signature of manager or other duly authorised officer:

*Delete whichever is inapplicable.

Form 5

r 24

Examination report

In terms of the Futures Industry (Client Funds) Regulations 1990

In the matter of the client records of [*specify name of the dealer*]

1 I/We, [*name(s)*] of [*name*], accountant(s), declare that I am a/we are qualified auditor(s) within the meaning of the Securities Act 1978.

2 In accordance with regulation 24 of the Futures Industry (Client Funds) Regulations 1990, I/we have examined the client records of [*name*], dealer, carrying on business at [*specify*]. The examination was completed—

(a) on [*date*], during the first (*or* second *or* third) quarter of the financial year that is due to end with [*date*]; or

(b) on [*date*], within 3 months after the close of the financial year that ended with [*date*].

3 The last examination of the client records of [*name*] was carried out on [*date*] by me/us (*or* by [*name*] on behalf of [*specify*], an authorised futures exchange of which the dealer is a member).

4 I/we report that, to the best of my/our knowledge and belief—

(a) the client records have been properly maintained since the date of the last examination; and

(b) the client records have been available for inspection whenever requested by me/us; and

(c) the dealer has complied with the provisions of the Securities Markets Act 1988 and the Futures Industry (Client Funds Regulations 1990 since the date of the last examination,—

except as stated below: [*specify*]

In my/our opinion, the following matters in relation to the client records should be communicated to the Financial Markets Authority and the [*specify*], an authorised futures exchange of which the dealer is a member, namely: [*specify*]

Form 5—*continued*

Dated at: [*place, date*]
Signature(s) of auditor(s):

*Delete if inapplicable.

Schedule form 5: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Schedule form 5: amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 6 September 1990.

Contents

Notes

1 General

This is a reprint of the Futures Industry (Client Funds) Regulations 1990. The reprint incorporates all the amendments to the regulations as at 1 May 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 84(4)
Insolvency Act 2006 (2006 No 55): section 445
Relationships (Statutory References) Act 2005 (2005 No 3): section 12
Securities Markets Amendment Act 2002 (2002 No 44): section 30

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2011