



# NZX Listing Rules

1 January 2019



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# Glossary

## Part A – Definitions

In these Rules the following terms have the following meaning:

<b>Accelerated Offer</b>	means an offer with one or more “accelerated features” (as that term is defined in clause 8A(5) of the Takeovers Code (Class Exemptions) Notice (No 2) 2001).
<b>Aggregate Net Value</b>	means the net value of the relevant assets calculated as the greater of: <ul style="list-style-type: none"><li>(a) the net tangible asset value or, for leased assets, the value of the right of use (in each case, from the most recently published financial statements of the relevant Issuer, if applicable), or</li><li>(b) market value.</li></ul>
<b>Appraisal Report</b>	means a report prepared by an appraiser and complying with Rule 7.10.
<b>Associated Person</b>	a person ( <b>A</b> ) is associated with, or an <b>Associated Person</b> of, another person ( <b>B</b> ) if: <ul style="list-style-type: none"><li>(a) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa),</li><li>(b) B is a body corporate and A has the power, directly or indirectly, to exercise, or control the exercise of, more than 50% of the Votes attaching to the Financial Products of B (or vice versa),</li><li>(c) A and B are Relatives or Related Bodies Corporate,</li><li>(d) A and B are partners to whom the Partnership Act 1908 applies,</li><li>(e) A is a director or Senior Manager of B (or vice versa), or</li><li>(f) A and B are acting jointly or in concert,</li></ul>



except that:

- (g) A is not an Associated Person of B merely because:
  - i. A acts as a professional or business adviser to B, without a personal financial interest in the outcome of that advice,
  - ii. A's ordinary business includes dealing in Financial Products on behalf of others and A is acting in accordance with the specific instructions of B,
  - iii. A acts as a proxy or representative of B for the purposes of a meeting of holders of Financial Products, or
  - iv. there is another person with which A and B are both associated,
- (h) persons will not be Associated Persons if NZX makes a Ruling that they are not Associated Persons.

**Audit Committee**

means a committee of the Board formed in accordance with Rule 2.13.

**Authorisation Code**

means an alphanumeric identifier authorising access to a Financial Product holder's account at the Issuer's registry.

**Average Market Capitalisation**

means, in relation to an Issuer, the Average Market Price multiplied by the number of Quoted Equity Securities carrying Votes on Day A.

**Average Market Price**

means, on **Day A**, the lesser of the volume weighted average price of an Issuer's Quoted Equity Securities (or, when calculating a Minimum Holding, the relevant Financial Product) calculated from trades through the Main Board over the following two periods:

- (a) 20 Business Days before Day A, or
- (b) 5 Business Days before Day A.

**Aware**

an Issuer becomes aware of information if, and as soon as:

- (a) a Director or a Senior Manager of the Issuer, or



- (b) if the Issuer is a Managed Investment Scheme, a Director or a Senior Manager of the Manager, has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties.

**Backdoor or Reverse Listing**

means a transaction, or series of related transactions, entered into by an Issuer which would result in a significant change:

- (a) in the ownership of a majority of the Equity Securities carrying Votes, and
- (b) either directly or indirectly, in the nature or scale of its activities, including through the acquisition of a new business.

**Bank**

means:

- (a) a Registered Bank,
- (b) a bank having recognition comparable to that of a Registered Bank under the laws of Australia, the United States of America, Japan, Singapore, Hong Kong, the United Kingdom, Germany, France or other member of the European Economic Area or Organisation for Economic Co-operation and Development (OECD), or
- (c) any other financial institution approved by NZX.

**Board**

means the board of Directors of an Issuer.

**Business Day**

means a time between 8.30 am and 5.30 pm on a day on which NZX is open for trading.

**Class**

means a class of Financial Products having identical rights, privileges, limitations and conditions, and includes or excludes Financial Products which NZX in its discretion deems to be, or not to be, of that class.

**Code Company**

means an Issuer which is a code company as defined in the Takeovers Code.

**Continuous Issuer**

has the meaning given in section 6 of the FMC Act.

**Convert**

means, in respect of a Financial Product, to:

- (a) convert that Financial Product into, or exchange it for, a Financial Product of a different sort



(whether at the option of the holder, the Issuer, or otherwise), or

- (b) subscribe for, or obtain, a Financial Product of a different sort,

pursuant to a right conferred by the first mentioned Financial Product.

**Conversion** and **Convertible** have corresponding meanings.

**CSN** has the meaning given in the NZX Participant Rules.

**Day A** means, unless a Rule specifies otherwise, the day before a relevant action is taken (e.g. an issue is made or transaction entered into) or the day before it is announced to market, whichever is the earlier.

**Debt Market** means the debt security financial product market operated by NZX.

**Depository Rules** means New Zealand Depository Limited's Depository Operating Rules.

**Depository System** has the meaning given in the Depository Rules.

**Debt Security** has the meaning given in sections 8(1) and 8(5) of the FMC Act, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Debt Security.

**Director** means:

- (a) in relation to a company incorporated in New Zealand, a director within the meaning of section 126(1)(a) of the Companies Act 1993,
- (b) in relation to a Managed Investment Scheme, a director (within the meaning of section 126(1)(a) of the Companies Act 1993) of the Manager, or
- (c) in relation to any other entity where paragraph (a) or (b) does not apply, any person occupying a position in that entity, or in the Manager of such entity, that is comparable with that of a director of a company,

**Disqualifying Relationship** means any direct or indirect interest, position, association or relationship that could reasonably influence, or could reasonably be perceived to influence, in a material way, the Director's capacity to:



- (a) bring an independent view to decisions in relation to the Issuer,
- (b) act in the best interests of the Issuer, and
- (c) represent the interests of the Issuer's Financial Product holders generally,

having regard to the factors described in the NZX Corporate Governance Code that may impact director independence, if applicable.

**Employee**

means, in relation to an Issuer:

- (a) an employee or officer of that Issuer or any of its Subsidiaries,
- (b) a labour-only contractor, consultant or consultant company who or which contracts with that Issuer or any of its Subsidiaries,
- (c) any trustee or trustees on behalf of any of the above, and
- (d) any trustee or trustees of, or in respect of any pension, superannuation or like fund established for the benefit of any of the above.

If the Issuer is a Managed Investment Scheme, a reference to "Issuer" above is to be read as a reference to the Manager of such Issuer.

**Equity Security**

has the meaning given in sections 8(2) and 8(5) of the FMC Act and also includes a Right, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Equity Security (and includes any Fund Security deemed to be an Equity Security under Rule 1.1.2).

**Escrow Agreement**

has the meaning given in Rule 8.2.1.

**Executive Director**

means a Director who is also an Employee of the Issuer.

**Ex Date**

in relation to a benefit, means the first Business Day before the Record Date for that benefit, unless NZX determines otherwise.

**Financial Product**

has the meaning given in section 7 of the FMC Act (as expanded by section 8 of that Act) and also includes a Right.



<b>FMA</b>	means the Financial Markets Authority established under the Financial Markets Authority Act 2011.
<b>FMC Act</b>	means the Financial Markets Conduct Act 2013.
<b>FMC Regulations</b>	means the Financial Markets Conduct Regulations 2014.
<b>Fund Security</b>	means a “managed investment product” as defined in sections 8(3) and 8(5) of the FMC Act in relation to a Managed Investment Scheme, subject to NZX’s sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Fund Security.
<b>Fund Update</b>	has the meaning given in regulation 5 of the FMC Regulations.
<b>Governing Document</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the case of an Issuer of Equity Securities, its constitution, articles of association or other constituent documents,</li> <li>(b) in the case of an Issuer of Debt Securities, a trust deed or the one or more deeds, agreements, or instruments that constitute those Debt Securities,</li> <li>(c) in the case of a Managed Investment Scheme constituted as a trust, the one or more trust deeds that constitutes the scheme, or</li> <li>(d) in the case of any other Managed Investment Scheme where (c) does not apply, the one or more deeds, agreements, or instruments that constitute or govern the scheme,</li> </ul> <p>and including (in each case) any amendments to a document referred to in paragraph (a) to (d).</p>
<b>Gross Value</b>	<p>means the gross value of the relevant assets calculated as the greater of:</p> <ul style="list-style-type: none"> <li>(a) the gross asset value (or, for leased assets, the value of the right of use) from the most recently published financial statements of the relevant Issuer, if applicable, or</li> <li>(b) market value.</li> </ul>



<b>Head of Market Supervision</b>	means the person occupying the position of Head of Market Supervision of NZX, by whatever name called.
<b>Head Security</b>	means the Financial Product which, immediately before the Ex Date, confers on the holder entitlement to a benefit.
<b>Home Exchange</b>	means NZX, or any other Recognised Stock Exchange which NZX is satisfied has: <ul style="list-style-type: none"> <li>(a) primary jurisdiction in relation to listing requirements for the Issuer and quotation of its Financial Products, or</li> <li>(b) if Rule 1.6.1(b) applies, primary jurisdiction in relation to the quotation of the relevant Financial Product of the Issuer.</li> </ul>
<b>Independent Director</b>	means a Director who is not an Employee of the Issuer and who has no Disqualifying Relationship.
<b>ISIN</b>	means International Security Identification Number.
<b>Issuer</b>	means: <ul style="list-style-type: none"> <li>(a) any person which is Listed (and includes, for the purposes of a Listed Managed Investment Scheme, the manager of the scheme), and</li> <li>(b) includes, as the context permits, all members (other than another Listed entity or that Listed entity's Subsidiary) of any group of companies or other entities of which such Issuer is the holding company or has a controlling interest, to the extent this is necessary to prevent the object of the Rules being frustrated or avoided by the use of a separate legal personality, and</li> <li>(c) for the purpose of the disclosure of information, the group (as defined in (b)) includes any Associated Persons of the Issuer over which the Issuer has control in law or in fact (other than another Listed entity or that Listed entity's Subsidiary).</li> </ul>
<b>Key Audit Partner</b>	has the meaning given in the definition section of the External Reporting Board's Professional and Ethical Standard 1 (Revised): Code of Ethics for Assurance Practitioners (PES 1).



<b>Listed</b>	means the status of a person that is party to a listing agreement with NZX under which such person agrees to comply with the Rules and NZX agrees to administer the listing.
	<b>List</b> and <b>Listing</b> have corresponding meanings.
<b>Main Board</b>	means the main board financial product market operated by NZX.
<b>Managed Investment Scheme</b>	has the meaning given in section 9 of the FMC Act (including a scheme declared to be such a scheme under Part 9 of that Act) subject to NZX's sole discretion to declare, by way of a Ruling, a scheme or arrangement to be, or not to be, a Managed Investment Scheme.
<b>Manager</b>	has the meaning given in section 6(1) of the FMC Act.
<b>MAP</b>	means the market announcement platform nominated by NZX from time to time to electronically process, release and store announcements about Issuers and Quoted Financial Products.
<b>Material Information</b>	has the meaning given in section 231(1) of the FMC Act (read together with additional terms defined in section 232 of that Act).
<b>Material Transaction</b>	means a transaction, or a related series of transactions, whereby an Issuer: <ul style="list-style-type: none"> <li>(a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation,</li> <li>(b) issues its own Financial Products, or acquires its own Equity Securities, having a market value above 10% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or in the case of an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),</li> <li>(c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt</li> </ul>





Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),

- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer,
- (e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or
- (f) undertakes an amalgamation, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer.

**Minimum Holding**

means a holding of a Class of Financial Products having a value of at least \$1,000 calculated:

- (a) prior to Quotation, at the issue or sale price of such Financial Products specified in any Offer Document (and, if expressed as an indicative price range, the mid-point of that range), or
- (b) at any other time, at the Average Market Price.

**Mining Issuer**

has the meaning given to that term in Appendix 4.

**Non-Affiliated Holder**

means any person other than:

- (a) a person who holds, or is one of a group of Associated Persons who together hold, 10% or more of a Class of Financial Products, or
- (b) a person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or
- (c) any other person or group of persons whom NZX in its discretion declares not to be a Non-Affiliated Holder for the purposes of the Rules.

**Non-Standard**

means a designation given by NZX under Rule 1.18.1.



<b>NZX</b>	means NZX Limited and includes its predecessors, successors and assigns and, as the context permits, includes any authorised delegate of NZX (including the Tribunal).
<b>NZX Corporate Governance Code</b>	means the code set out in Appendix 1.
<b>NZX Foreign Exempt Issuer</b>	means: <ul style="list-style-type: none"> <li>(a) an Issuer Listed on the Main Board or Debt Market as a secondary listing under Rule 1.6.1, and</li> <li>(b) where the context permits, an Issuer to the extent it has a Class of Financial Product Quoted and the Home Exchange of such Financial Product is a Recognised Stock Exchange.</li> </ul>
<b>NZX Participant Rules</b>	means the NZX Participant Rules made by NZX from time to time.
<b>NZX Regulation Personnel</b>	means any person holding an appointment or designated by NZX as NZX Regulation Personnel and includes the Head of Market Supervision.
<b>Offer Document</b>	means in relation to an offer of Financial Products to be Quoted on the Main Board or Debt Market: <ul style="list-style-type: none"> <li>(a) a PDS, if Part 3 of the FMC Act applies (and, in the case of a Continuous Issuer, also includes a document containing the terms and conditions of the particular Financial Products to the extent not contained in the PDS),</li> <li>(b) a Schedule 1 Offer Document,</li> <li>(c) any document of similar effect to a PDS required by the conditions of any applicable exemption granted by FMA from Part 3 of the FMC Act,</li> <li>(d) any offering document prepared in compliance with the mutual recognition scheme under the FMC Regulations; and</li> <li>(e) any document which NZX in its sole discretion declares by a Ruling to be an Offer Document.</li> </ul>



<b>Option</b>	means an option to acquire, by way of issue, a Financial Product.
<b>Ordinary Resolution</b>	means a resolution passed by a simple majority of Votes of Financial Product holders entitled to Vote and voting.
<b>Other Financial Product</b>	means, a Financial Product that is not an Equity Security, Debt Security or Fund Security subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Other Financial Product.
<b>Participant</b>	means a person who is a Legal Title Transfer Depository Participant as defined by the Depository Rules.
<b>PDS</b>	has the meaning given in section 6 of the FMC Act.
<b>Profile</b>	means a document with the content required by Rule 7.4.1, which may be required from time to time by NZX under Rule 7.3.1(b).
<b>provide to NZX</b>	means to provide such information, material or notice to NZX under Rule 3.29 not for market release.
<b>QFP notice</b>	a notice given under clause 20(1)(a) of Schedule 8 of the FMC Regulations.
<b>Quoted</b>	means a Financial Product of an Issuer that is approved for trading on NZX (for the avoidance of doubt, a Financial Product does not cease to be Quoted merely because trading of that product is suspended or halted).  <b>Quote</b> and <b>Quotation</b> have corresponding meanings.
<b>Reciprocal Arrangement</b>	means any agreement or arrangement which provides for the disclosure of information between NZX and any government or non-governmental agency, authority or association in New Zealand or elsewhere whose functions include monitoring, surveillance or regulation of: <ul style="list-style-type: none"> <li>(a) Issuers' compliance with their obligations under listing rules, applicable laws and regulations, or</li> <li>(b) trading in, or clearance and settlement of, transactions in Financial Products, derivatives</li> </ul>



or commodities (whether in New Zealand or elsewhere).

<b>Recognised Stock Exchange</b>	means a stock exchange approved by NZX from time to time as enforcing rules, procedures and requirements sufficiently similar to those of these Rules to justify issuers on such stock exchange Listing on the NZX as an NZX Foreign Exempt Issuer.
<b>Record Date</b>	means the time fixed by an Issuer for the determination of the Financial Product holders to whom an entitlement, right or obligation relating to the Financial Products of that Issuer applies.
<b>Registered Bank</b>	has the meaning given in section 2 of the Reserve Bank of New Zealand Act 1989.
<b>Related Body Corporate</b>	has the meaning given in section 12(2) of the FMC Act.
<b>Related Party</b>	<p>means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:</p> <ul style="list-style-type: none"><li>(a) a Director or Senior Manager of the Issuer or any of its Subsidiaries,</li><li>(b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes,</li><li>(c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), except where the person becomes an Associated Person as a consequence of the Material Transaction, or</li><li>(d) a person in respect of whom there are arrangements which are intended to result in that person becoming, or expected to become, a person described in (a), (b), or (c) other than as a consequence of the Material Transaction,</li></ul> <p>but a person is not a Related Party of an Issuer if:</p> <ul style="list-style-type: none"><li>(e) the only reason why that person would otherwise be a Related Party of the Issuer is</li></ul>



that a Director or Senior Manager of the Issuer is also a Director of that person, so long as:

- (i) the proportion of Directors of the Issuer who are also Directors of that person is one third or less, and
  - (ii) no Director or Senior Manager of the Issuer has a material direct or indirect economic interest in that person, other than receiving reasonable Director's fees or executive remuneration, or
- (f) that person is a Subsidiary or incorporated joint venture of, or unincorporated joint venture participant with, the Issuer and:
- (i) no Related Party of the Issuer has or intends to obtain, other than through the Issuer itself, a material direct or indirect economic interest in that Subsidiary or joint venture other than receiving reasonable Director's fees or executive remuneration, and
  - (ii) the Issuer has at least 50% of the Votes in or is entitled to at least 50% of the dividends declared or paid by the Subsidiary or incorporated joint venture or is entitled to at least one half of the income or profits, and the assets, of the unincorporated joint venture (if and when distributed).

## **Relative**

in relation to a person (**A**), means any of the following:

- (a) A's spouse, civil union partner, de facto partner
- (b) a parent or child of A,
- (c) a trustee of a trust under which A, or a relative of A (under paragraphs (a) or (b)), is a beneficiary who is:
  - (i) presently entitled to a share of the trust estate or income, or
  - (ii) individually or together with other beneficiaries, in a position to control the trustee,



- (d) a trustee of a trust if—
  - (i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994, and
  - (ii) a majority of the individuals who are beneficiaries under the trust are relatives of A (under paragraphs (a) or (b)).

<b>Relevant Interest</b>	has the meaning given in sections 235 to 238 of the FMC Act.
<b>Renounceable</b>	in relation to a Right or offer of Equity Securities means a Right or offer of Equity Securities that is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates).
<b>Results Announcement</b>	means an announcement with the applicable information specified in Appendix 2 and such additional content as may be prescribed by NZX from time to time.
<b>Right</b>	means any right (whether conditional or not, whether Renounceable or not and whether Quoted or not) to acquire an Equity Security, including a right under a Share Purchase Plan.
<b>Rules</b>	means these NZX Listing Rules.
<b>Ruling</b>	means any decision or determination by NZX as to the meaning, interpretation or application of the Rules and includes any ruling, waiver, or revocation of a waiver given under Rule 9.5, Rule 9.6, or Rule 9.7.
<b>Schedule 1 Offer Document</b>	means a document or documents containing the terms and conditions of: <ul style="list-style-type: none"><li>(a) an offer of Quoted Equity Securities made in reliance on the exclusion contained in clause 10 of Schedule 1 of the FMC Act,</li><li>(b) an offer of Quoted Equity Securities or Options under a Rights offer or an Accelerated Offer made in reliance on clause 19 of Schedule 1 of the FMC Act (whether Renounceable or non-Renounceable),</li></ul>



- (c) an offer of Debt Securities made in reliance on clause 19 of Schedule 1 of the FMC Act,
- (d) any document or documents of similar effect to those referred to in paragraphs (a) to (c) required by the conditions of any applicable exemption granted by FMA from Part 3 of the FMC Act, or
- (e) an offer of Financial Products made under a limited disclosure document, if an exclusion under Schedule 1 of the FMC Act applies to that offer.

**Senior Manager**

has the meaning given in section 6 of the FMC Act.

**Settlement System**

has the meaning given in the Depository Rules.

**Share Purchase Plan**

means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

- (a) the consideration payable for the Equity Securities issued does not in any 12 month period exceed \$15,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),
- (b) the number of Equity Securities to be issued does not exceed 5% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, and
- (c) the Offer Document contains a term to the effect that, if the offer is oversubscribed, oversubscriptions will be accepted (subject to paragraph (b) above or such lower limit as contained in the Offer Document) or acceptances will be scaled having regard to the number of fully paid Equity Securities carrying Votes held by those accepting the offer either on the Record Date or the closing date of the offer (and which date is relevant must be specified in the Offer Document).

**State Enterprise**

has the meaning given in section 2 of the State-Owned Enterprises Act 1986.



<b>Statement</b>	means a statement of holding of Quoted Financial Products complying with Rule 8.3.
<b>Subsidiary</b>	means: <ul style="list-style-type: none"> <li>(a) a subsidiary within the meaning of section 5 of the Companies Act 1993 (read together with sections 7 and 8 of that Act), and</li> <li>(b) an entity treated as a subsidiary within the meaning of any financial reporting standard approved in terms of section 19 of the Financial Reporting Act 2013.</li> </ul>
<b>Substantial Product Holder</b>	has the meaning given in section 274(1) of the FMC Act.
<b>Takeovers Code through MAP</b>	means the Takeovers Regulations 2000. means to submit the relevant announcement for market release through MAP in accordance with Rule 3.26.
<b>Treasury Stock</b>	means shares held by an Issuer under provisions in the Companies Act 1993 which enable treasury stock to be held by a company. This includes shares held by a Subsidiary of a company other than in accordance with section 82(6) of the Companies Act 1993.
<b>Tribunal</b>	means the NZ Markets Disciplinary Tribunal, a body constituted by NZX under the Tribunal Rules and, where the context permits, includes the chairperson, deputy chairperson and any division or authorised delegate of the NZ Markets Disciplinary Tribunal.
<b>Tribunal Rules</b>	means the NZ Markets Disciplinary Tribunal Rules.
<b>Vendor Securities</b>	means Equity Securities issued by an Issuer at or around the time of its Listing, or at or around the first Quotation of Equity Securities of the same Class, or which are issued with a view to such Listing or Quotation, and which are issued as consideration for (whether directly or indirectly), or in connection with: <ul style="list-style-type: none"> <li>(a) the acquisition by the Issuer or its Subsidiary of any material property (including any patent or intellectual property, or goodwill), or</li> </ul>





- (b) services provided or to be provided to the Issuer or its Subsidiary (whether related to its formation, promotion, or Listing, or otherwise),

and includes:

- (c) any Financial Products issued through a consolidation, subdivision, bonus issue, or similar arrangement in respect of Equity Securities referred to above, and
- (d) any other Financial Products which NZX determines are Vendor Securities.

**Vote**

means a right to vote at a meeting of Financial Product holders, other than:

- (a) a right to vote solely upon matters immaterial or inconsequential to the control of the Issuer or any material part of the Issuer's business,
- (b) a right to vote only when payments in respect of the Financial Product in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Financial Product, or in other circumstances of a special or remote nature, or
- (c) a right to vote attaching to Financial Products, other than Equity Securities, which is exercisable only at meetings of holders of those Financial Products.

**Wholesale Debt Securities**

means Debt Securities where the terms of offer by the Issuer limit subscription in New Zealand to wholesale investors (as defined in Schedule 1 of the FMC Act) or a subset of such wholesale investors.



## Part B – Interpretation

- 1 An Issuer must comply with the Rules as interpreted:
  - (a) in accordance with their spirit, intention and purpose,
  - (b) by looking beyond form to substance, and
  - (c) in a way that best promotes the principles on which the Rules are based.
- 2 In these Rules (unless the context requires otherwise):
  - (a) headings to clauses are for reference only and are not an aid in interpretation,
  - (b) references to a statutory provision, regulation or exemption notice will be construed as a reference to that statutory provision, regulation or exemption notice as it may be amended, re-enacted or modified by other provisions (including by regulation, order-in-council or other instrument), and includes reference to any other statutory provision necessary for the interpretation of the statutory provision, regulation or exemption notice,
  - (c) any reference to a person includes that person's successors and permitted assigns,
  - (d) any reference to a period of time is to be calculated in accordance with section 35 of the Interpretation Act 1999,
  - (e) any reference to a day which is not a Business Day, upon or by which something must be done, is a reference to the next Business Day,
  - (f) words importing the plural include the singular and vice versa and words importing gender import all genders,
  - (g) a reference to conduct or engaging in conduct includes doing, omitting to do or refusing to do any act and, unless otherwise stated, extends to causing, permitting, suffering or authorising the act or the omission to occur,
  - (h) all warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person will be deemed to have been given or entered into jointly and severally,
  - (i) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning,
  - (j) a reference to a Rule (e.g. Rule 2.6) includes a reference to all sub-Rules included under that Rule (e.g. Rule 2.6.3) and a reference to a Section (e.g. Section 2) includes a reference to all Rules and sub-Rules within that Section,
  - (k) a reference to time is a reference to New Zealand time and references to monetary amounts are to New Zealand currency,



- (l) if the name of a body (whether incorporated or not) or the name of an office is changed by law, then a reference in these Rules is taken as a reference to the body or office under the new name, and
  - (m) the appendices to the Rules have the same force and effect as if set out in the body of the Rules.
- 3 In these Rules the following Rules of interpretation apply:
- (a) an **agreement** includes a contract, deed, licence, franchise, undertaking or other document (in each case, whether oral or written) and includes that agreement as modified, supplemented, novated or substituted from time to time,
  - (b) a **holding company** means a company of which another company is a Subsidiary,
  - (c) a reference to **including** or similar words means including without limiting the generality of the preceding words,
  - (d) a **law** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any relevant jurisdiction (and “lawful” and “unlawful” will be construed accordingly),
  - (e) the word **person** includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality,
  - (f) **rights** includes authorities, discretions, remedies, powers and causes of action, and
  - (g) the words **written** and **writing** include all means of communication resulting in permanent visible reproduction.
- 4 These Rules are governed by, and construed in accordance with, the law of New Zealand. Each Issuer is deemed, by entering into an agreement to be Listed with NZX, to have irrevocably submitted to the non-exclusive jurisdiction of the Courts of New Zealand.



# Section 1

## Listing and Quotation

Eligibility for Listing and Quotation – Equity, Debt, Funds, Other Financial Products

Application for Listing and Quotation

Backdoor Listings

### Eligibility requirements for Equity, Debt & Fund Securities

#### 1.1 Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities

1.1.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Equity Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.20 and applicable legislation, and
- (b) a Class of Equity Securities will not generally be considered for initial Quotation unless:
  - (i) the anticipated market capitalisation of the applicant's Equity Securities to be Quoted is at least \$10 million, and
  - (ii) NZX is satisfied that, upon Quotation:
    - (A) at least 20% of the Class of Equity Securities will be held by at least 100 Non-Affiliated Holders (being the registered holders or, in the case of Equity Securities held through a custodian, the beneficial owners of the Equity Securities), with each such Non-Affiliated Holder holding (or having a beneficial interest in) at least a Minimum Holding, or
    - (B) the applicant will have an appropriate spread of Equity Security holders to ensure a sufficiently liquid market in the Class of Equity Securities.

1.1.2 The Manager of a Managed Investment Scheme may apply to List as an Issuer of Equity Securities, and to have the Financial Products of the Managed Investment Scheme Quoted as Equity Securities, rather than as Fund Securities. If NZX accepts such an application, the Financial Products will be deemed to be Equity Securities and not Fund Securities, and the Rules (including Appendix 3) will apply accordingly.

## 1.2 Eligibility for Listing as an Issuer of Debt Securities and Quotation of Debt Securities

1.2.1 For an applicant to be Listed on the Debt Market, with NZX as its Home Exchange, and its Debt Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.21, and applicable legislation, and
- (b) a Class of Debt Securities will not generally be considered for initial Quotation unless the nominal amount of the applicant's Debt Securities to be Quoted is at least \$10 million.

## 1.3 Rules which do not apply to Issuers of Debt Securities

1.3.1 The following Rules do not apply to an Issuer of Debt Securities:

- (a) Rules 2.1 to 2.14, 3.4, 3.8, 3.14.4, Section 4 (except for Rule 4.19), Section 5, Section 6, Rule 7.5, Rule 7.8, and

- (b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of other Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

## 1.4 Eligibility for Listing as an Issuer of Fund Securities and Quotation of Fund Securities

1.4.1 For an applicant to be Listed on the Main Board, with NZX as its Home Exchange and its Fund Securities Quoted:

- (a) the applicant must have a Governing Document consistent with Rule 2.18 and Rule 2.22, and applicable legislation,

- (b) a Class of Fund Securities will generally not be considered for initial Quotation unless:

- (i) the anticipated market capitalisation of the applicant's Fund Securities to be Quoted is at least \$10 million, and

if the applicant is not a Continuous Issuer, NZX is satisfied that, upon Quotation:

- (ii) at least 20% of the Class of Fund Securities will be held by at least 100 Non-Affiliated Holders (being the registered holders or, in the case of Fund Securities held through a custodian, the beneficial owners of the Fund Securities), with each such Non-Affiliated Holder holding (or having a beneficial interest in) at least a Minimum Holding, or

- (iii) the applicant will have an appropriate spread of Fund Security ownership to ensure a sufficiently liquid market in the Class of Fund Securities.

## 1.5 Rules which do not apply to Issuers of Fund Securities

1.5.1 The following Rules do not apply to an Issuer of Fund Securities:

- (a) Rules 2.1 to 2.14, 3.5 to 3.10, Section 4 (except for Rules 4.18 and 4.19), Section 5, Section 6, and

- (b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of other Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

## Eligibility requirements for NZX Foreign Exempt Issuers

### 1.6 Eligibility for Listing as an NZX Foreign Exempt Issuer

1.6.1 For an applicant to be Listed with NZX as an NZX Foreign Exempt Issuer, or for an Issuer to have Financial Products Quoted as an NZX Foreign Exempt Issuer, the applicant or Issuer (as applicable) must:

- (a) have a Recognised Stock Exchange as its Home Exchange, and

- (b) be subject to the listing rules (or their equivalent) of its Home Exchange in respect of the Financial Products it proposes to Quote as an NZX Foreign Exempt Issuer,

and the applicant need not apply for Quotation of all Classes of Financial Products quoted on its Home Exchange.

1.6.2 An existing NZX Foreign Exempt Issuer may apply for a Class of Financial Products to be Quoted, with NZX being the Home Exchange of such Financial Products, while retaining its NZX Foreign Exempt Issuer status in respect of other Financial Products.

### 1.7 Compliance with rules of Home Exchange

1.7.1 An NZX Foreign Exempt Issuer will be deemed (subject to Rule 1.7.2) to satisfy and comply with all the Rules so long as:

- (a) it remains listed on its Home Exchange, and

- (b) all of the Financial Products of the Issuer Quoted on NZX remain quoted on its Home Exchange,

unless the NZX Foreign Exempt Issuer is also an Issuer of another class of Financial Product Quoted on NZX, with NZX being the Home Exchange of such Financial

Products, in which case the Issuer must comply with applicable laws and the Rules that apply in respect of those Quoted Financial Products.

1.7.2 An NZX Foreign Exempt Issuer must:

- (a) release through MAP at the same time as, or promptly and without delay after, any information or notice it has provided to its Home Exchange that is made public, and any additional information NZX requests from time to time, in the manner and form NZX prescribes from time to time,
- (b) promptly and without delay release through MAP any notice or other information provided to its Home Exchange by third parties for market release in relation to the Issuer that is made public and released under the listing rules of its Home Exchange or applicable laws (for example, equivalent disclosures by substantial product holders, directors and senior managers or takeover notifications),
- (c) continue to comply with the listing rules (or their equivalent) of its Home Exchange,
- (d) promptly inform NZX if the Issuer:
  - (i) has breached any listing rules (or their equivalent) of its Home Exchange,
  - (ii) is granted a waiver of all or part of any listing rules (or their equivalent) of its Home Exchange, or
  - (iii) has had its listing cancelled, or the quotation of its Financial Products suspended, on its Home Exchange,
- (e) promptly and without delay request a trading halt in respect of its Quoted Financial Products if trading in those Financial Products is halted (or the Issuer has applied for a trading halt) on its Home Exchange, and
- (f) comply with the following Rules with all necessary modifications:
  - (i) Rule 1.7.2, Rule 1.19, Rule 1.21, Rule 1.23.1, Rule 3.26, and Rule 3.29,
  - (ii) Section 9, and
  - (iii) any other Rules that NZX may declare, at any time by notice to the Issuer, to apply to such Issuer regardless of whether the listing rules (or their equivalent) of its Home Exchange contain a similar provision.

1.7.3 As a general rule, NZX will follow the actions of the Home Exchange in respect of an NZX Foreign Exempt Issuer. NZX will cancel the Listing, suspend Quotation or institute a trading halt on the same terms and, to the extent practicable, at the same time as the Home Exchange of the NZX Foreign Exempt Issuer.

## Eligibility requirements for Wholesale Debt Securities Issuers

### 1.8 Eligibility for Listing as an Issuer of Wholesale Debt Securities

1.8.1 For an applicant to be Listed on the Debt Market as an Issuer of Wholesale Debt Securities, for each Class of Wholesale Debt Securities the applicant must provide NZX with:

- (a) a copy of the Governing Document,
- (b) a copy of the principal offer document or terms sheet for the relevant Wholesale Debt Securities, and
- (c) a notice describing the number and details of each Class of Wholesale Debt Securities to be covered by its Listing from time to time.

1.8.2 An Issuer of Wholesale Debt Securities accepted for Listing must not state or imply that its Wholesale Debt Securities will be quoted by NZX at any time.

### 1.9 Rules which do not apply to Issuers of Wholesale Debt Securities

1.9.1 The following Rules do not apply to an Issuer of Wholesale Debt Securities:

- (a) Sections 2, 3 (except for Rule 3.25.2, and Rule 3.26), 4, 5, 6, 7, and 8, and
- (b) any other Rules that NZX specifies either before or after the Issuer is Listed,

unless the Issuer is also an Issuer of Quoted Financial Products, in which case the Issuer must comply with the Rules that apply in respect of those Quoted Financial Products.

## Eligibility requirements for Other Financial Products

### 1.10 Listing and Quotation of Other Financial Products

1.10.1 An applicant which does not fall within the categories in Rule 1.1, Rule 1.2, Rule 1.4, Rule 1.6 or Rule 1.8 may be accepted for Listing with NZX if NZX is satisfied that such applicant is suitable for Listing and, if applicable, the applicant's Other Financial Products are suitable for Quotation.

1.10.2 An Issuer accepted for Listing under Rule 1.10.1 will be subject to such Rules and other requirements that NZX specifies either before or after the Issuer is Listed.

## Backdoor Listings

### 1.11 Approval of Backdoor or Reverse Listings

1.11.1 If an Issuer proposes to enter into a Backdoor or Reverse Listing transaction, then NZX may, in addition to any other rights and powers it has under these Rules, require the



Issuer to re-comply with the relevant listing and quotation requirements in Section 1 as if the Issuer was a new applicant for Listing, to the extent NZX considers necessary.

## **Application requirements for Listing and Quotation**

### **1.12 Application for Listing**

1.12.1 An applicant may apply to NZX to List on the Main Board or Debt Market if eligible to do so in accordance with the requirements of this Rule 1.12.

1.12.2 The following information and material must be provided with any application to List:

- (a) an executed listing agreement, in a form specified by NZX, to the effect that the applicant will at all times comply with the Rules (or a confirmation that the applicant will execute and provide a listing agreement prior to Listing),
- (b) a copy of the applicant's Governing Document,
- (c) confirmation that any fees prescribed by NZX while Listed will be paid,
- (d) if Quotation of a Class of Financial Products is sought at the time of Listing, the further information specified in Rule 1.13, Rule 1.14, Rule 1.15 or Rule 1.16 (as applicable),
- (e) a copy of the applicant's certificate of incorporation or commensurate document,
- (f) confirmation that the bond or deposit required by Rule 1.23 has been provided, or will be provided prior to Listing,
- (g) the number and details of each Class of Financial Product on issue at the time of the application and, to the extent the number and details are known at the time at which the application is made, of any issue or allotment intended prior to Listing (other than, in any case, Debt Securities which are not Quoted or not intended to be Quoted and any Class of Financial Product for which application for Quotation is not sought),
- (h) contact details of the applicant (being a phone number, postal address and email address),
- (i) copies of the applicant's annual reports for the last five years, if available,
- (j) all other documents or information as specified in any guidance published by NZX from time to time, and
- (k) any other information or documents that NZX may request.

### **1.13 Application for Quotation of Equity Securities**

1.13.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Equity Securities to be Quoted on the Main Board.

1.13.2 The following information and material must be provided with an application under Rule 1.13.1:

- (a) details of the Equity Security for which Quotation is sought, including the number of such Equity Securities (to the extent known at the time at which the application is made) and Class,
- (b) a draft Offer Document or Profile for the Equity Securities, to the extent required under Rule 7.3.1,
- (c) details of proposed arrangements to ensure opportunity for holders to trade on Quotation of the Equity Securities,
- (d) all other documents or information as specified in any guidance published by NZX from time to time, and
- (e) any other information or documents that NZX may request.

#### 1.14 **Application for Quotation of Debt Securities**

1.14.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Debt Securities to be Quoted on the Debt Market.

1.14.2 The following information and material must be provided with an application under Rule 1.14.1:

- (a) details of the Debt Security for which Quotation is sought, including the number or total nominal amount of such Debt Securities (to the extent known at the time at which the application is made), Class, and face value (if any),
- (b) a draft Offer Document or Profile for the Debt Securities, to the extent required under Rule 7.3.1,
- (c) details of proposed arrangements to ensure the opportunity for holders to trade on Quotation of the Debt Securities,
- (d) details of any designation sought for the Debt Securities (e.g. “green bonds”) and the certification methodology applied for such designation,
- (e) all other documents or information as specified in any guidance published by NZX from time to time, and
- (f) any other information or documents that NZX may request.

#### 1.15 **Application for Quotation of Fund Securities**

1.15.1 An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of Fund Securities to be Quoted on the Main Board.



1.15.2 The following information and material must be provided with an application under Rule 1.15.1:

- (a) details of the Fund Security for which Quotation is sought, including the number of such Fund Securities (to the extent known at the time at which the application is made) and Class,
- (b) the statement of investment policy and objectives (SIPO) prepared in accordance with Part 4 of the FMC Act, if applicable,
- (c) a draft Offer Document or Profile for the Fund Securities, to the extent required under Rule 7.3.1,
- (d) the names of the investment manager, investment adviser, administration agent and custodian of the investment fund (as applicable),
- (e) details of proposed arrangements to ensure the opportunity for holders to trade on Quotation of the Fund Securities,
- (f) details of any designation sought for the Fund Securities and the certification methodology applied for such designation,
- (g) all other documents or information as specified in any guidance published by NZX from time to time, and
- (h) any other information requested by NZX.

#### 1.16 **Application for Quotation of Other Financial Products**

1.16.1 An applicant may apply to NZX for Quotation of a Class or Classes of Other Financial Products. For an applicant to apply for Other Financial Products to be Quoted on the Main Board or Debt Market, the following information and material must be provided to NZX:

- (a) details of the Other Financial Product for which Quotation is sought, including the number or total nominal amount of such Other Financial Products (to the extent known at the time at which the application is made), Class and face value (if applicable),
- (b) any draft Offer Document or Profile for the Other Financial Products, unless the Issuer or applicant is, or intends to be, an NZX Foreign Exempt Issuer in respect of such Other Financial Products, to the extent required under Rule 7.3.1,
- (c) details of proposed arrangements to ensure opportunity for holders to trade on Quotation of the Other Financial Products,
- (d) details of any designation sought for the Other Financial Products and the certification methodology applied for such designation,



- (e) all other documents or information as specified in any guidance published by NZX from time to time, and
- (f) any other information requested by NZX.

## Designations

### 1.17 Designations

1.17.1 NZX may, on request from an Issuer or an applicant for Listing, approve a designation in respect of Quoted Financial Products (e.g. “green bonds”) at NZX’s sole discretion and on such terms and conditions as NZX may determine.

1.17.2 If an Issuer has a designation in respect of its Quoted Financial Products, then:

- (a) NZX may:
  - (i) request the Issuer to provide additional information regarding the certification methodology applied for such designation, or
  - (ii) remove that designation if NZX considers it to be misleading or inaccurate, and
- (b) if the Issuer becomes aware that such designation is, or may have become, misleading or inaccurate, the Issuer must provide to NZX details as to why such designation is, or may be, misleading or inaccurate.

### 1.18 Non-standard Listings

1.18.1 An Issuer, or applicant for Listing, which does not comply fully with all applicable Rules may be Listed, at NZX’s sole discretion, with the designation “Non Standard” or “NS”. Such an Issuer must ensure that any advertisement (as that term is defined in section 6(1) of the FMC Act), Offer Document, Profile or statement for distribution which refers in any way to the Listing or to the Quotation of the Financial Products, and all annual reports of that Issuer, state prominently:

- (a) that the Issuer has a Non Standard designation, and
- (b) where it is desirable, taking into account the context and the relevance of the information to the recipients, the reasons for the Non Standard designation.

## General rules for all Listings and Quotations

### 1.19 NZX discretion as to Listing and Quotation

1.19.1 NZX may refuse Listing or Quotation in its absolute discretion and without giving any reasons for such refusal.

1.19.2 NZX may at any time impose conditions on an applicant for Listing or Issuer which must be fulfilled in order to obtain or maintain a Listing or Quotation where NZX considers this

necessary or desirable to maintain a properly informed market or to ensure compliance with, or achieve the intent of, any of the Rules. Such conditions will be additional to the Rules.

1.19.3 NZX may require an applicant for Listing or Issuer to submit to the scrutiny of an independent expert any technical, financial or other information in any Offer Document, Profile, Appraisal Report or other document provided to NZX. The expert will report to NZX and be hired at the expense of the applicant or Issuer.

## 1.20 **Separate applications for each Class of Financial Products**

1.20.1 An application for Quotation must be made to NZX for each Class of Financial Products to become Quoted. If a Class of Quoted Financial Products divides into more than one Class, the Issuer must apply for Quotation of each of the resulting Classes.

## 1.21 **Commencement of Listing and Quotation**

1.21.1 The Rules take effect in respect of an applicant on and from the time at which it is Listed.

1.21.2 Quotation of a Class of Financial Products will be effective from the date and time specified in a notice published by NZX.

1.21.3 Financial Products issued, which are not but may become of the same Class as Quoted Financial Products, will not be Quoted until they have qualified for inclusion in the Class of Financial Product already Quoted (unless application is made for their Quotation as a separate Class).

## 1.22 **Nominated Contact for service and other communications**

1.22.1 Unless the Issuer (or the Manager of the Managed Investment Scheme) is a company incorporated in New Zealand, an Issuer which has NZX as its Home Exchange must at all times while it is Listed:

- (a) appoint and authorise a natural person resident in New Zealand to accept service of notices or legal proceedings from NZX and provide the contact details (being a phone number, postal address and email address) of such person, and
- (b) notify NZX promptly and without delay if the person so appointed, or such person's contact details, changes.

## 1.23 **Payment of Fees**

1.23.1 Each Issuer must pay to NZX the fees prescribed by NZX.

1.23.2 Every applicant for Listing must provide to NZX a bond in a form approved by NZX, for an amount determined by NZX in accordance with Rule 1.23.3 and given by a person approved by NZX for this purpose. Any Issuer which has not complied with this Rule before Listing must do so when required by NZX. NZX may agree to accept a deposit in lieu of a bond.

1.23.3 Each deposit or bond secures the payment of all amounts payable to NZX by the Issuer under the Rules. NZX may from time to time adjust the amount of each such deposit or bond. If any portion of a deposit or bond is applied in payment of monies payable to NZX by the Issuer, the Issuer must promptly arrange for the deposit or bond to be reinstated to its previous amount.



## Section 2

# Governance Requirements

Board Composition, Independent Directors

Director Nominations, Rotation, Removal

Audit Committee

Governance for non-Equity issuers

Requirements for Governing Documents

Minimum content for Equity, Debt, Fund Governing Documents

### Governance requirements for Equity Security Issuers

#### 2.1 Composition of Board of Directors

2.1.1 The composition of the Board of an Issuer of Quoted Equity Securities must satisfy the following requirements at all times (excluding alternate Directors):

- (a) there must be at least three Directors,
- (b) at least two Directors must be ordinarily resident in New Zealand, and
- (c) at least two Directors must be Independent Directors.

#### 2.2 Appointment of Directors

2.2.1 A person may be appointed as a Director of the Issuer by:

- (a) appointment by the Board, if permitted by the Governing Document of the Issuer,
- (b) nomination and appointment at an Issuer's annual or special meeting of Equity Security holders in accordance with Rule 2.3,
- (c) appointment by an Equity Security holder, as contemplated in Rule 2.4, or
- (d) appointment as an alternate Director under Rule 2.5.

#### 2.3 Director Nominations and Appointment

2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated by an Equity Security holder who will be entitled to attend and Vote at the meeting if he,

she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.

2.3.2 An Issuer must comply with the following Director nomination process:

- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,
- (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,
- (c) there must be no restriction on who may be nominated as a Director, unless:
  - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
  - (ii) applicable legislation restricts who may be a Director of the Issuer,
- (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and
- (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

2.3.3 Each resolution of the holders of Equity Securities to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only.

## 2.4 **Equity Holder appointment rights**

2.4.1 The Governing Document may give an Equity Security holder the right to appoint one or more Directors (and to remove any Director so appointed), provided:

- (a) the appointment does not result in the proportion of such Directors to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Issuer held by the appointer, and
- (b) if the appointer exercises its right to appoint one or more Directors with such Director remaining in office at the time of the election of other Directors, the appointer must not also Vote upon the election of other Directors.

## 2.5 **Alternate Directors**

2.5.1 No Director may appoint an alternate Director to act for him or her except with the consent of a majority of his or her co-Directors. The alternate appointment may be revoked by the appointing Director or by a majority of the Board. A Director may not act as alternate for another Director. No Director may appoint a deputy or agent otherwise than as an alternate Director.



## **2.6 Independence of Directors**

- 2.6.1 The Board must identify which Directors it has determined to be Independent Directors, having had regard to the non-exhaustive factors described in the NZX Corporate Governance Code that may impact director independence.
- 2.6.2 The determination under Rule 2.6.1 as to whether a Director is an Independent Director must be made and released through MAP no later than 10 Business Days after any Director's initial appointment.
- 2.6.3 If, at any time, the Board makes a determination regarding a Director's independence that differs from the position most recently released through MAP (for example, that an Independent Director is no longer independent), such determination must be promptly and without delay released through MAP.
- 2.6.4 The Issuer is responsible for ensuring that Directors provide sufficient information to the Board for the Board to make a determination under Rule 2.6.1.

## **2.7 Rotation of Directors**

- 2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment.
- 2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

## **2.8 Removal of Directors**

- 2.8.1 All Directors (other than a Director appointed by an Equity Security holder under Rule 2.4) must be subject to removal from office by Ordinary Resolution.

## **2.9 Proceedings and Powers of Directors**

- 2.9.1 Directors may continue to act where there is a vacancy in their body, but where the number of Directors has fallen below the minimum set by the Governing Document, the continuing Directors may act to remedy the shortfall in Directors or to summon a meeting of the Issuer's Equity Security holders, but for no other purpose.

## **2.10 Interested Directors**

- 2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the Issuer is not a company registered under that Act, the reference to the "company" in that section will be read as a reference to the Issuer.



2.10.2 Notwithstanding Rule 2.10.1, a Director of an Issuer incorporated under the Companies Act 1993 may vote on a Board resolution for, and be counted in a quorum for the consideration of, a matter in which that Director has an interest, if the matter:

- (a) is one in respect of which Directors are expressly required under that Act to sign a certificate, or
- (b) relates to the grant of indemnity under section 162 of that Act.

## 2.11 **Directors' Remuneration**

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

- (a) all Directors of the Issuer in aggregate, or
- (b) any person who from time to time holds office as a Director of the Issuer.

2.11.2 A resolution for the purposes of Rule 2.11.1:

- (a) must only be approved if notice of the amount of any increase in remuneration has been given in the notice of meeting, and
- (b) may provide that the remuneration may, in whole or in part, be through an issue of Equity Securities, provided the issue is in compliance with Rule 4.7.

2.11.3 If remuneration is expressed in accordance with Rule 2.11.1(a) and there is an increase in the number of Directors from the number when the remuneration was approved by an Ordinary Resolution, the Board may, without an Ordinary Resolution, increase the remuneration payable to all Directors of the Issuer in aggregate. The amount of the increase per additional Director may not exceed the amount necessary to enable the additional Director or Directors to be paid the average amount then being paid to each non-Executive Director (other than the chairperson) of the Issuer.

2.11.4 A lump sum payment or pension may be made to a Director or former Director, or to his or her dependents, on retirement or cessation of office provided that the amount of the payment, or the method of calculation, has been authorised by an Ordinary Resolution.

2.11.5 The resolutions referred to in this Rule 2.11 are subject to the voting restrictions in Rule 6.3.

## 2.12 **Directors' Remuneration as Employees or in another capacity**

2.12.1 Nothing in Rule 2.11 affects:

- (a) the remuneration of Executive Directors in their capacity as Employees, or

- (b) the amount paid to an Executive Director upon or in connection with the termination of his or her employment with the Issuer, or any payments relating to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

2.12.2 A Director's remuneration for work outside his or her capacity as a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 5.2 (if applicable).

## 2.13 **Audit Committee**

2.13.1 Each Issuer must establish an Audit Committee.

2.13.2 The Audit Committee must:

- (a) be comprised solely of Directors of the Issuer,
- (b) have at least three members,
- (c) have a majority of Independent Directors, and
- (d) have at least one member with an accounting or financial background.

2.13.3 The responsibilities of an Issuer's Audit Committee include as a minimum:

- (a) ensuring processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters,
- (b) recommending the appointment and removal of the independent auditor,
- (c) meeting regularly to monitor and review the independent and internal auditing practices,
- (d) having direct communication with and unrestricted access to the independent and any internal auditors or accountants,
- (e) reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations, and
- (f) ensuring that the Key Audit Partner is changed at least every five years.

## 2.14 **Equity Security holder notices and meetings**

2.14.1 Equity Security holders of all Classes (whether or not they have a right to Vote) are entitled to attend annual and special meetings and to receive copies, or have access to electronic copies, of all notices, reports and financial statements issued generally to holders of Financial Products carrying Votes.



2.14.2 Where a Quoted Equity Security holder has only supplied an overseas address or an electronic address, notices must be sent to that physical address or sent electronically to such electronic address.

2.14.3 An Issuer which has NZX as its Home Exchange:

- (a) may hold meetings as a physical meeting, by audio, audio and visual, and/or electronic means, and
- (b) must hold all physical meetings of holders of Quoted Financial Products in New Zealand, or in Australia if holders of Quoted Financial Products in New Zealand may participate in the meeting by audio, audio and visual, and/or electronic means.

### **Governance requirements for Debt Security Issuers**

**2.15 Debt Issuers comply with applicable law**

2.15.1 An Issuer of Debt Securities must comply with Part 4 of the FMC Act to the extent required by law.

### **Governance requirements for Fund Security Issuers**

**2.16 Fund Issuers comply with applicable law**

2.16.1 An Issuer of Fund Securities must comply with Part 4 of the FMC Act to the extent required by law.

2.16.2 If an Issuer of Fund Securities is not subject to Part 4 of the FMC Act, NZX may require, by prior written notice to the Issuer, an Issuer to comply with any requirement in Part 4 of the FMC Act (with all necessary modifications) as if the Issuer were subject to Part 4 of the FMC Act.

2.16.3 The composition of the Board of the Manager of Quoted Fund Securities must include at least one Director ordinarily resident in New Zealand or Australia.

### **Governance requirements for Issuers of Other Financial Products**

**2.17 NZX to determine governance requirements**

2.17.1 An Issuer of Other Financial Products (which are not Equity Securities, Debt Securities or Fund Securities), must comply with Part 4 of the FMC Act to the extent required by law.

2.17.2 If an Issuer of Other Financial Products is not subject to Part 4 of the FMC Act, NZX may require, by prior written notice to the Issuer, an Issuer to comply with any requirement in Part 4 of the FMC Act or the Rules (with all necessary modifications) as if the Issuer were subject to Part 4 of the FMC Act or that Rule.

## **Governing Document requirements for all Issuers**

### **2.18 Requirement to have Governing Document**

2.18.1 An Issuer must:

- (a) have a Governing Document that complies with the applicable provisions of this Section 2, and
- (b) comply with the terms of its Governing Document.

### **2.19 Solicitor's opinion regarding Governing Document**

2.19.1 An Issuer or applicant for Listing providing a Governing Document to NZX, or prior to changing its Governing Document, must provide a solicitor's opinion. That opinion must:

- (a) be provided by a solicitor or firm of solicitors approved by NZX,
- (b) be addressed to NZX and acknowledge that the solicitor or firm of solicitors accepts responsibility to NZX in respect of the opinion,
- (c) disclose any conflicting duties or interests the solicitor or firm of solicitors has and confirm that this disclosure is complete in all respects, and
- (d) state whether, in the opinion of that solicitor, the document in question complies with the Rules.

## **Governing Document requirements for Issuers of Equity Securities**

### **2.20 Content of Governing Document for Issuers of Equity Securities**

2.20.1 The Governing Document of each Issuer of Quoted Equity Securities must:

- (a) incorporate by reference provisions consistent with, and having the same effect as, the following provisions, as modified by any Ruling relevant to the Issuer:
  - (i) Rule 2.1.1, Rule 2.2.1, Rule 2.5.1, Rule 2.8.1, Rule 2.9.1, Rule 2.10.1 and Rule 2.10.2,
  - (ii) Rule 6.3.1 to Rule 6.3.3, and Rule 6.3.5, and
  - (iii) if the Issuer is not a company incorporated under the Companies Act 1993, Rule 6.7.1,
- (b) in the case of any non-Code Company, incorporate by reference the provisions required by Appendix 3,
- (c) provide that, for so long as the Issuer is Listed, the Issuer must comply with the Rules, and

- (d) provide that any Rulings authorising an act or omission which would otherwise be in breach of the Issuer's Governing Document will be deemed to be authorised by the Governing Document unless the Governing Document contains a contrary intention, and
- (e) provide that, subject to (d), if a provision in the Governing Document is inconsistent with the Rules, the Rules will prevail.

2.20.2 The Governing Document may provide that failure to comply with:

- (a) the Rules, or
- (b) a provision of the Governing Document corresponding with a provision of the Rules,

does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Equity Security holders, or other matter entered into by, or affecting, the Issuer. Such provision must expressly state that the provision does not limit the rights of Equity Security holders against the Issuer or the Directors of the Issuer. If such a provision is included it must also expressly state that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract.

## **Governing Document requirements for Issuers of Debt Securities**

### **2.21 Content of Governing Document for Issuers of Debt Securities**

2.21.1 Every Governing Document governing Quoted Debt Securities must provide that:

- (a) a meeting of Debt Security holders must be convened by the Issuer on the written request of holders of Debt Securities that have a combined nominal value of 5% or more of the nominal value of the Debt Securities on issue in that Class, or such other number of holders as required by section 120(1)(b) of the FMC Act (if applicable),
- (b) the necessary majority for passing an extraordinary resolution is approval of holders holding at least 75% of the nominal value of those Debt Securities held by persons entitled to vote and voting, and
- (c) must contain such other provisions as NZX may require in any particular case for the protection of holders of the Debt Securities in question.

## **Governing Document requirements for Issuers of Fund Securities**

### **2.22 Governing Document for Issuers of Fund Securities**

2.22.1 Every Governing Document for an Issuer of Fund Securities must:

- (a) comply with Part 4 of the FMC Act to the extent required by law, and

- (b) contain such other provisions as NZX may require in any particular case for the protection of holders of the Fund Securities in question.

## **Governing Document requirements for Issuers of Other Financial Products**

### **2.23 Governing Document for Issuers of other Financial Products**

2.23.1 Every Governing Document governing Other Financial Products must:

- (a) comply with Part 4 of the FMC Act to the extent required by law, and
- (b) contain such other provisions as NZX may require in any particular case for the protection of holders of the Other Financial Products in question.



## Section 3 Disclosure

Continuous disclosure

Periodic Disclosure / Fund Updates

Event Disclosure

Making Announcements to the NZX Market Announcement Platform

### Continuous disclosure

#### 3.1 Disclosure of Material Information

3.1.1 Once an Issuer becomes Aware of any Material Information relating to it, the Issuer must:

- (a) promptly and without delay release that Material Information through MAP, and
- (b) not disclose any Material Information to the public, any other stock exchange (except as provided for in Rule 3.26.2(d)) or any other party without first releasing that Material Information through MAP.

3.1.2 Rule 3.1.1 does not apply when:

- (a) one or more of the following applies:
  - (i) release of the information would be a breach of law,
  - (ii) the information concerns an incomplete proposal or negotiation,
  - (iii) the information contains matters of supposition or is insufficiently definite to warrant disclosure,
  - (iv) the information is generated for internal management purposes, or
  - (v) the information is a trade secret,
- (b) the information is confidential and its confidentiality is maintained, and
- (c) a reasonable person would not expect the information to be disclosed.



### 3.2 **False Market**

3.2.1 An Issuer must promptly and without delay release Material Information through MAP to the extent necessary to prevent development or subsistence of a market for its Quoted Financial Products which is materially influenced by false or misleading information emanating from:

- (a) the Issuer or any Associated Person of the Issuer, or
- (b) other persons in circumstances in each case which would give such information substantial credibility,

and which is of a reasonably specific nature whether or not Rule 3.1.2 applies.

### 3.3 **No Contracting out**

3.3.1 An Issuer must avoid entering into any obligation which may prejudice its ability to comply freely with the provisions of Rule 3.1 or Rule 3.2 to the extent that is reasonably possible without causing a material adverse effect on the Issuer's business.

### 3.4 **Related Party Transactions**

3.4.1 Every Issuer must promptly and without delay release through MAP sufficient details to inform the market upon entering into a transaction or related series of transactions with a Related Party under which the Issuer:

- (a) purchases, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 5% of the Issuer's Average Market Capitalisation,
- (b) issues its own Financial Products or acquires its own Equity Securities, having a market value above 5% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or for an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (c) borrows, lends, pays or receives money, or incurs an obligation, of an amount above 5% of the Issuer's Average Market Capitalisation (except for an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account), or
- (d) enters into any guarantee, indemnity, underwriting or similar obligation, or gives any security, which could expose the Issuer to liability above 5% of the Issuer's Average Market Capitalisation.

3.4.2 Rule 3.4.1 does not apply to a transaction to which Rule 5.2.1 applies.



## Periodic disclosure – Equity and Debt Securities

### 3.5 Results Announcement

- 3.5.1 Subject to Rule 3.5.3, each Issuer of Quoted Equity Securities or Quoted Debt Securities must release a Results Announcement through MAP no later than 60 days after the end of each financial year or half year.
- 3.5.2 A Results Announcement for a full financial year may be made before, or together with, the release of an annual report.
- 3.5.3 If an Issuer is required to consolidate the financial results of another Listed Issuer, it may make its Results Announcement up to 5 Business Days after the earlier of the release of the other Listed Issuer's Results Announcement and the timeframe required by Rule 3.5.1.

### 3.6 Preparation and delivery of Annual Reports

- 3.6.1 Each Issuer of Quoted Equity Securities or Quoted Debt Securities must within three months after the end of each financial year:
- (a) prepare an annual report, which must contain all information required by all applicable laws and these Rules, and
  - (b) deliver, subject to Rule 3.6.2, the annual report to:
    - (i) NZX by release through MAP (including by URL link to the annual report on an Issuer's website) before or at the same time as it is made available to Quoted Financial Product holders, and
    - (ii) each Quoted Financial Product holder in accordance with Rule 3.6.3.
- 3.6.2 An Issuer that comes within the State-Owned Enterprises Act 1986 is not required to issue an annual report to its Quoted Financial Product holders or NZX until that report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by the Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.
- 3.6.3 Annual reports must be made available to Quoted Financial Product holders by:
- (a) sending to Quoted Financial Product holders:
    - (i) a hard copy of the annual report, or
    - (ii) a notice under 209(3) of the Companies Act 1993, or
  - (b) complying with regulations 61B to 61F of the FMC Regulations.

For the purposes of this Rule 3.6.3, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the FMC Regulations will be deemed to be modified so that:

- (c) “shareholders” are members of the relevant Class of Quoted Financial Product holders of that Issuer,
- (d) “company” includes all Issuers, whatever their structure,
- (e) “board of a company” includes the Manager of a Managed Investment Scheme,
- (f) “annual report” means an annual report as required by Rule 3.6.1,
- (g) references to “working days after it is prepared” and “working days after the annual report for the period is prepared” are, for an Issuer that is a State Enterprise complying with regulations 61B to 61F of the FMC Regulations, interpreted as “working days after the annual report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by that Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.”

### **3.7 Contents of Annual Report**

3.7.1 The annual report of an Issuer of Quoted Equity Securities or Quoted Debt Securities must contain:

- (a) the information required to be published by subpart 5 of Part 5 of the FMC Act and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act,
- (b) audited financial statements and the associated audit report in accordance with the requirements of Part 7 of the FMC Act (unless the Issuer is exempt from Part 7 of that Act) or other applicable law,
- (c) the names and holdings of the registered holders having the 20 largest holdings of Quoted Financial Products at a date not earlier than two months before publication of the annual report, provided that, where known to the Issuer, Quoted Financial Products held through New Zealand Central Securities Depository Limited must be treated as being held by the persons on whose behalf New Zealand Central Securities Depository Limited is holding those Quoted Financial Products (and, for the avoidance of doubt, New Zealand Central Securities Depository Limited will not be treated as a registered holder) for the purposes of determining the 20 largest holdings,



- (d) details of the Quoted Financial Products, and Financial Products that may Convert to Quoted Financial Products, in which each Director has a Relevant Interest at the balance date of the financial year in respect of which the annual report is prepared,
- (e) details of the spread of Quoted Financial Product holders as at a date not earlier than two months before the publication of the annual report,
- (f) the current credit rating status (if any) of the Issuer,
- (g) a summary of all waivers:
  - (i) granted and published by NZX following an application by the Issuer, or
  - (ii) relied upon by the Issuer (regardless of when such waiver was granted or published),

in the 12 month period preceding the Issuer's balance date (or a reference to where this information can be found on the Issuer's website, where it must remain available until publication of the next annual report),
- (h) details of any public exercise of NZX's powers set out in Rule 9.9.3, and
- (i) for an Issuer of Quoted Equity Securities, the additional information set out in Rule 3.8.1.

3.7.2 Any Issuer which extends its annual balance date must:

- (a) prepare a report containing such information, to be released through MAP at such time as NZX requires, and
- (b) comply with Rule 3.21.2.

### 3.8 Further Annual Report content for Issuers of Equity Securities

3.8.1 Further to the requirements of Rule 3.7.1, the annual report of an Issuer of Quoted Equity Securities must also contain:

- (a) a statement on, or URL link to a statement on, the extent to which the Issuer has followed the recommendations in the NZX Corporate Governance Code during the relevant financial year, and the date at which the corporate governance statement is current (which must be the Issuer's balance date or a later date specified by the entity),
- (b) if the Issuer has not followed a recommendation in the NZX Corporate Governance Code for any part of the relevant financial year, the Issuer must separately state:
  - (i) which recommendation, or recommendations, were not followed,



- (ii) the period over which this occurred,
- (iii) the Issuer's reasons for not following the recommendation,
- (iv) what, if any, alternative governance practice was adopted in lieu of the recommendation during that period, and
- (v) that the alternative governance practice has been approved by the Board,

however, an Issuer need not separately state those matters for any part of a period prior to first Quotation of a Class of its Equity Securities,

- (c) a quantitative breakdown as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date, including comparative figures for the prior year which, at a minimum, must include:
  - (i) the number of male and female Directors, and
  - (ii) the number of male and female Officers,

at the relevant balance date and with comparative figures for the prior balance date (if any).

For the purposes of this Rule 3.8.1(c), "Officer" means a person, however designated, who is concerned or takes part in the management of the Issuer's business and reports directly to:

- (iii) the Board, or
  - (iv) a person who reports to the Board,
- (d) an evaluation from the Board on the Issuer's performance with respect to its diversity policy (if applicable),
  - (e) a statement as to which of its Directors are Independent Directors as at the balance date of the financial year in respect of which the annual report is prepared, and the factors relevant to that determination, and
  - (f) details of any Director who has been appointed under the provisions of the Governing Document complying with Rule 2.4, and the Financial Product holder which appointed that Director.



### 3.9 Registered Banks exempt

3.9.1 Rule 3.5 does not apply to an Issuer which is a Registered Bank, and Rules 3.6 to Rule 3.8 do not apply to an Issuer which is a Registered Bank that is not an Issuer of Quoted Equity Securities, provided that:

- (a) a copy of the Issuer's most recent disclosure statement (and any supplementary disclosure statement) is:
  - (i) available on the Issuer's website and by contacting the Issuer's registered office, and
  - (ii) released through MAP on an ongoing basis no later than it is made publically available elsewhere,
- (b) if the Issuer is required to provide a notification of interest payment under Rule 3.14.1, such notification contains a statement providing that the Issuer's latest disclosure statement (any supplementary disclosure statement) is available on the Issuer's website and by contacting the Issuer's registered office, and
- (c) the Issuer complies with all reporting requirements applying to Registered Banks, to the extent required by law or regulation.

### 3.10 Announcements by Mining Issuers

3.10.1 A Mining Issuer must comply with the requirements set out in Appendix 4.

## Periodic disclosure – Fund Securities

### 3.11 Fund Update

3.11.1 Every Issuer of Fund Securities that is a managed fund (as defined in regulation 5(1) of the FMC Regulations) must prepare a Fund Update in accordance with the FMC Act and the FMC Regulations to the extent required by law and release that Fund Update through MAP promptly and without delay after it is made publically available in accordance with the FMC Act.

### 3.12 Annual Report

3.12.1 Every Issuer of Fund Securities must prepare and release through MAP within three months of the balance date for the relevant scheme, an annual report prepared in accordance with the FMC Act and the FMC Regulations.



## Announcements of capital changes and distributions

### 3.13 Issues, acquisitions and redemption of capital

3.13.1 If an Issuer issues, acquires or redeems:

- (a) Quoted Financial Products, or
- (b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,

the Issuer must, subject to Rule 3.13.3, provide for release through MAP in prescribed form (as applicable) details of:

- (c) the Class of Financial Product and ISIN,
- (d) the number of Financial Products issued, acquired or redeemed,
- (e) the nominal value (if any) and the issue, acquisition, or redemption price,
- (f) whether payment was in cash,
- (g) any amount paid up (if not in full),
- (h) for an issue of Convertible Financial Products or Options, the principal terms of Conversion (for example, the conversion price and conversion date and the ranking of the Financial Product in relation to other Classes of Financial Product) or the Option (for example, the exercise price and exercise date),
- (i) the percentage of the total Class of Financial Product issued, acquired or redeemed (calculated on the number of Financial Products of the Class, excluding any Treasury Stock, in existence immediately prior to the issue, acquisition or redemption),
- (j) the reason for the issue, acquisition or redemption,
- (k) the specific authority for the issue, acquisition or redemption (if any),
- (l) any terms or details of the issue, acquisition or redemption (such as an escrow provision),
- (m) the total number of Financial Products of the Class in existence after the issue, acquisition or redemption (excluding Treasury Stock) and the total number of Financial Products of the Class held as Treasury Stock after the issue, acquisition or redemption,
- (n) in the case of an acquisition of Equity Securities by an Issuer which is a company registered under the Companies Act 1993, whether those Equity Securities are to be held as Treasury Stock, and

- (o) the dates of issue, acquisition or redemption.

Subject to Rule 3.13.2, notices required by this Rule must be released through MAP within one Business Day after the issue, acquisition or redemption. For the purposes of this Rule, the sale or transfer of Treasury Stock by an Issuer is deemed to be an issue of Financial Products.

3.13.2 If an Issuer of Fund Securities is a Continuous Issuer, such Issuer may announce issues, acquisitions or redemptions of Fund Securities under Rule 3.13.1 on a consistent monthly basis (for example, by announcing the issues on the first Business Day, or second Friday, of each month).

3.13.3 Rule 3.13.1 does not apply to the acquisitions of Quoted Debt Securities by the Issuer in a market-making capacity, or where such Quoted Debt Securities are held or acquired for the benefit of a third party.

### 3.14 **Distributions, conversion and calls**

3.14.1 An Issuer must release through MAP, at least 5 Business Days before the Record Date, the details of a proposal to:

- (a) pay or distribute a benefit on Quoted Financial Products,
- (b) proceed with a Conversion of Quoted Financial Products, or a Conversion of any Financial Products into Quoted Financial Products, or
- (c) make a call on a Quoted Financial Product,

in the form prescribed by NZX from time to time.

3.14.2 Where the timing of a call on Quoted Financial Products is not stated in the Offer Document or Profile, the Issuer must promptly and without delay notify NZX through MAP after determining that date.

3.14.3 No notification is required under Rule 3.14.1 of:

- (a) routine interest payments on Debt Securities, or
- (b) the redemption of Debt Securities on the scheduled maturity date.

3.14.4 If the Directors recommend or pay dividends other than in accordance with the Issuer's most recently published dividend policy, they must fully explain the reasons for the divergence by releasing that information through MAP in, or at the same time as, the notice given under Rule 3.14.1.

3.14.5 Where an Issuer decides that it will not pay the interest on any Quoted Debt Securities on the due date for that interest payment, the Issuer must release that decision through MAP promptly and without delay.



3.14.6 A supplementary dividend paid in terms of the Income Tax Act 2007 is not treated as a dividend for the purposes of Rule 3.14.1. An Issuer paying a supplementary dividend in respect of Quoted Financial Products must release through MAP, not less than 5 Business Days before the payment of the supplementary dividend, details of:

- (a) the amount (in cents) of the proposed supplementary dividend per Quoted Equity Security, and
- (b) the date upon which it will be paid,

in the form prescribed by NZX from time to time.

### 3.15 Further notice for Convertible Financial Products

3.15.1 Where Financial Products are Convertible at the option of the holder before final maturity into Quoted Financial Products, the Issuer must give notice of this option by release through MAP and to all holders of those Financial Products. That notice:

- (a) must be given:
  - (i) if the Financial Products are Convertible on a fixed date or dates, at least six weeks before each such date, or
  - (ii) if the Financial Products are Convertible on the trigger of an event, as soon as practicable after that event has occurred or promptly and without delay after it becomes apparent that the event will occur,
- (b) need not be given if the Financial Products are Convertible at the option of the holder at any time,
- (c) must disclose any option for Conversion which may be exercised at a later date, and
- (d) must contain a statement to the effect that any Financial Products holders in doubt as to whether Conversion is desirable should seek advice from a financial adviser.

3.15.2 Following each Conversion of Financial Products into Quoted Financial Products, the Issuer must promptly and without delay release through MAP notice of:

- (a) the number of Financial Products Converted and the number and Class of Quoted Financial Products into which they have been Converted,
- (b) details of any interest or dividend conditions attaching to the Financial Products into which they have been Converted, and
- (c) how many Financial Products of the same Class remain to be Converted.



## Announcements relating to offers

### 3.16 Early and Late Offer Closure

- 3.16.1 Where an offer of Financial Products that are intended to be Quoted is closed before the stated closing date, the Issuer must notify NZX by release through MAP within one Business Day after the closure.
- 3.16.2 An Issuer wishing to extend the closing date for an offer of Financial Products that are intended to be Quoted must notify NZX by release through MAP of the new date at least 5 Business Days before the original closing date. An Issuer must not, without the prior consent of NZX, extend a closing date more than once.
- 3.16.3 Nothing in this Rule 3.16 applies to an offer in accordance with Rules 4.6 to 4.9.

### 3.17 Notification of Level of Subscription

- 3.17.1 If an offer of Financial Products that are intended to be Quoted has been underwritten, the Issuer must promptly and without delay release through MAP appropriate notice of any shortfall (if applicable) once any final shortfall has been calculated (for example, following any shortfall bookbuild in accordance with Rule 4.4.1(a)), and in any event no later than 5 Business Days after the closing date, including the extent to which any of the Financial Products have been or will be taken by any underwriter or any sub-underwriter in any capacity.
- 3.17.2 If an offer of Financial Products that are intended to be Quoted has not been underwritten, the Issuer must promptly and without delay release through MAP appropriate notice of any shortfall (if applicable) once any final shortfall has been calculated (for example, following any shortfall bookbuild in accordance with Rule 4.4.1(a)), and in any event no later than 5 Business Days after the closing date of the offer.
- 3.17.3 If an offer of Financial Products that are intended to be Quoted is oversubscribed, and the Issuer elects to make an announcement regarding such oversubscription, the Issuer must promptly and without delay release through MAP appropriate notice of such oversubscription after the final extent of oversubscription is calculated, and in any event no later than 10 Business Days after the closing date. The announcement must specify the percentage or the total nominal amount by which the offer has been oversubscribed, rather than the mere fact of oversubscription.
- 3.17.4 In this Rule 3.17.3, a reference to “oversubscription” does not include the bids in a bookbuild exceeding the price or number of Financial Products intended to be Quoted that are offered through that bookbuild.

## Further information to be released through MAP

### 3.18 Proposals of Capital Change and Conditions

3.18.1 Every Issuer must promptly and without delay release through MAP information on any decision to:

- (a) in the case of an Issuer with Quoted Equity Securities, sub-divide or consolidate Financial Products, whether they are to be Quoted or not,
- (b) in the case of an Issuer with Quoted Equity Securities, issue Equity Securities, or Financial Products that may Convert to Equity Securities, whether they are to be Quoted or not, or
- (c) amend conditions of Quoted Financial Products.

### 3.19 Meetings

3.19.1 An Issuer must promptly and without delay release through MAP the following information:

- (a) the outcome of each resolution put to a meeting of Quoted Financial Product holders, including the results of polls conducted, and
- (b) notice of any adjournment of a meeting of Quoted Financial Product holders to another time or place, and the outcome in respect of each resolution dealt with before the adjournment.

3.19.2 An Issuer must, during or prior to the start of a meeting of Quoted Financial Product holders, release through MAP the contents of any prepared announcement or presentation (including a prepared address by the chairperson) that will be delivered at such meeting, provided that the information released through MAP need not include any information that is of a procedural nature or which relates to the administration of the meeting.

### 3.20 Directors, Senior Manager and Auditor and other information

3.20.1 An Issuer with Quoted Financial Products must promptly and without delay release through MAP information regarding any decision made to change (regardless of whether such change is effective at a later date):

- (a) a Director or Senior Manager of the Issuer,
- (b) if the Issuer is a Managed Investment Scheme, a Director or Senior Manager of the Manager,
- (c) the chairperson of the Issuer, or
- (d) the auditor of the Issuer.



### 3.21 **Change in Issuer's details and balance date**

3.21.1 An Issuer with Quoted Financial Products must promptly and without delay release through MAP (unless otherwise specified by NZX) the following information:

- (a) any decision to change the name of an Issuer (such notification must be released not less than 5 Business Days before such name change takes effect),
- (b) any change of an Issuer's contact details (including the address of its registered office, its mailing address or its contact telephone number),
- (c) any change of ISIN for an Issuer's Quoted Financial Products,
- (d) any change in the identity of an Issuer's registrar of Quoted Financial Products, or
- (e) the opening or closing of a branch register.

3.21.2 An Issuer with Quoted Equity Securities or Fund Securities must release through MAP any decision to extend its annual balance date to a later date and, in any event, must notify such change not less than one month before the end of the existing half-year reporting period or not less than one month before the existing annual balance date.

3.21.3 An issuer must provide to NZX from time to time such other information as NZX may prescribe from time to time, including by release through MAP.

### 3.22 **Credit Rating**

3.22.1 An Issuer must promptly and without delay release through MAP any new credit rating, or change to a current credit rating (such as, an upgrade, downgrade or change in outlook), in relation to:

- (a) the Issuer,
- (b) the Quoted Debt Securities of the Issuer, or
- (c) the Issuer's guaranteeing entity,

provided, for the avoidance of doubt, that this Rule 3.22.1 does not apply to an indicative credit rating.

### 3.23 **All notices and communications to be released through MAP**

3.23.1 Every Issuer must release through MAP:

- (a) no later than the time at which it is given to other recipients, an electronic copy in the same format of every notice or communication relating to Financial Products also Quoted by NZX given to:
  - (i) any stock exchange other than NZX, or

- (ii) generally to holders of that Issuer's Quoted Financial Product, except for:
  - (A) investor relations material (that do not contain Material Information),
  - (B) personalised letters only sent to some Financial Product holders,
  - (C) notices under section 209(3) of the Companies Act 1993 or regulations 61B to 61F of the FMC Regulations, and
  - (D) dividend or transfer statements.
- (b) promptly and without delay, any third party notice or communication given to, and released by, any stock exchange other than NZX in respect of the Issuer, or otherwise released by that stock exchange against the ticker code of the Issuer.

### **3.24 Disclosure of Relevant Interest in Financial Products**

3.24.1 Every Issuer with Quoted Equity Securities or Quoted Fund Securities must, upon request by NZX, exercise its powers under subpart 5 of Part 5 of the FMC Act in respect of such holders of Financial Products or other persons, as NZX may specify (either individually or by reference to a Class).

3.24.2 Any information obtained by an Issuer through the use of its powers under subpart 5 of Part 5 of the FMC Act (whether at the NZX's request or proactively) must be released through MAP if requested by NZX.

### **3.25 Disclosure upon initial Quotation or initial Listing**

3.25.1 Every Issuer must promptly and without delay upon initial Quotation of a Class of Financial Product release through MAP a copy of any Offer Document or Profile relating to the Financial Product.

3.25.2 Once accepted for Listing, an Issuer of Wholesale Debt Securities must release through MAP a copy of the principal offer document or terms sheet for the relevant Wholesale Debt Securities.

## **Form of disclosure and communication**

### **3.26 Form of Disclosure and Communication for Market**

3.26.1 All information for release to the market by an Issuer must be:

- (a) delivered through, and be compliant with the requirements of, MAP, and
- (b) in a format which is convenient for NZX to process and relay by the same means to subscribers to any information service offered by NZX.

NZX may require an Issuer to use specific forms or templates (with such alterations and completions as are satisfactory to NZX).

3.26.2 All announcements using MAP must be:

- (a) on the Issuer's letterhead, dated, and:
  - (i) attributed to an authorised representative of the Issuer stating that person's name and position, and
  - (ii) provide the contact details of an authorised representative of the Issuer who may answer investor queries on such information,
- (b) prefaced, in the case of long or complex announcements, by a summary of salient points, suitable for immediate transcription and dissemination by NZX without substantial editing,
- (c) marked as containing Material Information, using the appropriate flag in MAP, if the announcement contains Material Information and is not otherwise subject to an automated flag in MAP, and
- (d) in the case of a NZX Foreign Exempt Issuer, released through MAP at the same time as, or promptly and without delay after release to, the Issuer's Home Exchange and at least 10 minutes before public release in any other jurisdiction.

3.26.3 If a Rule requires an Issuer to release an announcement through MAP, that obligation is satisfied once:

- (a) the announcement is submitted into MAP (not when the announcement is subsequently released from MAP by NZX), or
- (b) if MAP is unavailable, due to a technology fault, that announcement is provided to NZX (or such contact at NZX which NZX may specify from time to time).

### 3.27 Disclosure under Embargo

3.27.1 Where announcements are made under embargo, the Issuer must:

- (a) release the embargoed announcement through MAP at least 30 minutes before release to any other party, including the media, and
- (b) display the times and conditions of the embargo prominently on each page of the announcement.

NZX may choose to ignore the embargo where it considers the market should be immediately informed.

3.27.2 Material Information may not be embargoed under Rule 3.27.1.

### 3.28 Disclosure of additional information

3.28.1 NZX may require any amendment, addition or alteration to an announcement or require the Issuer to disclose further information following release of an announcement.

### 3.29 **Disclosure to NZX Regulation**

3.29.1 Material not to be released publicly (including draft documents lodged with NZX for review) and private correspondence with NZX or NZX Regulation Personnel must be addressed accordingly and marked in a prominent position with the words “Not for Public Release”. Any material destined for NZX Regulation Personnel may be:

- (a) sent by electronic mail to: regulation@nzx.com
- (b) delivered to: NZX Limited’s Registered Office
- (c) posted to: PO Box 2959 (or DX SP3501)  
Wellington  
New Zealand 6140

3.29.2 Information marked “Not for Public Release” may be released by NZX to the market if NZX forms the opinion that the release of that information is or was required by the Rules. Unless the information is Material Information, NZX will give the Issuer reasonable prior notice of this decision.

### 3.30 **Ownership of information disclosed**

3.30.1 All information, papers or documents provided to NZX by or on behalf of an Issuer becomes NZX’s property and may be copied or (subject to Rule 3.27) disseminated as it thinks fit.



## Section 4

# Changes to Capital

Shareholder approval to share issues, and exceptions (including 15% placement rule)

Share buybacks and redemptions

Financial assistance

Rights issues and share purchase plans

### Rules applying to Issuers of Equity Securities

#### 4.1 Issue of New Equity Securities

4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

4.1.2 An Issuer may issue Equity Securities, without approval by Ordinary Resolution, by way of:

- (a) a pro-rata Rights offer, bonus issue or a Share Purchase Plan in accordance with Rule 4.3 and, if applicable, Rule 4.4,
- (b) an issue under an Issuer's 15% placement capacity in accordance with Rule 4.5.1,
- (c) an issue to Employees, in accordance with Rule 4.6, or
- (d) other issues for dividend reinvestment plans, director remuneration, takeovers, amalgamation, conversions and Minimum Holdings in accordance with Rules 4.7 to 4.9.

#### 4.2 Shareholder approval for Issues by Ordinary Resolution

4.2.1 For the holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:

- (a) separate Ordinary Resolutions of each Class of Quoted Equity Securities whose rights or entitlements could be affected, or
- (b) if a Class of Quoted Equity Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 4.2.1(a), a single resolution of all such Classes of Equity Securities voting together.



4.2.2 An issue of Equity Securities authorised under Rule 4.2.1 must be completed within:

(a) 36 months after the passing of those resolutions, if the issue is restricted to Employees, and

(b) 12 months after the passing of those resolutions in all other circumstances,

otherwise the issue cannot occur until further approval is obtained under Rule 4.2.1.

4.2.3 A resolution under Rule 4.2.1 is not required in relation to the holders of a Class of Equity Securities if the terms of issue of those Equity Securities reserved the right to make the new issue (where the reservation included details of the maximum number, Class of Equity Securities and timeframe within which the further issue would be made).

4.2.4 Except as provided in Rules 6.5.1, 6.5.2 and 6.5.3, no Issuer may re-price or amend the terms of any Equity Securities issued under Rule 4.2.1 held by Employees or Directors, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the Quoted Equity Security holders approving the repricing or amendment.

4.2.5 The resolutions referred to in this Rule 4.2 are subject to the voting restrictions in Rule 6.3.

### 4.3 Pro-rata issues and Share Purchase Plans

4.3.1 An Issuer may issue Equity Securities if those Equity Securities are:

(a) offered to existing holders on a basis which, if the offer were accepted in full by all such holders, would maintain the proportionate Voting and distribution rights of each holder (subject only to rounding), and that offer is Renounceable or an Accelerated Offer,

(b) issued to existing holders as fully paid Equity Securities on a basis which maintains the existing proportionate Voting and distribution rights of each holder (subject only to rounding), or

(c) offered to existing holders under a Share Purchase Plan.

### 4.4 Rules applicable to pro-rata issues and Share Purchase Plans

4.4.1 Notwithstanding Rule 4.3.1, an Issuer is entitled to:

(a) issue any Equity Securities which have been offered under Rule 4.3.1(a) and not taken up, or held back because of fractional entitlements, provided the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer and the issue is completed within three months of the close of that offer,

- (b) issue Equity Securities to existing holders of Financial Products where the right to participate in future issues is specifically attached to those existing Financial Products, regardless of the effect on existing proportionate rights to Voting and distribution rights,
- (c) authorise a disproportionate offer to the extent necessary to round entitlements to a whole number, round up holdings to a Minimum Holding, or to avoid the creation of holdings which are less than Minimum Holdings,
- (d) not offer Equity Securities to holders of existing Equity Securities where the terms of those existing Equity Securities expressly exclude the right to participate in the relevant issue, and
- (e) not offer Equity Securities to holders outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous for the Issuer to make that offer in that jurisdiction, provided that in a Renounceable Rights offer the Issuer must arrange the sale of any excluded holders' Rights, or the underlying Equity Securities to which any excluded holders would be entitled if they were eligible to participate, and account to excluded holders for the net proceeds.

4.4.2 An Issuer making an Accelerated Offer under Rule 4.3.1(a) must comply with the following requirements (as applicable to the type of Accelerated Offer undertaken by the Issuer):

- (a) any bookbuild(s) must be undertaken pursuant to the terms set out in the Offer Document,
- (b) instead of arranging the sale of Renounceable Rights under Rule 4.4.1(e), new Equity Securities of Ineligible Shareholders must be offered under one or more bookbuild(s) undertaken in relation to the Accelerated Offer and any net premium achieved in excess of the price must be returned to Ineligible Shareholders,
- (c) notwithstanding Rule 4.17.1, Eligible Institutional Shareholders may be notified of their entitlements under the Accelerated Offer by electronic means and prior to the Record Date,
- (d) notwithstanding Rule 4.17.2, any Institutional Entitlement Offer component of an Accelerated Offer may be open for less than 12 Business Days (or 7 Business Days, as applicable) provided that any Offer Document relating to the Accelerated Offer clearly states or, if there is no Offer Document, applicants are advised before subscription that a shorter than usual offer period will apply to Eligible Institutional Shareholders under the Institutional Entitlement Offer (including the length of such shorter period),



- (e) if Rule 4.17.6 would otherwise apply to the Accelerated Offer, an Issuer may elect to:
  - (i) rather than comply with Rule 4.17.6(a):
    - (A) provide the information required by Rule 4.17.6(a) to NZX Regulation (not for public release) at least 5 Business Days before the Ex Date for the Accelerated Offer (to the extent such information is available), and
    - (B) release through MAP the information required by Rule 4.17.6(a) no later than the Ex Date for the Accelerated Offer, or
  - (ii) rather than comply with Rule 4.17.6(d), the quotation of Rights of Renounceable Rights may cease at the close of trading on the day 4 Business Days before the closing date of the Retail Entitlement Offer.
- (f) if Rule 4.17.7 would otherwise apply to the Accelerated Offer, an Issuer may elect to:
  - (i) provide to NZX the information required by Rule 4.17.7 at least 5 Business Days before the Ex Date for the Accelerated Offer (to the extent such information is available), and
  - (ii) release through MAP the information required by Rule 4.17.7 no later than the Ex Date for the Accelerated Offer,
- (g) Rule 4.19.1 must be separately applied to an Institutional Entitlement Offer and a Retail Entitlement Offer.

4.4.3 For the purposes of Rule 4.4.2, the following terms bear the following meanings:

<b>Eligible Institutional Shareholders</b>	means the institutional Equity Security holders of the Issuer, being wholesale investors (as defined in Schedule 1 of the FMC Act) or the equivalent type investor under securities legislation applying in a jurisdiction outside New Zealand, who are eligible to participate in the Institutional Entitlement Offer.
<b>Ineligible Shareholders</b>	means those Equity Security holders of the Issuer who do not receive an offer to participate in the Institutional Entitlement Offer or Retail Entitlement Offer by reason of Rule 4.4.1(e).
<b>Institutional Entitlement Offer</b>	means an accelerated pro-rata entitlement offer of Equity Securities made at a fixed price to the Issuer's Eligible Institutional Shareholders, usually conducted and completed before a Retail Entitlement Offer.



**Retail Entitlement Offer** means a pro-rata offer of Equity Securities, made at the same price and ratio of the related Institutional Entitlement Offer, to existing retail shareholders in New Zealand and certain eligible overseas jurisdictions (if relevant), who did not receive an offer under such Institutional Entitlement Offer.

#### 4.5 15% Placements

4.5.1 An Issuer may issue Equity Securities provided the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.5.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed the aggregate of:

- (a) 15% of the Equity Securities of that Class on issue at the beginning of that period, and
- (b) 15% of the Equity Securities of that Class issued during that period under any of Rules 4.2.1, 4.3, 4.4.1(a), 4.6, 4.8.1 and 4.9, and
- (c) any Equity Securities of that Class issued under this Rule 4.5.1 during that period, the issue of which has been ratified by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3), less
- (d) 15% of Equity Securities of that Class which have been acquired or redeemed by the Issuer during that period (other than Equity Securities held as Treasury Stock),

provided that:

- (e) Employees and Directors of the Issuer, and Associated Persons of a Director of the Issuer may participate only if:
  - (i) all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of such persons is in the best interests of the Issuer and fair to other Equity Security holders,
  - (ii) the terms of issue are the same for all persons participating in the issue and such persons are not exclusively Employees and / or Directors of the Issuer and / or Associated Persons of a Director of the Issuer, and
  - (iii) the level of participation of any Employee, Director or Associated Person of a Director, is determined according to criteria applying to all persons participating in the issue, and
- (f) Financial Products which may Convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may Convert, and

- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
  - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
  - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

#### 4.6 **3% Issues to Employees and Executive Directors**

##### 4.6.1 An Issuer may issue Equity Securities if:

- (a) the issue is made to, or to a trustee to hold for the benefit of, Employees and may include Employees that are Directors or Associated Persons of Directors only if their participation satisfies the allocation criteria applying to Employees generally,
- (b) the issue is of a Class of Equity Securities already on issue, and
- (c) the number to be issued, together with all other Equity Securities of the same Class issued under this Rule 4.6.1 over the shorter of the previous 12 months or the period since the Issuer was Listed, will not exceed 3% of the aggregate of:
  - (i) the total number of Equity Securities of that Class on issue at the commencement of that period, and
  - (ii) the total number of Equity Securities of that Class issued during that period under Rules 4.2.1, 4.3, 4.5.1, 4.8 and 4.9,

provided that for the purposes of this Rule 4.6.1:

- (d) Financial Products which may Convert to Quoted Equity Securities are deemed to correspond in number to, and be deemed to be of the same Class as, the Quoted Equity Securities into which they may Convert, and
- (e) if the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, unless otherwise specified in the issue terms, this is the Average Market Price.

##### 4.6.2 For the purposes of Rule 4.6.1, an issue to a Director or an Associated Person of a Director made in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, where that person has no beneficial interest, is deemed not to be an issue in which Directors or their Associated Persons participate.

#### 4.7 **Issues to Directors as remuneration**

4.7.1 An Issuer may issue Equity Securities to a Director (or a person at the direction of the Director) if:

- (a) the issue is made to satisfy Director remuneration in accordance with a resolution passed under Rule 2.11.2,
- (b) the issue is of a Class of Equity Securities already on issue,
- (c) the issue of Equity Securities is made after the end of the period to which that remuneration is payable, and
- (d) the issue price of the Equity Securities is not less than the Average Market Price before the issue is made.

#### 4.8 **Dividend Reinvestment Plan**

4.8.1 An Issuer may issue Equity Securities if the issue is made in lieu of dividends or as part of a dividend reinvestment plan that, if taken up in full by all holders, would not affect the proportionate voting or distribution rights of each holder (except to the extent that the plan excludes holders in a jurisdiction outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous to make the offer in that jurisdiction), subject only to rounding.

4.8.2 An Issuer may issue Equity Securities in respect of which an offer under the dividend reinvestment plan (under Rule 4.8.1) is not taken up, or held back because of fractional entitlements, provided that:

- (a) the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer,
- (b) the issue is completed within three months of allotments under the dividend re-investment plan, and
- (c) the issue of Equity Securities will reduce the Issuer's placement capacity under Rule 4.5.1.

4.8.3 An Issuer making an issue of Equity Securities to Equity Securities holders in accordance with an offer under Rule 4.8.1 must allot those Equity Securities on the same day that dividends are paid to Equity Security holders who do not participate in the issuance.



#### 4.9 **Issues relating to takeovers, conversions, minimum holdings and amalgamations**

##### 4.9.1 An Issuer may issue Equity Securities if:

- (a) the issue is in consideration of an offer made by the Issuer in accordance with:
  - (i) the Takeovers Code or a scheme of arrangement under Part 15 of the Companies Act 1993, or
  - (ii) the takeover regime of a jurisdiction other than New Zealand which NZX considers provides a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3, and

the offer is made to all holders (other than the Issuer) of any Equity Securities in any other entities Listed on the Main Board or on another stock exchange, except if the other entity is an Associated Person of the Issuer or of any Director of the Issuer,

- (b) the issue of Equity Securities (**Security B**) is made on Conversion of any Financial Product (**Security A**), and
  - (i) the terms of issue of Security A provided for the Conversion to Security B and the issue of Security A was approved in the manner set out in Rule 4.2.1 or Security A was issued in accordance with any of Rules 4.3, 4.5.1, 4.6, 4.8 or 4.9.1(a) (whether or not any of the Rules quoted applied to the issue of Security A), or
  - (ii) the issue of Security B is approved in the manner set out in Rule 4.2.1, or Security B is issued in accordance with Rule 4.5.1 or Rule 4.6,
- (c) the issue is made to bring an existing holder's holding up to a Minimum Holding, or
- (d) the issue is made under an arrangement, amalgamation or compromise effected through Part 13 or Part 15 of the Companies Act 1993 or an equivalent statutory regime in a jurisdiction other than New Zealand which NZX considers is at least as useful to the recipients.

#### 4.10 **Treasury Stock**

4.10.1 Transfer by an Issuer registered under the Companies Act 1993 of Treasury Stock is for the purposes of this Section 4 deemed to constitute an issue of Equity Securities.

#### 4.11 **Issue of discounted Equity Securities**

##### 4.11.1 If:

- (a) an Issuer proposes to issue Equity Securities carrying Votes, or Financial Products which are Convertible into Equity Securities carrying Votes, under Rule 4.3.1(c), Rule 4.5.1 or Rule 4.6.1 (the "Affected Securities"), and

- (b) the issue price of an Affected Security is less than 85% of the Average Market Price, then
- (c) before issuing the Affected Securities, all Directors who voted in favour of the resolution must sign a certificate that the consideration for the Affected Securities is fair and reasonable to the Issuer and to other Equity Security holders,

provided that:

- (d) if the Issuer has more than one Class of Equity Securities Quoted, the Quoted Equity Securities in Rule 4.11.1(b) refers to the Class most like the Affected Securities or, in the case of Convertible Financial Products, the Equity Securities into which the Affected Securities Convert, and
- (e) in the case of Convertible Financial Products, any consideration payable on Conversion is at least 85% of the Average Market Price of the Equity Securities into which the Affected Securities Convert.

#### **4.12 Entitlements to Third Party Securities**

4.12.1 Entitlements conferred by the holding of an Issuer's Equity Securities to Financial Products of a third party (whether or not that third party is an Issuer), may not be created or conferred other than in compliance with Rules 4.1 to 4.10, as if such Financial Products comprised an issue of Equity Securities of the Issuer.

#### **4.13 Issues and Buybacks of Securities Affecting Control**

4.13.1 Notwithstanding the provisions of Rules 4.1 to 4.10 and Rule 4.14, no issue, acquisition, or redemption of Financial Products may be made by an Issuer if there is a significant likelihood that it will result in any person, or group of Associated Persons, immediately or in the future, either:

- (a) increasing their percentage control over the total Votes attaching to Financial Products above one of the following key control thresholds:
  - (i) 20%,
  - (ii) 25%,
  - (iii) 50%,
  - (iv) 75%,
  - (v) 90%, or
- (b) materially increasing their ability to exercise effective control of that Issuer,





unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3).

4.13.2 Rule 4.13.1 does not apply to a Code Company.

#### 4.14 Buy Backs and Redemption of Equity Securities

4.14.1 An Issuer may only acquire or redeem Equity Securities of that Issuer by:

- (a) an acquisition effected through NZX's order matching market or through the order matching market of an Issuer's Home Exchange,
- (b) an acquisition effected in compliance with:
  - (i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,
  - (ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:
    - (A) not made from a Director, or an Associated Person of a Director, of the Issuer, and
    - (B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the issuer was listed, whichever is earlier, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,
  - (iii) section 61(7) of the Companies Act 1993, or
  - (iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,
- (c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,
- (d) an acquisition or redemption:
  - (i) approved in accordance with Rule 4.16.1,
  - (ii) of Equity Securities that were issued under Rule 4.6, or
  - (iii) from a holder who holds less than a Minimum Holding, or
- (e) a redemption of Equity Securities issued in compliance with Rule 4.2.1 or 4.3, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,



provided that for the purposes of Rule 4.14.1(b)(ii)(B):

- (f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
  - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
  - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

4.14.2 Before an Issuer acquires its own Equity Securities, except from a holder with a less than a Minimum Holding, the Issuer must give at least 3 Business Days' notice through MAP. That notice must specify:

- (a) a period of time not exceeding 12 months from the date of the notice within which the Issuer will acquire Quoted Equity Securities, and
- (b) the Class and maximum number of Quoted Equity Securities to be acquired in that period.

An Issuer may vary or cancel a notice at any time, subject to providing 3 Business Days' notice through MAP.

4.14.3 Equity Securities that are:

- (a) not shares of a company registered under the Companies Act 1993, or
- (b) issued by an Issuer which is not a company registered under the Companies Act 1993,

may be acquired or redeemed under Rules 4.14.1(b), (c), (f) and (i) provided the Issuer is compliant with the sections of the Companies Act 1993 referred to in those Rules, modified so that:

- (c) "shares" refer to all Equity Securities of the Class which is on offer with references to "shareholders" adapted accordingly, and
- (d) in respect of (b), "company" refers to the Issuer, and the company's directors and board refer to any person entering into the Listing Agreement on behalf of that Issuer, and "constitution" refers to the Governing Document which governs the rights of those Equity Securities.



#### 4.15 Financial Assistance

4.15.1 An Issuer must not give financial assistance for the purpose of, or in connection with, the acquisition of its Equity Securities except if that assistance:

- (a) complies with Rule 4.15.2, or
- (b) is approved in accordance with Rule 4.16.1.

4.15.2 An Issuer may give financial assistance of the nature referred to in Rule 4.15.1 provided:

- (a) such assistance is not given (either in whole or in part) to any Employee, Director, or Associated Person of a Director, and the amount, together with any other financial assistance given under this paragraph (a) over the preceding 12 months or since the Issuer was listed, whichever is the shorter, does not exceed 10% of the Average Market Capitalisation of the Issuer, or
- (b) such assistance is given to Employees of the Issuer and:
  - (i) the amount, together with all other financial assistance given under this paragraph (b) by the Issuer during:
    - (A) the shorter of the preceding three years or the period from the date on which the Issuer was Listed, will not exceed \$1 million, or
    - (B) the shorter of the preceding 12 months or the period from the date on which the Issuer was Listed, will not exceed 5% of the Average Market Capitalisation of the Issuer, and
  - (ii) the amount, together with all other financial assistance given under Rule 4.15.2(b)(i) during the shorter of the preceding five years or the period from the date on which the Issuer was Listed does not exceed 10% of the Average Market Capitalisation of the Issuer, and
  - (iii) may only be given to a Director of the Issuer who is an Employee, or Associated Person of such Director, if their participation satisfies the allocation criteria applying to Employees generally, or
- (c) all holders of Equity Securities of the Issuer are treated, or given the opportunity to be treated, on the same basis.

4.15.3 For the purposes of Rule 4.15.2(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share or superannuation scheme or suchlike, in which that Director or Associated Person has no beneficial interest, is deemed not to be financial assistance given to a Director or Associated Person of a Director.

#### **4.16 Shareholder approval of buy backs, redemption and financial assistance**

4.16.1 An Issuer may acquire or redeem Equity Securities under Rule 4.14.1(d)(i) or give financial assistance under Rule 4.15.1(b) if the precise terms and conditions of the transaction have been approved by separate resolutions (passed by a simple majority of Votes) of the holders of each Class of Quoted Equity Securities whose rights or entitlements will be materially and similarly affected.

4.16.2 A transaction authorised by resolutions passed under Rule 4.16.1 must be completed:

(a) within 36 months if transacted only with Employees, and

(b) within 12 months in all other circumstances,

otherwise the transaction cannot occur until further approval is obtained under Rule 4.16.1.

#### **4.17 Rights Issues and Share Purchase Plan additional requirements**

4.17.1 Letters of entitlement to Rights (whether or not Renounceable) are to be sent within 5 Business Days after the Record Date for the determination of the entitlement and by means that will give all holders of Rights, including those who are both participating and live overseas, reasonable time to respond.

4.17.2 Without limiting Rule 4.17.1, the closing date for applications under Rights issues (whether or not Renounceable) must be at least:

(a) 12 Business Days after the last letter of entitlement is sent, or

(b) 7 Business Days after the last letter of entitlement is sent, provided that holders of Rights are able to accept the offer using electronic means.

4.17.3 Renunciations of a Renounceable Rights issue must be made on or before the closing date for receipt of applications.

4.17.4 Entitlements to Rights may be scaled up to a Minimum Holding and can be altered to disregard fractions. Any Offer Document must state the terms on these matters.

4.17.5 The terms of a Renounceable Rights issue must provide that, if the Issuer receives both a renunciation and an acceptance in respect of the same Right(s), the renunciation takes priority over the acceptance.

4.17.6 For an application to NZX for Quotation of Rights under a Rights issue of Equity Securities, notice in a manner and form required NZX must be completed and supplied to NZX through MAP including any QFP notice (unless the QFP notice has already been released through MAP). If such Quotation is granted:

(a) such notice must be released through MAP no later than 5 Business Days before the Ex Date for the Rights Issue,

- (b) the Quotation of Rights will commence on the Ex Date for that Rights issue or such other date approved by NZX,
- (c) the Head Security under the Rights issue will be quoted ex rights on the Ex Date for that Rights issue, and
- (d) Quotation of Rights for a Renounceable Rights issue will cease at the close of trading on the day 4 Business Days before the closing date for receipt of acceptances and renunciations.

4.17.7 Where a Rights issue is to be made but Quotation of the Rights is not sought, the Issuer must provide, in the manner and form required by NZX, full details of the issue for release through MAP including any QFP notice (unless the QFP notice has already been released through MAP). This must be provided promptly and without delay after the issue decision has been made and at least 5 Business Days before the Ex Date to consider entitlements.

4.17.8 If Equity Securities are to be issued under a Share Purchase Plan:

- (a) either:
  - (i) the Record Date must precede the Issuer's announcement of the Share Purchase Plan to the market, and
  - (ii) the Issuer must release through MAP full details of the Share Purchase Plan, including the nature, entitlement and timing of the issue, pricing and amounts payable including any QFP notice (unless the QFP notice has already been released through MAP), one Business Day after the Record Date, or
- (b) the Issuer must give notice in the manner required by Rule 4.17.6(a).

4.17.9 This Rule 4.17 is subject to Rule 4.4.2.

## Issuers of Fund Securities

### 4.18 Issues, buy backs and redemptions of Fund Securities

4.18.1 An Issuer of Fund Securities that is not a Continuous Issuer must issue, acquire and redeem further Fund Securities in accordance with Rule 4.1 to 4.17 as if the Fund Securities were Equity Securities carrying Votes.

4.18.2 A Continuous Issuer must issue, acquire and redeem Fund Securities in accordance with the Governing Document.



## Allotment Processes

### 4.19 Allotment of Financial Products

- 4.19.1 An Issuer making an offer of Financial Products intended to be Quoted (other than Equity Securities issued under Rule 4.8 or Rule 4.9) must allot such Quoted Financial Products no later than 10 Business Days after the final closing date for the offer.
- 4.19.2 Where the issue price may be paid by instalments, the Issuer must acknowledge payments made in advance of the due date at allotment.
- 4.19.3 An Issuer making an issue must ensure that on allotment a CSN is recorded for each person to whom the Financial Products intended to be Quoted are issued.



## Section 5

# Major and Related Party Transactions

Shareholder approval of major disposal or acquisitions of assets

Shareholder approval of related party transactions, and exceptions

### Rules applying to Equity Issuers

#### 5.1 Disposal or Acquisition of Assets

5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above.

5.1.2 Rule 5.1.1 does not apply to:

- (a) a takeover offer made by an Issuer:
  - (i) to a Code Company in accordance with the Takeovers Act 1993 or by a scheme of arrangement under Part 15 of the Companies Act 1993,
  - (ii) to an Issuer which is covered by Appendix 3 of these Rules, in accordance with the relevant provisions in the Governing Document of that other Issuer which complies with Appendix 3, or
  - (iii) to any person, in accordance with the takeover law of a jurisdiction other than New Zealand applicable to that person where this provides, in the opinion of NZX, a similar or greater level of protection to the recipients of the offer as the Takeovers Code or Appendix 3,
- (b) any transaction entered into by the Issuer with a Bank as principal, on arm's length terms and in the ordinary course of the Bank's banking business, or

- (c) an issue of Financial Products for cash which does not significantly change the nature of the Issuer's business.

## 5.2 Transactions with Related Parties

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

5.2.2 Rule 5.2.1 does not apply to:

- (a) any transaction entered into by an Issuer with a Bank as principal, on arm's length terms and in the normal course of the Bank's banking business,
- (b) the issue, acquisition or redemption of Financial Products, or the provision of financial assistance in connection with the purchase of Financial Products, or the payment of a distribution, where the Issuer gives each holder of Financial Products of the Class in question the opportunity to receive the same benefit in respect of each Financial Product held (except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 4.4.1(e)),
- (c) the issue of Equity Securities by an Issuer under Rule 4.3.1(c) or Rule 4.8,
- (d) the issue of Equity Securities by an Issuer by way of an Accelerated Offer under Rule 4.3.1(a), provided that:
  - (i) Directors of the Issuer, excluding any Director that is an Associated Person of the Related Party, certify, in a form acceptable to NZX, that:
    - (A) the terms of the Accelerated Offer are fair, reasonable and in the best interests of the Issuer's Equity Security holders, other than the Related Party,
    - (B) the Issuer will pay and receive fair value under the Accelerated Offer,
    - (C) the Issuer was not unduly influenced in its decision to enter into the Accelerated Offer by the Related Party,
    - (D) the Related Party will not be involved in, or influence, any allocation decision in relation to any bookbuild(s) undertaken in connection with the Accelerated Offer, and



- (E) the Related Party will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Accelerated Offer on the same terms and conditions as other Equity Security holders or as an underwriter or sub underwriter on commercial terms.
- (e) an employment contract or contract for personal services which is a Material Transaction, where:
  - (i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Issuer,
  - (ii) the Independent Directors approving the contract sign and provide to NZX (not for market release) a certificate stating Rule 5.2.2(e)(i) has been complied with, and
  - (iii) material particulars of the contract (including the Issuer's use of this exception) are disclosed in the next annual report of the Issuer,
- (f) indemnification of a Director or Employee of the Issuer, or a Director or Employee of a Related Body Corporate of the Issuer, which would be a Material Transaction, where, at the time the indemnity is to be granted, the relevant Director or Employee has not been involved in proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by them under the indemnity,
- (g) arrangements, amalgamations or compromises under Parts 13 or 15 of the Companies Act 1993,
- (h) a Material Transaction that is an employment agreement with a natural person who is not a Director of the Issuer, or
- (i) a Material Transaction with:
  - (i) a total value of, or
  - (ii) in the case of paragraph (e) of the definition of Material Transaction, a gross cost to the Issuer in any financial year of,
 

\$250,000 or less.



## Section 6

# Voting Rights and Rights of Equity Securities

Voting restrictions

Adjustments to Option terms and other variations exceptions

### Voting Rights and Voting Restrictions

#### 6.1 Voting at meetings to be by poll

6.1.1 Voting at a meeting of Financial Product holders must be conducted by poll. Votes must be counted according to the votes attached to the Financial Products of each Financial Product holder entitled to Vote and voting.

#### 6.2 Votes attaching to Financial Products

6.2.1 Subject to NZX's approval, Financial Products of an Issuer may carry different numbers of Votes.

6.2.2 Subject to NZX's approval, the Governing Document of an Issuer may allow Votes attaching to a Class of Financial Products to vary from time to time in reference to movements in the economic value of a part or division of the Issuer's operations.

6.2.3 NZX may grant approval under Rule 6.2.1 or Rule 6.2.2 on such conditions as it thinks fit (which may require a resolution approved by holders of any Class or group of Financial Products of the Issuer).

6.2.4 Each Financial Product which is not fully paid will carry the fraction of the Vote which would be exercisable if the Financial Product was fully paid that is proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call).

#### 6.3 Voting Restrictions

6.3.1 Notwithstanding anything to the contrary in the Rules, persons identified in Column 2 of the table below are unable to Vote in favour of the resolutions listed in Column 1.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolutions under Rule 2.11	The Director intended to receive a payment or benefit in respect of the matter being the subject of the resolution, and any Associated Person of that Director.

<b>Column 1 RESOLUTION</b>	<b>Column 2 DISQUALIFIED PERSON</b>
Resolution under Rule 4.2.1	Subject to Rule 6.3.2: (a) any person to whom it is proposed to issue the new Equity Securities referred to in the resolution, and any Associated Person of that person, or (b) if no persons are specified in the resolution, any Director of the Issuer who is not excluded from participation in the terms of the resolution and any Associated Person of that Director.
Resolution under Rule 4.2.1 to approve a Rights issue of Equity Securities which is not Renounceable	Any Director of the Issuer and any Associated Person of that Director.
Resolution under Rule 4.5.1(c)	Any person who has been issued, or has acquired, the Equity Securities which are subject to ratification by that resolution, and any Associated Person of that person.
Resolution under Rule 4.13.1	Any person whose effective control of the Issuer would be materially increased, and any Associated Person of that person.
Resolution under Rule 5.2.1	The Related Party referred to in Rule 5.2.1 who is a party or beneficiary (in terms of Rule 5.2.1(a) or Rule 5.2.1(b) and any Associated Person of that person).
Resolution under Rule 6.8	Any person who is intended to benefit from the reduction, deferral, or cancellation and any Associated Person of that person, unless all holders of the Equity Securities are to be treated on the same basis.

- 6.3.2 A person is not disqualified from Voting on a resolution under Rule 4.2.1 if the new Equity Securities are to be offered on the same basis to all holders of Equity Securities of the same Class.
- 6.3.3 A person disqualified from Voting under Rule 6.3.1 may act as a proxy or Voting representative for another person who is qualified to Vote in respect of Financial Products held by that person and in accordance with that person's express instructions.
- 6.3.4 Each Issuer must use reasonable endeavours to ascertain, no later than 5 Business Days before a meeting to consider a resolution referred to in Rule 6.3.1, the identity of those Financial Product holders who are disqualified from voting on such resolution and, if requested by NZX, must supply a list of such holders to NZX.
- 6.3.5 No resolution of, or proceeding at, a meeting of Financial Product holders will be void on the basis of a breach of Rule 6.3.1.

## 6.4 Condition in Contract

- 6.4.1 Each Issuer must ensure that all agreements requiring approval by a resolution of Quoted Financial Product holders are conditional upon the passage of such a resolution and that the transaction must not be completed until that resolution is passed.
- 6.4.2 If that resolution fails, the Issuer must terminate its obligations under that agreement so that the transaction in question does not proceed.

## Rights of Equity Securities

### 6.5 Option

6.5.1 An Option can confer the right to participate in a Rights issue only if it:

- (a) is exercised before the Record Date for the Rights issue,
- (b) was issued through a pro rata offer made under Rule 4.3.1 to the holders of Quoted Equity Securities, or
- (c) was issued, with the approval of holders of Quoted Equity Securities, on terms which allow the Option holder to participate in offers to the holders of Quoted Equity Securities,

provided that nothing in this Rule 6.5.1 applies to any Option issued before the Issuer was Listed.

6.5.2 An Option must not confer the right to a change in the exercise price or number of underlying Equity Securities if there is a Rights issue to the holders of those Equity Securities, unless:

- (a) it was issued with the approval of Quoted Equity Securities holders, in which case changes can be made in accordance with the formula or provision contained in the terms of the Option, or
- (b) the effect of the change is to reduce the exercise price of the Option and the reduction is calculated according to the following formula:

$$O^1 = \frac{O - E[P-(S+D)]}{N + 1}$$

where,

$O^1$  = the new exercise price of the Option.

$O$  = the old exercise price of the Option.

$E$  = the number of underlying Financial Products into which one Option is exercisable.

(Note: E is generally one unless the number has changed because of a bonus issue or capital change.)

- P = the volume weighted average market price of underlying Financial Products during the 5 Business Days ending on the day before the Ex Date for the Rights.
- S = the subscription price for a Financial Product under the Rights issue.
- D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Financial Products (except those to be issued under the Rights Issue).
- N = the number of Financial Products with Rights or entitlements that must be held to receive a Right to one new Equity Security.

Nothing in this Rule applies to any Option which was issued before the Issuer was Listed.

- 6.5.3 If there is a bonus issue to the holders of the underlying Financial Products, the number of Financial Products over which an Option is exercisable may be increased to include those Financial Products which the Option holder would have received had the Option been exercised before the Record Date for the issue.
- 6.5.4 If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Financial Products, the number of Financial Products over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercise price amended in inverse proportion to that ratio, including any necessary rounding to the number of Financial Products or the exercise price.

## 6.6 Lien and Forfeiture

- 6.6.1 An Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Equity Securities will be restricted to one in respect of:
  - (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities, and
  - (b) any amount which the Issuer may be called upon to pay under any legislation in respect of the specific Equity Securities, whether or not the due date for payment has passed.
- 6.6.2 If Equity Securities are forfeited and sold or are sold to enforce a lien, any balance remaining after payments owing and expenses must be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.
- 6.6.3 Equity Securities may not be liable to forfeiture due to the failure of persons entitled to those Equity Securities (by transmission or otherwise) to submit evidence proving their title within a specified time.



6.6.4 To avoid doubt, for the purposes of this Rule 6.6, a lien does not include a right of set-off.

## 6.7 Modifications of Rights of Equity Security Holders

6.7.1 Every Issuer of Equity Securities must comply with the provisions of sections 116 and 117 of the Companies Act 1993 as modified so that:

- (a) “shares” will (subject to Rule 6.7.2) refer to all Equity Securities of that Issuer, and references to “shareholders” will be read accordingly, and
- (b) “company” will refer to the Issuer, and references to pre-emptive rights under section 45 of that Act will be deemed to have been deleted, and
- (c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:
  - (i) “special resolution” will refer to a resolution approved by a majority of 75% of votes of the holders of those Financial Products entitled to vote and voting, and
  - (ii) “constitution” will refer to the Governing Document for the rights of those Equity Securities.

6.7.2 Nothing in Rule 6.7.1 requires an Issuer to comply with sections 116 and 117 of the Companies Act 1993 in respect of actions that affect the rights attached to:

- (a) Equity Securities which are not Quoted, or
- (b) Equity Securities which are not shares of a company if those Equity Securities were issued on terms which expressly allow the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms were clearly disclosed when the Equity Securities were offered.

6.7.3 Rule 6.7.1 does not have the effect of deeming section 118 of the Companies Act 1993 to apply to any Financial Products other than shares of a company registered under the Companies Act 1993.

## 6.8 Cancellation of Unpaid Amounts

No obligation on a holder to pay any unpaid amount on any Equity Security may be cancelled, reduced or deferred without the authority of an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3).

## Section 7

# Requirements for Documents

Review of certain documents by NZX

Offer Documents and Profiles

Notices of Meeting of Financial Product Holders, Appraisal Reports and Proxy appointment

### NZX Review of documents

#### 7.1 NZX to review documents

7.1.1 The documents listed in Rule 7.1.2 must not be circulated to holders of Financial Products, executed or otherwise given effect to in any way, until NZX provides written confirmation that it does not object to the document.

7.1.2 The documents referred to in Rule 7.1.1 are:

- (a) any notice of a meeting of Quoted Equity Security holders to consider any matter other than:
  - (i) consideration of the annual report or financial statements,
  - (ii) electing Directors,
  - (iii) fixing Director remuneration,
  - (iv) changing the name of the Issuer,
  - (v) appointing or fixing the remuneration of auditors,
  - (vi) a resolution required or regulated under the Takeovers Code, or a resolution for a scheme of arrangement under Part 15 of the Companies Act 1993 where the Issuer is the target company, or
  - (vii) a shareholder proposal under the Governing Document of the Issuer or under Schedule 1 of the Companies Act 1993,
- (b) any Offer Document or Profile in respect of Financial Products Quoted or to be Quoted on the Main Board or Debt Market except:
  - (i) Schedule 1 Offer Documents (subject to the Issuer providing NZX with such information that NZX may prescribe from time to time),

- (ii) an Offer Document in respect of a Continuous Issuer, where that Offer Document is comprised of a PDS for which NZX has previously provided written confirmation under Rule 7.1.1 and another document containing the terms and conditions of the particular Financial Products, or
- (iii) if NZX has determined approval is not required.

## 7.2 Providing documents to NZX for review

- 7.2.1 Each document referred to in Rule 7.1.2(a) must be provided to NZX in draft for review at least 10 Business Days before that document is to be printed, circulated, executed, or otherwise given effect to or by such other timeframe that NZX may prescribe or otherwise advise from time to time in relation to any particular category of document.
- 7.2.2 An Offer Document or Profile requiring review under Rule 7.1.2(b) must generally be submitted at least 20 Business Days before Quotation is sought, with a draft timetable for any offer and Quotation and such other information NZX may require from time to time.
- 7.2.3 The review period will not commence until NZX has received all relevant documents in their proposed final form. If any alteration not sought by NZX is introduced to a document already submitted, NZX may restart the review timeframe at the time that alteration is received.
- 7.2.4 If more than one document is required to be reviewed, they must be provided to NZX together. If an Appraisal Report is required to accompany a notice of meeting, drafts of both documents must be provided together with any information required by NZX for the purposes of Rule 7.10.

## Preparing documents

### 7.3 Preparing Offer Document or Profile

- 7.3.1 An Issuer or applicant for Listing must prepare and issue:
  - (a) an Offer Document, where required by law, in respect of Financial Products Quoted or to be Quoted on the Main Board or the Debt Market.
  - (b) a Profile, if required to do so by NZX, when:
    - (i) seeking initial Quotation of a Class or Financial Products,
    - (ii) Rule 1.11 applies, or
    - (iii) Rule 5.1.1(a) applies to a transaction undertaken by an Issuer.





## Content of documents

### 7.4 Content of Offer Document and Profile

#### 7.4.1 Every Profile must:

- (a) contain the information required in a PDS as if the offer was regulated under the FMC Act, unless NZX determines otherwise,
- (b) contain all information required by the Rules, unless NZX determines otherwise, and
- (c) contain, or incorporate by reference, all other information NZX, in its sole discretion, might require.

#### 7.4.2 Every Offer Document or Profile must contain:

- (a) a statement of the principal terms of:
  - (i) the Financial Products being offered by, or referred to in, that Offer Document or Profile, and
  - (ii) the offer of those Financial Products (if applicable),
- (b) if applicable, a timetable of all relevant dates for:
  - (i) opening and closing the offer,
  - (ii) allotment of the Financial Products and/or Rights to those Financial Products,
  - (iii) quotation and commencement of trading of the Financial Products,
  - (iv) the payment of initial dividends, interest or other benefits (as applicable),
- (c) in the subscription application (if applicable), a field for subscribers to insert their CSN (if any), and
- (d) a description of the arrangements that a Financial Product holder would need to have in place in order to trade the Financial Product on the Main Board or the Debt Market.

#### 7.4.3 NZX may require an Offer Document to state:

- (a) the number and percentage of Financial Products of the Class being offered which are not available to Non-Affiliated Holders, together with the names or description of any class of persons to whom preference in allotment is to be given, whether the Financial Products in question are part of the issue or not,



- (b) the method of dealing with oversubscriptions and the amount of oversubscriptions which will be accepted,
- (c) the period within which subscription refunds will be paid, and
- (d) if interest will be paid on the amounts refunded under paragraph (c) and, if so, the basis upon which the interest will be calculated.

7.4.4 Every Offer Document or Profile made in contemplation of Quotation of Equity Securities must specify the Directors' intentions as to the Issuer's future dividend policy. Every other Offer Document from an Issuer with existing Quoted Equity Securities may specify the dividend policy or refer readers to the Issuer's website where such information may be obtained.

7.4.5 If Vendor Securities are issued at or about the time as an offer of Equity Securities, the Offer Document or Profile must state any restrictions to be imposed on the disposal by the holders or beneficial owners of effective ownership and control of the Vendor Securities, or that there are none.

7.4.6 A Profile must be distributed to such persons, and in such manner, as NZX may determine and must be released through MAP.

## 7.5 Disposal of Major Holdings

7.5.1 If at the time of the initial Quotation of Equity Securities:

- (a) a person holds more than 20% of the Equity Securities of that Class, or
- (b) a person is entitled, through a binding arrangement, to subscribe for more than 20% of the Equity Securities of that Class (other than under a bona fide underwriting agreement),

the Offer Document or Profile in respect of such Equity Securities must state, if applicable, the restrictions which are to be imposed upon the disposal of effective ownership and control of all or any of the Equity Securities by the holder of those Equity Securities (and if the holders are not to be the beneficial owners of the Equity Securities, by the beneficial owners). If there are no such restrictions applying to such a person, the Offer Document or Profile must state that.

7.5.2 For the purposes of Rule 7.5.1, Equity Securities will be deemed to be held by a person where that person has a Relevant Interest in those Equity Securities or is a member of a group of Associated Persons with relevant interests in those Equity Securities.

## 7.6 Additional Requirements for Debt Securities

7.6.1 Where an issue provides for early repayment of Debt Securities, the Offer Document or Profile must state the basis on which interest will be calculated until the date of early repayment or refer to the relevant provisions of the Governing Document.

7.6.2 Where a Debt Securities issue provides for repayment or conversion before maturity on a date to be fixed at the discretion of the Issuer, the Offer Document or Profile must state those terms.

## 7.7 Prominence of statements in Offer Documents

7.7.1 Any statement required by the Rules to be contained in an Offer Document or Profile must be sufficiently prominent and legible so as to come to the attention of a reasonable person viewing that document.

## 7.8 Notices of Meeting

7.8.1 The text of any resolution to be put to a meeting of an Issuer required by the Rules must be set out in the notice of the relevant meeting.

7.8.2 Each notice of meeting must contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to Vote to understand the effect of each resolution proposed, including:

- (a) the consequences if the resolution in question is not passed (unless such resolution concerns a matter listed in Rule 7.1.2(a)(i) to (vii)), and
- (b) a statement outlining who is subject to voting restrictions in relation to such resolution.

7.8.3 Each notice of meeting to consider a resolution to appoint, elect or re-elect a Director must include the following information on each candidate:

- (a) the Board's view on whether or not the candidate would qualify as an Independent Director (or, if the Board is unable to make such an assessment due to a lack of information regarding a candidate nominated by an Equity Security holder, a statement to that effect).
- (b) an outline of the candidate's experience (including specific details of relevant roles and organisations) and, if relevant, the qualifications of the candidate, to the extent such information is available to the Issuer after making due inquiries, and
- (c) any other information that the Board considers may be useful to provide to a Financial Product holder.

7.8.4 As a minimum, the notice of meeting for a resolution to approve an issue, acquisition or redemption of Financial Products, or provision of financial assistance, must state or contain so much of the following information as is applicable and known to the Issuer:

- (a) the number of any Financial Products to be issued, acquired, or redeemed or, if the number is not known, the formula to be applied to determine the number, and the maximum number which may be issued, acquired or redeemed,



- (b) the purpose of the transaction,
- (c) any issue, acquisition or redemption price or, if the price is not known, the formula to be applied to determine the price, and the time or times for payment with sufficient detail to enable Financial Product holders to ascertain the terms to or from any party,
- (d) the party or parties to whom any Financial Products are to be issued, or from whom they are to be acquired or redeemed, where that is known, and identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director,
- (e) in the case of an issue, the consideration for the issue and, where that is cash, the specific purpose for raising the cash,
- (f) the period of time within which any issue, acquisition or redemption will be made,
- (g) in the case of an issue, the ranking of the Financial Products to be issued for any future benefit, and
- (h) in the case of a resolution under Rule 4.16.1, the amount and full terms of the financial assistance to be given and the party or parties who will receive it, identifying by name any such parties who are Directors or Associated Persons of the Issuer or any Director.

7.8.5 A notice of meeting to consider a resolution of the nature referred to in Rule 7.8.4 (other than a resolution to permit an issue under Rule 4.7.1) must be accompanied by an Appraisal Report if:

- (a) the resolution is required by Rule 4.13,
- (b) more than 50% of the Financial Products to be issued are intended or likely to be acquired by Directors or Associated Persons of Directors, or
- (c) more than 50% of the Financial Products to be acquired or redeemed or the financial assistance to be given is intended or likely to go to Directors or Associated Persons of Directors.

7.8.6 Without limiting Rule 7.8.2, notices in respect of proposed changes to a Governing Document must explain the effect of such changes so that they can be understood without reference to the existing or proposed Governing Document.

7.8.7 Where the Issuer is incorporated under the Companies Act 1993 and the effect of the resolution, if passed, is that shareholders will have the right to require the Issuer to buy their shares under section 110 or 118 of that Act, the resolution must contain a prominent statement referring to that right.



7.8.8 A notice of meeting for the purposes of Rule 5.2.1 must:

- (a) be reviewed by NZX in accordance with Rule 7.1,
- (b) be accompanied by an Appraisal Report, and
- (c) contain such other material as is necessary to enable the holders of Financial Products entitled to Vote to decide whether the transaction price and terms are fair.

## 7.9 Proxy approval

7.9.1 So far as is reasonably practicable, resolutions must be framed in a manner which facilitates binary voting instructions for proxy holders.

7.9.2 A proxy form must be sent with each notice of meeting of Quoted Financial Product holders and:

- (a) as a minimum, so far as the subject matter and form of the resolutions reasonably permits, provide for a binary voting choice (for or against) to enable a Quoted Financial Product holder to instruct the proxy as to the casting of the vote,
- (b) not be sent with any name or office (e.g. chairperson of directors) filled in as proxy holder, and
- (c) contain a statement outlining who is subject to voting restrictions in relation to each resolution.

7.9.3 Notwithstanding Rule 7.9.2, an Issuer may provide in the proxy form that:

- (a) if, in appointing a proxy, a Quoted Financial Product holder does not name a person as their proxy but otherwise completes the proxy form in full, or
- (b) a Quoted Financial Product holder's named proxy does not attend the meeting,

a named person or office will act as that Quoted Financial Product holder's proxy and vote in accordance with their express direction. If such statement is included in the proxy form, the proxy form and notice of meeting must:

- (c) clearly and prominently disclose the intention to appoint a named person or office in the circumstances set out in Rule 7.9.3(a) and (b), and
- (d) provide that the named person or office acting as proxy must:
  - (i) only vote in accordance with the express directions of the relevant Quoted Financial Product holder, and



- (ii) not vote on a resolution if expressly granted a discretion on how to vote on a resolution and such resolution is subject to a voting restriction that applies to the proxy under Rule 6.3.1.

## 7.10 Appraisal reports

7.10.1 An Appraisal Report for the purposes of the Rules must be made by an independent appropriately qualified person previously approved by NZX. If the report relies on information provided, or an opinion expressed, by a party external to the Issuer, that other party must also be approved by NZX. NZX may refuse to approve, or revoke any prior approval, if not satisfied that the person is independent and appropriately qualified.

7.10.2 An Appraisal Report must:

- (a) be addressed to those Directors of the Issuer who are not, and are not associated with, a relevant Associated Person and, where there are no such Directors, to NZX, which at the expense of the Issuer will oversee the distribution of the report. “Relevant” in this context means persons whose association or connection with the Issuer or its Directors, or with parties to the transaction, or whose likelihood of acquiring Financial Products as a result of the transaction, is such that an Appraisal Report must be obtained,
- (b) be expressed to be for the benefit of those Equity Security holders who are not associated with any relevant Associated Persons (as defined in (a)),
- (c) state the appraiser’s opinion, with supporting reasons, as to whether or not the terms and conditions of the proposed transaction are fair to the holders of Equity Securities, other than those associated with the relevant Associated Persons (as defined in (a)),
- (d) state the appraiser’s opinion, with supporting reasons, as to whether the information to be provided by the Issuer is sufficient to enable Equity Security holders to make an informed decision, in respect of the question referred to in (c),
- (e) state whether the appraiser has obtained all the information needed to prepare the report,
- (f) state any material assumptions on which the appraiser’s opinion is based,
- (g) state any term of reference which may have materially restricted the scope of the report, and
- (h) not contain a disclaimer of liability that purports to absolve the appraiser from liability for an opinion expressed recklessly or in bad faith.

If the appraiser considers that the transaction has been structured wholly or partly to confer a benefit on the relevant Associated Persons (as defined in (a)), the appraiser may mention alternative courses of action available to the Issuer. Any indications by the

Directors that these alternative courses are not acceptable to them or that they would not propose to pursue them must be disregarded by the Appraiser if there is any reason to suspect that these are motivated, in whole or in part, by concern for the interests of the relevant Associated Persons in distinction to the interests of the other Equity Security holders.

7.10.3 An Issuer may circulate to Financial Product holders a summary of an Appraisal Report rather than the report in full. The summary must be accompanied by a certificate from the appraiser attesting that the summary is accurate and not misleading.



## Section 8

# Transfers and Statements

Restrictions on transfer

Statements

Financial Product Registers

### Transfers

#### 8.1 Transfer of Quoted Financial Products (common rules)

- 8.1.1 Subject to the provisions of any legislation, and to Rule 8.1.4, Rule 8.1.6(a), Rule 8.1.6(b) and Rule 8.2, no Issuer may impose, in its Governing Document or otherwise, any restriction on the right of a holder of a Quoted Financial Product to transfer that Financial Product, or any restriction upon registration of a properly completed transfer of Quoted Financial Products.
- 8.1.2 A transfer of Quoted Financial Products in writing that has not been properly completed must be promptly returned to the person submitting it, for completion.
- 8.1.3 Subject to the provisions of Rule 8.1.2 and Rule 8.1.6(a) and (b), and of any applicable legislation, no Issuer may:
- (a) require any documentation relating to transfers other than to establish an entitlement to transfer,
  - (b) require any information relating to the transferee (except for such information necessary to record the transfer), or
  - (c) impose any restriction on the acceptability of any common form of transfer.
- 8.1.4 An Issuer may decline to accept or register a transfer of a Quoted Financial Product if:
- (a) the Issuer has a lien on such Quoted Financial Product,
  - (b) the registration, together with the completion of any further transfers then held by the Issuer and awaiting registration, would result in the proposed transferee or a transferor having a holding below a Minimum Holding,
  - (c) the transfer would be contrary to any permitted restriction on transfer referred to in Rule 8.1.6, or
  - (d) the Issuer is a co-operative company registered under the Co-operative Companies Act 1996 and the registration would result in Quoted Financial



Products being transferred to persons that are not “transacting shareholders” (as defined in that Act).

8.1.5 Except as expressly permitted by the Rules, no benefit or right attaching to a Quoted Financial Product may be cancelled or varied by reason only of a transfer of that Quoted Financial Product.

8.1.6 The Governing Document of an Issuer may:

- (a) restrict the transfer of Debt Securities by requiring that holders must hold those Debt Securities in a specified minimum nominal amount (of no more than \$10,000, or such higher amount as NZX may specify from time to time) and/or in integral multiples of a specified nominal amount (of no more than \$1,000, or such higher amount as NZX may specify from time to time),
- (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or
- (c) prescribe procedures entitling the Issuer to sell Quoted Financial Products held in less than Minimum Holdings and to account to the holders for the proceeds of sale after deduction of reasonable sale expenses. At least three months’ prior notice must be given to the affected holders before such an action.

## 8.2 Escrow Agreements

8.2.1 If an Offer Document or Profile describes transfer restrictions under Rules 7.4.5 and 7.5 or otherwise for a period of time specified in that document:

- (a) the Issuer must enter into a “Escrow Agreement” with the persons to whom those Financial Products are issued, or to be issued, together with any beneficial owners of those Financial Products and such other persons as NZX considers necessary to ensure that the restrictions can be effectively enforced,
- (b) that agreement must prohibit the parties from taking steps which would cause the effective ownership or control of those Financial Products to be disposed of otherwise than in accordance with the restrictions specified in the Offer Document or Profile, and
- (c) where the agreement provides a discretion to lift the restrictions before the expiry of an agreed restriction period, the agreement must stipulate that this discretion can be exercised only with the consent of non-interested Directors of the Issuer. For this purpose, the term “interested” has the meaning in section 139 of the Companies Act 1993 and the word “company” will be read as a reference to the Issuer.

8.2.2 No variation or amendment can be made to an Escrow Agreement without the prior approval of NZX. The Issuer must advise NZX promptly and without delay upon becoming aware of any breach or likely breach of an Escrow Agreement and must take such steps as NZX may require to prevent or remedy any breaches.

## Statements

### 8.3 Statements

- 8.3.1 Every Issuer must issue to each holder of Quoted Financial Products on request a Statement that sets out:
- (a) the Class and number of Financial Products held by that holder and the total number of Financial Products of that Class issued by the Issuer,
  - (b) the register on which the holder's Financial Products are held, if other than the principal register, and
  - (c) the holder's number, CSN and address.
- 8.3.2 An Issuer is not obliged to provide a holder with the Statement required by Rule 8.3.1 if:
- (a) such a Statement has been provided within the previous six months, and
  - (b) the holder has not acquired or disposed of Financial Products of the relevant Class since a previous Statement required by Rule 8.3.1 or Rule 8.3.3 was provided.
- 8.3.3 Every Issuer must issue a Statement to each holder who obtains or disposes of Quoted Financial Products upon an issue or a transfer within 5 Business Days after the date of allotment or the date of registration of that transfer.
- 8.3.4 Where the Statement required by Rule 8.3.3 is issued following a transfer, the Statement must include:
- (a) all the information specified in Rule 8.3.1, except that the total number of Financial Products of that Class issued by the Issuer need not be shown, and
  - (b) the number of Financial Products transferred (to or from the holder) in each transfer since the last Statement.

## Financial Product Registers

### 8.4 Registration

- 8.4.1 An Issuer must ensure that any registrar it appoints to keep a register of its Quoted Financial Products complies with the requirements of this Section 8 and the FMC Act. References in this Section 8 to an Issuer will for this purpose include its registrar.
- 8.4.2 Every Issuer must ensure that its registry functions are performed promptly and properly. This will include indemnifying Participants and persons having dealings with its registrar against any losses or costs incurred through a failure in the performance of these functions which is not fairly attributable to the fault of the person claiming indemnity (or his or her agent).

8.4.3 Subject to the right of any Issuer under Rule 8.1, all properly executed and documented written Quoted Financial Product transfers must be registered within 2 Business Days of their receipt by the Issuer.

## 8.5 Legal title transfer

8.5.1 For the purposes of this Rule 8.5:

“Client Inward Transfer” has the meaning given in the Depository Rules, and

“Client Outward Transfer” has the meaning given in the Depository Rules.

8.5.2 Every Issuer with Financial Products Quoted, or that Issuer’s registry, must:

- (a) connect its register and maintain its registry connection to the Depository System, as specified by NZX, and operate it on all Business Days between the hours of 8.00 am and 6.00 pm,
- (b) comply with any time limits for the processing of electronic messages or documentation which NZX may specify in relation to the operation of the Depository System,
- (c) not delay the registration of any transfers, except in accordance with the Appendix to the Depository Rules, and
- (d) issue holders of Quoted Financial Products who are not Participants directly connected to the Depository System with an Authorisation Code.

8.5.3 Where a Client Inward Transfer is entered without proper authority from the holder of the Financial Product being transferred, the Issuer must immediately reinstate or otherwise compensate the dispossessed Financial Product holder. This obligation on the part of the Issuer does not affect or prejudice any right the Issuer may have against any other person.

8.5.4 A Client Outward Transfer to a bona fide purchaser for value must not in any circumstance be cancelled or reversed by an Issuer.

8.5.5 Each Participant who completes a Client Inward Transfer will be deemed to have warranted to the Issuer that the transfer is valid and has been authorised by the registered holder of the Financial Products, and to indemnify the Issuer for any loss suffered due to a breach by the Participant of that warranty, without prejudice to any right of the Participant under Rule 8.4.2.

8.5.6 The warranty contained in Rule 8.5.5 will give rise to a cause of action by an Issuer against the Participant in question, provided that this obligation does not affect or prejudice any other right the Participant may have.

8.5.7 The requirement in this Rule 8.5 for an Issuer to connect and operate a registry which is connected to the Depository System will apply only as long as the Rules include the provisions of Rule 8.5.3, Rule 8.5.4, Rule 8.5.5, Rule 8.5.6, and this Rule 8.5.7.



8.5.8 NZX may not exercise its right of waiver under Rule 9.7 in respect of compliance with Rule 8.5.2(a), Rule 8.5.2(d), Rule 8.5.3, Rule 8.5.4, Rule 8.5.5, Rule 8.5.6, or this Rule 8.5.8.



## Section 9

# NZX Powers

Status of the Rules and changes to Rules

NZX Regulation Waivers and Rulings

Trading Halts, Suspension and cancellation of listing

Compliance and enforcement functions

### Status of the Rules and changes to the Rules

#### 9.1 Status of Rules

- 9.1.1 These Rules were created by NZX to ensure that the Main Board and Debt Market are fair, orderly and transparent markets.
- 9.1.2 Any agreement made between NZX and an Issuer on the Main Board or the Debt Market under these Rules becomes a binding contract and is enforceable by NZX. These Rules do not have the status of regulations.
- 9.1.3 Each Issuer covenants with NZX to observe the Rules and to perform the obligations which the Rules purport to impose on Issuers, in the manner provided in the Rules.

#### 9.2 Amendment of Rules

- 9.2.1 Any amendments to these Rules will become binding on Issuers on the later of:
- (a) 20 Business Days after notice has been given to Issuers,
  - (b) the time (if any) specified in the notice to Issuers, or
  - (c) approval of the amendments by the FMA.
- 9.2.2 These timelines will apply even if an Issuer does not receive notice, through accidental omission by NZX or for any other reason.

#### 9.3 Procedures

- 9.3.1 NZX may from time to time approve written procedures relating to the operation of the Rules. Should an inconsistency emerge between any Rule and any procedure, the Rules will prevail.
- 9.3.2 Any procedures do not form part of the Rules, however, if a Rule requires compliance with any procedure, failure to comply with that procedure is a contravention of the Rule.

## 9.4 **Effect of Amendment**

9.4.1 Unless stated otherwise, the amending, deletion or lapsing of a Rule or procedure does not have any retrospective effect. In particular, it does not affect:

- (a) the previous operation of that Rule or procedure or anything done under that Rule or procedure,
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or procedure, or
- (c) any penalty, forfeiture, suspension, expulsion or disciplinary action incurred in respect of any contravention of that Rule or procedure. These may proceed as if the change had not taken effect.

9.4.2 When a change to the Rules requires a change to an Issuer's Governing Document, the Issuer will ensure that change is made at the first reasonable opportunity. Where the Rules are incorporated by reference into the Governing Document, the amendment will be deemed to be incorporated on the date specified in the notice given under Rule 9.2.1.

9.4.3 Any transaction:

- (a) to which these Rules apply, and
- (b) commenced, or undertaken pursuant to an agreement entered into, before an amendment of these Rules came into force,

will be allowed to proceed pursuant to the previously applicable Rules.

## 9.5 **Disputed Interpretation**

9.5.1 Disputes between an Issuer and a Quoted Financial Product holder of that Issuer in relation to the Rules may be referred to NZX for a Ruling under Rule 9.6, should NZX elect to exercise this power.

9.5.2 Written notice must be provided to NZX with any application under Rule 9.5.1. This must contain a summary of the relevant facts known to the applicant and sufficient explanation to enable NZX to understand the issues in dispute and to identify whether any other parties should be notified or invited to make submissions.

9.5.3 Before commencing legal action which involves determination of a dispute as to the meaning or application of the Rules, a party to the Rules or a Quoted Financial Product holder having the benefit of them, must first apply to have a determination made by NZX under Rule 9.5.1 and await the outcome of NZX's determination.

## 9.6 **Rulings**

9.6.1 NZX may make Rulings in relation to the Rules for such period and on such terms and conditions as it sees fit. It may do this upon application by an Issuer or at its own



instigation, and whether or not a dispute exists. A Ruling may apply to a specific Issuer, or be a class Ruling applying to the Rules generally.

9.6.2 Rulings in respect of an application by an Issuer will be made public, together with the Issuer's identity, the facts of any application and the grounds for NZX's decision, unless:

- (a) the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or
- (b) NZX elects at its sole discretion not to publish its decision.

9.6.3 Any Ruling given under Rule 9.6.1:

- (a) will have effect as if it formed part of the Rules, either in relation to:
  - (i) the Issuer concerned, or
  - (ii) the Rules generally if a class Ruling is made,
- (b) may be recorded or publicised in such manner as NZX thinks fit, and
- (c) may be revoked by NZX at any time by giving notice to either:
  - (i) the relevant Issuer, or
  - (ii) to the market generally, if revoking a class Ruling.

## 9.7 Waiver

9.7.1 NZX may waive the application of any one or more of the provisions of the Rules for such period (including retrospectively) and on such terms and conditions as NZX sees fit. It may do this upon application by an Issuer or at its own instigation. A waiver may apply to a specific Issuer, or be a class waiver applying to the Rules generally.

9.7.2 Waivers in respect of an application by an Issuer will be made public, together with the Issuer's identity, the facts of the application and the grounds for NZX's decision, unless:

- (a) the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or
- (b) NZX elects at its sole discretion not to publish its decision.

9.7.3 Any waiver granted under Rule 9.7.1 may be revoked at any time by NZX by written notice to the Issuer, or to the market generally if revoking a class waiver. Such a revocation has effect from the date stated in the notice (and may apply retrospectively if NZX considers that the waiver granted on the basis of incorrect information).

9.7.4 Subject to Rule 9.7.2, NZX may publish such information relating to a waiver granted or refused under Rule 9.7.1, or revocation of a waiver under Rule 9.7.3, as NZX sees fit.



## 9.8 Interpretation Policy

- 9.8.1 In the exercise of its powers to make Rulings, NZX will be guided by the policy statements published by it and any relevant Ruling decisions.
- 9.8.2 In addition to the policy statements referred to in Rule 9.8.1, NZX may from time to time issue further policy statements and practice notes which will have a similar status in the application of the Rules.

## 9.9 Trading Halts, Suspension, Cancellations and other Powers

- 9.9.1 An Issuer may request, by notice in writing to NZX in the prescribed form:
- (a) that trading in its Quoted Financial Products be halted for a period not to exceed 2 Business Days,
  - (b) that trading in its Quoted Financial Products be suspended for a period specified in the notice, or
  - (c) with at least one month's notice, that it will cease to be Listed or that some or all of its Quoted Financial Products will cease to be Quoted.
- 9.9.2 Upon receipt of a written notice under Rule 9.9.1, NZX may at its discretion accept or reject such applications or impose such conditions as it thinks fit.
- 9.9.3 NZX may at its absolute discretion at any time, without giving any reasons and without prior notice to the Issuer:
- (a) cancel the Listing of any Issuer,
  - (b) cancel, halt or suspend for such period as NZX thinks fit, the Quotation of any or all of an Issuer's Quoted Financial Products, or
  - (c) refer the conduct of any Issuer, or Director or Associated Person of any Issuer, to the Tribunal or any statutory or governmental authority.
- 9.9.4 Where NZX exercises its power under Rule 9.9.3 without giving prior notice or reasons to the Issuer, it will provide that notice, and the reasons for NZX exercising its powers in that manner, as soon as practicable.
- 9.9.5 Suspension of Quotation or trading does not release the Issuer from any obligation under the Rules. Cancellation of Listing or Quotation does not release the Issuer from any prior obligations in respect of any period or matter occurring before the cancellation.

## Compliance and enforcement

### 9.10 Contract and Commercial Law Act to Apply

- 9.10.1 The Rules are enforceable against each Issuer (including any person who has been Listed) for the benefit of every person who is or was a Quoted Financial Product holder



over the period that the Issuer is or was Listed, and subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 will apply accordingly.

9.10.2 Nothing in the status of Quoted Financial Product holders as beneficiaries of the Rules under the Contract and Commercial Law Act 2017 will:

- (a) entitle them to challenge the right of NZX or the Tribunal to exercise their powers as they think fit, or to challenge any consequences arising from the exercise, or non-exercise, of such powers,
- (b) limit the rights of NZX or the Tribunal in respect of the Rules, including their absolute discretion to make Rulings and to change or revoke all or any of the Rules,
- (c) entitle any person other than NZX to exercise the rights and powers provided in Rule 9.12,
- (d) entitle any person to be given notice of a Ruling, or
- (e) entitle any person to take legal action to enforce any provision of the Rules which is subject to a current Ruling except on the basis of and in accordance with that Ruling.

#### 9.11 **Compliance by Subsidiaries and in concert parties**

9.11.1 Every Issuer must take all steps reasonably practicable to ensure that no Subsidiary or person acting in concert with the Issuer or any of its Subsidiaries does anything that would cause the Issuer to be in breach of the Rules.

#### 9.12 **NZX Regulation**

9.12.1 NZX Regulation Personnel, the Tribunal and anyone authorised by NZX may:

- (a) require the Issuer, or require the Issuer to procure any Director, officer, employee or agent of the Issuer, to:
  - (i) produce for inspection by NZX any books, papers, registers, records, or accounts (whether hard copy or electronic) held by, or available to, that person, and
  - (ii) provide written commentary, explanation or responses to questions in relation to any document provided to NZX under (i) above,
- (b) inspect, copy or take notes from such documentation,
- (c) take physical possession of the information for such time as is reasonable to make copies or records,
- (d) require a representative of the Issuer to appear for interview, or



- (e) require the Issuer to procure any current, or use reasonable endeavours to procure any former Director, officer, employee or agent of the Issuer to appear for interview.
- 9.12.2 Where NZX Regulation Personnel are exercising their powers under Rule 9.12.1, NZX Regulation Personnel must deliver on request by the Tribunal, or such other person authorised under Rule 9.12.1, all information obtained under Rule 9.12.1 to the Tribunal or that person.
- 9.12.3 The Tribunal or authorised person acting under Rule 9.12.1 may provide information obtained from an Issuer to NZX if they consider that it:
- (a) should have been made available by the Issuer or otherwise under the Rules, or
  - (b) discloses some other breach of the Rules.
- 9.12.4 All information provided to NZX by the Tribunal under Rule 9.12.3 or to NZX under Rule 9.12.1 may be treated in all respects as if it had been supplied by the Issuer in compliance with the Rules, and accordingly fell within Rule 3.30.
- 9.12.5 Where NZX Regulation Personnel considers that a breach may have occurred, it may disclose to the Tribunal that information obtained under Rule 9.12.1 which is necessary to establish the fact and nature of the alleged breach and any other relevant facts and circumstances of which it is aware which would support a charge against the Issuer. Such charge will be heard by the Tribunal in accordance with the Tribunal Rules.
- 9.12.6 Except in accordance with Rule 9.12.2, Rule 9.12.3 or Rule 9.12.5, information obtained by NZX Regulation Personnel, the Tribunal or any person authorised under Rule 9.12.1 may be disclosed only:
- (a) as necessary for the discharge of their functions or the exercise their powers under the Rules,
  - (b) if disclosure is required by law,
  - (c) if disclosure is to a solicitor, accountant, or other professional adviser of NZX, NZX Regulation Personnel, the Tribunal or any other person authorised under Rule 9.12.1,
  - (d) to the NZX Chief Executive and the NZX Board,
  - (e) to any other person as required or permitted by the FMC Act,
  - (f) to any other person with whom NZX has a Reciprocal Arrangement in accordance with that Reciprocal Arrangement,



- (g) in relation to a NZX Foreign Exempt Issuer, to the Issuer's Home Exchange and the primary financial markets regulator in the jurisdiction of its Home Exchange, or
- (h) to any other stock exchange where the Issuer:
  - (i) is listed (whether or not such stock exchange is the Issuer's Home Exchange), or
  - (ii) has made an application for listing on such other stock exchange but has not yet been accepted for listing.

9.12.7 A document signed by the Head of Market Supervision, the Chairperson of the Tribunal or the chairperson of any Division of the Tribunal warranting the appointment of a person to exercise the powers of NZX or the Tribunal is conclusive evidence of the authority thereby warranted. Such a document may be general or specific to the circumstances of a particular case.

9.12.8 Any exercise by NZX of the powers set out in Rule 9.12.4 will, in the absence of the agreement of the Issuer concerned, require at least one Business Day of prior written notice to the Issuer of the intention to exercise the power (which notice may be in a general form) unless NZX Regulation Personnel have determined that the notice period should not apply in any particular case. The reasons for such determination will be given to the Issuer on request.

### 9.13 **The Tribunal**

9.13.1 NZX will appoint the Tribunal which will have the powers, rights and discretions set out in the Tribunal Rules, incorporated by reference into these Rules.

### 9.14 **Liability and Indemnity**

9.14.1 To the maximum extent permitted by law, none of NZX, any director or employee of NZX, any NZX Regulation Personnel or any delegate of NZX will be liable in tort, contract or otherwise for any action taken or not taken in the good faith exercise or purported exercise of the powers or discretions conferred by the Rules.

9.14.2 Each Issuer indemnifies NZX, its directors and employees, all NZX Regulation Personnel and delegates of NZX under the Rules against liabilities and claims arising from any actions or inactions by any such person in relation to the Issuer, which NZX determines to have been in good faith and in response to circumstances for which the Issuer should bear the responsibility in whole or in part. The indemnity will be for all or such part of the liabilities and claims as NZX determines.



## 9.15 **Costs**

9.15.1 An Issuer must pay all costs and expenses sought by NZX, NZX Regulation Personnel, the Tribunal and any person authorised by NZX in the exercise of the functions, rights and powers conferred by the Rules in respect of that Issuer. These payments may include an appropriate proportion of NZX's overhead costs in relation to such matters.



## Appendix 1

# NZX Corporate Governance Code

1 January 2019





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# NZX Corporate Governance Code

## PURPOSE & STRUCTURE OF PRINCIPLES

The overarching purpose of the NZX Corporate Governance Code (the **NZX Code**) is to promote good corporate governance, recognising that boards are in place to protect the interests of shareholders and to provide long-term value. The NZX Code is the primary guidance on corporate governance for NZX-listed issuers.

Strong governance can lead to a lower cost of capital and higher valuations for issuers. Regulation has an important role to play in improving corporate governance standards. The NZX Code is set out in Appendix 1 to the NZX Listing Rules (**Listing Rules**), which all listed issuers must report against.<sup>1</sup>

The NZX Code is structured around eight principles:

1. Code of ethical behaviour – directors should set high standards of ethical behavior, model this behavior and hold management accountable for these standards being followed throughout the organisation.
2. Board composition and performance – to ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.
3. Board committees – the Board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.
4. Reporting and disclosure – the Board should demand integrity in financial and non-financial reporting and in the timeliness and balance of corporate disclosures.
5. Remuneration – the remuneration of directors and executives should be transparent, fair and reasonable.
6. Risk management – directors should have a sound understanding of the material risks faced by the issuer and how to manage them. The Board should regularly verify that the issuer has appropriate processes that identify and manage potential and material risks.
7. Auditors – the Board should ensure the quality and independence of the external audit process.
8. Shareholder rights and relations – the Board should respect the rights of shareholders and foster relationships with shareholders that encourage them to engage with the issuer.

The NZX Code outlines recommendations under each principle recommending areas of good practice. If a particular recommendation is not appropriate for an issuer given its size or stage of development the issuer can explain why it has chosen not to adopt the recommendation and the alternative measures it has in place. The NZX Code therefore seeks to balance a desire to promote strong corporate governance while

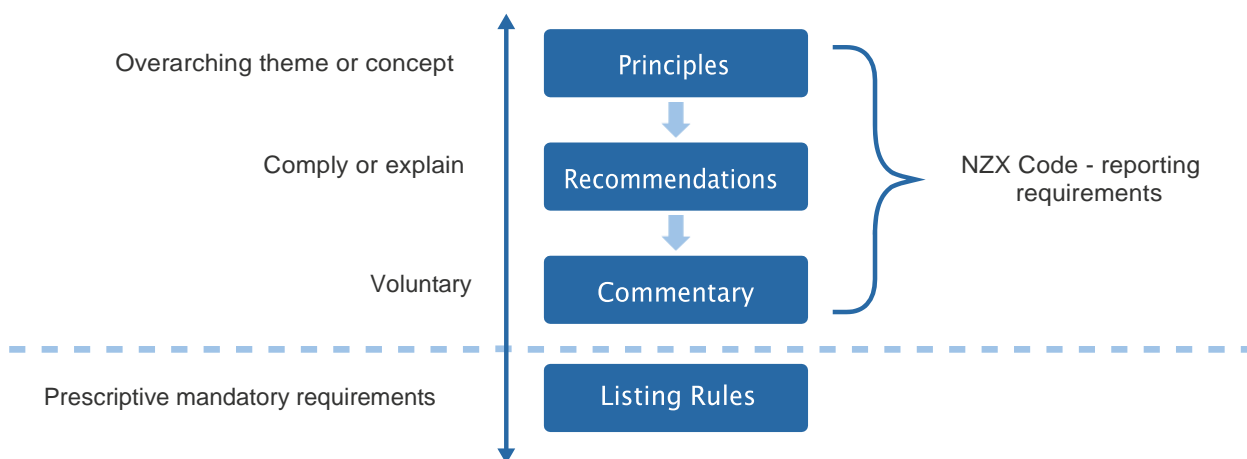
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<sup>1</sup> Under Listing Rules 3.8.1(a) – (b)

remaining flexible so that boards and issuers can determine the appropriate corporate governance practices for their businesses. Issuers should be continuously reviewing their corporate governance practices and seeking to improve these over time. NZX encourages issuers to think about disclosure on a continuous basis and not simply as an annual event. The recommendations have been drafted with the intention of allowing flexibility between disclosure in an Annual Report or on an issuer’s website. NZX also notes the value of independence on boards.

## HOW TO APPLY THE NZX CODE

The NZX Code applies to all listed issuers on the NZX Main Board that do not fall under an exception in the Listing Rules. There are specific recommendations intended to give effect to general principles, as well as explanatory commentary in relation to both the principles and recommendations. The diagram below illustrates the hierarchy of the ‘comply or explain’ regime (described below) and how each issuer should interpret the principles, recommendations and commentary.



### The NZX Main Board Rules

Listing Rule 3.8.1(a) requires an issuer to provide NZX with a statement on its corporate governance reporting. The statement must disclose the extent to which the issuer has followed the recommendations set by NZX during the reporting period and be current as at the effective date specified for the purpose of Listing Rule 3.8.1 (see below for how more about the form in which this can be disclosed).

The disclosures under Listing Rule 3.8.1(a) relate to the *recommendations* in the NZX Code. The principles themselves and commentary about the principles do not form part of the recommendations and therefore do not trigger any disclosure requirements under the Listing Rules.

### Comply or explain

The Listing Rules act to encourage issuers to adopt the NZX Code but do not force them to do so. This allows an issuer flexibility to adopt other corporate governance practices considered by the Board to be more suitable. Under the NZX Code, if the Board of an issuer considers that a recommendation is not appropriate because it does not fit the issuer’s circumstances, it is entitled not to adopt it. If it does not adopt it, it must explain why it has not. This is the basis of the ‘comply or explain’ (‘if not, why not’) approach. Requiring this explanation ensures that the market receives an appropriate level of information about the issuer’s governance arrangements so that:



- a. investors and other stakeholders can have a meaningful dialogue with the Board and management on corporate governance matters;
- b. investors can use such information to help make decisions on how to vote on particular resolutions; and
- c. investors can factor that information into their decision on whether or not to invest in the issuer.

### **Reporting against the NZX Code**

An issuer should explain what policies and practices it has in place in respect of the recommendation, and inform the investor or stakeholder where they can find any material referred to and where to find out more about their policies, which can be updated over time as practices develop and change. This is to demonstrate that the corporate governance practices of the issuer will evolve over time.

The disclosure of an issuer's compliance with the NZX Code is intended to be flexible so that disclosure can either be:

- ▶ in its annual report - where an issuer chooses to include its statement in the annual report rather than its website, NZX recommends that the statement and any related disclosures appear in a clearly labeled corporate governance section; or
- ▶ on its website - disclosures should be clearly presented and centrally located on or accessible from the landing page of the website, and the link should be easy to locate, prominently displayed in a category such as 'About Us' or 'Investor Centre'; or
- ▶ a combination of both reporting in the annual report and cross referencing on the website.

Issuers may incorporate material by reference as long as the material referred to is freely available and the statement clearly tells you where you can read or obtain a copy of it (such as a URL of a website).

### ***Disclosing that a recommendation is not followed***

If the issuer has not followed a recommendation for any part of the reporting period, its statement must separately identify that recommendation and what (if any) corporate governance arrangements it adopted in lieu of the recommendation during that period. An issuer's corporate governance statement must specify the date at which it is current. This must be the issuer's balance date or a later date specified by the issuer and state that it has been approved by the Board of the issuer. A statement regarding the explanation of why a recommendation was not followed should:

- ▶ be reasonably detailed and informative so that the market understands why it is that the issuer has chosen not to follow the recommendation;
- ▶ disclose the alternative practices it has, if any, employed in lieu of the recommendation and explain why they are more appropriate than the NZX Code in this instance; and
- ▶ avoid being short and uninformative, without analysis and unhelpful to investors.

### ***Exceptions***

Foreign exempt issuers are deemed under Listing Rule 1.7.1 to satisfy and comply with all the rules (including as to the content for annual reports) for so long as they remain listed on their home exchange (provided NZX can decide a rule does apply from time to time).



Issuers with only debt securities quoted are not required comply with Listing Rule 3.8.1(a) and (b).<sup>2</sup>

## **NZX'S CONSULTATION APPROACH**

In 2015, NZX commenced a comprehensive review of the previous Corporate Governance Best Practice Code. This was the first substantive update to the Code since 2003 and involved two rounds of formal feedback from market participants. NZX received over 80 submissions during the course of the review from a wide range of industry participants in New Zealand and offshore. NZX also engaged global market research company, TNS Qualitative Research to conduct interviews with 15 small to medium sized issuers to obtain their views on the issues raised, to ensure all the feedback from this sector of the market was considered as part of the review process.

In 2018 NZX updated the Code in conjunction with its holistic review of the Listing Rules.

The updated NZX Code seeks to more closely align with the Financial Markets Authority's *Corporate governance in New Zealand - Principles and guidelines* handbook, and the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*.

## **EFFECTIVE DATE**

The updated NZX Code has been reviewed by the NZX Board and approved by the Financial Markets Authority.

This version of the NZX Code applies to all reporting periods from the 30 June 2019 year end period, but early adoption is encouraged.

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<sup>2</sup> See Listing Rule 1.3.1.



# Principle 1 – Code of Ethical Behaviour

"Directors should set high standards of ethical behaviour, model this behaviour and hold management accountable for these standards being followed throughout the organisation."

## Overview commentary

Ethical behaviour is at the heart of good corporate governance and underpins an issuer's reputation. To maintain high ethical standards, it is important that an issuer has clear and consistent expectations of all its directors and employees, and that behaviour is modelled from the top down. A good code of ethics commits each and every person to the same standards and promotes a workplace culture of transparency. The code should be easy to read, apply to all persons throughout the issuer's organisation and be consistent with the recommendation below.

## RECOMMENDATION 1.1

1.1 The board should document minimum standards of ethical behaviour to which the issuer's directors and employees are expected to adhere (a code of ethics).

The code of ethics and where to find it should be communicated to the issuer's employees. Training should be provided regularly. The standards may be contained in a single policy document or more than one policy.

The code of ethics should outline internal reporting procedures for any breach of ethics, and describe the issuer's expectations about behaviour, namely that every director and employee:

- a. acts honestly and with personal integrity in all actions;
- b. declares conflicts of interest and proactively advises of any potential conflicts;
- c. undertakes proper receipt and use of corporate information, assets and property;
- d. in the case of directors, gives proper attention to the matters before them;
- e. acts honestly and in the best interests of the issuer, as required by law, and takes account of interests of shareholders and other stakeholders;
- f. adheres to any procedures around giving and receiving gifts (for example, where gifts are given that are of value in order to influence employees and directors, such gifts should not be accepted);
- g. adheres to any procedures about whistle blowing (for example, where actions of a whistle blower have complied with the issuer's procedures, an issuer should protect and support them, whether or not action is taken); and
- h. manages breaches of the code

## Commentary

### ***Why have a code of ethics?***

An issuer must act responsibly and ethically to build and maintain its reputation with investors and other stakeholders. Long term, ethics enhance the issuer's brand and investor confidence. It can be difficult for an issuer to re-build its image if a breach of ethics results in reputational damage.

An issuer should have specific processes in place to monitor compliance by its directors and employees with the code of ethics.

Recommendation 4.2 recommends that the code of ethics should be available on an issuer's website. Having transparency about ethical behaviour holds directors and employees accountable for their personal behaviour across the organisation. Over time, an issuer can track how it is progressing and improve its behaviour based on compliance with its own code of ethics.

### ***How should a breach of ethics be handled?***

An issuer should be transparent about how it plans to respond to breaches of a code of ethics, although it will be up to the issuer to determine whether to publicly disclose details of breaches of its code of ethics. Any breach of a code of ethics should be dealt with in a consistent and even-handed manner. The outcome of a breach should be consistent with past decisions where possible.

### ***How can the code of ethics be measured?***

The board should monitor instances where there is a breach of the code of ethics so that organisational behaviour is closely monitored.

An issuer should provide training on its code of ethics to new and existing staff. Providing training helps to ensure employees actively engage with the issuer's code of ethics. A code of ethics should be easy to find for all employees (for example, available on an issuer's website).

### ***How often should the code of ethics be updated?***

It is important that the code of ethics remains fit for purpose for each issuer. The code of ethics should be reviewed at least every two years to keep it up-to-date.

## RECOMMENDATION 1.2

1.2 An issuer should have a financial product dealing policy which applies to employees and directors.

## Commentary

A financial product dealing policy helps to provide transparency about expectations and requirements for financial product dealing by employees and directors and to protect them from the risk of breaching insider trading laws. It should clearly explain what processes are in place to manage the legal and reputational risks associated with staff financial product dealing. When developing a financial product dealing policy, an issuer may wish to consider existing third party guidance such as [the Listed Companies Association's Securities Trading Policy and Guidelines](#). Recommendation 4.2 recommends that the financial product dealing policy be made available on the issuer's website.

# Principle 2 – Board Composition & Performance

“To ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.”

## Overview commentary

For an issuer’s board to perform at an optimum level, the issuer must find the right mix of people to set its strategic direction. The board should have a procedure and criteria for the selection of its members. It is widely recognised that independence is an important consideration and that independent views add value to boards. Directors with an independent perspective are more likely to constructively challenge each other and executives – increasing their effectiveness. This means a director puts the interests of the entity before any other interests, including those of management or individual shareholders (except as disclosed and permitted by law).

## RECOMMENDATION 2.1

2.1 The board of an issuer should operate under a written charter which sets out the roles and responsibilities of the board. The board charter should clearly distinguish and disclose the respective roles and responsibilities of the board and management.

## Commentary

While some issuers are likely to have a similar split of functions between management and the board, these may vary. An issuer’s board and management team should have clearly articulated roles, which should be set out in the board charter. The board may regularly review its roles and responsibilities to ensure the scope of the issuer’s governance and management roles remains fit for purpose as the issuer evolves over time.

The board is usually responsible for:

- ▶ overall governance and providing strategic leadership;
- ▶ overseeing management’s implementation of the issuer’s strategic objectives and performance;
- ▶ overseeing the development, adoption and communication of a clear strategy for the business;
- ▶ overseeing accounting and reporting systems (including the external audit) and the issuer’s compliance with its continuous disclosure obligations;
- ▶ adopting and reviewing a risk management framework;
- ▶ the appointment of the chair (and deputy chair if necessary) and the CEO;
- ▶ approval of the issuer’s operating budgets/major capital expenditure; and

- ▶ adoption of the issuer’s remuneration policy and other corporate governance documents

Management will usually be responsible for implementing the strategic objectives set by the board. They operate within the ambit of risk set by the board and deal with all other aspects of the issuer’s day-to-day business. Management should provide the board with sufficient timely information to enable the board to perform its responsibilities.

A board charter may set out when directors may seek professional advice at the issuer’s expense, such as through the use of external legal advisers or consultants. Recommendation 4.2 recommends that the board’s charter be made available on the issuer’s website.

## RECOMMENDATION 2.2

2.2 Every issuer should have a procedure for the nomination and appointment of directors to the board.

### Commentary

Directors should be selected through a procedure administered by the issuer’s board or nomination committee (if applicable). The procedure should be outlined in the charter of the board or the appropriate committee. Generally, this should provide for:

- ▶ proper checks (e.g. as to the person’s character, experience, education, criminal record and bankruptcy history);
- ▶ the provision of key information about a candidate to shareholders to assist their decision as to whether or not to elect or re-elect the candidate (i.e. biographical details, relevant skills and experience, any other material directorships they hold); and
- ▶ if the candidate is standing for the first time, any material adverse information revealed by the checks the entity has performed (e.g. information regarding the person’s character, criminal record or bankruptcy history); or
- ▶ if the candidate is being re-elected, information about the term of office served by the director.

All material information regarding a board candidate, including negative information, should be provided to the board or nomination committee if the director is being elected by the board. An issuer may choose to use a skills matrix to help ensure the correct mix of skills is achieved when considering appropriate appointments for the board. A director’s independence should also be considered, particularly in light of Listing Rule 2.1.1(c) (namely “at least two Directors must be Independent Directors”) and Recommendation 2.8 (that a majority of the board should be Independent Directors).

## RECOMMENDATION 2.3

2.3 An issuer should enter into written agreements with each newly appointed director establishing the terms of their appointment.

### Commentary

All new directors should enter into a written agreement with the issuer. This should apply to new board appointments only to avoid confusion about the retrospective effects of this policy. Note that directors are subject to appointment and removal from office via shareholder approval, which will supersede anything in a written agreement in respect of a director ceasing to hold office. The written agreement should include information about:

- ▶ the issuer's expectations of the director in his or her role;
- ▶ the director's expected time commitment to the issuer (including other duties);
- ▶ remuneration entitlements (including any superannuation included); and
- ▶ indemnity and insurance arrangements.

The written agreement should also include:

- ▶ the requirement to disclose interests that may affect the director's independence;
- ▶ a requirement to comply with corporate policies including the board charter, code of ethics and financial product dealing policy;
- ▶ the term of appointment;
- ▶ ongoing rights of access to corporate information;
- ▶ the right to receive access to information for regulatory or litigation purposes for 6 years post leaving a board; and
- ▶ ongoing confidentiality obligations

For executive directors only the written agreement should also include:

- ▶ a description of their position, duties and responsibilities; and
- ▶ the person or body to whom they report.

## RECOMMENDATION 2.4

2.4 Every issuer should disclose information about each director in its annual report or on its website, including a profile of experience, length of service, independence and ownership interests and director attendance at board meetings.

### Commentary

Releasing profiles about each director, experience, length of service and ownership interests and attendance at board meetings informs investors of the skills and experience and extent of involvement of the directors of an issuer.

'Independent' status should not be determined without careful consideration of all relevant factors and interests. An issuer must consider the definition of an 'Independent Director' when making such determinations. An issuer may also wish to establish and publish clear criteria for determining Independent Directors in accordance with the overarching test within the Listing Rules.

Factors that may impact a director's independence include:

- ▶ being currently, or within the last three years, employed in an executive role by the issuer, any of its subsidiaries, and there has not been a period of at least three years between ceasing such employment and serving on the board;
- ▶ currently, or within the last 12 months, holding a senior role in a provider of material professional services to the issuer or any of its subsidiaries;
- ▶ a current, or within the last three years, material business relationship (e.g. as a supplier or customer) with the issuer or any of its subsidiaries;
- ▶ a substantial product holder of the issuer, or a senior manager of, or person otherwise associated with, a substantial product holder of the issuer;
- ▶ a current, or within the last three years, material contractual relationship with the issuer or any of its subsidiaries, other than as a director;
- ▶ having close family ties with anyone in the categories listed above;
- ▶ having been a director of the entity for a length of time that may compromise independence.

In each case, the materiality of the interest, position, association or relationship needs to be assessed to determine whether it might interfere, or might reasonably be seen to interfere, with the director's capacity to bring an independent judgment to bear on issues before the board and to act in the best interests of the issuer and to represent the interests of its financial product holders generally.

Disclosure should be made on an annual basis within the issuer's annual report or on the issuer's website.



## RECOMMENDATION 2.5

2.5 An issuer should have a written diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving diversity (which, at a minimum, should address gender diversity) and to assess annually both the objectives and the entity's progress in achieving them. The issuer should disclose the policy or a summary of it.

### Commentary

Authoritative research concludes that increased gender diversity on boards is associated with better financial performance.<sup>3</sup> Under Listing Rule 3.8.1(c) an issuer is required to provide a quantitative breakdown in its annual report as to the gender composition of the issuer's Directors and Officers as at the Issuer's balance date and including comparative figures for the prior balance date of the issuer. NZX publishes aggregated statistics of this information on its website.

An issuer should have a written diversity policy so that a clear summary of its attitude and goals regarding diversity in the workplace can be found. That should have measurable objectives set by the board of the issuer (or a board committee) to track how the issuer is progressing towards these, such as specific numerical targets to provide benchmarks. The periodic disclosure of this information will help keep the board of the issuer accountable. The policy should disclose how an issuer plans to achieve its objectives, which should include a mixture of qualitative and quantitative assessments such as corporate retention rates, equal pay, flexible working arrangements, organisational engagement regarding diversity and targets for diverse board appointments. More guidance can be found in NZX's guidance note on diversity.

Issuers should also consider diversity more broadly than just gender. A diversity policy will help an issuer ensure it is getting a wide mix of experiences and perspectives on the board and throughout its organisation.

Reporting should make clear how an issuer is tracking against the policy at the end of each reporting period. Recommendation 4.2 recommends that the diversity policy (or a summary of it) should be made available on the issuer's website.

The board may delegate an appropriate board committee (such as the nomination or remuneration committee) the task of setting the issuer's measurable objectives for improving gender (and other forms of) diversity. This should be reflected in the charter of the committee in question.

## RECOMMENDATION 2.6

2.6 Directors should undertake appropriate training to remain current on how to best perform their duties as directors of an issuer.

### Commentary

Where necessary, every issuer should provide resources to help develop and maintain directors' skills and knowledge.

<sup>3</sup> *Why Diversity Matters*, McKinsey, 2015, <http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

## RECOMMENDATION 2.7

2.7 The board should have a procedure to regularly assess director, board and committee performance.

### Commentary

Every issuer should have a process to conduct regular performance reviews of directors, the board and committees to ensure they are delivering to a high standard throughout their service. As part of the review, the board should assess whether appropriate training (as contemplated by recommendation 2.6) has been received by directors. The board may choose to use external facilitators from time to time to conduct reviews.

## RECOMMENDATION 2.8

2.8 A majority of the board should be independent directors.

### Commentary

Having a majority of independent directors makes it harder for any individual or small group of individuals to dominate the board's decision-making and maximises the likelihood that the decisions of the board will reflect the best interests of the entity and its security holders generally and not be biased towards the interests of management or any other person or group with whom a non-independent director may be associated. Non-executive directors should consider the benefits of conferring periodically without executive directors or other senior executives present.

## RECOMMENDATION 2.9

2.9 An issuer should have an independent chair of the board. If the chair is not independent, the chair and the CEO should be different people.

### Commentary

The chair of the board and the CEO should be separated to ensure that a conflict of interest does not arise. The chair of the board is responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management. The chair is also responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.

Issuers should have an independent chair, which can contribute to a culture of openness and constructive challenge that allows for a diversity of views to be considered by the board. Good governance demands an appropriate separation between those charged with managing a listed entity and those responsible for overseeing its managers.

## Principle 3 – Board Committees

“The board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.”

### Overview commentary

Committees are a way for the board of an issuer to delegate authority in a specific area. Some committees may not be appropriate for all issuers but they can improve the performance of an issuer if used appropriately. Every issuer will have different needs and constraints for their committees depending on their size or complexity.

### RECOMMENDATION 3.1

3.1 An issuer’s audit committee should operate under a written charter. Membership on the audit committee should be majority independent<sup>4</sup> and comprise solely of non-executive directors of the issuer. The chair of the audit committee should be an independent director and not the chair of the board.

### Commentary

Financial reporting is important for an issuer. Effective audit committees and audit processes are important tools to ensure financial accountability.

Under Listing Rule 2.13.1, each issuer must establish an Audit Committee. That Committee must:

- ▶ be comprised solely of directors of the issuer,
- ▶ have a minimum of three members
- ▶ have a majority of members that are Independent Directors, and
- ▶ have at least one member with an accounting or financial background.

Listing Rule 2.13 requires that an issuer’s Audit Committee responsibilities include as a minimum:

- ▶ ensuring processes are in place and monitoring those processes so that the board is properly and regularly informed and updated on corporate financial matters;
- ▶ recommending the appointment and removal of the independent auditor;
- ▶ meeting regularly to monitor and review the independent and internal auditing practices;
- ▶ having direct communication with and unrestricted access to the independent auditor and any internal auditors or accountants;

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<sup>4</sup> The requirement for a majority of independent directors is set out in Listing Rule 2.13

- ▶ reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations, and
- ▶ ensuring that the Key Audit Partner is change at least every five years<sup>5</sup>.

Every issuer should identify in its annual report or on its website the members of the audit committee. The audit committee's written charter should outline the role and responsibilities of the committee. Recommendation 4.2 recommends the audit committee's charter be made available on the issuer's website.

The chair of the audit committee should be independent, and not otherwise have a long-standing association with the issuer's external audit firm as a current, or retired, audit partner or senior manager at the firm. An audit committee chair will generally be perceived to be independent if there has been a period of at least three years between previously being employed by the external audit firm and serving as chair of the audit committee.

An issuer may also choose to have a separate risk committee, although these are often combined with the functions of the audit committee. Further information in relation to the use of risk committees is outlined under Principle 6.

### **RECOMMENDATION 3.2**

3.2 Employees should only attend audit committee meetings at the invitation of the audit committee.

#### **Commentary**

Employees should only attend audit committee meetings by invitation so as to protect the independence of the audit committee from undue influence.

### **RECOMMENDATION 3.3**

3.3 An issuer should have a remuneration committee which operates under a written charter (unless this is carried out by the whole board). At least a majority of the remuneration committee should be independent directors. Management should only attend remuneration committee meetings at the invitation of the remuneration committee.

#### **Commentary**

The remuneration committee's role is to recommend remuneration packages for directors for consideration by shareholders and to recommend to the board a policy for CEO and senior management remuneration. Every issuer should identify in its annual report and on its website the members of the remuneration committee. The remuneration committee's written charter should outline the role and

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<sup>5</sup> These responsibilities are also reflected in Listing Rule 2.13.3

responsibilities of the committee. Recommendation 4.2 recommends that the remuneration committee's charter be made available on the issuer's website.

The remuneration committee's written charter should outline:

- ▶ the remuneration committee's authority;
- ▶ the requirements relating to its composition (for example, whether a minimum number of Independent Directors are required);
- ▶ duties and responsibilities; and
- ▶ relationship with the board.

An issuer may decide not to have a separate remuneration committee. Where an issuer chooses not to have a remuneration committee under the "comply or explain" approach, an issuer should explain the alternative measures in place – for example, for these functions to be carried out by the board.

An issuer may choose to have a nomination committee to recommend director appointments to the board or to include these responsibilities in those functions to be performed by the remuneration committee.

More information about processes and policies in relation to remuneration is included under Principle 5.

#### **RECOMMENDATION 3.4**

3.4 An issuer should establish a nomination committee to recommend director appointments to the board (unless this is carried out by the whole board), which should operate under a written charter. At least a majority of the nomination committee should be independent directors.

#### **Commentary**

An issuer's nomination committee can help focus resources on appointing directors. An issuer's nomination committee may be comprised of members of the issuer's remuneration committee. For smaller issuers the remuneration committee may carry out the functions of the nomination committee. The nomination committee's written charter (which should be disclosed) should outline the committee's authority, duties, responsibilities and relationship with the board.

Smaller issuers may decide not to have a separate nomination committee. Under the "comply or explain" approach these issuers should explain the alternative measures in place – for example, for these functions to be carried out by the board.

### RECOMMENDATION 3.5

3.5 An issuer should consider whether it is appropriate to have any other board committees as standing board committees. All committees should operate under written charters. An issuer should identify the members of each of its committees, and periodically report member attendance.

#### Commentary

An issuer may choose to have other specific committees depending on the nature of their businesses, for example a health and safety committee.

Each committee should have a written charter that clearly sets out the roles and responsibilities of the committee. The members of the committee should be identified. The members should have an appropriate mix of experience and skills. Proceedings of committees should be reported back to the board. Recommendation 4.2 recommends that the charters of board committees be made available on the issuer's website.

Although an issuer may decide that it is not appropriate to have some of the separate committees recommended above, as it increases in size and scale it should continue to assess whether additional committees are appropriate in future.

### RECOMMENDATION 3.6

3.6 The board should establish appropriate protocols that set out the procedure to be followed if there is a takeover offer for the issuer including any communication between insiders and the bidder. The board should disclose the scope of independent advisory reports to shareholders. These protocols should include the option of establishing an independent takeover committee, and the likely composition and implementation of an independent takeover committee.

#### Commentary

It is useful for issuers to have appropriate protocols in place for dealing with takeovers given that issuers will often need to react quickly in response to any approach. Independence is an important issue in the context of takeovers and therefore any takeover committee should be independent of the bidder. Issuers are not required to disclose such protocols with other governance policies and documents.

# Principle 4 – Reporting & Disclosure

“The board should demand integrity in financial and non-financial reporting, and in the timeliness and balance of corporate disclosures.”

## Overview commentary

Disclosure is important for good corporate governance, particularly given the mandatory disclosure requirements for listed issuers within the Listing Rules.<sup>6</sup> Reporting and disclosure keeps issuers accountable to stakeholders and is a key measure of good corporate governance. NZX supports robust disclosure by issuers of information regarding financial and operational matters. This information should be accurate.

Disclosures which are recommended or suggested within this reporting framework should be made on at least an annual basis, however, an issuer may choose to disclose more regularly. The disclosure framework is also intended to be flexible so that issuers can determine the appropriate mechanism for disclosing information to investors and stakeholders – for example, within an annual report and on an issuer’s website.

Disclosure should look forward, and backward, explain the strategy adopted by the board, and highlight for shareholders and prospective investors material changes to previously announced strategies.

## RECOMMENDATION 4.1

4.1 An issuer’s board should have a written continuous disclosure policy.

## Commentary

An issuer should have a written policy that explains how it complies with its continuous disclosure obligations to ensure all investors have access to relevant information. Recommendation 4.2 recommends that the continuous disclosure policy be made available on an issuer’s website.

Announcements from an issuer should reflect a factual and balanced representation about the issuer, disclosing both positive and negative information.

The continuous disclosure policy should explain the respective roles of directors, officers and employees in relation to:

- ▶ complying with the issuer’s continuous disclosure obligations;
- ▶ safeguarding the confidentiality of corporate information to avoid premature disclosure;
- ▶ external communications such as analyst briefings and responses to investor queries; and
- ▶ responding to or avoiding the emergence of a false market in the issuer’s securities.

<sup>6</sup> Primarily section 3 of the Listing Rules

Additional guidance in relation to the contents of a continuous disclosure policy is outlined in NZX's guidance note available [here](#).

## RECOMMENDATION 4.2

4.2 An issuer should make its code of ethics, board and committee charters and the policies recommended in the NZX Code, together with any other key governance documents, available on its website.

### Commentary

Maintaining information on an issuer's website is important for investors and other interested stakeholders to remain informed about the issuer. Key governance documents should be available to investors and stakeholders on the issuer's website including:

- ▶ the code of ethics;
- ▶ the financial product dealing policy;
- ▶ the board and committee charters;
- ▶ a diversity policy (or a summary of it);
- ▶ the remuneration policy; and
- ▶ the continuous disclosure policy.

## RECOMMENDATION 4.3

4.3 Financial reporting should be balanced, clear and objective. An issuer should provide non-financial disclosure at least annually, including considering environmental, economic and social sustainability factors and practices. It should explain how operational or non-financial targets are measured. Non-financial reporting should be informative, include forward looking assessments, and align with key strategies and metrics monitored by the board.

### Commentary

It is important that every issuer provides disclosure of both financial and non-financial matters affecting it in its annual report, such as its sustainability strategy. Issuers may choose to report more regularly to investors on financial and non-financial matters.

#### **Financial reporting**

Financial reporting requirements are prescribed by the Companies Act 1993, Financial Markets Conduct Act 2013 and the Listing Rules. An issuer should ensure that financial reporting is accompanied by sufficient explanation and is expressed in a clear and objective manner to help investors to make meaningful investment decisions. An issuer should communicate a balanced and understandable



assessment of its performance, business model, strategic objectives and progress against meeting them. Changes in financial disclosure should be explained and allowed with historical comparison.

Issuer reporting should:

- ▶ be linked to the issuer's business model;
- ▶ be genuinely informative and include forward-looking elements where this will enhance understanding;
- ▶ describe the issuer's strategy, and associated risks and opportunities, and explain the board's role in assessing and overseeing strategy and the management of risks and opportunities (refer to recommendation 6.1 below);
- ▶ be accessible and appropriately integrated with other information that enables shareholders to obtain a picture of the whole organisation;
- ▶ use key performance indicators that are linked to strategy and facilitate comparisons; and
- ▶ use objective metrics where they apply and evidence-based estimates where they do not.

### ***Non-financial reporting***

As a step towards long term value creation, an issuer should determine the appropriate level of non-financial reporting to form part of its disclosure regime. While this non-financial reporting should include consideration of material environmental, social and governance (ESG) factors and practices, it could also include other non-financial disclosure, such as a description of the performance of the issuer's business against its strategic objectives. Companies should communicate a balanced and understandable assessment of the company's performance, business model, strategic objectives and progress against meeting them.

The Sustainable Stock Exchange Initiative recognises reporting frameworks for ESG policies and practices and it is now commonplace for stock-exchanges world-wide to provide guidance to issuers for reporting on ESG. This form of reporting is also referred to as sustainability reporting or by similar names.

In order for investors and other users of this information to be able to easily compare information, NZX suggests that if an issuer chooses a formal framework to report on ESG factors, it should report against a recognised international reporting initiative such as the Global Reporting Initiative guidelines or Integrated Reporting which can be found [here](#). There should be balanced, transparent, public disclosure which connects financial, social and environmental performance. This should explain how ESG factors affect the financial performance of an issuer, allowing stakeholders to have a better understanding of the issuer's overall performance, risks and opportunities. Smaller issuers may consider that it is not appropriate to adopt a formal ESG framework and may instead select non-financial matters they choose to report upon.

Recommendation 6.2 deals specifically with management and reporting of health and safety risks.



# Principle 5 – Remuneration

“The remuneration of directors and executives should be transparent, fair and reasonable.”

## Overview commentary

Investors rightly have a particular interest in director and executive remuneration. Transparency in these areas is essential to foster investor confidence. Remuneration should be fair and reasonable, and take into account a person’s skills, experience and other factors relevant to the issuer and proposed role.

## RECOMMENDATION 5.1

5.1 An issuer should recommend director remuneration to shareholders for approval in a transparent manner. Actual director remuneration should be clearly disclosed in the issuer’s annual report.

## Commentary

Every issuer should recommend director remuneration to shareholders for approval in a transparent manner.<sup>7</sup> The remuneration proposed for approval should be clearly expressed so shareholders understand why directors are being paid a particular amount as compensation for their contribution to the issuer. Disclosure should make it clear what individual directors are proposed to be paid, including outlining separately any amounts payable for any committee work. Disclosure should not be limited to a total remuneration pool.

Actual director remuneration should be clearly disclosed to shareholders in the issuer’s annual report, including a breakdown of remuneration for committee roles and for fees and benefits received for any other services provided to the issuer.

## RECOMMENDATION 5.2

5.2 An issuer should have a remuneration policy for remuneration of directors and officers, which outlines the relative weightings of remuneration components and relevant performance criteria.

## Commentary

The board should have a clear policy which sets remuneration at levels that are fair and reasonable in a competitive market. CEO remuneration is addressed specifically under recommendation 5.3 below.

Transparency is essential to foster confidence.

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<sup>7</sup> Director remuneration must be approved under Listing Rule 2.11.1

The term 'Officer' has been used within the recommendation to align with the existing definition of Officer within the Listing Rules. The references to 'executives' within the commentary below is intended to capture Officers.

If executive and director remuneration consultants are used by an issuer, they should be independent and should be engaged by the board. In this context independence means that the consultant must not have been subjected to any influence from management, any board member or any other party in relation to the services provided or the outcomes of those services. Executive director and remuneration consultants should sign a declaration of independence. Executive and director remuneration consultants should report to the board in relation to CEO and director remuneration but the board may determine that it is appropriate for advice in relation to other (non-CEO) senior executive remuneration should be reported to the CEO, provided that no senior management personnel makes decisions in respect to their own remuneration outcomes.

If an issuer makes public statements referring to reliance on independent remuneration reports from executive and director remuneration consultants in respect of decisions relating to director remuneration, then a summary of the findings of the report should be made public, and the executive and director remuneration consultant should attest to its independence within the report. Please note that this commentary is directed to remuneration reports relating to directors only and only in situations where issuers choose to publicly state that they are relying on such advice in respect of director remuneration proposals.

Executive and non-executive director remuneration should be clearly differentiated. The remuneration policy should describe the general policy for executive remuneration. It should clearly segment the components of director remuneration. Executive remuneration packages should generally contain an element that is dependent on the issuer's performance and performance of that individual.

Establishing a framework for remuneration (and determining actual remuneration) is complex and needs to be done in the context of each issuer's business. As such there is no 'one-size-fits-all' methodology but the elements of executive remuneration that should be considered include:

- ▶ fixed remuneration should be fair and should be based on the scale and complexity of the role and should reflect performance requirements and expectations attached to the role;
- ▶ any performance-based remuneration should be linked to clear targets aligned with the issuer's performance objectives and appropriate to its risk profile; and
- ▶ equity-based remuneration schemes should be carefully designed to support a long term approach and not promote undue risk taking.

For non-executive directors:

- ▶ levels of fixed fees should reflect the time commitment and responsibilities of the role;
- ▶ there should not be performance based remuneration as it may lead to bias in decision making; equity-based remuneration is generally acceptable for non-executive directors. Such directors may receive securities as part of their remuneration to align their interests with the interests of other security holders; and
- ▶ retirement payments should not be provided other than superannuation.



An issuer's remuneration policy should ensure fair and equal pay throughout an organisation based on the value of the services performed within the context of a competitive market and having regard to the employees' experience, skills and performance. Recommendation 4.2 recommends that the remuneration policy is made available on the issuer's website.

### RECOMMENDATION 5.3

5.3 An issuer should disclose the remuneration arrangements in place for the CEO in its annual report. This should include disclosure of the base salary, short term incentives and long term incentives and the performance criteria used to determine performance based payments.

#### Commentary

An issuer should disclose information about its CEO's remuneration (both the general policy and the actual amounts of the remuneration package) and the criteria that the CEO must fulfil to be compensated based on his or her performance (where applicable). This information is of significant interest to investors and should be clearly articulated.

The CEO remuneration policy (which may form part of the broader remuneration policy required by recommendation 5.2) should outline each component of remuneration, such as base salary, short term incentives or long term incentives.

Disclosure should be provided in relation to the material performance hurdles for any applicable incentive payments, with details of timing for when share entitlements will vest. The disclosure in relation to performance hurdles need not disclose the precise details of targets (as such targets may be commercially sensitive), so long as sufficient information is provided to inform investors as to the type of performance hurdle that applies (e.g. is it based on shareholder return, operational performance or qualitative factors).

Remuneration payments should be disclosed in the annual report of the issuer. Disclosure should relate to a clearly defined period which is comparable with historical disclosures. Disclosure should be provided so that a person can reasonably understand the levels of remuneration which have been earned or which have vested for the period (including relevant key performance indicators or hurdles which have been met) and the different components of remuneration packages. Annual disclosures should address:

- ▶ target amounts set for the year;
- ▶ short term incentive payments made in the year;
- ▶ long term incentive grants made in the year; and
- ▶ long term incentive grants that have vested in the year.

Details in relation to granting or payment of any long term incentives (either cash or shares) should be disclosed in the years in which such entitlements have been made or vest. The issuer should disclose the basis on which these incentives have been granted and vest the time period to which they relate.

Every issuer should ensure that it addresses any privacy concerns and issues around the disclosure of the CEO's remuneration by obtaining the consent of the CEO to the disclosure on an annual basis or including consent to such disclosure in the CEO's employment agreement.



## Principle 6 – Risk Management

“Directors should have a sound understanding of the material risks faced by the issuer and how to manage them. The Board should regularly verify that the issuer has appropriate processes that identify and manage potential and material risks.”

### Overview commentary

Any issuer will have a range of risks which need to be managed. To manage risk, it is critical that the board has processes in place to identify and manage the material risks facing its business, particularly to identify those risks that the board is willing to take in order to pursue its strategy and how it will manage these risks. The board should put processes in place to ensure it is regularly informed about the material risks facing the business.

### RECOMMENDATION 6.1

6.1 An issuer should have a risk management framework for its business and the issuer’s board should receive and review regular reports. An issuer should report the material risks facing the business and how these are being managed.

### Commentary

Each issuer should have an appropriate risk management and reporting framework in place that outlines the processes in place to identify and manage these risks. The material risks will vary between issuers depending on their size and the nature of their business but these may include health and safety and other ESG factors (also see recommendation 4.3).

The board should be responsible for determining the nature and extent of the material risks it is willing to take to achieve its strategic objectives and how it will manage them. The board should track the development of any existing risks and the emergence of new risks to the issuer’s business. Issuers are encouraged to develop and maintain a risk register which records the likelihood and impact of each risk to the issuer’s business, identifies the key risks and notes the steps taken to mitigate each risk.

The board or risk committee should receive appropriate and regular reporting from management in relation to the operation of the risk management framework. Reports to the board from the risk committee should highlight the main risks to the issuer’s performance and how these are being managed under the risk management framework.

An issuer should confirm in its annual report that it has carried out a robust risk assessment process and describe this to stakeholders.

An issuer may wish to have a risk committee as a sub-committee of the board (this function may also be combined with the audit committee). A risk committee's role is usually to review and make recommendations to the board in relation to:

- ▶ whether the issuer's processes for managing risk are sufficient;
- ▶ any incident involving fraud or other break-down of the entity's internal controls; and
- ▶ the issuer's insurance programme, having regard to the issuer's business and the insurable risks associated with its business.

See further detail about ESG reporting under Recommendation 4.3 which is also relevant in the context of risk reporting.

## **RECOMMENDATION 6.2**

6.2 An issuer should disclose how it manages its health and safety risks and should report on its health and safety risks, performance and management.

### **Commentary**

Although it will depend on the size and nature of the business, an issuer may decide to have a specific health and safety committee at board or management level, reflecting the importance of health and safety considerations.

Issuers should determine the appropriate way to report on their health and safety risks, performance and management and may wish to consider reporting both lead and lag indicators in respect of health and safety. If an issuer reports lag indicators, it should consider reporting lost time injury frequency rates (LTIFR) and total recorded injury frequency rates (TRIFR).

# Principle 7 – Auditors

“The board should ensure the quality and independence of the external audit process.”

## Overview commentary

The quality of external auditing is critical for the integrity of financial reporting and provides an important protection for investors. External auditors should be independent.

## RECOMMENDATION 7.1

7.1 The board should establish a framework for the issuer’s relationship with its external auditors. This should include procedures:

- (a) for sustaining communication with the issuer’s external auditors;
- (b) to ensure that the ability of the external auditors to carry out their statutory audit role is not impaired, or could reasonably be perceived to be impaired;<sup>8</sup>
- (c) to address what, if any, services (whether by type or level) other than their statutory audit roles may be provided by the auditors to the issuer; and
- (d) to provide for the monitoring and approval by the issuer’s audit committee of any service provided by the external auditors to the issuer other than in their statutory audit role.

## Commentary

Auditor independence is very important to maintain investor confidence. A framework for an issuer to manage external auditors is essential for an issuer. Note that external auditor rotation requirements are covered in the Listing Rules.<sup>9</sup>

The board should facilitate regular and full dialogue between its audit committee, the external auditors and management. A procedure for communication should be developed and implemented to make sure that occurs. This procedure should be documented in the audit committee charter given the importance of the external audit function to an issuer. There should be no relationship between the auditor and the issuer (or its directors and management) that could compromise the auditor’s independence. The framework should ensure that confirmation of an auditor’s independence is obtained by the board in writing.

Any other services that may be provided by the auditor to the issuer should be declared and there should be a plan in place for the monitoring and approval by the issuer’s audit committee of any service provided by the auditors to the issuer other than their statutory audit role. The framework should explain how the board consider audit quality, any identified threats to auditor independence and how the threat is managed.

<sup>8</sup> In Recommendation 7.1, “statutory audit role” means services required by any law to be provided by the auditors, acting as such

<sup>9</sup> Listing Rule 2.13.3(f)



## RECOMMENDATION 7.2

7.2 The external auditor should attend the issuer's Annual Meeting to answer questions from shareholders in relation to the audit.

### Commentary

Every issuer should ensure that their external auditor attends their Annual Meetings and that they are available to answer questions from investors relevant to the audit.

## RECOMMENDATION 7.3

7.3 Internal audit functions should be disclosed.

### Commentary

An issuer should disclose:

- ▶ if it has an internal audit function, how the function is structured and what role it performs; or
- ▶ if it does not have an internal audit function, the fact and the process it employs for evaluating and continually improving the effectiveness of its risk management and internal processes.

# Principle 8 – Shareholder Rights & Relations

“The board should respect the rights of shareholders and foster constructive relationships with shareholders that encourage them to engage with the issuer.”

## Overview commentary

Shareholders beneficially own an issuer and the board is accountable to them. An issuer must engage with its shareholders and provide them with proper information and mechanisms to allow them to exercise their rights. Subject to the issuer’s own continuous disclosure obligations, this includes communicating openly and giving shareholders ready access to information about the issuer and its governance.

An issuer’s website should be kept up to date so that shareholders are kept informed. An issuer should have a range of options for shareholders to communicate with it.

## RECOMMENDATION 8.1

8.1 An issuer should have a website where investors and interested stakeholders can access financial and operational information and key corporate governance information about the issuer.

## Commentary

Information about the issuer and key corporate governance information should be made available on an issuer’s website so interested investors and stakeholders can review it at all times.

This information should be easy to access and navigate.

The board should ensure sufficient channels for transparent and accountable, periodic engagement and reporting on environmental, social and governance issues with stakeholders.

In addition to the documents covered by Recommendation 4.2 to be made available on its website, every issuer should include and maintain links to the following on its website:

- ▶ a point of contact so the shareholder can get in touch with the issuer;
- ▶ the names and a brief bio of directors and key members of management;
- ▶ the information set out in Recommendation 2.4, if the issuer has chosen to disclose this on its website rather than its annual report;
- ▶ its constitution;
- ▶ links to copies of annual reports and financial statements for at least the last five years;
- ▶ copies of its announcements to NZX for at least the last two years;

- ▶ copies of notices of meetings of security holders, results of meetings and any accompanying documents; and
- ▶ if it keeps them, webcasts and/or transcripts of meetings of shareholders and copies of any documents tabled or made available at those meetings for at least the last two years.

The issuer can also help investors by including on the website the following information:

- ▶ an overview of its current business;
- ▶ a description of how it is structured;
- ▶ a summary of its history;
- ▶ calendar dates regarding results presentations, the Annual Meeting, details in relation to upcoming corporate actions including dividend payments and distributions;
- ▶ a description of different classes of securities (if relevant) and the rights attaching to them;
- ▶ historical information about the market prices of its securities for at least the last two years;
- ▶ a description of the issuer's dividend or distribution policy and information about the issuer's dividend or distribution history;
- ▶ copies of media releases the issuer makes and contact details for enquiries from shareholders, analysts or the media;
- ▶ contact details for its share registry; and
- ▶ links to download shareholder forms, such as transfer and transmission forms, dividend or distribution reinvestment plan forms etc.

## RECOMMENDATION 8.2

8.2 An issuer should allow investors the ability to easily communicate with the issuer, including providing the option to receive communications from the issuer electronically.

### Commentary

Each issuer should aim to allow investors and other financial market participants to gain a greater understanding of the issuer's business, governance, financial performance and prospects.

Shareholders should be specifically given an opportunity to express their views to the issuer on important issues.

Electronic communication is now commonplace and often more convenient for investors. An issuer should ensure that it has a modern communication framework in place so investors can receive communications in a manner that best suits them, such as webcasting.

An issuer should have an investor relations programme outlining how the issuer plans to engage with investors and encourage their input.

An issuer should have appropriate policies in place to encourage shareholder participation at meetings, which should ensure:

- ▶ meetings are held at times and locations that are convenient to shareholders and by providing clear notice; and
- ▶ the CEO should attend the Annual Meeting

### RECOMMENDATION 8.3

8.3 Quoted equity security holders should have the right to vote on major decisions which may change the nature of the issuer in which they are invested.

#### Commentary

NZX's mandatory Listing Rules outline specific requirements in respect of obtaining quoted equity security holder approval. This recommendation reflects the general principle that companies are run primarily for the benefit of shareholders as the owners of the company and shareholders should be entitled to vote on the key decisions impacting the company.

If an issuer seeks security holder approval for a transaction requiring approval under the mandatory Listing Rules, the issuer should disclose whether the approval was obtained, and the voting outcomes announced under NZX Listing Rule 3.19.1(a), when next reporting against the NZX Code.

### RECOMMENDATION 8.4

8.4 If seeking additional equity capital, issuers of quoted equity securities should offer further equity securities to existing equity security holders of the same class on a pro rata basis, and on no less favourable terms, before further equity securities are offered to other investors.

#### Commentary

Boards of issuers are responsible for considering the interests of all existing financial product holders when assessing their capital raising options. When practical, issuers should favour capital raising methods that provide existing equity security holders with an opportunity to avoid dilution by participating in the offer.

As such, a pro rata offer should be the preferred approach as this gives all equity security holders the option to take up their entitlements to avoid dilution.

This recommendation does not seek to inhibit issuers offering equity securities to employees (including executive directors), as the primary purpose of such incentives is not to raise capital.

If an issuer raises capital by a means other than a pro rata offer (e.g. placement or share purchase plan), the issuer should explain why such capital raising method was preferred when next reporting against the NZX Code.

## RECOMMENDATION 8.5

8.5 The board should ensure that the notices of annual or special meetings of quoted equity security holders is posted on the issuer's website as soon as possible and at least 20 working days prior to the meeting.

### Commentary

As part of encouraging shareholder participation in meetings, clear meaningful information about the matters to be addressed at the meetings should be provided to shareholders with sufficient notice in advance of the meeting. Information should be provided at least 20 working days in advance of a meeting to allow sufficient time for shareholders to consider such information.

If an issuer circulates a notice of meeting less than 20 working days in advance of the meeting in question, the issuer should explain why less than 20 working days' notice was given for that meeting when next reporting against the NZX Code.

## Appendix 2

# Results Announcement

### Full Year Results Announcement:

The following information must be contained in each Results Announcement given in respect of a full year:

- 1 Information prescribed by NZX from time to time. This information must be identified as “Results for announcement to the market” and must be placed in the format as specified by NZX from time to time.
- 2 The following information, which may be presented in whatever way the Issuer considers is the most clear and helpful to users, e.g., combined with the body of the announcement, combined with notes to the financial statements, or set out separately.
  - (a) A statement of financial performance.
  - (b) A statement of financial position. The statement of financial position may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals.
  - (c) A statement of cash flows. The statement of cash flows may be condensed but must report as line items each significant form of cash flow.
  - (d) Details of individual and total dividends or distributions and dividend or distribution payments, which:
    - (i) have been declared, and
    - (ii) relate to the period (in the case of ordinary dividends or ordinary dividends and special dividends declared at the same time) or were declared within the period (in the case of special dividends).
  - (e) A statement of movements in equity.
  - (f) Net tangible assets per Quoted Equity Security with the comparative figure for the previous corresponding period.
  - (g) A commentary on the results for the period. The commentary must be sufficient for the user to be able to compare the information presented with equivalent information for previous periods. The commentary must take account of those Classes of Financial Products that are Quoted and include any significant information needed by an investor to make an informed assessment of the entity’s activities and results, which may include but not be limited to discussion of the following.
    - (i) The earnings per Quoted Equity Security and the nature of any dilution aspects.
    - (ii) Returns to shareholders including distributions and buy backs.
    - (iii) Significant features of operating performance.
    - (iv) The results of segments that are significant to an understanding of the business as a whole.
    - (v) A discussion of trends in performance.
    - (vi) The Issuer’s dividend policy.

- (vii) Any other factors which have affected the results in the period or which are likely to affect results in the future, including those where the effect could not be quantified.
- (h) A statement as to whether the announcement is based on financial statements which have been audited, are in the process of being audited, or have not yet been audited and:
  - (i) If the financial statements have not yet been audited and are likely to be subject to qualification, a description of the likely qualification; or
  - (ii) If the financial statements have been audited, a statement of any qualifications that the auditors have made to those financial statements;

## Half-Year Results Announcement

The following information must be contained in each Result Announcement in respect of a half year:

- 1 Information prescribed by NZX from time to time. This information must be identified as “Results for announcement to the market” and must be placed in the format as specified by NZX from time to time.
- 2 The following information, which may be presented in whatever way the Issuer considers is the most clear and helpful to users, e.g., combined with the body of the announcement, combined with notes to the financial statements, or set out separately.
  - (a) A statement of financial performance
  - (b) A statement of financial position, which may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals.
  - (c) A statement of cash flows, which may be condensed but must report as line items each significant form of cash flow.
  - (d) Details of individual and total dividends or distributions and dividend or distribution payments, which:
    - (i) have been declared; and
    - (ii) relate to the period (in the case of ordinary dividends or ordinary dividends and special dividends declared at the same time) or were declared within the period (in the case of special dividends).
  - (e) A statement of movements in equity.
  - (f) Net tangible assets per Quoted Equity Security with the comparative figure for the previous corresponding half year period.
  - (g) A commentary on the results for the half year period. The commentary must be sufficient for the user to be able to compare the information presented with equivalent information for previous half year periods. The commentary must take account of those Classes of Financial Products that are Quoted and include any significant information needed by an investor to make an informed assessment of the entity’s activities and results, which may include but not be limited to discussion of the following.
    - (i) The earnings per Quoted Equity Security and the nature of any dilution aspects.
    - (ii) Returns to shareholders including distributions and buy backs.

- (iii) Significant features of operating performance.
  - (iv) A discussion of trends in performance.
  - (v) the Issuer's dividend policy.
  - (vi) Any other factors which have affected the results in the half year period or which are likely to affect results in the future, including those where the effect could not be quantified.
- (h) A statement as to whether the announcement is based on audited or unaudited half year financial statements and, if the financial statements have been audited, a statement of any qualifications that the auditors have made to those financial statements.

### **Full Year and Half-Year Results Announcement**

All Results Announcements must comply with the following requirements:

- 1 All statements must be prepared in compliance with applicable Financial Reporting Standards or the equivalent foreign accounting standards.
- 2 A statement of the accounting policies (if any) that the directors believe are critical to the portrayal of the Issuer's financial condition and results and which require the directors to make judgements and estimates about matters that are inherently uncertain.
- 3 If there has been any material change in accounting policies applied in preparation of the statements reflected in the announcement, it must disclose the impact of the change.
- 4 If the financial statements have been audited, a copy of the audit report should be provided with the announcement.
- 5 The announcement may include any additional facts, figures or interpretative notes that the Issuer wishes to include, and must include any additional information required by any applicable financial reporting standard or necessary to ensure the announcement is not misleading.





# Appendix 3

## Takeover Provisions

### 1.1 Interpretation

1.1.1 In this Appendix 3 unless the context otherwise requires:

<b>Acquisition Notice</b>	has the meaning given in paragraph 1.6.1.
<b>Affected Group</b>	means: <ul style="list-style-type: none"><li>(i) that group of persons who do not receive the Transfer offer or invitation (unless the non- receipt is inadvertent)</li><li>(ii) if the Transfers are not of an equal proportion of all holdings which are offered for disposal, the groups comprised of Transferors whose Transfers represent substantially identical proportionate parts of the holdings offered by them; and</li><li>(iii) those persons who are not covered by (i) or (ii) and are not the Transferees or other persons whose Relevant Interests would be taken into account in determining whether the Transfer is a Restricted Transfer</li></ul>
<b>Affected Securities</b>	has the meaning given in paragraph 1.6.1.
<b>Compulsory Acquisition Provisions</b>	means provisions in the Governing Document of an Issuer complying with paragraph 1.6.1 to paragraph 1.6.6.
<b>Default by a holder of Equity Securities of an Issuer</b>	means non-compliance with the Minority Veto Provisions in the Governing Document of the Issuer.
<b>Defaulter</b>	means a person with who has acquired a Relevant Interest in the Quoted Equity Securities in breach of the Minority Veto Provisions (other than a breach committed by the Issuer itself or its Directors).
<b>Differential Offer</b>	means an offer, or invitation to agree on Transfers, which:

- (a) is made to some but not all holders of a Class of Equity Securities, or
- (b) entitle any person other than to the benefit of NZX, or to exercise, the rights and powers provided in Rule 9.12, or would result in different prices or other terms applying among holders of the same Class of Equity Securities, or
- (c) would result in the Transfer of different proportions of those holdings of Equity Securities of the same Class which are offered for disposal.

**Enforcement Provisions**

means provisions in the Governing Document of an Issuer complying with paragraph 1.5.1 to paragraph 1.5.7 inclusive and paragraph 1.7.

**Majority Holder**

has the meaning given in paragraph 1.6.1.

**Minority Veto Provisions**

means paragraphs 1.4.1 to 1.4.10.

**Remaining Holders**

has the meaning given in paragraph 1.6.1

**Restricted Transfer**

means:

- (a) a Transfer which would result in the Votes controlled by any person or group of persons who are Associated Persons of each other, of any Class of Quoted Equity Securities of an Issuer:
  - (i) exceeding 20% of the Votes attached to that Class, or
  - (ii) if the person or group of persons controls 20% or more of the Votes attached to that Class, increasing by more than 5% in any period of 12 months excluding increases as a result of Transfers pursuant to a Restricted Transfer notice previously given by the person or group of persons, together with
- (b) any other Transfer which is likely to be contemporaneous with, or subsequent to, the Transfer in sub-paragraph (a) of this definition and



comprises with that Transfer part of a scheme or linked series of transactions:

However, the purposes of this definition, acquisition of interests in Equity Securities of an Issuer may be disregarded:

- (a) where it is determined by NZX that the acquisition was involuntary and occasioned by the action of another party over which the acquiring party had no effective control or influence in the matter; or
- (b) where, and to the extent that, it is determined by NZX that the aggregation of holdings among Associated Persons would include holdings of persons who have no practical likelihood of acting in concert, or exercising Votes or otherwise acting in collusion, with each other or any common party:

This definition will not apply:

- (a) where the Transfer is between two entities, one of which is directly or indirectly wholly owned beneficially by the other, or both of which are directly or indirectly wholly owned beneficially by the same entity; or
- (b) where the Transfer is in performance of the obligations of an underwriter pursuant to an underwriting agreement disclosed in an Offer Document for an offering of the relevant Class of Quoted Equity Securities.

## **Transfer**

in relation to an Equity Security includes sale of that Security, and the grant of rights or interests, whether conditional or not, which are intended to create for the recipient benefits which are substantially equivalent to ownership of that Security (or of an interest in that Security). In particular it includes:

- (a) a transaction whereby one party disposes of, alienates, or proposes to dispose of or alienate (temporarily or permanently), any interest or right of title to any Equity Security or in the Votes, dividends or income arising in respect of any Equity Security;



- (b) any agreement, arrangement or understanding in respect of Equity Securities under which the Votes attaching to them may be exercised by a person other than the registered holder, alone or jointly with the registered holder, or with other persons acting in concert, other than by reason of a bona fide appointment of a proxy or other representative for voting purposes under which the appointment may be terminated at will, and the appointor is entitled, if the appointor so wishes, to direct the proxy as to the manner in which Votes are to be cast;
- (c) any transaction whereby the holder of the Equity Securities enters into a commitment (whether conditional or unconditional) to sell the Equity Securities, or to grant an option over them or any part thereof, or at any future time to grant
- (d) the creation of a charge or other security interest enforceable by a right of possession or a power of sale or other disposition which would fall within other parts of this definition of “Transfer”, other than the creation of such an interest for bona fide financing purposes; or
- (e) any transaction, agreement or arrangement that has substantially the same effect as (a), (b), (c) or (d) above,

but excludes the issue, or acquisition, of Equity Securities by the Issuer in accordance with the Rules.

**Transferor and Transferee** have corresponding meanings

## 1.2 Restricted and Defensive Measures

1.2.1 Subject to paragraph 1.2.3, no Issuer may do anything or omit to do anything that could effectively result in:

- (a) a Restricted Transfer being frustrated; or
- (b) the holders of Quoted Equity Securities being denied an opportunity to decide on the merits of a Restricted Transfer.

1.2.2 Paragraph 1.2.1 does not prevent the directors of the Issuer taking steps to encourage competing bona fide offers from other persons.



- 1.2.3 An Issuer may take or permit the kind of action referred to paragraph 1.2.1, if:
- (a) the action has been approved by an Ordinary Resolution;
  - (b) the action is taken or permitted under a contractual obligation entered into by the Issuer, or in the implementation of proposals approved by the directors of the Issuer, and the obligations were entered into, or the proposals were approved, before the Issuer received notice of a Restricted Transfer or became aware that it was imminent; or
  - (c) if paragraphs (a) and (b) do not apply, the action is taken or permitted for reasons unrelated to the Restricted Transfer with the prior approval of NZX.

### 1.3 **Governing Document Provisions**

- 1.3.1 The Governing Document of each Issuer that is not a Code Company must contain or incorporate by reference:
- (a) Minority Veto Provisions;
  - (b) Enforcement Provisions; and
  - (c) Compulsory Acquisition Provisions.

### 1.4 **Minority Veto Provisions**

- 1.4.1 No Restricted Transfer of Quoted Equity Securities may take place unless notice is given to the Issuer, and to NZX for release to the market at least 15 Business Days before the Transfer, containing the following particulars:
- (a) the price or consideration, either specified as a fixed amount or expressed as a range with the higher price or consideration being not greater than 20% more than the lower price or consideration of that range;
  - (b) any conditions or arrangements directly or indirectly associated with the Transfer which could be material to the assessment of the price or price range by prospective Transferors of the Equity Securities;
  - (c) identification of the Class, and the maximum number of Equity Securities and percentage of the relevant Class, to which the Transfer proposal relates;
  - (d) the identity of all persons reasonably expected to acquire Relevant Interests in the Equity Securities as a result of the Transfer proposal;
  - (e) the number of Equity Securities (expressed in each case as a percentage of the total number in each relevant Class of Equity Securities) which will be held, or in which Relevant Interests will be held, upon completion of the proposed transactions, by each Transferee and Associated Persons of each Transferee;



- (f) the times within which the Transfers are intended to occur;
  - (g) how the Transfers are to be effected (for example, through NZX's order matching market, by widespread direct offer, private treaty, etc);
  - (h) the date the notice is given.
- 1.4.2 Any change in, or addition to, particulars notified under paragraph 1.4.1 must be made by giving a notice of change. Each such notice must be given at least two Business Days before the change takes effect in the case of a change to price or amount of consideration, and at least 15 Business Days before the change takes effect in the case of a change to any other particulars listed in paragraph 1.4.1, including without limitation the nature of the consideration.
- 1.4.3 Directors of an Issuer whose Quoted Equity Securities are the subject of a notice under paragraph 1.4.1 must give notice as soon as can be achieved, and before the expiry of the notice period referred to in paragraph 1.4.1:
- (a) whether any Director or Associated Person of a Director is expected by any Director to be a Transferee in the notified transaction;
  - (b) whether there is any Material Information pertaining to the Issuer which any Director believes is likely to be available to any Transferee in the proposed transaction, which has not been made generally available to the market;
  - (c) whether any Director considers there is any undisclosed Material Information which should materially affect the decision of a reasonably informed prospective Transferor in the proposed Transfer and, if so, an indication whether the Director would consider the Transfer to be made more or less desirable to the prospective Transferor by the Material Information; and
  - (d) a statement as to the timing, and expected significance of any further action, investigation, report, or disclosure which the Directors or any of them, intend to make in response to the relevant proposals for Transfers.
- 1.4.4 The Directors of an Issuer whose Quoted Equity Securities are the subject of a notice under paragraph 1.4.1, or who become aware that a Restricted Transfer proposal is more likely than not in the immediate future, must:
- (a) take all steps necessary to ensure that they and the Issuer are in a position to respond to the offer as required by these Rules, including under Rule 3.1;
  - (b) not be relieved of their disclosure obligations under these Rules by reason of a conflict of interest arising from involvement as or with a prospective Transferee or Transferor, but such Directors must disclose in any notice or statement the nature of their possible conflict;



- (c) in the case of a conflict of interest or of views as to how to proceed, if necessary release separate statements or notices to inform NZX promptly, with appropriate explanation; and
- (d) ensure that holders of the relevant Equity Securities are well informed to consider competitive offers for the control of Votes attached to the Equity Securities where there is any reasonable prospect of competition emerging to the completion of a Restricted Transfer proposal.

1.4.5 The Directors must, promptly and without delay upon a notice being given under paragraph 1.4.1 in respect of that Restricted Transfer or notice being given paragraph 1.4.2 in respect of that Restricted Transfer where the change relates to a change in the nature of the consideration offered, commission an Appraisal Report in respect of that Restricted Transfer. That report may contain such reasonable qualifications and limitations as are needed to recognise the deadlines within which it is required to be produced. That report must be:

- (a) delivered to NZX for release to the market at least two Business Days before expiration of the relevant notice, accompanied by a summary (approved by the appraiser) suitable for release to the market; and
- (b) copied to the Issuer and to any holder of Quoted Equity Securities of the Issuer upon request; and
- (c) dispatched to all holders of Equity Securities to whom the offer may be made at least three Business Days before the expiration of the relevant notice.

1.4.6 The requirement for an Appraisal Report in paragraph 1.4.5 does not apply if:

- (a) all Transferors consent to waive the requirement; or
- (b) a majority of the Disinterested Directors certify that in their opinion the cost and difficulty of providing the Appraisal Report will outweigh the benefit, because prospective Transferors are not at an information disadvantage in relation to prospective Transferees and their Associated Persons or because the Appraisal Report would not materially remedy any such information prejudice.

For the purposes of this provision, “**Disinterested Directors**” means Directors who are not involved as prospective Transferors (in relation to a proposal for a Differential Offer) or as Transferees, and who are not Associated Persons of any such Transferors or Transferees.

1.4.7 If a Restricted Transfer is not completed within three months of the notice required to be given under paragraph 1.4.1, or any status report given under this paragraph 1.4.7 then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer must be provided to the Issuer and NZX for release to the market. The additional market information must include:

- (a) when the Restricted Transfer is intended to be completed; and

- (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.
- 1.4.8 On receipt of the information provided under paragraph 1.4.7, the Directors of the Issuer must promptly and without delay advise NZX:
- (a) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or the response initially provided under paragraph 1.4.5; and
  - (b) that the Issuer is complying with Rule 3.1.
- 1.4.9 Except with the approval by Ordinary Resolution of each Affected Group:
- (a) all Transfers involved in a Restricted Transfer must be pursuant to an offer in writing to all holders of Equity Securities of any Class which is the subject of the proposed Restricted Transfer, on the same terms; and
  - (b) the Transfers must not result from Differential Offers.
- 1.4.10 Upon the giving of a notice under paragraph 1.4.1, or a notice under paragraph 1.4.2 where the change relates to a change in the nature of the consideration offered the Directors must commission a report from an independent appropriately qualified person previously approved by NZX. That report must:
- (a) be addressed to the holders of Equity Securities of the Class or Classes the subject of the Restricted Transfer referred to in the notice;
  - (b) express the opinion of the appraiser as to the consideration and other terms of the proposed transaction; and
  - (c) comply with the provisions of Rule 7.10.2(e), Rule 7.10.2(f), Rule 7.10.2(g), and Rule 7.10.2(h) as if that report were an Appraisal Report.

The provisions of paragraph 1.4.5(a), paragraph 1.4.5(b) and paragraph 1.4.5(c) apply to the report as if it were an Appraisal Report required by that provision.

## 1.5 Enforcement Provisions

- 1.5.1 An Issuer may, following a Default, exercise a power described in paragraph 1.5.2(a) or paragraph 1.5.2(b) in respect of all or any Quoted Equity Securities in which the Defaulter has a Relevant Interest (“**Defaulter’s Securities**”).
- 1.5.2 In the event of a Default:
- (a) no Vote may be cast on a poll, and if it is cast must be disregarded, on Defaulter’s Securities while the Default is unremedied;





- (b) a Defaulter's Securities may be sold by the Issuer. This power may not be exercised until one month after the Issuer has given notice to the Defaulter of its intention to exercise this power. It must not be exercised if, during that month:
  - (i) the Defaulter has remedied the Default (where it can be remedied); or
  - (ii) the Defaulter has transferred its Relevant Interest in the Defaulter's Securities to a person who is not a Defaulter.

If the power to sell is exercised, the Issuer may sell the Defaulter's Securities through NZX, or in some other manner approved by NZX, and must account to the holder of those Equity Securities for the proceeds of sale after deduction of all sale expenses. The Issuer is deemed to be authorised to take all steps, and sign all documents, necessary to effect the sale of the Defaulter's Securities.

- (c) neither the Issuer nor its Directors will be liable to a Defaulter or apparent Defaulter for or in connection with the exercise or purported exercise of the powers permitted by this paragraph 1.5.2;
- (d) the Issuer will have a lien on the Defaulter's Securities for, and deduct from the proceeds of sale pursuant to paragraph 1.5.2(b), any costs to the Issuer of determining whether a person is a Defaulter and exercising powers permitted by this paragraph 1.5.2;
- (e) the Issuer may treat as its costs for the purposes of paragraph 1.5.2(d) preceding, reimbursement by it of expenses of members of any Affected Group acting pursuant to paragraph 1.5.3; and
- (f) if NZX makes a Ruling dealing with the matters dealt with by this Appendix 3, or with provisions of the Governing Document of the Issuer required or permitted by this Appendix 3, that Ruling is binding upon the Issuer and all holders of Equity Securities of the Issuer, and will take effect as if that Ruling were itself incorporated in the Governing Document.

1.5.3 The Issuer must, if so directed by Ordinary Resolution of an Affected Group, exercise the power referred to in paragraph 1.5.2(b), if that power has become exercisable. The holders of 5% or more of the Equity Securities of an Affected Group may by notice to the Issuer require the Directors of the Issuer to convene a meeting of the Affected Group for the purpose of considering such a resolution.

1.5.4 An Issuer must use reasonable endeavours to ascertain for the purposes of paragraph 1.5.2(a) whether any Equity Securities are Defaulter's Securities, and accordingly whether a holder of those Securities is entitled to vote. If any holder of Equity Securities of the Issuer, or NZX, alleges that any Equity Securities are Defaulter's Securities, the Issuer must properly consider and investigate that allegation.

1.5.5 The ruling of the chairperson of any meeting as to whether any holder of Equity Securities is or is not entitled to vote at that meeting pursuant to paragraph 1.5.2(a)

will, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting will not be impugned by reason of a breach of paragraph 1.5.2(a). This provision does not prejudice any action which any person may have against the holder of any Equity Securities by reason of that holder having cast a Vote at any meeting in breach of paragraph 1.5.2(a).

- 1.5.6 Subject to paragraph 1.5.7, the sole remedy of an Issuer, a holder of Equity Securities of an Issuer, a Director of an Issuer, or any other person, in respect of a breach or alleged breach of this Appendix 3, or of provisions in the Governing Document of an Issuer required or permitted by this Appendix 3, is to exercise, or require the Directors of the Issuer to exercise, the powers referred to in paragraph 1.5.2(a) and paragraph 1.5.2(b). Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of the provisions referred to in that sentence.
- 1.5.7 Nothing in paragraph 1.5.6 affects the remedies of a holder of Equity Securities of an Issuer against the Directors of that Issuer in respect of a breach of this Appendix 3, or the provisions of the Governing Document referred to in paragraph 1.5.6, by that Director.
- 1.5.8 NZX (in this paragraph 1.5.8 an “**Arbiter**”) may, for the purposes of making a Ruling as to whether any person is a Defaulter, give notice to any person who the Arbiter believes may be a Defaulter. That notice must:
- (a) set out in general terms the grounds on which the Arbiter believes that person to be a Defaulter; and
  - (b) require that person, within a reasonable time specified in the notice, to produce evidence to rebut the Arbiter’s belief that that person is a Defaulter.

If the person to whom the notice is given fails within the time specified in the notice to produce to the Arbiter evidence satisfactory to the Arbiter that that person is not a Defaulter, then the Arbiter is entitled to assume without further evidence that that person is a Defaulter, and to make a Ruling to that effect.

## 1.6 **Compulsory Acquisition Provisions**

- 1.6.1 If a person, or a group of Associated Persons, acquires beneficial ownership of 90% or more of a Class of Quoted Equity Securities of an Issuer, that person or group of persons (the “**Majority Holder**”) must, within 20 Business Days after that circumstance arises, give notice (the “**Acquisition Notice**”) to all other holders (the “**Remaining Holders**”) of Equity Securities of that Class (“**Affected Securities**”) and at the same time to the Issuer and NZX, provided that when calculating the total number of Quoted Equity Securities in that Class, Treasury Stock will not be regarded as part of that Class.

1.6.2 The Acquisition Notice must specify:

- (a) that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
- (b) either:
  - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
  - (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
- (c) the consideration to be provided by the Majority Holder for Affected Securities.

1.6.3 Upon giving an Acquisition Notice, the Majority Holder is entitled and bound:

- (a) if the Acquisition Notice contains the statement in paragraph 1.6.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
- (b) if the Acquisition Notice contains the statement in paragraph 1.6.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.

1.6.4 The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire will be determined as follows:

- (a) the Acquisition Notice must specify the consideration which the Majority Holder is prepared to provide. The Majority Holder must, before giving the Acquisition Notice, provide to NZX a report from an independent appropriately qualified person, previously approved by NZX, confirming that that consideration is fair to the Remaining Holders, using the same criteria set out in paragraph (c)(iv) of this provision;
- (b) if, within 10 Business Days after the date of the Acquisition Notice, the Issuer receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the consideration will be determined in accordance with (c) and (d). If objections are received, the Issuer must promptly and without delay notify the Majority Holder and NZX of that fact. If such objections are not received, the consideration will be as specified in the Acquisition Notice;



- (c) if objections of the nature referred to in (b) are received by the Issuer, the consideration will be determined by an independent appropriately qualified person. That person must:
  - (i) be a different person from the person referred to in (a); and
  - (ii) act as an expert and not as an arbitrator; and
  - (iii) be directed to provide a decision within 20 Business Days after his or her appointment; and
  - (iv) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Issuer as a whole and the rights and obligations attached to those Equity Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority Holder, their respective holdings in the Issuer or the relative extent of those holdings; and
  - (v) be appointed by the disinterested Directors (as defined in paragraph 1.4.6) of the Issuer (if any, and otherwise by the Directors of the Issuer) after approval by NZX;
- (d) if the consideration determined by the person appointed in accordance with (c):
  - (i) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that person will be borne by the Remaining Holders who made the objections referred to in (b);
  - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person will be borne by the Majority Holder.

If the fee and expenses of that person is to be borne by the objectors in terms of (i), the Majority Holder may deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash).

1.6.5 If a Majority Holder fails to give an Acquisition Notice, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this paragraph 1.6, fails to do so, then the provisions of paragraph 1.5.1 to paragraph

1.5.5 will apply with the following modifications:

- (a) the Affected Securities held by the Majority Holder are deemed to be Defaulter's Securities;
- (b) the failure to comply with this paragraph 1.6 will be deemed to be a Default; and

- (c) the Remaining Holders will be deemed to be an Affected Group.

1.6.6 The Governing Document must also contain provisions:

- (a) providing for the payment or provision of consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if consideration requires to be determined pursuant to paragraph 1.6.4, within 2 Business Days after the consideration is determined;
- (b) providing for the consideration payable to Remaining Holders who cannot be found to be held in trust for those holders for at least five years; and
- (c) providing for the Issuer, upon payment or provision of the consideration, to execute transfers on behalf of the Remaining Holders, and to take all other steps necessary to transfer to the Majority Holder the Affected Securities of the Remaining Holders.

1.7 **Holding By Bare Trustee**

1.7.1 For all purposes of this Appendix 3, and notwithstanding anything in this Appendix 3:

- (a) the Transfer of Quoted Equity Securities, or of any interest in Quoted Equity Securities, to a bare trustee is deemed to be a Transfer to the person or persons for whom that bare trustee holds those Equity Securities or that interest as trustee (the “**Beneficial Owners**”);
- (b) Quoted Equity Securities, or any interest in Quoted Equity Securities, held by a bare trustee are deemed to be held by the Beneficial Owners; and
- (c) a trustee may be a bare trustee notwithstanding that that trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.

1.7.2 Without limiting paragraph 1.7.1:

- (a) a bare trustee and a Beneficial Owner will not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;
- (b) a bare trustee of Quoted Equity Securities will not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Quoted Equity Securities; and
- (c) a Beneficial Owner of Quoted Equity Securities does not have a Relevant Interest in the Quoted Equity Securities of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.



- 1.7.3 In the event of a Default, if any Quoted Equity Securities held by a person as bare trustee on behalf of different Beneficial Owners include any Defaulter's Securities:
- (a) the bare trustee must, on request by the Issuer or NZX, provide to the Issuer and NZX details of the Beneficial Owners of those Defaulter's Securities; and
  - (b) the Issuer may at any time, and must upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Securities are separately designated in the register recording those Quoted Equity Securities.



# Appendix 4

## Mining Issuer Disclosure

### 1.1 Announcements by Mining issuers

1.1.1 In this Appendix 4, unless the context otherwise requires:

<b>JORC Code</b>	means the 2012 edition of the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia available from <a href="http://www.jorc.org">http://www.jorc.org</a>
<b>Mining Issuer</b>	means an Issuer that is principally engaged in the exploration for, or extraction of, any mineral, oil or natural gas, and includes an Issuer which holds, as a principal part of its business or assets, an interest or interests in any mining tenement
<b>Mining Tenement</b>	includes an exploration licence and any mineral, oil, or natural gas lease or concession
<b>Permit</b>	means a permit in terms of the Crown Minerals Act 1991.

1.1.2 Where an unlisted company or entity is the operator of a mining tenement in joint venture with a Mining Issuer, the Mining Issuer must ensure that the contract between the parties creates an obligation on the operator to disclose immediately and fully report to the Mining Issuer any significant discovery. In addition, the Mining Issuer must secure the right to make all or part of such information available to NZX. The objective of these provisions is to avoid the establishment of a false market in the Mining Issuer's Equity Securities and to ensure that any Material Information in relation to the Mining Issuer is disclosed promptly and without delay.

1.1.3 Where a Mining Issuer reports on the progress of any geophysical survey, the report must state:

- (a) the name of the survey
- (b) the nature of the survey
- (c) the Permit in which the survey is being conducted, and
- (d) the status of the survey.

1.1.4 A Mining Issuer must give to NZX within one month after the end of each calendar year quarter a report providing all the information prescribed by NZX together with full details of production, development and exploration activities (including geophysical surveys) and expenditure incurred thereon. Where there has been no such activity, that fact must be stated.

## 1.2 Hydrocarbon Reports

1.2.1 Hydrocarbon Definitions: In this Appendix 4, unless the context otherwise requires:

<b>Hydrocarbon</b>	means a compound of the elements hydrogen and carbon, in either liquid or gaseous form. Natural gas and petroleum are mixtures of hydrocarbons
<b>Hydrocarbon Reserves</b>	means proved hydrocarbon reserves, probable hydrocarbon reserves or possible hydrocarbon reserves
<b>Possible Hydrocarbon Reserves</b>	means reserves less well defined by geological and geophysical control than probable hydrocarbon reserves and consist of extensions to the proved and probable hydrocarbon reserves areas where so indicated by geophysical and geological studies.  The probability generally assigned to these reserves would be 25% but may be higher or lower
<b>Probable Hydrocarbon Reserves</b>	means those reserves that may be reasonably assumed to exist because of geophysical or geological indications and which may become capable of commercial extraction at some future time. There is equal risk of there being larger or smaller volumes of reserves resulting
<b>Proved Hydrocarbon Reserves</b>	means those reserves that, to a high degree of certainty, are recoverable, at commercial rates under presently anticipated production methods, operating conditions, prices and costs. There is relatively little risk associated with these reserves.

1.2.2 Probable hydrocarbon reserves may only be reported in conjunction with proved hydrocarbon reserves. Possible hydrocarbon reserves may only be reported in conjunction with proved and probable hydrocarbon reserves.

1.2.3 Any report which relates to a Mining Issuer's hydrocarbon reserves must be based on and state that it is based on, or be accompanied by, a statement of information compiled by a person holding a Bachelor Degree (or its equivalent) in geology, geophysics, petroleum engineering or a related discipline and who, in addition, has had



at least five years' experience in the practice or the teaching of geology, geophysics or petroleum engineering.

Where that person is:

- (a) not a full-time employee of the Mining Issuer, a report may be released only with the person's consent and a statement in writing that the information has been faithfully presented in form and context, or
- (b) a full-time employee of the reporting Mining Issuer, it must be stated that the report accurately reflects the information compiled by the person.

1.2.4 Where a report relates to the potential hydrocarbon reserve state (i.e. from the earliest exploratory investigations to the stage preceding that at which proved hydrocarbon reserves can be estimated), the word "reserves" must not be used.

1.2.5 A Mining Issuer must also provide to NZX weekly before 9.00am on a Business Day, the following information on hydrocarbon exploration and assessment during drilling and testing operations:

- (a) the name of the well, the Permit in which it is located, and its position in the Permit with respect to previous wells, known oil or gas fields or towns
- (b) the time of reporting
- (c) the progress for the past week
- (d) current operation
- (e) any results of drill stem tests and other flow tests where hydrocarbons are recovered to surface, in accordance with paragraph 1.2.7, and
- (f) the participating companies and their beneficial percentage interest in the well.

1.2.6 Where exploratory investigations have reached the stage where a hydrocarbon reserve can be estimated, reports must use the categories of hydrocarbon reserves defined in this Appendix 4.

1.2.7 A report must be issued on the day that:

- (a) a decision is made to flow test an interval of the well, advising of the decision and the depth and gross interval to be tested
- (b) flow test operations commence, advising of such, and
- (c) hydrocarbons are flowing to surface.

Within 24 hours of the completion of flow test operations over the test interval, a report must be issued which includes:

- (d) depth and interval tested
- (e) representative sustained flow rate (if achieved)
- (f) choke size and representative surface flowing pressure (if achieved), and
- (g) summary description of fluids recovered.

1.2.8 A report required under paragraph 1.2.7 need not be released if:

- (a) a reasonable person would not expect the information to be disclosed
- (b) the information is confidential and its confidentiality is maintained, and
- (c) the release of the information would be a breach of law.

### 1.3 **Ore and Mineralisation Reports**

1.3.1 Where a report relates to the pre-identified mineral resources stage as described in the JORC Code, the words “ore”, “reserves” or “resources” must not be used and in lieu of such words such a report may refer to “mineralization” or some similar term having no economic connotation.

1.3.2 Reports and statements in the field of mineral exploration and assessment which may be made by a Mining Issuer during the pre-resource mineralisation stage must include relevant basic data such as the type and method of sampling and the distribution, dimensions, assay results and relative location of all relevant samples. If true dimensions, particularly width or mineralisation, are not stated, the report must be qualified accordingly.

1.3.3 References to geophysical or geochemical results must refer only to “anomalies” and not to “mineralization”, “ore”, “reserves”, “resources” or similar terms.

1.3.4 Assay results must be set out in one of the following three forms considered most suitable by the Mining Issuer’s geologist and/or mining engineer:

- (a) all assay results, with sample widths or size in the case of bulk samples
- (b) the weighted average grade of the mineralised zone, indicating clearly how the grade was calculated, and
- (c) when high values are recorded they must be given in context, with full supporting data.

The type of assay method used must be stated for all assay results submitted to NZX.

1.3.5 Where a report relates to exploratory investigations which have reached the stage where an identified mineral resource or ore reserves can be estimated with reasonable assurance, reports must use the expression for categories of identified mineral resources or ore reserves, as defined in the JORC Code.

1.3.6 Any report which relates to a Mining Issuer's ore or mineralisation must be based on, and state it is based on, or be accompanied by a signed statement to the same effect, information that has been compiled by a competent person, as defined in the JORC Code.

Where the competent person is:

- (a) not a full-time employee of the Mining Issuer, a report may be released only with the person's consent and a statement in writing that the information has been faithfully presented in form and context, or
- (b) a full-time employee of the reporting Mining Issuer, it must be stated that the report accurately reflects the information compiled by the person.

