

# NZX Regulation Decision

Carbon Fund (“CO2”)

Application for waivers from NZX Main Board Listing Rules 3.1.1(a), 3.1.1(b), 3.3.1(a), 3.3.1(c), 3.3.2 to 3.3.4, 3.3.5 to 3.3.15, 3.4.1 to 3.4.3, 3.5.1, 3.5.2, 3.6, Section 4, 5.2.3, 7.3, 7.4, 7.5, 7.6.1 to 7.6.3, 7.11.1, 7.12.1, 9.2, 10.3.2, 10.4.1(b), 10.4.2, and 10.6.1(a)

12 October 2018



1. The information on which the waiver decisions below are based is set out in Appendix One and in the reasons set out for each waiver decision. The waivers will not apply if this information is not, or ceases to be, full and accurate in all material respects.
2. The Rules, and where relevant the associated Appendices to the Rules, to which these decisions relate are set out in Appendix Two to these decisions.
3. Capitalised terms which have not been defined have the meanings given to them in the Rules.

## **Waiver from Rules 3.1.1(a) and 3.1.1(b)**

### **Decision**

4. On the basis that the information provided about the Fund is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from:
  - a. Rule 3.1.1(a) to the extent that it requires the Fund to contain, or incorporate by reference, in its Master Trust Deed or Establishment Deed, the Rules contained in Appendix 6 to the Rules, from which NZX has granted the Fund waivers; and
  - b. Rule 3.1.1(b) to the extent that it requires the Fund to contain, or incorporate by reference, in its Master Trust Deed or Establishment Deed, the Rules contained in Section 4 of the Rules, from which NZX has granted the Fund a waiver.

### **Reasons**

5. In coming to the decision to provide the waivers set out in paragraph 4 above, NZXR has considered that:
  - a. it has granted SIFL waivers from Section 4 of the Rules, and a number of the Rules contained in Appendix 6 to the Rules. These waivers from Rule 3.1.1(a) and 3.1.1(b) are therefore required as a consequence of these other waivers being granted; and
  - b. there is precedent for these decisions.

## **Waivers from Rules 3.3.1(a), 3.3.1(c) and 3.3.2 to 3.3.4**

### **Decision**

6. Subject to the conditions contained in paragraph 7 below, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 3.3.1(a), 3.3.1(c), and 3.3.2 to 3.3.4.
7. The waivers granted in paragraph 6 above are provided on the following conditions:
  - a. SIFL will inform NZXR immediately of any changes or proposed changes to its current board composition, to the independent member(s) of its Compliance Committee, or to the licensed supervisor of the Fund;



- b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and
- c. these waivers, their conditions and their implications are clearly and prominently disclosed in the Fund's half-year and annual report for each year the waivers are relied on.

## Reasons

8. In coming to the decision to provide the waivers set out in paragraph 6 above, NZXR has considered that:
- a. an independent perspective is brought to SIFL's Board decision making by the following:
    - i. SIFL's compliance activities (including adherence to compliance policies and procedures) are supervised by its Compliance Committee. The Compliance Committee is required to have at least one independent external third-party member, who is the chairperson of the Committee and who may nominate other members to the Committee or attendees for specific meetings as he or she sees fit; and
    - ii. as the Fund has been established within a managed investment scheme registered under the FMCA, SIFL is subject to supervision by a licensed independent supervisor in respect of the Fund. Section 127(1)(e) of the FMCA requires both the manager and the supervisor of the scheme to be independent of each other. In addition, SIFL must report certain matters to the Supervisor under the FMCA, Master Trust Deed and a separate management agreement entered into between SIFL and the Supervisor.
  - b. The Supervisor's obligation under the FMCA, Master Trust Deed, and Establishment Deed include supervising:
    - i. the performance by SIFL of its functions and its obligations; and
    - ii. the financial position of SIFL and the Salt Listed Funds.
  - c. SIFL is a licensed managed investment scheme manager under the FMCA. To obtain its license, SIFL had to demonstrate that it meets the minimum standards set by the FMA for that type of licence. The minimum standards include specific standards for governance, covering compliance, culture, and compliance assurance (including a requirement for SIFL's oversight body to consider the adequacy and robustness of its governance and compliance arrangements at least annually);
  - d. as the Salt Listed Funds is registered under the FMCA:
    - i. investors have all of the protections set out in the FMCA (including Part 4); and



- ii. SIFL, its Directors, and its appointed investment manager are bound by the constraints on investments set out in the SIPO, which can only be amended after prior written notice is given to the Supervisor (and compliance with the SIPO is reported to both the Supervisor and the Compliance Committee),
- e. as SIFL and its Directors are required to comply with the specific governance obligations applying to registered schemes under the FMCA (in addition to those set out in the Master Trust Deed), investors in the Fund will have the benefit of investor protections that do not apply to Issuers that are not Managed Investment Schemes and which the requirement for a minimum number of Directors and Independent Directors address;
- f. the directors (and senior managers) of SIFL are subject to the duties set out in Section 145 of the FMCA, which:
  - i. prohibit them from making use of information acquired through being a director (or senior manager) of SIFL in order to gain an improper advantage for themselves or any other person or in order to cause detriment to investors; and
  - ii. prohibit them from making improper use of their position to gain, directly or indirectly, an advantage for themselves or any other person or to cause detriment to investors.
- g. the waivers from Rule 3.3.2 to 3.3.4 are consequential waivers to the waiver from Rule 3.3.1(c);
- h. the condition set out in paragraph 7(c) requires SIFL to provide regular access to information about these waivers and their implications to the market for the period during which SIFL relies on the waivers. Investors can take this information into account when making their investment decision; and
- i. there is precedent for these decisions.

## Waivers from Rules 3.3.5 to 3.3.15

### Decision

9. Subject to the conditions set out in paragraph 10 below, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 3.3.5 to 3.3.15.
10. The waivers granted in paragraph 9 above are provided on following conditions:
  - a. the Master Trust Deed provides Unit Holders with the ability to remove SIFL as manager of the Salt Listed Funds in accordance with the FMCA;
  - b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and



- c. these waivers, their conditions, and their implications are clearly and prominently disclosed in the Fund's half-year and annual report for each year the waivers are relied on.

## Reasons

11. In coming to the decision to provide the waivers set out in paragraph 9 above, NZXR has considered that:

- a. the Rules were drafted with company structures in mind and do not reflect the fact that, as a fund established within a registered scheme under the FMCA, the Fund is structured differently to a company (in that it is managed by a manager under the supervision of a supervisor);
- b. the Rules do not reflect the fact that the appointment and removal of the Directors of the manager of a listed fund is a matter for the shareholders of the manager, rather than a matter for Unit Holders;
- c. the relationship between Unit Holders, the Fund's manager, and the Fund's supervisor is governed by the Master Trust Deed, Establishment Deed, and the FMCA. Copies of the Master Trust Deed and Establishment Deed are available to investors on the online Disclose register, and the FMCA can be accessed online;
- d. Section 185(1)(b) of the FMCA (which is reflected in the Master Trust Deed) sets out a statutory mechanism for removing the manager of the Salt Listed Funds. Accordingly, should Unit Holders be dissatisfied with SIFL's performance, there are alternative mechanisms in the Master Trust Deed which facilitate the removal of SIFL and, with it, all the Directors of SIFL;
- e. the policy rationale behind Rules 3.3.5 to 3.3.15 will still be met as Unit Holders have the ability to remove SIFL as manager of the Fund, as outlined above;
- f. the condition set out in paragraph 10(c) requires SIFL to provide regular access to information about these waivers and their implications to the market for the period during which SIFL relies on the waivers. Investors can take this information into account when making their investment decision; and
- g. there is precedent for these decisions.

## Waivers from Rules 3.4.1 to 3.4.3

### Decision

12. Subject to the conditions contained in paragraph 13, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 3.4.1 to 3.4.3.

13. The waivers granted in paragraph 12 above are provided on the following conditions:

- a. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and

- b. these waivers, their conditions, and their implications are clearly and prominently disclosed in the Fund's half-year and annual report for each year the waivers are relied on.

## Reasons

14. In coming to the decision to provide the waivers set out in paragraph 12 above, NZXR has considered that:
- a. as a fund within a registered scheme, the Fund is structured differently to a company, and is managed by a licensed manager under the supervisor of a licensed supervisor. The appointment of Directors to the manager of a listed fund is a matter for the shareholders of that manager, and not Unit Holders (who have the benefit of the powers outlined in paragraph 11) and therefore the restriction in Rule 3.4.1 is not relevant;
  - b. given SIFL's role in relation to the Fund is set out in the Master Trust Deed and FMCA, NZXR considers that the additional restrictions of Rules 3.4.1 and 3.4.2 are not required;
  - c. due to the structure of the Fund, every Director of SIFL may be deemed to be "interested" in matters relating to the Fund (which would result in all Directors being prohibited from voting);
  - d. the Master Trust Deed and the FMCA contain provisions and restrictions in relation to decision making, specific director duties, and related party transactions in respect of the Fund. In addition, SIFL's management of the Fund is independently overseen by NZGT and the Compliance Committee. Accordingly, SIFL has submitted, and NZXR has no reason not to agree, that there are sufficient safeguards against potential conflicts; and
  - e. there is precedent for these decisions.

## Waivers from Rules 3.5.1 to 3.5.2

### Decision

15. Subject to the conditions contained in paragraph 16, and on the basis that the information provided is complete and accurate in material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 3.5.1 and 3.5.2.
16. The waivers granted in paragraph 15 above are provided on the following conditions:
- a. the Master Trust Deed provides Unit Holders with the ability to remove SIFL as manager of the Salt Listed Funds in accordance with the FMCA;
  - b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and



- c. the Fund clearly and prominently discloses this waiver, its conditions and its implications in its half-year report and annual report for each year the waiver is relied on.

## Reasons

17. In coming to the decision to provide the waiver set out in paragraph 15 above, NZXR has considered that:
- a. the policy behind Rules 3.5.1 and 3.5.2 is to ensure that Directors cannot seek to reward themselves without sufficient scrutiny by an Issuer's Security Holders. SIFL receives a fee of 0.95% per annum of the Fund's gross asset value, which can only be increased (subject to a cap of 2% per annum of the Fund's gross asset value) after SIFL gives at least one month's notice to all Unit Holders and to NZGT. Directors' fees will be paid out of this fee. Information on the fee, including SIFL's ability to change the fee, is available to investors as it is disclosed in the Offer Documents for the offer of Units in the Fund;
  - b. any change to Directors' remuneration will not directly alter the return available to investors, unless there is a change to the fee that SIFL receives. The provisions of the Master Trust Deed and the FMCA, and the responsibilities of the NZGT, as disclosed in the Offer Documents for the offer of Units in the Fund, protect the interests of Unit Holders. In addition, the condition contained in paragraph 16(a) will ensure that there is a mechanism in the Master Trust Deed to facilitate the removal of the SIFL as manager should Unit Holders be dissatisfied with the fee being paid to SIFL; and
  - c. there is precedent for these decisions.

## Waiver from Rule 3.6

### Decision

18. Subject to the conditions contained in paragraph 19, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 3.6.
19. The waiver granted in paragraph 18 is provided on the following conditions:
- a. SIFL, as manager of the Fund, has the responsibilities and obligations set out in clauses 1 to 3 of Schedule 13 to the FMCR;
  - b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and
  - c. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waivers are relied on.



## Reasons

20. In coming to the decision to provide the waiver set out in paragraph 18 above, NZXR has considered that:
- a. as a fund established within a registered scheme under the FMCA, there are additional protections in terms of oversight of financial reporting apply in respect of the Fund. In particular, Regulation 84(1) of the FMCR implies clauses 1 to 3 of Schedule 13 to the FMCR into the governing document for a registered scheme (the Master Trust Deed and Establishment Deed, in the case of the Fund). These provisions require the manager of a registered scheme to discharge many of the responsibilities set out in Rule 3.6, and to report matters to the Fund's supervisor;
  - b. as the Fund has been established within a registered scheme under the FMCA, SIFL is subject to additional reporting obligations in respect of the Fund, including to provide quarterly reports to NZGT and to report material issues to NZGT (neither of which is ordinarily required by a company structure);
  - c. in the particular circumstances of the Fund, where there is an independent Compliance Committee chairperson and a licensed independent supervisor with oversight responsibilities, there is little additional benefit in also requiring the oversight of an Audit Committee;
  - d. the Fund has been granted a non-standard designation. Accordingly, potential investors have it brought to their attention that SIFL does not comply with all of the requirements of the Rules in respect of the Fund; and
  - e. there is precedent for this decision.

## Waiver from Section 4

### Decision

21. Subject to the conditions in paragraph 22, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Section 4 of the Rules.
22. The waiver granted in paragraph 21 is provided on the following conditions:
- a. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and
  - b. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waivers are relied on.





## Reasons

23. In coming to the decision to provide the waiver set out in paragraph 21 above, NZXR has considered that:
- a. the requirements in Section 4 of the Rules provide protections similar to those under the New Zealand Takeovers Code for non-code companies. The takeover requirements provide protection for minority interests where there are attempts to change the effective control of a company;
  - b. the structure of the Fund (as a fund within a registered scheme under the FMCA) is such that SIFL effectively controls the Fund (subject to NZGT's powers and duties as supervisor of the Fund), in accordance with the responsibilities, powers, and obligations set out in the Master Trust Deed and FMCA. In accordance with the Master Trust Deed and FMCA, Unit Holder rights in respect of the Fund are more limited than ordinary shareholders in a company;
  - c. a takeover offer for Units would not generally affect the control of the Fund, as the power to control the Fund will generally remain with SIFL and NZGT. While Unit Holders have the power to remove SIFL and NZGT, any new manager or trustee can only act within the powers, rights and obligations as set out in the Master Trust Deed and FMCA;
  - d. accordingly, the provisions of Section 4 of the Rules are not appropriate or necessary in the context of the Fund; and
  - e. there is precedent for this decision.

## Waiver from Rule 5.2.3

### Decision

24. Subject to the conditions contained in paragraph 25, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 5.2.3 in respect of the Units, for a period of 12 months, to the extent that Rule requires the Units to be held by at least 500 Members of the Public, with each Member of the Public holding at least a Minimum Holding.
25. The waiver granted in paragraph 24 is provided on the following conditions:
- a. the Fund discloses liquidity as a risk in the Offer Documents for the offer of the Units during the period of this waiver;
  - b. this waiver, its conditions and its implications are clearly and prominently disclosed in both the Fund's half-year and annual report for each year the waivers are relied on;



- c. this waiver, its conditions, and the implications of this waiver are clearly and prominently disclosed in the Offer Documents for the offer of Units during the period this waiver is relied on;
- d. SIFL ensures that the total number of Members of the Public holding Units and the percentage of Units held by Members of the Public holding at least a Minimum Holding is monitored at the end of each quarter;
- e. during the period of this waiver, SIFL provides NZXR with a written quarterly update of the total number of Members of the Public holding Units holding at least a Minimum Holding and the percentage of Units held by Members of the Public holding at least a Minimum Holding. The updates are to be provided to NZXR within ten Business Days of the end of each quarter; and
- f. the nature of the Fund's business and operations do not materially change from those described the Offer Documents for the offer of Units in the Fund;

## Reasons

26. In coming to the decision to provide the waiver set out in paragraph 24 above, NZXR has considered that:
- a. the policy behind Rule 5.2.3 is to promote a liquid market which is important to ensure efficient price setting and to enable Security holders to trade. NZXR recognises that the nature of the Units means the Units will likely not be subject to the same degree of trading activity as ordinary shares. Further, given the unit pricing mechanisms set out in the Master Trust Deed, liquidity is less of a factor in terms of efficient price setting;
  - b. SIFL has indicated that it expects that the number of Members of the Public holding Units will increase over time, as the offer progresses and more Units are issued;
  - c. the conditions in paragraphs 25(a), (b), and (c) require SIFL to give access to information about this waiver and its implications to potential subscribers for Units for the period of this waiver;
  - d. the conditions in paragraphs 25(d) and (e) require SIFL to monitor the spread of the Units and to provide information that will allow NZXR to monitor any material reductions in the spread of Units over the period of the waiver and to reconsider this waiver, if it believes it necessary;
  - e. the waiver is granted for a period of 12 months. This gives NZXR the opportunity to reconsider the spread of the Units in 12 months' time if SIFL considers that a waiver is still required;



- f. the Fund has been granted a non-standard designation. Accordingly, potential investors have it brought to their attention that the Fund does not comply with all of the requirements of the Rules; and
- g. there is precedent for this decision.

## Waiver from Rule 7.3

### Decision

27. Subject to the conditions contained in paragraph 28, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 7.3.
28. The waiver granted in paragraph 27 is provided on the following conditions:
- a. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year and annual report for each year the waivers are relied on;
  - b. SIFL issues, acquires, and redeems Units in the Fund in accordance with the Master Trust Deed and Establishment Deed; and
  - c. the ability for SIFL to issue further Units in the Fund is clearly disclosed in the Offer Documents for the offer of Units during the period of this waiver.

### Reasons

29. In coming to the decision to provide the waiver set out in paragraph 27 above, NZXR has considered that:
- a. the policy of Rule 7.3 is that there should be limits on the issue of Equity Securities where the issue will lead to the dilution of a shareholders' investment. The granting of this waiver does not offend the policy of this Rule;
  - b. the Unit pricing mechanism set out in the Master Trust Deed and Establishment Deed ensure, to the extent practicable, that new Unit Holders will not dilute the holdings of existing Unit Holders;
  - c. as the Fund is an open-ended fund, there is no maximum number of Units that can be issued, and Units will continue to be issued on an ongoing basis, as set out in the Offer Documents for the offer of Units. Accordingly, investors are provided with information that Units will be issued on an ongoing basis, which is clearly disclosed in the Offer Documents; and
  - d. there is precedent for this decision.



## Waiver from Rule 7.4

### Decision

30. Subject to the conditions contained in paragraph 31, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 7.4.
31. The waiver granted in paragraph 30 is provided on the following conditions:
- a. SIFL issues, acquires, and redeems Units in the Fund in accordance with the Master Trust Deed and Establishment Deed; and
  - b. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waiver is relied on.

### Reasons

32. In coming to the decision to provide the waiver set out in paragraph 30 above, NZXR has considered that:
- a. Rule 7.4 requires that any Equity Security issued, which confers a right to securities of a third party, cannot be issued except in accordance with Rule 7.3. SIFL has been granted a waiver in respect of the Fund from Rule 7.3, as per paragraph 27 above;
  - b. Unit Holders will have beneficial rights to the underlying assets held by or on behalf of NZGT in respect of the Fund, some of which may be Securities. As a result, this may trigger Rule 7.4 and, but for a waiver, it is unclear how the issue of Units on an ongoing basis could meet the requirements of Rule 7.4;
  - c. Unit Holders' beneficial interest in the Fund's assets is a term of the offer of Units which is clearly disclosed in the PDS for the offer of Units in the Fund; and
  - d. there is precedent for this decision.

## Waiver from Rule 7.5

### Decision

33. Subject to the conditions contained in paragraph 34, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 7.5.
34. The waiver granted in paragraph 33 is provided on the following conditions:
- a. the Fund remains a PIE;



- b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund;
- c. SIFL issues, acquires, and redeems Units in the Fund in accordance with the Master Trust Deed and Establishment Deed; and
- d. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waiver is relied on.

## Reasons

35. In coming to the decision to provide the waiver set out in paragraph 33 above, NZXR has considered that:

- a. Rule 7.5 provides added protection for Security holders where a proposed change in the holdings of an Issuer may lead to a change in effective control of the Issuer. The granting of this waiver does not offend the policy of this Rule;
- b. the structure of the Fund (as a fund within a registered scheme under the FMCA) is such that SIFL effectively controls the Fund (subject to NZGT's powers and duties as supervisor of the Fund), in accordance with the responsibilities, powers, and obligations set out in the Master Trust Deed and FMCA. In accordance with the Master Trust Deed and FMCA, Unit Holder rights in respect of the Fund are more limited than ordinary shareholders in a company, meaning that a change to Unit holdings will not generally change control of the Fund;
- c. although Units are generally not redeemable for cash, the Master Trust Deed and Establishment Deed provide a mechanism for SIFL to allow the redemption of Units in the future (with that ability being at all times subject to SIFL's duty to act in the best interests of Unit Holders). The ability to redeem Units is a term of the offer of Units and is set out in the Offer Documents for the offer of Units;
- d. in addition, the Fund is a PIE and, as such, there are limits on the size of holdings by individual Unit Holders. NZXR acknowledges that, but for these waivers, the Rules would operate to restrict SIFL's ability to redeem Units, or take other action immediately, in order for the Fund to remain PIE compliant. The terms and conditions for redemption of the Units are set out in the Master Trust Deed and Establishment Deed;
- e. SIFL's ability to redeem Units or take other action to ensure that the Fund remains compliant with the PIE regime has been disclosed in the Offer Documents for the offer of Units in the Fund. Investors can take this information into account when making their investment decision; and
- f. SIFL also has the ability to redeem Units in other circumstances, including at the request of Unit Holders, as set out in the Master Trust Deed.



## Waivers from Rules 7.6.1 to 7.6.3

### Decision

36. Subject to the conditions contained in paragraph 37, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 7.6.1 to 7.6.3.
37. The waivers granted in paragraph 36 are provided on the following conditions:
- a. the Fund remains a PIE;
  - b. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund;
  - c. SIFL issues, acquires, and redeems Units in the Fund in accordance with the Master Trust Deed and Establishment Deed; and
  - d. these waivers, their conditions, and their implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waivers are relied on.

### Reasons

38. In coming to the decision to provide the waivers set out in paragraph 36 above, NZXR has considered that:
- a. although Units are generally not redeemable for cash, the Master Trust Deed and Establishment Deed provide a mechanism for SIFL to allow the redemption of Units in the future (with that ability being at all times subject to SIFL's duty to act in the best interests of Unit Holders). The ability to redeem Units is a term of the offer of Units and is set out in the Offer Documents for the offer of Units;
  - b. in addition, the Fund is a PIE and, as such, there are limits on the size of holdings by individual Unit Holders. NZXR acknowledges that, but for these waivers, the Rules would operate to restrict SIFL's ability to redeem Units, or take other action immediately, in order for the Fund to remain PIE compliant. The terms and conditions for redemption of the Units are set out in the Master Trust Deed and Establishment Deed;
  - c. SIFL's ability to redeem Units or take other action to ensure that the Fund remains compliant with the PIE regime has been disclosed in the Offer Documents for the offer of Units in the Fund. Investors can take this information into account when making their investment decision;
  - d. the Fund has been granted a non-standard designation. Accordingly, potential investors have it brought to their attention that the Fund does not comply with all of the requirements of the Rules; and
  - e. there is precedent for these decisions.



## Waiver from Rule 7.11.1

### Decision

39. Subject to the conditions contained in paragraph 40, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 7.11.1.
40. The waiver granted in paragraph 39 is provided on the following conditions:
- a. SIFL issues, acquires, and redeems Units in the Fund in accordance with the Master Trust Deed and Establishment Deed; and
  - b. the Offer Documents for the offer of Units in the Fund clearly discloses SIFL's ability to defer the processing of applications for Units during the period of this waiver.

### Reasons

41. In coming to the decision to provide the waiver set out in paragraph 39 above, NZXR has considered that:
- a. the issue of Units will ordinarily occur on a weekly basis, meaning that in some circumstances (depending on when a valid application is received and accepted by SIFL) there will be situations where the issue of Units does not occur within five Business Days after the latest date on which applications for Units close (as required by Rule 7.11.1;)
  - b. in addition, there may be situations where SIFL considers it necessary or desirable to defer processing applications;
  - c. the timeframes within which Units will ordinarily be issued and the circumstances in which applications can be deferred are set out in the Master Trust Deed and Establishment Deed;
  - d. the condition in paragraph 40(b) ensures that the Offer Documents for the offer of Units in the Fund discloses the timeframes within which Units will ordinarily be issued and SIFL's ability to defer applications for Units. Investors can take this information into account when making their investment decision; and
  - e. there is precedent for this decision.



## Waiver from Rule 7.12.1

### Decision

42. Subject to the conditions contained in paragraph 43, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 7.12.1 in respect of the issue of Units in the Fund.
43. The waiver granted in paragraph 42 is provided on the following conditions:
- a. Units are issued in accordance with the Master Trust Deed and Establishment Deed; and
  - b. SIFL announces the issue of Units under Rule 7.12.1 no less frequently than on the first Business Day of each month (unless no Units have been issued during the relevant period, in which case no announcement is required).

### Reasons

44. In coming to the decision to provide the waiver set out in paragraph 42 above, NZXR has considered that:
- a. as set out above, the unit pricing mechanism set out in the Master Trust Deed and Establishment Deed ensures, to the extent practicable, that new Unit Holders will not dilute the holdings of existing Unit Holders;
  - b. in addition, the Fund is an open-ended fund, meaning that Units will be issued on an ongoing basis, with issues intended to occur on a weekly basis;
  - c. as the issue or redemption of Units will not generally have any impact on the holdings of remaining Unit Holders, the administrative burden associated with providing the details required by Rule 7.12.1 is not justified by the benefit to the market of that information being released;
  - d. the condition set out in paragraph 43(b) will ensure that the market is informed on a regular basis of the number of Units on issue; and
  - e. there is precedent for this decision.

## Waiver from Rule 9.2

### Decision

45. Subject to the condition contained in paragraph 46, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 9.2 to the extent that the Rule may require SIFL in respect of the Fund to seek Unit Holder approval for:



- a. the entry into any agreement under which Salt is appointed as investment manager of the Fund;
  - b. the entry into or implementation of any transaction under that agreement; or
  - c. the payment of fees to SIFL in accordance with the Master Trust Deed and Establishment Deed.
46. The waiver granted in paragraph 45 is provided on the condition that the payment of fees and expenses to SIFL, and the appointment of Salt as investment manager for the Fund, is clearly disclosed in the Offer Documents for the offer of Units.

## Reasons

47. In coming to the decision to provide the waiver set out in paragraph 45 above, NZXR has considered that:
- a. Rule 9.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer;
  - b. the Master Trust Deed and the FMCA govern the payment of fees and expenses to SIFL and the entry into transactions that provide for a related party benefit to be given. There is a general prohibition on entering into a transaction that provides for a related party benefit (within the meaning of the FMCA) to be given, subject to the exceptions set out in the FMCA;
  - c. SIFL receives a fee of 0.95% per annum of the Fund's gross asset value, which can only be increased (subject to a cap of 2% per annum of the Fund's gross asset value) after SIFL gives at least one month's notice to all Unit Holders and NZGT. Salt's fees will be paid out of this fee. Information on the fee, including SIFL's ability to change the fee, is available to investors as it is disclosed in the Offer Documents for the offer of Units in the Fund;
  - d. the condition of the waiver requires the disclosure of SIFL's fee and the appointment of Salt as investment manager in the Offer Documents for the offer of Units in the Fund. This disclosure provides prospective Unit Holders with sufficient advanced notice of those matters. Prospective Unit Holders are then able to make a fully informed decision about investing into the Fund;
  - e. the arrangements detailed in paragraph 45 are instrumental to the establishment and operation of the Fund; and
  - f. there is precedent for this decision.



## Waivers from Rules 10.3.2, 10.4.1(b), and 10.4.2

### Decision

48. Subject to the conditions contained in paragraph 49, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, waivers from Rules 10.3.2, 10.4.1(b), and 10.4.2.
49. The waivers granted in paragraph 48 are provided on the following conditions:
- a. SIFL must provide Unit Holders in the Fund with the current net asset value of the Fund at least weekly; and
  - b. SIFL must include the following information in its half-year report:
    - i. the current net asset value of the Fund;
    - ii. a statement of financial performance;
    - iii. a statement of cash flows;
    - iv. statements of movement in Unit Holder funds;
    - v. a statement of financial position;
    - vi. a statement of accounting policies adopted in the reporting period; and
    - vii. any major changes in value of assets, as per Listing Rule 10.3.2.

### Reasons

50. In coming to the decision to provide the waivers set out in paragraph 48 above, NZXR has considered that:
- a. the Rules were drafted with company structures in mind and do not reflect the fact that, as a fund established within a registered scheme under the FMCA, the Fund is structured differently to a company, with different information being important for investors;
  - b. in light of those differences, NZXR considers it appropriate to grant waivers from Rules 10.3.2, 10.4.1(b), and 10.4.2 in respect of the Fund, subject to SIFL complying with the alternative disclosure conditions set out in paragraph 49; and
  - c. there is precedent for these decisions.



## Waiver from Rule 10.6.1(a)

### Decision

51. Subject to the conditions contained in paragraph 52, and on the basis that the information provided is complete and accurate in all material respects, NZXR grants SIFL, as manager of the Fund, a waiver from Rule 10.6.1(a) to the extent that the Rule would require SIFL to notify NZX of any proposal to issue Equity Securities.
52. The waiver granted in paragraph 51 is provided on the following conditions:
- a. the nature of the Fund's business and operations do not materially change from those described in the Offer Documents for the offer of Units in the Fund; and
  - b. this waiver, its conditions, and its implications are clearly and prominently disclosed in the Fund's half-year report and annual report for each year the waivers are relied on.

### Reasons

53. In coming to the decision to provide the waiver set out in paragraph 51 above, NZXR has considered that:
- a. Rule 10.6.1(a) ensures information is provided to the market where there is a change to the capital structure of the Issuer. The granting of this waiver does not offend the policy of this Rule;
  - b. as set out above, the unit pricing mechanism set out in the Master Trust Deed and Establishment Deed ensures, to the extent practicable, that new Unit Holders will not dilute the holdings of existing Unit Holders. Accordingly, the information that would otherwise be provided under Rule 10.6.1(a) is less relevant for investors;
  - c. also as set out above, the Fund is an open-ended fund, meaning that Units will be issued on an ongoing basis, with issues intended to occur weekly. The condition of the waiver from Rule 7.12.1, as set out in paragraph 43(b), will ensure that the market is informed on a regular basis of the number of Units on issue; and
  - d. there is precedent for this waiver.

## Confidentiality

54. SIFL has requested that this application and any decision be kept confidential until the Offer Documents for the offer of the Fund is registered and the FMA's consideration period under sections 65 and 66 of the FMCA has expired.
55. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants SIFL's request.



## Appendix One

1. Salt Investment Funds Limited (**SIFL**) is the licensed manager (**Manager**) of the Salt Investment Funds, a registered scheme under the Financial Markets Conduct Act 2013 (**FMCA**) comprising three unlisted managed funds.
2. SIFL intends to establish a new scheme, the Salt Listed Funds (**Scheme**), and to establish the Carbon Fund (**Fund**) within that scheme. Units in the Fund (**Units**) are intended to be quoted on the NZX Main Board (**Main Board**).
3. The Fund has sought a number of waivers in order to comply with the Main Board Listing Rules (**Rules**).
4. Due to these waivers, the Fund has been designated as Non-Standard in terms of its Listing on the Main Board.

### Structure of the Fund

5. The authorised investments for the Fund are:
  - a. Carbon credits traded in the NZ Emissions Trading Scheme (**NZ ETS**);
  - b. Carbon credits traded in international emissions trading schemes;
  - c. Derivatives (either exchange traded or over-the-counter) including but not limited to swaps, interest rate and forward rate contracts, forward foreign exchange contracts, options and futures contracts;
  - d. Units and other prescribed interests in unit trusts or other pooled funds that invest in the investment referred to above, including unit trusts managed by SIFL or its related parties, irrespective of whether the trust or fund is listed on the Main Board and/or the Australian Securities Exchange; and
  - e. Cash or cash equivalent securities including bank accounts, term deposits and other certificates of deposit, commercial paper and government bills.

(together, the **Authorised Investments**).

6. The Fund's investment objective is to provide investors with a total return exposure to movements in the price of carbon credits including via the NZ ETS. The NZ ETS is the New Zealand government's primary response to reducing New Zealand's greenhouse gas emissions. Its objective is to support and encourage global efforts to reduce greenhouse gas emissions by reducing New Zealand's net emissions and assisting New Zealand to meet its international obligations. The Manager must invest in accordance with the Fund's statement of investment policies and objectives (**SIPO**).
7. Any investment directly into the Fund is converted into Units in the Fund. By purchasing Units in the Fund, investors' money is pooled together, and Salt then invests that money in underlying investments. Returns that it receives on its Authorised Investments are reflected in changes to the Unit value, and the price that holders of the Units (**Unit Holders**) receive

when they sell their Units (or redeem them, if the Manager permits). All Units in the Fund have equal value.

8. The Fund will be a Portfolio Investment Entity (**PIE**) for tax purposes. As a PIE, the Fund must meet certain qualifying criteria. These criteria include limits on the size of holdings by individual Unit Holders. Accordingly, the Manager may be required to transfer, redeem or treat as void ab initio Units in order for the Fund to remain PIE compliant. Further, should the Manager be required to take such remedial action, this will need to be undertaken immediately and without delay.
9. Other persons involved in the Fund are as follows:
  - a. The New Zealand Guardian Trust Company Limited will be the supervisor of the Fund (**NZGT** or the **Supervisor**);
  - b. Salt Funds Management Limited (**Salt**), SIFL's parent company, will be the investment manager of the Fund; and
  - c. Link Market Services Limited will provide registry services for the Fund and MMC Limited will provide other administration services for the Fund.
10. The Scheme is governed by a master trust deed (**Master Trust Deed**), and an establishment deed for the Fund (**Establishment Deed**), entered into between SIFL and NZGT.
11. An investor's Units represent that investor's proportionate holding of the Fund's net assets, but they do not give an investor legal ownership of, or any direct right to, those underlying assets.
12. The Units are generally not redeemable for cash. However, the Master Trust Deed and Establishment Deed provide a mechanism for SIFL to allow the redemption of Units in the future (with that ability being at all times subject to SIFL's duty to act in the best interests of Unit Holders). The ability to redeem Units is a term of the offer of Units and is set out in the Offer Documents for the offer of Units;

### **The proposed offer of Units in the Carbon Fund**

13. SIFL proposes to first offer Units in the Fund via an initial offer period, with Units issued during the initial offer period to be quoted on the Main Board on the Fund's listing date. The purpose of the initial offer period is to build up some critical mass and to ensure that there are Units available for quotation on the Fund's listing date.
14. There is no minimum size offer for the Fund.
15. Following listing, Units in the Fund will continue to be issued (i.e., the Fund will be a Open-Ended Fund). Units will be issued on a weekly basis, although the Master Trust Deed gives SIFL up to five business days to make a decision in respect of applications, and permits SIFL to defer the processing of applications in certain circumstances, such as:
  - a. Processing of an application pending receipt of cleared funds; and/or



- b. Processing of applications received during the initial offer period, which may be postponed until after the expiry of the initial offer period.
16. Units will be offered via a product disclosure statement (**PDS**) prepared in accordance with the FMCA and Financial Markets Conduct Regulations 2014 (**FMCR**). The PDS should be read along with the SIPO and the Other Material Information document (together, the **Offer Documents**).
17. As a licensed manager, SIFL will be subject to the governance and disclosure requirements of the FMCA in relation to the Fund and the offer of Units in the Fund (including the requirement to have a SIPO in place for the Salt Listed Funds which covers the Fund). SIFL has also established a compliance committee (**Compliance Committee**) to supervise its compliance activities (including adherence to compliance policies and procedures). The Compliance Committee is required to have at least one independent external third-party member, who is the chairperson of the Committee and who may nominate other members to the Committee or attendees for specific meetings as he or she sees fit. Salt has also established an equivalent compliance committee.
18. Further information on the governance and compliance arrangements in place in respect of SIFL and the Fund are set out in the Reasons for each waiver decision disclosed in this document.



## Appendix Two

### Rule 3.1 Contents of Constitution

3.1.1 The Constitution of each Issuer shall:

- (a) either incorporate by reference or contain provisions consistent with, and having the same effect as, the provisions listed in Appendix 6, as such provisions apply from time to time and as modified by any Ruling relevant to the Issuer; and
- (b) in the case of any Issuer which is not a Code Company, either incorporate by reference or contain the provisions required by Section 4; and

### APPENDIX 6

#### PROVISIONS REQUIRED TO BE CONTAINED IN OR INCORPORATED BY REFERENCE IN AN ISSUER'S CONSTITUTION (Rule 3.1.1(a))

Rule 3.3.1 to Rule 3.3.4

Rule 3.3.7 to Rule 3.3.10

Rule 3.4.1

Rule 3.4.3 to Rule 3.4.4

Rule 6.3.2

Rule 9.3.1 to Rule 9.3.3

Rule 9.3.5

And, in the case of an Issuer that is not a company incorporated under the Companies Act 1993, Rule 8.3.1

### Rule 3.3 Appointment and Rotation of Directors

3.3.1 The composition of the Board shall include the following:

- (a) the minimum number of Directors (other than alternate Directors) shall be three; and
- (c) the minimum number of Independent Directors shall be two or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.

3.3.2 The Board must identify which Directors it has determined, in its view, to be Independent Directors.

3.3.3 The Board must make a determination under Rule 3.3.2:



- (a) no later than 10 Business Days following an appointment of a Director by Security holders. Immediately after making such a determination the Issuer shall release to the market whether the Board has determined that the Director is an Independent Director unless a determination by the Board in relation to that Director was disclosed under Rule 10.4.5(l) in the most recently published annual report; and
- (b) no later than 10 Business Days following appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the Issuer shall release to the market whether the Board has determined that such Director is an Independent Director; and
- (c) prior to publication of its annual report to enable it to comply with Rule 10.4.5(l).

3.3.4 It is the responsibility of the Issuer to make the necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under Rule 3.3.2.

3.3.5 No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.3.5. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An Issuer shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the Issuer before the closing date for nominations shall be given by the Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Issuer shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director.

3.3.6 Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the Issuer, but shall be eligible for election at that meeting.

3.3.7 No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of his or her co-Directors. That appointment may be revoked by a majority of his or her co-Directors or by the Director who appointed the alternate. A Director may not be appointed to act as alternate for another Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

3.3.8 The Constitution may give a Security holder the right to appoint Directors, so long as:

- (a) the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the Issuer attaching to Securities held by the appointer; and





(b) if the appointer exercises its rights to appoint Directors, then the appointer has no right to Vote upon the election of other Directors.

3.3.9 No term of appointment of an Executive Director of an Issuer or any of its Subsidiaries, shall exceed five years. This provision shall not preclude reappointment of an Executive Director upon expiry of a term of appointment, and shall not affect the terms of the engagement of that Executive Director as an employee.

3.3.10 All Directors (other than a Director appointed pursuant to Rule 3.3.8) shall be subject to removal from office as Director by Ordinary Resolution of the Issuer.

3.3.11 Subject to Rule 3.3.12, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.

3.3.12 The following Directors shall be exempt from the obligation to retire pursuant to Rule 3.3.11:

(a) Directors appointed pursuant to Rule 3.3.8; and

(b) Directors appointed by the Directors, who are offered for re-election pursuant to Rule 3.3.6; and

(c) one Executive Director (if the Constitution so provides).

The Directors referred to in (a) and (c) shall be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.11 is based. The Directors referred to in (b) shall be excluded from that number.

3.3.13 No resolution to appoint or elect a Director (including a resolution to re-elect any Director under Rule 3.3.6) shall be put to holders of Securities unless:

(a) the resolution is for the appointment of one Director; or

(b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been approved without a Vote being cast against it.

Nothing in this Rule 3.3.13 prevents the election of two or more Directors by ballot or poll.

3.3.14 An Issuer may, with the prior approval of NZX, provide in its Constitution for the appointment of a person to a special office such as "Founder President". If the person holding that office is a Director, then (subject to Rule 3.3.15) all of the provisions of the Rules as to Directors shall apply to that person.

3.3.15 A holder of a special office in terms of Rule 3.3.14 who is also a Director shall not be subject to retirement by rotation under Rule 3.3.11, provided that:

(a) the holder of a special office shall retire every fifth year following appointment to the special office, as if Rule 3.3.11 applied to him or her in that year; and



- (b) the holder of the special office shall in each year be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.11 is based; and
- (c) if an Executive Director holds office and is exempted from retirement by rotation under Rule 3.3.12, this Rule shall not apply, and the holder of the special office shall be subject to retirement by rotation under Rule 3.3.11.

### **3.4 Proceeding and Powers of Directors**

- 3.4.1 Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by the Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Issuer, but for no other purpose.
- 3.4.2 In cases where two Directors form a quorum, the chairperson of a meeting at which only two Directors are present shall not have a casting vote.
- 3.4.3 Subject to Rule 3.4.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an Issuer is not a company registered under that Act, the reference to the “company” in that section shall be read as a reference to the Issuer.

### **3.5 Directors’ Remuneration**

- 3.5.1 No remuneration shall be paid to a Director of an Issuer by that Issuer or any of its Subsidiaries in his or her capacity as a Director of the Issuer or any of its Subsidiaries unless that remuneration has been authorised by an Ordinary Resolution of the Issuer, other than remuneration paid to a Director by a Subsidiary that has Equity Securities Quoted. Each such resolution shall express Directors' remuneration as either:
  - (a) a monetary sum per annum payable to all Directors of the Issuer taken together; or
  - (b) a monetary sum per annum payable to any person who from time to time holds office as a Director of the Issuer.

Such a resolution may expressly provide that the remuneration may be payable either in part or in whole by way of an issue of Equity Securities, provided that issue occurs in compliance with Rule 7.3.8.

If remuneration is expressed in accordance with (a), then in the event of an increase in the total number of Directors of the Issuer holding office, the Directors may, without the authorisation of an Ordinary Resolution of the Issuer, increase the total remuneration by such amount as is necessary to enable the Issuer to pay to the additional Director or Directors of the Issuer remuneration not



exceeding the average amount then being paid to each of the other non-Executive Directors (other than the chairperson) of the Issuer.

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a general meeting of the Issuer unless notice of the amount of increase has been given in the notice of meeting. Nothing in this Rule 3.5.1 shall affect the remuneration of Executive Directors in their capacity as executives.

Directors' remuneration for work not in the capacity of a Director of the Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to Rule 9.2 (if applicable).

- 3.5.2 An Issuer may make a payment to a Director or former Director of that Issuer, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution of the Issuer provided that an Issuer may make a payment to a Director or former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution of the Issuer provided that the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Issuer.

Nothing in this Rule 3.5.2 shall affect any amount paid to an Executive Director upon or in connection with the termination of his or her employment with the Issuer, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

### **3.6 Audit Committee**

- 3.6.1 Each Issuer shall establish an Audit Committee.

- 3.6.2 The Audit Committee shall:

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

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

- (a) ensuring that processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters; and
- (b) recommending the appointment and removal of the independent auditor; and



- (c) meeting regularly to monitor and review the independent and internal auditing practices; and
- (d) having direct communication with and unrestricted access to the independent and any internal auditors or accountants; and
- (e) reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations; and
- (f) ensuring that the external auditor or lead audit partner is changed at least every five years.

## **Section 4 – Takeover Provisions for Issuers Which Are Not Code Companies**

### **4.1 Interpretation**

4.1.1 In this Section 4 unless the context otherwise requires:

**Acquisition Notice** has the meaning given in Rule 4.8.1.

**Affected Group** means:

- (a) in respect of a Restricted Transfer effected otherwise than by trades matched through NZX's order matching market each of:
  - (i) the group comprised of persons who are not recipients (disregarding inadvertent nonreceipt) of the offer or invitation which would implement the proposed Transfers;
  - (ii) if the Transfers are not of an equal proportion of all holdings which are offered for disposal, the groups comprised of Transferees whose Transfers represent substantially identical proportionate parts of the holdings offered by them; and
  - (iii) the group comprised of persons who are not members of the groups described in (i) and (ii) and who are not the Transferees and other persons whose Relevant Interests would be taken into account in determining whether the Transfer is a Restricted Transfer, but disregarding the proviso to the definition of Restricted Transfer;
- (b) in respect of a Restricted Transfer effected by trades matched through NZX's order matching market, the group comprised of those other than:
  - (i) the persons whose control of Votes would in aggregate determine whether the Transfer is a Restricted Transfer; and
  - (ii) insiders.

**Affected Securities** has the meaning given in Rule 4.8.1.



<b>Compulsory Acquisition Provisions</b>	means provisions in the Constitution of an Issuer complying with Rule 4.8.1 to Rule 4.8.6 inclusive.
<b>Default by a holder of Equity Securities of an Issuer</b>	means non-compliance with Notice and Pause Provisions, or Minority Veto Provisions, in the Constitution of the Issuer.
<b>Defaulter</b>	means a person with a Relevant Interest in Quoted Equity Securities of an Issuer who has acquired that Relevant Interest in breach of Notice and Pause Provisions or Minority Veto Provisions (other than a breach committed by the Issuer itself or its Directors).
<b>Director</b>	includes in relation to an Issuer that is a Managed Investment Scheme a Director of the Manager.
<b>Differential Offer</b>	means an offer, or invitation to agree on Transfers, which: <ul style="list-style-type: none"> <li>(a) is made to some but not all holders of a Class of Equity Securities;</li> <li>(b) or entitle any person other than to the benefit of NZX, or to exercise, the rights and powers provided in Rule 2.3; or</li> <li>(c) would result in different prices or other terms applying among holders of the same Class of Equity Securities; or</li> <li>(d) would result in the Transfer of different proportions of those portions of holdings of Equity Securities of the same Class which are offered for disposal.</li> </ul>
<b>Effective Date</b>	means 1 July 2001 or any other date on which the Takeovers Code comes into force.
<b>Enforcement Provisions</b>	means provisions in the Constitution of an Issuer complying with Rule 4.7.1 to Rule 4.7.7 inclusive and Rule 4.9.
<b>Insider</b>	means in respect of an Issuer: <ul style="list-style-type: none"> <li>(a) Directors or Associated Persons of Directors;</li> <li>(b) persons who hold Material Information of the Issuer which has not been disclosed to the market.</li> </ul>
<b>Majority Holder</b>	has the meaning given in Rule 4.8.1.
<b>Minority Veto Provisions</b>	has the meaning given in Rule 4.6.1.



**Notice and Pause Provisions** has the meaning given in Rule 4.5.1.

**Relevant Group** in respect of an Issuer means each of the groups comprising;

- (a) holders of Securities who are Members of the Public; and
- (b) holders of Securities who are not Members of the Public;

in each Class of Quoted Equity Securities of that Issuer the rights of which are governed by the Constitution of that Issuer.  
Remaining Holders has the meaning given in Rule 4.8.1.

**Restricted Transfer** means:

- (a) the 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 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:

Provided that for 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:

Provided also that this definition shall 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 Offering Document, Prospectus or Register Entry for an offering of the relevant Class of Quoted Equity Securities.

**Special Resolution** means a resolution passed by a majority of 75% of Votes of holders of Equity Securities entitled to vote and voting.

**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 any of the rights referred to above;
- (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 meaning

4.1.2 Subject to Rule 4.1.3 and Rule 4.1.4, as from the Effective Date nothing in this Section shall apply in respect of any Issuer which is a Code Company.

4.1.3 This Section 4 shall continue to apply in respect of any non-compliance with this Section 4 which occurred before the Effective Date.

4.1.4 Rule 4.8 shall continue to apply in respect of a Code Company if:

(a) Rule 4.8.1 applies in respect of that Code Company before the Effective Date; and

(b) Part 7 of the Code does not apply in respect of that Code Company.

If Rule 4.8 continues to apply in respect of a Code Company by virtue of this Rule 4.1.4, Rule 4.7.1 to Rule 4.7.5 shall also continue to apply in the circumstances recorded in Rule 4.8.5.

## **4.2 Restricted and Defensive Measures**

4.2.1 Except as permitted or required by Rule 4.3 no Issuer may:

(a) include in its Constitution any provision; or

(b) do anything or omit to do anything;

which would have the effect of causing or permitting an outcome or condition described in Rule 4.2.2.

4.2.2 An outcome or condition is prohibited for the purposes of Rule 4.2.1 if:

(a) registration of any transfer of a Quoted Equity Security is prevented or restricted, or made subject to a precondition, other than as permitted by Section 11; or

(b) the enjoyment by a new holder of any benefit or right conferred by the Issuer on the holder of a Quoted Equity Security, is conditional on anything other than registration of the relevant transfer; or

(c) any benefit or right conferred by the Issuer on the holder of a Quoted Equity Security is cancelled or varied or made contingent by reason of a Transfer of that Quoted Equity Security; or

(d) any Quoted Equity Security may be redeemed, cancelled, made forfeit, disposed of or otherwise dealt with, by reason of a Transfer of that or any other Quoted Equity Security without the consent of the holder, other than as permitted by Rule 8.2 and Rule 8.5; or

(e) any benefit or right conferred by the Issuer on the holder of a Security is enhanced, extended, or crystallises or attaches by reason of a Transfer of a Quoted Equity Security; or





- (f) any material benefit, right or asset of the Issuer terminates or is disposed of or is made contingent or the subject of a third party option by reason of a Transfer of a Quoted Equity Security of the Issuer; or
- (g) any material liability or obligation of the Issuer crystallises or arises or can be made due and payable before its normal maturity by a third party by reason of a Transfer of a Quoted Equity Security of the Issuer.

Nothing in this Rule limits any rule of law, whether relating to the duties of Directors or otherwise.

- 4.2.3 Notwithstanding Rule 4.2.1 an Issuer may enter into an agreement which may have one or more of the effects specified in Rule 4.2.2(f) or Rule 4.2.2(g) if that agreement is entered into with a person who is not a Related Party (as defined in Rule 9.2.3) of the Issuer and if, in approving the entry into of that agreement, the Directors of the Issuer act in good faith in the best interests of the Issuer, and not with the intention of restricting or preventing Transfers of Securities of the Issuer.

## 5.2 Quotation of Securities

- 5.2.3 A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

## 7.3 Issue of New Equity Securities

- 7.3.1 No Issuer shall issue any Equity Securities unless:
- (a) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to Rule 7.3.3) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements could be affected by that issue, and that issue is completed within the time specified in Rule 7.3.2; or
  - (b) the issue is made in accordance with any of Rules 7.3.4 to Rule 7.3.11.
- 7.3.2 An issue authorised by resolutions passed pursuant to Rule 7.3.1(a) shall be completed:
- (a) if that issue is made solely to Employees within 36 months after the passing of those resolutions; or
  - (b) in all other circumstances, within twelve months after the passing of those resolutions.
- 7.3.3 A resolution pursuant to Rule 7.3.1(a) of the holders of a Class of Securities shall not be required if:



- (a) the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or
- (b) those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to Vote on a resolution of the nature referred to in Rule 7.3.1(a); or
- (c) those Securities were issued on terms that the holders of those Securities would Vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Rule 7.3.1(a) and the issue is approved by a resolution (passed by a simple majority of Votes) of holders of all the relevant Classes Voting together.

7.3.4 An Issuer may issue Equity Securities if:

- (a) those Equity Securities are offered to holders of existing Equity Securities of the Issuer on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights, and that offer is Renounceable; or
- (b) those Equity Securities are issued to holders of existing Equity Securities of the Issuer as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights; or
- (c) those Equity Securities are offered to all holders of existing Equity Securities of the Issuer carrying Votes, for consideration not exceeding \$15,000 per existing Equity Security holder (being the registered holder or, in the case of Securities held through a custodian, the beneficial owners of the Securities) in any 12 month period, and the number of Equity Securities to be issued is not greater than 30% of the number of fully paid Equity Securities carrying Votes that are already on issue.

Notwithstanding (a), (b) and (c), the Issuer shall be entitled:

- (d) to issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Directors consider equitable and in the interests of the Issuer, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer and the issue is completed within 3 months after the close of the original offer; and
- (e) to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained; and



- (f) to authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings; and
- (g) to not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue; and
- (h) to not offer or issue Equity Securities to holders of existing Securities in a jurisdiction outside New Zealand if in the Issuer's reasonable opinion it is unduly onerous for the Issuer to make the offer in that jurisdiction provided that in the case of Renounceable Rights, the Issuer shall arrange the sale of any Renounceable Rights to the relevant Equity Securities and to account to holders in that jurisdiction for the proceeds.

In this Rule 7.3.4, "Distribution Right" means a right of the nature referred to in paragraph (a) or paragraph (b) of the definition of "Equity Security" in Rule 1.6.1.

### 7.3.5

An Issuer may issue Equity Securities if the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this Rule 7.3.5 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Issuer was Listed to the date of the issue, will not exceed the aggregate of:

- (a) 20% of the total number of Equity Securities of that Class on issue at the commencement of that period; and
- (b) 20% of the number of the Equity Securities of that Class issued during that period pursuant to any of Rule 7.3.1(a), Rule 7.3.4, Rule 7.3.6 and Rule 7.3.10; and
- (c) any Equity Securities of that Class issued pursuant to this Rule 7.3.5 during that period, the issue of which has been ratified by an Ordinary Resolution of the Issuer; and less
- (d) 20% of the number 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); and

Provided that for the purposes of this Rule 7.3.5:

- (e) Employees of the Issuer, Directors of the Issuer or Associated Persons of a Director of the Issuer may only participate in an issue made under this Rule if:
  - i. all Directors voting in favour of the resolution to issue the Equity Securities sign a certificate that the participation of Employees and/or Directors and/or Associated Persons of a Director, as the case may be, in the issue is in the best interests of the Issuer and fair to holders of Equity Securities who are not receiving or are not associated with those parties receiving, Equity Securities under the issue; and



- ii. the terms of the issue to all persons in an offer under this Rule are the same; and
  - iii. the level of participation of any Director, Associated Person of a Director or Employee is determined according to criteria applying to all persons participating in the issue; and
- (f) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert; and
- (g) where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

7.3.6 An Issuer may issue Equity Securities if:

- (a) the issue is made to Employees of the Issuer and may include issues to Directors and Associated Persons of Directors whose participation has been determined by reference to criteria applying to Employees generally; and
- (b) the issue is of a Class of Securities already on issue; and
- (c) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued to Employees of the Issuer pursuant to this Rule 7.3.6 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Issuer was Listed to the date of the issue, does 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 pursuant to any of Rule 7.3.1(a), Rule 7.3.4, Rule 7.3.5, and Rule 7.3.10.

Provided that for the purposes of this Rule 7.3.6:

- (d) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert; and
- (e) where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

7.3.7 For the purposes of Rule 7.3.6, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bone fide



employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

7.3.8 An Issuer may issue Equity Securities to a Director if:

- (a) the issue is made in accordance with a resolution passed under Rule 3.5.1; and
- (b) the issue is of a Class of Equity Securities already on issue; and
- (c) the issue of Equity Securities is made after the end of the period (or half period) to which that remuneration relates; and
- (d) the issue price of the Equity Securities is equal to the volume weighted average market price of Equity Securities of that class over the 20 Business Days before the issue occurs.

7.3.9 Except as provided in Rule 8.1.7, Rule 8.1.8 and Rule 8.1.9, no Issuer may reprice or amend the terms of any Securities issued with approval under Rule 7.3.1(a) to or for the benefit of 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.

7.3.10 An Issuer may issue Equity Securities if:

- (a) the issue is made as consideration in an offer made by the Issuer in accordance with:
  - i. any takeovers code approved under the Takeovers Act 1993; or
  - ii. the provisions of the Constitution or Trust Deed of another Issuer which comply with Section 4 where that other Issuer is not a Code Company; or
  - iii. any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in (i) or (ii);

and that offer is made to all holders (other than the Issuer and its Related Companies) of Equity Securities in any company or other entity, Listed on NZSX or on a Recognised Stock Exchange, which is not a company or other entity that is an Associated Person of the Issuer or of any Director of the Issuer; or

- (b) the issue of Equity Securities (Security B) is made on Conversion of any Security (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 7.3.1(a), (whether or not Rule 7.3.1(a) applied to the issue of Security A), or Security A was issued in accordance with any of Rule Rule 7.3.4, Rule 7.3.5, Rule 7.3.6, Rule 7.3.10(a), or Rule 7.3.10(e) (whether or not any of those Rules applied to the issue of Security A); or



- ii. the issue of Security B is approved in the manner set out in Rule Rule 7.3.1(a), or is issued in accordance with Rule Rule 7.3.5 or Rule 7.3.6; or
- (c) the issue is made to an existing holder of Equity Securities of the Issuer in order to bring that holder's holding up to a Minimum Holding; or
- (d) the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part 13 or Part 15 of the Companies Act 1993; or
- (e) the issue is made pursuant to a plan for the issue of Securities in lieu of dividends or as part of a dividend re-investment plan that entitles an existing Security holder to subscribe for Securities by applying all or any specified part of any dividend declared by an Issuer and payable to that person, and which issue or dividend reinvestment plan would, (except to the extent that the plan excludes existing holders in a jurisdiction outside New Zealand if in the Issuer's reasonable opinion it is unduly onerous for the Issuer to extend the plan to that jurisdiction), maintain the existing proportionate right of each existing holder relative to other holders of Equity Securities to Votes and Distribution Rights, if the offer were accepted by all such holders.

7.3.11 A transfer, by an Issuer which is a company registered under the Companies Act 1993, of Treasury Stock of that Issuer shall for the purposes of this Rule 7.3 be deemed to constitute an issue of Equity Securities.

#### **7.4 Entitlements to Third Party Securities**

7.4.1 Entitlements conferred by the holding of Equity Securities of an Issuer, to Securities of a third party (whether or not that third party is an Issuer), shall not be created or conferred other than in compliance with Rule 7.3, as if such Securities comprised an issue of Equity Securities of the Issuer.

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

7.5.1 Notwithstanding the provisions of Rules 7.3 and Rule 7.6, no issue, acquisition, or redemption of Securities shall be made by an Issuer if:

- (a) there is a significant likelihood that the issue, acquisition, or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of that Issuer; and
- (b) that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Issuer;

unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution of the Issuer.



## 7.6 Buy Backs of Equity Securities, Redemption of Equity Securities, and Financial Assistance

- 7.6.1 An Issuer shall not acquire or redeem Equity Securities of that Issuer other than by way of:
- (a) an acquisition effected by offers made by the Issuer through NZX's order matching market, or through the order matching market of a Recognised Stock Exchange; or
  - (b) an acquisition effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993; or
  - (c) an acquisition of the nature referred to in section 61(7) of the Companies Act 1993; or
  - (d) an acquisition or redemption approved in accordance with Rule 7.6.5; or
  - (e) an acquisition required by a shareholder of the Issuer pursuant to sections 110 or 118 of the Companies Act 1993; or
  - (f) an acquisition effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993 and:
    - i. is made from any person who is not a Director or an Associated Person of a Director of the Issuer; and
    - ii. the total number of Equity Securities of the same Class acquired together with all other Equity Securities of the same Class as those Equity Securities that are to be acquired, pursuant to this Rule 7.6.1(f) during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date on which the Issuer was listed to the date of the acquisition, will not exceed 15% of the total number of Equity Securities of that Class on issue at the commencement of that period; or
  - (g) a redemption from a holder who holds less than a Minimum Holding; or
  - (h) a redemption of Equity Securities issued:
    - i. before 1 September 1994; or
    - ii. in compliance with Rule 7.3.1(a) or Rule 7.3.4, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue; or
  - (i) a redemption in compliance with section 69(1)(a) of the Companies Act 1993; or
  - (j) a redemption of Debt Securities which may be Converted into Equity Securities in an Issuer which is a company, and, before that Conversion, they are redeemed in cash;
  - (k) an acquisition or redemption of Equity Securities that were issued under Rule 7.3.6;

Provided that for the purposes of Rule 7.6.1(f):

- (l) Securities which will, or may, convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, Securities into which they will, or may, convert; and
- (m) where the Conversion ratio is fixed by reference to the market price of the underlying Securities, the market price for the purposes of Rule 7.6.1(f) shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the acquisition is entered into or announced to the market.

7.6.2 Before an Issuer acquires Equity Securities of that Issuer, other than an acquisition from a holder who holds less than a Minimum Holding, the Issuer shall give at least 3 Business Days notice to NZX. That notice shall:

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

Provided that an Issuer may at any time by 3 Business Days notice to NZX vary any notice so given and may cancel such notice at any time.

7.6.3 An Issuer shall not give financial assistance for the purposes of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Issuer unless the giving of that assistance:

- (a) complies with Rule 7.6.4; or
- (b) is approved in accordance with Rule 7.6.5.

## 9.2 Transactions with Related Parties

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

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

9.2.2 For the purposes of Rule 9.2.1, "Material Transaction" means a transaction or a related series of transactions whereby an Issuer:





- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the Issuer; or
- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 10% of the Average Market Capitalisation of that Issuer, save in the case of an issue pursuant to Rule 7.3.5 where only the market value of those Securities being issued to the Related Party or to any Employees of the Issuer are to be taken into account; or
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the Issuer; or
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, for or of obligations which could expose the Issuer to liability in excess of 10% of the Average Market Capitalisation of the Issuer; or
- (e) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) in respect of which the actual gross cost to the Issuer in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer; or
- (f) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer:
- (g) For the purposes of Rule 9.2.2(a), "Aggregate Net Value" means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value.

9.2.3 For the purposes of Rule 9.2.1, "Related Party" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or executive officer of the Issuer or any of its Subsidiaries; or
- (b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes; or
- (c) an Associated Person of the Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but a person is not a Related Party of an Issuer if:



- (e) the only reason why that person would otherwise be a Related Party of the Issuer is that a Director or executive officer of the Issuer is also a Director of that person, so long as:
  - i. not more than one third of the Directors of the Issuer are also Directors of that person; and
  - ii. no Director or executive officer of the Issuer has a material direct or indirect economic interest in that person, other than by reason of receipt of reasonable Directors' fees or executive remuneration; or
- (f) that person is a Subsidiary of, 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 a material direct or indirect economic interest in that Subsidiary, incorporated joint venture, or unincorporated joint venture participant, other than by reason of receipt of reasonable Director's fees or executive remuneration; and
  - ii. the Issuer is entitled to participate, directly or indirectly, in at least one half of the income or profits, and the assets, of that Subsidiary, incorporated joint venture, or unincorporated joint venture participant.

### 10.3 Preliminary Announcements

- 10.3.2 Each preliminary announcement, whether for a full year or a half-year, shall include the information and otherwise address the matters specified by the relevant section of Appendix 1.

### 10.4 Annual and Half-Year Reports

- 10.4.1 Subject to Rule 10.4.3 each Issuer shall within three months of the end of each Issuer's financial years:

- (b) make available to each Quoted Security holder in accordance with Rule 10.4.4.

- 10.4.2 Each Issuer shall within three months after the end of the first six months of each financial year of the Issuer:

- (a) deliver to NZX electronically, in the format specified by NZX from time to time; and
- (b) make available to each Quoted Security holder in accordance with Rule 10.4.4,

a half-year report. That half-year report shall be delivered to NZX before, or at the same time as, it is made available to Quoted Security Holders in accordance with Rule 10.4.4. That half-year report shall include the information and otherwise address the matters prescribed by the relevant section of Appendix 1.



## **10.6 Other Administrative Information to be Notified to NZX**

- 10.6.1 Without limiting the information that is required to be released as Material Information under Rule 10.1.1 every Issuer shall provide to NZX for release to the Market under Rule 10.2.2 as soon as the information is first available:
- (a) any proposal to sub-divide or consolidate Securities, or to issue Equity Securities, or Securities that may Convert to Equity Securities, whether they are to be Quoted or not; or

