

2. COMPLIANCE AND ENFORCEMENT

2.1 CONTRACTS PRIVACY ACT TO APPLY

2.1.1 Manner of Application: Subject to Rule 2.1.2, the provisions of the Rules are hereby declared to be a contract enforceable against each Issuer for the benefit of every person who is or was a holder of Quoted Securities of that Issuer in the period in which the Issuer is or was Listed, and the Contracts (Privacy) Act 1982 shall apply accordingly.

2.1.2 Limitation of Beneficiaries' Rights: Nothing in Rule 2.1.1, or in the status of holders of Quoted Securities referred to in that Rule as beneficiaries of the Rules under the Contracts (Privacy) Act 1982, shall:

- (a) entitle such persons to take action against NZX or NZX Discipline, whether to challenge the right of NZX or NZX Discipline to exercise or not exercise its powers under the Rules in such manner as it thinks fit, or for the consequences of any such exercise or non-exercise; or
(Amended 1/5/04)
- (b) limit or affect the rights of NZX or NZX Discipline in respect of the Rules and in particular (but without limitation) the absolute discretion to make Rulings and to change or revoke all or any of the Rules; or
(Amended 1/5/04)
- (c) entitle any person other than NZX to the benefit of, or to exercise, the rights and powers provided in Rule 2.3; or
- (d) entitle any person to prior, or any, notice of a Ruling; or
- (e) entitle any person to pursue any proceedings to enforce any provision of the Rules which is the subject of a current Ruling, other than on the basis of and in accordance with such Ruling.

2.2 COMPLIANCE BY SUBSIDIARIES, OFFICERS, AND ASSOCIATES

2.2.1 Responsibility to Procure Compliance: Every Issuer shall take all steps within its powers to ensure that:

- (a) no Subsidiary of the Issuer; and

- (b) no person who is acting in concert with the Issuer or any of its Subsidiaries for purposes relevant to the Rules,

does anything which would cause that Issuer to be in breach of the Rules.

See also Rule 1.1.5 which extends the effect of the Rules to any group of companies or other entities of which an Issuer is the holding company.

2.2.2 Acknowledgement of Compliance with Rules: Every Issuer shall ensure that every Director of the Issuer shall, forthwith after his or her appointment as such, deliver to NZX a signed acknowledgement to the effect that:

- (a) the Director is aware that the Issuer is contractually bound to observe the Listing agreement between the Issuer and NZX, and the Rules from time to time; and
- (b) the Director will use his or her best endeavours to procure compliance by the Issuer with the Listing Rules.

2.3 ISSUER SURVEILLANCE

2.3.1 Powers of Inspection: The NZX Regulation Personnel on their own accord or pursuant to a request made of them by NZX Discipline, and NZX Discipline and any other person authorised by NZX may, for the purpose of ascertaining whether an Issuer is complying or has complied with the Rules, or of ascertaining whether NZX should exercise in respect of an Issuer any rights or powers under the Rules: *(Amended 1/5/04)*

- (a) require the Issuer or, require the Issuer to procure, any Director, officer, employee or agent of the Issuer or any Subsidiary thereof to produce for inspection any books, papers, registers, records, or accounts (whether recorded in documentary or electronic form) (for the purposes of this Rule 2.3.1(a) together “information”) that are held by the person concerned; and *(Amended 1/5/04)*
- (b) inspect and make copies of, or take notes from, such information; and
- (c) if necessary for the purpose of making copies or taking records thereof, take possession of any such information, and remove it from the premises where it is kept, for such period of time as is reasonable to make such

copies or records; and

- (d) require the Issuer or, require the Issuer to procure, any Director, officer, employee or agent of the Issuer or any Subsidiary thereof to appear for interview. *(Inserted 1/5/04)*

2.3.2 NZX Discipline's Powers: Where NZX Regulation Personnel are exercising their powers under Rule 2.3.1 pursuant to a request by NZX Discipline, or other person authorised under Rule 2.3.1, NZX Regulation Personnel shall deliver to NZX Discipline or that other person authorised under Rule 2.3.1 making that request all information obtained pursuant to Rule 2.3.1.

(Amended 1/5/04)

2.3.2A Provision of Information to NZX: Where NZX Discipline or any other person authorised under Rule 2.3.1 exercising its powers under Rule 2.3.1 obtains information from an Issuer, NZX Discipline or that other person authorised under Rule 2.3.1 shall provide that information to NZX if:

(Inserted 1/5/04)

- (a) NZX Discipline or that other person authorised under Rule 2.3.1 considers that that information should have been made available to NZX by that Issuer or otherwise pursuant to the Rules; or *(Amended 1/5/04)*
- (b) NZX Discipline or that other person authorised under Rule 2.3.1 considers that that information discloses some other breach of the Rules.

(Amended 1/5/04)

2.3.3 Disclosure of Information: Information obtained pursuant to Rule 2.3.1 shall not be disclosed by the NZX Regulation Personnel, NZX Discipline or any person authorised under Rule 2.3.12 to any person, except:

(Amended 1/5/04)

- (a) as required to discharge their functions and/or to exercise powers conferred by these Rules; or *(Amended 1/5/04)*
- (b) if disclosure is required by law; or
- (c) if disclosure is to a solicitor, accountant, or other professional adviser of NZX Regulation Personnel, NZX Discipline, or any other person authorised under Rule 2.3.1; or *(Amended 1/5/04)*

- (d) in accordance with Rule 2.3.2, 2.3.2A or 2.3.3A; or
(Inserted 1/5/04)
- (e) to NZX, the Chief Executive and/or the Board of NZX; or
(Inserted 1/5/04)
- (f) to the Securities Commission for the purposes of complying with section 36ZD or 36ZL of the Securities Markets Act 1988 or to any other regulator to comply with a request of that regulator or otherwise cooperate with that regulator.
(Inserted 1/5/04)

2.3.3A Referral to NZX Discipline: Where NZX Regulation Personnel have exercised their powers of inspection pursuant to Rule 2.3.1 and NZX Regulation Personnel consider that the information obtained discloses a breach of the Rules, NZX Regulation Personnel may disclose to NZX Discipline so much of that information as is necessary to disclose the fact and nature of the breach and may bring a charge against the Issuer for such alleged breach, such charge to be heard in accordance with the NZX Discipline Rules. In addition to disclosing the information obtained under Rule 2.3.1, NZX Regulation Personnel shall disclose to NZX Discipline all other facts and circumstances of which it is aware relating to the alleged breach of the Rules and which is relevant to the charge brought.
(Inserted 1/5/04)

2.3.4 Use of Information by NZX: All information given to NZX by NZX Discipline under Rule 2.3.2A or given to NZX under Rule 2.3.3 may be dealt with by NZX in all respects as if it had been supplied by the Issuer in compliance with the Rules, and accordingly fell within Rule 10.1.3.
(Amended 1/5/04)

2.3.5 Evidence of Authority: A document signed by the Chief Executive of NZX, or by the Chairperson of NZX Discipline (as defined in the NZX Discipline Rules), or by the chairperson of any Division (as defined in the NZX Discipline Rules) of NZX Discipline warranting the appointment of any person to exercise the powers of NZX or NZX Discipline set out in this Rule 2.3 shall be conclusive evidence of the authority thereby warranted. Such a document may be general or specific to the circumstances of a particular case.
(Amended 1/5/04)

2.3.6 Notice of Exercise of Powers: Any exercise by NZX of the power set out in Rule 2.3.4 shall, in absence of agreement of the Issuer concerned, require at least one Business Day's prior written notice to the Issuer of the intention to

exercise such power (which notice may be in a general form), unless NZX Regulation Personnel have certified that the notice period shall not apply in any particular case, and such certification indicating the reasons therefore is shown to the Issuer on request. *(Amended 1/5/04)*

2.3.7 *(Deleted 1/5/04)*

2.4 *(Revoked 1/5/04)*

2.5 *(Revoked 1/5/04)*

2.6 *(Revoked 1/5/04)*

2.6A NZX DISCIPLINE

2.6A.1 **NZX to Appoint NZX Discipline:** NZX shall appoint NZX Discipline which shall have the powers, rights and discretions set out in the NZX Discipline Rules which NZX Discipline Rules are incorporated by reference into these Rules. *(Inserted 1/5/04)*

2.7 LIABILITY AND INDEMNITY

2.7.1 **Limitation of Liability:** None of NZX, any director or employee of NZX, any NZX Regulation Personnel nor any delegate of NZX shall be liable in tort, contract, or otherwise for any action taken or not taken in exercise or purported exercise in good faith of the powers or discretions conferred by the Rules. *(Amended 1/5/04)*

2.7.2 **Indemnity:** Each Issuer shall indemnify NZX, each director or employee of NZX, all NZX Regulation Personnel and each delegate of NZX under the Rules against all liabilities and claims which may arise (notwithstanding the limitation in Rule 2.7.1) in relation to any action or inaction by any such person in connection with such Issuer, which NZX determines to have been taken or not taken in good faith and in response to circumstances for which the Issuer should bear the responsibility in whole or in part. The indemnity shall be for all or such part of the liabilities and claims as NZX determines in the circumstances. *(Amended 1/5/04)*

2.7.3 Continuing Application to the Panel: Rules 2.7.1 and 2.7.2 and 2.8.1 shall continue to apply in all respects to the Market Surveillance Panel constituted under the Rules until 1 May 2004 and any member or delegate of the Panel, in respect of all acts or omissions of the Panel, its members or delegates whilst it was in existence under these Rules in the form they stood immediately prior to their revocation or amendment on 1 May 2004. *(Inserted 1/5/04)*

2.8 COSTS

2.8.1 Costs of Exercise of Powers: An Issuer shall, when called upon by NZX to do so, pay all costs and expenses incurred by NZX, NZX Regulation Personnel and NZX Discipline and any person authorised by NZX in carrying out the functions and exercising the rights and powers conferred by the Rules in respect of that Issuer. The costs and expenses so payable may include an appropriate proportion of the remuneration and other overhead costs of NZX in relation to such matters. *(Amended 1/12/02)*

2.8.2 Bond or Deposit: Every applicant for Listing shall, before it is Listed, deliver to NZX a bond in a form approved by NZX, for an amount determined by NZX in accordance with Rule 2.8.3, and given by a person approved by NZX for this purpose. Any Issuer which has not complied with this Rule before Listing shall do so when required by NZX. NZX may, in respect of any applicant for Listing or Issuer, agree to accept, in lieu of a bond, a deposit of money on such terms as NZX may determine. *(Amended 1/12/02)*

2.8.3 Purpose and Amount: Each deposit or bond made or given pursuant to Rule 2.8.2 shall be made or given to secure to NZX the payment of all moneys payable to NZX by the Issuer under the Rules. NZX may from time to time determine the amount of each such deposit or bond. If NZX increases that amount, each Issuer shall upon request by NZX increase the amount of the deposit made by that Issuer, or procure the amount of the bond provided in respect of that Issuer to be increased. If any portion of a deposit or bond is applied in payment of moneys payable to NZX by the Issuer, the Issuer shall forthwith cause the deposit or bond to be reinstated to its previous amount.