

4. VOTING RIGHTS, TRANSFERS AND STATEMENTS

4.1 VOTING

- 4.1.1 **Differential Voting:** Securities of an NZAX Issuer may carry different numbers of Votes including “no votes.”

Securities which carry different numbers of Votes per Security, will constitute different Classes, notwithstanding that their other rights and privileges may be identical.

- 4.1.2 **Variation in Voting Rights:** The Constitution of an NZAX Issuer may contain a provision allowing Votes attaching to a Class of Securities to vary from time to time by reference to the economic value of a part or division of the NZAX Issuer's operations (which economic value may be ascertained by reference to the market price of Securities linked to that part or division).

- 4.1.3 **Partly Paid Securities:** Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

1. **Bonus shares credited as fully paid carry a full Vote because zero cents per share is paid and the total paid and payable is zero cents.**
2. **Example: A company issues shares at an issue price of 20 cents each, paid to 1 cent and with further 18 cents credited, leaving 1 cent to pay. The voting entitlement of the share is one-half of a Vote because the 18 cents that is credited is ignored when calculating amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the voting entitlement is 95% of a Vote. If 10 cents was paid and 10 cents to pay, the voting entitlement would be one-half even if the 10 cents to be paid was paid in advance of the call.**

4.1.4 Participation of Options in Rights issues: An Option must not confer the right to participate in a Rights issue unless the Option:

- (a) is exercised before the Record Date for the Rights issue; or
- (b) was issued under a pro rata offer made pursuant to NZAX Listing Rule 7.3.4 contained in Appendix 1, to the holders of Quoted Equity Securities; or
- (c) was issued with the approval of holders of Quoted Equity Securities, and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option:

Provided that nothing in this NZAX Listing Rule A4.1.4 shall apply to any Option which was issued prior to the coming into force of this NZAX Listing Rule or Listing of an NZAX Issuer.

4.1.5 Change of Option's Exercise Price or Number of Underlying Securities:

An Option must not confer the right to a change in the exercise price or number of underlying Securities, except if that Option:

- (a) was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holders of the underlying Securities; or
- (b) was not issued with the approval of holders of Quoted Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of that Option may be reduced according to the formula set out as follows:

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

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

O = the old exercise price of the Option.

E = the number of underlying Securities into which one Option is exercisable.

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

P = the average market price per share (weighted by reference to volume) of underlying Securities during the five Business Days ending on the day before the Rights date.

S = the subscription price for a Security under the Rights issue. D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Securities (except those to be issued under the Rights issue).

N = the number of Securities with Rights or entitlements that must be held to receive a Right to one new Security:

Provided that nothing in this NZAX Listing Rule shall apply to any Option which was issued prior to the coming into force of this NZAX Listing Rule or Listing of an Issuer.

Example: The capital of a company comprises ordinary shares at an issue price of 20 cents each and Options over unissued ordinary shares exercisable at \$1.00 each. The company announces a 4:7 Rights issue. There is no dividend payable. The issue price for the shares under the Rights issue is \$2.00. The average price that ordinary shares trade at over the five Business days ending on the day before the ex Rights date or ex entitlement date is \$3.00 after the announcement. To receive one Right a shareholder must hold 1.75 ordinary shares ($7 \div 4 = 1.75$, which is N). The amount by which the exercise price of an Option is to be reduced is calculated as follows:

$$\begin{aligned}
 O^1 &= O - \frac{E[P-(S+D)]}{N + 1} \\
 &= 1 - \frac{1[3.00-(2.00+0)]}{1.75 + 1} \\
 &= 63.6364 \text{ cents}
 \end{aligned}$$

The new exercise price of the option is 63.6364 cents and the Option holder has gained the benefit of any bonus element in the rights issue. This benefit is the same as that conferred on shareholders. There is no change in the number of shares to which the Option holder is entitled. At the time when the Option is exercised, it may be necessary to round up or round down any fraction of a cent remaining after aggregating the exercise price of each of the Options exercised by the holder.

- 4.1.6 Change of Option on a Bonus Issue:** If there is a bonus issue to the holders of the underlying Securities the number of Securities over which an Option is exercisable may be increased (or additional Securities may be reserved for issue on exercise of an Option) by the number of Securities which the holder of the Option would have received if that Option had been exercised before the Record Date for the issue. *(Amended 1/5/04)*

Example: The capital of a company comprises ordinary shares of \$1.00 each and Options over unissued ordinary shares exercisable at \$1.00 each. The entity makes a 1:1 bonus issue. An Option holder with 1000 Options with a total exercise amount payable of \$1000 will then have an entitlement to 2000 Securities for a total exercise amount payable of \$1000. Each Option is exercisable for \$1.00 and

entitles the holder to 2 shares. The exercise amount payable per Option stays the same (i.e. \$1.00). If the entity subsequently has a further 1:1 bonus issue, the Option holder would become entitled to 4000 Securities for a total exercise amount payable of \$1000. Each Option is exercisable for \$1.00 and entitles the holder to 4 shares. The exercise amount payable per Option stays the same (i.e. \$1.00).
(Amended 1/5/04)

4.1.7 Change of Option on a consolidation or subdivision or similar

proportionate reconstruction: If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Securities, the number of Securities over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercisable price amended in inverse proportion to that ratio.
(Inserted 1/5/04)

4.2 LIEN AND FORFEITURE

4.2.1 When Enforceable: Except in the case of a Non-Standard NZAX Issuer, an NZAX Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Securities shall be restricted to one in respect of:

- (a) unpaid calls, installments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
- (b) such amounts as the NZAX Issuer may be called upon to pay under any legislation in respect of the specific Securities.

4.2.2 Application of Proceeds of Sale: If Equity Securities are forfeited and sold or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, installments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.

4.2.3 Restrictions on Forfeiture: Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

4.3 MODIFICATION OF RIGHTS OF SECURITY HOLDERS

4.3.1 Procedure: Every NZAX Issuer shall comply with the provisions of sections 116 and 117 of the Companies Act 1993, whether or not the NZAX Issuer is a company registered under that Act. For the purposes of this NZAX Listing Rule, those sections shall be deemed to be modified so that:

- (a) references in those sections to "shares" shall (subject to NZAX Listing Rule A4.3.2) be deemed to include references to all Equity Securities of that NZAX Issuer, and references to "shareholders" shall be read accordingly;
- (b) in respect of NZAX Issuers which are not companies registered under the Companies Act 1993, references to the "company" shall be deemed to be references to the NZAX Issuer, and references to pre-emptive rights under section 45 of that Act shall be deemed to be deleted from those sections; and
- (c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
 - (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

4.3.2 Exception: An NZAX Issuer shall be required by NZAX Listing Rule A4.3.1 to comply with sections 116 and 117 of the Companies Act 1993 but shall not be required by the modifications deemed to be made thereto by NZAX Listing Rule A4.3.1 to comply with those sections in respect of actions that affect the rights attached to

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not shares of a company if:
 - (i) those Equity Securities were issued before 30 April 1995; or
 - (ii) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior

approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

- 4.3.3 **Section 118:** NZAX Listing Rule A4.3.1 shall not have the effect of deeming section 118 of the Companies Act 1993 to apply to any Securities other than shares of a company registered under the Companies Act 1993.

4.4 CANCELLATION OF UNPAID AMOUNTS

- 4.4.1 No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution of the NZAX Issuer.

1. **No vote in favour of any such resolution shall be cast by any person (or by any Associated Person of that person) who is intended to benefit from the reduction, deferral or cancellation, unless the reduction, deferral or cancellation benefits all holders of Equity Securities of the NZAX Issuer on the same basis.**
2. **Any agreement involving a transaction referred to in this NZAX Listing Rule must comply with NZAX Listing Rule A1.9.**

4.5 SALE OF MINIMUM HOLDINGS

- 4.5.1 The Constitution of an NZAX Issuer may prescribe procedures entitling the NZAX Issuer, after giving not less than three months prior notice to holders of Securities of less than a Minimum Holding to sell such Securities (through NZX or in some other manner approved by NZX) and to account to the Holders for the proceeds of sale after deduction of reasonable sale expenses.

4.6 TRANSFER OF SECURITIES

- 4.6.1 **Right to Transfer:** Subject to the provisions of any legislation, and to NZAX Listing Rules A4.6.4 and A4.6.5, no NZAX Issuer shall impose, in its Constitution or otherwise, any restriction on the right of a holder of a Quoted Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Quoted Securities. *(Amended 1/5/04)*

4.6.2 Improperly Completed Written Transfers: A transfer of Securities in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to NZAX Listing Rules A4.6.4 and A4.6.5) shall be registered when the errors or omissions have been rectified.

4.6.3 Documentation: Subject to the provisions of NZAX Listing Rule A4.6.5 and of any legislation no NZAX Issuer shall:

- (a) require any documentation relating to transfers other than to establish an entitlement to transfer;
- (b) require any information relating to the transferee; or
- (c) impose any restriction on the acceptability of any common form of transfer.

4.6.4 Permitted Restrictions: An NZAX Issuer may decline to accept or register:

- (a) a transfer of a Security on which the NZAX Issuer has a lien; or
- (b) a transfer of Securities if such registration, together with the registration of any further transfer or transfers then held by the NZAX Issuer and awaiting registration, would result in the proposed transferee holding Securities of less than the Minimum Holding; or
- (c) Revoked 1/5/04 *(Amended 1/5/04)*

4.6.5 Special Restrictions: An NZAX Issuer may, with the prior approval of NZX, incorporate in its Constitution or Trust Deed a provision restricting the issue, acquisition or transfer of Relevant Interests in Equity Securities.

NZX recognises that there are situations in which a restriction on the ownership of the Equity Securities of an NZAX Issuer may be appropriate. In addition, NZX wishes to facilitate the Listing of entities (such as co-operative companies) which may have membership or security ownership restrictions and have not previously availed themselves of the services offered by NZX. NZX will generally exercise its discretion to permit a restriction to be introduced where:

- (a) the NZAX Issuer has some right, licence, or property which forms a significant part of the business of the NZAX Issuer (such as airline landing rights or fishing quota) which could reasonably be expected to be adversely affected by the aggregation of the holding of Equity Securities by a person or group of persons;
- (b) the restriction is desirable, expedient or necessary in connection with giving effect to a statutory requirement;
- (c) there are other reasons which NZX considers justify the inclusion of a restriction.

NZX will as a general rule only exercise its discretion under NZAX Listing Rule A4.6.5 before the time of the initial Listing of an NZAX Issuer or, in respect of a Class of Securities of an NZAX Issuer, before the time of the initial Quotation of that Class. NZX's view is that any restriction on the ownership of Equity Securities of an NZAX Issuer should be clear at the time of Listing or Quotation, so that investors can make an informed investment decision before they acquire Equity Securities of the NZAX Issuer through NZX.

4.6.6 No Cancellation of Rights: Except as expressly permitted by the NZAX Listing Rules, no benefit or right attaching to a Security shall be cancelled or varied by reason only of a transfer of that Security.

4.7 STATEMENTS

4.7.1 Issue of Statements: Every NZAX Issuer shall issue to each holder of Quoted Securities of that NZAX Issuer on request, a statement that sets out:

- (a) the Class of Securities held by that holder, the total number of Securities of that Class issued by the NZAX Issuer, and the number of Securities of that Class held by the holder;
- (b) the register on which the holder's Securities are held, if other than the principal register;

- (c) the rights, privileges, conditions and limitations, including restrictions on transfer (if any) attaching to the Securities held by the holder;
- (d) the relationship of the Securities held by the holder to other Classes of Quoted Securities;
- (e) the holder's number, and the address of the holder; and
- (f) the postal address of the registrar of the Securities.

NZAX Listing Rule A4.7.1 requires that further issues of Equity Securities which may eventually become part of another Class (for example, upon payment of calls in full, or elapse of a period of non entitlement to a dividend) be clearly identified as distinct from that other Class. Statements must therefore carry the appropriate description eg "1994 Bonus Issue", "1993 Cash Issue". Statements provided pursuant to subsequent transfers of such Securities need contain only an endorsement of the relevant dividend qualification until the Securities eventually rank pari passu with all other of the Class they are to become.

4.7.2 Exceptions: An NZAX Issuer shall not be obliged to provide a holder with the Statement required by NZAX Listing Rule A4.7.1 if:

- (a) such a Statement has been provided within the previous six months;
- (b) the holder has not acquired or disposed of Securities of the relevant Class since a previous Statement required by NZAX Listing Rule A4.7.1 or NZAX Listing Rule 4.7.3 was provided; and
- (c) the rights attached to Securities of the relevant Class have not been altered since the previous Statement required by NZAX Listing Rule A4.7.1 was provided.

4.7.3 Statement After Issue or Transfer: Every NZAX Issuer shall issue a Statement including the details in NZAX Listing Rule A4.7.4 to each holder of Securities who obtains or disposes of Securities upon an issue or a transfer within five Business Days after the date of allotment of the securities, or the date of registration of that transfer.

4.7.4 Transfer Details in Statement: Where the Statement required by NZAX Listing Rule A4.7.4 is issued following a transfer, the Statement shall include the following information:

- (a) all the information specified in paragraphs (a), (b), (e) and (f) of NZAX Listing Rule A4.7.1, except that the total number of Securities of that Class issued by the NZAX Issuer need not be shown; and
- (b) the number of Securities transferred (to or from the holder) in each transfer since the last Statement; and
- (c) where the transfer is submitted by a Delivery and Settlement Participant, the subscriber reference provided in that transfer.

(Amended 1/5/04)

4.8 REGISTRATION

4.8.1 Registrars to Comply: If an NZAX Issuer appoints a registrar to keep any register of Securities, that NZAX Issuer shall ensure that its registrar complies with the requirements of NZAX Listing Rules A4.6 to A 4.9, and references in NZAX Listing Rules A4.6 to A4.9 to an NZAX Issuer shall for this purpose include its registrar.

4.8.2 General NZAX Issuer Responsibility: Every NZAX Issuer shall ensure that its registry functions are performed promptly and properly and shall indemnify Market Participants (as defined in the NZX Participant Rules) and persons having dealings with its registrar against any losses, costs or expenses incurred as a consequence of any failure in such performance of registry functions which is not fairly attributable to the fault of the person claiming indemnity (or his or her agent).

(Amended 1/5/04)

4.8.3 Time of Registration After Receipt of Written Transfer: Subject to the right of any NZAX Issuer in terms of NZAX Listing Rule A4.6, all properly executed and documented written Security transfers shall be registered within two Business Days of their receipt by the NZAX Issuer.

4.9 “FASTER” SYSTEM

4.9.1 Definitions: For the purposes of this NZAX Listing Rule A4.7:

"Client Inward Transfer" means the transfer by a Delivery and Settlement Participant of Securities out of the name of a Security holder on an NZAX Issuer's Securities register to the transfer account of a member firm in the manner contemplated by paragraph (c) of the Schedule to the Securities Transfer (Approval of FASTER System) Order 1998; *(Amended 1/5/04)*

"Client Outward Transfer" means the registration of a Buyer (as defined in the Market Participant Rules) or Delivery and Settlement Participant as a Security holder on the Securities register of an NZAX Issuer by a FASTER Participant in the manner contemplated by paragraphs (e) (ii) and (f) of the Schedule to the Securities Transfer (Approval of FASTER System) Order 1998. *(Amended 1/5/04)*

"Delivery and Settlement Participant" has the meaning given in the NZX Participant Rules. *(Inserted 1/5/04)*

4.9.2 Operation: Every NZAX Issuer with Securities Quoted, or that NZAX Issuer's registry shall:

- (a) connect its register and maintain its registry connection to the "FASTER" system, as specified from time to time by NZX, and operate it on all Business Days between the hours of 8.00am and 6.00pm;
- (b) comply with any time limits for the processing of electronic messages or documentation which NZX may from time to time specify in the operation of the "FASTER" system;
- (c) not delay the registration of any transfers, except as may be specified by NZX for the operation of the "FASTER" system; and
- (d) issue holders of Quoted Securities who are not participants directly connected to the system with a four character FASTER Identification Number (FIN).

The NZX Participant Rules set out the procedures followed by Trading Participants when dealing with transfers through "FASTER" or by transfer document. *(Amended 1/5/04)*

- 4.9.3 **Inward Transfer:** In any case where a Client Inward Transfer is entered by a person in any circumstance where that person does not have the proper authority of the holder of the Securities being transferred to execute the transfer, the NZAX Issuer shall be obliged to immediately reinstate or otherwise compensate the dispossessed Security holder:
 Provided that this obligation on the part of the NZAX Issuer shall not affect or prejudice any right the NZAX Issuer may have against any other person.
- 4.9.4 **Outward Transfer:** A Client Outward Transfer to a bona fide purchaser for value shall not in any circumstance be cancelled or reversed by an NZAX Issuer.
- 4.9.5 **Warranty by Delivery and Settlement Participants:** Each Delivery and Settlement Participant who completes a Client Inward Transfer will be deemed to warrant to the NZAX Issuer that the transfer is valid and has been authorised by the registered holder of the Securities being transferred and to indemnify the NZAX Issuer for any loss suffered by the NZAX Issuer due to a breach by the Delivery and Settlement Participant of that warranty, without prejudice to any right of the Delivery and Settlement Participant under NZAX Listing Rule A4.8.2. *(Amended 1/5/04)*
- 4.9.6 **Cause of Action:** The warranty contained in NZAX Listing Rule A4.9.5 will give rise to a cause of action by an NZAX Issuer against the Delivery and Settlement Participant in question: *(Amended 1/5/04)*
- Provided that this obligation on the part of the Delivery and Settlement Participant shall not affect or prejudice any other right the Delivery and Settlement Participant may have. *(Amended 1/5/04)*
- 4.9.7 **Continued Application of NZAX Listing Rules:** The requirement in this NZAX Listing Rule 4.9 for an NZAX Issuer to connect and operate a FASTER registry shall only apply as long as the NZAX Listing Rules include the provision of NZAX Listing Rules A4.9.3, A4.9.4, A4.9.5, A4.9.6, and this NZAX Listing Rule.
- 4.9.8 **No Waiver of FASTER Requirements:** NZX may not exercise its right of waiver under NZAX Listing Rule A1.7 in respect of compliance with NZAX Listing Rules A4.9.2(a), A4.9.2(d), A4.9.3, A4.9.4, A4.9.5, A4.9.6 or this NZAX Listing Rule A4.9.8.