

## 5. POWERS OF NZX & OBLIGATIONS OF NZAX ISSUERS WHILE LISTED

### 5.1 APPROVAL OF DOCUMENTS BY NZX

**5.1.1 Approval:** The documents listed below shall be subject to the approval of NZX, and shall not be circulated to holders of Securities, executed, or otherwise given effect to in any way, until the written approval of NZX is obtained. *(Amended 1/5/04)*

- (a) any Constitution including any proposed changes to any Constitution; and
- (b) any notice of a meeting of holders of Quoted Securities to consider any matter other than declaring a dividend, the consideration of financial statements and reports of Directors or auditors, the election of Directors, the fixing of the remuneration of Directors, a change of name of the NZAX Issuer, or the appointment of, and fixing of remuneration of, auditors, or a resolution required or permitted under the Takeovers Code; and
- (c) any Offering Document or Disclosure Document provided pursuant to NZAX Listing Rule A3.4.1 or A3.4.2; and
- (d) any "Pre Break" Announcement made pursuant to NZAX Listing Rule B1.1A.

**NZX will not look favourably upon resolutions contained in notices of meeting of holders of Quoted Securities which purport to confer on the Board discretions to undertake certain transactions, where the material details of such transactions are not settled or cannot be disclosed and adequately explained to the Quoted Security holder to enable that Quoted Security holder to make an informed decision whether to vote in favour of that resolution, and NZX may decline to approve any notice of meeting which contains such resolutions.** *(Inserted 1/5/04)*

**5.1.2 Solicitor's Certificate:** Any Constitution (or proposed changes to a Constitution) shall be submitted to NZX for approval along with a certificate from the solicitor for the NZAX Issuer. That certificate shall be addressed to NZX, in a form satisfactory to NZX and shall confirm that the Constitution complies with the NZAX Listing Rules.

- 5.1.3 Timing:** Each document referred to in NZAX Listing Rule A5.1.1 shall be submitted to NZX in draft form for approval at least 10 Business Days before that document is intended to be circulated, executed, or otherwise given effect to (or, if that document is to be printed, 10 Business Days before printing is intended to commence). *(Amended 1/5/04)*
- 5.1.3A Procedure:** Each document referred to in NZAX Listing Rule A5.1.1 shall be submitted in its proposed full form, and if more than one document is required to be approved, they shall be submitted together. If an Appraisal Report is required to accompany a notice of meeting, a draft of that Appraisal Report shall be submitted together with the draft of the notice of meeting. The period of 10 Business Days referred to in NZAX Listing Rule A5.1.3 shall not commence until NZX has received all relevant documents in their proposed final form. If any alteration is made to a document already submitted (that alteration not being required as a consequence of NZX’s review of that document), NZX may regard in its absolute discretion that period of 10 Business Days as commencing at the time that alteration is received by NZX. *(Inserted 1/5/04)*
- 5.1.4 Notice of Meeting:** Each notice of meeting of holders of Securities shall contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice of meeting.
- 5.1.5 Notices of Changes:** Without limiting NZAX Listing Rule A5.1.4, notices in respect of proposed changes to a Constitution or Trust Deed shall be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed Constitution or Trust Deed. The notice shall state that the changes have been approved by NZX.
- 5.1.6 Minority Buyout Rights: If:**
- (a) a resolution is to be proposed at a meeting of shareholders of an NZAX Issuer which is a company registered under the Companies Act 1993; and
  - (b) if that resolution is passed, shareholders will have the right to require the Issuer to purchase their shares by virtue of section 110 or section 118 of that Act;
- then the notice of meeting to consider that resolution shall contain a prominent statement of the right referred to in (b).

**5.1.7 Proxies:** A proxy form shall be sent with each notice of meeting of Quoted Security holders and shall:

- (a) (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Quoted Security holder to instruct the proxy as to the casting of the vote; and  
*(Amended 1/5/04)*
- (b) not be sent with any name or office (e.g. chairperson of directors) filled in as proxy holder.  
*(Amended 1/5/04)*

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two way voting instructions for proxy holders.

- 1. NZAX Listing Rule A5.1.7 is not intended to prohibit any Director or person at their own expense soliciting Quoted Security holders in a personal capacity for their proxies.**  
*(Amended 1/5/04)*
- 2. The proxy may include a footnote to the effect that certain officers of the NZAX Issuer or other persons are willing to act as proxy if the Quoted Security holder wishes to appoint them.**  
*(Amended 1/5/04)*
- 3. NZAX Issuers should have regard to NZAX Listing Rule 9.3.3 in Appendix 1 and the footnote to that NZAX Listing Rule.**  
*(Inserted 1/5/04)*

## 5.2 OTHER NOTICES

**5.2.1 Notices, Reports, Financial Statements:** Equity Security holders of all Classes shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

**The use of the word "reports" in NZAX Listing Rule A5.2.1 makes this wider than the provisions of companies legislation regarding formal notices.**

**5.2.2 Service of Notices Outside New Zealand:** If a holder of a Quoted Security has no registered address within New Zealand and has not supplied to the NZAX Issuer an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices for that Quoted Security holder shall be posted to that Quoted Security holder at such international address and shall be deemed to have been received by that Quoted Security holder 24 hours after the time of posting.

*(Amended 1/5/04)*

**5.3 TRADING HALTS, SUSPENSION, CANCELLATION AND OTHER POWERS**

**5.3.1 Request:** An NZAX Issuer may request:

- (a) by notice in writing to NZX, that trading in its Securities be halted by NZX for a period not to exceed two Business Days; or
- (b) by not less than one month's prior written notice to NZX, that it cease to be Listed or that some or all of its Securities cease to be Quoted.

After receipt of a request from an NZAX Issuer in accordance with:

- (c) NZAX Listing Rule A5.3.1(a) NZX may halt trading; or
- (d) NZAX Listing Rule A5.3.1(b), NZX may cancel the Listing or Quotation of some or all of its Securities (or both), as the case may be,

*(Amended 1/5/04)*

on or subject to compliance with such conditions as NZX thinks fit.

**1. Where an NZAX Issuer is requesting a trading halt, pursuant to NZAX Listing Rule A5.3.1(a), it must provide information to NZX on each of the following:**

- (a) its reasons for the trading halt; and**
- (b) how long it wants the trading halt to last; and**
- (c) the event it expects to happen that will end the trading halt; and**

- (d) that it is not aware of any reason why the trading halt should not be granted; and
  - (e) any other information necessary to inform the market about the trading halt, or that NZX asks for.
2. NZX is not required to act on the NZAX Issuer's request for a trading halt.
  3. Among the conditions which NZX may require in the case of a request, pursuant to NZAX Listing Rule A5.3.1(b), for cancellation of Listing or Quotation of some or all of its Securities (or both) are:
    - (Amended 1/5/04)
    - (a) A requirement for a prior approving resolution of Security holders of the Class of Securities proposed to be cancelled who are Members of the Public; and (Amended 1/5/04)
    - (b) Arrangements to protect rights of any Class of Security holders which arise under the NZAX Listing Rules and which, if lost on cessation of Listing, would prejudice the position of those holders.
  4. In the case of a compulsory acquisition following a takeover offer, NZX will generally suspend Quotation of an NZAX Issuer's Securities 5 Business Days after it receives a copy of an acquisition notice under the Takeovers Code. (Inserted 1/5/04)

**5.3.2 Powers of NZX:** NZX may at any time, and in its absolute discretion, do any one or more of the following, without giving any reasons and (subject to NZAX Listing Rule A5.3.4) without giving prior notice to the NZAX Issuer concerned:

- (a) cancel the Listing of any NZAX Listed Issuer; or
- (b) cancel, halt or suspend for such period as NZX thinks fit, the Quotation of any or all of an NZAX Issuer's Securities; or (Amended 1/5/04)
- (c) Revoked (1/5/04)

- (d) refer the conduct of any NZAX Issuer, or of any Director or Associated Person of any NZAX Issuer, to NZX Discipline or any statutory or governmental authority. *(Amended 1/5/04)*

**5.3.3 Examples of Reasons:** Without limiting NZAX Listing Rule A5.3.2, NZX may exercise any of its powers under NZAX Listing Rule A5.3.2 if it considers that:

- (a) a false market exists in any or all of an Issuer's Securities; or *(Amended 1/5/04)*
- (b) any provision of the NZAX Listing Rules has not been complied with by an NZAX Issuer or any Director or officer of that NZAX Issuer; or *(Amended 1/5/04)*
- (c) the spread requirements specified in NZAX Listing Rule A3.5.4 are not being met in respect of any or all of an NZAX Issuer's Securities and the NZAX Issuer has failed to inform NZX pursuant to NZAX Listing Rule A3.5.5 that it has become aware that the requirements are not being met or the NZAX Issuer has failed to take steps to ensure compliance with the spread requirements at the earliest possible time; or *(Amended 1/5/04)*
- (d) it is in the best interests of the market, or attainment of the intent and objects of the NZAX Listing Rules, to exercise such a power; or
- (e) there occurs in respect of an NZAX Issuer:
  - (1) a change in control of Votes of that NZAX Issuer which confers an effective controlling interest in the NZAX Issuer, or a change in ownership in all or substantially all of those Securities of the NZAX Issuer carrying Votes; and *(Amended 1/5/04)*
  - (2) a cessation of, or change in the essential nature or direction of, the business or activities of that NZAX Issuer. *(Amended 1/5/04)*

**1. NZX may, but generally will not, remove Listing from an NZAX Issuer only because the minimum spread requirements in NZAX Listing Rule A3.5.4 cease to be satisfied. Listing will be removed in those circumstances (or may at the discretion of NZX, be qualified by a Non Standard designation) if NZX considers, taking account of any circumstances it thinks fit including the nature of the NZAX Issuer**

and the general characteristics of holders of its Quoted Securities, that:

- (a) trading in the market in those Securities is limited and/or:
  - (i) quotations for the Securities; and/or
  - (ii) prices at which sales are reported to occur; and/or
  - (iii) any pattern of transactions;

gives or appears to give a false indication of proper arm's length market prices; and

- (b) continuation of Listing without Non Standard designation, or at all, as the case may be, is likely in the opinion of NZX to give rise to an unacceptable risk of damage to the reputation of NZX.

NZX will be influenced by the extent to which any reports or references to the Listing of the NZAX Issuer or Quotation of all or any Class of its Securities could mislead people as to the value of investment in its Quoted Securities. *(Amended 1/5/04)*

- 2. In relation to an NZAX Issuer who fails to issue its preliminary full year or half year announcement reports, annual and half yearly reports or quarterly reports of consolidated cash flows, by their respective due dates, NZX will observe the following policy: *(Amended 1/5/04)*

- (a) NZX will immediately publish their names; and
- (b) if after five Business Days following the relevant due date, that NZAX Issuer has not complied, Quotation of all or any Class of that NZAX Issuer's Securities will be suspended, until such time as the NZAX Issuer has complied; and *(Amended 1/5/04)*

- (c) in appropriate cases, either in addition to or in substitution for the steps taken under paragraphs (a) or (b), NZX may pursuant to NZAX Listing Rule A2.3, and at the expense of the NZAX Issuer, use its power of inspection to ascertain and inform the market of the state of that NZAX Issuer. *(Amended 1/5/04)*

- 5.3.4 **Absence of Prior Notice:** If NZX exercises its power under NZAX Listing Rule A5.3.2 without giving prior notice or reasons to the NZAX Issuer concerned it shall, as soon as practicable thereafter, give notice to the NZAX Issuer concerned, explaining the reasons for the decision to exercise its powers in that manner. NZX shall not act in that manner unless NZX forms the opinion that any delay involved in giving prior notice or explanation of the reasons may prejudice the interests of other participants in the market.
- 5.3.5 **Continuing Obligations:** The suspension of Quotation or trading shall not release the NZAX Issuer concerned from any obligation (whether to pay fees or otherwise) it has under the NZAX Listing Rules, and the cancellation of Listing or Quotation shall not release the NZAX Issuer concerned from any such obligation it has under the NZAX Listing Rules in respect of any period or matter occurring before the cancellation.
- 5.4 **GENERAL OBLIGATIONS OF NZAX ISSUERS WHILE LISTED**
- 5.4.1 **NZAX Listing Rules:** Upon the execution of a Listing Agreement with NZX, an NZAX Issuer shall comply with the NZAX Listing Rules from the date the Application for Listing is accepted by NZX pursuant to NZAX Listing Rule A3.3.8.
- 5.4.2 **NZAX Internet Website:** Every NZAX Issuer shall maintain its NZAX Internet website and ensure that it is up to date at all times and contains all necessary information and disclosures as required by the NZAX Listing Rules.