

## 9. TRANSACTIONS WITH RELATED PARTIES AND MAJOR TRANSACTIONS

### 9.1 DISPOSAL OR ACQUISITION OF ASSETS

**9.1.1 Approval of Resolution:** An Issuer shall not (subject to Rule 9.1.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Issuer or assets to be held by the Issuer:

- (a) which would change the essential nature of the business of the Issuer; or
- (b) in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Issuer; *(Amended 1/5/04)*

except with the prior approval of an Ordinary Resolution of the Issuer or a special resolution if that Issuer must obtain approval of the transaction or transactions by a special resolution under section 129 of the Companies Act 1993. *(Amended 1/5/04)*

Provided that for the purposes of paragraph (b) above “Average Market Capitalisation” means the average end-of-day market capitalisation of an Issuer’s Equity Securities carrying Votes over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market. *(Amended 1/5/04)*

**9.1.2 Contents of Notice:** The notice of meeting containing the resolution to approve any transaction referred to in Rule 9.1.1 shall contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of Securities to appraise the implications of the transactions.

**9.1.3 Exception:** Rule 9.1.1 shall not apply to:

- (a) a takeover offer by an Issuer in respect of a Code Company; or
- (b) any transaction entered into by an Issuer with a Bank, on arms length terms and in the ordinary course of banking business, as a result of which transaction the Issuer has recourse to the credit risk of a Bank. *(Amended 1/5/04)*

1. The attention of Issuers is drawn to:
  - (a) the provisions of section 129 of the Companies Act 1993, requiring the approval of a special resolution of shareholders to “major transactions” as defined in that section; and
  - (b) Rule 1.12, dealing with conditions to be included in contracts relating to transactions subject to the approval of a resolution under Rule 9.1.
2. The provisions of Rule 1.1.5 apply to Rule 9.1 to deem references to the Issuer to extend to the group comprised of the Issuer and its Subsidiaries where the context permits.
3. NZX may waive application of Rule 9.1 where, due to deterioration in the financial position of the Issuer, the Average Market Capitalisation of the Issuer has reduced to such an extent that the Rule imposes an unreasonable restriction on the ability of the Issuer to realise assets.
4. The notice of meeting must be approved by NZX pursuant to Rule 6.1.
5. Rule 9.1.3 stipulates that the transaction in question must result in the Issuer having “recourse to the credit risk of a Bank”. The intention of this is to exclude a transaction such as one in which an Issuer may purchase from a Bank notes or securities of a third party which is not a Bank, and to limit the exception in Rule 9.1.3 to situations where the Issuer’s moneys are in substance invested against the credit risk of a Bank.

## 9.2 TRANSACTIONS WITH RELATED PARTIES

**9.2.1 Restriction:** 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:

- (c) that Material Transaction is an employment agreement with a natural person who is not a director within the meaning of section 126 of the Companies Act 1993 of the Issuer or any of its Subsidiaries; or  
*(Inserted 1/5/04)*
- (d) the total value of that Material Transaction is less than \$250,000; or  
*(Inserted 1/5/04)*
- (e) that Material Transaction is approved by an Ordinary Resolution of the Issuer.

1. **NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.**
2. **NZX may waive the requirement to obtain the approval of a resolution for the purposes of Rule 9.2.1 in respect of the annual or other renewal or re-negotiation of transactions which have been approved by a resolution under Rule 9.2.1, if the Issuer produces a report from a suitable independent person as to the fairness of the terms of the renewal or re-negotiation.**
3. **Rule 9.3.1 deals with the persons entitled to Vote on a resolution under this Rule.**
4. **Any agreement involving a transaction referred to in this Rule must comply with Rule 1.12.**
5. **The relevant time for an Issuer to determine whether or not a Related Party is or is likely to become a direct or indirect party to a Material Transaction, or at least one of a related series of transactions of which the Material Transaction from part is at the time of entry into that transaction.** *(Inserted 1/5/04)*

6. In the context of employment agreements with persons who are directors within the meaning of section 126 of the Companies Act 1993 the relevant time for an Issuer to determine whether or not the party to that employment agreement is a director within the meaning of section 126 of the Companies Act 1993 is at the time that employment agreement is entered. Each time the Issuer varies the terms of the employment agreement, including the compensation payable, the Issuer should determine whether the other party to that transaction is a director within the meaning of section 126 of the Companies Act 1993. *(Inserted 1/5/04)*

9.2.2 **Definition of Material Transaction:** 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 5% of the Average Market Capitalisation of the Issuer; or *(Amended 1/5/04)*
- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 5% of the Average Market Capitalisation of that Issuer; or *(Inserted 1/5/04)*
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% of the Average Market Capitalisation of the Issuer; or *(Amended 1/5/04)*
- (d) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Issuer to liability in excess of 5% of the Average Market Capitalisation of the Issuer; or *(Amended 1/5/04)*
- (e) provides or obtains any services (including without limitation the 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 0.5% of the Average Market Capitalisation of the Issuer; or *(Amended 1/5/04)*

- (f) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer:

Provided that for the purposes of this Rule 9.2.2:

- (a) “Average Market Capitalisation” has the same meaning as in the proviso to Rule 9.1.1; and
- (b) “Aggregate Net Value” as used in Rule 9.2.2(a) 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. *(Amended 1/5/4)*

- 1. Transactions in Securities are to be treated as transactions in the assets the value of which underlies or is reflected in the securities.**
- 2. In assessing whether payments under an employment agreement with a Related Party are likely to exceed the thresholds in 9.2.2(e), the Issuer must have regard to the total maximum amount that could become payable in any one financial year. *(Inserted 1/5/04)***

**9.2.3 Definition of Related Party:** 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 officer of the Issuer or any of its Subsidiaries; or
- (b) a Substantial Security Holder of the Issuer; 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 excludes a wholly owned Subsidiary of the Issuer, other than a wholly owned Subsidiary which:

- (i) is a party to a Material Transaction of the type described in Rule 9.2.2(d); and
- (ii) the Issuer intends to sell, or otherwise dispose of, the subsidiary to a Related Party. *(Amended 1/12/99)*

**9.2.4 Exception:** Rule 9.2.1 shall not apply to:

- (a) any transaction entered into by an Issuer with a Bank which is a Related Party of that Issuer, on arm's length terms and in the normal course of banking business, as a result of which transaction the Issuer has recourse to the credit risk of a Bank; or
- (b) the issue, acquisition or redemption by an Issuer of Securities of that Issuer, or the giving by an Issuer of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this paragraph, the transfer, by an Issuer which is a company registered under the Companies Act 1993, of shares held by that company in itself, shall be deemed to constitute an issue of Securities; or
- (c) any employment or service contracts which are Material Transactions under Rule 9.2.2(d) where NZX is satisfied that the terms of the contract have been set on an arm's length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee (as defined in Rule 7.3.6) of the Issuer or any Related Company which would be a Material Transaction under Rule 9.2.2(c), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Companies Act 1993. *(Amended 1/12/99)*

1. Where the Independent Directors of an Issuer are satisfied that the criteria in Rule 9.2.4(a) are satisfied no application need be made by that Issuer to NZX for approval of that transaction and no shareholder ratification of that transaction is required.

*(Amended 1/5/04)*

2. For the purposes of Rule 9.2.4(c), evidence from Independent Directors, audit or remuneration committees (of which a majority of members must be non-Executive Directors) or other committees of the Board comprised entirely of “non-interested” directors or independent experts will be relevant.

9.2.5 **Notice of Meeting:** The text of any resolution to be put to a meeting of an Issuer for the purposes of Rule 9.2.1 shall be set out in the notice of the relevant meeting. That notice shall:

- (a) be approved by NZX in accordance with Rule 6.1; and
- (b) be accompanied by an Appraisal Report; and
- (c) contain such other material as is necessary to enable the holders of Securities of the Issuer to decide whether the transaction price and terms are fair.

### 9.3 VOTING RESTRICTIONS

9.3.1 **Restriction:** Notwithstanding anything to the contrary in the Rules, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of any such resolution shall be cast on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a person.

| Column 1<br>RESOLUTION   | Column 2<br>DISQUALIFIED PERSON  |
|--|--|
| Resolutions under Rules 3.5.1 and 3.5.2  | The Director intended to receive a payment.  |
| Resolution under Rule 7.3.1  | Subject to Rule 9.3.2:<br>(a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or<br>(b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director of the Issuer who is not excluded by the terms of the resolution from participation in the issue. |
| Resolution under Rule 7.3.1 to approve a Rights issue of Equity Securities which is not Renounceable | Any Director of the Issuer and any Associated Person of the Issuer.  |
| Resolution under Rule 7.3.5(b)(iii)  | Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution.  |
| Resolution under Rule 7.3.6  | Any Director intended or likely to benefit from the issue referred to in the resolution.   |
| Resolution under Rule 7.5  | Any person whose effective control of the Issuer would be materially increased.  |
| Resolution under Rule 8.4  | Any 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 Issuer on the same basis.  |
| Resolution under Rule 9.2.1  | Any person referred to in Rule 9.2.3 who is a party or beneficiary (in terms of Rule 9.2.1(a) or (b)) to or of the transactions the subject of the resolution.   |

**9.3.2 Exception:** On a resolution under Rule 7.3.1, a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.



**9.3.3 Proxies or Representatives:** Rule 9.3.1 shall not prevent a person disqualified from Voting under that Rule, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that Rule, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

**1. Rule 9.3.3 prohibits a disqualified person from exercising discretionary proxies. Disqualified persons are only able to exercise proxies where the Security holder has provided that disqualified person with an express instruction setting out how to exercise that Security holder's vote. "Express instructions" exclude instructions that give the proxy holder a discretion how to exercise that Security holder's vote as that proxy holder sees fit. *(Inserted 1/5/04)***

**2. Examples of express instructions include:**

- **an instruction to vote for or against a particular resolution; or**
- **an instruction that the proxy holder should vote for or against a resolution in accordance with the Chairperson's vote on that resolution. *(Inserted 1/5/04)***

**9.3.4 Discovery of Disqualified Persons:** Each Issuer shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in Rule 9.3.1, the identity of holders of Securities who are disqualified from voting on that resolution pursuant to Rule 9.3.1, and on request shall supply a list of such holders to NZX and any holder of Equity Securities of the Issuer.

**9.3.5 Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Issuer concerned) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of Rule 9.3.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of Rule 9.3.1. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to Rule 9.3.4 shall be disregarded by the Issuer and the chairman of the relevant meeting if it is notified to the Issuer later than one full Business Day before the time fixed for commencement of the meeting.