

## 1. INTERPRETATION, RULINGS, WAIVERS

### 1.1 APPLICATION AND INTERPRETATION

**1.1.1 Application:** Except where the context requires otherwise, the NZAX Listing Rules apply as from **1 March 2007**. Any action taken by NZX, an NZX Sponsor or an Applicant for Listing, prior to commencement of these NZAX Listing Rules that would, had these NZAX Listing Rules been in force, have constituted action taken under these rules, shall be treated as having been taken under these rules.

**1.1.2 Definitions:** In the NZAX Listing Rules, the following terms have the following meanings unless the context requires otherwise:

**“Advertisement”** has the meaning given in the Securities Act 1978 and includes a statement or report made in accordance with either of sections 5(2CA) or 3(7) of that Act.

**“Advisor”** has the meaning given in the NZX Participant Rules.

**“Associated Person”** has the meaning given in NZAX Listing Rule 1.2.1.

**“ASX”** means Australian Stock Exchange Limited and includes its successors.

**“Average Market Capitalisation”** means, in relation to any transaction, the volume weighted average market capitalisation of an NZAX Issuer’s Equity Securities carrying Votes calculated from trades on the NZAX over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market.

**“Bank”** means a registered bank in terms of the Reserve Bank of New Zealand Act 1989, a bank having recognition comparable to that of a registered bank under the law of Australia, the United States of America, Japan or the United Kingdom, or any other financial institution approved by NZX.

**“Business Day”** means a day on which NZX is open for trading.

“**Class**” means a class of Securities having identical rights, privileges, limitations and conditions, and includes or excludes Securities which NZX in its discretion deems to be of or not of that Class.

“**Code Company**” means an NZAX Issuer which is a code company as defined in the Takeovers Code.

“**Common Shareholder Number**” or “**CSN**” has the meaning given in the NZX Participant Rules.

“**Constitution**” means, in relation to an NZAX Issuer, its constitution, or other documents comprising its constitution.

“**Convert**” in respect of a Security, means to convert that Security into, or exchange that Security for, a Security of a different sort, whether at the option of the holder, or of the NZAX Issuer, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security. “**Conversion**” and “**Convertible**” have corresponding meanings.

“**Delivery and Settlement Participant**” has the meaning given in the NZX Participant Rules.

“**Director**” means:

- (a) in relation to a company as defined in the Companies Act 1993, any person occupying the position of director of the company by whatever name called; or
- (b) in relation to any other entity, any person occupying a position in that entity the body that is comparable with that of a director of a company as defined in (a).

“**Disclosure Document**” means the document that shall be prepared by an applicant for Listing on the NZAX, where the applicant is not required by law to prepare an Offering Document. The Disclosure Document shall comprise all matters set out in appendix 3.

“**Dual Listed NZAX Issuer**” means an NZAX Issuer incorporated in Australia which is admitted and not removed from the ASX’s Official List

and which is also listed on the NZAX, otherwise than as an Overseas Listed Issuer, and in respect of which both NZX and ASX are Home Exchanges.

“**Equity Security**” means a Security:

- (a) which confers a present or future right to participate in the assets of an Issuer after payment of claims payable under section 313(1) of the Companies Act 1993 or, in the case of an NZAX Issuer that is not a company, after paying preferential or other creditors; or
- (b) which confers a present or future right to participate in the income or profits of an NZAX Issuer.
- (c) which carries, or will in future carry, a Vote, or a right to participate in the ultimate control of an NZAX Issuer; or
- (d) which under its terms of issue may be Converted into a Security of the nature referred to in (a) to (c) without:
  - (i) the agreement of the holder; or
  - (ii) approval of the precise terms and conditions of issue of the Security of the nature referred to in (a) to (c) on Conversion, in the manner set out in NZAX Listing Rule 7.3.1,

and includes any other Security which NZX in its sole discretion declares by a Ruling to be an Equity Security but does not include any Security that NZX in its sole discretion declares by a Ruling not to be an Equity Security.

**1. A Convertible Security may be both a debt Security and an Equity Security for the purposes of the NZAX Listing Rules. However NZX will generally determine, before or after Quotation, that where:**

- (a) a Convertible Security (such as a capital note) is only Convertible with the agreement of the NZAX Issuer, or**
- (b) the Securities into which the Convertible Security may Convert are not presently Quoted, or**

(c) the NZAX Issuer of the Convertible Security is a Subsidiary of the NZAX Issuer of the Securities into which a Convertible Security will Convert,

the Convertible Security shall be deemed to be a debt Security and not an Equity Security for the purposes of the NZAX Listing Rules.

2. NZX may attach certain terms and conditions as NZX considers appropriate to a Ruling that a Convertible Security is a debt Security, including requiring the Security to be issued, or the Conversion rights approved, as if NZAX Listing Rule 7.3 applied, before the Security can be Converted (see also NZAX Listing Rule 7.3.8(b)) and may also require the Offering Document for the Security to contain disclosures that would be required for an issue of Equity Securities (for example, about the NZAX Issuer's dividend policy).

**“Executive Director”** means a Director who is also an employee of the NZAX Issuer.

**“Ex Date”** in relation to a benefit, means the first Business Day after the Record Date for that benefit.

**“Head Security”** means, in relation to any benefit, the Security the holding of which immediately before the Ex Date, confers the entitlement to the benefit.

**“Home Exchange”** means, in respect of any NZAX Issuer, the NZAX Market, or any other Recognised Stock Exchange which NZX is satisfied has primary jurisdiction in relation to listing requirements for the NZAX Issuer and Quotation of its Securities. In respect of NZAX Issuers subject to a declaration under NZAX Listing Rule 5.1.7 the term includes NZX, whether or not the NZAX Issuer concerned retains another Home Exchange.

**“Initial Public Offer”** means an initial offer of Securities to Members of the Public under an Offering Document by an entity that has applied for Listing.

**“Investment Statement”** has the meaning given in section 38C of the Securities Act 1978.

“**ISIN**” means International Security Identification Number as allocated by NZX and the Reserve Bank of New Zealand, following application to NZX or the Reserve Bank.

“**Listing**” means, in respect of any person, the entering into between that person and NZX of a listing agreement, whereby that person agrees to comply with the NZAX Listing Rules and NZX agrees to administer that listing on the NZAX, and “**Listed**” and “**List**” have corresponding meanings.

“**Material Information**” in relation to an NZAX Issuer is information that:

- (a) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price or value of Quoted Securities of the NZAX Issuer; and
- (b) relates to particular Securities, a particular NZAX Issuer, or particular NZAX Issuers, rather than to Securities generally or NZAX Issuers generally.

For the purposes of this definition information is “**generally available to the market**”:

- (c) if:
  - (i) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant Securities; and
  - (ii) since it was made known, a reasonable period for it to be disseminated among those persons has expired; or
- (d) if it is likely that persons who commonly invest in relevant Securities can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
- (e) if it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in paragraphs (c) and (d) above.

In this definition, “**relevant securities**” means securities of a kind the price or value of which might reasonably be expected to be affected by the information. Information that is notified to NZX for disclosure to the market in accordance with these Rules is generally available to the market under paragraph (c) of this definition immediately on it being made available to the market (without limiting how quickly the reasonable period of dissemination in paragraph (c)(ii) of this definition may be satisfied in other cases.

“**Member of the Public**” means, in relation to an NZAX Issuer and/or Securities of an NZAX Issuer, any person other than:

- (a) a person who holds, or who is one of a group of Associated Persons who together hold, 10% or more of a Class of Securities; or
- (b) a person who has, or who is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the NZAX Issuer; or
- (c) any other person or member of a class of persons, whom NZX in its discretion declares not to be a Member of the Public for the purposes of the NZAX Listing Rules.

“**Minimum Holding**” means a parcel or number of Securities as may be prescribed by NZX or, with the approval of NZX, by an NZAX Issuer in its constitution.

“**Mining NZAX Issuer**” has the meaning given in NZAX Listing Rule 10.9.1.

“**Non-Standard NZAX Issuer**” means a type of NZAX Issuer that has been so classified by NZX pursuant to NZAX Listing Rule 5.1.3. An applicant for an NZAX Listing will be considered for classification as Non Standard where that NZAX Issuer has a non-traditional ownership or management structure or unique constitution such as co-operative companies. Criteria which NZX may consider in assessing whether to classify an NZAX Issuer as Non Standard includes the following:

- (a) the NZAX Issuer has a defined group of shareholders; or

(b) the ability of certain holders of shares to vote is limited.

“**NZAX**” means the alternative market operated by NZX.

“**NZAX Issuer**” means any entity which has been admitted to the NZAX Market and is a party to a Listing Agreement with NZX and has the extended meaning given in NZAX Listing Rule 1.1.5.

“**NZAX Listing Rules**” means these rules which relate to the NZAX Market.

“**NZDX**” means the debt security market operated by NZX.

“**NZSX**” means the main board equity security market operated by NZX.

“**NZX**” means New Zealand Exchange Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline).

“**NZX Discipline**” means the body constituted by NZX under the NZX Discipline Rules and where the context permits includes the chairperson, deputy chairperson, any division or duly authorised delegate of NZX Discipline.

“**NZX Discipline Rules**” means the NZX Discipline Rules made by NZX from time to time.

“**NZX Participant Rules**” means the NZX Participant Rules made by NZX from time to time.

“**NZX Regulation Personnel**” means any person for the time being holding appointment, or designated, by NZX as an NZX Regulation Personnel.

“**NZX Sponsor**” means an entity that has been approved by NZX in accordance with the NZX Participant Rules as eligible to assist a prospective NZAX Issuer in the Listing and or Quotation of Securities on the NZAX Market.

**“Offering Document”** means a document that contains an offer of Securities to the public and which complies with the Securities Act 1978 and the NZAX Listing Rules.

**“Official List”** has the meaning given in the ASX Listing Rules.

**“Option”** means an option to acquire a Security.

**“Ordinary Resolution of the NZAX Issuer”** means (subject to NZAX Listing Rule 1.1.7) a resolution passed by a simple majority of Votes of holders of Securities of the NZAX Issuer which carry Votes, entitled to vote and voting.

**“Organising Participant”** means the Primary Market Participant which has undertaken the responsibilities of that position in respect of a Listing procedure, issue, Offering Document, or Advertisement.

**“Overseas Listed NZAX Issuer”** has the meaning given in NZAX Listing Rule 5.1.7.

**“Pre Break Announcement”** means an announcement to the market which is made pursuant to NZAX Listing Rule 10.2.

**“Primary Market Participant”** has the meaning given in the NZX Participant Rules.

**“Prospectus”** means a prospectus within the meaning of the Securities Act 1978.

**“Quotation”** means, in respect of a Class of Securities of an NZAX Issuer, the granting of a right for Trading Participants to quote bids and offers for that Class of Security on NZX. **“Quote”** and **“Quoted”** have corresponding meanings.

**“Recognised Stock Exchange”** means a stock exchange approved by NZX from time to time as enforcing rules, procedures and requirements sufficiently similar to those of NZAX to justify classification as a Recognised Stock Exchange for the purposes of the NZAX Listing Rules.



**Full members of the World Federation of Stock Exchanges (WFE) are recognised for this purpose.**

**“Record Date”** means the time fixed by an NZAX Issuer for the determination of the Security holders to whom an entitlement, right or obligation relating to the Securities of that Issuer shall apply.

**“Related Company”** has the meaning given in section 2(3) of the Companies Act 1993 (read together with section 2(4) of that Act).

**“Relevant Interest”** has the meaning given in the Securities Markets Act 1988.

**“Renounceable”** in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates).

**“Right”** means any right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.

**“Ruling”** means any decision or determination by NZX as to the meaning or interpretation or application of the NZAX Listing Rules and includes any ruling, waiver, or revocation of a waiver given pursuant to NZAX Listing Rules 1.5 or 1.6.

**“Security”** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

- (a) any renewal or variation of the terms or conditions of any existing Security; and
- (b) any Option or Right.

**“Security Agreement”** has the meaning given in NZAX Listing Rule 7.8.1.

**“Statement”** means a statement of holding of Securities complying with NZAX Listing Rule 11.2.

**“Subsequent Public Offer”** means any offer of Securities other than an initial offer of Securities to Members of the Public, by an NZAX Issuer.

**“Subsidiary”** means;

- (a) a subsidiary within the meaning of section 5 of the Companies Act 1993 (read together with sections 6 to 8 inclusive of that Act); and
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of any financial reporting standard approved in terms of section 27(3) of the Financial Reporting Act 1993.

**“Substantial Security Holder”** has the meaning given in section 2 of the Securities Markets Act 1988.

**“Takeovers Code”** means the takeovers code recorded in the Takeovers Code Approval Order 2000.

**“Trading Participant”** has the meaning given in the NZX Participant Rules.

**“Treasury Stock”** means shares in an NZAX Issuer which is a company registered under the Companies Act 1993, which have been acquired by that NZAX Issuer and are held by that NZAX Issuer as treasury stock pursuant to provisions of that Act which enable treasury stock to be held by a company and includes shares held by a Subsidiary of a company other than in accordance with section 82(6) of the Companies Act 1993.

**“Trust Deed”** means a trust deed governing the issue of Securities which are Quoted or intended to be Quoted.

**“Vendor Securities”** means Equity Securities which are issued by an NZAX Issuer at or about the time of its Listing, or of the first Quotation of Securities of the same Class as those Securities, or which are issued with a view to such Listing or Quotation, and which are issued as consideration for (whether directly or indirectly), or in connection with:

- (a) the acquisition by the NZAX Issuer or any Subsidiary of the NZAX Issuer of any material property (including without limitation any patent or intellectual property, or goodwill); or

- (b) services provided or to be provided to the NZAX Issuer or any Subsidiary of the NZAX Issuer (whether related to its formation, promotion, or Listing, or otherwise);

and includes:

- (c) any Securities issued pursuant to a consolidation, subdivision, bonus issue, or similar arrangement in respect of Securities referred to above; and
- (d) any other Securities which NZX determines are Vendor Securities.

**“Vote”** means a right to vote at meetings of holders of Securities of the NZAX Issuer other than:

- (a) a right to vote solely upon matters of a nature immaterial or inconsequential to the control of the NZAX Issuer, or to the control of any material part of the business or operations of the NZAX Issuer; or
- (b) a right to vote only when a payment in respect of the Security in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Security, or in other circumstances of a special or remote nature; or
- (c) a right to vote attaching to Securities which are not Equity Securities, exercisable only at meetings of holders of those Securities.

**1.1.3 Construction:** In the NZAX Listing Rules:

- (a) The headings appear as a matter of convenience and shall not affect the construction of the NZAX Listing Rules; and
- (b) In the absence of an express indication to the contrary, references to sections, paragraphs and appendices are to sections and paragraphs of, and appendices to, the NZAX Listing Rules and reference to a Rule includes any of its sub-Rules or paragraphs; and
- (c) References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory

regulations or instrument as from time to time amended or re-enacted, or, as the context permits, provisions substituted therefore the time being in force; and

- (d) The singular includes the plural and vice versa and words importing any gender include the other genders; and
- (e) The appendices to the NZAX Listing Rules shall have the same force and effect as if set out in the body of the NZAX Listing Rules; and
- (f) The words "written" and "writing" include facsimile and electronic communications and any other means of communication resulting in permanent visible reproduction; and
- (g) The word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (h) Unless stated otherwise, references to monetary amounts are to New Zealand currency and references to times are New Zealand time.

**1.1.4 Notes for Guidance Only:** The footnotes to the NZAX Listing Rules are intended as a guide for users and an aid in interpretation and, only to that extent, form part of the NZAX Listing Rules.

**1.1.5 Whole Group Subject to NZAX Listing Rules:** An NZAX Issuer shall also include all members of any group of entities of which the NZAX Issuer is the holding company, or in which the NZAX Issuer has a controlling interest, to the extent that such extension is necessary to ensure that the object of the NZAX Listing Rules is not frustrated or avoided by reason of the separate legal personality of members of the group. In relation to the disclosure of information for this purpose the group includes any Associated Persons of the NZAX Issuer of which the NZAX Issuer has control in law or in fact, other than any such Associated Person which is another Listed entity or a Subsidiary thereof. Assessment of the materiality of any information in relation to such a group shall be treated as if the group constituted one business.

- 1.1.6 New Zealand Law Terms:** Terms used in the NZAX Listing Rules which have defined meanings in the Companies Act 1993 and/or the Securities Act 1978 or any other legislation shall have the same meanings in the NZAX Listing Rules unless the context requires otherwise.
- 1.1.7 Ordinary Resolution of the NZAX Issuer:** If as a matter of law, or by reason of the provisions of any Constitution, the holders of all Classes of Securities which carry Votes are not able to meet and vote at one meeting, then votes may be cast in accordance with the applicable law or the provisions contained in the Constitution of that NZAX Issuer and regard may be had to the aggregate number of Votes cast in favour of and against the relevant proposal at all of the meetings held or at all the different locations.
- 1.1.8 Application of NZAX Listing Rules to Non Equity Quoted Securities:** Where an NZAX issuer wishes to quote any Security that is not an Equity Security, such Security shall be governed by such of the NZAX Listing Rules or other NZX Listing Rules as NZX determines in its absolute discretion shall be applicable to the type of Security the NZAX Issuer wishes to quote.

## 1.2 ASSOCIATED PERSONS

- 1.2.1 Associated Persons:** In the NZAX Listing Rules, a person is an Associated Person of another person if the first person is associated with the other in terms of NZAX Listing Rules 1.2.2 to 1.2.6
- 1.2.2 Association:** A person (the "**first person**") is associated with another person (the "**second person**") if, in making a decision or exercising a power affecting an NZAX Issuer, the first person could be influenced as a consequence of an Arrangement or relationship existing between, or involving, the first person and the second person.
- 1.2.3 Deeming Provisions:** Without limiting NZAX Listing Rule 1.2.2, the first person is associated with the second person if:
- (a) the first person is a company, and the second person is:
    - (i) Director of that company; or

- (ii) Related Company of that company; or
- (iii) Director of a Related Company of that company; or
- (b) the first person is a spouse, domestic companion, child or parent of the second person, or a nominee or trustee for any of them or for the second person; or
- (c) the first person is a Director of a company, or holds a Relevant Interest in Securities carrying more than 10% of the Votes of a company and the first person and the second person are parties to an Arrangement relating to the control of, or the control or ownership of Securities in, that company, which Arrangement affects Securities of that company carrying more than 30% of the total Votes attaching to Securities of that company; or
- (d) the first person and the second person are acting jointly or in concert; or
- (e) the first person and/or the second person propose to do, or are likely to do, anything which will cause them to become associated in terms of paragraphs (a) to (d) above or NZAX Listing Rule 1.2.2.

**1.2.4 Exclusions:** The first person is not associated with the second person solely because:

- (a) the first person acts as a professional or business adviser to the second person, without a personal financial interest in the outcome of that advice; or
- (b) the first person is a Trading Participant or other person whose ordinary business includes dealing in Securities on behalf of others, and the first person acts in accordance with the specific instructions of the second person to deal in Securities; or)
- (c) the first person acts as a proxy or representative of the second person for the purposes of a meeting of holders of Securities of a company or other entity.

- 1.2.5 Reverse Application:** If the first person is associated with the second person in terms of NZAX Listing Rule 1.2.2 to 1.2.4, then the second person shall be deemed to be associated with the first person.
- 1.2.6 Ruling:** Notwithstanding anything in this NZXA Listing Rule 1.2, persons shall not be associated if NZX rules that they are not associated.
- 1.2.7 Definition:** For the purposes of this NZAX Listing Rule 1.2, “**Arrangement**” means an agreement, arrangement, or understanding, whether express or implied, and whether or not legally enforceable.

- 1. The definition of “Associated Person” is broad. If there is any doubt as to whether any two or more persons are Associated Persons, Issuers should seek a ruling from NZX in terms of NZAX Listing Rule 1.2.6.**
- 2. If a connection between two persons of the nature referred to in NZAX Listing Rule 1.2.3(c) or (d) is not related to the matter in respect of which the question of whether those persons are Associated Persons is required to be determined, NZX will readily grant a ruling that those persons are not Associated Persons.**

### **1.3 DISPUTED INTERPRETATION**

- 1.3.1 Decisions by NZX:** In the event of a dispute or anticipated dispute between an NZAX Issuer and any Security holder of that NZAX Issuer having the benefit of the NZAX Listing Rules, as to the meaning of any of the provisions of the NZAX Listing Rules, upon application of either of them, the matter may, if NZX elects to exercise this power, be determined by NZX.
- 1.3.2 Application for Determination:** Any party to a dispute or anticipated dispute who is entitled to apply to NZX for a determination under NZAX Listing Rule 1.3.1 and seeks such a determination shall give written notice to NZX. The notice shall contain a summary of the relevant facts known to the applicant and any explanation necessary to enable NZX to know the issues which are or may be in dispute and to identify which, if any, other parties or potential parties should be given notice of the application and invited to make submissions.

- 1.3.3 Relationship to Court Proceedings:** Before any action at law is commenced by a party to, or Security holder having the benefit (pursuant to NZAX Listing Rule 2.1) of, the contract represented by the NZAX Listing Rules, which involves determination of a dispute as to the meaning or application of the NZAX Listing Rules, such party shall apply to have a determination made by NZX pursuant to NZAX Listing Rule 1.3.1 as a condition precedent to the commencement of such proceedings.

**NZAX Listing Rule 1.3.1 is analogous to a *Scott v Avery* clause used in arbitration provisions, and is intended to have the same effect.**

## 1.4 ALTERATION OF NZAX LISTING RULES

- 1.4.1 Procedure:** The NZAX Listing Rules may be changed at any time or times by NZX. Notice of a change made under this NZAX Listing Rule shall be given in writing to each NZAX Issuer. A change shall take effect on the expiry of such period of notice of the changes as NZX sees fit.
- 1.4.2 Omission to Notify:** Accidental omission to give notice to an NZAX Issuer or non-receipt of a notice given to an NZAX Issuer shall not invalidate the notice in relation to that NZAX Issuer or any other person.

- 1. NZX may circulate proposed amendments (other than those relating to forms and fees) in draft form to all NZAX Issuers for comment. NZX will publish a notice of amendments.**
- 2. The attention of NZAX Issuers is drawn to NZAX Listing Rule 1.8.1, dealing with changes to Constitutions or Trust Deeds made necessary by a change to the NZAX Listing Rules.**

## 1.5 RULINGS

- 1.5.1 Power to Make Rulings:** NZX may, on request or of its own motion and whether or not a dispute exists, by written notice to the NZAX Issuer concerned, make rulings as to the meaning, interpretation or application of any one or more of the provisions of the NZAX Listing Rules for such period and on such terms and conditions as NZX may determine.



**1.5.2 Publication of Rulings:** Unless the NZAX Issuer establishes, to the satisfaction of NZX, grounds for maintaining confidentiality of NZX's decision with respect to a ruling application made by that NZAX Issuer or, unless NZX determines in its sole discretion not to publish its decision with respect to a ruling application, NZX will publish that decision and the identity of that NZAX Issuer and the facts of that application and the grounds for determining that application will be disclosed.

- 1. NZX will generally consider that rulings sought in anticipation of a transaction will be grounds for confidentiality until such transaction is announced to the market. If the transaction does not proceed, the ruling sought will not lose its confidentiality.**
- 2. All applications for rulings should be submitted to NZX at least 10 Business Days prior to the NZAX Issuer requiring a determination. Where applications are not submitted to NZX at least 10 Business Days prior to the NZAX Issuer requiring a determination, the Issuer may be charged an urgency fee.**

**1.5.3 Effect of Ruling:** Any ruling given pursuant to NZAX Listing Rule 1.5.1 shall have effect according to its tenor as if it formed part of the NZAX Listing Rules in relation to the NZAX Issuer concerned and may be recorded or publicised in such manner as NZX thinks fit.

- 1. NZAX Listing Rules 1.5.1 (and 1.3 and 1.6) are intended to exclude the Court's role in interpreting the NZAX Listing Rules only where and to the extent that NZX has made a relevant Ruling before the date on which the substantive Court hearing could occur. Because the NZAX Listing Rules, although contractual, assume the exercise of broad discretions in some areas, the rights and entitlement conferred under the NZAX Listing Rules are to be read subject to the possibility of exercise of the powers and discretions reserved to NZX.**
- 2. Any ruling given pursuant to NZAX Listing Rule 1.5.1 will be provided to the NZAX Issuer not less than one half a Business Day prior to publication by NZX and should be kept confidential to the NZAX Issuer until published by NZX. The Ruling to be provided is a final decision, and will not be for comment by the NZAX**

**Issuer.** The Ruling is provided to facilitate the NZAX Issuer dealing with the publication of the Ruling by NZX.

3. NZAX Issuers making applications for rulings should complete any templates promulgated by NZX for this purpose and all information necessary for NZX to determine such application should be provided at the time of application. Where NZX requires the NZAX Issuer to provide additional information in respect of an application for a ruling, NZX will have 10 Business Days from the date all information is finally provided to make its determination. An NZAX Issuer must comply with any NZX timetable for provision of information and any information received after the date set out in the timetable may not be considered by NZX.
4. Where an NZAX Issuer wishes its application for ruling and NZX's decision on that ruling application to be treated in confidence it should specify this in its application and include grounds in support of this.

## 1.6 WAIVER

**1.6.1 Power to Waive:** NZX may, in any particular case or cases, by written notice to the NZAX Issuer concerned, waive the application of any one or more of the provisions of the NZAX Listing Rules for such period (whether commencing before or after the date of the notice) and on such terms and conditions as NZX may determine.

**1.6.2 Publication of Waiver:** Unless the NZAX Issuer establishes, to the satisfaction of NZX, grounds for maintaining confidentiality of NZX's decision with respect to a waiver application made by that NZAX Issuer, or unless NZX determines in its sole discretion not to publish its decision with respect to a waiver application, NZX will publish that decision and the identity of that NZAX Issuer and the facts of that application and the grounds for determining that application will be disclosed.

1. NZX will generally consider the waivers sought in anticipation of a transaction to be grounds for confidentiality until such transaction is announced to the market. If the transaction does not proceed, the waiver sought will not lose its confidentiality.

2. **All applications for waivers should be submitted to NZX at least 10 Business Days prior to the NZAX Issuer requiring a determination. Where applications are not submitted to NZX at least 10 Business Days prior to the NZAX Issuer requiring a determination, the NZAX Issuer may be charged an urgency fee.**

- 1.6.3 Revocation:** Any waiver granted under NZAX Listing Rule 1.6.1 may be revoked at any time by NZX by written notice to the NZAX Issuer concerned and such a revocation shall have effect from the date stated in the notice (which may be before the date of the notice if NZX considers that the waiver was granted on the basis of incorrect information).
- 1.6.4 Publication:** Subject to NZAX Listing Rule 1.6.2 NZX may publish such information relating to a waiver granted or refused under NZAX Listing Rule 1.6.1, or revocation of a waiver under NZAX Listing Rule 1.6.3, as it considers desirable.

1. **Any waiver given pursuant to NZAX Listing Rule 1.6.1 will be provided to the NZAX Issuer not less than one half a Business Day prior to publication by NZX and should be kept confidential to the NZAX Issuer until published by NZX. The waiver to be provided is a final decision, and will not be for comment by the NZAX Issuer. The waiver is provided to facilitate the NZAX Issuer dealing with the publication of the waiver by NZX.**
2. **NZX shall consider retrospective waivers only in exceptional circumstances where a minor or inadvertent breach of an NZAX Issuer would incur severe consequences for such NZAX Issuer if the application were not considered by NZX.**
3. **NZAX Issuers making applications for waiver should complete any templates promulgated by NZX for this purpose and all information necessary for NZX to determine such application should be provided at the time of application. Where NZX requires the NZAX Issuer to provide additional information in respect of an application for a waiver, NZX will have 10 Business Days from the date all information is finally provided to make its determination. An NZAX Issuer must comply with any NZX timetable for**

provision of information and any information received after the date set out in the timetable may not be considered by NZX.

4. Where an NZAX Issuer wishes its application for waiver and NZX's decision on that waiver application to be treated in confidence it should specify this in its application and include grounds in support of this.

## 1.7 INTERPRETATION POLICY

**1.7.1 General Application of Policy Statements:** In the exercise of the powers to make Rulings NZX shall be guided by the policies set out or explained in the footnotes to the NZAX Listing Rules and any other practice notes or relevant Rulings promulgated to NZAX Issuers.

**1.7.2 Elaboration of Policy:** In addition to the policy statements referred to in NZAX Listing Rule 1.7.1 NZX may from time to time issue further policy statements and practice notes which will have a similar status in the application of the NZAX Listing Rules.

## 1.8 EFFECT OF CHANGES TO RULES – STATUS OF PREVIOUS RULES

**1.8.1 General:** Whenever a change is made to the NZAX Listing Rules which requires a change to be made to any Constitution, each NZAX Issuer affected shall, at the first reasonable opportunity, cause its Constitution to be changed. In the case of changes to those NZAX Listing Rules which must be contained in or incorporated by reference into a Constitution an NZAX Issuer that has those provisions contained in a Constitution shall at the first reasonable opportunity, cause its Constitution to be amended and in the case of an NZAX Issuer that incorporates by reference those NZAX Listing Rules required to be contained in its Constitution such amended rules shall be deemed to be incorporated into that NZAX Issuer's Constitution by reference on the date specified in the notice given under NZAX Listing Rule 1.4.

1. NZX will generally regard the first annual meeting of the NZAX Issuer held six months or more after a change in the NZAX Listing Rules as the first reasonable opportunity for a change in the Constitution where the NZAX Listing Rules are not incorporated by reference into that NZAX Issuer's Constitution.
2. Where an NZAX Issuer incorporates by reference those NZAX Listing Rules required to be contained in its Constitution, NZX will generally provide one month after the expiry of the notice given under NZAX Listing Rule 1.4) before amended NZAX Listing Rules shall be deemed to be incorporated into that NZAX Issuer's Constitution.

- 1.8.2 Work in Progress:** Any transactions to which these NZAX Listing Rules apply, and which commenced prior to any amendments coming into force, may proceed pursuant to the previously applicable NZAX Listing Rules, provided that a waiver from any amended NZAX Listing Rules applicable to such a transaction has been granted by NZX on or before the expiry of 3 months from their coming into force.
- 1.8.3 Changes to Market Surveillance Panel and Introduction of NZX Discipline:** All NZAX Listing Rules relating to the establishment, powers and procedures of the Market Surveillance Panel in force prior to the introduction of the NZAX Listing Rule changes on 1 May 2004 shall be deemed to be in force and effect to the extent an application has been made to the Market Surveillance Panel on or before that date and those prior NZAX Listing Rules shall continue in force in respect of that application.
- 1.8.4 Continuation of Waivers:** Any waiver granted by NZX pursuant to NZAX Listing Rule A1.8 of the NZAX Listing Rules in force prior to commencement of these NZAX Listing Rules shall be deemed to be a waiver given pursuant to NZAX Listing Rule 1.6 and shall (subject to the power of NZX pursuant to NZAX Listing Rule 1.6.2) continue in force notwithstanding the introduction of these NZAX Listing Rules.

## **1.9 CONDITION IN CONTRACT**

Each NZAX Issuer shall ensure that its obligations, and the obligations of its Subsidiaries, under every agreement involving a transaction which in terms of the NZAX Listing Rules requires approval by a resolution of holders of Securities shall:

- (a) be conditional upon the passage of such a resolution in accordance with the NZAX Listing Rules, and
- (b) that that transaction shall not be completed until that resolution is passed.

If that resolution is not passed, the NZAX Issuer shall terminate its obligations, or the obligations of its Subsidiary, under that agreement, so that the transaction in question does not proceed.

## **1.10 GOVERNING LAW AND JURISDICTION**

The NZAX Listing Rules shall be governed by and construed in accordance with the law of New Zealand. Each NZAX Issuer shall be deemed, by entering into a Listing Agreement with NZX, to have irrevocably submitted to the non-exclusive jurisdiction of the Courts of New Zealand.