

NEW ZEALAND EXCHANGE LIMITED (“NZX”) BUSINESS RULES

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PART A – NZX FIRMS

1. INTERPRETATION

1.1 Definitions: For the purposes of Part A of these Rules:

the **Act** means the Sharebrokers Act 1908;

Approved Organisation means any organisation, association of persons or other entity designated as such by the Board from time to time pursuant to **Rule 5.2 of Part A**;

Approved Security has the meaning set out in **Rule 20.2 of Part A**;

Board means the board of directors from time to time of NZX, appointed in accordance with the constitution;

Business Day means a day on which NZX is open for trading;

Chair means the chair from time to time of the Board;

Code of Practice means NZX Code of Practice, as amended from time to time;

company means a company registered or re-registered under the Companies Act 1993;

constitution means the constitution from time to time of NZX;

Complaints Committee means any committee appointed pursuant to **Rule 12.11 of Part A**;

Defaulter has the meaning set out in **Rule 14.1 of Part A**;

Deputy Chair means the deputy chair from time to time of the Board;

Disciplinary Committee means the disciplinary committee established by the Board pursuant to **Rule 12.1 of Part A**;

flotation has the meaning set out in **Rule 7.4 of Part A**;

full time means:

- (a) employment predominantly in; or

- (b) acting as a consultant or as an independent contractor predominantly for,

the Stockbroking Business of an NZX Firm;

Good Stockbroking Practice means:

- (a) complying with the spirit and intent of the practices, procedures and requirements as set out from time to time in:
 - (i) these Rules;
 - (ii) the Regulations;
 - (iii) the Code of Practice; and
 - (iv) any other documents specified by the Board from time to time and communicated to NZX Firms; and
- (b) conduct that is consistent with the wider interests of fair and orderly Securities markets;

group means a holding company and its subsidiaries, and **member of a group** means any one of them;

holding company has the meaning set out in the Companies Act 1993 subject to **Rule 1.2(h)**;

Inspector means the inspector appointed by NZX in accordance with **Rule 17.1 of Part A**, and includes the person or persons appointed as the inspector under the rules of the New Zealand Stock Exchange in force immediately prior to these Rules coming into force;

Listing Rules means NZX Listing Rules, as amended from time to time;

Managing Director means the managing director from time to time of NZX or the person who is responsible for carrying out the duties of managing director or chief executive of NZX, and includes:

- (a) the person appointed as managing director under the rules of the New Zealand Stock Exchange in force immediately prior to these Rules coming into force; and

- (b) any delegate of the Managing Director appointed under **Rule 12.11(a) of Part A**;

Managing Principal in relation to an NZX Firm means an NZX Broker who is designated, in accordance with **Rule 3.12 of Part A**, as a Principal of an NZX Firm and who is responsible for carrying out the duties of the chief executive, managing director or managing partner of the relevant NZX Firm, whichever is appropriate;

notice has the meaning set out in **Rule 1.3 of Part A**;

NZX means New Zealand Exchange Limited established pursuant to the New Zealand Stock Exchange Restructuring Act 2002;

NZX Associate Broker includes any person who:

- (c) is designated as an NZX Associate Broker pursuant to **Rule 3 of Part B**; or
- (d) is a member of a category or class of members of an Approved Organisation, where that category or class of members is recognised by the Board pursuant to **Rule 5.4(b) of Part A**; or
- (e) was an individual associate member under the rules of the New Zealand Stock Exchange in force immediately prior to these Rules coming into force;

NZX Firm means:

- (a) a company; or
- (b) a partnership; or
- (c) a sole trader; or
- (d) any other business entity,

in each case, that has met the requirements for designation, and has been designated by the Board, as an NZX Firm of NZX in accordance with **Rule 2.3 of Part A**; or

- (e) a member firm of the New Zealand Stock Exchange under the rules of the New Zealand Stock Exchange in force immediately prior to these Rules coming into force;

NZX Broker includes any person who:

- (a) is designated as an NZX Broker pursuant to **Rule 4 of Part B**; or
- (b) is a member of a category or class of members of an Approved Organisation, where that category or class of members is recognised by the Board pursuant to **Rule 5.4(a) of Part A**; or
- (c) was an individual full member under the rules of the New Zealand Stock Exchange in force immediately prior to these Rules coming into force;

Part A means Part A of these Rules, as amended from time to time;

Part B means Part B of these Rules, as amended from time to time;

Principal means an NZX Broker:

- (a) who is a partner, director, shareholder of an NZX Firm; or
- (b) who is a director of, or controlling shareholder in, a company which holds directly or indirectly more than 20% of the issued capital of an NZX Firm; or
- (c) who has or has had at any time a relationship with an NZX Firm giving that NZX Broker the right or opportunity to influence or control the direction of that NZX Firm which, in the opinion of the Board, would reasonably require that NZX Broker to be regarded at the material time as a Principal of that NZX Firm;

Principal Stockbroking Office means the Stockbroking Office of NZX Firm designated as such in accordance with **Rule 3.12 of Part A**;

Regulations means NZX Limited Regulations for NZX Firms, as amended from time to time;

revocation:

- (a) in relation to an NZX Firm, has the meaning set out in **Rule 15.4 of Part A**; and

- (b) in relation to an NZX Broker or an NZX Associate Broker, has the meaning set out in **Rule 9.2 of Part B**;

Rules means NZX Business Rules 2002, as amended from time to time;

Secretary has the meaning set out in section 2 of the Sharebrokers Act 1908;

Securities has the meaning set out in the Listing Rules;

services has the meaning set out in **Rule 3.4(b) of Part A**;

Short Sale has the meaning set out in **Rule 20.2 of Part A**;

stock or **stocks** includes shares and vice versa;

Broker includes sharebroker and vice versa;

stockbroking includes sharebroking and vice versa;

Stockbroking Business includes:

- (a) trading in Securities as Principal, or for and on behalf of or as agent for, any other person;
- (b) giving investment advice relating to Securities to any other person for remuneration; and
- (c) any other business which an NZX Firm conducts relating to Securities and which impacts on the financial position of NZX Firm;

Stockbroking Office means any place from which a Stockbroking Business is conducted, including providing advice or accepting or lodging orders to purchase or sell Securities;

subsidiary has the meaning set out in the Companies Act 1993, subject to **clause 1.2(h)**;

suspension:

- (a) in relation to an NZX Firm, has the meaning set out in **Rule 15.1 of Part A**; and
- (b) in relation to an NZX Broker or any NZX Associate Broker, has the meaning set out in **Rule 8.5 of Part B**;

Trading System means the systems, facilities and services provided by NZX for lodging quotations and orders for trading and settling Securities;

writing includes representing or reproducing words, figures, or symbols:

- (a) in a visible and tangible form by any means and in any medium; and
- (b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and to be retrieved and read;

and **written** has a corresponding meaning.

1.2 Interpretation:

- (a) Unless the context requires otherwise:
 - (i) the headings are inserted for convenience only and shall not affect the interpretation of these Rules;
 - (ii) words importing persons include firms and corporations;
 - (iii) words importing one gender include the other genders;
 - (iv) words importing the singular include the plural, and vice versa;
 - (v) reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;

- (vi) references to **dollars** or **\$** are references to New Zealand dollars;
- (vii) where the day on, or by, which anything is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day; and
- (viii) all references to a **subsidiary** or **holding company** where that company is not a company incorporated under the Companies Act 1993 shall be construed as if that company was incorporated.

(b) **The Board:**

- (i) shall, if requested by an NZX Firm, NZX Stockholder, NZX Associate Broker, or Approved Organisation; and
- (ii) may at any other time,

provide interpretations of the Rules, and NZX will notify NZX Firms, NZX Brokers, NZX Associate Brokers, Approved Organisations and the Secretary accordingly.

1.3 Notices:

- (a) A notice, approval, consent or other communication (**notice**) under these Rules must be in writing, and must be left at, or sent by prepaid ordinary post to, the address of the addressee, or sent by facsimile to the facsimile number of the addressee.

(b) **Notices to:**

- (i) an NZX Firm shall be sent to its Principal Stockbroking Office;
- (ii) an Approved Organisation shall be sent to its head office;
- (iii) an NZX Broker or NZX Associate Broker shall be sent to that individual;

in each case, at the address and facsimile numbers notified to NZX from time to time.

- (c) A notice is deemed to be received if delivered by hand, on receipt; if sent by post, on the third day after posting; and if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient, **provided that** in the case of a notice delivered by hand or facsimile, if the date of delivery or transmission is not a Business Day, or the delivery or transmission is made after 5.00pm on a Business Day, then the notice will be deemed to have received on the next Business Day.

2. APPLICATION AND DESIGNATION AS AN NZX FIRM

- 2.1 Application in writing:** Application for designation as an NZX Firm shall be made in writing to the Board.
- 2.2 Board considers applications:** The Board shall consider all applications for designation as an NZX Firm. The Board shall review each application and satisfy itself that the requirements of all relevant Rules, including **Rules 3 and 4 of Part A** (as appropriate), have been met.
- 2.3 Designation:** The Board shall designate a firm as an NZX Firm of NZX when:
- (a) that firm provides evidence satisfactory to the Board that:
- (i) the requirements of **Rule 3.6 of Part A** are met (if a company);
 - (ii) it holds a sharebroker's licence where required to do so by law;
 - (iii) it will carry out its responsibilities as an NZX Firm and Broker honestly and diligently, and in particular, will at all times fully comply with the Rules, the Regulations and the Code of Practice, and will at all times observe Good Stockbroking Practice;
 - (iv) it will ensure that its employees (including NZX Brokers and NZX Associate Brokers) and contractors comply fully with the Rules, the Regulations and the Code of Practice, and will at all times observe Good Stockbroking Practice;

- (v) the firm acknowledges and agrees that, upon being designated as an NZX Firm, these Rules shall form a binding contract between that firm and NZX in accordance with **Rule 2.4 of Part A**; and
 - (vi) its settlement, payment and accounting systems and its technical capabilities comply with such standards as may be prescribed by the Board from time to time;
- (b) each Principal of the firm has delivered to the Board a statutory declaration stating that:
- (i) (if a company) the requirements of **Rule 3.6 of Part A** are met; and
 - (ii) he or she will ensure that the firm will at all times fully comply with the Rules, the Regulations and the Code of Practice, and will at all times observe Good Stockbroking Practice;
- (c) such fees, levies or other charges as are set by the Board as a condition of designation as an NZX Firm are paid; and
- (d) the requirements for a Stockbroking Office are met in accordance with **Rule 4 of Part A**.
- 2.4 Rules form basis of contract:** Upon the Board designating a firm as an NZX Firm in accordance with **Rule 2.3 of Part A**, these Rules shall form a binding contract between NZX Firm and NZX.
- 3. CONTINUING REQUIREMENTS FOR NZX FIRMS**
- 3.1 Conduct of NZX Firm:** Every NZX Firm shall:
- (a) at all times observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency, and within NZX Firm's competence;
 - (b) refrain from any action, conduct, matter or thing which is, or is reasonably likely to be:
 - (i) detrimental to the wellbeing or proper conduct of NZX; or

- (ii) a discredit or bring generally into disrepute NZX or NZX Firms;
 - (c) comply fully with the Rules, the Regulations and the Code of Practice, and at all times observe Good Stockbroking Practice;
 - (d) ensure that its employees (including NZX Brokers and NZX Associate Brokers) and contractors comply fully with the Rules, the Regulations and the Code of Practice, and at all times observe Good Stockbroking Practice;
 - (e) comply with any request or direction made or given by NZX under these Rules, the Regulations, or the Code of Practice; and
 - (f) at all times ensure that its settlement, payment and accounting systems and its technical capabilities comply fully with such standards as may be prescribed by the Board from time to time.
- 3.2 **No trading of Securities for employees of other NZX Firms:** No NZX Firm shall buy or sell Securities for an employee of any other NZX Firm; **provided that this Rule 3.2 of Part A** shall not apply where the two NZX Firms are members of the same group.
- 3.3 **Description of NZX Firm:** No NZX Firm shall, in respect of its activities as a Broker, describe its business in any way other than as an NZX Firm.
- 3.4 **Description of NZX Firm's conduct:** Where any NZX Firm is in any way associated with any group or association, whether incorporated or not, the functions or purposes of which include providing in New Zealand any services of any sort falling within the objects of NZX, then:
- (a) NZX Firm shall in all circumstances clearly identify to all persons with whom that NZX Firm may deal and all other persons who may become aware of NZX Firm's conduct, the distinction between conduct undertaken by NZX Firm as an NZX Firm, and conduct undertaken in the course of, or by virtue of, NZX Firm's association with that other body.
 - (b) in relation to disseminating information or providing access to facilities that are provided by NZX for NZX Firms (the **services**), all NZX Firms acknowledge:

- (i) the services are provided to NZX Firms on a basis of the cost of those services being shared, in whole or in part, by NZX Firms;
- (ii) the services may incorporate or rely upon intellectual property which is owned by, or licensed to, NZX; and
- (iii) the services may incorporate information produced for the confidential use of NZX Firms only, without it being specifically delineated but in circumstances that require all NZX Firms to respect absolutely that confidentiality.

If the Board is satisfied that an NZX Firm is misusing the access to the services for the purpose of promoting or conducting business in the course of its association with any other organisation described in this **Rule 3.4 of Part A**, the Board may at any time restrict or suspend access for that NZX Firm to the services.

3.5 Payment of fees: Every NZX Firm shall pay such fees, levies and other charges as shall from time to time be fixed, or incurred on behalf of NZX Firm, by NZX pursuant to **Rule 5.8(a) of Part A**.

3.6 Obligations of Principals and directors of companies: In the case of an NZX Firm which is a company, NZX Firm and every NZX Broker who is a director of that NZX Firm, shall ensure that at all times:

- (a) a majority of the directors are NZX Brokers;
- (b) the constitution of the company provides that:
 - (i) it agrees to be bound by the Rules, the Regulations and the Code of Practice, and to observe at all times Good Stockbroking Practice;
 - (ii) the directors required to form a quorum for a directors' meeting include a majority of directors who are NZX Brokers; and
 - (iii) the directors may not delegate their powers as directors by power of attorney or in any other manner, **provided that** a director who is an NZX Broker may only appoint as his or her alternate director a person who is an NZX Broker.

For the avoidance of doubt, this **Rule 3.6(b)** shall not prevent the proper delegation by directors who are executive officers of the company of their executive powers;

- (c) the registered office is located at a Stockbroking Office of the company, **provided that** where the company is a wholly owned subsidiary of any other company with its registered office in New Zealand, NZX Firm's registered office may be situated at the same location as that of its parent company; and
- (d) the constitution of the company complies in all material respects with the standard form (if any) prescribed from time to time by the Board. The Board's determination that the constitution of a company does or does not at any time comply with this **Rule 3.6(d)** of **Part A** shall be final and binding on NZX Firm.

3.7 Beneficial owners of shares must be identifiable: All NZX Firms which are companies shall:

- (a) provide the Managing Director with a schedule of their shareholders; and
- (b) identify the beneficial owners of such shares and the number of shares held by each beneficial owner.

The Managing Director shall maintain a file of such schedules.

3.8 Change In ownership of shares must be notified: Where there is a change in the legal or beneficial ownership of any shares in an NZX Firm which is a company, the directors shall immediately advise the Managing Director, giving full details of the change and also confirming the identity of the beneficial owner of such shares so that the file referred to in **Rule 3.7** of **Part A** may be updated.

3.9 Notification of new director: Whenever a new director of an NZX Firm which is a company is appointed, NZX Firm shall promptly deliver to NZX a statutory declaration by the director stating that NZX Firm is complying with **Rule 3.6** of **Part A** and that the director will ensure that NZX Firm will at all times comply with the Rules, the Regulations and the Code of Practice, and observe Good Stockbroking Practice.

3.10 Notification of Companies Office filing: Whenever an NZX Firm which is a company files with the Registrar of Companies an annual return, financial statements or a notice of a change in its share capital, or its

directors or its constitution, it shall at the same time send a copy of such return or notice to the Managing Director.

- 3.11 Notification of NZX Brokers and NZX Associate Brokers employed by NZX Firms:** Each NZX Firm shall:
- (a) ensure that NZX has at all times an up-to-date list of NZX Brokers and NZX Associate Brokers employed by or contracted to that NZX Firm; and
 - (b) in particular, immediately notify and provide an amended list to NZX whenever an NZX Broker or NZX Associate Broker:
 - (i) commences employment or contractual relations with; or
 - (ii) ceases to be employed by or contracted to;
 that NZX Firm.
- 3.12 Managing Principal and Principal Stockbroking Office:** Every NZX Firm shall designate one NZX Broker to be Managing Principal, and one office as its Principal Stockbroking Office.
- 3.13 Managing Principal responsible for NZX Firm's compliance:** The Managing Principal shall be responsible for ensuring his or her NZX Firm complies with **Rule 3 of Part A**.
- 3.14 Client advisers and investment advisers must be NZX Brokers or NZX Associate Brokers:** Each NZX Firm shall ensure that all of its employees, officers, agents and Principals who are acting as client advisers and/or investment advisers are NZX Brokers or NZX Associate Brokers.
- 3.15 Suspension:** If an NZX Firm fails to comply with any of **Rule 3 of Part A**, then, without limiting any other remedies or sanctions available to the Board, NZX Firm shall be liable to have its designation as an NZX Firm suspended by the Board without further notice, and such suspension shall continue until such Rules are complied with, in each case to the satisfaction of the Board.
- 4. STOCKBROKING OFFICES**
- 4.1 Name of Stockbroking Office:** No NZX Firm shall operate any Stockbroking Office under a name which is different from that of NZX Firm.

- 4.2 **Control of Stockbroking Office:** Every Principal Stockbroking Office shall be under the direct full time control of a Principal. Any other Stockbroking Office shall be under the direct full time control of an NZX Broker or NZX Associate Broker.
- 4.3 **Requirements for establishing a new NZX Firm:** Any NZX Broker wishing to establish a new NZX Firm shall first be required to satisfy the Board that:
- (a) he or she and any other person with whom they are associated in the venture is able to meet the capital and equity requirements set out in these Rules;
 - (b) their business plan, management controls, and office and accounting systems are of an acceptable standard when measured against those already in place in other NZX Firms. For the purposes of this Rule, a certificate to the appropriate effect from the Inspector will be required;
 - (c) their senior staff are suitably experienced and capable to enable their business to be conducted in a way which will not place other NZX Firms and the investing public at financial risk;
 - (d) where appropriate, they have fully met all obligations arising from their previous activities as a Principals of an NZX Firm;
 - (e) such fees, levies or other charges as may be set by the Board as a condition of establishing a new NZX Firm have been paid; and
 - (f) such other matters as the Board may from time to time generally, or specifically in relation to the relevant proposal, require have been, or will be complied with or provided.
- 4.4 **Notice of proposed Stockbroking Office:** An NZX Firm wishing to open further Stockbroking Offices in addition to its Principal Stockbroking Office or to join in partnership or become formally associated with another NZX Firm shall give NZX at least 15 Business Days' prior written notice of its intention to do so. In the case of a Stockbroking Office, the notice shall state the full address of the office and the full name of NZX Broker or NZX Associate Broker under whose direct full time control it will be placed. On receiving any such notice, the Managing Director shall promptly advise all NZX Firms of its details.

4.5 **Application to overseas Stockbroking Offices:** Where an NZX Firm has a Stockbroking Office situated overseas:

- (a) subject to **Rule 4.5(b)** of **Part A**, the provisions of these Rules relating to operating Stockbroking Offices shall apply to that overseas Stockbroking Office except in so far as they conflict with any applicable statutory or regulatory requirements that apply in the jurisdiction in which that Stockbroking Office is situated; and
- (b) **Rule 16** of **Part A** shall apply to that Stockbroking Office, **except that** the Inspector may appoint an overseas individual or firm who, in the Inspector's opinion has suitable qualifications and experience as his or her agent and delegate to that person any or all of his or her powers as Inspector in relation to that Stockbroking Office.

5. **POWERS OF THE BOARD**

5.1 **Powers are additional:** The powers of the Board under these Rules are in addition to the powers of the Board under the constitution and at law.

5.2 **Board may designate Approved Organisations:** The Board may from time to time designate any organisation, association of persons or other entity as an Approved Organisation for the purposes of recognising that organisation, association or other entity's members (or any category or class of its members) as NZX Brokers or NZX Associate Brokers under these Rules. Any such designation may be given subject to such terms and conditions as the Board may from time to time determine.

5.3 **Board may review and revoke designation of Approved Organisations:** The Board may at any time review any organisation, association or other entity's designation as an Approved Organisation under **Rule 5.2** of **Part A**, and may at its sole discretion revoke that designation at any time.

5.4 **Board may recognise classes or categories of membership in Approved Organisations:** The Board may from time to time recognise a category or class of members of an Approved Organisation such that members of that category or class will, for the purposes of these Rules, be deemed to be:

- (a) NZX Brokers; or

- (b) NZX Associate Brokers.

Any such recognition may be given subject to such terms and conditions as the Board may from time to time determine.

- 5.5 **Board may review and revoke recognition:** The Board may at any time review its recognition of any class or category of membership under **Rule 5.4 of Part A**, and may at its sole discretion revoke that recognition at any time.

- 5.6 **Power to bring charges:** The Board, or any delegate authorised for the purposes of this **Rule 5.6** may, with absolute discretion and after making such enquiries (if any) as it, he or she thinks fit, bring a charge or charges against an NZX Firm or NZX Firms if, in the opinion of the Board, or any such delegate, NZX Firm may be or may have:

- (a) been guilty of a breach of any of these Rules, the Regulations or the Code of Practice, or has failed to observe Good Stockbroking Practice; or
- (b) been guilty of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX; or
- (c)
 - (i) been in partnership with a person; or
 - (ii) engaged a person as an employee (including as an NZX Broker or NZX Associate Broker); or
 - (iii) been in association or contractual relationship with a person; or
 - (iv) engaged a person as a Principal;

in each case, who has been guilty of conduct which, if committed by an NZX Firm, would justify the Disciplinary Committee imposing on that NZX Firm any of the penalties in **Rule 12.8 of Part A**.

Any Board member who, or whose NZX Firm, is concerned with or implicated in the charge, shall not consider whether to bring any charge against an NZX Firm or NZX Firms under this **Rule 5.6 of Part A**. The Board shall refer any such charge to the Disciplinary Committee, which shall hear the charge in accordance with **Rule 12.4 of Part A**.

- 5.7 **Power to receive and consider complaints:** The Board, or any delegate authorised for the purpose of this Rule, shall have power to receive complaints about NZX Firms or the conduct of NZX Firms, to reject summarily any complaints which appear to be insubstantial or frivolous, and otherwise at its discretion to refer such complaints to a Complaints Committee, the Managing Director, or the Board, in each case to determine the complaint or consider if charges should be brought against NZX Firm under **Rule 5.6 of Part A**. Any Board member who, or whose NZX Firm, is concerned with or implicated in the complaint shall not determine the complaint or consider whether to bring any charge against an NZX Firm or NZX Firms under this **Rule 5.7 of Part A**.
- 5.8 **Further powers of Board:** Without limiting the Board's powers under **Rule 5.6 of Part A**, the Board shall have power to:
- (a) impose on NZX Firms such fees, levies and other charges, whether as a condition of designation as an NZX Firm or otherwise, as it sees fit. For the avoidance of doubt, the Board may differentiate between NZX Firms as regards the amount of such fees, levies and other charges on such basis as it sees fit;
 - (b) summarily (without bringing a charge under **Rule 5.6 of Part A**) impose on any NZX Firm in respect of a breach of any Rule, Regulation, or the Code of Practice, or failure to observe Good Stockbroking Practice a fine of up to \$250,000 (plus GST or any other applicable tax). There shall be a right of appeal to the Disciplinary Committee against the imposition of a fine under this **Rule 5.8(b) of Part A**. The Board shall prepare, and NZX shall publish, following the expiry of the appeal period under **Rule 12.4(f)(ii) of Part A**, a written summary of the Board's reasons for any decision the Board makes under this **Rule 5.8(b) of Part A**, including the reasons for its choice of penalty;
 - (c) summarily (without bringing a charge under **Rule 5.6 of Part A**) suspend or revoke a firm's designation as an NZX Firm for any breach of any Rule, Regulation, or the Code of Practice, or failure to observe Good Stockbroking Practice which, in the Board's opinion, constitutes a material, wilful, prolonged or repeated breach. An NZX Firm may appeal to the Disciplinary Committee against any such suspension or revocation under this **Rule 5.8(c) of Part A**. If that NZX Firm is found on appeal not to have been in breach of the relevant Rule under this **Rule 5.8(c) of Part A**, NZX shall bear the reasonable out-of-pocket costs of appeal of that NZX Firm. The Board shall

prepare, and NZX shall publish, following the expiry of the appeal period under **Rule 12.4(f)(ii)** of **Part A**, a written summary of the Board's reasons for any decision the Board makes under this **Rule 5.8(c)** of **Part A**, including the reasons for its choice of penalty;

- (d) take such other action as may, in the Board's opinion, be required for the operation of fair and orderly Securities markets, and to secure compliance with these Rules, the Regulations and the Code of Practice; and
- (e) make rulings as to the interpretation of the Rules, in accordance with **Rule 1.2(b)** of **Part A**.

When the Board is considering imposing any of the penalties under **Rules 5.8(b)** and **5.8(c)** of **Part A**, and in considering the extent of any penalty, the Board shall take into consideration the conduct of the relevant NZX Firm during the previous two year period.

- 5.9 **Delegation of powers:** The Board shall have the power to delegate to any person, sub-committee of the Board or other committee or body, whether incorporated or unincorporated, and whether or not it includes or comprises persons who are not NZX Brokers or NZX Associate Brokers, any of the powers, rights and discretions of the Board including the power of delegation on such terms and conditions as the Board may from time to time specify.

6. LISTING

- 6.1 Where a prospectus states that an application has been made under the Listing Rules to list an issuer, or to quote Securities, on NZX no NZX Firm shall deal in the Securities concerned until the issuer has been listed by, or the Securities quoted on, NZX or such listing or quotation has been refused.

7. AUTHORITY TO ACT

- 7.1 **Deemed authority to act on offer to public:** Subject to **Rule 7.2** of **Part A**, all NZX Firms shall be deemed to have authority to act as brokers to, or to be associated with, any flotation where a prospectus or other document soliciting applications for shares or other Securities or capable of promoting inquiries for shares or other Securities is issued to members of the public as contemplated in the definition of "offer of securities to the public" in the Securities Act 1978.

- 7.2 **Assurance of authority to act required on listing:** In the case of any flotation or further issue of shares or other Securities for which listing is being or will be sought, no NZX Firm shall have authority to act unless the issuer or its organising broker has sought and received assurance from NZX that authority to act has not been withdrawn. In considering an application for assurance of authority to act, NZX shall have regard to whether the requirements of the general law and the Rules and the Listing Rules have been or are likely to be complied with, the standing and repute of the issuer and such other matters as NZX may consider to be relevant in the interests of the investing public and the standing of NZX and NZX Firms generally.
- 7.3 **Application for assurance of authority to act:** Application for assurance of authority to act shall be made by NZX Firm acting as organising broker to the Board or to any delegate of the Board, and shall be accompanied by such fee as may from time to time be prescribed by the Board.
- 7.4 **Meaning of flotation:** For the purposes of **Rule 7 of Part A**, flotation does not include the issue of debentures or stock by the New Zealand Government or by any local authority within New Zealand. Authority to act in these instances is deemed to have been given.
- 7.5 **Effect of assurance of authority to act:** Assurance of authority to act given to any one NZX Firm shall be deemed to be authority for all other NZX Firms to be associated with the particular flotation, but shall not confer upon such other NZX Firms any right to demand to be allowed to place a portion of the issue.
8. **UNDERWRITING**
- 8.1 Upon receiving an application for assurance under **Rule 7.3 of Part A** that an NZX Firm has authority to act in a flotation which it is underwriting, whether wholly or in part or in conjunction with any other person, the Board may request the Inspector:
- (a) to verify, by examining the records of the applicant, the details contained in the application in so far as they relate to underwriting the flotation; and
 - (b) to report to the Board on the accuracy of such application with any comments which the Inspector considers may affect the Board's consideration of the application.

In considering the application, the Board shall satisfy itself that NZX Firm has the ability to meet its financial obligations in respect of that flotation.

9. **CONTRACTS**

- 9.1 **Dealing as principal:** In contracts between NZX Firms for the sale and purchase of Securities, they shall be held to be principals to each other, unless a written arrangement to the contrary is made between buying and selling brokers at the time the contract is made.
- 9.2 **Evidence of transaction:** Including a transaction in an NZX Firm's matched trade report shall be prima facie evidence that the transaction has taken place and of the terms of the trade.
- 9.3 **Transaction not invalidated by refusal to register transfer:** Refusal by the board of directors of any company to register a transfer shall not invalidate a contract between NZX Firms.
- 9.4 **Transactions with clients:** All transactions between NZX Firms and their clients shall be evidenced by issuing a written contract note no later than the day following NZX Firm executing a client instruction. NZX may from time to time prescribe the form and content of contract notes to be used by NZX Firms. No NZX Firm shall include in any contract note any matter inconsistent with the Rules or Good Stockbroking Practice.

10. **DELIVERY AND SETTLEMENT**

- 10.1 **NZX Firms' delivery and settlement obligations:** In order to ensure that NZX Firms at all times meet their obligations regarding delivery and settlement of Securities, all NZX Firms shall deliver and settle according to the procedures, and within the time limits, recognised as Good Stockbroking Practice.
- 10.2 **NZX Firm's terms of business:** Each NZX Firm shall specify in its terms of business or other equivalent agreement with clients that:
- (a) where any client of an NZX Firm has failed to meet a delivery obligation, NZX Firm concerned shall have the right to pass on, and the client shall have the obligation to meet, any charge or levy incurred by NZX Firm because of the client's failure to make delivery within the time needed to enable NZX Firm to meet the time limits recognised as Good Stockbroking Practice;

- (b) where a client has failed to settle with an NZX Firm, both parties shall have the rights and obligations recognised as Good Stockbroking Practice regarding cancelling the contract and mitigating any loss relating to that failure to settle; and
- (c) in dealings between NZX Firm and its clients, NZX Firm shall be liable as principal.

11. TRADING ACTIVITIES AND TRANSACTION REPORTING

11.1 Conduct and reporting of trading: NZX Firms shall conduct and report trading of Securities on NZX in accordance with Good Stockbroking Practice.

12. DISCIPLINE

12.1 Disciplinary Committee:

- (a) The Board shall appoint a Disciplinary Committee consisting of:
 - (i) a barrister or solicitor of not less than seven years standing currently in practice, who shall be the chair;
 - (ii) two NZX Brokers, neither of whom shall be a member of the Board;
 - (iii) two members of the public (neither of whom shall be a barrister or solicitor, or an NZX Broker or NZX Associate Broker) to be the independent members; and
 - (iv) a representative of NZX.

The persons appointed as members of the disciplinary committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to have been appointed under these Rules and to continue in office in accordance with the terms of their respective appointments.

- (b) The terms of appointment of the members of the Disciplinary Committee shall be as follows:
 - (i) for the chair, a term of up to three years;

- (ii) for any other member, a term of up to two years.
- (c) The Board may, at its complete discretion, appoint any retiring member of the Disciplinary Committee for a further term or terms.
- (d) The Board may from time to time remove from office any member of the Disciplinary Committee or fill any vacancy in its membership or appoint any additional member within the limits of **Rule 12.1(a) of Part A**.
- (e) The remuneration and expenses of the Disciplinary Committee shall be as determined by the Board and shall be paid by NZX.

12.2 Quorum:

- (a) The quorum for a meeting of the Disciplinary Committee shall consist of:
 - (i) the chair;
 - (ii) one NZX Broker member;
 - (iii) one independent member; and
 - (iv) NZX representative

provided that in relation to proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of the disciplinary committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules, the quorum for a meeting of the Disciplinary Committee shall consist of the chair and at least two other members, one of whom shall be the independent member.
- (b) If the chair of the Disciplinary Committee or any other member through absence or any other cause (including because that member or that member's NZX Firm is concerned or implicated in a charge), is unable to act, the Board shall as necessary appoint a suitably qualified person to act in his or her place during the period of his or her inability to act.

12.3 Members' Interests:

- (a) At the hearing of any charge against an NZX Firm, no member of the Disciplinary Committee who is concerned or implicated in, or whose NZX Firm is concerned or implicated in, that charge shall be eligible to attend any meeting of the Disciplinary Committee in respect of that charge.
- (b) The chair and the independent member shall, as soon as is practicable after being advised of any charge, declare any interest in connection with the parties to, or the subject matter of, the charge. In such a case, he or she shall not be eligible to attend any hearing of that charge and the Board shall appoint another chair and/or independent member (as the case may be) for that hearing only.

12.4 Powers of the Disciplinary Committee:

- (a) Without limiting or derogating from any other provisions of these Rules, the Disciplinary Committee shall have power to hear any charge made against any NZX Firm, and referred to it by the Board or its delegate, in each case under **Rule 5.6 of Part A**, and impose any of the penalties listed in **Rule 12.8 of Part A**.
- (b) The Disciplinary Committee may, by notice in writing signed by its chair or by any person nominated by its chair to act as its secretary, require any person (including any NZX Broker, NZX Associate Broker, officer, employee, consultant or contractor of an NZX Firm) to attend and give evidence before it at the hearing of a charge and/or to produce for inspection all books, records, tapes, documents, and any information held on any other media that are in the custody or under the control of the person relating to the subject matter of any such hearing.
- (c) At any time after a charge has been made against any NZX Firm, the Disciplinary Committee may, of its own motion and without the necessity of giving any prior notice to NZX Firm, make an order suspending its designation as an NZX Firm until the charge has been heard and disposed of. The Disciplinary Committee shall give public notice of the fact of interim suspension, unless there are extraordinary circumstances which justify postponing of such notice.
- (d) An NZX Firm in respect of whom an order:

- (i) for interim suspension under **Rule 12.4(c)** or **Rule 12.8 of Part A**; or
- (ii) for suspension under **Rule 12.8(b)** of **Part A**,

has been made, may at any time apply to the Disciplinary Committee to revoke the order and the Disciplinary Committee may grant, on such terms as it thinks fit, or refuse, any such application.

- (e) The Disciplinary Committee may require, as a condition of granting an application under **Rule 12.4(d)** of **Part A**, that NZX Firm pay an additional amount as from time to time prescribed by the Board. The additional amount payable shall be applied for the general purposes of NZX.
- (f) The Disciplinary Committee shall hear and determine any appeal by an NZX Firm from the decision of a Complaints Committee or the Managing Director, or from the decision of the Board made under **Rule 5.8(b)** or **5.8(c)** of **Part A**. Such appeal:
 - (i) shall be by way of complete rehearing, unless the Disciplinary Committee decides otherwise; and
 - (ii) must be lodged within 8 Business Days of NZX Firm being informed of the relevant decision that is the subject of the appeal.
- (g) All proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of the disciplinary committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to be proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of the Disciplinary Committee under these Rules.

12.5 Notice and timing of hearing: The Disciplinary Committee shall give at least 8 Business Days' prior written notice (or such lesser period as may be agreed by the parties concerned) to NZX Firm against whom a charge has been made, specifying the nature of such charge and the date, place and time of the meeting of the Disciplinary Committee called to consider that matter. The meeting shall commence within 15 Business Days of the expiry of the 8 Business Day notice period, unless the Disciplinary Committee and the Board agree otherwise.

12.6 Procedure:

- (a) Except as otherwise provided in these Rules, the Disciplinary Committee shall regulate its own procedure.
- (b) The Disciplinary Committee may require evidence to be given either orally or in writing and may require any evidence to be verified by statutory declaration.
- (c) The chair of the Disciplinary Committee may require that any oral evidence be received only after the witness has taken an appropriate oath or affirmation.
- (d) At any hearing of the Disciplinary Committee, any person charged shall be given all reasonable opportunity of being heard and shall be entitled to call witnesses and to be represented by counsel if that person so chooses.
- (e) The Disciplinary Committee shall provide a written summary of its reasons for any decision it makes in determining a charge against an NZX Firm and its choice of any penalty imposed.
- (f) The Managing Director and/or any other representative of NZX appointed by the Managing Director, may attend any meeting of the Disciplinary Committee in an ex-officio capacity.
- (g) Charges against an NZX Firm may include allegations as to conduct or omission by any natural persons employed by, contracted to, or officers in, that NZX Firm.

12.7 Statement of findings:

- (a) The Disciplinary Committee shall forward to the Board the written summary of reasons required under **Rule 12.6(e)** of **Part A**.
- (b) The Board shall prepare a statement of the circumstances preliminary to the hearing of any complaint and the findings of the Disciplinary Committee on every charge and the penalty (if any) imposed.
- (c) The statement prepared under **Rule 12.7(b)** of **Part A**:

- (i) shall identify the relevant NZX Firm by name (unless no findings adverse to NZX Firm have been made, in which case the Board shall, at its discretion, decide whether to identify NZX Firm charged); and
- (ii) shall be published by NZX following the expiry of any relevant appeal period under **Rule 12.4(f)(ii)** or **Rule 12.11(i)** of **Part A**.

12.8 Penalties: If, after hearing any charge, the Disciplinary Committee finds that NZX Firm has been guilty of a breach of any Rule, Regulation, or the Code of Practice, or has failed to observe Good Stockbroking Practice, or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX, it may, if it thinks fit, without limiting any other remedies or sanctions available to the Disciplinary Committee, do one or more of the following things:

- (a) revoke that firm's designation as an NZX Firm; and/or
- (b) suspend that firm's designation as an NZX Firm for a stated period; and/or
- (c) order NZX Firm to pay to NZX within a specified time, a sum by way of penalty not exceeding \$1,000,000 (plus GST or any other applicable tax); and/or
- (d) censure NZX Firm; and/or
- (e) in relation to any charge under **Rule 5.6(c)** of **Part A** proved, it may order:
 - (i) in the case of a charge under **Rule 5.6(c)(i)** of **Part A**, that the partnership be dissolved;
 - (i) in the case of a charge under **Rule 5.6(c)(ii)** of **Part A**, that the employee concerned be dismissed;
 - (ii) in the case of a charge under **Rule 5.6(c)(iii)** of **Part A**, that the association or contractual relationship be terminated; or
 - (iii) in the case of a charge under **Rule 5.6(c)(iv)** of **Part A**, that the Principal's engagement be terminated.

If any NZX Firm fails to carry out an order of the Disciplinary Committee made under this **Rule 12.8 of Part A**, the Disciplinary Committee may, without limiting any other remedies or sanctions available to the Disciplinary Committee, suspend that firm's designation as an NZX Firm until the order is complied with.

When the Disciplinary Committee is considering imposing any of the penalties under this **Rule 12.8 of Part A**, and in considering the extent of any penalty, the Disciplinary Committee shall take into consideration the conduct of the relevant NZX Firm during the previous two year period.

12.9 Costs and expenses:

- (a) After hearing any charge or application, the Disciplinary Committee may, at its discretion, make an order as to costs, including:
 - (i) the costs and expenses of, and incidental to, any investigation or hearing, including any amount payable under **Rule 12.9(b) of Part A**; and
 - (ii) the legal and any other out-of-pocket costs of NZX as well as NZX's reasonable internal legal and management costs, whether in relation to the proceedings before the Disciplinary Committee or in prior proceedings before a Complaints Committee.
- (b) Every person (other than an NZX Firm or an officer or employee of an NZX Firm) who gives evidence, or attends to give evidence, at a hearing by the Disciplinary Committee, or in prior proceedings before a Complaints Committee, may be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:
 - (i) determined by the Disciplinary Committee;
 - (ii) paid by NZX; and
 - (iii) recoverable in terms of any order the Disciplinary Committee may make under **Rule 12.9(a) of Part A**.

12.10 Failure to pay costs or attend:

- (a) Any NZX Firm that fails, within the time stated in any order of the Disciplinary Committee, to pay any sum ordered to be

paid by way of penalty or costs or expenses may have its designation as an NZX Firm suspended by the Board until such sum is paid. Should any part of the sum remain unpaid for one month following the date of suspension, in the absence of any circumstance which, in the opinion of the Board, provides reasonable justification for such failure to pay, the Board may thereafter, at its complete discretion and without limiting any other remedies or sanctions available to the Board, promptly revoke NZX Firm's designation as an NZX Firm.

- (b) Every NZX Firm commits a breach of these Rules that, without lawful justification, refuses or fails to:
 - (i) attend and give evidence when required to do so by the Disciplinary Committee; or
 - (ii) answer truly and fully any question put to it by a member of the Disciplinary Committee; or
 - (iii) produce to the Disciplinary Committee any book, tape, document, paper or other record (in whatever medium) required of it.

12.11 Complaints committee:

- (a) The Board or its delegates shall have the power to appoint one or more Complaints Committees or, at its discretion, the Managing Director or a delegate of the Managing Director, either on a standing basis or to consider a particular matter, to investigate and consider complaints which, in the opinion of the Board or its delegates, are not frivolous, but are not sufficiently serious so as to require the attention of the Disciplinary Committee. Each Complaints Committee established under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to be a Complaints Committee under these Rules.
- (b) A Complaints Committee shall consist of a minimum of one NZX Broker who shall not be a member either of the Board, the Market Surveillance Panel or the Disciplinary Committee, and shall hear any reasonable charge or complaint made against any NZX Firm that is referred to it. Every person appointed as a member of a Complaints Committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules

shall be deemed to have been appointed under these Rules and to continue in office in accordance with the terms of that appointment.

- (c) Where any member of a Complaints Committee is unable to act because of absence or because that member or that member's NZX Firm is concerned or implicated in a charge, then the Board shall, if necessary, appoint another member in that member's place to consider and hear the particular charge.
- (d) The following rules relating to the Disciplinary Committee shall, with appropriate modifications, and with the exceptions stated in this **Rule 12.11(d)** of **Part A**, apply to the Managing Director and to a Complaints Committee when either is appointed under **Rule 12.11(a)** to **(c)** of **Part A**:
 - (i) **Rule 12.3** of **Part A** as to Members' interests;
 - (ii) **Rule 12.4(b)** of **Part A** as to evidence;
 - (iii) **Rule 12.5** as to notice of hearing, except that the period shall be five Business Days and a Complaints Committee or the Managing Director may deal with the matter on considering the evidence submitted and without giving a date, time or place of hearing;
 - (iv) **Rule 12.6** of **Part A** as to procedure, except that representation by counsel shall not be permitted without the consent of all parties and the Complaints Committee or the Managing Director (as the case may be);
 - (v) **Rule 12.7** of **Part A** as to statement of findings, except that the summary referred to in **Rule 12.7(a)** of **Part A** may be provided to the Board in a summary of findings in respect of matters heard by the Complaints Committee and the Managing Director in each case over a period of up to six months, and a summary statement of findings subsequently prepared by the Board need not, at the discretion of the Board, identify each defendant NZX Firm. The preliminary statement referred to in **Rule 12.7(b)** of **Part A** need not be provided in order for a Complaints Committee to consider a complaint;

- (vi) **Rule 12.8 of Part A** as to penalties, except that neither a Complaints Committee nor the Managing Director may suspend or revoke a firm's designation as an NZX Firm or impose any fine exceeding \$250,000 (plus GST or any other applicable tax), in respect of any one charge;
 - (vii) **Rule 12.9 of Part A** as to costs and expenses; and
 - (viii) **Rule 12.10 of Part A** as to failure to pay costs or attend, subject to NZX Firm's right to appeal a finding.
- (e) Where a Complaints Committee or the Managing Director decides that NZX Firm in question has no case to answer, then the complainant shall be notified accordingly and a written report of the findings given to both the chair and the independent members of the Disciplinary Committee.
- (f) A Complaints Committee and the Managing Director:
- (i) shall each have the power to employ legal assistance;
 - (ii) may each decline either to hear or to continue hearing a charge and instead refer it to the Disciplinary Committee;
 - (iii) may each resolve after hearing a charge that its, his or her powers as to penalties are not sufficient and refer the matter to the Disciplinary Committee.
- (g) The Disciplinary Committee in respect of any charge referred to it under **Rules 12.11(f)(ii) or 12.11(f)(iii) of Part A** shall have the discretion to rehear any or all matters previously heard by a Complaints Committee or the Managing Director (as the case may be).
- (h) There shall be a right of appeal to the Disciplinary Committee against the findings of a Complaints Committee or of the Managing Director with regard to findings and penalties (including the amount of costs).
- (i) Any appeal under **Rule 12.11(h) of Part A** shall be in writing and shall be lodged with the chair of the Disciplinary Committee not later than 8 Business Days after NZX Firm

concerned has been given written notice (in the same manner as provided for under **Rule 12.5 of Part A**) of the findings of the Complaints Committee or of the Managing Director.

- (j) Instead of appealing to the Disciplinary Committee under **Rule 12.11(h) of Part A**, an NZX Firm may appeal against a penalty imposed by (but not a finding of) a Complaints Committee or the Managing Director to:
 - (i) a Complaints Committee (in the case of a penalty imposed by the Managing Director); or
 - (ii) a further Complaints Committee composed of a different member or members (in the case of a penalty imposed by a Complaints Committee in the first instance).

Such appeal shall be lodged with the Complaints Committee not later than 8 Business Days after NZX Firm concerned has been given written notice (in the same manner as provided for under **Rule 12.5 of Part A**) of the findings of the Complaints Committee or of the Managing Director.

In respect of any such appeal, the outcome of the appeal including any increase or decrease in penalties (up to a maximum of \$250,000, plus GST or any other applicable tax, in respect of any one charge) or costs, shall be binding on NZX Firm. The appeal shall represent a waiver by that NZX Firm of any further right to appeal to the Disciplinary Committee.

- (k) All proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of a Complaints Committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to be proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of a Complaints Committee under these Rules.

13. DISPUTES

- 13.1 **Disputes between NZX Firms referred to Board:** All disputes between NZX Firms shall be referred for determination to a director of the Board who shall act as arbitrator.

- 13.2 **If a director of the Board unable or unwilling to act:** If no director of the Board is able or willing to act as arbitrator in a dispute, the Board shall nominate an NZX Broker (not being a director) to act as arbitrator.
- 13.3 **Determination final:** Any determination under **Rules 13.1 or 13.2 of Part A** shall be final and binding on NZX Firms in dispute.
- 13.4 **Hearing of disputes:** The provisions of **Rule 12.3 of Part A** shall, with appropriate modification, apply to hearings of disputes as if references in **Rule 12.3 of Part A** to the Disciplinary Committee were references to an arbitrator appointed under **Rule 13.1 or 13.2 of Part A**. All disputes between member firms (and all related matters, including hearings) under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to be a dispute between NZX Firms (and all related matters, including hearings) under these Rules.
- 13.5 **Statement of findings and orders for costs:** An arbitrator appointed under **Rule 13.1 or 13.2 of Part A:**
- (a) may prepare and circulate to NZX Firms or to such NZX Firms as it thinks fit, a statement of its findings on any dispute; and
 - (b) may make such order as it considers fit regarding the payment of costs of the hearing of any dispute.
- 13.6 **Condition precedent to court action:** It shall be a condition precedent to an NZX Firm commencing court action against any other NZX Firm in respect of any stockbroking transaction or any transaction to which any Rule applies, that the dispute shall be first determined in the manner provided by these Rules, and thereafter action shall be commenced only to enforce the decision given under these Rules and then only after NZX Firm sued shall have, after 10 Business Days' prior notice in writing, refused or neglected to carry out such decision. In any such action, no NZX Firm shall dispute the correctness of such decision or award, or the fact that it was given in accordance with these Rules.
14. **DEFAULTING NZX FIRMS**
- 14.1 **NZX Firm in default:** An NZX Firm shall be deemed to be a defaulter in each of the following cases (**Defaulter**):

- (a) where it is so declared by the Chair after it has failed to deliver the Securities or pay the money demanded of it pursuant to any Rule relating to delivery and settlement;
- (b) where the Board has made such enquiries (if any) as it thinks fit and resolves that, in its opinion, it is in, or is reasonably likely to become, in difficulties and has failed or is reasonably likely to fail to meet its actual or prospective (including contingent) liabilities;
- (c) where it is insolvent or has called a meeting of its creditors or has made a composition with its creditors or an assignment for the benefit of its creditors; or
- (d) where the Board has made such enquiries (if any) as it thinks fit and resolves that, in its opinion, other circumstances exist which justify such NZX Firm being considered a Defaulter in order to protect the financial interests of all other NZX Firms or of the investing public or for such other reasons as may be considered to be relevant in the interests of the well-being and proper conduct of NZX.

14.2 Chair to notify NZX Firm: Where an NZX Firm has been deemed to be a Defaulter under **Rule 14.1** of **Part A**, that decision shall be notified immediately by the Chair to all other NZX Firms.

14.3 Contracts and Defaulters:

- (a) Subject to the provisions of these Rules, every uncompleted contract with an NZX Firm shall be deemed to be rescinded, closed and terminated as from the time NZX Firm becomes a Defaulter and where the contract is partially uncompleted, that contract shall be deemed to be rescinded, closed and terminated as to the uncompleted balance.
- (b) The Board (whose decision shall be final) shall determine the market price on the day NZX Firm becomes a Defaulter and any surplus or deficiency in respect of such uncompleted contract or balance shall be determined accordingly.
- (c) The Defaulter shall be liable to the other NZX Firms for any such deficiency and each such other NZX Firm shall account to the Defaulter for any surplus.
- (d) Every NZX Firm involved with a Defaulter on a rescinded contract shall promptly inform NZX of the details.

- 14.4 **Declaration of Default and suspension:** The Board may declare any NZX Firm a Defaulter in accordance with **Rule 14.1 of Part A**, and may suspend such firm's designation as an NZX Firm of NZX for such time as it thinks fit.
- 14.5 **NZX Firm's obligation to report:** If an NZX Firm becomes aware that another NZX Firm has failed to meet any of its obligations under these Rules, such NZX Firm shall promptly notify the Chair in writing of the circumstances. Failure to notify such circumstances is a breach of these Rules.
- 14.6 **Chair to investigate:** Upon being notified that an NZX Firm has failed to meet its obligations, the Chair shall:
- (a) immediately investigate the matter;
 - (b) simultaneously advise the Board that the affairs of such NZX Firm are under investigation; and
 - (c) upon completing the investigation, advise the result of such investigation.
- 14.7 **NZX Firms to facilitate inquiries:** Where any inquiries as to the credit, competence, performance or position of any NZX Firm are being made by NZX, every other NZX Firm shall, on request, facilitate such inquiries and make all necessary inquiries into dealings with NZX Firm which is being investigated.
15. **SUSPENDING AND REVOKING DESIGNATION AS AN NZX FIRM**
- 15.1 **Suspending designation as an NZX Firm:**
- (a) An NZX Firm may have its designation as an NZX Firm suspended:
 - (i) by the Board under **Rules 3.15, 5.8(c), 12.10(a), 14.4, 17.5, or 18.4 of Part A**;
 - (ii) by the Disciplinary Committee under **Rules 12.4(c) or 12.8 of Part A**.
 - (b) For the purposes of any Rule which provides for suspending a firm's designation as an NZX Firm, **suspension** means that NZX Firm shall not, for the period of suspension, be entitled to:

- (i) hold itself out to the public as an NZX Firm;
 - (ii) execute new transactions on the Trading System;
and
 - (iii) have access to any services provided to NZX Firms by NZX; and
 - (iv) otherwise operate as an NZX Firm, except to honour pre-existing third party obligations.
- (c) Suspension shall not excuse an NZX Firm from meeting any obligations owed by it to NZX under these Rules, including the obligation to pay all fees, levies or other charges as they fall due.

15.2 Application to lift suspension: Any firm that has had its designation as an NZX Firm suspended may apply in writing to the Board for that suspension to be lifted.

15.3 Revoking designation as an NZX Firm: An NZX Firm shall have its designation as an NZX Firm revoked:

- (a) automatically if that NZX Firm made a false declaration when applying for designation under **Rule 2 of Part A**;
- (b) if that NZX Firm delivers a notice in writing to the Board that it wishes to revoke its designation as an NZX Firm, upon acceptance by the Board. The Board shall not withhold its acceptance without good reason. Good reason shall include, for example, if NZX Firm has not settled all outstanding fees, levies or other charges owed to NZX, outstanding third party obligations, and any other expenses incurred in respect of that NZX Firm;
- (c) by the Board (which may be without further notice to NZX Firm) under the powers provided in **Rule 5.8(c) of Part A**;
- (d) by the Disciplinary Committee pursuant to **Rule 12.8(a) of Part A** or by the Board pursuant to **Rules 12.10(a) or 18.4 of Part A**; or
- (e) by the Board if NZX Firm fails to pay any fees, levies or other charges set by the Board which are due and payable as a condition of designation as an NZX Firm.

15.4 Effect of revocation:

- (a) For the purposes of any Rule which provides for revocation of a firm's designation as an NZX Firm, **revocation** means that that firm is no longer an NZX Firm of NZX, and in particular that it shall not be entitled to:
 - (i) hold itself out to the public as an NZX Firm;
 - (ii) execute new transactions on the Trading System;
 - (iii) have access to any services provided to NZX Firms by NZX; and
 - (iv) otherwise operate as an NZX Firm, except to honour pre-existing third party obligations.
- (b) Revocation shall not excuse an NZX Firm from meeting any contractual obligations owed by it to NZX under these Rules, including the obligation to pay all outstanding fees, levies or other charges as they fall due.

15.5 Conditions for re-designation as an NZX Firm: Any NZX Firm that has its designation as an NZX Firm revoked under **Rule 15.3 of Part A** may subsequently apply for re-designation as an NZX Firm under **Rule 2 of Part A**.

16. NZX FIRM'S ACCOUNTS, AUDIT AND SUPPLY OF INFORMATION

16.1 Accounts and records: Every NZX Firm shall keep books of account and records containing complete and correct records and explanations of the affairs and transactions of its Stockbroking Business. The books, records and explanations:

- (a) shall be kept separate and distinct from the books and other records of any other business in which NZX Firm may be involved;
- (b) shall be in such form as the Board shall from time to time determine; and
- (c) must be sufficient to enable an auditor to supply the certificate of audit and report as required by **Rule 16.2 of Part A**.

16.2 Audit certificate and report: When notified by the Board, an NZX Firm shall, within the time specified in such notice, supply to the Chair a certificate of audit and report from a practising chartered accountant who shall be appointed by:

- (a) agreement of NZX Firm and the Board; and
- (b) failing agreement of NZX Firm and the Board, may be appointed by the Board at the expense of NZX Firm.

The certificate and report shall deal with such financial matters as the Board shall from time to time determine.

16.3 Inspection of records: The Board shall have full and absolute power at any time:

- (a) to call upon any NZX Firm to produce promptly, for inspection by the Board or its duly appointed representatives or the Inspector, all books, records, and other documents (including in electronic form) relating to its business as a Broker; and
- (b) to require NZX Firms to make their employees, contractors and consultants available to appear before the Board or its duly appointed representatives or the Inspector at any time, and to give such information as may be required in connection with such business.

16.4 Financial statements: Every NZX Firm shall provide copies of its financial statements to the Inspector immediately following completing such financial statements.

17. NZX INSPECTOR

17.1 Board to appoint inspector:

- (a) The Board shall appoint:
 - (i) an individual or individuals (who shall not be an NZX Broker or an NZX Associate Broker); or
 - (ii) an appropriate firm (who shall not be, or be part of, an NZX Firm);

who in each case, in the Board's reasonable opinion, has suitable qualifications and experience to be or to provide

appropriate personnel to carry out the duties of the inspector of NZX (the **Inspector**).

- (b) The Board may, at its sole discretion, appoint as an alternate Inspector an individual or firm who meets the criteria in **Rule 17(a)(I) or (II) of Part A**, as the case may be, if for any substantial reason it considers this necessary.
- (c) Each Inspector or alternate Inspector shall be directly responsible for work carried out by that Inspector under these Rules.
- (d) Neither the Inspector nor the alternate Inspector (if any) nor any member of their firm shall take any part in the accounting work involved with the day to day recording of stockbroking transactions for an NZX Firm. Provided the principle of independence of the Inspector remains paramount, an Inspector may undertake for an NZX Firm such accounting work as preparing the annual financial statements from a trial balance supplied by NZX Firm, preparing and lodging tax returns, or offering advice to NZX Firm on improving its accounting methods or office procedures.

17.2 Powers of Inspector: The Inspector shall have power:

- (a) to inspect the financial records and related documents of each NZX Firm at any time the Inspector considers necessary;
- (b) to require from any NZX Firm an explanation of any item or state of affairs whatsoever in relation to NZX Firm's Stockbroking Business which, in the opinion of the Inspector, appears to need an explanation or to be at variance with these Rules, the Regulations, the Code of Practice or with Good Stockbroking Practice; and
- (c) to access information concerning NZX Firm's assets, either private or of another business if, in the Inspector's opinion, such information is necessary to demonstrate NZX Firm's overall solvency or compliance with the Rules, the Regulations, the Code of Practice, or with Good Stockbroking Practice; and
- (d) to meet and question NZX Firm's employees (including NZX Brokers and NZX Accredited Brokers), contractors and consultants;

- (e) to inspect and/or access, at any time, such information, network, system, equipment or process of any NZX Firm as the Inspector in his or her discretion considers necessary to ensure any NZX Firm, or its employees, observes and complies with the Rules, the Regulations, the Code of Practice, and with good stockbroking practice.

17.3 Maintenance of records and internal systems: Each NZX Firm shall be required to satisfy the Inspector that:

- (a) its accounts and related subsidiary records are being maintained in a satisfactory and systematic manner and are being kept regularly up to date; and
- (b) it has in place reasonable internal systems and checks, both in respect of the activities of employees able to initiate and control Securities transactions and also in respect of Principals, partners, shareholders and directors.

17.4 Supply of information to Inspector: Each NZX Firm shall supply to the Inspector on a continuing basis such information as may be requested by the Inspector.

17.5 Failure to comply: Failure to comply with **Rules 16 and 17 of Part A** involving the supply of information shall render NZX Firm liable for immediate suspension of its designation as an NZX Firm by the Board.

18. CAPITAL ADEQUACY REQUIREMENTS

18.1 NZX Firm to maintain liquid capital: To ensure that NZX Firms are at all times capable of meeting their financial obligations, every NZX Firm shall at all times maintain its Liquid Capital at or above the Prescribed Level, except as provided in **Rule 18.2 of Part A**.

18.2 Exceptions: An NZX Firm may, upon application in writing to the Board, be excused, on such terms and conditions as the Board determines, from complying with **Rule 18.1 of Part A**:

- (a) temporarily in respect of a particular transaction if to do so is in accordance with Good Stockbroking Practice; and
- (b) in the case of a newly established NZX Firm, for a period of **12 months** from the date of its designation by NZX as an NZX Firm.

- 18.3 **Definitions:** For the purposes of **Rule 18.1 of Part A, Liquid Capital** and **Prescribed Level** each have the meaning given to it in the Regulations.
- 18.4 **Board's power to suspend:** If an NZX Firm is unable to comply with **Rule 18.1 of Part A** and has not been temporarily excused from complying under **Rule 18.2 of Part A**, the Board may if it sees fit, and pending any other action by the Board including possible revocation of the firm's designation as an NZX Firm, suspend the firm's designation as an NZX Firm until such time as it is satisfied that NZX Firm is once again in a position to comply with this **Rule 18 of Part A**.
19. **FIDELITY GUARANTEE FUND**
- 19.1 **Board to make arrangements for fidelity guarantee fund:** The Board shall make arrangements for a fidelity guarantee fund (the **fidelity guarantee fund**) for the purpose of meeting just claims from persons who have suffered pecuniary loss from a stockbroking transaction as a result of an NZX Firm being unable to meet its financial obligations, **provided that** nothing in this Rule or in establishing and maintaining the fidelity guarantee fund shall constitute a legal obligation to any such claimant.
- 19.2 **Management of fidelity guarantee fund:** The fidelity guarantee fund shall be managed and controlled solely by the Board, which may in its absolute discretion constitute a Fidelity Guarantee Fund Committee to assist with such management. The Fidelity Guarantee Fund Committee shall be accountable to the Board and shall have such powers as the Board from time to time determines.
- 19.3 **NZX Firm to give security:** Every NZX Firm which is not a company and carries on any business in addition to the business of stockbroking shall give security by bond (at such time for such amount and in such form as shall be determined by the Board) to secure the fidelity of such NZX Firm.
- 19.4 **NZX Firm to give security in respect of partner(s):** Every NZX Firm who is in partnership with any person who is not an NZX Broker (whether or not such person is, in the opinion of the Board, actively engaged in stockbroking) shall in addition to complying with **Rule 19.3 of Part A**, take out and maintain a bond to secure the fidelity of that person in respect of each type of business (other than stockbroking) engaged in by him or her, each such bond to be in the sum of \$25,000 or such larger figure as the Board may from time to time determine, and such bond shall be in favour of or assigned to NZX, **provided that** this **Rule 19.4 of Part A** shall not apply in respect of any business where that person is already covered by a fidelity arrangement covering real

estate agents or chartered accountants or by some other fidelity arrangement approved for the time being by the Board.

19.5 NZX Firm to pay annual contribution: Every NZX Firm shall pay to NZX:

- (a) such annual contribution; and
- (b) such additional levy,

in each case, in the manner, at the time, and on such terms as are from time to time fixed by the Board, **provided that** the total amount of all contributions and additional levies paid by NZX Firms in any one year shall not, in aggregate, exceed the sum of \$1,000,000.

In setting the amount of any levy payable by any class of NZX Firm, the Board may differentiate between NZX Firms. No person shall be entitled to a refund of any contributions or additional levies paid under this **Rule 19.5 of Part A**.

19.6 Insurance: The Board shall also have the power to enter into any contract of insurance which may supplement, replace or otherwise contribute to any payment made from the fidelity guarantee fund as a result of any just claim being met.

19.7 Payment of premium: The premium for such insurance may, at the complete discretion of the Board, be paid from the capital of the fidelity guarantee fund, the income of the fidelity guarantee fund, special levies upon NZX Firms or upon market transactions, or any combination thereof.

19.8 Limit on claims: Subject to **Rule 19.10 of Part A**, a person claiming to have suffered a loss under **Rule 19.1 of Part A** and seeking reimbursement under the fidelity guarantee fund or any related scheme of insurance shall not be entitled to receive more than \$20,000 (or such greater amount as the Board may in its absolute discretion determine) in respect of any loss suffered as a result of the acts or defaults of any one NZX Broker, NZX Associate Broker or NZX Firm.

19.9 Further limit on claims: The total amount payable out of the fidelity guarantee fund or any related scheme of insurance, to meet claims (as limited by **Rule 19.8 of Part A**) arising out of the inability of any NZX Firm to meet the financial obligations of such NZX Firm shall be limited to the lesser of:

- (a) the amount/s claimed; or

- (b) \$500,000; or
- (c) such greater amount as may be from time to time determined by the Board under **Rule 19.10 of Part A**.

19.10 Board's discretion to determine claim: The Board in its discretion shall determine the extent (if any) to which any claim on the fidelity guarantee fund shall be met.

20. SHORT SALES

20.1 Short sales to comply with Good Stockbroking Practice: No NZX Firm shall enter into a Short Sale contract, either on its own behalf or knowingly for a client, unless such Short Sale is undertaken in compliance with Good Stockbroking Practice.

20.2 Definitions: For the purposes of this **Rule 20 of Part A, Short Sale** means a sale of any Security where at the time of the sale, the seller does not have a presently exercisable and unconditional right to vest the Security in the buyer, and related expressions shall have a corresponding meaning.

21. MISCELLANEOUS

21.1 NZX Firms to protect buyer's rights in respect of certain Securities: Where existing Security holders are given the right to apply for new Securities offered to Security holders prior to delivery of Securities sold for cash, NZX Firms shall take such action as may be required by Good Stockbroking Practice to protect the rights of the buyers in respect of the Securities so offered.

21.2 NZX Firms to protect buyer's and seller's rights in respect of dividend and other entitlements: NZX Firms shall take such action as may be required by Good Stockbroking Practice to protect the rights of buyers and sellers in respect of entitlements to dividends, interest, or capital distributions and in regard to settlement.

21.3 Rights in respect of calls on Securities being sold: The rights and obligations of buyers and sellers with regard to calls made on Securities which are being sold shall be as recognised by Good Stockbroking Practice.

21.4 Securities transfers: Securities transfers (as defined by the Securities Transfer Act 1991) must be used for all transactions in New Zealand registered Securities, and the Board may determine the procedures to be adopted for completing and processing all such transfers.

- 21.5 **Partial Invalidity:** If any term or provision of the Rules or their application to any person or circumstances is, to any extent, held to be invalid or unenforceable, the remainder of the Rules or the application of such term or provision to any other persons or circumstances will not be affected, and each term and provision of the Rules will be valid and enforceable to the extent permitted by law.
22. **AMENDMENT TO PART A**
- 22.1 **Board may amend rules:** The Board may from time to time decide to amend **Part A**.
- 22.2 **Notice:** The Board shall give written notice of any amendment to **Part A** to NZX Firms and Approved Organisations and to the Secretary.
- 22.3 **Amendments:** Amendments to **Part A** become effective on the date specified by the Board:
- (a) **provided that** the date specified is no less than 20 Business Days after all NZX Firms and Approved Organisations have received notice of the amendment under **Rule 22.2 of Part A**; and
 - (b) subject to the New Zealand Stock Exchange Restructuring Act 2002 and any other relevant laws.

PART B – NZX BROKERS AND NZX ASSOCIATE BROKERS

1. INTERPRETATION

1.1 Definitions: Unless the context requires otherwise, **Rule 1.1 in Part A** applies to **Part B**.

1.2 Interpretation: Unless the context requires otherwise, **Rules 1.2 and 1.3 in Part A** applies to **Part B**.

2. APPLICATION AND DESIGNATION AS AN NZX BROKER OR AN NZX ASSOCIATE BROKER

2.1 Application in writing: Application for designation as an NZX Broker or an NZX Associate Broker shall be made in writing to the Board.

2.2 Board considers applications: The Board (or its appointee) shall consider all applications for designation as an NZX Broker or an NZX Associate Broker. The Board (or its appointee) shall review each application and satisfy itself that the requirements of all relevant Rules have been met.

2.3 Board may appoint committee: The Board may at its discretion appoint a committee to perform its duties under **Rule 2.2 of Part B**.

2.4 Designation: The Board (or its appointee) shall:

- (a) designate as an NZX Associate Broker a person that meets the requirements of **Rule 3 of Part B**; and
- (b) designate as an NZX Broker a person that meets the requirements of **Rule 4 of Part B**.

2.5 Rules form basis of contract: Upon the Board designating a person as an NZX Associate Broker or an NZX Broker, in accordance with **Rule 2.4 of Part B**, these Rules shall form a binding contract between the designated person and NZX.

3. REQUIREMENTS FOR DESIGNATION AS AN NZX ASSOCIATE BROKER

3.1 The Board shall designate as an NZX Associate Broker a natural person (a **candidate**) who has applied for designation in accordance with **Rule 2.1 of Part B** if the candidate:

- (a) **supplies evidence satisfactory to the Board to the effect that the candidate:**
 - (i) holds a sharebroker's licence where required to do so by law;
 - (ii) has obtained a pass in such examinations as the Board may from time to time prescribe;
 - (iii) is currently working under the supervision of an NZX Broker, and has had full time experience for a continuous period of at least the previous six months under the supervision of an NZX Broker, or has had equivalent securities industry experience;
 - (iv) will at all times:
 - (aa) fully comply with the Rules, the Regulations and the Code of Practice; and
 - (bb) observe Good Stockbroking Practice; and
 - (cc) will carry out his or her responsibilities as an NZX Associate Broker honestly and diligently.

In particular, and without limiting the Board's power to satisfy itself of this requirement, the Board may accept references from at least two suitable persons (other than persons connected with NZX Firm then employing the candidate) as evidence of the candidate's intentions in this matter;
- (b) **has delivered to the Board a statutory declaration stating:**
 - (i) that the candidate is a fit and proper person without record of dishonest or fraudulent activities;
 - (ii) in particular, whether or not that candidate has:
 - (aa) been excluded from any other organisation which is equally committed to high standards of professional conduct; or
 - (bb) committed an act of bankruptcy; or

- (cc) been of unsound mind; or
 - (dd) been prohibited from being a director or promoter of, or managing, a company; or
 - (ee) been found liable for insider trading or any other breach of the provisions of the Securities Amendment Act 1988, or for an offence under the Companies Acts 1955 or 1993 or other companies or securities legislation; or
 - (ff) been an officer of a company that has been ordered by the Court to be wound up or put in liquidation, in each case because it is insolvent while that person was an officer of the company;
- (iii) that upon being designated as an NZX Associate Broker, the candidate acknowledges and agrees that these Rules shall form a binding contract between that candidate and NZX in accordance with **Rule 2.5 of Part B**;
- (c) provides in writing and, if required by the Board, by statutory declaration, such other information as the Board may request;
 - (d) has paid such fees, levies or other charges as are set by the Board as a condition of designation; and
 - (c) provides written confirmation from the Managing Principal of NZX Firm which employs or otherwise contracts with the candidate that NZX Firm supports the candidate's application.

4. REQUIREMENTS FOR DESIGNATION AS AN NZX BROKER

4.1 The Board shall designate as an NZX Broker a natural person (a **candidate**) who has applied for designation in accordance with **Rule 2.1 of Part B** if the candidate:

- (a) supplies evidence satisfactory to the Board to the effect that the candidate:

- (i) holds a sharebroker's licence where required to do so by law;
- (ii) has been employed or otherwise contracted full time for a total of not less than three years in the five year period immediately preceding the application in the Stockbroking Office of an NZX Firm or of a member of an overseas stock exchange recognised by the Board, or has had equivalent securities industry experience;
- (iii) has obtained a pass in such further examinations as the Board may from time to time prescribe. In exceptional circumstances, the Board may consider and accept evidence of experience or qualifications, either in reduction of the three year full time employment requirement or extension of the five year period, or exemption from the examination qualifications required, but not both; and
- (iv) will at all times:
 - (aa) fully comply with the Rules, the Regulations and the Code of Practice;
 - (bb) observe Good Stockbroking Practice; and
 - (cc) carry out his or her responsibilities as an NZX Broker honestly and diligently.

In particular, and without limiting the Board's power to satisfy itself of this requirement, it may accept references from at least two suitable persons (other than persons connected with NZX Firm then employing the candidate) as evidence of the candidate's intentions in this matter;

- (b) has delivered to the Board a statutory declaration stating:
 - (i) that the candidate is a fit and proper person without record of dishonest or fraudulent activities;
 - (ii) in particular, whether or not that candidate has:

- (aa) been excluded from any other organisation which is equally committed to high standards of professional conduct; or
 - (bb) committed an act of bankruptcy; or
 - (cc) been of unsound mind; or
 - (dd) been prohibited from being a director or promoter of, or managing, a company; or
 - (ee) been found liable for insider trading or any other breach of the provisions of the Securities Amendment Act 1988, or for an offence under the Companies Acts 1955 or 1993 or other companies or securities legislation; or
 - (ff) been an officer of a company that has been ordered by the Court to be wound up or put in liquidation, in each case because it is insolvent while that person was an officer of the company;
- (iii) that upon being designated as an NZX Broker, the candidate acknowledges and agrees that these Rules shall form a binding contract between that candidate and NZX in accordance with **Rule 2.5 of Part B**;
- (c) provides in writing and, if required by the Board, by statutory declaration, such other information as the Board may request;
 - (d) has paid such fees, levies or other charges as are set by the Board as a condition of designation; and
 - (e) provides written confirmation from the Managing Principal of NZX Firm which employs or otherwise contracts with the candidate that NZX Firm supports the candidate's application.

4.2 Board may deem person from overseas exchange to be NZX Broker: Notwithstanding **Rule 4.1 of Part B**, the Board may resolve, exclusively for the purposes of **Rule 3.6(a) of Part A**, that a member or person of equivalent status of an Approved Organisation shall be deemed to be an NZX Broker until and if such resolution is revoked.

5. CONTINUING REQUIREMENTS FOR NZX BROKERS AND NZX ASSOCIATE BROKERS

5.1 Conduct: Every NZX Broker and NZX Associate Broker shall:

- (a) at all times observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency and within that person's competence;
- (b) refrain from any action, conduct, matter or thing which is, or is reasonably likely to be:
 - (i) detrimental to the wellbeing or proper conduct of NZX; or
 - (ii) a discredit or bring generally into disrepute NZX or NZX Firms;
- (c) comply fully with these Rules, the Regulations and the Code of Practice and at all times observe Good Stockbroking Practice;
- (d) comply with any request or direction made or given by NZX under these Rules, the Regulations or the Code of Practice; and
- (e) comply with such continuing professional development requirements as may be prescribed by the Board from time to time.

5.2 Pay fees: Every NZX Broker and NZX Associate Broker shall pay such fees, levies and other charges as shall from time to time be fixed, or incurred on behalf of that person, by NZX pursuant to **Rule 6.3(a) of Part B**.

6. POWERS OF THE BOARD

6.1 Power to bring charges: The Board or any delegate authorised for the purposes of this Rule may, with absolute discretion and after making such enquiries (if any) as it, he or she thinks fit, bring a charge or

charges against an NZX Broker or NZX Associate Broker if, in the opinion of the Board, or any such delegate, that person may be or may have been:

- (a) guilty of a breach of any of these Rules, the Regulations or the Code of Practice, or has failed to observe Good Stockbroking Practice; or
- (b) guilty of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX; or
- (c) either:
 - (i) in partnership with a person; or
 - (ii) in association or contractual relationship with another party;

who, in each case, has been guilty of conduct which, if committed by an NZX Broker or NZX Associate Broker, would justify the Disciplinary Committee imposing on that person any of the penalties in **Rule 7.6 of Part B**.

Any Board member who, or whose NZX Firm, is concerned with or implicated in the charge, shall not consider whether to bring any charge against an NZX Broker or NZX Associate Broker under this **Rule 6.1 of Part B**. The Board shall refer any such charge to the Disciplinary Committee, which shall hear the charge in accordance with **Rule 7.3 of Part B**.

6.2 Power to receive and consider complaints: The Board or any delegate authorised for the purpose of this Rule shall have power to receive complaints about NZX Brokers or NZX Associate Brokers or their conduct, to reject summarily any complaints which appear to be insubstantial or frivolous, and otherwise at its discretion to refer such complaints to a Complaints Committee, the Managing Director, or the Board, in each case to determine the complaint or consider if charges should be brought against that person under **Rule 6.1 of Part B**. Any Board member who, or whose NZX Firm, is concerned with or implicated in the complaint shall not determine the complaint or consider whether to bring any charge against an NZX Broker or NZX Associate Broker under this **Rule 6.2 of Part B**.

6.3 Further powers of Board: Without limiting the Board's powers under **Rule 6.1 of Part B**, the Board shall have power to:

- (a) impose on NZX Brokers and NZX Associate Brokers such fees, levies and other charges, whether as a condition of designation as an NZX Broker or an NZX Associate Broker or otherwise, as it sees fit. For the avoidance of doubt, the Board may differentiate between:
- (i) NZX Brokers and NZX Associate Brokers;
 - (ii) different NZX Brokers; and
 - (iii) different NZX Associate Brokers;
- in each case, as regards the amount of such fees, levies or other charges on such basis as it sees fit;
- (b) summarily (without bringing a charge under **Rule 6.1 of Part B**) impose on any NZX Brokers or NZX Associate Brokers in respect of a breach of any Rule, Regulation, or the Code of Conduct, or failure to observe Good Stockbroking Practice, a fine of up to \$20,000 (plus GST or any other applicable tax). There shall be a right of appeal to the Disciplinary Committee against the imposition of a fine under this **Rule 6.3(b) of Part B**. The Board shall prepare, and NZX shall publish, following the expiry of the appeal period under **Rule 7.3(e)(ii) of Part B**, a written summary of the Board's reasons for any decision the Board makes under this **Rule 6.3(b) of Part B**, including the reasons for its choice of penalty;
- (c) summarily (without bringing a charge under **Rule 6.1 of Part B**) suspend or revoke an NZX Broker's or NZX Associate Broker's designation as an NZX Broker or NZX Associate Broker (as the case may be) for any breach of any Rule, Regulation, or the Code of Conduct, or failure to observe Good Stockbroking Practice which, in the Board's opinion, constitutes a material, wilful, prolonged or repeated breach. There shall be a right of appeal to the Disciplinary Committee against any such suspension or revocation under this **Rule 6.3(c) of Part B**. The Board shall prepare, and NZX shall publish, following the expiry of the appeal period under **Rule 7.3(e)(ii) of Part B**, a written summary of the Board's reasons for any decision the Board makes under this **Rule 6.3(c) of Part B**, including the reasons for its choice of penalty. If an NZX Broker or NZX Associate Broker is found on appeal not to have been in breach of the relevant Rule under this **Rule 6.3(c) of Part B**, NZX shall bear the reasonable out of pocket costs of appeal of that person; and

- (d) take such other action as may, in the Board's opinion, be required for the operation of fair and orderly Securities markets, and to secure compliance with these Rules, the Regulations and the Code of Practice.

When the Board is considering imposing any of the penalties under **Rules 6.3(b) and 6.3(c) of Part B**, and in considering the extent of the penalty, the Board shall take into consideration the conduct of the relevant NZX Broker or NZX Associate Broker (as the case may be) during the previous two year period.

- 6.4 Delegation of powers:** The Board shall have the power to delegate to any person, sub-committee of the Board or other committee or body, whether incorporated or unincorporated, and whether or not it includes or comprises persons who are not NZX Brokers or NZX Associate Brokers, any of the powers, rights and discretions of the Board, including the power of delegation on such terms and conditions as the Board may from time to time specify.

7. DISCIPLINE

- 7.1 Disciplinary Committee:** The Disciplinary Committee appointed by the Board under **Rule 12.1 of Part A** shall be the Disciplinary Committee for the purposes of **Part B**, and the provisions of **Rule 12 of Part A** shall apply, **except** as otherwise provided in this **Rule 7 of Part B**.

- 7.2 Conflict of Interest:** At the hearing of any charge against an NZX Broker or NZX Associate Broker, no member of the Disciplinary Committee who is concerned or implicated in or whose NZX Firm is concerned or implicated in that charge shall be eligible to attend any meeting of the Disciplinary Committee in respect of that charge.

7.3 Powers of the Disciplinary Committee:

- (a) Without limiting or derogating from any other provisions of these Rules, the Disciplinary Committee shall have power to hear any charge made against any NZX Broker or NZX Associate Broker, and referred to it by the Board or its delegate, in each case under **Rule 6.1 of Part B**, and impose any of the penalties listed in **Rule 7.6 of Part B**.
- (b) At any time after a charge has been made against any NZX Broker or NZX Associate Broker, the Disciplinary Committee may of its own motion, and upon written notice and without prior notice to NZX Broker or NZX Associate Broker, make an order suspending his or her designation as an NZX Broker or NZX Associate Broker (as the case may be) until the charge

has been heard and disposed of. The Disciplinary Committee shall give public notice of the fact of interim suspension, unless there are extraordinary circumstances which justify postponing such notice.

- (c) An NZX Broker or NZX Associate Broker in respect of whom an order has been made for:
 - (i) interim suspension under **Rule 7.3(b)** or **Rule 7.6(b)** of **Part B**; or
 - (ii) suspension under **Rule 7.6(b)** of **Part B**

may at any time apply to the Disciplinary Committee to revoke the order and the Disciplinary Committee may grant, on such terms as it thinks fit, or refuse, any such application.
- (d) The Disciplinary Committee may require as a condition of granting an application under **Rule 7.3(c)** of **Part B** that NZX Broker or NZX Associate Broker (as the case may be) pay, as well as his or her current year's subscription to NZX, an additional amount not exceeding a year's subscription and any amount payable by him or her to the fidelity guarantee fund during the period of the applicant's suspension. The additional amount payable shall be applied for the general purposes of NZX.
- (e) The Disciplinary Committee shall hear and determine any appeal by an NZX Broker or NZX Associate Broker from the decision of a Complaints Committee or the Managing Director, or from the decision of the Board made under **Rule 6.3(b)** or **(c)** of **Part B**. Any such appeal:
 - (i) shall be by way of complete rehearing, unless the Disciplinary Committee decides otherwise; and
 - (ii) must be lodged within 8 Business Days of NZX Broker or NZX Associate Broker (as the case may be) being informed of the relevant decision that is the subject of the appeal.
- (d) All proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of the disciplinary committee under the rules of the New Zealand Stock Exchange in force immediately prior to the coming into force of these Rules shall be deemed to be proceedings and actions (whether in

relation to charges, hearings, orders or otherwise) of the Disciplinary Committee under these Rules.

7.4 Notice and timing of hearing: The Disciplinary Committee shall give at least 8 Business Days' notice in writing (or such lesser period as may be agreed by the parties concerned) to NZX Broker or NZX Associate Broker against whom a charge has been made, specifying the nature of such charge and the date, place and time of the meeting of the Disciplinary Committee called to consider that matter. The meeting shall commence within 15 Business Days of the expiry of the 8 Business Day notice period, unless the Disciplinary Committee and the Board agree otherwise.

7.5 Statement of findings:

- (a) The Disciplinary Committee shall forward to the Board the written summary of its reasons for any decision it makes in determining a charge against an NZX Broker or NZX Associate Broker and its choice of any penalty imposed.
- (b) The Board shall prepare a statement of the circumstances preliminary to the hearing of any complaint and the findings of the Disciplinary Committee on every charge and the penalty (if any) imposed.
- (c) The statement prepared in terms of **Rule 7.5(b) of Part B:**
 - (i) shall identify the relevant NZX Broker or NZX Associate Broker by name (unless no findings adverse to that person have been made, in which case the Board shall, at its discretion, decide whether to identify the person charged); and
 - (ii) shall be published by NZX following the expiry of the appeal period specified in **Rule 7.3(e)(ii) of Part B.**

7.6 Penalties: If, after hearing any charge, the Disciplinary Committee finds that an NZX Broker or NZX Associate Broker has been guilty of a breach of any Rule, Regulation, or the Code of Practice, or has failed to observe Good Stockbroking Practice, or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX, it may, if it thinks fit, and without limiting any other remedies or sanctions available to the Disciplinary Committee, do one or more of the following things:

- (a) revoke that person's designation as an NZX Broker or NZX Associate Broker (as the case may be);
- (b) suspend that person's designation as an NZX Broker or NZX Associate Broker (as the case may be) for a stated period, including for failure to carry out an order of the Disciplinary Committee made under this **Rule 7.6 of Part B** until the order is complied with;
- (c) order NZX Broker or NZX Associate Broker to pay to NZX within a specified time, a sum by way of penalty not exceeding \$100,000 (plus GST or any other applicable tax);
- (d) censure NZX Broker or NZX Associate Broker.

When the Disciplinary Committee is considering imposing any of the penalties under **Rules 7.6 of Part B**, and in considering the extent of any penalty, the Board shall take into consideration the conduct of the relevant NZX Broker or NZX Associate Broker (as the case may be) during the previous two year period.

7.7 Costs and expenses:

- (a) After hearing any charge or application, the Disciplinary Committee may, at its discretion, make an order as to costs, including:
 - (i) the costs and expenses of and incidental to any investigation or hearing including any amount payable under **Rule 7.7(b) of Part B**; and
 - (ii) the legal and any other out-of-pocket costs of NZX, as well as NZX's reasonable internal legal and management costs, whether in relation to the proceedings before the Disciplinary Committee or in prior proceedings before a Complaints Committee appointed in terms of **Rule 7.9 of Part B**.
- (b) Every person (other than an NZX Firm or an officer or employee of an NZX Firm) who gives evidence, or attends to give evidence, at a hearing by the Disciplinary Committee, or in prior proceedings before a Complaints Committee, may be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:
 - (i) determined by the Disciplinary Committee;

- (ii) paid by NZX; and
- (iii) recoverable in terms of any order the Disciplinary Committee may make under **Rule 7.7(a)** of **Part B**.

7.8 Failure to pay costs or attend:

- (a) Any NZX Broker or NZX Associate Broker who fails within the time stated in any order of the Disciplinary Committee to pay any sum ordered to be paid by way of penalty or costs or expenses may have his or her designation as an NZX Broker or NZX Associate Broker (as the case may be) suspended by the Board until such sum is paid. Should any part of the sum remain unpaid for one month following the date of suspension, in the absence of any circumstance which in the opinion of the Board provides reasonable and substantial justification for such failure to pay, the Board may thereafter, at its complete discretion and without limiting any other remedies or sanctions available to the Board, revoke that NZX Broker's or NZX Associate Broker's designation as an NZX Broker or NZX Associate Broker (as the case may be).
- (b) Every NZX Broker or NZX Associate Broker commits a breach of these Rules who, without lawful justification, refuses or fails to:
 - (i) attend and give evidence when required to do so by the Disciplinary Committee; or
 - (ii) answer truly and fully any question put to them by a member of the Disciplinary Committee; or
 - (iii) produce to the Disciplinary Committee any book, tape, document, paper or other record (in whatever medium) required of them.

7.9 Complaints committee: A Complaints Committee or the Managing Director appointed, in each case by the Board under **Rule 12.11** of **Part A** may, in accordance with **Part A**, consider a particular matter, or investigate and consider complaints against NZX Brokers and NZX Associate Brokers which, in the opinion of the Board or its delegates, are not frivolous, but are not sufficiently serious so as to require the attention of the Disciplinary Committee **provided that** neither a Complaints Committee or the Managing Director may impose a fine exceeding \$20,000 (plus GST or any other applicable tax) in respect of any one charge. Each Complaints Committee established under the rules of the New Zealand Stock Exchange in force immediately prior to

the coming into force of these Rules shall be deemed to be a Complaints Committee under these Rules.

8. SUSPENSION

8.1 Suspension of Principal on Default of NZX Firm: If an NZX Firm has been a Defaulter under **Rules 14.1 or 14.4 of Part A**, every Principal of that NZX Firm shall, from the time such declaration of Default has been made, be deemed to be suspended until further notice.

8.2 Suspended Principal to provide assistance: Any NZX Broker suspended under **Rule 8.1 of Part B** shall, as a condition of retaining his or her designation as an NZX Broker:

- (a) provide all reasonable assistance to the Inspector, receiver, liquidator, special manager, the Board or its nominee or any other appropriate person to enable the financial position of NZX Firm to be established and the reconciliation of accounts with all other NZX Firms to be completed; and
- (b) contribute financially his or her appropriate share:
 - (i) to the costs of resolving NZX Firm's affairs; and
 - (ii) to funding any liability which NZX Firm might have to its clients and stockbroking creditors after determining NZX Firm's recoverable assets.

8.3 Financial contribution of suspended Principal: The Board shall:

- (a) determine the amount of the appropriate share in **Rule 8.2(b) of Part B**; and
- (b) give the suspended Principal an opportunity to explain to the Board his or her views on what constitutes an appropriate share.

In making that determination, the Board shall have regard to the suspended Principal's views, the extent of his or her interest in NZX Firm, the extent to which he or she was in a position to influence or control the direction of NZX Firm, and any other matters which the Board reasonably regards as relevant, to determine the appropriate share.

8.4 Other grounds for suspension: An NZX Broker or NZX Associate Broker may also be suspended:

- (a) by the Board pursuant to these Rules, including **Rule 6.3(c) of Part B**;
- (b) by the Disciplinary Committee pursuant to **Rules 7.3(b) and 7.6(b) of Part B**.

8.5 Effect of suspension:

- (a) For the purposes of any Rule which provides for the suspension of an NZX Broker's or NZX Associate Broker's designation as an NZX Broker or NZX Associate Broker (as the case may be), **suspension** means that the person concerned shall not, for the period of suspension, be entitled to:
 - (i) the right to hold himself or herself out to the public as an NZX Broker or NZX Associate Broker (as the case may be);
 - (ii) have access to any services provided to NZX Firms by NZX; and
 - (iii) otherwise operate as an NZX Broker or NZX Associate Broker (as the case may be).
- (b) Suspension shall not excuse an NZX Broker or NZX Associate Broker from meeting any obligations owed by that person to NZX, including the obligation to pay all fees, levies or other charges as they fall due.

8.6 Application to lift suspension:

- (a) Any person who has had his or her designation as an NZX Broker or NZX Associate Broker suspended may apply in writing to the Board for that suspension to be lifted.
- (b) Without limiting the discretion of the Board to decide the matter, it shall be reasonable grounds for the suspension to be lifted where the person whose designation as an NZX Broker or NZX Associate Broker was suspended is able to show, to the satisfaction of the Board, that in the circumstances, it might not have been appropriate for the suspension to be imposed.

9. REVOCATION AND RE-DESIGNATION

9.1 Revocation: An NZX Broker or NZX Associate Broker shall have his or her designation as an NZX Broker or NZX Associate Broker revoked:

- (a) automatically, if that person:
 - (i) has not represented an NZX Firm full time for a total of six months out of the last 12 months, unless granted leave of absence by the Board. Such leave of absence must be applied for in writing to the Board prior to the expiry of the relevant 12 month period; or
 - (ii) made a false declaration to NZX when applying for designation as an NZX Broker or an NZX Associate Broker;

but in each case, such revocation shall not release that person from any outstanding obligations owed by him or her to NZX at that time; or
- (b) if that person delivers a resignation in writing to the Board, upon acceptance by the Board. The Board shall not withhold its acceptance without good reason. Good reason shall include, for example, if NZX Broker or NZX Associate Broker has not settled all outstanding fees, levies or other charges owed to NZX, outstanding third party obligations, and any other expenses incurred in respect of that person by NZX; or
- (c) on revocation by the Board (which may be without further notice to the person):
 - (i) if any of the events listed in **Rules 3(b)(ii) or 4(b)(ii) of Part B** occurs after the date the person became an NZX Broker or NZX Associate Broker (as the case may be) and the Board in its complete discretion decides to revoke the designation; or
 - (ii) under **Rule 6.3(c) of Part B**; or
 - (iii) (in the case of an NZX Broker who is a Principal and who has been suspended under **Rule 8.1 of Part B**) if, in the Board's opinion, that NZX Broker has failed to provide the Board with satisfactory evidence of his

or her on-going commitment to meet his or her obligations under **Rule 8.2 of Part B**.

- (d) on revocation by the Board if that person fails to pay any fees, levies or other charges set by the Board which are due and payable as a condition of designation as an NZX Broker or an NZX Associate Broker; or
- (e) upon revocation by the Disciplinary Committee under **Rule 7.6(a) of Part B**.

9.2 Effect of revocation:

- (a) For the purposes of any Rule which provides for the revocation of the designation as an NZX Broker or NZX Associate Broker, **revocation** means that the person concerned is no longer an NZX Broker or an NZX Associate Broker, and in particular that person shall no longer be entitled to:
 - (i) the right to hold himself or herself out to the public as an NZX Broker or NZX Associate Broker (as the case may be);
 - (ii) have access to any services provided to NZX Firms by NZX; and
 - (iii) otherwise operate as an NZX Broker or NZX Associate Broker (as the case may be).
- (b) Revocation shall not excuse an NZX Broker or NZX Associate Broker from meeting any obligations owed by that person to NZX under these Rules, including the obligation to pay all fees, levies or other charges as they fall due.

9.3 Evidence: For the purposes of **Rule 9.1(c) of Part B**, proof of the occurrence of any of the events listed in **Rules 3(b)(ii) or 4(b)(ii) of Part B** in relation to an NZX Broker or an NZX Associate Broker may be given by a certificate containing evidence of the matter and purporting to be signed by, in the case of a conviction, the Registrar or other proper officer of any Court by which NZX Broker or an NZX Associate Broker was convicted and in any other case, by an appropriate person who has knowledge of the matter concerned.

9.4 Conditions for re-designation as an NZX Broker or NZX Associate Broker: Any NZX Broker or NZX Associate Broker that has his or her

designation revoked under **Rule 9.1 of Part B** may subsequently apply for re-designation under **Rules 3 or 4 of Part B** (as appropriate).

10. MISCELLANEOUS

10.1 Partial Invalidity: If any term or provision of the Rules or their application to any person or circumstances is, to any extent, held to be invalid or unenforceable, the remainder of the Rules or the application of such term or provision to any other persons or circumstances will not be affected, and each term and provision of the Rules will be valid and enforceable to the extent permitted by law.

11. AMENDMENT TO PART B

11.1 Board may amend rules: The Board may from time to time decide to amend **Part B**.

11.2 Notice: The Board shall give written notice of any amendment to **Part B** to all NZX Brokers, NZX Associate Brokers, NZX Firms and Approved Organisations and to the Secretary.

11.3 Amendments effective: Amendments to **Part B** become effective on the date specified by the Board:

- (a) provided **that** the date specified is no less than 20 Business Days after all NZX Firms and Approved Organisations have received notice of the amendment under **Rule 11.2 of Part B**; and
- (b) subject to the New Zealand Stock Exchange Restructuring Act 2002 and any other relevant laws.