

SECTION 7

PRIMARY MARKET PARTICIPANTS

7.1 APPLICABLE MARKET PARTICIPANTS

7.1.1 For the purpose of these **Rules** all;

- (a) NZX Firms;
- (b) NZX Bank Only Participants;
- (c) NZX Sponsors; and
- (d) Distribution and Underwriting Sponsors,

shall be deemed to be Primary Market Participants, and must comply with this **Section 7**.

7.1.2 Nothing in **Rule 7.1.1** prohibits NZX from designating an Approved Organisation as a Primary Market Participant. *(Amended 28/2/07)*

7.1.3 *(Revoked 28/2/07)*

7.1.4 *(Revoked 28/2/07)*

7.2 AUTHORITY TO ACT

7.2.1 Subject to **Rules 7.2.2, 7.4.4 and 7.4.5**, each Primary Market Participant shall have authority to act as advisors to, be associated with, or distribute and underwrite (as applicable) any initial public offering or subsequent public offer of Securities where a prospectus, or other document soliciting applications for Securities or capable of promoting inquiries for Securities, is issued to members of the public (as defined in the Securities Act 1978). *(Amended 28/2/07)*

7.2.2 In the case of any initial public offer or subsequent public offer of Securities for which listing is being or will be sought:

- (a) Each Primary Market Participant (with the exception of Distribution and

Underwriting Sponsors which cannot bring an issue of Securities to market provided by NZX without being a designated NZX Sponsor), must seek authority to act as advisors in the initial public offering or subsequent public offer in the form provided in **Appendix 6A**; and/or

- (b) each Primary Market Participant wishing to distribute and underwrite the initial public offer or subsequent public offer must seek an authority to do so in the form provided in **Appendix 6B**); and
- (c) each Primary Market Participant must receive assurance from NZX that its authority to act or distribute and underwrite (as applicable) in the Primary Market has not been withdrawn. *(Amended 28/2/07)*

7.2.3 In considering an application for assurance of authority to act in the Primary Market pursuant to **Rule 7.2.2**, NZX shall have regard to:

- (a) Whether the requirements of the general law, the applicable Rules and the Listing Rules have been or are likely to be complied with;
- (b) The standing and repute of the Issuer; and
- (c) Such other matters as NZX may consider to be relevant in the interests of the investing public and the standing of NZX and all Market Participants generally.

7.2.4 *(Revoked 28/2/07)*

7.2.5 Assurance of authority to act given to a Primary Market Participant shall be deemed to be authority for all other Market Participants to be associated with that particular issue of Securities for which authority has been given, but shall not confer upon such other Market Participants any right to demand to be allowed to place a portion of the issue. *(Amended 28/2/07)*

7.2A OBLIGATIONS OF A PRIMARY MARKET PARTICIPANT

On receiving authority to act under **Rule 7.2.2**, each Primary Market Participant, with the exception of Distribution and Underwriting Sponsors to which only (d), (f) and (g) apply:

- (a) Accepts responsibility to NZX and acknowledges that it does not have any conflicting duties of interest in relation to the Issuer (the Applicant)

and where applicable its offer of Securities;

- (b) Confirms that the directors and/or officers of the Applicant have received satisfactory advice and guidance (from it or its professional advisers) as to the nature of their responsibilities and obligations to ensure compliance by the Applicant with the Listing Rules for the market the Applicant intends to list on;
- (c) Confirms that to the best of its knowledge and belief, having made due and careful enquiry, all relevant requirements of the Listing Rules relevant to the market the Applicant intends to list on and the Securities Act 1978 have been complied with;
- (d) Will comply with the Rules (both Listing Rules and the NZX Participant Rules) applicable to it in its role as Primary Market Participant and/or Organising Participant;
- (e) Is satisfied that the Applicant and the securities which are the subject of the Application are appropriate to be admitted to a market provided by NZX;
- (f) Confirms that the personnel involved in bringing the issue and/or the distribution of the issue are suitably expert and experienced to meet their responsibilities to the Applicant, at law and under the Listing Rules and the NZX Participant Rules;
- (g) Will confirm to NZX in writing if it ceases to be the Applicant's Organising Participant or Distribution and Underwriting Sponsor, prior to the listing of the Applicant. *(Inserted 28/02/07)*

7.3 UNDERWRITING

7.3.1 Upon receiving an application for assurance of authority to distribute and underwrite in the Primary Market under **Rule 7.2.2(b)**, NZX may:

(Amended 28/2/07)

- (a) Verify the details contained in the application in so far as they relate to underwriting the initial public offer or subsequent public offer by examining records or requesting further information from the Primary Market Participant. *(Amended 28/2/07)*
- (b) *(Revoked 28/2/07)*

7.3.2 In considering an application under **Rule 7.2.2**, NZX shall satisfy itself that the Primary Market Participant has the ability to meet its financial obligations in respect of underwriting that initial public offer or subsequent public offer.

7.3.3 For the avoidance of doubt, an NZX Firm, Bank Only Participant and Distribution and Underwriting Sponsor must ensure that it has adequate internal controls established to manage and distribute the issue of new Securities and to meet its obligations as agreed to with the Issuer of the Securities. *(Amended 28/2/07)*

7.4 NZX SPONSORS AND DISTRIBUTION AND UNDERWRITING SPONSORS

7.4.1 Deleted 2004

7.4.2 Each NZX Sponsor and Distribution and Underwriting Sponsor must advise NZX as soon as practicable, and in any event within **5 Business Days** of a change being made, of any changes in the personnel (identified in that NZX Sponsor's or Distribution and Underwriting Sponsor's (as applicable) application made under **Rule 3.1**) that results in that NZX Sponsor or Distribution and Underwriting Sponsor (as applicable) no longer having personnel with the experience in those transactional areas. *(Amended 28/2/07)*

7.4.3 *(Revoked 28/2/07)*

7.4.4 For the avoidance of doubt, an NZX Sponsor must not act as an underwriter or partake in the provision of any such services in relation to any offer of Securities. An NZX Sponsor must establish a relationship with an NZX Firm, Bank Only Participant or a Distribution and Underwriting Sponsor to distribute and/or underwrite an issue (or seek to become designated as an NZX Firm, Bank Only Participant or Distribution and Underwriting Sponsor). *(Amended 28/2/07)*

7.4.5 A Distribution and Underwriting Sponsor must not act as an NZX Sponsor (and bring an issue of Securities to market provided by NZX) without being a designated NZX Sponsor. *(Inserted 28/2/07)*

7.5 INSTRUCTION SHEETS

7.5.1 Once an authority to act has been granted for an issue of new Securities brought to a market provided by NZX which: *(Amended 28/2/07)*

- (a) Is a non-renounceable issue;
- (b) Has timetable differences across geographic locations (e.g. the issue is taking place in New Zealand and Australia);
- (c) Involves a capital reconstruction; or
- (d) Involves any complex issue or event that has the potential to cause confusion in the market in terms of trading, delivery and settlement requirements, as determined by NZX at its complete discretion,

that Primary Market Participant must complete an instruction sheet (the issue of new Securities by way of a placement is excluded from the requirements of this **Rule 7.5.1** unless specifically required by NZX) for the market outlining, as a minimum and where appropriate to the issue, the information set out in **Rule 7.5.2**, and provide that instruction sheet to NZX to be distributed to all other Market Participants by NZX. *(Amended 28/2/07)*

7.5.2 The following information must be contained in the instruction sheet required by **Rule 7.5.1**:

- (a) Details of the type of Securities to be issued;
- (b) Whether the issue of Securities is underwritten and, if so, by whom;
- (c) The issue price/yield and payment of the Securities to be issued;
- (d) How fractions will be treated (e.g. rounded up or down or disregarded);
- (e) Any operational issues in relation to trading;
- (f) Terms of the new Securities;
- (g) Acceptance/renunciation requirements;
- (h) The timetable for the issue of Securities;
- (i) Any specific Trading System and/or FASTER System procedures required for the new issue of Securities; *(Amended 28/2/07)*
- (j) Any statements to holders of existing Securities;

- (k) Name of Primary Market Participant bringing the issue of new Securities to a market provided by NZX; and
- (l) Any other information necessary to ensure an orderly, efficient and informed market.

7.6 EXCLUSION LISTS

7.6.1 An exclusion list issued by a Primary Market Participant in relation to the issue of new Securities must only contain the names:

- (a) Of companies, firms, organisations, partnerships or individuals with which that Primary Market Participant has a significant commercial relationship and which is widely recognised by other Market Participants on the condition that prior written consent of those companies, firms, organisations, partnerships or individuals included on the exclusion list is obtained by the Primary Market Participant; or
- (b) Of companies, firms, organisations, partnerships or individuals who are conflicted from participating in the issue of new Securities by an Issuer due to their connection or involvement with bringing that issue of new Securities to a market provided by NZX; or
- (c) For which the Primary Market Participant has received written consent from the Issuer of the new Securities to include in an exclusion list on the condition that the Issuer has been advised in writing by the Primary Market Participant of the implications and intentions of such a list.

7.6.2 For the avoidance of doubt, all Primary Market Participants issuing exclusion lists must take into consideration the obligations of that Primary Market Participant to comply with Good Broking Practice and any directions or policy statements issued from time to time by NZX.