

4. TRANSACTIONS WITH RELATED PARTIES

4.1 RESTRICTION

An NZAX Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (c) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless:

- (c) that Material Transaction is an employment agreement with a natural person who is not a director within the meaning of section 126 of the Companies Act 1993 of the NZAX Issuer or any of its Subsidiaries; or
(Inserted 1/5/04)
- (d) that Material Transaction is approved by an Ordinary Resolution of the NZAX Issuer.
(Amended 1/5/04)

- 1. NZX may waive the requirement to obtain the approval of a resolution for the purposes of NZAX Listing Rule B4.1 if it is satisfied that the personal connections with, or involvement or personal interest of a Related Party are immaterial or plainly unlikely to have influenced the promotion of the proposal to enter into the transaction or its terms and conditions.**
- 2. NZX may waive the requirement to obtain the approval of a resolution for the purposes of NZAX Listing Rule B4.1 in respect of the annual or other renewal or re-negotiation of transactions which have been approved by a resolution under NZAX Listing Rule B4.1, if the NZAX Issuer produces a report from a suitable independent person as to the fairness of the terms of the renewal or re-negotiation.**

3. Any agreement involving a transaction referred to in this NZAX Listing Rule must comply with NZAX Listing Rule A1.9.
4. The relevant time for an NZAX Issuer to determine whether or not a Related Party is or is likely to become a direct or indirect party to a Material Transaction, or at least one of a related series of transactions of which the Material Transaction from part is at the time of entry into that transaction. *(Inserted 1/5/04)*
5. In the context of employment agreements with persons who are directors within the meaning of section 126 of the Companies Act 1993 the relevant time for an NZAX Issuer to determine whether or not the party to that employment agreement is a director within the meaning of section 126 of the Companies Act 1993 is at the time that employment agreement is entered. Each time the NZAX Issuer varies the terms of the employment agreement, including the compensation payable, the NZAX Issuer should determine whether the other party to that transaction is a director within the meaning of section 126 of the Companies Act 1993. *(Inserted 1/5/04)*

4.2 DEFINITION OF MATERIAL TRANSACTION

For the purposes of NZAX Listing Rule B4.1, "Material Transaction" means a transaction or a related series of transactions whereby an NZAX Issuer:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of the NZAX Issuer; or
- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 10% of the Average Market Capitalisation of that Issuer; or *(Inserted 1/5/04)*
- (c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 10% of the Average Market Capitalisation of the NZAX Issuer; or

- (d) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the NZAX Issuer to liability in excess of 10% of the Average Market Capitalisation of the NZAX Issuer; or
- (e) provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the NZAX Issuer in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 1.5% of the Average Market Capitalisation of the NZAX Issuer or;
- (f) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the NZAX Issuer:

Provided that for the purposes of this NZAX Listing Rule B4.2:

- (a) “Average Market Capitalisation” means the average end-of-day market capitalisation of an NZAX Issuer’s Equity Securities carrying Votes over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market; and *(Amended 1/5/04)*
- (b) “Aggregate Net Value” as used in NZAX Listing Rule B4.2(a) means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value. *(Amended 1/5/04)*

- 1. Transactions in Securities are to be treated as transactions in the assets the value of which underlies or is reflected in the Securities.**
- 2. In assessing whether payments under an employment agreement with a Related Party are likely to exceed the thresholds in NZAX Listing Rule B4.2(e), the NZAX Issuer must have regard to the total maximum amount that could become payable in any one financial year.** *(Inserted 1/5/04)*

4.3 DEFINITION OF RELATED PARTY

For the purposes of NZAX Listing Rule B4.1, "Related Party" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or officer of the NZAX Issuer or any of its Subsidiaries; or
- (b) a substantial security holder of the NZAX Issuer; or
- (c) an Associated Person of the NZAX Issuer or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself;

but excludes a wholly owned Subsidiary of the NZAX Issuer, other than a wholly owned Subsidiary which:

- (i) is a party to a Material Transaction of the type described in NZAX Listing Rule B4.2(d); and
- (ii) the NZAX Issuer intends to sell, or otherwise dispose of, the Subsidiary to a Related Party.

4.4 EXCEPTION

NZAX Listing Rule B4.1 shall not apply to:

- (a) any transaction entered into by an NZAX Issuer with a Bank which is a Related Party of that NZAX Issuer, on arm's length terms and in the normal course of banking business, as a result of which transaction the NZAX Issuer has recourse to the credit risk of a Bank; or
- (b) the issue, acquisition or redemption by an NZAX Issuer of Securities of that NZAX Issuer, or the giving by an NZAX Issuer of financial assistance for the purposes of, or in connection with, the purchase of

Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this paragraph, the transfer, by an NZAX Issuer which is a company registered under the Companies Act 1993, of shares held by that company in itself, shall be deemed to constitute an issue of Securities; or

- (c) any employment or service contracts which are Material Transactions under NZAX Listing Rule B4.2(d) where NZX is satisfied that the terms of the contract have been set on an arm's length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee (as defined in NZAX Listing Rule 7.3.6 in Appendix 1) of the NZAX Issuer or any Related Company which would be a Material Transaction under NZAX Listing Rule B4.2(c), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Companies Act 1993; or
- (f) in relation to any Non Standard NZAX Issuer which is a co-operative company, any transaction or proposed transaction with a Related Party which is in the ordinary course of business of that NZAX Issuer and which falls within section 29(g) of the Co-operative Companies Act 1996.

1. For the purposes of NZAX Listing Rule B4.4(c), evidence from independent directors, audit or remuneration committees (of which a majority of members must be non-Executive Directors) or other committees of the Board comprised entirely of "non-interested" directors or independent experts will be relevant. (Amended 1/5/04)

4.5 NOTICE OF MEETING

The text of any resolution to be put to a meeting of an NZAX Issuer for the purposes of NZAX Listing Rule B4.1 shall be set out in the notice of the

relevant meeting. That notice shall:

- (a) be approved by NZX in accordance with NZAX Listing Rule A5.1.1; and
- (b) be accompanied by a certificate from the Directors (other than any Director who is interested in the transaction) certifying that the terms of the transaction are fair and reasonable to shareholders and in the best interests of the NZAX Issuer; and
- (c) contain such other material as is necessary to enable the holders of Securities of the NZAX Issuer to decide whether the transaction price and terms are fair.

4.6 VOTING RESTRICTIONS

4.6.1 No vote in favour of a resolution under NZAX Listing Rule B4.1 shall be cast on any Securities held by any person (or any Associated Person of that person) referred to in NZAX Listing Rule B4.3 who is a party or beneficiary (in terms of NZAX Listing Rule B4.1(a) or (b)) to or of the transactions the subject of the resolution .

4.6.2 Proxies or Representatives: NZAX Listing Rule B4.6.1 shall not prevent a person disqualified from Voting under that NZAX Listing Rule, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that NZAX Listing Rule, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

- 1. NZAX Listing Rule B4.6.2 prohibits a disqualified person from exercising discretionary proxies. Disqualified persons are only able to exercise proxies where the Security holder has provided that disqualified person with an express instruction setting out how to exercise that Security holder's vote. "Express instructions" exclude instructions that give the proxy holder a discretion how to exercise that Security holder's vote as that proxy holder sees fit.**

(Inserted 1/5/04)

2. Examples of express instructions include:

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

4.6.3 Discovery of Disqualified Persons: Each NZAX Issuer shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in NZAX Listing Rule B4.6.1, the identity of holders of Security who are disqualified from voting on that resolution pursuant to NZAX Listing Rule B4.6.1, and on request shall supply a list of such holders to NZX and any holder of Equity Securities of the NZAX Issuer.

4.6.4 Deadline for Challenge: Without prejudice to any remedy (other than those which take legal effect against the NZAX Issuer concerned) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of NZAX Listing Rule B4.6.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of NZAX Listing Rule B4.6.1. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to NZAX Listing Rule B4.6.1 shall be disregarded by the NZAX Issuer and the chairman of the relevant meeting if it is notified to the NZAX Issuer later than one full Business Day before the time fixed for commencement of the meeting.