

2. COMPLIANCE AND ENFORCEMENT

2.1 CONTRACTS PRIVACY ACT TO APPLY

2.1.1 Manner of Application: Subject to NZAX Listing Rule A2.1.2, the provisions of the NZAX Listing Rules are hereby declared to be a contract enforceable against each NZAX Issuer for the benefit of every person who is or was a holder of Quoted Securities of that NZAX Issuer in the period in which the NZAX Issuer is or was Listed, and the Contracts (Privacy) Act 1982 shall apply accordingly.

2.1.2 Limitation of Beneficiaries' Rights: Nothing in NZAX Listing Rule A2.1.1, or in the status of holders of Quoted Securities referred to in that Rule as beneficiaries of the NZAX Rules under the Contracts (Privacy) Act 1982, shall:

- (a) entitle such persons to take action against NZX or NZX Discipline, whether to challenge the right of NZX or NZX Discipline to exercise or not exercise its powers under the NZAX Listing Rules in such manner as it thinks fit, or for the consequences of any such exercise or non-exercise; or
(Amended 1/5/04)
- (b) limit or affect the rights of NZX or NZX Discipline in respect of the NZAX Listing Rules and in particular (but without limitation) the absolute discretion to make Rulings and to change or revoke all or any of the NZAX Listing Rules; or
(Amended 1/5/04)
- (c) entitle any person other than NZX to the benefit of, or to exercise, the rights and powers provided in NZAX Listing Rule A2.3; or
- (d) entitle any person to prior, or any, notice of a Ruling; or
- (e) entitle any person to pursue any proceedings to enforce any provision of the NZAX Listing Rules which is the subject of a current Ruling, other than on the basis of and in accordance with such Ruling.

2.2 COMPLIANCE BY SUBSIDIARIES, OFFICERS, AND ASSOCIATES

2.2.1 Responsibility to Procure Compliance: Every NZAX Issuer shall take all steps within its powers to ensure that:

- (a) no Subsidiary of the NZAX Issuer; and
- (b) no person who is acting in concert with the NZAX Issuer or any of its Subsidiaries for purposes relevant to the NZAX Listing Rules,

does anything which would cause that NZAX Issuer to be in breach of the NZAX Listing Rules.

See also the definition of NZAX Issuer in NZAX Listing Rule A1.1 which extends the effect of the NZAX Rules to any group of companies or other entities of which an NZAX Issuer is the holding company.

2.2.2 Acknowledgement of Compliance with NZAX Listing Rules: Every NZAX Issuer shall ensure that every Director of the NZAX Issuer shall, forthwith after his or her appointment as such or at the time of making Application for Listing (whichever is applicable), deliver to NZX a signed acknowledgement to the effect that:

- (a) the Director is aware that the NZAX Issuer is contractually bound to observe the Listing agreement between the NZAX Issuer and NZX, and the NZAX Listing Rules from time to time; and
- (b) the Director will use his or her best endeavours to procure compliance by the NZAX Issuer with the NZAX Listing Rules.

2.3 ISSUER SURVEILLANCE

2.3.1 Powers of Inspection: The NZX Regulation Personnel on their own accord or pursuant to a request made of them by NZX Discipline, and NZX Discipline and any other person authorised by NZX may, for the purpose of ascertaining whether an NZAX Issuer is complying or has complied with the NZAX Listing Rules, or of ascertaining whether NZX should exercise in respect of an NZAX Issuer any rights or powers under the NZAX Listing Rules: *(Amended 1/5/04)*

- (a) require the NZAX Issuer, or require the NZAX Issuer to procure, any Director, officer, employee, or agent of the NZAX Issuer or any Subsidiary thereof to produce for inspection any books, papers, registers, records, or accounts (whether recorded in documentary or electronic form) (for the purposes of this NZAX Listing Rule A2.3.1(a) together "information") that

are held by the person concerned; *(Amended 1/5/04)*

- (b) inspect and make copies of, or take notes from, such information; and
- (c) if necessary for the purpose of making copies or taking records thereof, take possession of any such information, and remove it from the premises where it is kept, for such period of time as is reasonable to make such copies or records; and
- (d) require the NZAX Issuer or, require the NZAX Issuer to procure, any Director, officer, employee or agent of the NZAX Issuer or any Subsidiary thereof to appear for interview. *(Amended 1/5/04)*

2.3.2 NZX Discipline's Powers: Where NZX Regulation Personnel are exercising their powers under NZAX Listing Rule A2.3.1 pursuant to a request by NZX Discipline, or other person authorised under NZAX Listing Rule A2.3.1, NZX Regulation Personnel shall deliver to NZX Discipline or that other person authorized by NZAX Listing Rule A2.3.1 making that request all information obtained pursuant to NZAX Listing Rule A2.3.1. *(Amended 1/5/04)*

2.3.2A Provision of Information to NZX: Where NZX Discipline or any other person authorised under NZAX Listing Rule A2.3.1 exercising its powers under NZAX Listing Rule A2.3.1 obtains information from an NZAX Issuer, NZX Discipline or that other person authorised under NZAX Listing Rule A2.3.1 shall provide that information to NZX if: *(Inserted 1/5/04)*

- (a) NZX Discipline or that other person authorised under NZAX Listing Rule A2.3.1 considers that that information should have been made available to NZX by that NZAX Issuer, or otherwise pursuant to the NZAX Listing Rules; or
- (b) NZX Discipline or that other person authorised under NZAX Listing Rule A2.3.1 considers that that information discloses some other breach of the NZAX Listing Rules. *(Amended 1/5/04)*

2.3.3 Disclosure of Information: Information obtained pursuant to NZAX Listing Rule A2.3.1 shall not be disclosed by the NZX Regulation Personnel, NZX Discipline or any person authorised under NZAX Listing Rule A2.3.2, or the Panel, to any person, except: *(Amended 1/5/04)*

- (a) as required to discharge their functions and/or to exercise powers conferred by these NZAX Listing Rules; *(Amended 1/5/04)*
- (b) if disclosure is required by law; or
- (c) if disclosure is to a solicitor, accountant, or other professional adviser of NZX Regulation Personnel, NZX Discipline, or any other person authorised under NZAX Listing Rule A2.3.1; or *(Amended 1/5/04)*
- (d) in accordance with NZAX Listing Rule A2.3.2, A2.3.2A or A2.3.3A; or *(Inserted 1/5/04)*
- (e) to NZX, the Chief Executive and/or the Board of NZX. *(Inserted 1/5/04)*
- (f) to the Securities Commission in accordance with sections 36ZD or 36ZL of the Securities Markets Act 1988 or to any other regulator to comply with a request of that regulator or otherwise co-operate with that regulator *(Inserted 1/5/04)*

2.3.3A Referral to NZX Discipline: Where NZX Regulation Personnel have exercised their powers of inspection pursuant to NZAX Listing Rule A2.3.1 and NZX Regulation Personnel consider that the information obtained discloses a breach of the NZAX Listing Rules, NZX Regulation Personnel may disclose to NZX Discipline so much of that information as is necessary to disclose the fact and nature of the breach and may bring a charge against the NZAX Issuer for such alleged breach, such charge to be heard in accordance with the NZX Discipline Rules. In addition to disclosing the information obtained under NZAX Listing Rule A2.3.1, NZX Regulation Personnel shall disclose to NZX Discipline all other facts and circumstances of which it is aware relating to the alleged breach of the NZAX Listing Rules and which is relevant to the charge brought. *(Inserted 1/5/04)*

2.3.4 Use of Information by NZX: All information given to NZX by NZX Discipline under NZAX Listing Rule A2.3.2A or given to NZX under NZAX Listing Rule A2.3.3 may be dealt with by NZX in all respects as if it had been supplied by the NZAX Issuer in compliance with the NZAX Listing Rules, and accordingly fell within NZAX Listing Rule B1.1.3. *(Amended 1/5/04)*

2.3.5 Evidence of Authority: A document signed by the Chief Executive of NZX, or by the Chairperson of NZX Discipline (as defined in the NZX Participant Rules), or by the chairperson of any Division (as defined by the NZX Participant Rules) of NZX Discipline warranting the appointment of any person

to exercise the powers of NZX set out in this NZAX Listing Rule A2.3 shall be conclusive evidence of the authority thereby warranted. Such a document may be general or specific to the circumstances of a particular case.

(Amended 1/5/04)

2.3.6 Notice of Exercise of Powers: Any exercise by NZX of the power set out in NZAX Listing Rule A2.3.4 shall, in absence of agreement of the NZAX Issuer concerned, require at least one Business Day's prior written notice to the NZAX Issuer of the intention to exercise such power (which notice may be in a general form), unless NZX Regulation Personnel have certified that the notice period shall not apply in any particular case, and such certification indicating the reasons therefore is shown to the NZAX Issuer on request.

(Amended 1/5/04)

2.3.7 (Deleted 1/5/04)

2.4 (Revoked 1/5/04)

2.5 (Revoked 1/5/04)

2.6 (Revoked 1/5/04)

2.6A NZX DISCIPLINE

2.6A.1 NZX to Appoint NZX Discipline: NZX shall appoint NZX Discipline which shall have the powers, rights and discretions set out in the NZX Discipline Rules which NZX Discipline Rules are incorporated by reference into these NZAX Listing Rules.

(Inserted 1/5/04)

2.7 LIABILITY AND INDEMNITY

2.7.1 Limitation of Liability: None of NZX, any director or any employee of NZX, any NZX Regulation Personnel nor any delegate of NZX shall be liable in tort, contract, or otherwise for any action taken or not taken in exercise or purported exercise in good faith of the powers or discretions conferred by the NZAX Listing Rules.

(Amended 1/5/04)

2.7.2 Indemnity: Each NZAX Issuer shall indemnify NZX, each director or employee of NZX, all NZX Regulation Personnel and each delegate of NZX

under the NZAX Listing Rules against all liabilities and claims which may arise (notwithstanding the limitation in NZAX Listing Rule A2.7.1) in relation to any action or inaction by any such person in connection with such NZAX Issuer, which NZX determines to have been taken or not taken in good faith and in response to circumstances for which the NZAX Issuer should bear the responsibility in whole or in part. The indemnity shall be for all or such part of the liabilities and claims as NZX determines in the circumstances.

(Amended 1/5/04)

- 2.7.3 Continuing Application to the Panel:** NZAX Listing Rules A2.7 and A6.2.1 shall continue to apply in all respects to the Market Surveillance Panel constituted under the NZAX Listing Rules until 1 May 2004 and any member or delegate of the Panel, in respect of all acts or omissions of the Panel, its members or delegates whilst it was in existence under these NZAX Listing Rules.

(Inserted 1/5/04)