



# New Zealand Depository Limited

Depository Operating Procedures

22 November 2019



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## Section A: Interpretation and Construction

### A.1 Interpretation

A.1.1 *Definitions incorporated by reference: Capitalised terms defined in the New Zealand Depository Limited Depository Operating Rules have the same meaning when used in these Procedures, unless expressly stated or the context requires otherwise.*

A.1.2 *Interpretation: In these Procedures, the following terms bear the following meanings:*

**Business Partner Identification Number** means a unique identification code assigned to a Depository Participant in the Settlement System; and

**ISIN** means an International Securities Identification Number.

### A.2 Construction

A.2.1 *Without limiting any provision in a Rule relating to the application of that Rule to one or more Procedures, the following Rules shall also apply to these Procedures, with such necessary modifications to assist such application, including references to “a Rule” or “these Rules” being replaced with references to “a Procedure” or “these Procedures” mutatis mutandis: Rules 1.7, 6.1, 6.3, 6.4, 6.6, 6.8, 6.9, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6 and 9.7.*

# Central Depository Procedures

## Section 1: Introduction and General Provisions

### Amendment Procedure

#### *Procedures for Rule 1.3.1*

1.3.1 *Subject to Rule 1.3.2 and Rule 6.11.8, CDO may, from time to time, amend these Rules, in accordance with the Procedures. NZX may request that CDO amend the Rules by providing CDO with written notice of proposed amendments. CDO must amend the Rules as proposed by NZX from time to time in accordance with Procedures except if such amendment would, in CDO's reasonable opinion, materially increase the risk to the Settlement System in respect of the clearing and settlement of Settlement Transactions. Amendments to these Rules come into effect and are binding on CDO, CHO, Depository Participants and the Nominee on the date specified by CDO by Notice provided that:*

- (a) the date specified is no less than 20 Business Days after CDO has sent Notice of the amendment to Depository Participants; and*
- (b) the proposed amendment to the Rules is not disallowed under the RBNZ Act.*

#### **1.1 Amendment of Rules**

1.1.1 CDO may from time to time at its discretion (and shall if requested to do so by NZX) propose amendments to the Rules by Notice to Depository Participants. The Notice will set out (as applicable):

- (a) the Rule or Rules to be amended;
- (b) the nature of the issues that have arisen which necessitate the amendment;
- (c) the result CDO desires to achieve from the amendment;
- (d) to the extent practicable, the amendment proposed;
- (e) to the extent it differs from the timetable set out in Procedure 1.1.2, the timetable for the amendment; and
- (f) any other information CDO believes is relevant.

1.1.2 The process for an amendment of the Rules will, except to the extent CDO determines otherwise, follow the indicative timeframe set out below following issue of Notice of the amendment:

(a) CDO to receive submissions on proposed amendment.	15 Business Days following Notice
(b) CDO to consider submissions and give Notice to Depository Participants of its decisions on issues raised.	15 Business Days after closing date for submissions
(c) CDO to receive submissions on CDO response.	10 Business Days after further Notice issued
(d) CDO to consider submissions and provide final amendments (if any).	10 Business Days after closing date for further submissions

1.1.3 CDO may give Notice of the amendment to such other interested parties as it considers fit. CDO shall give a copy of any such Notice to NZX.

1.1.4 CDO must consult with Depository Participants when proposing amendments to the Procedures that would result in the imposition of, in the reasonable opinion of CDO, materially more onerous obligations on Depository Participants generally.

1.1.5 Subject to Procedure 1.1.4, CDO may depart from the process set out in this Procedure.

## Section 2: Depository Participants

### Application Procedure

*Procedures for Rules 2.3.1, 2.2.1(k) and 2.2.1(o)*

2.3.1 *Applications for participation in the Depository must be made in the manner prescribed by Procedure. An application constitutes an offer by the applicant to be bound by the Rules, and acceptance of the application by CDO constitutes a binding contract between CDO, Nominee and the applicant to be bound by the Rules.*

2.2.1 *An applicant to be a Depository Participant will not be allowed to participate in the Depository and will not be provided access to the Depository System unless the applicant:*

- (k) has provided contact details for the applicant, the Responsible Person and the Directors, Personnel, agents or other Persons acting on behalf of the applicant;*
- (o) has provided any additional information prescribed by Procedure, including a completed and signed application form.*

#### 2.1 Application

2.1.1 A Person applying for participation in the Depository System must complete and deliver to CDO an application in the form prescribed by Procedure 2.3 together with:

- (a) where the applicant is a Company or body corporate, a copy of its certificate of incorporation (or equivalent document confirming establishment of the entity) and names and addresses of its Directors and shareholders and a copy of the constitution or equivalent document;
- (b) where the applicant is not a body corporate, the name and details of the applicant;
- (c) details of any legal or arbitration proceedings active, threatened or pending against the applicant or any member of its group which may have a significant effect on the reputation of the applicant;
- (d) details of any adverse or potentially adverse matters in respect of the applicant which have been brought to the attention of any relevant regulatory authorities during the last 6 years (where possible please provide copies of any relevant correspondence in relation to such matters);
- (e) the applicant's compliance plan relating to its business as a Depository Participant;

- (f) details of the applicant's technology relevant to its clearing and settlement business and its conformance with the Depository System and timetable for completion of systems testing;
- (g) the undertakings and acknowledgments from the applicant's Settlement Bank required by Rule 3.3.1;
- (h) name of the applicant's Responsible Person, including evidence of compliance with the requirements of Procedures 2.15 and 2.16;
- (i) evidence of the appointment of an agent for service of process, if so required by CDO; and
- (j) any other information which the applicant thinks may be relevant to CDO when considering the application.

2.1.2 An applicant may, if permitted by CDO, submit in substitution of any of the information required by Procedure 2.1.1:

- (a) evidence of membership of, or participation in, any other market, clearing house, settlement system or depository, together with confirmation of compliance with the rules or other requirements of that market, clearing house, settlement system or depository;
- (b) evidence of holding a status, licence, permission or entitlement relevant to the assessment of suitability for participation in the Depository, together with confirmation of compliance with the regulatory requirements of that status, licence, permission or entitlement.

2.1.3 CDO may require additional information in relation to an application or any of the information or supporting documentation filed in support of the application.

2.1.4 An applicant must submit information (in typed format), in as much detail as the applicant thinks appropriate to support the application and must comply with Rule 9.7.4.

2.1.5 CDO will keep confidential all information provided to it by the applicant in relation to its application, in accordance with, and subject to, Rule 9.7.7.

## **2.2 Application Information**

2.2.1 In addition to the information specified by Procedure 2.1.1, an applicant for participation in the Depository shall provide:

[Nothing currently required]



## **2.3 Application Form**

- 2.3.1 An application for participation in the Depository must be in the form, and include the confirmations, determined by CDO from time to time. An applicant should request the form from CDO.

### **Technical Requirements Procedure**

*Procedures for Rule 2.2.1(e) and 2.5.1(d)*

- 2.2.1 *An applicant to be a Depository Participant will not be allowed to participate in the Depository and will not be provided access to the Depository System unless the applicant:*

- (e) *satisfies CDO as to the applicant's technical capacity to be connected to Depository System including satisfaction of such systems testing as may be prescribed by Procedure;*

- 2.5.1 *A Depository Participant must at all times:*

- (d) *comply with operational, procedural and technical requirements of the Depository System and networks, as specified by CDO by Procedure;*

## **2.4 Technical Requirements**

- 2.4.1 The technical requirements for connectivity to the Depository system are contained in the following documents:

- (a) Network connectivity overview;
- (b) CHO/CDO message definition; and
- (c) TCP/IP interface specification.

## **2.5 Systems Testing**

- 2.5.1 CDO will require a Depository Participant to undertake the following testing:

- (a) Conformance of BOS software: Conformance must be successfully completed for all the Depository Participant's Back Office System (BOS) software. The extent of the testing required is contained in the Depository Participant Technical Conformance document available from CDO. All tests will be based on specifications and procedures defined in this document.
- (b) Connectivity: The connectivity test is network based and it involves the testing of successful connectivity between the Depository Participant and the Depository System. Note that this does not require CDO to physically attend the premises of the Depository Participant.
- (c) Validation: Validation tests are system/business message

based and must be successfully completed by each Depository Participant. These tests are run against the Depository System front end web application and the Depository Participant's BOS – if applicable.

- 2.5.2 CDO will notify Depository Participants of any amendment or addition to these conformance tests.

## **Compliance Plan Procedure**

### *Procedures for Rule 2.5.1(b)*

- 2.5.1 *A Depository Participant must at all times:*

- (b) *for the purpose of ensuring compliance with Rule 2.5.1(a) have in place a compliance plan that will ensure continuous compliance with all requirements imposed by or pursuant to these Rules and meet all requirements prescribed by Procedure;*

## **2.6 Compliance Plan**

- 2.6.1 A Depository Participant must, at all times, maintain adequate, suitably designed and effective accounting systems and internal procedures and controls to procure compliance with the applicable requirements of the Securities Legislation and the Rules. This includes a periodic review of the obligations under the Securities Legislation and the Rules, the identification of the key risks facing the Depository Participant and the establishment of systems, procedures and controls to monitor and manage those risks.

- 2.6.2 A Depository Participant's compliance plan should address the following matters relating to its participation in the Depository:

- (a) a statement of the objectives of the compliance plan;
- (b) a programme of procedures and controls, including regular periodic (daily, weekly, monthly, quarterly and annual) tasks, processes, monitoring and sampling and testing of operational activities;
- (c) the management structure, including operations and processes, for implementation of that Depository Participant's compliance plan;
- (d) allocation of compliance responsibilities among the Depository Participant's Personnel relevant to tasks performed reflecting, where appropriate, the compliance and procedures manuals referred to in Procedure 2.6.2(e) and including responsibility for the design, implementation, functioning and review of the compliance plan;
- (e) written compliance and procedure manuals, setting out the

Depository Participant's procedures, and controls over those procedures, in all areas of its clearing and settlement operations;

- (f) recording and reporting to the Depository Participant's Responsible Person, breaches and suspected breaches of the Securities Legislation relevant to its business as a Depository Participant and the Rules, and providing structures and procedures for investigation, external reporting, mitigation, discipline and remedy of those breaches;
- (g) processes for avoiding or managing conflicts of interest arising for Personnel involved in both compliance activities and operational activities;
- (h) maintenance of records of compliance activities;
- (i) processes to test and internally audit the effectiveness of the implementation of that Depository Participant's compliance plan; and
- (j) processes for regular periodic review of the adequacy of the compliance plan (including against the requirements of this Procedure) and implementation of the actions required as a consequence of that review.

## **Records Procedure**

*Procedures for Rule 2.5.1(h)*

**2.5.1** *A Depository Participant must at all times:*

- (h) maintain any records that may be prescribed by Procedure for the period prescribed by Procedure;*

## **2.7 Books, Records and Explanations**

**2.7.1** Each Depository Participant must maintain accounting and other records containing complete and accurate records and explanations of the affairs and transactions of its business. The books, records and explanations must be:

- (a) kept separate and distinct so as to distinguish the books, explanations and records for its depository business from the books, explanations and other records of any other business in which the Depository Participant may be involved;
- (b) sufficient to comply with the requirements of the Securities Legislation governing the maintenance of financial records;
- (c) otherwise in the form and with the content prescribed by Procedures; and

- (d) be retained for a period of 7 years following the end of the financial year to which they relate.

## **2.8 General Requirements**

2.8.1 The requirements of this Procedure are not exhaustive and it is the obligation of each Depository Participant to ensure that the records and reports maintained are sufficient having regard to the nature of the Depository Participant's business. The detailed requirements of this obligation will vary according to, amongst other things:

- (a) the manner in which the business of each Depository Participant is structured, organised and managed;
- (b) the size of the business of each Depository Participant; and
- (c) the nature, volume and complexity of the transactions and commitments of each Depository Participant.

## **2.9 Timing**

2.9.1 The financial records must be made as soon as practicable after the events to which they relate.

## **2.10 Language**

2.10.1 All records and reports, which a Depository Participant is required to maintain under this Procedure must be kept in writing and in the English language or in a manner which will enable them to be readily accessible by CDO and readily converted into writing in the English language at the cost of the Depository Participant. CDO may direct a Depository Participant to convert records into writing and into English as is required by Rule 9.7.4. That direction must be complied with by the time specified by CDO when giving the direction.

## **2.11 Place of Keeping Records**

2.11.1 The location at which the records and reports required by this Procedure are kept must be notified to CDO.

2.11.2 If the records which a Depository Participant is required to maintain under this Procedure are kept outside New Zealand:

- (a) the Depository Participant must send, or cause to be sent, to New Zealand, records which will enable true and fair financial statements to be prepared; and
- (b) CDO may direct a Depository Participant to produce any of its records in New Zealand.

2.11.3 A Depository Participant must comply with any direction given by

CDO under Procedure 2.11.2(b) by the time specified by CDO when giving the direction and at the cost of the Depository Participant.

## **Responsible Person Procedures**

*Procedures for Rules 2.12.2 (b), 2.12.3 (d), (e) and (g)*

*2.12.2 A Responsible Person must:*

- (b) have, and continue to have, skills, knowledge, expertise and experience and have completed qualifications or training, of a type specified by the Procedures;*

*2.12.3 A Responsible Person must:*

- (d) submit to CDO such reports or certifications in relation to the Depository Participant's business as a Depository Participant and/or its compliance with these Rules as prescribed by the Procedures;*
- (e) submit to CDO, as prescribed by Procedure, details of any natural Persons who are authorised to sign documents (that are not Notices or Instructions for the purposes of Rule 2.10.1) in connection with the Depository Participant's business as a Depository Participant and these Rules on behalf of the Depository Participant and/or the Responsible Person, and promptly notify CDO in writing of any changes to those details;*
- (g) complete any training or continuing education requirements prescribed by the Procedures.*

## **2.12 Responsible Person Qualifications**

2.12.1 Prior to being nominated as a Responsible Person an applicant must have completed training or hold one or more of the following qualifications:

[None at present]

## **2.13 Periodic Certifications**

2.13.1 Each Responsible Person must deliver to CDO on or before the 10th day of each calendar month, a monthly compliance report in the form set out in Appendix A of this Procedure signed by the Responsible Person.

2.13.2 Each Responsible Person must deliver to CDO on or before the 10th day of each financial year, an annual compliance report in the form set out in Appendix B of this Procedure signed by the Responsible Person.

## **2.14 On Demand Certification**

- 2.14.1 Each Responsible Person must deliver to CDO, on or before the date specified by CDO, certification as to the Depository Participant's compliance with applicable Securities Legislation or the Rules and Procedures, in the form required by CDO and signed by the Responsible Person (or its delegate).

## **2.15 Authorised Signatories**

- 2.15.1 A Responsible Person must submit to CDO details of any natural Persons authorised by the Responsible Person to sign documentation on behalf of the Responsible Person or the Depository Participant for the purposes of the Rules. The details must include:

- (a) the name, title and function of each Person;
- (b) the extent of the authorised signatory's authority;
- (c) specimen signatures of any new authorised signatories;
- (d) the date the authorised signatory was appointed.

- 2.15.2 A Depository Participant must notify CDO in writing if any authorised signatory ceases to be authorised by the Responsible Person or if any new natural Persons are given that authority.

## **2.16 Training**

- 2.16.1 **Initial Education:** Prior to being nominated as a Responsible Person, an applicant must have completed the following training:

- (a) CDO orientation training;
- (b) [no additional training]

- 2.16.2 **Continuing Education:** The continuing education requirements for Responsible Persons are the successful completion of at least 5 hours (or 5 hours' equivalent) compliance education each calendar year.

- 2.16.3 Suitable compliance education means education or professional development approved by CDO directly related to compliance obligations, policies, procedures and ethics with specific relevance to the Depository Participant's and Responsible Person's obligations under applicable Securities Legislation and Rules. This includes internal training.

- 2.16.4 CDO may approve, for the purposes of compliance with education continuing with requirements, the quality and measurement standards of continuing education or continuing professional development established for their members by one

of the professional bodies set out below:

- (a) Australasian Compliance Institute;
- (b) New Zealand Institute of Chartered Accountants;
- (c) New Zealand Law Society;
- (d) Commodities Futures Trading Commission of the United States of America;
- (e) Securities and Exchange Commission of the United States of America;
- (f) Financial Services Authority of the United Kingdom; or
- (g) any Person of equivalent or similar standing to those named in paragraphs (a) to (f) in any jurisdiction or any other Person as CDO may approve.

2.16.5 When a Depository Participant appoints a natural Person to the role of Responsible Person during a calendar year, the Depository Participant must be able to demonstrate to CDO that the Responsible Person has undertaken compliance education since the date of appointment as a Responsible Person by that Depository Participant which satisfies the continuing education requirement pro-rata to the number of full months that the Responsible Person held that role during that year.

**Appendix A**  
**Monthly Compliance Certificate**

Depository Participant:

Month Ended:

Having made due and careful enquiry, to the best of my knowledge, I hereby certify and represent that, except to the extent disclosed in the writing to CDO:

- 1 The representations and warranties of the Depository Participant contained in Rule 2.8.1 and/or repeated pursuant to Rule 2.8.2 during the previous calendar month were, at the time they were given, true and accurate in all material respects and all information which the Depository Participant has given to CDO during that time was complete, accurate and not misleading in any material respect.
- 3 During the previous calendar month the Depository Participant satisfied and continues to satisfy the requirements of Rule 2.2.
- 4 The Depository Participant has made all notifications to CDO required by Rule 2.7.
- 5 No Potential Default Event is continuing as at the date of this certificate.\*

Signed:

Name:

Responsible Person:

Dated:

*\*If this statement cannot be made, the certificate should identify any Potential Default Event that is continuing and the steps, if any, being taken to remedy it.*



**Appendix B**  
**Annual Compliance Certificate**

Depository Participant:

Year Ended:

Having made due and careful enquiry, to the best of my knowledge, I hereby certify and represent that during [previous year]:

- 1 The Depository Participant has developed and implemented a compliance plan as required by Rule 2.5.1(b) and the compliance plan is operating effectively and is adequate having regard to the nature and extent of the Depository Participant's activities as a Depository Participant to ensure compliance with applicable Securities Legislation and the Rules.
- 2 All matters of non-compliance with the Securities Legislation and Rules that have been identified by the compliance plan have been notified to CDO.
- 3 The Depository Participant has maintained the records required by the Rules.
- 4 Except to the extent disclosed in writing to CDO, the representations and warranties of the Depository Participant contained in Rule 2.8.1 and/or repeated pursuant to Rule 2.8.2 during the previous year were, at the time they were given, true and accurate and all information which the Depository Participant has given to CDO during that time was complete, accurate and not misleading.
- 5 The Depository Participant continues to satisfy the requirements of Rule 2.2.
- 6 I have completed the following continuing education courses:

Course	Provider	Duration
--------	----------	----------
- 7 I have retained copies of the relevant documentation on which this representation is based and this is available for inspection by CDO.
- 8 The Depository Participant has made all notifications to CDO required by Rule 2.7.
- 9 No Potential Default Event is continuing as at the date of this certificate.\*

Signed:

Name:

Responsible Person:

Dated:

*\*If this statement cannot be made, the certificate should identify any Potential Default Event that is continuing and the steps, if any, being taken to remedy it.*

## Section 3: Depository Accounts

### Account Procedure

*Procedures for Rules 3.1.1, 3.3.2, 3.3.3, 3.3.6 and 3.4.1.*

- 3.1.1 *CDO will open and maintain for each Depository Participant at least one Account. CDO will, on receipt of a request from a Depository Participant in the form prescribed by Procedure, open one or more additional Accounts in the name of that Depository Participant with the description required by the Depository Participant.*
- 3.3.2 *CDO must not record a deposit of Money to an Account pursuant to Rule 3.3.1, unless:*
- (a) the Depository Participant has given CDO Notice of the payment to CDO in accordance with the Procedures; and*
  - (b) in the case of NZ\$, CDO has received confirmation from the ESAS System of the receipt of a matching amount in CDO's ESAS Account; or*
  - (c) in the case of any other currency, CDO has received confirmation from a Clearing Bank of the receipt of a matching amount in cleared funds in CDO's relevant account at a Clearing Bank.*
- 3.3.3 *A Depository Participant may make a withdrawal of Money from an Account by giving Notice to CDO in the form prescribed by Procedure.*
- 3.3.6 *At the close of each Business Day at the time prescribed by Procedure, CDO will credit the balance of Money in a Depository Participant's Settlement Account to:*
- (a) in the case of NZ\$, the ESAS Account of the Depository Participant's Settlement Bank via the ESAS System;*
  - (b) in the case of any other currency, the account of the Depository Participant at the Depository Participant's Settlement Bank via the Clearing Bank.*
- 3.4.1 *Accounts may be closed by CDO on receipt of a request from a Depository Participant in the form prescribed by Procedure. CDO will only implement a request to close an Account if the Account has zero balances at the time of receipt of the request. If the Depository Participant is a Clearing Participant, CDO must first obtain CHO's consent before closing an Account or Settlement Account. CDO may apply by Procedure other conditions to the closing of Accounts.*

### **3.1 Accounts**

- 3.1.1 Requests for additional Accounts must be made by submitting an account opening request in a form prescribed by CDO from time to time.
- 3.1.2 The account opening request shall provide the following information:
- (a) the Depository Participant's Business Partner Identification Number;
  - (b) Account type (owner account, omnibus with client, omnibus without client, client);
  - (c) effective date;
  - (d) tax code – if applicable;
  - (e) investor type;
  - (f) currency;
  - (g) account description.

### **3.2 Money**

- 3.2.1 Notice of deposit of Money to or from an Account must be given by credit transfer notice.
- 3.2.2 Requests for withdrawal of Money from an Account must be given by withdrawal request notice.

### **3.3 Account Closure**

- 3.3.1 Requests for closure of an Account must be made to CDO by submitting an account closure request in a form prescribed by CDO from time to time.
- 3.3.2 The following conditions must be satisfied before CDO will action a request for Account closure:
- (a) the balances in the Account must be zero; and
  - (b) there must be no outstanding Instructions in respect of the Account, including pending Corporate Actions and Settlement Instructions.
- 3.3.3 The close of each Business Day for the purpose of Rule 3.3.6 is 4.30pm.

## **Lodgement and Uplift Procedure**

*Procedures for Rules 3.5.1, 3.5.2, 3.5.3, 3.5.9 and 3.8.1.*

- 3.5.1 *Subject to Rule 3.5.2, a Depository Participant may Lodge Admitted Product into a specified Account by transferring legal title to the Admitted Product to Nominee or a Custodian (including by means of the Legal Title Transfer System) in accordance with the Procedures.*
- 3.5.2 *No Admitted Product which has reached Maturity, or that is subject to any restriction on transfer that would prevent or restrict the transfer of beneficial interests across Accounts or otherwise fails to meet any condition imposed by CDO under Rule 6.2.3 may be lodged in the Depository.*
- 3.5.3 *A Depository Participant Lodging Admitted Product under Rule 3.5.1 must give a Notice of Lodgement in accordance with the Procedures.*
- 3.5.9 *At the close of each Business Day at the time prescribed by the Procedures, every Depository Participant who is a Clearing Participant must transfer the balance of Admitted Product in each Settlement Account to another Account (not being a Settlement Account), unless CDO agrees otherwise.*
- 3.8.1 *Subject to Rules 3.8.4 and 4.5.3(c), a Depository Participant may request the Uplift of Admitted Product from an Account in that Depository Participant's name by Notice to CDO in the form prescribed by Procedure.*

### **3.4 Lodgement –Transfer using the Legal Title Transfer System**

- 3.4.1 A Legal Title Transfer Depository Participant may lodge Admitted Product (in the form of Securities legal title to which can be transferred by means of the Legal Title Transfer System) into an Account in that Depository Participant's name by giving a product lodge request through the Depository System user interface or by way of a Deliver Free message [MT542] specifying:
- (a) a subscriber reference;
  - (b) the ISIN of the Admitted Product and the quantity of Admitted Product being lodged;
  - (c) the date of the proposed transfer;
  - (d) the Depository Participant's Business Partner Identification Number; and
  - (e) the details of the Account into which the Admitted Product is to be lodged.
- 3.4.2 The lodgement of a product lodge request under the Procedure

3.4.1 will automatically effect:

- (a) the transfer of the Securities from the Transfer Account of the Legal Title Transfer Depository Participant to the Transfer Account of the Nominee by PPT;
- (b) the transfer of the Securities from the Transfer Account of the Nominee to the Owned Account of the Nominee by OOT; and
- (c) the credit of the Admitted Product to the Account of the Depository Participant specified in the Lodge Request.

3.4.3 Upon successful completion of the lodge request, the Depository Participant will be notified through the Depository System user interface that the status of the lodge transaction is complete, or where applicable, by way of Deliver Free Confirmation [MT546].

3.4.4 Where the lodge request is unsuccessful, all or in part, the Depository Participant will be notified through the Depository System user interface that the status of the lodge transaction is incomplete or failed, or where applicable, by way of a Settlement Status and Processing Advice [MT548].

### **3.5 Lodgement – Transfer of Securities without using the Legal Title Transfer System**

3.5.1 A Depository Participant may lodge Admitted Product (in the form of Securities) into an Account in that Depository Participant's name by:

- (a) giving Notice of a product lodge request to CDO in the form notified by CDO from time to time specifying:
  - (i) the ISIN of the Admitted Product and the quantity of Admitted Product being lodged;
  - (ii) the date of the proposed transfer;
  - (iii) the Depository Participant's Business Partner Identification Number; and
  - (iv) the details of the Account into which the Admitted Product is to be lodged; and
- (b) transferring legal title to the Admitted Product to Nominee by sending a duly completed and executed instrument of transfer that complies with either the Securities Transfer Act 1991 or Subpart 9 of Part 5 of the FMC Act and/or any other applicable requirement to the relevant Product Registry for that Admitted Product and providing a copy of that instrument to CDO.

3.5.2 When CDO receives confirmation that the Admitted Product has

been transferred into the name of Nominee at the relevant Product Registry for the Admitted Product either by means of the Legal Title Transfer System or directly from the Product Registry, CDO will credit the Admitted Product to the Account of the Depository Participant specified in the lodge request.

3.5.3 Upon successful completion of the lodge, the Depository Participant will be notified that the status of the lodge transaction is complete.

3.5.4 Where the lodge is unsuccessful, all or in part, the Depository Participant will be notified that the status of the lodge transaction is incomplete or failed.

### **3.6 Lodgement – US Securities (Treasury Bills) [REVOKED]**

### **3.7 Custodians [REVOKED]**

### **3.8 Uplift – Transfer using the Legal Title Transfer System**

3.8.1 A Depository Participant may request the Uplift of Admitted Product (in the form of Securities which can be transferred using the Legal Title Transfer System) from an Account in its name by giving a product uplift request through the Depository System user interface or by way of a Receive Free Confirmation message [MT500] specifying:

- (a) a subscriber reference;
- (b) the ISIN of the Admitted Product and the quantity of Admitted Product being Uplifted;
- (c) the date of the proposed transfer;
- (d) the Depository Participant's Business Partner Identification Number;
- (e) the details of the Account from which the Admitted Product will be uplifted; and
- (f) the details of the Transfer Account or other account on a Securities Register in the name of the Depository Participant to which the Admitted Product is to be transferred;

3.8.2 Prior to any such request being actioned, CDO must be satisfied that there is sufficient Admitted Product available in the specified Account to fulfil the product uplift request. If sufficient Admitted Product is available, CDO will transfer the Admitted Product from Nominee's Owned Account to its Transfer Account and then to the Transfer Account or other account on a Securities Register in the name of the Depository Participant

specified in the product uplift request. When CDO receives confirmation of that transfer of the Admitted Product at the Securities Registry, CDO will debit the Admitted Product from the Account of the Depository Participant specified in the product Uplift request.

3.8.3 Upon successful completion of the product uplift request, the Depository Participant will be notified through the Depository System user interface that the status of the Uplift transaction is complete, or where applicable, by way of Receive Free Confirmation [MT501].

3.8.4 Where the product lodge request is unsuccessful, all or in part, the Depository Participant will be notified through the Depository System user interface that the status of the Uplift transaction is incomplete or failed, or where applicable, by way of a Settlement Status and Processing Advice [MT510].

### **3.9 Uplift – Transfer of New Zealand Securities without using the Legal Title Transfer System**

3.9.1 A Depository Participant may request the Uplift of Admitted Product (in the form of Securities) from an Account in its name by:

- (a) giving Notice of a product Uplift request to CDO in the form notified by CDO from time to time specifying:
  - (i) the ISIN of the Admitted Product and the quantity of Admitted Product being lodged;
  - (ii) the date of the proposed transfer;
  - (iii) the Depository Participant's Business Partner Identification Number;
  - (iv) the details of the Account from which the Admitted Product is to be Uplifted; and
- (b) providing CDO, for execution by Nominee, a duly completed instrument of transfer that complies with either the Securities Transfer Act 1991 or Subpart 9 of Part 5 of the FMC Act and/or any other applicable requirement for that Admitted Product.

3.9.2 Prior to any such request being actioned, CDO must be satisfied that there is sufficient Admitted Product available in the specified Account to fulfil the product uplift request. If sufficient Admitted Product is available, CDO will execute the securities transfer form and send that original securities transfer form to the relevant Product Registry for that Admitted Product. CDO will then debit the Admitted Product from the Account of the Depository Participant specified in the product Uplift request.

- 3.9.3 Upon successful completion of the product uplift request, the Depository Participant will be notified that the status of the Uplift transaction is complete.
- 3.9.4 Where the product uplift request is unsuccessful, all or in part, the Depository Participant will be notified that the status of the Uplift transaction is incomplete or failed.
- 3.10 Uplift US Securities (US Treasury Bills) [REVOKED]**
- 3.11 Transfer from Settlement Accounts at End of Day**
- 3.11.1 Every Depository Participant who is a Clearing Participant must transfer the balance of Admitted Product in each Settlement Account to another Account (not being a Settlement Account) at 6.00 pm every Business Day.



## Section 4: Depository Transactions

### Depository Instruction Procedure

*Procedures for Rules 4.1.1, 4.1.4 and 4.1.6.*

- 4.1.1 *A Depository Participant may give CDO instructions on any Business Day in the manner and during the time specified by Procedure. An Instruction may be to:*
- (a) *debit a specified Account of the Depository Participant with a specified quantity of Admitted Product and credit a specified Account of another Depository Participant with that Admitted Product; and/or*
  - (b) *debit the balance of Money in a Depository Participant's Account by a specified amount and credit the Account of another Depository Participant with that amount.*
- 4.1.4 *CDO will enable each Depository Participant to view in the Depository System all unsettled Instructions given by that Depository Participant.*
- 4.1.6 *A Depository Participant may withdraw an Instruction by Notice to CDO in the manner specified by Procedure, at any time no later than 60 minutes prior to the execution time specified in the Instruction.*

#### 4.1 Depository Instructions

- 4.1.1 An Instruction must be given by either:
- (a) entering an Instruction into the Depository System; or
  - (b) electronic message relating to the Instruction:
    - (i) for a DFP Instruction either a Receive Free message [MT540] or a Deliver Free message [MT542]; and
    - (ii) for a DVP Instruction, either a Receive Against Payment message [MT541] or a Deliver Against Payment message [MT543].
- 4.1.2 An Instruction may be withdrawn by either:
- (a) entering a cancellation Instruction into the Depository System; or
    - (i) for a DFP Instruction either a Receive Free message [MT540] or a Deliver Free message [MT542] with the message function set as cancel; and
    - (ii) for a DVP Instruction, either a Receive Against Payment message [MT541] or a Deliver Against Payment message [MT543] with the message

function set as cancel.

- 4.1.3 To be effective, a notice of withdrawal of an Instruction must be given to CDO not later than 60 minutes prior to the execution time specified in the Instruction.

## **4.2 Close Out time**

- 4.2.1 The time for lapse of an Instruction for the purpose of Rule 4.1.5 shall be 5.30pm on the day on which the Instruction is due for execution.

## **Security Interests Procedure**

*Procedures for Rules 4.5.1, 4.5.2, 4.5.3 and 4.5.4.*

- 4.5.1. *A Depository Participant may, by Notice to CDO in accordance with Procedure, require CDO to record the Security Interest of another Depository Participant who is a Secured Party, in specified Admitted Product held in any Account of that Depository Participant, other than a Settlement Account, for the purposes of section 18 of the PPSA or for the purpose of analogous provisions under the laws of other jurisdictions. On receipt of such Notice, CDO may record such Security Interest in the relevant Admitted Product in the relevant records. CDO is not required to ascertain the validity or the terms of any Security Interest before recording that Security Interest.*
- 4.5.2 *A Depository Participant who is a Secured Party in respect of any Admitted Product may, by Notice to CDO, notify CDO that its Security Interest in specified Admitted Product has been discharged. On receipt of such Notice, CDO will as soon as is reasonably practicable record the discharge of such Security Interest in the relevant Admitted Product in the relevant records. CDO is not required to ascertain the validity or the terms of any discharge of a Security Interest before recording that discharge.*
- 4.5.3 *While a Security Interest is recorded in accordance with Rule 4.5.1, and before it has been discharged pursuant to Rule 4.5.2, notwithstanding the terms of that Security Interest:*
- (a) the Debtor will be entitled to interest, dividends and other Income derived from the Admitted Product, including any amount payable on Maturity of the Admitted Product, unless the Depository Participant has, by Notice to CDO in the form prescribed by Procedure, required such amount to be paid to the Secured Party, and CDO has agreed to act on such Notice;*
  - (b) except as provided in Rule 4.5.4, neither the Debtor nor the Secured Party are entitled to give an Instruction in respect of the Admitted Product; and*

- (c) *except as provided in Rule 4.5.4, neither the Debtor nor the Secured Party are entitled to Uplift the Admitted Product.*

**4.5.4** *Where a Depository Participant who is a Secured Party is entitled pursuant to Section 109 of the PPSA (or pursuant to any analogous provisions of law in any other jurisdiction) to take possession of and dispose of any Admitted Product, that Secured Party may by Notice to CDO, instruct CDO to transfer the Admitted Product to an Account of that Secured Party. CDO is not required to ascertain the validity or the entitlement of a Depository Participant who is a Secured Party to give such a Notice and may accept that Notice as being valid and effective without further enquiry. On giving a Notice in accordance with this Rule, a Depository Participant is deemed to have represented and warranted to CDO (and to Nominee) that it is authorised and entitled to give that Notice and deemed to indemnify CDO (and Nominee) against any claim, action or Loss that may arise against CDO (or Nominee) or that CDO (or Nominee) might suffer as a result of effecting the transfer of the Admitted Product.*

### **4.3 Notice of Security Interests**

- 4.3.1** Any Notice given by a Depository Participant to CDO in accordance with Rule 4.5.1 shall include:
- (a) the identity of that Depository Participant, including its Business Partner Identification Number;
  - (b) the identity of the Depository Participant who is the Secured Party, including its Business Partner Identification Number;
  - (c) details of the relevant Account;
  - (d) details of the relevant Security Interest sufficient for that Security Interest to be appropriately recorded by CDO;
  - (e) details of the Admitted Product (including product type, code and amounts) in respect of which that Security Interest has been granted or purported to be granted by the Depository Participant;
  - (f) the date on which the relevant Security Interest is to be granted;
  - (g) whether or not the Depository Participant requires any such amounts specified in Rule 4.5.3(a) to be paid to the Debtor and if any such amounts are to be paid to the Debtor, a description of what those amounts are;
  - (h) the name (if appropriate), title and contact details of the Person duly authorised to discharge the Security Interest; and

- (i) any other relevant information as CDO may specify from time to time:

[none currently required]

#### **4.4 Notice of Discharge of Security Interests**

4.4.1 Any Notice given to CDO by a Depository Participant who is a Secured Party in accordance with Rule 4.5.2 shall be given by the Person duly authorised to discharge the Security Interest as advised to CDO from time to time and shall include:

- (a) the identity of that Depository Participant who is a Secured Party, including its Business Partner Identification Number;
- (b) the identity of the Depository Participant who granted the relevant Security Interest, including its Business Partner Identification Number;
- (c) details of the relevant Account;
- (d) details of the relevant Security Interest sufficient for that Security Interest to be appropriately identified by CDO;
- (e) details of the Admitted Product (including product type, code and amounts) in respect of which that Security Interest has been granted or purported to be granted by the relevant Depository Participant;
- (f) the Business Day on which the relevant Security Interest is to be discharged;
- (g) the name (if appropriate), title and contact details for the Person duly authorised to discharge the Security Interest; and
- (h) any other information as CDO may specify from time to time:

[none currently required]

#### **4.5 Notice of Uplift of Admitted Product by Depository Participant who is a Secured Party**

4.5.1 Any Notice given to CDO by a Depository Participant who is a Secured Party in accordance with Rule 4.5.4 shall be given by the Person duly authorised to transfer the Approved Product which is subject to the relevant Security Interest as advised to CDO from time to time and shall include:

- (a) the identity of that Depository Participant who is a Secured Party, including its Business Partner Identification Number;
- (b) the identity of the Depository Participant who granted the relevant Security Interest, including its Business Partner Identification Number;

- (c) details of the relevant Account from which the Admitted Product is to be transferred;
- (d) details of the relevant Account to which the Admitted Product is to be transferred;
- (e) details of the relevant Security Interest sufficient for that Security Interest to be appropriately identified by CDO;
- (f) the Business Day on which the transfer of the Admitted Product is to occur;
- (g) the name (if appropriate), title and contact details for the Person duly authorised to order the transfer; and
- (h) any other information as CDO may specify from time to time:

[none currently required]

## Section 5: Stock Lending

### Stock Lending Procedure

*Procedure for Rules 5.1.1, 5.2.1, 5.3.1, and 5.4.1(c) and (e), 5.6.1(b) and 5.8.1.*

- 5.1.1 *Subject to Rule 5.1.2, a Depository Participant who is also a Clearing Participant or a Lending Clearing Participant may by Notice in the manner prescribed by Procedure identify Admitted Product held in an Account, which is available to lend in accordance with these Rules. The Notice will specify in relation to each Admitted Product:*
- (a) *the maximum quantity available for lending from the Lending Pool on a Business Day; and*
  - (b) *the maximum period the Admitted Products are available for lending from the Lending Pool (which must be for a period of no less than 1 day); and*
  - (c) *the Account in which the Admitted Product is held.*
- 5.2.1 *A Lending Transaction may be initiated by a Depository Participant (who is also a Clearing Participant or a Lending Clearing Participant) who wishes to borrow Admitted Product, or by CHO if it wishes to borrow Admitted Product under rule 4.3.1(c), Rule 4.3.3(b) or Rule 7.4.1(h) of the C&S Rules, by lodging a Borrowing Request in the manner prescribed by Procedure.*
- 5.3.1 *On receipt of a Borrowing Request (and, if a Depository Participant provided the Borrowing Request and that Depository Participant has provided sufficient Collateral in respect of the Lending Transaction) CDO will randomly select in accordance with Procedure from the Lending Pool an amount of Admitted Product equal to that required by the Borrower.*
- 5.4.1 *Each Lending Transaction is undertaken on the following terms:*
- (c) *a Lender may call for the redelivery of some or all Equivalent Product at any time by on a Settlement Day by giving Notice to the borrower in the manner described in Procedure;*
  - (e) *the Borrower may partially or completely repay or terminate a Lending Transaction on a Settlement Day by redelivering some or all Equivalent Product and by giving of Notice in the manner prescribed by Procedure;*
- 5.6.1 *On receipt by CDO of a notice from a Lender given for the purposes of Rule 5.4.2(c),*

(b) CDO will then randomly select from the Lending Pool in accordance with Procedure for delivery to the Lender an amount of Admitted Product equal to that required by the Lender,

5.8.1 Where Income is paid by an Issuer in relation to any Borrowed Product on or by reference to an Income Payment Date falling before the redelivery by the Borrower of Equivalent Product in respect of that Borrowed Product, the Borrower shall on the date of the payment of such Income, (the “**Relevant Payment Date**”) pay to each Lender a sum of Money (“**Substitute Payment**”) equivalent to the amount that that Lender would have been entitled to receive (after any deduction, withholding or payment for or on account of any foreign withholding tax made by the relevant Issuer (or on its behalf) in respect of such Income) had such Borrowed Product not been lent to the Borrower and been held by the Lender on the Income Payment Date, irrespective of whether the Borrower received the same. A Borrower is required to comply with any requirements and pay any amounts, including in respect of applicable tax laws and regulations and directives, as specified by Procedure. Any Substitute Payments made under this Rule will be paid to the Lenders in sequence determined by CDO under Rule 5.3.4.

## 5.1 Identification

5.1.1 A Depository Participant who is also a Clearing Participant or a Lending Clearing Participant may identify Admitted Product available for lending by giving Notice in a standing instruction entered through the Depository System. A standing instruction may be amended or withdrawn with effect at the beginning of a Business Day.

## 5.2 Admitted Product that may not be borrowed

5.2.1 The following Admitted Product (including categories of Admitted Product) that may not be borrowed under the Rules:

- (a) any Admitted Product during such period before a Record Date for a Recall Corporate Action as CDO may determine; and
- (b) [currently none other]

## 5.3 Borrowing Request

5.3.1 Borrowing Request must include the following information:

- (a) the identity of the Person wishing to borrow, including its Business Partner Identification Number;
- (b) details of the Admitted Product to be borrowed;

- (c) the quantity of Admitted Product to be borrowed;
- (d) the Account to which the Admitted Product is to be transferred; and
- (e) any other information as CDO may specify from time to time:  
[none currently required]

#### **5.4 Selection of Admitted Product**

5.4.1 If CDO receives a Borrowing Request in respect of Admitted Product and the quantity of that Admitted Product in the Lending Pool available for lending is equal to or greater than the quantity of Admitted Product in that Borrowing Request, or if CDO receives a Notice from a Lender under Rule 5.4.1(c) that is not satisfied by Equivalent Product delivered by a Borrower, then CDO will select Admitted Product from the Lending Pool by the following procedure:

- (a) if the quantity of Admitted Product in the Lending Pool is equal to the quantity of Admitted Product in the Borrowing Request or the Notice given by the Lender, CDO will select all that Admitted Product;
- (b) if the quantity of Admitted Product in the Lending Pool is greater than the quantity of Admitted Product in the Borrowing Request or in the Notice given by the Lender, then:
  - (i) each Depository Participant whose Admitted Product is in the Lending Pool will be allocated a random number by the Depository System;
  - (ii) those Depository Participants will be sorted by their allocated number in ascending order and allocated a position in sequence accordingly;
  - (iii) Admitted Product of Depository Participants will be selected by reference to the sequence of Depository Participants identified;
  - (iv) if the quantity of the Admitted Product in the Lending Pool of the Depository Participant identified as the first in the sequence is equal to or greater than the quantity in the Borrowing Request or the Lender's Notice, then that quantity of the Depository Participant's Admitted Product in the Lending Pool will be selected; and
  - (v) if the quantity of a Depository Participant's Admitted Product is less than the quantity of Admitted Product



in the Borrowing Request or the Lender's Notice then all of that Depository Participant's Admitted Product in the Lending Pool will be selected and Admitted Product of the Depository Participant next in sequence will then be selected until sufficient Admitted Product has been selected to fulfil the Borrowing Request or the Lender's Notice.

## **5.5 Recall**

- 5.5.1 Notice may be given by a Lender recalling Equivalent Product for the purposes of Rule 5.4.1(c) by issuing a recall instruction entered through the Depository System or by giving a recall notice message [MT526]. Such notice will constitute a notice requesting recall of an amount of Equivalent Product of a particular class.
- 5.5.2 Notice may be given by a Borrower in accordance with Rule 5.4.1(e) by issuing a repayment request entered through the Depository System in respect of all or part of a particular loan.
- 5.5.3 Notice may be given by CHO recalling Equivalent Product for the purposes of Rule 5.4.1(c) or Rule 5.6.1(c)(iii) by giving a recall notice message [MT526]. CHO may give Notice for the purposes of Rule 5.4.1(c) in respect of all loans in respect of Equivalent Product of a particular class, in respect of some or all loans of a particular Borrower, or to some or all Equivalent Product for a particular loan. Without limitation, CHO's Notice may relate to the recall of Equivalent Product in respect of which there is a Corporate Action other than a cash distribution, interest payment, subdivision or bonus issue of Admitted Product (including Admitted Product of any class issued by any Issuer whether or not the Issuer of the bonus Admitted Product is the Issuer of the Admitted Product in respect of which the bonus Admitted product is issued).
- 5.5.4 If a Lender gives a Notice under Procedure 5.5.1 in respect of Equivalent Product and that Lender is party to more than one Lending Transaction relating to Equivalent Product of that class, and if there is insufficient Admitted Product in the Lending Pool to equal that required by the Lender and CDO is required to select the Borrower or Borrowers from whom Equivalent Product will be recalled under Rule 5.6.1(c)(ii), then CDO will select the Borrowers by reference to the date and time on which the Lending Transactions were first created, and in doing so CHO will first select the Borrowers in respect of the earliest date and the earliest time on a particular date.

## **5.6 Income**

- 5.6.1 Each Borrower is required to comply with the requirements in respect of tax for a Lending Transaction in this Procedure.

- 5.6.2 If an Imputation Credit or FDP Credit is attached to the Income in respect of the Substitute Payment, then the Borrower may:
- (a) attach Imputation Credits to the Substitute Payment; and/or
  - (b) issue a Credit Transfer Notice,
  - (c) and if so, the Borrower must provide to the Lender all necessary forms, certificates or confirmations, duly completed, to enable the Lender to utilise such Imputation Credits and/or FDP Credits available to the Borrower in respect of the Substitute Payment. This Procedure applies even if the Borrower is unable for any reason to attach an Imputation Credit to or issue a Credit Transfer Notice in respect of a Substitute Payment.
- 5.6.3 If the Borrower does not attach Imputation Credits or issue a Credit Transfer Notice in accordance with Procedure 5.6.2, equivalent to the aggregate of all Imputation Credits and FDP Credits (“**Credits**”) that were attached to the Income, then the Borrower must pay to the Lender, in addition to the Substitute Payment, an amount equal to the difference between the amount of Credits that were attached under Procedure 5.6.2 and the aggregate of all Credits that were attached to the Income.
- 5.6.4 If the Borrower is required to pay New Zealand tax in accordance with the Income Tax Act 2007 in respect of the Substitute Payment, the amount of the Substitute Payment is equal to the amount of the Income less the amount of New Zealand tax (including any FDP liability under the FDP Rules) that would be payable by the Lender, if the Lender had derived the Income.
- 5.6.5 Subject to Procedure 5.6.4, all payments by a Depository Participant under Rule 5.5 and these Procedures are to be made without any deduction or withholding for or on account of any taxes. If any deduction or withholding is required by law, then, if CDO so requires, the payer must pay such additional amount to ensure that the other party receives the full amount that the party would have received had no such deduction or withholding been required.
- 5.6.6 If the Borrower is required to make a Substitute Payment, the Borrower shall pay to the Commissioner of Inland Revenue of New Zealand (on or before the applicable payment date for the RWT) in respect of the Substitute Payment, the correct amount of RWT calculated in accordance with section RE 17 of the Income Tax Act 2007.

## Section 6: CDO Powers

### Admitted Product Procedure

*Procedures for Rules 6.2.1 and 6.2.5.*

6.2.1 *Any person may apply to CDO, in the form prescribed by Procedure, to have a class of Commodity or Derivatives Contract approved as an Admitted Product. Upon receipt of an application or on its own initiative, and subject to Rule 6.2.2, CDO may at its discretion approve a class of Commodity or Derivatives Contract as an Admitted Product.*

6.2.5 *Where CDO approves a class of Commodity or Derivatives Contract as an Admitted Product under Rule 6.2.1 or Rule 6.2.2, CDO must notify the applicant (if any), NZX, the Issuer of the Admitted Product (if any), CHO and, by Procedure, each Depository Participant. Notice given under this Rule 6.2.5 will specify:*

- (a) the Commencement Date for that Admitted Product; and*
- (b) any conditions attached to approval of the Admitted Product.*

#### 6.1 Application for Admitted Products

6.1.1 An application for approval of a class of Commodity or Derivatives Contract must be made in writing in such form as CDO may request, and shall include:

- (a) name and description of the Commodity or Derivatives Contract, including a copy of the document that prescribes the terms of the Commodity or Derivatives Contract and, if applicable, any offer document issued in relation to the Commodity or Derivatives Contract;
- (b) description of the market (if any) on which it is traded, including a copy of the rules of any market on which it is traded;
- (c) details of the register maintained for the Commodity or Derivatives Contract and arrangements for transfer of holdings on that register to the Depository; and
- (d) details of the agreement and other arrangements for the transmission of information from the Product Registry to the Depository System.

#### 6.2 Admitted Products

6.2.1 The following classes of Commodity or Derivatives Contract are Admitted Products:

- (a) all products quoted on an NZX Market. These products

are approved without conditions.

- 6.2.2 Commodities or Derivatives Contracts that are specified on NZX Clearing's website are Admitted Products.

## Waiver and Ruling Procedure

### *Procedures for Rules 6.6.1 and 6.6.4*

- 6.6.1 *CDO has sole discretion to waive all or any part of these Rules or the Procedures in respect of a Depository Participant or any class or classes thereof and CDO may make rulings as to the interpretation of these Rules or the Procedures. CDO may make rulings and grant waivers from these Rules or the Procedures, on such terms and conditions as CDO, in its complete discretion, thinks fit. CDO may by Procedure specify the procedures and practices it will adopt in relation to consideration of applications for rulings or waivers.*
- 6.6.4 *The power and discretions of CDO set out in this Rule 6.6 are subject to sections 156ZB and 156ZC of the RBNZ Act such that CDO may not make any ruling or grant any waiver of any provision of the Rules (including the Appendix) or the Procedures that provides for any of the matters set out in section 156Q of the RBNZ Act or that relates to a transfer that has the benefit of section 156X of the RBNZ Act.*

## 6.3 Application

- 6.3.1 Applications for waivers and/or rulings from a Rule or Procedure should be in writing and addressed to CDO, attention of the Head of Operations. Applications may be made by e-mail to clearing@nzx.com.
- 6.3.2 Applications for a waiver or ruling should contain all information required to clearly establish and document the need for the waiver or ruling sought. As a minimum this should address:
- (a) **Applicant:** the full name of the Depository Participant seeking the waiver or ruling;
  - (b) **Background:** the full background to the matter and the transactions or circumstances in respect of which the waiver or ruling is sought. This should include the generic background to the situation or events in question followed by the material details, e.g., details of transactions, etc.;
  - (c) **Details:** the specific Rule or Procedure in respect of which the waiver or the ruling is sought and any conditions of the waiver or ruling which the applicant

considers appropriate;

- (d) **Reasons:** for each provision of the Rules or Procedure in respect of which the waiver or ruling is sought, why the waiver or ruling is sought and give full reasons which may justify the waiver or ruling;
- (e) **Policy:** the policy considerations applicable to the application. This should include identification of the application of the Rules or Procedure, without the waiver or ruling, the hardship or mischief that will result if the application is not approved, the policy objective behind the Rule concerned, the basis upon which that policy objective continues to be addressed by, or is not affected by, the waiver or ruling sought and the manner in which the interests of CDO, clients of the Depository Participant seeking the waiver or ruling and other Depository Participants are protected or preserved by the proposed waiver or ruling;
- (f) **Precedents:** any existing waiver or ruling decisions which are similar to the waiver or ruling sought and which may provide a precedent for the application. The application should state how the precedents are similar to, and different from, the waiver or ruling sought;
- (g) **Impact:** how the proposed waiver or ruling may affect CDO, the Depository Participant or clients of the Depository Participant seeking the waiver or ruling and other Depository Participants, including any costs and benefits to them and that Depository Participant;
- (h) **Timeframe:** whether the application is urgent and the date by when a determination is needed and the reason/s why the application should be considered on an urgent basis;
- (i) **Publication:** whether the applicant requires a decision or any information in relation to the application to be kept confidential and the period for which that confidentiality is required. This must set out the policy reason why the decision should not be published, or alternatively why publication should be delayed for a period of time; and
- (j) **Other:** any other information known to the applicant that is material or relevant to the application.

6.3.3 Applications for a waiver or ruling should be accompanied by any relevant documents to support the application.

## 6.4 Timing

6.4.1 All applications for waivers and rulings should be submitted to

CDO at least 10 Business Days prior to the Depository Participant requiring a determination. If a determination is required in less than 10 Business Days a Depository Participant may apply to have the application dealt with on an urgent basis.

6.4.2 If an application is urgent, a timeframe should be provided within which determination is needed accompanied by the reasons for the request for urgent consideration.

6.4.3 CDO does not guarantee that a decision will be provided within any particular time. While CDO will always endeavour to meet an applicant's timeframe, the ability to meet urgent timetables will be subject to CDO resource availability. The timing of a decision in relation to an application may also be influenced by the quality of the application and the thoroughness with which it has been prepared.

## **6.5 Procedure**

6.5.1 On receipt of an application for a waiver or ruling, that waiver or ruling will be considered by CDO regulatory personnel. A CDO compliance officer will be identified to the applicant for the purposes of communications.

6.5.2 After an initial appraisal, the applicant may be asked to provide further information.

6.5.3 When all information requested by CDO has been provided by the applicant and considered by CDO, the lead compliance officer will prepare a decision in relation to the application. A draft decision may be provided to the applicant for discussion if CDO believes necessary.

6.5.4 In its decision CDO will, subject to Procedure 6.7.1, publish the identity of the Depository Participant, the facts of that application, the determination made by CDO in response to that application and the grounds for determining the application.

## **6.6 Fees**

6.6.1 The Depository Participant making an application for a waiver or ruling must pay the fees specified in that respect by Procedure 6.9. Fees will be payable regardless of whether the application is accepted or declined.

6.6.2 Waiver and ruling fees will be invoiced to the Depository Participant concerned at the conclusion of CDO work, or on a monthly basis where necessary.

## **6.7 Publication**

- 6.7.1 CDO will publish all decisions in relation to applications for waivers or rulings (and revocations of waivers or rulings) from the Rules, unless:
- (a) the Depository Participant seeking the waiver or ruling establishes, to the satisfaction of CDO, grounds for maintaining confidentiality of CDO's decision with respect to a waiver or ruling application; or
  - (b) CDO determines in its sole discretion not to publish its decision with respect to a ruling or waiver application.
- 6.7.2 A determination under Procedure 6.7.1 may comprise:
- (a) a determination in relation to some or all of the information contained in a decision; and/or
  - (b) a determination to withhold publication permanently or for a period of time.
- 6.7.3 CDO will generally consider that rulings or waivers applied for in anticipation of a transaction will be grounds for confidentiality until such transaction is announced publicly. If the transaction does not proceed, the waiver or ruling sought will not lose its confidentiality.
- 6.7.4 Applicants will be provided with decisions at least one half Business Day prior to their public release. The decision provided is a final decision and will not be for comment by the Depository Participant. The decision is provided to facilitate the Participant dealing with the publication of the waiver by CDO.
- 6.7.5 All decisions will be published by CDO by Notice to all Depository Participants and any NZX Market in which the Depository Participant may be involved. Waivers and rulings will also be published by CDO from time to time at [www.NZX.com](http://www.NZX.com)

## **Fee Schedule Procedure**

*Procedure for Rule 6.7.2.*

6.7.2 *CDO will publish the fees, levies and other charges payable under Rule 6.7.1 in accordance with Procedure.*

### **6.8 Set Fees**

6.8.1 Admission, activity and other fees are published in the CDO Fee Schedule which can be located at [www.NZX.com](http://www.NZX.com).

6.8.2 Activity fees will be calculated on a monthly basis by reference to the activity in each calendar month and will be invoiced to the Depository Participant by the fifth Business Day of the

following month. Invoices will be payable within 10 Business Days of issue.

## **6.9 Waiver and Ruling Fee**

6.9.1 Each applicant for a waiver or ruling must pay a fee calculated on the basis of time devoted by personnel to the application, calculated at the rates set out in the CDO fee schedule.

6.9.2 The applicant will also reimburse to CDO the costs charged by any professional advisors who may be engaged by CDO in the process of determination of the application.

## **6.10 Late Filing Fee**

6.10.1 Each Depository Participant whose Responsible Person fails to supply any certificates or other information by the specified date required by Procedures 2.13 to 2.14 must pay a fee of \$250 and an ongoing fee of \$250 for each additional day on which the Responsible Person fails to supply the certificate or other information.



## Section 7: Default

### Overdue Interest Rate Procedure

*Procedures for Rule 7.5.1.*

**7.5.1 Overdue Interest:** *Any amount to be paid by a Depository Participant to CDO and not paid by its due date for payment will be treated as an unpaid amount and will bear interest at the rate prescribed by CDO by Procedure. Interest will accrue and compound on a daily basis and must be paid as a separate debt to CDO.*

#### **7.1 Overdue Interest Rate**

**7.1.1** The rate of interest payable on any amount not paid by a Depository Participant is the rate equal to the aggregate of 5% per annum and CDO's cost of borrowing.

## Section 8: Miscellaneous

### Notice Procedure

*Procedures for Rule 9.6.4 and 9.6.6.*

- 9.6.4 *For the purposes of any Rule or Procedure that requires or permits a document to be given to a Person whether the expression ‘serve’, ‘give’, or ‘send’ or any other expression is used, the document may be given, and will be deemed to have been received, in the manner set out in the relevant Procedure. Nothing in this Rule or the Procedures prevents documents being sent, given to or served on a Person in any other manner permitted by law. Any document or notice shall be deemed to have been received by the recipient of the document or notice if the recipient has effectively received the document or notice, notwithstanding any non-compliance with this Rule or the Procedures.*
- 9.6.6 *Without limiting any other provision of this Rule 9.6, any Notice to be given by a Depository Participant to CDO under Rule 2.7 must be given to the “Head of Operations” of CDO, in the manner prescribed by Procedure.*

#### **8.1 Notice**

- 8.1.1 CDO may give Notice to any Person by any of the following methods:
- (a) (if to a natural person) by delivering it to the person personally;
  - (b) leaving it at or by sending it by courier or post to the address of the recipient last notified to CDO;
  - (c) sending it by facsimile to the recipient's facsimile number last notified to CDO;
  - (d) where the Notice is a circular or bulletin addressed to a class of Persons, delivering or communicating the circular or bulletin by any means permitted under this Procedure;
  - (e) specific email by any method which identifies a natural Person or natural Person's title as addressee;
  - (f) broadcast email by any method which identifies the addressee and which, having regard to all the relevant circumstances at the time, was as reliable as appropriate for the purposes for which the information was communicated; or
  - (g) publishing information on NZX Clearing's website.

8.1.2 A Depository Participant or Responsible Person may give Notice to CDO by any of the following methods:

- (a) delivering it to the Head of Operations personally;
- (b) leaving it at or by sending it by courier or post to Level 2, NZX Centre, 11 Cable Street, Wellington, New Zealand marked to the attention of Head of Operations, New Zealand Depository Limited;
- (c) sending it by facsimile to 64 4 496 2893 marked to the attention of Head of Operations, New Zealand Depository Limited; or
- (d) specific email addressed to clearing@nzx.com.

8.1.3 Where Notice is given in accordance with this Procedure:

- (a) post is taken to be received on the second Business Day after the document is put in the post in a stamped addressed envelope or other covering;
- (b) courier and personal delivery is taken to be received at the time of delivery;
- (c) facsimile is taken to be received when the sender's facsimile machine indicates a successful transmission to the facsimile number; and
- (d) email is taken to be given 2 hours after the time the email enters the recipient's information system, unless a Notice of non-delivery or redirection has been received by the sender within that time.

8.1.4 A Notice given in accordance with this Procedure is deemed to be received by that Person at the time it is taken to be given to that Person.

## **8.2 Notice to Head of Operations**

8.2.1 Any Notice to be given by a Depository Participant to CDO under Rule 2.7 must be given to the Head of Operations at clearing@nzx.com.