8. VOTING RIGHTS AND RIGHTS OF EQUITY SECURITIES

8.1 VOTING

8.1.1 **Differential Voting:** Subject to Rule 8.1.4, Securities of an Issuer may carry different numbers of Votes.

> **Securities which carry different numbers of Votes per Security, will constitute different Classes, notwithstanding that their other rights and privileges may be identical.**

8.1.2 **Variation in Voting Rights:** Subject to Rule 8.1.4, the Constitution of an Issuer may contain a provision allowing Votes attaching to a Class of Securities to vary from time to time by reference to the economic value of a part or division of the Issuer's operations (which economic value may be ascertained by reference to the market price of Securities linked to that part or division).

8.1.3 **Issue of Equity Securities carrying Voting Rights – Pricing:** If:

(a) an Issuer proposes to issue Equity Securities carrying Votes under Rules 7.3.4(ba), 7.3.5 or 7.3.6 (the "Affected Securities"); and *(Amended 1/5/04)*

(b) the proportion that the issue price of the Affected Securities forms of the Average Market Price of that Issuer's existing Quoted Equity Securities is not at least 90% of the proportion that number of Votes carried by Affected Securities forms of the number of Votes carried by that Issuer's existing Quoted Equity Securities, *(Amended 1/5/04)*

the Issuer shall not issue the Affected Securities without the approval of NZX pursuant to Rule 8.1.4:

Provided that:

(c) for the purposes of this Rule 8.1 "Average Market Price" means the average end-of-day market price over the 20 Business Days before the earlier of the day the issue is made or the proposal is announced to the market; and *(Amended 1/5/04)*

(d) if the Issuer has more than one Class of Equity Securities Quoted, the existing Quoted Equity Securities in Rule 8.1.3(b) shall refer to the Class having the most similar characteristics (other than Votes) to the Affected Securities.

Rule 8.1.3(b) expressed as a formula is as follows:

$$\left[\frac{\text{Issue price of Affected Securities}}{\text{Average Market Price of Issuer's Existing Quoted Equity Securities}}\right] \text{ must be greater than } 90\% \times \left[\frac{\text{Total Number of Votes of Affected Securities}}{\text{Total Number of Votes Of Issuer's existing Quoted Equity Security}}\right]$$

(Inserted 1/5/04)

8.1.4 **Approval by NZX:** Any provision of the nature referred to in Rule 8.1.1 or 8.1.2, or issue of the nature referred to in Rule 8.1.3, shall be subject to the approval of NZX. NZX may grant approval on such conditions as it thinks fit (including a condition for approval of resolutions of holders of any Class or group of Securities of the Issuer).

1. **NZX will as a general rule require the issue of a Class of Securities carrying different Votes from an existing Class of Securities to be approved by separate resolutions of:**

   (a) **Members of the Public holding each Class of Equity Security of the Issuer; and**

   (b) **other holders of Equity Securities.**

2. **The attention of Issuers is drawn to the provisions of sections 116 and 117 of the Companies Act 1993, which must be complied with in addition to any conditions imposed by NZX.**

8.1.5 **Partly Paid Securities:** Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

1. **Bonus shares credited as fully paid carry a full Vote because zero cents per share is paid and the total paid and payable is zero cents.**
2. **Example: A company issues shares at an issue price of 20 cents each, paid to 1 cent and with further 18 cents credited, leaving 1 cent to pay. The voting entitlement of the share is one half of a Vote because the 18 cents that is credited is ignored when calculating amounts paid and payable for this purpose. If the amount actually paid is 19 cents, the voting entitlement is 95% of a Vote. If 10 cents was paid and 10 cents to pay, the voting entitlement would be one half even if the 10 cents to be paid was paid in advance of the call.**

8.1.6 **Participation of Options in Rights Issues:** An Option must not confer the right to participate in a Rights issue unless the Option:

(a) is exercised before the Record Date for the Rights issue; or

(b) was issued under a pro rata offer made pursuant to Rule 7.3.4 to the holders of Quoted Equity Securities; or

(c) was issued with the approval of holders of Quoted Equity Securities, and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option:

Provided that nothing in this Rule 8.1.6 shall apply to any Option which was issued prior to the coming into force of this Rule or Listing of an Issuer.

8.1.7 **Change of Option's Exercise Price or Number of Underlying Securities:** An Option must not confer the right to a change in the exercise price or number of underlying Securities, except if that Option:

(a) was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holders of the underlying Securities; or

(b) was not issued with the approval of holders of Quoted Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of that Option may be reduced according to the formula set out as follows:

$$0^1 = 0 - \frac{E[P-(S+D)]}{N+1}$$

O^1 = the new exercise price of the Option.

O = the Old exercise price of the Option.

E = the number of underlying Securities into which one Option is exercisable.

[Note: E is generally one unless the number has changed because of a bonus issue or capital change.]

P = the average market price per share (weighted by reference to volume) of underlying Securities during the 5 Business Days ending on the day before the Rights date.

S = the subscription price for a Security under the Rights issue.

D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Securities (except those to be issued under the Rights Issue).

N = the number of Securities with Rights or entitlements that must be held to receive a Right to one new Security.

Provided that nothing in this Rule shall apply to any Option which was issued prior to the coming into force of this Rule or Listing of an Issuer.

Example: The capital of a company comprises ordinary shares at an issue price of 20 cents each and Options over unissued ordinary shares exercisable at $1.00 each. The company announces a 4:7 Rights issue. There is no dividend payable. The issue price for the shares under the Rights issue is $2.00. The average price that ordinary shares trade at over the 5 Business days ending on the day before the ex Rights date or ex entitlement date is $3.00 after the announcement. To receive one Right a shareholder must hold 1.75 ordinary shares (7 ÷ 4 = 1.75, which is N). The amount by which the exercise price of an Option is to be reduced is calculated as follows:

$$0^1 = 0 - \frac{E[P-(S+D)]}{N+1}$$

$$= 1 - \frac{1[3.00-(2.00+0)+0]}{1.75+1}$$

$$= 63.6364 \text{ cents}$$

The new exercise price of the option is 63.6364 cents and the Option holder has gained the benefit of any bonus element in the rights issue. This benefit is the same as that conferred on shareholders. There is no change in the number of shares to which the Option holder is entitled. At the time when the Option is exercised, it may be necessary to round up or round down any fraction of a cent remaining after aggregating the exercise price of each of the Options exercised by the holder.

8.1.8 **Change of Option on a Bonus Issue:** If there is a bonus issue to the holders of the underlying Securities the number of Securities over which an Option is exercisable may be increased (or additional Securities may be reserved for issue on exercise of an Option) by the number of Securities which the holder of the Option would have received if that Option had been exercised before the Record Date for the issue. *(Amended 1/5/04)*

Example: The capital of a company comprises ordinary shares of $1.00 each and Options over unissued ordinary shares exercisable at $1.00 each. The entity makes a 1:1 bonus issue. An Option holder with 1000 Options with a total exercise amount payable of $1000 will then have an entitlement to 2000 Securities for a total exercise amount payable of $1000. Each Option is exercisable for $1.00 and entitles the holder to 2 shares. The exercise amount payable per Option stays the same (i.e. $1.00). If the entity subsequently has a further 1:1 bonus issue, the Option holder would become entitled to 4000 Securities for a total exercise amount payable of $1000. Each Option is exercisable for $1.00 and entitles the holder to 4 shares. The exercise amount payable per Option stays the same (i.e. $1.00). *(Amended 1/5/04)*

8.1.9 **Change of Option on consolidation or subdivision or similar proportionate reconstruction:** If there is a consolidation or subdivision or similar proportionate reconstruction of the underlying Securities, the number of Securities over which an Option is exercisable may be consolidated or subdivided in the same ratio and the exercise price amended in inverse proportion to that ratio. *(Inserted 1/5/04)*

8.2 LIEN AND FORFEITURE

8.2.1 **When Enforceable:** An Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Securities shall be restricted to one in respect of:

(a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and

(b) such amounts as the Issuer may be called upon to pay under any legislation in respect of the specific Securities.

8.2.2 **Application of Proceeds of Sale:** If Equity Securities are forfeited and sold or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.

8.2.3 **Restrictions on Forfeiture:** Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

8.3 MODIFICATION OF RIGHTS OF SECURITY HOLDERS

8.3.1 **Procedure:** Every Issuer shall comply with the provisions of sections 116 and 117 of the Companies Act 1993, whether or not the Issuer is a company registered under that Act. For the purposes of this Rule 8.3.1, those sections shall be deemed to be modified so that:

(a) references in those sections to "shares" shall (subject to Rule 8.3.2) be deemed to include references to all Equity Securities of that Issuer, and references to "shareholders" shall be read accordingly; and

(b) in respect of Issuers which are not companies registered under the Companies Act 1993, references to the "company" shall be deemed to be references to the Issuer, and references to pre-emptive rights under section 45 of that Act shall be deemed to be deleted from those sections; and

(c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:

(i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and

(ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

8.3.2 **Exception:** An Issuer shall be required by Rule 8.3.1 to comply with sections 116 and 117 of the Companies Act 1993 but shall not be required by the modifications deemed to be made thereto by Rule 8.3.1 to comply with those sections in respect of actions that affect the rights attached to:

(a) Equity Securities which are not Quoted; or

(b) Equity Securities which are not shares of a company if:

(i) those Equity Securities were issued before 30 April 1995; or

(ii) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

8.3.3 **Section 118:** Rule 8.3.1 shall not have the effect of deeming section 118 of the Companies Act 1993 to apply to any Securities other than shares of a company registered under the Companies Act 1993.

8.3.4 *(Revoked 1/5/04)*

8.4 CANCELLATION OF UNPAID AMOUNTS

8.4.1 No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution of the Issuer.

1. **Rule 9.3.1, deals with the persons entitled to Vote on a resolution under this Rule.**
2. **Any agreement involving a transaction referred to in this Rule must comply with Rule 1.12.**

8.5 SALE OF MINIMUM HOLDINGS

8.5.1 The Constitution of an Issuer may prescribe procedures entitling the Issuer, after giving not less than three months' prior notice to holders of Securities of less than a Minimum Holding, to sell such Securities (through NZX or in some other manner approved by NZX) and to account to the Holders for the proceeds of sale after deduction of reasonable sale expenses.