

Appendix 3

Takeover Provisions

1.1 Interpretation

1.1.1 In this Appendix 3 unless the context otherwise requires:

Acquisition Notice	has the meaning given in paragraph 1.6.1.
Affected Group	means: <ul style="list-style-type: none">(i) that group of persons who do not receive the Transfer offer or invitation (unless the non- receipt is inadvertent)(ii) if the Transfers are not of an equal proportion of all holdings which are offered for disposal, the groups comprised of Transferors whose Transfers represent substantially identical proportionate parts of the holdings offered by them; and(iii) those persons who are not covered by (i) or (ii) and are not the Transferees or other persons whose Relevant Interests would be taken into account in determining whether the Transfer is a Restricted Transfer
Affected Securities	has the meaning given in paragraph 1.6.1.
Compulsory Acquisition Provisions	means provisions in the Governing Document of an Issuer complying with paragraph 1.6.1 to paragraph 1.6.6.
Default by a holder of Equity Securities of an Issuer	means non-compliance with the Minority Veto Provisions in the Governing Document of the Issuer.
Defaulter	means a person with who has acquired a Relevant Interest in the Quoted Equity Securities in breach of the Minority Veto Provisions (other than a breach committed by the Issuer itself or its Directors).



Differential Offer	<p>means an offer, or invitation to agree on Transfers, which:</p> <ul style="list-style-type: none"> (a) is made to some but not all holders of a Class of Equity Securities, or (b) entitle any person other than to the benefit of NZX, or to exercise, the rights and powers provided in Rule 9.12, or (c) would result in different prices or other terms applying among holders of the same Class of Equity Securities, or (d) would result in the Transfer of different proportions of those holdings of Equity Securities of the same Class which are offered for disposal.
Enforcement Provisions	means provisions in the Governing Document of an Issuer complying with paragraph 1.5.1 to paragraph 1.5.7 inclusive and paragraph 1.7.
Majority Holder	has the meaning given in paragraph 1.6.1.
Minority Veto Provisions	means paragraphs 1.4.1 to 1.4.10.
Remaining Holders	has the meaning given in paragraph 1.6.1
Restricted Transfer	<p>means:</p> <ul style="list-style-type: none"> (a) a Transfer which would result in the Votes controlled by any person or group of persons who are Associated Persons of each other, of any Class of Quoted Equity Securities of an Issuer: <ul style="list-style-type: none"> (i) exceeding 20% of the Votes attached to that Class, or (ii) if the person or group of persons controls 20% or more of the Votes attached to that Class, increasing by more than 5% in any period of 12 months excluding increases as a result of Transfers pursuant to a Restricted Transfer notice previously given by the person or group of persons, together with (b) any other Transfer which is likely to be contemporaneous with, or subsequent to, the



Transfer in sub-paragraph (a) of this definition and comprises with that Transfer part of a scheme or linked series of transactions:

However, the purposes of this definition, acquisition of interests in Equity Securities of an Issuer may be disregarded:

- (a) where it is determined by NZX that the acquisition was involuntary and occasioned by the action of another party over which the acquiring party had no effective control or influence in the matter; or
- (b) where, and to the extent that, it is determined by NZX that the aggregation of holdings among Associated Persons would include holdings of persons who have no practical likelihood of acting in concert, or exercising Votes or otherwise acting in collusion, with each other or any common party:

This definition will not apply:

- (a) where the Transfer is between two entities, one of which is directly or indirectly wholly owned beneficially by the other, or both of which are directly or indirectly wholly owned beneficially by the same entity; or
- (b) where the Transfer is in performance of the obligations of an underwriter pursuant to an underwriting agreement disclosed in an Offer Document for an offering of the relevant Class of Quoted Equity Securities.

Transfer

in relation to an Equity Security includes sale of that Security, and the grant of rights or interests, whether conditional or not, which are intended to create for the recipient benefits which are substantially equivalent to ownership of that Security (or of an interest in that Security). In particular it includes:

- (a) a transaction whereby one party disposes of, alienates, or proposes to dispose of or alienate (temporarily or permanently), any interest or right of title to any Equity Security or in the Votes, dividends or income arising in respect of any Equity Security;



- (b) any agreement, arrangement or understanding in respect of Equity Securities under which the Votes attaching to them may be exercised by a person other than the registered holder, alone or jointly with the registered holder, or with other persons acting in concert, other than by reason of a bona fide appointment of a proxy or other representative for voting purposes under which the appointment may be terminated at will, and the appointor is entitled, if the appointor so wishes, to direct the proxy as to the manner in which Votes are to be cast;
- (c) any transaction whereby the holder of the Equity Securities enters into a commitment (whether conditional or unconditional) to sell the Equity Securities, or to grant an option over them or any part thereof, or at any future time to grant any of the rights referred to above;
- (d) the creation of a charge or other security interest enforceable by a right of possession or a power of sale or other disposition which would fall within other parts of this definition of “Transfer”, other than the creation of such an interest for bona fide financing purposes; or
- (e) any transaction, agreement or arrangement that has substantially the same effect as (a), (b), (c) or (d) above,

but excludes the issue, or acquisition, of Equity Securities by the Issuer in accordance with the Rules.

Transferor and Transferee have corresponding meanings

1.2 Restricted and Defensive Measures

1.2.1 Subject to paragraph 1.2.3, no Issuer may do anything or omit to do anything that could effectively result in:

- (a) a Restricted Transfer being frustrated; or
- (b) the holders of Quoted Equity Securities being denied an opportunity to decide on the merits of a Restricted Transfer.

1.2.2 Paragraph 1.2.1 does not prevent the directors of the Issuer taking steps to encourage competing bona fide offers from other persons.



- 1.2.3 An Issuer may take or permit the kind of action referred to paragraph 1.2.1, if:
- (a) the action has been approved by an Ordinary Resolution;
 - (b) the action is taken or permitted under a contractual obligation entered into by the Issuer, or in the implementation of proposals approved by the directors of the Issuer, and the obligations were entered into, or the proposals were approved, before the Issuer received notice of a Restricted Transfer or became aware that it was imminent; or
 - (c) if paragraphs (a) and (b) do not apply, the action is taken or permitted for reasons unrelated to the Restricted Transfer with the prior approval of NZX.

1.3 **Governing Document Provisions**

- 1.3.1 The Governing Document of each Issuer that is not a Code Company must contain or incorporate by reference:
- (a) Minority Veto Provisions;
 - (b) Enforcement Provisions; and
 - (c) Compulsory Acquisition Provisions.

1.4 **Minority Veto Provisions**

- 1.4.1 No Restricted Transfer of Quoted Equity Securities may take place unless notice is given to the Issuer, and to NZX for release to the market at least 15 Business Days before the Transfer, containing the following particulars:
- (a) the price or consideration, either specified as a fixed amount or expressed as a range with the higher price or consideration being not greater than 20% more than the lower price or consideration of that range;
 - (b) any conditions or arrangements directly or indirectly associated with the Transfer which could be material to the assessment of the price or price range by prospective Transferors of the Equity Securities;
 - (c) identification of the Class, and the maximum number of Equity Securities and percentage of the relevant Class, to which the Transfer proposal relates;
 - (d) the identity of all persons reasonably expected to acquire Relevant Interests in the Equity Securities as a result of the Transfer proposal;
 - (e) the number of Equity Securities (expressed in each case as a percentage of the total number in each relevant Class of Equity Securities) which will be held, or in which Relevant Interests will be held, upon completion of the proposed transactions, by each Transferee and Associated Persons of each Transferee;



- (f) the times within which the Transfers are intended to occur;
 - (g) how the Transfers are to be effected (for example, through NZX's order matching market, by widespread direct offer, private treaty, etc);
 - (h) the date the notice is given.
- 1.4.2 Any change in, or addition to, particulars notified under paragraph 1.4.1 must be made by giving a notice of change. Each such notice must be given at least two Business Days before the change takes effect in the case of a change to price or amount of consideration, and at least 15 Business Days before the change takes effect in the case of a change to any other particulars listed in paragraph 1.4.1, including without limitation the nature of the consideration.
- 1.4.3 Directors of an Issuer whose Quoted Equity Securities are the subject of a notice under paragraph 1.4.1 must give notice as soon as can be achieved, and before the expiry of the notice period referred to in paragraph 1.4.1:
- (a) whether any Director or Associated Person of a Director is expected by any Director to be a Transferee in the notified transaction;
 - (b) whether there is any Material Information pertaining to the Issuer which any Director believes is likely to be available to any Transferee in the proposed transaction, which has not been made generally available to the market;
 - (c) whether any Director considers there is any undisclosed Material Information which should materially affect the decision of a reasonably informed prospective Transferor in the proposed Transfer and, if so, an indication whether the Director would consider the Transfer to be made more or less desirable to the prospective Transferor by the Material Information; and
 - (d) a statement as to the timing, and expected significance of any further action, investigation, report, or disclosure which the Directors or any of them, intend to make in response to the relevant proposals for Transfers.
- 1.4.4 The Directors of an Issuer whose Quoted Equity Securities are the subject of a notice under paragraph 1.4.1, or who become aware that a Restricted Transfer proposal is more likely than not in the immediate future, must:
- (a) take all steps necessary to ensure that they and the Issuer are in a position to respond to the offer as required by these Rules, including under Rule 3.1;
 - (b) not be relieved of their disclosure obligations under these Rules by reason of a conflict of interest arising from involvement as or with a prospective Transferee or Transferor, but such Directors must disclose in any notice or statement the nature of their possible conflict;



- (c) in the case of a conflict of interest or of views as to how to proceed, if necessary release separate statements or notices to inform NZX promptly, with appropriate explanation; and
- (d) ensure that holders of the relevant Equity Securities are well informed to consider competitive offers for the control of Votes attached to the Equity Securities where there is any reasonable prospect of competition emerging to the completion of a Restricted Transfer proposal.

1.4.5 The Directors must, promptly and without delay upon a notice being given under paragraph 1.4.1 in respect of that Restricted Transfer or notice being given paragraph 1.4.2 in respect of that Restricted Transfer where the change relates to a change in the nature of the consideration offered, commission an Appraisal Report in respect of that Restricted Transfer. That report may contain such reasonable qualifications and limitations as are needed to recognise the deadlines within which it is required to be produced. That report must be:

- (a) delivered to NZX for release to the market at least two Business Days before expiration of the relevant notice, accompanied by a summary (approved by the appraiser) suitable for release to the market; and
- (b) copied to the Issuer and to any holder of Quoted Equity Securities of the Issuer upon request; and
- (c) dispatched to all holders of Equity Securities to whom the offer may be made at least three Business Days before the expiration of the relevant notice.

1.4.6 The requirement for an Appraisal Report in paragraph 1.4.5 does not apply if:

- (a) all Transferors consent to waive the requirement; or
- (b) a majority of the Disinterested Directors certify that in their opinion the cost and difficulty of providing the Appraisal Report will outweigh the benefit, because prospective Transferors are not at an information disadvantage in relation to prospective Transferees and their Associated Persons or because the Appraisal Report would not materially remedy any such information prejudice.

For the purposes of this provision, “**Disinterested Directors**” means Directors who are not involved as prospective Transferors (in relation to a proposal for a Differential Offer) or as Transferees, and who are not Associated Persons of any such Transferors or Transferees.

1.4.7 If a Restricted Transfer is not completed within three months of the notice required to be given under paragraph 1.4.1, or any status report given under this paragraph 1.4.7 then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer must be provided to the Issuer and NZX for release to the market. The additional market information must include:

- (a) when the Restricted Transfer is intended to be completed; and

- (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.
- 1.4.8 On receipt of the information provided under paragraph 1.4.7, the Directors of the Issuer must promptly and without delay advise NZX:
- (a) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or the response initially provided under paragraph 1.4.5; and
 - (b) that the Issuer is complying with Rule 3.1.
- 1.4.9 Except with the approval by Ordinary Resolution of each Affected Group:
- (a) all Transfers involved in a Restricted Transfer must be pursuant to an offer in writing to all holders of Equity Securities of any Class which is the subject of the proposed Restricted Transfer, on the same terms; and
 - (b) the Transfers must not result from Differential Offers.
- 1.4.10 Upon the giving of a notice under paragraph 1.4.1, or a notice under paragraph 1.4.2 where the change relates to a change in the nature of the consideration offered the Directors must commission a report from an independent appropriately qualified person previously approved by NZX. That report must:
- (a) be addressed to the holders of Equity Securities of the Class or Classes the subject of the Restricted Transfer referred to in the notice;
 - (b) express the opinion of the appraiser as to the consideration and other terms of the proposed transaction; and
 - (c) comply with the provisions of Rule 7.10.2(e), Rule 7.10.2(f), Rule 7.10.2(g), and Rule 7.10.2(h) as if that report were an Appraisal Report.

The provisions of paragraph 1.4.5(a), paragraph 1.4.5(b) and paragraph 1.4.5(c) apply to the report as if it were an Appraisal Report required by that provision.

1.5 Enforcement Provisions

- 1.5.1 An Issuer may, following a Default, exercise a power described in paragraph 1.5.2(a) or paragraph 1.5.2(b) in respect of all or any Quoted Equity Securities in which the Defaulter has a Relevant Interest (“**Defaulter’s Securities**”).
- 1.5.2 In the event of a Default:
- (a) no Vote may be cast on a poll, and if it is cast must be disregarded, on Defaulter’s Securities while the Default is unremedied;

- (b) a Defaulter's Securities may be sold by the Issuer. This power may not be exercised until one month after the Issuer has given notice to the Defaulter of its intention to exercise this power. It must not be exercised if, during that month:
 - (i) the Defaulter has remedied the Default (where it can be remedied); or
 - (ii) the Defaulter has transferred its Relevant Interest in the Defaulter's Securities to a person who is not a Defaulter.

If the power to sell is exercised, the Issuer may sell the Defaulter's Securities through NZX, or in some other manner approved by NZX, and must account to the holder of those Equity Securities for the proceeds of sale after deduction of all sale expenses. The Issuer is deemed to be authorised to take all steps, and sign all documents, necessary to effect the sale of the Defaulter's Securities.

- (c) neither the Issuer nor its Directors will be liable to a Defaulter or apparent Defaulter for or in connection with the exercise or purported exercise of the powers permitted by this paragraph 1.5.2;
 - (d) the Issuer will have a lien on the Defaulter's Securities for, and deduct from the proceeds of sale pursuant to paragraph 1.5.2(b), any costs to the Issuer of determining whether a person is a Defaulter and exercising powers permitted by this paragraph 1.5.2;
 - (e) the Issuer may treat as its costs for the purposes of paragraph 1.5.2(d) preceding, reimbursement by it of expenses of members of any Affected Group acting pursuant to paragraph 1.5.3; and
 - (f) if NZX makes a Ruling dealing with the matters dealt with by this Appendix 3, or with provisions of the Governing Document of the Issuer required or permitted by this Appendix 3, that Ruling is binding upon the Issuer and all holders of Equity Securities of the Issuer, and will take effect as if that Ruling were itself incorporated in the Governing Document.
- 1.5.3 The Issuer must, if so directed by Ordinary Resolution of an Affected Group, exercise the power referred to in paragraph 1.5.2(b), if that power has become exercisable. The holders of 5% or more of the Equity Securities of an Affected Group may by notice to the Issuer require the Directors of the Issuer to convene a meeting of the Affected Group for the purpose of considering such a resolution.
- 1.5.4 An Issuer must use reasonable endeavours to ascertain for the purposes of paragraph 1.5.2(a) whether any Equity Securities are Defaulter's Securities, and accordingly whether a holder of those Securities is entitled to vote. If any holder of Equity Securities of the Issuer, or NZX, alleges that any Equity Securities are Defaulter's Securities, the Issuer must properly consider and investigate that allegation.
- 1.5.5 The ruling of the chairperson of any meeting as to whether any holder of Equity Securities is or is not entitled to vote at that meeting pursuant to paragraph 1.5.2(a)

will, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting will not be impugned by reason of a breach of paragraph 1.5.2(a). This provision does not prejudice any action which any person may have against the holder of any Equity Securities by reason of that holder having cast a Vote at any meeting in breach of paragraph 1.5.2(a).

- 1.5.6 Subject to paragraph 1.5.7, the sole remedy of an Issuer, a holder of Equity Securities of an Issuer, a Director of an Issuer, or any other person, in respect of a breach or alleged breach of this Appendix 3, or of provisions in the Governing Document of an Issuer required or permitted by this Appendix 3, is to exercise, or require the Directors of the Issuer to exercise, the powers referred to in paragraph 1.5.2(a) and paragraph 1.5.2(b). Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of the provisions referred to in that sentence.
- 1.5.7 Nothing in paragraph 1.5.6 affects the remedies of a holder of Equity Securities of an Issuer against the Directors of that Issuer in respect of a breach of this Appendix 3, or the provisions of the Governing Document referred to in paragraph 1.5.6, by that Director.
- 1.5.8 NZX (in this paragraph 1.5.8 an “**Arbiter**”) may, for the purposes of making a Ruling as to whether any person is a Defaulter, give notice to any person who the Arbiter believes may be a Defaulter. That notice must:
- (a) set out in general terms the grounds on which the Arbiter believes that person to be a Defaulter; and
 - (b) require that person, within a reasonable time specified in the notice, to produce evidence to rebut the Arbiter’s belief that that person is a Defaulter.

If the person to whom the notice is given fails within the time specified in the notice to produce to the Arbiter evidence satisfactory to the Arbiter that that person is not a Defaulter, then the Arbiter is entitled to assume without further evidence that that person is a Defaulter, and to make a Ruling to that effect.

1.6 **Compulsory Acquisition Provisions**

- 1.6.1 If a person, or a group of Associated Persons, acquires beneficial ownership of 90% or more of a Class of Quoted Equity Securities of an Issuer, that person or group of persons (the “**Majority Holder**”) must, within 20 Business Days after that circumstance arises, give notice (the “**Acquisition Notice**”) to all other holders (the “**Remaining Holders**”) of Equity Securities of that Class (“**Affected Securities**”) and at the same time to the Issuer and NZX, provided that when calculating the total number of Quoted Equity Securities in that Class, Treasury Stock will not be regarded as part of that Class.

1.6.2 The Acquisition Notice must specify:

- (a) that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
- (b) either:
 - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
 - (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
- (c) the consideration to be provided by the Majority Holder for Affected Securities.

1.6.3 Upon giving an Acquisition Notice, the Majority Holder is entitled and bound:

- (a) if the Acquisition Notice contains the statement in paragraph 1.6.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
- (b) if the Acquisition Notice contains the statement in paragraph 1.6.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.

1.6.4 The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire will be determined as follows:

- (a) the Acquisition Notice must specify the consideration which the Majority Holder is prepared to provide. The Majority Holder must, before giving the Acquisition Notice, provide to NZX a report from an independent appropriately qualified person, previously approved by NZX, confirming that that consideration is fair to the Remaining Holders, using the same criteria set out in paragraph (c)(iv) of this provision;
- (b) if, within 10 Business Days after the date of the Acquisition Notice, the Issuer receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the consideration will be determined in accordance with (c) and (d). If objections are received, the Issuer must promptly and without delay notify the Majority Holder and NZX of that fact. If such objections are not received, the consideration will be as specified in the Acquisition Notice;



- (c) if objections of the nature referred to in (b) are received by the Issuer, the consideration will be determined by an independent appropriately qualified person. That person must:
 - (i) be a different person from the person referred to in (a); and
 - (ii) act as an expert and not as an arbitrator; and
 - (iii) be directed to provide a decision within 20 Business Days after his or her appointment; and
 - (iv) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Issuer as a whole and the rights and obligations attached to those Equity Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority Holder, their respective holdings in the Issuer or the relative extent of those holdings; and
 - (v) be appointed by the disinterested Directors (as defined in paragraph 1.4.6) of the Issuer (if any, and otherwise by the Directors of the Issuer) after approval by NZX;
- (d) if the consideration determined by the person appointed in accordance with (c):
 - (i) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that person will be borne by the Remaining Holders who made the objections referred to in (b);
 - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person will be borne by the Majority Holder.

If the fee and expenses of that person is to be borne by the objectors in terms of (i), the Majority Holder may deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash).

- 1.6.5 If a Majority Holder fails to give an Acquisition Notice, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this paragraph 1.6, fails to do so, then the provisions of paragraph 1.5.1 to paragraph 1.5.5 will apply with the following modifications:
- (a) the Affected Securities held by the Majority Holder are deemed to be Defaulter's Securities;
 - (b) the failure to comply with this paragraph 1.6 will be deemed to be a Default; and
 - (c) the Remaining Holders will be deemed to be an Affected Group.

1.6.6 The Governing Document must also contain provisions:

- (a) providing for the payment or provision of consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if consideration requires to be determined pursuant to paragraph 1.6.4, within 2 Business Days after the consideration is determined;
- (b) providing for the consideration payable to Remaining Holders who cannot be found to be held in trust for those holders for at least five years; and
- (c) providing for the Issuer, upon payment or provision of the consideration, to execute transfers on behalf of the Remaining Holders, and to take all other steps necessary to transfer to the Majority Holder the Affected Securities of the Remaining Holders.

1.7 Holding By Bare Trustee

1.7.1 For all purposes of this Appendix 3, and notwithstanding anything in this Appendix 3:

- (a) the Transfer of Quoted Equity Securities, or of any interest in Quoted Equity Securities, to a bare trustee is deemed to be a Transfer to the person or persons for whom that bare trustee holds those Equity Securities or that interest as trustee (the “**Beneficial Owners**”);
- (b) Quoted Equity Securities, or any interest in Quoted Equity Securities, held by a bare trustee are deemed to be held by the Beneficial Owners; and
- (c) a trustee may be a bare trustee notwithstanding that that trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.

1.7.2 Without limiting paragraph 1.7.1:

- (a) a bare trustee and a Beneficial Owner will not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;
- (b) a bare trustee of Quoted Equity Securities will not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Quoted Equity Securities; and
- (c) a Beneficial Owner of Quoted Equity Securities does not have a Relevant Interest in the Quoted Equity Securities of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.



- 1.7.3 In the event of a Default, if any Quoted Equity Securities held by a person as bare trustee on behalf of different Beneficial Owners include any Defaulter's Securities:
- (a) the bare trustee must, on request by the Issuer or NZX, provide to the Issuer and NZX details of the Beneficial Owners of those Defaulter's Securities; and
 - (b) the Issuer may at any time, and must upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Securities are separately designated in the register recording those Quoted Equity Securities.

