



New Zealand Depository Limited

Depository Operating Rules

10 December 2020~~16 April 2015~~



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Depository Rule Book

Section 1: Introduction and General Provisions

1.1 The Depository

1.1.1 The Depository and the Clearing House form part of the Settlement System. CDO is the operator of the Depository and makes the Depository available for the following purposes:

- (a) to enable electronic custody of Admitted Product;
- (b) to enable recording of beneficial and Security Interests in Admitted Product;
- (c) to enable CHO and Depository Participants who are also Clearing Participants and Lending Clearing Participants to discharge delivery and payment obligations for the purposes of the C&S Rules;
- (d) to enable Depository Participants to settle transactions in Admitted Product;
- (e) to facilitate the undertaking by Depository Participants of Lending Transactions in Admitted Product; and
- (f) to provide other services not inconsistent with these Rules.

1.1.2 CDO provides or makes available to Depository Participants and CHO services and facilities in the Depository:

- (a) for the electronic recording of interests in Admitted Product;
- (b) for the electronic transfer of legal title to Securities that are Admitted Product;
- (c) for the electronic settlement of transactions in Admitted Product;
- (d) for the completion of Lending Transactions in Admitted Product; and
- (e) other services or facilities as specified from time to time in accordance with these Rules.

1.1.3 Nothing in these Rules limits in any way the services or facilities that are or may be provided or made available by CDO, whether through the Depository or otherwise.

1.2 Status of Rules

1.2.1 These Rules provide for:

- (a) the basis on which Admitted Product is transferred into and from the Depository;

- (b) the basis on which settlement instructions are given to, or received by, Depository Participants, CHO and CDO;
- (c) the basis on which settlements between Depository Participants are effected;
- (d) any action to be taken if a Depository Participant is unable, or is likely to become unable, to meet that Depository Participant's obligations to any or all of the following:
 - (i) CDO;
 - (ii) another Depository Participant; and/or
 - (iii) any other party to these Rules or any other Person.

1.2.2 These Rules and any Procedures made in accordance with Rule 1.4 constitute a binding contract between CDO, Nominee, and each Depository Participant and each Responsible Person and a binding contract between CDO, Nominee and CHO and in respect of a Lending Transaction created under Rule 5.3.1 in respect of a Borrowing Request delivered by CHO, a binding contract between CHO and any Depository Participant that is a party to that Lending Transaction as Lender. In agreeing to be bound by these Rules, CDO and each Depository Participant agrees to be bound by the NZ Markets Disciplinary Rules in the manner provided for in these Rules with the effect that Depository Participants shall be bound by, and have the benefit of, NZ Markets Disciplinary Tribunal Rule 4.5 and all provisions of the NZ Markets Disciplinary Tribunal Rules necessary to give effect to that rule.

1.2.3 Any agreement entered into between Depository Participants pursuant to these Rules and Procedures constitutes a binding contract between the Depository Participants and is enforceable by CDO and/or Nominee, as the case may be.

1.2.4 Nothing in these Rules or any Procedure, or in the status of Depository Participants shall:

- (a) entitle a Depository Participant or any other Person to take action (except as provided by Rule 1.2.4(e), Rule 1.2.5 and Rule 8.11.3) against any of CDO, Nominee, CHO, NZX, or the operator of an NZX Market or the NZ Markets Disciplinary Tribunal, whether to challenge the right of CDO, Nominee, CHO, NZX or the operator of an NZX Market or the NZ Markets Disciplinary Tribunal to exercise or not exercise any of their respective powers under the Rules in such manner as it thinks fit, or for the consequences of any such exercise or non-exercise other than as expressly provided for in these Rules or Procedures; or
- (b) limit or affect the rights of CDO, Nominee, CHO, NZX,

an operator of an NZX Market or the NZ Markets Disciplinary Tribunal in respect of the Rules and in particular (but without limitation) the absolute discretion of CDO to make rulings and waivers and the right of CDO to amend (including replace, vary, remove or otherwise substitute) all or any of the Rules or Procedures in the manner expressly provided for in these Rules and the Procedures; or

- (c) entitle any Person to prior notice (or any notice) of any exercise by CDO, Nominee, CHO or NZX, an operator of an NZX Market or the NZ Markets Disciplinary Tribunal of any power under, or in relation to these Rules or Procedures, including in respect of CDO notice of any ruling under the Rules in the manner provided for in these Rules or the Procedures (except as expressly required by these Rules or the Procedures); or
- (d) entitle any Person to pursue any proceedings to enforce any provision of the Rules which is the subject of a current ruling, other than on the basis of, and in accordance with, such ruling; or
- (e) confer or purport to confer, on any Person (other than NZX, the operator of an NZX Market, the NZ Markets Disciplinary Tribunal, an Issuer or a Securities Registry and any other Person specified in Rule 1.2.5) who is not a party to these Rules, a benefit under the Rules enforceable under the Contracts (Privity) Act 1982, or create an obligation enforceable at the suit of the Person.

1.2.5 Those provisions in these Rules and any Procedures which specifically refer to either NZX (including Rules 1.3, 1.4, 6.2, 6.11, 9.5 and 9.7.7) and/or the operator of any NZX Market or the NZ Markets Disciplinary Tribunal confer a benefit on each of those Persons referred to in those provisions and, subject to this Rule 1.2.5, are intended to be enforceable by each such Person by virtue of the Contracts (Privity) Act 1982. The rights of privity of an Issuer, a Securities Registry and a Security holder are set out in Section 8. Notwithstanding the foregoing, these Rules and any Procedures may be revoked, deleted or amended in any way and at any time in accordance with these Rules without the consent of the operator of any NZX Market (other than NZX) or the NZ Markets Disciplinary Tribunal, an Issuer, a Securities Registry or a Security holder.

1.2.6 Each Depository Participant acknowledges that in agreeing to be bound by the Rules and the Procedures pursuant to Rule 1.2, it is not relying upon any Pre-Contractual Statement that is not set out in the Rules. No Depository Participant shall have any right of action against CDO arising out of or in connection with any Pre-Contractual Statement except in the case of fraud or to the extent repeated in the Rules. For the purposes of this Rule

1.2.6, a “**Pre-Contractual Statement**” means any prior drafts, agreements, undertakings, representations, warranties, promises, assurances and arrangements of any nature whatsoever, whether or not in writing, relating to the Rules and the Procedures.

1.3 Amendment of Rules

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:

Procedure 1.1

- (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.

1.3.2 CDO may not amend this Rule 1.3 nor any of Rules 1.4, 6.2, 6.11, 9.5 and 9.7.7 without the prior written consent of NZX. CDO must give NZX notice of any proposed amendments to the Rules. CDO may not make any amendments to any of the other Rules without the prior written consent of NZX, such consent not to be withheld by NZX if, in CDO’s reasonable opinion, failure to make those amendments would materially increase the risk to the Settlement System in respect of the clearing and settlement of Settlement Transactions.

1.4 Procedures

1.4.1 CDO may, from time to time, with the prior written consent of NZX, prepare and approve written Procedures relating to the operation of the Depository and the activities of CDO, Nominee, CHO and Depository Participants under these Rules. CDO may not amend Procedures 1.1 or 6.1 or 6.2 without the prior written consent of NZX. NZX may not withhold its consent to the amendment of any other Procedures if, in CDO’s reasonable opinion, failure to make those amendments would materially increase the risk to the Settlement System in respect of the clearing and settlement of Settlement Transactions.

1.4.2 NZX may request that CDO amend the Procedures by providing CDO with written notice of proposed amendments. CDO must

amend the Procedures as proposed by NZX from time to time 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.

1.4.3 If there is any inconsistency between any Rule and any Procedure, the Rules will prevail.

1.4.4 The Procedures do not form part of the Rules. However, if a Rule requires compliance with any part of the Procedures, failure to comply with that part of the Procedures is a contravention of that Rule.

1.5 Effect of Amendment

1.5.1 Unless expressly stated otherwise, where a Rule or Procedure is amended, deleted or lapses or otherwise ceases to have effect, that circumstance does not:

- (a) revive anything not in force or existing at the time at which that circumstance takes effect;
- (b) affect the previous operations of that Rule or Procedure or anything done under that Rule or Procedure;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or Procedure;
- (d) affect any penalty, forfeiture, suspension, termination or disciplinary action taken or incurred in respect of that Rule or Procedure (including in respect of any contravention of that Rule or Procedure); or
- (e) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, termination or disciplinary action, in respect of that Rule or Procedure (including in respect of any contravention of that Rule or Procedure),

and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, termination or disciplinary action may be imposed as if the circumstance had not taken effect.

1.6 Definitions

1.6.1 In these Rules the following terms bear the following meanings;

Account means an account established for a Depository Participant, CHO, CDO or Nominee in the Depository and includes a Settlement Account;

Acting in Concert means a group of Persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate through the acquisition (directly or indirectly) of Securities in another Person by any of them (either directly or indirectly) to obtain or consolidate Control of that Person;

Admitted Product means a Commodity or Derivatives Contract approved for admission to the Depository in accordance with Rule 6.2 and specified in a Procedure;

Procedure 6.2

Affected Person has the meaning given to it by Rule 9.5.1;

Appendix means the appendix to the Rules;

Authorisation Code or FIN means an alphanumeric identifier issued by the operator of an NZX Market, or a Securities Registry, to a Security holder that provides authority to access the Security holder's account in the Securities Registry;

Authorised Signatory means, in respect of a Depository Participant, each Person notified by the Depository Participant in accordance with Rule [2.10.12-10.1](#);

Bank means:

- (a) a Registered Bank;
- (b) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Rating Limited or A3 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
- (c) any other bank or financial institution approved by CHO from time to time;

Borrowed Product means Admitted Product that is the subject of a Lending Transaction;

Borrower means a Depository Participant who is also a Clearing Participant or a Lending Clearing Participant, or CHO, as the case

	may be, who borrows Admitted Product under a Lending Transaction;
Borrowing Request	means a request by a Borrower to initiate a Lending Transaction made in accordance with Rule 5.2.15-2.4 ;
Business Day	means a day on which the Clearing House is open for clearing and settlement and includes every day on which an NZX Market is open for trading;
C&S Rules	means the Clearing and Settlement Rules of CHO;
CDO	means New Zealand Depository Limited <u>or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of CDO</u> ;
CHO	means New Zealand Clearing Limited <u>or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of CHO</u> ;
CIT or Client Inward Transfer	means the transfer by a Person of Securities that are Admitted Product from another Person's account on an Issuer's Securities Register into that Person's Transfer Account on that Issuer's Securities Register; in the manner contemplated by Rule 8.6;
Clearing Bank	means a Bank appointed by CHO under Rule 6.3 of the C&S Rules for the purpose of making and receiving of payments in currencies other than NZ\$;
Clearing House	Means the central counterparty clearing house operated by CHO in accordance with the C&S Rules including its functions, facilities and systems;
Clearing House System	has the meaning given to that term in the C&S Rules;
Clearing Participant	means a Person whom CHO has allowed to be a participant in the Clearing House in accordance with the C&S Rules, and includes a General Clearing Participant, a Default Clearing Participant and an Individual Clearing Participant but does not include a Lending Clearing Participant;

Client Advising Participant	means a participant in an NZX Market that has been accredited and/or approved by the operator of that NZX Market for the purpose of providing investment advice and/or Securities recommendations to clients;
Collateral	has the meaning given to that term in the C&S Rules;
Commencement Date	means the date upon which a class of property becomes an Admitted Product, as specified in a Notice in accordance with Rule 6.2.5;
Commodity	means any property, right (present or future or of any description) or asset and includes, a financial product, a Security, an Emission Unit, electricity and Money in any currency but excludes any property or right in a Derivatives Contract;
Company	means a “company” or an “overseas company” within the meaning of the Companies Act 1993, or an entity which CDO determines has a comparable status under the laws of any other jurisdiction nominated from time to time by CDO;
Confidential Information	has the meaning given to that term in Rule 9.7.7;
Control	<p>means the ability of one Person or group of Persons Acting in Concert (Person A) (whether or not exercised and whether or not exercisable with or without the consent or concurrence of any other Person) to:</p> <p>(a) control, including control the appointment or removal of, 25% or more of the Persons who have the capacity to determine the outcome of decisions concerning the financial and operating policies of another Person (Person B), and where Person B is a Company, includes the ability of Person A to control, including control the appointment and removal of, 25% or more of the Directors of Person B; and/or</p> <p>(b) exercise, or control the exercise of,</p>

50% or more of the legal or beneficial ownership rights in respect of that Person (Person B), and where that Person is a Company, includes the ability of Person A to control Persons who hold or control 50% or more equity securities or voting rights in Person B;

Corporate Action means any action taken or Notice given in respect of Admitted Product by or on behalf of the Issuer of Admitted Product or the Product Registry or any third party including, a distribution, interest or other payment of income, rights issue, bonus issue, Corporate Offer, exercise of voting rights, rights relating to conversion, subdivision, consolidation, pre-emption, redemption, repurchase or other rights or obligations, including those requiring election or action (including the payment of any call) by the holder for the time being of such Admitted Product;

Corporate Offer means a takeover offer, scheme of arrangement, amalgamation or other offer acceptance of which would result in disposition or replacement of all or part of a holder's interest in the Admitted Product;

COT or Client Outward Transfer means the transfer by a Person of Securities that are Admitted Product from that Person's Transfer Account on an Issuer's Securities Register into another Person's account on that Issuer's Securities Register in the manner contemplated by Rule 8.9;

Credit Transfer Notice means a notice in a form approved by the Commissioner of Inland Revenue and duly completed with all the particulars required by section 30C of the Tax Administration Act 1994;

CSN or Common Shareholder Number means a unique alphanumeric identifier that uniquely identifies a holder of Securities on all Securities Registers of Issuers that have entered into a Securities Transfer Services Agreement;

Custodian means a custodian appointed by CDO or Nominee from time to time to hold

Procedure 3.7

	Admitted Product for and on behalf of CDO or Nominee as specified by Procedure;
Debtor	has the meaning given to that term in the PPSA, and includes any analogous Person as prescribed by analogous law in any other jurisdiction as CDO may determine;
Declared Default	means a Default Event that CDO has determined it will treat as a “Declared Default” in accordance with Rule 7.2.1;
Default Declaration Date	means the date and time determined and described as such by CDO in accordance with Rule 7.2.1;
Default Event	means an event or circumstance referred to in Rule 7.1.1;
Defaulting Depository Participant	means a Depository Participant in respect of whom CDO has declared a default in accordance with Rule 7.2.1;
Depository	means the depository operated by CDO in accordance with these Rules;
Depository Participant	means a Person that CDO has allowed to be a participant in the Depository in accordance with Rule 2.1.1;
Depository System	means the electronic system for accessing the Depository including any software contained within or used in connection with that system and includes the Legal Title Transfer System;
Depository Transaction	means a transaction resulting from an Instruction given under Rule 4.1.1 and executed in accordance with Rule 4.1.5;
Derivatives Contract	has the meaning given in the C&S Rules;
DFP Instruction	means an Instruction where the delivery of Admitted Product is made without a Money Element;
Director	means: <ul style="list-style-type: none"> (a) in relation to a company as defined in the Companies Act 1993, any Person occupying the position of director of the company, by whatever name

called;

- (b) in relation to any other entity, any Person occupying a position of management and control in that entity that is comparable with that of a director, by whatever name called,

and in relation to a Depository Participant, includes a Person in accordance with the directions or instructions of whom that Depository Participant, or any Person referred to in (a) or (b) is accustomed or required to act;

DVP Instruction means an Instruction where the Depository Transaction involves both a Money Element and a Product Element;

Eligible Securities has the meaning given in the C&S Rules;

Emission Unit means:

- (a) a unit as defined in section 4(1) of the Climate Change Response Act 2002; and

- (b) personal property that:

- (i) is created by, or in accordance with, any enactment (whether of New Zealand, another country, or any jurisdiction of any country), rule of law, contractual provision, or international treaty or protocol as:

- one of a fixed number of units issued by reference to a specified amount of greenhouse gas; or
- evidence of a specified amount of reductions, removals, avoidance, storage, sequestration, or any other form of mitigation of greenhouse gas emissions; and

- (ii) can be surrendered, retired, cancelled, or otherwise used to:

- offset greenhouse gas emissions under or otherwise comply with any enactment (whether of New Zealand, another country, or any jurisdiction of any country), rule of law, contractual provision or international treaty or protocol; or
- enable a Person who surrenders, retires, cancels, or otherwise uses it to claim an environmental benefit;

Equivalent Product

means:

- (a) in respect of a Lending Transaction and a Borrower, Admitted Product of a type, nominal value, description and amount identical to the Borrowed Product referred to in a Borrowing Request; or
- (b) in respect of a Lending Transaction and a Lender, Admitted Product of a type, nominal value, description and amount identical to the Borrowed Product referred to in a notice given to that Lender under Rule 5.3.3(b); or
- (c) if, and to the extent that such Borrowed Product has been converted, subdivided, consolidated, redeemed, repurchased or been the subject of a capitalisation issue or event similar to any of the foregoing (or will be converted, subdivided, consolidated, redeemed, repurchased, or be the subject of a capitalisation issue or event similar to any of the foregoing by reference to a date that occurs prior to the redelivery of Equivalent Product by the Borrower);
 - (i) in the case of conversion, subdivision or consolidation, that number of Securities into

which the Borrowed Product has been or will be converted, subdivided or consolidated;

- (ii) in the case of redemption or repurchase, a sum of money equivalent to the proceeds of redemption of the Borrowed Product;
- (iii) in the case of a capitalisation issue the Admitted Product of a type, nominal value, description and amount identical to the Borrowed Product together with the Securities allotted or to be allotted by way of bonus thereon;
- (iv) in the case of any event similar to any of the foregoing, Admitted Product of a type, nominal value, description and amount identical to the Borrowed Product together with or replaced by a sum of Money or Securities equivalent to that received or to be received in respect of such Borrowed Product;

Error	means an error or oversight of any kind and arising for whatever reason, by CDO or Nominee or a delay, deficiency or failure on the part of CDO or Nominee, arising for whatever reason, and in any case including due to an incorrect Instruction from CHO;
ESAS Account	means, in respect of CHO, CDO, Nominee or a Settlement Bank, an exchange settlement account maintained for that Person in the ESAS System;
ESAS System	means the Exchange Settlement Account System operated by the Reserve Bank of New Zealand;
FDP Credit	means an FDP credit within the meaning of section OA 5 of the Income Tax Act 2007;

FDP Rules	means the FDP Rules as that term is defined in section YA 1 of the Income Tax Act 2007;
FMC Act	means the Financial Markets Conduct Act 2013;
Generally Accepted Accounting Practice	has the meaning given to that term in section 8 of the Financial Reporting Act 2013;
Holding Company	has the meaning given to that term in the Companies Act 1993;
Imputation credit	means an imputation credit within the meaning of section YA 1 of the Income Tax Act 2007;
Imputation Credit Account	has the meaning given to that term in the Income Tax Act 2007;
Income	means any dividends, interest or other distributions or proceeds of any kind whatsoever with respect to Borrowed Product other than a distribution of the kind referred to in paragraph (c) of the definition of Equivalent Product;
Income Payment Date	in relation to Borrowed Product, means the date by reference to which particular holders are identified as being entitled to payment of Income;
Insolvent	means, in respect of a Person, the occurrence of any of the following: <ul style="list-style-type: none"> (a) an application or order is made, or a resolution is passed or proposed for the appointment of an administrator in respect of the liquidation, dissolution or winding up of the Person or the removal from the relevant register of the Person or any corporate action, legal proceedings or other procedure or step is taken in relation to the same; (b) a liquidator, receiver, manager, statutory manager, trustee, administrator, inspector, or similar official is appointed in respect of a Person or any of its assets, whether

by a court, by the Person, by its creditors or otherwise or the Person is declared to be at risk in accordance with section 30 of the Corporations (Investigation and Management) Act 1989, or any corporate action, legal proceedings or other procedure or step is taken in relation to the same;

- (c) a direction is given to the Person under Section 113 of the RBNZ Act, or a recommendation is made by the Reserve Bank of New Zealand, in respect of the Person, in accordance with Section 117 of the RBNZ Act;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a stay or moratorium on payment or recovery of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Person;
 - (ii) a composition, assignment or arrangement for the benefit of or with any creditor or class of creditors of the Person;
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Person or any of its assets; or
 - (iv) enforcement of any Security Interest over any assets of the Person;
- (e) any procedure or step analogous to any procedure or step referred to in paragraphs (a), (b), (c) or (d) above is taken in respect of the Person in any jurisdiction;

- (f) a moratorium or administration is proposed, ordered or arranged;
- (g) a Person is unable to, or admits inability to pay its debts as they fall due or is deemed, declared or presumed by law to be unable to pay its debts as they fall due;
- (h) a Person suspends, stops or threatens to suspend or stop making payment on any indebtedness;
- (i) a Person ceases, or threatens to cease, to carry on all or a material part of its business;
- (j) the value of the assets of a Person is less than its liabilities (taking into account contingent and prospective liabilities);
- (k) a holder of a Security Interest in any asset of a Person enters into or takes possession of that asset or takes any other step to realise or enforce that Security Interest; or
- (l) a distress, execution, attachment or other legal process is claimed or issued against any of the assets of a Person;
- (m) any of the Person's assets, or shares in the Person, are compulsorily acquired, or ordered sold, vested or divested, by or by order of any governmental authority or by law, or any steps are taken to effect any of the same;
- (n) in respect of a Depository Participant, in the opinion of CHO:
 - (i) any Collateral provided in respect of the obligations of that Depository Participant is at risk, is affected by any process of law, or is jeopardised in any way; or
 - (ii) any Person takes or purports to take any action to take

possession of or takes any steps to realise or enforce any interest in any Collateral provided in respect of the obligations of that Depository Participant,

and the term “**Insolvency**” shall be interpreted accordingly;

Instruction

means:

- (a) an instruction given by a Depository Participant in respect of a transaction and/or in an Account; and/or
- (b) an instruction or other action by CHO in respect of a Settlement Transaction and/or an Account or a Settlement Account;

Issuer

means the Person who is the issuer of a Security for the purposes of the FMC Act, and includes any Person who, in respect of the Security, has entered into a listing agreement with an exchange;

Intellectual Property

means all intellectual property rights and interests (including common law rights and interests) in any jurisdiction including (without limitation):

- (a) patents, trademarks, trade names, service marks, registered designs and all goodwill rights associated with such works, copyright, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, service marks and designs; and
- (c) know-how, ideas, concepts, tools, techniques, computer program code, data, inventions, discoveries, developments, trade secrets, information and logical sequences (whether or not reduced to writing or other machine or human readable form);

Legal Title Transfer Depository

means a Depository Participant who CDO allows, under Rule 8.2, to be a “Legal Title Transfer Depository Participant” and to

Participant	access the Legal Title Transfer System;
Legal Title Transfer System	means the electronic system used to effect transfer of legal title to Securities that are Admitted Product as described in the Appendix, and includes any software contained within or used in connection with that system;
Lender	means a Depository Participant who is also a Clearing Participant or a Lending Clearing Participant and who lends Admitted Product under a Lending Transaction;
Lending Clearing Participant	means a Depository Participant allowed by CHO in accordance with the C&S Rules to clear and settle only Lending Transactions on the Clearing House;
Lending Pool	means at a particular time on a Business Day, Admitted Product that has been Locked by CDO under Rule 5.1.3 on that Business Day prior to that time that has not been subsequently selected by CDO for Lending prior to that time on that Business Day;
Lending Transaction	means a transaction for the delivery and re-delivery of Admitted Product in accordance with Section 5 of the Rules;
Lock or Locked	<p>(a) means, in respect of CDO, an action by CDO in relation to an Account, an Admitted Product or entitlement, to prevent a transfer, creation of a Security Interest over, a change in status or other dealing in or in respect of the Account, Admitted Product or entitlement recorded in that Account; and/or</p> <p>(b) means, in respect of CHO, an action by CHO (or a direction by CHO to CDO to execute such action) in relation to a Settlement Account, or Approved Product or entitlement recorded in that Settlement Account, to prevent a transfer, creation of a Security Interest over, a change in status or other dealing in respect of that Settlement Account, Approved</p>

Product or entitlement;

Lodgement	means the transfer of legal title to Admitted Product to the Nominee by means of the Legal Title Transfer System or by any other means for the purpose of having the Admitted Product recorded in the Depository in accordance with Rule 3.5.1, and “ Lodge ” and “ Lodged ” shall be interpreted accordingly;
Losses	means all direct and indirect and consequential losses, costs, damages, expenses and liabilities whatsoever;
Major Transaction	means a “major transaction” as defined in the Companies Act 1993;
Material Adverse Effect	has the meaning given in Rule 7.1.1;
Maturity	means the due date for repayment, redemption or repurchase of an Admitted Product that is repayable, redeemable or repurchaseable subject to a right or obligation to repurchase, repay or redeem, and “ Mature ”, “ Matured ” and “ Maturity Date ” shall be interpreted accordingly;
Money	has the meaning given in the C&S Rules and includes a Depository Participant’s rights (if any) in Money;
Money Collateral	has the meaning given in the C&S Rules;
Money Collateral Account	means an account in a particular currency, in the name of CDO, held by CDO on behalf of, and for the benefit of, CHO within a Bank for the receipt, holding and payment of Money Collateral under the C&S Rules;
Money Element	means the component of a Depository Transaction or a Corporate Action (if any) which is intended by the parties to be performed by the delivery by one party to the other of a specified amount of Money;
Nominee	means New Zealand Depository Nominee Limited and any other Person appointed as a nominee by CDO from time to time;
Notice	means notice given in accordance with

Rule 9.6, and “**Notifying**” shall be construed accordingly;

NZ\$ or \$ or NZD means the lawful currency of New Zealand from time to time;

NZ Markets Disciplinary Tribunal means the body constituted by NZX under the NZ Markets Disciplinary Tribunal Rules, and where the context permits, includes the chairperson, deputy chairperson, any division or duly authorised delegate of the NZ Markets Disciplinary Tribunal and shall include any successor body to the NZ Markets Disciplinary Tribunal from time to time;

NZ Markets Disciplinary Tribunal Rules means the rules of the NZ Markets Disciplinary Tribunal applicable to the Settlement System;

NZCDC means New Zealand Clearing and Depository Corporation Limited;

NZX means NZX Limited [or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of NZX;](#)

NZX Market means a Market operated by NZX or a subsidiary of NZX, the rules of which require Transactions to be cleared and settled on the Clearing House;

OIT or Owned Inward Transfer means, in respect of a Person, the transfer of Securities that are Admitted Product from that Person’s Owned Account (or the Owned Account of its nominee, or in the case of CDO, Nominee’s Owned Account) on an Issuer’s Securities Register into that Person’s Transfer Account (or in the case of CDO, Nominee’s Transfer Account) in the manner contemplated by Rule 8.7;

OOT or Owned Outward Transfer means, in respect of a Person, the transfer of Securities that are Admitted Product from that Person’s Transfer Account (or in the case of CDO, Nominee’s Transfer Account) on an Issuer’s Securities Register into that Person’s Owned Account (or the Owned Account of its nominee, or in the case of CDO, Nominee’s Owned Account) in the manner contemplated by Rule 8.8;

- Owned Account** means:
- (a) an account on an Issuer's Securities Register in a Legal Title Transfer Depository Participant's name or in the name of its nominee for the purposes of recording Securities held by that Legal Title Transfer Depository Participant or its nominee;
 - (b) an account on an Issuer's Securities Register in Nominee's name for the purposes of recording Securities held by Nominee;

- Overseas Activity** means any of the activities of:
- (a) any part of a Depository Participant's business as a Depository Participant that is located outside New Zealand; or
 - (b) any of a Depository Participant's Personnel located outside New Zealand who are engaged in, and to the extent it relates to, the Depository Participant's business as a Depository Participant;

Person includes any individual natural person, Company, corporation, corporation sole, partnership, joint venture, association (whether corporate or unincorporated), trust, Government department, Minister of the Crown, state or agency of a state (in each case, whether or not having separate legal personality);

Personnel means, in relation to a particular Person, an employee of that Person, as defined under the Employment Relations Act 2000 (or in the case of a Person who is not subject to the Employment Relations Act 2000, applied as if the Person was subject to the Employment Relations Act 2000), and includes any individual employed by, contracted, seconded, or providing consulting services to, the Person whether it be on a permanent, part-time, casual or temporary basis;

Potential Default Event	means any event or circumstance that, with the giving of notice or the lapse of time or both, would constitute a Default Event;
PPSA	means the Personal Property Securities Act 1999;
PPT or Participant to Participant Transfer	means the transfer of Securities from one Person's Transfer Account to another Person's Transfer Account, for no consideration;
Procedure	means a procedure relating to the operation of the Depository and the activities of CDO, CHO, the Nominee and Depository Participants under these Rules, as approved and amended from time to time by CDO in accordance with Rule 1.4;
Proceeds	has the meaning given to that term in the PPSA;
Product Element	means the component of a Depository Transaction or a Corporate Action (if any) which is intended by the parties to be performed by the delivery by one party to the other of a specified amount of Admitted Product;
Product Register	means a register that records the legal or beneficial owner of Admitted Product and includes: <ul style="list-style-type: none"> (a) a Securities Register; and (b) a register established for the purpose set out in section 10 of the Climate Change Response Act 2002; and (c) a register that records the legal or beneficial owner of Admitted Product which is maintained in a jurisdiction outside of New Zealand;
Product Registry	means a Person who operates or maintains a Product Register, and includes a Securities Registry;
RBNZ Act	means the Reserve Bank of New Zealand Act 1989;
Reciprocal	means any agreement or arrangement

Arrangement	between CDO or CHO (as the case may be) and any government agency or regulatory authority (including a securities exchange, NZX or an operator of an NZX Market) in New Zealand or elsewhere whose functions include prudential supervision and/or the regulation of trading in Securities, Derivatives Contracts or Commodities (in New Zealand or elsewhere), which provides for the disclosure of information between CDO or CHO (as the case may be) and the other party in relation to dealings in Securities, Derivatives Contracts or Commodities or any aspect of prudential supervision (in New Zealand or elsewhere);
<u>RegCo</u>	<u>Means NZX Regulation Limited or its predecessors, successors or assigns, and as the context permits includes any duly authorised delegate of RegCo;</u>
Registered Bank	means a bank registered under the RBNZ Act;
Related Person	has the meaning given in the C&S Rules;
Relevant Payment Date	has the meaning given in Rule 5.8.1;
Responsible Person	means an individual appointed by a Depository Participant to represent the Depository Participant and perform the functions of a Responsible Person in accordance with these Rules;
Risk Management Purposes	has the meaning given in Rule 6.9.1;
Rules	means these New Zealand Depository Limited Depository Operating Rules and includes the Appendix;
RWT	means RWT as that term is defined in section YA 1 of the Income Tax Act 2007;
RWT Rules	means RWT rules as that term is defined in section YA 1 of the Income Tax Act 2007;
Secured Party	has the meaning given to that term in the PPSA;

Securities Legislation	means the Securities Act 1978, FMC Act and any Regulations made under that Act, the Financial Transactions Reporting Act 1996, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Financial Reporting Act 1993, Financial Reporting Act 2013, the Companies Act 1993 and the RBNZ Act, and includes any equivalent or analogous law, regulation or directive in any other jurisdiction binding on or applicable to the Depository Participant;
Security Interest	has the meaning given to that term in the PPSA;
Security or Securities	means a “financial product” within the meaning of section 7(1) of the FMC Act (excluding a “derivative” within the meaning of section 8(4) of the FMC Act), and includes any right or option to acquire any Security or benefit of any kind, whether conditional or not and whether renounceable or not;
Securities Register	means the register that records the legal owner of the Securities issued by an Issuer that is maintained by or on behalf of that Issuer;
Securities Registry	means a Person who is appointed by an Issuer to maintain its Securities Register and who is able to access the Legal Title Transfer System and register holdings of the Securities of that Issuer transferred through the Legal Title Transfer System;
Securities Transfer Services Agreement	means an agreement between the operator of an NZX Market, CDO and an Issuer under which the Issuer agrees to the use of the Legal Title Transfer System to transfer legal title to the Issuer’s Securities or a class of them by electronic means and includes the rules applicable to Issuers listed on an NZX Market;
Settlement	means: <ul style="list-style-type: none"> (a) in relation to an Instruction, the execution of a Depository Transaction in accordance with that Instruction and in accordance with

Rule 4.1.5;

- (b) in relation to a Corporate Action, the recording of that Corporate Action in Accounts in accordance with Rule 4.7;

and “**Settle**” and “**Settled**” have a corresponding meaning;

Settlement Account

means a Clearing Participant’s Account designated as a Settlement Account for the purpose of effecting settlements between a Clearing Participant and CHO in accordance with the C&S Rules;

Settlement Bank

a Bank appointed by a Depository Participant, for the purposes of paying Money to and receiving Money from CDO and if a Depository Participant is a Bank, includes the Depository Participant;

Settlement System

means the Clearing House, the Depository, and the facilities and systems used by CHO or CDO to effect the clearing and settlement of transactions, including the Clearing House System and the Depository System;

Settlement Time

has the meaning given to it in the C&S Rules;

State of Emergency

means any of the following events, if in the opinion of CDO the occurrence of the event threatens the financial stability or integrity of the Depository or prevents or significantly hinders the operation of the Depository or the Depository System, or creates unacceptable risks for CDO, the Depository, the Depository System, the Nominee, or Depository Participants or the Settlement System generally:

- (a) a fire, power failure or restriction, communication breakdown, accident, flood or other weather related event, embargo, boycott, labour dispute, unavailability of data processing or any other computer system or facility;
- (b) an act of God;
- (c) an act of war (whether declared or

undeclared) or an outbreak or escalation of hostilities in any region of the world;

(d) an act of terrorism; or

(e) any other event, situation or circumstance in relation to CDO, NZX, an operator of an NZX Market the Depository, the Depository System, CHO, the Clearing House, the Clearing House System or the Nominee in the nature of an emergency;

**State of
Emergency Rule**

means a Rule made pursuant to Rule 6.8.1(a);

**Stock
Reservation**

means the placement through the Legal Title Transfer System of an electronic hold on Securities by the Securities Registry;

Subsidiary

means a subsidiary as defined in the Companies Act 1993 and includes an “in substance subsidiary” and any other company treated as a subsidiary of a company in accordance with Generally Accepted Accounting Practice, provided that the definition of “company” in this case includes a company wherever incorporated;

**Substitute
Payment**

means a payment required under Rule 5.8.1;

Suspension

means suspension from the Depository System in accordance with Rule 7.6.1, and the terms “**Suspend**” and “**Suspended**” shall be interpreted accordingly;

Trading Day

means, in respect of an NZX Market, a day on which the NZX Market is open for trading;

**Trading
Participant**

means a participant in an NZX Market who has been approved and/or accredited by the operator of that NZX Market for the purpose of facilitating trades in that NZX Market and who are required to comply with conduct rules relating to the protection of client assets;

Transfer Account

means an account on a Securities Register

of an Issuer,

- (a) in a Legal Title Transfer Depository Participant's name that records Securities held in that Legal Title Transfer Depository Participant's name on behalf of another Person or on its own account for transfer through the Legal Title Transfer System; and
- (b) in Nominee's name that records Securities held by Nominee on behalf of CDO or another Person for transfer through the Legal Title Transfer System;

Unprofessional Conduct

includes:

- (a) conduct which amounts to dishonesty or impropriety affecting professional character and which is indicative of a failure to either understand or practice the precepts of honesty or fair dealing; and/or
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach and/or maintain reasonable standards of competence and diligence,

by a Depository Participant, a Director, any Personnel, agent or other Person who acts (or purports to act) on behalf of that Depository Participant, whether in the conduct of that Depository Participant's business or in the conduct of any other business in which the Depository Participant, its Directors, Personnel, agent or other Person is involved;

Uplifted or Uplift

means transfer of legal title to Admitted Product to a Depository Participant by means of the Legal Title Transfer System or by any other means for the purpose of ceasing to have the Admitted Product recorded in the Depository in accordance with Rule 3.8.3.

1.7 Interpretation

1.7.1 In these Rules:

- (a) headings to Sections, Rules and clauses are for reference only and are not an aid in interpretation;
- (b) references to a statutory provision will be construed as references to that statutory provision as amended or re-enacted or as is modified by other statutory provisions from time to time;
- (c) references to a Person are to that Person and that Person's successors, permitted assigns, executors and administrators as the context requires;
- (d) references to periods of time include the day on which the period commences and also the day on which the period ends;
- (e) any date that is not a Business Day, upon or by which anything is due to be done by any Person, will be deemed to be a reference to the next Business Day except where otherwise stated;
- (f) words importing the plural include the singular and vice versa and words importing gender import all genders;
- (g) a reference to conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement. Unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting, suffering or authorising the act or thing to be done or the refusal or omission to occur;
- (h) all warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one Person (other than by CHO, CDO, Nominee or NZX) will be deemed to have been given or entered into jointly and severally;
- (i) any statement in these Rules stated to be to the best of a Person's knowledge or to be so far as a Person is aware (or any similar expression) will be deemed to include an additional statement that it has been made after due and careful enquiry by that Person;
- (j) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (k) a reference to a Rule (e.g. Rule 2.3) includes a reference to all sub-Rules included under that Rule (e.g. Rule 2.3.3)

and a reference to a Section (e.g. Section 2) includes a reference to all Rules and sub-Rules within that Section;

- (l) a reference to time is a reference to Wellington, New Zealand time;
- (m) if the name of a body is changed in accordance with the law (whether or not the body is incorporated) or the name of an office is changed by law, then a reference in these Rules to the body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to the body or office under the new name.

1.7.2 In these Rules a reference to:

- (a) an **“agreement”** includes a contract, deed, licence, franchise, undertaking or other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;
- (b) **“assets”** or **“property”** includes present and future properties, reviews and rights of every description and the whole or any part of the relevant Person’s business, undertaking, property, revenues and rights (in each case, present and future) and reference to an asset includes any legal or equitable interest in it;
- (c) **“CDO”, “CHO”, “Nominee”, “NZCDC”, “RegCo”** or **“NZX”** includes its successors, permitted assigns, permitted transferees and delegates;
- (d) a **“Clearing Bank”, “Clearing Participant”, a “Client Advising Participant”, a “Defaulting Depository Participant”, a “Depository Participant”, a “Lending Clearing Participant”** or a **“Settlement Bank”** includes its successors, permitted assigns and permitted transferees;
- (e) a **“consent”** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration (and references to obtaining consents are to be construed accordingly);
- (f) a **“directive”** includes any present or future directive, regulation, request, requirement, externally imposed voluntary credit restraint programme or notification by whatsoever means, or a change in interpretation or application of any law by any agency of any state or any self-regulating organisation or any Person or body charged with the administration of any law (in each case, whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of Persons to whom the directive is

addressed);

- (g) a “**guarantee**” includes any indemnity and also includes any other obligation (whatever called) of any Person to pay, purchase, provide funds (whether by the advance of Money, the purchase or subscription of shares or other securities, the purchase of assets or services, or otherwise) for the payment of, or to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other Person;
- (h) “**including**” and “**includes**” means including or includes without limitation;
- (i) “**indebtedness**” includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of Money;
- (j) a “**law**” or “**regulation**” includes a constitutional provision, treaty, decree, official directive, convention, statute, regulation, ordinance, by-law, judgement, rule of common law or equity or a rule of an exchange in each case of any relevant jurisdiction and is a reference to that law or regulation or any provision thereof as amended, re-enacted, consolidated or replaced or modified by other provisions of law or regulation from time to time (and “**lawful**” and “**unlawful**” shall be construed accordingly);
- (k) “**rights**” includes authorities, discretions, remedies, powers and causes of action;
- (l) the “**Rules**”, the “**Procedures**”, the “**C&S Rules**” or the “**NZ Markets Disciplinary Tribunal Rules**” is a reference to any such rules or procedures, as the context requires, as amended, varied, supplemented, consolidated, replaced or novated from time to time;
- (m) “**tax**” includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding imposed, assessed or levied by any governmental agency (whether state or local), and any interest, penalties, fines, costs, charges, and other liabilities arising from or payable in respect of such tax; and
- (n) “**in writing**” includes representing or reproducing words, figures or symbols:
 - (i) in a visible and tangible form by any means and in any medium; and
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and

to be retrieved and read.

- 1.7.3 An interpretation or construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to an interpretation or construction which would not promote that purpose or object.
- 1.7.4 A Potential Default Event (other than a Default Event) is “**continuing**” if it has not been remedied or waived and a Default Event is “**continuing**” if it has not been waived by CDO.
- 1.7.5 A term used in these Rules that is not defined in these Rules but is defined in the C&S Rules has the meaning given to that term in the C&S Rules.

1.8 Delegation to RegCo

- 1.8.1 NZX, CHO and CDO may act by and through RegCo in performing any function or discharging any power set out in these Rules. RegCo shall have the authority to exercise any rights, powers, authorities and discretions under any delegated authority granted to it by NZX, CHO or CDO.

Section 2: Depository Participants

2.1 Access to the Depository

- 2.1.1 CDO may allow a Person that CDO considers satisfies the requirements of Rule 2.1.3, 2.2 and 2.3 to be a participant in the Depository and to access the Depository System.
- 2.1.2 CDO may, either at the time of admission to participation in the Depository or at any time thereafter, impose any condition on a Depository Participant's participation and access that it considers appropriate. CDO will notify the Depository Participant in writing of any condition imposed.
- 2.1.3 Access to the Depository and the Depository System will be at the absolute discretion of CDO. CDO may determine in its absolute discretion, whether to approve or decline an application for participation in the Depository System, provided that at all times CDO shall have regard to the integrity, stability, reliability and efficiency of the Depository System.

2.2 Depository Participants

- 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:
 - (a) holds all licences, consents and approvals and has completed all registrations as are necessary to enable the applicant to carry on the business it proposes to carry on;
 - (b) satisfies CDO that it is of high integrity and a suitable Person to be a Depository Participant and that all Directors or other Persons having Control of the applicant are of good reputation and character and high business integrity and have the training, skills, knowledge, expertise and experience to enable the applicant to carry on the business it proposes to carry on;
 - (c) satisfies CDO that it has in place management structures, facilities, procedures, personnel and financial resources as are necessary to enable it to carry on the business it proposes to carry on and that are adequate for the performance of its obligations as a Depository Participant under these Rules;
 - (d) satisfies CDO that the applicant has in place appropriate systems and controls which will ensure continuous compliance with all requirements imposed by or pursuant to the Securities Legislation relevant to its activities as a Depository Participant and these Rules;

- (e) satisfies CDO as to the applicant's technical capacity to be connected to the Depository System including satisfaction of such systems testing as may be prescribed by Procedure; Procedure 2.5
- (f) has a Settlement Bank to act as the Depository Participant's Settlement Bank and has advised CDO of the identity of its Settlement Bank;
- (g) satisfies CDO that the applicant does and will continue to meet the requirements of Rule 2.5;
- (h) pays to CDO the admission fee prescribed under Rule 6.7;
- (i) has nominated a Responsible Person and provided CDO with the name of the Person nominated;
- (j) has provided the names of all Directors, Personnel, agents and other Persons to whom it proposes to give access to the Depository System on its behalf;
- (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; Procedure 2.1
- (l) where the applicant is an "overseas company" (as defined in the Companies Act 1993), provides CDO with details and evidence of its incorporation, including a certificate of good standing from the appropriate authority in its home jurisdiction;
- (m) has provided to CDO such information as CDO believes is necessary to enable CDO to comply with its obligations under the Financial Transactions Reporting Act 1996, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or any other law or regulation applicable to CDO in any jurisdiction;
- (n) has provided to CDO the address of the location at which the Depository Participant will store or maintain records required to be stored or maintained under these Rules; and
- (o) has provided any additional information prescribed by Procedure, including a completed and signed application form. Procedures 2.1 and 2.2

2.2.2 Where an applicant is incorporated, domiciled or resident outside of New Zealand, CDO may require the applicant to do or provide any or all of the following:

- (a) give additional undertakings or assurances (governed by New Zealand law and subject to the jurisdiction of the New Zealand courts) in respect of any matter which CDO

considers reasonable or in the interests of CDO, the Depository or other Depository Participants including undertakings as to:

- (i) the amount of resources and number of Personnel to be located in New Zealand (if any);
 - (ii) access by CDO and the NZ Markets Disciplinary Tribunal to records required to be kept by the Depository Participant under the Securities Legislation relevant to its business as a Depository Participant or these Rules;
 - (iii) foreign taxes that might be payable;
 - (iv) recognition by the applicant's law of incorporation or protections which are substantially equivalent to those afforded by New Zealand law to Money and property on Insolvency of the applicant;
 - (v) recognition of the rights of CDO under the Rules and that the Rules are, and will be, enforceable in the foreign jurisdiction including on the Insolvency of the applicant; and
 - (vi) the ranking of creditors on Insolvency of the applicant and the enforceability of these Rules;
- (b) deliver to CDO evidence that the applicant currently conducts depository operations in compliance with the regulatory requirements of the jurisdiction in which the applicant is incorporated, domiciled or resident and is regulated in that jurisdiction by a foreign regulatory authority acceptable to CDO;
 - (c) irrevocably appoint one or more Persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the Depository Participant and provide a physical address for each such Person and agree that failure by an agent for service to notify the Depository Participant of the service of documents will not invalidate the proceedings concerned;
 - (d) immediately appoint another Person for the purpose of paragraph (c) if, for any reason, the Person is unable to act, and failing this authorise CDO to appoint another Person for this purpose; and
 - (e) provide a legal opinion at the expense of the applicant, from independent lawyers acceptable to, and for the benefit of, CDO that deals with matters required by CDO and which is acceptable to CDO. Without limiting the foregoing, CDO may require a legal opinion that the Rules

and Procedures (and the NZ Markets Disciplinary Tribunal Rules) would be recognised as valid, binding and enforceable in accordance with their terms against the applicant in the jurisdiction in which the applicant is incorporated or resident.

2.3 Application Procedures

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.

Procedure 2.1

2.3.2 Notwithstanding Rule 2.3.1, in determining an application for participation in the Depository, CDO may have regard to any information available to CDO in whatever form and from whatever source. For the avoidance of doubt, CDO may satisfy itself that one or more of the requirements of Rule 2.2.1 has been met by virtue of an applicant's membership of, or participation in, any other market, depository system or the applicant holding any other status, licence, permission or entitlement which CDO in its discretion considers is relevant.

2.3.3 CDO will use all reasonable endeavours to make its decision whether to accept or reject an application for participation in the Depository within a reasonable time of application. CDO may request an applicant to provide further information, undertake such investigations and seek such information from such other Persons, as CDO considers necessary to establish whether the applicant satisfies the requirements of Rule 2.2.1.

2.3.4 CDO will notify the applicant of the outcome of its application and may provide such additional evidence or record of the Depository Participant's status as it considers fit.

2.4 Depository Participant to act as if it were Principal

2.4.1 Each Depository Participant must act as if it were principal in all of its activities with CDO and must in all cases be responsible and liable to CDO as if it were principal and not agent. To the extent that a Depository Participant is acting on behalf of any other Person (which may include another Depository Participant), the Depository Participant shall ensure that the Depository Participant has, at all times, the full and exclusive rights, power and authority to act in all of its activities with CDO to the exclusion of that other Person, including full authority to bind that Person to these Rules and authorise holding of that Person's Admitted Product in the Depository in accordance with these Rules.

2.5 Depository Participants' Obligations

2.5.1 A Depository Participant must at all times:

- (a) comply with, and procure that its Directors, Personnel and other Persons acting on its behalf comply with:
 - (i) these Rules and the Procedures and the NZ Markets Disciplinary Tribunal Rules applicable to it;
 - (ii) any decisions, directions and requirements of CDO under the Rules or the Procedures or of the NZ Markets Disciplinary Tribunal under the NZ Markets Disciplinary Tribunal Rules applicable to it;
 - (iii) every other undertaking and agreement between the Depository Participant and CDO and/or Nominee; and
 - (iv) every other agreement, document, instrument or other obligation created in accordance with the Rules or the Procedures.
- (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; Procedure 2.6
- (c) continue to satisfy the requirements of Rule 2.2.1;
- (d) comply with operational, procedural and technical requirements of the Depository System and networks, as specified by CDO by Procedure; Procedures 2.4 and 2.5
- (e) comply with, and procure that each of the Depository Participant's Directors, Personnel, agents and any other Persons acting on its behalf complies with, all law and regulation applicable to it and maintain in full effect and comply with all consents which may be necessary or desirable to enable the Depository Participant to carry on the business it proposes to carry on or to enable the performance of its obligations as a Depository Participant under these Rules;
- (f) pay such fees, levies and charges imposed by CDO under Rule 6.7 or imposed under the NZ Markets Disciplinary Tribunal Rules;
- (g) refrain from any act, omission or course of conduct which is likely to harm the reputation of the Depository, threaten the integrity or security of the Depository or constitute

Unprofessional Conduct;

- (h) maintain any records that may be prescribed by Procedure for the period prescribed by Procedure; and
- (i) ensure the accuracy and completeness of all information or documents provided to CDO by or on behalf of the Depository Participant.

Procedures 2.7 -
2.11

2.6 Overseas Activities and Overseas Participants

2.6.1 A Depository Participant who proposes to locate any part of its business as a Depository Participant outside New Zealand or locate any of its Personnel engaged in its business as a Depository Participant outside New Zealand must:

- (a) give CDO prior written Notice of the Overseas Activity;
- (b) obtain all necessary regulatory approvals from any relevant government agency or regulatory authority in New Zealand or elsewhere, for the Overseas Activity;
- (c) comply with the directions of CDO and any relevant government agency or regulatory authority in New Zealand or elsewhere concerning supervision of the Overseas Activities;
- (d) satisfy CDO it has sufficient arrangements in place to ensure that the Depository Participant and CDO can communicate with each other promptly on a day to day operational basis and so that the Depository Participant can comply promptly with the Rules or Procedures and any decisions, directions and requirements of CDO under the Rules or the Procedures or the NZ Markets Disciplinary Tribunal Rules; and
- (e) comply with any request by CDO requiring any part of the Depository Participant's business as a Depository Participant (or any records or copies of records relating to that business) to be located in New Zealand.

2.6.2 If any of the records a Depository Participant is required to maintain under these Rules, or are otherwise maintained in relation to its business as a Depository Participant, are at any time kept outside New Zealand:

- (a) the Depository Participant must notify CDO of the details of the location of any such records located outside New Zealand, and the means of storage;
- (b) the Depository Participant must satisfy CDO that CDO will be able to promptly and effectively exercise its powers conferred by these Rules (including Rule 7.3) in relation to

those records; and

- (c) CDO may at any time direct the Depository Participant to deliver to CDO in New Zealand, at the Depository Participant's expense and by the time specified by CDO, any such records that are located outside New Zealand.

2.6.3 If a Depository Participant is incorporated, resident or domiciled outside of New Zealand, or conducts all or part of its business outside New Zealand and:

- (a) any tax or duty of any kind may be liable to be paid by CDO or any other Depository Participant;
- (b) the Depository Participant may be required by any law or regulation to withhold payment of an amount or deduct tax or duty of any kind from an amount payable to CDO or any other Depository Participant; or
- (c) CDO or any other Depository Participant may be required by any law or regulation to withhold payment of an amount or deduct tax or duty of any kind from an amount payable by CDO or any other Depository Participant,

in respect of any transaction or agreement between the Depository Participant and CDO or any other Depository Participant (including a Depository Transaction) and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Depository Participant were incorporated, domiciled or resident in New Zealand and conducting its business as a Depository Participant wholly in New Zealand, then the Depository Participant must, prior to entry into that transaction or agreement, disclose in writing to CDO and every other affected Depository Participant that the duty or tax may be payable, or a withholding or deduction may have to be made and the nature and amount or rate of the duty, tax, withholding or deduction.

2.6.4 Subject to these Rules or the C&S Rules, all payments made under these Rules or in respect of a Lending Transaction in each case by a Depository Participant shall, if CDO so requires, be made without any deduction or withholding 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 the other party receives the full amount that the other party would have received had no such deduction or withholding been required.

2.7 Notification and Provision of Information

2.7.1 Each Depository Participant must give CDO Notice of the following promptly after becoming aware of the same:

- (a) any breach by the Depository Participant of these Rules or occurrence of a Potential Default Event or Default Event in respect of the Depository Participant (and the steps, if any, being taken to remedy it);
- (b) the resignation of a Director or Responsible Person;
- (c) any change in Control of the Depository Participant;
- (d) the details of any litigation, arbitration or administrative proceedings, claim or action (including disciplinary or enforcement actions) taken, threatened or pending against the Depository Participant or any Director, Personnel, agent or Person acting on the Depository Participant's behalf by any regulatory authority, Alternative Regulator, exchange, market operator, clearing and settlement facility or any other Person which, if adversely determined, would reasonably be likely to have a material adverse effect on:
 - (i) the business, operations, property, condition (financial or otherwise) or prospects of the Depository Participant; or
 - (ii) the ability of the Depository Participant to comply with the Rules; or
 - (iii) the validity or enforceability of, or the effectiveness or ranking of any Security Interest in Admitted Product if granted or purported to be granted in favour of CHO or the rights and remedies of CDO, Nominee or CHO under the Rules or the C&S Rules;
- (e) the Depository Participant becoming aware of any breach by another Depository Participant of these Rules or occurrence of a Default Event in respect of another Depository Participant;
- (f) any other material change in information concerning the Depository Participant or the Depository Participant's business from that previously provided to CDO; and
- (g) any event or emergency, whether or not within the Depository Participant's control which impairs the Depository Participant's ability to comply with the Rules, to properly and effectively conduct its business as a Depository Participant or which may otherwise have a material adverse effect on the Depository Participant.

2.7.2 Each Depository Participant must give CDO not less than 5 Business Days prior written Notice of:

- (a) the proposed appointment of a Director or Responsible

Person;

- (b) the proposed change in its management structure from that which the Depository Participant has previously provided to CDO;
- (c) any proposed Major Transaction or analogous transaction under the law of another jurisdiction, change in the nature or scope of its business or any proposed cessation of its business as a Depository Participant;
- (d) any change in any of the Directors, Personnel, agents or other Persons whom the Depository Participant allows, or proposes to allow, to access the Depository System on its behalf;
- (e) the change of its name or the name in which it carries on business, or any change in the address at which the Depository Participant carries on business or stores or maintains records or other information required to be stored or maintained by these Rules; or
- (f) the change to the contact details for the Depository Participant, the Responsible Person or any Director, Personnel, agent or other Person acting on behalf of the Depository Participant, which the Depository Participant has previously provided to CDO.

2.7.3 CDO may, at any time and in its complete discretion, request in writing any information from a Depository Participant to enable CDO to determine whether that Depository Participant is complying with all applicable Rules, Procedures and other Notices or directives given from time to time by CDO or applicable laws and regulations and/or to ensure CDO can carry out its functions and/or comply with any obligations it may have, including under the Rules, a Reciprocal Arrangement or as required by law, regulation or directive.

2.7.4 Upon receipt of a request for information from CDO pursuant to Rule 2.7.3, a Depository Participant may apply in writing to CDO for that information not to be disclosed to any specific Persons. CDO will consider such request but is not obliged to accept such request if CDO considers that such request would cause it to be in breach of any obligations it may have, including to disclose information to any Person under any Reciprocal Arrangement, the Rules or otherwise.

2.8 Depository Participant's Warranties

2.8.1 Each Depository Participant represents, warrants and undertakes to CDO, Nominee and to CHO that:

- (a) in the case of a Depository Participant that is not a natural

Person, the Depository Participant is duly incorporated and validly existing under the laws of its jurisdiction of incorporation, has the power to own its own assets, enter into, and to exercise its rights, and observe, perform and comply with its obligations under the Rules and each Depository Transaction, and to carry on its business as a Depository Participant;

(b) everything required to be done (including the obtaining of any necessary consents, the declaration of any interests, and the passing of all necessary resolutions) to:

(i) enable the Depository Participant to lawfully enter into, and to exercise its rights, and observe perform and comply with its obligations under the Rules and in respect of each Instruction and each Depository Transaction; and

(ii) ensure that those obligations and Instructions are legal, valid, binding and enforceable in accordance with their terms;

has been duly done and remains in full force and effect;

(c) the Depository Participant is in compliance in all material respects with:

(i) all laws, regulations, by-laws, directives and consents relevant to its activities as a Depository Participant; and

(ii) all obligations binding on it by law, contract or otherwise;

(d) no circumstances exist which would constitute a Default Event and no circumstances exist which would require Notification to CDO under Rule 2.7 and have not been Notified;

(e) all information provided by the Depository Participant to CDO under the Rules or the Procedures is correct, accurate, complete, true and not misleading in any material way (whether by omission or otherwise), and is compliant with any applicable law, regulation or reporting standard as at the date when that information was provided to CDO, and remains so, and there are no facts or circumstances that have not been disclosed to CDO that would make that information incorrect, inaccurate, incomplete, untrue or misleading in any material respect;

(f) the Depository Participant is not Insolvent and is able to pay all its debts as they fall due;

- (g) in relation to all Admitted Product it has Lodged in the Depository in accordance with Rule 3.5:
 - (i) the Depository Participant has good legal title to the Admitted Product, and is entitled to Lodge it in the Depository and to deal with it in accordance with the Rules;
 - (ii) the Depository Participant has the right to transfer and give good unencumbered title to the Admitted Product, that the Admitted Product is what it purports to be and that the Depository Participant is not aware of any fact which renders (or may render) the Admitted Product valueless, defective, cancelled, void, or subject to a lien, Security Interest or other claim;
- (h) in relation to all Admitted Product held in an Account in its name:
 - (i) the Depository Participant has not received any Notice of, and is otherwise not aware of any proprietary or equitable interest or other Security Interest or right in or to Admitted Product that is or may be held or asserted by any other Person in a manner that may prevent or impede the Depository Participant from dealing with the Admitted Product free from that proprietary or equitable interest or otherwise in accordance with the Rules; and
 - (ii) in any case where a Depository Participant is or may in the future be acting for or on behalf of another Person (which may include another Depository Participant), that it has the full and exclusive rights, power and authority to act in all of its activities with CDO to the exclusion of that other Person, including full authority to bind that Person to these Rules and authorise holding of that Person's Admitted Product in the Depository in accordance with these Rules and in respect of the Lodgement or Uplift of that Person's Admitted Product in accordance with these Rules.

2.8.2 The representations and warranties of the Depository Participant contained in Rule 2.8.1 will be deemed to be repeated by the Depository Participant on each Business Day and immediately prior to the creation of each Depository Transaction and each Lodgement of Admitted Product by reference to the facts and circumstances existing on each such time.

2.8.3 Each Depository Participant acknowledges that CDO has been induced to accept the Depository Participant as a Depository

Participant and act on Instructions in reliance upon the representations, warranties and undertakings contained in Rule 2.8.1 and that CDO and the Nominee will continue to rely on those representations, warranties and undertakings until all obligations of the Depository Participant under these Rules have been discharged in full.

- 2.8.4 Without prejudice to Rules 7.2 and 7.3, if a Depository Participant becomes aware that any representation, warranty or undertaking of the Depository Participant contained in Rule 2.8.1 and/or repeated pursuant to Rule 2.8.2 is untrue, inaccurate or misleading or any of the information which it has previously given to CDO or Nominee was incorrect, inaccurate, incomplete, untrue or misleading in any material respect, it must promptly notify CDO in writing and submit the correct information together with an explanation.

2.9 Depository Participant's Undertaking

- 2.9.1 In any case where the terms governing any Admitted Product impose on the Person in possession of, or entitled to, that Admitted Product any obligation, the Depository Participant on whose behalf the Admitted Product is held in the Depository undertakes to immediately on demand by CDO, pay, do, procure and/or execute such amounts, acts, documents, matters or things as CDO requires to enable CDO to perform that obligation.

2.10 Authorised Signatories

- 2.10.1 Each Depository Participant must, on being allowed to participate in the Depository, provide to CDO the names of Persons authorised by that Depository Participant to give Notices and Instructions on behalf of that Depository Participant. A list of Authorised Signatories may indicate that any authorised signature may be a facsimile, an email address or electronic signature, whether affixed by stamp or generated by other mechanical or automated means.

Procedure 2.15

- 2.10.2 A Depository Participant may provide to CDO by Notice in writing a new list of Authorised Signatories at any time. On giving Notice in writing of a new list of Authorised Signatories all previous lists of Authorised Signatories, are automatically revoked.

2.11 Scope of Obligations and Responsibility for Personnel and other Persons

- 2.11.1 A reference to a Depository Participant in these Rules extends to and includes, in relation to the obligations of a Depository Participant under the Rules, all Subsidiaries of the Depository Participant, to the extent necessary to ensure that the object of any applicable Rules or any direction given from time to time by

CDO is not frustrated or avoided by reason of the separate legal personality of the members of a group comprising the Depository Participant and its Subsidiaries.

- 2.11.2 If requested by CDO, each Depository Participant must procure any Subsidiary of the Depository Participant to deliver to CDO a duly executed written acknowledgement and undertaking that the Subsidiary agrees to be jointly and severally liable to CDO, for any breach of the Rules by the relevant Depository Participant and in respect of any obligations owed by that Depository Participant to Nominee under these Rules, to be jointly and severally liable to Nominee, as the case may be, for any breaches of those Rules.
- 2.11.3 A Depository Participant is responsible for the conduct of the Depository Participant's Directors, Responsible Person, Personnel, Agents, and other Persons acting on its behalf for the purposes of and in the course of its activities as a Depository Participant. Such conduct will be treated for the purposes of these Rules as conduct of the Depository Participant.
- 2.11.4 A Depository Participant must ensure that all Directors, Personnel, agents or other Persons acting on its behalf in relation to its business of a Depository Participant are employed, contracted or engaged on such terms and conditions as are necessary to give effect to Rule 6.4.1.
- 2.11.5 A Depository Participant must ensure that all Persons that are directly involved in the operation of its business as a Depository Participant or are provided with access to the Depository System on behalf of the Depository Participant:
- (a) are under the supervision and control of the Responsible Person; and
 - (b) have, and continue to have, the appropriate training, skills, knowledge, expertise and experience required to perform their respective functions; and
 - (c) are of good reputation, character and integrity.

2.12 Responsible Persons

- 2.12.1 Each Depository Participant must nominate for approval by CDO an individual to be the Responsible Person for that Depository Participant. An application shall be made by submitting to CDO a duly completed application form, together with any other information required by this Rule 2.12 and the Procedures. CDO will not approve the nominated individual to be the Responsible Person for a Depository Participant unless CDO is satisfied that (at CDO's absolute discretion) that the

individual satisfies the requirements set out in Rule 2.12.2.

2.12.2 A Responsible Person must:

- (a) be of, and continue to be of, good reputation and good character and integrity;
- (b) have, and continue to have, skills, knowledge, expertise and experience and have completed qualifications or training, of a type specified by the Procedures;
- (c) have, and continue to have, sufficient power and authority within the Depository Participant to fulfil the functions of a Responsible Person;
- (d) have not engaged in, and not engage in Unprofessional Conduct;
- (e) where that Responsible Person is not resident in New Zealand, irrevocably appoint a Person resident or incorporated in New Zealand who is authorised to accept service in New Zealand of documents on behalf of the Responsible Person, and provide a physical address for that Person at which service of documents may be effected, and agree that failure by an agent for service to notify the Responsible Person of the service of documents will not invalidate the proceedings;
- (f) provide to CDO a written undertaking:
 - (i) to comply with and be bound by the Rules and the Procedures and any decisions, directions and requirements of CDO or as required, Nominee, under the Rules or the Procedures;
 - (ii) to procure the Depository Participant to comply with and be bound by the Rules, the Procedures and any decisions, directions and requirements of CDO under the Rules or the Procedures; and
 - (iii) where the Responsible Person is not resident in New Zealand, submitting to the exclusive jurisdiction of the courts of New Zealand and waiving any objection arising at any time to the undertaking of proceedings in relation to the Rules in New Zealand, any claim that such proceedings have been brought in an inconvenient forum and the right to object to such proceedings on the basis that the courts of New Zealand do not have jurisdiction over him or her.

Procedure 2.16

2.12.3 A Responsible Person must:

- (a) if requested by CDO, represent the Depository Participant

in any dealing with CDO or Nominee, and have full power to bind the Depository Participant;

- (b) procure that the Depository Participant complies at all times with the Rules and Procedures;
- (c) be responsible for the control, leadership, influence and supervision of the Depository Participant's depository business;
- (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; Procedure 2.13 - 2.14
- (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; Procedure 2.15
- (f) procure that all information which the Responsible Person gives to CDO is correct, accurate, complete, true and not misleading and if the Responsible Person becomes aware that information which he or she has previously given to CDO was incorrect, inaccurate, incomplete, untrue or misleading, promptly notify CDO in writing and submit the amended information together with an explanation; and
- (g) complete any training or continuing education requirements prescribed by the Procedures. Procedure 2.16

2.12.4 For the purposes of Rule 2.12.7, CDO may deem any Person who:

- (a) is entitled to exercise powers of control over the Responsible Person of a Depository Participant; or
 - (b) in accordance with whose directions or instructions the Responsible Person of a Depository Participant is required or is accustomed to act; or
 - (c) is otherwise entitled to exercise a degree of control over the Depository Participant which effectively confers upon that Person the powers and responsibilities of a Responsible Person,
- to be a Responsible Person.

2.12.5 In determining an application to be approved as a Responsible

Person, CDO:

- (a) may have regard to any information available to CDO in whatever form and from whatever source;
- (b) will use all reasonable endeavours to make its decision whether to accept or reject an application for an individual to be a Responsible Person within a reasonable time of application;
- (c) may request an applicant to provide further information, undertake such investigations and seek such information from such other Persons, as CDO considers necessary to establish whether the applicant satisfies the requirements of Rule 2.12.2; and
- (d) will notify the applicant of the outcome of its application.

2.12.6 CDO may (in its absolute discretion) withdraw its approval for an individual to be the Responsible Person for the Depository Participant, by Notice to the Depository Participant, for any reason whatsoever, including if:

- (a) CDO considers that:
 - (i) the Responsible Person no longer satisfies any of the requirements set out in Rule 2.12.2 ;
 - (ii) the Responsible Person fails to comply with the obligations set out in the Rules, including without limitation Rule 2.12.3; or
 - (iii) the continuation of that individual as the Responsible Person for the Depository Participant will be detrimental, or reasonably likely to be detrimental, to the wellbeing, proper conduct, stability or integrity of the Depository, the Depository System or its operations; or
- (b) the rights of the Depository Participant are, or are to be, Suspended under Rule 7.6 or terminated under Rule 7.8.

2.12.7 Where a Responsible Person of a Depository Participant fails to comply with the obligations set out in the Rules and the Procedures, that Depository Participant will also have contravened the Rules and the Procedures.

Section 3: Depository Accounts

3.1 Accounts

- 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. Procedure 3.1
- 3.1.2 CDO must open and maintain for each Depository Participant that is a Clearing Participant, such number of Settlement Accounts as CHO considers necessary for the purposes of effecting settlements between the Clearing Participant and CHO in accordance with the C&S Rules. Only Settlement Accounts may be used for the purposes of effecting settlement of Settlement Transactions other than Lending Transactions with CHO in accordance with the C&S Rules. Overnight balances of Admitted Product or Money in a Settlement Account are not permitted without prior agreement between the Clearing Participant and CDO.

3.2 Transactions on Accounts

- 3.2.1 Each Depository Participant that is a Clearing Participant or Lending Clearing Participant irrevocably authorises CHO and/or CDO (and directs CDO to accept without reference to the Depository Participant):
- (a) to debit or credit Approved Product, Admitted Product and/or Money from or to the Depository Participant's Settlement Accounts in accordance with C&S Rules 4.2.6, 4.2.7, 4.2.11 and 4.2.12 and from or to Accounts in accordance with C&S Rules 4.2.16, 4.2.17, 4.2.20 and 4.2.21; and
 - (b) to Lock Approved Product in the Depository Participant's Settlement Accounts in accordance with C&S Rule 4.2.2; and
 - (c) to Lock Admitted Product in the Depository Participant's Settlement Accounts or Accounts in accordance with Section 5; and
 - (d) to record the delivery, transfer and return of Collateral to or from the Depository Participant's Accounts or Settlement Accounts in accordance with C&S Rules 3.14.1 and 3.15.8.

This Rule 3.2.1 constitutes an irrevocable instruction by each Clearing Participant and each Lending Clearing Participant to CDO

and CHO to debit and/or credit and/or take such other action in respect of its Accounts for the purpose of effecting the settlement of its obligations arising under each Settlement Transaction to which it is a party or for the purpose of delivering Collateral to CHO. CDO must debit and/or credit and/or take such other action in respect of Accounts as instructed or authorised in accordance with this Rule 3.2.1.

3.2.2 CDO will credit an Account of a Depository Participant with the quantity of Admitted Product:

- (a) the Depository Participant is entitled to receive as a Product Element of a Depository Transaction; and
- (b) the Depository Participant is entitled to receive as a Product Element of a Corporate Action.

3.2.3 CDO will debit an Account of a Depository Participant with the quantity of Admitted Product:

- (a) the Depository Participant is obliged to deliver as a Product Element of a Depository Transaction; and
- (b) the Depository Participant is obliged to deliver as a Product Element of a Corporate Action.

3.2.4 A Depository Participant must not give any Instruction, or take any action (or fail to take any action) that would result in any of its Accounts, including any Settlement Account, having a negative balance of Admitted Product.

3.2.5 CDO will credit an Account of a Depository Participant with all amounts:

- (a) the Depository Participant is entitled to receive as a Money Element of a Depository Transaction; and
- (b) the Depository Participant is entitled to receive as a Money Element of a Corporate Action.

3.2.6 CDO will debit the Account of a Depository Participant with all amounts:

- (a) the Depository Participant is obliged to pay as a Money Element of a Depository Transaction;
- (b) the Depository Participant is obliged to pay as a Money Element of a Corporate Action.

3.2.7 A Depository Participant must not give any Instruction, or take any action that would result in any of its Accounts, including any Settlement Account, having a negative balance of Money.

3.3 Deposit of Money with CDO

3.3.1 A Depository Participant may pay Money to CDO for deposit in an Account only:

Procedure 3.2

- (a) if CDO is satisfied that, other than where the Depository Participant is acting as a trustee for a client in relation to Money held in an Account, such deposit of Money would not be construed to be a regulated offer as that term is defined in section 41 of the FMC Act or such deposit of Money would be a regulated offer to which an exclusion under Part 1 of Schedule 1 of the FMC Act applies; and
- (b) in the case of NZ\$, by instructing its Settlement Bank to deposit Money to CDO's ESAS Account (or in the case of any other currency, by instructing its Settlement Bank to deposit Money in cleared funds to CDO's account at the Clearing Bank) and giving Notice in writing to CDO in the form prescribed by the Procedures.

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.

Procedure 3.2

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.

Procedure 3.2

3.3.4 If at the time of receipt of a Notice in accordance with Rule 3.3.3, the balance of Money in a Depository Participant's Accounts equals or exceeds the aggregate of:

- (a) the amount to be withdrawn as specified in the Notice;
- (b) the amount the Depository Participant is obliged to pay as a Money Element of an Instruction in respect of which an Instruction has been received by CDO at that time;
- (c) the amount the Depository Participant is obliged to pay as the Money Element of a Corporate Action in respect of which an Instruction has been received by CDO at that

time; and

- (d) any amounts payable to CHO on that Settlement Day or Relevant Payment Date (as the context requires),

CDO shall:

- (e) in the case of NZ\$, deposit the amount specified in the Notice into the ESAS Account of the Depository Participant's Settlement Bank in NZ\$ via the ESAS System; and/or
- (f) in the case of any other currency, deposit the amount specified in the Notice into the account of the Depository Participant at the Depository Participant's Settlement Bank, via the Clearing Bank.

3.3.5 If at the time of receipt of a Notice in accordance with Rule 3.3.3, the balance of Money in the Account does not equal or exceed the aggregate of the amounts described in Rules 3.3.4(a) to and including 3.3.4(d), CDO must Notify the Depository Participant and take no further action.

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:

Procedure 3.2.3

- (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.

3.3.7 No Money balance in any Depository Participant's Account or Settlement Account will bear interest.

3.3.8 Money recorded in an Account of a Depository Participant is deemed to be held by CDO (or Nominee) as trustee for that Depository Participant to the exclusion of all other Depository Participants. Nothing in the role of CDO (or Nominee) renders CDO (or Nominee) a bailee (constructive or otherwise) nor shall it constitute a representation or warranty by CDO (or Nominee) as to the title of any Depository Participant to Money in an Account.

3.3.9 CDO and Nominee shall recognise only the Depository Participant in whose name Money is recorded in an Account as the sole beneficial owner of that Money.

3.3.10 CDO and Nominee shall not, except as ordered by a court of competent jurisdiction or as is otherwise expressly provided by these Rules, be liable for, bound by or compelled in any way to

see to the execution of any trust or equity affecting the ownership of, or incidental rights to, Money in an Account, nor to recognise a Depository Participant as holding Money in an Account on trust nor to recognise (whether or not it has Notice of the interest or rights concerned and notwithstanding and designation of any Account) any proprietary, equitable, contingent, future, partial or other interest in any Money in an Account or any other right, except the beneficial right of ownership (if any) of the Depository Participant in whose name the Money in the Account is recorded.

- 3.3.11 The Depository Participant shall not assert, nor permit any Person claiming under or through the Depository Participant to assert, any proprietary, equitable, contingent, future, partial or other interest in any Money in an Account against CDO, Nominee or any Person acting on behalf of CDO or Nominee (or both), other than the beneficial right of ownership (if any) of the Depository Participant in whose name the Money in the Account is recorded.

3.4 Account Closing

- 3.4.1 Accounts may be closed by CDO on receipt of a request from a Depository Participant in the form prescribed by Procedure 3.3. 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 or by Notice other conditions to the closing of an Account or Accounts generally.
- 3.4.2 CDO may on its own initiative close any Account that has a zero balance and has had no account activity for a period of 6 months or more.

3.5 Lodgement of Admitted Product

- 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. Procedure 3.4, 3.5 and 3.6
- 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 that otherwise fails to meet any condition imposed by CDO under Rule 6.2.3 may be lodged in the Depository. Procedure 6.2
- 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 3.4 to 3.6

Procedures.

- 3.5.4 Upon receipt of confirmation from the relevant Product Registry (if any) of the registration of legal title to the Admitted Product in the name of the Nominee, or where the Admitted Product is held by a Custodian, upon receipt of confirmation from the Custodian of the transfer of the Admitted Product into the account of Nominee at that Custodian, CDO will record the credit of the Admitted Product in the Account of the Depository Participant Lodging the Admitted Product in accordance with Rule 3.5.1. Lodgement is deemed to be effective from the later of the date and time of transfer of legal title to the Nominee and the giving of Notice in accordance with Rule 3.5.3.
- 3.5.5 Admitted Product recorded in the Account of a Depository Participant is deemed to be held by CDO and/or Nominee as trustee for that Depository Participant to the exclusion of all other Depository Participants. Nothing in the role of CDO or Nominee renders CDO or Nominee a bailee (constructive or otherwise) nor shall it constitute a representation by CDO as to the title of any Depository Participant to Admitted Product.
- 3.5.6 CDO is the managing trustee of the Depository and appoints the Nominee as custodian trustee of the Admitted Product Lodged in the Depository in accordance with Section 50 of the Trustee Act 1956. Legal title to all Admitted Product Lodged in the Depository will be registered on the Product Register for the Admitted Product in the name of the Nominee or in the name of a Custodian.
- 3.5.7 The appointment of Nominee as custodian trustee does not relieve CDO of any of its obligations under these Rules. CDO must do everything necessary to enable and ensure that the obligations and functions of Nominee as custodian trustee are performed.
- 3.5.8 CDO and Nominee may enter into such agreements, arrangements or understandings between themselves as CDO and Nominee consider necessary or desirable to give effect to their respective roles as managing trustee and custodian trustee.
- 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.

Procedure 3.11

3.6 Consequences of Lodgement

- 3.6.1 By Lodging Admitted Product into the Depository, a Depository Participant agrees that, subject to Rule 3.10.1, it will be treated for the purposes of the Rules as sole beneficial owner of the

Admitted Product.

- 3.6.2 Notwithstanding any requirement of Rule 4.5, CDO may allow a Depository Participant to designate by Notice (including such terms as CDO may require) any Admitted Product held in an Account (other than a Settlement Account) as being held by it for a particular purpose, in a particular capacity or in connection with a particular Depository Instruction or client of the Depository Participant. Any such designation shall operate solely for the benefit of the Depository Participant and will not constitute Notice to CDO or any other Person or put CDO or any other Person on notice as to the existence of any limitation on the ability of a Depository Participant to deal with the Admitted Product.
- 3.6.3 A Depository Participant holding entitlements to Admitted Product through the Depository shall be entitled to all rights incidental to beneficial ownership of the Admitted Product held in an Account in the Depository in its name, including receipt of interest and dividend or other distribution payments and exercise of voting and other rights. Any interest, dividend, distribution or other benefit received or accrued on any Admitted Product will be credited to the relevant Account of the Depository Participant.
- 3.6.4 Subject to the Rules, CDO may rely upon, and shall use its reasonable endeavours to act upon, Instructions from a Depository Participant in relation to the exercise of voting or other discretionary rights in respect of Admitted Product held in an Account (other than a Settlement Account) of the Depository Participant. CDO or Nominee may refuse to act on any direction (written or otherwise) given by the Depository Participant in relation to Admitted Product in a Settlement Account of the Depository Participant, and shall have no obligation to provide to the Depository Participant any information received in respect of Admitted Product in a Settlement Account of the Depository Participant, including any information in respect of a Corporate Action or Corporate Offer.
- 3.6.5 CDO will advise a Depository Participant as soon as practicable of the occurrence of a Corporate Action in respect of any Admitted Product of the Depository Participant, including sending to the Depository Participant copies of notices and other materials received by CDO or Nominee in respect of any Admitted Product. None of CDO, nor any of its Directors, Personnel or agents, shall have any duty or responsibility as regards attendance at meetings or voting in respect of any of the Admitted Product or in respect of proxies received by CDO in respect of any Admitted Product and/or for sending any proxies or giving any notice of the receipt of such proxies.
- 3.6.6 CDO, or any agent of CDO, may deduct taxation from any

payment if it is obliged to do so under any applicable law. The Depository Participant shall be solely responsible for all taxes or similar liabilities levied on, or arising out of, any Admitted Product. Each Depository Participant shall provide CDO with such information regarding the Depository Participant's tax status as reasonably requested by CDO from time to time.

3.7 Certificates

3.7.1 Where an Issuer of Admitted Product is required by Securities Legislation (including Section 54 of the Securities Act 1978) or otherwise to issue a certificate in respect of any Admitted Product registered in the Product Register of the Admitted Product in the name of the Nominee, CDO may hold physical custody of the certificate on behalf of the Nominee. Where production of any certificate held by CDO to a Product Registry is required to enable Uplift of Admitted Product in accordance with Rule 3.8.3, CDO must produce the certificate to the Product Registry for cancellation.

3.7.2 CDO may at any time produce a certificate held in respect of Admitted Product held in the Depository to the relevant Product Registry:

- (a) for consolidation with the certificate issued for any other amount of the same Admitted Product held in the Depository;
- (b) for subdivision into two or more separate certificates of such amounts of Admitted Product as CDO may determine;
- (c) to enable any Corporate Action in relation to the Admitted Product to be completed; or
- (d) to enable Uplift of Admitted Product in accordance with Rule 3.8.3.

3.8 Uplifting Admitted Products

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.

Procedures 3.8, 3.9 and 3.10

3.8.2 Notwithstanding Rules 3.8.4 and 4.5.3(c), CDO may give Notice to a Depository Participant requiring the Uplift of Admitted Product if:

- (a) CDO determines that the Admitted Product does not comply with the criteria or conditions imposed by CDO in accordance with Rule 6.2.3; or

(b) the Issuer of the Admitted Product becomes Insolvent.

3.8.3 On receiving or giving Notice of Uplift of Admitted Product in accordance with Rule 3.8.1 or 3.8.2, CDO must:

- (a) procure the registration in the Product Register of the Admitted Product (if any) of legal title to, or (where the legal title to the Admitted Product is held by a Custodian on behalf of that Depository Participant) beneficial interest in, the Admitted Product in the name of the Depository Participant (including by way of transfer of legal title to the Admitted Product through the Legal Title Transfer System by effecting a PPT in accordance with Rule 8.10.2 or a COT in accordance with Rule 8.9.4). CDO may prescribe by Procedure a process for the transfer from the Nominee of legal title to Admitted Product other than Securities that are transferred through the Legal Title Transfer System. The Depository Participant must do and execute all acts, documents and things as are required to enable completion of that transfer; and
- (b) record the debit of the Admitted Product from the Account of the Depository Participant specified in the Notice given in accordance with Rule 3.8.1 or Rule 3.8.2.

Uplift is complete upon the transfer of legal title to, or (where the legal title to the Admitted Product is held by a Custodian on behalf of that Depository Participant) beneficial interest in, the Admitted Product into the name of the Depository Participant specified in the Notice given in accordance with Rule 3.8.1 or Rule 3.8.2.

3.8.4 Admitted Product may not be Uplifted:

- (a) if the Admitted Product is the subject of a Depository Transaction which has not been Settled;
- (b) if at the time of receipt of a Notice in accordance with Rule 3.8.1, the balance of that Admitted Product in the specified Account is less than the aggregate of the amount of that:
 - (i) Admitted Product specified in the Notice in accordance with Rule 3.8.1;
 - (ii) Admitted Product the Depository Participant is obliged to deliver as the Product Element of a Depository Transaction in respect of which an Instruction has been received by CDO at that time; and
 - (iii) Admitted Product the Depository Participant is obliged to deliver as the Product Element of a

Corporate Action in respect of which an Instruction has been received by CDO at that time; or

- (c) in any period during which the Product Register of the Admitted Product is closed or is unable to process transfers of legal title to Admitted Product or during which the relevant Custodian is closed or is unable to process transfers.

3.9 Reconciliation

- 3.9.1 CDO will, at least daily, reconcile the ownership interest of the Nominee recorded on each Product Registry and recorded by each Custodian with the cumulative entitlements of all Depository Participants for each Admitted Product.
- 3.9.2 If, having undertaken reconciliation as provided for in Rule 3.9.1, there is an imbalance between the entitlements in the Depository and the recorded interest of the Nominee, then CDO will investigate the imbalance and take such actions, acting in good faith, as it deems appropriate.

3.10 Ownership of Admitted Product

- 3.10.1 Subject to Rules 4.5 and 4.9, but notwithstanding any other provision of these Rules:
 - (a) CDO and the Nominee shall recognise only the Depository Participant in whose name Admitted Product is recorded as the sole beneficial owner of that Admitted Product;
 - (b) CDO and the Nominee shall not, except as ordered by a court of competent jurisdiction or as is otherwise expressly provided by these Rules, be liable for, bound by or compelled in any way to see to the execution of any trust or equity affecting the ownership of, or incidental rights to, an Admitted Product, nor to recognise a Depository Participant as holding Admitted Product on trust nor to recognise (whether or not it has Notice of the interest or rights concerned and notwithstanding and designation of any Account) any proprietary, equitable, contingent, future, partial or other interest in any Admitted Product or any other right, except the beneficial right of ownership in the Depository Participant in whose Account the Admitted Product is recorded;
 - (c) the Depository Participant shall not assert, nor permit any Person claiming under or through the Depository Participant to assert, any proprietary, equitable, contingent, future, partial or other interest or right against CDO, the Nominee or any Person acting on behalf of CDO or the Nominee (or both);

- (d) in any case where the terms governing any Admitted Product impose any obligation on the Person in possession of, or entitled to, such Admitted Product (including as to the execution or furnishing of any document), the Depository Participant will promptly on request by CDO do and execute such acts, documents and things as the CDO may reasonably require to enable CDO (or Nominee) to perform such obligation.

3.11 Money Collateral Account and other Accounts in the name of CHO

- 3.11.1 CDO must open and maintain for CHO Money Collateral Accounts. A Money Collateral Account may be used only for the purposes of the receipt, holding and payment of Money Collateral in accordance with the C&S Rules. CHO may give, and CDO shall accept and implement, directions from CHO in relation to the receipt, holding and delivery of Money Collateral in accordance with the C&S Rules.
- 3.11.2 CDO must open and maintain for CHO in the Depository an Account for the purposes of the recording of Money Collateral held in a Money Collateral Account and the receipt, holding and delivery of Eligible Securities as Collateral in accordance with the C&S Rules. CHO may give, and CDO shall accept and implement, directions from CHO in relation to the receipt, holding and delivery of Eligible Securities in accordance with the C&S Rules.
- 3.11.3 CDO may open and maintain for CHO in the Depository such other Accounts as CHO considers necessary or desirable in order for CHO to perform its duties, functions and obligations under the C&S Rules. CHO may give, and CDO shall accept and implement, directions from CHO in relation to the record, receipt, holding and delivery of Admitted Product or Money in respect of such Accounts.
- 3.11.4 Admitted Product or Money (and any Security Interest in the same) recorded in an Account in the name of CHO is deemed to be held by CDO and/or Nominee as trustee for CHO to the exclusion of all other Persons.

Section 4: Depository Transactions

4.1 Depository Instructions

- 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.
- 4.1.2 An Instruction must specify a time for execution on a Business Day on or after the day on which the Instruction is given.
- 4.1.3 A DFP Instruction or a DVP Instruction will be executed only if an Instruction matches with another Instruction from another Depository Participant specified in the Instruction for Settlement at the same time.
- 4.1.4 CDO will enable each Depository Participant to view in the Depository System all unsettled Instructions given by that Depository Participant.
- 4.1.5 CDO must execute each DFP Instruction and each DVP Instruction by making debits and credits (and in the case of a DVP Instruction, simultaneously) to the Accounts of the Depository Participants in accordance with the Instructions provided that if:
- (a) the execution of an Instruction relating to a class of Admitted Product would result in there being a negative balance of that class of Admitted Product in any Account;
 - (b) the execution of an Instruction relating to Money would result in there being a negative balance of Money in any Account;
 - (c) any of the Accounts specified in the Instruction are invalid or do not exist;
 - (d) the Instruction refers to Admitted Product that has Matured or will Mature before the time for execution specified in the Instruction;
 - (e) the Instruction refers to Admitted Product that does not comply with criteria or conditions for Lodgement of Admitted

Product specified in accordance with Rule 6.2.3, or for which admission has been suspended or withdrawn in accordance with Rule 6.2.6; or

- (f) one or more of the other Instructions specified in the Instruction has not been received or has been received but not matched with the Instruction, or has been received and matched with the Instruction but cannot be executed at that time,

CDO must not (and shall not) execute the Instruction, but must retry execution of the Instruction until the time prescribed by Procedure. If an Instruction remains unsettled at the time prescribed by Procedure the Instruction will lapse, CDO will Notify the Depository Participant that the Instruction has failed and specify in that Notice the reason the Instruction could not be executed and CDO will have no further obligation in respect that Instruction.

Procedure 4.1

- 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.

Procedure 4.2

4.2 Matured Admitted Product

- 4.2.1 CDO and the Nominee have no obligation to deal with any Admitted Product in the Depository after Maturity of that Admitted Product. If the Proceeds of Maturity of any Admitted Product are received by CDO or Nominee, the Proceeds must be held on trust for the benefit of the Depository Participant, and may be transferred to a third party (including a Secured Party) by CDO or Nominee following Notice to that effect from that Depository Participant (or Secured Party, as the context requires).

4.3 Status of Settlements

- 4.3.1 Settlements are valid and final and may not in any circumstances be reversed or avoided after:

- (a) an amount of Money is credited to or debited from an Account; or
- (b) Admitted Product is credited to or debited from an Account, in accordance with Rule 4.1.5 or Rule 4.7.

- 4.3.2 Each Depository Participant acknowledges that CDO has no responsibility other than to execute Instructions received in accordance with Rule 4.1.5, and, without limiting the foregoing, CDO has no obligation to ensure that any Depository Participant performs or completes its obligations under a Depository Transaction.

4.4 Depository Transaction Reports

- 4.4.1 Subject to Rule 4.4.2, CDO shall make the following reports available in the Depository System for viewing and downloading by a Depository Participant:
- (a) a “Statement of Account” report, which will provide balance details of all Accounts held by each Depository Participant at the end of each Business Day; and
 - (b) a “Statement of Transactions” report, which will provide details of all transactions occurring on Accounts held by each Depository Participant for each Business Day.
- 4.4.2 A Depository Participant shall only be entitled to view and download reports in respect of the Accounts and transactions on Accounts in the name of that Depository Participant.

4.5 Security Interests

- 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. Procedure 4.3
- 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. Procedure 4.4
- 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; Procedure 4.3

- (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.

Procedure 4.5

4.6 Notice of Corporate Actions

4.6.1 Subject to Rule 4.6.3, upon receipt of details of any Corporate Action in respect of Admitted Product registered in the name of the Nominee, CDO will, as soon as is reasonably practicable, notify the Depository Participants for whom it holds that Admitted Product of those details.

4.6.2 CDO will upon request by an Issuer of an Admitted Product or a Product Registry of an Admitted Product, and may on its own initiative without request, provide the Product Registry of the Admitted Product with the name of the Depository Participant on behalf of whom it holds that Admitted Product.

4.6.3 Where CDO has provided an Issuer or a Product Registry with the name of the Depository Participant on behalf of whom it holds Admitted Product in accordance with Rule 4.6.2, CDO may rely upon that Issuer or Product Registry to inform the relevant Depository Participants of the details of any Corporate Action in respect of that Admitted Product, and if such an Issuer or its Product Registry fails or refuses to communicate information regarding the Corporate Actions directly to one or more Depository Participant, no Depository Participant has any claim on, or cause of action against CDO, the Nominee, or any Person acting on their behalf in respect of any such failure.

4.7 Corporate Actions

- 4.7.1 Where the Nominee receives any interest, dividend or other amount of Money in respect of an Admitted Product on behalf of a Depository Participant as a result of a Corporate Action, CDO will procure the Nominee to pay that amount to CDO and CDO will credit the amount to the Depository Participant's Account or, an account with a Bank nominated by the Depository Participant for that purpose or where no Bank account has been nominated by issue of a cheque to the Depository Participant at its last advised postal address.
- 4.7.2 Where the Issuer of Admitted Product or its paying agent is a Depository Participant and holds an Account, then, subject to the Rules, any interest, dividend or other amount of Money payable in respect of an Admitted Product may be paid to Depository Participants having an interest in that Admitted Product by an Instruction from the Issuer or the Issuer's paying agent (as the case may be) debiting the Issuer's or the Issuer's paying agent's Account and crediting the payee Depository Participant's Account. The Issuer or the Issuer's paying agent (as the case may be) is responsible for making all withholdings and deductions, filing all returns, issuing all certificates and taking such other steps as may be required by law or otherwise in relation to the payment.
- 4.7.3 Neither CDO nor the Nominee has any obligation to make any payment under Rule 4.7.1 or 4.7.2 until CDO has received the Money required to make the payment in full, and the receipt of that Money is cleared and irreversible. Neither CDO nor the Nominee shall be obliged to pay interest on any such amounts.
- 4.7.4 Where the Nominee receives any Admitted Product as a result of a Corporate Action in respect of an Admitted Product held on behalf of a Depository Participant, CDO will record the Depository Participant's interest in that additional Admitted Product by crediting the Account in which the Admitted Product that accrued the entitlement to the additional Admitted Product is recorded.
- 4.7.5 Where Admitted Product held on behalf of a Depository Participant is amalgamated, consolidated, substituted, repurchased, redeemed, repaid or cancelled (including by way of Corporate Offer or other equivalent action), CDO will record the amalgamation, consolidation, substitution, redemption, repayment, repurchase or cancellation (howsoever described) by debiting and/or crediting the Account in which the Admitted Product is recorded. CDO, CHO and the Nominee will be entitled to accept as conclusive the Issuer's or Product Registry of the Admitted Product's advice of the amalgamation, consolidation, substitution, redemption, repurchase, repayment, or cancellation (howsoever described).
- 4.7.6 Where a Depository Participant accepts a Corporate Offer in relation to any Admitted Product held on behalf of that Depository

Participant, CDO will record the result of the Corporate Offer by debiting and/or crediting the Account in which the Admitted Product is recorded accordingly. CDO, CHO and the Nominee will be entitled to accept as conclusive the offeror's advice or advice of the relevant Issuer or Product Registry as to acceptance of the Corporate Offer, unless the Depository Participant has given Notice to CDO to the contrary within the required timeframe.

4.8 Instructions and Notices from Depository Participants

4.8.1 CDO and Nominee are entitled without further enquiry to accept and act on Instructions and Notices which:

- (a) are communicated via the Depository System;
- (b) are or purport to have been given or sent by an Authorised Signatory;
- (c) are communicated in any other manner permitted or contemplated by these Rules; or
- (d) are given by a Person who CDO, or Nominee, as the context requires, acting in good faith, believes is authorised to give such an Instruction and/or Notice.

4.8.2 The execution of, or action on (or no action, as the context requires) and/or Notices shall constitute a good discharge by CDO or Nominee, neither of whom shall be required to check the authenticity or source of any Instruction or Notice (whether sent by facsimile, computer, telephone or otherwise).

4.8.3 Without limiting Rule 4.8.1, CDO may also accept as an Instruction or Notice from a Depository Participant an Instruction or Notice given by a liquidator, receiver, statutory manager or other Person CDO reasonably believes has lawful authority to act in the name of, or on behalf of, that Depository Participant (including as a Secured Party).

4.8.4 Each Depository Participant authorises and will adopt and ratify all actions taken or (as the case may be) not taken, by CDO and Nominee in good faith on reliance upon an Instruction and/or Notice (notwithstanding any error, misunderstanding, lack of clarity, forgery or fraud by an Authorised Signatory, Persons purporting to be Authorised Signatories or by others).

4.8.5 Without limiting or prejudicing any other right, discretion, power or remedy, neither CDO nor Nominee is obliged to act (and CDO may procure that the Nominee does not act) on any Instruction (other than an Instruction of CHO), Notice or information and may refuse to allow a Depository Transaction or a Corporate Action to be Settled or to deal with an Admitted Product or with Money in any other way, where:

- (a) the Depository System or the ESAS System is unavailable;
- (b) CDO believes that the Instruction or Notice has not been given in accordance with the Rules, or that doing so would be unlawful, including contravening any statute or an order made by any Court;
- (c) CDO believes that acting on the Instruction, Notice or information or allowing the Depository Transaction, Corporate Action or dealing with the Admitted Product or Money could place CDO or the Nominee in breach of its obligations to CHO, another Depository Participant or other Person;
- (d) according to the Depository System, the Depository Transaction, Corporate Action or dealing or any receipt or clearance of Money or Admitted Product appears not to have occurred within the prescribed timeframes or by applicable cut-off times;
- (e) a Potential Default Event has occurred;
- (f) CDO or Nominee receives information sufficient for CDO or Nominee (as the case may be) to form a view in good faith that the Depository Participant may not be absolutely entitled to the Admitted Product or Money, or authorised to deal with Admitted Product or Money in accordance with these Rules;
- (g) CDO determines that a State of Emergency exists or is developing in accordance with Rule 6.8.1;
- (h) CDO or Nominee is served with a Court order which in the opinion of CDO affects the ability of the Depository Participant to deal with the Admitted Product or Money or otherwise enter into the Depository Transaction or participate in the Corporate Action;
- (i) the Depository Participant, or another Depository Participant which is a party to the Depository Transaction or participant in the Corporate Action, resigns, is Suspended or terminated in accordance with Rules 7.6 or 7.8; or
- (j) the Instruction, Notice or information is unclear in the view of CDO, in which case CDO must seek clarification from the Depository Participant, but CDO may not act (and may procure that Nominee does not act) upon that Instruction, Notice or information until it has been clarified to its absolute satisfaction.

4.8.6 If in accordance with Rule 4.8.5, CDO decides not to act or for any other reason CDO is unable to act on any Instruction or Notice or apparent Instruction or Notice which it has received

from a Depository Participant, CDO will notify the Depository Participant concerned of the relevant circumstances as soon as practicable after it has become aware of them.

4.9 Errors

4.9.1 If as a result of an Error a Depository Participant receives any Money, payment, Admitted Product, right, issue, benefit, security, financial instrument or other property or thing to which the Depository Participant is not entitled (an “**Error Benefit**”), then:

- (a) as soon as the Error comes to the attention of CDO, CDO must give Notice to the Depository Participant of the Error and specify the steps that must be taken by the Depository Participant in order to return the Error Benefit to the Person entitled to receive it, including the payment of Money;
- (b) the Depository Participant shall take the steps specified in the Notice on the day on which the Notice is given, or if the Notice is given after 3:30pm on a Business Day, by 11:00am the next Business Day or at such later time as may be specified in the Notice; and
- (c) if the Depository Participant has already transferred any Admitted Product or other property or assets the subject of the Error Benefit, the Depository Participant shall purchase equivalent Admitted Product, or other property or assets in order to return the Admitted Product, property or assets if required to do so by CDO under this Rule.

4.9.2 Without prejudice to any other provision of these Rules, where an Error has occurred in respect of the recording of Money or Admitted Product in an Account, CDO may in its discretion take any action it considers necessary or desirable to correct any record.

4.10 General

4.10.1 CDO, Nominee and CHO may rely on any representation, Notice, agreement or document believed to be genuine, correct and appropriately authorised and upon any statement or representation made by a Person regarding any matters which may reasonably be assumed to be in that Person’s knowledge or power to make.

4.10.2 CDO and Nominee are not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (oral or written) supplied by an Issuer of Admitted Product, a Product Registry or other Person; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Admitted Product or of any Security

Interest recorded under Rule 4.5.

- 4.10.3 None of CDO, Nominee or CHO is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or a breach of fiduciary duty (in respect of CDO or Nominee).

Section 5: Stock Lending

5.1 Identification

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:

Procedure 5.1

- (a) the maximum quantity available for lending from the Lending Pool on a Business Day;
- (b) the maximum period the Admitted Product is available for lending from the Lending Pool (which must be for a period no less than one day); and
- (c) the Account in which the Admitted Product is held.

5.1.2 CDO may by Procedure prescribe the Admitted Product (including categories of Admitted Product) that may not be lent under the Rules and must do so if directed by CHO.

Procedure 5.2

5.1.3 At the beginning of each Business Day CDO will create a Lending Pool of Admitted Product available for lending under this Section 5 during that Business Day by identifying the Admitted Product that is available to lend on that Business Day and Locking that Admitted Product until the end of that Business Day until and unless that Admitted Product is selected for lending under Rule 5.3.1 or Rule 5.6.1.

5.1.4 At the end of a Business Day CDO will terminate the Lending Pool by removing the Lock on any Admitted Product that was Locked during that Business Day under Rule 5.1.3 and which has not been selected for lending during that Business Day.

5.2 Initiation

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 for Risk Management Purposes (as defined in the C&S Rules) and/or 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.

Procedure 5.3

5.3 Creation

5.3.1 On receipt of a Borrowing Request (and, if a Depository Participant provided the Borrowing Request and that Depository

Procedure 5.4

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. All Depository Participants whose Admitted Product has been selected will become a Lender and be deemed to have entered into a single Lending Transaction with the Depository Participant or CHO, as the case maybe, who delivered the Borrowing Request for the quantity of Admitted Product selected by CDO, and otherwise on the terms specified by Rule 5.4.

- 5.3.2 If the Borrowing Request was delivered by a Depository Participant who has not provided sufficient Collateral to CHO prior to lodging the Borrowing Request, or if there is insufficient Admitted Product available to lend the amount of Admitted Product required by the Depository Participant or CHO, as the case may be, no Lending Transaction will be created, and CDO will notify that Depository Participant or CHO, as the case may be, that insufficient Admitted Product or insufficient Collateral is available to meet the Borrowing Request.
- 5.3.3 On creation of a Lending Transaction under Rule 5.3.1, CDO will notify:
- (a) the Borrower of the creation of the Lending Transaction, but not the identity of the Lender or Lenders;
 - (b) each Lender of the creation of the Lending Transaction and the quantity of Borrowed Product lent by that Lender under the Lending Transaction, but not the identity of the Borrower; and
 - (c) CHO of the quantity of Borrowed Product, the identity of the Lender or Lenders and the identity of the Borrower.
- 5.3.4 If there is more than one Lender in respect of a Lending Transaction, CDO will determine the order for redelivery or payment of each of the Lenders in respect of the other Lenders by reference to the sequence in which they were selected under Rule 5.3.1 and Rule 5.6.1.

5.4 Lending Terms

- 5.4.1 Each Lending Transaction is undertaken on the following terms:
- (a) each Lender will deliver (and the Borrower will accept delivery of) the quantity of the Borrowed Product referred to in the Notice given under Rule 5.3.3(b) and all of the Lender's right, title and interest in the Borrowed Product delivered will pass to the Borrower free and clear from all Security Interests;
 - (b) each Lender gives the representations and warranties set

out in Rule 5.4.3 and the Borrower gives the representations and warranties set out in Rule 5.4.4;

(c) a Lender may call for the redelivery of some or all Equivalent Product at any time on a Settlement Day by giving Notice to the Borrower in the manner described in Procedure;

Procedure 5.5

(d) the Borrower must redeliver Equivalent Product in accordance with the terms of a Notice given by a Lender under Rule 5.4.1(c);

(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;

Procedure 5.5

(f) the Lender or Lenders will accept delivery of Equivalent Product by the Borrower and all of the Borrower's right, title and interest in the Equivalent Product delivered to a Lender will pass to the Lender free and clear from all Security Interests; and

(g) the Borrower will comply with Rule 5.8.

5.4.2 The obligations of each Lender under a Lending Transaction are several and not joint.

5.4.3 Each Lender is deemed to represent, warrant and undertake to the Borrower (and following novation in accordance with Rule 5.5, CHO) on a continuing basis, with the intent that such representations and warranties survive the completion of any Lending Transaction, that, where acting as a Lender, the Lender:

(a) has all necessary licences and approvals, and is duly authorised and empowered to perform its duties and obligations under the Lending Transaction and will do nothing prejudicial to the continuation of such authorisations, licences or approvals;

(b) is not restricted under the terms of its constitution or in any other manner from lending Admitted Product in accordance with the Rules or from otherwise performing its obligations under the Lending Transaction;

(c) is entitled to pass the full legal and beneficial ownership of, and will pass full beneficial ownership of all Admitted Product provided by it under a Lending Transaction, to the Borrower free and clear from all Security Interests; and

(d) is acting as principal in respect of the Lending Transaction.

- 5.4.4 Each Borrower is deemed to represent, warrant and undertake to each Lender (and following novation in accordance with Rule 5.5, CHO) on a continuing basis, with the intent that such representations and warranties survive the completion of any Lending Transaction, that, where acting as a Borrower, the Borrower:
- (a) has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under a Lending Transaction and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
 - (b) is not restricted under the terms of its constitution or in any other manner from borrowing Admitted Product in accordance with the Rules or from otherwise performing its obligations under a Lending Transaction;
 - (c) is acting as principal in respect of the Lending Transaction; and
 - (d) is entitled to pass the full legal and beneficial ownership of and will pass full beneficial ownership of all Equivalent Product provided by it free and clear from all Security Interests.

5.5 Novation

- 5.5.1 Immediately upon creation of a Lending Transaction (except where CHO is the Borrower), the Lending Transaction will be novated in accordance with Rule 3.3 of the C&S Rules. The Lenders and the Borrower are deemed to have agreed to that novation and those novated Lending Transactions shall be deemed to include the provisions of Rule 5.6 and Rule 5.8.

5.6 Lender Recall

- 5.6.1 On receipt by CDO of a Notice from a Lender given for the purposes of Rule 5.4.1(c),
- (a) CDO will satisfy the Lender's request by selecting for delivery Equivalent Product in respect of which Notice has been given by a Borrower under Rule 5.4.1(e) that has not at that time been redelivered to a Lender (if any); and
 - (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, and upon settlement of the delivery of that Admitted Product under the C&S Rules, the Lender or Lenders of the Admitted Product selected under this Rule will be substituted for the Lender who gave the Notice under Rule 5.4.1(c) and the rights of the former Lender will

Procedure 5.4

be deemed to be assigned to the new Lender or Lenders;
and

(c) if there is insufficient Admitted Product in the Lending Pool to equal that required by the Lender, then,

(i) CDO will select from the Lending Pool in accordance with Procedure available Admitted Product (if any) for delivery to the Lender who gave the Notice under Rule 5.4.1(c) and upon settlement of the delivery of that Admitted Product under the C&S Rules, the Lender or Lenders selected under this Rule will be substituted for the Lender who gave the Notice under Rule 5.4.1(c) in respect of the Admitted Product selected under this Rule 5.6.1(c)(i) and the rights of the former Lender will be deemed to be assigned to the new Lender or Lenders; and

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(ii) CDO will select in accordance with Procedure the Borrower or Borrowers from whom Equivalent Product will be recalled and the amount of Equivalent Product to be recalled from each Borrower in order to meet the Lender's request (together with Admitted Product delivered under Rule 5.6.1(c)(i), if any); and

Procedure 5.5.4

(iii) CHO will give a Notice to the Borrower or Borrowers identified under Rule 5.6.1(c)(ii) in accordance with Procedure recalling from each Borrower the quantity of Admitted Product specified in Rule 5.6.1(c)(ii) at the time specified by CHO in its discretion in the Notice; and

Procedure 5.5

(iv) on redelivery of Equivalent Product by the Borrower in accordance with a Notice given by CHO under Rule 5.6.1(c)(iii), CHO will settle the delivery of that Equivalent Product to the Lender who gave the Notice under Rule 5.4.1(c) in accordance with the C&S Rules.

5.7 Borrower Voluntary Delivery

5.7.1 On redelivery of Equivalent Product by a Borrower under Rule 5.4.1(e) CDO must select the Account of the Lender to credit with the Equivalent Product or if there is more than one Lender CDO must select the Accounts of the Lenders to credit with the Equivalent Product in the sequence determined by CDO under Rule 5.3.4 and CHO will settle the delivery of that Equivalent Product to the Lender or Lenders in accordance with the C&S Rules.

5.8 Income

5.8.1 Where Income is paid by an Issuer in relation to any Borrowed

Procedure 5.7

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 the sequence determined by CDO under Rule 5.3.4.

Section 6: CDO Powers and Relationship with Operators of NZX Markets

6.1 Additional Powers

6.1.1 The powers set out in this Section are in addition to and without limitation of rights and powers of CDO set out elsewhere in these Rules, in CDO's constitution and at law.

6.2 Admission of Products

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.

Procedure 6.1

6.2.2 NZX may direct CDO to have a class of Commodity or Derivatives Contract approved as any Admitted Product. CDO must approve a class of Commodity or Derivatives Contract as Admitted Product as directed by NZX, subject to Rule 6.2.3.

6.2.3 CDO may attach such conditions to an approval given under Rule 6.2.1 and Rule 6.2.2 that it considers necessary for the integrity, reliability and efficiency of the Depository. CDO may, as a condition of approval as Admitted Product, require the Product Registry to enter into such agreements and other arrangements as it thinks necessary in relation to transmission of information to CDO.

6.2.4 Where a class of Commodity or Derivatives Contract exists or is issued subject to a condition that prevents or limits the ability of that Commodity or Derivatives Contract to be offered for sale to or to be held by any Person, that limitation must be notified to CDO on an application made in accordance with Rule 6.2.1. Notwithstanding the receipt of notification, it is the sole responsibility of each Depository Participant in whose Account Admitted Product is recorded to inform any proposed or prospective transferee of any interest in the Admitted Product of the existence and nature of the condition. Each Depository Participant acknowledges that neither CDO nor Nominee bears any duty or obligation to inform them of the existence and nature of any condition.

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:

Procedure 6.2

- (a) the Commencement Date for that Admitted Product; and
 - (b) any conditions attached to approval of the Admitted Product.
- 6.2.6 CDO may, with NZX's prior written consent, at any time, at its discretion, either:
 - (a) suspend approval of a class of Admitted Product until further Notice, provided that any period of suspension does not exceed 60 Business Days;
 - (b) withdraw approval of a class of Admitted Product, whether or not approval of the Admitted Product is already suspended.
- 6.2.7 If CDO suspends or withdraws approval of a class of Admitted Product in accordance with Rule 6.2.6, CDO must promptly give Notice of the suspension or withdrawal to NZX, the Issuer of the Admitted Product (if any), CHO and each Depository Participant. The Notice must specify the time and date on which the suspension or revocation is effective and in the case of a suspension in accordance with Rule 6.2.6, the period of the suspension.
- 6.2.8 Upon suspension or withdrawal of approval of a class of Admitted Product no further Admitted Product of that class can be Lodged into the Depository and no Instructions can be given in respect of Admitted Product of that class.
- 6.2.9 Withdrawal of approval of a class of Admitted Product will not affect a Depository Participant's or CDO's rights or obligations under a Depository Transaction entered into prior to notification of the withdrawal of approval.
- 6.2.10 CDO may with NZX's prior written consent at any time, at its discretion remove any suspension in accordance with Rule 6.2.6 and give Notice accordingly to NZX, the Issuer of the Admitted Product (if any) and each Depository Participant.

6.3 Complaints and Investigations

- 6.3.1 CDO may receive and consider complaints from any Person about CDO, CDO's operation of the Depository, Nominee, a Depository Participant or a Depository Participant's Directors, Personnel or agents' depository activities. CDO may, at its discretion:
 - (a) reject summarily any complaint which appears to be insubstantial, immaterial, vexatious and or frivolous;
 - (b) investigate the complaint in accordance with Rule 6.3.3; or

- (c) refer the complaint to any other Person that has jurisdiction in relation to the subject matter of the complaint or whom CDO believes is better qualified to deal with the matter, including under a Reciprocal Arrangement.
- 6.3.2 CDO will maintain a record of complaints detailing the complaint, any investigation or other action taken and the outcome of the complaint.
- 6.3.3 CDO may, either as a result of receiving a complaint in accordance with Rule 6.3.1 or on its own initiative, investigate a complaint and make such enquiries as it thinks fit. As a result of its investigations, CDO may exercise such powers as are conferred on it under these Rules as it thinks fit.
- 6.3.4 Where CDO has received and considered a complaint concerning CDO and/or its operation of the Depository, and has been unable to resolve that complaint to the satisfaction of the complainant, it must notify the complainant of that fact.

6.4 Investigation Powers

- 6.4.1 CDO may (either on its own account or in accordance with a request made to it by CHO or any Person with whom CDO has a Reciprocal Arrangement) for the purposes of ascertaining whether a Depository Participant is in compliance with these Rules or the rules or requirements of any Person with whom CDO has a Reciprocal Arrangement, or ascertaining whether to exercise any rights or powers under these Rules:
 - (a) require any Depository Participant to produce for inspection any documents or records (whether in physical or electronic form) in that Depository Participant's possession or control;
 - (b) require any Depository Participant to procure any Director of the Depository Participant, or any Personnel, agent or other Person within the control of the Depository Participant, to produce for inspection any documents or records (whether in physical or electronic form) in that Person's possession or control;
 - (c) require any Depository Participant to reproduce, or assist in reproducing in usable form any document or record produced, or required to be produced to CDO;
 - (d) inspect and make records of or copy any document or record produced to CDO.
- 6.4.2 Documents, records or information to be provided to CDO pursuant to Rule 6.4.1 must be provided in such format, electronic or otherwise, and by the time, specified by CDO.

6.5 Disclosure of Information obtained on Inspection

6.5.1 Information obtained pursuant to Rule 6.4 may be disclosed:

- (a) as required by CDO, CHO or any Person with whom CDO has a Reciprocal Arrangement, to perform its functions and to exercise its powers under these Rules;
- (b) as required by law;
- (c) to a solicitor, accountant or other professional adviser of CDO, CHO or any Person with whom CDO has a Reciprocal Arrangement; or
- (d) to any Person that has jurisdiction in relation to the Depository Participant or the subject matter or the investigation.

6.5.2 CDO will take all reasonable measures to protect any information obtained by CDO pursuant to Rule 6.4 from any unauthorised use or disclosure.

6.5.3 Upon receipt of a request from CDO pursuant to Rule 6.4 a Depository Participant may make submissions in writing to CDO that that information obtained by CDO not be disclosed to any specified Person(s). CDO will reasonably consider such submissions but is not obliged to accept such request if CDO considers that access to that information by any specified Person is appropriate for CDO to fulfil its functions, including, but not limited to, fulfilling any obligations it has under a Reciprocal Arrangement or at law.

6.6 Power of Waiver and Rulings

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.

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6.7 and 6.9

6.6.2 Any waiver or ruling granted by CDO may be revoked at any time by CDO by Notice to the Depository Participant or Depository Participants concerned. Any such revocation shall have effect from the date stated in the Notice (which may be before the date of the Notice if CDO considers that the waiver or ruling was granted on the basis of information which was incorrect, incomplete or misleading in any material respect or if the conditions specified in the waiver or ruling have not been

satisfied or complied with in full).

- 6.6.3 Any waiver or ruling granted by CDO will be valid and have effect in accordance with the terms of and for the period specified in the decision for that waiver or ruling. Any waiver or ruling is granted by CDO on the basis that the information provided is complete, true and up-to-date in all material respects. Any waiver or ruling granted by CDO will be void from the outset if CDO has made the decision in relation to the application on the basis of information that CDO determines was incorrect, incomplete or misleading in any material respect. Waivers and rulings granted by CDO subject to conditions are only valid if those conditions are satisfied or complied with. A waiver or ruling will be void from the outset if any such conditions are not satisfied or complied with in full.
- 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.
- 6.6.5 Depository Participants may seek a review of the decision of CDO in respect of any waiver or ruling under this Rule 6.6 pursuant to NZ Markets Disciplinary Tribunal Rule 4.5.

6.7 Fee Setting Power

- 6.7.1 CDO may impose on any or all Depository Participants such fees, levies and other charges, including as a condition of participation as a Depository Participant, or in relation to a Lending Transaction as it sees fit. For the avoidance of doubt, CDO may differentiate between Depository Participants as regards the amount of such fees, levies and other charges at its complete discretion. CDO may set fees payable by CDO to Depository Participants who are Lenders in relation to Lending Transactions. All fees, levies and other charges will be payable in the manner and at the time specified by or under Procedure.
- 6.7.2 CDO will publish the fees, levies and other charges payable under Rule 6.7.1 in accordance with Procedure.

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6.9

6.8 Emergency Powers

- 6.8.1 If CDO determines that a State of Emergency exists or is developing, CDO may with the prior consent of CHO (such consent not to be unreasonably withheld or delayed) or shall, if directed by CHO, take or authorise any action it considers necessary for the purpose of dealing with the State of Emergency, including:

- (a) making State of Emergency Rules (which may be inconsistent with these Rules) for the Risk Management Purposes. In the event of inconsistency between any State of Emergency Rules and these Rules, the State of Emergency Rules will prevail;
- (b) suspending provision of any Depository facilities or Services to one or more Persons;
- (c) taking, or refraining from taking, or directing a Depository Participant to take or refrain from taking any action which CDO considers appropriate;
- (d) taking any action in the name of and at the expense of a Depository Participant; and/or
- (e) taking any other action that is inconsistent with these Rules.

6.8.2 No Person bound by the Rules or Procedures is liable for failure to comply with a Rule or Procedure (other than Rule 2.8 or a State of Emergency Rule) if, and to the extent which, compliance has been delayed, interfered with, curtailed or prevented by any action of CDO under Rule 6.8.1.

6.8.3 CDO may specify the period for which a State of Emergency may persist but the period must not exceed 30 Business Days. If CDO does not specify a period, the State of Emergency will persist for 30 Business Days.

6.8.4 CDO must promptly notify Depository Participants of its determination that a State of Emergency exists or is developing and the exercise of any powers under Rule 6.8.1. Upon cessation of the State of Emergency, CDO must promptly notify Depository Participants that the State of Emergency has ceased to exist.

6.8.5 Upon cessation of a State of Emergency, any State of Emergency Rules made by CDO under Rule 6.8.1 shall cease to have effect, without prejudice to the rights or obligations of any Person arising from acts or omissions while the State of Emergency Rules were in effect and for the avoidance of doubt, Rules 1.2 and 1.5 apply to State of Emergency Rules.

6.9 General Powers and Obligations to CHO

6.9.1 CDO may take action or not take action, as the case may be, if in its opinion, such action (including restricting access to the Depository System) or inaction is or may be necessary or desirable for the protection of CDO, CHO, Nominee, Depository Participants generally or as a class (or in particular), the Clearing House, the Depository, the Settlement System or for the operation of sound, orderly, stable and secure Clearing

House, Depository and Settlement System or to prevent any material risk to CDO, CHO, the Clearing House, the Depository or the Settlement System (the “**Risk Management Purposes**”) and/or to ensure compliance with these Rules, provided that CDO’s exercise of its powers under this Rule must be consistent with its obligations to process payments of Money and delivery of Admitted Product under Rules 3.2.1 to 3.2.6, 3.3.4 and 3.8.3.

- 6.9.2 CDO and Nominee shall promptly take all actions as are requested by CHO, which in the opinion of CHO are necessary or desirable for the operation of a sound, orderly, stable and secure Clearing House and/or Clearing House System and/or Settlement System and/or to secure compliance with the C&S Rules. Without limiting the foregoing, CDO and the Nominee shall, upon request by CHO:
- (a) disclose to CHO any information, agreement or document it requests (including reports);
 - (b) take any action in relation to an Account or Settlement Account including Locking, debiting or crediting Approved Product or Money to or from an Account; and/or
 - (c) execute any direction from CHO or take any action (or not take any action) as CHO may specify in relation to Collateral held for CHO;
 - (d) operate the Depository System on any day and for any hours during that day as CHO may specify.

6.9.3 At the request of a Depository Participant, CDO may take any action on behalf of, including in the name of, a Depository Participant, provided that any such action taken by CDO:

- (a) must not be inconsistent with the Rules, including the purpose and objects underlying the Rules; and
- (b) is subject to the limitation of liability of CDO under Rule 9.1.

6.10 Delegation of Powers

6.10.1 CDO may delegate to any Person any of the rights, powers and discretions of CDO, including the power of delegation on such terms and conditions, if any, as CDO from time to time thinks fit.

6.11 Relationship with Operators of NZX Markets

6.11.1 **Depository Data:** In the course of operating the Depository, CDO may collect and store information relating to Admitted Product, Commodities underlying an Admitted Product, Issuers of Admitted Product, Depository Participants and the activities of the Depository generally (“**Depository Data**”). CDO hereby grants NZX an exclusive licence to receive and use Depository

Data and to redistribute Depository Data to any Person on such terms as NZX thinks fit, including on terms that include the right to redistribute the Depository Data to others. CDO may use Depository Data for the purpose of operating the Depository (“**Depository Data Purpose**”) but may not redistribute Depository Data except for the Depository Data Purpose or as required by law, or these Rules or as a condition of designation of the Settlement System under the RBNZ Act.

- 6.11.2 **Distribution of NZX Data and Depository Data:** CDO will do all things required by NZX or the operator of an NZX Market that is necessary or desirable for the purpose of the redistribution by NZX or an operator of an NZX Market of NZX Data or Depository Data as the case may be, including (at its own cost) the provision of an electronic feed of NZX Data or Depository Data as requested by NZX or the operator of an NZX Market. For the purposes of this Rule 6.11.2, “**NZX Data**” means data provided by NZX or an operator of an NZX Market relating to Transactions entered into on that NZX Market, including data relating to Admitted Product, an underlying Commodity of an Admitted Product, a Commodity, or relating to Issuers of Admitted Product.
- 6.11.3 **Provision of Information:** CDO must provide NZX and/or the operator of an NZX Market with any information it may request in order to promote the integrity, transparency and confidence in such market or in connection with its supervisory, regulatory and/or surveillance functions or its operation of such market or markets and operational platforms in connection therewith. Such information may include information about CDO, Nominee, the Depository, the Depository System, any Depository Participant and any information held by or provided to or by the Depository.
- 6.11.4 **CDO Actions:** If CDO receives a notice or request from NZX or CHO under this Section 6 then CDO must take all actions at its own cost that are necessary or desirable and within its reasonable control and within a reasonable time to procure that any transactions arising from Approved Products can to the extent applicable, be held and/or settled using the Depository System.
- 6.11.5 **Changes to Markets:** If the operator of an NZX Market makes any changes to the operation of an NZX Market, or CHO makes any changes to the Clearing House System, then CDO must take all actions at its own cost that are necessary or desirable to ensure that transactions arising from Approved Product traded on that NZX Market can continue to be held in or settled through the Depository System, and CDO must comply with all reasonable requests made by the operator of an NZX Market or CHO (as the case may be) for this purpose.

- 6.11.6 **CDO Costs:** CDO may not impose any fees or charges on NZX or an operator of an NZX Market, or seek to recover from NZX or an operator of an NZX Market any costs incurred by CDO in respect of:
- (a) the implementation of clearing and settlement on the Clearing House for any Market operated by NZX or a subsidiary of NZX; and/or
 - (b) the implementation of any changes to the Depository System.
- 6.11.7 **Operation of Depository:** CDO must operate the Depository System on such days and for such periods of time on such days as an operator of an NZX Market reasonably requests as being necessary or desirable for the orderly operation of that NZX Market.
- 6.11.8 **No Amendment:** CDO may not amend Rule 6.8 or Rule 6.9.2 without the prior consent of CHO (such consent not to be unreasonably withheld or delayed).

Section 7: Default and Termination

7.1 Default Event

7.1.1 The occurrence of any of the following events or circumstances with respect to a Depository Participant will constitute a Default Event:

- (a) that Depository Participant fails to pay an amount due and payable to CDO, Nominee or CHO under the Rules at the place and in the currency in which it is expressed to be payable;
- (b) that Depository Participant fails to comply with or breaches any of the continuing obligation requirements set out in Rule 2.6, 2.7.1(a) to and including 2.7.1(d) and 2.7.1(g), 2.7.2(a) to and including 2.7.2(c), 2.8.1 and 2.8.2;
- (c) that Depository Participant no longer satisfies any requirements for admission as a Depository Participant or fails to comply with any condition of admission;
- (d) that Depository Participant:
 - (i) fails to comply with an obligation under these Rules (other than an obligation to which Rule 7.1.1(a), (b) or (c) relates);
 - (ii) fails to comply with any condition or directive imposed on the Depository Participant by CDO, Nominee or CHO; and/or
 - (iii) breaches any agreement between the Depository Participant and CDO or Nominee, as the case may be, in any material respect or breaches any undertaking in favour of CDO or Nominee, as the case may be,

and which, if the failure to comply is capable of remedy, is not remedied within 3 Business Days (or such later time as CDO may in its sole discretion allow) of the earlier of (A) CDO giving Notice to the Depository Participant and (B) the Depository Participant becoming aware of the failure to comply;

- (e) CDO withdraws approval for a Responsible Person pursuant to Rule 2.12.6;
- (f) an Insolvency occurs in respect of the Depository Participant;
- (g) CDO restricts that Depository Participant from accessing the Depository System under Rule 6.9.1 or CDO is of the

opinion that the acts, omissions or proposed conduct of that Depository Participant may adversely affect the soundness, stability, security, operation or integrity of the Depository System or the Clearing House System;

- (h) any representation or warranty made or deemed to be made by a Depository Participant under or pursuant to the Rules or the Procedures, or in any other agreement or document delivered by or on behalf of the Depository Participant under or in connection with the Rules or the Procedures (including in respect of an application to be a Depository Participant) is or proves to have been incorrect, or misleading when made or deemed to be made;
- (i) CDO is informed by CHO, an operator of an NZX Market or other market operator, clearing and settlement facility or depository facility that the Depository Participant or a Related Person of that Depository Participant is not, or may not be, complying with its obligations under the rules and procedures of, or any terms of agreement with, CHO, an operator of an NZX Market or any other Market operator, clearing and settlement facility or other depository facility and such event or circumstance would have a Material Adverse Effect;
- (j) CDO is informed by any other Alternative Regulator or other regulatory body that the Depository Participant or a Related Person of the Depository Participant is not, or may not be, complying with any law, directive or regulatory requirement and such event has or may have a Material Adverse Effect;
- (k) that Depository Participant or a Related Person of that Depository Participant is suspended, expelled or terminated (howsoever described) as a member or participant of, or subject to any sanction imposed by, the Clearing House (or CHO), any NZX Market (or the operator thereof), any other derivatives, securities, commodity or stock exchange or market or other clearing and settlement facility or is subject to any sanction imposed by any New Zealand or overseas regulatory authority or ceases to be entitled to carry on business;
- (l) a Depository Participant or its Responsible Person is found to be in breach of, or guilty of, an offence under the provisions of the Securities Legislation, or a crime involving dishonesty (as defined in Section 2 of the Crimes Act 1961);
- (m) in relation to a Depository Participant who is a Clearing Participant or a Lending Clearing Participant, a Credit Event occurs with respect to that Depository Participant for

the purposes of the C&S Rules;

- (n) it is or will become unlawful for a Depository Participant to comply with its obligations under the Rules or any obligation of a Depository Participant becomes invalid or unenforceable or is held, declared or claimed by any Person other than CDO, to be void, voidable or unenforceable; or
- (o) a duty, tax or withholding of the nature referred to on Rule 2.6.3 is or will be required to be paid or made and the Depository Participant has not made the disclosure required by that Rule.

For the purposes of Section 7 of these Rules, “**Material Adverse Effect**” means in the opinion of CDO, a material adverse effect on:

- (a) the capacity of the Depository Participant to meet all its obligations to CDO, the Depository, Nominee, [NZX](#), an operator of an NZX Market, CHO, the Clearing House or other Depository Participants;
- (b) the financial position, reputation, security, integrity or stability of the Depository, CDO or the Depository Participant; or
- (c) an NZX Market or in respect of any Admitted Product, any underlying market for or in respect of that Admitted Product.

7.2 Declared Default

- 7.2.1 CDO may, in its absolute discretion, determine whether it will treat a Default Event as a Declared Default and may determine the Default Declaration Date, being the date and time from which the Depository Participant is deemed to be in default. It must give Notice to the Defaulting Depository Participant and may notify other Depository Participants of the Declared Default and Default Declaration Date.

7.3 Default Remedies

- 7.3.1 Upon the occurrence of a Declared Default, CDO may, without limitation, take such action as CDO deems necessary, expedient or desirable for the Risk Management Purposes in respect of such Declared Default. This action may include all or any of the following:
 - (a) suspending the Defaulting Depository Participant’s connection to the Depository;
 - (b) cancelling any or all Instructions of the Defaulting Depository Participant.

7.4 Set off

- 7.4.1 Without prejudice to any other rights CDO may have, whether under these Rules, by agreement, by operation of law or otherwise, CDO may at any time and without Notice to a Defaulting Depository Participant set off any amount (whether actual, contingent, present or future) payable or owing by CDO to the Defaulting Depository Participant against any amount (whether actual, contingent, present or future) payable or owing by the Defaulting Depository Participant to CDO. CDO must notify the Defaulting Depository Participant of any set off effected under these Rules. If any obligation is unascertained, CDO may make a good faith estimation of that obligation and effect set off in respect of that obligation, subject to CDO adjusting its accounting once such obligation is ascertained.

7.5 Miscellaneous Provisions

- 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. Procedure 7.1
- 7.5.2 **Rights in Addition:** CDO's rights under these Rules are in addition to, and not in limitation or exclusion of, any rights CDO may have whether by agreement, by operation of law or otherwise.

7.6 Suspension

- 7.6.1 CDO will be entitled to Suspend a Depository Participant in any of the following circumstances:
- (a) the occurrence of a Default Event or Declared Default in respect of that Depository Participant; or
 - (b) a Potential Default Event occurs which is continuing; or
 - (c) any alleged event or breach of these Rules where such breach or event, if proven, could have a Material Adverse Effect.
- 7.6.2 A Suspension may be for a fixed period or for an indefinite period, as determined by CDO in its sole discretion. During a period of Suspension in respect of a Suspended Depository Participant, CDO may exercise any of its powers under the Rules, including under Rules 6.4 and 6.9.
- 7.6.3 A Suspension will remain in force for any period notified to the Depository Participant or until CDO determines that the

Suspension will be extended or participation is terminated.

- 7.6.4 A Suspended Depository Participant may Uplift Admitted Product in accordance with Rule 3.8, but may not otherwise exercise any other rights of a Depository Participant, including without limitation the giving of Instructions, Borrowing Requests or Lodging Admitted Product to the Depository.

7.7 Resignation

- 7.7.1 A Depository Participant may cease to be a Depository Participant by providing written notification of resignation to CDO. The resignation will take effect 3 months from receipt of notification unless CDO and the Depository Participant agree otherwise.
- 7.7.2 A resigning Depository Participant must not give Instructions with an effective date later than the last day of such Depository Participant's participation in the Depository.

7.8 Termination

- 7.8.1 A Depository Participant's participation in the Depository may be terminated by CDO in accordance with Rule 7.8.2.
- 7.8.2 CDO will be entitled to terminate, either with immediate effect or by specifying a future date, the participation of a Depository Participant in the Depository in any of the following circumstances:
- (a) a Default Event, whether or not it has resulted in a Declared Default;
 - (b) the Depository Participant ceases to carry on business as a Depository Participant for a period of 6 months; or
 - (c) the Depository Participant is Suspended under Rule 7.6.1(a) and CDO, in its sole discretion, determines that Depository Participant has not or is unlikely to remedy to the satisfaction of CDO the matters giving rise to the Suspension.

7.9 General Provisions Relating to Resignation, Suspension and Termination

- 7.9.1 A resigning or terminated Depository Participant must Uplift all Admitted Product from the Depository in accordance with Rule 3.8, on or before the effective date of resignation or termination of the Depository Participant's participation in the Depository. If a Depository Participant fails to do so, the Nominee may transfer legal title to all Admitted Product held for the Depository Participant into the name of the Depository Participant. A Depository Participant's obligations under these

Rules (including without limitation obligations under Rule 2.5.1(f)) will remain in full force and effect until all Admitted Product held for the Depository Participant has been Uplifted.

- 7.9.2 On the effective date of resignation, Suspension or termination of a Depository Participant's participation in the Depository, the Depository Participant's access to the Depository System shall cease.
- 7.9.3 CDO may publish the resignation, Suspension or termination of a Depository Participant in any manner it deems appropriate. CDO will notify all other Depository Participants and may notify other relevant regulatory authorities of the resignation, Suspension and termination.
- 7.9.4 A resigning, Suspended or terminated Depository Participant must act in good faith and take such actions as may be necessary, convenient or desirable to assist the CDO in all matters arising out of such resignation, Suspension or termination.
- 7.9.5 A resigning or terminated Depository Participant will not be entitled to the repayment of any fees, dues, assessments, fines or charges paid by such Depository Participant to CDO, nor will the resigning Depository Participant be discharged from the obligation to pay any fees, dues, assessments, fines or charges in respect of the period preceding the effective date of resignation or termination.
- 7.9.6 Subject to any legal or regulatory requirement to retain such information, a resigning or terminated Depository Participant must return to CDO all software, equipment and documentation provided by CDO.
- 7.9.7 A former Depository Participant shall continue to be liable to CDO and to all other Depository Participants for all obligations and liabilities incurred by the former Depository Participant under these Rules during the period of its participation in the Depository until the later of:
- (a) 7 years following the date on which a Depository Participant has ceased to be a Depository Participant; and
 - (b) if CDO has instituted proceedings or taken any action against the former Depository Participant during the seven year period, then in relation to the obligation and liabilities that were the subject of such proceedings, the date on which all of CDO's remedies against the former Depository Participant have been exhausted.

7.9.8 Rules 9.3 and 9.7.7 will continue to apply to a former Depository Participant after the time on which the former Depository Participant ceased to be a Depository Participant.

Section 8: Transfer of Legal Title to Securities

8.1 Entitlement to Transfer Legal Title to Securities

- 8.1.1 CDO or a Legal Title Transfer Depository Participant may effect the transfer of legal title to Securities that are Admitted Product by electronic means if the transfer of legal title to Securities is effected in accordance with this Section 8.
- 8.1.2 If, at the time a CIT is effected under these Rules, an Issuer of Securities is not party to a Securities Transfer Services Agreement that contains provisions enforceable by Security holders that require the Issuer of the Securities to reinstate or otherwise compensate a Security holder in respect of the transfer of securities by CIT without the proper authority or the Security holder, then Rules 8.5.5, 8.5.6, 8.5.7, 8.11.1, 8.11.2 and 8.11.3 will apply to a Security holder in respect of that CIT.

8.2 Designation as a Legal Title Transfer Depository Participant

- 8.2.1 CDO may allow a Depository Participant to be a Legal Title Transfer Depository Participant and to access the Legal Title Transfer System.
- 8.2.2 CDO may, either at the time of granting access or any time thereafter, impose any limitation or condition on a Legal Title Transfer Depository Participant's access to the Legal Title Transfer System that CDO considers appropriate.
- 8.2.3 Access to the Legal Title Transfer System will be at the absolute discretion of CDO. CDO may, at its absolute discretion, disconnect a Legal Title Transfer Depository Participant's access to the Legal Title Transfer System in any of the following circumstances:
- (a) if the Legal Title Transfer Depository Participant breaches, or CDO believes the Legal Title Transfer Depository Participant is at risk of breaching or is likely to breach, any of the obligations of a Legal Title Transfer Depository Participant under this Section 8, including any of the limitations or conditions imposed on the Legal Title Transfer Depository Participant under Rule 8.2.2;
 - (b) if CDO believes that the continued access of the Legal Title Transfer Depository Participant to the Legal Title Transfer System will be detrimental, or reasonably likely to be detrimental, to the wellbeing, proper conduct, stability or integrity of the Legal Title Transfer System, the Depository, the Depository System, or any other part of the Settlement System; or

- (c) the rights of a Legal Title Transfer Depository Participant are, or are to be, Suspended under Rule 7.6.1 or terminated under Rule 7.8.1.

8.3 Transfer of Legal Title to Securities

8.3.1 A Legal Title Transfer Depository Participant may transfer legal title to Securities that are Admitted Product by:

- (a) CIT in accordance with Rule 8.5 and Rule 8.6;
- (b) OIT in accordance with Rule 8.7;
- (c) OOT in accordance with Rule 8.8;
- (d) COT in accordance with Rule 8.9.1 and Rule 8.9.2;
- (e) PPT in accordance with Rule 8.10.1.

8.3.2 CDO may transfer legal title to Securities by:

- (a) CIT in accordance with Rule 8.6;
- (b) OIT in accordance with Rule 8.7;
- (c) OOT in accordance with Rule 8.8;
- (d) COT in accordance with Rule 8.9.4;
- (e) PPT in accordance with Rule 8.10.2.

8.3.3 The electronic information available through the Legal Title Transfer System is to be used by the Legal Title Transfer Depository Participant only to effect the transfer of legal title to Securities and not for gathering information generally or for any other purposes not related to the transfer of legal title to Securities. For the avoidance of doubt this Rule 8.3.3 does not prevent access by a Depository Participant or its Personnel to the Legal Title Transfer System to check Security holdings for the purposes of updating in-house client portfolio records.

8.4 Instructions to Transfer Legal Title to Securities

8.4.1 Upon being instructed to transfer Securities by a Person in respect of the sale of those Securities, a Legal Title Transfer Depository Participant may either:

- (a) reserve those Securities using the Stock Reservation process under Rule 8.12, pending a transfer of those Securities to the Legal Title Transfer Depository Participant's Transfer Account by effecting a CIT on or before the Settlement Date for the sale; or
- (b) transfer those Securities to the Legal Title Transfer

Depository Participant's Transfer Account on or before the Settlement Date for the sale, by effecting a CIT in accordance with Rule 8.5.

8.5 Client Inward Transfers

- 8.5.1 A Legal Title Transfer Depository Participant shall only be entitled to effect a CIT if the Legal Title Transfer Depository Participant is not acting in breach of any limitation or conditions imposed by CDO under Rule 8.2.2 in giving effect to the CIT, and:
- (a) the Legal Title Transfer Depository Participant is a Depository Participant and a Trading Participant; or
 - (b) the Legal Title Transfer Depository Participant is a Clearing Participant acting on the instructions of a Trading Participant and is party to a C&S Agreement with that Trading Participant, or
 - (c) the Legal Title Transfer Depository Participant is acting as agent or trustee for the Person in whose account on an Issuers Securities Register the Securities are held, and is:
 - (i) a Registered Bank, a Subsidiary or Holding Company of a Registered Bank, or a Subsidiary of a Holding Company of a Registered Bank; or
 - (ii) a trustee company as defined in section 2(1) of the Trustee Act 1956; or
 - (iii) a Person who has appropriate procedures in place for the protection of assets of its clients and who in CDO's opinion is a fit and proper Person to effect CITs.
- 8.5.2 Before submitting a CIT, a Legal Title Transfer Depository Participant must:
- (a) if the Legal Title Transfer Depository Participant is a Trading Participant, have received from the client any documentation required to instruct and authorise a CIT;
 - (b) if the Legal Title Transfer Depository Participant is a Clearing Participant acting on instructions from a Trading Participant and is party to a C&S Agreement with that Trading Participant, be authorised in writing by that Trading Participant to effect the transfer of legal title to the Securities, and comply with any conditions of that authorisation;
 - (c) if the Legal Title Transfer Depository Participant is acting as agent or trustee of the Person in whose account on an

Issuer's Securities Register the Securities are held, have received from the client any documentation required to instruct and authorise a CIT;

- (d) have received, in a valid and genuine form, all necessary Authorisation Code(s), CSN(s) and any other details necessary for the CIT to be correctly submitted;
- (e) verify the holdings of Securities on the Securities Register of the Issuer and note any special conditions that exist in respect of those holdings; and
- (f) do anything necessary to ensure the validity of the proposed transfer of Securities.

8.5.3 No Legal Title Transfer Depository Participant may transfer Securities of a Trading Participant's client into the Legal Title Transfer Depository Participant's Transfer Account for the purpose of the settlement of a sale of those Securities unless the Trading Participant has confirmed the sale of those Securities.

8.5.4 If documents of any kind are required pursuant to Rule 8.5.3 to support a transfer of Securities, the Legal Title Transfer Depository Participant who gave effect to the transfer of Securities must deliver the documents to the Securities Registry used by the Issuer of those Securities by 12:00pm, or such other time as determined by the operator of the NZX Market from time to time, on the Trading Day following that transfer.

8.5.5 Each Legal Title Transfer Depository Participant who effects a CIT in respect of Securities warrants:

- (a) to the Securities Registry and to the Issuer of those Securities, in respect of those Securities, that the transfer the subject of the CIT is valid and is duly authorised by the registered holder of the Securities being transferred; and
- (b) (if this Rule applies to a Security Holder) to the Security holder from whose Account on the Securities Register the Securities are to be transferred, that the transfer will not occur without the consent of that Security holder.

8.5.6 For the avoidance of doubt, each Legal Title Transfer Depository Participant who effects a CIT indemnifies the Securities Registry, the Issuer and (if this Rule applies to a Security holder) the Security holder from whose Account on the Securities Register the Securities were transferred for any loss suffered due to a breach by the Legal Title Transfer Depository Participant of the warranty provided pursuant to Rule 8.5.5.

8.5.7 The Legal Title Transfer Depository Participant's warranty and indemnity in Rule 8.5.5 and 8.5.6:

- (a) constitutes a promise which confers, and is intended to confer, a benefit on a Securities Registry, an Issuer and (if those Rules apply to a Security holder), a Security holder under Section 4 of the Contracts (Privity) Act 1982; and
- (b) gives rise to a cause of action by a Securities Registry, an Issuer and (if those Rules apply to a Security holder), a Security holder against a Legal Title Transfer Depository Participant, provided that this Rule 8.5.7 shall not affect or prejudice any other right a Legal Title Transfer Depository Participant may have,

however, notwithstanding the foregoing, these Rules and any Procedures may be revoked, deleted or amended in any way and at any time in accordance with these Rules without the consent of any Issuer or Securities Registry or Security holder.

8.5.8 All Securities that are transferred to a Legal Title Transfer Depository Participant's Transfer Account via a CIT are held in the Legal Title Transfer Depository Participant's Transfer Account on trust for the Person from whose account at the Securities Register the Securities were transferred, until the Securities are transferred from that account in accordance with the instructions of that Person or their duly authorised agent.

8.5.9 Each Legal Title Transfer Depository Participant must monitor and maintain an exception report for all completed CITs where the returned registration name and address at the Securities Registry differs from the records held by that Legal Title Transfer Depository Participant.

8.6 Giving effect to a CIT

8.6.1 Subject to Rule 8.5, a Legal Title Transfer Depository Participant may give effect to a transfer of legal title to Securities by CIT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting the account of a Person in the Securities Register by a specified amount of Securities of that Issuer;
- (b) crediting the Transfer Account of the Legal Title Transfer Depository Participant by the specified amount of Securities of that Issuer.

8.6.2 If CDO is acting as agent or trustee of a Person in whose name an account in a Securities Register is held, CDO may give effect to a transfer of legal title to Securities by CIT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting the account of that Person in the Securities

Register by a specified amount of Securities of that Issuer;

- (b) crediting the Transfer Account of Nominee by the specified amount of Securities of that Issuer.

8.7 Giving effect to a OIT

8.7.1 A Legal Title Transfer Depository Participant may give effect to a transfer of Securities by OIT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from an Owned Account of the Legal Title Transfer Depository Participant (or its nominee) a specified amount of Securities of that Issuer; and
- (b) crediting the Transfer Account of the Legal Title Transfer Depository Participant by the specified amount of Securities of that Issuer.

8.7.2 CDO may give effect to a transfer of Securities by OIT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from an Owned Account of Nominee a specified amount of Securities of that Issuer; and
- (b) crediting the Transfer Account of Nominee by the specified amount of Securities of that Issuer.

8.8 Giving effect to a OOT

8.8.1 A Legal Title Transfer Depository Participant may give effect to a transfer of Securities by OOT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from the Transfer Account of the Legal Title Transfer Depository Participant a specified amount of Securities of that Issuer; and
- (b) crediting an Owned Account of the Legal Title Transfer Depository Participant or its nominee by the specified amount of Securities of that Issuer.

8.8.2 CDO may give effect to a transfer of Securities by OOT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from the Transfer Account of Nominee a specified amount of Securities of that Issuer; and

- (b) crediting an Owned Account of Nominee by the specified amount of Securities of that Issuer.

8.9 Giving effect to a COT

8.9.1 A Legal Title Transfer Depository Participant may give effect to a transfer of legal title to Securities by COT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from the Transfer Account of the Legal Title Transfer Depository Participant a specified amount of Securities of that Issuer; and
- (b) crediting the account of another Person on the Issuer's Securities Register by the specified amount of Securities of that Issuer.

8.9.2 Prior to effecting a COT, a Legal Title Transfer Depository Participant must:

- (a) ensure the transferee of Securities has an allocated CSN and has an account on the Issuer's Securities Register. For the avoidance of doubt, a Securities Registry number will not be sufficient to effect transfer of legal title;
- (b) ensure that any documentation required to authorise a COT is obtained.

8.9.3 If documents of any kind are required pursuant to Rule 8.9.2, a Legal Title Transfer Depository Participant who gave effect to the transfer of Securities must deliver the documents to the Securities Registry by 12:00pm, or such other time as determined by the operator of the NZX Market from time to time, on the Trading Day following the transfer.

8.9.4 CDO may give effect to a transfer of legal title to Securities by COT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting from the Transfer Account of Nominee a specified amount of Securities of that Issuer; and
- (b) crediting the account of another Person on the Issuer's Securities Register by the specified amount of Securities of that Issuer.

8.10 Giving effect to a PPT

8.10.1 A Legal Title Transfer Depository Participant may give effect to a transfer of legal title to Securities by PPT by sending through the Legal Title Transfer System an electronic message into the

computer system controlling the Issuer's Securities Register:

- (a) debiting the Transfer Account of the Legal Title Transfer Depository Participant in the Securities Register by a specified amount of Securities of that Issuer;
- (b) crediting the Transfer Account of another Legal Title Transfer Depository Participant or Nominee (as applicable) by the specified amount of Securities of that Issuer.

8.10.2 CDO may give effect to a transfer of legal title to Securities by PPT by sending through the Legal Title Transfer System an electronic message into the computer system controlling the Issuer's Securities Register:

- (a) debiting the Transfer Account of Nominee in the Securities Register by a specified amount of Securities of that Issuer;
- (b) crediting the Transfer Account of a Legal Title Transfer Depository Participant by the specified amount of Securities of that Issuer.

8.11 CDO's Indemnities

8.11.1 If CDO effects a CIT in respect of Securities, CDO warrants:

- (a) to the Securities Registry and to the Issuer of those Securities, in respect of those Securities, that the transfer the subject of the CIT is valid and is duly authorised by the registered holder of the Securities being transferred; and
- (b) (if this Rule applies to a Security Holder) to the Security holder from whose Account on the Securities Register the Securities are to be transferred, that the transfer will not occur without the consent of that Security holder.

8.11.2 For the avoidance of doubt, CDO indemnifies the Securities Registry, the Issuer and (if this Rule applies to a Security holder) the Security holder from whose Account on the Securities Register the Securities were transferred for any loss suffered due to a breach by CDO of the warranty provided pursuant to Rule 8.11.1.

8.11.3 CDO's warranty and indemnity in Rule 8.11.1 and 8.11.2:

- (a) constitutes a promise which confers, and is intended to confer, a benefit on a Securities Registry, an Issuer and (if those Rules apply to a Security holder), a Security holder under Section 4 of the Contracts (Privity) Act 1982; and
- (b) gives rise to a cause of action by a Securities Registry, an Issuer and (if those Rules apply to a Security holder), a Security holder against CDO, provided that this Rule

8.11.3 shall not affect or prejudice any other right CDO may have,

however, notwithstanding the foregoing, these Rules and any Procedures may be revoked, deleted or amended in any way and at any time in accordance with these Rules without the consent of any Issuer or Securities Registry or Security holder.

8.12 Stock Reservation Process

8.12.1 Before submitting a Stock Reservation instruction, a Legal Title Transfer Depository Participant must:

- (a) if the Legal Title Transfer Depository Participant is a Trading Participant, have received from the client any documentation required to instruct and authorise a Stock Reservation;
- (b) if the Legal Title Transfer Depository Participant is a Clearing Participant acting on the instructions of a Trading Participant and is party to a C&S Agreement with that Trading Participant, be authorised in writing by that Trading Participant to effect a Stock Reservation on the instruction of the Trading Participant, and comply with any conditions of that authorisation;
- (c) have received, in a valid and genuine form, all necessary Authorisation Code(s), CSN(s) and any other details necessary for the Stock Reservation instruction to be correctly submitted;
- (d) verify that Person's holdings of Securities on the Securities Register of the Issuer and note any special conditions that exist against that Person's holdings; and
- (e) do anything necessary to ensure the validity of the proposed Stock Reservation instruction.

8.12.2 Each Legal Title Transfer Depository Participant who forwards a Stock Reservation instruction to an Issuer's Securities Registry warrants to that Issuer that the transfer the subject of the Stock Reservation instruction is valid and is duly authorised by the registered holder of the Securities being transferred.

8.12.3 For the avoidance of doubt, each Legal Title Transfer Depository Participant who forwards a Stock Reservation instruction to a Securities Registry indemnifies the Issuer for any loss suffered due to a breach by the Legal Title Transfer Depository Participant of the warranty provided pursuant to Rule 8.12.2.

8.13 Obligations of Legal Title Transfer Depository Participants, Nominee and CDO

8.13.1 Each Legal Title Transfer Depository Participant shall maintain a Transfer Account and at least one Owned Account in its name or in the name of its nominee on the Securities Register of each Issuer in respect of which the Legal Title Transfer Depository Participant gives effect to legal title transfer of Securities under these Rules.

8.13.2 A Legal Title Transfer Depository Participant shall be responsible for:

- (a) the authorisation and validity of all transfers of legal title to Securities executed by it through the Legal Title Transfer System;
- (b) ensuring that all documents required in support of a transfer executed by it are:
 - (i) valid; and
 - (ii) retained by that Legal Title Transfer Depository Participant or delivered to the relevant Securities Registry by 12:00pm, or such other time as the operator of the relevant NZX Market may from time to time notify, on the Trading Day following the transfer.

8.13.3 Each Legal Title Transfer Depository Participant is responsible for ensuring that Securities transferred by it are free from all liabilities due or payable at the time of transfer.

8.13.4 Subject to Rule 8.13.5 any record of a Person's Authorisation Code held by a Legal Title Transfer Depository Participant may be stored by a Legal Title Transfer Depository Participant on the condition that:

- (a) the Legal Title Transfer Depository Participant enters into a written agreement with the Person outlining the storage and use of that Person's Authorisation Code;
- (b) if the Legal Title Transfer Depository Participant has received that Person's Authorisation Code from a Trading Participant, the Legal Title Transfer Depository Participant has entered into a written agreement with the Trading Participant outlining the storage and use of that Person's Authorisation Code; and
- (c) any stored Authorisation Code is encrypted.

Any such agreement entered into by a Legal Title Transfer Depository Participant and a Person for the purpose of this Rule must include an undertaking from the Legal Title Transfer Depository Participant that that Legal Title Transfer Depository Participant will at all times protect that Person's Authorisation Code from unauthorised use and/or access. Any record of a

Person's Authorisation Code held by that Legal Title Transfer Depository Participant which is not the subject of an agreement under this Rule or is not encrypted must be disposed of by Legal Title Transfer Depository Participant upon the completion of the Person's transaction.

- 8.13.5 Any record of a Person's Authorisation Code held by a Legal Title Transfer Depository Participant but not subject to an agreement pursuant to Rule 8.13.4 must be disposed of, which may be done by deleting the Authorisation Code from the document on which it is recorded such that the Authorisation Code is not legible, upon the completion of that Person's transaction (which shall be when that Person's Securities have been successfully transferred out of the name of that Person and that Person has been paid the money arising from the transfer of that Person's Securities). If a Person's Authorisation Code cannot be destroyed, a Legal Title Transfer Depository Participant must establish appropriate internal procedures to prevent the unauthorised access or use of that Person's Authorisation Code.
- 8.13.6 Each Legal Title Transfer Depository Participant is responsible for ensuring that only authorised Persons have access to a Person's Authorisation Code until completion of the transfer.
- 8.13.7 For the avoidance of doubt, each Legal Title Transfer Depository Participant must ensure that its systems do not automatically populate a Person's Authorisation Code as a result of that Legal Title Transfer Depository Participant facilitating a transfer of Securities on behalf of that Person on a previous occasion, other than in accordance with Rule 8.13.4(b).
- 8.13.8 Each Legal Title Transfer Depository Participant must be able to provide immediately upon request by CDO, CHO or any Person with whom CHO or CDO has a Reciprocal Arrangement, details of all transfers of Securities effected by that Legal Title Transfer Depository Participant. The details must, as a minimum, include:
- (a) the quantity and type of Security that the Legal Title Transfer Depository Participant is delivering and settling on behalf of the Person;
 - (b) the date when the instructions were received by that Legal Title Transfer Depository Participant for delivery and settlement;
 - (c) the name of the Person who the Securities will be transferred to or from;
 - (d) copies of relevant client details, for the buying and/or selling client (if applicable) including, but not limited to:

- (i) registered name and address; and
- (ii) CSN;
- (e) the date when delivery and settlement of the Securities was completed.

8.13.9 The requirements for the retention and storage of a Person's Authorisation Codes in Rules 8.13.4, 8.13.5 and 8.13.6 may be satisfied by a Person or by a Client Advising Participant entering into a written agreement with a Legal Title Transfer Depository Participant that provides for:

- (a) the Client Advising Participant to provide that Person's Authorisation Code to the Client Advising Participant's Trading Participant or for that Person's Authorisation Code to be provided to the Legal Title Transfer Depository Participant;
- (b) the Client Advising Participant and Legal Title Transfer Depository Participant to retain that Person's Authorisation Code on the condition that the Person's Authorisation Code is encrypted; and
- (c) the Person's Authorisation Code at all times to be protected by the Client Advising Participant and Legal Title Transfer Depository Participant (as applicable), from unauthorised use and or access.

8.13.10 This Rule 8.13 (other than Rule 8.13.1) applies to CDO as if CDO were a Legal Title Transfer Depository Participant. CDO shall maintain a Transfer Account in Nominee's name and at least one Owned Account in the name of Nominee on the Securities Register of each Issuer in respect of which CDO gives effect to legal title transfer of Securities under these Rules.

8.14 Systems and Controls

8.14.1 Each Legal Title Transfer Depository Participant must establish internal controls to prevent unauthorised access to the Legal Title Transfer System.

8.14.2 To ensure compliance with Rule 8.14.1, a Legal Title Transfer Depository Participant must ensure that all of its authorised users of the Legal Title Transfer System have individual passwords to enable them to access the Legal Title Transfer Depository Participant's connection to the Legal Title Transfer System. Each Legal Title Transfer Depository Participant is responsible for ensuring that any unauthorised parties do not access an authorised user's password.

Section 9: Miscellaneous

9.1 Liability of Affected Persons

- 9.1.1 The liability of each Affected Person (including under these Rules and the C&S Rules) to any Person for any breach, act or omission whatsoever is limited to Losses resulting from fraud that is directly attributable to that Affected Person or Losses resulting from fraud that is indirectly attributable to that Affected Person through general principles of law (such as vicarious liability or agency), provided that, notwithstanding any fraud, no Affected Person will be liable for any indirect or consequential damages, nor any loss of profits, goodwill, reputation or opportunity, whether direct or indirect, even when notified of the possibility of such damages, and further provided that each Affected Person's liability is subject to Rule 9.1.6. For the avoidance of doubt, nothing in this Rule 9.1.1 limits any obligation of CHO to pay compensation to any Clearing Participant or Lending Clearing Participant in accordance with Rule 4.4 of the C&S Rules.
- 9.1.2 The total aggregate limit of an Affected Person's liability in respect of or arising out of any one event for which that Affected Person is liable under Rule 9.1.1 shall be as follows:
- (a) in the case of Losses resulting from fraud that is directly attributable to an Affected Person, that Affected Person's liability shall not be subject to a monetary cap. For the purposes of this Rule 9.1.2(a), all inter-related events which give rise to liability for that Affected Person will be treated as one event; and
 - (b) in the case of Losses resulting from fraud that is indirectly attributable to an Affected Person through general principles of law (such as vicarious liability or agency), the total aggregate liability of that Affected Person and all other Affected Persons for those Losses shall not exceed NZ\$5 million. For the purpose of this Rule 9.1.2(b):
 - (i) all inter-related events which give rise to liability for an Affected Person will be treated as one event. If any two or more Depository Participants suffer Losses resulting from fraud that is indirectly attributable to an Affected Person through general principles of law (such as vicarious liability or agency) and which exceed the total aggregate limit of NZ\$5 million, the liability of that Affected Person to each of those Depository Participants shall be proportional to the total of those Losses suffered by each of those Depository Participants respectively up

to the total of NZ\$5 million; and

- (ii) all claims against any two or more Affected Persons which arise out of the same event or inter-related events shall be aggregated for the purpose of determining whether the NZ\$5 million limit in this Rule 9.1.2(b) has been reached, to the intent that the aggregate liability of all Affected Persons in respect of that event or those inter-related events shall not exceed that NZ\$5 million limit and, to the extent that the aggregate liability of all Affected Persons would (but for this Rule 9.1.2(b)) otherwise exceed the NZ\$5 million limit, each Affected Person shall be severally liable for its proportional share of that NZ\$5 million aggregate liability (such proportion to be calculated by reference to what would otherwise be the liability of that Affected Person as a proportion of what would otherwise be the total liability of all Affected Persons).

9.1.3 Except as expressly set out in Rule 9.1.1, no Affected Person will have any obligation or liability to any Person, whether a claim is made in contract, tort (including negligence), equity or otherwise, and whether under statute, warranty, indemnity, or any other obligation to pay, including without limitation in the event of:

- (a) any Losses (including direct, indirect or consequential loss or damage) which may be suffered or incurred or which may directly or indirectly arise out of or in connection with that or any other Affected Person's activities;
- (b) a Depository Participant's inability to use the Depository System, any other CDO system, the Clearing House System or any other CHO System;
- (c) a failure, error or omission on the part of that or any other Affected Person including any loss or damage in respect of:
 - (i) the result of the settlement of any transfer of property on the Depository;
 - (ii) the result of clearing and settling on the Clearing House;
 - (iii) any inoperability or malfunction of equipment, software or any other product supplied to a Depository Participant, or in respect of its installation, maintenance or removal; or
 - (iv) the exercise by that or any other Affected Person of a

decision making power;

- (d) CDO accepting a Depository Participant's resignation, or CDO's decision to Suspend or terminate a Depository Participant's participation in the Depository or to declare a Depository Participant to be a Defaulting Depository Participant;
- (e) CHO accepting a Depository Participant's resignation or CHO's decision to suspend or terminate a Depository Participant's participation in the Clearing House or to declare a Depository Participant to be a Defaulting Clearing Participant or CHO's exercise of any power in respect of a Non-Performing Clearing Participant.

9.1.4 If for any reason any Affected Person is liable to any one or more Persons under or in connection with these Rules, all Affected Persons' total aggregate liability in respect of all those Persons together, and all Affected Persons' breaches, acts and omissions combined, will not in any circumstances exceed an aggregate total of \$100 (or if this amount is not enforceable at law, then the minimum amount that is enforceable at law), provided that this limitation will not apply to liability permitted under Rule 9.1.1.

9.1.5 An Affected Person may require a Depository Participant to pay that Affected Person's reasonable cost of producing (pursuant to court order, regulatory request, or other legal process) records relating to the business or affairs of that Depository Participant, or any Director, Personnel or agent or other Person acting on behalf of the Depository Participant. This applies regardless of who requires the production.

9.1.6 An Affected Person will not be required to make payment pursuant to Rule 9.1.1 unless the Depository Participant has provided written details of the claim to that Affected Person no later than 18 calendar months following the date on which the Depository Participant became or should reasonably become aware of the specific act, fact, circumstance or event which gave rise to the claim.

9.1.7 The limitations and exclusions in this Rule 9.1 are cumulative and independent, and will apply whether a claim is made in contract, tort (including negligence), equity or otherwise, and whether under statute, warranty, indemnity, or any other obligation to pay.

9.2 Limitation on Action

9.2.1 No Depository Participant will be entitled to take (and to the maximum extent permitted by law each Depository Participant waives and abandons its right to take) any legal proceedings, arbitration or other proceedings (including in relation to

negligence) against any Affected Person seeking to impose any liability on any Affected Person for the alleged failure on that or any other Affected Person's part to prevent or require action by a Depository Participant or any of its Directors, Personnel or agents or any other Person acting on behalf of the Depository Participant, other than legal proceedings relating to fraud.

9.3 Indemnity

9.3.1 A Depository Participant will not be required to indemnify an Affected Person under this Rule 9.3 against Losses incurred by that Affected Person arising out of or in connection with the fraud, wilful default or gross negligence of that Affected Person, but only to the extent that such fraud, wilful default or gross negligence of that Affected Person contributed directly to the Losses.

9.3.2 Subject only to Rule 9.3.1, each Depository Participant undertakes and agrees to indemnify each Affected Person against all Losses incurred or suffered by that Affected Person where such Losses arose out of or in connection with:

- (a) any breach by that Depository Participant of its obligations under the Rules; or
- (b) any wilful, unlawful, reckless or negligent act or omission by that Depository Participant; or
- (c) any action taken by CDO on behalf of, and at the request of, a Depository Participant under Rule 6.9.3.

9.3.3 Without limitation to Rule 9.3.2 above, if any legal proceedings, arbitration or other proceedings are brought to impose any liability on any Affected Person for the alleged failure on that or any other Affected Person's part to prevent or require action by a Depository Participant (the "**Affected Depository Participant**") or any of the Affected Depository Participant's Directors, Personnel or agents, or other Person acting on behalf of the Affected Depository Participant, such Affected Depository Participant hereby undertakes to indemnify each Affected Person against:

- (a) all expenses and reasonable legal fees reasonably incurred by that Affected Person arising from or in connection with the proceedings;
- (b) any payment made by that Affected Person arising from or in connection with settlement of the proceedings; and
- (c) any payment made by that Affected Person as a result of any order or award made in the proceedings.

9.4 Exclusion of Warranties

9.4.1 Except as provided in Rule 8.11, no Affected Person makes any representation nor gives any warranty to any Depository Participant or any other Person:

- (a) in respect of the genuineness, regularity, completeness, validity, quality or title of, or entitlement to, any Admitted Product;
- (b) that it has checked or will check for irregularities or defects in, or has ascertained or will ascertain the validity, completeness or title of, any proprietary or equitable interest in any Admitted Product; or
- (c) that it has reviewed or checked the accuracy or completeness of any document forwarded to a Depository Participant.

9.5 Definition of Affected Person

9.5.1 For the purposes of Rules 9.1, 9.2, 9.3 and 9.4, an “**Affected Person**” means each of CDO, Nominee, CHO, NZCDC, a Director, Personnel or agent of CDO, Nominee, CHO or NZCDC and any other person acting on behalf of CDO (including NZX) and “**Affected Persons**” means any two or more of those Persons.

9.5.2 The provisions of Rules 9.1, 9.2, 9.3, 9.4 and this Rule 9.5 are for the benefit of each Affected Person and are intended to be enforceable by each Affected Person.

9.6 Notices

9.6.1 In these Rules and the Procedures, a reference to notifying a Person or giving a Person notice includes a reference to:

- (a) giving notice of those matters to the Person; or
- (b) transmitting a message containing those matters to the Person.

9.6.2 For the purposes of the Rules and Procedures, a message that is transmitted by CDO or a Depository Participant will be deemed to be received when the message is made available for collection in the Depository facility for passing messages between CDO and Depository Participants.

9.6.3 If any Rule or Procedure requires or permits giving of notice of matters to a Person, the Rule or Procedure requires or permits the giving to that Person of a written document containing those matters.

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

Procedure 8.1.

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.

9.6.5 If under these Rules CDO is to give any notice to some or all Depository Participants, accidental omission by CDO to give notice to one or more Depository Participants does not affect the validity and enforceability of any resolution, decision, proceeding or act in connection with which the notice was to have been given.

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.

Procedure 8.2

9.6.7 A Depository Participant must acquire and maintain an operating e-mail system for the purposes of receiving notices under Rule 9.6.4.

9.7 General Provisions

9.7.1 **Transfer by a Depository Participant:** A Depository Participant may not transfer, assign or otherwise dispose of any of its rights, entitlements or obligations arising under these Rules.

9.7.2 **Governing Law:** These Rules, and any other agreements entered into, or deemed to have been entered into, under or for the purpose of these Rules, will be governed and construed in accordance with the laws of New Zealand and each Depository Participant irrevocably submits to the exclusive jurisdiction of the courts of New Zealand. Each Depository Participant irrevocably waives:

- (a) any objection arising at any time to the undertaking of proceedings in New Zealand;
- (b) any claim that such proceedings have been brought in an inconvenient forum; and
- (c) the right to object to such proceedings on the grounds that the courts of New Zealand do not have jurisdiction over it.

9.7.3 **Interim Injunctions:** Notwithstanding Rule 9.7.2, CDO and the Nominee (but not a Depository Participant) shall be entitled to apply to a court in a jurisdiction other than New Zealand for

provisional or interim relief measures, whether or not such relief is sought before the initiation of any proceedings in New Zealand.

- 9.7.4 **Language:** Every document required to be provided to CDO must be in the English language or, if not in English, and if so required by CDO, be accompanied by a certified English translation and, in such case, the English translation will prevail unless the document is a constitutional, statutory or other official document.
- 9.7.5 **Waiver:** No indulgence or concession granted by CDO (except as expressly granted by CDO pursuant to Rule 6.6), and no omission or delay in exercising any rights or powers or privileges of CDO under these Rules, will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 9.7.6 **Voice Recording:** CDO may record telephone conversations without the use of warning tones. The records will be sole property of CDO and may be introduced as evidence in any court, regulatory, disciplinary or other proceedings of the matters discussed.
- 9.7.7 **Confidentiality:** Unless otherwise provided under these Rules or in any other agreement between CDO and the Depository Participant, CDO and Nominee must treat all information and documents received by either of them in respect of a Depository Participant or relating to that Depository Participant under or in connection with these Rules ("**Confidential Information**") as confidential. CDO and Nominee will however be entitled to disclose Confidential Information in all or any of the following circumstances:
- (a) to any Affected Person and their Related Persons and advisors;
 - (b) to CHO if CHO has requested the information or where such disclosure is made to enable CHO to perform its functions or to exercise its powers under the C&S Rules and these Rules;
 - (c) if such disclosure is requested by the NZ Markets Disciplinary Tribunal or by any Person with whom CDO or CHO has a Reciprocal Arrangement;
 - (d) for the purpose of enabling CDO, Nominee, CHO, an operator of an NZX Market or the NZ Markets Disciplinary Tribunal to institute, carry on, hear or defence any proceedings, including any court proceedings;
 - (e) as required by law or as required or requested by NZX or

an operator of an NZX Market under these Rules including for the purpose of ensuring compliance with any rule (including a listing or market conduct rule) of such Market, or as in accordance with a Reciprocal Arrangement;

- (f) for the purpose of enabling CDO, CHO, or Nominee to discharge its functions and obligations under these Rules, having regard to the Risk Management Purposes;
- (g) for the purpose of enabling CDO or any other Person approved by CDO to publish or distribute aggregated information and reports (including as part of a commercial exercise) in relation to the Depository to Depository Participants and other Persons;
- (h) in relation to enforcement of a Depository Participant's obligations under these Rules;
- (i) with the consent of the Depository Participant; or
- (j) where the Confidential Information is already in the public domain or becomes public, other than as a result of breach by CDO or the Nominee of this Rule.

9.7.8 **Invalidity:** The invalidity, illegality and unenforceability in whole or in part of any of the provisions of these Rules in respect of any Depository Participant will not affect the validity, legality and enforceability of those Rules in respect of any other Depository Participant or the validity, legality and enforceability of the remaining part or provisions of these Rules.

9.7.9 **No Set-off:** All payments to be made by a Depository Participant to either CDO or Nominee for its own account (including any fees, levies and charges imposed by CDO) under or in respect of these Rules or the Procedures shall be made without (and free and clear of any deduction for) set-off or counterclaim.

9.7.10 **Intellectual Property:** Subject to payment of fees and levies and charges in accordance with these Rules, CDO grants (and is authorised to grant) to each Depository Participant a non-exclusive, non-transferable licence to use and communicate with the Depository System to the extent, and in the manner, required or permitted by these Rules and the Procedures.

9.7.11 CDO reserves (and is authorised to reserve) all Intellectual Property rights that CDO, CHO or NZX have or may have in relation to the Settlement System and the information passing into or out of, or held within, the Settlement System (including any right CDO, CHO or NZX may have to the confidentiality of that information). No Depository Participant will obtain any ownership, copyright or other Intellectual Property in any information, agreement or document provided by CDO or CHO

or in any aspect of the Settlement System.

9.7.12 No Depository Participant may:

- (a) copy, alter, or modify or attempt to copy, alter or modify all or any part of the Settlement System;
- (b) attempt to recreate, reverse engineer or in any other way derive the source code or object code for all or any part of the Settlement System;
- (c) use or communicate with the Settlement System otherwise than as required or permitted by these Rules; or
- (d) allow a Person that is not a Director, Personnel, agent or other Person acting on behalf of, the Depository Participant and authorised by the Depository Participant for that purpose to access the Settlement System.

9.7.13 **Validity of Action:** An action or inaction by CDO or the Nominee under the Rules or any Procedure may not be challenged on the ground that a Rule, Procedure, direction, decision, resolution or requirement of CDO or Nominee or any agreement made by CDO or Nominee is ultra vires or otherwise invalid.

9.7.14 **Notices or Time:** A decision, resolution, proceeding or act of CDO or the Nominee under these Rules is not invalidated by defect, irregularity or deficiency of Notice or time unless:

- (a) A Depository Participant concerned by the defect, irregularity or deficiency, requests within 5 Business Days of the date that the Depository Participant knew or should reasonably have known of the defect, irregularity or deficiency, that CDO to resolve that the decision, resolution, proceeding or act is invalid;
- (b) CDO believes that the defect, irregularity or deficiency has caused or may cause substantial injustice which cannot reasonably be avoided; and
- (c) CDO accordingly resolves that the decision, resolution, proceeding or act is invalid.

9.7.15 **Conclusive Evidence:** Any written advice, statement or report by CDO which relates to the Depository will in the absence of manifest error, be final and conclusive unless disputed by the recipient within 5 Business Days of its dispatch by CDO. Except as otherwise agreed by CDO, the failure of a Depository Participant to inform CDO of any error or omission in any written advice, statement or report promptly within 5 Business Days of its dispatch by CDO will constitute a waiver in favour of CDO by such Depository Participant of any right to require rectification of

that written advice, statement or report.

9.7.16 Service of process:

- (a) Without prejudice to any other mode of service allowed under any relevant law, a Depository Participant (other than a Depository Participant incorporated or resident in New Zealand), shall, if so required by CDO, promptly (and in any event within 5 Business Days of Notice of such requirement), irrevocably appoint an agent for service of process in relation to any proceedings before the New Zealand courts in connection with these Rules and agrees that failure by an agent for service of process to notify that Depository Participant of the process will not invalidate the proceedings concerned. If such Depository Participant fails to appoint an agent under this Rule, CDO may appoint another agent for this purpose.
- (b) If any Person appointed as agent for service of process is unable for any reason to act as agent for service of process, that Depository Participant shall promptly (and in any event within 10 Business Days of such event taking place) appoint another agent on terms acceptable to CDO. Failing this, CDO may appoint another agent for this purpose.

9.7.17 Reciprocal Arrangement: CDO shall use reasonable endeavours to enter into, and maintain, a Reciprocal Arrangement with each of NZX and CHO.

Appendix

Legal Title Transfer System Description

Definitions

In this Appendix, the following terms bear the following meanings:

C&S Agreement means a C&S Agreement within the meaning of the C&S Rules;

CSN means common shareholder number used to identify a Registry Account or Registry Accounts of a Person (other than a Legal Title Transfer Depository Participant or Nominee);

FIN or **Authorisation Code** in relation to a Registry Account holder and a Registry Account, means the Registry Account holder's confidential personal identification number;

Issuer means an Issuer that is party to a Securities transfer Services Agreement;

Network means the network used to:

- (a) access the Legal Title Transfer System via secured means, including via any of:
 - (i) the SWIFT network;
 - (ii) the private closed network used to access the Depository System accessed by a Legal Title Transfer Depository Participant via a dedicated network circuit; or
 - (iii) a virtual private network between the pre-prescribed hardware used to operate the firewall for the Legal Title Transfer System and the pre-prescribed hardware used to operate the firewall for a Legal Title Transfer Depository Participant's system; or
 - (iv) the internet, using a two-part authentication device; and
- (b) send messages, via a closed network to and from the Legal Title Transfer System and any Registry System; or

in each case, by other secure means approved by CDO from time to time;

Owned Account means:

- (a) an account on an Issuer's Securities Register in a Legal Title Transfer Depository Participant's name or in the name of its nominee for the purposes of recording Securities held by that Legal Title Transfer Depository Participant or its nominee;
- (b) an account on an Issuer's Securities Register in Nominee's name for the purposes of recording Securities held by Nominee;

Registered Bank means a bank registered under the RBNZ Act;

Registry Account means an account on an Issuer's register in a Person's name (other than a Legal Title Transfer Depository Participant the nominee of a Legal Title Transfer Depository Participant, CDO or Nominee) for the purposes of recording Securities held in that Person's name;

Registry System means the system used to operate an Issuer's Securities Register;

Security Code means the unique identifier allocated to a particular class of security for the purposes of the Legal Title Transfer System;

Transfer Account means an account on an Issuer's Securities Register:

- (a) in a Legal Title Transfer Depository Participant's name that records Securities held in that Legal Title Transfer Depository Participant's name on behalf of another Person or on its own account for transfer through the Legal Title Transfer System; and
- (b) in Nominee's name that records Securities held by Nominee on behalf of CDO or another Person for transfer through the Legal Title Transfer System;

Legal Title Transfer System Description

The Legal Title Transfer System is the system within the Depository System for the electronic transfer of legal title to Securities on Issuers' Securities Registers. The essential features of the Legal Title Transfer System are:

- (a) an individual may only electronically access the Depository System by first logging onto the Network as an individual authorised by a Legal Title Transfer Depository Participant or CDO using his or her personal logon details;

- (b) CDO allocates a unique identifier to record the point of and means of access of every instance of access to the Legal Title Transfer System by any individual on behalf of a Legal Title Transfer Depository Participant or CDO (including by verifying the relevant IP addresses previously allocated to Legal Title Transfer Depository Participants or by CDO for the purpose of accessing the Legal Title Transfer System);
- (c) an individual's permissions in the Legal Title Transfer System are restricted:
 - (i) in the case of an individual who accesses the Legal Title Transfer System on behalf of a Legal Title Transfer Depository Participant, to access permitted to that Legal Title Transfer Depository Participant;
 - (ii) in the case of an individual who accesses the Legal Title Transfer System on behalf of CDO to access permitted to CDO;

Electronic entry of transaction instructions by a Legal Title Transfer Depository Participant

- (d) in relation to a transfer by a Legal Title Transfer Depository Participant of Securities from a Registry Account or an Owned Account of that Legal Title Transfer Depository Participant or its nominee to that Legal Title Transfer Depository Participant's Transfer Account, the Legal Title Transfer Depository Participant enters the following information electronically into the Legal Title Transfer System:
 - (i) the Legal Title Transfer Depository Participant's Owned Account number or the name, CSN and Authorisation Code of the Registry Account holder whose Securities are being transferred;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;
- (e) in relation to a transfer by a Legal Title Transfer Depository Participant of Securities from that Legal Title Transfer Depository Participant's Transfer Account to a Registry Account or to an Owned Account of that Legal Title Transfer Depository Participant or that Legal Title Transfer Depository Participant's nominee, the Legal Title Transfer Depository Participant enters the following information electronically into the Legal Title Transfer System:

- (i) the Owned Account number of the Legal Title Transfer Depository Participant or in the case of a transfer to the Owned Account of that Legal Title Transfer Depository Participant's nominee, the Owned Account number of that nominee, or the name and CSN of the Registry Account holder into whose name Securities are being transferred;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;
- (f) in relation to the transfer by a Legal Title Transfer Depository Participant of Securities from that Legal Title Transfer Depository Participant's Transfer Account to the Transfer Account of another Legal Title Transfer Depository Participant or to Nominee's Transfer Account:
- (i) the name of the Legal Title Transfer Depository Participant to whom the Securities are being transferred, or, if the Securities are being transferred to Nominee, Nominee's name;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;
- (g) if the information entered by the Legal Title Transfer Depository Participant is validated by the Legal Title Transfer System, it is formatted into a message, assigned a unique transaction identifier, and sent via the Network to the Issuer's Registry System;

Electronic entry of transaction instructions by CDO

- (h) in relation to a transfer of Securities from a Registry Account or an Owned Account of Nominee to Nominee's Transfer Account, CDO enters the following information electronically into the Legal Title Transfer System:
- (i) Nominee's Owned Account number or the name, CSN and Authorisation Code of the Registry Account holder whose Securities are being transferred;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;

- (i) in relation to a transfer of Securities from Nominee's Transfer Account to a Registry Account or to an Owned Account of Nominee, CDO enters the following information electronically into the Legal Title Transfer System:
 - (i) Nominee's Owned Account number or the name and CSN of the Registry Account holder into whose name Securities are being transferred;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;
- (j) in relation to the transfer of Securities from Nominee's Transfer Account to the Transfer Account of a Legal Title Transfer Depository Participant:
 - (i) the name of the Legal Title Transfer Depository Participant to whom the Securities are being transferred;
 - (ii) the Security Code for the Securities being transferred;
 - (iii) the number of Securities being transferred;
- (k) if the information entered by CDO is validated by the Legal Title Transfer System, it is formatted into a message, assigned a unique transaction identifier, and sent via the Network to the Issuer's Registry System;

The electronic transfer of Securities on register

- (l) If the information in a message is validated and acted on in the Registry System:
 - (i) in the case of an instruction to transfer Securities from a Registry Account to a Transfer Account, the name of the holder of the Registry Account is removed as the holder of the Securities; the Securities are transferred to the Transfer Account; the name of the holder of the Transfer Account is entered as the registered holder of the Securities and the Registry System sends a message via the Network confirming the transfer of Securities;

- (ii) in the case of an instruction to transfer Securities from an Owned Account to a Transfer Account, the Securities are transferred from the Owned Account into the Transfer Account; and, if the Owned Account is in the name of Nominee or a nominee of a Legal Title Transfer Depository Participant, the name of the holder of the Owned Account is removed as the holder of the Securities and the name of the holder of the Transfer Account is entered as the registered holder of the Securities and the Registry System sends a message via the Network confirming the transfer of Securities;
- (iii) in the case of an instruction to transfer Securities from a Transfer Account to an Owned Account, the Securities are transferred from the Transfer Account to the Owned Account and, if the Owned Account is in the name of Nominee or a nominee of a Legal Title Transfer Depository Participant, the name of the holder of the Transfer Account is removed as the holder of the Securities and the name of the holder of the Owned Account is entered as the registered holder of the Securities and the Registry System sends a message via the Network confirming the transfer of Securities;
- (iv) in the case of an instruction to transfer Securities from a Transfer Account to a Registry Account, the name of the holder of the Transfer Account is removed as the holder of the Securities; the Securities are transferred to the Registry Account; the name of the holder of the Registry Account is entered as the registered holder of the Securities and the Registry System sends a message via the Network, confirming the transfer of Securities;
- (v) in the case of an instruction to transfer Securities from a Transfer Account to a Transfer Account the name of the holder of the Transfer Account from which the Securities are transferred is removed as the holder of the Securities; the Securities are transferred to the other Transfer Account; the name of the holder of the other Transfer Account is entered as the registered holder of the Securities and the Registry System sends a message via the Network, confirming the Transfer of Securities;
- (m) if the information in the message is validated can be acted on, but cannot be acted on immediately, the Registry System sends a message via the Network advising that the transfer is held pending further action; or

- (n) if the information in the message is not validated or cannot be acted on, the Registry System sends a message via the Network advising failure;

Essential provisions in the Rules relating to electronic transfers and essential features of the Legal Title Transfer System

- (o) the essential Rules relating to the Legal Title Transfer System are Rule 3.5.6 (relating to Nominee being custodian trustee in accordance with section 50 of the Trustee Act 1956); Rules 8.1.2, 8.5.5, 8.5.6, 8.5.7, 8.11.1, 8.11.2 and 8.11.3 (relating to indemnities and responsibility for wrongful transfer); Rule 8.2.3 (relating to access to the Legal Title Transfer System); Rule 8.5.1 (relating to who (other than CDO may perform CITs, i.e., deal with Securities of other Persons) and Rule 8.6.2 (relating to CDO performing CITs, i.e., dealing with Securities of other Persons).