

NZX Limited

NZ Markets Disciplinary Tribunal Rules

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**APPENDIX 1 - SPECIAL DIVISION OF NZ MARKET DISCIPLINARY
MARKET DISCIPLINARY TRIBUNAL**

NZ Markets Disciplinary Tribunal Rules

Section 1: Function of NZ Markets Disciplinary Tribunal

- 1.1 **Principal function of the NZ Markets Disciplinary Tribunal:** The principal function of NZ Market Disciplinary Tribunal is to hear and determine (including penalties (if any) under **NZ Market Disciplinary Tribunal Rule 11**), without bias and after giving the parties fair consideration, any matter involving:
- (a) a Market Participant (excluding any FASTER Participant) referred to it under the NZX Participant Rules; and
 - (b) an Issuer referred to it by NZX under the Listing Rules; and
 - (c) a Futures and Options Participant referred to it by NZX under the Futures and Options Rules; and
 - (d) any further person referred to it by NZX under any rules and regulations of NZX from time to time; and
 - (e) a Referral in accordance with **NZ Market Disciplinary Tribunal Rule 4.12**; and
 - (f) the review of a decision of NZ Market Disciplinary Tribunal from a Summary Hearing in accordance with **NZ Market Disciplinary Tribunal Rule 7**; and
 - (g) any right, power or discretion of NZX delegated by NZX to the NZ Markets Disciplinary Tribunal in accordance with **NZ Markets Disciplinary Tribunal Rule 4.10** other than those matters set out in NZ Markets Disciplinary Tribunal Rule 1.2
- 1.2 **Restricted matters:** NZX must not delegate to NZ Markets Disciplinary Tribunal and the NZ Markets Disciplinary Tribunal shall not have power to review any decision of NZX in respect of:
- (a) the approval of new Listings or Quotation of any Class of Securities under the Listing Rules; and/or
 - (b) any designation of any person as a Market Participant under the NZX Participant Rules or as a Futures and Options Participant under the Futures and Options Rules; and/or
 - (c) changes to the Conduct Rules, Futures and Options Rules and any other rules or regulations of NZX from time to time; and/or
 - (d) its policy decisions as set out in any guidance notes or other documents, other than where such review is in accordance with **NZ Markets Disciplinary Tribunal Rule 4.12**; and/or

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- (e) a trading halt under Listing Rule 5.4.2; and/or
- (f) NZX's pricing or other commercial terms.

1.3 **Consultation Required Before Any Change To Discipline Rules:**
NZX Must consult with the NZ Markets Disciplinary Tribunal before making any changes to the NZ Markets Disciplinary Tribunal Rules.

Section 2: Appointment

- 2.1 **Composition of NZ Markets Disciplinary Tribunal:** The membership of the NZ Markets Disciplinary Tribunal shall consist of:
- (a) at least two barristers and/or solicitors of not less than seven years standing each currently in practice who has a working knowledge of the New Zealand courts system (Legal Appointees); and
 - (b) at least two Market Participants, one of which shall be a Trading Participant and one of which shall be a Delivery and Settlement Participant (Market Participant Appointees); and
 - (c) at least two company directors of Listed Issuers (Issuer Appointees); and
 - (d) up to 11 members of the public who shall be appointed on the basis of their reputation and demonstrated knowledge and expertise in relation to markets or a facet of the markets (including futures and options), none of whom shall be Market Participants or a representative of NZX (Public Appointees); and
- and shall be appointed by NZX, in accordance with the procedures set out in this **NZ Markets Disciplinary Tribunal Rule 2**.
- 2.2 **NZX Quorum:** In considering any matter brought to the NZ Markets Disciplinary Tribunal, the Chairperson, Deputy Chairperson, or the Chairperson of the relevant Division, may in order to obtain advice and guidance on practical market operational matters, consult with any NZX staff members considered appropriate to provide the requisite advice or guidance.
- 2.3 **Confirmation of appointment by Securities Commission:** Subject to **NZ Markets Disciplinary Tribunal Rule 2.6**, the appointment of any member of the NZ Markets Disciplinary Tribunal by NZX must be confirmed by the Securities Commission;
- 2.4 **Nominations:** NZX shall periodically call for nominations for appointment as a member of the NZ Markets Disciplinary Tribunal. NZX shall consider the nominations received for members of NZ Markets Disciplinary Tribunal in accordance with the policies set out below:
- (a) for nominations for appointment as Public Appointees under

NZ Markets Disciplinary Tribunal Rules

NZ Markets Disciplinary Tribunal Rule 2.1(d), NZX shall consider the following disciplines in assessing such nominations:

- (i) law; and
- (ii) commerce; and
- (iii) accountancy; and
- (iv) finance; and
- (v) funds management; and
- (vi) governance; and
- (vii) public administration; and
- (viii) technology; and
- (ix) tax; and
- (x) banking.

- (b) for all nominations, NZX shall not consider any person for appointment as a member of NZ Markets Disciplinary Tribunal unless, in its opinion, the person is qualified for appointment, having regard to the functions and powers of the NZ Markets Disciplinary Tribunal, by virtue of that person's knowledge of or experience in the disciplines set out in this **NZ Markets Disciplinary Tribunal 2.4**.

2.5 **Term:** Except as set out in **NZ Markets Disciplinary Tribunal Rule 2.10** for originating members of the NZ Markets Disciplinary Tribunal, each member of the NZ Markets Disciplinary Tribunal shall be appointed for a term of up to three years. One third of the members shall retire by rotation each year. As between persons who became members on the same day, except in the case of original members in which case **NZ Markets Disciplinary Tribunal Rule 2.10** shall apply, those members to retire by rotation will be chosen by lot.

2.6 **Further Terms:** NZX may appoint any retiring member of the NZ Markets Disciplinary Tribunal for a further term or terms, up to a maximum of three consecutive terms, and such re-appointment shall not require the confirmation of the Securities Commission under **NZ Markets Disciplinary Tribunal Rule 2.3**.

2.7 **Removal from office:** NZX may, from time to time, remove from office, upon confirmation of that removal by the Securities Commission, any member of NZ Markets Disciplinary Tribunal

where that member:

- (a) is incapacitated from acting for a period of more than 3 months in any 12 month period or less; or
- (b) has, in NZX's opinion, neglected his or her duty; or
- (c) is found by NZX to have engaged in misconduct.

2.8 **Resignation:** Subject to **NZ Markets Disciplinary Tribunal Rule 2.9**, any member of the NZ Markets Disciplinary Tribunal may resign as a member of the NZ Markets Disciplinary Tribunal by providing 60 days' written notice to NZX. Any member of the NZ Markets Disciplinary Tribunal who resigns under this **NZ Markets Disciplinary Tribunal Rule 2.8** shall provide to NZX a statement of the reasons for such resignation, in writing, and NZX shall provide a copy of that statement to the Securities Commission.

2.9 **Effect of Resignation:** The resignation of a member of the NZ Markets Disciplinary Tribunal under **NZ Markets Disciplinary Tribunal Rule 2.8** shall not be effective until either:

- (a) matters before any Division on which that member is currently sitting are disposed of; or
- (b) that member is replaced by the Chairperson on any Division on which that member is currently sitting; or
- (c) the quorum for all Divisions on which that member is currently sitting have been reduced in accordance with **NZ Markets Disciplinary Tribunal Rule 3.2**.

2.10 **Originating members:** Notwithstanding **NZ Markets Disciplinary Tribunal Rule 2.5**, in respect of those persons who are originating members of NZ Markets Disciplinary Tribunal, lots shall be drawn by such members to divide such members into 3 tranches of equal numbers, or if the number of such members is not a multiple of 3, the number nearest to equal, with the initial term for each tranche being 2, 3 and 4 years, respectively.

2.11 **Chairperson and Deputy Chairperson:** The members of NZ Markets Disciplinary Tribunal shall select the Chairperson and Deputy Chairperson from the persons appointed under **NZ Markets Disciplinary Tribunal Rule 2.1(a)**. The Chairperson (or in his or her absence the Deputy Chairperson) shall among other things:

- (a) determine the composition of Divisions referred to in **NZ Markets Disciplinary Tribunal Rule 3.1** including the chairperson of each Division where the Chairperson or Deputy Chairperson is not a member of those Divisions; and
- (b) conduct meetings or hearings, as the case may be, which he or she attends; and
- (c) determine whether or not any member of the NZ Markets Disciplinary Tribunal has a conflict of interest in relation to a particular matter, in accordance with these NZ Markets Disciplinary Tribunal Rules and any guidelines, if any, NZX may publish from time to time.

2.12 **Vacancy:** NZX may appoint a person to fill any vacancy in NZ Markets Disciplinary Tribunal's membership to the extent such appointment complies with **NZ Markets Disciplinary Tribunal Rules 2.1 to 2.3** (inclusive). A member appointed in accordance with this **NZ Markets Disciplinary Tribunal Rule 2.12** shall retire by rotation on the same date as the person that member replaces.

2.13 **Change of Status:** Where the status of a member of the NZ Markets Disciplinary Tribunal has changed such that he or she no longer comes within the class of his or her original appointment under **NZ Markets Disciplinary Tribunal Rule 2.1**, he or she shall be deemed to be no longer a member of the NZ Markets Disciplinary Tribunal once all Hearings with which that member is involved are concluded, unless:

- (a) he or she is also eligible for appointment as another class of appointee under the **NZ Markets Disciplinary Tribunal Rule 2.1**; and
- (b) NZX consents to the change of class and appointment; and
- (c) The composition of the the NZ Markets Disciplinary Tribunal satisfies the requirements of **NZ Markets Disciplinary Tribunal Rule 2.1** after the change of appointment date; then
- (d) The member may continue as a new class of appointee to the NZ Markets Disciplinary Tribunal

Section 3: Divisions

- 3.1 **Quorum:** The NZ Markets Disciplinary Tribunal shall ordinarily act through Divisions. Subject to **NZ Markets Disciplinary Tribunal Rule 3.2**, the quorum for each Division shall comprise 3 members who, in each case, do not have a conflict of interest and who, subject to **NZ Markets Disciplinary Tribunal Rule 3.3**, are selected, in relation to each matter falling for consideration, by the Chairperson (or in his or her absence the Deputy Chairperson).
- 3.2 **Reduced quorum:** The quorum required under **NZ Markets Disciplinary Tribunal Rule 3.1** may be reduced to 2 if required due to unavailability of NZ Markets Disciplinary Tribunal members over holiday periods, conflicts of interest, illness, accident, or other unavoidable causes, or the expiration of a member's term or the resignation or removal of office of a member of NZ Markets Disciplinary Tribunal. Where the quorum for a Division is reduced to 2 under this **NZ Markets Disciplinary Tribunal Rule 3.2**, the chairperson of that Division shall have a casting vote. If the chairperson of that Division is the member no longer sitting on that Division, the Chairperson (or in his or her absence the Deputy Chairperson) shall appoint a chairperson for that Division from the remaining two members and the newly appointed chairperson of that Division shall have a casting vote.

1. At the hearing of any matter by the NZ Markets Disciplinary Tribunal, if the chairperson of that Division is the member no longer sitting on that Division, the chairperson of the NZ Markets Disciplinary Tribunal shall appoint a chairperson for that Division from the remaining two members and that newly appointed chairperson of that Division shall have a casting vote. No member of the NZ Markets Disciplinary Tribunal who is concerned with, or implicated in, or who is a director, shareholder or employer of a person interested in, or implicated in, or is an advisor to a person interested in, or implicated in, that matter (or has been so concerned or held such appointment within the past 24 months from the date of the act or omission giving rise to the matter), shall be eligible to be selected in a Division to hear and determine that matter or shall be eligible to attend any meeting of the NZ Markets Disciplinary Tribunal in respect of that matter. If a member of the NZ Markets Disciplinary Tribunal is concerned with, is interested in, or implicated in, or is a director, shareholder or employer of a competitor of the person implicated in a matter (except in the case of the Market Participant Appointees, who may be selected in a Division whether or not they are competitors) such member shall also be ineligible to be selected in a Division

to hear and determine that matter and shall be ineligible to attend any meeting of the NZ Markets Disciplinary Tribunal in respect of that matter.

2. All members of the NZ Markets Disciplinary Tribunal shall, as soon as is practicable after being advised of a matter to be heard and determined by the NZ Markets Disciplinary Tribunal, declare any interest in connection with the parties to, or the subject matter of, that matter. In such a case, that member shall not be eligible to attend any hearing or meeting of the NZ Markets Disciplinary Tribunal in respect of that matter.
3. The Chairperson or Deputy Chairperson (as the case may be), in selecting members of a Division for any hearing, shall consider the matter being called for consideration, the issues that will likely be raised and shall select the quorum, after

3.3 **Required members:** Each Division of the NZ Markets Disciplinary Tribunal constituted in accordance with NZ Markets Disciplinary Tribunal Rule 3.1 or 3.2 to consider:

- (a) a breach of the NZX Participant Rules, shall include at least one Market Participant Appointee; and/or
- (b) a breach of the Futures and Options Rules, shall include at least one person with knowledge and experience in futures and options products and trading; and/or
- (c) a matter under the Full Hearing Procedure shall include at least one Legal Appointee.

If both Legal Appointees are unable to act through absence or any other cause (including conflict), NZX shall as necessary appoint a suitably qualified person (being a barrister and/or solicitor who meets the requirements set out in NZ Markets Disciplinary Tribunal Rule 2.1(a)) who would be eligible to hear that matter if he or she was appointed a member of the NZ Markets Disciplinary Tribunal to act in place of those Legal Appointees during the period of their inability to act unless the Chairperson (or the Deputy Chairperson in his or her absence) considers that a Public Appointee or Issuer Appointee meets the requirements of NZ Markets Disciplinary Tribunal Rule 2.1(a) and would be eligible to be part of the Division to hear that matter and, if so, that Public Appointee shall be the Legal Appointee of that Division during the period of the existing Legal Appointees' inability to act.

- 3.4 **Appointment of Temporary Member:** The Chairperson, or the Deputy Chairperson in his or her absence, may appoint to the NZ Markets Disciplinary Tribunal Division any person whom he or she considers appropriate to replace any member who is unable to act or attend. Any such appointment only extends to such time as the determination of the relevant Division is finalised.

Section 4: Power of NZ Markets Disciplinary Tribunal

- 4.1 **Hearing and determination of matters:** Without limiting or derogating from any other provision of these NZ Markets Disciplinary Tribunal Rules, the NZ Markets Disciplinary Tribunal shall have power to:
- (a) hear and determine any matter involving a Market Participant (excluding any FASTER Participant) referred to it by NZX under the NZX Participant Rules; and
 - (b) hear and determine any matter involving an Issuer referred to it by NZX under the Listing Rules; and
 - (c) hear and determine any matter involving a Futures and Options Participant referred to it by NZX under the Futures and Options Rules; and
 - (d) hear and determine any matter involving any other person referred to it by NZX under any other rules and regulations of NZX from time to time; and
 - (e) a Referral in accordance **with NZ Markets Disciplinary Tribunal Rule 4.12**; and
 - (f) review decisions of NZ Markets Disciplinary Tribunal from a Summary Hearing in accordance with **NZ Markets Disciplinary Tribunal Rule 7**; and
 - (g) impose any of the penalties listed in **NZ Markets Disciplinary Tribunal Rule 11**; and
 - (h) engage advisors and such other experts on terms and conditions it thinks fit; and
 - (i) consider issuing Practice Notes addressing the process, procedure, and approach of the **NZ Markets Disciplinary Tribunal in accordance with Rule 4.1** and may publish those Practice Notes on NZX's website (www.nzx.com) in conjunction with a summary of the practice note that may be released to Market Participants and Listed Issuers via NZX's market announcement platform.

and shall have all necessary or desirable ancillary powers to give full effect to the specific powers set out in this **NZ Markets Disciplinary Tribunal Rule 4**, including the power for the NZ Markets Disciplinary Tribunal to determine its own processes and procedures to the extent that such processes and procedures are

not set out in these NZ Markets Disciplinary Tribunal Rules.

4.2 **Evidence:** The NZ Markets Disciplinary Tribunal and the Appeal Panel shall have the power to receive in evidence any statement, document, information or matter that may in its opinion assist it to deal effectively with any matter before it, whether or not it would otherwise be admissible in a court of law. The NZ Markets Disciplinary Tribunal may, by notice in writing signed by its Chairperson or by any person nominated by its Chairperson, require any person, including any Responsible Executive, Managing Principal or any director, officer, employee, consultant, contractor or other professional service provider of a Market Participant, an Issuer or a Futures and Options Participant (as the case may be) or a Complainant:

- (a) to attend and give evidence before it at an oral hearing of a matter involving that person and the notice issued under this **NZ Markets Disciplinary Tribunal Rule 4.2** shall specify the time and place of hearing; and/or
- (b) to provide affidavits or other written evidence of a matter involving that person and the notice issued under this **NZ Markets Disciplinary Tribunal Rule 4.2** shall specify the date by which the evidence requested under this **NZ Markets Disciplinary Tribunal Rule 4.2(b)** must be furnished; and/or
- (c) to produce for inspection all books, records, tapes, documents, and any information held on any other media that are in the custody or under the control of that person that are relevant to the subject matter of any such hearing, which shall be particularised in the notice issued under this Rule 4.2,

provided that, where the NZ Markets Disciplinary Tribunal requires attendance, evidence or information under this **NZ Markets Disciplinary Tribunal Rule 4.2** from a person that NZX does not have a contractual relationship with that enforces such attendance, evidence or information being provided, that Market Participant, Issuer or Futures and Options Participant must use its best endeavours to procure such attendance, evidence or information from its employees, consultants, contractors or other professional service providers.

4.3 **Suspension of Market Participants:** At any time after a matter involving a Market Participant which is referred for hearing and determination by way of the Full Hearing Procedure in accordance with **NZ Markets Disciplinary Tribunal Rule 6.1** or referred in accordance with **NZ Markets Disciplinary Tribunal Rule 5.3**, the Chairperson (or in his or her absence the Deputy Chairperson) may of his or her own motion and without the necessity of giving any

prior notice to that Market Participant, make an order suspending that Market Participant's designation as a Market Participant until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence the Deputy Chairperson) may only make such order where he or she considers suspension is necessary in order to protect the interests of NZX, Market Participants, the public or in the interests of the market generally. Following the suspension of a Market Participant's designation under this **NZ Markets Disciplinary Tribunal Rule 4.3**, the provisions of **NZX Participant Rule 17** shall apply to such Market Participant. The NZ Markets Disciplinary Tribunal shall give public notice of an interim suspension order under this **NZ Markets Disciplinary Tribunal Rule 4.3**, unless the Chairperson (or in his or her absence the Deputy Chairperson) believes there are extraordinary circumstances which justify postponing that public notice.

- 4.4 **Revocation of Market Participant's interim suspension order:** A Market Participant in respect of whom an order for interim suspension under **NZ Markets Disciplinary Tribunal Rule 4.3** has been made may, at any time, apply in writing to the Chairperson to revoke that interim suspension order. Upon receiving an application for revocation of an interim suspension under **NZ Markets Disciplinary Tribunal Rule 4.3** the Chairperson (or in his or her absence the Deputy Chairperson) shall constitute a Division to hear and determine the application and that Division may grant, on such terms and subject to such conditions as it thinks fit, or refuse that application. The Division of The NZ Markets Disciplinary Tribunal hearing the application to revoke the interim suspension order under this **NZ Markets Disciplinary Tribunal Rule 4.4** must determine that application no later than 3 Business Days after its receipt by the Chairperson. Where the Division hearing the application does not notify a Market Participant of its determination under this **NZ Markets Disciplinary Tribunal Rule 4.4**, within 3 Business Days of an application from that Market Participant, that Division is deemed to have accepted that application and the interim suspension order of that Market Participant is revoked.
- 4.5 **Suspension of Issuer's Quoted Securities:** At any time after a matter involving an Issuer which is referred for hearing and determination by way of the Full Hearing Procedure in accordance with **NZ Markets Disciplinary Tribunal Rule 6.1** or referred in accordance with **NZ Markets Disciplinary Tribunal Rule 5.3**, the Chairperson (or in his or her absence the Deputy Chairperson) may of his or her own motion and without the necessity of giving any prior notice to that Issuer make an order suspending the quotation of trading in the Quoted Securities or a particular class of Quoted Securities of that Issuer, until that matter has been heard and disposed of, provided that the Chairperson (or in his or her absence

the Deputy Chairperson) may only make such order where he or she considers suspension is necessary in the public interest to protect people trading in Securities, or the class of Securities, of that Issuer, or is in the interests of the market generally. The Chairperson (or in his or her absence the Deputy Chairperson) shall give public notice of a trading suspension under this **NZ Markets Disciplinary Tribunal Rule 4.5**.

- 4.6 **Revocation of Issuer's interim suspension order:** An Issuer in respect of whom an order for interim trading suspension under **NZ Markets Disciplinary Tribunal Rule 4.5** has been made may, at any time, apply in writing to the Chairperson to revoke that interim trading suspension order. Upon receiving an application for revocation of an interim suspension under **NZ Markets Disciplinary Tribunal Rule 4.5** the Chairperson (or in his or her absence the Deputy Chairperson) shall constitute a Division to hear and determine the application and that Division may grant, on such terms and subject to such conditions as it thinks fit, or refuse that application. The Division of the NZ Markets Disciplinary Tribunal hearing the application to revoke the interim suspension order under this **NZ Markets Disciplinary Tribunal Rule 4.6** must determine that application no later than 3 Business Days after its receipt by the Chairperson. Where the Division hearing the application does not notify an Issuer of its determination under this **NZ Markets Disciplinary Tribunal Rule 4.6** within 3 Business Days of an application from that Issuer, that Division is deemed to have accepted that application and the interim trading suspension order of that Issuer is revoked.

4.7 **Disclosure Orders for Issuers:**

- (a) At any time after a matter involving an Issuer has been referred for hearing and determination by NZ Markets Disciplinary Tribunal, and that matter alleges non-compliance with the continuous disclosure Listing Rules, the Division of The NZ Markets Disciplinary Tribunal hearing that matter may, provided it complies with **NZ Markets Disciplinary Tribunal Rule 4.7(b) and (c)**, direct that Issuer in writing to:

- (i) disclose and publish such Material Information; or
- (ii) publish certain corrective information,

to the extent that Division considers necessary to prevent development or subsistence of a market for that Issuer's Quoted Securities or class of Quoted Securities, which is materially influenced by false or misleading information (**Disclosure Order**). A Disclosure Order must specify the terms of and reasons for that Disclosure Order.

- (b) The Division of NZ Markets Disciplinary Tribunal hearing a matter must give an Issuer 24 hours' notice before making a Disclosure Order, specifying:
 - (i) the information to be disclosed; and
 - (ii) the reasons requiring the disclosure; and
 - (iii) any other terms or conditions for the disclosure.
- (c) The Division of the NZ Markets Disciplinary Tribunal hearing a matter must give an Issuer an opportunity to make written submissions in response to a Disclosure Order within the 24-hour notice period set out in **NZ Markets Disciplinary Tribunal Rule 4.7(b)**. That Division must have regard to any such written submissions when making a Disclosure Order under **NZ Markets Disciplinary Tribunal Rule 4.7(a)**.

4.8 Suspension of Future and Options Participants: At any time after a matter involving a Futures and Options Participant which is referred for hearing and determination by way of the Full Hearing Procedure in accordance with **NZ Markets Disciplinary Tribunal Rule 6.1** or referred in accordance with **NZ Markets Disciplinary Tribunal Rule 5.3**, the Chairperson (and in his or her absence the Deputy Chairperson) may, of its own motion and without the necessity of giving notice to that Futures and Options Participant, make an order suspending that Future and Options Participant's designation under the Futures and Options Rules until that matter has been heard and disposed of, provided that the Chairperson (and in his or her absence the Deputy Chairperson) may only make such order where he or she considers suspension is necessary in order to protect the interests of NZX, Futures and Options Participants, the public or in the interests of the market generally. Following the suspension of a Future and Options Participant's designation under this **NZ Markets Disciplinary Tribunal Rule 4.8**, the provisions of Futures and Options Rule 12 shall apply to such Futures and Options Participant. The Chairperson (and in his or her absence the Deputy Chairperson) shall give public notice of an interim suspension order under this **NZ Markets Disciplinary Tribunal Rule 4.8** unless the Chairperson (and in his or her absence the Deputy Chairperson) believes there are extraordinary circumstances which justify postponing that public notice.

4.9 Revocation of Future and Options Participant's interim suspension order: A Futures and Options Participant in respect of whom an order for interim suspension under **NZ Markets Disciplinary Tribunal Rule 4.8** has been made, may at any time, apply to the Chairperson to revoke that interim suspension order. Upon receiving an application for revocation of an interim suspension under **NZ Markets Disciplinary Tribunal Rule 4.9** the

Chairperson (or in his or her absence the Deputy Chairperson) shall constitute a Division to hear and determine the application and that Division may grant, on such terms and subject to such conditions as it thinks fit, or refuse, that application. The Division of the NZ Markets Disciplinary Tribunal hearing the application to revoke the interim suspension order under this **NZ Markets Disciplinary Tribunal Rule 4.9** must determine that application no later than 3 Business Days after its receipt by the Chairperson. Where the Division hearing the application does not notify a Futures and Options Participant of its determination under this **NZ Markets Disciplinary Tribunal Rule 4.9**, within 3 Business Days of an application from that Futures and Options Participant, that Division is deemed to have accepted that application and the interim suspension order of that Futures and Options Participant is revoked.

- 4.10 **Delegation from NZX to NZ Markets Disciplinary Tribunal:** Subject to **NZ Markets Disciplinary Tribunal Rule 1.2**, the NZ Markets Disciplinary Tribunal shall:
- (a) have, and be entitled to exercise, such powers, rights or discretions of NZX as may from time to time be delegated to NZ Markets Disciplinary Tribunal under the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time; and
 - (b) have authority to deal with such specific matters as may from time to time be delegated to NZ Markets Disciplinary Tribunal pursuant to the Conduct Rules, the Futures and Options Rules or any other rules and
 - (c) be entitled to exercise all the powers of NZX in matters delegated to, or dealt with by, NZ Markets Disciplinary Tribunal in accordance with this **NZ Markets Disciplinary Tribunal Rule 4.10**.
- 4.11 **Revocation of a delegation:** NZX may at any time revoke or vary any delegation under **NZ Markets Disciplinary Tribunal Rule 4.10** to the extent that revocation or variance otherwise complies with these **NZ Markets Disciplinary Tribunal Rules**.
- 4.12 **Review of NZX Action by NZ Markets Disciplinary Tribunal:** An applicant for a waiver or ruling under the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time may apply to the NZ Markets Disciplinary Tribunal for review of the decision made by NZX in respect of that waiver or ruling application (**Referral**).
- (a) A Referral shall be sought only on the basis that the decision:

- (i) was irrational having regard to the evidence available to NZX and the circumstances at the time NZX made the decision; or
 - (ii) made in circumstances when NZX has refused to consider information submitted by an applicant for a waiver or ruling,
- (b) New Evidence shall not be received on a Referral.
- (c) A Referral shall be made in writing to the Chairperson stating the grounds for the Referral. The Chairperson (and in his or her absence the Deputy Chairperson) may:
 - (i) Reasonably refuse to consider a Referral. Where the Chairperson (and his or her absence the Deputy Chairperson) refuses to consider a Referral it shall provide the applicant of that Referral with written reasons for such refusal; or
 - (ii) Determine that the Referral be dealt with by the NZ Markets Disciplinary Tribunal in accordance with the procedures set out in The NZ Markets Disciplinary Tribunal Rule 5, with any modifications to those Summary Hearing Procedures as the Division of the NZ Markets Disciplinary Tribunal constituted to hear and determine that matter considers appropriate; or
 - (iii) Determine that the Referral be referred back to NZX for NZX to reconsider the application for the waiver or ruling afresh.

4.13 NZ Markets Disciplinary Tribunal Precedence:

- (a) A determination made by NZ Markets Disciplinary Tribunal shall be binding on NZX to the extent that NZX exercises its powers to grant waivers and make rulings under the Conduct Rules, Futures and Options Rules or any other rules and regulations of NZX from time to time.
- (b) Subject to **NZ Markets Disciplinary Tribunal Rule 4.12**, a waiver granted or ruling made by NZX under the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time is binding unless and until the NZ Markets Disciplinary Tribunal makes a determination which overturns that waiver or ruling.

- (c) A waiver granted or ruling made by NZX under the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time which is subsequently overturned by the NZ Markets Disciplinary Tribunal shall not affect the rights of the parties who relied on that waiver or ruling from the time that waiver or ruling was made up until the time of the determination by NZ Markets Disciplinary Tribunal overturning that waiver or ruling.

4.14 **Default Determination**

- (a) If the Respondent fails to file a statement of response within the time frames permitted under these NZ Markets Disciplinary Tribunal Rules or those directed by the NZ Markets Disciplinary Tribunal after receiving an application for an extension or otherwise, NZX by application, and accompanied by proof of service, may request a determination of breach by default. Such an application must also be served on the Respondent in accordance with Rule 5.18.
- (b) If the Respondent opposes the application, the NZ Markets Disciplinary Tribunal may, on determining that the Respondent had adequate reason for the failure to file the statement of response, direct the Respondent to promptly file a statement of response. If the default application is unopposed, or the NZ Markets Disciplinary Tribunal finds that the Respondent did not have adequate reason to fail to file a statement of response, or the Respondent failed to file a statement of response after being given an opportunity to do so, the NZ Markets Disciplinary Tribunal may make a default determination and determine a penalty.
- (c) If a Respondent shows that service of the statement of case and application for default determination was not effected, or can otherwise show good reason for the failure to provide the statement of response, and a default determination has been entered into, the NZ Markets Disciplinary Tribunal may set aside the determination if it considers that it is fair and reasonable to do so.

Section 5: Summary Hearing Procedure

- 5.1 **Referral by NZX:** If NZX considers a matter is not frivolous but is not sufficiently serious to require determination under the Full Hearing Procedure, it may refer that matter to the NZ Markets Disciplinary Tribunal for hearing and determination by way of the Summary Hearing Procedure set out in this **NZ Markets Disciplinary Tribunal Rule 5 (Summary Hearing)**. In determining whether a matter should be referred for hearing and determination by way of Summary Hearing Procedure, NZX shall consider the requirements of the market for speed and certainty of interpretation and administration of the Conduct Rules, the Futures and Options Rules and any other rules and regulations of NZX from time to time.

1. An example where the requirement for speed and certainty may result in a matter being referred to NZ Markets Disciplinary Tribunal under the Summary Hearing Procedure is where a transaction must proceed within a particular time period which prevents the notice requirements of the Full Hearing Procedure being complied with and there are allegations that the transaction or aspects of the transaction do not comply with the Conduct Rules, Futures and Options Rules or any other rules or regulations of NZX from time to time. In order for the transaction to proceed, the allegations must be dealt with and the Summary Hearing Procedure is, in NZX's opinion, the appropriate forum for this.
2. Without limiting NZX's discretion to refer a matter to the Summary Hearing Procedure or the Full Hearing Procedure, those breaches of:
 - (a) the NZX Participant Rules found in penalty bands 1-4 of part A of the NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note; and
 - (b) the Listing Rules found in penalty bands 1-3 of part B of the NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note; and
 - (c) the Futures and Options Rules found in penalty bands 1-4 of part C of the NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note,

will ordinarily be referred to the Summary Hearing Procedure.

- 5.2 **Behaviour caught:** Any matter referred by NZX under **NZ Markets Disciplinary Tribunal Rule 5.1** or **6.1** where the Respondent is:
- (a) a Market Participant or a Futures and Options Participant may include allegations as to conduct or omission by any natural person employed by, contracted to, or officer in, that Market Participant or Futures and Options Participant; and
 - (b) an Issuer may include allegations as to conduct or omission by Directors and/or officers of that Issuer.
- 5.3 **Referral by the NZ Markets Disciplinary Tribunal to Full Hearing Procedure:** The Chairperson (and in his or her absence the Deputy Chairperson) may decline to hear a matter, or the chairperson of the Division constituted to hear and determine a matter may decline to continue to hear that matter before it by way of Summary Hearing Procedure and instead refer that matter to the Full Hearing Procedure or may resolve, after hearing a matter, that the Summary Hearing Procedure powers as to penalties are not sufficient and refer the matter for determination of penalty to the Full Hearing Procedure. Where the Chairperson (and in his or her absence the Deputy Chairperson) or the chairperson of a Division constituted to hear and determine a matter proposes to make a referral under this **NZ Markets Disciplinary Tribunal Rule 5.3**, the Chairperson (and in his or her absence the Deputy Chairperson) or the chairperson of the Division that is constituted to hear and determine the matter (as the case may be) shall provide not less than 5 Business Days' notice to the Respondent and NZX of such referral, during which time the Respondent and NZX may make submissions to the Chairperson (and in his or her absence the Deputy Chairperson) or the chairperson of the Division that is constituted to hear and determine the matter (as the case may be) as to why the matter should not be referred to the Full Hearing Procedure. At the end of this 5 Business Day period the Chairperson (or in his or her absence the Deputy Chairperson) or the chairperson of the Division that is constituted to hear and determine the matter (as the case may be) shall make a determination whether to refer the matter to the Full Hearing Procedure

- 5.4 **Discretion:** The chairperson of the Division constituted to hear and determine a matter, referred to it under **NZ Markets Disciplinary Tribunal Rule 5.3** for determination under the Full Hearing Procedure, shall have the discretion to re-hear or not re-hear any or all evidence previously heard by the NZ Markets Disciplinary Tribunal under the Summary Hearing Procedure, provided always that that Division is provided with transcripts of all oral evidence previously heard by the NZ Markets Disciplinary Tribunal and copies of all physical or documentary evidence previously provided to NZ Markets Disciplinary Tribunal.
- 5.5 **Statement of case:** Where NZX refers a matter for hearing and determination in accordance with **NZ Markets Disciplinary Tribunal Rule 5.1** or where the NZ Markets Disciplinary Tribunal accepts an application in accordance with **NZ Markets Disciplinary Tribunal Rule 6.2**, NZX shall submit a statement of case to the party whom NZX believes has breached the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time (**Respondent**) setting out:
- (a) the matter to be referred to NZ Markets Disciplinary Tribunal; and
 - (b) all material facts taken into account by NZX; and
 - (c) that the matter is to be heard under the Summary Hearing Procedure ; and
 - (d) the penalty NZX considers appropriate for the matter; and
 - (e) whether NZX believes that the NZ Markets Disciplinary Tribunal should order that any decision made by NZ Markets Disciplinary Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
 - (f) all documents NZX believes are relevant to that matter which shall also be attached.
- 5.6 **Statement in response:** The Respondent may, within 10 Business Days of receipt of a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 5.5** or such other period, including for the avoidance of doubt a shorter period of time, as directed by the Chairman of the division of the NZ Markets Disciplinary Tribunal hearing the matter, either on the

request of that Respondent or where the Chairman of the Division considers it appropriate, submit to NZX and the NZ Markets Disciplinary Tribunal a statement in response setting out:

- (a) all material facts in response to that statement of case, including the proposed penalty; and
- (b) any mitigating factors in response to the statement of case, including the proposed penalty; and
- (c) whether the Respondent believes that an oral hearing of that matter is essential to establish all the facts relevant to that matter and, if so, a request for an oral hearing; and
- (d) whether the Respondent believes the NZ Markets Disciplinary Tribunal should order that any decision made by the NZ Markets Disciplinary Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
- (e) copies of all documents the Respondent believes are relevant to that matter which shall also be attached; or
- (f) file a notice requesting more time to file a statement of response with the NZ Markets Disciplinary Tribunal within 8 Business Days setting out why additional time is required.

5.6A Amendment to Statement of Case or Statement of Response:

- (a) Filing of an amended statement:
 - (i) Any party may at any time before a hearing, seek leave from the NZ Markets Disciplinary Tribunal to file an amended statement of case or response with the NZ Markets Disciplinary Tribunal and serve a copy thereof on the other party.
 - (ii) An amended statement may introduce a fresh claim whether or not that claim has arisen since the filing of the statement of case, or a fresh ground of defence, whether as an alternative or not.
 - (iii) Where an amended statement introduces a fresh claim, if the other party wishes to file and serve a defence thereto, it must be done within 3 Business Days after the day on which the amended statement is served on him, or within such other time as directed by the NZ Markets Disciplinary Tribunal.
 - (iv) Where an amended statement does not introduce a

fresh claim, the other party (if he or she wishes) may, within 2 Business Days after the day on which the amended pleading is served on him, or within such other period as directed by the NZ Markets Disciplinary Tribunal file and serve an amended response thereto.

- 5.6B **Rejoinder to the Statement of Response:** Notwithstanding **NZ Markets Disciplinary Tribunal Rule 5.6A**, Upon receiving a statement of Response, NZX may file a rejoinder to the Statement of Response, commenting on key aspects of that Statement of Response, provided that that Rejoinder is filed within 2 Business Days of NZX being served with the Statement of Response in the case of a matter referred under the Summary Hearing procedure and within 4 Business Days in the case of a matter heard under the Full Hearing procedure.
- 5.7 **Provision of documents to NZ Markets Disciplinary Tribunal:** At the expiry of the period referred to in **NZ Markets Disciplinary Tribunal Rule 5.6**, and, if relevant, **NZ Markets Disciplinary Rule 5.6A** or **5.6B**, NZX shall submit to the Chairperson the statement of case provided under **NZ Markets Disciplinary Tribunal Rule 5.5**, the statement in response (if any) provided under **NZ Markets Disciplinary Tribunal Rule 5.6**, together with all copies of all relevant documents and a statement as to whether NZX believes that an oral hearing of that matter is essential to establish all the facts relevant to that matter and, if so, a request for an oral hearing.
- 5.8 **Summary Hearing on documents:** Subject to **NZ Markets Disciplinary Tribunal Rule 5.9**, matters referred to the Summary Hearing Procedure shall take place through the consideration of the documents provided under **NZ Markets Disciplinary Tribunal Rules 5.5** and **5.6** with no oral hearing. The consideration and determination of a matter under this **NZ Markets Disciplinary Tribunal Rule 5.8** shall occur within 5 Business Days after receipt by the NZ Markets Disciplinary Tribunal of all documents in accordance with **NZ Markets Disciplinary Tribunal Rule 5.7**. For the avoidance of doubt, where the NZ Markets Disciplinary Tribunal receives amendments to the Statement of Case or Statement of Response, or a Rejoinder to the Statement of Response, in accordance with **NZ Markets Disciplinary Tribunal Rule 5.6A** or **NZ Markets Disciplinary Tribunal Rule 5.6B**, the timeframes for the hearing of the matter will be reset.
- 5.9 **Oral hearing:** If a party notifies NZ Markets Disciplinary Tribunal that it believes an oral hearing of a matter is essential to establish all the facts relevant to that matter in accordance with **NZ Markets Disciplinary Tribunal Rule 5.6(c)** or **5.7**:

- (a) that matter shall be heard and determined by way of an oral Summary Hearing within 10 Business Days of such notice or such other period as determined by the NZ Markets Disciplinary Tribunal; and
- (b) The NZ Markets Disciplinary Tribunal shall deliver its Summary Hearing determination within 10 Business Days of the date of the oral summary Hearing.

5.10 **Notice of oral hearing:** The Chairperson (or in his or her absence the Deputy Chairperson) shall provide not less than 2 and not more than 7 Business Days' notice of the date, time and venue for an oral hearing, or such lesser period with the agreement of the parties. The Chairperson (or in his or her absence the Deputy Chairperson) may vacate an oral hearing date at his or her discretion and appoint a substitute date provided that reasonable notice of that substitute date is given to the parties. The NZ Markets Disciplinary Tribunal may also adjourn and reconvene an oral hearing as it thinks fit.

5.11 **Attendance at oral hearing:** All parties shall be entitled to attend and be heard at any oral hearing of a matter, but an oral hearing may proceed in the absence of one or more of the parties.

5.12 **Additional Notice required of new matters:** Where a Division of the NZ Markets Disciplinary Tribunal constituted to hear and determine a matter becomes aware, during the course of hearing or considering a matter, of further breaches of the Conduct Rules, Futures and Options Rules or any other rules and regulations of NZX from time to time (Additional Compliance Issues) which are not the subject of the matter before that Division and that Division seeks to determine those Additional Compliance Issues as part of the matter currently before it, that Division shall give at least 5 Business Days' written notice to the Respondent and NZX setting out those Additional Compliance Issues. The parties shall be provided an opportunity to respond to those Additional Compliance Issues in accordance with the procedures set out in these NZ Markets Disciplinary Tribunal Rules, as though those Additional Compliance Issues were new matters before that Division.

5.13 **Hearing and consideration procedures:** A Summary Hearing, whether considered on the documents submitted to NZ Markets Disciplinary Tribunal in accordance with **NZ Markets Disciplinary Tribunal Rules 5.8** or by way of an oral hearing, shall:

- (a) be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the

matters before NZ Markets Disciplinary Tribunal permit;
and

- (b) take place in private except that a Summary Hearing that is to be heard and determined by an oral hearing pursuant to **NZ Markets Disciplinary Tribunal Rule 5.9:**
 - (i) resulting from a complaint received by NZX from a third party (**Complainant**), the Complainant may, in the sole discretion of NZ Markets Disciplinary Tribunal, be invited to attend parts or all of the Full Hearing in respect of that complaint, provided the Complainant has delivered to the NZ Markets Disciplinary Tribunal a confidentiality undertaking in respect of that Summary Hearing in a form acceptable to NZ Markets Disciplinary Tribunal; and
 - (ii) NZ Markets Disciplinary Tribunal may have its legal advisors present and NZ Markets Disciplinary Tribunal may, at its discretion permit NZX and/or the Respondent to each have one legal advisor present.

5.14 **Oral evidence may require oath or affirmation:** The chairperson of the Division constituted to hear and determine a matter may require that any oral evidence at the Summary Hearing of that matter be received only after the witness providing that oral evidence has taken an appropriate oath or affirmation.

5.15 **Physical presence not required:** The NZ Markets Disciplinary Tribunal may conduct a Summary Hearing without all members of the Division constituted to hear and determine a matter being in the physical presence of one another provided that all members of that Division are able to participate in and properly consider the evidence provided at that Summary Hearing.

5.16 **Decision by majority vote:** The decision of NZ Markets Disciplinary Tribunal shall be determined according to a simple majority of votes of the members of the Division constituted to hear and determine a matter. Each member of a Division shall have and shall exercise a deliberative vote and the chairperson of that Division shall, subject to **NZ Markets Disciplinary Tribunal Rule 3.2**, have a deliberative but not a casting vote.

5.17 **Statement of findings:** Each Division of the NZ Markets Disciplinary Tribunal constituted to hear and determine a matter shall provide a written statement of its reasons for any decision it makes in determining a matter and its choice of any penalty imposed. That Division shall forward to NZX that written statement of reasons. NZX shall prepare a statement of the

circumstances giving rise to the hearing of that matter which shall identify the Respondent by name, (unless no findings adverse to that Respondent have been made, or the Division constituted to hear and determine the matter has, at its discretion, decided not to identify that Respondent).

The statement of circumstances prepared by NZX may:

- (a) be published at NZX's discretion; and
- (b) be provided to a Complainant where a matter has resulted from a complaint made by that Complainant at that Division's discretion and subject to that Complainant, in the case of decisions where the Division has made an order that such decision should not be published, delivering to NZ Markets Disciplinary Tribunal a confidentiality undertaking, in a form acceptable to NZ Markets Disciplinary Tribunal.

5.18 **Service:** Service shall be deemed effective by personal service of the statement of case, or by leaving the same either at the Respondent's last office address advised to NZX during business hours or the Respondent's last place of residence as reflected in NZX records, or upon mailing the same to the Respondent at the aforesaid office address or place of residence. Following such service, NZ Markets Disciplinary Tribunal shall then have jurisdiction upon receipt of the statement of case.

Section 6: Full Hearing Procedure

- 6.1 **Referral by NZX:** If NZX considers a matter is sufficiently serious, it may refer that matter to the NZ Markets Disciplinary Tribunal for hearing and determination by way of the Full Hearing Procedure as set out in this **NZ Markets Disciplinary Tribunal Rule 6 (Full Hearing)**.
- 6.2 **Application by Respondent to apply Summary Hearing Procedure:** If a Respondent receives notice of a matter which has been referred to the Full Hearing Procedure, that Respondent may apply to the NZ Markets Disciplinary Tribunal in writing for that matter to be heard by way of the Summary Hearing Procedure. Such application must be made in that Respondent's statement of response provided under **NZ Markets Disciplinary Tribunal Rule 6.5**. The Chairperson (or in his or her absence the Deputy Chairperson) may, after consideration of NZX's position, grant or decline such application in its sole discretion. The decision of the Chairperson (or in his or her absence the Deputy Chairperson) under this **NZ Markets Disciplinary Tribunal Rule 6.2** shall be final and binding on the parties.
- 6.3 **Notification:** The Chairperson (and in his or her absence the Deputy Chairperson) must notify a Respondent who makes an application under **NZ Markets Disciplinary Tribunal Rule 6.2**, no later than 3 Business Days after receipt of that application. If the NZ Markets Disciplinary Tribunal:
- (a) grants such application or does not notify an applicant within the period set out in this **NZ Markets Disciplinary Tribunal Rule 6.3**, the matter will proceed under the Summary Hearing Procedure in accordance with **NZ Markets Disciplinary Tribunal Rules 5.5 to 5.17** (inclusive); or
 - (b) declines such application, the matter will proceed under the Full Hearing Procedure and the NZ Markets Disciplinary Tribunal shall convene a Full Hearing in accordance with this **NZ Markets Disciplinary Tribunal Rule 6**
- 6.4 **NZ Markets Disciplinary Tribunal Rules for Full Hearing: NZ Markets Disciplinary Tribunal Rules 5.5 to 5.17** relating to a Summary Hearing shall, with appropriate modifications, apply to a Full Hearing, except that;

- (a) **NZ Markets Disciplinary Tribunal Rule 5.6** shall be amended such that the Respondent must provide its statement of response to NZX no later than 20 Business Days after receipt of a statement of case from NZX or such period as directed by the Chairman of the division of NZ Markets Disciplinary Tribunal hearing the matter; and
- (b) **NZ Markets Disciplinary Tribunal Rule 5.8** shall be amended such that a Full Hearing must be convened to consider the matter and a determination must be issued within 30 Business Days after receipt by the NZ Markets Disciplinary Tribunal of a statement of response or within such period as determined by the chairperson of the division, or by the process set out in The NZ Markets Disciplinary Tribunal practise note; and
- (bb) **NZ Markets Disciplinary Tribunal Rule 5.8** shall be amended such that the NZ Markets Disciplinary Tribunal's determination under an oral hearing under the Full Hearing Procedure shall occur within 15 Business Days after receipt by the NZ Markets Disciplinary Tribunal or within such other period as determined by the chairperson of the Division.
- (c) **NZ Markets Disciplinary Tribunal Rule 5.10** shall be amended such that the NZ Markets Disciplinary Tribunal must give not less than 5 Business Days and not more than 15 Business Days notice of an oral hearing under the Summary Hearing Procedure; and
- (d) **NZ Markets Disciplinary Tribunal Rule 5.13(b)** shall be amended to include the ability at a Full Hearing for 2 (or more with the prior permission of the NZ Markets Disciplinary Tribunal) representatives of each of NZX and the Respondent, to be present and make submissions at that Full Hearing. Those representatives may be:
 - (i) an employee or director of the party represented; or
 - (ii) a barrister and/or solicitor of the High Court of New Zealand; or
 - (iii) any other person approved by the chairperson of the Division constituted to hear and determine the matter.

Section 7: Summary Appeal Procedure

7.1 **Statement of case for Summary Appeal:** Either party may appeal a determination made at a Summary Hearing (**Summary Appeal**) by submitting a notice in writing to the Chairperson no later than 8 Business Days after that party received written notice of the determination of NZ Markets Disciplinary Tribunal in respect of the matter which is the subject of the Summary Appeal, setting out:

- (a) the name of the party appealing (Appellant); and
- (b) the determination appealed against; and
- (c) the grounds of the Summary Appeal; and
- (d) all material facts presented at the Summary Hearing for that matter that the Appellant believes are relevant to the Summary Appeal; and
- (e) whether any New Evidence is to be relied upon and, if so, disclosing that New Evidence. For the avoidance of doubt, if an Appellant does not notify the Chairperson of such New Evidence as part of the notice under this **NZ Markets Disciplinary Tribunal Rule 7.1**, that New Evidence will be inadmissible at the Summary Appeal; and
- (f) whether the Appellant believes that an oral hearing of that matter is essential to establish all the facts relevant to that matter and, if so, a request for an oral hearing; and
- (g) whether the Appellant believes NZ Markets Disciplinary Tribunal should order that any decision made by NZ Markets Disciplinary Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
- (h) all other documents the Appellant believes are relevant to the Summary Appeal which shall also be attached.

7.2 **Statement of case for Summary Appeal provided to other party:** Where the Chairperson (and in his or her absence the Deputy Chairperson) considers that a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 7.1** is not frivolous or without merit, the Chairperson (and in his or her absence the Deputy Chairperson) shall provide, no later than 3 Business Days after receipt of a statement of case under **NZ**

Markets Disciplinary Tribunal Rule 7.1, a copy of that statement of case for appeal to the other party (Summary Appeal Respondent). Where the Chairperson (and in his or her absence the Deputy Chairperson) considers a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 7.1** is frivolous or without merit, the Chairperson (and in his or her absence the Deputy Chairperson) shall notify the Appellant of that fact no later than 5 Business Days after receipt of that statement of case, setting out its reasons. The decision of the Chairperson (and in his or her absence the Deputy Chairperson) shall be final and binding upon the Appellant under this **NZ Markets Disciplinary Tribunal Rule 7.2**.

7.3 **Statement in response to Summary Appeal:** The Summary Appeal Respondent may, within 5 Business Days of receipt of a statement of case for appeal provided under **NZ Markets Disciplinary Tribunal Rule 7.1** or such other period as directed by the NZ Markets Disciplinary Tribunal on the request of that Summary Appeal Respondent, submit to the NZ Markets Disciplinary Tribunal and the Appellant a statement in response to appeal setting out its absolute discretion approve a class of financial products as Admitted Products. CDO may attach any conditions it considers appropriate to approval, having regard to the integrity, reliability and efficiency of the Depository.

- (a) all materials facts presented at the Summary Hearing for that matter that the Summary Appeal Respondent believes are relevant to the Summary Appeal; and
- (b) whether any New Evidence is to be relied upon and, if so, disclosing that New Evidence. For the avoidance of doubt, if a Summary Appeal Respondent does not notify the Chairperson of such New Evidence as part of its statement in response under this **NZ Markets Disciplinary Tribunal Rule 7.3**, that New Evidence will be inadmissible at the Summary Appeal; and
- (c) whether the Summary Appeal Respondent believes that an oral hearing of that matter is essential to establish all the facts relevant to that matter and requesting an oral hearing; and
- (d) whether the Summary Appeal Respondent believes the NZ Markets Disciplinary Tribunal should order that any decision made by the NZ Markets Disciplinary Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
- (e) all other documents the Summary Appeal Respondent believes are relevant to the Summary Appeal which shall

also be attached.

- 7.4 **Procedure of Summary Appeals: NZ Markets Disciplinary Tribunal Rules 5.8 to 5.17** (inclusive) relating to Summary Hearings as amended by **NZ Markets Disciplinary Tribunal Rule 6.4** relating to Full Hearings shall, with appropriate modifications, apply to a Summary Appeal, except that:
- (a) a Summary Appeal shall not be conducted as a rehearing but rather as a review of the findings. A Division constituted to hear and determine a Summary Appeal shall hear and determine that Summary Appeal based on the facts as accepted at the Summary Hearing the subject of that Summary Appeal; and
 - (b) a party may submit New Evidence at a Summary Appeal for a matter only where that New Evidence was notified to NZ Markets Disciplinary Tribunal in accordance with **NZ Markets Disciplinary Tribunal 7.1(e)** or **7.3(b)**. If New Evidence is submitted by a party in accordance with this **NZ Markets Disciplinary Tribunal 7.4(b)**, that New Evidence only shall be heard by way of rehearing; and
 - (c) any member of the NZ Markets Disciplinary Tribunal who sat on the Division at the Summary Hearing Procedure for a matter shall be ineligible to sit on the Division to hear and determine that Summary Appeal
- 7.5 **Effect of Summary Hearing determination:** Pending the completion of a Summary Appeal for a matter under this **NZ Markets Disciplinary Tribunal Rule 7**, the Summary Hearing determination of NZ Markets Disciplinary Tribunal for that matter has full force and effect except to the extent that determination includes a suspension or revocation of a Market Participant's designation under **NZ Markets Disciplinary Tribunal Rule 11**, suspension of the quotation of trading of an Issuer's Quoted Securities or a class of Quoted Securities under **NZ Markets Disciplinary Tribunal Rule 11** or the suspension or revocation of a Futures and Options Participant's designation under **NZ Markets Disciplinary Tribunal Rule 11**.
- 7.6 **Determination on Summary Appeal:** The NZ Markets Disciplinary Tribunal may affirm, vary or set aside the determination at Summary Hearing and any penalty imposed where it considers that that determination is a misrepresentation or an erroneous application of the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time (as the case may be). A party shall have no right of appeal from a determination made by NZ Markets Disciplinary Tribunal in a Summary Appeal.

Section 8: Full Appeal Procedure

8.1 **Limitation on right to appeal a Full Hearing determination:** Subject to Rule 8.1A, either party may appeal a determination of The NZ Markets Disciplinary Tribunal that relates to a matter that was referred to a Full Hearing in accordance **Either** party may appeal a determination of the NZ Markets Disciplinary Tribunal that relates to a matter that was referred to a Full Hearing in accordance with the **NZ Markets Disciplinary Tribunal Rule 5.3 or 6.1**, only where that determination included:

- (a) a penalty in the amount of:
 - (i) \$100,000 or more in the case of a non-natural person; or
 - (ii) \$50,000 or more in the case of a natural person, or
- (b) the suspension or revocation of a Market Participant's designation under **NZ Markets Disciplinary Tribunal Rule 4.3**, the suspension of quotation of trading of an Issuer's Quoted Securities or class of Quoted Securities under **NZ Markets Disciplinary Tribunal Rule 4.5**, or suspension or revocation of a Futures and Options Participant's designation under **NZ Markets Disciplinary Tribunal Rule 4.8**.
- (c) any decision of NZXD to publish and/ or identify any party to a Full Hearing.

Other than as set out in this **NZ Markets Disciplinary Tribunal Rule 8.1**, a party shall have no right of appeal from a determination made by NZ Markets Disciplinary Tribunal at a Full Hearing.

8.2 **Statement of case:** Where a party is entitled to appeal a determination made by NZ Markets Disciplinary Tribunal at a Full Hearing in accordance with **NZ Markets Disciplinary Tribunal Rule 8.1**, that party may appeal that determination (Full Appeal) by submitting a notice in writing to the appeal panel constituted under **NZ Markets Disciplinary Tribunal Rule 9.1 (Appeal Panel)** by addressing that notice to the chairperson of the Appeal Panel no later than 8 Business Days after that party received written notice of the determination of NZ Markets Disciplinary Tribunal in respect of the matter the subject of the Full Appeal, setting out:

- (a) The name of the party appealing (**Full Appellant**); and
- (b) The determination appealed against; and
- (c) The grounds of the Full Appeal; and
- (d) All material facts presented at the Full Hearing for that matter that the Full Appellant believes are relevant to the Full Appeal; and
- (e) Whether any New Evidence is to be relied upon and, if so, disclosing that New Evidence. For the avoidance of doubt, if a Full Appellant does not notify the chairperson of the Appeal Panel of such New Evidence as part of the notice under this **NZ Markets Disciplinary Tribunal Rule 8.2**, that New Evidence will be inadmissible at the Full Appeal; and
- (f) Whether the Full Appellant believes that an oral hearing of the Full Appeal is essential to establish all the facts relevant to that matter and, if so, a request for an oral hearing; and
- (g) Whether the Appeal Panel should order that any decision made by it for this Full Appeal not be published, or that publication should be delayed for a specified time period; and
- (h) All other documents the Full Appellant believes are relevant to the Full Appeal which shall also be attached.

8.3 **Statement of case provided to other party:** Where the Appeal Panel considers that a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 8.2** is not frivolous or without merit, the chairperson of the Appeal Panel (and in his or her absence the deputy chairperson of the Appeal Panel) shall provide, no later than 3 Business Days after receipt of that statement of case, a copy of that statement of case to the other party to the Full Hearing the subject of the Full Appeal (**Full Appeal Respondent**). Where the Appeal Panel considers that a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 8.2** is frivolous or without merit, the chairperson of the Appeal Panel (or in his or her absence the deputy chairperson of the Appeal Panel) shall notify the Full Appellant of that fact no later than 5 Business Days after receipt of that statement of case, setting out its reasons.

8.4 **Statement in response:** The Full Appeal Respondent may, within 5 Business Days of receipt of a statement of case provided under **NZ Markets Disciplinary Tribunal Rule 8.3** or

such other period as directed by the Appeal Panel on the request of that Full Appeal Respondent, submit to the chairperson of the Appeal Panel a statement in response setting out:

- (a) all material facts presented at the Full Hearing for that matter that the Full Appeal Respondent believes are relevant to the Full Appeal; and
- (b) whether any New Evidence is to be relied upon. For the avoidance of doubt, if a Full Appeal Respondent does not notify the chairperson of the Appeal Panel of such New Evidence as part of its statement in response under this NZ Markets Disciplinary Tribunal Rule 8.4, that New Evidence will be inadmissible at the Full Appeal; and
- (c) whether the Appellant believes that an oral hearing of the Full Appeal is essential to establish all the facts relevant to that matter and, if so, a request for an oral hearing; and
- (d) whether the Full Appeal Respondent believes Appeal Panel should order that any decision made by it for this Full Appeal not be published, or that publication should be delayed for a specified time period; and
- (e) all other documents the Full Appeal Respondent believes relevant to the Full Appeal which shall also be attached.

8.5 Procedure of Full Appeals: NZ Markets Disciplinary Tribunal Rules 5.8 to 5.17 (inclusive) relating to Summary Hearings as amended by **NZ Markets Disciplinary Tribunal Rule 6.4** relating to Full Hearings shall, with appropriate modifications, apply to a Full Appeal, except that:

- (a) a Full Appeal shall not be conducted as a rehearing but rather as a review of the findings. A Full Appeal shall be based on the facts as accepted at the Full Hearing the subject of that Full Appeal; and
- (b) a party may submit New Evidence at a Full Appeal for a matter only where that New Evidence was notified to NZ Markets Disciplinary Tribunal in accordance with **NZ Markets Disciplinary Tribunal Rule 8.2(e)** or **8.4(b)**. If New Evidence is submitted by a party in accordance with this **NZ Markets Disciplinary Tribunal Rule 8.5(b)**, that New Evidence only shall be heard by way of rehearing; and
- (c) **NZ Markets Disciplinary Tribunal Rule 5.8** shall be amended such that a Full Appeal on the documents shall

occur not more than 20 Business Days after receipt of a statement in response in respect of a matter; and

- (d) **NZ Markets Disciplinary Tribunal Rule 5.10** shall be amended such that the Appeal Panel must give not less than 5 Business Days and not more than 20 Business Days' notice of an oral hearing for a Full Appeal.

- 8.6 **Effect of Full Hearing determination:** Pending the completion of a Full Appeal for a matter under this **NZ Markets Disciplinary Tribunal Rule 8**, the determination of NZ Markets Disciplinary Tribunal at Full Hearing for that matter has full force and effect except to the extent that determination includes a suspension or revocation of a Market Participant's designation under **NZ Markets Disciplinary Tribunal Rule 4.3**, or quotation of trading of an Issuer's Quoted Securities or class of Quoted Securities under **NZ Markets Disciplinary Tribunal Rule 4.5** or the suspension or revocation of a Futures and Options Participant's designation under **NZ Markets Disciplinary Tribunal Rule 4.8**.
- 8.7 **Determination on Full Appeal:** The Appeal Panel may affirm, vary or set aside the determination of NZ Markets Disciplinary Tribunal at Full Hearing and any penalty imposed where it considers that that determination is a misrepresentation or an erroneous application of the Conduct Rules, the Futures and Options Rules or any other rules and regulations of NZX from time to time (as the case may be).

Section 9: Appeal Panel

- 9.1 **Members of Appeal Panel:** The membership of the Appeal Panel shall consist of:
- (a) two practicing or retired barristers and/or solicitors of not less than seven years standing that are not retired justices, one of whom shall be the chairperson and the other deputy chairperson of the Appeal Panel. The Appeal Panel shall appoint the members appointed under this **NZ Markets Disciplinary Tribunal Rule 9.1(a)** as chairperson and deputy chairperson of the Appeal Panel; and
 - (b) two retired Market Participants or person who would have been Market Participants if still employed and undertaking their former occupation; and
 - (c) two former directors of Issuers, who are no longer directors of any Listed Issuer; and
 - (d) one member of the public who shall be appointed on the basis of his or her reputation and demonstrated knowledge and expertise in relation to securities markets or a facet of securities markets, including futures and options.
- 9.2 **Nominations and appointment:** NZX shall periodically call for nominations for appointment to the Appeal Panel. NZX shall provide, from the nominations received, a list of suitable nominees to the Securities Commission taking into consideration the policies set out in **NZ Markets Disciplinary Tribunal Rule 2.4**. The Securities Commission shall appoint members of the Appeal Panel from the list provided by NZX and upon such appointment shall notify NZX and publish notification of those appointments on its website.
- 9.3 **Term:** Each member of the Appeal Panel shall be appointed for a term of three years. One third of the members shall retire by rotation each year. As between persons who became members of the Appeal Panel on the same day, those members to retire by rotation will be chosen by lot. The Securities Commission may appoint a retiring member of the Appeal Panel for a further term or terms, up to a maximum of three consecutive terms.
- 9.4 **Removal from Office:** The Securities Commission may remove from office any member of the Appeal Panel where that

member:

- (a) is incapacitated from acting for a period of more than 3 months in any 12 month period; or
- (b) has, in the opinion of the Securities Commission, neglected his or her duty; or
- (c) is found by the Securities Commission to have engaged in misconduct.

If the Securities Commission removes a member of the Appeal Panel in accordance with this **NZ Markets Disciplinary Tribunal Rule 9.4**, it must immediately notify NZX and publish notification of that removal on its website.

9.5 **Resignation:** A member of the Appeal Panel may resign his or her office by providing 60 days' written notice to the Securities Commission and NZX.

9.6 **Effect of Resignation:** The resignation of a member of the Appeal Panel who resigns shall not be effective until all Full Appeals on which that member is currently sitting are disposed of.

9.7 **Divisions:** The Appeal Panel shall ordinarily act through divisions consisting of 3 members of the Appeal Panel who do not have a conflict of interest and are chosen by the chairperson of the Appeal Panel (or in his or her absence the deputy chairperson of the Appeal Panel), at least one of whom must be the chairperson or deputy chairperson of the Appeal Panel.

9.8 **Procedures of the Appeal Panel:** Other than as set out in these NZ Markets Disciplinary Tribunal Rules, a division of the Appeal Panel shall determine its own processes for hearing and determining appeals before it under these **NZ Markets Disciplinary Tribunal Rules**:

- (a) NZ Markets Disciplinary Tribunal shall forward to NZX the written summary of reasons required under **NZ Markets Disciplinary Tribunal Rule 5.17**.
- (b) NZX shall prepare a statement of the circumstances preliminary to the hearing of any charge and the determination of NZ Markets Disciplinary Tribunal on every charge and the penalty (if any) imposed.
- (c) The written summary of reasons required under **NZ Markets Disciplinary Tribunal Rule 5.17** and the statement of circumstances preliminary to the hearing

required under **NZ Markets Disciplinary Tribunal Rule 9.8(b)** shall be provided to the Appeal Panel by NZX.

- 9.9 **NZ Markets Disciplinary Tribunal Rules applying to Full Appeals: NZ Markets Disciplinary Tribunal Rule 3.3** relating to divisions, **NZ Markets Disciplinary Tribunal Rule 4** relating to powers of NZ Markets Disciplinary Tribunal, **NZ Markets Disciplinary Tribunal Rule 10** relating to settlements, **NZ Markets Disciplinary Tribunal Rule 11** relating to penalties, **NZ Markets Disciplinary Tribunal Rule 13** relating to pay costs or attend, **NZ Markets Disciplinary Tribunal Rule 14** relating to remuneration and **NZ Markets Disciplinary Tribunal Rule 16** relating to indemnification, shall apply to the Appeals Panel with appropriate modifications.

Section 10: Settlement

- 10.1 **Approval of settlement:** At any time after a statement of case is issued in respect of a matter, the parties to that matter may, without prejudice, negotiate a proposed settlement and jointly submit it in writing to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) for approval. If that Division of NZ Markets Disciplinary Tribunal constituted to hear and determine the matter which is the subject of the settlement or the division of the Appeal Panel constituted to hear and determine the matter which is the subject of the settlement (as the case may be) approves a proposed settlement under this **NZ Markets Disciplinary Tribunal Rule 10.1** or any variation to that proposed settlement agreed between the parties to that matter, the terms of that approved settlement shall be the determination of that Division of NZ Markets Disciplinary Tribunal or that Division of the Appeal Panel (as the case may be) as if it was the determination of it as a hearing at first instance, except there is no right of appeal and the terms of the approved settlement have immediate effect.
- 10.2 **Negotiation of settlement not affect procedures:** The procedures set out in **NZ Markets Disciplinary Tribunal Rules 5 to 8** (inclusive), including the time for submitting documents and for consideration of documents or convening an oral hearing, shall not be affected by the parties to a matter entering into settlement negotiations under **NZ Markets Disciplinary Tribunal Rule 10.1**.
- 10.3 **Settlement confidential:** If NZ Markets Disciplinary Tribunal or the Appeal Panel does not approve a proposed settlement:
- (a) there shall be no reference in any documents or oral hearing before NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) to the negotiations, the proposed settlement or the submissions to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), all of which are confidential; and
 - (b) any member of the Division of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) constituted to consider a proposed settlement must not sit on the Division of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) constituted to hear and determine the matter the subject of that proposed settlement.

Section 11: Penalties

- 11.1 **Penalties for Market Participants who are not natural persons on Full Hearing Procedure:** If, after hearing any matter by way of the Full Hearing Procedure, the Division of NZ Markets Disciplinary Tribunal or the division of the Appeal Panel (as the case may be) finds that a Market Participant, who is not a natural person, has been guilty of a breach of any NZX Participant Rule or has failed to observe Good Broking Practice, or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or its markets, it may, if it thinks fit, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), do one or more of the following things:
- (a) issue a private reprimand; and/or
 - (b) issue a public statement that that Market Participant has acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and that no further action will be taken; and/or
 - (c) Issue a public statement that that Market Participant has acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and criticise the conduct of that Market Participant; and/or
 - (d) publicly censure that Market Participant, by making an announcement to the market that that Market Participant is found to have acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and is censured by NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be); and/or
 - (e) revoke that Market Participant's designation as a Market Participant; and/or
 - (f) suspend that entity's designation as a Market Participant

for a stated period; and/or.

- (g) order that Market Participant to pay to NZX within a specified time a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax); and/or
- (h) order that Market Participant to make restitution to a third party where that Market Participant has profited from a breach of the NZX Participant Rules at that third party's expense; and/or
- (i) require that Market Participant, where the breach is capable of being remedied, to take such remedial action as NZ Markets Disciplinary Tribunal may direct; and/or
- (j) require that Market Participant to undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the NZX Participant Rules by that Market Participant; and/or;
- (k) NZX require that Market Participant to pay the total commission or gross commission or part thereof arising from any transaction giving rise to a breach of the NZX Participant Rules to NZX, which shall be deposited by NZX into the Discipline Fund; and/or
- (l) in relation to any matter involving **NZX Participant Rule 17.2.1** proved, it may order:
 - (a) in the case of a matter involving **Futures and Options Rule 17.1(d)(i)** that the partner concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the Futures and Options Rules by that employee of that Futures and Options Participant; or
 - (i) in the case of a matter involving **NZX Participant Rule 17.1(d)(ii)**, that the employee concerned undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the NZX Participant Rules by that employee of the Market Participant; or

- (ii) in the case of a matter involving **NZX Participant Rule 17.1(d)(iv)**, that the Managing Principals or Responsible Executives (as the case may be) undertake, in a form directed by NZX, or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the NZX Participant Rules by that employee of the Market Participant; and/or
- (m) order a probationary period whereby certain terms and conditions, in addition to those set out in the NZX Participant Rules, are attached to that Market Participant's continued designation as a Market Participant.

If a Market Participant fails to carry out an order of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), made under this **NZ Markets Disciplinary Tribunal Rule 11.1**, in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), suspend that Market Participant's designation as a Market Participant until that order is complied with.

11.2 Penalties for Market Participant who are not natural persons on Summary Hearing Procedure: Where a matter is heard by way of Summary Hearing Procedure, NZ Markets Disciplinary Tribunal shall have the same powers as to penalties as set out in **NZ Markets Disciplinary Tribunal Rule 11.1**, except that NZ Markets Disciplinary Tribunal, acting under the Summary Hearing Procedure, may not:

- (a) suspend or revoke a Market Participant's designation; and/or
- (b) order that Market Participant to pay to NZX within a specified time, a sum by way of penalty exceeding \$250,000 (plus GST or any other applicable tax); and/or
- (c) make orders under **NZ Markets Disciplinary Tribunal Rule 11.1(j) or 11.1(k)**.

If a Market Participant fails to carry out an order of NZ Markets Disciplinary Tribunal made under this **NZ Markets Disciplinary**

Tribunal Rule 11.2 in the period determined by or otherwise satisfactory to that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal, suspend that Market Participant's designation as a Market Participant until that order is complied with

11.3 **Penalties for Market Participants who are natural persons, on Full Hearing Procedure:** If, after hearing any matter by way of the Full Hearing Procedure, the Division of the NZ Markets Disciplinary Tribunal or the division of the Appeal Panel (as the case may be) finds that a Market Participant who is a natural person has been guilty of a breach of any NZX Participant Rule or has failed to observe Good Broking Practice, or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX, it may, if it thinks fit, and without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), do one or more of the following things:

- (a) issue a private reprimand; and/or
- (b) issue a public statement that that Market Participant has acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and that no further action will be taken;
- (c) issue a public statement that that Market Participant has acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and criticise the conduct of that Market Participant; and/or
- (d) publicly censure that Market Participant, by making an announcement to the market that that Market Participant is found to have acted in breach of the NZX Participant Rules or has failed to observe Good Broking Practice or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and is censured by NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be); and/or

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- (e) revoke that Market Participant's designation as a Market Participant; and/or
- (f) suspend that Market Participant's designation as a Market Participant for a stated period; and/or
- (g) order that Market Participant to pay to NZX within a specified time, a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax), and where that party has profited from the breach to pay to NZX an additional fine equal to the profit derived from the breach multiplied by 3 notwithstanding that the total fine imposed may exceed \$500,000 (plus GST or any other applicable tax); and/or
- (h) order that Market Participant to make restitution to a third party where that Market Participant has profited from a breach of the NZX Participant Rules at that third party's expense; and/or
- (i) require that Market Participant, where such breach is capable of being remedied, to take such remedial action as NZ Markets Disciplinary Tribunal may direct; and/or
- (j) order a probationary period whereby certain terms and conditions as determined by the Division of NZ Markets Disciplinary Tribunal or the division of the Appeal Panel, in addition to those set out in the NZX Participant Rules, are attached to that Market Participant's continued designation as a Market Participant; and/or
- (k) require that Market Participant to undertake such training as NZX may direct, such training being designed to prevent a future contravention of the NZX Participant Rules.

If a Market Participant fails to carry out an order of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) made under this NZ Markets Disciplinary Tribunal Rule 11.3, in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), suspend that Market Participant's designation as a Market Participant until that order is complied with.

11.4 **Penalties for Market Participants who are natural persons under the Summary Hearing Procedure:** Where an inquiry is conducted, or matter heard by way of Summary Hearing Procedure, NZ Markets Disciplinary Tribunal shall have the same powers as to penalties as set out in **NZ Markets Disciplinary Tribunal Rule 11.3**, except that NZ Markets Disciplinary Tribunal acting under the Summary Hearing Procedure, may not:

- (a) suspend or revoke that Market Participant's designation;
or
- (b) order that Market Participant to pay to NZX within a specified time, a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax), and where that party has profited from the breach to pay to NZX an additional fine equal to the profit derived from the breach multiplied by 3 notwithstanding that the total fine imposed may exceed \$500,000 (plus GST or any other applicable tax);

If a Market Participant fails to carry out an order of NZ Markets Disciplinary Tribunal made under this **NZ Markets Disciplinary Tribunal Rule 11.4** in the period determined by or otherwise satisfactory to that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal, suspend that Market Participant's designation as a Market Participant until that order is complied with.

11.5 **Penalties for Issuers under the Full Hearing Procedure:** If, after hearing any matter by way of the Full Hearing Procedure that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) finds that an Issuer has been guilty of a breach of any Listing Rule, it may, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), do one or more of the following things:

- (a) issue a private reprimand; and/or
- (b) issue a public statement that that Issuer or director or former director of that Issuer has acted in breach of the Listing Rules and:

- (i) state that no further action will be taken; and/ or
- (ii) criticise the conduct of that Issuer or director or former director of that Issuer; and/ or
- (iii) make an announcement to the market that that Issuer or director or former director of that Issuer is found to have acted in breach of the Listing Rules and is censured by the NZ Markets Disciplinary Tribunal; and/ or
- (c) issue a public statement that that Issuer has acted in breach of the Listing Rules and criticise the conduct of that Issuer; and/or
- (d) publicly censure that Issuer by making an announcement to the market that that Issuer is found to have acted in breach of the Listing Rules and is censured by NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be); and/or
- (e) suspend the Quotation of a Class or all Classes of that Issuer's Quoted Securities for a stated period; and/or
- (f) publicly state that the retention of the office of director and/or executive of that Issuer by a named individual is prejudicial to the interests of investors; and/or
- (g) cancel that Issuer's Listing; and/or
- (h) cancel Quotation of any Class or all Classes of that Issuer's Quoted Securities; and/or
- (i) order that Issuer to pay to NZX, within a specified time, a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax); and/or
- (j) order that Issuer to make restitution to a third party where that Issuer has profited from a breach of the Listing Rules at that third party's expense; and/or
- (k) require that Issuer, where such breach is capable of being remedied, to take such remedial action as NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) may direct.

If an Issuer fails to carry out an order of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) made under this **NZ Markets Disciplinary Tribunal Rule 11.5** in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), suspend the Quotation of any or all Classes of that Issuer's Quoted Securities until the order is complied with.

11.6 Penalties for Issuers under the Summary Hearing

Procedure: Where an inquiry is conducted, or matter heard, by way of Summary Hearing Procedure, NZ Markets Disciplinary Tribunal shall have the same powers as to penalties as set out in **NZ Markets Disciplinary Tribunal Rule 11.5**, except that NZ Markets Disciplinary Tribunal acting under summary procedure may not:

- (a) cancel an Issuer's Listing; or
- (b) suspend Quotation of a Class or all Classes of an Issuer's Quoted Securities; or
- (c) order that Issuer to pay to NZX, within a specified time, a sum by way of penalty exceeding \$250,000 (plus GST or any other applicable tax).

If an Issuer fails to carry out an order of NZ Markets Disciplinary Tribunal made under this **NZ Markets Disciplinary Tribunal Rule 11.6** in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal that Division may, without limiting any other remedies or sanctions available to NZ Markets Disciplinary Tribunal, suspend the Quotation of any or all Classes of that Issuer's Quoted Securities until the order is complied with.

11.7 Penalties for Futures and Options Participants who are not natural persons on Full Hearing Procedure:

If, after hearing any matter by way of the Full Hearing Procedure, the Division of NZ Markets Disciplinary Tribunal or the division of the Appeal Panel (as the case may be) finds that a Futures and Options Participant, who is not a natural person, has been guilty of a breach of any Futures and Options Rule or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the well-being or proper conduct of NZX or its markets, it may, if it thinks fit, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary

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Tribunal or the Appeal Panel (as the case may be), do one or more of the following things:

- (a) issue a private reprimand; and/or
- (b) issue a public statement that that Futures and Options Participant has acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and that no further action will be taken; and/or
- (c) issue a public statement that that Futures and Options Participant has acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and criticise the conduct of that Futures and Options Participant; and/or
- (d) publicly censure that Futures and Options Participant, by making an announcement to the market that that Futures and Options Participant is found to have acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and is censured by NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be); and/or
- (e) revoke that Futures and Options Participant's designation as a Futures and Options Participant; and/or
- (f) suspend that entity's designation as a Futures and Options Participant for a stated period; and/or
- (g) order that Futures and Options Participant to pay to NZX within a specified time a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax); and/or
- (h) order that Futures and Options Participant to make restitution to a third party where that Futures and Options Participant has profited from a breach of the Futures and Options Rules at that third party's expense; and/or
- (i) require that Futures and Options Participant, where the breach is capable of being remedied, to take such remedial action as NZ Markets Disciplinary Tribunal may direct; and/or
- (j) require that Futures and Options Participant to undertake, in a form directed by NZX or upgrade to the satisfaction of

NZX, an education or compliance programme designed to prevent future contravention of the Futures and Options Rules by that Futures and Options Participant; and/or

- (k) require that Futures and Options Participant to pay the total commission or gross commission or part thereof arising from any transaction giving rise to a breach of the Futures and Options Rules to NZX and which shall be deposited by NZX into the Discipline Fund; and/or
- (l) in relation to any matter involving Futures and Options Rule 12.2 proved, it may order:
 - (i) in the case of a matter involving Futures and Options Rule 12.2(d)(i) that the partner concerned undertake, in a form directed by NZX or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the Futures and Options Rules by that employee of that Futures and Options Participant; or
 - (ii) in the case of a matter involving Futures and Options Rule 12.2(d)(ii) that the employee concerned undertake, in a form directed by NZX or upgrade to the satisfaction of NZX, an education or compliance programme designed to prevent future contravention of the Futures and Options Rules by that employee of that Futures and Options Participant; and/or
- (m) order a probationary period whereby certain terms and conditions as determined by the Division of NZ Markets Disciplinary Tribunal or the division of the Appeal Panel, in addition to those set out in the Futures and Options Rules are attached to that Futures and Options Participant's continued designation as a Futures and Options Participant.

If a Futures and Options Participant fails to carry out an order of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) made under this **NZ Markets Disciplinary Tribunal Rule 11.7** in the period determined by or otherwise satisfactory to that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of the NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), suspend that Futures and Options Participant's designation as a Futures and Options Participant until that order is complied with.

11.8 **Penalties for Futures and Options Participants who are not natural persons on Summary Hearing Procedure:** Where a matter is heard by way of Summary Hearing Procedure, NZ Markets Disciplinary Tribunal shall have the same powers as to penalties as set out in **NZ Markets Disciplinary Tribunal Rule 11.7**, except that NZ Markets Disciplinary Tribunal, acting under the Summary Hearing Procedure, may not

- (a) suspend or revoke a Futures and Options Participant's designation; and/or
- (b) order that Futures and Options Participant to pay to NZX within a specified time, a sum by way of penalty exceeding \$250,000 (plus GST or any other applicable tax); and/or
- (c) make orders under **NZ Markets Disciplinary Tribunal Rule 11.7(j) or 11.7(k)**.

If a Futures and Options Participant fails to carry out an order of NZ Markets Disciplinary Tribunal made under this **NZ Markets Disciplinary Tribunal Rule 11.8** in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be), that Division of NZ Markets Disciplinary Tribunal or that the division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal, suspend that Futures and Options Participant's designation as a Futures and Options Participant until that order is complied with.

11.9 **Penalties for Futures and Options Participants who are natural persons, on Full Hearing Procedure:** If, after hearing any matter by way of the Full Hearing Procedure, the Division of the NZ Markets Disciplinary Tribunal or the division of the Appeal Panel (as the case may be) finds that a Futures and Options Participant who is a natural person has been guilty of a breach of any Futures and Options Rule or of any act, matter or thing detrimental, or reasonably likely to be detrimental, to the wellbeing or proper conduct of NZX, it may, if it thinks fit, and without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), do one or more of the following things:

- (a) issue a private reprimand; and/or

- (b) issue a public statement that that Futures and Options Participant has acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and that no further action will be taken; and/or
- (c) issue a public statement that that Futures and Options Participant has acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the wellbeing or proper conduct of NZX or its markets and criticise the conduct of that Futures and Options Participant; and/or
- (d) publicly censure that Futures and Options Participant, by making an announcement to the market that that Futures and Options Participant is found to have acted in breach of the Futures and Options Rules or done any act, matter or thing detrimental or reasonably likely to be detrimental to the well being or proper conduct of NZX or its markets and is censured by NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be); and/or
- (e) revoke that Futures and Options Participant's designation as a Futures and Options Participant; and/or
- (f) suspend that Futures and Options Participant's designation as a Futures and Options Participant for a stated period; and/or
- (g) order that Futures and Options Participant to pay to NZX within a specified time, a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax), and where that party has profited from the breach to pay to NZX an additional fine equal to the profit derived from the breach multiplied by 3 notwithstanding that the total fine imposed may exceed \$500,000 (plus GST or any other applicable tax);
- (h) order that Futures and Options Participant to make restitution to a third party where that Futures and Options Participant has profited from a breach of the Futures and Options Rules at that third party's expense; and/or
- (i) require that Futures and Options Participant, where such breach is capable of being remedied, to take such remedial actio as NZ Markets Disciplinary Tribunal may direct; and/ or

- (j) order a probationary period whereby certain terms and conditions, in addition to those set out in the Futures and Options Rules are attached to that Futures and Options Participant's continued designation as a Futures and Options Participant; and/or
- (k) require that Futures and Options Participant to undertake such training as NZX may direct, such training being designed to prevent a future contravention of the Futures and Options Rules.

If a Futures and Options Participant fails to carry out an order of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) made under this **NZ Markets Disciplinary Tribunal Rule 11.9** in the period determined by or otherwise satisfactory to that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel, that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), suspend that Futures and Options Participant's designation as a Futures and Options Participant until that order is complied with.

11.10 Penalties for Futures and Options Participants who are natural persons under the Summary Hearing Procedure:

Where an inquiry is conducted, or matter heard by way of Summary Hearing Procedure, NZ Markets Disciplinary Tribunal shall have the same powers as to penalties as set out in **NZ Markets Disciplinary Tribunal Rule 11.9**, except that NZ Markets Disciplinary Tribunal acting under the Summary Hearing Procedure, may not:

- (a) suspend or revoke that Futures and Options Participant's designation; or
- (b) order that Futures and Options Participant to pay to NZX within a specified time, a sum by way of penalty not exceeding \$500,000 (plus GST or any other applicable tax), and where that party has profited from the breach to pay to NZX an additional fine equal to the profit derived from the breach multiplied by 3 notwithstanding that the total fine imposed may exceed \$500,000 (plus GST or any other applicable tax);.

If a Futures and Options Participant fails to carry out an order of NZ Markets Disciplinary Tribunal made under this **NZ Markets Disciplinary Tribunal Rule 11.10** in the period determined by or otherwise satisfactory to the Division of NZ Markets Disciplinary Tribunal, that the Division of NZ Markets Disciplinary Tribunal may, without limiting any other remedies or sanctions available to the NZ Markets Disciplinary Tribunal, suspend that Futures and Options Participant's designation as a Futures and Options Participant until that order is complied with.

- 11.11 **Public statements and censures:** Any determination to make a public statement or public censure made by NZ Markets Disciplinary Tribunal under this **NZ Markets Disciplinary Tribunal Rule 11** shall not be made until the time period for appeal against that determination has expired.
- 11.12 **Factors to consider in determining penalty:** When a Division of NZ Markets Disciplinary Tribunal or a division of the Appeal Panel (as the case may be) is considering imposing any of the penalties under this **NZ Markets Disciplinary Tribunal Rule 11**, and in considering the extent of that penalty, that the Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel (as the case may be) shall take into consideration:
- (a) the conduct of the party to which the penalty will be imposed over the previous 24 month period; and/or
 - (b) the matter before it; and/or
 - (c) the severity of the matter; and/or
 - (d) any benefit obtained or detriment suffered as a consequence of the breach; and/or
 - (e) the reputational impact of the penalty being imposed; and/or
 - (f) any penalty guidance notes that have been published by NZX; and/or
 - (g) any other mitigating factors that Division of NZ Markets Disciplinary Tribunal or that division of the Appeal Panel; and/ or
 - (h) any other penalty or sanction actually, or likely to be, imposed on the party by any other body or power for the matter before it.

The NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note provide guides as to the appropriate financial penalties to be imposed by the NZ Markets Disciplinary Tribunal in respect of breaches of the NZX Participant Rules by Market Participants, the NZX Listing Rules by Issuers and the Futures and Options Rules by Futures and Options Participants (respectively). The applicable penalties are divided into bands. Each of the penalty bands provides examples of types of breaches and the recommended financial penalty for such breach. The penalty band also sets out mitigating factors for consideration by the NZ Markets Disciplinary Tribunal in setting the penalty. The penalty bands are not an attempt by NZX to indicate what penalty should be imposed for every breach of the NZX Participant Rules, NZX Listing Rules or Futures and Options Rules but do provide guidance to the NZ Markets Disciplinary Tribunal as to the appropriate penalty to impose on a Market Participant, Issuer or Futures and Options Participant. The NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note also provides Market Participants, Issuers and Futures and Options Participants with an outline of the penalties that they can expect to see imposed for breaches of the NZX Participant Rules, NZX Listing Rules and Futures and Options Rules (respectively). The NZ Markets Disciplinary Tribunal Rules Penalty Band Guidance Note is however not determinative and the NZ Markets Disciplinary Tribunal will ultimately use its discretion in imposing any penalty under this NZX Discipline Rule 11.

- 11.13 **Proceeds of penalties imposed:** Any penalty imposed on a Market Participant, Issuer or Futures and Options Participant under these NZ Markets Disciplinary Tribunal Rules shall be a debt due to NZX enforceable by action in the name of NZX. All amounts received by NZX in payment of any penalty imposed on a Market Participant, Issuer or Futures and Options Participant under these NZ Markets Disciplinary Tribunal Rules shall be kept in a separate account of NZX (Discipline Fund). Proceeds in the Discipline Fund may only be used by NZX against money paid or payable by NZX in respect of:
- (a) enforcement of the Conduct Rules, Futures and Options Rules and any other rules and regulations of NZX from time to time; and/or
 - (b) the costs and expenses of NZ Markets Disciplinary Tribunal and the Appeal Panel, including any remuneration payable under **NZ Markets Disciplinary Tribunal Rule 14**; and/or

- (c) seminars and other education initiatives in respect of regulation of NZX's markets and regulation of the futures and options industry; and/or
- (d) redrafting the Conduct Rules, Futures and options Rules and any other rules and regulations of NZX from time to time; and/or
- (e) any other use with the prior written consent of the Securities Commission.

11.14 Penalties for failure to comply with requirement to provide information or document:

- (a) A person who receives notice under Rule 4.2, must comply with the requirement stated in the notice in the manner within the period (being not less than 5 Business Days or such other period advised by the NZ Markets Disciplinary Tribunal after the notice is given to the person) specified in the notice
- (b) Every Person is liable for a fine not exceeding \$10,000, who, when required to comply with a notice given under Rule 4.2:
 - (i) refuses or fails without reasonable
 - (ii) knowingly or recklessly provides information that is false or misleading in any material particular.

11.15 No set-off: Fines or orders imposed on Market Participants, Issuers or Futures and Options Participants under these NZ Markets Disciplinary Tribunal Rules can not be set-off against any other monies owed by NZX to the party against whom the penalty has been imposed.

Section 12: Annual Regulatory Report

12.1 **Content of report:** Following the end of each calendar year NZX shall collate the following information for that year and provide to the NZ Markets Disciplinary Tribunal as a report by the end of April of the following year:

- (a) breaches of the Conduct Rules, Futures and Options Rules or any other rules or regulations of NZX from time to time identified by NZX; and
- (b) complaints received by NZX in respect of Market Participants, Issuers and Futures and Options Participants; and
- (c) the use of the proceeds of the Disciplinary Fund.

The NZ Markets Disciplinary Tribunal shall create and provide an annual regulatory report to the public by the end of June of the following year using as a minimum the information from the report in respect of each year provided to the NZ Markets Disciplinary Tribunal by NZX above, and that collated by itself below:

- (d) number of statements of case issued by NZX and the type of matters addressed in those statements of case; and
- (e) the findings of the NZ Markets Disciplinary Tribunal and the Appeal Panel in respect of each statement of case issued by NZX, provided such disclosures are consistent with any decision on publication made by the NZ Markets Disciplinary Tribunal; and
- (f) any penalties imposed by the NZ Markets Disciplinary Tribunal and the Appeal Panel; and.
- (g) a statement from the NZ Markets Disciplinary Tribunal and the Appeal Panel stating whether or not they believe that adequate resources have been made available to it, to undertake its role under these NZ Markets Disciplinary Tribunal Rules; and
- (h) any order for costs imposed on Market Participants, issuers or Futures and Options Participants under this Rule can not be set-off against any other monies owed by NZX to the party against whom the costs order has been imposed.

- 12.2 **Copy to be provided to NZX:** The Annual Regulatory Report shall be provided by the NZ Markets Disciplinary Tribunal to NZX one month prior to it being made publicly available and NZX shall be entitled to provide to the NZ Markets Disciplinary Tribunal comments on the Annual Regulatory Report. The NZ Markets Disciplinary Tribunal is not required to make changes to the Annual Regulatory Report based on comments received from NZX under this Rule 12.2.

Section 12A: Costs and Expenses

12A.1 **NZ Markets Disciplinary Tribunal Costs and Expenses**

Awards: The NZ Markets Disciplinary Tribunal may of its own initiative order any party to pay such reasonable costs as it thinks fit, regardless of any finding or the outcome of the case, after conducting a hearing under these NZ Markets Disciplinary Tribunal Rules. Such costs may include the remuneration and expenses of members of the NZ Markets Disciplinary Tribunal and Counsel to NZ Markets Disciplinary Tribunal and NZX staff assisting the Tribunal, and any costs incurred by NZX in the preparation and presentation of its case. Such order, which may be made at the same time as the determination, or following the determination, will be made after the parties have been heard on costs.

Such an order may include:

- (a) the costs and expenses of a hearing, including, the fees and expenses of and incidental to the NZ Markets Disciplinary Tribunal conducting the hearing, and any other expenses related to the hearing (including any amount payable under **NZ Markets Disciplinary Tribunal Rule 12.A.2**) shall be as fixed and allocated by the NZ Markets Disciplinary Tribunal in its determination; and
- (b) Where the order is made in favour of NZX, the costs and expenses incurred by NZX in the preparation and presentation of its case.

12A.1A In the absence of such an award as outlined in the above Rule 12A.1, fixing and allocating the costs and expenses of the hearing, each party shall be responsible for the legal and other expenses of the hearing, each party shall be responsible for the legal and other expenses of that party and for an equal share of the fees and other expenses relating to that hearing including an expert's costs, and costs of any counsel assisting the NZ Markets Disciplinary Tribunal.

12A.1B Any order for costs made by the NZ Markets Disciplinary Tribunal, in terms of Rule 12A.1, shall be paid within 30 days of receipt of the notification in writing of the amount payable.

12A.2 **NZ Markets Disciplinary Tribunal Evidence Costs and Expenses Awards:**

Every person (other than NZX, a respondent or an officer or employee of NZX or such respondent or any other person who gives evidence on behalf of NZX or a respondent) who gives evidence, or attends to give evidence, at a hearing conducted by NZ Markets Disciplinary

Tribunal, may be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:

- (a) determined by NZ Markets Disciplinary Tribunal; and
- (b) paid by NZX; and
- (c) recoverable in terms of any order NZ Markets Disciplinary Tribunal may make under NZ Markets Disciplinary Tribunal Rule 12A.1

12A.3 Appeal Panel Costs and Expenses Awards: After conducting an appeal under **NZ Markets Disciplinary Tribunal Rule 8** the Appeal Panel may, at its discretion, and after hearing from the parties, make an order as to costs against any party to the hearing. The Appeal Panel's powers to make an order as to costs under this Rule 12A.3 are limited to:

- (a) the costs and expenses of, and incidental to, the hearing conducted the Appeal Panel (including any amount payable under **NZ Markets Disciplinary Tribunal Rule 12.A.4**); and
- (b) the fees payable to Appeal Panel members for time expended by such members in relation to the hearing.

12A.4 Appeal Panel Evidence Costs and Expenses Awards Every person (other than NZX, a respondent or an officer or employee of NZX or such respondent or any other person who gives New Evidence on behalf of NZX or a respondent) at a Full Appeal, or attends to give New Evidence, at an appeal conducted by the Appeals Panel, may be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:

- (a) determined by the Appeals Panel; and
- (b) paid by NZX; and
- (c) recoverable in terms of any order the Appeals Panel may make under NZ Markets Disciplinary Tribunal Rule 12A.3.

Section 13: Failure To Pay Costs or Attend

- 13.1 **Consequences of failure to pay a penalty:** A Respondent that fails, within the time stated in any determination or period otherwise satisfactory to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), to pay any sum ordered to be paid by way of penalty or costs and expenses:
- (a) may, where the Respondent is a Market Participant, have its designation as a Market Participant suspended by NZX; or
 - (b) may, where the Respondent is an Issuer, have Quotation of any Class or all of its Quoted Securities suspended by NZX; or
 - (c) may, where the Respondent is a Futures and Options Participant, have its designation as a Futures and Options Participant suspended by NZX,
- until such sum is paid and that Respondent:
- (d) shall be liable to NZX for interest at the Interest Rate, calculated on a daily basis on the amount the Respondent was ordered to pay from the time that amount was due for payment as stated in the determination or period otherwise satisfactory to the NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), until payment in full is made.
- Should any part of that sum remain unpaid for one month following the date of such suspension, in the absence of any circumstance which, in the opinion of NZX, provides reasonable justification for such failure to pay, NZX may thereafter, at its complete discretion and without limiting any other remedies or sanctions available to NZX, promptly, in the case of a Market Participant revoke that Market Participant's designation as a Market Participant, in the case of an Issuer, cancel that Issuer's Listing and in the case of a Futures and Options Participant revoke that Futures and Options Participant's designation as a Futures and Options Participant.
- 13.2 **Failures amounting to a breach:** Every Market Participant, Issuer or Futures and Options Participant commits a breach of the Listing Rules, NZX Participant Rules or Futures and Options Rules (as relevant) if, without lawful justification, it

refuses or fails to:

- (a) attend and give evidence when required to do so by NZ Markets Disciplinary Tribunal; or
- (b) answer truly and fully any question put to it by a member of the NZ Markets Disciplinary Tribunal; or
- (c) produce for the NZ Markets Disciplinary Tribunal any book, tape, document, paper or other record (in whatever medium) required of it.

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Section 14: Remuneration

- 14.1 **Remuneration:** Members of the NZ Markets Disciplinary Tribunal and the Appeal Panel shall be entitled to be reimbursed for reasonable expenses incurred when engaged on the business affairs of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be), and each member of NZ Markets Disciplinary Tribunal or the Appeal Panel (as the case may be) shall be paid by way of remuneration such sums as NZX may from time to time agree with that member.
- 14.2 **Remuneration Review:** The remuneration of the NZ Markets Disciplinary Tribunal shall be reviewed every two years from 30 June 2008. The remuneration review committee will consist of the Head of market Supervision at NZX, the Chairperson of the NZ Markets Disciplinary Tribunal and the Director of Market Supervision at the Securities Commission. That committee shall make a recommendation to the NZX Board. The NZX Board shall determine the rate of remuneration payable to members and may accept, reject or alter that recommendation, provided that the NZX Board may not reduce the rate of remuneration payable to members without prior approval of the Securities Commission.

Section 15: Annual and Other Meetings

The members of NZ Markets Disciplinary Tribunal shall meet at least once annually and NZX shall be entitled to call additional meetings of NZ Markets Disciplinary Tribunal where it considers such meetings are necessary for operational reasons and members of the NZ Markets Disciplinary Tribunal shall attend such meetings unless excused. Not all members of NZ Markets Disciplinary Tribunal must be in the physical presence of one another for any meeting of NZ Markets Disciplinary Tribunal provided that all members involved in the proceedings are able to participate in discussion at that meeting.

Section 16: Indemnification

- 16.1 **Limitation of Liability:** None of NZX, NZ Markets Disciplinary Tribunal, the Appeal Panel, any member of NZ Markets Disciplinary Tribunal or the Appeal Panel, any employee of NZX, or any delegate of NZX, NZ Markets Disciplinary Tribunal or the Appeal Panel, shall be liable in tort, contract, or otherwise for any action taken or not taken in exercise or purported exercise in good faith of the powers or discretions conferred by these NZ Markets Disciplinary Tribunal Rules.
- 16.2 **Indemnity:** Each Issuer and Market Participant shall indemnify each of NZX, NZ Markets Disciplinary Tribunal, the Appeal Panel, any member of the NZ Markets Disciplinary Tribunal or the Appeal Panel, each employee of NZX, and each delegate of NZX, NZ Markets Disciplinary Tribunal or the Appeal Panel, against all liabilities and claims which may arise (notwithstanding the limitation in **NZ Markets Disciplinary Tribunal Rule 16.1**) in relation to any action or inaction by any such person in connection with that Issuer or Market Participant (as the case may be), which action or inaction have been taken or not taken in good faith and in response to circumstances for which that Issuer or Market Participant should bear the responsibility in whole or in part. This indemnity shall be for all or such part of the liabilities and claims as NZ Markets Disciplinary Tribunal or the Appeal Panel, determines in the circumstances.

Section 17: Confidentiality

- 17.1 **Materials provided confidential:** Subject to **NZ Markets Disciplinary Tribunal Rule 17.3**, all material received or granted access to by a party in respect of a matter under these NZ Markets Disciplinary Tribunal Rules will be treated confidentially by the members of NZ Markets Disciplinary Tribunal or the Appeal Panel and any persons involved in that matter.
- 17.2 **Secure storage of materials:** Subject to **NZ Markets Disciplinary Tribunal Rule 17.3**, any written records or copies of documents relating to a party in respect of a matter under these NZ Markets Disciplinary Tribunal Rules will be stored by the NZ Markets Disciplinary Tribunal or the Appeal Panel and all other persons involved in that matter in a manner to ensure such records or documents remain secure and confidential to that party.
- 17.3 **17.3 Exceptions:** A party may make any material received or granted access to by another party in respect of a matter under these NZ Markets Disciplinary Tribunal Rules available and not require such material to be secure in accordance with **NZ Markets Disciplinary Tribunal Rule 17.2**, where such disclosure is:
- (a) in a manner otherwise permitted by these NZ Markets Disciplinary Tribunal Rules; or
 - (b) in respect of information already in the public domain or has ceased to be confidential at the time of its disclosure, other than by a breach of this **NZ Markets Disciplinary Tribunal Rule 17**; or
 - (c) to a government body or Court pursuant to a request from that body made within the apparent scope of its authority, or by a registered exchange provided that the party making such disclosure has used its best endeavours to advise the party whose material is being disclosed of such request at least 2 Business Days prior to such disclosure; or
 - (d) with the prior written consent of the party whose material is being disclosed.

Section 18: Transitional Provisions

All proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of the NZX Disciplinary Committee under the Rules of NZX Limited in force immediately prior to the coming into force of these **NZ Markets Disciplinary Tribunal Rules** and any proceedings or actions (whether in relation to charges, hearings, orders or otherwise) of the Disciplinary Committee under the Rules of the New Zealand Stock Exchange in force prior to 31 December 2002 shall be deemed to be proceedings and actions (whether in relation to charges, hearings, orders or otherwise) of NZ Markets Disciplinary Tribunal under these **NZ Markets Disciplinary Tribunal Rules**.

Section 19: Definitions and Interpretation

19.1 **Capitalised terms:** Unless otherwise defined in **NZ Markets Disciplinary Tribunal Rule 19.2**, the definitions in the NZSX Listing Rules, NZAX Listing Rules, the NZX Participant Rules or the Futures and Options Rules shall apply to capitalised terms in these NZ Markets Disciplinary Tribunal Rules.

19.2 **Definitions: In these NZ Markets Disciplinary Tribunal Rules:**

Additional Compliance Issues has the meaning given in **NZ Markets Disciplinary Tribunal Rule 5.12**.

Annual Regulatory Report has the meaning given in **NZ Markets Disciplinary Tribunal Rule 12.1**.

Appeal Panel has the meaning given in **NZ Markets Disciplinary Tribunal Rule 8.2**.

Appellant has the meaning given in **NZ Markets Disciplinary Tribunal Rule 7.1(a)**.

Chairperson means the chairperson of NZ Markets Disciplinary Tribunal appointed under **NZ Markets Disciplinary Tribunal Rule 2.10** and having the powers and responsibilities set out in that **NZ Markets Disciplinary Tribunal Rule**.

Complainant has the meaning given in **NZ Markets Disciplinary Tribunal Rule 5.13(b)(i)**.

Conduct Rules means together all Listing Rules for any of NZX's markets and the NZX Participant Rules.

Corporate Counsel means the person occupying the position of corporate counsel of NZX, by whatever name called.

Deputy Chairperson means the deputy chairperson of NZ Markets Disciplinary Tribunal appointed under **NZ Markets Disciplinary Tribunal Rule 2.10** who acts as the chairperson of NZ Markets Disciplinary Tribunal where the Chairperson is unavailable for any reason.

Discipline Fund has the meaning given in **NZ Markets Disciplinary Tribunal Rule 11.13**.

Disclosure Order has the meaning given in NZ Markets Disciplinary Tribunal Rule 4.7(a).

Division means a division of NZ Markets Disciplinary Tribunal appointed in accordance with **NZ Markets Disciplinary Tribunal Rule 3**.

Full Appeal has the meaning given in **NZ Markets Disciplinary Tribunal Rule 8.2**.

Full Appeal Respondent has the meaning given in **NZ Markets Disciplinary Tribunal Rule 8.3**.

Full Appellant has the meaning given in **NZ Markets Disciplinary Tribunal Rule 8.2(a)**.

Full Hearing has the meaning given in **NZ Markets Disciplinary Tribunal Rule 6.1**.

Full Hearing Procedure means the procedure for hearing a matter set out in **NZ Markets Disciplinary Tribunal Rule 6**.

Futures and Options Participant has the meaning given in the Futures and Options Rules.

Futures and Options Rules means the rules governing Futures and Options Participants, as amended from time to time.

Head of Regulatory and Public Policy means the person occupying the position of head of regulatory and public policy of NZX, by whatever name called.

Independent Member means, in relation to Appendix 1, a person who:

- (i) is not a director;
- (ii) is not an employee; and
- (iii) does not hold or control any Equity Securities, of NZX or any member of any group of companies and/or other

entities of which NZX is the holding company or has a controlling interest.

Related Entity means, in relation to Appendix 1, any Issuer, or entity seeking Listing, which has a connection or relationship with NZX such that the Special Division is satisfied that in the circumstances there would be a reasonable apprehension or suspicion of bias by NZX in relation to that entity.

Interest Rate means in relation to any amount, the average rate as displayed on the Reuters Monitor Screen page BKBM (or any successor page displaying substantially the same information) under the heading "FRA" for bank accepted bills having a term of three months, at or about 10.45am on the day on which interest commenced to accrue in respect of that amount, plus 2%.

Issuer means any person Listed on any market operated by NZX.

Issuer Appointees has the meaning given in **NZ Markets Disciplinary Tribunal Rule 2.1(c)**.

Legal Appointees has the meaning given in **NZ Markets Disciplinary Tribunal Rule 2.1(a)**.

Listing Rules means, the listing rules for all markets operated by NZX, as amended from time to time.

Market Participant has the meaning given in the NZX Participant Rules and for the purposes of these NZXZ Discipline Rules includes Employees (as that term is defined in the NZX Participant Rules) thereof.

Market Participant Appointees has the meaning given in **NZ Markets Disciplinary Tribunal Rule 2.1(b)**.

New Evidence means any evidence that did not exist at the time of hearing or consideration of a matter at first instance. For the avoidance of doubt, any evidence that existed at that time but was not in the possession or control of a party is not New Evidence.

NZX Appointees has the meaning given in **NZ Markets Disciplinary Tribunal Rule 2.1(e)**.

NZ Markets Disciplinary Tribunal means the body appointed under **NZ Markets Disciplinary Tribunal Rule 2** and except where otherwise specified or required by the context includes the Chairperson, Deputy Chairperson, each Division and each member.

NZ Markets Disciplinary Tribunal rules Penalty Band Guidance Note means the guidance note of that name as amended from time to time issued by NZX and as approved by the Securities Commission under the memorandum of understanding between NZX and the Securities Commission on regulatory co-operation dated 27 February 2003.

NZX Participant Rules means the rules that govern the conduct of NZX Market Participants, as amended from time to time.

Public Appointees has the meaning given in **NZ Markets Disciplinary Tribunal Rule 2.1(d)**.

Referral means a review of a decision made by NZX in respect of a waiver or ruling application in accordance with **NZ Markets Disciplinary Tribunal Rule 4.12**.

Respondent has the meaning given in **NZ Markets Disciplinary Tribunal Rule 5.5**.

Securities Commission means the body of that name established under the Securities Act 1978.

Special Division means that division of NZ Markets Disciplinary Tribunal constituted under clause 1 of Appendix 1.

Summary Appeal has the meaning given in **NZ Markets Disciplinary Tribunal Rule 7.1**.

Summary Appeal Respondent has the meaning given in **NZ Markets Disciplinary Tribunal Rule 7.2**.

Summary Hearing has the meaning given in **NZ Markets Disciplinary Tribunal Rule 5.1**.

Summary Hearing Procedure means the procedure for hearing a matter as set out in **NZ Markets Disciplinary Tribunal Rule 5**.

19.3 **Construction: In the NZ Markets Disciplinary Tribunal Rules:**

- (a) the headings appear as a matter of convenience and shall not affect the construction of the NZ Markets Disciplinary Tribunal Rules; and
- (b) in the absence of an express indication to the contrary, references to sections, paragraphs and appendices are to sections and paragraphs of, and appendices to, the NZ Markets Disciplinary Tribunal Rules and reference to an NZ Markets Disciplinary Tribunal Rule includes any of its sub-Rules or paragraphs; and
- (c) references to any legislation or legislative provision (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and, unless otherwise expressly stated, refers to New Zealand legislation and provisions and includes any statutory instrument, regulations or orders issued under that legislation or legislative provision; and
- (d) the singular includes the plural and vice versa and words importing any gender include the other genders; and
- (e) the appendices to the NZ Markets Disciplinary Tribunal Rules shall have the same force and effect as if set out in the body of the NZ Markets Disciplinary Tribunal Rules; and
- (f) the words “written” and “writing” include facsimile communications and any other means of communication resulting in permanent visible reproduction; and
- (g) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (h) unless stated otherwise, references to monetary amounts are to New Zealand currency and references to times are New Zealand time; and
- (i) the word “includes” means without limitation.

Appendix 1

Special Division of NZ Markets Disciplinary Tribunal

1. **Special Division Appointment:** NZ Markets Disciplinary Tribunal shall establish a Special Division which comprises three Independent Members who do not have a conflict of interest, selected by the Chairperson (or in his or her absence the Deputy Chairperson). The members of the Special Division shall be confirmed by the Securities Commission
2. **Removal from Office:** NZ Markets Disciplinary Tribunal may, subject to confirmation of that removal by the Securities Commission, from time to time, remove from office any member of the Special Division, by a 75% majority of the members of the NZ Markets Disciplinary Tribunal voting to so remove that member.
3. **Objective of Special Division:** The objective of the Special Division is to foster market confidence that the Listing Rules, NZX Participant Rules and NZ Markets Disciplinary Tribunal Rules are applied in respect of NZX or a Related Entity in an impartial and independent manner.
4. **Powers and Functions of Special Division:** The Special Division has the following powers and functions in relation to NZX or a Related Entity:
 - (a) the powers and functions that NZX has under the Listing Rules in relation to any application for Listing, or Quotation of any Class of Securities; and
 - (b) the powers and functions that NZX has under the Listing Rules to determine waiver applications or Ruling applications in relation to an Issuer. For the avoidance of doubt the Special Division does not have any power to make or change the Listing Rules; and
 - (c) the powers and functions that NZX has in relation to an Issuer under the NZ Markets Disciplinary Tribunal Rules; and
 - (d) the powers and functions that NZX has in relation to a market Participant under the Discipline Rules, to the extent that that Market Participant's conduct the subject of the enquiry or charge is in relation dealing in, or trading in, the Quoted Securities of NZX.

5. **Delegation:** Where it is not inconsistent with the objective in clause 1 of this Appendix to do so, the Special Division may delegate any of its powers or functions under this Appendix to any person, including the NZX Regulation Personnel, except in relation to:
 - (a) the approval or cancellation of any Listing of NZX or a Related Entity; and
 - (b) the approval, cancellation or suspension of the Quotation of any Class of Securities of NZX or a Related Entity; and
 - (c) the power to make Rulings and waive the application of any one or more of the provisions of the Rules in relation to NZX or a Related Entity; and
 - (d) the power to determine whether or not to bring a charge against a Market Participant under the NZX Participant Rules for breach of those rules.
6. **Restrictions on powers and functions of NZX:** NZX shall not exercise any powers or functions it has under the Conduct Rules that this appendix gives to the Special Division, except under a delegation from the Special Division.
7. **Rights and obligations of NZX and Related Entity as a Listing applicant:** NZX and a Related Entity, as an applicant for Listing, have all the rights and obligations that any other applicant for Listing has under the Listing Rules, except that the Special Division acts in the place of NZX and references in the Listing Rules to NZX shall be deemed to be references to the Special Division.
8. **Rights and obligations of NZX and Related Entity as an Issuer:** If Listed, NZX or a Related Entity has all the rights and obligations that another Issuer has, except that the Special Division acts in the place of NZX and references in the Listing Rules to NZX shall be deemed to be references to the Special Division.