



NZX Limited
NZ Markets Disciplinary Tribunal
Rules

16 August 2010

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NZ Markets Disciplinary Tribunal Rules

Section 1: Introduction and General Provisions

1.1 The NZ Markets Disciplinary Tribunal

1.1.1 The Tribunal is an independent disciplinary body charged with determining and providing remedies for referrals made to it by NZX or CHO, as the case may be, under:

- (a) NZX's Conduct Rules, enacted pursuant to Section 36G of the Securities Markets Act 1988;
- (b) CHO's Clearing and Settlement Rules;
- (c) NZX's Futures and Options Rules;
- (d) CDO's Depository Operating Rules;
- (e) NZX's Derivatives Market Rules; and
- (f) any other NZX Markets Rules as advised by NZX from time to time,

or in respect of Referrals made under Rule 4.5.

1.1.2 The Tribunal is a separate body appointed under Rule 2 of these Rules, and is the body formerly called "NZX Discipline" appointed under the NZX Discipline Rules. For the avoidance of doubt, in each of the Conduct Rules and the Futures and Options Rules a reference to "NZX Discipline" or "NZXD" shall be deemed to refer to the Tribunal.

1.1.3 While the Tribunal operates independently of NZX it remains legally part of NZX. NZX remains liable for all liabilities or obligations properly incurred by the Tribunal in the performance of its functions. The Tribunal also operates independently of CHO and CDO and any other subsidiaries and/or or Related Entities of NZX.

1.1.4 The principal function of the Tribunal is to hear and determine, without bias and after giving the parties fair consideration, any matter involving:

- (a) a Participant (other than a Clearing Participant) referred to it by NZX under any of the NZX Markets Rules;
- (b) a Clearing Participant referred to it by CHO under the Clearing and Settlement Rules;
- (c) any other person referred to it by NZX or by CHO under any rules, procedures and regulations of NZX or CHO, as the context requires, from time to time;

- (d) a Referral in accordance with Rule 4.5;
- (e) the review of a decision of the Tribunal from a Summary Hearing in accordance with Rule 7; and
- (f) any right, power or discretion of NZX delegated by NZX to the Tribunal in accordance with Rule 4.4.1 other than those matters set out in Rule 1.1.5.

1.1.5 NZX, CHO or CDO must not delegate to the Tribunal and the Tribunal shall not have power to review any decision of NZX, CDO or CHO in respect of:

- (a) the approval of new Listings or Quotation of any Class of Securities under the Listing Rules;
- (b) the designation of any right or interest in property, a Commodity or a Derivatives Contract, as an Approved Product in accordance with the Clearing and Settlement Rules;
- (c) the designation of any right or interest in property, including a Commodity or a Derivatives Contract, as an Admitted Product in accordance with the Depository Operating Rules;
- (d) any designation or accreditation by NZX of any person as a Market Participant, a Futures and Options Participant or a Derivatives Participant or other participant (however defined) in any other NZX Market;
- (e) any designation and/or accreditation of any person as a Clearing Participant and/or a Lending Clearing Participant under the Clearing and Settlement Rules;
- (f) any designation and/or accreditation of any person as a Depository Participant under the Depository Operating Rules;
- (g) any designation or determination by CHO of a Declared Default, a Default Declaration Date, a Suspension and/or a termination pursuant to the Clearing and Settlement Rules;
- (h) any designation or determination by CDO of a Declared Default, a Default Declaration Date, a Suspension and/or a termination pursuant to the Depository Operating Rules;
- (i) amendments or changes to any of the NZX Markets Rules, the Clearing and Settlement Rules, the Depository Operating Rules and/or any other rules and regulations and procedures of NZX, CHO or CDO as the context requires;
- (j) its policy decisions as set out in any guidance notes or other documents, other than where such review is in accordance with

Rule 4.5;

- (k) a trading halt under any of the Listing Rules;
- (l) any decision made by CDO other than in respect of waivers and rulings of CDO in accordance with Rule 4.5;
- (m) any determination or decision by CHO in respect of a claim for compensation under rule 4.4 of the Clearing and Settlement Rules other than in respect of rule 4.4.7(b), which may be the subject of a Referral pursuant to Rule 4.5; and/or
- (n) NZX's, CDO's or CHO's pricing or other commercial terms, including, without limitation, the exercise by CHO of its discretions in respect of the clearing and settlement of any Transactions.

1.1.6 For the avoidance of doubt, Lending Clearing Participants, CDO and Depository Participants are only party to these Rules for the purposes of Referrals pursuant to Rule 4.5.

1.2 **Status of Rules**

1.2.1 These Rules:

- (a) form part of the conduct rules for the purposes of Section 36G of the Securities Markets Act 1988; and
- (b) should be read in conjunction with the NZX Markets Rules, the Clearing and Settlement Rules and the Depository Operating Rules, as applicable.

1.2.2 These Rules and any Procedures made in accordance with Rule 1.4.1 constitute a contract between NZX and each Participant, between CHO and each Clearing Participant and Lending Clearing Participant and between CDO and each Depository Participant.

1.2.3 Under Section 36R of the Securities Markets Act 1988, these Rules are not regulations for any purpose.

1.2.4 Any agreement entered into between:

- (a) any Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Participants and is enforceable by NZX;
- (b) any Clearing Participants and/or Lending Clearing Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Clearing Participants and/or Lending Clearing Participants, as the context requires, and is enforceable by CHO; and

- (c) any Depository Participants required pursuant to these Rules and Procedures constitutes a binding contract between those Depository Participants and is enforceable by CDO.
- 1.2.5 Each Participant covenants with NZX and each other Participant to observe these Rules and the Procedures and to perform the obligations which these Rules and Procedures purport to impose on Participants, in the manner provided in these Rules.
- 1.2.6 Each Clearing Participant and Lending Clearing Participant covenants with CHO and each other Clearing Participant and Lending Clearing Participant to observe these Rules and Procedures and to perform the obligations which these Rules and Procedures purport to impose on Clearing Participants and Lending Clearing Participants, in the manner provided in these Rules.
- 1.2.7 Each Depository Participant covenants with CDO and each other Depository Participant to observe these Rules and Procedures and to perform the obligations which these Rules and Procedures purport to impose on Depository Participants, in the manner provided in these Rules.
- 1.3 **Amendment of Rules**
 - 1.3.1 Subject to Rule 1.3.2, NZX may from time to time amend these Rules, in accordance with the relevant Procedure. Amendments to these Rules will become binding on Participants upon the later of:
 - (a) 20 Business Days after Participants have been given notice of the amendments;
 - (b) the date the amendments have effect in accordance with section 361 of the Securities Markets Act 1988; and
 - (c) the time (if any) specified in the notice to Participants.
 - 1.3.2 Before amending these Rules, NZX must consult with the Tribunal in relation to the proposed amendments.
 - 1.3.3 Before amending these Rules, to the extent any amendment is material and directly affects:
 - (a) CHO and the Clearing and Settlement Rules, NZX must consult with CHO in relation to the proposed amendment; and
 - (b) CDO and the Depository Operating Rules, NZX must consult with CDO in relation to the proposed amendment.

For the avoidance of doubt, NZX does not need to consult with CHO or CDO in respect of any amendment to these Rules in respect of an

NZX Market.

1.4 Procedures

1.4.1 NZX may from time to time approve written Procedures relating to the operation of the Tribunal. Procedures may not be inconsistent with the Rules. In the event of inconsistency between any Rule and any Procedure, the Rules will prevail.

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

1.5 Effect of Amendment

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

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

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

1.6 Interpretation

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

Additional Compliance has the meaning given in Rule 6.4.1;

Issues

Admitted Product	has the meaning given in the Depository Operating Rules;
Advisor	has the meaning set out in the NZX Participant Rules;
Annual Regulatory Report	has the meaning given in Rule 14.1.3;
Appeal Panel	has the meaning given in Rule 5.1;
Appellant	has the meaning given in Rule 8.1.1(a);
Approved Product	has the meaning given in the Clearing and Settlement Rules;
Business Day	means a time between 8.30 a.m and 5.30 p.m on a day on which NZX is open for trading;
CDO	means New Zealand Depository Limited and includes its successors, transferees and assigns;
Chairman	means the chairman of the Division hearing a matter appointed under Rule 3.1.2;
Chairperson	means the chairperson of the Tribunal appointed under Rule 2.4;
Chief Executive	means the person occupying the position of Chief Executive Officer of NZX;
CHO	means New Zealand Clearing Limited and includes its successors, transferees and assigns;
Clearing Appointees	has the meaning given in Rule 2.1.1(c);
Clearing Participant	has the meaning given in the Clearing and Settlement Rules and includes a Responsible Person;
Clearing and Settlement Rules	means CHO's Clearing and Settlement Rules as amended, supplemented or novated by CHO from time to time;
Compensation Referral	review of a decision made by CHO in respect of a claim for compensation in accordance with

	Rule 4.5.1(b);
Complainant	has the meaning given in Rule 6.5.1(b)(i);
Conduct Rules	means together, the Listing Rules and the NZX Participant Rules;
Corporate Counsel	means the person occupying the position of corporate counsel of NZX, by whatever name called;
Declared Default	has the meaning given in the Clearing and Settlement Rules or, as the context requires with respect to Depository Participants, the Depository Operating Rules;
Default Declaration Date	has the meaning given in the Clearing and Settlement Rules or as the context requires with respect to Depository Participants, the Depository Operating Rules;
Deputy Chairperson	means the deputy chairperson of the Tribunal appointed under Rule 2.4;
Depository Operating Rules	means CDO's Depository Operating Rules as amended, supplemented or novated by CDO from time to time;
Depository Participant	has the meaning given in the Depository Operating Rules;
Derivatives Advisor	means an Advisor as defined in the Derivatives Market Rules;
Derivatives Market Appointees	has the meaning given in Rule 2.1.1(d);
Derivatives Market Rules	means NZX's Derivatives Market Rules as amended from time to time;
Derivatives Participant	means a Participant as defined in the Derivatives Market Rules;
Discipline Fund	has the meaning given in Rule 11.21.1;
Disclosure Order	has the meaning given in Rule 4.3.1;
Division	means a division of the Tribunal appointed in accordance with Rule 3.1.1;
Full Appeal	has the meaning given in Rule 9.2.1;
Full Appeal Respondent	has the meaning given in Rule 9.2.2;

Full Appellant	has the meaning given in Rule 9.2.1(a);
Full Hearing	has the meaning given in Rule 7.1.1;
Full Hearing Procedure	means the procedure for hearing a matter set out in Rule 7.1.1;
Futures and Options Advisor	has the meaning given in the Futures and Options Rules;
Futures and Options Participant	has the meaning given in the Futures and Options Rules;
Futures and Options Rules	means the NZX Futures and Options Rules as amended by NZX from time to time;
Head of Market Supervision	means the person occupying the position of Head of Market Supervision of NZX, by whatever name called;
Head of Risk	means the person occupying the position of NZCDC Head of Risk and/or Chief Operating Officer, by whatever names called;
Head of Settlements	means the person occupying the position of NZCDC Head of Settlements and Depository Operations, by whatever name called;
Independent Member	<p>means a member of the Special Division who;</p> <p>(a) is not a director or employee; and</p> <p>(b) does not hold or control any Equity Securities,</p> <p>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;</p>
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 which is, or has been, Listed on an NZX Market (and where applicable has the extended meaning given in Rule 1.6.3(d))

and includes, without limitation, an NZSX Issuer and an NZAX Issuer, as the context requires. For the purposes of this definition, "Listed" shall have the meaning given in the NZSX Listing Rules, where the reference to "Rules" shall be construed as a reference to the rules of the relevant NZX Market;

Issuer Appointees	has the meaning given in Rule 2.1.1 (e);
Legal Appointees	has the meaning given in Rule 2.1.1(a);
Lending Clearing Participant	has the meaning given in the Clearing and Settlement Rules;
Listing Rules	means, as the context requires, the NZSX Listing Rules, the NZAX Listing Rules, and/or any other listing rules governing the operation of an NZX Market as advised to the Tribunal by NZX from time to time;
Market Participant	has the meaning given in the NZX Participant Rules and for the purposes of these Rules includes Employees (as that term is defined in the NZX Participant Rules) thereof and Advisors;
Market Participant Appointees	has the meaning given in Rule 2.1.1(b);
NZAX Issuer	means a person which is, or has been, Listed on the NZAX and where applicable has the extended meaning given in NZAX Listing Rule 1.6.6;
NZAX Listing Rules	means the NZAX Listing Rules governing the NZAX market operated by NZX, as amended by NZX from time to time;
NZCDC	means New Zealand Clearing and Depository Corporation Limited and includes its successors, transferees and assigns;
NZSX Issuer	means a person which is, or has been, Listed on the NZSX or the NZDX and where applicable has the extended meaning given in NZSX Listing Rule 1.6.6;
NZSX Listing	means the NZSX / NZDX Listing Rules governing the NZSX and NZDX markets

Rules	operated by NZX, as amended by NZX from time to time;
NZX	means NZX Limited and includes its successors;
NZX Board	means the Board of Directors of NZX;
NZX Markets	means a market, exchange or facility for the trading of Securities, financial products, Derivatives Contracts and/or Commodities operated by NZX or a subsidiary of NZX from time to time as advised by NZX to the Tribunal that such market, exchange or facility should be subject to these Rules and includes, without limitation, the NZSX market, the NZDX market, the NZAX market and the derivatives market;
NZX Markets Rules	means the Conduct Rules, the Futures and Options Rules, the Derivatives Market Rules and any other rules and regulations of any other NZX Market and/or of NZX from time to time and as amended by NZX from time to time;
NZX Participant Rules	means the NZX Participant Rules governing Market Participants, as amended by NZX from time to time;
Participant	means: <ul style="list-style-type: none">(a) an Issuer;(b) a Market Participant;(c) an Advisor;(d) a Futures and Options Participant;(e) a Futures and Options Advisor;(f) a Derivatives Participant;(g) a Derivatives Advisor;(h) a Clearing Participant;(i) a Lending Clearing Participant;(j) a Depository Participant; and/or(k) any other person referred to under any NZX Markets Rules or other rules, and regulations of NZX from time to time as

being subject to the jurisdiction of the Tribunal;

Procedure	means a procedure to these Rules in accordance with Rule 1.4, as amended by NZX from time to time;
Public Appointees	has the meaning given in Rule 2.1.1(f);
Quoted Securities	means, in respect of all classes of an Issuer's securities for which NZX provides a market to quote bids and offers;
Referral	means a Waiver and Ruling Referral or a Compensation Referral, as the context requires;
Respondent	has the meaning given in Rule 6.2.1;
Related Entity	means any Participant in an NZX Market, or person who applies to NZX to become a Participant, 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 Participant or that person;
Rules	means these NZ Markets Disciplinary Tribunal Rules as amended by NZX from time to time;
Securities	has the meaning contained in the NZSX Listing Rules, the Futures and Options Rules, the Derivatives Market Rules or the Clearing and Settlement Rules, or any other NZX Markets Rules, as the context requires;
Securities Commission	means the body of that name established under the Securities Act 1978 and includes any successor thereof;
Special Division	means that division of the Tribunal constituted under Rule 3.2.1;
Summary Appeal	has the meaning given in Rule 8.1.1;
Summary Appeal Respondent	has the meaning given in Rule 8.1.2;
Summary Hearing	has the meaning given in Rule 6.1.1;

Summary Hearing Procedure	means the procedure for hearing a matter as set out in Rule 6;
Suspension	has the meaning given in the Clearing and Settlement Rules;
Tribunal	means the NZ Markets Disciplinary Tribunal appointed under Rule 2 and except where otherwise specified or required by the context includes the Chairperson, Deputy Chairperson, each Division and each member;
Waiver and Ruling Referral	means a review of a decision made by NZX, CDO or CHO, as the context requires, in respect of a waiver or ruling application in accordance with Rule 4.5.1(a); and
Writing	includes representing or reproducing words, figures, or symbols.

1.6.2 In these Rules any reference to:

- (a) headings to clauses are for reference only and are not an aid in interpretation;
- (b) statutory provisions will be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time;
- (c) a person are to that person and that person's successors and permitted assigns;
- (d) all periods of time include the day on which the period commences and also the day on which the period ends;
- (e) any date which is not a Business Day, upon or by which anything is due to be done by any person, will be deemed to be a reference to the next Business Day;
- (f) words importing the plural include the singular and vice versa and words importing gender import all genders;
- (g) conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement. Unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting suffering or authorising the act or thing to be done or the refusal or omission to occur;
- (h) all warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than

one person will be deemed to have been given or entered into jointly and severally;

- (i) any statement in these Rules stated to be to the best of a person's knowledge or to be so far as a person is aware (or any similar expression) will be deemed to include an additional statement that it has been made after due and careful enquiry;
- (j) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (k) a Rule (e.g. Rule 2.4) includes a reference to all sub-Rules included under that Rule (e.g. Rule 2.4.3) and a reference to a Section (e.g. Section 2) includes a reference to all Rules and sub-Rules within that Section;
- (l) time is a reference to New Zealand time; and
- (m) if the name of a person or body is changed in accordance with the law (whether or not the body is incorporated) or the name of an office is changed by law then a reference in these Rules to the person, body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to that person, body or office under the new name.

1.6.3 In these Rules the following rules of interpretation apply:

- (a) an “**agreement**” also includes a contract, deed, licence, franchise, undertaking or other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;
- (b) “**consent**” also includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration (and references to obtaining consents are to be construed accordingly);
- (c) a “**director**” includes:
 - (i) a person occupying the position of management and control of a Participant, by whatever name called;
 - (ii) a person in accordance with who's directions or instructions the Participant, or any person referred to in (i) is accustomed or required to act.
- (d) an “**Issuer**” in the Rules shall, as the context permits, extend to include all members (other than another Issuer entity or a subsidiary thereof) of any group of companies and/or other entities of which the Issuer is the holding company, or in which

the Issuer otherwise has a controlling interest, to the extent that such extension is necessary to ensure that the object of the Rules is not frustrated or avoided by reason of the separate legal personality of members of the group. In relation to the disclosure of information for this purpose the group includes any Associated Persons of the Issuer of which the Issuer has control in law or in fact, other than any such Associated Person which is another Issuer or a subsidiary thereof. Assessment of the materiality of any information in relation to such group shall be treated as if the group constituted one business;

- (e) a “**law**” includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any relevant jurisdiction (and “**lawful**” and “**unlawful**” shall be construed accordingly);
- (f) “**rights**” includes authorities, discretions, remedies, powers and causes of action;
- (g) a “**holding company**” means a company of which another company is a subsidiary;
- (h) a “**person**” includes any individual natural person, a company, corporation, corporation sole, partnership, joint venture, association (whether incorporated or unincorporated), trust, Government department, state or agency of a state (in each case whether or not having separate legal personality);
- (i) “**subsidiary**” means a subsidiary of that company as defined in the Companies Act 1993 and includes an “**in substance subsidiary**” and any other company treated as a subsidiary of a company in accordance with Generally Accepted Accounting Practice, provided that the definition of “**company**” includes a company wherever incorporated;
- (j) “**tax**” includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding imposed, assessed or levied by any governmental agency (whether state or local), and any interest, penalties, fines, costs, charges, and other liabilities arising from or payable in respect of such tax; and
- (k) In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction which would not promote that purpose or object.

1.6.4 **Capitalised terms:** Unless otherwise defined in these Rules and as the context requires, the definitions in the NZX Markets Rules, the Clearing and Settlement Rules and the Depository Operating Rules

| shall apply to capitalised terms in these Rules.

Section 2: Membership of Tribunal

2.1 Composition and Appointment

2.1.1 The membership of the Tribunal shall consist of:

- (a) at least two barristers and/or solicitors of not less than seven years standing each currently in practice each of whom has a working knowledge of the New Zealand courts system (Legal Appointees); and
- (b) at least three Market Participants, one of which shall be a Trading Participant (Market Participant Appointees); and
- (c) at least one person who has or has had relevant experience with a Clearing Participant or former Clearing Participant, or a Delivery and Settlement Participant prior to the introduction of the NZX Participant Rule changes for the purposes of the launch of the Clearing House (Clearing Appointees); and
- (d) at least one Derivatives Participant or Futures and Options Participant or former Derivatives Participant or Futures and Options Participant, or a person who would have been a Futures and Options Participant or Derivatives Participant if that person was still employed and undertaking their former occupation (Derivatives Market Appointees); and
- (e) at least two company directors of Issuers (Issuer Appointees); and
- (f) 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 derivatives and futures and options), none of whom shall be Market Participants, Clearing Participants, Futures and Options Participants, Derivatives Participants or a representative of NZX (Public Appointees),

and shall be appointed by NZX, in accordance with this Rule 2.

2.1.2 In considering any matter brought to the Tribunal, the Chairperson, the Deputy Chairperson or the Chairman of the relevant Division, may, in order to obtain advice and guidance on practical market operational matters, consult with any NZX representatives or, as the context requires in respect of Clearing Participants, Lending Clearing Participants and the Clearing and Settlement Rules, CHO representatives, or as the context requires in respect of Depository Participants and the Depository Operating Rules, CDO, in each case who are considered appropriate to provide the requisite advice or guidance.

- 2.1.3 Subject to Rule 2.1.6, the appointment of any member of the Tribunal by NZX must be confirmed by the Securities Commission.
- 2.1.4 NZX shall periodically call for nominations for appointment as a member of the Tribunal. NZX shall consider the nominations received for members of the Tribunal in accordance with the policies set out below:
- (a) for nominations for appointment as Public Appointees under Rule 2.1.1(f), NZX shall consider the following disciplines in assessing such nominations:
 - (i) law;
 - (ii) commerce;
 - (iii) accountancy;
 - (iv) finance;
 - (v) funds management;
 - (vi) governance;
 - (vii) public administration;
 - (viii) technology;
 - (ix) tax; and
 - (x) banking.
 - (b) for all nominations, NZX shall not consider any person for appointment as a member of the Tribunal unless, in its opinion, the person is qualified for appointment, having regard to the functions and powers of the Tribunal, by virtue of that person's knowledge of or experience in the disciplines set out in this.
- 2.1.5 Except as set out in Rule 2.3.1 for originating members of the Tribunal, each member of the 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 Rule 2.3.1 shall apply, those members to retire by rotation will be chosen by lot.
- 2.1.6 NZX may appoint any retiring member of the 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 Rule 2.1.3.

2.1.7 NZX Regulation Personnel, the Head of Market Supervision, the Corporate Counsel, the Chief Executive, the Head of Risk, the Head of Settlements, members of the NZX Board and all directors of NZCDC, CHO and CDO shall be ineligible for appointment as a member of the Tribunal or a temporary Division member under Rules 3.1.4 or 3.1.5.

2.2 Removal and Retirement

2.2.1 NZX may, from time to time, remove from office, upon confirmation of that removal by the Securities Commission, any member of the 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.

2.2.2 Subject to Rule 2.2.3, any member of the Tribunal may resign as a member of the Tribunal by providing 60 days' written notice to NZX. Any member of the Tribunal who resigns under this Rule 2.2.2 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.

2.2.3 The resignation of a member of the Tribunal under Rule 2.2.2 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 Rule 3.1.2.

2.3 Originating members

2.3.1 Notwithstanding Rule 2.1.5, in respect of those persons who are originating members of the 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.

2.4 Chairperson and Deputy Chairperson

2.4.1 The members of the Tribunal will select the Chairperson from the

persons appointed under Rule 2.1.1(a) and a Deputy Chairperson from all members of the Tribunal;

2.4.2 The Chairperson (or in his or her absence the Deputy Chairperson) shall among other things:

- (a) determine the composition of Divisions referred to in Rule 3.1.1 including the Chairman 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 Tribunal has a conflict of interest in relation to a particular matter, in accordance with these Rules and any Procedures.

2.4.3 The Chairperson and Deputy Chairperson will cease to hold that position on retirement of membership in accordance with Rule 2.1.5. If a Chairperson or Deputy Chairperson is re-appointed in accordance with Rule 2.1.6 they may on reappointment offer themselves for re-election as Chairperson or Deputy Chairperson.

2.5 **Vacancy and Change of Status**

2.5.1 NZX may appoint a person to fill any vacancy in the Tribunal's membership to the extent such appointment complies with Rules 2.1.1 to 2.1.3 (inclusive). A member appointed in accordance with this Rule 2.5.1 shall retire by rotation on the same date as the person that member replaces.

2.5.2 Where the status of a member of the Tribunal has changed such that he or she no longer comes within the class of his or her original appointment under Rule 2.1.1, he or she shall be deemed to be no longer a member of the 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 Rule; and
- (b) NZX consents to the change of class and appointment; and
- (c) The composition of the Tribunal satisfies the requirements of Rule 2.1.1 after the change of appointment date;

then the member may continue as a new class of appointee to the Tribunal.

Section 3: Divisions

3.1 Quorum and Appointment

- 3.1.1 The Tribunal shall ordinarily act through Divisions. Subject to Rule 3.1.2, the quorum for each Division shall comprise 3 members who, in each case, do not have a conflict of interest and who, subject to Rule 3.1.3, are selected, in relation to each matter falling for consideration, by the Chairperson (or in his or her absence the Deputy Chairperson) in accordance with the Procedure (if any) for that purpose.
- 3.1.2 The quorum required under Rule 3.1.1 may be reduced to 2 Tribunal members if required due to unavailability of the Tribunal members over holiday periods, conflicts of interest, illness, accident, or other unavoidable causes, or the expiration of a Tribunal member's term or the resignation or removal of office of a member of the Tribunal. Where the quorum for a Division is reduced to 2 Tribunal members under this Rule 3.1.2, the Chairman of that Division shall have a casting vote. If the Chairman 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 Chairman for that Division from the remaining two members and the newly appointed Chairman of that Division shall have a casting vote.
- 3.1.3 Each Division constituted in accordance with Rule 3.1.1 or 3.1.2 to consider:
- (a) a breach of the NZX Participant Rules or the Clearing and Settlement Rules (or any other NZX Market Rules as advised by NZX) shall include at least one Market Participant Appointee and/or a Clearing Appointee; and/or
 - (b) a breach of the Futures and Options Rules and/or Derivatives Market Rules (or any other NZX Market Rules as advised by NZX), shall include at least one person with knowledge and experience in derivatives and/or futures and options products and trading of any such instruments; and/or
 - (c) a breach of the Listing Rules (or any other NZX Market Rules as advised by NZX), shall include at least one Issuer Appointee; and/or
 - (d) a matter under the Full Hearing Procedure shall include at least one Legal Appointee; and/ or
- 3.1.4 If all 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 Rule 2.1.1(a)) who would be eligible to hear that matter if he or she was appointed a member of the 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 Rule 2.1.1(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.

- 3.1.5 The Chairperson, or the Deputy Chairperson in his or her absence, may appoint to a Division any person whom he or she considers appropriate, when having regard to the criteria set out in Rule 2.1, to replace any member who is unable to act or attend due to unavailability of the Tribunal member 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 the Tribunal, provided that there are no other members of the Tribunal available to act. Any such appointment only extends to such time as the determination of the relevant Division is finalised.
- 3.1.6 For the avoidance of doubt, where a non-member is appointed to a Division under Rule 3.1.4, Rule 3.1.5 or Rule 3.17, that Division must still have 2 Tribunal members sitting and satisfy the quorum requirements of Rule 3.1.3, except that where a person is appointed to a Division temporarily under Rule 3.1.4 they will be deemed to have satisfied the requirements of 3.1.3(d).
- 3.1.7 If all Clearing Appointees are unable to act through absence or any other cause (including conflict), NZX shall, as necessary, appoint a suitably qualified person who would be eligible to hear that matter if he or she was appointed a member of the Tribunal to act in place of those Clearing Appointees during the period of their inability to act unless the Chairperson (or the Deputy Chairperson in his or her absence) considers that a Market Participant Appointee, a Derivatives Market Appointee, a Public Appointee or Issuer Appointee meets the requirements of Rule 2.1.1(c) or Rule 2.1.1(d) as the context requires, and would be eligible to be part of the Division to hear that matter and, if so, that Market Participant Appointee, Derivatives Market Appointee, Public Appointee or Issuer Appointee, as the case may be, shall be the Clearing Appointee of that Division during the period of the existing Clearing Appointees' inability to act.

3.2 **Special Division**

- 3.2.1 The 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.
- 3.2.2 The 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 Tribunal voting to so remove that member.
- 3.2.3 The objective of the Special Division is to foster market confidence that the NZX Markets Rules, and these Rules are applied in respect of NZX or a Related Entity in an impartial and independent manner.

3.3 **Powers and Functions of Special Division**

- 3.3.1 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:
 - (i) in relation to a Participant under these Rules;
 - (ii) under the Listing Rules in relation to any application for Listing, or Quotation of any Class of Securities;
 - (iii) under any of the NZX Market Rules in relation to any application for accreditation or designation as a participant (including as a Market Participant, a Futures and Options Participant or a Derivatives Participant) under those rules;
 - (iv) in respect of any waiver applications or Ruling applications under the NZX Markets Rules;
 - (v) in respect of a Market Participant under these 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 or a Related Entity; and
 - (b) For the avoidance of doubt the Special Division does not have any power to make, amend or change any NZX Markets Rules, the Clearing and Settlement Rules or the Depository Operating Rules.
- 3.3.2 Where it is not inconsistent with the objective in Rule 3.2.3 to do so, the Special Division may delegate any of its powers or functions under this Rule to any person, including NZX Regulation

Personnel, except in relation to:

- (a) the approval or cancellation of any Listing where the Issuer is NZX or a Related Entity; and
- (a) the approval, cancellation or suspension of the Quotation of any Class of Securities of NZX or a Related Entity; and
- (b) the approval, suspension or revocation of a designation of NZX or a Related Entity as a Market Participant, Futures and Options Participant or a Derivatives Participant; and
- (c) the power to make Rulings and waive the application of any one or more of the provisions of the NZX Markets 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 in respect of the conduct referenced in Rule 3.3.1(a)(v); and
- (e) the power to determine whether or not to bring a charge against a Participant under the NZX Participant Rules, the Futures and Options Rules or the Derivatives Market Rules for a breach of those NZX Market Rules where the relevant participant (however defined) is NZX or a Related Entity.

3.3.3 NZX shall not exercise any powers or functions it has under any of the NZX Markets Rules that this Rule gives to the Special Division, except under a delegation from the Special Division.

3.4 **Rights and obligations of NZX and Related Entity**

3.4.1 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.

3.4.2 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.

3.4.3 NZX and a Related Entity, as an applicant for designation as a Participant (other than as an Issuer), have all the rights and obligations that any other applicant has under the NZX Markets Rules (other than the Listing Rules), except that the Special Division acts in the place of NZX and references in the NZX Markets Rules (other than the Listing Rules) to NZX shall be deemed to be references to the Special Division.

- 3.4.4 If designated as a Participant (other than as an Issuer), NZX or a Related Entity has all the rights and obligations that another Participant has, except that the Special Division acts in the place of NZX and references in the NZX Markets Rules (other than the Listing Rules), to NZX shall be deemed to be references to the Special Division.

Section 4: Power of the Tribunal

4.1 Hearing and determination of matters

4.1.1 Without limiting or derogating from any other provision of these Rules, the Tribunal shall have power to:

- (a) hear and determine any matter involving a Participant referred to it by NZX under the NZX Markets Rules; and
- (b) hear and determine any matter involving a Clearing Participant referred to it by CHO under the Clearing and Settlement Rules; and
- (c) 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
- (d) hear and determine a Referral in accordance with Rule 4.5.1; and
- (e) review decisions of a Division from a Summary Hearing in accordance with Rule 8; and
- (f) impose any of the penalties listed in Rule 11; and
- (g) engage advisors and such other experts on terms and conditions it thinks fit; and
- (h) suggest to NZX and consult with NZX on the amendment of these Rules in accordance with Rule 1.3 or the creation or amendment of Procedures in accordance with Rule 1.4.

and shall have all necessary or desirable ancillary powers to give full effect to the specific powers set out in this Rule 4, including the power for the Tribunal to determine its own processes and procedures to the extent that such processes and procedures are not set out in these Rules or the Procedures.

4.1.2 The 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 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, Responsible Person, Managing Principal or any director, officer, employee, consultant, contractor or other professional service provider of a 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 Rule 4.1.2 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 Rule 4.1.2 shall specify the date by which the evidence requested under this Rule 4.1.2(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 4.1.2.

4.1.3 Where the Tribunal requires attendance, evidence or information under Rule 4.1.2 from a person that NZX, CDO or CHO, as the context requires, does not have a contractual relationship with that enforces such attendance, evidence or information being provided, that Participant must use its best endeavours to procure such attendance, evidence or information from its directors, officers, employees, consultants, contractors or other professional service providers.

4.2 **Suspension of Participants**

4.2.1 At any time after a matter involving a Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant or a Depository Participant) which is referred for hearing and determination by way of the Full Hearing Procedure in accordance with Rule 7.1.1 or referred in accordance with Rule 6.1.3, 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 Participant, make an order suspending that Participant's designation as applied to that Participant under the rules applicable to it 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, CHO, CDO, Participants, the public or in the interests of the market generally. Following the suspension of a Participant's designation under this Rule 4.2.1, the provisions relating to the suspension of that Participant under the rules to which it is subject, shall apply to such Participant. The Tribunal shall give public notice of an interim suspension order under this Rule 4.2.1, unless the Chairperson (or in his or her absence the Deputy Chairperson) believes there are extraordinary circumstances which justify postponing that public notice.

4.2.2 A Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant or a Depository Participant) in respect

of whom an order for interim suspension under Rule 4.2.1 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 Rule 4.2.1, 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 Tribunal hearing the application to revoke the interim suspension order under this Rule 4.2.2 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 that Participant of its determination under this Rule 4.2.2, within 3 Business Days of an application from that Participant, that Division is deemed to have accepted that application and the interim suspension order of that Participant is revoked.

- 4.2.3 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 Rule 7.1.1 or referred in accordance with Rule 6.1.3, 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 Rule 4.2.3.
- 4.2.4 An Issuer in respect of whom an order for interim trading suspension under Rule 4.2.3 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 Rule 4.2.3 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 hearing the application to revoke the interim suspension order under this Rule 4.2.4 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 an Issuer of its determination under this Rule 4.2.4 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.
- 4.2.5 At any time after a matter involving a Clearing Participant which is

referred for hearing and determination by way of the Full Hearing Procedure in accordance with Rule 7.1.1 or referred in accordance with Rule 6.1.3, 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 Clearing Participant, request that CHO Suspend that Clearing 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 request where he or she considers Suspension is necessary in order to protect the interests of NZX, CHO, CDO, Clearing Participants, the public or in the interests of the market generally. CHO may accept or decline such request in its sole discretion.

4.3 **Disclosure Orders for Issuers**

4.3.1 At any time after a matter involving an Issuer has been referred for hearing and determination by the Tribunal, and that matter alleges non-compliance with the continuous disclosure Listing Rules, the Division hearing that matter may, provided it complies with Rule 4.3.2 and 4.3.3, direct that Issuer in writing to:

- (a) disclose and publish such Material Information; or
- (b) 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.

4.3.2 The Division hearing a matter must give an Issuer 24 hours' notice before making a Disclosure Order, specifying:

- (a) the information to be disclosed; and
- (b) the reasons requiring the disclosure; and
- (c) any other terms or conditions for the disclosure.

4.3.3 The Division of the 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 Rule 4.3.2. That Division must have regard to any such written submissions when making a Disclosure Order under Rule 4.3.1.

4.4 **Delegation to the Tribunal**

4.4.1 Subject to Rule 1.1.5, the Tribunal shall:

- (a) have, and be entitled to exercise, such powers, rights or

discretions of:

- (i) NZX as may from time to time be delegated to the Tribunal under the NZX Markets Rules from time to time; or
 - (ii) CHO as may from time to time be delegated to the Tribunal under the Clearing and Settlement Rules; or
 - (iii) CDO as may from time to time be delegated to the Tribunal under the Depository Operating Rules; and
- (b) have authority to deal with such specific matters as may from time to time be delegated to the Tribunal pursuant to the NZX Markets Rules, the Depository Operating Rules and/or the Clearing and Settlement Rules;
- (c) be entitled to exercise all the powers of NZX, CDO or CHO, as the context requires, in matters delegated to, or dealt with by, the Tribunal in accordance with this Rule 4.4.1, or as otherwise conferred on the Tribunal under any of the NZX Markets Rules, the Depository Operating Rules or the Clearing and Settlement Rules.

4.4.2 NZX, CDO or CHO, as the case may be, may at any time revoke or vary any delegation under Rule 4.4.1 to the extent that revocation or variance otherwise complies with these Rules.

4.5 **Review of NZX Action, CDO Action or CHO Action**

4.5.1 Subject to Rule 1.1.5:

- (a) an applicant for a waiver or ruling under:
- (i) any of the NZX Markets Rules, may apply to the Tribunal for review of the decision made by NZX;
 - (ii) the Clearing and Settlement Rules, may apply to the Tribunal for review of the decision made by CHO; or
 - (iii) the Depository Operating Rules, may apply to the Tribunal for review of the decision made by CDO,
- in respect of that waiver or ruling application (each a “**Waiver or Ruling Referral**”); or
- (b) a Clearing Participant or a Lending Clearing Participant who has lodged a claim under rule 4.4.2 of the Clearing and Settlement Rules who alleges that CHO has failed to determine its claim in good faith as required by rule 4.4.4 of the Clearing and Settlement Rules, may apply to the Tribunal for a determination by the Tribunal as to whether CHO has failed to determine that claim in good faith (a “**Compensation**”

Referral”).

- 4.5.2 A Referral may only be sought on the following bases:
- (a) a Waiver and Ruling Referral shall be sought only on the basis that the decision:
 - (i) was irrational having regard to the evidence available to NZX, CDO or CHO, as the context requires, and the circumstances at the time NZX, CDO or CHO, as the context requires, made the decision; or
 - (ii) was made in circumstances where NZX, CDO or CHO, as the context requires, did not observe the rules of procedural fairness in making such decision; or
 - (iii) was made in circumstances when NZX, CDO or CHO, as the context requires, has refused to consider information submitted by an applicant for a waiver or ruling;
 - (b) a Compensation Referral may only be sought on the basis that:
 - (i) the relevant Clearing Participant or Lending Clearing Participant alleges that CHO has failed to determine its claim lodged under Rule 4.4.2 of the Clearing and Settlement Rules in good faith as required by rule 4.4.4 of the Clearing and Settlement Rules; and
 - (ii) any compensation payable in respect of such claim shall be as determined by CHO in accordance with rule 4.4.7(b) of the Clearing and Settlement Rules.
- 4.5.3 Notwithstanding any other Rule, new evidence shall not be received on a Referral.
- 4.5.4 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:
- (a) 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
 - (b) determine that the Referral be dealt with by the Tribunal in accordance with the procedures set out in Rule 6, with any modifications to those Summary Hearing Procedures as the Division constituted to hear and determine that matter considers appropriate; or
 - (c) determine that the Referral be referred back to NZX, CDO or

CHO, as the context requires, for NZX, CDO or CHO, as the context requires, to reconsider the application for the waiver or ruling afresh or in respect of CHO, to recalculate and redetermine the claim for compensation, as the context requires.

4.6 **Tribunal Precedence**

- 4.6.1 A determination made by the Tribunal shall be binding on NZX to the extent that NZX exercises its powers to grant waivers and make rulings under any of the NZX Markets Rules.
- 4.6.2 Subject to Rule 4.5.1, a waiver granted or ruling made by NZX under any of the NZX Markets Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.
- 4.6.3 A waiver granted or ruling made by NZX under any of the NZX Markets Rules which is subsequently overturned by the 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 the Tribunal overturning that waiver or ruling.
- 4.6.4 Subject always to Rule 1.1.5, a determination made by the Tribunal shall be binding on CHO to the extent that CHO exercises its powers to grant waivers and make rulings under the Clearing and Settlement Rules.
- 4.6.5 Subject to Rule 4.5.1, a waiver granted or ruling made by CHO under the Clearing and Settlement Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.
- 4.6.6 A waiver granted or ruling made by CHO under the Clearing and Settlement Rules which is subsequently overturned by the 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 the Tribunal overturning that waiver or ruling.
- 4.6.7 Subject always to Rule 1.1.5, a determination made by the Tribunal shall be binding on CDO to the extent that CDO exercises its powers to grant waivers and make rulings under the Depository Operating Rules.
- 4.6.8 Subject to Rule 4.5.1, a waiver granted or ruling made by CDO under the Depository Operating Rules is binding unless and until the Tribunal makes a determination which overturns that waiver or ruling.

4.6.9 A waiver granted or ruling made by CDO under the Depository Operating Rules which is subsequently overturned by the 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 the Tribunal overturning that waiver or ruling.

4.7 **Default Determination**

4.7.1 If the Respondent fails to file a statement of response within the time frames permitted under these Rules or those directed by the Tribunal after receiving an application for an extension or otherwise, NZX or CHO, 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 6.7.

4.7.2 If the Respondent opposes the application, the 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 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 Tribunal may make a default determination and determine a penalty.

4.7.3 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 Tribunal may set aside the determination if it considers that it is fair and reasonable to do so.

4.8 **Failures amounting to a breach**

4.8.1 Every Participant, commits a breach of the NZX Markets Rules, the Depository Operating Rules and/or the Clearing and Settlement Rules to which it is subject (as relevant) if, without lawful justification, it refuses or fails to:

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

Section 5: Appeal Panel

5.1 Appointment of Appeal Panel

5.1.1 The membership of the Appeal Panel shall consist of:

- (a) two practising 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 Rule 5.1.1(a) as chairperson and deputy chairperson of the Appeal Panel; and
- (b) up to two retired Market Participants, or persons who would have been Market Participants if still employed and undertaking their former occupation; and
- (c) up to two retired persons who have had relevant experience with Clearing Participants, or Delivery and Settlement Participants prior to the introduction of the NZX Participant Rule changes for the purposes of the launch of the Clearing House; and
- (d) any two of the following persons:
 - (i) a retired Derivatives Participant, or person who would have been a Derivatives Participant if still employed and undertaking their former occupation; or
 - (ii) a retired Futures and Options Participant, or person who would have been a Futures and Options Participant if still employed and undertaking their former occupation; or
 - (iii) a 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 derivatives or futures and options; or
- (e) two former directors of Issuers, who are no longer directors of any Issuer.

5.1.2 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 Rule 2.1.4. 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.

- 5.1.3 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.
- 5.1.4 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.
- 5.1.5 If the Securities Commission removes a member of the Appeal Panel in accordance with Rule 5.1.4, it must immediately notify NZX and publish notification of that removal on its website.
- 5.1.6 A member of the Appeal Panel may resign his or her office by providing 60 days' written notice to the Securities Commission and NZX.
- 5.1.7 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.

5.2 **Appeal Divisions**

- 5.2.1 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.

5.3 **Appeal Panel Procedures**

- 5.3.1 Other than as set out in these Rules, a division of the Appeal Panel shall determine its own processes for hearing and determining appeals before it under these Rules:
- (a) The Tribunal shall forward to NZX, CDO or CHO as the context requires, the written summary of reasons required

under Rule 6.6.1;

- (b) NZX, CDO or CHO, as the case may be, shall prepare a statement of the circumstances preliminary to the hearing of any charge and the determination of the Tribunal on every charge and the penalty (if any) imposed;
- (c) The written summary of reasons required under Rule 6.6.1 and the statement of circumstances preliminary to the hearing required under Rule 5.3.1(b) shall be provided to the Appeal Panel by NZX, CDO or CHO.

5.3.2 Rule 3.1.3 relating to divisions, Rule 4 relating to powers of the Tribunal, Rule 10 relating to settlements, Rule 11 relating to penalties, Rules 12 and 13 relating to payment of costs or expenses, Rule 15 relating to remuneration and Rule 17 relating to indemnification, shall apply to the Appeal Panel with appropriate modifications.

Section 6: Summary Hearing

6.1 Lodgement by NZX or CHO

6.1.1 If NZX or CHO 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 Tribunal for hearing and determination by way of the Summary Hearing Procedure set out in this Rule 6 (Summary Hearing). In determining whether a matter should be referred for hearing and determination by way of Summary Hearing Procedure, NZX or CHO, as the case may be, shall consider the requirements of the market for speed and certainty of interpretation and administration of the NZX Markets Rules, in respect of NZX, and the Clearing and Settlement Rules, in respect of CHO, including Procedures.

6.1.2 Any matter referred by NZX or CHO under Rule 6.1.1 or 7.1.1 where the Respondent is:

- (a) a Participant (other than an Issuer), may include allegations as to conduct or omission by any natural person employed by, contracted to, or officer in, that Participant; and
- (b) an Issuer, may include allegations as to conduct or omission by Directors and/or officers of that Issuer.

6.1.3 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 Chairman of a Division constituted to hear and determine a matter proposes to make a referral under this Rule 6.1.3, the Chairperson (and in his or her absence the Deputy Chairperson) or the Chairman of a 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, or CHO as the case may be, of such referral, during which time the Respondent and NZX, or CHO, may make submissions to the Chairperson (and in his or her absence the Deputy Chairperson) or the Chairman 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 Chairman 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.

- 6.1.4 The Chairman of the Division constituted to hear and determine a matter, referred to it under Rule 6.1.3 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 Tribunal under the Summary Hearing Procedure, provided always that that Division is provided with transcripts of all oral evidence previously heard by the Tribunal and copies of all physical or documentary evidence previously provided to the Tribunal.

6.2 **Statement of Case**

- 6.2.1 Where NZX or, as the context requires, CHO refers a matter for hearing and determination in accordance with Rule 6.1.1 or where the Tribunal accepts an application in accordance with Rule 7.1.2, NZX or CHO, as the case may be, shall submit a statement of case to the party whom NZX believes has breached any of the NZX Markets Rules or, as the case may be, CHO believes has breached the Clearing and Settlement Rules (Respondent) setting out:

- (a) the matter to be referred to the Tribunal; and
- (b) all material facts taken into account by NZX or, as the context requires, CHO; 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 or CHO, as the case may be, believes that the Tribunal should order that any decision made by the Tribunal for this matter not be published, or that publication should be delayed for a specified time period; and
- (f) all documents NZX or CHO, as the case may be, believes are relevant to that matter which shall also be attached.

- 6.2.2 The Respondent may, within 10 Business Days of receipt of a statement of case provided under Rule 6.2.1 or such other period, including for the avoidance of doubt a shorter period of time, as directed by the Chairman of the Division hearing the matter, either on the request of that Respondent or where the Chairman of the Division considers it appropriate, submit to

NZX or CHO as the context requires, and the 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 Tribunal should order that any decision made by the 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

file a notice requesting more time to file a statement of response with the Tribunal within 8 Business Days setting out why additional time is required.

- 6.2.3 Any party may at any time before a hearing, seek leave from the Tribunal to file an amended statement of case or response with the Tribunal and serve a copy thereof on the other party.
- 6.2.4 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.
- 6.2.5 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 Tribunal.
- 6.2.6 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 Tribunal, file and serve an amended response thereto.
- 6.2.7 Notwithstanding Rule 6.2.8, upon receiving a statement of Response, NZX or CHO, as the context requires, 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 3 Business Days of NZX or CHO, or the context requires, 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.

- 6.2.8 At the expiry of the period referred to in Rule 6.2.2, and, if relevant, Rule 6.2.5 or 6.2.6, NZX or CHO, as the context requires, shall submit to the Chairperson the statement of case provided under Rule 6.2.1, the statement in response (if any) provided under Rule 6.2.2, together with all copies of all relevant documents and a statement as to whether NZX or CHO 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.

6.3 **Summary Hearing**

- 6.3.1 Subject to Rule 6.3.2, matters referred to the Summary Hearing Procedure shall take place through the consideration of the documents provided under Rule 6.2.8 with no oral hearing. The consideration and determination of a matter under this Rule 6.3.1 shall occur within 5 Business Days after receipt by the Tribunal of all documents in accordance with Rule 6.2.8. For the avoidance of doubt, where the Tribunal receives amendments to the Statement of Case or Statement of Response in accordance with Rule 6.2.3 or a rejoinder to the Statement of Response in accordance with Rule 6.2.7, the timeframes for the hearing of the matter will be reset.

- 6.3.2 If a party notifies the Tribunal that it believes an oral hearing of a matter is essential to establish all the facts relevant to that matter in accordance with Rule 6.2.2(c) or 6.2.8:

- (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 Tribunal; and
- (b) The Tribunal shall deliver its Summary Hearing determination within 10 Business Days of the date of the oral Summary Hearing.

- 6.3.3 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 Tribunal may also adjourn and reconvene an oral hearing as it thinks fit.

6.3.4 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.

6.4 Additional notice required of new matters

6.4.1 Where a Division constituted to hear and determine a matter becomes aware, during the course of hearing or considering a matter, of further breaches of any of the NZX Markets Rules or the Clearing and Settlement Rules, as applicable (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 or, as the context requires, CHO, 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 Rules, as though those Additional Compliance Issues were new matters before that Division.

6.5 Hearing and consideration procedures

6.5.1 A Summary Hearing, whether considered on the documents submitted to the Tribunal in accordance with Rules 6.3.1 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 the 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 Rule 6.3.4:
 - (i) resulting from a complaint received by NZX or, as the context requires, CHO from a third party (Complainant), the Complainant may, in the sole discretion of the Tribunal, be invited to attend parts or all of the Full Hearing in respect of that complaint, provided the Complainant has delivered to the Tribunal a confidentiality undertaking in respect of that Summary Hearing in a form acceptable to the Tribunal; and
 - (ii) The Tribunal may have its legal advisors present and the Tribunal may, at its discretion permit NZX, and/or as the context requires, CHO, and/or the Respondent to each have one legal advisor present.

6.5.2 The Chairman 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.

- 6.5.3 The 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.
- 6.5.4 The decision of the 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 Chairman of that Division shall, subject to Rule 3.1.2, have a deliberative but not a casting vote.

6.6 **Statement of findings**

- 6.6.1 Each Division 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, or, as the context requires, CHO (and including in respect of a Referral under Rule 4.5 in respect of CDO, CDO), that written statement of reasons. NZX or, as the context requires, CDO or CHO 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).
- 6.6.2 The statement of circumstances prepared by NZX, or, as the context requires, CHO or CDO may:
- (a) be published at NZX's, or, as the context requires, CHO's or CDO'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 the Tribunal a confidentiality undertaking, in a form acceptable to the Tribunal.

6.7 Service

- 6.7.1 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, or as the context requires, CHO, 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, the Tribunal shall then have jurisdiction upon receipt of the statement of case.

Section 7: Full Hearing

7.1 Escalation to Full Hearing

- 7.1.1 If NZX or, as the context requires, CHO, considers that a matter is sufficiently serious, it may refer that matter to the Tribunal for hearing and determination by way of the Full Hearing Procedure as set out in this Rule 7 (Full Hearing).
- 7.1.2 If a Respondent receives notice of a matter which has been referred to the Full Hearing Procedure, that Respondent may apply to the 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 Rule 6.2.2. The Chairperson (or in his or her absence the Deputy Chairperson) may, after consideration of NZX's or, as the context requires, CHO'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 Rule 7.1.2 shall be final and binding on the parties.
- 7.1.3 The Chairperson (and in his or her absence the Deputy Chairperson) must notify a Respondent who makes an application under Rule 7.1.2, no later than 3 Business Days after receipt of that application. If the Tribunal:
- (a) grants such application or does not notify an applicant within the period set out in this Rule 7.1.3, the matter will proceed under the Summary Hearing Procedure in accordance with Rules 6.2.1 to 6.7.1 (inclusive); or
 - (b) declines such application, the matter will proceed under the Full Hearing Procedure and the Tribunal shall convene a Full Hearing in accordance with this Rule 7.

7.2 Full Hearing Procedure

- 7.2.1 Rules 6.2.1 to 6.7.1 relating to a Summary Hearing shall, with appropriate modifications, apply to a Full Hearing, except that:
- (a) Rule 6.2.2 shall be amended such that the Respondent must provide its statement of response to NZX, or as the context requires, CHO, no later than 20 Business Days after receipt of a statement of case from NZX or, as the context requires, CHO, or such period, including for the avoidance of doubt a shorter period of time, as directed by the Chairman of the Division hearing the matter; and

- (b) Rule 6.3.1 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 Tribunal of a statement of response or within such period as determined by the Chairman of the division, or by the process prescribed by Procedure (if any); and
- (c) Rule 6.3.2(b) shall be amended such that the Tribunal's determination under an oral hearing under the Full Hearing Procedure shall occur within 15 Business Days of the date of the oral hearing; and
- (d) Rule 6.3.3 shall be amended such that the Tribunal must give not less than 5 Business Days and not more than 15 Business Days notice of an oral hearing under the Full Hearing Procedure; and
- (e) Rule 6.5.1(b) shall be amended to include the ability at a Full Hearing for 2 (or more with the prior permission of the Tribunal) representatives of each of NZX or CHO, as the case may be, 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 Chairman of the Division constituted to hear and determine the matter.

Section 8: Summary Appeal

8.1 Statement of Appeal

8.1.1 Either party may appeal a determination made at a Summary Hearing (Summary Appeal) by submitting a statement of appeal in writing to the Chairperson no later than 8 Business Days after that party received written notice of the determination of the 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 Rule 8.1.1, 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 the Tribunal should order that any decision made by the 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.

8.1.2 Where the Chairperson (and in his or her absence the Deputy Chairperson) considers that a statement of appeal provided under Rule 8.1.1 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 appeal under Rule 8.1.1, a copy of that statement of appeal to the other party (Summary Appeal Respondent). Where the Chairperson (and in his or her

absence the Deputy Chairperson) considers a statement of appeal provided under Rule 8.1.1 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 appeal, 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 Rule 8.1.2.

8.1.3 The Summary Appeal Respondent may, within 5 Business Days of receipt of a statement of appeal provided under Rule 8.1.1 or such other period as directed by the Tribunal on the request of that Summary Appeal Respondent, submit to the Tribunal and the Appellant a statement in response to appeal setting out:

- (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 Rule 8.1.3(b), 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 Tribunal should order that any decision made by the 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.

8.2 **Summary Appeal Procedure**

8.2.1 Rules 6.3.1 to 6.7.1 (inclusive) relating to Summary Hearings as amended by Rule 7.2.1 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 the Tribunal in accordance with Rule 8.1.1(e) or 8.1.3(b). If new evidence is submitted by a party in accordance with this Rule 8.2.1(b), that new evidence only shall be heard by way of rehearing; and
- (c) any member of the 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.

8.3 **Effect of Summary Hearing determination**

- 8.3.1 Pending the completion of a Summary Appeal for a matter under this Rule 8, the Summary Hearing determination of the Tribunal for that matter has full force and effect except to the extent that determination includes a suspension or revocation of a Participant's designation under Rule 11 or the suspension of the quotation of trading of an Issuer's Quoted Securities or a class of Quoted Securities under Rule 11.

8.4 **Determination of Summary Appeal**

- 8.4.1 The 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 relevant NZX Markets Rules, the Clearing and Settlement Rules and/or the Depository Operating Rules, as the context requires. A party shall have no right of appeal from a determination made by the Tribunal in a Summary Appeal.

Section 9: Full Appeal

9.1 Limitation on Appeal

9.1.1 Either party may appeal a determination of the Tribunal that relates to a matter that was referred to a Full Hearing in accordance with the Rule 6.1.3 or 7.1.1, 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 Participant's designation under Rule 4.2.1 or the suspension of quotation of trading of an Issuer's Quoted Securities or class of Quoted Securities under Rule 4.2.3; or.
- (c) any decision of the Tribunal to publish and/ or identify any party to a Full Hearing.

9.1.2 Other than as set out in Rule 9.1.1, a party shall have no right of appeal from a determination made by the Tribunal at a Full Hearing.

9.2 Appeal Procedure

9.2.1 Where a party is entitled to appeal a determination made by the Tribunal at a Full Hearing in accordance with Rule 9.1.1, that party may appeal that determination (Full Appeal) by submitting a statement of appeal in writing to the appeal panel constituted under Rule 5.1.1 (Appeal Panel) by addressing that statement of appeal to the chairperson of the Appeal Panel no later than 8 Business Days after that party received written notice of the determination of the 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 Rule 9.2.1, 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.

9.2.2 Where the Appeal Panel considers that a statement of appeal provided under Rule 9.2.1 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 appeal, a copy of that statement of appeal 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 appeal provided under Rule 9.2.1 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 appeal, setting out its reasons.

9.2.3 The Full Appeal Respondent may, within 5 Business Days of receipt of a statement of appeal provided under Rule 9.2.2 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 to appeal 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 Rule 9.2.3, 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.

9.3 Full Appeal Hearing Procedure

9.3.1 Rules 6.3.1 to 6.7.1 (inclusive) relating to Summary Hearings as amended by Rule 7.2.1 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 the Tribunal in accordance with Rule 9.2.1(e) or 9.2.3(b). If new evidence is submitted by a party in accordance with this Rule 9.3.1(b), that new evidence only shall be heard by way of rehearing; and
- (c) Rule 6.3.1 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) Rule 6.3.3 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.

9.4 Effect of Full Hearing determination

9.4.1 Pending the completion of a Full Appeal for a matter under this Rule 9, the determination of the 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 Participant's designation under Rule 4.2.1 or quotation of trading of an Issuer's Quoted Securities or class of Quoted Securities under Rule 4.2.3.

9.5 **Determination on Full Appeal**

- 9.5.1 The Appeal Panel may affirm, vary or set aside the determination of the Tribunal at Full Hearing and any penalty imposed where it considers that that determination is a misrepresentation or an erroneous application of the applicable NZX Markets Rules and/or as the context requires, the Clearing and Settlement Rules (as the case may be).

Section 10: Settlement

10.1 Approval of settlement

10.1.1 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 the Tribunal or the Appeal Panel (as the case may be) for approval. If that Division of the 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 Rule 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 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.

10.1.2 The procedures set out in Rules 5 to 9 (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 Rule 10.1.1.

10.2 Proposed Settlement confidential

10.2.1 If the Tribunal or the Appeal Panel does not approve a proposed settlement:

- (a) there shall be no reference in any documents or oral hearing before the Tribunal or the Appeal Panel (as the case may be) to the negotiations, the proposed settlement or the submissions to the Tribunal or the Appeal Panel (as the case may be), all of which are confidential; and
- (b) any member of the Division or the division of the Appeal Panel (as the case may be) constituted to consider a proposed settlement must not sit on the Division or the division of 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

11.1.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division 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 the 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 the 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 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 the breach is capable of being remedied, to take such remedial action as the 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) 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 21.1.3 proved, it may order:
 - (i) in the case of a matter involving NZX Participant Rule 21.1.3(c)(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 NZX Participant Rules by that Employee of that Market Participant; or
 - (ii) in the case of a matter involving NZX Participant Rule 21.1.3(c)(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; 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.

11.1.2 If a Market Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be), made under Rule 11.1.1, in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be) that Division of the Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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 Participants who are not natural persons on Summary Hearing Procedure**

11.2.1 Where a matter is heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.1.1, except that the Tribunal, acting under the Summary Hearing Procedure, may not suspend or revoke a Market Participant's designation.

11.2.2 If a Market Participant fails to carry out an order of the Tribunal made under Rule 11.2.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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**

11.3.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division 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 or its markets, it may, if it thinks fit, and without limiting any other remedies or sanctions available to the 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 the 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 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 the Tribunal may direct; and/or
- (j) order a probationary period whereby certain terms and conditions as determined by the Division 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.

11.3.2 If a Market Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.3.1, in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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**

11.4.1 Where an inquiry is conducted, or matter heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.3,1 except the Tribunal acting under the Summary Hearing Procedure, may not suspend or revoke that Market Participant's designation.

11.4.2 If a Market Participant fails to carry out an order of the Tribunal made under Rule 11.4.1 in the period determined by or otherwise satisfactory to that Division, that Division may, without limiting any other remedies or sanctions available to the 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**

11.5.1 If, after hearing any matter by way of the Full Hearing Procedure that Division 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 the 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) state that the Issuer or director or former director of that Issuer is censured by the Tribunal; and/ or
- (c) suspend the Quotation of a Class or all Classes of that Issuer's Quoted Securities for a stated period; and/or
- (d) 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
- (e) cancel that Issuer's Listing; and/or
- (f) cancel Quotation of any Class or all Classes of that Issuer's Quoted Securities; and/or
- (g) 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
- (h) 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
- (i) require that Issuer, where such breach is capable of being remedied, to take such remedial action as the Tribunal or the Appeal Panel (as the case may be) may direct.

11.5.2 If an Issuer fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.5.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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

11.6.1 Where an inquiry is conducted, or matter heard, by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.5.1, except that the 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).

11.6.2 If an Issuer fails to carry out an order of the Tribunal made under Rule 11.6.1 in the period determined by or otherwise satisfactory to that Division, that Division may, without limiting any other remedies or sanctions available to the 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**

11.7.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division 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 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 the 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 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 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 the 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(c)(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(c)(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 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.

11.7.2 If a Futures and Options Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.7.1 in the period determined by or otherwise satisfactory to that Division of the Tribunal or that division of the Appeal Panel (as the case may be), that Division or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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**

11.8.1 Where a matter is heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.7.1, except that the Tribunal, acting under the Summary Hearing Procedure, may not suspend or revoke a Futures and Options Participant's designation:

11.8.2 If a Futures and Options Participant fails to carry out an order of the Tribunal made under Rule 11.8.1 in the period determined by or otherwise satisfactory to that Division that Division may, without limiting any other remedies or sanctions available to the 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

- 11.9.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division 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 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 the 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 action as the 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.

11.9.2 If a Futures and Options Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.9.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel, that Division or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the 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**

11.10.1 Where an inquiry is conducted, or matter heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.9.1, except that the Tribunal acting under the Summary Hearing Procedure, may not suspend or revoke that Futures and Options Participant's designation.

11.10.2 If a Futures and Options Participant fails to carry out an order of the Tribunal made under Rule 11.10.1 in the period determined by or otherwise satisfactory to the Division, that the Division may, without limiting any other remedies or sanctions available to the Tribunal, suspend that Futures and Options Participant's

designation as a Futures and Options Participant until that order is complied with.

11.11 Penalties for Clearing Participants who are not natural persons on Full Hearing Procedure

11.11.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division or the division of the Appeal Panel (as the case may be) finds that a Clearing Participant, who is not a natural person, has been guilty of a breach of any Clearing and Settlement Rule or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO, CDO or the Clearing House, it may, if it thinks fit, without limiting any other remedies or sanctions available to the 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 Clearing Participant has acted in breach of the Clearing and Settlement Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO, CDO or the Clearing House and that no further action will be taken; and/or
- (c) issue a public statement that that Clearing Participant has acted in breach of the Clearing and Settlement Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO, CDO or the Clearing House and criticise the conduct of that Clearing Participant; and/or
- (d) publicly censure that Clearing Participant, by making an announcement to the NZX Markets that that Clearing Participant is found to have acted in breach of the Clearing and Settlement Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO, CDO or the Clearing House, and is censured by the Tribunal or the Appeal Panel (as the case may be); and/or
- (e) revoke that Clearing Participant's designation as a Clearing Participant with the consent of CHO (which CHO may withhold in its discretion); and/or
- (f) suspend that entity's designation as a Clearing Participant

for a stated period with the consent of CHO (which CHO may withhold in its discretion); and/or.

- (g) order that Clearing Participant to pay to NZX (for and on behalf of CHO) 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 (for and on behalf of CHO) 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 Clearing Participant to make restitution to a third party where that Clearing Participant has profited from a breach of the Clearing and Settlement Rules at that third party's expense; and/or
- (i) require that Clearing Participant, where the breach is capable of being remedied, to take such remedial action as the Tribunal may direct; and/or
- (j) require that Clearing Participant to undertake, in a form directed by CHO, or upgrade to the satisfaction of CHO, an education or compliance programme designed to prevent future contravention of the Clearing and Settlement Rules by that Clearing Participant; and/or
- (k) require that Clearing Participant to pay the total commission or gross commission, or part thereof, arising from any transaction giving rise to a breach of the Clearing and Settlement Rules to NZX (for and on behalf of CHO), which shall be deposited by NZX into the Discipline Fund; and/or
- (l) in relation to any matter involving Clearing and Settlement Rule 6.8.1(c) proved, it may order:
 - (i) that the Employee or person who the Clearing Participant is in association or contractual relationship with undertake, in a form directed by CHO, or upgrade to the satisfaction of CHO an education or compliance programme designed to prevent future contravention of the Clearing and Settlement Rules by that Employee of that Clearing Participant; and/ or
 - (ii) order a probationary period whereby certain terms and conditions, in addition to those set out in the Clearing and Settlement Rules, are attached to that Clearing Participant's continued designation as a Clearing Participant; and/or

- (m) apply to a court in a jurisdiction other than New Zealand for provisional or interim relief measures.

11.11.2 If a Clearing Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be), made under Rule 11.11.1, in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be) that Division of the Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal or the Appeal Panel (as the case may be), request CHO Suspend that Clearing Participant's designation as a Clearing Participant until that order is complied with. CHO may in its discretion accept or decline that request.

11.12 **Penalties for Clearing Participants who are not natural persons on Summary Hearing Procedure**

11.12.1 Where a matter is heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.11.1, except that the Tribunal, acting under the Summary Hearing Procedure, may not suspend or revoke a Clearing Participant's designation.

11.12.2 If a Clearing Participant fails to carry out an order of the Tribunal made under Rule 11.12.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal, request CHO Suspend that Clearing Participant's designation as a Clearing Participant until that order is complied with. CHO may in its discretion accept or decline that request.

11.13 **Penalties for Responsible Persons of Clearing Participants on Full Hearing Procedure**

11.13.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division or the division of the Appeal Panel (as the case may be) finds that a Responsible Person of a Clearing Participant has been guilty of a breach of any Clearing and Settlement Rule or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO, CDO or the Clearing House, it may, if it thinks fit, and without limiting any other remedies or sanctions available to the 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 Responsible Person has acted in breach of the Clearing and Settlement Rules or has or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO or its Clearing House and that no further action will be taken;
- (c) issue a public statement that that Responsible Person has acted in breach of the Clearing and Settlement Rules or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO or its Clearing House and criticise the conduct of that Responsible Person; and/or
- (d) publicly censure that Responsible Person, by making an announcement to the market that that Responsible Person is found to have acted in breach of the Clearing and Settlement Rules or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of CHO or its Clearing House and is censured by the or the Appeal Panel (as the case may be); and/or
- (e) revoke that Responsible Person's designation as a Responsible Person with the consent of CHO (which CHO may withhold in its discretion); and/or
- (f) suspend that Responsible Person's designation as a Responsible Person for a stated period with the consent of CHO (which CHO may withhold in its discretion); and/or
- (g) order that Responsible Person to pay to NZX (for and on behalf of CHO) 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 Responsible Person to make restitution to a third party where that Responsible Person has profited from a breach of the Clearing and Settlement Rules at that third party's expense; and/or
- (i) require that Responsible Person, where such breach is capable of being remedied, to take such remedial action as the Tribunal may direct; and/or

- (j) order a probationary period whereby certain terms and conditions as determined by the Division or the division of the Appeal Panel, in addition to those set out in the Clearing and Settlement Rules, are attached to that Responsible Person's continued designation as a Responsible Person; and/or
- (k) require that Responsible Person to undertake such training as CHO may direct, such training being designed to prevent a future contravention of the Clearing and Settlement Rules.

11.13.2 If a Responsible Person fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.13.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal or the Appeal Panel (as the case may be), request CHO to Suspend that Responsible Person's designation as a Responsible Person until that order is complied with. CHO may in its discretion accept or decline that request.

11.14 **Penalties for Responsible Persons of Clearing Participants under the Summary Hearing Procedure**

11.14.1 Where an enquiry is conducted, or matter heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.13.1 except the Tribunal acting under the Summary Hearing Procedure, may not suspend or revoke that Responsible Person's designation.

11.14.2 If a Responsible Person fails to carry out an order of the Tribunal made under Rule 11.14.1 in the period determined by or otherwise satisfactory to that Division, that Division may, without limiting any other remedies or sanctions available to the Tribunal, request that CHO Suspend that Responsible Person's designation as a Responsible Person until that order is complied with. CHO may in its discretion accept or decline that request.

11.15 **Penalties for Derivatives Participants who are not natural persons on Full Hearing Procedure**

11.15.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division or the division of the Appeal Panel (as the case may be) finds that a Derivatives Participant, who is not a natural person, has been guilty of a breach of any Derivatives Market Rule or has done, or as a result of omitting to do, any act, matter or thing, which has an adverse effect on NZX or any NZX Markets, it may, if it thinks fit, without limiting any other

remedies or sanctions available to the 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 Derivatives Participant has acted in breach of the Derivatives Market Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or NZX's markets and that no further action will be taken; and/or
- (c) issue a public statement that that Derivatives Participant has acted in breach of the Derivatives Market Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or the NZX Markets and criticise the conduct of that Derivatives Participant; and/or
- (d) publicly censure that Derivatives Participant, by making an announcement to the market that that Derivatives Participant is found to have acted in breach of the Derivatives Market Rules or has done, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or any NZX Markets, and is censured by the Tribunal or the Appeal Panel (as the case may be); and/or
- (e) revoke that Derivatives Participant's designation as a Derivatives Participant; and/or
- (f) suspend that entity's designation as a Derivatives Participant for a stated period; and/or
- (g) order that Derivatives 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 Derivatives Participant to make restitution to a third party where that Derivatives Participant has profited from a breach of the Derivatives Market Rules at that third party's expense; and/or

- (i) require that Derivatives Participant, where the breach is capable of being remedied, to take such remedial action as the Tribunal may direct; and/or
- (j) require that Derivatives 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 Derivatives Market Rules by that Derivatives Participant; and/or;
- (k) require that Derivatives Participant to pay the total commission or gross commission, or part thereof, arising from any transaction giving rise to a breach of the Derivatives Market Rules to NZX, which shall be deposited by NZX into the Discipline Fund; and/or
- (l) in relation to any matter involving Derivatives Market Rule 14.5 proved, it may order:
 - (i) in the case of a matter involving Derivatives Market Rule 14.5.1(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 Derivatives Market Rules by that Employee of that Derivatives Participant; and/or
 - (ii) In the case of a matter involving Derivatives Market Rule 14.5.1(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 Derivatives Market Rules by that Employee of that Derivatives Participant; and/ or
- (m) order a probationary period whereby certain terms and conditions, in addition to those set out in the Derivatives Market Rules, are attached to that Derivatives Participant's continued designation as a Derivatives Participant.

11.15.2 If a Derivatives Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be), made under Rule 11.15.1, in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be) that Division of the Tribunal or that division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal or the Appeal Panel (as the case may be), suspend that Derivatives Participant's designation as a Derivatives Participant until that order is complied with.

11.16 Penalties for Derivatives Participants who are not natural persons on Summary Hearing Procedure

- 11.16.1 Where a matter is heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.15.1, except that the Tribunal, acting under the Summary Hearing Procedure, may not suspend or revoke a Derivatives Participant's designation.
- 11.16.2 If a Derivatives Participant fails to carry out an order of the Tribunal made under Rule 11.16.1, in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or division of the Appeal Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal, suspend that Derivatives Participant's designation as a Derivatives Participant until that order is complied with.

11.17 Penalties for Derivatives Participants who are natural persons on Full Hearing Procedure

- 11.17.1 If, after hearing any matter by way of the Full Hearing Procedure, the Division or the division of the Appeal Panel (as the case may be) finds that a Derivatives Participant who is a natural person has been guilty of a breach of any Derivatives Market Rule or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or any NZX Markets, it may, if it thinks fit, and without limiting any other remedies or sanctions available to the 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 Derivatives Participant has acted in breach of the Derivatives Market Rules or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or any NZX Markets and that no further action will be taken; and/ or
 - (c) issue a public statement that that Derivatives Participant has acted in breach of the Derivatives Market Rules or has committed, or as a result of omitting to do, any act, matter or thing, detrimental, or reasonably likely to be detrimental, to the well being or proper conduct of NZX or any NZX Markets and criticise the conduct of that Derivatives Participant; and/or

- (d) publicly censure that Derivatives Participant, by making an announcement to the market that that Derivatives Participant is found to have acted in breach of the Derivatives Participant Rules or has committed, or as a result of omitting to do, 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 the or the Appeal Panel (as the case may be); and/or
- (e) revoke that Derivatives Participant's designation as a Derivatives Participant; and/or
- (f) suspend that Derivatives Participant's designation as a Derivatives Participant for a stated period; and/or
- (g) order that Derivatives 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 Derivatives Participant to make restitution to a third party where that Derivatives Participant has profited from a breach of the Derivatives Market Rules at that third party's expense; and/or
- (i) require that Derivatives Participant, where such breach is capable of being remedied, to take such remedial action as the Tribunal may direct; and/or
- (j) order a probationary period whereby certain terms and conditions as determined by the Division or the division of the Appeal Panel, in addition to those set out in the Derivatives Market Rules, are attached to Derivatives Participant's continued designation as a Derivatives Participant; and/or
- (k) require that Derivatives Participant to undertake such training as NZX may direct, such training being designed to prevent a future contravention of the Derivatives Market Rules.

11.17.2 If a Derivatives Participant fails to carry out an order of the Tribunal or the Appeal Panel (as the case may be) made under Rule 11.17.1 in the period determined by or otherwise satisfactory to that Division or that division of the Appeal Panel (as the case may be), that Division or that division of the Appeal

Panel (as the case may be) may, without limiting any other remedies or sanctions available to the Tribunal or the Appeal Panel (as the case may be), suspend that Derivatives Participant's designation as a Derivatives Participant until that order is complied with.

11.18 Penalties for Derivatives Participants who are natural persons under the Summary Hearing Procedure

11.18.1 Where an inquiry is conducted, or matter heard by way of Summary Hearing Procedure, the Tribunal shall have the same powers as to penalties as set out in Rule 11.17.1 except the Tribunal acting under the Summary Hearing Procedure, may not suspend or revoke that Derivatives Participant's designation.

11.18.2 If a Derivatives Participant fails to carry out an order of the Tribunal made under Rule 11.18.1 in the period determined by or otherwise satisfactory to that Division, that Division may, without limiting any other remedies or sanctions available to the Tribunal, suspend that Derivatives Participant's designation as a Derivatives Participant until that order is complied with.

11.19 Public statements and censures

11.19.1 Any determination to make a public statement or public censure made by the Tribunal under this Rule 11 shall not be made until the time period for appeal against that determination has expired, or the right of appeal has been waived, whichever is the earlier.

11.20 Factors to consider in determining penalty

11.20.1 When a Division or a division of the Appeal Panel (as the case may be) is considering imposing any of the penalties under this Rule 11, and in considering the extent of that penalty, that the Division 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 Procedure in relation to guidance for application of penalties; and/or
- (g) any other mitigating factors that Division 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.

11.21 **Proceeds of penalties imposed**

11.21.1 Any penalty imposed on a Participant under these Rules shall be a debt due to NZX enforceable by action in the name of NZX (including, for the avoidance of doubt, penalties imposed on a Clearing Participant). All amounts received by NZX in payment of any penalty imposed on a Participant under these 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 any NZX Markets Rules and the Clearing and Settlement Rules, and any other rules and regulations of NZX or CHO from time to time; and/or
- (b) the costs and expenses of the Tribunal and the Appeal Panel, including any remuneration payable under Rule 12; and/or
- (c) seminars and other education initiatives in respect of regulation of NZX Markets and regulation of the futures and options industry; and/or
- (d) redrafting the NZX Markets Rules and the Clearing and Settlement Rules and any other rules and regulations of NZX or CHO or CDO from time to time; and/or
- (e) any other use with the prior written consent of the Securities Commission.

11.22 **Penalties for failure to comply with requirement to provide information or document**

11.22.1 A person who receives notice under Rule 4.1.2, 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 Tribunal after the notice is given to the person) specified in the notice.

11.22.2 Every Person referred to in Rule 4.1.3 is liable for a fine not exceeding \$10,000, who, where a notice is given under Rule 4.1.2, fails to ensure that the person on whom notice is served:

- (a) complies, without reasonable excuse, with that notice; or
- (b) provides information that is a true and fair view in any material particular.

11.23 **No set-off**

11.23.1 Fines order imposed on Participants under these Rules cannot be set-off against any other monies owed by NZX or CHO, as the context requires, to the party against whom the penalty has been imposed. All payments made to NZX under these Rules shall be made in New Zealand dollars (unless NZX agrees otherwise) and shall be made without (and free and clear of any deduction for) set-off or counterclaim.

Section 12: Costs and Expenses

12.1 Costs and Expenses Awards

12.1.1 The Tribunal may order any party, to pay such reasonable costs as it thinks fit, regardless of any finding or the outcome of the case. Such costs may include the remuneration and expenses of members of the Tribunal, Counsel to the Tribunal and any temporary appointee to a Division and NZX staff assisting the Tribunal, and any costs incurred by NZX, CDO or CHO 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.

12.1.2 An order for costs under Rule 12.1.1 may include:

- (a) the costs and expenses of a hearing, including, the fees and expenses of and incidental to the Tribunal conducting the hearing, and any other expenses related to the hearing (including any amount payable under Rule 12.2.1) shall be as fixed and allocated by the Tribunal in its discretion; and
- (b) where the order is made in favour of NZX, CDO or CHO, the costs and expenses incurred by NZX, CDO or CHO, as the case may be, in the preparation and presentation of its case.

12.1.3 If the Tribunal considers that in making a decision, which is the subject of a Referral under Rule 4.5, or to bring proceedings under these Rules, NZX, CDO or CHO has acted vexatiously, frivolously or unreasonably, it may make an order under Rule 12.1.1 that NZX, CDO or CHO as the context requires, pay another party to the proceedings, the fees and expenses of and incidental to the preparation and presentation of its case.

12.1.4 In the absence of an award under Rule 12.1.1, fixing and allocating the costs and 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 Tribunal.

12.1.5 Any order for costs made by the Tribunal, in terms of Rule 12.1.1, shall be paid within 30 days of receipt of the notification in writing of the amount payable.

12.2 Evidence Costs and Expenses Awards

12.2.1 Every person (other than NZX, CDO, CHO, a Respondent, an

applicant under Rule 4.5 or an officer or employee of NZX, CDO or CHO or such Respondent or applicant or any other person who gives evidence on behalf of NZX or a Respondent or applicant) who gives evidence, or attends to give evidence, at a hearing conducted by the Tribunal, will be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:

- (a) determined by the Tribunal;
- (b) paid by NZX; and
- (c) recoverable in terms of any order the Tribunal may make under Rule 12.1.1.

12.3 **Appeal Panel Costs and Expenses Awards**

12.3.1 The Appeal Panel may order that any party, pay such reasonable costs as it thinks fit, regardless of any finding or the outcome of the case. Such costs may include the remuneration and expenses of members of the Appeal Panel and Counsel to the Appeal Panel and NZX, CDO or CHO staff assisting the Appeal Panel, and any costs incurred by NZX, CDO or CHO, as the case may be, 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.:

12.3.2 An order for costs under Rule 12.3.1 may include:

- (a) the costs and expenses of a hearing, including, the fees and expenses of and incidental to the Appeal Panel conducting the hearing, and any other expenses related to the hearing (including any amount payable under Rule 12.4.1) shall be as fixed and allocated by the Appeal Panel in its discretion; and
- (b) where the order is made in favour of NZX, CDO or CHO, the costs and expenses incurred by NZX, CDO and CHO in the preparation and presentation of its case.

12.3.3 If the Appeal Panel considers that a decision of NZX, CDO or CHO, and/ or the Tribunal which is the subject of an Appeal, is vexatious, frivolous or unreasonable, it may make an order under Rule 12.3.1 that NZX, CDO or CHO, as the case may be, pay another party to the proceedings, the fees and expenses of and incidental to the preparation and presentation of its case.

12.3.4 In the absence of an award under Rule 12.1.1, fixing and allocating the costs and 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 Appeal Panel.

- 12.3.5 Any order for costs made by the Tribunal, in terms of Rule 12.3.1, shall be paid within 30 days of receipt of the notification in writing of the amount payable.

12.4 Appeal Panel Evidence Costs and Expenses Awards

- 12.4.1 Every person (other than NZX, CDO, CHO, a Respondent, an applicant under Rule 4.5 or an officer or employee of NZX, CDO CHO, or such Respondent or applicant or any other person who gives evidence on behalf of NZX, CDO, CHO or a Respondent or such applicant) who gives evidence, or attends to give evidence, at a hearing conducted by the Appeal Panel, will be entitled to reimbursement for relevant actual and reasonable travelling expenses. Any such reimbursement shall be:

- (a) determined by the Appeal Panel;
- (b) paid by NZX; and
- (c) recoverable in terms of any order the Appeal Panel may make under Rule 12.3.1.

Section 13: Failure to Pay Penalties or Costs

13.1 Consequences of failure

13.1.1 A Respondent (or an applicant under Rule 4.5) that fails, within the time stated in any determination or period otherwise satisfactory to the 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 (or applicant) is a Participant (other than an Issuer, a Clearing Participant, a Lending Clearing Participant or a Depository Participant), have its designation as a participant and/or advisor (howsoever defined), as the case maybe, under the applicable NZX Market Rules 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 Clearing Participant or the applicant under Rule 4.5 is a Lending Clearing Participant, have its designation as a Clearing Participant or a Lending Clearing Participant suspended by CHO; or
- (d) may, where applicant under Rule 4.5 is a Depository Participant, have its designation as a Depository Participant suspended by CDO.

13.1.2 A Respondent (or an applicant under Rule 4.5) that fails, within the time stated in any determination or period otherwise satisfactory to the 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 shall be liable to NZX (CDO or CHO, as the context requires) 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 Tribunal or the Appeal Panel (as the case may be), until payment in full is made.

13.1.3 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 (or as the context requires, CHO or CDO) provides reasonable justification for such failure to pay, NZX, CHO or CDO as the context requires, may thereafter, at its complete discretion and without limiting any other remedies or sanctions available to it, promptly:

- (a) in the case of a Participant (other than an Issuer or a Clearing Participant, a Lending Clearing Participant or Depository Participant) revoke that Participant's designation as a participant and/or advisor (howsoever defined), as the case maybe, under the applicable NZX Market Rules;
- (b) in the case of an Issuer, cancel that Issuer's Listing;
- (c) in the case of a Clearing Participant or Lending Clearing Participant, NZX may request, and CHO may require, the revocation of that Clearing Participant's or Lending Clearing Participant's designation as a Clearing Participant or Lending Clearing Participant as the case may be; or
- (d) in the case of a Depository Participant, NZX may request, and CDO may require, the revocation of that Depository Participant's designation as a Depository Participant.

Section 14: Annual Regulatory Report

14.1 Content of report

14.1.1 Following the end of each calendar year NZX shall collate the following information for that year and provide to the Tribunal as a report by the end of February of the following year:

- (a) breaches of the NZX Market Rules identified by NZX;
- (b) complaints received by NZX in respect of Participants (other than Clearing Participants, Lending Clearing Participants or Depository Participants); and
- (c) the use of the proceeds of the Disciplinary Fund.

14.1.2 Following the end of each calendar year CHO shall collate the following information for that year and provide to the Tribunal as a report by the end of February of the following year:

- (a) breaches of the Clearing and Settlement Rules identified by CHO; and
- (b) complaints received by CHO in respect of Clearing Participants or Lending Clearing Participants.

14.1.3 The Tribunal shall create and provide an annual regulatory report (the Annual Regulatory Report) to the public by the end of April of the following year using as a minimum the information from the report in respect of each year provided to the Tribunal by NZX and CHO above, and that collated by itself below:

- (a) number of statements of case issued by NZX and CHO and the type of matters addressed in those statements of case;
- (b) the findings of the Tribunal and the Appeal Panel in respect of each statement of case issued by NZX and CHO, provided such disclosures are consistent with any decision on publication made by the Tribunal;
- (c) any penalties imposed by the Tribunal and the Appeal Panel; and
- (d) a statement from the Tribunal and the Appeal Panel stating whether or not they believe that adequate resources have been made available to them, to undertake their role under these the Tribunal Rules.

14.2 Review by NZX and CHO

- 14.2.1 The Annual Regulatory Report shall be provided by the Tribunal to NZX and CHO one month prior to it being made publicly available and both NZX and CHO shall be entitled to provide to the Tribunal comments on the Annual Regulatory Report. The Tribunal is not required to make changes to the Annual Regulatory Report based on comments received from NZX and CHO.

Section 15: Remuneration

15.1 Remuneration

15.1.1 Members of the Tribunal, the Appeal Panel and any temporary appointees to a Division shall be entitled to be reimbursed for reasonable expenses incurred when engaged on the business affairs of the Tribunal or the Appeal Panel (as the case may be), and each member of the 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.

15.2 Remuneration Review

15.2.1 The remuneration of the Tribunal and the Appeal Panel shall be reviewed every two years from 30 June 2008. The remuneration review committee will consist of the Head of Market Supervision at NZX and the Chairperson of the Tribunal. 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 16: Annual and Other Meetings

16.1 Meetings

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

Section 17: Indemnification

17.1 Limitation of Liability

17.1.1 None of NZX, CHO, CDO, the Tribunal, the Appeal Panel, any member of the Tribunal, the Appeal Panel or any temporary appointees to a Division, any director, officer or employee of NZX or CHO, CDO, or any delegate of NZX, CHO, CDO, the 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 Rules.

17.2 Indemnity

17.2.1 Each Participant shall indemnify each of NZX, CHO, CDO, the Tribunal, the Appeal Panel, any member of the Tribunal or the Appeal Panel, any temporary appointees to a Division each employee of NZX, CHO, CDO and each delegate of NZX, CHO, CDO, the Tribunal or the Appeal Panel, against all liabilities and claims which may arise (notwithstanding the limitation in Rule 17.1) in relation to any action or inaction by any such person in connection with that 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 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 the Tribunal or the Appeal Panel, determines in the circumstances.

Section 18: Confidentiality

18.1 Materials provided confidential

18.1.1 Subject to Rule 18.1.3, all material received or granted access to by a party in respect of a matter under these Rules will be treated confidentially by members of the Tribunal, members of the Appeal Panel, temporary appointees to a Division and any persons involved in that matter of those entities.

18.1.2 Subject to Rule 18.1.3, any written records or copies of documents relating to a party in respect of a matter under these Rules will be stored by the 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.

18.1.3 A party may make any material received or granted access to by another party in respect of a matter under these Rules available and not require such material to be secure in accordance with Rule 18.1.2, where such disclosure is:

- (a) in a manner otherwise permitted by these 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 Rule 18; 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) required by law or is permitted or required pursuant to a Reciprocal Arrangement or by or to an Alternative Regulator as the context requires; or
- (e) with the prior written consent of the party whose material is being disclosed.