

# New Zealand Clearing Limited

## Application Form – Clearing Participant

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### **APPLICATION**

This application form should be completed by an applicant seeking to become a Clearing Participant.

Please return this application form and supporting documentation to:

**New Zealand Clearing Limited**

**P O Box 2959**

**WELLINGTON**

It is essential that an applicant read this application form in conjunction with the New Zealand Clearing Limited Clearing and Settlement Rules (“Rules”) and the procedures made in accordance with the Rules (“Procedures”).

Terms used herein which are not otherwise defined have the meaning given to them in the Rules. Principles of construction set out in Rule 1.7 of the Rules are hereby incorporated into this application form mutatis mutandis.

### **CONFIDENTIALITY**

New Zealand Clearing Limited (“CHO”) will keep confidential all information provided to it by the Applicant in relation to its application, except to the extent that disclosure of any or all of the information is permitted under the Rules or the Procedures.

### **STATUS OF THIS APPLICATION**

An application constitutes an offer by the applicant to be bound by the Rules and the Procedures, any condition imposed from time to time by CHO as a requirement of designation of the Applicant as a Clearing Participant, any decisions, directions or requirements of CHO or the NZ Markets Disciplinary Tribunal under the Rules or Procedures, every undertaking and agreement between the applicant and CHO and any agreement, document, instrument, or obligation created in accordance with the Rules or Procedures.

If CHO accepts the applicant’s application and allows the applicant to be a participant in the Clearing House, the acceptance by CHO shall create a binding contract between CHO and the Applicant on such terms.

### **INSTRUCTIONS**

Applicants must submit the application form in hard copy (to be completed in type written form with

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original signatures included) along with supporting documentation and information (as outlined in the Rules and Procedures). Supporting documentation should be supplied in typed format, in as much detail as the applicant feels appropriate to support the application, but in any event to satisfy the criteria contained in the Rules and Procedures.

Please note that CHO may require additional information in relation to the application form or any of the supporting documentation filed in support of the application.

**CHO reserves the right to decline an application notwithstanding that an applicant meets the minimum criteria set out in the Rules.**

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### APPLICANT DETAILS

<b>1. Name of applicant (must be a company as defined under the Rules):</b>
<b>2. Trading Name (if different) to name above:</b>
<b>3. Address and contact telephone numbers of proposed principal place of business and registered office, if different:</b>
<b>4. Name and position of main contact person at the applicant to discuss this application:</b>
<b>5. Category of Clearing Participant the applicant is applying for designation as:</b>
<b>6. Details of the Applicant's management structures and names of the Personnel holding management positions, when they were appointed and details of the experience of those Persons relevant to the type of Clearing Participant for which the applicant is seeking designation as (see Clearing and Settlement Procedure 2.1.1(m) &amp; 2.1.1(n)):</b>
<b>7. The names of each Director of the applicant</b>
<b>8. Emergency contact details for the applicant</b>

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<b>9. Name, business contact details, qualifications of the applicant's proposed Responsible Person and details of any other position held by such person and an undertaking from such person as required under Rule 2.13.2(g).</b>			
<b>10. A copy of the applicant's Buy In Procurement agreement as required under Rule 2.2.1(l)</b>			
<b>12. If and when CHO agrees to accept collateral by way of the grant by the applicant of a security interest in property delivered to CHO, does the applicant propose to deliver collateral of the following nature?</b>			
<b>Securities issued by issuers in the NZX50</b>	<i>Indicate (yes/no) whether Applicant proposes to deliver such collateral</i>	<b>Securities issued by the New Zealand Government</b>	<i>Indicate yes/no whether Applicant proposes to deliver such collateral</i>
<b>Money (in all currencies)</b>	<i>Indicate (yes/no) whether Applicant proposes to deliver such collateral</i>	<b>US Treasury Bills</b>	<i>Indicate yes/no whether Applicant proposes to deliver such collateral</i>
<b>Securities issued by issuers in the ASX200</b>	<i>Indicate (yes/no) whether Applicant proposes to deliver such collateral</i>		

### ADDITIONAL CRITERIA AND REQUIREMENTS

Attached as Schedules to this form are additional criteria and requirements that are particular to certain applicants (e.g. Overseas Applicants, General Clearing Applicants). Applicants should complete the Schedules applicable to that applicant.

### SUPPORTING DOCUMENTATION / INFORMATION

Please refer to the Rules, Procedures (specifically Procedure 2.1.1) and the Applicant Guide for supporting documentation required to accompany this application.

**Once completed this application form should be sent to:**  
**New Zealand Clearing Limited**  
**PO Box 2959**  
**WELLINGTON**

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### SCHEDULE 1

#### UNDERTAKING AND WARRANTIES BY APPLICANT TO NEW ZEALAND CLEARING LIMITED ("CHO")

\_\_\_\_\_ ("the Applicant") hereby applies to be a Clearing Participant and hereby:

- (a) **undertakes** to be bound by, and to comply with:
- (i) the CHO Clearing and Settlement Rules (the "Rules") and CHO Clearing and Settlement Procedures (the "Procedures");
  - (ii) any condition imposed from time to time by CHO as a requirement of designation of the Applicant as a Clearing Participant;
  - (iii) any decisions, directions or requirements of CHO under the Rules or Procedures;
  - (iv) every undertaking and agreement between the Applicant and CHO; and
  - (v) every other agreement, document, instrument, or other obligation created in accordance with the Rules or Procedures;
  - (vi) the NZ Markets Disciplinary Tribunal Rules; and
  - (vii) any decision, direction or requirement of the NZ Markets Disciplinary Tribunal.
- (b) **warrants** that:
- (i) all information contained in this application form or provided in connection with this application is complete, true, accurate and not misleading;
  - (ii) no event has occurred in relation to the Applicant or any of the Personnel named in this application which would have amounted to a breach of the Rules or the Procedures had the applicant been a Clearing Participant at the time of the event, or which would have rendered any of the warranties or undertakings given in accordance with the Rules, incorrect, untrue or misleading in any material respect; and
  - (iii) it has provided all information required by the Rules and the Procedures in relation to the application.
- (c) **acknowledges and agrees** that, if and when CHO agrees to accept Collateral required to be provided by the Applicant to CHO under the Rules, by way of the grant by the Applicant of a Security Interest in property delivered to CHO, then this undertaking, the Rules, the Procedures, and the description of such Collateral in the applicant's Application Form or in any other document delivered to CHO by the Applicant together shall constitute a Security Agreement for

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the purposes of the Personal Property Securities Act 1999.

### **Signature of two Directors or Duly Authorised Officers of the Applicant:**

1.

2.

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### **Full Name of signatories:**

1.

2.

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### **Date:**

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### SCHEDULE 2

#### ADDITIONAL REQUIREMENTS FOR OVERSEAS APPLICANTS

An Applicant who is incorporated outside of New Zealand must provide the information and undertakings under Rule 2.2.2, including:

<b>1. Evidence that the Applicant (or a Related Person of the Applicant) currently conducts clearing and settlement operations which are conducted in compliance with the regulatory requirements of the jurisdiction in which the Applicant is incorporated, and is regulated in that jurisdiction by a foreign regulatory authority acceptable to CHO</b>
<b>2. Details of the amount of resources and number of personnel to be located in New Zealand (if any)</b>
<b>3. Details of one or more Persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the Applicant as a Clearing Participant and a physical address for each such Person</b>

**Overseas Applicants may also, upon request of CHO, be asked to provide additional assurances and information, including but not limited to:**

1. Additional undertakings or assurances in respect of any matter which CHO considers reasonable or in the interests of CHO, the Clearing House or other Clearing Participants including, without limitation, undertakings as to:
  - a. the ranking of creditors on winding-up of the applicant and the enforceability of these Rules, including without limitation the Security Interest created by Rule 3.13.6 and each Clearing Participant's application form;
  - b. recognition of the rights of CHO under the Rules and that the Rules are, and will be, enforceable in the foreign jurisdiction;
2. A legal opinion at the expense of the applicant, from independent lawyers acceptable to, and for the benefit of, CHO which deals with matters required by CHO and which is acceptable to CHO. Without limiting the foregoing, CHO may require a legal opinion that the Rules and Procedures would be recognised as contractually valid, binding and enforceable against the applicant in the jurisdiction in which the applicant is incorporated or resident, and confirming that CHO's rights in respect of all Collateral, whether provided by way of absolute transfer or by grant of a Security Interest, would be enforceable in such jurisdiction.

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### SCHEDULE 3

#### ADDITIONAL REQUIREMENTS FOR GENERAL CLEARING PARTICIPANTS

An Applicant who is applying for accreditation as a General Clearing Participant must answer the following questions and provide the following information:

<b>1. A copy of the Applicant's standard form C&amp;S Agreement</b>



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### **SCHEDULE 4**

#### **ADDITIONAL REQUIREMENTS FOR DEFAULT CLEARING PARTICIPANTS**

An Applicant who is applying for accreditation as a Default Clearing Participant must answer the following questions and provide the following information:

<b>1. A copy of the Applicant's standard form C&amp;S Agreement</b>
<b>2. A copy of each C&amp;S Agreement with every Participant for whom it proposes to provide clearing and settlement services</b>

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### SCHEDULE 5

#### UNDERTAKING AND ACKNOWLEDGEMENT BY DEFAULT CLEARING PARTICIPANT

In accordance with Rule 2.2.1(u)(ii), \_\_\_\_\_ (“the Applicant”), if granted approval as a Default Clearing Participant by New Zealand Clearing Limited (“CHO”), hereby:

- (a) **undertakes** to:
- (i) accept any request to provide clearing and settlement services for any Trading Participant that makes a genuine and reasonable request for such services and do so irrespective of the identity of the Trading Participant, and that it will provide such services on a reasonable timetable;
  - (ii) provide such clearing and settlement services to Trading Participants on substantially equivalent commercial rates irrespective of the identity of the Trading Participant that wishes to engage such services;
  - (iii) ensure that information received from Trading Participants in the course of providing clearing and settlement services is kept secure and confidential;
  - (iv) use best endeavours to remain technologically current and accordingly able to clear and settle all financial products traded on NZX Markets, on a timetable contemporaneous with the introduction of any such financial products;
- (b) **acknowledges** that any breach of the material terms of this undertaking by the Applicant once approved as a Default Clearing Participant, will, unless CHO determines otherwise, result in that entity ceasing to be a Default Clearing Participant and becoming a General Clearing Participant. In such a situation, the entity will no longer market or promote or advertise itself as a Default Clearing Participant.

#### Signature of two Directors or Duly Authorised Officers of the Applicant:

1. \_\_\_\_\_ 2. \_\_\_\_\_

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#### Full Name of signatories:

1. \_\_\_\_\_ 2. \_\_\_\_\_

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#### Date: