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CONSTITUTION
OF
NEW ZEALAND CLEARING LIMITED

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PART A: INTERPRETATION

1 Defined terms

1.1 In this Constitution the following expressions have the following meanings:

Act means the Companies Act 1993;

Board means the Directors of the Company who number not less than the required quorum acting together as the board of directors;

Company means New Zealand Clearing Limited;

Constitution means this Constitution as it may be altered from time to time in accordance with the Act;

Director means a person appointed as a director of the Company in accordance with this Constitution;

Joint Regulators has the meaning given in the Reserve Bank of New Zealand Act 1989;

Preference Shareholder means a holder of Redeemable Preference Shares;

Redemption Amount means, in relation to any Redeemable Preference Share, the issue price;

Redeemable Preference Shares means the non-participating redeemable preference shares referred to in clause 2.2(c) and which have the specific terms set out in the Second Schedule;

Share means a share in the Company;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to clause 1.1, expressions which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution.

2 Construction

In this Constitution:

2.1 headings appear as a matter of convenience and do not affect the interpretation of this Constitution;

2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;

2.3 a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

2.4 a reference to *permitted by the Act* means not prohibited by the Act;

- 2.5 unless explicitly stated otherwise, references to clauses, Parts and/or Schedules are references to the clauses, Parts and/or Schedules, as appropriate, of this Constitution; and
- 2.6 the Schedules form part of this Constitution.

PART B: SHARES AND SHAREHOLDERS

3 Shares

3.1 Initial Shares

On the adoption of this Constitution there are 100 ordinary shares on issue.

3.2 Types of Shares

Subject to clause 3.3, the Company may issue the following Shares:

- (a) ordinary shares; and/or
- (b) Redeemable Preference Shares.

3.3 Additional Classes

Notwithstanding clause 3.2, the Board may, with the written consent of the holders of ordinary shares, issue further Shares, securities that are convertible, or exchangeable for, Shares or options to acquire Shares, in the Company which rank equally with, or in priority to, existing Shares, or which have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise. Any such issue will not be treated as an action affecting the rights attached to existing Shares unless the terms of issue of those Shares expressly provide otherwise.

4 Issue of Shares

The Board may:

- (a) without prejudice to any special rights conferred on the existing shareholders issue Shares to any person, in such number as it thinks fit, without any requirement that those shares be offered for acquisition to existing shareholders;
- (b) unless the terms of issue of a class of Shares specifically provide otherwise, issue shares that rank equally with, or in priority to, existing Shares (whether as to voting rights or distributions or both) without any requirement that the Shares be first offered to existing shareholders. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise;
- (c) resolve to apply any amounts available for distribution to shareholders to pay up in full Shares to be issued to the shareholders, or to pay up any sums unpaid on Shares held by shareholders or both.

5 Consolidation and subdivision

The Board may

- 5.1 consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- 5.2 subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

6 Transfer of Shares

6.1 Share register may be divided

The share register may be divided into 2 or more registers kept in different places.

6.2 Shareholder may transfer shares:

Any shareholder may transfer all or any Shares by presenting to the Company any instrument of transfer in any form the Board may approve and which is signed in behalf of the transferor (and signed by or on behalf of the transferee if the registration of the transfer imposes a liability on the transferee).

6.3 Board may refuse or delay transfer

The Board may, within 15 days of receipt of a notice of transfer of shares, only if the transfer of Shares is not in compliance with this clause 6 or would be contrary to the terms of issue of the Shares.

7 Calls On Shares

The Board may make calls on any shareholder for any money that is unpaid on Shares and not otherwise payable at a specified time or times under this Constitution or the terms of issue of those Shares or any contract for the issue of those Shares. Each shareholder shall, subject to receiving 14 days' written notice specifying the time and place for payment, pay to the Company, at the time or times and place so specified, the amount called. A call may be revoked or postponed at the Board's discretion.

8 Company may acquire and hold Shares

Subject to this Constitution, the Company may in accordance with the Act:

- (a) purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and
- (b) may make an offer to one or more holders of those Shares to acquire Shares issued by the Company in such number or proportion as it thinks fit.

9 Meetings of Shareholders

A meeting of shareholders may be held either:

- (a) by a number shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

PART C: DIRECTORS

10 Number of directors is restricted

The minimum number of Directors is 1. The maximum number of Directors is 6.

11 Appointment of Directors

A Director may be appointed by:

- (a) notice in writing to the Company from the holders of a majority of the ordinary shares; or
- (b) an ordinary resolution of the holders of ordinary shares.

Two or more Directors may be appointed by a single resolution or notice.

12 Removal of Directors

Each Director may be removed from office at any time by:

- (a) notice in writing to the Company from the holders of a majority of the ordinary shares; or
- (b) an ordinary resolution of the holders of ordinary shares.

Two or more Directors may be removed from office by a single resolution or notice.

13 Alternate Directors

13.1 A Director may appoint any person, who is not disqualified under the Act to be appointed as a Director, to act as an alternate director in the place of that Director by notice in writing to the Company. Any appointment of an alternate director may be for a specified period or generally during the absence from time to time of the Director. An alternate director may be removed in like manner.

13.2 Unless otherwise provided for by the terms of appointment, an alternate director shall have the same rights, powers and privileges (but excluding the power to appoint an alternate director), and shall discharge all the duties of, and be subject to the same provisions as, the Director in whose place he or she acts.

13.3 An alternate director is entitled to a separate vote for each Director the alternate director represents in addition to any vote that alternate director may have as a Director in their own right.

13.4 The appointment of an alternate director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause the alternate director to vacate office if he or she were a Director.

14 Election of chairperson of the Board and term of office

14.1 The Directors may elect one of their number as chairperson and, if they so determine, a deputy chairperson of the Board.

14.2 If one has been elected, the chairperson of the Board and/or the deputy chairperson of the Board, holds that office until he or she vacates that office or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

15 Office of Director vacated in certain cases

The office of Director is vacated if the person holding that office:

- 15.1 dies; or
- 15.2 is absent from 3 consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office; or
- 15.3 becomes disqualified from being a director pursuant to the Act; or
- 15.4 retires from office and is not re-elected or deemed to have been re-elected under this Constitution; or
- 15.5 resigns from that office in accordance with the Act.

16 Director's Remuneration and Other Benefits

The Board shall not exercise any of the powers contained in, or implied by, section 161 of the Act without the prior written approval of the Company's ordinary shareholders.

17 **Meetings of the Board**

Schedule 1 governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Second Schedule to the Act does not apply to proceedings of the Board.

18 **Written resolutions of Board permitted**

A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

19 **Written resolutions may be in counterparts**

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or other electronic means of communication, will satisfy the requirements of this clause.

20 **Exercise of powers may be ratified**

Subject to section 177 of the Act, the purported exercise by a Director or the Board of any power vested in shareholders may be ratified by the shareholders in the same manner in which the power may be exercised.

21 **Board delegates to comply with regulations**

In exercising the Board's delegated powers, any committee of Directors, Director, employee, or any other person must comply with any regulations that the Board may impose.

22 **Committee proceedings**

The provisions of this Constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

23 **Reimbursement of expenses**

Directors and alternate directors may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising their powers as a Director without requiring the prior approval of shareholders.

24 **Management of Company**

24.1 Subject to any provision to the contrary in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

24.2 The Board shall not:

- (a) adopt a new, materially amend or alter, any policy, or policies, relating to the source, nature, application, or use of capital provided for the purpose of meeting the obligations of the clearing house as a central counterparty;
- (b) adopt a new, or materially amend the pricing structure for clearing services;

without the prior written approval of a majority of shareholders.

PART D: GENERAL

25 **Directors Duties as Wholly owned Subsidiary**

For the purpose of section 131(2) of the Act, for so long as the Company is a wholly owned subsidiary of another company, each director of the Company is expressly permitted, when exercising powers or performing duties as a director of the Company, to act in a manner which he or she believes to be in the best

interests of the Company's holding company irrespective of whether it is in the best interests of the Company, or not.

26 **Company may indemnify Directors and employees for certain liabilities**

The Company may indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.

27 **Company may effect insurance for Directors and employees**

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

28 **Manner of execution of deeds**

A deed may be entered into on behalf of the Company in writing signed under the name of the Company by:

28.1 two or more Directors; or

28.2 a Director, or any other person authorised by the Board whose signature must be witnessed; or

28.3 one or more attorneys appointed by the Company in accordance with the Act.

29 **Distribution of surplus assets in kind**

If the Company is liquidated the liquidator may, with the approval of shareholders by ordinary resolution, but subject to any other sanction required by the Act:

29.1 divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

(a) fix such values for surplus assets as the liquidator considers to be appropriate, and

(b) determine how the division will be carried out as between shareholders or different classes of shareholder;

and

29.2 vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

SCHEDULE 1: PROCEEDINGS OF THE BOARD

NOTICE OF MEETING

1 Director's power to convene meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2 Notice to be sent to Director's address

The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address, facsimile number or electronic mail address is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.

3 Notice to contain certain details

The notice of meeting must include the date, time and place of the meeting and the matters to be discussed.

4 Period of notice required to be given to Directors

At least two days' notice of a meeting of the Board must be given unless, where a chairperson has been elected, the chairperson (or, in the chairperson's absence from New Zealand, the deputy chairperson (if any), and in the deputy chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hour's notice is given. Any such shorter notice may be given by telephone communication to each Director at the telephone number provided to the company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.

5 Absent Directors

If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

6 Directors may waive irregularities in notice

Any irregularity in the notice of a meeting, or failure to comply with clauses 1 to 5 of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

MEETING AND QUORUM

7 Methods of holding meetings

A meeting of the Board may be held either:

7.1 by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

7.2 by means of audio, or audio and visual, communication by which all Directors participating can simultaneously hear each other throughout the meeting.

8 Quorum for Board meeting

A quorum for a meeting of the Board shall be a majority of the Directors. No business may be transacted at a meeting of Directors if a quorum is not present. An alternate director present at a meeting may be included for the purpose of establishing a quorum if the Director for whom the alternate director is acting is absent from the meeting.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson of the meeting will adjourn the meeting to a specified day, time and place, the day being within the next 4 days. If no such adjournment is made the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

10 Chairperson to chair meetings

The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

11 Voting**11.1 Voting on resolutions**

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director must not vote where that Director is not permitted to vote by this Constitution. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

11.2 Chairperson does not have a casting vote

The chairperson of the Board shall not have a casting vote.

12 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of all proceedings of meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

13 Board may regulate other proceedings

Except as set out in this Schedule, the Board may regulate its own procedure.

SCHEDULE 2: TERMS OF REDEEMABLE PREFERENCE SHARES

1. Dividends

Each Preference Shareholder is entitled to receive non-cumulative dividends as determined by the Directors from time to time in accordance with this Constitution in priority to the holders of all other classes of Shares but, except as otherwise provided in this Schedule, is not entitled to any further participation in the profits or assets of the Company.

2. Redemption of Redeemable Preference Shares

Subject to the provisions of the Act, Redeemable Preference Shares are redeemable in the following manner:

- 2.1 a Preference Shareholder may, at its option and at any time, redeem all, or any of, the Redeemable Preference Shares, subject to satisfaction of the requirements of this Schedule;
- 2.2 Preference Shareholders must give the Company notice in writing of its intention to redeem ("Redemption Notice");
- 2.3 the Company must, within four days of receiving a Redemption Notice, seek the approval of the Joint Regulators for the redemption ("Approval"). Any request for Approval shall be accompanied by all necessary information that the Joint Regulators requires to make a determination as to whether to provide said Approval;
- 2.4 the Company must notify the Preference Shareholder forthwith upon receiving Approval ("Approval Notice"), if provided, and any such Approval Notice must fix a time, being not more than five days after delivering the Approval Notice, and place for the redemption and the surrender of the share certificates for the Redeemable Preference Shares to be redeemed ("Redemption Date");
- 2.5 on the Redemption Date or at any earlier time that may be agreed by the Company and the Preference Shareholder:
 - 2.5.1 the Company must pay the Redemption Amount for each Redeemable Preference Share to be redeemed by the Preference Shareholder; and
 - 2.3.1 the Preference Shareholder must deliver to the Company the share certificate (if any) for the Redeemable Preference Share to be redeemed and where any such certificate includes Redeemable Preferences Shares which are yet to be redeemed, the Company may issue the Preference Shareholder with a fresh certificate for the Redeemable Preference Shares that holder has not yet redeemed.

3. Priority

- 3.1 Each Redeemable Preference Share ranks for priority of payment of capital and dividend:
 - 3.1.1 *pari passu* with all other Redeemable Preference Shares; and
 - 3.1.2 in priority to all other Shares and classes of Shares in the capital of the Company from time to time.
- 3.2 On the appointment of a liquidator, the Redeemable Preference Shares rank in priority to all other Shares or classes of Shares and confer

upon Preference Shareholders the right to be paid all amounts which would be payable upon redemption of such Redeemable Preference Shares but such Preference Shareholder will not be entitled to any further participation in the profits or assets of the Company.

4. Attendance at General Meetings

Preference Shareholders are not entitled to attend, speak or vote at any annual or other meeting of Shareholders except:

- 4.1 if any Redemption Amount due and payable remains unpaid on the date of any meeting of shareholders; and or
- 4.2 in respect of a resolution to appoint a liquidator to the Company.

5. Issue of Share

The issue of any Shares ranking in priority, or in preference to the Redeemable Preference Shares is deemed to be an action affecting the rights attached to those Redeemable Preference Shares and the Company must not issue any such Shares without the prior written consent of the holders the Redeemable Preference Shares.

6. Transfer

Redeemable Preference Shares are not transferable, except with the prior written consent of the holders of ordinary shares.

7. Terms

The Company cannot vary the rights attaching to the Redeemable Preference Shares without the prior written consent of all Preference Shareholders.