

## Securities Markets Act 1988

### The Authorised Futures Exchange (NZX Limited) Notice 2010

Pursuant to section 37(8) of the Securities Markets Act 1988, the Securities Commission gives the following notice.

#### Notice

##### 1. Title and commencement

- (1) This notice may be cited as the Authorised Futures Exchange (NZX Limited) Notice 2010.
- (2) This notice shall come into force on the day after the date of its publication in the *New Zealand Gazette* and shall continue in force until revoked by the Securities Commission.

##### 2. Interpretation

- (1) In this notice, unless the context otherwise requires:

"**Act**" means the Securities Markets Act 1988 and includes any re-enactment or replacement thereof.

"**Client**" has the meaning given to that term in the Rules.

"**Company**" means NZX Limited.

"**Contract**" has the meaning given to that term in the Rules.

"**Contract Specifications**" has the meaning given to that term in the Rules.

"**Directors**" has the meaning given to that term in the Rules.

"**Error Trade Register**" has the meaning given to that term in the Rules.

"**Head of Market Supervision**" means the person employed by the Company occupying that position within the Company from time to time.

"**Market**" means the derivatives market operated by the Company and conducted in accordance with the Rules and the Procedures and declared an authorised futures exchange under Part III of the Act by this Notice.

"**Market Maker Programme**" has the meaning given to that term in the Rules.

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"**NZ Markets Disciplinary Tribunal Rules**" has the meaning given to that term in the Rules.

"**NZX Designated Person**" has the meaning given to that term in the Rules.

"**Participant**" has the meaning given to that term in the Rules.

"**Person**" has the meaning given to that term in the Rules.

"**Personnel**" has the meaning given to that term in the Rules.

"**Procedures**" means the Derivatives Market Procedures in relation to the derivatives market operated by the Company and as amended or replaced from time to time.

"**Rules**" means the Derivatives Market Rules in relation to the derivatives market operated by the Company and as amended or replaced from time to time.

"**Trading Day**" has the meaning given to that term in the Rules.

"**Trading System**" has the meaning given to that term in the Rules.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this Notice has the same meaning as in the Act.

### **3. Authorisation - NZX Limited declared an authorised futures exchange**

- (1) The Company is declared to be an authorised futures exchange for the purposes of Part III of the Act.
- (2) The authorisation in clause 3(1) of this Notice is subject to the conditions set out in clauses 4 to 7 of this Notice.

### **4. Conditions**

- (1) The Company must ensure that copies of the Rules and the Procedures are available for public inspection, free of charge and during normal office hours, at the registered office of the Company.
- (2) The Company must notify and obtain the written consent of the Securities Commission (such consent not to be unreasonably withheld or delayed) in relation to any amendments to existing Contract Specifications or for designations of new Contract Specifications by the Company prior to such amendments or designations becoming effective.
- (3) The Company must notify the Securities Commission of any proposed amendments to the Procedures before they are effected, and must obtain the written consent of the Securities Commission before making any amendments which, in the opinion of the Securities Commission, materially modify the application of any of the Rules.
- (4) The Company must notify and obtain the written consent of the Securities Commission if it seeks to transfer or assign any of its rights, entitlements, or

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obligations under the Rules, the Procedures, the NZ Markets Disciplinary Tribunal Rules and related procedures to any Person.

- (5) The Company must maintain real-time surveillance of the Market and undertake such surveillance to a standard satisfactory to the Securities Commission.
- (6) The Company must notify the Securities Commission of any proposed amendments to the Rules and obtain the written consent of the Securities Commission before such amendments are effected in accordance with the Rules.

#### **5. Conditions relating to directions by the Securities Commission to the Company**

- (1) The Company must, immediately upon receipt of a direction from the Securities Commission under this clause 5, comply with that direction and must not allow any trading to take place on the Market contrary to the direction.
- (2) The Securities Commission may make a direction to the Company after taking into account the purpose of subpart 1 of Part 2 of the Act and the criteria stated in section 19A of the Act or any other matters it considers relevant, it is satisfied that the direction is necessary or desirable in the public interest to protect people trading Contracts and that there is no more appropriate course of action to address the situation.
- (3) A direction under this clause 5 may, for up to 21 days:
  - (a) require the Company to suspend trading of 1 or more Contracts, or a class of Contracts, traded on the Market; or
  - (b) give the Company any other direction in relation to trading on the Market.
- (4) Before giving a direction under this clause 5, the Securities Commission must follow the procedures set out in the Schedule to this Notice.
- (5) The Securities Commission may vary a direction given under this clause 5 in the same way as it made that direction.
- (6) The Securities Commission may revoke a direction given under this clause 5 by giving written notice to the Company.

#### **6. Conditions relating to reporting obligations**

- (1) The Company must notify the Securities Commission if the Company:
  - (a) takes any disciplinary action for a contravention of the Rules or Procedures against any person; or
  - (b) knows or suspects that a person has committed, is committing, or is likely to commit a significant contravention of:
    - (i) the Rules or Procedures; or

- (ii) the Act, the Securities Act 1978, the Takeovers Act 1993 or any enactment made under any of those Acts.
- (2) The Company must give the notice under clause 6(1) immediately after taking the disciplinary action, or knowing or suspecting the person has committed, is committing, or is likely to commit the significant contravention.
- (3) Any notice given by the Company under clause 6(1) must include:
  - (a) the person's name and contact details; and
  - (b) if it relates to a disciplinary action, the grounds for, nature of, and reasons for the action taken; and
  - (c) if it relates to a known or suspected contravention, the facts supporting the Company's view and to which obligation the known or suspected contravention relates; and
  - (d) any other information reasonably required by the Securities Commission in order to carry out its functions.
- (4) The Company must, if requested to do so in writing by the Securities Commission:
  - (a) give to the Securities Commission (or any person authorised by the Securities Commission) all information, assistance and access to the Company's facilities that are necessary or desirable to enable the Securities Commission to fulfil its functions; and
  - (b) make all reasonable endeavours to assist the Securities Commission to acquire the licenses or other assistance from any third parties that are necessary or desirable to enable it to undertake surveillance of the Market.
- (5) The Company's obligations in clause 6(4)(b) are subject to the Securities Commission agreeing to reimburse the Company for its reasonable costs in relation to the performance of those obligations.
- (6) The Company must provide the Securities Commission with information, to the extent reasonably required by the Securities Commission, in relation to the Company's senior management Personnel who manage the Market on a day to day basis as at the date of this Notice, and must update this information where there are changes to such senior management Personnel.
- (7) The Company must immediately notify the Securities Commission where it:
  - (a) receives any complaint in respect of the Company's operation of the Market; or
  - (b) has received and considered a written complaint concerning:
    - (i) the Company or the Company's operation of the Market; or
    - (ii) a Participant or its Directors or other Personnel,

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where such complaint has not been resolved to the satisfaction of the complainant.

- (8) The Company must provide the Securities Commission with notice in writing, as soon as reasonably practicable, where the Company:
- (a) seeks to delegate to any Person, committee or body, with the exception of the Head of Market Supervision, any of the powers, rights and discretions of the Company under the Rules;
  - (b) seeks to designate a person (other than the Head of Market Supervision) as an NZX Designated Person and include in such notification the matters for which such person will be responsible; or
  - (c) seeks to approve a Market Maker Programme under the Rules.
- (9) The Company is not required to provide the Securities Commission with notice in writing under clause 6(8)(a) of this Notice in the circumstances where such delegation is limited to a period of less than 5 Trading Days.
- (10) The Company must within 3 months after the end of its financial year, give a report to the Securities Commission on how well it has met its obligations under clause 7(1) of this Notice in the preceding financial year.
- (11) The Company must provide a report to the Securities Commission following completion of each risk assessment review to identify vulnerabilities in the Trading System at a minimum of every 6 months from the date of this Notice.

## **7. Conditions relating to market supervision**

- (1) The Company must:
- (a) to the extent that it is reasonably practicable, do all things necessary to ensure that the Market operates in a fair, orderly and transparent manner;
  - (b) have adequate arrangements for supervising the Market, include arrangements for:
    - (i) handling conflicts between the commercial interests of the Company and the need for the Company to ensure that the Market operates in a fair, orderly and transparent manner;
    - (ii) monitoring the conduct of Participants; and
    - (iii) enforcing compliance with the Rules and Procedures; and
  - (c) have sufficient resources (including financial, technological and human resources) to operate the Market properly and for the required supervisory

(d) arrangements to be provided.

Dated at Wellington this 6th day of September 2010.

The COMMON SEAL of the )  
SECURITIES COMMISSION )  
was affixed in the presence of: )



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David Mayhew  
Member

## SCHEDULE

1. The Securities Commission will give written notice to the Company, and if after receiving the Securities Commission's notice, the Company does not take, within 2 Trading Days:
  - (a) either:
    - (i) in the case of a proposed direction to suspend the trading of Contracts or a class of Contracts, actions to prevent that trading; or
    - (ii) in any other case, any other action, that, in the Securities Commission's view, is adequate to assess the situation raised in the notice; and
  - (b) the Securities Commission has had regard to any written submissions made to it by the Company; and
  - (c) the Securities Commission still considers that it is appropriate to give the direction to the Company.
2. If the Securities Commission thinks it necessary or desirable in the public interest for a direction to be made more urgently than 2 Trading Days it may give the Company less than 2 Trading Days notice but must include in that notice the reasons for acting urgently.
3. The written notice given by the Securities Commission to the Company under clause 1 of this Schedule must include:
  - (a) the Securities Commission's opinion that the matters listed in clause 5(2) of this Notice which are required to be satisfied, have been satisfied;
  - (b) the proposed terms of the direction; and
  - (c) the reasons for the Securities Commission's opinion under clause 3(a) of this Schedule.

