

**COMMODITY FUTURES TRADING COMMISSION
FORM FBOT**

**FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO
PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)**

APPLICATION INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this application have the same meaning as in the Commodity Exchange Act, as amended (CEA or Act),¹ and in the regulations of the Commodity Futures Trading Commission (Commission or CFTC).²
2. For the purposes of this Form FBOT, the term “applicant” refers to the foreign board of trade applying for registration pursuant to CEA section 4(b) and part 48 of the Commission’s regulations. The term “clearing organization” refers to the clearing organization that will be clearing trades executed on the trading system of such foreign board of trade.

GENERAL INSTRUCTIONS

1. A Form FBOT (including exhibits) shall be completed by any foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission’s regulations.
2. Form FBOT (including exhibits and any supplement thereto) (collectively, the “application” or “application for registration”) must be filed electronically with the Secretary of the Commission at FBOTapplications@cftc.gov. Applicants may prepare their own Form FBOT, but must follow the format prescribed herein.
3. The name of any individual listed in Form FBOT shall be provided in full (Last Name, First Name and Middle Name or Initial).
4. Form FBOT must be signed by the Chief Executive Officer (or the functional equivalent) of the foreign board of trade who must possess the authority to bind the foreign board of trade.
5. If this Form FBOT is being filed as a new application for registration, all applicable items on the Form FBOT must be answered in full. Non-applicable items should be indicated by marking “none” or “N/A.”

¹ 7 U.S.C. 1 et seq.

² 17 CFR chapter I.

6. Submission of a complete Form FBOT (including all information, documentation and exhibits requested therein, and any required supplement) is mandatory and must be received by the Commission before it will begin to process a foreign board of trade's application for registration. The information provided with a Form FBOT (including exhibits and any supplement thereto) will be used to determine whether the Commission should approve or deny registration to an applicant. Pursuant to its regulations, the Commission may determine that information and/or documentation in addition to that requested in the Form FBOT is required from the applicant in order to process the application for registration or to determine whether registration is appropriate.
7. Pursuant to Commission regulations, an applicant or its clearing organization must identify with particularity any information in the application (including, but not limited to, any information contained in this Form FBOT) that will be the subject of a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in Commission regulation 145.9.³ Except in cases where confidential treatment is granted by the Commission pursuant to the Freedom of Information Act and Commission regulations, information supplied in the Form FBOT (including exhibits and any supplement thereto) will be included routinely in the public files of the Commission and will be available for inspection and comment by any interested person.
8. A Form FBOT that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.⁴ Acceptance of a Form FBOT by the Commission, however, shall not constitute a finding that the Form FBOT has been filed as required or that the information submitted is verified to be true, current, or complete. The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity to respond, if the Commission determines that a representation made in this Form FBOT is found to be untrue or materially misleading or if the foreign board of trade failed to include information in this Form FBOT that would have been material to the Commission's determination as to whether to issue an Order of Registration.
9. In addition to this Form FBOT, the clearing organization associated with the foreign board of trade must complete and submit Supplement S-1 to this Form FBOT in accordance with the instructions thereto. To the extent a single document or description is responsive to more than one request for the same information in either the Form FBOT or the Supplement S-1,

³ 17 CFR § 145.9.

⁴ Applicants and their clearing organizations are encouraged to correspond with the Commission's Division of Market Oversight regarding any content, procedural, or formatting questions encountered in connection with the preparation of a Form FBOT, or any exhibits or supplements thereto, prior to formally submitting those documents to the Commission. When appropriate, potential applicants and clearing organizations, as applicable, may provide a complete draft Form FBOT (including exhibits and any required supplement) to the Division of Market Oversight for early review to minimize the risk of having a submission returned or otherwise denied as not acceptable for filing. Review of draft submissions by any division of the Commission and any comments provided by a division of the Commission are for consultation purposes only and do not bind the Commission. To obtain instructions for submitting drafts, please contact the Division of Market Oversight.

the document or description need only be provided once and may be cross-referenced elsewhere.

10. All documents submitted as part of this Form FBOT (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION ON THE FORM FBOT

Pursuant to the Commission's regulations, if any information or documentation contained in this Form FBOT (including exhibits or any supplement or amendment thereto) is or becomes inaccurate for any reason prior to the issuance of an Order of Registration, an amendment correcting such information must be filed promptly with the Commission. A registered foreign board of trade also may submit an amendment to this Form FBOT to correct information that has become inaccurate subsequent to the receipt of an Order of Registration.

COMMODITY FUTURES TRADING COMMISSION

FORM FBOT

**FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION (IN ORDER TO
PERMIT DIRECT ACCESS TO MEMBERS AND OTHER PARTICIPANTS)**

NZX Limited

Name of applicant as specified in organizational documents

Level 2, NZX Centre, 11 Cable Street, PO Box 2959, Wellington, New Zealand
Address of principal executive office

- X If this Form FBOT is a new application for registration, complete in full and check here.
- √ If this Form FBOT is an amendment to a pending application or to a final application that resulted in the issuance of an Order of Registration, list and/or describe all items that are amended or otherwise updated and check here.
When appropriate, please attach additional page(s) containing a list and explanatory statement of amendment(s) or update(s).

In 2010, NZX Limited submitted an application for no-action relief. Prior to full appraisal of the application, the new rule was published. Given the specific format requested under this Form FBOT, the application is completed in full.

GENERAL INFORMATION

1. Name under which the business of the foreign board of trade will be conducted, if different than name specified above:

N/A

2. List of principal office(s) where foreign board of trade activities are/will be conducted (please use multiple entries, when applicable):

Office (name and/or location): Level 2, NZX Centre
Address: 11 Cable Street, PO Box 2959, Wellington
New Zealand

Phone Number: +64 4 472 7599
Fax Number: +64 4 496 2893
Website Address: www.nzx.com

3. Contact Information.

3a. Primary Contact for Form FBOT (i.e., the person authorized to receive Commission correspondence in connection with this Form FBOT and to whom questions regarding the submission should be directed):

Name: Dey, Robyn Lesley
Title: Corporate Counsel and Acting Head of Market Supervision
Email Address: robyn.dey@nxz.com
Mailing Address: PO Box 2959, Wellington
New Zealand

Phone Number: +64 4 496 2881
Fax Number: +64 4 496 2893

3b. If different than above, primary contact at the foreign board of trade that is authorized to receive all forms of Commission correspondence:

Name: _____
Title: _____
Email Address: _____
Mailing Address: _____

Phone Number: _____
Fax Number: _____

BUSINESS ORGANIZATION

Describe organizational history, including date and, if applicable, location of filing of original organizational documentation, and describe all substantial amendments or changes thereto.

NZX Limited is a limited liability company registered on 31 December 2002 under the Companies Act 1993 (New Zealand).

SIGNATURES

By signing and submitting this Form FBOT, the applicant agrees to and consents that the notice of any proceeding before the Commission in connection with the foreign board of trade's application for registration or registration with the Commission may be given by sending such notice by certified mail or similar secured correspondence to the persons specified in sections 3a and 3b above.

NZX Limited has duly caused this Form FBOT to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of February, 2012. NZX Limited and the undersigned represent that all information and representations contained herein are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Form FBOT. The submission of any amendment to Form FBOT represents that all items and exhibits not so amended remain true, current, and complete as previously filed.

Signature of Chief Executive Officer (or functional equivalent), on behalf of the Foreign Board of Trade

Weldon, Mark Rhys, Chief Executive Officer
Title

NZX Limited
Name of Foreign Board of Trade

Exhibit A-1, a description of the following for the foreign board of trade:

Location, history, size, ownership and corporate structure, governance and committee structure, current or anticipated presence of offices or staff in the United States, and anticipated volume of business emanating from members and other participants that will be provided direct access to the foreign board of trade's trading system.

1. NZX Limited ("**NZX**") has its origins in a number of regional stock exchanges dating from the 1870s. In 1974 these regional exchanges were amalgamated to form one national exchange, the New Zealand Stock Exchange ("**NZSE**"). In October 2002 the member firms of the NZSE voted in favor of demutualization and in December of the same year NZSE became a limited liability company, New Zealand Exchange Limited. In May 2003, NZX listed its own securities on its main equity market. In 2008 its name was changed to NZX Limited.
2. NZX is the only registered securities exchange operating in New Zealand and is licensed, in respect of its securities markets, under Part 2B of the Securities Markets Act 1988 ("**SMA**"). NZX currently operates three securities markets: the New Zealand Main Board ("**NZSX**"); the New Zealand Alternative Market ("**NZAX**")⁵; and the New Zealand Debt Market ("**NZDX**").⁶
3. In order to lawfully operate a futures exchange in New Zealand an entity may elect to follow one of two processes under the SMA. The first option is to seek registration under Part 2B of the SMA. The second option is to apply to the Financial Markets Authority (the "**FMA**") under Part 3 of the SMA for a declaration that a body corporate is an authorized futures exchange. NZX elected to apply for authorization under Part 3 and has obtained this.
4. NZX is a limited liability company registered under the Companies Act 1993. It has a Board of Directors who are appointed by its shareholders.
5. NZX is committed to ensuring it employs best practice governance structures and principles in keeping with Appendix 16 of the NZSX Listing Rules and the Corporate Governance Principles and Guidelines published originally by the Securities Commission ("**SecCom**") (the FMA's predecessor). NZX believes good governance starts at the top with the Board of Directors ("**Board**").
6. The Board is responsible for the overall direction and strategy of NZX. The Board has established a Code of Ethics that provides a set of principles for Directors to apply in their conduct and work for NZX. The principles deal with managing conflicts of interest, the required skills of Directors, trading in NZX's shares, and maintaining confidentiality of information received in their capacity as Directors of NZX.
7. The Board appoints the Chief Executive and delegates the day-to-day operation of NZX's business to the Chief Executive. The Chief Executive implements policies and strategies set by the Board and is accountable to it. The responsibility for the supervision of NZX's securities and derivatives markets has been delegated by the Board to the Chief Executive and Head of Market Supervision jointly.
8. The Board currently comprises six Directors, of whom five are non-executive Directors and Independent Directors as defined in the NZSX Listing Rules. Mark Weldon, the Chief Executive, is the only non-Independent Executive Director.

⁵ The NZAX is designed for fast growing, developing companies and companies with non-traditional structures (such as co-operatives). This market was developed around several key principles - attracting high growth companies by providing a low-cost market for Listed Issuers, and easier access to information and support.

⁶ The NZDX is New Zealand's market for trading debt securities, offering a range of investment securities including corporate and government bonds and fixed income securities.

9. The Board has two standing committees: an Audit and Financial Risk Committee and an Appointments and Remuneration Committee.
10. As at 1 January 2012, NZX's market capitalization was NZD\$274,242,082.04.
11. As at 24 January 2012 NZX has a staff of 146.92 (full time equivalent) of which 18.51 (full time equivalent) staff work in market supervision. The derivatives market (the "**Market**") is operated by NZX alongside the securities markets. Staff in market supervision work across all markets.
12. All trades on NZX's markets are cleared and settled by New Zealand Clearing Limited ("**CHO**") which operates as a clearing house under a central counterparty model (the "**Clearing House**") with a depository system operated by New Zealand Depository Limited ("**CDO**"). The settlement system operated by CHO and CDO being the "**Clearing & Settlement System**". For further details on CHO, CDO, the Clearing House and the Clearing & Settlement System please see Supplement S-1 to this Form FBOT.
13. NZX Market participants comprise participants (and their advisors) accredited or designated by NZX to participate in the Market (the "**Participants**") and clearing participants and depository participants who participate in the Clearing and Settlement System by settling trades for Market participants.
14. REDACTED
15. United States domiciled Participants will have access to NZX's Market website at <http://www.nzxfutures.com>. The website includes general information on the dairy market and how the Market works, contracts specifications and data and quotes. In addition, it provides links to the Market rules and procedures.
16. United States domiciled Participants will also have access to NZX's main website at <http://www.nzx.com>. The website includes general information relating to NZX, its organization and business interests as well as the contracts and securities traded on its markets. It also provides links to all of NZX's rules and procedures and market supervision functions and provides the public with access to market data and relevant news articles and commentary.
17. REDACTED
18. REDACTED

⁷ A list of the Annexures to this Form FBOT is provided at the end of this Form.

Attach, as **Exhibit A-2**, the following:

Articles of association, constitution, or other similar organizational documents.

19. Please see Annexures 2 and 3 respectively for copies of the certificate of incorporation and constitution of NZX.

Attach, as **Exhibit A-3**, the following:

(1) Membership and trading participant agreements.

20. There is not a Participant agreement as such. Rather, applicants submit an application form (please see Annexures 4 and 5). Pursuant to Rule 3.1 of the Derivatives Markets Rules (see Exhibit A-6) an application constitutes an offer by the applicant to be bound by the Rules and acceptance of an applicant's application by NZX constitutes a binding contract between NZX and the applicant to be bound by the Rules.

(2) Clearing agreements.

21. Pursuant to Rule 7.1.1 of the Derivatives Markets Rules (see Exhibit A-6), a Trading Participant must satisfy NZX that it has in place and will maintain adequate arrangements for the clearing and settlement of all trades entered into by the Trading Participant. If a Trading Participant is not a Clearing Participant (pursuant to the Clearing and Settlement Rules (see Exhibit A-6)), the Trading Participant must enter into and maintain a written agreement with each of its Clearing Participants setting out the terms and conditions on which each Clearing Participant will clear and settle trades. Each such agreement (a "**Clearing and Settlement Agreement**") must comply with the requirements of the Clearing and Settlement Rules. CHO has the ability to give reasonable directions regarding the making of amendments to a Clearing and Settlement Agreement.
22. For further details in relation to clearing agreements, please see Supplement S-1 to this Form FBOT.

Attach, as **Exhibit A-4**, the following:

Terms and conditions of contracts to be available through direct access (as specified in Exhibit E).

23. Please see Annexures 6 and 7 respectively for the individual contract specification and contract terms and administrative procedures for Whole Milk Powder ("**WMP**") Futures (as at 30 January 2012).
24. Please see Annexures 8 and 9 respectively for the individual contract specification and terms and contract terms and administrative procedures for WMP Options (underlying futures contract being One NZX Derivatives Market Contract No. 1 Global WMP Futures Contract) (as at 30 January 2012).
25. Please see Annexures 10 and 11 respectively for the individual contract specification and contract terms and administrative procedures for Skim Milk Powder ("**SMP**") Futures (as at 30 January 2012).
26. Please see Annexures 12 and 13 for the individual contract specification and contract terms and administrative procedures for Anhydrous Milk Fat ("**AMF**") Futures (as at 30 January 2012).
27. The contracts listed above are, as at 30 January 2012, the only contracts available through the Market. REDACTED

Attach, as **Exhibit A-5**, the following:

The national statutes, laws and regulations governing the activities of the foreign board of trade and its respective participants.

28. Please see Annexure 14 for the Securities Act 1978 (as at 1 October 2011).
29. Please see Annexure 15 for the Companies Act 1993 (as at 1 May 2011).
30. Please see Annexure 16 for the Financial Markets Authority Act 2011 (as at 1 October 2011).
31. Please see Annexure 17 for the Reserve Bank of New Zealand Act 1989 (as at 1 May 2011).
32. Please see Annexure 18 for the Authorised Futures Exchange (NZX Limited) Notice 2010⁸.
33. Please see Annexure 19 for the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010.
34. Please see Annexure 20 for the Securities Markets Act 1988 (as at 1 October 2011).
35. Please see Annexure 21 for the Securities Markets (Insider Trading Exemption – Futures Contracts) Regulations 2010.
36. Please see Annexure 22 for the Futures Industry (Client Funds) Regulations 1990 (as at 1 May 2011).
37. Please see Annexure 23 for the Futures Contracts (NZCDC Settlement System and NZX Derivatives Market) Exemption Notice 2010.
38. Please see Annexure 24 for the Financial Advisers Act 2008 (as at 1 July 2011).

⁸ The Authorised Futures Exchange (NZX Limited) Notice 2010 will be replaced as a consequence of the establishment of the FMA as the successor to the Securities Commission in 2011. The replacement notice is expected to be on substantially the same terms as the Authorised Futures Exchange (NZX Limited) Notice 2010.

Attach, as **Exhibit A-6**, the following:

The current rules, regulations, guidelines and bylaws of the foreign board of trade.

39. Please see Annexure 25 for the Derivatives Markets Rules (dated 1 September 2010).
40. Please see Annexure 26 for the Derivatives Markets Procedures (dated 30 January 2012).
41. Please see Annexure 27 for the Clearing and Settlement Rules (dated 3 August 2010).
42. Please see Annexure 28 for the Clearing and Settlement Procedures (dated 18 February 2011).
43. Please see Annexure 29 for the Depository Operating Rules (dated 3 August 2010).
44. Please see Annexure 30 for the Depository Operating Procedures (dated 29 September 2010).
45. Please see Annexure 31 for the NZ Markets Disciplinary Tribunal Rules (dated 16 August 2010).
46. Please see Annexure 32 for the NZ Markets Disciplinary Tribunal Procedures (dated 6 August 2010).

Attach, as **Exhibit A-7**, the following:

Evidence of the authorization, licensure or registration of the foreign board of trade pursuant to the regulatory regime in its home country jurisdiction and a representation by its regulator(s) that it is in good regulatory standing in the capacity in which it is authorized, licensed or registered.

47. Please refer to Exhibit A-5 for the Authorised Futures Exchange (NZX Limited) Notice 2010.

48. REDACTED

Attach, as **Exhibit A-8**, the following document:

A summary of any disciplinary or enforcement actions or proceedings that have been brought against the foreign board of trade, or any of the senior officers thereof, in the past five years and the resolution of those actions or proceedings.

49. No disciplinary or enforcement actions or proceedings have been brought against NZX, nor the senior officers thereof, in the last five years.

Attach, as **Exhibit A-9**, the following document:

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the foreign board of trade to notify Commission staff promptly if any of the representations made in connection with or related to the foreign board of trade's application for registration cease to be true or correct, or become incomplete or misleading.

50. Please see Annexure 34 for an undertaking by Mark Weldon, Chief Executive Officer.

EXHIBIT B – MEMBERSHIP CRITERIA

Attach, as **Exhibit B**, the following, separately labeling each description:

(1) A description of the categories of membership and participation in the foreign board of trade and the access and trading privileges provided by the foreign board of trade. The description should include any restrictions applicable to members and other participants to which the foreign board of trade intends to grant direct access to its trading system.

51. The table below summarises the Participant categories and the access and trading privileges granted.

References to Rules in this Exhibit refer to the Derivatives Market Rules and references to Procedures refer to the Derivatives Market Procedures

Summary of Participant categories

| | TRADING | | | |
|--|--------------------------|--------------------------|----------------------------------|------------------------------|
| | TECHNOLOGY CONNECTING | BANK ONLY PARTICIPANT | PRINCIPAL BOOK ONLY DEALER | TRADING AND ADVISING FIRM |
| TRADE ON BEHALF OF CLIENTS | | √ | | √ |
| TRADE ON PRINCIPAL ACCOUNT | | √ | √ | √ |
| HOLD CLIENT ASSETS | | √ | | √ |
| ADVISE CLIENTS | | √ | | √ |
| TRADE ON MARKET ON BEHALF OF A TCF CLIENT | √ | | | |
| CAPITAL ADEQUACY REQUIREMENT | √ | √ | | √ |

Trading Participants

52. As summarized above, NZX has provided for a number of different classes of Trading Participant who have to meet and maintain certain criteria (as detailed below) that vary between classes⁹. There are also categories of Participants under the Rules known as ("**Advising Participants**") and ("**Advisors**") who have a relationship with Trading Participants but do not carry out any direct trading function in that they refer instructions to Trading Participants who enter orders in the trading system¹⁰. We have focused our description in this Exhibit on Trading Participants.
53. A Technology Connecting Facility ("**TCF**"), is another type of Participant. This participant does not deal in the Market but acts as a conduit to provide connectivity for international clients that are subject to the oversight of an Alternative Regulator¹¹ (or have the benefit of an appropriate exemption). This is a liquidity initiative designed to facilitate worldwide access to the Market for qualified persons.
54. Trading Participants are permitted to trade each category of product offered by NZX on the Market¹².
55. The various Participants are not licensed by the FMA in the manner of participants in the United States. Rather, there is a broad legislative prohibition, contained in section 38 of the SMA, on dealing in "futures contracts" unless the person is a member of a class of persons that has been:
- a. authorized by the FMA to carry on the business of dealing in "futures contracts"; or
 - b. has been approved by an authorized futures exchange under its rules to carry on the business of dealing in "futures contracts" in accordance with the rules of that exchange.

Where the approval derives from carrying on business under the rules of an authorized exchange, that person and their activities are subject to the regulation and oversight of the relevant authorized futures exchange (i.e. NZX).

(2) A description of all requirements for each category of membership and participation on the trading system and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

- (i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the foreign board of trade confirms compliance with such requirements.
- (ii) Authorization, Licensure and Registration. A description of any regulatory and self-regulatory authorization, licensure or registration requirements that the foreign board of trade imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by

⁹ These are Trading and Advising Firms, Principal Only Dealers, Bank Only Participants and TCFs.

¹⁰ Advising Participants can be either Advising Firms or Introducing Brokers.

¹¹ Alternative Regulator means an exchange or other Regulatory Authority recognized by NZX and as advised by NZX from time to time and published in the Procedures.

¹² There is no automatic crossover between participants authorized to trade on NZX's securities markets (NZSX, NZAX and NZDX) and the Market. NZX's securities markets have different participant rules comprising different requirements.

the regulatory regime/authority in the home country jurisdiction(s) of the foreign board of trade. Please also include a description of the process by which the foreign board of trade confirms compliance with such requirements.

- (iii) Financial Integrity. A description of the following:
 - (A) The financial resource requirements, standards, guides or thresholds required of members and other participants.
 - (B) The manner in which the foreign board of trade evaluates the financial resources/holdings of its members or participants.
 - (C) The process by which applicants demonstrate compliance with financial requirements for membership or participation including, as applicable:
 - (i) Working capital and collateral requirements, and
 - (ii) Risk management mechanisms for members allowing customers to place orders.
- (iv) Fit and Proper Standards. A description of how the foreign board of trade ensures that potential members/other participants meet fit and proper standards.

Trading Participants

- 56. Broadly, Trading Participants must meet fitness and competence standards and are required to have sufficient financial resources to comply with the Capital Adequacy requirements. Section 3 of the Rules specifies the requirements for becoming a Market Participant and establishes the specific criteria for the various classes. NZX has wide discretion to approve or decline an application for Trading Participant status. Section 3 also requires a Trading Participant to disclose details of its ownership structure, to notify NZX of changes in its management, to appoint compliance managers (for corporate entities) and contains additional requirements that apply to overseas applicants.
- 57. Trading Participants have to nominate, and NZX must approve, a "Responsible Executive" who must meet certain requirements under the Rules. These need to be senior persons of sufficient authority and standing within the company as well as highly skilled and experienced individuals who have not and will not engage in unprofessional conduct. The Responsible Executive is key to monitoring and ensuring the ongoing compliance and standards of the Trading Participant.
- 58. Section 4 requires Trading Participants to comply with the Rules, Procedures, laws and regulations and to notify NZX of key events¹³, and to provide NZX with specified types of information on request. This section also contains other general business conduct requirements such as the requirement to have a business continuity plan and emergency procedures in place. This section also contains a prohibition on market manipulation and the need for Trading Participants to have policies and procedures in place to identify and internally report insider trading¹⁴. Section 4 also contains provisions in relation to capital adequacy.

¹³ Such events include: bankruptcy or insolvency of the Participant; appointment of a receiver, liquidator or statutory manager; that an emergency has arisen or where a Participant is, due to circumstances outside its control, unable to comply with the Rules.

¹⁴ The legislative prohibition on Market Manipulation and Insider Trading is contained in Part 1 of the SMA.

59. Section 5 contains specific requirements for TCFs. Persons seeking to become a TCF have to meet additional requirements under the Rules. They must notify NZX in writing of the identity of their TCF Clients and the Alternative Regulator who has oversight in respect of those clients or the regulatory exemption that applies to the TCF Client.
60. Section 6 contains additional requirements relating to client agreements and trading agreements and "know your client" procedures.
61. Trading Participants must satisfy NZX that they have in place appropriate clearing and settlement arrangements. Section 7 ensures that clearing and settlement occurs through the Clearing House run by CHO and in accordance with the Clearing and Settlement Rules and the Depository Operating Rules and Procedures.
62. Section 8 sets out general obligations when trading on the Market. For example, Rule 8.1 is the rule setting out price limits and position limits (which are specified by Procedure). This practice helps NZX to ensure market integrity and reflects international best practice. It also sets out rules relating to errors and trade and cross transactions cancellation, disputes in relation to trades, trading halts and suspension of trading.
63. Section 9 contains requirements concerning bringing orders to Market, recording client instructions and reporting to clients.
64. Section 10 allows NZX to specify requirements relating to the operation of the Market, session times, order types, common trade facilities and contract specifications by procedure and regulates cross transactions.
65. Section 13 deals with accounts, audits and inspections and ensures NZX has the power to carry out audits and inspections to ensure compliance with the Rules.
66. Section 14 contains NZX's powers, which are in addition to those it has under its constitution and at law. This includes the power to refer matters to the NZ Markets Disciplinary Tribunal ("NZMDT") as well as the power to take action to suspend a Trading Participant where they are in default and ultimately to terminate their status where necessary¹⁵.

Professional Qualifications

67. As part of the application, a potential Responsible Executive must deliver evidence of qualifications and examination results and must have completed specified NZX Diploma courses (run in conjunction with Kaplan Professional). In addition, a Participant is required to ensure that its management and staff are suitably qualified and experienced.

Authorization, Licensure and Registration.

68. As referred to above in Exhibit A-3 pursuant to Rule 3.1 of the Rules an application constitutes an offer by the applicant to be bound by the Rules and acceptance of an applicant's application by NZX constitutes a binding contract between NZX and the applicant to be bound by the Rules.

Financial Integrity

69. Unless NZX is satisfied that the Trading Participant is subject to, and is complying with, an equivalent level of prudential supervision by an Alternative Regulator (as defined in the Rules), a Participant Requiring Capital (all Participants other than Advisors and Principal Book Only

¹⁵ More detail on the NZMDT is contained in Exhibit G below.

Dealers unless directed as a condition of accreditation) must at all times maintain its Net Tangible Current Assets at a level equal to, or greater than, the higher of:

- a. the relevant Minimum Net Tangible Current Asset level; and
- b. its Total Risk Requirement.

70. A Trading Participant's Net Tangible Current Assets are to be calculated in the manner determined by the Appendix to the Rules.
71. The Minimum Net Tangible Current Asset levels for a Trading Participant is \$500,000.
72. A Participant is required to calculate and record daily its Total Risk Requirement being the aggregate of specified categories of risk requirements as set out and calculated in the manner determined by the Appendix to the Rules and its Capital Adequacy Calculations. A Participant must provide to NZX a monthly report of its daily Capital Adequacy Calculations and if a threshold of 120% of its Prescribed Minimum Capital Adequacy level is breached, the reporting requirement is daily. NZX may, by notice to a Participant, require reports on a more regular basis when NZX considers it necessary or desirable.
73. An applicant is required to provide details of its current financial position, sufficient to demonstrate that the applicant meets the capital adequacy requirements relevant to the category of Participant it is applying for. This will need to be evidenced to NZX's satisfaction prior to designation.
74. REDACTED

Fit and Proper Standards

75. An applicant for designation as a Participant is required to provide evidence to the satisfaction of NZX, in NZX's opinion, that it is a fit and proper person to carry on the business of the kind and scale in respect of which that applicant seeks designation. In particular that it will meet all the requirements of directions given from time to time by NZX, it will carry out its responsibilities as a Participant honestly and diligently and it meets any other requirements specified by NZX (Rule 3.2). Rules 3.3 to 3.6 sets out additional application requirements for different types of Participants.
76. REDACTED

EXHIBIT C – BOARD AND/OR COMMITTEE MEMBERSHIP

Attach, as **Exhibit C**, the following:

(1) A description of the requirements applicable to membership on the governing board and significant committees of the foreign board of trade.

77. As a listed company, the Board comprises individuals who are elected by shareholders and is responsible for the overall direction and strategy of NZX. It appoints the Chief Executive and delegates the day-to-day operation of NZX's business to the Chief Executive. The Chief Executive implements policies and strategies set by the Board and is accountable to it. The Board has also made a direct joint delegation to the Head of Market Supervision and the Chief Executive in respect of NZX's regulatory functions in respect of the securities markets and the Market.
78. The Board has stated that Board competencies must include a mix of market knowledge and practical experience and that the historical process of Board appointments has involved analysis of the overall skill set and the identification of individuals who enable the achievement of NZX's strategic objectives.
79. Board appointments by the Board are temporary until shareholder approval is obtained at the next annual shareholders meeting.
80. Pursuant to the NZSX Listing Rules, the composition of the Board shall:
 - a. have a minimum of three Directors;
 - b. include at least two Directors ordinarily resident in New Zealand; and
 - c. have a minimum number of Independent Directors (being a Director who is not an executive of the entity and does not have a disqualifying relationship).
81. The Board of NZX has two standing committees: an Audit and Financial Risk Committee and an Appointments and Remuneration Committee. Given the size of the Board, there is no nominations and succession committee. Rather, the full Board is involved in the Director nomination process.
82. The Audit and Financial Risk Committee has a clear line of communication with the independent external auditor and the internal finance and audit team, and it may, at its discretion, meet with the independent auditor without company management being present. The Audit and Financial Risk Committee operates under Terms of Reference, which set out its role in assisting the Board with financial reporting and corporate financial matters.
83. The Appointments and Remuneration Committee operates under Terms of Reference which set out its role. It assists the Board in reviewing the remuneration policies, practices and performance of NZX as they relate to the Directors including any committees that Directors may serve on, and also the remuneration and performance of the Chief Executive.
84. The Appointments and Remuneration Committee comprises entirely non-Executive Directors.

(2) A description of the process by which the foreign board of trade ensures that potential governing board and committee members/other participants meet these standards.

85. The Audit and Financial Risk Committee may only comprise non-Executive Directors and at least one member of the Audit and Risk Committee must have expertise in accounting.
86. The Board determines periodically whether each Director is an Independent Director and publishes these determinations (as required by the NZSX Listing Rules).

(3) A description of the provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the foreign board of trade.

87. As NZX is registered as a limited liability company under the Companies Act 1993, each NZX Director is required to disclose any interest he or she may have in a transaction or proposed transaction with NZX. If a company, including NZX, enters a transaction in which a Director is interested and the Director hasn't disclosed his or her interest, it may be open to the company to avoid the transaction if the company doesn't receive fair value.
88. In addition, the NZSX Listing Rules require that any Director who is so interested may not vote on a Board resolution in respect of such matter. There is an exception where, pursuant to an express provision of the Companies Act 1993, Directors are required to sign a certificate and where the resolution relates to the grant of an indemnity.
89. NZX has developed a Conflict Management Policy (see Annexure 35 for a copy of the Policy) the purpose of which is to identify possible conflicts between NZX's commercial interests and its obligations as a market operator and to describe the processes in place at a management and Board level to manage these. No Director, including the CEO must take part in a decision in respect of which he may have a personal interest or other potential conflict, for example, a relationship with a Participant, or a relevant shareholding in a listed entity. Any conflict must be declared by the Director where a matter on which that Director is conflicted is discussed by the Board. The conflicted Director must excuse him or herself from discussions and decision making on matters on which the Director is conflicted.
90. This is reinforced in the Code of Ethics established by the Board that provides a set of principles for Directors to apply in their conduct and work for NZX. The principles deal with managing conflicts of interest, the required skills of Directors, trading in NZX's shares, and maintaining confidentiality of information received in their capacity as Directors of NZX. The Code requires each Director to alert the Board as soon as the Director is aware of any possible conflict of interest that may exist.

(4) A description of the rules with respect to the disclosure of material non-public information obtained as a result of a member's or other participant's performance on the governing board or significant committee.

91. As NZX is registered as a limited liability company under the Companies Act 1993, each NZX Director must not disclose or use information obtained by virtue of their capacity as a Director. The key exceptions are where the disclosure or use is for the purposes of NZX, as required by law, and when particulars of the disclosure are entered into the interests register and the Director is authorised by the Board and the disclosure or use will not be likely to prejudice NZX.
92. The NZSX Listing Rules require NZX to disclose 'Material Information' (being price sensitive information) other than where the specified conditions are met (such as a reasonable person would not expect the information to be disclosed).
93. Under the SMA there are also obligations in relation to insider trading and market manipulation. NZX has internal policies and processes to assist with compliance.

EXHIBIT D – THE AUTOMATED TRADING SYSTEM

Attach, as **Exhibit D-1**, a description of (or where appropriate, documentation addressing) the following, separately labeling each description:

References to Rules in this Exhibit refer to the Derivatives Market Rules and references to Procedures refer to the Derivatives Market Procedures

(1) The order matching/trade execution system, including a complete description of all permitted ways in which members or other participants (or their customers) may connect to the trade matching/execution system and the related requirements (for example, authorization agreements).

94. REDACTED

95. REDACTED

96. REDACTED

97. REDACTED

98. REDACTED

99. REDACTED

100. REDACTED

101. REDACTED

102. REDACTED

103. REDACTED

104. REDACTED

REDACTED

105. REDACTED

106. REDACTED

107. REDACTED

REDACTED

108. REDACTED

109. REDACTED

110. REDACTED

111. REDACTED

112. REDACTED

(2) The architecture of the systems, including hardware and distribution network, as well as any pre- and post-trade risk-management controls that are made available to system users.

REDACTED

113. REDACTED

114. REDACTED

115. REDACTED

116. REDACTED

117. REDACTED

118. REDACTED

REDACTED

119. REDACTED

REDACTED

120. REDACTED

121. REDACTED

122. REDACTED

(3) The security features of the systems.

REDACTED

123. REDACTED

124. REDACTED

REDACTED

125. REDACTED

REDACTED

126. REDACTED

127. REDACTED

(4) The length of time such systems have been operating.

128. REDACTED

(5) Any significant system failures or interruptions.

129. REDACTED

(6) The nature of any technical review of the order matching/trade execution system performed by the foreign board of trade, the home country regulator, or a third party.

130. REDACTED

(7) Trading hours.

131. REDACTED

(8) Types and duration of orders accepted.

132. REDACTED

133. REDACTED

(9) Information that must be included on orders.

134. REDACTED

(10) Trade confirmation and error trade procedures.

135. REDACTED

136. REDACTED

(11) Anonymity of participants.

137. REDACTED

(12) Trading system connectivity with clearing system.

138. REDACTED

139. REDACTED

(13) Response time.

140. REDACTED

REDACTED

141. REDACTED

REDACTED

142. REDACTED

(14) Ability to determine depth of market.

143. REDACTED

144. REDACTED

145. REDACTED

(15) Market continuity provisions.

146. REDACTED

147. REDACTED

148. REDACTED

149. REDACTED

150. REDACTED

(16) Reporting and recordkeeping requirements.

151. REDACTED

Attach, as **Exhibit D-2**, a description of the manner in which the foreign board of trade assures the following with respect to the trading system, separately labeling each description:

- (1) Algorithm. The trade matching algorithm matches trades fairly and timely.

152. REDACTED

REDACTED

153. REDACTED

154. REDACTED

155. REDACTED

156. REDACTED

REDACTED

157. REDACTED

158. REDACTED

REDACTED

159. REDACTED

160. REDACTED

161. REDACTED

REDACTED

162. REDACTED

REDACTED

163. REDACTED

164. REDACTED

165. REDACTED

(2) IOSCO Principles. The trading system complies with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles). Provide a copy of any independent certification received or self-certification performed and identify any system deficiencies with respect to the IOSCO Principles.

166. REDACTED

(3) Audit Trail.

(i) The audit trail timely captures all relevant data, including changes to orders.

(ii) Audit trail data is securely maintained and available for an adequate time period.

167. REDACTED

168. REDACTED

169. REDACTED

170. REDACTED

(4) Public Data. Adequate and appropriate trade data is available to users and the public.

171. REDACTED

172. REDACTED

(5) Reliability. The trading system has demonstrated reliability.

173. REDACTED

(6) Secure Access. Access to the trading system is secure and protected.

174. REDACTED

(7) Emergency Provisions. There are adequate provisions for emergency operations and disaster recovery.

175. REDACTED

176. REDACTED

177. REDACTED

178. REDACTED

179. REDACTED

(8) Data Loss Prevention. Trading data is backed up to prevent loss of data.

180. REDACTED

181. REDACTED

182. REDACTED

(9) Contracts Available. Mechanisms are available to ensure that only those futures, option or swap contracts that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 are made available for trading by direct access.

183. REDACTED

184. REDACTED

(10) Predominance of the Centralized Market. Mechanisms are available that ensure a competitive, open, and efficient market and mechanism for executing transactions.

185. REDACTED

186. REDACTED

187. REDACTED

**EXHIBIT E – THE TERMS AND CONDITIONS OF CONTRACTS PROPOSED TO BE
MADE AVAILABLE IN THE UNITED STATES**

Attach, as **Exhibit E-1**, a description of the terms and conditions of futures, option or swap contracts intended to be made available for direct access. With respect to each contract, indicate whether the contract is regulated or otherwise treated as a futures, option or swap contract in the regulatory regime(s) of the foreign board of trade's home country.

188. Please see Exhibit A-4 for details of the contracts. Each contract is regulated or otherwise treated as a "futures contract" pursuant to the Securities Markets Act 1988 (referred to in Exhibit A-5).

As **Exhibit E-2**, demonstrate that the contracts are not prohibited from being traded by United States persons, i.e., the contracts are not prohibited security futures or single stock contracts or narrow-based index contracts. For non-narrow based stock index futures contracts, demonstrate that the contracts have received Commission certification pursuant to the procedures set forth in § 30.13 and Appendix D to part 30 of this chapter.

189. The contracts are based on dairy commodities and are not based on any securities.

As **Exhibit E-3**, demonstrate that the contracts are required to be cleared.

190. Pursuant to Rule 7.1.1 of the Derivatives Markets Rules (see Exhibit A-6), a Trading Participant must satisfy NZX that it has in place and will maintain adequate arrangements for the clearing and settlement of all trades entered into by the Trading Participant. Pursuant to Rule 7.2.2, each Trading Participant that is party to a Trade acknowledges that the Clearing and Settlement Terms of that Trade will be novated in accordance with the Trading Participant's C&S Agreement with the Relevant Clearing Participant (unless the Trading Participant is also a Clearing Participant).
191. Under the Clearing and Settlement Rules (see Exhibit A-6), under Rule 3.1.1 all 'Mandatory Transactions' (which include trades on the Market) are automatically subject to clearing and settlement on the clearing house.

As **Exhibit E-4**, identify any contracts that are linked to a contract listed for trading on a United States-registered entity, as defined in section 1a(40) of the Act. A linked contract is a contract that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on such registered entity.

- 192. No contracts are linked to a contract listed for trading on a United States-registered entity.
- 193. Although each contract is denominated in United States Dollars, each contract is cash settled (rather than physically settled). The settlement price is determined using GlobalDairyTrade, which is an international Internet auction, conducted by New Zealand based Fonterra Co-operative Group Limited.
- 194. REDACTED

As **Exhibit E-5**, identify any contracts that have any other relationship with a contract listed for trading on a registered entity, i.e., both the foreign board of trade's and the registered entity's contract settle to the price of the same third party-constructed index.

195. The contracts do not have any relationship with any other contract listed for trading on a registered entity.

As **Exhibit E-6**, demonstrate that the contracts are not readily susceptible to manipulation. In addition, for each contract to be listed, describe each investigation, action, proceeding or case involving manipulation and involving such contract in the three years preceding the application date, whether initiated by the foreign board of trade, a regulatory or self-regulatory authority or agency or other government or prosecutorial agency. For each such action, proceeding or case, describe the alleged manipulative activity and the current status or resolution thereof.

196. As outlined in Exhibit E-4, the price for each contract is based on GlobalDairyTrade ("GDT").
197. GDT is an auction platform for internationally-traded commodity dairy products, established by Fonterra Co-operative Group Limited with CRA International Inc. as the trading manager. Fonterra states that, through the market, commodity dairy products are offered to over 500 bidders from 80 countries through an internet based trading platform. The trading process is transparent, simple and is managed by CRA, as third-party trading manager.
198. GDT was launched by Fonterra in 2008 and now comprises four sellers including Fonterra and DairyAmerica. The contracts traded on the Market are based on the product that Fonterra sells.
199. GDT trading events are conducted as ascending-price clock auctions run over several bidding rounds, each event typically lasting approximately 2 hours.
200. Prior to each GDT event, GDT publishes Fonterra's offer quantities for the next GDT event and Fonterra's forecasts of future GDT offer quantities on www.globaldairytrade.info under the Next Event tab (Fonterra's Supply Information). Although Fonterra's Supply Information is only available on www.globaldairytrade.info to qualified bidders, by arrangement with Fonterra it is also made publicly available by NZX on <http://www.nzx.com/futures/dairy/> at the same time as the information is provided to GDT qualified bidders. This information is generally published 5 days prior to a GDT trading event.
201. Fonterra's Supply Information will include Sales Group Maximum Supply, Product Maximum Supply, Starting Prices and forecast volumes for the specifications which are the subject of the contracts.
202. There are various features of the GDT system which are designed to minimise the manipulation risk:
 - except in emergency situations, there is no communication between sellers and the trading manager during trading events;
 - it is a requirement that all product purchased on GDT is used for bidders own purposes – it cannot be on sold;
 - customer identities are anonymous to the trading manager; and
 - the results are published immediately online.
203. NZX is not aware of any investigation, action, proceeding or case involving manipulation and involving a contract in the three years preceding the application date.

EXHIBIT F – THE REGULATORY REGIME GOVERNING THE FOREIGN BOARD OF TRADE IN ITS HOME COUNTRY¹⁶ OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the foreign board of trade, attach, as **Exhibit F**, the following (including, where appropriate, an indication as to whether the applicable regulatory regime is dependent on the home country's classification of the product being traded on the foreign board of trade as a future, option, swap, or otherwise, and a description of any difference between the applicable regulatory regime for each product classification type):

(1) A description of the regulatory regime/authority's structure, resources, staff, and scope of authority; the regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the foreign board of trade; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.

204. As part of the comprehensive review of New Zealand's securities laws a new market conduct regulator, the FMA, was established in 2011 pursuant to the Financial Markets Authority Act 2011 (referred to in Exhibit A-5) and assimilated SecCom (among a number of other regulatory functions of other bodies). The legislation also provides that references to SecCom are required to be read as a reference to the FMA.
205. The Financial Markets Authority Act 2011 establishes the FMA as an independent Crown entity, and sets out its functions and powers. As part of its powers, the FMA may authorise those dealing in futures contracts.
206. The FMA oversees and administers a range of financial markets legislation (including the SMA). The FMA also monitors, investigates and enforces other financial markets legislation to ensure financial market participants comply with their governance, reporting and supervision obligations under that legislation.
207. The FMA receives appropriations from the New Zealand government and also receives income from fees and recovery of costs.
208. A copy of the organization chart (as published on www.fma.govt.nz) is attached as Annexure 37.
209. A copy of the Statement of Intent (2011 – 2014) of the FMA is attached as Annexure 38. This document provides a comprehensive overview of the following areas:
 - FMA's strategic intent;
 - statement of service performance; and
 - its forecast financial statements.

¹⁶ Where multiple foreign boards of trade subject to the same regulatory regime/authority and are similarly regulated are applying for registration at the same time, a single Exhibit E-1 may be submitted as part of the application for all such foreign boards of trade either by one of the applicant foreign boards of trade or by the regulatory regime/authority with responsibility to oversee each of the multiple foreign boards of trade applying for registration. Where an FBOT applying for registration is located in the same jurisdiction and subject to the same regulatory regime as a registered FBOT, the FBOT applying for registration may include by reference, as part of its application, information about the regulatory regime that is posted on the Commission's website. The FBOT applying for registration must certify that the information thus included in the application is directly applicable to it and remains current and valid.

210. The Statement of Intent, in preparing its forecast information on 1 May 2011, forecast an establishment of 105 full-time equivalent staff for the year ending 20 June 2012.
211. The role of the Reserve Bank of New Zealand in its oversight of designated settlement systems is addressed in Supplement S-1.

(2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:¹⁷

212. The legislative and regulatory framework in New Zealand relating to futures contracts and futures exchanges is largely contained in Part 3 of the SMA. This provides for futures exchanges to be authorized by the FMA under the SMA. Various other parts of the SMA are relevant to futures contracts and futures exchanges.
213. In 2006 major reforms were made to securities law in New Zealand, pursuant to the Securities Market Amendment Act 2006, to further strengthen the framework for securities, securities trading and takeovers law and to bring the law into line with international practice. This included a new insider-trading and market manipulation regime (which extends to trading in futures contracts).
214. There was a further amendment to the SMA in 2009 (by way of the Securities Markets Amendment Act 2009). Key features of this amendment were: various edits to better fit the SMA to dealing with futures contracts; alignment of the regulatory environment for exchanges seeking to operate in both the securities and futures markets so that an exchange registered under the SMA may be registered either in relation to securities markets only or in relation to both securities and futures markets ; and permitting participants approved by the operator of an authorized futures exchange to be authorized futures dealers (rather than requiring the FMA to give that approval).
215. On 4 October 2010 the Securities Markets (Insider Trading – Exemptions – Futures Contracts) Regulations 2010 were published (referred to in Exhibit A-5). This exemption is to ensure that certain conduct by traders in futures contracts, and their advisers, is not insider trading for the purposes of the SMA.
216. The Financial Markets Conduct Bill 2011 (the “**Bill**”) was introduced to Parliament on 12 October 2011. The purpose of the Bill is “to provide an enduring financial market conduct regulatory regime that promotes confident and informed participation in New Zealand’s financial markets”. The Bill replaces financial market conduct regulation contained in a number of statutes (including the Securities Act 1978 and the Securities Markets Act 1988 as discussed above), allowing for a more coherent regime.
217. The Bill provides that “derivatives” is one of four categories of financial product that are covered by the Bill. Existing registered exchanges and authorised futures exchanges (i.e. NZX) will be treated as holding a financial product market licence in respect of each of their current markets.
218. The Bill is at the initial states of the legislative process. A copy of the Bill is attached as Annexure 39.

(i) The authorization, licensure or registration of the foreign board of trade.

219. The FMA oversees dealing in securities, registered exchanges and futures exchanges. The FMA has primary responsibility for licensing and oversight of exchanges, approves market rules and undertakes an annual review of registered exchanges.
220. Please refer to Exhibit A-5 for the Authorised Futures Exchange (NZX Limited) Notice 2010 (the “**Authorisation Notice**”). NZX is also registered as a securities exchange pursuant to the SMA (and is the only registered exchange in New Zealand).

¹⁷ To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A-5, they need not be duplicated. They may be cross-referenced.

221. NZX approves futures dealers in the Market under its derivatives market rules. NZX acts as front line regulator of futures dealers on the Market, but must keep the FMA informed of any disciplinary action or suspected significant breaches of the Market rules.
222. Pursuant to the Authorisation Notice¹⁸, NZX is an authorized futures exchange under Part 3 of the SMA in respect of the Market. Various conditions were imposed as part of the authorization. These are set out in the Authorization Notice. There are general obligations, obligations relating to directions from the FMA, reporting obligations and market supervision obligations.
223. The Derivatives Market Rules and Procedures had been approved by SecCom. Further, NZX has received external legal advice that confirm these rules and procedures are fit for the purpose of regulating the trading of derivatives on exchange in New Zealand.
224. The general obligations imposed on NZX as part of the Authorisation Notice include:
- Ensuring copies of the Derivatives Market Rules and Procedures are available for public inspection, free of charge.
 - Obtaining consent from the FMA in relation to changes to contract specifications, or new contract specifications.
 - Advance notification must be given to the FMA of any proposed amendments to the Derivatives Market Procedures.
 - In the event NZX seeks to transfer or assign any of its rights, entitlements or obligations under the Derivatives Market Rules or Procedures or the NZMDT Rules or Procedures, the written consent of the FMA must be obtained.
 - Maintaining real-time surveillance of the Market, to a standard satisfactory to the FMA.
 - Notifying the FMA of any proposed amendments to the Derivatives Market Rules and obtaining written consent to such amendments.
225. NZX must comply with directions from the FMA immediately after they are received. NZX must not permit any trading to take place on the Market that is contrary to such directions. The Authorization Notice sets out how the FMA can make, vary and revoke a direction as well as the procedures that must be followed by the FMA before giving such a direction.
226. NZX must notify the FMA whenever:
- it takes any disciplinary action for a contravention of the Derivatives Market Rules or Procedures; or
 - knows or suspects a person has committed, is committing or is likely to commit a significant contravention of the Derivatives Market Rules or Procedures or various, key enactments.
227. NZX has very broad obligations to provide information, assistance and access to its facilities to enable the FMA to fulfill its functions and to notify the FMA of complaints received about NZX's operation of the Market. NZX must also advise the FMA when they receive complaints in relation to Market participants, where such complaints have not been resolved to the satisfaction of the complainant. NZX also has reporting obligations to the FMA for financial and risk matters.
228. NZX is obliged, as far as reasonably practicable, to do all things necessary to ensure the Market operates in a fair, orderly and transparent manner. NZX must have in place arrangements for supervising the Market more specifically. This includes arrangements for: handling any conflicts between NZX's commercial interests and the need to ensure the Market operates in a fair, orderly and transparent manner; monitoring the conduct of Market participants and enforcing compliance

¹⁸ The Authorised Futures Exchange (NZX Limited) Notice 2010 will be replaced as a consequence of the FMA in 2011. The replacement notice is expected to be on substantially the same terms as the Authorised Futures Exchange (NZX Limited) Notice 2010.

with the Derivatives Market Rules and Procedures. NZX must also ensure that sufficient resources (human, technological and financial) are available to operate the Market properly.

(ii) The regulatory regime/authority's program for the ongoing supervision and oversight of the foreign board of trade and the enforcement of its trading rules.

229. There is no legislative oversight programme for the Market. However, the FMA is required to carry out an annual review of how NZX is meeting its obligations under the SMA as the operator of its securities markets. FMA and NZX have agreed that the FMA will review the Market at the same time that the FMA reviews NZX's securities markets. FMA is currently carrying out its annual review in respect of 2011, and has stated that it intends to publish its review by 30 June 2012.

(iii) The financial resource requirements applicable to the authorization, licensure or registration of the foreign board of trade and the continued operations thereof.

230. There are no prescribed financial resource requirements, rather the Authorisation Notice requires NZX to "have sufficient resources (including financial, technological and human resources) to operate the Market properly..."

(iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of the foreign board of trade or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.

231. NZX is required to prepare and provide to the FMA, pursuant to Condition 6(11) of the Authorisation Notice, an assessment of its trading system. This was assessed against Principle 5 of the IOSCO Principles for the Oversight of Screen-Based Trading Systems for Derivative Products.

(v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of the foreign board of trade prior to their implementation.

232. The original Rules and Procedures of NZX in relation to the Market were approved as part of the Authorisation Notice. NZX must obtain the written consent of the FMA to amendments to the Rules and to amendments to the Procedures which materially modify the application of any of the Rules.

(vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.

233. Written consent of the FMA is required to any amendments to contract specifications or for designations of new contract specifications prior to such amendments or designations becoming effective.

(vii) The regulatory regime/authority's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.

234. In its Statement of Intent, the FMA states that the FMA's role is to "identify this behaviour [serious wrong doing] as early as possible and take appropriate enforcement action. The quality of our surveillance and enforcement function will be a critical factor in ensuring a strong deterrent effect.

FMA will seek to achieve the best 'whole of system' approach to enforcement. This means it will cooperate with other regulatory agencies, and will promptly refer any matters best investigated or enforced by those agencies."

235. The Statement of Intent further sets out what the FMA will focus on to achieve this impact.

(3) A description of the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with members and other participants located in the United States participants, including:

236. The Financial Advisers Act 2008 applies to persons providing "financial adviser services", being all financial advice received by clients in New Zealand, including advice provided by advisers based overseas (unless exempted). Certain sections of the Act also apply to New Zealand-based advisers giving advice to overseas clients. These include the obligation to act with care, diligence and skill and not to act in a misleading or deceptive manner.

(i) Recordkeeping requirements.

237. The Derivatives Market Rules contain a number of provisions relating to recordkeeping, including section 13 which requires a Participant to maintain complete and accurate records for a period of seven years following the financial year to which they relate.

(ii) The protection of customer funds.

238. Section 11 of the Derivatives Market Rules deals with accepting and holding Client Funds. For New Zealand domiciled Trading Participants, this includes compliance with the relevant statute and regulations¹⁹. REDACTED

(iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

239. Under the Derivatives Markets Rules, NZX may declare a Participant to be a 'Defaulter' if specified events occur, including an insolvency event, it fails to comply with an obligation under a Derivatives Contract, the Rules or the Procedures or it fails to satisfy financial requirements as a Participant. Upon such a declaration, NZX may take any of the actions specified including a prohibition on dealing and generally take any other action or refrain from taking any action, in order to eliminate or minimise risk with respect to Trades, Contracts or Derivatives Contracts entered into or facilitated by the Participant or Client Funds or which NZX considers appropriate for the protection of NZX, New Zealand Clearing Limited, New Zealand Depository Limited, the Market or other Participants and that Participant's Clients.

240. Under the Clearing and Settlement Rules, there is a similar declaration right and CHO has the general right, without limitation to take such action as it deems necessary, expedient or desirable for, among other matters, the operation of sound, orderly, stable and secure Clearing House,

¹⁹ Financial Transactions Reporting Act 1996 (which imposes obligations on financial institutions including identity verification, retention of records and reporting of suspicious transactions) and Futures Industry (Client Funds) Regulations 1990. The Financial Transactions Reporting Act is being progressively replaced by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. The general purposes of the Futures Industry (Client Funds) Regulations 1990 are to:

- (a) provide for the establishment and maintenance of client bank accounts and client funds accounts by dealers in futures contracts;
- (b) require client money to be paid into or credited to those accounts;
- (c) prescribe the obligations of dealers and other persons in relation to client bank accounts and client funds accounts;
- (d) restrict the disbursements of client money from client bank accounts and the debiting of amounts to client funds accounts;
- (e) prescribe requirements relating to the deposit of client property in safe custody;
- (f) restrict the availability of client money and client property to meet liabilities of the dealer or other persons;
- (g) give further protection to client money and client property in cases where the dealer is insolvent;
- (h) prescribe conditions relating to certain client investments;
- (i) require dealers to keep accounting and other records in relation to client bank accounts, client fund accounts, and client property;
- (j) provide for the auditing of those accounting records; and
- (k) prescribe offences for contravention or failure to comply with the regulations.

Depository and/or Settlement System or to prevent any material risk to CHO, the Clearing House or the Settlement System.

4) A description of the regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade.

241. Please see above in relation to the FMA's annual review of the Market. Please also see the description above of the obligations of NZX under the Authorisation Notice. As set out therein, the FMA has very broad powers to require NZX to provide information, assistance and access to its facilities to enable the FMA to fulfill its functions.

242. The FMA have not published a program of how it uses such powers (nor is there a program prescribed by legislation). However, the Statement of Intent refers to the annual review.

(5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:

(i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.

(ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.

(iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.

(iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.

In respect of NZX:

(i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.

243. NZX is an authorised futures exchange for the purposes of Part 3 of the Securities Markets Act 1988 pursuant to the Authorised Futures Exchange (NZX Limited) Notice 2010²⁰.

(ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.

244. The FMA's predecessor, the Securities Commission, published in April 2011 a review of NZX's performance of its regulatory functions as a registered exchange under the Securities Markets Act 1988 (prior to the commencement of the Market). The review focused on NZX's arrangements for discharging its obligations as a registered exchange (as further specified therein) during the period from 1 January 2009 to 30 June 2010. A copy of this report is attached as Annexure 40.

245. The FMA has stated that it intends to complete and publish an annual review of the Market by 30 June 2012.

²⁰ We note that as a consequence of the establishment of the FMA as the successor to the Securities Commission in 2011, it is intended that the FMA will replace this authorisation notice; however, it is expected this will be on substantially the same terms as the current notice.

- (iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.
246. There have been no significant regulatory concerns, inquiries or investigations by the FMA in relation to NZX.
- (iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.
247. There have been no investigations or disciplinary actions initiated by the FMA (or any other self-regulatory or governmental entity) in relation to the Market operated by NZX nor, other than as set out below, NZX or its senior officers.
248. In relation to NZX's obligations as a listed issuer on its registered securities exchange, the FMA conducted an informal inquiry in 2011 into continuous disclosure issues in relation to comments made by Mr. Mark Weldon, the Chief Executive Officer of NZX, concerning the carrying value of a subsidiary of NZX.
249. The FMA stated, following the inquiry, that it is satisfied that NZX was not in breach of its continuous disclosure obligations as an issuer under the Securities Markets Act 1988 and that a sale of shares by Mr. Weldon was conducted in a manner compliant with applicable financial markets legislation.
- In respect of the NZCDC Group:*
- (i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.
250. The NZCDC settlement system operated and managed by, or on behalf of, NZCDC is a designated settlement system pursuant to the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010.
- (ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.
251. No oversight reports have been published by the FMA and the RBNZ in relation to the NZCDC settlement system.
- (iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.

252. There have been no significant regulatory concerns, inquiries or investigations by the FMA and/or the RBNZ in relation to the NZCDC settlement system and/or members of the NZCDC Group.

(iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.

253. There have been no investigations or disciplinary actions initiated by the FMA, the RBNZ (or any other self-regulatory or governmental entity) in relation to the NZCDC settlement system and/or members of the NZCDC Group (or their respective senior officers).

(6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an "as needed basis," the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).

254. REDACTED

EXHIBIT G – THE RULES OF THE FOREIGN BOARD OF TRADE AND ENFORCEMENT THEREOF

Attach, as **Exhibit G-1**, the following:

A description of the foreign board of trade's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities.

- 255. NZX Market Supervision ("**NZXMS**") supervises market participants and assists the FMA as required under the SMA.
- 256. NZXMS is a team led by the Head of Market Supervision ("**HMS**") which has three principal areas of focus: Regulation, Compliance and Market Surveillance. Its regulatory functions to discharge NZX's responsibilities under NZX rules are supported by Client and Market Services, which provides market operations services (and which also reports to the HMS).
- 257. NZXMS information is not available to personnel who are not part of NZXMS or the clearing house (with whom NZXMS must share information in order to manage market and counter party risks). There is also a degree of physical separation of NZXMS together with the clearing house team from the NZX businesses.

Regulation

- 258. The Regulation team consists of a Business Leader and a team of lawyers (who also perform work for NZX's Corporate Counsel). As at 1 January 2012, there were 6 lawyers in the Issuer Regulation team. The lawyers range in experience from newly admitted graduates to lawyers with over 15 years' experience in securities law.
- 259. NZXMS operates an on-the-job training regime, which ensures that new entrants to the Issuer Regulation team are provided an appropriate level of responsibility for their level of experience. NZXMS operates an entirely open plan office space so that the Business Leader for Issuer Regulation and the HMS are available at all times to discuss matters with members of the team.

Compliance

- 260. The Compliance team consists of a Business Leader and two compliance and risk advisors, together with additional support from lawyers when required. This team has a mixture of skills with legal, finance and accounting backgrounds given the need to supervise, using risk-based assessment, the advising and trading functions and capital adequacy of NZX firms. The principal responsibility of Compliance is to supervise market Participants, including Market Participants, to ensure compliance with the relevant Rules respectively.

Market Surveillance

- 261. The Market Surveillance team consists of a Business Leader and two surveillance analysts, together with additional support from 3 members of the Client and Market Services team and when required, from Issuer Regulation and Participant Compliance (e.g. trading investigations with Market Participants or potential continuous disclosure issues identified through surveillance activity). This team has a mixture of skills, including with team members having finance and equities analyst and trading compliance backgrounds.
- 262. The principal responsibility of Market Surveillance is to monitor, in real-time, trading activity on the Market and the securities exchanges for compliance with the relevant rules, the rules and the prohibitions on insider trading and market manipulation in the SMA. NZXMS uses a variety of

tools to assist its analysts: principally SMARTS surveillance technology and various media financial data sources (e.g. IRESS). NZXMS makes trading enquiries of Market Participants in connection with this function.

263. Breaches of specified NZX Rules (including the Clearing and Settlement Rules and the Derivatives Market Rules) may be referred to the FMA or to the NZMDT. Please see Exhibit G-3 for further information relating to the NZMDT.
264. As a registered exchange (in respect of its securities markets) and an authorized exchange (in respect of the Market) NZX is required to undertake the supervision of markets that it operates in respect of listed entities and products and participants and their trading activities on those markets. This dual role of market operator and supervisor may lead to a perception of conflict between NZX's regulatory and commercial functions. For this reason, it is important for NZX to effectively and demonstrably manage any conflicts arising between its commercial and supervisory roles. Accordingly, NZX has developed a Conflict Management Policy see Annexure 35 for a copy of the Policy the purpose of which is to identify possible conflicts and to describe the processes in place at a management and Board level to manage these.
265. Participants in the Market have an obligation to act in a manner consistent with the promotion and protection of the integrity and public image of NZX and its markets. Central to promoting and protecting the reputation of the Market is ensuring that conduct that might amount to market manipulation, creating a false or misleading market or price or insider trading are strictly prohibited.
266. All NZX markets are "self reporting". This means that participants are expected to have an internal compliance function to monitor compliance with the relevant rules. Where a participant detects a breach of the rules, the participant is expected to "self report" the breach to NZX. NZX may take disciplinary action in relation to the breach, but the "self reporting" will be considered a mitigating factor in determining any penalties.
267. NZXMS also undertakes its own investigations of participants in order to detect breaches. NZXMS conducts both onsite and desk-based inspections of participants, as well as spot checks of ad hoc information.
268. Other than some specific set penalties for trading activity (for example, breaches of position limits or trade cancellations), NZXMS is not able to impose penalties on participants. Breaches of the conduct rules (and the appropriate penalties and sanctions) are determined by NZMDT after reviewing (and/or hearing) information provided by both NZX and the Participant.
269. NZXMS, using the SMARTS Surveillance program, monitors market activity. As such they are often the first to detect activity that might amount to market manipulation. Where NZX Market Surveillance identifies possible market manipulation they refer the breach to the FMA for further investigation. Conduct which amounts to market manipulation is a breach of the SMA²¹ and the FMA is responsible for enforcing and prosecuting such breaches. NZX is also able to pursue participants for market manipulation under its rules.

²¹ Part I.

Attach, as **Exhibit G-2**, the following:

A description of the foreign board of trade's trade practice rules, including but not limited to rules that address the following –

(1) Capacity of the foreign board of trade to detect, investigate, and sanction persons who violate foreign board of trade rules.

270. Section 14 contains NZX's powers, which are in addition to those it has under its constitution and at law. NZX has broad powers of investigation. NZX may receive and consider complaints about NZX, NZX's operation of the Market, a Participant, or its Directors or other Personnel.
271. The supervision carried out by NZXMS is based on the risk-based assessment model and a key part of this role is to assess risk, capital adequacy, technological compliance and the record keeping and client order procedures to ensure compliance with the Rules. Where NZX receives a complaint it is entitled to refer the complaint to any other person that has jurisdiction (e.g. the FMA) it is also entitled to make such enquiries as it thinks fit and exercise such powers conferred on it as it thinks fit.
272. Under Derivatives Market Rule 14.8, NZX may conduct onsite inspections to assess a Participant's compliance with the Derivatives Market Rules and Procedures. The frequency and focus areas of these inspections is determined using a risk-based approach, and will be supplemented by desk based monitoring where appropriate.
273. In addition to onsite inspections, NZX has broad powers under Derivatives Market Rule 14.8 including requiring a Participant to produce for inspection any information or documents and require the Participant or specified persons to answer questions and provide statutory declarations.
274. In relation to trading, information is gained by Market Surveillance through a number of sources, including:
 - SMART Surveillance
 - market analysis of the underlying product, the contracts and participants
 - IRESS market data and analysis
 - Monitoring of Participant and client positions to ensure they accord with the maximum thresholds (as set out in the Contract Specifications (see Exhibit A-4))
 - media monitoring
275. Using the information gained by the above sources (and other information it may have including through a Participant's obligation to report (Derivatives Market Rule 14.6)), NZX will, as appropriate, use its investigation powers to ascertain compliance with any conditions of designation, the Derivatives Market Rules and Procedures, any directions issued by NZX from time to time.
276. Rule 14.5 of the Derivatives Market Rules entitles NZX to submit proceedings against a participant (or the Responsible Person for a participant) to the NZMDT if NZX is of the opinion that (among other points) the participant may have breached the Derivatives Market Rules, been guilty of a thing detrimental to the proper conduct of an NZX Market, or NZX.
277. Please see Exhibit G-3 in relation to the powers of NZMDT.

(2) Prohibition of fraud and abuse, as well as abusive trading practices including, but not limited to, wash sales and trading ahead, and other market abuses.

278. Under Rule 4.3 of the Derivatives Market Rules, each Participant is prohibited from placing an order for, or dealing in, any contract when dealing in that contract or placing that order might reasonably be expected to have an adverse effect on the operations of the Market or result in unfairness to its clients or other Participants. Rule 4.3.1 further specifies examples of such conduct and a trade entered into in breach of any short selling restriction is deemed to be falling within Rule 4.3.1.
279. There is also a duty on Participants accepting orders to consider whether that order or the circumstances surrounding that order may evidence market manipulation.
280. Under Rule 4.4 Participants are obliged to act with honesty, integrity, fairness, due skill and care. Participants must refrain from actions which may interfere with the operations of the Market.
281. Under Rule 8.1, price limits may be imposed to prevent the execution of orders submitted that are at unrepresentative price levels or are the subject of manifest price errors (these are specified in the Contract Specifications (see Exhibit A-4)).

(3) A trade surveillance system appropriate to the foreign board of trade and capable of detecting and investigating potential trade practice violations.

282. The trade surveillance system used by NZX is the SMARTS Surveillance (version v6.2.34.1_1). SMARTS is part of NASDAQ OMX Group.
283. There are alerts set as part of the SMARTS Surveillance, including unusual price movements (inter and intra-day) and price drivers.

(4) An audit trail that captures and retains sufficient order and trade-related data to allow the compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time.

284. The SMARTS Surveillance provides an audit trail with the following features:
 - Order entry, deletion and amendments are stored by the system with comprehensive details of each order. The 'Replay' is able to be used to play back orders and trades after the fact.
 - Reports are also able to be generated with specific filters e.g. broker, security etc. Using the reporting application we are able to look at activity according to the filters for a defined period or in real time.
 - 'Spread', gives a graphical representation of where the Best Bid & Offer are in real time. We are able to zoom in on a particular period of trading activity for an overview of what has been happening.

(5) Appropriate resources to conduct real-time supervision of trading.

285. Together with the various technology and other information sources, the Market Surveillance team consists of a Business Leader and two surveillance analysts

(6) Sufficient compliance staff and resources, including those outsourced or delegated to third parties, to fulfill regulatory responsibilities.

286. NZX does not outsource or delegate to third parties any of its compliance activities. See Exhibit G-1 in relation to the size and experience of the market supervision department. Unlike the rest of NZX, NZXMS does not have a budget or firm financial targets (ie performance of NZXMS is not assessed against a financial goal or budget performance). As such NZXMS, whilst like any entity

needs to be cost conscious and efficient, its focus is primarily on discharging its regulatory obligations.

(7) Rules that authorize compliance staff to obtain, from market participants, information and cooperation necessary to conduct effective rule enforcement and investigations.

287. NZX has broad powers to inspect and investigate under Derivatives Market Rule 14.8 including requiring a Participant to produce for inspection any information or documents and require the Participant or specified persons to answer questions and provide statutory declarations.

288. In addition, under Rule 8.2.1, NZX may request evidence from Participants to establish their compliance with the Derivatives Market Rules and the Derivatives Market Procedures.

(8) Staff investigations and investigation reports demonstrating that the compliance staff investigates suspected rule violations and prepares reports of their findings and recommendations.

289. Pursuant to Derivatives Market Rule 14.4.2, NZX maintains a record of complaints detailing each complaint received by it, any investigation or other action taken and the outcome of the complaint.

(9) Rules determining access requirements with respect to the persons that may trade on the foreign board of trade, and the means by which they connect to it.

290. The Market can be accessed by either direct access or by accessing through an accredited Participant. Direct access to the Market can be through either the NZX network, a dedicated leased line or through internet VPN and requires accreditation as a Participant.

291. "Dealers" and "DMA Dealers" (as defined in the Derivatives Market Rules) are individuals who have been designated by NZX to use the trading functionality of the trading system. In addition "DMA Authorised Persons" are individuals who have authority from a Trading Participant to submit orders (these may be clients of the Participant, agent for a client of the Participant or an employee of the Participant).

292. There are a number of requirements set out in the Derivatives Market Procedures (Sections 3.8 and 3.9) to become accredited as a Dealer or a DMA Dealer including evidence of qualifications.

(10) The requirement that market participants submit to the foreign board of trade's jurisdiction as a condition of access to the market.

293. Rule 15.2.10 provides that in respect of the Derivatives Market Rules and the Derivatives Market Procedures, each Participant irrevocably submits to the exclusive jurisdiction of the courts of New Zealand.

Attach, as **Exhibit G-3**, the following:

A description of the foreign board of trade's disciplinary rules, including but not limited to rules that address the following –

(1) Disciplinary authority and procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations and that provide the authority to fine, suspend, or expel any market participant pursuant to fair and clear standards.

294. The NZMDT is an independent regulatory body established under the NZMDT Rules see Annexures 31 and 32 for a copy of these rules and procedures.
295. The NZMDT is a special function body which is independent of NZX and its subsidiaries. The FMA approves the membership of the NZMDT²². NZX is responsible for the identification and prosecution of breaches of the relevant rules whereas the role of the NZMDT is to determine whether that breach has occurred and the consequences of such a breach.
296. The NZMDT acts on referrals from NZX and will determine whether a breach has occurred. Where the Tribunal finds a breach it assesses and imposes appropriate penalties.
297. The NZMDT is charged under the NZMDT Rules with hearing and determining matters referred to it in relation to the conduct of parties regulated by NZX's market rules and the Clearing and Settlement Rules. The NZMDT is required to hear matters without bias and to give the parties fair consideration. The jurisdiction of the NZMDT does not extend to reviewing decisions made by NZX in respect of: approvals of listings, designations of persons as Participants, changes to the NZX Rule set, published policy decisions, trading halts, pricing schedules.
298. The NZMDT can be likened to the 'court' that brings to account the players in New Zealand's capital markets. Under the NZMDT Rules, the NZMDT is empowered to impose penalties, as appropriate, on those parties The NZMDT determines has engaged in conduct that breaches any of the NZX Rules. The full powers of NZMDT are set out in the NZMDT Rules under Section 4.
299. In addition, there is the Appeals Panel which is a body independent of NZX and the NZ Markets Disciplinary Tribunal, responsible for determining appeals made against determinations of the NZMDT. Either party may appeal a determination of the NZMDT where the determination made under a Full Hearing procedure included a penalty in the amount of \$100,000 or more, or the suspension or revocation of a Market Participant's or Futures and Options Participant's designation, or the suspension of quotation of trading of an Issuer's Quoted Securities
300. NZX has the ability under the Derivatives Market Rules to revoke designation as a Dealer, a DMA Dealer or a Responsible Executive. NZX may also suspend or terminate a Participant's designation as a Participant.

(2) The issuance of warning letters and/or summary fines for specified rule violations.

301. A late filing fee is payable in respect of failure to supply any returns or records by the specified date of \$250 and an ongoing fee of \$250 for each additional day.
302. Although there is no express power in the Derivatives Market Rules, NZX may issue a warning letter in respect of a Participant's conduct. NZMDT has the ability to issue a private reprimand.

²² The Tribunal membership is drawn from senior representatives of the legal, listed issuer and market participant professions as well as members of the public.

(3) The review of investigation reports by a disciplinary panel or other authority for issuance of charges or instructions to investigate further, or findings that an insufficient basis exists to issue charges.

303. Under the NZMDT Rules, the NZMDT has the power to engage advisers and require attendance at an oral hearing, provision of affidavits and the production for inspection of information. Where this is required from a person that NZX, CDO or CHO, as the context requires, does not have a contractual relationship with, the Participant must use its best endeavours to procure the same.

(4) Disciplinary committees of the foreign board of trade that take disciplinary action via formal disciplinary processes.

304. The NZMDT constitutes the disciplinary committee of NZX.

(5) Whether and how the foreign board of trade articulates its rationale for disciplinary decisions.

305. The NZMDT is entitled to issue a public statement where a person has been found in breach. Such decisions are available on www.nzx.com.

306. Please see "Appendix B: NZ Markets Disciplinary Tribunal Policy on Naming Market Participants" of the User Guide to the NZMDT (April 2011) attached as Annexure 42 in relation to the policy on naming market participants.

(6) The sanctions for particular violations and a discussion of the adequacy of sanctions with respect to the violations committed and their effectiveness as a deterrent to future violations.

307. Rules 11.15 to 11.18 of the NZMDT Rules set out the penalties for Derivatives Participants. There are various sanctions set out therein and include a financial penalty of up to \$500,000. However, the key commercial sanction is the ability to revoke a Participant's designation. Section 11.6 of the NZ Market Disciplinary Tribunal Procedures (referred to in Exhibit A-6) provides guidance on the penalty bands for breaches of the Derivatives Market Rules.

308. The most relevant comparison for quantum is with the SMA. Under that legislation the highest penalty is for criminal liability for insider trading which is 5 years' imprisonment and a \$1,000,000 fine for a body corporate. Given that insider trading is deemed to be a criminal liability (which it is not under the NZX) the penalty being one half of that under the SMA is consistent.

Attach, as **Exhibit G-4**, the following:

A description of the market surveillance program (and any related rules), addressing the following –

The dedicated market surveillance department or the delegation or outsourcing of that function, including a general description of the staff; the data collected on traders' market activity; data collected to determine whether prices are responding to supply and demand; data on the size and ownership of deliverable supplies; a description of the manner in which the foreign board of trade detects and deters market manipulation; for cash-settled contracts, methods of monitoring the settlement price or value; and any foreign board of trade position limit, position management, large trader or other position reporting system.

309. Please see Exhibit G-2 for general information in relation to NZXMS and the use of the SMARTS Surveillance programme.

310. REDACTED

EXHIBIT H – INFORMATION SHARING AGREEMENTS AMONG THE COMMISSION, THE FOREIGN BOARD OF TRADE, THE CLEARING ORGANIZATION, AND RELEVANT REGULATORY AUTHORITIES

Attach, as **Exhibit H**, the following:

(1) A description of the arrangements among the Commission, the foreign board of trade, the clearing organization, and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that will be executed pursuant to the foreign board of trade's registration with the Commission and the clearing and settlement of those transactions. This description should address or identify whether and how the foreign board of trade, clearing organization, and the regulatory authorities governing the activities of the foreign board of trade and clearing organization agree to provide directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

- (i) To evaluate the continued eligibility of the foreign board of trade for registration.
- (ii) To enforce compliance with the specified conditions of the registration.
- (iii) To enable the CFTC to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities.
- (iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade.
- (v) To enable Commission staff to effectively accomplish its surveillance responsibilities with respect to a registered entity where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect such ability.

311. Please see Annexure 33 for a statement by the FMA in relation to entering into information sharing arrangements in regards to NZX.

312. REDACTED

313. NZX and CHO each confirms that it is willing to liaise with the Commission in relation to arrangements the Commission may wish to put in place regarding information sharing.

(2) A statement as to whether and how the foreign board of trade has executed the International Information Sharing Memorandum of Understanding and Agreement.

314. Although NZX is not currently a party to the International Information Sharing Memorandum of Understanding and Agreement, as part of this Application NZX would be keen to review the Memorandum to consider executing such agreement.

(3) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If not, describe any substitute information-sharing arrangements that are in place.

315. The FMA is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU). New Zealand has been a full signatory since 2003. In addition, pursuant to the Financial Markets Authority Act 2011 (referred to in Exhibit A-4) the FMA may provide to a law enforcement agency or an overseas regulator any information or a copy of any document that the FMA holds in relation to its legislative authority and considers may assist the recipient's legal authority.

(4) A statement as to whether the regulatory authorities governing the activities of the foreign board of trade and clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations. If not, a statement as to whether and how they have committed to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission, whether pursuant to an existing memorandum of understanding or some other arrangement.

316. The FMA, through its predecessor SecCom, is a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations.

EXHIBIT I – ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **EXHIBIT I**, any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the foreign board of trade set forth in Commission regulation 48.7 are satisfied.

317. N/A

ANNEXURES

- Annexure 1 – REDACTED
- Annexure 2 – Certificate of Incorporation of NZX
- Annexure 3 – Constitution of NZX
- Annexure 4 – Application Form – Advising and Trading Participants
- Annexure 5 – Application Form - Advisor
- Annexure 6 – WMP Futures – Contract Specifications
- Annexure 7 – WMP Futures – Contract Terms
- Annexure 8 – WMP Options – Contract Specifications
- Annexure 9 – WMP Options – Contract Terms
- Annexure 10 – SMP Futures – Contract Specifications
- Annexure 11 – SMP Futures – Contract Terms
- Annexure 12 – AMF Futures – Contract Specifications
- Annexure 13 – AMF Futures – Contract Terms
- Annexure 14 – Securities Act 1978
- Annexure 15 – Companies Act 1993
- Annexure 16 – Financial Markets Authority Act 2011
- Annexure 17 – Reserve Bank of New Zealand Act 1989
- Annexure 18 – Authorised Futures Exchange (NZX Limited) Notice 2010
- Annexure 19 – Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010
- Annexure 20 – Securities Markets Act 1988
- Annexure 21 – Securities Markets (Insider Trading – Exemptions – Futures Contracts) Regulations 2010
- Annexure 22 – Futures Industry (Client Funds) Regulations 1990
- Annexure 23 – Futures Contracts (NZCDC Settlement System and NZX Derivatives Market) Exemption Notice 2010
- Annexure 24 – Financial Advisers Act 2008
- Annexure 25 – Derivatives Markets Rules
- Annexure 26 – Derivatives Markets Procedures
- Annexure 27 – Clearing and Settlement Rules
- Annexure 28 – Clearing and Settlement Procedures
- Annexure 29 – Depository Operating Rules
- Annexure 30 – Depository Operating Procedures
- Annexure 31 – NZ Markets Disciplinary Tribunal Rules
- Annexure 32 – NZ Markets Disciplinary Tribunal Procedures

Annexure 33 – REDACTED

Annexure 34 – Undertaking by Mark Weldon, Chief Executive Officer

Annexure 35 – NZX Conflict Management Policy

Annexure 36 – REDACTED

Annexure 37 – FMA Organisation Chart

Annexure 38 – FMA Statement of Intent

Annexure 39 – Financial Markets Conduct Bill

Annexure 40 – NZX Oversight Review

Annexure 41 – REDACTED

Annexure 42 – NZMDT User Guide