

Continuation of Appendix to Part 48 – Supplement S-1 to Form FBOT

COMMODITY FUTURES TRADING COMMISSION

SUPPLEMENT S-1 to FORM FBOT

**CLEARING ORGANIZATION SUPPLEMENT TO
FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION**

SUPPLEMENT INSTRUCTIONS

DEFINITIONS

1. Unless the context requires otherwise, all terms used in this supplement 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 Supplement S-1, 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 Supplement S-1 (including exhibits) shall be completed by each clearing organization that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of the Commission’s regulations. Each clearing organization shall submit a separate Supplement S-1.
2. In the event that the clearing functions of the foreign board of trade applying for registration will be performed by the foreign board of trade itself, the foreign board of trade shall complete this Supplement S-1, but need not duplicate information provided on its Form FBOT. Specific reference to or incorporation of information or documentation (including exhibits) on the associated Form FBOT, where appropriate, is acceptable. To the extent a singular document or description is responsive to more than one request for information in this Supplement S-1, the document or description need only be provided once and may be cross-referenced elsewhere.
3. Supplement S-1, including exhibits, should accompany the foreign board of trade’s Form FBOT and must be filed electronically with the Secretary of the Commission at FBOTapplications@cftc.gov. Clearing organizations may prepare their own Supplement S-1, but must follow the format prescribed herein.

¹ 7 U.S.C. 1 et seq.

² 17 CFR chapter I.

4. The name of any individual listed in Supplement S-1 shall be provided in full (Last Name, First Name and Middle Name or Initial).
5. Supplement S-1 must be signed by the Chief Executive Officer (or the functional equivalent) of the clearing organization who must possess the authority to bind the clearing organization.
6. If this Supplement S-1 is being filed in connection with a new application for registration, all applicable items must be answered in full. If any item is not applicable, indicate by marking "none" or "N/A."
7. Submission of a complete Form FBOT and Supplement S-1 (including all information, documentation and exhibits requested therein) 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 and Supplement S-1 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 and Supplement S-1 is required from the applicant and/or its clearing organization(s) in order to process the application for registration or to determine whether registration is appropriate.
8. 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 Supplement S-1), 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 Supplement S-1 will be included routinely in the public files of the Commission and will be available for inspection by any interested person.
9. A Supplement S-1 that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing.⁴ Acceptance of either a Form FBOT or Supplement S-1 by the Commission, however, shall not constitute a finding that the either have been filed as required or that the information submitted is verified

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, Supplement S-1, or exhibits 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 and Supplement S-1 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.

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 Supplement S-1 is found to be untrue or materially misleading or if the foreign board of trade and/or clearing organization failed to include information in this Supplement S-1 that would have been material to the Commission's determination as to whether to issue an Order of Registration.

10. All documents submitted as part of this Supplement S-1 (or exhibits thereto) must be written in English or accompanied by a certified English translation.

UPDATING INFORMATION

Pursuant to the Commission's regulations, if any information or documentation contained in this Supplement S-1 (including exhibits) 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 clearing organization also may submit an amendment to this Supplement S-1 to correct information that has become inaccurate subsequent to the issuance of an Order of Registration.

COMMODITY FUTURES TRADING COMMISSION
SUPPLEMENT S-1 to FORM FBOT
CLEARING ORGANIZATION SUPPLEMENT TO
FOREIGN BOARD OF TRADE APPLICATION FOR REGISTRATION

New Zealand Clearing and Depository Corporation Limited
Name of clearing organization as specified in organizational documents

Address of principal executive office

Level 2, NZX Centre, 11 Cable Street, PO Box 2959, Wellington, New Zealand

Name of the foreign board of trade on associated Form FBOT

☐ If this Supplement S-1 is accompanying a new application for registration, please complete in full and check here.

☒ If this Supplement S-1 is an amendment to a pending application for registration, or to a final application that resulted in the issuance of an Order of Registration, please list 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 Supplement S-1, the application is completed in full.

REGISTERED DERIVATIVES CLEARING ORGANIZATIONS

If the clearing organization is registered with the Commission in good standing as a derivatives clearing organization (DCO), please indicate by checking here:

☐ CFTC-registered DCO.

If the clearing organization is registered with the Commission in good standing as a DCO, the clearing organization need not complete the remainder of the Supplement S-1.

GENERAL INFORMATION

1. Name under which the business of the clearing organization will be conducted, if different than name specified above:

N/A

2. List of principal office(s) where clearing organization 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.nzclearingcorp.com

3. Contact Information.

3a. Primary Contact for Supplement S-1 (i.e., the person authorized to receive Commission correspondence in connection with this Supplement S-1 and to whom questions regarding the submission should be directed):

Name:

Smith, Simon

Title:

Head of Clearing House

Email Address:

simon.smith@nzx.com

Mailing Address:

PO Box 2959, Wellington

New Zealand

Phone Number:

+64 4 496 2859

Fax Number:

+64 4 496 2893

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

Name:

Title:

Email Address:

Mailing Address:

Phone Number:

Fax Number:

BUSINESS ORGANIZATION

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

New Zealand Clearing and Depository Corporation Limited is a limited liability company, incorporated on 7 November 2008 under the Companies Act 1993 (New Zealand).

SIGNATURES

By signing and submitting this Supplement S-1, the clearing organization agrees to and consents that the notice of any proceeding before the Commission in connection with the associated 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.

New Zealand Clearing and Depository Corporation Limited has duly caused this Supplement S-1 to be signed on its behalf by the undersigned, hereunto duly authorized, this 1st day of February, 2012.

New Zealand Clearing and Depository Corporation Limited and the undersigned represent that all information and representations contained in this Supplement S-1 (and exhibits) are true, current, and complete. It is understood that all information, documentation, and exhibits are considered integral parts of this Supplement S-1. The submission of any amendment to a Supplement S-1 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 Clearing Organization



Smith, Simon, Head of Clearing House

Title

New Zealand Clearing and Depository Corporation Limited

Name of Clearing Organization

INSTRUCTIONS FOR EXHIBITS TO SUPPLEMENT S-1

1. The following exhibits must be filed with the Commission by the clearing organization(s) that will be clearing trades executed on the trading system of a foreign board of trade applying for registration with the Commission pursuant to CEA section 4(b) and part 48 of Commission's regulations. The information and documentation requested relates to the activities of the clearing organization.
2. The exhibits should be filed in accordance with the General Instructions to this Supplement S-1 and labeled as specified herein. If any exhibit is not applicable, please specify the exhibit letter and number and indicate by marking "none" or "N/A." If any exhibit may be satisfied by documentation or information submitted in a different exhibit, the documentation or information need not be submitted more than once – please use internal cross-references where appropriate.

GENERAL REQUIREMENTS

A foreign board of trade applying for registration must submit sufficient information and documentation to successfully demonstrate to Commission staff that the foreign board of trade and its clearing organization satisfy all of the requirements of Commission regulation 48.7. With respect to its review of the foreign board of trade's clearing organization, the Commission anticipates that such information and documentation would necessarily include, but not be limited to, the following:

EXHIBIT A – GENERAL INFORMATION AND DOCUMENTATION

Attach, as **Exhibit A-1**, a description of the following for the clearing organization:

Location, history, size, ownership and corporate structure, governance and committee structure, and current or anticipated presence of staff in the United States.

1. New Zealand Clearing and Depository Corporation Limited ("**NZCDC**") is a wholly owned subsidiary of NZX Limited ("**NZX**"). NZCDC in turn owns New Zealand Clearing Limited ("**CHO**") and New Zealand Depository Limited ("**CDO**"). All trades on NZX's markets are cleared and settled by CHO which operates as a clearing house under a central counterparty model (the "**Clearing House**"). CDO is the operator of a central securities depository which forms part of the clearing house system and provides for centralised recording and transfer of beneficial interests in securities and maintains accounts against which derivatives positions are recorded (the "**Depository**"). A nominee company, New Zealand Depository Nominee Limited ("**Nominee**"), acts solely as a bare trustee and holds legal title to securities and cash held in the depository.
2. Each of NZCDC, NZX, CHO, CDO and Nominee is a limited liability company incorporated (or registered in the case of NZX) under the Companies Act 1993.
3. As at 31 December 2010, the audited financial statements of the NZCDC Group showed a total equity of \$12,617,000.
4. In 2007 NZX commenced a project to redefine New Zealand's clearing and settlement infrastructure to ensure that the New Zealand market was served by a clearing and settlement model that reflected international best practice, reduced systemic risk and enabled a broader set of products to be offered in New Zealand.
5. This project culminated in the creation of the NZCDC Group in mid 2010 (being NZCDC, CDO, CHO and Nominee) and the subsequent declaration of the NZCDC settlement system as a designated settlement system followed by the operational launch of the NZCDC central counter party-clearing house and depository in the third quarter of 2010.
6. The NZCDC Board governs the overall operations of the Clearing House and the Depository. A single governing board is important to ensure that risk and operations are viewed and managed across the system as a whole, as well as within each business. The boards of the operating subsidiaries of CHO, CDO and Nominee operate when required to provide legal effect to action taken, or decisions are required, in respect of the operating subsidiaries.
7. The NZCDC Board currently consists of three members with a constitutional limit of six. Pursuant to documented policies, NZCDC Board members must possess appropriate knowledge, specifically banking and finance, markets, legal, compliance and regulatory and risk management.
8. The NZCDC Group does not have a separate Audit and Financial Risk Committee, as this role is undertaken by the NZX Audit and Financial Risk Committee which assists the NZCDC Board with financial reporting and corporate financial matters.
9. The NZX 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 NZCDC Board is invited to, and the NZCDC Chair as the designated representative attends, all NZX Audit and Financial Risk Committee meetings where NZCDC financial reporting and corporate financial matters are discussed.

10. The NZCDC Board has a Credit Committee to assist the Board in managing financial risk. Among other things, the Credit Committee has responsibility for reviewing and approving amendments to margin rates, and reviewing and making recommendations to the Board for the amendment of credit related policies and procedures, including margin and collateral management procedures. The Credit Committee meets on an ad hoc basis to consider specific risk related items as they arise. The NZCDC Chair is the designated representative on this committee. All NZCDC Board members can attend the Credit Committee meetings.
11. The NZCDC Board will also form other ad hoc committees to address specific issues as and when required.
12. REDACTED
13. United States domiciled NZX participants will have access to CHO's website at <http://www.nzclearingcorp.com>. The website includes general information relating to CHO, its organization and business interests as well as links to the rules and procedures and provides the public with access to relevant publications.
14. REDACTED

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

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

15. Please see Annexures⁵ 1 and 2 respectively for copies of the certificate of incorporation and constitution of NZCDC.
16. Please see Annexures 3 and 4 respectively for copies of the certificate of incorporation and constitution of CHO.
17. Please see Annexures 5 and 6 respectively for copies of the certificate of incorporation and constitution of CDO.
18. Please see Annexures 7 and 8 respectively for copies of the certificate of incorporation and constitution of Nominee.

⁵ A list of the Annexures to this Supplement S-1 is provided at the end of this Supplement.

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

(1) Membership and participation agreements.

19. Please see Annexure 9 for copy of the Clearing Participant Application Form.
20. The application process for Clearing Participants (as defined in Exhibit B) consists of completing the appropriate application forms. An application constitutes an offer by the applicant to be bound by the C&S Rules and the C&S Procedures (as defined in Exhibit A-5), any condition imposed from time to time by CHO, any decisions, directions or requirements of CHO or the NZ Markets Disciplinary Tribunal under the C&S Rules or the C&S Procedures, every undertaking and agreement between the applicant and CHO and any agreement, document, instrument, or obligation created in accordance with the C&S Rules and the C&S Procedures.
21. If CHO accepts the applicant's application and allows the applicant to be a participant in the Clearing House, the acceptance by CHO shall create a binding contract between CHO and the applicant on such terms. There is no further participant agreement.
22. In relation to Depository Participants (as defined in Exhibit B), the application process consists of completing the appropriate application forms. An application constitutes an offer by the applicant to be bound by the Depository Operating Rules, the Depository Operating Procedures (as defined in Exhibit A-5), any condition imposed from time to time by CDO, any decisions, directions or requirements of CDO or the NZ Markets Disciplinary Tribunal under the Depository Operating Rules or the Depository Operating Procedures, every undertaking and agreement between the applicant and CDO and any agreement, document, instrument, or obligation created in accordance with the Depository Operating Rules and the Depository Operating Procedures.

(2) Clearing agreements.

23. Please see Exhibit B in relation to Clearing & Settlement Agreements where a Clearing Participant is providing clearing and settlement services to another person.
24. Other than described above in this Exhibit A-3, there are no further clearing agreements.

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

The national statutes, laws and regulations governing the activities of the clearing organization and its members.

25. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Financial Markets Authority Act 2011 (as at 1 October 2011).
26. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Companies Act 1993 (as at 1 May 2011).
27. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Reserve Bank of New Zealand Act 1989 (as at 1 May 2011).
28. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010.
29. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Securities Markets Act 1988 (as at 1 May 2011).
30. Please see Annexure 10 for the Securities Markets Act (NZCDC Settlement System) Exemption Notice 2010.
31. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Futures Industry (Client Funds) Regulations 1990 (as at 1 May 2011).
32. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Futures Contracts (NZCDC Settlement System and NZX Derivatives Market) Exemption Notice 2010.

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

The current rules, regulations, guidelines and bylaws of the clearing organization.

33. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the Clearing and Settlement Rules (dated 3 August 2010) (the "**C&S Rules**").
34. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the Clearing and Settlement Procedures (dated 18 February 2011) (the "**C&S Procedures**").
35. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the Depository Operating Rules (dated 3 August 2010).
36. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the Depository Operating Procedures (dated 29 September 2010).
37. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the NZ Markets Disciplinary Tribunal Rules (dated 16 August 2010).
38. Please see Exhibit A-6 of for the Form FBOT of NZX Limited for the NZ Markets Disciplinary Tribunal Procedures (dated 6 August 2010).

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

Evidence of the authorization, licensure or registration of the clearing organization pursuant to the regulatory regime in its home country jurisdiction(s) 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.

39. Please see Exhibit A-5 of the Form FBOT of NZX Limited for the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010 (the "**Designation Order**").
40. REDACTED

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

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

41. No disciplinary or enforcement actions or proceedings have been brought against Nominee, CHO, CDO or NZCDC nor the senior officers thereof, in the last five years.

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

An undertaking by the chief executive officer(s) (or functional equivalent[s]) of the clearing organization to notify Commission staff promptly if any of the representations made in connection with this supplement cease to be true or correct, or become incomplete or misleading.

42. Please see Annexure 12 for undertaking by Simon Smith, Head of Clearing House.

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 clearing organization and the access and clearing privileges provided to each by the clearing organization.
43. CHO may allow a company that it considers satisfies the requirements set out in the C&S Rules to be a clearing participant in the Clearing House and to access the Clearing House System ("**Clearing Participant**"). CHO provides or makes available to Clearing Participants, for a fee, the various services and facilities in the Clearing House.
44. CDO may allow a company that it considers satisfies the requirements set out in the Depository Operating Rules to be a depository participant ("**Depository Participant**") in the Depository (being the depository operated by CDO in accordance with the Depository Operating Rules, the "**Depository**") and to access the Depository System. CDO provides or makes available to Depository Participants, for a fee, the various services and facilities in the Depository.
45. We have focused our description in this Exhibit on Clearing Participants.
46. Applicants are assessed by CHO on different criteria depending on which of the three classes of Clearing Participant they are applying to be. Those classes are: Individual Clearing Participants (which clear and settle their own trades), General Clearing Participants (which clear and settle trades for multiple Trading Participants (including itself)) and Default Clearing Participants (which can clear and settle for certain transactions but not on their own account). A further category exists, being certain Depository Participants who CHO determines satisfies the rules who will be permitted to clear and settle as Lending Clearing Participants. All Clearing Participants and Lending Clearing Participants act as principal and not agent in respect of activities with CHO.
47. The table below summarises the participant categories and the access and clearing privileges granted.

Summary of Clearing Participant categories

	CLEARING			
	LENDING CLEARING	DEFAULT CLEARING	INDIVIDUAL CLEARING	GENERAL CLEARING
CLEAR AND SETTLE FOR TRADING PARTICIPANT		√		√
CLEAR AND SETTLE ON OWN BEHALF			√	√
CLEAR AND SETTLE LENDING TRANSACTIONS	√	√	√	√
CAPITAL ADEQUACY REQUIREMENT		√	√	√

48. A General Clearing Participant has the ability to:
- (a) clear and settle trades on behalf of trading participants with whom it has a C&S Agreement (as defined below); and
 - (b) clear and settle trades on its own behalf.
49. An Individual Clearing Participant has the ability to clear and settle only its transactions through the Clearing House on its own behalf.
50. A Default Clearing Participant has the ability to clear and settle trades on behalf of trading participants with whom it has a C&S Agreement (as defined below) but it is not able to clear and settle transactions on its own behalf.
51. A Lending Clearing Participant is a Depository Participant that has been accredited and approved by CHO for the purpose of clearing and settling lending transactions (which occur in the Depository) on its own behalf through the Clearing House.
- (2) A description of all requirements for each category of membership and participation 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 clearing organization confirms compliance with such requirements.

- (ii) Authorization, Licensure and Registration. A description of any regulatory or self-regulatory authorization, licensure or registration requirements that the clearing organization imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the clearing organization, and a description of the process by which the clearing organization 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 clearing organization evaluates the financial resources/holdings of its members or other participants.
 - (C) The process by which applicants for clearing membership or participation demonstrate compliance with financial requirements including:
 - (1) Working capital and collateral requirements, and
 - (2) Risk management mechanisms.
 - (iv) Fit and Proper Standards. A description of any other ways in which the clearing organization ensures that potential members/other participants meet fit and proper standards.
52. Pursuant to Rule 2.1 of the C&S Rules, CHO may allow a person that CHO considers satisfies the requirements of Rules 2.1.6, 2.2 and 2.5 of the C&S Rules to be a participant in the Clearing House and to access the Clearing House System, as any of a General Clearing Participant, an Individual Clearing Participant, or a Default Clearing Participant. CHO may allow a Depository Participant that CHO considers satisfies the requirements of Rules 2.1.6, 2.2.2, 2.3 and 2.5 of the C&S Rules to be a participant in the Clearing House to clear and settle on the Clearing House Lending Transactions (being a transaction for the delivery and re-delivery of Approved Product in accordance with Section 5 of the Depository Operating Rules).
53. In summary, Clearing Participants must be companies and be Depository Participants. They must hold all necessary licenses and approvals to conduct their business and satisfy CHO that the entity, and all directors or persons in positions of authority or control, are of high reputation and integrity and have the training, skills and knowledge necessary to carry on the business. They must have in place appropriate systems and controls to ensure compliance with the law and the C&S Rules. They also have to demonstrate technical capacity to connect to the Clearing House and comply with the requirements set out in the C&S Procedures. Clearing Participants must meet stringent financial requirements, carry adequate insurance and provide financial statements and records as required by the C&S Procedures. Where the company is an overseas company they have to provide evidence of incorporation and a certificate of good standing from their home jurisdiction.
54. Clearing Participants have to nominate, and CHO has to approve, a "Responsible Person" who must meet certain requirements under the C&S 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 Person is key to monitoring and ensuring the ongoing compliance and standards of the Clearing Participant.
55. Each Clearing Participant who provides clearing and settlement services to another person must enter into a Clearing & Settlement Agreement ("**C&S Agreement**") with that person. C&S Agreements must provide for certain matters prescribed by the C&S Rules and the C&S Procedures. Broadly, these provisions provide certainty as to key issues critical to the tri-partite relationship between a Clearing Participant, the trading participant to whom the Clearing Participant provides

clearing and settlement services and CHO. CHO has the ability to give reasonable directions regarding the making of amendments to a C&S Agreement.

56. In relation to Clearing Participants incorporated outside New Zealand, CHO may, as part of the application requirements, require an overseas Clearing Participant to give additional undertakings or assurances (governed by New Zealand law) as to matters such as information access, recognition of law and regulation and ranking of creditors.
57. In evaluating applications, at all times, CHO is to have regard to the integrity, stability, reliability and efficiency of the Clearing House System.

Professional Qualifications

58. A Clearing Participant applicant must satisfy CHO that all directors or other persons having control of the applicant have the training, skills, knowledge, expertise and experience to enable the applicant to carry on the business it proposes to carry on.

Authorization, Licensure and Registration

59. As referred to above in Exhibit A-3, an application constitutes an offer by the applicant to be bound by the C&S Rules and the C&S Procedures, any condition imposed from time to time by CHO, any decisions, directions or requirements of CHO or the NZ Markets Disciplinary Tribunal under the C&S Rules or the C&S Procedures, every undertaking and agreement between the applicant and CHO and any agreement, document, instrument, or obligation created in accordance with the C&S Rules and the C&S Procedures.
60. The Futures Industry (Client Funds) Regulations 1990 as referred to in Exhibit A-4 require the identification and separate treatment of customer and proprietary assets where certain definitions apply. Please see Exhibit F of the Form FBOT of NZX Limited for further details in relation to this legislation.

Financial Integrity

61. Unless CHO is satisfied that the Clearing Participant is subject to, and is complying with, an equivalent level of prudential supervision by an Alternative Regulator (as defined in the C&S Rules), a Clearing Participant 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.
62. A Clearing Participant's Net Tangible Current Assets are to be calculated in the manner determined by the Appendix to the C&S Rules.
63. The Minimum Net Tangible Current Asset levels are:
 - (a) \$1,000,000 for an Individual Clearing Participant;
 - (b) \$5,000,000 for a General Clearing Participant; and
 - (c) \$5,000,000 for a Default Clearing Participant.
64. A Clearing Participant is required to calculate 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 C&S Rules. A Clearing Participant must provide to CHO a monthly report of its daily Capital Adequacy Calculations and if a minimum threshold of 120% of its Prescribed Minimum Capital Adequacy level is breached, the reporting requirement is daily. CHO may, by notice to a Clearing Participant, require reports on a more frequent basis when CHO considers it necessary or desirable.
65. REDACTED

66. REDACTED

67. In addition to monthly Capital Adequacy reporting, Clearing Participants are also required (pursuant to sections 2.17 to 2.18 of the C&S Procedures) to provide half year and annual reports. These reports include the audited financial statements and group structure reports (annual) and certain certifications and reconciliations.

Fit and Proper Standards

68. An applicant to be a Clearing Participant must satisfy CHO that the entity, and all directors or persons in positions of authority or control, are of high reputation and integrity and have the training, skills and knowledge necessary to carry on the business.

69. 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 clearing organization.

70. Please see Exhibit A-1 for background information on the corporate structure, governance and committee structure.

71. The NZCDC Board has a mix of skills, including: quantitative, practical markets knowledge; financial skills; legal, compliance and process skills and experience; technology knowledge; regulation, risk management and regulator management; knowledge of the rules, procedures, and legislation to ensure that they are being appropriately administered by Clearing House management.

72. Other than the Board committees referred to in Exhibit A-1, there are no further significant committees of the NZCDC Group.

(2) A description of how the clearing organization ensures that potential governing board and committee members meet these standards.

73. NZCDC is a wholly owned subsidiary of NZX and the NZCDC Board is appointed by NZX. Board representatives have a banking and/or finance background or other relevant skill set. Any future appointments would be based on a targeted selection by NZX.

(3) A description of the clearing organization's provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the clearing organization.

74. As each member of the NZCDC Group is registered as a limited liability company under the Companies Act 1993, each director is required to disclose any interest he or she may have in a transaction or proposed transaction with the relevant company. If a company 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.

75. In addition, the NZCDC Group has policies in place; the purpose of which are to identify possible conflicts and to set out the processes in place at a management and board level to manage these.

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

76. As each member of the NZCDC Group is registered as a limited liability company under the Companies Act 1993, each 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 the company, as required by law, and when particulars of the disclosure are entered into the interests register and the director is authorised by the relevant board and the disclosure or use will not be likely to prejudice the company.

EXHIBIT D – SETTLEMENT AND CLEARING

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

A description of the clearing and settlement systems, including, but not limited to, the manner in which such systems interface with the foreign board of trade's trading system and its members and other participants.

- 77. REDACTED
- 78. Please see Annexure 14 for a copy of the TCS BaNCS Overview document prepared by NZCDC.

⁶ This document is a business based interpretation of the system; should the Commission have any questions or require further details, particularly in relation to the technical specifications of the clearing and settlement system, NZX will assist as far as possible.

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

A certification, signed by the chief executive officer (or functional equivalent) of the clearing organization, that the clearing system observes (1) the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or (2) successor standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions (RCCPs).

79. Please see Annexure 15 for a certification by Simon Smith, Head of Clearing House, in relation to the RCCPs.

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

A detailed description of the manner in which the clearing organization observes each of the RCCPs or successor standards and documentation supporting the representations made, including any relevant rules or written policies or procedures of the clearing organization. Each RCCP should be addressed separately within the exhibit.

80. REDACTED

EXHIBIT E – THE REGULATORY REGIME GOVERNING THE CLEARING ORGANIZATION IN ITS HOME COUNTRY OR COUNTRIES

With respect to each relevant regulatory regime or authority governing the clearing organization, attach, as **Exhibit E**, the following:

(1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.

- 81. RBNZ oversees the New Zealand payment system for the purpose of promoting the maintenance of a sound and efficient financial system and is a joint regulator of designated settlement systems with the FMA. The roles and policies of RBNZ and the FMA are explained in the document The Designation and Oversight of Designated Settlement Systems attached as Annexure 17.
- 82. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the FMA.
- 83. A copy of the organization chart (as published on www.rbnz.govt.nz) is attached as Annexure 18. As at 30 June 2011, RBNZ had 250 (FTE) staff with an average of 8.0 years of service.

(2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.

- 84. Please refer to Exhibit A-4 which refers to a copy of the Reserve Bank of New Zealand Act 1989. Part 5C of the Act makes RBNZ and the FMA joint regulators of designated settlement systems.

(3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:⁷

(i) The authorization, licensure or registration of the clearing organization.

- 85. The settlement system operated by CHO and CDO is designated (Exhibit A-6 refers to the Designation Order) as a settlement system under part 5C of the Reserve Bank of New Zealand Act 1989 (see Exhibit A-4). Designation under Part 5C is an opt-in regime, with settlement systems needing to apply for designation. This legislation provides for a regulatory framework for securities settlement systems and caters for oversight from joint regulators – RBNZ and the FMA.
- 86. Designation of a settlement system gives statutory backing to the settlement system's rules, which helps to support finality of settlement and the effectiveness of netting arrangements. Designation also ensures that certain aspects of the rules of a designated settlement system are valid and enforceable despite any enactment or rule of law to the contrary. A designated settlement system also has protection against claims that might otherwise be made by the liquidator of a failed participant.

(ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.

⁷ To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A-4, they need not be duplicated. They may be cross-referenced.

87. There are no prescribed financial requirements, rather under part 5C of the Reserve Bank of New Zealand Act 1989 (see Exhibit A-4), each of RBNZ and the FMA, in considering an application, may have regard to any or all of specified matters, including “the financial resources of the settlement system”. RBNZ and FMA have stated that they shall have a conservative approach to determining such a system’s capacity to withstand extreme but plausible market conditions.
88. Pursuant to the Designation Order, the designation is subject to conditions specified therein, including notification requirements in relation to a material non-compliance with the financial resources policy and prior to changes to the financial resources policy. Further, NZCDC is required to report on the financial statements and financial resources.

(iii) The regulatory regime/authority’s program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.
89. The roles and policies of RBNZ and the FMA are explained in the document The Designation and Oversight of Designated Settlement Systems attached as Annexure 17.
90. REDACTED

(iv) The extent to which the current RCCPs are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.
91. Pursuant to the Designation Order, NZCDC is required to publish a self-assessment carried out against the required standards which are defined to be the Recommendations for Securities Settlement Systems and the Recommendations for Central Counterparties published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

(v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.
92. Under part 5C of the Reserve Bank of New Zealand Act 1989 (see Exhibit A-4), each of RBNZ and the FMA, in considering an application, may have regard to any or all of specified matters, including “the rules of the settlement system”.
93. For the purposes of Part 5C, the rules of a designated settlement system are defined to be the rules contained in documents specified in the Designation Order, and include any amendments to those rules that have been notified to and not disallowed by RBNZ and the FMA or which have been made pursuant to a variation of the designation.
94. The specified operator of a designated settlement system must, as soon as practicable, notify either of RBNZ or the FMA of any amendment that is proposed to be made to the rules of the designated settlement system. RBNZ and the FMA may then disallow the proposed rule change within 20 working days.

(vi) 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, sanction, and enforce rules applicable to the clearing organization.

95. RBNZ and the FMA may, by notice in writing, require the following persons to supply any information relating to the designated settlement system:
- The specified operator of the designated settlement system.
 - A participant in the designated settlement system.
 - The contact person of the designated settlement system.
96. RBNZ and the FMA may exercise the power to request information only if they consider the information is reasonably required to enable them to perform their functions and duties, or exercise their powers, under Part 5C. For example, RBNZ and the FMA may need further information to properly understand how market conditions are impacting on a designated system's risk controls, to consider amendments to rules, in relation to applications for variation or revocation of designation, or to properly consider a review of a designation.
97. RBNZ and the FMA can also specify the manner in which the information must be verified.
98. Failure to supply information formally requested pursuant to RBNZ and the FMA's statutory power, without lawful justification or excuse, is an offence.

(vii) The financial protection afforded customer funds.

99. There is no legislative protection afforded customer funds. CHO does not have a guarantee fund as NZX determined, based upon analysis of projected trading volumes, that the level of risk capital CHO will hold will be more than sufficient for the scenarios considered under the risk capital modelling.
100. The Futures Industry (Client Funds) Regulations 1990 as referred to in Exhibit A-4 require the identification and separate treatment of customer and proprietary assets where a Clearing Participant falls within the definition of dealing in futures under the Securities Markets Act (referred to in Exhibit A-4).
101. In addition to margin requirements and risk capital provided by way of paid up capital, NZCDC has access to other facilities including under a Memorandum of Understanding between NZX and RBNZ (see Annexure 19), where NZCDC is eligible for backup liquidity support from the RBNZ, subject to NZCDC maintaining its designation status and meeting the eligibility criteria for RBNZ counterparties. Please see Exhibit F-2 in relation to compensation and liability under the Rules.

**EXHIBIT F – THE RULES OF THE CLEARING ORGANIZATION AND
ENFORCEMENT THEREOF**

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

A description of the clearing organization's regulatory or compliance department, including its size, experience level, competencies, duties and responsibilities of staff.

- 102. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the regulatory/compliance department.
- 103. REDACTED

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

A description of the clearing organization's rules and how they are enforced, with reference to any rules provided as part of Exhibit A-5 that require the clearing organization to comply with one or more of the RCCPs.

References to "Rules" and "Procedures" in this Exhibit are to the C&S Rules and the C&S Procedures respectively

104. Section 1 of the Rules is an introductory section, which provides for the purposes of the Clearing House, the status of the Rules, the process for amendment of the Rules, defined terms and rules of interpretation.
105. Rule 1.1 provides that the purposes of the Clearing House include the provision of clearing and settlement services in relation to transactions, removing direct transaction counterparty risk for those transactions.
106. Rule 1.2 provides for the status of the Rules. The Rules, including any Procedures made in accordance with the Rules, are a binding contract between CHO and each Clearing Participant. The Rules provide the basis on which settlement instructions are given to Clearing Participants and to CHO, the basis upon which settlement instructions of Clearing Participants are determined and calculated, the basis on which settlements between Clearing Participants and CHO are effected, and any actions to be taken in relation to a default or prospective default.
107. Rules 1.3 and 1.5 provide for a process for amendment of the Rules, and the effect of such amendment. Any amendment to the Rules must occur in accordance with the provisions of the Reserve Bank of New Zealand Act 1989 (referred to in Exhibit A-4).
108. Rule 1.4 provides for the adoption by CHO of written procedures. Although the Procedures do not form part of the Rules, if a Rule requires compliance with any part of the Procedures, failure to comply with the Procedure is a breach of the Rule.

Clearing Participants

109. Section 2 of the Rules provides for rules relating to eligibility criteria for access to the Clearing House as a Clearing Participant, application procedures, ongoing prudential supervision of Clearing Participants by CHO and other obligations in relation to the continued status as a Clearing Participant.
110. Rules 2.1, 2.2 and 2.3 together provide for the application procedures, and eligibility criteria for acceptance of a person by CHO to be a Clearing Participant. Only Clearing Participants are permitted to access the Clearing House system.
111. Rules 2.6 and 2.7 provide for certain ongoing obligations in relation to a person's status as a Clearing Participant. In particular, a Clearing Participant must act as principal, and not as agent, in relation to all of its activities with CHO. In addition a Clearing Participant must at all times ensure that its directors, personnel, agents and other persons acting on the Clearing Participant's behalf comply with the Rules and the Procedures, any decisions, directions and requirements of CHO under the Rules or Procedures, and undertakings between the Clearing Participant and CHO. Rule 2.9 requires Clearing Participants to give notice to CHO of certain events relating to the clearing and settlement business of the Clearing Participant.
112. Rule 2.8 provides for additional obligations on any Clearing Participant who locates any part of its business as a Clearing Participant outside of New Zealand. The additional obligations are to provide

greater assurance of CHO's ability to supervise the clearing and settlement business of, and enforce the Rules against, a Clearing Participant whose clearing and settlement business is located outside New Zealand.

- 113. Rule 2.10 requires each Clearing Participant to appoint a settlement bank.
- 114. Rule 2.14 requires each Clearing Participant who provides clearing and settlement services to another person to enter into a Clearing and Settlement Agreement with that person. A Clearing and Settlement Agreement must provide for the matters prescribed by Procedure, and contain certain provisions.
- 115. Rules 2.15, 2.16, 2.17, 2.18 and 2.19 provide for prudential supervision by CHO of a Clearing Participant's capital adequacy. The obligations include daily calculation, in the manner set out in the Rules, of each Clearing Participant's NTCA and its total risk exposure reflecting the settlement obligations of the Clearing Participant and referencing these amounts to the prescribed minimum capital adequacy of the Clearing Participant.
- 116. Rule 2.21 provides for a Clearing Participant or an operator of an NZX market to apply to CHO for approval to segregate transactions to be cleared and settled into two or more settlement accounts. CHO may by notice require a Clearing Participant to segregate transactions.

Clearing

- 117. Section 3 of the Rules provides for obligations in relation to clearing of transactions. The Rules provide for the novation of the original transaction to CHO, the terms of the transactions assumed by CHO, the netting of each Clearing Participant's gross obligations to CHO arising from settlement transactions, the calculation of margin requirements in respect of net open positions of each Clearing Participant and the obligation to provide collateral equal at least to the total margin requirements for the Clearing Participant.
- 118. Rule 3.1 sets out the circumstances in which a transaction is subject to clearing and settlement on the Clearing House. All transactions matched in the trading system of an approved market (which includes the derivatives market) are automatically subject to clearing on the Clearing House. Other transactions in an approved product may be submitted for clearing on the Clearing House in accordance with the Rules. A transaction that is submitted for clearing and settlement on the Clearing House in accordance with the Rules, is an irrevocable instruction by the Clearing Participant to CHO to clear and settle the transaction in accordance with the Rules.
- 119. Rule 3.2 provides for the ability of CHO to prescribe position limits.
- 120. Rule 3.3 provides for the novation of a transaction as part of the clearing process. Novation is effected by cancellation of the original transaction and replacement with two separate and independent settlement transactions comprising a settlement transaction between the buying Clearing Participant and CHO, and a settlement transaction between the selling Clearing Participant and CHO.
- 121. Rule 3.4 provides for the incorporation into each settlement transaction that is novated under the Rules of certain rights and obligations as set out in the Rules.
- 122. Rule 3.5 provides for the rights of a Clearing Participant and CHO in relation to the exercise of an option.
- 123. Rule 3.6 permits a Clearing Participant to apply to CHO for their rights and obligations under a settlement transaction from a derivatives contract to be novated in full to another Clearing Participant.

124. Rule 3.7 permits a Clearing Participant who is a buyer and a Clearing Participant who is a seller, (this may be the same Participant) to one or more settlement transaction from a derivatives contract(s) (which when aggregated are identical apart from price and contract date) to apply to CHO for their rights and obligations to be set-off.
125. Rule 3.8 provides for the calculation of variation margin in relation to futures contracts.
126. Rule 3.9 provides for the continuous netting of the gross obligations and entitlements arising from the settlement transactions to which a Clearing Participant is a party. This is an important element of the clearing and settlement process, and enables the calculation of a Clearing Participant's net open position in respect of each currency and approved product.
127. Rule 3.11 provides for the calculation of a Clearing Participant's margin obligations or entitlement. A Clearing Participant's total margin obligation is calculated on the basis of the Clearing Participant's net open position in respect of all settlement transactions (other than settlement transactions that arise from lending transactions) to which the Clearing Participant is a party. For lending transactions, a Clearing Participant's total margin obligation is calculated on a gross basis in respect of each of a Clearing Participant's delivery and payment obligations under each lending transaction to which the Clearing Participant is a party.
128. Rule 3.12 requires each Clearing Participant to deliver as collateral certain property that is eligible to be delivered as collateral under the Rules. Eligible collateral is money in approved currencies, certain approved securities and other property, and certain assurances provided by third parties. The value of collateral delivered must be at least the aggregate of the margin components for each settlement transaction entered into by the Clearing Participant.

Settlement

129. Section 4 of the Rules provides for rules in relation to the settlement of settlement transactions. It also provides for the consequences of a Clearing Participant's settlement failure and compensation for settlement failure.
130. Under Rule 4.1, settlement will be effected by the transfer of approved products and money within the Depository in accordance with the Depository Rules, in satisfaction of each Clearing Participant's net open position for each approved product, and by the transfer of amounts of money to or from a money settlement account in the Depository. Settlements are valid and final and may not in any circumstances be reversed or avoided when, in the case of money, cash is received in a money settlement account, or in the case of approved products, when approved products are credited to or debited from an account in the Depository.
131. Rule 4.3 provides for steps that may be taken by CHO in the event a Clearing Participant fails to deliver all or any part of the required quantity of approved product required to be delivered on settlement, or fails to pay all or any part of the amount required to be paid at settlement. In relation to failure to deliver product, steps include borrowing product on behalf of the Clearing Participant, buying in approved product, carrying forward the shortfall to a new settlement time, cancellation of the relevant settlement transactions between CHO and the Clearing Participant (and replacement with an obligation to pay compensation), the exercise of default remedies under the Rules, referring the Clearing Participant to the New Zealand Markets Disciplinary Tribunal or charging costs incurred in remedying the short fall to the Clearing Participant.
132. Rule 4.4 provides for the method of calculation of compensation that a Clearing Participant may seek from CHO if CHO fails to deliver the required quantity of an approved product required to be delivered, or fails to pay the amount required to be paid, by CHO at the settlement time. Compensation available from CHO under Rule 4.4 (if any) will not include compensation for indirect or consequential losses, in the case of a product short fall will not in any circumstances exceed a total of 100% of the settlement price for that product shortfall or, in the case of a payment short fall,

will not exceed the amounts of that payment shortfall. CHO will also not be liable to pay compensation in respect of any settlement failure if such failure arises out of causes beyond its reasonable control.

Reporting

133. Section 5 provides for reports and other information that are either delivered to, or made available to, Clearing Participants.
134. Rule 5.2 provides for various reports which are prepared by CHO and made available for each Clearing Participant. These reports relate to matters such as total amounts of approved products required to be delivered for each settlement time on each settlement day, amounts to be paid or received in each currency by the Clearing Participant through its settlement bank, and reports which allow Clearing Participants to review their net open positions with CHO for each settlement time on each settlement day and the official calculation of the margin requirements of the Clearing Participant. In addition, a report will be provided on the details of the collateral delivered in respect of the Clearing Participant.

CHO Powers

135. Section 6 of the Rules provides for various general powers of CHO in relation to the approval of markets and products in respect of which CHO will provide clearing and settlement services on the Clearing House, the appointment of a bank by CHO to serve as CHO's clearing bank, provisions for complaints and investigations undertaken by CHO, CHO's powers to give waivers or rulings, refer matters to the New Zealand Markets Disciplinary Tribunal, set fees and undertake actions in response to a state of emergency.
136. Rule 6.2 provides that CHO may approve a class of commodity or derivatives contract as an approved product from which it will accept transactions for clearing and settlement on the clearing house. CHO may subsequently withdraw its approval.
137. Rule 6.3 provides for the appointment by CHO of a bank as CHO's clearing bank for the purpose of operating a system for the making and receiving of payments in currencies other than New Zealand dollars. To be appointed as a clearing bank, the bank must meet certain requirements set out in the Rules.
138. Rules 6.4, 6.5 and 6.6 provide for Rules in relation to the receipt and consideration by CHO from any person of a complaint about CHO, CHO's operation of the Clearing House, a Clearing Participant or a Clearing Participant's directors, personnel, agents or CHO's clearing and settlement activities. Under Rule 6.5, CHO may exercise various powers of investigation for the purposes of ascertaining whether a Clearing Participant is complying or has complied with the Rules or the rules of any person with whom CHO has a reciprocal regulatory arrangement. These powers of investigation include requiring any Clearing Participant to produce for inspection documents or records, requiring the Clearing Participant (or any of its directors, personnel, agent or other persons within the control of the Clearing Participant) to answer questions, provide explanations and/or give evidence as may be required by CHO, require an appearance before CHO to answer questions, or the appointment of a suitably qualified person to review information available to CHO and report to CHO in relation to the Clearing Participant's compliance with the Rules or the Depository Rules. Rule 6.6 provides that information obtained pursuant to these powers of investigation may be disclosed in various limited circumstances, otherwise CHO must take all reasonable measures to protect any information obtained by CHO pursuant to the powers of investigation from any unauthorised use or disclosure. Clearing Participants may request information obtained by CHO under the powers of investigation not be disclosed to specified persons.

139. Rule 6.7 provides for a general power for CHO to waive all or any part of the Rules and for CHO to make rulings as to the interpretation of the Rules. CHO may make rulings and grant waivers on such terms and conditions as CHO thinks fit.
140. Under Rule 6.8, CHO may submit proceedings against a Clearing Participant to the New Zealand Market Disciplinary Tribunal if, in the opinion of CHO, the Clearing Participant may have breached the Rules, done things detrimental to the wellbeing, proper conduct, stability of an NZX Market or integrity of CHO, the Clearing House or the Depository, or where a person employed by or associated with a Clearing Participant has engaged in conduct which, if committed by that Clearing Participant, would justify the New Zealand Markets Disciplinary Tribunal imposing on that Clearing Participant any of the penalties available to it under the rules of the New Zealand Markets Disciplinary Tribunal. By applying for, and being accepted for participation in, the Clearing House, and agreeing to be bound by the Rules, the Clearing Participant also agrees to be bound by the New Zealand Market Disciplinary Tribunal Rules and to comply with the decisions of the New Zealand Markets Disciplinary Tribunal.
141. Rule 6.9 provides for the imposition from time to time by CHO of fees, levies and other charges as CHO thinks fit. These are published by Procedure and are available on www.nzx.com.
142. Rule 6.11 provides for various actions that may be taken by CHO if CHO determines that a state of emergency exists or is developing. A state of emergency is, generally, an event that threatens the financial stability or integrity of the Clearing House or significantly hinders the operation of the Clearing House. Actions that can be taken by CHO include making state of emergency rules, suspending Clearing House facilities or services, taking any action, or directing a Clearing Participant to take action which CHO considers appropriate, taking action in the name of and at the expense of a clearing participant, and other actions that may be inconsistent with the Rules. Where CHO has taken an action under the emergency powers provisions of Rule 6.11.1, no person bound by the Rules shall be liable for failure to comply with the Rules or Procedures (other than the clearing participants warranties or a state of emergency rule) where compliance has been delayed, interfered with, curtailed or prevented by CHO exercising emergency powers.

Default and Termination

143. Section 7 provides for rules relating to the occurrence of a credit event with respect to a Clearing Participant, including the exercise of default remedies, by-in, close-out, set off, enforcement of security interests and other actions. This section also provides for rules relating to the suspension, resignation and termination of a Clearing Participant's participation in the Clearing House.
144. Rule 7.1 provides for a range of occurrences with respect to a Clearing Participant that will constitute a credit event and Rule 7.3 allows CHO to treat a credit event as a declared default. The declaration by CHO of a declared default allows CHO to exercise various default remedies under Rule 7.4 as CHO deems necessary, expedient or desirable for the protection of CHO, the Clearing House, CDO or the Nominee in respect of such declared default. Such action may include suspending the defaulting Clearing Participant's connection to the Clearing House system and the Depository System, cancelling any or all of the transactions of the defaulting Clearing Participant, carrying forward and recalculating all or any settlement transactions in respect of the defaulting Clearing Participant, refusing to release collateral, applying the defaulting Clearing Participant's collateral, buying in approved products to meet delivery obligations of the defaulting Clearing Participant, and imposing costs and charges for the defaulting Clearing Participant's late delivery and/or payment.
145. Rule 7.9 provides for CHO to enforce its security interest in collateral that has been posted by the defaulting Clearing Participant.
146. Rules 7.11, 7.12, 7.13 and 7.14 provide for the process and consequences of a suspension, resignation or termination of a Clearing Participant.

Miscellaneous

147. Section 8 provides for various miscellaneous matters, including the liability of CHO, an indemnity in favour of CHO, the provision of services by CHO, the giving of notices in accordance with the Rules, and various other general provisions relating to contract management, and interpretation and operation of the Rules.
148. Under Rule 8.1, NZCDC Group's (including specified officers) liability to any person for any breach, act or omission whatsoever is limited to losses resulting from their fraud (excluding indirect and consequential damages, loss of profits, good will, reputation or opportunity) and, in respect of CHO, compensation to Clearing Participants in relation to a settlement failure (Rule 4.4). The aggregate liability (where the fraud is indirectly attributable) for any one event is capped at NZ\$5 million.

Attach, as **Exhibit F-3**, the following, to the extent not included in Exhibit F-2:

A description of the clearing organization'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 clearing participant pursuant to fair and clear standards.

149. Section 6 of the C&S Rules set out the rights and powers of CHO (in addition to and without limitation of further rights and powers of CHO).
150. Rules 6.4 and 6.5 empower CHO to receive complaints and investigate (on its own initiative or in accordance with a request made to it by specified persons) participants (and officers thereof). Rule 6.8 of the C&S Rules entitles CHO to submit proceedings against a participant (or the Responsible Person for a participant) to the NZ Markets Disciplinary Tribunal ("NZMDT") if CHO is of the opinion that (among other points) the participant may have breached the C&S Rules, been guilty of a thing detrimental to the proper conduct of an NZX Market, or integrity of CHO, CDO and the related infrastructure.

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

151. Pursuant to Section 6.8 of the C&S Procedures, a fee schedule is available on www.nzx.com and provides for fees for specific settlement matters. For example, the fee for settlement failure is \$541 plus 6bps per day.
152. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the powers of NZMDT.

(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.

153. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the powers of NZMDT.

(4) Disciplinary committees of the clearing organization that take disciplinary action via formal disciplinary processes.

154. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the powers of NZMDT.

(5) Whether and how the clearing organization articulates its rationale for disciplinary decisions.

155. Disciplinary decisions would be issued by NZMDT. Please see Exhibit F of the Form FBOT of NZX Limited in relation to the powers of NZMDT.

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

156. Rules 11.11 to 11.14 of the NZ Markets Disciplinary Tribunal Rules referred to in Exhibit A-4 set out the penalties for Clearing Participants (and Responsible Persons). There are various sanctions set

out therein including a financial penalty of up to \$500,000. However, the key commercial sanction is the ability to revoke a participant's designation.

157. Please refer to Exhibit G-3 of the Form FBOT of NZX Limited in relation to a discussion on the adequacy of sanctions.

Attach, as **Exhibit F-4**, the following, to the extent not provided in Exhibit F-2:

A demonstration that the clearing organization is authorized by rule or contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce its rules, and to ensure compliance with the conditions of registration.

158. Rule 6.5.1 of the C&S Rules sets out the powers of CHO including requiring a participant to produce documents or records, requiring a person within the control of the participant to appear before CHO and to send a representative of CHO to a participant's offices for the purpose of exercising any powers and discretions of CHO.

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

Attach, as **Exhibit G**, 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.

- 159. The CFTC and the Securities Commission (succeeded by the FMA) entered into a Memorandum of Understanding on Consultation and Mutual Assistance for the Exchange of Information dated 16 September 1996.
- 160. REDACTED
- 161. REDACTED

(2) 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.

- 162. 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.
- 163. RBNZ and the FMA have entered into an Memorandum of Understanding (attached as Annexure 20) which includes provisions for information sharing.

(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 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.

164. The FMA is a signatory to the Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations.

EXHIBIT H – ADDITIONAL INFORMATION AND DOCUMENTATION

Attach, as **EXHIBIT H**, any additional information or documentation necessary to demonstrate that the requirements for registration applicable to the clearing organization or clearing system set forth in Commission regulation 48.7 are satisfied.

N/A

ANNEXURES

Annexure 1 - Certificate of incorporation of NZCDC.

Annexure 2 - Constitution of NZCDC.

Annexure 3 - Certificate of incorporation of CHO.

Annexure 4 - Constitution of CHO.

Annexure 5 - Certificate of incorporation of CDO.

Annexure 6 - Constitution of CDO.

Annexure 7 - Certificate of incorporation of Nominee.

Annexure 8 - Constitution of Nominee.

Annexure 9 - Clearing Participant Application Form.

Annexure 10 - Securities Markets Act (NZCDC Settlement System) Exemption Notice 2010.

Annexure 11 - REDACTED

Annexure 12 - Undertaking by Simon Smith, Head of Clearing House.

Annexure 13 - REDACTED

Annexure 14 - TCS BaNCS Overview document prepared by NZCDC

Annexure 15 - Certification by Simon Smith, Head of Clearing House, in relation to the RCCPs.

Annexure 16 - REDACTED

Annexure 17 - The Designation and Oversight of Designated Settlement Systems.

Annexure 18 - RBNZ Organisation Chart.

Annexure 19 - Memorandum of Understanding between NZX and RBNZ.

Annexure 20 - Memorandum of Understanding between FMA and RBNZ