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10 April 2019

Michael Coco
Chief, Office of International Corporate Finance
Securities and Exchange Commission
Room 3628 100 F Street NE
Washington DC 20549

Dear Mr. Coco,

Application for Designation of NZX Limited as a Designated Offshore Securities Market

1. I am writing on behalf of NZX Limited (**NZX**) to submit an application to the United States Securities and Exchange Commission for the designation of NZX as a Designated Offshore Securities Market (**DOSM**) within the meaning of Rule 902(b) of Regulation S, under the Securities Act 1933, as amended. Please find **enclosed** NZX's application for DOSM status, on the basis outlined below.
2. NZX is a New Zealand registered company (1266120) under the New Zealand Companies Act 1993 and a licensed market operator under the New Zealand Financial Markets Conduct Act 2013.
3. NZX is making this application to be granted DOSM status including for the following financial product markets it operates: the NZX Main Board; the NZX Debt Market (**NZDX**); the NZX Alternative Market (**NZAX**); and the NXT Market (together, the **NZX Securities Markets**).
4. After 1 July 2019, the NZAX and NXT Markets will be consolidated into the NZX Main Board. Therefore, from 1 July 2019, the NZAX and NXT Markets will no longer exist and will no longer require DOSM status.
5. NZX is seeking this designation in order to exist NZX Participants who are eligible for the safe harbour provided by Regulation 904 of Regulation S, in satisfying the requirements specified in that rule when reselling financial products, in on or through the facilities of any of the NZX Securities Markets.
6. If you have any questions or require further information to assist the Commission in coming to a determination on the matters contained in our original application, please do not hesitate to contact me.

Yours sincerely,

/s/ Kristin Brandon

Kristin Brandon
Head of Policy and Regulatory Affairs, NZX Limited



NZX Limited

Application to the SEC for recognition as a Designated
Offshore Securities Market

April 2019



CONTENTS

1.	Introduction	5
1.1	Application.....	5
1.2	Description of the NZX Securities Markets	5
1.2.1	NZX Main Board.....	6
1.2.2	NZX Debt Market (NZDX).....	6
1.2.3	NZAX.....	6
1.2.4	NXT Market	6
2.	Overview of NZX	8
2.1	History and formation of NZX	8
2.2	NZX as a Licensed Market Operator	8
2.3	NZX's other businesses.....	9
2.4	Governance of NZX.....	10
2.4.1	Role of NZX's Board.....	10
2.4.2	Composition of NZX's Board	10
2.4.3	Board sub-committees.....	10
2.5	Management of NZX	12
3.	Oversight and accreditation of Participants	13
3.1	NZX Participant Accreditation and Ongoing Requirements.....	13
3.2	NZX Advisers Accreditation and Ongoing Requirements.....	13
3.3	FMA's oversight of NZX Market Participants and NZX Advisers	14
3.3.1	Financial Service Providers (Registration and Dispute Resolution) Act 2008.....	14
3.3.2	Financial Advisers Act 2008	15
3.3.3	DIMS Licence requirements	18
3.4	Legislative reform – Financial Services Legislation Amendment Bill	18
4.	Oversight of the NZX Securities Markets	20



4.1	NZX Regulation	20
4.1.1	NZX Issuer Compliance.....	20
4.1.2	NZX Participant Compliance.....	22
4.1.3	NZX Surveillance.....	22
4.2	NZX Policy and Client and Data Services	23
4.2.1	NZX Policy	23
4.2.2	NZX Client and Data Services	23
4.3	FMA's oversight of NZX as a licensed market operator	24
4.3.1	FMA role and function	24
4.3.2	FMA oversight of NZX	24
4.3.3	FMA accreditation of NZX rules.....	26
4.4	FMA oversight of New Zealand's capital markets	28
4.4.1	Legislative requirements for dealing with financial products on the NZX Securities Markets	28
4.4.2	Liability and Enforcement under the FMCA	31
5.	Application of the Listing Rules to Issuers.....	33
5.1	Governance of the NZX Main Board.....	33
5.1.1	Listing requirements	33
5.1.2	Enforcement of NZX Main Board Listing Rules.....	37
5.2	NZX Main Board Listing Rule Amendments 2019.....	38
5.2.1	Background.....	38
5.2.2	Key changes to the NZX Main Board Listing Rules.....	39
5.2.3	Consolidation of equity markets.....	40
6.	NZX Conflicts Management	41
6.1	Nature of potential conflicts	41
6.2	Conflicts Management Policy	41
6.3	Conflict Management mechanisms.....	42
6.3.1	Governance arrangements.....	42



7.	Regulatory Co-operation and Trade Reporting	44
7.1	NZX information sharing with the FMA	44
7.2	Reporting by NZX Participants	44
7.3	NZX's relationships with international bodies.....	46
7.3.1	World Federation of Exchanges and MoUs	46
7.3.2	Intermarket Surveillance Group (ISG).....	46
7.3.3	MABRA certification.....	46
7.4	FMA's relationships with international bodies	46
7.4.1	IOSCO.....	46
7.4.2	ASIC.....	47
8.	Trading System	48
8.1	NASDAQ X-stream.....	48
8.2	Access to historical announcements.....	48
9.	Clearing House	49
9.1	Role of the Clearing House and Depository	49
9.2	Operation of the Clearing House	49
9.3	Governance of the Clearing House.....	49
9.4	Regulation of the Clearing House	51
9.4.1	Description of the Joint Regulators	51
9.4.2	NZX Group obligations as operators of the Clearing House.....	51
9.4.3	Powers of the Joint Regulators	51
9.5	Clearing and Depository Rules and Procedures	52
	Glossary	53



1. Introduction

1.1 Application

NZX Limited submits this application to the Securities Exchange Commission (**Commission**) for designation of NZX as a Designated Offshore Securities Market (**DOSM**), within the meaning of Rule 902(b) of Regulation S, under the Securities Act 1933, as amended.

NZX Limited is a New Zealand registered company and is applying to be designated by the Commission as a DOSM including in respect of the NZX Securities Markets operated by NZX¹, which are described further in section 1.2, below.

This application describes NZX's role as a New Zealand licensed market operator of the NZX Securities Markets, and the governance arrangements in place to support those functions. We also describe NZX's activities which relate to the operation of those markets (including NZX's role as an operator of a central party clearing house which is a New Zealand designated settlement system).

Further detail regarding NZX's general activities, including its operation of the NZX Derivatives Market are available on its public website. We are also happy to provide further information on these other activities and functions should the Commission so require.

1.2 Description of the NZX Securities Markets

The **NZX Securities Markets** comprise the following financial product markets that are operated by NZX:

- NZX Main Board: the NZX Main Board is NZX's original equities market;
- NZX Debt Market: the NZX Debt Market is NZX's debt security market;
- NZX Alternative Market: the NZX Alternative Market is NZX's original alternative market for small to medium sized enterprises; and
- NXT Market: the NXT Market, which was launched in 2015 as an alternative market to the NZAX, for small to medium sized businesses.

¹ As discussed in section 5.2.3 of this application, NZX will consolidate all of its current equity boards (the NZX Alternative Market, NXT Market and NZX Main Board) into one equity board (the NZX Main Board) on 1 July 2019¹, at which time NZX's designation as a DOSM will cease to apply to the NZAX and NXT Market (as those markets will cease to exist).



1.2.1 NZX Main Board

The NZX Main Board is NZX's original equities market. Financial products that can be quoted on the NZX Main Board include: preference shares, warrants, options, convertible notes and managed funds.

Issuers listed on the NZX Main Board are regulated under provisions of the NZX Listing Rules relating to equity securities or fund securities (as appropriate)², and their quoted financial products are displayed on nzx.com as being part of the NZX Main Board.

The NZX Main Board has 120 listed issuers of equity securities, representing an aggregate market capitalisation of approximately NZD 141 billion.

The NZX Main Board has 37 listed issuers of fund securities, representing an aggregate market capitalisation of approximately NZD 4 billion. None of the managed funds quoted on the NZX Main Board are investment companies (or managed by investment companies) that are registered under the Investment Company Act of 1940.

1.2.2 NZX Debt Market

The NZX Debt Market (**NZDX**) is NZX's original debt market. Financial products that can be quoted on the NZDX include: vanilla debt, structured debt, hybrid/convertible debt and green bonds.

Issuers listed on the NZDX are regulated under the provisions of the NZX Listing Rules relating to debt securities, and their quoted financial products are displayed on nzx.com as being part of the NZDX.

The NZDX has 50 listed issuers whose quoted debt securities reflect a market capitalisation of NZD 30.2 billion.

1.2.3 NZX Alternative Market

The NZX Alternative Market (**NZAX**) is NZX's original alternative market for small to medium sized enterprises designed. Financial products that can be quoted on the NZAX include: preference shares, options, warrants and convertible notes.

Issuers listed on the NZAX are regulated under their own bespoke set of listing rules, being the NZAX Listing Rules, and their quoted financial products are displayed on nzx.com as being part of the NZAX.

The NZAX currently has 11 listed issuers with a market capitalisation of approximately NZD 258 million.

As discussed further in section 5.2.3 of this application, the NZAX is closed to new listings and will be dissolved effective 1 July 2019. NZX is working with current NZAX issuers, to facilitate their migration to the NZX Main Board.

1.2.4 NXT Market

The NXT Market, was launched in 2015 as a targeted market for small to mid-sized New Zealand businesses whose growth potential may have been constrained by a lack of expansion capital. Only shares and rights to shares may be quoted on the NXT Market.

² The NZX Listing Rules dated 1 January 2019 contain specific provisions relating to fund securities. Issuers on the NZX Main Board have until 1 July 2019 to transition to these rules. Until then some issuers of fund securities may be regulated under the provisions of the NZX Main Board Listing Rules dated 1 October 2017 that relate to equity securities.

Issuers listed on the NXT Market are regulated under a bespoke set of Listing Rules, the NXT Market Rules, and their quoted financial products are displayed on a separate website.

The NXT Market operates under an alternative disclosure regime to continuous disclosure. This regime requires NXT Issuers to report their performance on a quarterly basis, against key operating milestones that have been identified by the NXT Issuer as being the most significant factors by which the performance of the issuer's business should be assessed. In addition, NXT Issuers are required to provide immediate disclosure of certain matters specified by Schedule 5A of the NXT Market Rules, by way of an interim update.

The NXT Market currently has 2 listed issuers with a market capitalisation of approximately NZD 68,000.

As discussed further in section 5.2.3 of this application, the NXT Market is closed to new listings and will be dissolved effective 1 July 2019. NZX is working with current NXT issuers, to facilitate their migration to the NZX Main Board.

Please refer to the following links which contain further information regarding matters described in this section:

- [NZX Website](#)
- [NXT Market Website](#)
- [NXT Market Rules](#)



2. Overview of NZX

Attribute 1 of Rule 902(b)(2) of Regulation S requires the Commission to consider an applicant's organisation under foreign law (**Attribute 1**).

This section of the application describes the manner in which NZX is constituted under New Zealand law, and NZX's governance structure, for the purposes of Attribute 1.

2.1 History and formation of NZX

NZX has its origins in several regional stock exchanges throughout New Zealand dating from the 1870s. In 1974 these regional exchanges were amalgamated to form one national exchange, the New Zealand Stock Exchange. The New Zealand Stock Exchange operated as a member-owned exchange from 1974 up until 2002 when its members voted in favour of demutualisation.

In December 2002, as a consequence of demutualisation, the New Zealand Stock Exchange was restructured and reconstituted as a limited liability company, NZSE Limited (**NZSE**). Since 2002, NZSE has been renamed twice, and is now known as NZX Limited. NZX is a company registered under New Zealand law under company number 1266120, with a current registered address at Level 1, NZX Centre, 11 Cable Street, Wellington, 6011, New Zealand.

In May 2003, NZX listed its shares on its main equity market, the NZX Main Board. Additionally, on 21 June 2018, NZX also quoted 40,000,000 unsecured, subordinated notes on its debt market (**NZDX**), with a maturity date of 20 June 2033 unless redeemed earlier by note-holders at certain prescribed dates.

NZX is therefore subject to the NZX Main Board/Debt Market Listing Rules, and subject to the independent oversight of the Special Division of the NZ Markets Disciplinary Tribunal (**NZMDT**).

2.2 NZX as a Licensed Market Operator

NZX is currently licensed by the New Zealand Financial Markets Authority (**FMA**) to operate the following markets:

- the NZX Securities Markets;
 - the Fonterra Shareholders' Market (**FSM**)³; and
 - the NZX Derivatives Market,
- (each an **NZX Licensed Market**).

NZX is a self-regulating organisation, and provides front-line regulation of the NZX Licensed Markets. This role is performed by the NZX Regulation team, which operates behind an information barrier from the rest of the organisation in accordance with its own governance and oversight arrangements. We discuss NZX Regulation in more detail at section 4.1.

We set out below the manner in which NZX is licensed to operate the NZX Securities Markets.

Prior to 1 December 2014, NZX operated the NZX Securities Markets as a registered exchange under the Securities Markets Act 1988 (**SMA**).

³ The Fonterra Shareholders' Market is a private market on which only Fonterra Co-operative Group Limited (**Fonterra**), Fonterra Farmer Shareholders and a specially appointed market maker may trade Fonterra shares. More information is available here: <https://www.fonterra.com/nz/en/investors/farmgate-milk-prices/shares-and-units.html>

In 2013, New Zealand's securities legislation underwent a major reform, which resulted in the repeal of the SMA and other related legislation, and the introduction of the Financial Markets Conduct Act 2013 (**FMCA**). The FMCA was implemented in three phases, with the first phase (which included the relevant market licensing provisions) coming into effect on 1 December 2014.

On 1 December 2014 when the initial phase of the FMCA came into effect, NZX was issued two financial product market licenses by the New Zealand Financial Markets Authority (**FMA**) under the transitional provisions of the FMCA⁴, which remain in force unless revoked by the FMA.⁵

NZX is authorised to operate the NZX Main Board, NZAX, NZDX, FSM, and the NZX Derivatives Market under the New Zealand Financial Product Market Licence (NZX Limited) 2014 (**Licence**). NZX is authorised to operate the NXT Market under the New Zealand Financial Product Market Licence (NZX- NXT Market) 2014 (**NXT Licence**).

NZX must comply with the general obligations for licensed market operators under the FMCA (**General Obligations**), along with the other statutory requirements set out in the FMCA and associated regulations. The Minister is also able to impose further obligations on licensed market operators.⁶ We have described this further in section 4.3.2.

As a licensed market operator, NZX Limited is subject to a control limit, such that no person may hold or control more than 10% of the voting rights in NZX Limited.⁷ This requirement is reflected in NZX Limited's constitution and the Financial Markets Conduct Regulations 2014.⁸

Please refer to the following links which contain further information regarding matters described in this section:

- [New Zealand Financial Product Market Licence \(NZX Limited\) 2014](#)
- [New Zealand Financial Product Market Licence \(NZX Limited – NXT Market\) 2014](#)
- [NZX current constitution](#)

2.3 NZX's other businesses

NZX is a for-profit, publicly held New Zealand company. In addition to its licensed market operator functions, it undertakes various other commercial activities, including:

- 1) operating the Clearing House which is a designated settlement system, that clears and settles the trades undertaken on the NZX Licensed Markets;

⁴ Financial Markets Conduct Act 2013, Schedule 4, cl 42.

⁵ New Zealand Financial Product Market Licence (NZX Limited) 2014; New Zealand Financial Product Market Licence (NZX-NXT Market) 2014.

⁶ The Minister refers to the minister currently tasked with overseeing the application of the FMCA in New Zealand. This is currently the Minister of Commerce and Consumer Affairs. The Minister can and has delegated his licensing functions and power to the FMA in accordance with section 350 FMCA.

⁷ Financial Markets Conduct Act 2013, ss 344 & 345; Financial Markets Conduct Regulations 2014, reg 181.

⁸ Financial Markets Conduct Regulations 2014, reg 181.

- 2) publishing news and data relating to the NZX Licensed Markets;
- 3) operating a wealth management business providing rich online platform functionality, which enables New Zealand investment advisers to efficiently administer their client's assets;
- 4) providing passive fund management products, through its wholly-owned subsidiary Smartshares Limited, under the Smartshares and SuperLife brands; and
- 5) operating New Zealand's wholesale electricity market.

2.4 Governance of NZX

2.4.1 Role of NZX's Board

The NZX board is ultimately responsible for ensuring that the NZX Securities Markets are operated in a fair, orderly and transparent manner, and for ensuring that NZX and its relevant subsidiaries meet their obligations as operators of the Clearing House under the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010 (**Designation Order**).

The board meets its responsibilities by receiving reports and plans from management and through its annual work programme.

2.4.2 Composition of NZX's Board

The board comprises seven directors with diverse backgrounds, skills, knowledge, experience and perspectives. All directors are non-executive, and the majority are independent.

The current directors of the board are James Miller (Chair), Frank Aldridge, Nigel Babbage, Richard Bodman, Jon Macdonald, Lindsay Wright and Elaine Campbell.

In accordance with NZX's Fit and Proper Policy, all directors and senior managers appointed to NZX must be of good character and have the capability for their position. NZX undertakes rigorous checks of all directorial candidates, including by undertaking criminal record, credit, qualification and references checks; Internet searches for adverse publicity; and industry-specific checks depending on the professional background of the candidate.

The board uses committees to address issues that require detailed consideration. Board committees are comprised of directors and, in the case of the NZX Conflicts Committee and Regulatory Governance Committee, include non-director members who have specialist knowledge and experience, and provide an independent perspective. The board retains ultimate responsibility for the functions of its committees and determines their responsibilities.

2.4.3 Board sub-committees

The NZX Board currently has six sub-committees:

- (1) Audit and Risk Committee;
- (2) Human Resources and Remuneration Committee;
- (3) Nomination Committee;
- (4) Clearing Committee;
- (5) Conflicts Committee; and
- (6) Regulatory Governance Committee.



The first three committees relate to the governance of NZX in its capacity as a publicly listed company. The second three committees are specific to the operation and function of NZX as a licensed market operator and designated settlement system operator. We have briefly discussed the role of each of these sub-committees below.

Audit and Risk Committee

NZX's Audit and Risk Committee assists the board in fulfilling its responsibilities in relation to the NZX Group's financial practices and reporting, internal control environment, internal audit, external audit and risk management.

In accordance with the composition requirements in the NZX Main Board Listing Rules, the committee must be comprised solely of NZX directors, have a minimum of three members, have a majority of members that are independent directors and have at least one director with an accounting or financial background.

The committee is also responsible for ensuring the independence of the external auditors and ensuring compliance with NZX's External Auditor Independence Policy.

The current members of the committee are Lindsay Wright (Chair), Frank Aldridge and Richard Bodman.

Human Resources and Remuneration Committee

NZX's Human Resources and Remuneration Committee assists the board in overseeing the management of the human resources activities of NZX, including the remuneration of employees. In accordance with the NZX Corporate Governance Code (**NZX Code**), the Human Resources and Remuneration Committee is recommended to have a majority of members that are independent directors.⁹

The current members of the committee are Frank Aldridge (Chair), Jon Macdonald and James Miller. The majority of members are independent.

Nomination Committee

NZX's Nomination Committee assists the board in identifying and recommending to the board individuals for nomination as directors and members of committees. In accordance with the NZX Code, the committee is recommended to have a majority of members that are independent directors.¹⁰

The current members of the committee are James Miller (Chair), Frank Aldridge and Jon Macdonald. The majority of members are independent.

Clearing Committee

NZX's Clearing Committee assists the board in ensuring that the Clearing House has adequate risk capital to enable NZX and NZX Clearing to meet their obligations as the operators of a designated settlement system.

The committee must have a minimum of three members. The committee may have a non-director as a member (who must have skills and experience relevant to the operation of the committee). The current members of the committee are Richard Bodman (Chair), Nigel Babbage, and Lindsay Wright.

⁹ NZX Corporate Governance Code, Recommendation 3.3 (2017 and 2019).

¹⁰ NZX Corporate Governance Code, Recommendation 3.4 (2017 and 2019).



Conflicts Committee

NZX's Conflicts Committee assists the board in overseeing the effectiveness of NZX's policies and procedures for ensuring that any conflicts of interest within the NZX Group are appropriately managed, including any conflicts between NZX's regulatory responsibilities and its commercial interests. Further detail regarding how NZX manages actual and perceived conflicts of interest between its commercial interests and regulatory function are set out at section 6 of this application.

The committee must have a minimum of three members, have a minimum of two directors as members, and have a minimum of one non-director as a member (who must have skills and experience relevant to the operation of the committee).

The current members of the committee are Jayshree Das (Chair and non-director member), Nigel Babbage, Richard Bodman and Jon Macdonald.

Regulatory Governance Committee

The Regulatory Governance Committee assists the board in reviewing and providing feedback in respect of the governance of the NZX's regulatory function. The committee must have a minimum of three members, have a minimum of two directors as members and have a minimum of one non-director as a member (who must have skills and experience relevant to the operation of the committee). Further discussion regarding the role of the RGC committee is set out at section 6.3.1 of this application.

The current members of the committee are David Flacks (Chair and non-director member), Nigel Babbage, Richard Bodman and Jon Macdonald.

Please refer to the following links which contain further information regarding matters described in this section:

- [NZX Board composition](#)
- <https://www.nzx.com/about-nzx/investor-centre/governance/committees>

2.5 Management of NZX

The day-to-day management of NZX (excluding NZX's regulatory function) is undertaken by the Chief Executive Officer (**CEO**) and other senior managers through a set of delegated authorities that clearly define the CEO's and senior managers' responsibilities, and those retained by the board.

The functional departments that contribute to the operation of NZX's Securities Markets include NZX Regulation, NZX Policy, Information Technology and NZX Client and Data Services. Each of these teams and their respective functions are discussed in section 4 of this application.

The board delegates authority for undertaking NZX's regulatory function to the Head of Market Supervision (**HoMS**) who manages the NZX Regulation team. HoMS reports directly to the Board on regulatory matters without the presence of the CEO to avoid any perceived or actual conflicts of interest.

3. Oversight and accreditation of Participants

Attribute 2 of Rule 902(b)(2) of Regulation S requires the Commission to consider an applicant's association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history (**Attribute 2**).

This section describes the nature of the participants that NZX accredits to participate in its markets, and the legislative and regulatory requirements with which those participants are required to comply, for the purposes of Attribute 2.

3.1 NZX Participant Accreditation and Ongoing Requirements

In order to trade, or facilitate primary offers of financial products on the NZX Securities Markets, non-natural persons are required to be accredited by NZX under the NZX Participant Rules as NZX Market Participants. The NZX Participant Rules also contain ongoing obligations that apply to accredited NZX Market Participants. No current NZX Market Participant is a registered company in the United States, and all current NZX Market Participants are domiciled in either New Zealand or Australia.

In order to clear and settle trades conducted on the NZX Securities Markets, non-natural persons must be accredited as Clearing and Depository Participants under the NZX Clearing & Settlement Rules (**C Rules**) and NZX Depository Rules (**D Rules**), respectively.

An overview of the accreditation requirements of the respective categories of NZX Market Participants, and Clearing and Depository Participants, their permitted activities and ongoing obligations is included in Appendix 1 to this application.

Appendix 1 does not describe the requirements that apply to NXT Advisors, on the basis that NZX proposes to disestablish the NXT market from 1 July 2019, as part of the consolidation of its equities markets. Further information about this proposal is set out at section 5.2.3 of this application. We also note that Appendix 1 does not include information regarding the accreditation of participants in relation to the NZX Derivatives Market or uncommon types of NZX Market Participants.

Please refer to the following links which contain further information regarding matters described in this section:

- [Guide to becoming a NZX Participant](#)
- [List of current NZX Market Participants – Cash Markets](#)

3.2 NZX Advisers Accreditation and Ongoing Requirements

In order for natural persons to act as brokers for a NZX Market Participant and be eligible to provide advice to clients in relation to transactions relating to financial products quoted on the NZX Securities Markets, those persons must be accredited by NZX as an NZX Adviser¹¹. The NZX Participant Rules govern the conduct and accreditation of NZX Advisers.

¹¹ In this application the term NZX Adviser includes NZDX Advisers who are persons accredited only to provide advice in relation to the debt securities quoted on the NZDX.

NZX Advisers must comply with the ongoing requirements set out in NZX Participant Rule 8.1, which includes obligations to act ethically, in an open and co-operative manner and to fully comply with the NZX Participant Rules and Good Broking Practice.

Please refer to the following links which contain further information regarding matters described in this section:

- [NZX Adviser Accreditation Guidance Note](#)

3.3 FMA's oversight of NZX Market Participants and NZX Advisers

The FMA is the primary regulator of New Zealand's financial markets. The FMA is the New Zealand government agency responsible for financial regulation.

NZX Market Participants and NZX Advisers are also regulated by FMA under applicable legislation. Additional statutory licensing requirements governed by the FMA may apply to NZX Market Participants and NZX Advisers, depending on the nature of services provided. Persons providing brokerage or custodial services must also comply with the broker and/or custodian obligations (as applicable) under the financial advisers' legislation, if they provide those services to a client in New Zealand.¹²

We have provided a brief summary of the current regulatory regime applying to financial intermediaries below.

3.3.1 Financial Service Providers (Registration and Dispute Resolution) Act 2008

Most NZX Market Participants and NZX Advisers are required to comply with the registration obligations under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP RDR**). The FSP RDR requires all persons ordinary resident or having a place of business in New Zealand that provide, or hold themselves out as providing "financial services" in New Zealand, to register as Financial Services Providers (**FSP**).¹³

Where an FSP provides financial services to a "retail client" the FSP must also be a member of an approved dispute resolution scheme.¹⁴ The majority of NZX Market Participants and NZX Advisers will be registered with an approved dispute resolution scheme under the FSP RDR.

The FSP Register is an online register which publishes details of an FSP's legal and trading names, address, registration particulars, a description of the nature of the financial services that the FSP provides, and if applicable, details of the FSP's approved dispute resolution scheme. The FSP Register also enables overseas regulators to properly identify an FSP and contact the FMA where they wish to complain about the conduct of an FSP.

As part of the FSP registration process, all individuals that hold the role of director, senior manager or controlling owner of an FSP must submit to a criminal history check, which confirms

¹² Financial Advisers Act 2003, Part 3A.

¹³ Financial Service Providers (Registration and Dispute Resolution) Act 2008, ss 5, 11 & 12.

¹⁴ Financial Service Providers (Registration and Dispute Resolution) Act 2008, s 48 & 49.

whether an applicant has been convicted of one of the disqualification offences set out in the FSP RDR¹⁵.

3.3.2 Financial Advisers Act 2008

The Financial Advisers Act 2008 (**FAA**) prescribes minimum disclosure, competency and accountability requirements for financial advisers operating in New Zealand. NZX Market Participants employing financial advisers will either have Qualifying Financial Entity (**QFE**) status, or be registered as a FSP (**Non-QFE Entity**). We have summarised the authorisation and ongoing obligations of QFEs and Non-QFE Entities below.

We note that overseas providers may be exempt from these requirements, subject to compliance with the financial intermediaries' legislation in their own jurisdiction.

QFE

A QFE is an entity or group of entities that have elected to become a QFE for the purposes of compliance with the FAA.¹⁶ A QFE may provide a financial advice service on its own account and is also responsible for the financial advice provided by its employees or other nominated representatives.¹⁷ Employees or representatives of a QFE providing financial advice will either be QFE Advisers or Authorised Financial Advisers (**AFAs**) depending on the nature of the services they provide.

The FMA must approve an entity or group of entities' status as a QFE, and in doing so will consider the procedures that a QFE applicant has in place to ensure that retail clients receive adequate consumer protection, including through appropriate training and supervision of its employees.¹⁸

QFEs are required to:

- a) act with care, diligence and skill;¹⁹
- b) not engage in misleading or deceptive conduct;²⁰
- c) comply with certain disclosure obligations where providing services to retail clients;²¹
- d) comply with the conditions of their QFE status;²²
- e) have and maintain an adviser business statement, which describes the QFE's adviser business and the governance;
- f) have and maintain compliance arrangements that ensure that the business and its advisers operate professionally;

¹⁵ These are convictions for crimes involving dishonesty within the past 5 years under Sections 217 to 266 of the New Zealand Crimes Act 1961, and / or offences relating to the financing of terrorism or convictions for money laundering

¹⁶ Financial Advisers Act 2008, s 63.

¹⁷ Financial Advisers Act 2008, s 76.

¹⁸ Financial Advisers Act 2008, s 65(3).

¹⁹ Financial Advisers Act 2008, s 33.

²⁰ Financial Advisers Act 2008, s 34 & 35.

²¹ Financial Advisers Act 2008, s 25.

²² Financial Advisers Act 2008, s 46.



- g) submit an annual report to the FMA; and ²³
- h) ensure the members of its QFE group, employees and nominated representatives comply with the terms and conditions of its QFE status and their financial adviser obligations under the FAA.²⁴

Non-QFE Entities

NZX Market Participants that are Non-QFE Entities are only required to register as an FSP under the FSP RDR, and comply with the fair dealing provisions of the FAA and FMCA which prohibit any person engaging in misleading or deceptive conduct in relation to the supply of a financial services or dealing in a financial product.²⁵ Non-QFE Entities may only provide personalised financial advice services to retail clients through an employee or representative that is an authorised financial adviser (AFA).

AFAs

NZX Market Participants cannot be AFAs for the purposes of the FAA, as only natural persons can hold this designation. NZX Advisers who provide personalised financial advice may have to be authorised as an AFA by the FMA.

In order to be authorised as an AFA, a candidate must meet certain eligibility requirements, (including by joining an approved dispute resolution scheme and registering as an FSP), meet certain minimum competency requirements and be of good character. An applicant must also select the scope of their authorisation (for example: financial advice, personalised DIMS, investment planning services or combinations of these services). The FMA will assess an applicant's eligibility, and if the FMA is satisfied that an applicant meets these criteria, the FMA will authorise that individual as an AFA.

AFAs are subject to a Code of Professional Conduct (**Code**), and disclosure and regulation obligations under the FAA. AFAs must adhere to certain standard conditions including a requirement to have an adviser business statement, reporting and notification obligations, records and client money obligations, supervision requirements, requirements not to hold themselves out as being endorsed by the FMA, requirements in relation to outsourcing to third parties, and minimum financial requirements.²⁶ The FMA may also prescribe specific conditions for an AFA.

An AFA is subject to an ongoing obligation to comply with the Code of Professional Conduct (Code), which includes standards relating to minimum standards of:

- (a) ethical behaviour
- (b) client care;
- (c) competence, knowledge and skills; and
- (d) continuing professional development.

AFAs are also subject to primary and secondary disclosure obligations to a client (disclosures about the AFA and their service, and the financial product and services that a client is obtaining), and fair dealing rules in the FAA and FMCA which prohibit false, misleading of

²³ Financial Advisers Act 2008, s 77.

²⁴ Financial Advisers Act 2008, s 76.

²⁵ Financial advisers Act 2008, s 34; Financial Markets Conducts Act 2013, Part 2.

²⁶ Financial Advisers Act 2008, s 45.



deceptive conduct in the supply of a financial service or dealing in a financial product, and certain annual filing obligations.

Brokers and Custodians

Under the FAA a Broker is a person who receives, holds, pays or transfers client funds or client property on behalf of a client (**Broker**).²⁷ Subject to certain exceptions, a Custodian under the FAA means a person that holds client property or funds on behalf of a client or another party nominated by the client (**Custodian**).²⁸ As Custodians will always hold funds or property on behalf of a client, Custodians are always Brokers for the purposes of the FAA. However, Brokers will not always be Custodians.

Brokers

A Broker's conduct obligations are set out in Part 3A of the FAA, and include:

- (a) general obligations to exercise care, diligence and skill and not engage in misleading or deceptive conduct;²⁹
- (b) trust accounting obligations, including that client funds must be kept in a separate account, that a Broker must properly account for all funds and property, that accurate records be kept of all transactions, and that the Broker not apply client funds or property except as authorised by the client;³⁰
- (c) disclosure obligations to clients, including the disclosure of any material interests or relationships, a Broker's procedures for handling client money or property and any criminal convictions or civil or disciplinary proceedings a Broker or its principal officers have; and³¹
- (d) where relevant, a Broker may also be required to comply with the custodial obligations set out below.

Custodians

In addition to being registered as an FSP, a Custodian must:

- (a) undertake daily reconciliations of client property and funds;³²
- (b) clearly disclose any fees charged to clients for holding their property of funds;³³
- (c) provide semi-annual reporting to clients of all relevant transactions; and³⁴
- (d) within four months of the Custodian's most recent accounting period, obtain and assurance engagement with a qualified auditor. The assurance must be provided to the

²⁷ Financial Advisers Act 2008, ss 77A & 77B.

²⁸ Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, regs 3 & 4; Financial Advisers Act 2008, s 77B(b).

²⁹ Financial Advisers Act 2008, s 77K & 77L.

³⁰ Financial Advisers Act 2008, s 77P – 77T.

³¹ Financial Advisers Act 2008, ss 77E - 77I

³² Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, reg 8.

³³ Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, reg 5.

³⁴ Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, reg 5.



FMA within 20 business days of receipt. The Custodian must also supply this to clients upon request.³⁵

3.3.3 DIMS Licence requirements

Certain NZX Market Participants will provide discretionary investment management services (**DIMS**) to clients in New Zealand. Broadly speaking, a financial service will incorporate DIMS when the service provider can exercise its discretion to make buy or sell investment decisions regarding a client's portfolio on behalf of the client.

Subject to certain exceptions, under the FMCA, in order to provide DIMS in New Zealand, a provider must hold a relevant market services license from the FMA (**DIMS Licence**).³⁶ All DIMS Licences are subject to standard conditions set out in the FMCA. These standard conditions include obligations in relation to skills and expertise, outsourcing, record-keeping, regulatory disclosures to FMA, compliance, governance and financial resources.³⁷

The FMA may also impose specific conditions in relation to limits on licensed activity and the use of associated persons acting as Custodians. Under the FMCA and FMC Regulations, DIMS providers are also subject to an obligation to immediately notify certain matters to the FMA, and report material breaches of certain limits under your investment authority known as limit breaks.³⁸

Please refer to the following links which contain further information regarding matters described in this section:

- [AFA Standard Conditions](#)
- [AFA Code of Professional Conduct](#)
- Regulation of [DIMS](#)

3.4 Legislative reform – Financial Services Legislation Amendment Bill

In this section of the application we also discuss proposed reform of the financial services legislative framework which will affect the designations and respective obligations referred to in this section. NZX does not consider that this reform will affect NZX's ability to comply with the Attributes.

There is currently before the New Zealand parliament the Financial Services Legislation Amendment Bill (**FSLAB**) that, if passed, will repeal the FAA, amend the FSP RDR and provide for a new licensing regime of advisers under the FMCA. This reform will mean that a broader range of financial advisers and market participants will be required to be licensed by the FMA and to comply with a higher standard of conduct and client care.³⁹

³⁵ Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014, reg 9.

³⁶ Financial Markets Conduct Act 2013, s 388.

³⁷ Financial Markets Conduct Act 2013, Part 6, Subpart 6.

³⁸ Financial Markets Conduct Act 2013, ss 94-96 & 191.

³⁹ Financial Services Legislation Amendment Bill.

Under the proposed new regime, any person or entity carrying on the business of giving financial advice to retail clients will be required to be licensed by the FMA as a Financial Advice Provider. Further, any representative of a Financial Advice Provider will need to either be an employee or contractor of the Financial Advice Provider, or be registered as a financial adviser under the FSP RDR. The proposed new regime also introduces disclosure obligations and a duty to act in the client's best interests and exercise care, skill and diligence.

All persons providing financial advice to a retail client will need to comply with a revised Code. The new Code will impose similar but enhanced standards to that of the current Code and will apply to a broader range of advisers. The proposed new Code will establish minimum standards of client care, skill, knowledge, competence and ethical behaviour.

The FSP RDR will also be amended to require a reporting entity for the purposes of AML/CFT legislation to register as an FSP. It is also proposed that FSP registrar be given greater powers in terms of information sharing and gathering, and deregistration. The FSLAB is expected to pass this year, with the new regime and Code expected to come into effect May 2019, subject to a transitional period. By May 2021, all Financial Advice Providers will be required to comply with the new regime.



4. Oversight of the NZX Securities Markets

Attribute 3 of Rule 902(b)(2) of Regulation S requires the Commission to consider an offshore securities market's oversight by a governmental or self-regulatory body (**Attribute 3**). Attribute 4 of Rule 902(b)(2) of Regulation S requires the Commission to consider an offshore securities market's oversight standards that are set by an existing body of law (**Attribute 4**).

We have consolidated discussion of matters that relate to Attribute 3 and Attribute 4 into this section, which discusses the NZX and FMA's respective roles in regulating the NZX Securities Markets.

NZX operates under a self-regulatory organisation model (**SRO**), as the frontline regulator of the NZX Securities Markets and is responsible for monitoring and enforcing compliance with the Listing Rules and NZX Participant Rules, as well as referring conduct or information to the FMA which NZX considers would assist the FMA carry out its functions.⁴⁰ This section focuses on the manner in which NZX performs its licensed market operator obligations.

The FMA is the primary conduct regulator of New Zealand capital markets, and also oversees NZX's licensed market operator activities. This section discusses the manner in which the FMA oversees NZX's compliance with its licensed market obligations, as well as the FMA's broader role as a conduct regulator of New Zealand's capital markets.⁴¹

4.1 NZX Regulation

The NZX Securities Markets are operated under a SRO model, with oversight from the FMA. This means that NZX is both an operator and regulator of the NZX Securities markets.

NZX Regulation sits behind an information barrier within NZX, with primary responsibility for regulating the NZX Securities Markets. NZX Regulation is made up of three teams - NZX Issuer Compliance, NZX Participant Compliance and NZX Surveillance.

4.1.1 NZX Issuer Compliance

The NZX Issuer Compliance team ensures the NZX Securities Markets are regulated in accordance with the listing rules⁴², being the:

- a) NZX Main Board / Debt Market Listing Rules dated 1 October 2017;
- b) NZX Listing Rules dated 1 January 2019;
- c) NXT Rules and Procedures; and
- d) NZAX Listing Rules,

(together, the **Listing Rules**)

Issuer Compliance reviews applications for new listings, with a particular focus on the review of documents relating to an offer of financial products, to ensure that disclosure in relation to that offer is appropriate.

The team considers applications for waivers from the requirements of the Listing Rules and applications for rulings as to the interpretation of the Listing Rules. These decisions will typically

⁴⁰ Financial Markets Conduct Act 2013, ss 357 & 358.

⁴¹ Financial Markets Authority Act 2011, Part 2.

⁴² Note that from 1 July 2019, the NXT Market, NZAX and NZX Main Board will be consolidated

be considered by a division of 2-3 NZX Regulation solicitors (with oversight by HoMS where escalation of the decision is necessary), who will confirm their understanding of an Issuer's circumstances, consider market precedent, evaluate the commercial and policy considerations and decide whether to grant the waiver or ruling, and if so on what conditions. Waivers related to continuous disclosure obligations must be referred to FMA for comment.⁴³

NZX's Listing Rules provide NZX Regulation with broad discretion to apply trading halts and suspensions in respect of the financial products quoted on one the NZX Securities Markets.⁴⁴ Issuers may also request a trading halt or a suspension from NZX. Issuer Compliance determines trading halt and suspension requests. NZX Regulation's policy is that trading interruptions should be kept to a minimum and will only exercise its discretion to implement a trading halt in order to ensure that the market trades on a fair, orderly and transparent basis. In some circumstances, NZX may instead place an Issuer's financial products into suspension.

Enforcement

Issuer Compliance also performs NZX's enforcement function by investigating suspected breaches of the Listing Rules⁴⁵, and taking action in accordance with NZX Regulation's "Approach to Enforcement".

NZX Regulation utilises a variety of enforcement tools, depending on the circumstances and the regulatory outcomes sought. The following enforcement tools are available to NZX Regulation:

- (a) **Referral to NZMDT**: This tool is available to NZX Regulation in relation to all alleged Listing Rule or NZX Participant Rule breaches. Referrals to the Tribunal are likely to be made for matters that align with NZX Regulation's enforcement priorities, or where additional guidance from NZMDT in relation to the interpretation of a rule is required. NZMDT may utilise a number of enforcement penalties, as described in section 5.1.2.
- (b) **Infringement notices**: NZX Regulation may issue infringement notices to Issuers and NZX Participants. This tool is available to NZX Regulation in relation to rule breaches of a minor nature and is most likely to be used where there is clear evidence that a breach has occurred. Infringement fees cannot exceed \$10,000.⁴⁶
- (c) **Obligations letter**: NZX Regulation may issue an 'obligations' letter noting the breach and requiring the Issuer or NZX Participant to review its internal controls that allowed the breach to occur. This tool is likely to be used for minor issues and first-time breaches. It may also be used if it appears a rule has been breached but there is insufficient evidence to pursue the breach further.
- (d) **Imposing conditions**: NZX Regulation may impose additional requirements on a NZX Participant or Issuer. This tool is likely to be used where NZX Regulation considers it would assist the NZX Participant or Issuer to comply with the Rules or to address a particular risk to investors or clients.
- (e) **Referral to FMA**: NZX Regulation may refer the matter to FMA for investigation, if the matter is also one where FMA has jurisdiction to enforce a party's obligations.

⁴³ Financial Markets Conduct Act 2013, s 359.

⁴⁴ NZX Main Board / Debt Market Rules 5.4 (1 October 2017).

⁴⁵ New Zealand Clearing Limited Clearing and Settlement Rules (C&S Rules) and New Zealand Depository Limited Depository Operating Rules (D Rules)

⁴⁶ As defined by the NZMDT Procedures – Penalty Bands.



NZX Regulation may use other regulatory tools, such as increasing its surveillance or monitoring of a particular Issuer or Market Participant's conduct. In some cases, NZX Regulation may decide to take no action in respect of an alleged breach (for example, where there is a lack of evidence).

4.1.2 NZX Participant Compliance

The NZX Participant Compliance team administers the NZX Participant Rules (which govern trading on the NZX Securities Markets) and the C&S and D Rules, including through supervising compliance with those rules by NZX Market Participants, and Clearing and Depository Participants, respectively.

The team considers applications for accreditation as a NZX Market Participant or Clearing Participant and considers applications for waivers and rulings in relation to the NZX Participant Rules and the C&S and D Rules.

The Participant Compliance team performs regular on-site and desk-based inspections to check whether NZX Participants are meeting their obligations under the NZX Participant Rules. The inspection process is also designed to test a NZX Market Participant's procedures in light of best practice. The Participant Compliance team maintains comprehensive risk profiles of NZX Participants operating in NZX's markets which are used by Participant Compliance for:

- scheduling and identifying focus areas for onsite inspections (including "spot" inspections);
- scheduling desk-based inspections; and
- other risk-based monitoring or enforcement activities.

Participant Compliance regularly reviews risk profiles to ensure they accurately reflect the risk of each NZX Participant. NZX also reviews its onsite inspection procedures to ensure that testing procedures contain an appropriate level of sampling and depth of testing.

Participant Compliance also performs capital and prudential inspections and risk profiling of NZX Participants and Clearing and Depository Participants, investigates suspected breaches of the NZX Participant Rules and C&S and D Rules, and refers suspected rule breaches to the Issuer Compliance team for enforcement as appropriate.

4.1.3 NZX Surveillance

Surveillance is a front-line monitoring and investigative function helping NZX operate fair, orderly and transparent capital markets. NZX Surveillance monitors the NZX Securities Markets, in real time and retrospectively, looking for instances of insider trading, market manipulation or breaches of the NZX Participant Rules.

NZX Surveillance monitors price movements, trading volumes, market releases (on NZX and other exchanges) and other media information in the performance of its function. In-depth analysis is undertaken of abnormal market conduct or trading, which may include analysis of activity by security, by participant, or by client. In addition, NZX Surveillance investigates allegations of market misconduct in relation to financial products quoted on the NZX Securities Markets.

NZX Surveillance uses market-monitoring software (SMARTS), market information from the NZX's trading system (X-stream), databases that update in real time with securities movements and volume statistics from information providers such as Iress and Bloomberg, as well as NZX's historical database of market activity.



The team works closely with, and refers matters to, the NZX Regulation team, the FMA, and the Special Division. NZX Surveillance provides the primary liaison with market participants on trading related issues.

Please refer to the following links which contain further information regarding matters described in this section:

- [Approach to Enforcement](#)

4.2 NZX Policy and Client and Data Services

The NZX Policy and the NZX Client and Data Services teams support NZX Regulation's role as the frontline regulator of the NZX Securities Markets.

4.2.1 NZX Policy

NZX is responsible for developing and enhancing the rules that govern the NZX Securities Markets, and the practices and policies under which those markets operate, and for contributing to broader legislative initiatives that affect New Zealand's capital markets. This function is undertaken by the NZX Policy team which is headed up by NZX's Head of Policy and Regulatory Affairs.

NZX continually monitors its rules and guidance to ensure they remain appropriate for its markets. From time to time, NZX will amend its rules and guidance to respond to changes in the market environment, (e.g. legislative change, changes in technology, market behaviour or economic conditions) or accommodate market developments.

4.2.2 NZX Client and Data Services

The NZX Client and Data Services team (**CDS**), works closely with NZX Regulation on a daily basis to monitor compliance with the Listing Rules. Examples of interaction between NZX Regulation and CDS include:

- (a) CDS updates NZX Surveillance when market sensitive information is released by Issuers to the market, and whenever a trading halt is implemented. NZX Surveillance can then review trading in the context of these events as well as other information sources;
- (b) NZX Surveillance operates a watch list of Issuers where factors indicate that there may be an increased risk of improper trading. The CDS and NZX Regulation teams regularly meet to discuss this list, as well as more broadly discussing current market conditions and events; and
- (c) CDS and NZX Regulation maintain a shared Issuer risk list. This list includes current and historic information on Issuers who, for a variety of reasons, NZX Regulation considers should be more closely monitored. This list is referred to when monitoring reporting and continuous disclosure compliance, as well as when considering waiver applications.

Please refer to the following links which contain further information regarding matters described in this section:

- [NZX's current consultations](#)

4.3 FMA's oversight of NZX as a licensed market operator

4.3.1 FMA role and function

The FMA is New Zealand's primary securities regulator and is responsible for promoting and facilitating the development of fair, efficient and transparent financial markets.⁴⁷ The FMA has a broad regulatory mandate, but the remainder of the discussion in this section will focus on the FMA's role in regulating the NZX Securities Markets.

4.3.2 FMA oversight of NZX

NZX's Obligations as a Licensed Market Operator

NZX's general obligations as a licensed market operator include statutory obligations as follows:

- (1) to the extent that is reasonably practicable, do all things necessary to ensure that each of its licensed markets is a fair, orderly, and transparent market;⁴⁸
- (2) to have adequate arrangements in place for operating its licensed markets, including arrangements:
 - (a) for releasing market announcements provided to NZX in accordance with disclosures made to NZX under disclosure obligations under the FMCA;⁴⁹
 - (b) for handling conflicts between NZX's commercial interests and regulatory obligations to operate a fair, orderly and transparent market;⁵⁰
 - (c) for monitoring the conduct of participants (including listed issuers) on or in relation to its licensed markets;⁵¹
 - (d) for enforcing compliance with the relevant Listing Rules and NZX Participant Rules (for example, by having a sufficiently independent adjudicative body to adjudicate on contraventions that are referred to it);⁵²
- (3) to be sufficiently resourced to operate its licensed markets properly, including by having appropriate financial, technological, and human resources;⁵³ and
- (4) to have adequate arrangements for ensuring that the following criteria continue to be met:⁵⁴
 - (a) NZX is registered with a recognised dispute resolution in accordance with the Financial Service Provider (Registration and Dispute Resolution) Act 2008;⁵⁵ and

⁴⁷ Financial Market Authority Act 2011, s 8.

⁴⁸ Financial Markets Conduct Act 2013, s 314(a).

⁴⁹ The disclosure obligations are obligations which requires listed issuers to comply with continuous disclosure, directors and senior managers to make product holding disclosures, and shareholders to disclose substantial holdings in listed issuers. Financial Markets Conduct Act 2013, s 314(b)(i) & subparts 4,5 & 6.

⁵⁰ Financial Markets Conduct Act 2013, s 314(b)(ii).

⁵¹ Financial Markets Conduct Act 2013, s 314(b)(iii).

⁵² Financial Markets Conduct Act 2013, s 314(b)(iv).

⁵³ Financial Markets Conduct Act 2013, s 314(1)(c).

⁵⁴ Financial Markets Conduct Act 2013, s 314(1)(d).

⁵⁵ Financial Markets Conduct Act 2013, s 316(c); Financial Service Provider (Registration and Dispute Resolution) Act 2008, s 11.

- (b) no director, senior manager, or controlling owner of NZX is disqualified under section 14(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or is disqualified from managing a body corporate under the laws of any other jurisdiction.⁵⁶

The Licence and NXT Licence impose the following legislative conditions on NZX, as a licensed market operator in relation to the operation of the NZX Securities Markets:

- (1) **Clearing and settlement arrangements:** NZX must have and maintain at all times clearing and settlement arrangements that have been approved by the FMA, for transactions effected through the NZX Securities Markets. Please see section 9 for further information about NZX Clearing;⁵⁷
- (2) **Enforcement of Rules:** NZX must maintain the arrangements set out in the NZMDT Rules for enforcing compliance with the Listing Rules and NZX Participant Rules. Please see section 5.1.2 for more detail regarding the function and operation of NZMDT;⁵⁸ and
- (3) **General Notification:** NZX shall at all times provide the FMA with contact details for an appropriate person with whom FMA may liaise with on market issues.⁵⁹

FMA's oversight of NZX as a licensed market operator

Under the FMCA, NZX is required, to report annually to the FMA, on how it has discharged its obligations as a licensed market operator during a given period.⁶⁰ The FMA must also carry out a regular review of how NZX is meeting all of its market operator obligations at least once in respect of a reporting period, and will prepare a draft report setting out how its determination in respect of NZX's fulfilment of these obligations.⁶¹ The FMA may rely upon the report prepared by NZX when undertaking its own review, and any other materials it deems appropriate to assist it in its review.⁶² FMA must then present the report to NZX and allow NZX submissions in response and consider those submissions.⁶³ The FMA must then finalise its report of the NZX, and provide this to both NZX and the Minister, and make its report publicly available.

If the FMA considers that NZX is failing to meet one or more of its market operator obligations, it can require NZX to submit an action plan to the FMA for the remedy of those failures.⁶⁴ In response, NZX must provide an action plan to the FMA that addresses the failure and specifies:

- a) the actions that the licensed market operator proposes to take to remedy the failure or to avoid any further failure;
- b) the timetable for taking those actions; and

⁵⁶ Financial Markets Conduct Act 2013, s 317(1)(d).

⁵⁷ Financial Markets Conduct Act 2013, s 318(1)(b); New Zealand Financial Product Market Licence (NZX Limited) 2014, cl 7; New Zealand Financial Product Market Licence (NZX-NXT Market) 2014, cl 7.

⁵⁸ Financial Markets Conduct Act 2013, s 318(1)(c); New Zealand Financial Product Market Licence (NZX Limited) 2014, cl 8; New Zealand Financial Product Market Licence (NZX-NXT Market) 2014, cl 8.

⁵⁹ New Zealand Financial Product Market Licence (NZX Limited) 2014, cl 9(2).

⁶⁰ Financial Markets Conduct Act 2013, s 337.

⁶¹ Financial Markets Conduct Act 2013, s 338.

⁶² Financial Markets Conduct Act 2013, s 338(3)(a).

⁶³ Financial Markets Conduct Act 2013, s 338(3)(b).

⁶⁴ Financial Markets Conduct Act 2013, s 340.

- c) where any matter has not been addressed by the action plan, an explanation as to why.⁶⁵
The FMA has broad rights to amend, reject or approve an action plan.⁶⁶

If NZX fails to meet a market license obligation, the Minister may provide direction to NZX, at the advice of FMA, to correct the deficiencies.⁶⁷ Instead of giving a direction to NZX, the Minister may also amend the conditions of the License or the NXT Licence or cancel those licences.⁶⁸

The FMA also has powers to provide directions to NZX in respect of its Listed Issuers and Market Participants.⁶⁹ Failure to adhere to these directions without good reason is an offence, and NZX may be liable on conviction for a fine of up to NZD 300,000.

4.3.3 FMA accreditation of NZX rules

Listing Rules

NZX must also operate its licensed markets in accordance with its approved Listing Rules which govern, among other matters, the admission, conduct and activities of Issuers.⁷⁰ The Listing Rules are supported by a listing agreement entered into between NZX and an Issuer, which contractually obligates the Issuer to comply with the relevant Listing Rules.

The Listing Rules must include certain provisions under the FMCA, including provisions:

- (a) relating to the approval of persons to enable financial products issued by those persons to be traded on the market;⁷¹
- (b) requiring an issuer be party to a listing agreement with NZX, and relating to the entry into, and revocation of, those listing agreements;⁷²
- (c) relating to the governance practices of issuers;⁷³
- (d) relating to the conduct or activities of issuers in relation to that market or to financial products traded on that market; and⁷⁴
- (e) relating to the monitoring and enforcement of those rules⁷⁵.

We have set out in section 5 of this application, the manner in which the NZX Main Board Listing Rules comply with these requirements.

⁶⁵ Financial Markets Conduct Act 2013, s 340(3).

⁶⁶ Financial Markets Conduct Act 2013, s 341.

⁶⁷ Financial Markets Conduct Act 2013, s 342.

⁶⁸ Financial Markets Conduct Act 2013, s 343.

⁶⁹ Financial Markets Conduct Act 2013, s 361.

⁷⁰ Financial Markets Conduct Act 2013, s 327.

⁷¹ Financial Markets Conduct Act 2013, s 328(3)(a).

⁷² Financial Markets Conduct Act 2013, s 328(3)(b).

⁷³ Financial Markets Conduct Act 2013, s 328(3)(c).

⁷⁴ Financial Markets Conduct Act 2013, s 328(3)(d).

⁷⁵ Financial Markets Conduct Act 2013, s 328(3)(e).



Business Rules

Under the FMCA, NZX must operate the NZX Securities Markets in accordance with “business rules” that govern the conduct of participants who trade on its Licensed Markets. The NZX Participant Rules constitute the Business Rules for the purposes of the FMCA.

The NZX Participant Rules must include certain provisions under the FMCA, including provisions:

- (a) relating to the authorisation of persons to undertake trading activities on, or otherwise participate in the market;⁷⁶
- (b) relating to the conduct or activities of those persons in relation to the market;⁷⁷
- (d) governing the conduct of business on the market; and ⁷⁸
- (e) relating to the monitoring and enforcement of those rules⁷⁹.

FMA’s approval for Listing Rules and Business Rules

The Listing Rules and NZX Participant Rules, and any amendment to these rules, have no effect until they have been approved by the FMA. The FMA must approve rule amendments, unless the FMA is satisfied that:

- (a) it is not in the public’s best interest to do so after having regard to the purposes of the FMCA, and the ability of NZX to operate its Securities Markets in accordance with its statutory obligations; and ⁸⁰
- (b) the amendment would not provide for appropriate continuous disclosure by Issuers of material information that is not generally available to the market after having regard to the purposes of the FMCA, and specifically Part 5 of FMCA, and any other matters the FMA considers relevant

NZX has an obligation to publish a copy of the NZX Listing Rules and NZX Participant Rules on its website at all times.⁸¹

Please refer to the following links which contain further information regarding matters described in this section:

- [FMA Report 31 December 2017](#)
- Rules relating to the [NZX Licensed Markets](#)

⁷⁶ Financial Markets Conduct Act 2013, s 328(4)(a).

⁷⁷ Financial Markets Conduct Act 2013, s 328(4)(b).

⁷⁸ Financial Markets Conduct Act 2013, s 328(4)(c).

⁷⁹ Financial Markets Conduct Act 2013, s 328(4)(d).

⁸⁰ Financial Markets Conduct Act 2013, s 331(1)(a).

⁸¹ Financial Markets Conduct Act 2013, s 335.

4.4 FMA oversight of New Zealand’s capital markets

4.4.1 Legislative requirements for dealing with financial products on the NZX Securities Markets

Part 5 of the FMCA regulates dealings in quoted financial products on the NZX Securities Markets. Part 5 imposes:

- (a) prohibitions on insider trading and market manipulation on the NZX Securities Markets;⁸²
- (b) statutory obligations for Issuers to comply with the continuous disclosure obligations contained in the relevant Listing Rules;⁸³
- (c) disclosure obligations on directors and senior managers who acquire a “relevant interest” in an Issuer’s quoted financial products;⁸⁴and
- (d) disclosure obligations on persons acquiring a substantial product holding in an Issuer’s quoted financial products of 5% or more.⁸⁵

NZX supports the FMA in enforcing these provisions, by undertaking a frontline regulatory role and supplying the FMA with information where it considers this would assist the FMA in the performance of its regulatory function.⁸⁶ We have set out below, further detail in relation to these obligations and a brief discussion of the FMA’s oversight role in relation to these obligations.

Prohibition on Insider trading

Subpart 2 of Part 5 of the FMCA contain a prohibition on an “information insider” trading in the quoted financial products of an Issuer.⁸⁷ This prohibition extends to an information insider:

- (a) encouraging or procuring another to trade in the quoted financial products of an Issuer; or
- (b) disclosing inside information to another where the information insider knows, or ought to have reasonably known, that the person would trade in the quoted financial products of an Issuer.⁸⁸

An information insider of an Issuer is someone who holds material information relating to the Issuer that is not generally available to the market (**Inside Information**), where the information insider knows, or ought to reasonably know that the information is material information and that it was not generally available to the market.⁸⁹

⁸² Financial Markets Conduct Act 2013, Subpart 2.

⁸³ Financial Markets Conduct Act 2013, Subpart 4.

⁸⁴ Financial Markets Conduct Act 2013, Subpart 6

⁸⁵ Financial Markets Conduct Act 2013, Subpart 5. This is New Zealand’s equivalent to a Schedule 13D.

⁸⁶ Financial Markets Conduct Act 2013, s 358.

⁸⁷ Financial Markets Conduct Act 2013, s 241.

⁸⁸ Financial Markets Conduct Act 2013, s 242 & 243

⁸⁹ For completeness, NZX Participant Rule 15.6 requires all client advising participants to notify their respective Compliance Managers where they suspect that a client is engaging in insider trading. The Compliance Manager is required to maintain written records of all



There is both civil and criminal liability available for contraventions of the insider trading provisions. A contravention of the insider trading provisions will only be a criminal offence where it is proven that the offender knew that the disclosed information:

- (a) was “material information”;
- (b) was not generally available to the market; and
- (c) knew, or ought to reasonably known or believed, that the person they were disclosing the information to would trade or hold the quoted financial products of the Issuer (to which the disclosed information relates) or advise or encourage another person to do the same.⁹⁰

Market Manipulation

Subpart 3 of Part 5 of the FMCA contains prohibitions on:

- (a) the dissemination of false or misleading information which has the effect of misleading the market as to the actual price of volume of traded financial products (**Disclosure-based Manipulation Provisions**); and ⁹¹
- (b) the practice of buying or selling of Financial Products in a way that manipulates the apparent value or trading volume in a Financial Products (**Trade-based Manipulation Provisions**)⁹²

(together, the **Market Manipulation Provisions**).

There are certain recognised exemptions from the Market Manipulation Provisions, which include takeovers, short-selling and crossings, and a specific defence available where the Trade-based Manipulation conforms with accepted market practice.⁹³

There are both civil and criminal sanctions available under the FMCA for breaches of the Market Manipulation Provisions. In order for a contravention of the Disclosure-based Manipulation Provisions to be a criminal offence, a person who makes a statement or disseminates information must have known that statement or information was false in a material aspect or was materially misleading.⁹⁴

In order for a contravention of a Trade-based Manipulation Provision to be a criminal offence, a person giving effect to the trading activity must know that the act or omission will have, or is likely to have the effect or creating or causing the creation of a false or misleading appearance of trading, including with respect to the volume of trading or pricing of a Quoted Financial Product.⁹⁵

referrals of insider trading, have policies and procedures in place for investigating suspected contraventions and reporting these to NZX.

⁹⁰ Financial Markets Conduct Act 2013, s 244.

⁹¹ Financial Markets Conduct Act 2013, s 262.

⁹² Financial Markets Conduct Act 2013, s 265.

⁹³ Financial Markets Conduct Act 2013, ss 263, 266 & 268.

⁹⁴ Financial Markets Conduct Act 2013, s 264(1).

⁹⁵ Financial Markets Conduct Act 2013, s 269.



Disclosure of directors and senior managers' interests

Subpart 6 of Part 5 of the FMCA imposes a disclosure obligation on directors and senior managers of Issuers to disclose to the market “relevant interests” they hold.⁹⁶ A relevant interest in a financial product includes legal or beneficial ownership, the power to exercise or control the exercise of a vote attaching to, or the ability to acquire, dispose, or control the acquisition or disposal of the financial products (**Relevant Interest**).⁹⁷

Subject to certain recognised exemptions, directors and senior managers have an initial obligation to disclose within five trading days of their appointment to office, or the issuer listing on an NZX Securities Market. Directors and senior managers are subject to an ongoing obligation to disclose any acquisition or disposal of a Relevant Interest within 5 working days, unless the acquisition or disposal is made under a prescribed set of transactions, in which case the disclosure must be made within 20 working days of the transaction.⁹⁸

Substantial Product Holder disclosures

Subpart 5 of Part 5 of the FMCA imposes disclosure obligations on a substantial product holder of an Issuer. A substantial product holder is any person with a Substantial Holding (**Substantial Product Holder**).⁹⁹ A substantial holding is defined as any Relevant Interest in an Issuer's quoted financial products that comprises at least 5% of the class of those quoted financial products (**Substantial Holding**).¹⁰⁰

Substantial Product Holders have an initial disclosure obligation as soon as the Substantial Holding arises. The disclosure must be made as soon as the person knows, or ought reasonably to know, that the person has a Substantial Holding.¹⁰¹ Additionally, Substantial Product Holders are subject to an ongoing obligation to disclose any movement of 1% or more in a Substantial Holding as soon as the Substantial Product Holder knows, or ought reasonably to know about the movement.¹⁰²

Statutory obligation to comply with Continuous Disclosure

Subpart 4 of Part 5 of the FMCA provides statutory backing to the Continuous Disclosure Obligations in the Listing Rules.¹⁰³

In addition to the penalties that NZX or the NZMDT can impose for breaches of the Continuous Disclosure Obligations (discussed in section 4.1.1 and 5.1.2, respectively), a consequential breach of section 270 in the FMCA also gives rise to potential civil liability.¹⁰⁴

Statutory obligation for NXT Market Issuers to comply with Alternative Disclosure

The Financial Markets Conduct (NZX-NXT Market) Regulations 2014 provides statutory backing to the alternative disclosure provisions set out in the NXT Market Rules, by providing that a breach of those provisions may give rise to civil liability under the FMCA.

⁹⁶ Financial Markets Conduct Act 2013, s 297.

⁹⁷ Financial Markets Conduct Act 2013, s 235.

⁹⁸ Financial Markets Conduct Act 2013, s 297. These prescribed transactions include an employee share plan, dividend re-investment scheme, share top-up scheme, amalgamation, prescribed acquisition or disposal or scheme of arrangement.

⁹⁹ Financial Markets Conduct Act 2013, s 274(1).

¹⁰⁰ Financial Markets Conduct Act 2013, s 274(2).

¹⁰¹ Financial Markets Conduct Act 2013, s 276.

¹⁰² Financial Markets Conduct Act 2013, s 277.

¹⁰³ Financial Markets Conduct Act 2013, s 270.

¹⁰⁴ Financial Markets Conduct Act 2013, s 485(d).

Fair Dealing

Part 2 of the FMCA also contains “fair dealing” provisions which prohibit (among other conduct) misleading and deceptive conduct, false or misleading representations, unsubstantiated representations in relation to any dealing in Financial Products, or the supply or possible supply of financial services (**Fair Dealing Provision**).¹⁰⁵

Additionally, all persons “in trade” are prohibited from making false, misleading or unsubstantiated representations in connection with any dealing in financial products, the supply or possible supply of financial services.¹⁰⁶

4.4.2 Liability and Enforcement under the FMCA

The FMA has a number of actions that it can take as a result of a breach of a FMCA provision, as described below.

Stop orders

The FMA retains broad discretion to impose a stop-order preventing an issuer listed on a NZX Securities Market, from accepting applications for financial products where the FMA has concerns about an issuer’s disclosure or otherwise.

Following registration of a PDS, all issuers will be subject to a stand-down period of five working days, before the offer is able to go live in order to provide the FMA sufficient opportunity to review the finalised PDS. During this time, if required, the FMA may exercise its powers to issue a stop order under Part 8 of the FMCA. The FMA may elect to take such action where the PDS contains false or misleading information, a material mis-description, or is non-compliant with the substantive content requirements of a PDS set out at Part 3 of the FMCA.¹⁰⁷

Civil liability

Under Part 5 of the FMCA, all of the provisions discussed in section 4.4.1 are defined as Part 5 market provisions (**Market Provisions**).¹⁰⁸ All Market Provisions are civil liability provisions for the purposes of Subpart 3 of Part 8 FMCA (**Civil Liability Provision**).¹⁰⁹ Remedies available for breaches of a Civil Liability Provision include declarations of contravention, pecuniary penalties,¹¹⁰ compensatory orders and other civil liability orders (**Other Orders**).¹¹¹ A declaration of contravention is a declaration made by the court on the application of the FMA (or other person) of a contravention of a Civil Liability Provision. It enables a person seeking a compensatory order to rely on the declaration as proof that the contravention occurred.¹¹²

The courts may, on application by the FMA, or any other person, make Other Orders if the Court is satisfied that a person has, intends to, or was involved in the contravention of a Civil Liability Provision.¹¹³ These Other Orders may include (but are not limited to):

¹⁰⁵ Financial Markets Conduct Act 2013, s 19.

¹⁰⁶ Financial Markets Conduct Act 2013, s 22 & 23.

¹⁰⁷ Financial Markets Conduct Act 2013, s 462.

¹⁰⁸ Financial Markets Conduct Act 2013, s 385(1).

¹⁰⁹ Financial Markets Conduct Act 2013, s 485(d).

¹¹⁰ These may only be sought by the FMA.

¹¹¹ Financial Markets Conduct Act 2013, s 486(1).

¹¹² Financial Markets Conduct Act 2013, s 487.

¹¹³ Financial Markets Conduct Act 2013, s 497.



- (a) a direction for the person in contravention to return or refund money or property to an aggrieved party;¹¹⁴
- (b) restraining the exercise of rights attaching to financial products or exercise of relevant interests in the financial products; or¹¹⁵
- (c) the cancellation of an agreement for the acquisition or disposal of a financial products.¹¹⁶

Contraventions of the FMCA Part 2 Fair Dealing Provisions, may give rise to civil liability including a pecuniary penalty not exceeding the consideration for the relevant transaction, three times the amount of the gain made or the loss avoided, and \$NZ1 million in the case of an individual or \$NZ5 million in any other case.¹¹⁷

Criminal liability

Criminal liability may also arise for breaches of the Insider Trading and Market Manipulation Provisions. Liability for these contraventions may result in imprisonment for a term not exceeding 5 years and / or a fine not exceeding \$NZ500,000 in the case of an individual, and a fine of \$NZ2.5 million in any other case.¹¹⁸

¹¹⁴ Financial Markets Conduct Act 2013, s 498(a).

¹¹⁵ Financial Markets Conduct Act 2013, s 498(c).

¹¹⁶ Financial Markets Conduct Act 2013, s 498(h).

¹¹⁷ Financial Markets Conduct Act 2013, s 38.

¹¹⁸ Financial Markets Conduct Act 2013, ss 244 & 264.



5. Application of the Listing Rules to Issuers

In this section we describe in detail, the requirements that apply to issuers listed on the NZX Main Board under the NZX Main Board Listing Rules and the manner in which those Rules are enforced. This information is relevant for the purposes of Attribute 4 of Rule 902(b)(2) of Regulation S.

We have provided a detailed description of the regulation of the NZX Main Board because NZX has recently completed a holistic review of the NZX Main Board Listing Rules. As a result of that review, the NZX Securities Markets will be consolidated into the NZX Main Board effective 1 July 2019.

5.1 Governance of the NZX Main Board

We have summarised below the key requirements contained in the NZX Main Board Listing Rules and how those rules satisfy the statutory requirements of section 328 of the FMCA, described in section 4.3.3, above.

NZX Regulation has the power to waive the requirements of the NZX Main Board Listing Rules by written notice to the affected issuer, on such terms and conditions as it considers to be appropriate.

5.1.1 Listing requirements

The NZX Main Board Listing Rules include requirements relating to the approval of issuers whose financial products are to be traded on the NZX Main Board, these are described below.

Spread requirements

In order to list on the NZX Main Board, a listing candidate must be able to demonstrate that on listing:

- the anticipated market value of the financial products to be quoted will be at least NZD 5 million; and ¹¹⁹
- the issuer's financial products are held by at least 500 members of the public, holding at least 25% of the securities on issue in that class. ¹²⁰

Listing application

An applicant must provide a listing application that contains prescribed information. ¹²¹ This application must be submitted to NZX through an NZX Market Participant that has accepted responsibility for listing the issuer candidate (**Organising Participant**). ¹²²

The prescribed information for an application to list on the Main Board is set out in NZX Main Board Listing Rules 5.1 and 5.2. This includes a requirement to provide the "offering document" for the applicant's securities where that applicant is offering securities to the public in conjunction with their listing. ¹²³ In New Zealand issuers will most commonly be required to

¹¹⁹ Main Board Listing Rule 5.1.3 (1 October 2017).

¹²⁰ Main Board Listing Rule 5.2.3 (1 October 2017). This requirement must be maintained following quotation unless NZX is otherwise satisfied that the issuer can maintain a spread of financial products sufficient to ensure that there is a sufficiently liquid market in that class of financial products.

¹²¹ Main Board Listing Rules 5.1.1 & 5.1.2 (1 October 2017); NZAX Rule 5.1.9 (22 May 2017).

¹²² Main Board Listing Rule 5.1.1 (1 October 2017). For further information regarding the types of Market Participants that are able to act as an Organising Participant and further information on the accreditation and eligibility requirements please see sections 3.1 and 3.2 of this application.

¹²³ Main Board Listing Rule 5.2.2(c) (1 October 2017).

prepare a product disclosure statement (**PDS**) under the FMCA in connection with an offering of securities.

NZX Regulation will review all relevant documentation relating to an applicant's listing, and offer of financial products (if applicable), to ensure that these documents meet the requirements of the NZX Main Board Listing Rules. NZX Regulation will also consult with an external body of advisers, the NZX Listing Sub-committee, who are comprised of highly experienced market stakeholders with financial accounting, investing and advisory experience, in relation to the applicant's proposed listing and, disclosure documents (and where relevant, financial accounts).¹²⁴

Where an applicant is applying to become a listed issuer and quote existing securities on the NZX Main Board without offering new financial products (**Compliance Listing**), the NZX Main Board Listing Rules require that the issuer prepare a disclosure document in connection with the proposed quotation of the Issuer's financial products (**Profile**).¹²⁵ A Profile should, to the maximum extent possible, comply with the statutory disclosure requirements for a PDS in Part 3 of the FMCA.¹²⁶

NZX must be satisfied with the form of the PDS or Profile.

A PDS must be approved by NZX before it is registered on the Disclose Register maintained by the New Zealand Companies Office.¹²⁷ The FMA, will also typically undertake a review of the PDS's compliance with the FMCA, concurrently with NZX Regulation.

Additionally, NZX requires that an applicant provide a copy of its constitution which must comply with the NZX Main Board Listing Rules, and any other additional information NZX requests. NZX will also undertake a due diligence on the senior managers and directors of the issuer, to ensure that they are fit and proper persons.

NZX has ultimate discretion regarding the admission and continued listing of Issuers on any of its markets.¹²⁸

Obligation to enter into a Listing Agreement

All Issuers must enter into a listing agreement with NZX.¹²⁹ Each time the Issuer appoints a new director, the Issuer is required to provide NZX with a signed acknowledgement from that director, acknowledging that the director will use his/her best endeavours to procure the Issuer's compliance with the relevant Listing Rules.¹³⁰

Governance of Issuers

The NZX Main Board Listing Rules contain both mandatory governance requirements as well as a best practice corporate governance code which all Issuers with equity securities quoted on the NZX Main Board must observe on a "comply or explain" basis. These requirements satisfy the legislative requirement for provisions relating to the governance practices of issuers. We have

¹²⁴ The NZX Listing Sub-committee was historically a sub-committee of the Board, but now operates as an independent advisory board.

¹²⁵ NZX Main Board Listing Rule 7.1.1(b) (October 2017), NZX Main Board Listing Rule (7.3.1)(January 2019)

¹²⁶ NZX Main Board Listing Rule 7.1.3 (October 2017)

¹²⁷ NZX Main Board Listing Rule 6.1 (1 October 2017); NZAX Listing Rule 6.1(22 May 2017).

¹²⁸ NZX Main Board Listing Rules 5.3.1, 5.3.2 & 5.4.2 (1 October 2017); NZAX Listing Rules 5.3 & 5.4.2 (22 May 2017).

¹²⁹ NZX Main Board Listing Rule 5.1.2(a) (1 October 2017).

¹³⁰ NZX Main Board Listing Rule 2.2.2 (1 October 2017); NZAX Listing Rules 2.2.2 (22 May 2017); NXT Market Rule 12 (26 September 2014).

briefly summarised these obligations below and have discussed the proposed changes to these requirements in section 5.2.2.

Mandatory governance requirements

The NZX Main Board Listing Rules contain mandatory provisions prescribing:

- (a) content requirements for company's constitution¹³¹, including a requirement that the issuer either incorporate the NZX Main Board Listing Rules into the constitution by reference, or individually incorporate certain provisions¹³² (relating to board composition, the approval of directors' remuneration, and shareholder approval of related party transactions);
- (b) content requirements for trust deeds, where the Issuer is issuing debt securities, including a requirement for the security-holder approval of the appointment of a new trustee, and a requirement that a meeting of the security-holders will be called upon written requisition of a meeting by at least 5% of the security-holders where the debt securities are offered under a regulated offer;
- (c) minimum composition requirements in relation to an Issuer's board, (including that at all times an Issuer's board shall be comprised of a minimum of three directors, at least two of whom shall be New Zealand resident, and at least two of whom must be independent directors¹³³);
- (d) mandatory director rotation requirements, including a requirement that at least three or one third of the directors (being the longest standing members) retire at the Issuer's annual meeting each year, but are eligible to stand again for election by the security-holders at that meeting;
- (e) composition requirements for an Issuer's audit committee, including: a minimum of three members; all members must be directors; a majority of members must be independent directors; and, one member must sit on the committee that has accounting of financial background;
- (f) requirements as to the responsibilities of the audit committee;
- (g) that NZX must approve any amendment to an Issuer's constitution, trust deed, notice of meeting, or offering document or profile;
- (h) content requirements for notices of meeting and offering documents, including matters to be disclosed in relation to resolutions to approve or ratify issues of securities, and requirements to include independent appraisal reports in respect of certain transactions.

NZX Corporate Governance Code

Issuers listed on the NZX Main Board are required to comply with the NZX Corporate Governance Code (**NZX Code**) on a "comply or explain" basis. This means an issuer is required to materially adhere to the recommendations in the NZX Code or disclose its non-compliance in its annual report. Additionally, issuers that have partially complied with a recommendation are

¹³¹ In New Zealand a company's constitutive document is the constitution, which is similar to a memorandum of association.

¹³² The provisions specified in Appendix 6 of the Main Board Listing Rules (1 October 2017).

¹³³ Main Board Listing Rule 3.3.1(c) (October 2017). The test for an independent director is set out in the Rules and requires that a director not have a Disqualifying Relationship. Where an NZX Main Board issuer's board has eight or more directors, a minimum of three or one-third of directors (rounded down) must be independent. The requirements of this rule will change slightly following the introduction of the Listing Rule amendments next year (refer to Main Board Listing Rule 2.1.1(c) (January 2019)).



required to disclose why they did not fully comply and describe the alternative governance practices they adopted in lieu of compliance.¹³⁴

The NZX Code contains eight principles of good governance, and beneath each of these principles are a set of specific recommendations that an Issuer is expected to comply with. These recommendations are also accompanied by commentary which provides further detail and best practice standards to complying with the NZX Code. The commentary is intended to reflect best practice, and Issuers are not required to comply with these requirements. However, larger, well-established Issuers usually comply with these standards in order to conform to investors' expectations.

The eight governance principles contained in the NZX Code are as follows:

Principle 1 - Code of Ethical Behaviour: directors should set high standards of ethical behaviour, model this behaviour and hold management accountable for these standards being followed throughout the organisation.

Principle 2 - Board Composition & Performance: to ensure an effective board, there should be a balance of independence, skills, knowledge, experience and perspectives.

Principle 3 - Board Committees: the board should use committees where this will enhance its effectiveness in key areas, while still retaining board responsibility.

Principle 4 - Reporting & Disclosure: the board should demand integrity in financial and non-financial reporting and in the timeliness and balance of corporate disclosures.

Principle 5 - Remuneration: the remuneration of directors and executives should be transparent, fair and reasonable.

Principle 6 - Risk Management: directors should have a sound understanding of the material risks faced by the issuer and how to manage them. The board should regularly verify that the issuer has appropriate processes that identify and manage potential and material risks.

Principle 7 - Auditors: the Board should ensure the quality and independence of the external audit process.

Principle 8 - Shareholder Rights and Relations: the board should respect the rights of shareholders and foster relationships with shareholders that encourage them to engage with the issuer.

Regulation of conduct or activities of issuers on the NZX Main Board/NZDX

The NZX Main Board Listing Rules contain the following provisions that meet the statutory obligation that the rules must regulate the conduct or activities of issuers, or financial products traded, on the NZX Main Board:

- (a) restrictions on Issuers from entering into:
- material related party transactions,
 - major transactions where the value of that transaction exceeds more than 50% of the issuer's average market capitalisation, or where the transaction would change the essential nature of the Issuer's business,

¹³⁴ NZX Main Board / Debt Market Listing Rule 10.4.5(i) (1 October 2017).



without seeking shareholder approval;¹³⁵

- (b) restrictions on Issuers from:
- taking actions that could affect the voting or other rights attaching to securities, including by modifying existing security-holders' rights, or issuing new securities at a significant discount;¹³⁶
 - issuing further securities without complying with certain disclosure requirements, and either seeking shareholder approval for that issuance or complying with a maximum 20% placement capacity in any 12-month period;¹³⁷ and
- (c) requirements for Issuers to immediately disclose "material information" to the market upon coming into possession with that information (**Continuous Disclosure**). Material information is information that a reasonable person would expect to have a material effect on the price of an Issuer's quoted financial products, if it were released to the market. The rules also contain periodic reporting requirements (for example: annual reports).¹³⁸

5.1.2 Enforcement of NZX Main Board Listing Rules

Role of NZMDT

Section 2 of the NZX Main Board Listing Rules contains provisions relating to the monitoring and enforcement of the rules as required by the statutory obligations set out in the FMCA.

In particular NZX Main Board Listing Rule 2.4 enables the NZ Markets Disciplinary Tribunal (**NZMDT**) to act as a disciplinary body. The NZMDT is an independent regulatory body, whose members are appointed by NZX and approved by the FMA, and who represent various market interests (issuers, market participants, lawyers and members of the public).

NZMDT's principal role is to determine whether matters referred to NZMDT by NZX Regulation, demonstrate that an Issuer or Market Participant has breached the NZX Listing Rules, NZX Participant Rules, C Rules or D Rules. Each referral is typically heard by a panel of three panel members appointed by the Chairperson of NZMDT. The panel must be comprised of independent members that have relevant experience to the matter being determined.¹³⁹

Appointees are required to disclose any actual or potential conflict of interest to the Executive Counsel of NZMDT, and the Chairperson of NZMDT (or the Deputy Chairperson in their absence) will determine whether that actual or potential conflict will preclude the member from sitting on the panel for a given matter.

NZMDT does not supervise the market conduct of listed issuers and NZX market participants, as NZX and the FMA perform that supervisory role.

NZMDT Enforcement actions

If NZMDT determine that a breach has occurred, it must then assess the appropriate penalty. The range of penalties NZMDT may impose are set out in the NZMDT Rules. The NZMDT has

¹³⁵ NZX Main Board Listing Rule 9.2 and 9.1(1 October 2017).

¹³⁶ NZX Main Board Listing Rules, section 8 (1 October 2017).

¹³⁷ NZX Main Board Listing Rules, section 7 (1 October 2017), note that from 1 January 2019 the placement capacity will reduce to 15% of the class of the Issuers equity securities on issue (see NZX Main Board Listing Rule 4.5.1 (1 January 2019)).

¹³⁸ NZX Main Board Listing Rules 10.1 and 10.4 (1 October 2017).

¹³⁹ NZ Markets Disciplinary Tribunal Rules (11 September 2017), r 3.3.

delegated authority to NZX to impose lower level penalties to non-compliant issuers and market participants, such as issuing infringement notices and obligations letters.

If the NZMDT determines that there has been a breach of the Listing Rules, NZX Participant Rules, C Rules or D Rules, the NZMDT has discretion to impose a variety of penalties including:

- (a) publicly censuring a Listed Issuer or Market Participant;
- (b) issuing a private reprimand;
- (c) revoking or suspending a Market Participant's designation or suspend quotation of all or some of a Listed Issuer's quoted shares, or cancel a Listed Issuer's listing altogether;
- (d) ordering the Market Participant or Listed Issuer to make restitution to a third party where the Market Participant or Listed Issuer profited from the breach at that third party's expense;
- (e) requiring a Market Participant or Listed Issuer to rectify a breach where possible; and/or
- (f) imposing financial penalties which range up to \$NZ500,000 depending on the severity of the breach.¹⁴⁰

Please click on the following links which contain further information regarding matters described in this section:

- [NZX Code](#)
- [Continuous Disclosure Guidance Note](#)

5.2 NZX Main Board Listing Rule Amendments 2019

This section describes NZX's current proposal to substantially amend the Main Board Listing Rules, including to consolidate the equity markets, as a result of the first holistic review of the Main Board Listing Rules since their introduction in 2003. The proposed rule amendments will take effect from 1 January 2019 (subject to a 6 month transition period).

5.2.1 Background

In September 2017, NZX initiated the review, releasing a discussion document and survey outlining the proposed scope and areas of focus for the review. The objectives for this review were to:

- (a) reduce the complexity of the current three equity market structure and build scale on the NZX Main Board;
- (b) enhance investor protections to increase confidence and participation in NZX's markets;

¹⁴⁰ NZ Markets Disciplinary Tribunal Rules, section 9.

- (c) accommodate the listing of a broader range of financial products and issuers with fit for purpose rules for small to medium sized issuers, funds and debt issuers;
- (d) improve access for foreign listings to expand the range of investable products for New Zealand investors; and
- (e) remove unnecessary compliance costs, introduce tools to reduce the cost of compliance and ensure the rules are easy to navigate and use.

Initial consultation closed in December 2017, and NZX received responses from a range of stakeholders including issuers, participants, law firms, governance bodies and accountants.

In April 2018, NZX released a follow-up consultation paper and an exposure draft of the proposed revised Main Board Listing Rules, including the NZX Code. NZX sought further input from market stakeholders, and the second round of consultation closed in June 2018.

Following the second round of consultation, NZX submitted the revised NZX Main Board Listing Rules to the FMA for approval under section 330 of the FMCA. These changes have now been approved and will come into effect on 1 January 2019.

5.2.2 Key changes to the NZX Main Board Listing Rules

The most significant changes to the NZX Main Board Listing Rules include:

- (a) removal of the spread / free float requirement for new classes of debt securities, on the basis that this is unnecessary for debt products;
- (b) removal of the requirement to seek NZX Regulation approval to quote debt and equity securities that are the same class as existing debt or equity securities quoted on NZX's markets (qualifying financial products), on the ground that these offers are already regulated by the FMCA;
- (c) amendments to the definition of a "Disqualifying Relationship" for the purposes of evaluating whether a director qualifies as an independent director, introduction of a recommendation that boards are comprised of a majority of independent directors and minor changes to the mandatory rules relating to independent board composition;
- (d) amendments to contemplate fund structures, to avoid the need for waivers and rulings from NZX Regulation in order for funds to list on the Main Board;
- (e) the introduction of rules for the listing of wholesale debt securities;
- (f) amendments to harmonise the treatment of issuers listed on overseas markets;
- (g) removal of the requirement for issuers to produce and publish a half-year financial report, provided that issuers continue to publish a preliminary announcement setting out the prescribed information;
- (h) extension of the continuous disclosure obligations to require material information that directors or senior managers of an issuer ought to have known about (i.e., constructive knowledge) to be immediately disclosed to the market;
- (i) enhanced disclosure requirements for notices of meetings;
- (j) the introduction of mandatory voting by poll; and



- (k) lowering the “headroom” for issuers issuing new equity securities without shareholder approval from 20% to 15% of the total number of securities on issue in that class at the beginning of that 12-month period, thereby reducing the potential for dilution without shareholder approval.

5.2.3 Consolidation of equity markets

In conjunction with the proposed changes to the NZX Main Board Listing Rules, NZX will consolidate its three equity boards (NXT Market, NZAX and Main Board) into the single Main Board, effective 1 July 2019. NZX is working with issuers currently listed on the NXT Market or NZAX to migrate these issuers across it to its Main Board or assist them in de-listing. This will result in the removal of the separate rules relating to the NXT and NZAX Markets.

Please refer to the following links which contain further information regarding matters described in this section:

- [Information regarding the review of the NZX Main Board Listing Rules](#)



6. NZX Conflicts Management

In this section we describe the conflict management arrangements that are adhered to by NZX.

This section is relevant to Attribute 4 of Regulation S Rule 902(b), as NZX has a statutory obligation as a licensed market operator to have adequate arrangements for handling conflicts between its commercial interests and the obligation to operate its markets in a fair, transparent and orderly manner.¹⁴¹

6.1 Nature of potential conflicts

NZX's dual role as market operator and supervisor may lead to a perception of conflict between NZX's regulatory and commercial functions. For this reason, it is critical for NZX to:

- (a) operate, and be seen to operate, markets with a strong reputation for market integrity; and
- (b) effectively and demonstrably manage any conflicts that might arise between its commercial and supervisory roles.

There are a number of potential conflicts relevant to NZX's commercial and regulatory functions. Potential conflicts could include NZX:

- (a) seeking to relax accreditation or decision-making criteria or amend the rules that govern the NZX Licensed Markets in order to obtain a commercial advantage;
- (b) choosing not to enforce the rules that govern the NZX Licensed Markets in relation to an entity or participant with which NZX has a business or other relationship in order to obtain a commercial advantage;
- (c) imposing stricter requirements on a competitor; and
- (d) adopting an approach of meeting cost-reduction targets by failing to adequately resource its operational, supervisory, compliance or enforcement functions.

In addition, conflicts of interest may arise at an individual level in relation to interests of NZX Board members and NZX staff.

6.2 Conflicts Management Policy

NZX considers that conflicts management is an integral part of its operating model and has put in place a Conflicts Management Policy. The policy sets out NZX's arrangements for dealing with potential conflicts and ensuring that any other potential conflicts are identified and managed in a timely and robust manner.

NZX's conflict management arrangements are based on the following principles:

- (a) it is fundamental to NZX that the markets operate and are seen to operate in a fair, orderly and transparent way and that there is no credible suggestion of unmanaged conflict;
- (b) a credible perception of conflict may be as damaging as an actual conflict and must be managed accordingly;

¹⁴¹ Financial Markets Conduct Act 2013, s 314(a) & (b)(ii).



- (c) commercial areas of the business and commercial interests will not be allowed to influence regulatory decision-making;
- (d) regulatory activity and information is quarantined from commercial activity; and
- (e) regulatory activity and decision-making must be consistent and transparent and free from undue influence.

6.3 Conflict Management mechanisms

The mechanisms that have been put in place to deal with potential conflicts of interest include:

- (a) the Conflicts Management Policy;
- (b) governance arrangements;
- (c) management/operational arrangements;
- (d) protocols to deal with regulation of listed issuers and market participants with which NZX has a connection or relationship that would result in a reasonable apprehension of bias (**Associated Entities**).

We discuss these arrangements in further detail below.

6.3.1 Governance arrangements

Board Oversight Controls

The NZX Board has overall responsibility for the regulatory function undertaken by NZX. It operates subject to oversight controls that are set out in the NZX Conflict Management Policy. That controls are designed to ensure that the Board is properly informed of NZX's regulatory activity, but that no undue influence is brought to bear upon NZX Regulation.

The controls include:

- (a) direct access by HoMs to the NZX Board in relation to regulatory issues and regulatory resource allocation;
- (b) the Board's role in appointment, remuneration and review of HoMs;
- (c) regular regulatory briefings by HoMs to the NZX Board without the presence of the CEO; and
- (d) mechanisms for escalation to the NZX Board of issues arising between commercial and regulatory aspects of NZX.

Additionally, the Board has established a Regulatory Governance Committee and Conflicts Committee that are tasked with providing feedback on NZX's regulatory decisions, and overseeing the adequacy of the NZX's conflicts management arrangements and compliance with those arrangements, and respectively. Further information about the composition and role of these committees is set out in section 2.4.3.

Management/operational arrangements

The following structural arrangements have been implemented by NZX to manage conflicts of interest, by ensuring (as far as is practicable) the quarantining of regulatory decision-making and information from the commercial parts of NZX's business (these are described in more detail above):



- (a) all core regulatory functions are undertaken by a separate regulatory division (NZX Regulation);
- (b) core operational functions which support market monitoring are undertaken by a separate operational division (Market Services);
- (c) all NZX employees and directors are required to comply with the NZX Conflict Management Policy;
- (d) all staff in teams that perform core regulatory functions are subject to NZX's Personal Conflicts Policy (see Attachment 3 of the Conflicts Management Policy);
- (e) NZX's regulatory decision-making powers are delegated to HoMS, who regularly briefs the NZX Chair and the Board on any operational and regulatory issues;
- (f) NZX staff are subject to controls which governs the interaction and information-flow between regulatory and non-regulatory staff (see Attachment 2 of the Conflicts Management Policy); and
- (g) NZX staff and the NZX Board are subject to the NZX Financial Products Trading Policy. This policy requires all employees to obtain approval before trading any securities or derivatives listed on any of NZX's markets. Specific requirements apply to any proposed trading of securities by the Head of Market Supervision and the NZX CEO.

Regulatory Protocols

Additionally, NZX has put in place protocols to deal with potential conflicts of interest that may arise in relation to relationships with Associated Entities. These protocols impose additional safeguards in relation to regulatory decision and so provide assurance that there can be no credible perception of conflict of interest. Please see attached as Appendix 2, the NZX Conflict Management Policy (which contains the Associated Entity controls).

In addition Related Entities (being listed issuers and market participants in which NZX has a majority ownership stake) and NZX itself, as a listed issuer, are subject to the regulatory oversight of the Special Division of NZMDT.

Conflicts Committee Oversight

In addition, the NZX Conflicts Committee is required under its Charter to complete an annual review of the adequacy of NZX's conflict management arrangements. The committee typically engages an outsource provider to complete this review and has engaged EY for the 2018 review period. The outsource provider will report to the committee, as to the extent to which NZX has fulfilled its statutory obligation to have adequate arrangements to handle conflicts between NZX's commercial interests and the need to operate its markets in a fair, orderly and transparent manner. NZX typically provides this report to the FMA, as part of NZX's self-assessment of the extent to which NZX has satisfied its statutory obligations as a licensed market operator.



7. Regulatory Co-operation and Trade Reporting

Attribute 5 of Rule 902(b)(2) of Regulation S requires the Commission to consider the manner in which an offshore securities market's securities transactions are reported on a regular basis to a governmental or self-regulatory body (**Attribute 5**).

In this section we discuss the manner in which NZX shares information with the FMA and other regulatory bodies, and the requirements for NZX Market Participants to report transactions to NZX, for the purposes of Attribute 5. For completeness, we also describe NZX's and the FMA's relationships with international regulators.

7.1 NZX information sharing with the FMA

Under the FMCA, NZX must share information, provide assistance, or provide access to NZX's facilities to the FMA or the Takeovers Panel.¹⁴² The Takeovers Panel is an independent Crown entity that regulates New Zealand's takeovers activity. In order to request this information, assistance or access, the regulators must submit a request in writing to NZX.¹⁴³

Additionally, NZX has discretion to disclose information to the FMA or Takeovers Panel at any time where it considers the disclosure of that information would assist the FMA or Takeovers Panel in the performance of their respective functions.¹⁴⁴

In practice, NZX, the FMA, and Takeovers Panel regularly engage with one another and collaborate to regulate the NZX Securities Markets. NZX has established processes and policies for engaging with these regulators on day-to-day basis.

The FMA and the Takeovers Panel have entered into memorandums of understanding (**MoU**) with NZX to promote communication and collaboration between the regulations, and between themselves.

In addition to NZX's regular reporting, where NZX identifies abnormal trading activity, or market conduct that warrants investigation it will refer this to the FMA for investigation under the information sharing provisions of the FMCA.¹⁴⁵

Please refer to the following links which contain further information regarding matters described in this section:

- [Memorandum of Understanding - NZX and FMA](#)
- [Memorandum of Understanding – NZX and Takeovers Panel](#)
- [Memorandum of Understanding – Takeovers Panel and FMA](#)

7.2 Reporting by NZX Participants

Under the NZX Participant Rules, NZX Trading Participants must submit certain orders straight to market via the Trading System. These orders are automatically transparent to NZX, as is

¹⁴² Financial Markets Conduct Act 2013, s 357(1).

¹⁴³ Financial Markets Conduct Act 2013, s 357(2).

¹⁴⁴ Financial Markets Conduct Act 2013, s 358.

¹⁴⁵ Financial Markets Conduct Act 2013, s 358.

data relating to any executed trades. All orders submitted into the Trading System must include the appropriate flag to indicate whether the order relates to a retail client, wholesale client, employee/prescribed person, or the NZX Participant as principal, or market maker.

Nasdaq OMX trading software used by NZX (discussed further in section 8 of this Application) provides NZX with full immediate transparency of order entry and trade matching. SMART Surveillance software also provides NZX Surveillance with full transparency over pre and post trade activity on the NZX Securities Markets. NZX, as frontline monitor and regulator of the market, has real-time visibility over trade and order details including all counterparty details involved in the transaction. The FMA may request and receive this information from NZX, as required.

The market depth feed provides price and volume information for orders in the Trading System. All Trading Participants have access to the “market depth feed” which provides full transparency of the order book on an anonymous basis. In addition, persons who are not Trading Participants may subscribe to the “market depth feed”, to obtain access to this information. Client identification reference codes are only ever visible to NZX and the client’s Trading Participant.

Post-trade data is publicly available through the “market depth feed” which provides the number of trades, total value and volume details through www.nzx.com with a 20 minute delay to the release of the trading information. The same trading data is available immediately to persons who subscribe to receive this data on a no-delay basis from NZX.

Following execution, the trade is reported in the Trading System and immediately novated to the Clearing System, where the trade is also visible to the relevant Clearing Participant in that system. The Trading Participants’ details are anonymous until T+2 (when a trade is settled) when the broker code for a trade become available to each counterparty Participant.

Off-Market Trades

Trades in financial products quoted on a NZX Securities Market (including crossings) that are not effected through the Trading System (**Off-Market Trades**) must also be reported through the Trading System. Depending on the nature of the specific transaction, the NZX Participant Rules prescribe time limitations in which to complete the reporting and may require the inclusion of a specified flag (such as a “special crossing” flag).

All Off-Market Trades in securities quoted on the NZX securities markets must be appropriately flagged to denote the nature of the transaction, in accordance with NZX Participant Procedure 2.1.2. Once an Off-Market Trade is reported, the same post transparency requirements apply, as described above.

Under NZX Participant Rule 13.1(b) all off-market trades on the NZX Securities Markets must be reported:

- during the adjust session (if the trade was effected during that session), or
- during the anonymous call auction session or the pre-opening session, if the off-market trade was effected during the enquiry session, depending on the trading sessions on the markets operated by NZX, and in all cases no later than 15 minutes prior to the commencement of the normal trading session on the next trading day.

Under NZX Participant Rule 13.1.1(e), all crossings or negotiated deals (under rule 13.1.1(f)) executed during a normal trading session must be reported immediately through the Trading System on the same trading day.



NZX Participants are also subject to an obligation to report suspected insider trading internally, keep records of these incidents, investigate conduct, and report this conduct to NZX if warranted.¹⁴⁶

7.3 NZX's relationships with international bodies

In order to enhance the efficiency and effectiveness of NZX's ability to operate the NZX Securities Markets, in a fair, orderly and transparent manner, NZX maintains a number of international memberships and accreditations.

7.3.1 World Federation of Exchanges and MoUs

NZX is a member of the World Federation of Exchanges, which is the global industry association for exchanges and clearing houses, which enables NZX to access global markets knowledge.

In September 2018, NZX entered into a memorandum of understanding with Nasdaq with a view to exploring opportunities to promote dual listings, and broader market development initiatives.

In addition NZX Limited has also entered into memoranda of understanding with the following international stock exchanges:

- Hong Kong Exchanges and Clearing Limited (HKEX);
- Shanghai Stock Exchange (SSE); and
- Singapore Exchange (SGX).

NZX also has an operational protocol in place with the Australian Securities Exchange (ASX), reflecting the strong linkages between the Australian and New Zealand capital markets.

7.3.2 Intermarket Surveillance Group (ISG)

NZX Limited is also a member of the ISG. ISG comprises more than 50 international exchanges and regulators who perform front-line market trading surveillance. ISG's purpose is to facilitate the coordination and development of programmes and procedures that assist members in identifying possible fraudulent and manipulative activities across markets. The ISG also provides a forum for discussing common regulatory concerns, thus enhancing members' ability to efficiently fulfil their regulatory responsibilities.

7.3.3 MABRA certification

In October 2017, NZX confirmed certification of its status as a "foreign regulator" in relation to the administration or enforcement of foreign business law for the purposes of the Mutual Assistance in Business Regulation Act 1992 (Australia) (**MABRA**). Certification under MABRA enables NZX to directly request Australian Securities and Investments Commission to gather information, documents or evidence on NZX's behalf and to disclose that information to NZX.

7.4 FMA's relationships with international bodies

7.4.1 IOSCO

The FMA is a member of the International Organisation of Securities Commissions (**IOSCO**) and a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (**MMoU**). The MMoU represents a common understanding among its signatories of how they should consult, cooperate, and exchange information for the purpose of regulatory enforcement regarding securities markets.

¹⁴⁶ NZX Participant Rule 15.6 (8 October 2018)



The MMoU itself sets out the specific requirements for:

- what information can be exchanged and how it is to be exchanged;
- the legal capacity to compel information;
- the types of information that can be compelled;
- the legal capacity for sharing information; and
- the permissible use of information.

The MMoU also sets out specific requirements regarding the confidentiality of the information exchanged, and ensures that no domestic banking secrecy, blocking laws or regulations will prevent securities regulators from sharing this information with their counterparts in other jurisdictions.

7.4.2 ASIC

The FMA has a memorandum of understanding with the Australian Securities and Investment Commission (**ASIC**), with a view to streamlining trans-Tasman regulation, through consultation, co-operation and the exchange of information. In particular, in 2017 the FMA and ASIC re-affirmed their commitment to collaborate and cooperate on expanding opportunities in fintech and innovation.



8. Trading System

Attribute 6 of Rule 902(b)(2) of Regulation S requires the Commission to consider an applicant's system for the exchange of price quotations through common communications media (**Attribute 6**).

In this section we describe the manner in which the trading system operates, for the purposes of enabling the Commission to consider NZX's application against Attribute 6.

8.1 NASDAQ X-stream

NZX uses the NASDAQ X-stream platform electronic trading system (**Trading System**). NASDAQ X-Stream is a world-class trading platform used by over 30 exchanges worldwide. It is marketed by NASDAQ as the world's fastest trading platform and boasts sub-100us latency with a potential throughput of over 100,000 orders per second.

As an alternative to using in-house or ISV front-ends, X-Stream is deployed with its own front-end with a full range of features and customisability including personalised tabular displays, per-user softVhard trading rules, full history of orders and trades, live ticker display and customisable security lists.

X-Stream supports FIX 5.0 using the Genium FIX backend. The FIX Gateway gives seamless connectivity to ISV front-ends, middle and back-office systems and external entities such as clearing houses and data vendors, including trade reporting. Full order, depth and trade information is available.

The Trading System processes, prioritises and display quotations in the following way:

- (a) each message received and processed by the system is date and time stamped and processed in respect of the order received. Each trade execution message (i.e., where a match between 'bid' and 'ask' occurs) is time stamped, processed and disseminated to the market;
- (b) 'bid' and 'ask' information including 'quantity' or 'lot', are displayed on the central order book and are viewable by those who have approved access to the Trading System; and
- (c) a market depth display is also provided to Participants (i.e. the levels below the best bid and ask). A full schedule of order types is detailed in the X-Stream product specification.

A trade-matching algorithm uses a price and time priority method to ensure that trades are matched on a fair and timely basis.

A major project to upgrade NZX's trading system is underway, which is intended to complete in Q2 2020. This will replace the current Nasdaq X-stream platform, with the latest Nasdaq ME trading platform, enabling new connectivity methods (using ITCH, OUCH and native FIX, aligning to global standards and lowering barriers to entry) and enhanced functionality.

8.2 Access to historical announcements

NZX also provides public access to issuers' historic public announcements published through its market announcement platform (MAP) on its main website NZX.com. This enables market stakeholders to access a wealth of historic information and disclosure made by Issuers including material announcements, administrative announcements, and periodic financials reporting.

9. Clearing House

Attribute 7 of Rule 902(b)(2) of Regulation S requires the Commission to consider an applicant's organized clearance and settlement system (**Attribute 7**).

In this section we describe the manner in which the Clearing House is operated and regulated, for the purposes of enabling the Commission to consider NZX's application against Attribute 7.

9.1 Role of the Clearing House and Depository

The Clearing House is designed to ensure the orderly settlement of all on-market trades. It clears all trades made on the NZX Securities Markets, NZX Derivatives Markets, as well as the Fonterra Shareholders' Market.

NZX Participants enter bids and offers into the Trading System, and where those bids and offers match, the resulting trade will be automatically novated to New Zealand Clearing Limited (**NZC**) and replaced with two separate transactions: one between the buyer and NZC, and the other between the seller and NZC. In doing so, NZC assumes the counterparty risk for those transactions.

Settlement of the two securities transactions then occurs in the Depository on a Delivery Versus Payment (**DVP**) basis, meaning that the delivery of the securities by New Zealand Depository Limited (**NZD**) to the buyer will occur contemporaneously with the delivery of the consideration for those securities to the seller.

The Depository provides Clearing and Depository Participants with efficient settlement of on and off-market trades, securities safekeeping services and offers participants a securities lending facility.

9.2 Operation of the Clearing House

The Clearing House system is operated on the BaNCS Market Infrastructure platform (**BaNCS**) provided by Tata Consultancy Services (**TCS**). BaNCS interfaces with various NZX systems, providing access to Clearing and Depository Participants via an industry standard application programming interface (**SWIFT**).

The NZX Technology team is responsible for managing the NZX Clearing IT systems, ensuring the availability, security, capacity and maintenance of the systems. TCS provides 24/7 support from its development centre in Chennai, India.

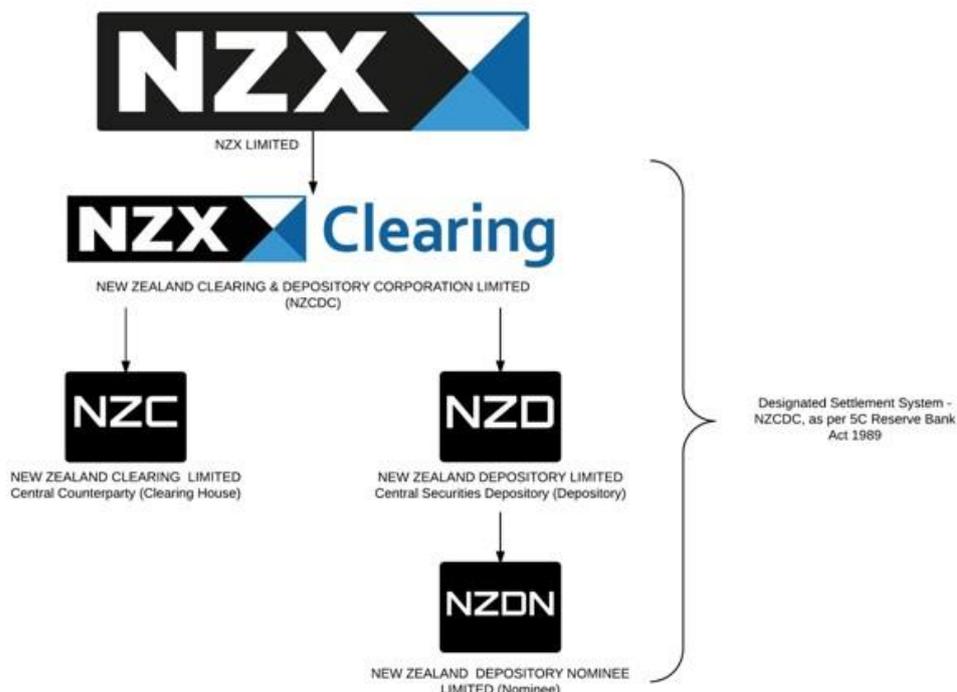
In 2017, NZX successfully implemented an upgrade of BaNCS, which provided improvements to daily batch settlement processing times, improved capabilities for managing defaults, corporate action processing across a wide range of financial products, security, data encryption and automated instrument creation.

9.3 Governance of the Clearing House

NZX Clearing is comprised of NZX's wholly-owned subsidiary, New Zealand Clearing and Depository Corporation Limited (**NZCDC**), and NZCDC's two wholly-owned subsidiaries:

- (a) New Zealand Clearing Limited (**NZC**), which performs a role as a Central Counterparty Clearing House (Clearing House) to the System; and
- (b) New Zealand Depository Limited (**NZD**), which performs a role as a Central Securities Depository (CSD) to the System.

NZCDC and its subsidiaries are registered New Zealand companies incorporated under New Zealand law.



NZX is ultimately responsible for the Clearing House and provides the technology infrastructure and services to the Clearing House, as well as being responsible for the governance and oversight of the Clearing House and ensuring that the Clearing House maintains appropriate risk capital.¹⁴⁷ The NZX Board is ultimately responsible for the compliance of NZCDC and its subsidiary companies with the conditions of the Designation Order, and other key legislative and regulatory obligations. The NZX Board is also ultimately responsible for the overall direction and strategy of NZX Clearing.

To assist the NZX Board in fulfilling its obligations under the Designation Order, NZX has established several Board committees, including the Clearing Committee, Conflicts Committee, RGC, A&R Committee and Remuneration Committee. The roles, responsibilities, and composition of these committees are outlined at section 2.4 above.

The NZCDC Board is comprised of NZX senior management and is designed to operate as an internal management board. NZCDC is tasked with monitoring the operation of the Clearing House and ensuring day-to-day compliance with the Designation Order and other key statutory obligations.

¹⁴⁷ Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010.

9.4 Regulation of the Clearing House

9.4.1 Description of the Joint Regulators

The FMA in conjunction with RBNZ oversee the operation of the Clearing House as a designated settlement system under the Designation Order.¹⁴⁸

RBNZ is the primary prudential regulator of New Zealand's financial markets and regulates all three designated settlement systems currently in operation in New Zealand. The other two designated settlement systems in New Zealand (RBNZ's Exchange Settlement Account System and the Continuous Linked Settlement System operated by CLS Bank International) are pure payment only systems, and accordingly and governed by RBNZ only. As the Clearing House is a securities settlement system, it is also regulated by FMA as the primary financial markets conduct regulator in New Zealand.

Settlement systems are not required to be designated in New Zealand, and in order for the Joint Regulators to recommend a settlement systems for designation, the Joint Regulators must undertake a thorough assessment of the system and be satisfied with the clarity and certainty of the legal rules governing a system, the financial soundness of an operator, the risk management frameworks and policies implemented by that operator, and the capabilities and capacity of an operator to comply with the stringent requirements of a designated settlement system. NZX Clearing was the first clearing system in New Zealand to be designated as settlement system under the Designation Order.

9.4.2 NZX Group obligations as operators of the Clearing House

The Designation Order names NZX and NZD as operators, and NZC as a specified operator of the Clearing House, these companies must therefore ensure the Clearing House's regulatory compliance.¹⁴⁹

Under the Designation Order the system operators are subject to obligations to

- a) notify the joint regulators where a material outage, or non-compliance with a financial policy or risk management framework occurs;
- b) provide prior notice to the Joint Regulators of changes to various governance and constituent documents;
- c) publish a self-assessment at regular intervals against the IOSCO Principles of Financial Markets Infrastructure.¹⁵⁰

9.4.3 Powers of the Joint Regulators

Under the Designation Order, the Joint Regulators have powers to, (among other matters):

- (a) approve changes to the constitution or ownership and control of the System (excluding control of NZX, which is publicly-traded);¹⁵¹
- (b) be notified of any changes to the rules, procedures and policies relating to the System;

¹⁴⁸ Reserve Bank Act 1989, s 5C.

¹⁴⁹ Reserve Bank of New Zealand (Designated Settlement System NZCDC) Order 2010.

¹⁵⁰ Reserve Bank of New Zealand (Designated Settlement System NZCDC) Order 2010, cl 8.

¹⁵¹ Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010, cl 1(d)(ii).

- (c) be notified of any change in key personnel charged with overseeing the operation or compliance of the System, including senior managers and directors;
- (d) require NZX to regularly report to the Joint Regulators on the operation of the System; and
- (e) require NZX to notify the Joint Regulators of any material non-compliance with the System's risk management frameworks or any event that materially increases the risk of a system outage or material incident.

9.5 Clearing and Depository Rules and Procedures

The New Zealand Clearing Limited Clearing and Settlement Rules and Procedures, and the New Zealand Depository Limited Depository Operating Rules and Procedures set out the respective rules and obligations of clearing and depository participants.

Please refer to the following links which contain further information regarding matters described in this section:

- [Clearing and Settlement and Depository Operating Rules](#)



Glossary

Associated Entities	means listed issuers and market participants with which NZX has a connection or relationship that would result in a reasonable apprehension of bias
Broker	means a person who receives, holds, pays or transfers client funds or client property on behalf of a client, for the purposes of the Financial Advisers Act 2008.
CDS	means the NZX Client and Data Services team
CIO	means the Chief Information Officer
Civil Liability Provision	Means Market Provisions that are civil liability provisions for the purposes of Subpart 3 of Part 8 of the FMCA.
Clearing House	means the central counterparty clearing house that is a designated settlement system operated by NZX and NZX Clearing under the Designation Order
Code	means the Code of Professional Conduct for the purposes of the FAA
Custodian	means a person that holds client property or funds on behalf of a client or another party nominated by the client, for the purposes of the Financial Advisers Act 2008.
C&S Rules	means the NZC Clearing and Settlement Rules
Designation Order	means the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010
DIMS	means a discretionary investment management service, for the purposes of the FMCA.
Disclosure-based Manipulation Provisions	means the prohibitions set out in section 262 of the FMCA
D Rules	means the NZD Depository Operating Rules
FAA	means the Financial Advisers Act 2008.
Fair Dealing Provision	means the prohibitions set out in Part 2 of the FMCA, which prohibit (among other conduct) misleading and deceptive conduct, false or misleading representations, unsubstantiated representations in relation to any dealing in financial products, or the supply or possible supply of financial services
FMA	means the Financial Markets Authority
FMCA	means the Financial Markets Conduct Act 2013



FSLAB	means the Financial Services Legislation Amendment Bill
FSM	means the Fonterra Shareholders' Market
HMDC	means the Head of Markets Development and Clearing
HOMS	means the Head of Market Supervision
Issuer	means an issuer that is listed on the NZX Securities Markets (and the Fonterra Shareholders' Market, where appropriate)
MABRA	means the Mutual Assistance in Business Regulation Act 1992 (Australia)
Market Manipulation Provisions	means the Disclosure-based Manipulation Provisions and the Trade-based Manipulation Provisions.
Market Provisions	means the provisions of the FMCA that are Part5 Market Provisions for the purposes of section 485(d) of the FMCA
MoU	means memoranda of understanding
NZAX	means the NZX Alternative Market
NZC	means New Zealand Clearing Limited
NZD	means New Zealand Depository Limited
NZDX	means the debt security market operated by NZX
NZMDT	means the NZ Markets Disciplinary Tribunal, an independent regulatory body from NZX, that has the powers and functions specified in the NZMDT Rules
NZX Clearing	means New Zealand Corporation Depository Corporation Limited, NZC and NZD, being the NZX subsidiaries that operate the Clearing House
NZX Code	means the NZX Corporate Governance Code set out in Appendix 16 of the current NZX Main Board Listing Rules, and Appendix 1 of the NZX Main Board Listing Rules that become effective on 1 January 2019
NZX Licensed Markets	means the NZX Securities Markets, Fonterra Shareholders' Market and the NZX Derivatives Market
NZX Regulation	means the team within ZNX that acts as front-line regulator of the NZX Licensed Markets
NZX Securities Markets	means the NZX Main Board, NZDX, NZX Alternative Market and the NXT Market
Organising Participant	means an NZX Market Participant that has accepted responsibility for listing an Issuer candidate



QFE	means a qualifying financial entity for the purposes of the Financial Advisers Act 2008
Relevant Interest	bears the definition set out in section 235 of the FMCA
Special Division	means the division of NZMDT that exercise the powers and functions of NZX Regulation as they apply to NZX and to any related entity
SRO	means the self-regulatory organisation model, under which NZX operates the NZX Securities Markets
Substantial Holding	is defined in the FMCA, to mean any Relevant Interest in a listed issuer's quoted financial products that comprises at least 5% of the class of those quoted financial products
Trade-based Manipulation Provisions	means the provisions set out in section 265 of the FMCA
Trading System	means the NASDAQ X-stream platform electronic trading system



Appendix 1

Summary of requirements for participation in the NZX Securities Markets

Participant Type	Summary	Accreditation Requirements	Ongoing Obligations
Advising Firms	<p>An Advising Firm's primary role is to advise clients, in relation to financial products quoted on the NZX Securities Markets.</p> <p>Advising Firms may also:</p> <ul style="list-style-type: none"> (a) act as Organising Participant and assist prospective listing applicants (i.e. issuers); (b) act as Organising Participant for further capital raisings undertaken by Listed Issuers; (c) hold client funds if permitted to do so by NZX; and (d) distribute or underwrite offers for debt or equity securities on one of NZX's Securities Markets. <p>Advising Firms are not able to directly enter and/or settle trades in the Trading System and must enter into an agreement with an NZX accredited Trading and Advising Participant for the execution of Trades.</p>	<p>An applicant for accreditation as an Advising Firm, must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZX along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, and evidence of the applicant's licence where relevant); (b) meet minimum capital requirements on an initial and ongoing basis; (c) enter into an agreement with an accredited Trading and Advising firm to facilitate trading; and (d) appoint a managing principal or responsible executive for ensuring that the Advising Firm complies with the NZX Participant Rules. 	<p>An Advising Firm must act in accordance with the NZX Participant Rules, which require the Advising Firm to:</p> <ul style="list-style-type: none"> (a) maintain adequate capital as required for an Advising Firm; (b) ensure that only accredited NZX advisers (NZX Advisers) provide advice to clients; (c) enter into client agreements with its clients and obtains the required client information; (d) meet certain client assets obligations (if applicable); (e) observe proper ethical standards and act with honesty, integrity and fairness; and (f) act in accordance with Good Broking Practice; and (g) agree to comply with decisions and directions of NZMDT.

Participant Type	Summary	Accreditation Requirements	Ongoing Obligations
<p>Trading and Advising Firms</p>	<p>A Trading and Advising Firm has the ability to advise clients or issuers on NZX's securities markets, and to trade on behalf of clients or as Principal.</p> <p>Trading and Advising Firms may also:</p> <ul style="list-style-type: none"> (a) act as Organising Participant and assist a prospective listing applicant list on one of NZX's Securities Markets; (b) distribute and / or underwrite offers of securities on the NZX Securities Markets; (c) hold clients assets or funds; (d) enter into trading agreements with Advising Firms; and (e) offer direct market access services (DMA) which allows approved clients to directly access and place orders in NZX's Trading System. 	<p>An applicant for accreditation as an Trading and Advising Firm, must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZX along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, evidence of the applicant's licence where relevant); (b) meet minimum capital requirements on an initial and ongoing basis; (c) if the Trading and Advising Firm is not a Clearing Participant, enter into a clearing and settlement agreement with a Clearing Participant; (d) appoint a managing principal or responsible executive for ensuring that the Trading and Advising Participant complies with the NZX Participant Rules; (e) appoint a compliance manager who is responsible for ensuring that the Trading and Advising Participant complies with the NZX Participant Rules; (f) ensure all employees providing advice to clients are appropriately qualified to do so, and have been accredited as NZX Advisers; and (g) ensure that any employees entering trades into the trading system have the required training and have been accredited as Dealers or Derivatives Dealers. 	<p>A Trading and Advising Firm must act in accordance with the NZX Participant Rules, which require the Trading and Advising Firm to:</p> <ul style="list-style-type: none"> (a) maintain adequate capital as required by an Trading and Advising Firm; (b) ensure that only NZX Advisers provide advice to clients; (c) ensure that it enters into client agreements with its clients and obtains the required client information; (d) meet certain client assets obligations; (e) ensure that only Dealers¹, DMA Dealers or DMA authorised persons can place orders on the markets; (f) ensure the accuracy and integrity of orders placed on NZX's securities market; and (g) observe proper ethical standards and act with honesty, integrity and fairness.

¹ Dealer means a person who has been accredited and approved by NZX as a Dealer to use the trading and reporting functionality available in the trading system, including entering, withdrawing or amendment orders, bids, and / or trades on behalf of a trading participants.

Participant Type	Summary	Accreditation Requirements	Ongoing Obligations
Principal Book Only Dealer	A Principal Book Only Dealer can trade on the NZX Securities Markets, as principal.	<p>An applicant for accreditation as a Principal Book Only must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZX along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, evidence of the applicant's license where relevant); (b) meet minimum capital requirements on an initial and ongoing basis; (c) if the Principal Book Only Dealer is not a Clearing Participant, enter into a clearing and settlement agreement with a Clearing Participant; (d) appoint a managing principal or responsible executive for ensuring that the Principal Book Only Dealer complies with the NZX Participant Rules; (e) appoint a compliance manager who is responsible for ensuring that the Principal Book Only Dealer complies with the NZX Participant Rules; and (f) ensure that any employees entering trades into the trading system have the required training and have been accredited as Dealers or DMA Dealers. 	<p>A Principal Book Only Dealer must act in accordance with the NZX Participant Rules, which require the Principal Book Only Dealer to:</p> <ul style="list-style-type: none"> (a) maintain adequate capital as required by a Principal Book Only Dealer; (b) ensure that only Dealers or DMA Authorised Persons can place orders on the NZX Securities Markets; (c) ensure that only Dealers, DMA Dealers or DMA authorised persons can place orders on the NZX Securities Markets; (d) ensure the accuracy and integrity of orders placed on those markets; (e) observe proper ethical standards and act with honesty, integrity and fairness; and (f) act in accordance with Good Broking Practice.
NZX Sponsor	An NZX Sponsor can bring a new issuances for quotation to the NZX Securities Markets, but cannot distribute the issuance.	<p>An applicant for accreditation as an NZX Sponsor, must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZX along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, and evidence of the applicant's licence where relevant); (b) have adequate conflicts management arrangements in place; 	<p>An NZX Sponsor must act in accordance with the NZX Participant Rules specific to its category of Participant. This requires an NZX Sponsor to:</p> <ul style="list-style-type: none"> (a) accept responsibility to NZX and acknowledge that it does not have any conflicting duties or interest in relation to

Participant Type	Summary	Accreditation Requirements	Ongoing Obligations
		<ul style="list-style-type: none"> (c) appoint a responsible executive to ensure that the NZX Sponsor complies with the NZX Participant Rules; and (d) ensure that its personnel are suitably qualified and experienced to meet their obligations to an issuer under NZX's Participant Rules. 	<ul style="list-style-type: none"> (b) the issuer that the NZX Sponsor is bringing to market; observe proper ethical standards and act with honesty, integrity and fairness; and (c) act in accordance with Good Broking Practice.
<p>Clearing Participant</p>	<p>Clearing Participants fall into three main categories:</p> <ul style="list-style-type: none"> (1) Individual Clearing Participant (ICP) - An ICP clears and settles transactions only for itself. (2) General Clearing Participant (GCP) - A GCP clears and settles transactions for itself and / or other Market Participants who are not Clearing Participants. (3) Default Clearing Participant (DCP) - A DCP clears and settle trades for any Participant in an NZX Market, but cannot clear transactions on its own behalf. 	<p>An applicant for accreditation as an Clearing Participant must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZC along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, and evidence of the applicant's licence where relevant); (b) meet minimum capital requirements on an initial and ongoing basis; (c) notify NZC of its Settlement Bank; (d) be a Depository Participant under the D Rules; (e) satisfy NZC that the Clearing Participant is of suitable standing and has appropriate systems, management structures and procedures in place; (f) satisfy NZC that it has the technical capacity to be connected to the Clearing House System, including through systems testing; and (g) provide documentation to satisfy NZC's obligations in relation to AML and CFT laws. 	<p>A Clearing Participant must act in accordance with the obligations in the C&S Rules to:</p> <ul style="list-style-type: none"> (a) maintain adequate capital as required by an ICP, GCP or DCP; (b) satisfy its daily settlement and margin obligations; (c) maintain satisfactory systems for the execution, recording reporting clearing and settlement of transactions; (d) maintain sufficient personnel with adequate knowledge, skill, training and competence to ensure compliance with the C&S Rules; (e) refrain from any conduct which is likely to harm the reputation or integrity of NZC or which constitutes unprofessional conduct; (f) where the Clearing Participant is a DCP, accept any genuine and reasonable request from a Trading Participant who seeks to enter into a Clearing and Settlement Agreement with a DCP;

Participant Type	Summary	Accreditation Requirements	Ongoing Obligations
			<ul style="list-style-type: none"> (g) use best endeavours to remain technologically current and being able to clear and settle all products as they are introduced; and (h) agree to comply with decisions and directions of NZMDT.
<p>Depository Participant</p>	<p>Every Clearing Participant is required to be a Depository Participant.</p> <p>There is only one category of Depository Participant. However, a Depository Participant may be assigned additional roles as follows:</p> <p>Legal Title Transfer Depository Participant - A Legal Title Transfer Depository Participant may effect the transfer of legal title to securities by electronic means.</p> <p>Borrower - The Borrower role allows a Depository Participant to borrow securities from the lending pool, subject to the provision of eligible collateral.</p> <p>Lender - The Lender role enables a Depository Participant to place securities in the lending pool and be selected to lend securities.</p>	<p>An applicant for accreditation as a Depository Participant, must:</p> <ul style="list-style-type: none"> (a) submit an application form to NZD along with all relevant evidence and documentation (including audited accounts for the preceding 5 years, and evidence of the applicant's licence where relevant); (b) demonstrate to NZX's satisfaction that the applicant is of suitable standing, and has appropriate systems and management structures and procedures in place; (c) notify NZD of its Settlement Bank; (d) provide appropriate documentation to enable NZX to meet its AML obligations in respect of that applicant; (e) appoint a responsible person to oversee the applicant's ongoing compliance with the D Rules; and (f) ensure all persons with access to the Legal Title Transfer System are adequately trained. 	<p>A Depository Participant must act in accordance with the D Rules, which require the Depository Participant to:</p> <ul style="list-style-type: none"> (a) maintain satisfactory systems for the execution, recording, reporting, clearing and settlement of transactions; (b) maintain sufficient personnel with adequate knowledge, skill, training and competence to ensure compliance with the D Rules; and (c) refrain from conduct which may harm the reputation or the integrity of NZD, or that would constitute unprofessional conduct.



CONFLICT MANAGEMENT POLICY

20 November 2018

Contents

1.	Introduction.....	2
2.	Objective	3
3.	Application.....	3
4.	Types of conflict of interest	3
	Conflict between NZX’s regulatory responsibilities and its commercial interests	3
	Resourcing conflict	4
	Self-regulation conflict	4
	Personal conflict	5
5.	Management of conflicts of interest	5
	Oversight.....	5
	Conflict between NZX’s regulatory responsibilities and its commercial interests.....	5
	Management principles	5
	Structural framework	6
	Regulatory activity controls.....	6
	Associated entity controls	6
	Decision-making.....	6
	Regulatory Governance Committee.....	7
	Resourcing conflict	7
	Head of Market Supervision confirmation	7
	Clearing Committee.....	7
	Self-regulation conflict	7
	Special Division	7
	Smartshares independent directors	8
	Personal conflict	8
	Code of Conduct	8
	Board Charter.....	8
	Conflicts Committee Charter.....	8
	Regulatory Governance Committee Charter.....	8
	Personal Conflict Management Policy	9
	Financial Products Trading Policy.....	9
6.	Notification of breaches	9
7.	NZ Markets Disciplinary Tribunal	9
8.	Regulation by Financial Markets Authority and Reserve Bank of New Zealand	10
9.	Delegation	10
	Appendix 1 – Board oversight controls	11
	Appendix 2 – Regulatory activity controls	12
	Appendix 3 – Associated entity controls.....	14
	Appendix 4 – Personal Conflict Management Policy.....	17
	Appendix 5 – NZ Markets Disciplinary Tribunal controls	18



1. Introduction

- 1.1 NZX Limited (**NZX**) is a licensed market operator. NZX is responsible for monitoring listed issuers' and market participants' compliance with, and enforcing, the rules under which NZX's markets operate.
- 1.2 The Financial Markets Conduct Act 2013 requires NZX to:
- (a) operate its markets in a fair, orderly and transparent manner; and
 - (b) have in place adequate arrangements for handling conflicts between its commercial interests and the need for it to ensure that its markets operate in a fair, orderly and transparent manner.
- 1.3 New Zealand Clearing and Depository Corporation Limited (**NZCDC**), a wholly-owned subsidiary of NZX, and NZX are designated operators of the NZCDC settlement system (**NZX Clearing**). NZCDC and NZX are responsible for monitoring market participants' compliance with, and enforcing, the rules under which NZX Clearing operates.
- 1.4 The Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Order 2010 requires NZCDC and NZX to operate NZX Clearing in accordance with the principles for financial market infrastructures, which include a requirement to consider the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
- 1.5 In this policy:
- (a) a **listed issuer** is an entity whose financial products are quoted on a market operated by NZX;
 - (b) a **market participant** is an entity or person accredited to:
 - (i) participate in NZX's markets; or
 - (ii) clear and settle trades through NZX Clearing or participate in the depository operated by New Zealand Depository Limited (**NZD**), which operates NZX Clearing's securities depository;
 - (c) **NZX's rules** are the rules for:
 - (i) listed issuers whose financial products are quoted on a market operated by NZX;
 - (ii) market participants who participate in NZX's markets; and
 - (iii) market participants who clear and settle trades through NZX Clearing or who participate in the depository operated by NZD;
 - (d) **NZX Operations** is NZX's clearing house and product operations teams, which undertakes all core operational activity in respect of NZX's markets and NZX Clearing; and



- (e) **NZX Regulation** is NZX's regulatory team, which undertakes all core regulatory activity in respect of NZX's markets and NZX Clearing.

1.6 The Financial Markets Authority (**FMA**) and Reserve Bank of New Zealand (**RBNZ**) as joint regulators of NZX Clearing must approve in writing any changes to this policy.

1.7 The policies and charters referred to in this policy are available at www.nzx.com.

2. Objective

2.1 NZX is committed to having in place arrangements to identify, declare and manage conflicts arising between:

- (a) NZX's commercial interests, and its regulatory roles as market operator and operator of NZX Clearing; and
- (b) NZX's role as market operator, and its and NZCDC's roles as operators of NZX Clearing.

2.2 This policy sets out the types of conflict of interest that could arise for NZX, together with its arrangements to manage these conflicts. It also sets out the NZ Markets Disciplinary Tribunal's role in managing conflicts.

2.3 This is an important policy. You should take the time to read it and understand how it applies to you. If there is anything that you do not understand, you should contact the General Counsel or Head of Market Supervision.

3. Application

This policy applies to all directors, independent members of Board committees and employees (including secondees, contractors and consultants) of the NZX Group.

4. Types of conflict of interest

Conflict between NZX's regulatory responsibilities and its commercial interests

4.1 A conflict can arise between NZX's regulatory roles as market operator and operator of NZX Clearing with responsibilities for monitoring listed issuers' and market participants' compliance with, and enforcing, NZX's rules, and NZX's role as a commercial entity. Such a conflict may arise if NZX were to act in its shareholders' interest by maximising shareholder value at the expense of undertaking its regulatory duties.

4.2 This conflict may result in NZX:

- (a) being less willing to establish strong regulatory standards, and less willing to enforce NZX's rules in respect of listed issuers and market participants, including by:
 - (i) approving new listed issuers or market participants that do not comply with NZX's regulatory standards;
 - (ii) granting rulings, waivers or approvals that weaken NZX's regulatory standards;



- (iii) approving new products for the purpose of NZX Clearing's rules without ensuring the risk capital held by New Zealand Clearing Limited (**NZC**), which operates NZX Clearing's central counterparty clearing house, is adequate to meet its obligations as the central counterparty clearing house; and
 - (iv) making regulatory decisions (for example, in respect of trading halts or suspensions) that are inappropriate in the circumstances; and
- (b) showing inappropriate bias when regulating a listed issuer or market participant that provides services in competition with NZX or has a connection or relationship with NZX, including:
- (i) using investigation or referral for enforcement action powers in a biased or unfair manner;
 - (ii) making administrative decisions in a biased or unfair manner;
 - (iii) using unfair regulatory practices (for example, delays in responding to queries or the imposition of burdensome procedures); and
 - (iv) making improper use of confidential information about a competing entity for business instead of regulatory purposes.

Resourcing conflict

- 4.3 A conflict could arise between NZX's focus on financial performance and its willingness to adequately resource NZX Regulation. There is a risk that NZX inadequately resources NZX Regulation and as a result it cannot properly regulate NZX's markets. This conflict can also arise in respect of NZX's willingness to adequately resource NZX Clearing. In particular, the risk capital held by NZC must be adequate to meet its obligations as the central counterparty clearing house for NZX Clearing. There is a risk that NZX inadequately resources NZX Clearing and as a result NZCDC and NZX cannot comply with their obligations as operators of a designated settlement system.

Self-regulation conflict

- 4.4 NZX is a listed issuer. NZX's shares are quoted on the NZX Main Board and its subordinated notes are quoted on the NZX Debt Market.
- 4.5 Smartshares Limited (**Smartshares**), a wholly-owned subsidiary of NZX, is a listed issuer. Smartshares manages exchange traded funds quoted on the NZX Main Board.
- 4.6 NZX Wealth Technologies Limited (**NZXWT**), a wholly-owned subsidiary of NZX, is a market participant accredited to participate in the depository operated by NZD. NZXWT provides technology platform services and wrap asset administration services to financial advisers and providers.
- 4.7 A conflict could arise if NZX was required to enforce its (and its subsidiaries) compliance with NZX's rules.



Personal conflict

- 4.8 A conflict can arise because a director, independent member of a Board committee or member of NZX Regulation may have a personal interest which interferes with their objectivity when undertaking regulatory activities.

5. Management of conflicts of interest

Oversight

- 5.1 The Board has a specific oversight role in respect of NZX's regulatory activity.
- 5.2 Board oversight controls (see Appendix 1) ensure that the Board is properly informed of NZX's regulatory activity, and that no undue influence is brought to bear upon NZX Regulation.
- 5.3 The Board has established a Conflicts Committee, which assists the Board in overseeing the effectiveness of NZX's policies and procedures for ensuring that any conflicts of interest within the NZX Group are appropriately managed.
- 5.4 The Conflicts Committee is responsible for reviewing at least annually the adequacy of the arrangements within the NZX Group for dealing with any potential or actual conflict between:
- (a) the interests arising from the regulation of NZX's markets or NZX Clearing, and the commercial interests of NZX and its accountability to its shareholders, including any potential or actual conflict arising from the quotation of financial products issued by NZX or Smartshares on NZX's markets; and
 - (b) NZX's role as licensed market operator and NZCDC's and NZX's roles as operators of NZX Clearing, including the possibility of regulatory or resourcing conflicts between NZX and NZX Clearing,
- and making recommendations to the Board.
- 5.5 The Conflicts Committee has at least one independent member who is not a director or employee of NZX.

Conflict between NZX's regulatory responsibilities and its commercial interests

Management principles

- 5.6 NZX's arrangements to manage conflicts of interest between its regulatory and commercial roles, are based on the following principles:
- (a) NZX's markets must operate, and be seen to operate, in a fair, orderly and transparent manner;
 - (b) a credible perception of a conflict of interest may be just as damaging as an actual conflict and must be managed accordingly;
 - (c) NZX's commercial interests must not be allowed to influence regulatory decision-making or NZCDC's and NZX's ability to comply with their obligations as operators of a designated settlement system;



- (d) NZX's regulatory information and activity must be quarantined from its commercial activity; and
- (e) NZX's regulatory activity must be consistent and transparent, and free from undue influence.

Structural framework

5.7 To ensure NZX's regulatory activity is quarantined from its commercial activity:

- (a) all core regulatory activity is undertaken by NZX Regulation;
- (b) all core operational activity critical for regulatory outcomes is undertaken by NZX Operations;
- (c) the power to make decisions in respect of regulatory matters is delegated to the Head of Market Supervision;
- (d) the Chief Executive Officer (**CEO**) has no power to make decisions in respect of regulatory matters, but is responsible for ensuring NZX operates its markets in a fair, orderly and transparent manner; and
- (e) the Board does not make decisions in respect of regulatory matters, but has oversight of NZX's regulatory activity, including through the Regulatory Governance Committee.

Regulatory activity controls

5.8 Regulatory activity controls (see Appendix 2) ensure NZX's regulatory activity is quarantined from its commercial activity and is free from undue influence.

Associated entity controls

5.9 Associated entity controls (see Appendix 3) ensure NZX does not show inappropriate bias when regulating listed issuers or market participants which are associated entities of NZX.

Decision-making

- 5.10 All regulatory decisions must be made in accordance with NZX's rules, which are prepared by NZX and approved by the FMA (and, in the case of the rules relating to NZX Clearing, the RBNZ). NZX's rules are available at www.nzx.com.
- 5.11 Guidance notes in respect of NZX's rules are made available to listed issuers and market participants, and are available at www.nzx.com.
- 5.12 NZX Regulation has developed internal operating rules and procedures which set out the process NZX Regulation will follow to ensure consistent application of NZX's rules.
- 5.13 NZX's regulatory decisions in respect of rulings, waivers and approvals, together with the NZ Markets Disciplinary Tribunal's decisions in respect of disciplinary matters, are available at www.nzx.com (unless NZX or the Tribunal has determined that there are considerations that make it appropriate to keep a decision confidential).
- 5.14 The names and contact details of all listed issuers and corporate market participants are available at www.nzx.com.



Regulatory Governance Committee

- 5.15 The Board has established a Regulatory Governance Committee, which assists the Board in reviewing and providing feedback in respect of the governance of NZX's regulatory function.
- 5.16 The Regulatory Governance Committee is responsible for reviewing and providing feedback in respect of the quality of NZX's regulatory decisions by reviewing a selection of decisions to determine whether they:
- (a) are consistent with NZX's rules and any guidance notes issued by NZX;
 - (b) are logical and appropriate in the circumstances, with any discretions reasonably exercised; and
 - (c) have been made in accordance with NZX's internal operating rules and procedures and the delegated authorities approved by the Board.
- 5.17 The Regulatory Governance Committee has at least one independent member who is not a director or employee of NZX.

Resourcing conflict

Head of Market Supervision confirmation

- 5.18 The Board oversight controls require that at each regular Board meeting, the Head of Market Supervision will meet with the Board without the CEO being present. At that time, the Head of Market Supervision will confirm whether he or she considers NZX Regulation is adequately resourced.

Clearing Committee

- 5.19 The Board has established a Clearing Committee, which assists the Board in ensuring that NZC has adequate risk capital to meet its obligations as the central counterparty clearing house for NZX Clearing.
- 5.20 The Clearing Committee will obtain advice from independent external advisers as to the adequacy of NZC's risk capital and the suitability of the risk capital calculations used to formulate the risk capital requirements:
- (a) at least annually; and
 - (b) prior to the Board approving any new approved products for the purpose of NZX Clearing's rules.
- 5.21 The advice from independent external advisers as to the adequacy of NZC's risk capital and the suitability of the risk capital calculations used to formulate the risk capital requirements will be provided to the Board, and will be made available to the FMA and RBNZ.

Self-regulation conflict

Special Division

- 5.22 The Special Division of the NZ Markets Disciplinary Tribunal is established under the NZ Markets Disciplinary Tribunal Rules and exercises the powers and functions of NZX Regulation as they apply to:



- (a) NZX; and
- (b) related entities of NZX (as defined in the NZ Markets Disciplinary Tribunal Rules), including Smartshares and NZXWT.

5.23 The members of the Special Division are appointed by the NZ Markets Disciplinary Tribunal on the basis of their independence and skills, and because they do not have any conflicts of interest. The members of the Special Division are confirmed by the FMA.

Smartshares independent directors

5.24 The Smartshares Board currently has two independent directors who are not directors or employees of NZX.

Personal conflict

Code of Conduct

5.25 NZX's Code of Conduct applies to all directors, independent members of Board committees and employees (including secondees, contractors and consultants) of the NZX Group. The code notes that a director, independent member or employee must avoid conflicts of interest at all times and must promptly notify the General Counsel (or the Board Chairperson) if the director, independent member or employee:

- (a) engages in any other business or commercial activity that would interfere with his or her ability to carry out his or her job and responsibilities to NZX;
- (b) is a material shareholder (this being a shareholder who, directly or indirectly, holds or otherwise has any financial interest in more than 10% of the shares) in, or a director or employee of, any other entity in the financial services industry; or
- (c) is involved in any transaction for or on behalf of NZX where he or she has a commercial or personal interest in the other party to the transaction.

Board Charter

5.26 NZX's Board Charter sets out the responsibilities and framework for the operation of the Board. The charter notes that a director must excuse himself or herself from all discussions in respect of any matter in which he or she may have an actual conflict. The Board Chairperson will determine whether a director will receive supporting documentation in respect of any matter in which the director may have an actual conflict.

Conflicts Committee Charter

5.27 NZX's Conflicts Committee Charter sets out the responsibilities and framework for the operation of the Conflicts Committee. The charter notes that a member must excuse himself or herself from all discussions in respect of any matter in which he or she may have an actual conflict. The Chairperson of the Conflicts Committee will determine whether a member will receive supporting documentation in respect of any matter in which the member may have an actual conflict.

Regulatory Governance Committee Charter

5.28 NZX's Regulatory Governance Committee Charter sets out the responsibilities and framework for the operation of the Regulatory Governance Committee. The charter notes that a member must excuse himself or herself from all discussions in respect of any matter in which he or she may have an actual conflict. The Chairperson of the Regulatory Governance Committee will determine whether a member will receive supporting documentation in respect of any matter in which the member may have an actual conflict.



Personal Conflict Management Policy

- 5.29 NZX's Personal Conflict Management Policy (see Appendix 4) supplements the conflicts of interest provisions in the Code of Conduct and applies to all members of NZX Regulation. The policy sets out the requirement to declare actual or potential conflicts of interest, together with NZX's arrangements to manage such conflicts.
- 5.30 The Head of Market Supervision may from time to time determine that the Personal Conflict Management Policy should also apply to an employee (or secondee, contractor or consultant) who is not a member of NZX Regulation by notifying the General Counsel and Board Chairperson.

Financial Products Trading Policy

- 5.31 NZX's Financial Products Trading Policy sets out the prohibition on insider trading, together with NZX's restrictions on its directors, independent members of Board committees and employees trading financial products quoted on a market operated by NZX.
- 5.32 Under the policy:
- (a) NZX's directors, independent members of Board committees and employees must obtain the General Counsel's consent before trading in NZX's shares and subordinated notes; and
 - (b) certain employees (including members of NZX Regulation) must obtain the Head of Market Supervision's consent before trading in financial products quoted on a market operated by NZX (other than NZX's shares and subordinated notes).

6. Notification of breaches

- 6.1 Subject to paragraph 6.2 and 6.2, directors, independent members of Board committees and employees must notify the Head of Market Supervision and CEO of breaches or potential breaches of this policy (including the controls or Personal Conflict Management Policy set out in the appendices).
- 6.2 Directors, independent members of Board committees and employees must notify the CEO, Board Chairperson and Chairperson of the Conflicts Committee of breaches or potential breaches of this policy by the Head of Market Supervision (including the controls or Personal Conflict Management Policy set out in the appendices).
- 6.3 Directors, independent members of Board committees and employees must notify the Head of Market Supervision, Board Chairperson and Chairperson of the Conflicts Committee of breaches or potential breaches of this policy by the CEO (including the controls set out in the appendices).

7. NZ Markets Disciplinary Tribunal

- 7.1 The NZ Markets Disciplinary Tribunal is an independent regulatory body established under the NZ Markets Disciplinary Tribunal Rules.
- 7.2 The NZ Markets Disciplinary Tribunal's principal role is to determine whether a listed issuer or market participant has breached NZX's rules in any matter referred to it by NZX Regulation (the Special Division has the role of NZX Regulation in bringing cases to the Tribunal in respect of matters concerning NZX and related entities of NZX, including



Smartshares and NZXWT). If the Tribunal determines that a breach has occurred, it must then determine the appropriate penalty.

7.3 NZ Markets Disciplinary Tribunal controls (see Appendix 5) ensure the Tribunal operates in an independent and impartial manner.

7.4 The NZ Markets Disciplinary Tribunal Rules are available at www.nzx.com.

8. Regulation by Financial Markets Authority and Reserve Bank of New Zealand

8.1 The FMA regulates NZX as a licensed market operator and reviews NZX's regulatory obligations (including its arrangements for handling conflicts of interest) annually.

8.2 The FMA and RBNZ jointly regulate NZX and NZCDC as operators of NZX Clearing.

9. Delegation

The Head of Market Supervision may sub-delegate his/her authority to make regulatory decisions where he/she is unavailable or where the decision can be more efficiently handled by a member of NZX Regulation. The Head of Market Supervision will notify the CEO in writing of any such sub-delegation and when he/she is unavailable.

Approver:	NZX Limited Board
Document owner:	General Counsel and Head of Market Supervision
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Appendix 1 – Board oversight controls

The controls set out below ensure that the Board is properly informed of NZX’s regulatory activity, and that no undue influence is brought to bear upon NZX Regulation.

1. Board meetings

- 1.1. The Head of Market Supervision will prepare an NZX Regulation paper for each regular Board meeting. The paper will cover:
 - (a) key regulatory activity;
 - (b) compliance with NZX’s market operator obligations; and
 - (c) any breaches of this policy (including the controls and Personal Conflict Management Policy set out in the appendices).
- 1.2. At each regular Board meeting, the Head of Market Supervision will meet with the Board without the CEO being present. At that time, the Head of Market Supervision will confirm whether:
 - (a) there has been any undue influence sought to be placed on NZX Regulation in respect of regulatory decision-making; and
 - (b) the Head of Market Supervision considers NZX Regulation is adequately resourced.

2. Head of Market Supervision access to the Board

- 2.1. The Head of Market Supervision will have unrestricted access to the Board.
- 2.2. The Head of Market Supervision will escalate conflict of interest issues to the Board where a matter of difference has arisen and cannot be resolved between the Head of Market Supervision and CEO.

3. Head of Market Supervision appointment and remuneration

- 3.1. The Board must approve (upon the recommendation of NZX’s Human Resources Committee):
 - (a) the appointment or removal of the Head of Market Supervision;
 - (b) the remuneration of the Head of Market Supervision; and
 - (c) any disciplinary action against the Head of Market Supervision.

4. Enforcement Policy

The Board will review NZX Regulation’s Enforcement Policy (which sets out guidelines for referring matters to the NZ Markets Disciplinary Tribunal) at least every two years.



Appendix 2 – Regulatory activity controls

The controls set out below ensure NZX's regulatory activity is quarantined from its commercial activity and is free from undue influence.

1. Restrictions

1.1. The following restrictions apply to NZX's regulatory activity:

- (a) only members of NZX Regulation may make regulatory decisions (a regulatory decision is a decision made to exercise a discretionary regulatory power under NZX's rules);
- (b) only members of NZX Regulation may enter the NZX Regulation section of NZX's premises;
- (c) in making regulatory decisions, members of NZX Regulation must only take into account the facts and other relevant circumstances surrounding the activity in question and must not be unduly influenced by any other factors;
- (d) any employee involved in the implementation of regulatory decisions or the exercise of a power conferred on NZX under NZX's rules must act in accordance with NZX's internal operating rules and procedures;
- (e) NZX Group directors, independent members of Board committees and employees (including the CEO) must not attempt to influence the outcome or implementation of regulatory decisions or the exercise of regulatory powers, and members of NZX Regulation must report any such attempt to the Head of Market Supervision;
- (f) regulation must not be relaxed in order to achieve any commercial objectives, such as cost reduction or revenue increase; and
- (g) regulatory decisions must be consistent and fair, and in accordance with NZX's rules.

1.2. Only members of NZX Regulation are permitted to access information systems resources (computing device, network, information repository) that hold regulatory information and NZX will restrict access to such information system resources.

2. Use of regulatory information

2.1. Regulatory information is information obtained by NZX Regulation about listed issuers or market participants obtained in the course of NZX making regulatory decisions about listed issuers and market participants under NZX's rules, including:

- (a) the identity of a listed issuer or market participant the subject of a regulatory decision;
- (b) the fact that NZX Regulation suspects that a breach of NZX's rules has occurred;
- (c) the fact that an investigation is underway;
- (d) the fact that a matter has been referred to the FMA or the NZ Markets Disciplinary Tribunal;



- (e) the fact that a complaint has been received about a listed issuer or market participant; and
- (f) information received from a listed issuer or market participant that relates to a decision made or to be made by NZX Regulation.

2.2. Regulatory information does not include:

- (a) information about market activity that does not individually identify a listed issuer or market participant;
- (b) information about trends in market practices; and
- (c) publicly available information about listed issuers, market participants or trading activity.

2.3. Members of NZX Regulation must not disclose regulatory information to employees in other parts of NZX, except in the following circumstances:

- (a) where the information is necessary to the proper functioning of NZX's markets;
- (b) where a regulatory decision has been made and it is necessary for operational employees to understand the impact of the decision (for example, a trading halt or suspension);
- (c) where disclosure is made for the purposes of assisting monitoring compliance with, or enforcement of, NZX's rules;
- (d) in other circumstances where the Head of Market Supervision agrees in advance; and
- (e) to the Board (including Board committees) or CEO (where appropriate).

2.4. Employees who obtain regulatory information must not use that information for any purpose other than for which it was acquired and must keep the information confidential.



Appendix 3 – Associated entity controls

The controls set out below ensure NZX does not show inappropriate bias when regulating listed issuers or market participants which are associated entities.

The controls do not apply to entities regulated by the Special Division of the NZ Markets Disciplinary Tribunal i.e. NZX and its related entities, including Smartshares and NZXWT.

1. Introduction

- 1.1 An **associated entity** for the purposes of these controls is a listed issuer or market participant which competes with NZX or has a connection or relationship with NZX such that in the circumstances there would be a reasonable apprehension or suspicion of bias by NZX in respect of that listed issuer or market participant.
- 1.2 The Head of Market Supervision will assess whether a new listed issuer or market participant is an associated entity at the time the issuer is listed or the market participant is accredited and at least annually after that.
- 1.3 The Conflicts Committee, in consultation with the Special Division, will annually assess which listed issuers and market participants are associated entities.
- 1.4 If the Board Chairperson has an actual or potential conflict of interest in respect of a matter escalated to him/her in accordance with sections 3 and 4 below, the matter should be referred to the Chairperson of the Conflicts Committee.

2. Regulatory decisions

- 2.1 The following additional controls apply to the regulation of associated entities:
 - (a) all regulatory decisions (except those which are time-critical – see section 3 below) must be notified in advance to the Head of Market Supervision;
 - (b) the Head of Market Supervision will:
 - (i) review the proposed regulatory decision;
 - (ii) verify that the correct process has been followed in reaching the proposed decision; and
 - (iii) either authorise or not authorise the proposed decision;
 - (c) where the Head of Market Supervision does not authorise the decision:
 - (i) the Head of Market Supervision will explain why he or she did not authorise the decision to the employee proposing the decision; and
 - (ii) the decision of the Head of Market Supervision will prevail, unless the relevant employee seeks to escalate the matter to the Board Chairperson (the employee will not be subject to dismissal, demotion, harassment or any other form of retaliatory action for such escalation);
 - (d) where the relevant employee escalates the matter to the Board Chairperson, the Board Chairperson will:



- (i) review the proposed regulatory decision;
 - (ii) verify that the correct process has been followed in reaching the proposed decision; and
 - (iii) either authorise or not authorise the proposed decision; and
- (e) a record will be made of the circumstances of the regulatory decision and the process that was followed (this record will be made available to the FMA as part of its annual review of NZX's regulatory obligations).

3. Time critical decisions

3.1 Certain regulatory decisions are time critical and must be made immediately (for example, a trading halt or suspension). In these circumstances, where it would not be in the best interests of market integrity to take the time for the Head of Market Supervision to review the decision, the regulatory decision may be made immediately and the following additional controls apply:

- (a) as soon as practicable following the decision, the Head of Market Supervision will:
 - (i) review the regulatory decision;
 - (ii) verify that the correct process has been followed in reaching the decision; and
 - (iii) either support or not support the decision;
- (b) where the Head of Market Supervision does not support the decision:
 - (i) the Head of Market Supervision will explain why he or she did not support the decision to the employee who made the decision;
 - (ii) the decision of the Head of Market Supervision will prevail, unless the relevant employee seeks to escalate the matter to the Board Chairperson (the employee will not be subject to dismissal, demotion, harassment or any other form of retaliatory action for such escalation); and
 - (iii) the Head of Market Supervision may authorise any appropriate action to put the entity back into the position it would have been in had the regulatory action not been taken;
- (c) where the relevant employee escalates the matter to the Board Chairperson, the Board Chairperson will:
 - (i) review the regulatory decision;
 - (ii) verify that the correct process has been followed in reaching the decision; and
 - (iii) either support or not support the decision; and
- (d) a record will be made of the circumstances of the regulatory decision and the process that was followed (this record will be made available to the FMA as part of its annual review of NZX's regulatory obligations).



4. Fonterra

4.1 For the purposes of these controls, Fonterra Co-operative Group Limited (**Fonterra**), which has contracted with NZX to operate the Fonterra Shareholders' Market, is an associated entity and, as a result, these controls also apply to all regulatory decisions in respect of:

- (a) Fonterra;
- (b) the Fonterra Shareholders' Market; and
- (c) the Fonterra Shareholders' Fund (which is a fund quoted on the NZX Main Board).

4.2 For the purposes of these controls, a regulatory decision includes:

- (a) a ruling, waiver or approval under the Fonterra Shareholders' Market Rules or in respect of the Fonterra Shareholders' Fund under the NZX Main Board Listing Rules;
- (b) a ruling, waiver or approval from the NZX Participant Rules insofar as they apply to the Fonterra Shareholders' Market;
- (c) any enforcement decision arising out of an investigation of a suspected breach of the Fonterra Shareholders' Market Rules by Fonterra or the NZX Main Board Listing Rules by the Fonterra Shareholders' Fund;
- (d) where NZX consults with Fonterra under rule 22.13.2(b) of the NZX Participant Rules;
- (e) any decision to recommend suspension or termination of an RMA provider (a Fonterra Shareholders' Market participant who provides trading functionality in respect of the Fonterra Shareholders' Market and units in the Fonterra Shareholders' Fund) to the NZ Markets Disciplinary Tribunal under rule 22.13.3 of the NZX Participant Rules; and
- (f) where NZX has had to determine whether or not to make a ruling in respect of waivers granted to an RVP (a Fonterra Shareholders' Market participant who has been approved to provide market making services in respect of the Fonterra Shareholders' Market) under rule 22.5.1 of the NZX Participant Rules.



Appendix 4 – Personal Conflict Management Policy

This policy supplements the conflicts of interest provisions in the Code of Conduct and applies to all members of NZX Regulation.

1. Duty to declare conflicts of interest

- 1.1 A member of NZX Regulation must identify and declare to the Head of Market Supervision (using NZX's Declaration of Personal Conflict of Interest Form) any actual or potential conflicts of interest that arise in his or her personal capacity. Such interests will be noted in NZX's conflicts register.
- 1.2 From time to time, the Head of Market Supervision will require members of NZX Regulation to confirm that the information in the conflicts register is true and correct.
- 1.3 A person will have an actual or potential conflict of interest where he or she has a connection or relationship with a listed issuer or market participant that could cause that person to be biased or perceived to be biased in the performance of that person's duties. This includes where a person:
 - (a) is a director of a listed issuer or market participant;
 - (b) has a trading account with a market participant;
 - (c) holds financial products issued by a listed issuer; and
 - (d) has a family member or close associate employed by, or acting as a director of, a listed issuer or market participant.

2. Managing conflicts of interest

- 2.1 If a member of NZX Regulation has an actual or potential conflict of interest, the Head of Market Supervision will either:
 - (a) require that that the member not take part in discussions and decisions in respect of any regulatory matter in which he or she has the conflict; or
 - (b) specify arrangements to manage the conflict.



Appendix 5 – NZ Markets Disciplinary Tribunal controls

The controls set out below ensure the NZ Markets Disciplinary Tribunal operates in an independent and impartial manner.

1. Controls

- 1.1 The Tribunal operates in accordance with the NZ Markets Disciplinary Tribunal Rules.
- 1.2 The members of the Tribunal are subject to the NZ Markets Disciplinary Tribunal Conflicts Policy.
- 1.3 The Tribunal's decisions are made public (unless the Tribunal determines that there are considerations that make it appropriate to keep a decision confidential).
- 1.4 The penalties the Tribunal can impose are set out in the NZ Markets Disciplinary Tribunal Rules and the Penalties Band Guidance Note.
- 1.5 The Tribunal's decisions may be considered by the FMA as part of its annual review of NZX's regulatory obligations.
- 1.6 The Tribunal's decisions may be appealed to a separate division of the Tribunal.

2. Further information

The NZ Markets Disciplinary Tribunal Rules, NZ Markets Disciplinary Tribunal Conflicts Policy and Penalties Band Guidance Note are available at www.nzx.com.