
NZCLEAR¹ SYSTEM RULES

Effective Date is 9 November 2009

¹ The System Operator has advised that from 26 June 2010 the system formerly known as the Austraclear New Zealand System will be known as the NZClear System.

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NZCLEAR SYSTEM RULES

1 DEFINITIONS AND INTERPRETATIONS

Definitions

1.1 In these Rules, unless the context requires otherwise:

“Associate Member” means any person, firm or corporation which has been accepted by the System Operator under Rules 3 and 4 as an Associate Member of the System (and whose membership has not been terminated in accordance with the Rules).

“Auditor” means the Auditor of the System appointed under Rule 19.

“Authorised Signatory” means, in respect of a Member, each signatory or authorised person notified by the Member in the Authorised Signatories form referred to in Rule 16.6.

“Bank” means a person or body corporate registered as a "registered bank" under Section 69 of the Reserve Bank Act.

“Branch Account” means an NZClear System account opened by the System Operator in respect of a Member for use in accordance with these Rules.

“Business Day” means a day (not being a Saturday or Sunday) on which Banks are open for business in either Auckland or Wellington.

“Cash Account” means, in respect of a Member, an account recorded in the System in respect of a Member which records the Cash Elements of Transactions of that Member.

“Cash Element” means a Corporate Action Cash Element or a Transaction Cash Element.

“Cash Transaction” means a Transaction in respect of which there is only a Cash Element and no Security Element.

“Corporate Action” means any action taken or notice given by or on behalf of the Issuer of any Security (for example, but without limitation, a Corporate Action may arise in respect of a dividend, interest payment, rights issue, bonus shares, take-over or voting right).

“Corporate Action Cash Element” means that component of a Corporate Action which is performed by the making of a payment of money to, or by, holders of equity or debt Securities of an Issuer.

“Corporate Action Security Element” means that component of a Corporate Action which is performed by registering a dealing in respect of the Securities of an Issuer in a Member’s Security Account.

“Daily Transaction Report” means, in respect of a Participating EAH, the report made available by the System Operator for access by that Participating EAH under Rule 13.

“Default Rate” means the Official Cash Rate plus the Margin.

“Depository” means NZCSD or such other company as may be nominated as Depository from time to time by the System Operator.

“Effective Date” has the meaning ascribed to it in Rule 2.3.

“Element” means a Transaction Cash Element, a Corporate Action Cash Element, a Transaction Security Element or a Corporate Action Security Element.

“Encumber” in relation to a Security means the identification and constructive delivery of that Security to a Member as security or collateral for an obligation, debt or liability using the functionality of the System, and as this and the following terms are further described in Rule 10; and references to “Encumbered”, “Encumbrancer”, “Encumbrancee” and the like shall have corresponding meanings.

“Encumbrance” means the restrictions under these Rules which affect an Encumbered Security.

“End of Day” in relation to the operations of the System means the time set out in the *Operating Guidelines* from time to time as being the time that the System is closed to Members at the end of the ESAS Day. This time may be extended by the System Operator by notifying Members through the System or by such other means as the System Operator may decide.

“Error” has the meaning ascribed to it in Rule 17.5.1.

“Error Benefit” has the meaning ascribed to it in Rule 17.5.1.

“ESAS” means the Exchange Settlement Account System operated by the Reserve Bank.

“ESAS Account” means, in respect of a Participating EAH, the Exchange Settlement Account maintained at the Reserve Bank for that Participating EAH.

“ESAS Day” means the hours of operation of ESAS Accounts as determined from time to time in accordance with the ESAS Terms & Conditions issued by the Reserve Bank.

“ESAS Start of Day” means the start of the ESAS Day as determined from time to time in accordance with the ESAS Terms & Conditions issued by the Reserve Bank.

“ESAS Terms & Conditions” means the Reserve Bank of New Zealand Exchange Settlement Account Terms and Conditions entered into by each ESAS Account holder with the Reserve Bank, as they may be modified, varied, supplemented, novated, replaced or substituted from time to time.

“FINEWISS Securities” means “fixed interest new issue” registered certificates of deposit issued by Members pursuant to the “FINEWISS” functionality of the System, together with such other securities as the System Operator may allow to be issued pursuant to that functionality from time to time; and “FINEWISS Security” means any one of them.

“FW Registrar” means the Reserve Bank acting as registrar in respect of FINEWISS Securities.

“FW Registry Agreement” means, in respect of each FINEWISS Security, the registry agreement relating to FINEWISS Securities between the Issuer of that FINEWISS Security and the FW Registrar.

“House Account” means the default Sub-Account within a Member’s Security Account in which Securities are recorded.

“Issuer” means, in relation to an equity Security or debt Security, the person on whose behalf any money, paid in consideration of the allotment of the security, is received.

“List of Authorised Signatories” means a document in the form prescribed by the System Operator, and lodged with the System Operator by a Member, pursuant to Rule 16.6 or, as the case may be, the latest such document so lodged by such Member.

“Lodge” means the transfer of a Security into the name of the Depository, the simultaneous creation and registration of FINEWISS Securities, or such other process by which a Security is treated as Lodged and able to be dealt with through the System as the *Operating Guidelines* may specify; and references to "Lodging", "Lodgement" and the like shall have corresponding meanings.

“Margin” means 2% per annum.

“Maturity” means the due date for repayment of a debt Security or the redemption or repurchase by the Issuer of any Security; and “Matured” and “Maturity Date” shall have corresponding meanings.

“Maximum Cash Limit” means the maximum amount up to which a Member's Participating EAH has authorised the Member's Cash Account to go into debit.

“Mediation Notice” has the meaning ascribed in Rule 22.10.1.

“Member” means any person, firm or corporation which has been accepted under these Rules as a Member of the System (and whose membership has not been terminated in accordance with these Rules) and where the context so requires, includes a former Member. Unless the context requires otherwise, Member also includes an Associate Member and a Nominated Trust Member and, in any case in which it participates not as System Operator or agent in Transactions or Corporate Actions, but in the capacity of a Member, but only for that limited purpose, includes the System Operator.

“Network” means any computer equipment, software, networks and ancillary services which may be provided by or made available through the System Operator, in order to provide access to the System.

“New Operator” has the meaning ascribed in Rule 22.9.

“Nominated Account” means an account at a Participating EAH opened by a Participating EAH for a Member and notified to the System Operator by that Member under Rule 7.

“Nominated Clearing Account” means an account of a Participating EAH acceptable to the System Operator, nominated by that Participating EAH under Rule 7.1.

“Nominated Trust” has the meaning ascribed to it in Rule 5.1.

“Nominated Trust Member” means any person, firm or corporation which has been accepted by the System Operator under Rule 5 as a Nominated Trust Member of the System (and whose membership has not been terminated in accordance with the Rules).

“**Notifiable Event**” means, in respect of the Member:

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement or composition with, its creditors; or
- (b) its admitting in writing its inability to pay its debts as they become due from its own money; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of an application in respect of it:
 - (i) in any court or before any agency alleging or for its bankruptcy, or liquidation (or any analogous proceeding) unless it can be demonstrated by the Member to be vexatious or that it is otherwise unlikely to result

in the liquidation of the Member, in either case within a period of time to be specified by the Reserve Bank;

- (ii) seeking any reorganisation, arrangement, composition, readjustment, administration, liquidation, dissolution or similar relief,

under any present or future statute, law or regulation, such application (except in the case of an application for liquidation or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing;

- (e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of it over all or any material part of its property;
- (f) the appointment of a Statutory Manager under either the Reserve Bank Act or the Corporations (Investigation and Management) Act 1989;
- (g) the occurrence of any event having a substantially similar effect to any of the events specified in (a) to (f) above under the law of any applicable jurisdiction; or
- (h) the occurrence of any of the events specified in (a) to (g) above occurring in relation to a parent entity which holds shares either directly or indirectly in the Member and where the event places that Member at financial risk.

“NZCSD” means New Zealand Central Securities Depository Limited.

“Official Cash Rate” means, at any time, the official cash interest rate set by the Reserve Bank and current at that time.

“*Operating Guidelines*” means the NZClear guidelines published from time to time by the System Operator which, *inter alia*, set out the day-to-day administration, operating times, System functions and processes for the System Operator and Members.

“Participating ESAS Account Holder” or “Participating EAH” means: (a) a Bank or other entity which is a Member and has an ESAS Account and which has agreed to participate as a banker in the System by providing one or more Nominated Accounts (and related Cash Accounts) to one or more members and to be bound by these Rules; (b) in respect of a Member, means that Participating EAH with which that Member has its Nominated Account; and (c) in any case in which it participates not as System Operator or agent in Transactions or Corporate Actions, but in the capacity of a Participating ESAS Account Holder, but only for that limited purpose, includes the System Operator.

“Payment Obligation” means any amount payable by any Participating EAH to any other Participating EAH under Rule 12.

“Prescribed” means prescribed by the System Operator whether in the *Operating Guidelines* or otherwise.

“Reserve Bank” means the Reserve Bank of New Zealand as defined in Section 5 of the Reserve Bank Act.

“Reserve Bank Act” means the Reserve Bank of New Zealand Act 1989.

“Rule Change” has the meaning ascribed in Rule 22.3.1.

“Rules” means the NZClear System terms and conditions issued by the System Operator from time to time, previously known as “Regulations”, any documentation or advice which is expressly stated to form part of the Rules, all schedules and appendices of the foregoing, and all amendments or new versions issued from time to time of any of the foregoing.

“Security” means a security as defined in Section 2 of the Securities Act 1978 of a type which is acceptable to the System Operator for Lodgement into the System; and “Securities” shall be interpreted accordingly.

“Security Account” means, in respect of each Branch Account, the account kept for the relevant Member by the System Operator to record Securities in the System held on behalf of that Member and consists of a House Account and any other Sub-Accounts the Member may have opened from time to time in accordance with Rule 6.

“Security Element” means a Transaction Security Element or a Corporate Action Security Element.

“Security Transaction” means a Transaction in respect of which there is only a Transaction Security Element and no Transaction Cash Element.

“Settlement” means (subject to Rules 8 and 11.4 to 11.6):

- (a) in relation to a Transaction Cash Element or a Transaction Security Element, the due performance of that Element as intended by the parties to the Transaction (of which the Element is part);
- (b) in relation to a Corporate Action, means the recording of the Corporate Action Security Element in the relevant Member’s Security Account and/or the recording of the Corporate Action Cash Element in the Member’s Cash Account (as the case may be); and
- (c) in respect of a Trade, means Settlement as that term is used in Rule 11.7,

and “Settle” and “Settled” shall have corresponding meanings.

“Settlement Date” means, in relation to a Transaction, the date specified in the recorded particulars of such Transaction as the ESAS Day on which such Transaction is to be Settled; and, in relation to a Corporate Action, means the date on which the Corporate Action is recorded in the relevant Member’s Security Account or Cash Account (as the case may be).

“Settlement Session” means each period during each Business Day specified to be a Settlement Session by the System Operator in the Operating Guidelines and during which the Operating Guidelines specify the System is available to Members.

“Special Conditions” has the meaning ascribed to it in Rule 3.1.5.

“Start of Day” in relation to the operations of the System means the time set out in the *Operating Guidelines* from time to time as being the time that the System is first opened to Members for the new ESAS Day.

“Sub-Account” means a House Account or another sub-account in a Member’s Security Account, and is more particularly described in Rule 6.

“System” or “NZClear² System” means the NZClear facility established by the System Operator for the Lodgement, transfer and Uplifting of Securities, the recording and the Settlement of Transactions between Members and the recording and Settlement of Corporate Action Security Elements and Corporate Action Cash Elements, which facility is known as the NZClear System or any other name designated by the System Operator and notified to Members, and includes any Network provided under Rule 20.

“System Operator” means the Reserve Bank or a New Operator appointed in accordance with Rule 22.9.

“Trade” means a Transaction comprising both a Cash Element and a Security Element.

“Transaction” means any dealing reported to and recorded by the System Operator in accordance with Rule 11.2:

“Transaction Cash Element” means that component of a Transaction which is intended by the parties to the Transaction to be performed by the payment by one party to the other of a specified amount of money.

“Transaction Security Element” means that component of a Transaction which is intended by the parties to the Transaction to be performed by the transfer by one party to the other of a specified Security Lodged in the System.

²

The System Operator has notified Members that from 26 June 2010 the system formerly known as the Austraclear New Zealand System will be known as the NZClear System.

“Uplift” in relation to a Security means the transfer of that Security from the System; references to “Uplifted”, “Uplifting” and the like shall have a corresponding meaning.

Interpretation

- 1.2 Unless the context requires otherwise, these Rules shall be interpreted as follows:
- 1.2.1 Any reference to a clause, regulation, schedule, appendix, or Rule means a clause, regulation, schedule, appendix or rule of these Rules.
- 1.2.2 The *Operating Guidelines* do not form part of the Rules. However, if a Rule requires compliance with any part of the Operating Guidelines failure to comply with that part of the Operating Guidelines is a contravention of the Rule.
- 1.2.3 The headings and any explanatory notes in the Rules are for ease of reference only and shall not affect interpretation.
- 1.2.4 The singular includes the plural and vice versa.
- 1.2.5 A reference to a person includes a firm, partnership, trust, organisation, company or other body corporate.
- 1.2.6 Any period of time (unless expressly stated or defined otherwise) shall include the whole of the day on which the period commences and the whole of the day on which it expires.
- 1.2.7 A reference to legislation includes any modification, consolidation or re-enactment of that legislation.
- 1.2.8 A reference to these Rules or to any other document between the parties includes such Rules or document as modified, varied, supplemented, novated, replaced or substituted from time to time.
- 1.2.9 A reference to an agent includes attorneys and independent contractors.

2 EFFECT OF RULES

2.1 Electronic system only

The NZClear System is an electronic payment and securities transaction settlement system. The System does not cater for the physical custody of, or settlement of transactions involving, paper securities.

2.2 Binding commitment on parties

Each Member, the System Operator and each Participating EAH acknowledges that:

- (a) the System has been established for the benefit of the Members;

- (b) in the case of the Members and the Participating EAHs, by and in consideration of becoming or continuing to be recognised as a Member or a Participating EAH (as the case may be), it must comply with these Rules and fulfil and perform every obligation imposed on it by or pursuant to these Rules;
- (c) for the avoidance of doubt, the use by a Member or a Participating EAH (in any capacity) of the System constitutes acceptance of these Rules by that person; and
- (d) these Rules are a valid, binding and enforceable contract between each and every Member, Participating EAH and the System Operator.

2.3 Point at which Rules have effect

These Rules shall have effect as at the date of their last amendment, which may be recorded on the title page (the "Effective Date"). They shall remain in force until such time as the Rules are either:

- (a) cancelled, terminated or withdrawn by the System Operator; or
- (b) replaced (whether in whole or part) by amendment or substitution in accordance with Rule 22.3 (Changes to the Rules).

3. MEMBERSHIP GENERALLY

3.1 Applications for membership

3.1.1 Applications for membership (whether for full membership, Associate Membership or Nominated Trust Membership) shall be made in such manner and subject to such conditions as may be specified from time to time by the System Operator. The conditions of application for membership of the System (including full membership, Associate Membership or Nominated Trust Membership) are as follows.

3.1.2 No individual, firm or corporation shall be eligible for membership where that individual, or where in the case of a firm any of the partners, or where in the case of a corporation any director of the corporation, has within a period of five years prior to application for membership been declared bankrupt or has been convicted of an offence referred to in section 382(1) of the Companies Act 1993 or any equivalent or analogous section of any legislation in force in New Zealand or in any other jurisdiction relating to the regulation of the affairs of companies or the securities industry.

3.1.2A No applicant shall be eligible for membership or to remain a Member unless the System Operator is satisfied that it has the capacity to meet its present and future obligations, having regard to its:

- (a) Operational capacity.

- (b) Financial condition.
 - (c) Business continuity arrangements.
 - (d) Character and business integrity; and
 - (e) Any other considerations that in the opinion of the System operator relate to the standing of the applicant and the integrity of the System.
- 3.1.2B Persistent or repeated failure by a Member to comply with the Rules or to make operational errors shall be deemed by the System Operator to be evidence of the Member's lack of capacity to meet its present and future obligations as referred to in 3.1.2A.
- 3.1.3 An applicant shall provide such information as the System Operator may from time to time reasonably require, including information relating to the applicant's constitution or corresponding documents, business activities and financial position.
- 3.1.4 The System Operator shall in its unfettered discretion determine whether or not to accept any application for membership. The System Operator is not required to give reasons for declining any application.
- 3.1.5 The System Operator may at any time and for any reason impose additional conditions or requirements on the membership of any Member. These shall be known as "Special Conditions" and are deemed to form part of these Rules. The rights, privileges, liabilities and obligations of the Member under these Rules shall be subject to (and, where applicable, amended by) such Special Conditions. The System Operator may at any time vary or withdraw any Special Conditions, and in such event shall notify the Member accordingly.
- 3.1.6 The System Operator may at any time amend or re-issue these Rules, in accordance with Rule 22.3.
- 3.1.7 If an application for membership is refused, the System Operator shall notify the applicant of such refusal. Any such applicant shall be entitled at any time to lodge a fresh application for membership, in accordance with these Rules.
- 3.1.8 An applicant accepted for membership shall be notified accordingly (and notified of any Special Conditions attached to such membership). The applicant shall upon such notification pay to the System Operator a joining fee of an amount determined by the System Operator. On completion of all documentation and other requirements of the System Operator, the applicant shall become a Member.

3.2 Member's undertaking and entitlement

A Member shall be bound by and shall fulfil, perform, observe and comply with all liabilities, duties and obligations imposed upon such Member under these Rules and shall be entitled to the benefit of the rights and privileges conferred upon the Member, and imposed upon other Members, under these Rules.

3.3 Subscriptions

Each Member shall pay the System Operator a subscription fee and any other charges relating to the System, of such amounts and at such times, as are advised by the System Operator.

3.4 Resignation of Member

A Member may resign its membership of the System by giving the System Operator not less than twenty (20) Business Days' prior written notice or such shorter period of notice as the System Operator may agree to accept.

3.5 Expulsion of Member

3.5.1 The System Operator may expel any Member from the System where:

- (a) the Member or its agent fails to comply with any provision of these Rules provided that the System Operator may use its discretion to waive a failure if it is deemed by the System Operator to be insignificant or immaterial);
- (b) the Member or its agent is guilty of any conduct regarded by the System Operator in its absolute discretion to be contrary to the interests of any Member, or the System;
- (c) the System Operator believes that any of the following is likely to occur or it becomes aware of:
 - (i) the making of any application for the bankruptcy or liquidation of, or for the appointment of a receiver or statutory manager in relation to, the Member;
 - (ii) a receiver or receiver and manager, administrator, administrative receiver, compulsory manager or statutory manager being appointed to the Member or over any part of its undertakings or assets;
 - (iii) a resolution for the liquidation of the Member (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction making an order to that effect;
 - (iv) the Member entering into any arrangement with its creditors or becoming subject to an administration order;
 - (v) any event occurring in any relevant jurisdiction analogous to those events described in Rules 3.5.1(c)(i) to 3.5.1(c)(iv) above in relation to the Member; or

- (vi) any of the events described in Rules 3.5.1(c)(i) to 3.5.1(c)(v) above occurring in relation to a parent entity which holds shares either directly or indirectly in the Member and where that event places the Member at financial risk.

3.5.2 The System Operator shall not make a decision to expel the Member without giving the Member particulars of such failure or conduct or event and the System Operator having consulted or attempting to have consulted with the Member. These obligations are subject to the System Operator's right to act swiftly, such as (but without limitation on the System Operator) to make an expulsion decision within twenty-four (24) hours of the occurrence of the failure or conduct or event or to suspend the Member under Rule 3.6.

3.6 Suspension of Member

3.6.1 The System Operator may suspend a Member immediately and without prior notice, if it considers that Rule 3.5.1 might apply in respect of that Member, pending further investigation of whether Rule 3.5.1 does apply, and pending the outcome of the consultation process provided for in Rule 3.5.2. The System Operator shall forthwith notify the Member of a decision to suspend it, but the suspension shall not be affected by any omission to give notice or delay in giving such notice.

3.6.2 For the purposes of consultation in Rule 3.5.2, the System Operator may communicate with or notify the Member by telephone, provided that the Member is subsequently sent written confirmation of the particulars and expulsion decision referred to in Rule 3.5.2.

3.6.3 For the avoidance of doubt, a Member that has been suspended may Uplift Securities from the System, subject to Rules 9.8, 14 and 16.

3.7 Consequences of Member's exit

3.7.1 The resignation, suspension or expulsion of a Member shall not in any way prejudice, limit, avoid, extinguish or affect the rights, duties, liabilities and obligations of, or the indemnities given by, the Member, whether under these Rules or otherwise accrued and existing at the date of such resignation, suspension or expulsion, or which may arise, accrue or crystallise afterwards out of or by reason of facts or circumstances occurring or in existence at or before such date.

3.7.2 The System Operator may reinstate the Member (in the case of suspension or expulsion) on whatever terms the System Operator considers appropriate, including (without limitation) requiring the Member to meet any costs incurred by the System Operator in connection with the suspension or expulsion of that Member and to submit a new application in accordance with Rule 3.1, and without any liability on the part of the System Operator.

3.8 Notifiable Events

3.8.1 The Member acknowledges that the System Operator and each of the Members relies on, and places trust in, all other Members for the continuing successful Settlement of Transactions. The Member, in recognition of this reliance, immediately upon the occurrence, or threatened occurrence, of a Notifiable Event will:

- (a) if the Member has good reason to doubt its authority to Settle any Transactions, ensure that no further Transactions are entered into the System.
- (b) notify the System Operator of the occurrence, or threatened occurrence, of that Notifiable Event and the steps (if any) the Member is taking to ensure that it continues to have authority to Settle Transactions.

4 ASSOCIATE MEMBERS

An Associate Member shall be entitled to all the rights and privileges of membership and shall be subject to all the liabilities and obligations of membership under these Rules or otherwise provided that:

- (a) an Associate Member shall not be entitled to have recorded in the System any Transaction if such Transaction is with another Associate Member;
- (b) an Associate Member may request only one Branch Account and shall not be entitled to open any Sub-Accounts in addition to its House Account under Rule 6.3,

unless permitted by the System Operator.

5 NOMINATED TRUST MEMBERS

5.1 A Member who:

- (a) is a Trustee Company as defined in Section 2 of the Trustee Companies Act 1967 and which acts as a trustee for the purposes of a deed constituting a trust fund in which units have been or are to be issued to investors; or
- (b) is (or is a wholly-owned subsidiary of) a company authorised by statute to act as a trustee, and is acting as a trustee or representative for the purposes of a deed constituting a trust fund in which it has no material beneficial interest and the management of which is vested in a corporation not directly or indirectly associated with or related to the Member;

may apply to the System Operator to become a Nominated Trust Member in respect of such trust fund (“the Nominated Trust”). Such application shall be made in

writing, and shall be accompanied by such documents and further information as the System Operator may, in any particular case, require.

- 5.2 A Nominated Trust Member may request a Security Account and Cash Account designated by the name of the Nominated Trust.
- 5.3 A Nominated Trust Member may request only one Branch Account.

6 BRANCH ACCOUNTS, SECURITY ACCOUNTS AND SUB-ACCOUNTS

- 6.1 The System Operator shall open and maintain in the System, for each Member, at least one Branch Account. Each Branch Account shall have a Security Account and the System Operator shall debit and credit the relevant Security Account with Transaction Security Elements and Corporate Action Security Elements as they are Settled.
- 6.2 A Member may decide that for its own business activities it needs more than one Branch Account. Subject to Rule 5.3, the Member may therefore request, and the System Operator may, at its discretion, agree to open, one or more additional Branch Accounts (and associated Security Accounts) for the Member for the purpose of recording Securities.
- 6.3 Each Security Account shall comprise a default Sub-Account called the House Account in which Securities are recorded except as otherwise directed pursuant to Rules 6.5 and 6.6. A Member shall be entitled to open Sub-Accounts in each Security Account, at the System Operator's discretion. Every Sub-Account shall at the time of opening be designated in a manner that is clearly distinctive from any other Sub-Account of that Member. Such designation may, at the option of the Member concerned, be by way of numbering, lettering, naming or any combination of these or any other ways.
- 6.4 Each Sub-Account shall be deemed to be a sub-account of the Member's Security Account and each Security Account shall be deemed to be a sub-account of each Branch Account. A Security recorded in a Sub-Account other than the House Account is to be treated for all purposes as held by the Member on the same basis as other Securities held in that Member's Security Account(s), and the fact that it is so recorded shall not affect the obligations and liabilities of that Member in respect of the Security and any dealings with it.
- 6.5 A Security Lodged into the System by a Member shall (subject to Rule 9) be recorded in the House Account of the Branch Account used by the Member in respect of that Lodgement, unless at the time of Lodgement the Member requests such Security to be recorded in a particular Sub-Account, in which case that request shall be complied with by the System Operator.

6.6 Where, as a result of a Transaction or Corporate Action a Security is to be recorded in the Security Account of a Member, such Security shall be recorded in the House Account of the relevant Branch Account used by the Member in respect of the Transaction or, in the case of a Corporate Action, recorded in the House Account in which the Security in respect of the Corporate Action is recorded, provided that the relevant Member may request on or before the time of recording the Transaction or Corporate Action that the Security be recorded in a particular Sub-Account.

6.7 A Member may, in the manner and with such particulars as are required at any time, request a Security to be transferred from the House Account of that Member to another Sub-Account of that Member, or from another Sub-Account of that Member to that House Account, or from one Sub-Account to another Sub-Account of that Member. Upon receipt of such a request, the System Operator shall give effect to the request and record such transfer.

7 NOMINATED ACCOUNTS

7.1 Nominated Clearing Account

Each Participating EAH when so requested by the System Operator shall nominate in writing an account of that Participating EAH, acceptable to the System Operator, as the account of that Participating EAH to be its Nominated Clearing Account to be used in conjunction with the System. For the purposes of the System, a Participating EAH may give the System Operator notice of change of that nomination, which shall take effect at such time as the System Operator may agree with the Participating EAH.

7.2 Nominated Accounts

Each Member (excluding the System Operator in those limited circumstances where it acts as a Member and has an ESAS Account) shall maintain one or more Nominated Accounts with a Participating EAH which is/are available for use by the Member in relation to the System. The Member:

- (a) shall give the System Operator notice of the particulars of that account or those accounts; and
- (b) may, by giving the System Operator reasonable notice, amend any of those particulars.

8 CASH ACCOUNTS AND LIMITS

8.1 The System Operator may open and maintain in the System for each Member, a Cash Account which relates to a Nominated Account that the Member has opened and maintains with a Participating EAH. The Cash Account details shall correspond to the relevant Member's Nominated Account. All particulars provided by that Member

relating to its Nominated Accounts, and subsequent changes to those particulars, must be confirmed by the Participating EAH. The Participating EAH shall be deemed to have debited or credited (as the case may be) the Cash Account with the Cash Elements of the Member's Transactions and Corporate Actions affecting the Member, as they are Settled, via the System.

- 8.2 A Member's Participating EAH shall set a Maximum Cash Limit on the Member's Cash Account. Notwithstanding any other provision in these Rules, the Members acknowledge and agree that each Cash Account maintained by the System Operator records obligations between the relevant Member and its Participating EAH in respect of transactions involving that Member's Nominated Account; and no Cash Account gives rise to any claim on, or debt owed to any person by, the System Operator, Depository or any agent of either of them.
- 8.3 Except as provided for in Rule 8.5, a Transaction will not be Settled by the System if, as a result of the Cash Element being debited to the Cash Account of the Member, the Maximum Cash Limit on the Member's Cash Account would be exceeded.
- 8.4 A Member's Participating EAH may change a Maximum Cash Limit by entering that revised Maximum Cash Limit in the System via the Network. Any change to such a limit made by a Participating EAH shall not affect in any way the liability of the Participating EAH in respect of any Payment Obligations undertaken by the Participating EAH prior to changing the limit. Where a Participating EAH reduces a Member's Maximum Cash Limit and the existing debit balance of the Cash Account exceeds the new limit, Settlement of any Cash Element will not proceed if it would increase the debit balance of the Member's Cash Account. Notwithstanding the above, where a Participating EAH reduces a Member's Maximum Cash Limit after the time the System sends an electronic message to ESAS clearing a Cash Element for Settlement through ESAS and for Settlement against the Member's Maximum Cash Limit as it was before the change in the Maximum Cash Limit, that Cash Element shall be permitted to Settle.
- 8.5 A Member's Participating EAH may also specifically approve individual Transactions in excess of the Member's Maximum Cash Limit for Settlement by prior written notice to the System Operator.
- 8.6 A Member may instruct its Participating EAH to utilise the System to either deposit cash in the Member's Cash Account by crediting the Member's Cash Account and debiting the Member's Nominated Account; or withdraw cash from the Member's Cash Account by debiting the Member's Cash Account and crediting the Member's Nominated Account, provided that withdrawals of cash may not result in the Maximum Cash Limit on the Member's Cash Account being exceeded.
- 8.7 Each of the Members hereby authorises its Participating EAH to:

- 8.7.1 clear that Member's Cash Account ensuring the balance of the Cash Account is zero at such times and with such frequency as the Participating EAH may agree with the System Operator from time to time; and
- 8.7.2 debit or credit that Member's Nominated Account accordingly.

9 LODGEMENT AND HOLDING OF SECURITIES

9.1 Process for Lodging Securities

- 9.1.1 A Member may Lodge Securities with the System Operator for entry into the System. The System Operator may accept or decline Securities for entry into the System in its absolute discretion and may establish such criteria and impose such conditions upon accepting such Securities for entry into the System as the System Operator sees fit, including all FINEWISS Securities. The procedure for such Lodgement shall be as advised by the System Operator from time to time in the *Operating Guidelines*. These may also specify the moment at which a Security is to be treated as Lodged and Transactions in respect of it able to be Settled using the System, provided always that the System Operator may by notice require the immediate and compulsory Uplift of, and prohibit Settlement of any Transaction involving, any Security that does not comply with criteria or conditions set or imposed by the System Operator before, at or after the time the Security was entered into the System and that have not been waived by the System Operator.
- 9.1.1A Only Members who fit at least one of the following categories may perform a Lodge on behalf of another person through an electronic security transfer function provided by the System:
- (a) Banks, subsidiaries and holding companies of Banks, and other subsidiaries of holding companies of Banks;
 - (b) Trustee corporations (as defined in s 2 of the Trustee Act 1956);
 - (c) Persons subject to the conduct rules of a registered exchange (as defined in s 2 of the Securities Markets Act 1988);
 - (d) An Issuer of FINEWISS Securities who is registering a FINEWISS Security for which they are the Issuer.
- 9.1.2 Subject to Rule 9.1.1, the System Operator shall record the Security in the Security Account associated with the Branch nominated by the Member Lodging that Security. Except as is expressly provided otherwise in these Rules, such Security shall be deemed to be held by the System Operator as trustee for that Member to the exclusion of any other Member. Nothing in the role of the System Operator shall render the System Operator a bailee (constructive or otherwise) nor shall it constitute a representation by the System Operator as to the title of any Member to any Security or cash amount.

9.2 Depository as custodian trustee

The System Operator shall be the managing trustee and appoints the Depository as the custodian trustee, under Section 50 of the Trustee Act 1956, in respect of the Securities Lodged in the System. Subject to Rule 9.4.2, all registered Securities shall be held in the name of the Depository, as the registered holder, on the relevant register. The appointment of the Depository as custodian trustee shall not relieve the System Operator of any of its obligations under these Rules. The System Operator undertakes that it will do all things necessary to enable and ensure that the functions of the Depository as custodian trustee are performed and, in particular, guarantees that, subject to Rule 21, it will accept liability for any debts or liabilities incurred by the Depository.

9.3 Conditions on Lodgement

9.3.1 No Security which has reached Maturity or is subject to any restriction on transfer which will prevent or restrict the transfer of beneficial interests by means of a Transaction within the System may be Lodged in the System.

9.3.2 Where a Security has been issued upon any condition which relates to the ability of that Security to be offered for sale to, or held by, any person, the fact of the existence of such a condition (which it shall be the duty of the Member in whose Security Account it is registered to advise to the System Operator) shall be recorded by the System Operator upon notification of it with all other particulars of that Security. Notwithstanding the giving of such notice to the System Operator, it shall be the sole responsibility of the Member in whose name the Security is recorded from time to time to inform any proposed transferee of any interest in that Security of the existence and nature of such condition. Any such proposed transferee of such an interest in a Security hereby acknowledges that neither the System Operator, the Depository nor any agent of either of them bears any such responsibility or liability.

9.4 Consequences of Lodging a Security

9.4.1 By Lodging a Security a Member:

- (a) agrees that the Member will be treated for the purposes of the Rules as if it were the sole beneficial owner of that Security, notwithstanding the nature of the Member's membership or the title of any Security Account or Branch Account or Sub-Account, or any other indication of the basis on which the Security is held;
- (b) represents and warrants to the System Operator, the Depository and all other Members that it has good legal title to the Security or is otherwise fully authorised to deal with the Security, and is entitled to Lodge it in the System and to deal with it in accordance with the Rules;

- (c) represents and warrants to the System Operator, the Depository and all other Members that it has the right to transfer and to give good and unencumbered title to the Security, that the Security is what it purports to be and that the Member is not aware of any fact which renders (or may render) the Security valueless, defective, cancelled, void or subject to a lien or other claim;
- (d) agrees that it will not assert or permit any person claiming under or through it to assert any proprietary or equitable interest or right in respect of the Security other than absolute legal and beneficial ownership on the part of the Member, provided always that in respect of FINEWISS Securities (except in circumstances where Rule 14.3.1 or Rule 14.6 applies) it will not assert or permit any person claiming under or through it to assert any proprietary or equitable interest or right in respect of the Security other than beneficial ownership on the part of the Member;
- (e) agrees to indemnify other Members, Issuers, the System Operator and any person out of whose registry account a Security was wrongfully transferred against all losses, damages, costs and expenses suffered or incurred as a result of an inaccurate or wrongful Lodge effected by the Member through an electronic security transfer function provided by the System.

9.4.2 Where the *Operating Guidelines* allow a Security to be treated as Lodged or otherwise permitted to be Settled pursuant to a Transaction or a Corporate Action before that Security is registered in the name of the Depository, then:

- (a) the Member Lodging that Security undertakes to take all necessary steps to ensure the Security is registered in the name of the Depository;
- (b) the Member Lodging the Security indemnifies the System Operator, Depository and other Members in respect of any loss suffered as a result of that Security not being registered in the name of the Depository; and
- (c) any Member which suffers a loss arising out of a dealing in respect of any such Security shall be entitled to claim only against the Member that Lodged that Security, and shall have no claim whatsoever against the System Operator, Depository or any agent of either of them in respect of that dealing.

9.5 Designation of Securities

Without limiting Rule 9.4.1, any facility or process within the System which enables the Member to designate Securities held in a Security Account as being so held by it for a particular purpose, in a particular capacity, in a Branch or Sub-Account or in connection with a particular Transaction, shall operate solely for the benefit of that Member and shall not constitute notice to the System Operator or to any other person, or put those parties on enquiry, as to the existence of any limitation on the ability of such Member to deal with the Security.

9.6 Other proprietary or equitable interests

If a Member receives notice or otherwise becomes aware that a proprietary or equitable interest or other right in or to a Security is, or may be, held or asserted by any other person in a manner which may prevent or impede the Member from transferring and dealing with the Security free from that proprietary or equitable interest or otherwise in accordance with these Rules, other than the restrictions applying to FINEWISS Securities set out in Rule 9.8, the Member shall immediately inform the System Operator of the circumstances to the extent that they are within the Member's knowledge and comply with any requirements imposed by the System Operator.

9.7 Exclusion of warranties as to quality

9.7.1 Neither the System Operator, the Depository nor any agent of either of them makes any representation nor gives any warranty to any Member or other party or person:

- (a) in respect of the genuineness, regularity, completeness, validity, quality or title of, or entitlement to, any Security;
- (b) that it has checked or will check for irregularities or defects in, or has ascertained or will ascertain the validity, completeness or title of, any proprietary or equitable interest in any Security.

9.7.2 Neither the System Operator, the Depository nor any agent of either of them shall have any obligation or liability to any Member or other party or person for any loss incurred by such Member, other party or person as a result of the Lodgement, negotiation, transfer or Encumbrance of invalid, defective, cancelled, Matured, expired, redeemed, irregular, void, incomplete, fraudulent or forged Securities, or as a result of a breach of any Member's warranty, or Settlement of any Transaction or Corporate Action involving any such Security. Notwithstanding any other provision, the System Operator shall in its discretion be entitled to take appropriate steps to amend or reverse any entry arising therefrom. Any demand or claim by any Member, party or person in respect of an invalid, defective, cancelled, Matured, expired, redeemed, irregular, void, incomplete, fraudulent or forged Security, or for breach of Member's warranty, may not be brought against the System Operator, Depository or any agent of either of them, but shall be a matter entirely between the affected

Member and the Lodging Member, or a Member who held the Security before the affected Member, as the case may be.

9.8 FINEWISS Securities

9.8.1 Notwithstanding any other provision of these Rules, where a Member elects to issue, or Settle a Transaction involving, FINEWISS Securities other than pursuant to Rule 22.9 (whether the Transaction involves FINEWISS Securities issued before, on or after the Effective Date), the Member may do so only in accordance with the stipulations as to the creation of, Lodging of, holding of and Settlement of Transactions involving such FINEWISS Securities set out in the Rules and the relevant FW Registry Agreement, as amended from time to time.

9.8.2 The registrar in respect of all FINEWISS Securities shall be the FW Registrar, or such other person (if any) as is permitted pursuant to the relevant FW Registry Agreement.

9.8.3 Neither the System Operator, Depository, FW Registrar nor any agent of any of them shall have any obligation to act as paying agent in respect of any FINEWISS Security. The Issuer may appoint another person to be paying agent in respect of any FINEWISS Security, provided always that: (a) such appointee is a Member; and (b) such appointment shall immediately terminate should that agent cease for any reason to be a Member.

9.9 Complaints in connection with Lodges

9.9.1 The System Operator shall receive complaints from non-Members in connection with the Lodge of Securities by a Member in a manner not in accordance with the Rules (eg where the Member is alleged to not have authorisation to deal with the Security as required in Rule 9.4.1(b)). Following receipt of such complaint, the System Operator will refer the complaint to the Member on behalf of the non-Member making the complaint.

10 ENCUMBRANCES

10.1 A Security which is Encumbered by a Member (the “Encumbrancer”) shall continue to be recorded in the Security Account of that Member but shall, while it remains so Encumbered, be separately identified in such Security Account by the System Operator as being Encumbered upon receipt by the System Operator of information to that effect from the Encumbrancer, which shall provide such information promptly upon creation of the Encumbrance. Conversely, the security interest held by the Encumbrancee shall likewise be recorded in the Security Account of the Encumbrancee and separately identified in such Security Account by the System Operator, upon receipt by the System Operator of information to that effect from the Encumbrancee, which shall provide such information promptly upon creation of the Encumbrance.

- 10.2 The System Operator shall not be concerned to ascertain the validity, or the terms, of any Encumbrance, or whether or not the terms of this Rule 10 are complied with by any Member.
- 10.3 While a Security is Encumbered in accordance with Rule 10.1, notwithstanding the terms of any Encumbrance the parties to the Rules hereby agree that:
- (a) only the Encumbrancer shall be entitled to interest, dividends or other income derived from the Security, including any such amount payable on Maturity of the Security;
 - (b) the Encumbrancer has authority to give instructions to the System Operator in respect of Corporate Actions under Rule 15;
 - (c) neither the Encumbrancer nor the Encumbrancee are entitled to transfer or otherwise deal with the Security or any interest in the Security;
 - (d) the Encumbrancee has no authority to give instructions to the System Operator in respect of Corporate Actions or to transfer or otherwise deal with the Security; and
 - (e) unless the System Operator is duly notified by the Encumbrancee of the discharge of the Encumbrance by such time as is specified on the Maturity Date of that Security, the Security which is the subject of the Encumbrance shall be Uplifted by the Encumbrancee by the time on the Maturity Date of that Security as is specified for that purpose. The System Operator and the Depository shall have no obligation to deal with any Security on the System after Maturity of that Security. If the proceeds of Maturity of any such Security are received by the System Operator, the same shall (subject to Rule 10.3(a)) be held on trust for the Encumbrancee.

11 TRANSACTIONS AND SETTLEMENT

- 11.1 A Member may access the System and undertake Transactions between the hours and on the basis set out by the System Operator from time to time in the *Operating Guidelines*.
- 11.2 Members may report (in the manner and with such particulars as are required by the System and in accordance with the Member's type of membership) to the System Operator any dealing of a kind provided for in the System. Any such dealing shall be entered in the System in accordance with these Rules.
- 11.3 The recording of a Transaction which has either a Cash or a Security Element or both shall be provisional until Settlement of all its Elements.

- 11.4 A Transaction Security Element will not be Settled by the System unless the Security which is the subject of the Transaction is held in the Security Account of the Member which is the transferor, and is not subject to an undischarged Encumbrance in favour of another Member.
- 11.5 Subject to Rule 11.4, a Security Transaction shall be deemed to be Settled only at the time the System records Settlement and denotes the Transaction's status as "Completed" or "Settled".
- 11.6 The Cash Element of a Transaction shall be deemed to be Settled when:
- (a) the Cash Element is accepted by the System within the Maximum Cash Limit of the paying Member as provided in Rule 8; and
 - (b) confirmation is received that the Participating EAH of the paying Member has paid the amount equal to the Cash Element to the ESAS Account of the Participating EAH of the receiving Member or for the credit of that Member.
- 11.7 11.6(b) shall not apply where the same Participating EAH acts for both the paying Member and the receiving member.
- 11.8 A Trade shall be deemed Settled on the recording of that Transaction in the System and on Settlement of both Elements. For the purpose of determining the time of such a Settlement, the Security Element of a Trade shall be deemed to be Settled at the same moment in time as the related Cash Element is Settled.
- 11.9 Upon Settlement of all Elements of a Trade, the recording of such Transaction shall be final and irrevocable.
- 11.10 If any Element of a Transaction cannot be Settled on a Settlement Date, the Transaction may be deleted in accordance with the *Operating Guidelines*.
- 11.11 This Rule 11 shall (except to the extent that the same cannot be overridden) override the provisions of any statute or law.
- 11.12 Nothing in these Rules shall be construed as permitting any Member (other than the System Operator) to attach any condition or restriction to the Settlement of any Element except as may be specifically provided for in these Rules. Any condition or restriction which is imposed by a Member contrary to the provisions of these Rules shall be void and of no effect. Non-compliance by the System Operator or Depository or any agent of either of them with any such condition or restriction shall not invalidate that Settlement.

12 PAYMENT OBLIGATIONS

Each Participating EAH irrevocably undertakes that, subject to and in accordance with these Rules, when the Cash Element of a Trade is accepted by the System within the relevant Maximum Cash Limit, in accordance with Rule 11.6 (or alternatively, within the limit specifically authorised pursuant to Rule 8.5), as soon as practicable thereafter, the Participating EAH of the paying Member will pay the amount of the Cash Element from its ESAS Account to the ESAS Account of the Participating EAH of the receiving Member, in accordance with Rule 11.6.

13 DAILY REPORTS

In respect of all payments and receipts for each ESAS Day arising out of the Settlement of all Cash Elements from all Cash Accounts of the Participating EAHs, the System Operator shall make available to each Participating EAH a Daily Transaction Report, showing the Cash Elements of all Transactions Settled across that Participating EAH's Nominated Clearing Account on that ESAS Day. This Daily Transaction Report shall be available to the Participating EAHs through the System at the Start of Day on the following Business Day. The Daily Transaction Report shall also be available a reasonable time after the end of a Settlement Session in respect of the Cash Elements of those Transactions Settled on that day to the end of that Settlement Session.

14 UPLIFTING OF SECURITIES

- 14.1 No Security may be Uplifted from the System if that Security is the subject of a Transaction, the Cash Element of which has not been Settled.
- 14.2 A Security may not be Uplifted from the System during any period during which any registry maintained by the Issuer of the Security is closed in accordance with the terms of its issue.
- 14.3 Notwithstanding Rules 14.1 and 14.2, in the event an Issuer is placed in liquidation, or a receiver, receiver and manager, administrator, administrative receiver, compulsory manager, statutory manager or any other analogous officer is appointed over the Issuer or over or in respect of any of its assets or undertaking, or an analogous procedure is instituted by or against the Issuer or any of its assets or undertaking (or where, for any reason, Securities issued by that Issuer otherwise cease, in the opinion of the System Operator, to be traded in significant numbers) the System Operator and/or the Depository may, at any time thereafter:
- 14.3.1 to the extent possible, transfer legal title to those Securities to the Members for whom the Depository holds them on trust at that time;

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- 14.3.2 remove all reference to the Securities from the System whereupon no Transaction or other dealing in respect of them may be Settled on the System; and
- 14.3.3 where it is impossible or impracticable to transfer legal title to those Securities in accordance with Rule 14.3.1, create a paper-based record of holdings of those Securities and make that list of Members' beneficial interests available to the relevant liquidator, receiver, receiver and manager, administrator, administrative receiver, compulsory manager, statutory manager or such other officer in respect of the relevant Issuer as it may consider appropriate, and request that such officer deal to the greatest extent possible, in respect of those Securities, with the relevant Members directly.
- 14.4 Subject to Rules 14.1 and 14.2, a Member shall be entitled to Uplift any Security in the System which is recorded in its Security Account, other than a FINEWISS Security and any Security over which such Member has created an Encumbrance recorded in the System, during those hours specified from time to time in the *Operating Guidelines*.
- 14.5 The procedure for such Uplifting is as specified from time to time in the *Operating Guidelines* and the System Operator shall not be obliged to release any Securities for Uplifting unless such procedure is followed.
- 14.6 Notwithstanding Rules 14.1 and 14.2, the System Operator is entitled to effect (or procure the Depository to effect) the compulsory Uplift of a Security pursuant to Rule 9.1.1 or the Uplift of a FINEWISS Security in accordance with the terms of the relevant FW Registry Agreement.

15 CORPORATE ACTIONS

15.1 Advice of Corporate Action

In respect of every Security registered pursuant to Rule 9.2 in the name of the Depository by a registrar, the System Operator may at any time or times provide that registrar or Issuer with a record of the name of the Member on behalf of whom the Depository holds that Security. In respect of each Security contained in the record submitted to the registrar, the System Operator may rely upon that registrar to inform the relevant Member of the details of any Corporate Action in respect of that Security. Members acknowledge and agree that in the event a registrar fails or refuses to communicate information regarding Corporate Actions directly to one or more Members, no Member shall have any claim on, or cause of action against, the System Operator, Depository, or any agent of either of them in respect of any such failure; provided that once notified of a registrar's failure to perform, the System Operator or the Depository will promptly seek details of the Corporate Action from the registrar and send that information to the relevant Members.

15.2 Collections and payments

15.2.1 Where any interest, dividend or other amount is payable in respect of a Security by a Member (whether in its capacity as a Participating EAH or on its own behalf) to another Member, the paying Member:

- (a) undertakes to credit the payment direct to the Cash Account of the Member (or, in the event of such Security being subject to an Encumbrance, the Encumbrancer) in whose Security Account such Security is recorded at the time at which holding such Security entitles the holder to receive the dividend, interest or other amount in accordance with the terms of its issue; and
- (b) is responsible for making all withholdings and deductions, filing all returns, issuing all certificates and taking all other steps that may be required in relation to the payee Member's tax affairs in relation to the Corporate Action,

and the System Operator and Depository (and their respective agents) have no responsibility for any such matters unless, until and to the extent (if any) that the System Operator notifies the Member otherwise, in writing. A Member that is obliged to make any payment under this Rule 15.2.1 shall be entitled to such information held by the System Operator as may be reasonably required to enable it to perform those obligations.

15.2.2 If the paying agent is not a Member and the Depository receives interest, a dividend, or any other amount on behalf of a Member, the System Operator shall procure the Depository to remit such interest, dividend or other payment to the Cash Account of the relevant Member or Encumbrancer (as the case may be). The Member or Encumbrancer shall be responsible for making all withholdings and deductions, filing all returns, issuing all certificates and taking all other steps required in relation to the Member's tax affairs in respect of the Corporate Action, and the System Operator and Depository (and their respective agents) have no responsibility for any such matters unless, until and to the extent (if any) that the System Operator or Depository shall notify the Member otherwise, in writing.

15.2.3 Neither the System Operator nor the Depository shall have any obligation to make a payment or to transfer any funds in respect of a Corporate Action if the amounts receivable by, or to be credited to, it in that regard have not been cleared, received in full or are still revocable. Neither the System Operator nor the Depository shall be obliged to pay interest on any such amounts.

15.2.4 In the event the System Operator decides in respect of a Corporate Action to make a payment or funds available to a Member before receiving cleared or sufficient funds or such funds are required to be repaid, the Member shall reimburse and hereby indemnifies, and shall keep indemnified, the System Operator and the Depository on demand for the amount of such payment or funds and for any loss, damages, liability, claim, costs, or expenses suffered or incurred by the System Operator

and/or the Depository (and/or any of their agents) in respect of such transfer, credit or payment.

- 15.2.5 The System Operator shall give the Member not less than one hour's prior notice of a demand for reimbursement under Rule 15.2.4. The Member shall, immediately on receipt of the System Operator's demand, make a payment to the System Operator as full reimbursement to be received by the System Operator no later than by the end of the Settlement Session in which all Members are able to participate immediately following the time at which demand is made.

15.3 Settlement

A Corporate Action shall be effective upon Settlement.

15.4 Use of agents

- 15.4.1 The System Operator may appoint the Depository or any other person to be its agent to perform on its behalf any or all of its obligations under this Rule 15, in which case:

- (a) the System Operator may provide such information in relation to the Member and the Securities held by the Member as may be necessary to enable the agent to perform its functions; and
- (b) the Member will provide the agent with such information required to enable the agent to perform its functions as may be Prescribed.

- 15.4.2 Where the System Operator provides information to an agent under Rule 15.4.1:

- (a) the provision of the information to the agent shall not affect the confidentiality obligations of the System Operator under Rule 18.3; and
- (b) the System Operator shall be responsible for any action by the agent which is in breach of Rule 18.3.

16 INSTRUCTIONS FROM MEMBERS

16.1 System Operator obliged to act

- 16.1.1 The System Operator shall deal with a Security in accordance with any directions or instructions given from time to time by the Member in whose Security Account such Security is for the time being recorded, where those directions or instructions are given in accordance with these Rules and:

- (a) via the System; or

- (b) by an Authorised Signatory; or
- (c) where those directions or instructions are given by such other means as the System Operator may approve from time to time.

16.1.2 The System Operator shall act on the Member's instructions in respect of Corporate Actions, provided that those instructions are given in accordance with the Rules and such instructions are sufficiently clear to the System Operator in its discretion and received by any due date and time advised by the System Operator in its advice given under Rule 15.1 and are given in accordance with Rule 16.1.1.

16.2 System Operator entitled to act

16.2.1 The System Operator shall be entitled without further enquiry to accept and act on instructions which:

- (a) are communicated via the System;
- (b) are or purport to have been given or sent by an Authorised Signatory;
- (c) are communicated in any other manner permitted or contemplated by these Rules; or
- (d) are given by a person whom the System Operator, acting in good faith, believes is authorised to give such an instruction.

16.2.2 The execution of or action on instructions shall constitute a good discharge to the System Operator which shall not be required to check the authenticity or source of any instruction (whether sent by facsimile, email, computer, telephone or otherwise).

16.2.3 Without limiting Rule 16.2.1, the System Operator may also accept instructions from a Member given by a liquidator, receiver, statutory manager or other person it reasonably believes has lawful authority to act in the name of or on behalf of the Member.

16.3 Member ratification of System Operator actions

Each Member authorises and will adopt and ratify all actions taken or (as the case may be) not taken, by the System Operator in good faith in reliance upon an instruction (notwithstanding any error, misunderstanding, lack of clarity, forgery or fraud by an Authorised Signatory, persons purporting to be Authorised Signatories or by others).

16.4 System Operator refusal to act

16.4.1 Without limiting or prejudicing any other right, discretion, power or remedy, the System Operator shall not be obliged to act (and may procure that the Depository does not act) on any instruction or information and may refuse to allow a Transaction or a Corporate Action to be Settled or to deal with a Security or with cash in any other way, where:

- (a) it believes that the instruction has not been given in accordance with the Rules, or that doing so would contravene any statute or an order made by any Court;
- (b) it believes that acting on the instruction or information or allowing the Transaction, Corporate Action or dealing with the Security or cash could place the System Operator or the Depository in breach of its obligations to another Member or to a third party;
- (c) according to the System, the Transaction, Corporate Action or dealing or any receipt or clearance of funds appears not to have occurred within the Prescribed timeframes or by applicable cut-off times;
- (d) it becomes aware of or has reason to believe that any of the events in Rule 3.5.1 has occurred or is likely to occur;
- (e) the System Operator or the Depository receives information sufficient for it to form a view in good faith that the Member may not be absolutely entitled to the Security, or authorised to deal with it in accordance with these Rules;
- (f) the System Operator or the Depository is served with a Court order which affects the ability of the Member to deal with the Security or otherwise enter into the Transaction or participate in the Corporate Action;
- (g) the Member, or another Member which is a party to the Transaction or participant in the Corporate Action, resigns, is suspended or expelled from membership of the System;
- (h) the System Operator cancels, or gives notice of its intention to cancel, these Rules in accordance with Rule 17.4; or
- (i) the instruction or information is unclear in the view of the System Operator, in which case the System Operator shall seek clarification from the Member, but the System Operator shall not act (and may procure that the Depository does not act) upon that instruction or information until it has been clarified to its absolute satisfaction. The System Operator and Depository shall have no liability for any loss, damages, claim, liability, costs or expenses suffered or incurred by the Member or any other Member or person as a result of the delay taken to clarify the instruction or information.

- 16.4.2 In the event that the System Operator decides not to act or is unable to act on any instruction or apparent instruction which it has received from a Member, it will notify the Member concerned of the relevant circumstances as soon as practicable after it has become aware of them. The System Operator may notify the Member by telephone, provided that the Member is subsequently sent written confirmation (by fax, hand or e-mail in accordance with Rule 22.4) of the telephone notification.

16.5 Member acting for a third party

In any case where a Member is or may in the future be acting as agent, broker or dealer for a third party (which may include another Member) in relation to Securities held in the System or where a Member may request the System Operator to hold Securities in the System which are the property of any third party (whether the System Operator shall be aware of such circumstances or not), such Member warrants and represents to the System Operator and the Depository that, subject to Rule 10, it has the full authority of such third party to accept these Rules so as to bind the third party and for the System Operator and the Depository to hold such Securities in the System on the terms set out in these Rules. The System Operator and the Depository shall not be bound to act on the instructions of the third party and all deliveries of such Securities held in the System will be made to or to the order of such Member.

16.6 Authorised signatories

- 16.6.1 A Member shall submit to the System Operator a List of Authorised Signatories in any form Prescribed from time to time by the System Operator and may lodge a new List of Authorised Signatories which shall automatically revoke all earlier Lists of Authorised Signatories. The persons named in a current List of Authorised Signatories shall be authorised by such Member to bind that Member for the purpose of these Rules.
- 16.6.2 A List of Authorised Signatories submitted by the Member under this Rule may indicate that any signature so authorised may be a facsimile, an approved e-mail address or an electronic signature, whether affixed by stamp or generated by other mechanical or automated means.

17 RIGHTS AND POWERS OF THE SYSTEM OPERATOR

17.1 System Operator authority as agent of the Member

- 17.1.1 Without prejudice to any other provision of these Rules, the Member irrevocably authorises the System Operator as agent for the Member to do all such acts on its behalf and to exercise all such powers under these Rules as are specifically delegated to the System Operator by these Rules, together with such powers as are reasonably incidental. For the avoidance of doubt, the System Operator may exercise any such

authorities, powers and delegated functions itself, through the Depository or via any agent, in accordance with Rule 17.2.

- 17.1.2 The authorities conferred on the System Operator by the Member are given as security for the performance of the Member's obligations under these Rules and shall be irrevocable during its membership of the System and for so long afterwards as may be necessary to ensure the full and proper discharge of such obligations.

17.2 System Operator delegation

- 17.2.1 The System Operator may perform any of its duties under these Rules by or through its authorised officers or agents.
- 17.2.2 Subject to Rule 17.2.3, the System Operator may sub-contract or delegate any or all of its functions in respect of the System, provided that any such delegation shall be without prejudice to the System Operator's obligations under these Rules.
- 17.2.3 Where the System Operator proposes to sub-contract or delegate all, or substantially all, of its functions in respect of the System to another party, it shall give Members at least twenty (20) Business Days prior notice of such subcontracting or delegation taking effect.

17.3 Enforcement of the Rules

The System Operator does not owe the Member any duty (whether contractual or otherwise) to monitor or enforce compliance by any other Member with the Rules or in relation to the admission to, suspension of or expulsion from, membership of that other Member.

17.4 Cancellation and suspension of the Rules

- 17.4.1 Notwithstanding any other provision, the System Operator may amend, cancel or terminate these Rules in its absolute discretion by giving not less than twenty (20) Business Days prior written notice of the amendment, cancellation or termination, and otherwise in accordance with the procedures in Rule 22.3.
- 17.4.2 Where the System Operator is unable to perform any of its obligations under these Rules as a result of circumstances beyond the reasonable control of the System Operator, the System Operator may give notice to the Members suspending the System Operator's obligations to perform either in whole or in part.

17.5 Errors

- 17.5.1 In the event the System Operator makes an error or oversight of any kind or there is a delay, deficiency or failure on the part of the System Operator (an "Error"), and as a result of that Error a Member receives any payment, right, issue, benefit, equity,

debt security, financial instrument or other matter to which the Member is not entitled (an "Error Benefit"), the following shall apply:

- (a) the System Operator shall notify the Member in writing of the Error as soon as the Error comes to the attention of the System Operator;
- (b) the System Operator shall specify, in its notice to the Member, the steps that must be taken by the Member in order to return the Error Benefit to the person entitled to receive it;
- (c) the Member shall take the steps specified in the notice on the day on which the demand is made, or if the demand is made after 3.30pm, by 11am the next Business Day or at such later time as may be specified in the notice; and
- (d) if the Member has already transferred any Security or other property comprising the Error Benefit, the Member shall purchase equivalent Securities or property in order to return these if required to do so by the System Operator under this Rule.

17.5.2 Without prejudice to any other provision of these Rules, the System Operator shall in its discretion be entitled to take appropriate steps to effect a correction in any inaccurate record where an Error has occurred in a Cash Account or a Security Account, with effect retrospectively to the date on which the correct entry (or no entry) should have been made. For the avoidance of doubt, it is not intended that any such correcting action by the System Operator should derogate from the irrevocable Settlement of a Transaction.

18 RIGHTS AND OBLIGATIONS OF MEMBERS

18.1 Member's performance of obligations under a Security

In any case where the terms governing any Security impose any obligation on the person in possession of or entitled to such Security obligation (including, without limitation to the foregoing, as to the execution or furnishing of any documents) the Member will promptly on request by the System Operator do and execute such acts, documents and things as the System Operator may reasonably require to enable it to perform such obligation.

18.2 Payment of fees

- 18.2.1 In addition to the joining, subscription and any other membership fees under Rule 3, the Member shall pay to the System Operator fees and charges in respect of its services and the System (including the Network) calculated in accordance with the System Operator's schedule of fees in effect from time to time. Such fees schedules shall be promulgated by the System Operator (including by placement on its website) and a copy shall be forwarded to the Member.
- 18.2.2 If the System Operator wishes to vary the fees or charges specified in a schedule, then it may do so at its sole and absolute discretion and notwithstanding Rule 22.3, provided that no such variation shall take effect until twenty (20) Business Days after the date on which the System Operator shall have notified Members of the Schedule containing such variations.

18.3 Confidentiality

- 18.3.1 Subject to Rule 18.3.2, each Member is entitled to confidentiality of all dealings with the System Operator consistent with the proper operation of the System in the manner contemplated by these Rules. Accordingly, the System Operator shall not, except as required by law or authorised by these Rules, disclose to third parties not otherwise entitled to receive the same, any information concerning dealings of any Member with the System Operator or concerning dealings of any Member with another Member. If the System Operator is compelled by law to disclose any such information, it shall wherever reasonably possible prior to such disclosure, unless prohibited by law, inform the Member concerned.
- 18.3.2 The System Operator may use and disclose any information relating to the Member and its activities:
- (a) in such manner as the System Operator may think fit for the purpose of enabling or assisting it to discharge any of the System Operator's or the Depository's functions;
 - (b) to any other person or body exercising supervisory or regulatory function in New Zealand or in any other jurisdiction, for the purpose of enabling or assisting that person or body to discharge any such function;
 - (c) for or to any investigating authority with a view to the investigation of circumstances appearing to constitute or involve a criminal offence or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings; or
 - (d) in such manner as may be specified in the *Operating Guidelines* from time to time.

18.4 Recognition of ownership of a Security

Subject to Rule 10 (Encumbrances) and the correction of Errors pursuant to Rule 17.5, but notwithstanding any other provision of these Rules:

- (a) the System Operator shall recognise only the Member in whose name a Security is recorded as the sole beneficial owner of that Security;
- (b) the System Operator shall not, except as ordered by a court of competent jurisdiction or as is otherwise expressly provided by these Rules, be liable for, bound by or compelled in any way to see to the execution of any trust or equity affecting the ownership of or incidental rights to a Security, nor to recognise a Member as holding Securities on trust nor to recognise (whether or not it has notice of the interest or rights concerned) any proprietary, equitable, contingent, future or partial interest in any Security or any other right, except the beneficial right of ownership in the Member in whose name the Security is recorded; and
- (c) the Member shall not assert, nor permit any person claiming under or through it to assert, any such proprietary or equitable interest or other right against the System Operator or Depository.

18.5 Undertakings and warranties as to information and authorities

The Member undertakes and warrants to the System Operator and Depository that:

- (a) the Member shall, as and when requested by the System Operator, supply such information as is deemed necessary by the System Operator for the purposes of these Rules;
- (b) all information provided (present and future) to the System Operator by the Member or on its behalf is or will be correct and authorised in accordance with the Member's established internal procedures;
- (c) under its constitution (or empowering documentation) the Member has all requisite powers and authorities, and that all necessary action has been taken, to enter into and be bound by the agreement constituted by these Rules (whether by itself or by an agent on its behalf) and to perform all the Member's obligations; and
- (d) the Member shall be responsible for ensuring the accuracy and completeness of all information or documents provided to the System Operator by or on behalf of the Member, and to update them on a continuous basis, and the System Operator shall not be under any obligation to check the same.

18.6 Prohibition on assignment by a Member

The Member shall not transfer, assign or novate any of its rights, interests, benefits or obligations under these Rules, or attempt to do so.

19 AUDIT OF THE SYSTEM**19.1 Appointment and duties of auditor**

19.1.1 The System Operator shall appoint an Auditor who shall be responsible for auditing the NZClear System and the Securities held in it. The Auditor's duties shall include the following:

- (a) reviewing the integrity of the NZClear System, including the maintenance of security and confidentiality over the data of individual Members;
- (b) assessing the integrity of systems-generated information, including controls over the input, processing, accounting and reporting of all Transaction data;
- (c) reviewing reconciliation of Securities recorded in the respective registry records; and
- (d) reviewing and evaluating the system of internal controls and accounting procedures of the System.

19.1.2 Based on the results of the Auditor's overall examination of the NZClear System, the Auditor shall be instructed to:

- (a) issue a quarterly report to the System Operator in the form and at the time specified in Rule 19.2;
- (b) issue, at the expense of a Member, a specific audit report in the Prescribed form, such issue to be made upon the request of the Member concerned and either to the Member concerned or as it may direct by notification to the System Operator.

19.1.3 The Member shall rely on the Auditor for verification of Securities held in the System.

19.2 Auditor's quarterly report

- 19.2.1 The Auditor shall issue a quarterly report to the System Operator in the Prescribed form within fourteen (14) days after each 31 March, 30 June, 30 September and 31 December in every year.
- 19.2.2 As soon as practicable after receiving the report, the System Operator must make it available on its website.

20 NETWORK OPERATION

- 20.1 The System Operator may in its sole discretion operate and supply a Network, as part of the provision of the System for Members.
- 20.2 The System Operator may supply the Member with certain equipment, as advised by the System Operator, for the purpose of enabling the Member to access and use the Network. This equipment shall remain the property of the System Operator.
- 20.3 The Member shall locate such equipment in a secure environment on its premises and shall keep the equipment safe from damage or misuse, including ensuring that it is used only for the purpose for which it was provided by the System Operator and that all warranties and other conditions which may apply to the equipment are complied with in all respects.
- 20.4 The System Operator and its agents may have reasonable access to the Member's sites for the purpose of checking and maintaining the equipment.
- 20.5 Subject to the Member's compliance with this Rule 20, it shall be the responsibility of the System Operator to arrange for the servicing and maintenance of the equipment. The equipment may only be serviced by the System Operator, its agents, or as otherwise directed by the System Operator.
- 20.6 The Member shall not (nor permit its agents to) interfere with the equipment, nor shall it make or permit any attachment to, reconfiguration of, modification to, or similar action in respect of, the equipment or the Network, unless expressly authorised by the System Operator and on such conditions as may be specified by the System Operator.
- 20.7 The System Operator may advise the Member from time to time of any faults reporting and resolution process to be followed by the Member.
- 20.8 In the event the Member ceases (for whatever reason) to be a Member, the Member shall immediately on request return to the System Operator all the equipment which has been supplied to it by the System Operator.

- 20.9 The Member shall fulfil and observe all obligations to, and directions given by, the System Operator from time to time in respect of access to, and the use and operation of, the equipment and the Network. The Member shall access and use the Network in a lawful and responsible manner and solely for its proper purpose and shall not permit any unauthorised access or connection to, or misuse of, or any unauthorised configuration in respect of, the Network.
- 20.10 The System Operator shall take reasonable steps to ensure that any Network it provides is secure, resilient and reliable and is in accordance with any specifications or performance criteria for the same as may be supplied by the System Operator and subject to the following qualifications in this Rule 20.10.
- (a) The System Operator makes no representation nor gives any undertakings or warranties other than those expressly set out in these Rules. Any implied warranties or representations as to the merchantability or fitness for a particular purpose, in respect of the Network, the System Operator's service (including that of its agents) or the equipment, are hereby expressly excluded.
 - (b) For the avoidance of doubt, neither the System Operator nor the Depository gives any warranty nor representation as to availability or performance of the Network or any equipment or that they will operate as error free.
- 20.11 Whenever a Member makes a change to its own systems, it shall be responsible for ensuring the security and performance of its own systems and procedures where these interface with, or may otherwise affect, the System.
- 20.12 The Member shall on demand either pay to or reimburse the System Operator, for any costs incurred by the System Operator (or its agent) in connection with any complaint, service request, error or fault notification by that Member in respect of the equipment or the Network, including for any repairs or maintenance, where the System Operator determines that there was no fault or defect or that the problem complained of:
- (a) did not result from any error or defect in the System or the equipment provided by the System Operator; or
 - (b) resulted from unauthorised or inappropriate use of the System or the equipment.
- 20.13 Without limiting or prejudicing any of the System Operator's other rights, powers or remedies, the System Operator may, in its absolute discretion, disconnect the Member from the Network (either temporarily or permanently) in the event that the Member resigns its membership, is suspended or expelled from the System or, in the System Operator's opinion, breaches any of the Rules.
- 20.14 This rule 20 shall replace in its entirety any Network Access Agreement, Network Conditions (as defined by the Application for Members to Access the Network) or

equivalent arrangements, previously entered into between the Reserve Bank and any Member.

20.15 The System Operator may enter into an agreement with a network provider under which the Network will be operated and supplied by that network provider. While any such agreement is in force:

- (a) Rule 20 shall apply as if any references to the System Operator included references to the network provider;
- (b) the network provider shall be entitled to the benefit of Rules 21 and 22 (with all necessary modifications) to the same extent as if references to the System Operator included references to the network provider; and
- (c) the circumstances in which the network provider may cease to perform that function or may assign the benefit of that agreement to a new network provider, will be determined in accordance with that agreement.

20.16 Neither the System Operator, FW Registrar, Depository nor any agent of any of them shall be liable in negligence, contract or otherwise howsoever for any losses, damages, claims, liabilities, costs or expenses suffered or incurred by any Member or other person as a result of any error or defect in, or corruption of, electronic data received by, held on or transmitted from the System.

21 LIABILITY AND INDEMNITIES

21.1 Exclusion of third party rights

Except as provided in Rule 9.4.1(e):

- (a) nothing in these Rules is intended to confer any benefit or enforceable rights on, and neither the System Operator, FW Registrar, Depository, or any agent of any of them, nor any Member or Participating EAH (each a “party” for the purposes of this Rule 21 and Rule 22) assumes any responsibility in relation to, the Rules or the System to, any person other than a party;
- (b) no person other than a party shall have any claim against a party arising out of or in connection with the Rules or the System.

21.2 Enforceability of the Rules

21.2.1 The obligations of each Member and each Participating EAH under these Rules are owed to the System Operator, FW Registrar and the Depository and to each other Member and Participating EAH, and may be enforced directly by any other Member or Participating EAH or (at the election, and in the sole discretion, of the System

Operator) by the System Operator as trustee for all other Members and Participating EAHs. Nothing in this Rule affects:

- (a) the ability of the System Operator to change or replace these Rules in accordance with Rule 22.3, without the consent of any other party; or
- (b) the ability of the System Operator to waive any breach or non-compliance by a Member or Participating EAH, on such terms as the System Operator may think fit, and whether before or after the events giving rise to the breach or non-compliance occur, without the consent of any Member or Participating EAH, each of which agrees to be bound by any such waiver.

21.2.2 Notwithstanding Rule 21.1, the Depository, FW Registrar, System Operator and each employee, officer, director and agent of the Depository, FW Registrar or System Operator shall be entitled to the benefit of, and may enforce, all waivers, warranties, exclusions of liability, limitations of liability, immunities, releases and indemnities given by another party in favour of the Depository, FW Registrar or System Operator or any agent of any of them, whether under these Rules or otherwise.

21.3 Exclusions of liability

Neither the System Operator, FW Registrar, Depository, any agent of any of them nor any of their respective employees, officers or directors (collectively referred to in this Rule 21.3 as the “System Operator”) shall be liable to any person, whether a Member or Participating EAH or otherwise, and whether under these Rules or at common law (including in negligence) or in equity, or under any statute, in respect of:

- 21.3.1 any failure by any Member or Participating EAH to comply with these Rules or to perform any obligation under or in connection with these Rules;
- 21.3.2 any decision in relation to the admission, suspension, or expulsion of the Member or Participating EAH, or any other Member or Participating EAH, or any other person;
- 21.3.3 any defect in the title of any Member to any Security recorded in the Security Account of that Member, or any loss resulting from a claim by any person other than that Member to have some interest in, or to otherwise be entitled to restrain or obtain the benefit of, any dealings with, any Security, or any loss resulting from any claim by any person other than that Member to any funds handled by the System Operator pursuant to any Corporate Action;
- 21.3.4 any defect in the genuineness, regularity, completeness, validity, or quality of any Security;

- 21.3.5 any action taken by the System Operator, or any omission to act, in connection with the performance or purported performance of the System Operator's functions under these Rules, whether negligent or otherwise, except that the System Operator will be liable subject to Rule 21.4 for any direct loss or damage resulting from a wilful default or failure to act in good faith on the part of the System Operator;
- 21.3.6 any act or omission by an agent of the System Operator in connection with the performance or purported performance of functions under these Rules, except that the System Operator will be liable subject to Rule 21.4 for any direct loss or damage resulting from a wilful default or failure to act in good faith on the part of the agent if the System Operator authorised or had actual knowledge of, and failed to take reasonable steps to prevent, the relevant act or omission;
- 21.3.7 without limiting the other provisions of this Rule, any action taken or omitted by the System Operator or any employee or agent of the System Operator, in execution or intended execution of an instruction given or purporting to be given by a Member, whether or not that instruction complied with these Rules or was incorrect or fraudulent in any respect, unless the instruction was not authorised by the Member and the System Operator had actual knowledge that it was not authorised;
- 21.3.8 without limiting the other provisions of this Rule, the suspension or unavailability or interruption of access to the System, or the Network, or any part thereof;
- 21.3.9 any loss or damage suffered by a Member or Participating EAH caused by a third party acting through or by means of the System, or Network, or any part of these including without limitation any unauthorised or inappropriate use by the Member of the Network or System, or where the Member causes a denial of access or service to another Member or is responsible for or participates in any unauthorised access, connection or configuration in respect of the Network or System; or
- 21.3.10 any matter or claim whatsoever, including any claim based on the wilful default or failure to act in good faith or negligence of the System Operator or any employee or agent of the System Operator, where the claim has not been brought within the time limit fixed in Rule 21.5.

21.4 Limitation of liability

- 21.4.1 Where the System Operator, FW Registrar, Depository, any agent of any of them or any of their respective employees, officers or directors (together referred to in this Rule 21.4 and in Rule 21.5 as the "System Operator") is liable to any person in respect of any matter arising out of or in connection with the System, that liability shall be limited to direct losses resulting from the System Operator's wilful default or failure to act in good faith. The System Operator shall not be liable in respect of any act or omission, including any wilful default or act done or omitted other than in good faith, for:

- (a) indirect losses of any kind, including loss of profits, or damage to reputation; or
- (b) losses which exceed the maximum liability set out in Rule 21.4.2.

21.4.2 The total aggregate limit of the System Operator's liability under these Rules or otherwise in respect of all claims made by Members or Participating EAHs in respect of or arising out of any one event will not exceed five (5) million dollars. For the purpose of this Rule 21.4, all inter-related events which give rise to the System Operator's liability under these Rules or otherwise will be treated as one event. In the event of any two or more Members or Participating EAHs suffering losses which exceed the total aggregate limit of \$5 million, the liability of the System Operator to each of those Members or Participating EAHs in accordance with this Rule 21.4 will be proportional to the total loss suffered by each of those Members or Participating EAHs respectively.

21.5 Time limit on claims

Any claim against the System Operator arising out of or in connection with these Rules or the NZClear System shall be brought within twelve (12) months of the date on which the breach or other wrongful act giving rise to the claim actually occurred. For the avoidance of doubt, where a claim is founded on an omission, it shall be brought within twelve (12) months of the date on which it is alleged that the matter omitted ought first to have been done.

21.6 Members' indemnities

21.6.1 Each Member (which for the avoidance of doubt and notwithstanding the definition of "Member" in Rule 1 does not include the System Operator, FW Registrar or the Depository,) hereby indemnifies the System Operator, FW Registry, Depository, and every employee, director, officer or other agent of any of the System Operator, FW Registrar and the Depository, and each other Member and Participating EAH, against any loss, damages, claims, liabilities, costs or expenses suffered or incurred as a result of:

- (a) any breach by that Member of these Rules;
- (b) any claim by any person other than that Member to an interest in, or to restrain dealings in respect of, or to compensation for past dealings in respect of, any Securities Lodged by that Member or recorded in that Member's Security Account, or any funds received or paid by that Member through the System;
- (c) any claim by any person to or in respect of any funds received or otherwise dealt with by the System Operator, the Depository or any agent of either of them in respect of Securities in that Member's Security Account, or any claims by any person in respect of any such receipt or other dealing; and

- (d) any action taken or omitted by the System Operator or any employee or agent of the System Operator, in execution or intended execution of an instruction given or purporting to be given by a Member, whether or not that instruction complied with these Rules or was incorrect or fraudulent in any respect, unless the instruction was not authorised by the Member and the System Operator had actual knowledge that it was not authorised.

21.6.2 If the System Operator, FW Registry, Depository or any agent of any of them receives notice of any claim in respect of which it is entitled to be indemnified by the Member, the System Operator shall inform the Member of the claim as soon as reasonably practicable. Provided the System Operator, FW Registrar, Depository or agent of any of them (as the case may be) is not prejudiced or disadvantaged, the System Operator will endeavour to comply with the reasonable requests of the Member regarding a response to any third party claim and the conduct of any proceedings relating to it, but otherwise the System Operator may respond to all claims and conduct any proceedings as in its discretion it deems appropriate. The Member shall provide such deposit or other form of security as may be reasonably requested by the System Operator to secure performance of the Member's obligations under this Rule 21 as security in the event the System Operator is notified of any third party claim which is the subject of indemnification by the Member.

21.7 Survival after cancellation

Each Member agrees that the provisions of this Rule 21 shall survive:

- (a) any cancellation or termination of these Rules; and
- (b) any termination, however occurring, of the Member's membership of the System.

21.8 No restriction on waivers or releases by Member

Nothing in this Rule 21 shall limit or restrict any other waiver, release or indemnity given by any Member in favour of the System Operator, FW Registrar, the Depository or any director, officer, employee or agent of any of them, whether under any other provision of these Rules or in any other manner. Each such waiver, release or indemnity shall operate separately and cumulatively for the benefit of the System Operator, FW Registry, the Depository and their respective employees, directors, officers and agents.

22 MISCELLANEOUS

22.1 Set-off

Nothing in these Rules shall be construed so as to negate or exclude the System Operator's right of set-off which may otherwise arise.

22.2 No derogation

The rights and powers conferred by these Rules on a party are in addition to any rights and powers conferred on the parties by statute or by general law. Nothing in these Rules is intended or shall have effect (unless otherwise expressly provided) to diminish or prejudice in any way such rights and powers so conferred by statute or by general law.

22.3 Changes to the Rules

22.3.1 These Rules are subject to addition, modification, deletion, amendment or replacement (a "Rule Change") at any time by the System Operator without the consent of the Members. Any such Rule Change shall be notified by the System Operator to each Member in accordance with Rule 22.4 and shall have effect on the date specified in the notice which shall be the later of:

[
(a) twenty one (21) Business Days after the date on which either of the Securities Commission and the Reserve Bank as joint regulators first received notice of the proposed Rule Change under section 156ZB(1) of the Reserve Bank Act, if the regulators have not disallowed the proposed amendment under section 156ZC of the Reserve Bank Act.

(b) a date that is specified as part of the proposed Rule Change.]

22.3.2 If a Member does not wish to become bound by a Rule Change, it is open to that Member to resign its membership in accordance with Rule 3.4. For the avoidance of doubt, if a Member receives notice of a Rule Change and continues as a Member of the System after the date on which the Rule Change has effect, that Member thereby accepts the Rule Change and is bound to comply with these Rules as amended or replaced by that Rule Change.

22.4 Notices

Except where expressly provided otherwise in these Rules:

(a) every notice under these Rules shall be given or made in writing and sent to the address or contact details of the Member provided in its application or such other address as shall be notified to the System Operator from time to time;

- (b) every notice sent by letter shall be deemed to be served on the second Business Day after the letter duly addressed and stamped is put in the post; and
- (c) where these Rules require the giving by the System Operator of a notice to all Members, then the accidental omission to give a copy to or the non-receipt of a copy of such notice by any Member shall not affect the validity of such notice or the effectiveness of such notice.

22.5 Waivers by System Operator

No forbearance, waiver, failure or delay by the System Operator in exercising or enforcing its rights or any provision of these Rules shall prejudice or restrict its rights and no waiver of any provision or enforcement of these Rules will be deemed to be a waiver of any other provision or subsequent breach.

22.6 Void or invalid Rules

If any provision of these Rules is for any reason held to be void, invalid or unenforceable by a court or other binding authority, then such void effect, invalidity or unenforceability shall not prejudice the other provisions (which shall continue in full force and effect) except those which comprise an integral part of it or are otherwise clearly inseparable.

22.7 Survival

The cancellation or termination of these Rules shall not in any way prejudice, limit, avoid, extinguish or affect the rights, duties, liabilities, obligations of, or indemnities given by, any Member or Participating EAH, whether under these Rules or otherwise, accrued and existing at the date of such cancellation or termination or which may arise, accrue or crystallise afterwards out of or by reason of facts or circumstances occurring or in existence at or before such date.

22.8 Governing law

22.8.1 These Rules shall be governed by and construed in accordance with the laws of New Zealand.

22.8.2 For the benefit of the System Operator, Depository and FW Registrar, the Members, (including the Participating EAHs) irrevocably agree that the Courts of New Zealand shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes which may arise out of or in connection with these Rules. For such purposes, each Member irrevocably submits to the jurisdiction of the Courts of New Zealand. Each Member irrevocably waives any objection which it might now or hereafter have to the New Zealand Courts being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and agrees not to claim that any such Court is not a convenient or appropriate forum.

22.8.3 This submission to the jurisdiction of the Courts referred to above shall not (and shall not be construed so as to) limit the right of the System Operator to take proceedings against a Member in any other Court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

22.8.4 Where required by the System Operator, a Member shall irrevocably appoint the person whose name and address has been provided to the System Operator for this purpose, or such other person as it may nominate from time to time, to receive service of notice under Rule 22.4, as that Member's agent for service of any process in New Zealand.

22.9 Replacement of System Operator

The System Operator may in its unfettered discretion retire as operator of the NZClear System, and appoint a successor operator of the System (“the New Operator”). The System Operator shall give notice of its retirement as operator, and the appointment of the New Operator, to all Members and Participating EAHs. The notice shall specify the date on which it is to have effect, which must be at least twenty (20) Business Days after the date on which the notice is sent. On the date on which the notice is expressed to have effect:

- (a) the retiring System Operator and the Depository and its other agents shall cease to perform their functions under these Rules;
- (b) the New Operator will assume all of the responsibilities, obligations and liabilities of the System Operator under these Rules;
- (c) the New Operator shall be entitled to the benefit of all obligations owed to the System Operator by Members and Participating EAHs under these Rules, and shall be entitled to exercise all powers conferred on the System Operator by these Rules, as if it were the System Operator;
- (d) the retiring System Operator shall cease to hold office as trustee in respect of any Securities Lodged in the System, and shall be succeeded as trustee by the New Operator;
- (e) each Member shall (if requested by the New Operator) either prepare and submit to the System Operator or shall be deemed to have authorised the System Operator to prepare and submit a transfer in respect of every Security in its Security Account transferring the Security from the Depository to the New Operator or equivalent entity appointed by the New Operator to carry out the role of the Depository;
- (f) the retiring System Operator shall have no responsibility or liability in respect of the performance by the New Operator of its functions under these Rules;

- (g) the retiring System Operator shall continue to be entitled to the benefit and subject to the burden of these Rules in respect of any claims which have arisen or matters which occurred prior to the date on which the notice had effect; and
- (h) for avoidance of doubt, all references in these Rules to the System Operator shall be references to the New Operator, in respect of any matters arising on or after the date on which the notice had effect.

22.10 Dispute resolution

- 22.10.1 If a dispute arises between the System Operator and a Member in connection with the Rules, either the System Operator or that Member may serve written notice on the other requesting that the parties endeavour to resolve the dispute by mediation (a "Mediation Notice"). A party in receipt of a Mediation Notice may (but is not obliged to) agree to mediation of the dispute, in which case Rule 22.10.2 shall apply.
- 22.10.2 The mediation shall be conducted by a mediator, and at a fee, to be agreed between the parties. If they fail to reach agreement within ten (10) Business Days following the date of receipt of the Mediation Notice, the mediator shall be selected and the mediator fee determined by the Chair for the time being of LEADR New Zealand Inc.
- 22.10.3 If a party in receipt of a Mediation Notice decides not to consent to mediation, either party may take such steps to resolve the dispute in another way, including referral of the dispute for adjudication before the Courts.
- 22.10.4 Nothing in the Rules shall preclude any party from seeking urgent injunctive or interlocutory relief from the Court. If such relief is sought by a party, that party shall as soon as practicable thereafter advise the other parties whether or not it wishes the dispute to be the subject of mediation (subject to the extent of the relief sought and obtained from the Courts) following the period required to dispose of the application for relief.
- 22.10.5 In the event of any claim lodged by a party against another arising out of any circumstance relating to the System or to these Rules, the applicable interest rate applied to the amount of any claim from the date such sum became due until the date of payment shall be the Default Rate.

23 USER ADVISORY COMMITTEE

- 23.1 A User Advisory Committee shall be established and operated in accordance with the schedule "User Advisory Committee".
- 23.2 Notwithstanding clause 22.3.1, actions taken consistent with Rule 23.1 in order to establish the User Advisory Committee, including calling for nominations and casting of votes as provided in the Schedule, shall be effective for the purposes of

these Rules notwithstanding that 40 days may not have elapsed since Rule 23.1 was promulgated by the System Operator.

SCHEDULE

USER ADVISORY COMMITTEE

Establishment and Purposes

There shall be an NZClear Users' Advisory Committee ("the Committee") established for the following purposes:

- (a) Promoting the good governance of NZClear.
- (b) Ensuring that Members have an opportunity to contribute to the long term effectiveness and viability of NZClear.
- (c) Ensuring that the System Operator is aware of, and takes into account, the views of Members concerning the strategy and operation of NZClear.

Functions

The functions of the Committee are:

- (a) To provide advice to the System Operator on strategic and operational matters that relate to NZClear, including pricing.
- (b) To discuss and advise on matters raised with and put before the Committee by the System Operator, including plans, reports and proposed new services or significant developments.
- (c) To identify industry trends and issues that are relevant to NZClear.

Membership of the Committee

The Committee shall comprise up to seven members elected by Members of the NZClear System, excluding the Reserve Bank.

Nominations for representatives shall be called for members of each of the following classes of members:

- a representative for Members whose principal business is that of banking in New Zealand
- a representative for Members whose principal business is provision of nominee or custodian services in New Zealand
- a representative for Members whose principal business is provision of broking services in New Zealand
- a representative for Members who are not resident in New Zealand

- a representative for Members whose principal business is other than any of the categories listed above.

The highest polling representative nominee in each class shall be appointed to the Committee. The balance of Committee shall be the highest polling nominees who are not elected as a representative for a category mentioned above.

Every Member of NZClear is entitled to one vote (to be exercised in any one category).

Committee members shall be elected for a period of two years. The Chairman and Deputy Chairman of the User Committee may appoint a staff member of a Member to fill a casual vacancy.

The System Operator will not be a member of the Committee but shall be available to attend Committee meetings.

Obligations upon System Operator

System Operator to consider advice given by the Committee

The System Operator must consider, but is not bound by, any advice given by the Committee.

The System Operator shall prepare and publish a response to advice given by the Committee.

The System Operator must not proceed to implement any change to pricing policy, or incur any investment in excess of \$0.5 million, before it has consulted and considered the views of the Committee.

Administrative duties

Committee members shall elect a Chair and Deputy Chair. The Chair and Deputy Chair shall be elected for a period of twelve months.

The Chair shall convene at least four meetings of the Committee per annum.

The System Operator must provide administrative support for the Committee sufficient to enable the Committee to perform its functions effectively and efficiently.

Reporting

The System Operator must provide a quarterly Operations Report that covers the following:

- progress against stated objectives for the year
- system volumes and values processed
- system financial performance (including pricing)
- system outages

- system and product developments
- business continuity planning and testing
- risk management
- market issues related to the operation of the NZClear System.

The System Operator must provide for each financial year an Annual Report for the system.

Before the commencement of a financial year, the System Operator must prepare a plan and objectives for the year ahead. Members will have the opportunity to comment on the proposed plan before it is finalised by the System Operator.

Procedures

Generally

Each Member shall nominate a representative to act as contact person for the purpose of the communications and proceedings in relation to the Committee.

Attendance at meetings may be by teleconference, videoconference or other form of interactive technology, if such technology is available to Committee members and if it allows for full participation in the meeting.

The presence or attendance of at least three Committee members shall constitute a quorum.

Except as elsewhere provided in these Rules, the Committee shall regulate its own procedure.

Meetings initiated by Members

Any four members may give notice to the System Operator requesting it to convene a meeting of the Committee. Each such notice requesting that a meeting be convened must identify the particular issue(s) for which the meeting is called. On receiving such a notice the System Operator must convene a meeting of the Committee at the earliest practicable opportunity.

**ACKNOWLEDGEMENT OF OBSERVANCE AND
COMPLIANCE WITH NZCLEAR RULES (DATED [])**

Name of Member/Member

Place of Incorporation

Registered Office Address

.....

The abovenamed company (“the Applicant”) shall observe and comply with the attached NZClear Rules, and as they may be amended from time to time by the Reserve Bank.

DATED THIS day of 20

.....

(name)

.....

(signature)

.....

(title)

.....

(name)

.....

(signature)

.....

(title)

***NZCLEAR NEW ZEALAND SYSTEM APPLICATION FORM
AND ACCEPTANCE OF TERMS AND RULES***

To: *The System Operator
C/- The Registry Department
Reserve Bank of New Zealand
PO Box 2099
Wellington*

Name of Applicant

Place of Incorporation

Registered Office Address

Postcode

Facsimile Number

The abovenamed Company or organisation ("the Applicant"):

- (a) applies for membership of and access to the NZClear System and agrees that, if such application be approved then subject to and in consideration of such approval, the Applicant will comply with and be bound by the NZClear System terms and conditions ("The Rules") and Operating Guidelines from time to time in force and all amendments of the same of which it is notified in accordance with the Rules;*
- (b) acknowledges receipt of a copy of the Rules currently in force (Effective Date _____) and that it is aware of the contents of these Rules;*
- (c) warrants that it has all requisite powers and authorisation to enter into, and has satisfied all the requirements for membership set out in, these Rules, in particular Rule 3; and*
- (d) confirms its acceptance of the Rules as constituting a binding agreement between the Applicant (as the Member) and the System Operator.*

DATED this day of 20

Signed on behalf of:

.....
(Full legal name of Applicant)
by:

.....
(Name)

.....
(Name)

.....
(Signature)

.....
(Signature)

.....
(Director/Attorney/Authorised Person)

.....
(Director/Attorney/Authorised Person)

in the presence of:

Signature:

Name:

Occupation:

Address:

Note: Membership applications executed by a company must be executed in accordance with the requirements of section 180 of the Companies Act 1993 and the Applicant's constitution (if any).