



NZX Regulation Decision

Fonterra Shareholders' Fund (**FSF**) (NS)

Approval to List as an Issuer of Equity Securities
under NZX Listing Rule 1.1.2

Ruling on FSF's Governing Document

Application for Rulings and Waivers from NZX Listing
Rules – 2.3.1, 2.3.2, 2.7.1, 2.8.1, 2.10.1, 2.11.1, 2.12.1,
2.20.1(a)(i), 2.20.1(d), 3.13.1, 4.1, 4.11.1, 4.12, 4.14.1,
4.14.2, 5.1.1, 5.2, 8.1.6(b), Appendix 3

24 June 2019



Background

1. The approval from NZX Regulation (**NZXR**) for the Ruling and waivers set out in the decisions below:
 - a. will not apply if the information provided by FSF is not, or ceases to be, full and accurate in all material respects; and
 - b. takes effect from FSF's transition to the 1 January 2019 NZX Listing Rules (the **Rules**) has occurred.
2. This decision:
 - a. sets out NZXR's approval of FSF Listing as an Issuer of Equity Securities, and a Ruling that FSF Units are Equity Securities under the Rules;
 - b. sets out NZXR's Ruling that FSF's Trust Deed is its Governing Document; and
 - c. re-documents prior waiver and Ruling decisions granted by NZXR dated 23 October 2012 and 3 September 2014.
3. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
4. The information on which this decision is based is set out in Appendix One. This decision will not apply if that information is not, or ceases to be, full and accurate in all material respects.
5. The Rules to which this decision relates are set out in Appendix Two.

Approval to List as an Issuer of Equity Securities under Listing Rule 1.1.2

Decision

6. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR:
 - a. approves the Listing of FSF as an Issuer of Equity Securities under the Rules; and
 - b. grants a Ruling that FSF Units (the **Units**) are Equity Securities under the Rules.

Reasons

7. In coming to the decision set out in paragraph 6, NZXR has considered that:
 - a. the reason why FSF wishes to ensure that the Units be treated as Equity Securities is to enable FSF to continue to operate as a key element of Trading Among Farmers (**TAF**) in the same manner that holders of FSF Units (the **Unitholders**) are familiar with under the 1 October 2017 NZX Main Board and Debt Market Listing Rules (the **old Rules**), without affecting those of its Unitholders where their investment mandates only allow them to hold FSF units if FSF is an Issuer of Equity Securities;
 - b. FSF wishes to maintain a strong independent governance structure; and



- c. Rule 1.1.2 was included in the Rules to allow Issuers to seek Listing as an Issuer of Equity Securities where it is considered preferable to being Listed as an Issuer of Fund Securities. Due to FSF's historical listing status under the old Rules, it is appropriate for NZXR to approve this Listing to assist FSF in ensuring it is able to operate in the same manner as it does currently.

Ruling in relation to Governing Document

Decision

8. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR rules that FSF's Trust Deed is FSF's sole Governing Document under the Rules.
9. This Ruling in paragraph 8 is conditional on the Trust Deed complying with the Rule requirements, as modified by any rulings and waivers granted by NZXR.

Reasons

10. In coming to the decision in paragraph 8, NZXR has considered that by confirming FSF as an Issuer of Equity Securities, both the Trust Deed and the Manager's constitution could be considered Governing Documents of FSF based on the definition of Governing Document in the Rules. Accordingly, NZXR considers it is appropriate to clarify that the Trust Deed is FSF's sole Governing Document.

Waivers from Listing Rules 2.3.1, 2.3.2, 2.7.1 and 2.8.1

Decision

11. Subject to the conditions in paragraph 12, and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF waivers from:
 - a. Rules 2.3.1 and 2.3.2 to:
 - i. allow Fonterra to appoint two directors to the Board of the Manager, as permitted by clause 6.2 of the Manager's constitution, even though Fonterra is not a Unitholder in the FSF; and
 - ii. allow a precondition to be imposed in respect of persons who may be nominated and appointed by Unitholders to fill three elected director positions, being that those candidates be "Independent Directors" for the purposes of the Rules, as required by clause 31.8(e) of the Trust Deed.

This is to ensure that the maximum number of director limits in the Trust Deed are not exceeded, clause 31.8(h) of the Trust Deed provides, and FSF wishes to carry forward, a rule that candidate(s) with the most votes will be appointed if more persons are standing to be elected/re-elected than available positions.

- b. Rule 2.7.1 to the extent that the Fonterra appointed directors are not subject to the obligation to not hold office (without re-election) past the third annual meeting following the director's appointment of three years, whichever is longer, so that the Fonterra appointed directors may only be removed by a direction from Fonterra in accordance with the constitution of the Manager; and
- c. Rule 2.8.1 to the extent that Fonterra may remove the Fonterra appointed directors from the Board of the Manager in accordance with the constitution of the Manager.

12. The waivers contained in paragraph 11 are subject to conditions that:
 - a. FSF bears a "Non Standard" designation to alert the market to the FSF's unique governance arrangements; and
 - b. Fonterra appoints and removes the Fonterra appointed directors only in accordance with the provisions of the constitution of the Manager and the Trust Deed.

Reasons

13. In coming to the decision to provide the waivers set out in paragraph 11 above, NZXR has considered that:
 - a. in the context of the FSF, the Manager has a relatively constrained role given the scope of its powers under the Trust Deed, consistent with the FSF being a passive investment vehicle;
 - b. Fonterra has a stakeholder interest in the FSF, given that the FSF has been established to facilitate TAF, which was developed as a means for the reduction of Fonterra's redemption risk that existed under DIRA's requirement for open entry and exit. Fonterra's ability to appoint and remove two Directors to the Manager is consistent with the policy behind Rule 2.4 that allows a stakeholder to appoint and remove directors to represent its interests;
 - c. The requirement that all persons nominated by Unitholders be "independent" will ensure that the FSF has a minimum of three Independent Directors rather than a minimum of two as required by Rule 2.1.1(c), and this majority of Independent Directors provides an added protection to Unitholders. In addition, those Independent Directors are subject to rotation in accordance with Rule 2.7.1;
 - d. FSF will need to comply with Rules 2.6 and 3.1 which will ensure the market has visibility of those persons appointed and removed as Directors of the Manager; and
 - e. the conditions contained in paragraph 12 provide comfort to NZXR that information concerning the unique governance arrangements that apply to the FSF will be publicly available.

Ruling on Listing Rule 2.10.1

Decision

14. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a Ruling on Rule 2.10.1 that no Director of the Manager is "interested" in any matter, within the meaning assigned to that term in section 139 of the Companies Act 1993, merely because that person is a Director of the Manager.

Reasons

15. In coming to the decision to provide the Ruling in respect of Rule 2.10.1, NZXR has considered that:
 - a. the policy behind Rule 2.10.1 is to prevent situations arising whereby Directors who have a vested interest in a transaction may authorise the entry into, or implementation of, matters that are detrimental to the interests of Unitholders as a result of that "interest";

- b. the “interest” of the Directors of the Manager in this instance arises by virtue of the unique operating and management arrangements of the FSF;
- c. the Manager has a relatively constrained role given the scope of its powers under the Trust Deed, and the status of the FSF as a passive investment vehicle; and
- d. the Directors of the Manager will continue to be precluded by Rule 2.10.1 from voting on Board resolutions relating to transactions entered into by the Manager or the FSF with another entity in respect of which the Director would otherwise be “interested”.

Waivers from Listing Rules 2.11.1 and 2.12.1

Decision

16. Subject to the conditions in paragraph 17, and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rules 2.11.1 and 2.12.1 to allow the Manager to pay remuneration to the Directors of the Manager without approval by an ordinary resolution of Unitholders:
17. The waivers contained in paragraph 16 are subject to conditions that:
- a. the income from the FSF cannot directly be applied in satisfaction of Directors’ remuneration; and
 - b. FSF bears a "Non-Standard" designation to alert the market to the FSF's unique governance arrangements.

Reasons

18. In coming to the decision to provide the waivers set out in paragraph 16 above, NZXR has considered that:
- a. the policy behind the Rules is to ensure that directors cannot seek to reward themselves without sufficient scrutiny by an issuer's security holders, and in the context of the FSF, this concern is alleviated by the involvement of Fonterra in the negotiation of remuneration payments; and
 - b. there is limited ability for Fonterra to influence the Directors of the Manager given the FSF’s status as a passive investment vehicle.

Waiver from Listing Rule 2.20.1(a)(i)

Decision

19. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 2.20.1(a)(i) to the extent that Rule 2.20.1(a)(i) would require the Trust Deed to incorporate by reference provisions consistent with or having the same effect as Rules 2.8.1 and 2.10.1.

Reasons

20. The waiver provided in paragraph 19 above is necessary to ensure the waiver provided in paragraph 11c and the Ruling provided in paragraph 14 are effective.

Ruling on Listing Rule 2.20.1(d)

Decision

21. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR provides FSF a Ruling that the provisions contained in clause 4.5(c) of the Trust Deed contain a “contrary intention” for the purposes of Rule 2.20.1(d).

Reasons

22. The Dairy Industry Restructuring Act 2001 (**DIRA**) establishes a legislative framework within which Fonterra must operate in relation to TAF. The Ruling provided in paragraph 21 ensures that a Ruling cannot be granted permitting an act under the Rules that would be contrary to DIRA.

Waiver from Rule 3.13.1

Decision

23. Subject to the conditions in paragraph 24, and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 3.13.1 to the extent it requires the Manager of FSF to release to the market details of any issue, acquisition or redemption of Units related to Daily Trading (as defined in Appendix One).
24. The waiver contained in paragraph 23 is subject to conditions that:
 - a. the Manager must give to NZX for release to the market details of the issues, acquisitions or redemptions related to the Daily Trading for a calendar month in the form as required under Rule 3.13.1, aggregating the information for each trading day to provide monthly totals;
 - b. notices required under paragraph 24(a) must be provided to NZX no later than on the first business day of the calendar month following the calendar month to which the notice relates, and every such notice must clearly be identified as a monthly allotment and redemption notice and include a reference that the notice is being made in reliance on this waiver and where a copy of the waiver is available;
 - c. should Daily Trading result in a Gross Movement in the number of Units of more than 1%, either positive or negative, in one day, the FSF must give to NZX for release to the market details of that day's issues, acquisitions or redemptions related to the Daily Trading, as would be otherwise be required by Rule 3.13.1 by no later than on the immediately following business day; and
 - d. every notice made under paragraph 24(a) must clearly be identified as a monthly allotment and redemption notice and include a reference that the notice is being made in reliance on this waiver and where a copy of the waiver is available.

Reasons

25. In coming to the decision to provide the waiver in respect of Rule 3.13.1, NZXR has considered that:
 - a. the information under Rule 3.13.1 is generally required to inform investors of the dilutionary effect on their quoted securities when securities are issued, acquired or redeemed. The structure of the FSF is such that each Unit relates to the Economic

Rights of a Fonterra share held in trust by the Custodian on behalf of the Trustee. Each Unit entitles the holder to these Economic Rights. While Daily Trading alters the number of Units, Daily Trading does not alter this one-for-one relationship between Units and the Economic Rights of Fonterra shares. Accordingly, Daily Trading does not have a dilutionary effect on the value of the Units and granting this waiver will not offend the policy behind Rule 3.13.1;

- b. the waiver is limited to Daily Trading only, and would not apply to other issues, acquisitions or redemptions of Units (for example, a bonus issue of Units as a result of a bonus issue in respect of Fonterra shares), which could affect the value of Units;
- c. in the absence of the waiver, notifications would need to be made on an almost daily basis, and any notifications of events which could have a dilutionary effect on the value of the Units may not be highlighted due to the high number of announcements, meaning the policy intention of this Rule would not be met;
- d. the average daily Gross Movement and average daily Net Movement in the number of Units as a result of Daily Trading is minimal, representing approximately 0.1% of the total number of Units currently on issue. The market is well aware that changes of this level can be expected due to the structure of the FSF. Should there be a substantial movement in the number of Units on issue during one trading day, the conditions of the waiver require that a notification, as otherwise required under Rule 3.13.1, be made to the market;
- e. the Manager considers, and NZXR agrees, that the Daily Trading information is generally not of any significant value to Unitholders (or Fonterra shareholders). Further, NZXR considers there will be no detrimental impact on Unitholders or Fonterra shareholders if they receive notifications in relation to Daily Trading on a monthly basis; and
- f. had FSF sought to List as an of Issuer of Fund Securities, Rule 3.13.2 would have exempted FSF from the Daily Trading notifications on a similar basis as the conditions of the waiver sought.

Waiver from Listing Rule 4.1

Decision

26. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 4.1 to allow the Manager of the FSF to issue Units as set out in the Trust Deed, to both permit an issue of Units to be made to a transferor of a Fonterra share as well as to minor issuances made by Fonterra, without the need for Unitholder approval.

Reasons

27. In coming to the decision to provide the waiver in respect of Rule 4.1, NZXR has considered that:
- a. the ability for the Manager of the FSF to issue Units in exchange for Fonterra shares is essential to the operation of TAF and this, together with reliance on the existing waiver, was clearly set out in the Offer Document; and
 - b. the Manager of the FSF may issue Units in order to mirror issues by Fonterra (for example if Fonterra was to undertake a bonus issue the FSF would

contemporaneously undertake a bonus issue to preserve the one for one nature between Units and Fonterra shares); and

- c. the Trust Deed prescribes the basis on which the FSF can issue Units.

Waiver from Listing Rule 4.11.1

Decision

28. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 4.11.1 in respect of the pricing of Units issued in accordance with the Trust Deed to reflect Fonterra shares transferred or issued to the Custodian.

Reasons

29. In coming to the decision to provide the waiver in respect of Rule 4.11.1, NZXR considered that the Trust Deed sets out the provisions for the issue of Units, and the Manager has no discretion as to the pricing of the Units. Accordingly, the protection in Rule 4.11.1 is unnecessary.

Waiver from Listing Rule 4.12

Decision

30. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 4.12 to allow the Manager of the FSF to pass on any Benefit or Distribution (as defined in the Trust Deed) to Unitholders that Fonterra passes on to shareholders, as required by the Trust Deed.

Reasons

31. In coming to the decision to provide the waiver in respect of Rule 4.12, NZXR considered that:
- a. the distribution by the FSF of Benefits and Distributions to Unitholders as permitted by the Trust Deed to reflect those provided by Fonterra to shareholders is integral to the operation of TAF, the FSF and the FSM; and
 - b. the manner in which the FSF may distribute such Benefits was fully and accurately disclosed in the Offer Document which provides comfort that Unitholders are fully informed as to the non-application of Rule 4.12.

Waiver from Listing Rules 4.14.1 and 4.14.2

Decision

32. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rules 4.14.1 and 4.14.2 to the extent necessary to allow the Manager to redeem Units as required by the Trust Deed.



Reasons

33. In coming to the decision to provide the waivers in respect of Rules 4.14.1 and 4.14.2, NZXR considered that:
- a. the ability for the Manager of FSF to redeem Units on the basis set on in the decision in paragraph 32 above is integral to the operation of TAF, the FSF and the FSM; and
 - b. the principles underlying TAF, as was clearly disclosed in the Offer Document, include that the FSF must match on a one-for-one basis the redemption of Units by Permitted Persons, with the Custodian transferring one Fonterra share in respect of each Unit redeemed to the relevant Permitted Person.

Ruling on Listing Rule 5.1.1 and the definition of “Material Transaction”

Decision

34. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a Ruling that each and any:
- a. acquisition or disposition of Economic Rights of Shares in accordance with the Trust Deed; and
 - b. issue or redemption of Units in accordance with the Trust Deed;
- are not a "series of linked or related transactions" for the purposes of Rule 5.1.1, and are not a "related series of transactions" for the purposes of the definition of “Material Transaction” in the Glossary of the Rules.

Reasons

35. In coming to the decision to provide the Ruling in paragraph 34, NZXR considered that:
- a. the acquisition and disposition of Economic Rights and the issue and redemption of Units reflect the ordinary course of business of the FSF and the investment mandate of the FSF as prescribed in the Trust Deed;
 - b. there is no necessary relationship between each issue of Units, redemption of Units or acquisition of Economic Rights - rather these are ongoing activities of the FSF; and
 - c. a Related Party would be unable to influence the FSF's decision to issue or redeem Units or to acquire the Economic Rights as these activities are required to be conducted in the manner prescribed in the Trust Deed.

Waivers from Listing Rules 5.1.1 and 5.2

Decision

36. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a waiver from Rule 5.1 from the requirements in Rules 5.1 and 5.2 that respectively require shareholder approval for a major transaction or a Material Transaction with a Related Party, to allow the termination provisions of the Trust Deed to

operate as intended such that if the Fund is terminated, Fonterra or a nominee may acquire the Economic Rights held for the FSF or the Shares held for the Custodian.

Reasons

37. In coming to the decision to provide the Ruling in paragraph 36, NZXR considered that:

- a. the termination provisions in the Trust Deed were fully disclosed in the Offer Document and are a term of the Units;
- b. the nature of the investments of the FSF are such that they cannot be freely held by other parties, and therefore to facilitate the termination of the FSF, it is likely that Fonterra or the nominee will be the purchaser; and
- c. the mischief with which Rules 5.1.1 and 5.2 are concerned is not present if the FSF termination provisions are exercised.

Approval under Listing Rule 8.1.6(b)

Decision

38. Subject to the condition in paragraph 39, and on the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF approval for the restrictions contained in the Trust Deed allowing the Manager to refuse to:

- a. register a holding that would cause a Unitholder and its associates (other than Fonterra) to have a relevant interest (as that term is defined in the Financial Markets Conduct Act 2013) in more than 15% of Units on issue or voting rights, and may require a sell down if this level is exceeded; and
- b. register a holding that would cause the FSF to become ineligible as a Portfolio Investment Entity or Foreign PIE, or would operate to threaten any such eligibility.

39. The approval contained in paragraph 38 is subject to the condition that FSF bears a Non-Standard designation to act as notification to the market of this matter.

Reasons

40. In coming to the decision to provide the approval in paragraph 38, NZXR considered that:

- a. the 15% ownership restriction was clearly disclosed in the Offer Document;
- b. DIRA requires the Unitholder's consent to any change in the limit of Units that can be held by a person or entity. If Fonterra was unable to apply the ownership restriction this would amount to a change to the scope of the Fund which is a right attributed to the Fonterra Unit; and
- c. it is appropriate to allow the Manager to refuse transfers that could cause the FSF's tax status to be negatively affected.

Ruling on Appendix 3

Decision

41. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants FSF a Ruling that a transfer of Units to Fonterra will never be a Restricted Transfer for the purposes of Appendix 3 where section 161A of DIRA operates to prohibit Fonterra from exercising voting rights in respect of any Units that it holds.

Reasons

42. In coming to the decision to provide the approval in paragraph 41, NZXR considered that it is inappropriate for the takeover provisions contained in Appendix 3 to apply to a Transfer of Units to Fonterra in the circumstance where DIRA prohibits Fonterra from voting those Units, as Fonterra will not be able to increase its control by virtue of such a Transfer.



Appendix One

Background

1. The Fonterra Shareholders' Funds (**FSF**) is a Listed Issuer with units quoted on the NZX Main Board and the Australian Securities Exchange (as a foreign exempt listing).
2. FSF is a unitised investment trust established as the "Authorised Fund" under the Fonterra Co-operative Group Limited (**Fonterra**) constitution. FSF is a managed investment scheme (**MIS**) under the Financial Markets Conduct Act 2013 (**FMCA**) and its Governing Document is the Fonterra Shareholders' Fund Trust Deed dated 23 October 2012, as amended from time to time (the **Trust Deed**). Units in the FSF (the **Units**), are "managed investment products" under the FMCA.
3. The purpose of the FSF is to enable members of the public to invest in the economic performance of Fonterra. The FSF also supports liquidity in the Fonterra Shareholders' Market (**FSM**), which is a private market operated by the NZX that allows farmer shareholders to trade shares in Fonterra (**Shares**) among themselves (**Trading Among Farmers** or **TAF**).
4. The trustee/supervisor of the FSF is The New Zealand Guardian Trust Company Limited (**the Trustee**).
5. The manager of the FSF is the FSF Management Company Limited (the **Manager**). The Manager is a wholly-owned subsidiary of Trustee Executors Limited (**TEL**) in accordance with the terms of a Shareholding Deed executed by the Manager, TEL and Fonterra on 23 October 2012.
6. Underlying the FSF are Shares held by Fonterra Farmer Custodian Limited (**Custodian**). The Custodian is owned by the trustees of the Fonterra Farmer Custodian Trust (**FFCT**). The Custodian has declared a trust in respect of the "**Economic Rights**" of the Shares it holds from time to time under the FSF arrangements in favour of the Trustee. The Economic Rights in a Share include, for example, the right to receive dividends paid on the Share. For each such Share held by the Custodian, the Manager is required to issue a Unit in the FSF. In this way, the FSF is designed to have the effect that each Unit on issue in the FSF will represent the Economic Rights derived from a single Share.
7. The trustees of the FFCT also hold a special unit (**Fonterra Unit**) that gives them certain rights to ensure the Trust Deed is not amended where such an amendment would have certain prescribed effects.
8. The Fonterra Unit and the TAF structure is recognised in the Dairy Industry Restructuring Act 2001 (**DIRA**).
9. The wider investment community is given the opportunity to invest in Units as follows:
 - a. Fonterra farmers who own Shares, the Custodian (on behalf of a registered volume provider (**RVP**)) and Fonterra (together **Permitted Persons**) can sell and transfer legal title to Shares to the Custodian.



- b. The FSF then issues an equal number of Units to the transferor of that Share (except where the transferor is Fonterra), and the transferor must, if they are a farmer shareholder, then sell that Unit on the NZX Main Board or the ASX to any person.
 - c. Each Unit entitles the holder to the Economic Rights derived from the corresponding Share and can be traded further on the NZX Main Board and the ASX.
 - d. The FSF structure has been designed with the intention that Shares and Units should trade at very similar prices and the RVP's role is to promote liquidity of trading in Units and Shares, and to seek to ensure that the traded prices of Units and Shares are aligned.
 - e. Any Permitted Person may acquire Units on the FSF and require FSF to redeem those Units. Upon redemption of each Unit, the Custodian will transfer one Share to the relevant Permitted Person.
 - f. This effective "exchange" of Units for Shares and vice versa promotes price convergence between Units and Shares which is critical to TAF.
 - g. As a result of the above arrangements, Units are continuously allotted and redeemed (known as **Daily Trading**).
10. As the FSF is designed to track the performance of Shares, there is no investment discretion. Instead the FSF is a passive investment vehicle (i.e, it will not actively solicit Economic Rights or the redemption of Units except for the initial offer made in the course of establishment of the FSF). The key concept underpinning the FSF is a one-to-one correspondence between Shares and Units described above.

Application for Ruling to deem Units as Equity Securities, and to List as an Issuer of Equity Securities

11. Due to the creation of a specific regime for MIS in the 1 January 2019 NZX Listing Rules (the **Rules**), certain requirements that apply to Issuers of Equity Securities would no longer apply to FSF if it were to transition to the Rules as an Issuer of Fund Securities.
12. Given the unique TAF structure, and the importance of the FSF to TAF and the FSM as outlined in the Background above, FSF wishes to continue to operate in the same manner that Unitholders are familiar with under the 1 October 2017 NZX Main Board and Debt Market Listing Rules (the **old Rules**), without affecting those of its Unitholders where their investment mandates only allow them to hold Units if FSF is an Issuer of Equity Securities, and to maintain a strong independent governance structure.
13. Accordingly, the Manager has sought a Ruling from NZXR that FSF Units be deemed Equity Securities, and has applied to List FSF as an Issuer of Equity Securities under Rule 1.1.2.

Application for Ruling in relation to FSF's Governing Document

14. Subject to the Manager receiving NZXR's approval to List FSF as an Issuer of Equity Securities, there is potential for both FSF's Trust Deed and the Manager's constitution to be considered Governing Documents based on limbs (a) and (d) in the definition of Governing Document in the Glossary of the Rules. Accordingly, there may be unintended consequences such as the requirement for the Manager's constitution to incorporate certain provisions from the Rules that are inappropriate given FSF's structure.

15. The Manager has therefore sought clarification that for the purposes of the Rules, FSF's sole Governing Document is its Trust Deed.

Application for waivers from, or rulings in respect of, various requirements in the NZX Listing Rules

16. Due to the structure of FSF, certain requirements in the Rules that apply to Issuers of Equity Securities either cannot apply to FSF, or would create adverse effects.
17. The Manager considers that there have been no substantive policy changes between the old Rules in respect of which the existing waivers and rulings are granted, and the updated Rules that would impact on the decision.

Listing Rules 2.3.1, 2.3.2, 2.7.1 and 2.8.1 – Appointment, Nomination, Rotation and Removal of Directors

18. The Trust Deed requires the Manager's constitution to provide for a fixed number of five directors, with three directors to be elected by Unitholders and two directors to be appointed and removed by Fonterra. This composition is inconsistent with the Rules. Accordingly, the Manager of FSF has sought waivers from:

- a. Rules 2.3.1. and 2.3.2 to:
- i. allow Fonterra to appoint two directors to the Board of the Manager even though Fonterra is not a Unitholder in the FSF, as permitted by clause 6.2 of the Manager's constitution; and
 - ii. allow a precondition to be imposed in respect of persons who may be nominated and appointed by Unitholders to fill three elected director positions, being that those candidates be "independent directors" for the purposes of the Rules, as required by clause 31.8(e) of the Trust Deed.

To ensure that the maximum number of director limits in the Trust Deed are not exceeded, clause 31.8(h) of the Trust Deed provides, and FSF wishes to carry forward, a rule that candidate(s) with the most votes will be appointed if more persons are standing to be elected/re-elected than available positions.

- b. Rule 2.7.1 to the extent that the Fonterra nominated directors are not subject to the obligation to not hold office (without re-election) past the third annual meeting following the director's appointment of 3 years, whichever is longer, so that the Fonterra appointed directors may only be removed by a direction from Fonterra in accordance with the constitution of the Manager.
- c. Rule 2.8.1 to the extent that Fonterra may remove its appointed directors from the Board of the Manager in accordance with the constitution of the Manager.
19. In support of the application, the Manager submitted that:
- a. the Manager has a relatively constrained role given the scope of its powers under the Trust Deed, consistent with the FSF being a passive investment vehicle;
 - b. Fonterra has a stakeholder interest in the FSF, given that the FSF has been established to facilitate TAF, which was developed as a means for the reduction of Fonterra's redemption risk that existed under DIRA's requirement for open entry and

exit. Fonterra's ability to appoint and remove two directors to the Manager is consistent with the policy behind Rule 2.4 that allows a stakeholder to appoint and remove directors to represent its interests;

- c. the requirement that all persons nominated by Unitholders be "independent" will ensure that the FSF has a minimum of three Independent Directors rather than a minimum of two as required by Rule 2.1.1(c), and this majority of Independent Directors provides an added protection to Unitholders. In addition, those Independent Directors are subject to rotation in accordance with Rule 2.7.1; and
- d. the FSF will need to comply with Rules 2.6 and 3.1 which will ensure the market has visibility of those persons appointed and removed as directors of the Manager.

Listing Rule 2.10.1 – Interested Directors

20. The Manager of FSF sought a Ruling that no Director of the Manager is "interested" in any matter, within the meaning assigned to that term in section 139 of the Companies Act 1993, merely because that person is a Director of the Manager.

21. In support of the application, the Manager submitted that:

- a. section 139(c) of the Companies Act 1993 states that a director is interested in a transaction where the director is also a director of another party to, or person who will or may derive a material financial benefit from, a transaction. As the Directors of the Manager are also deemed to be Directors of the FSF, any transaction between the FSF and the Manager which causes the Manager to derive a material financial benefit will cause the Directors to be interested in the transaction and precluded from voting under Rule 2.10.1;
- b. the Directors of the Manager will need to pass resolutions in connection with the operation of the FSF to enable the FSF to carry out its function and it would be unreasonable, and not in the interests of Unitholders, if the Directors of the Manager were not permitted to vote on such resolutions;
- c. NZXR has confirmed that the policy underlying this Rule is to prevent situations arising whereby directors who have a vested interest in a transaction may authorise the entry into, or implementation of, matters that are detrimental to the interests of Unitholders as a result of that "interest";
- d. the "interest" of the Directors of the Manager in this instance arises by virtue of the unique operating and management arrangement of the FSF;
- e. the Manager has a relatively constrained role given the scope of its powers under the Trust Deed and the status of the FSF as a passive investment vehicle; and
- f. the Directors of the Manager will continue to be precluded by Rule 2.10.1 from voting on Board resolutions relating to transactions entered into by the Manager or the FSF with another entity in respect of which the Director would be otherwise "interested".

Listing Rules 2.11.1 and 2.12.1 – Director Remuneration

22. The Manager of FSF sought a waiver from the requirements in Rules 2.11.1 and 2.12.1 to allow the Manager to pay remuneration to the Directors of the Manager without approval by an ordinary resolution of Unitholders.

23. In support of the application, the Manager submitted that:
- a. the fees payable by Fonterra are de minimis in light of the business of Fonterra and it would be inconsistent to require Unitholder oversight of those fees where the other fees payable by Fonterra in respect of TAF do not require such oversight;
 - b. in the context of the FSF, the Manager and its Directors have a relatively constrained role given the scope of the Manager's powers under the Trust Deed;
 - c. as Fonterra ultimately pays the Manager's Directors' fees, it is appropriate for Fonterra to determine the amount of those fees;
 - d. NZX has confirmed the policy underlying these Rules is to ensure that directors cannot seek to reward themselves without sufficient scrutiny by an issuer's security holders and in the context of the FSF, this concern is alleviated by the involvement of Fonterra in the negotiation of remuneration payments; and
 - e. there is limited ability for Fonterra to influence the Directors of the Manager given the FSF's status as a passive investment vehicle.

Listing Rule 2.20.1(a)(i) – Contents of Governing Document - Incorporation by reference

24. The Manager of FSF sought a waiver from Rule 2.20.1(a)(i) to the extent that Rule 2.20.1(a)(i) would require the Trust Deed (which falls within the definition of Governing Document under the Rules) to incorporate by reference provisions consistent with or having the same effect as Rules 2.8.1 and 2.10.1 (on the basis of the waivers sought above).

Listing Rule 2.20.1(d) – Contents of Governing Document

25. The Manager of FSF sought a Ruling confirming that the provisions in clause 4.5(c) of the Trust Deed constitute a "contrary intention" for the purposes of Rule 2.20.1(d).
26. Although clause 2.3 of the Trust Deed reflects Rule 2.20.1(d), it is expressed as being "subject to clause 4.5(b)".
27. Clause 4.5 of the Trust Deed provides for the FSF to issue Fonterra Units, to ensure that the Trust Deed is not amended or altered without the Unitholders' consent if such amendment or alteration would have the effect as noted in clause 4.5(c)(i) – (v) of the Trust Deed.
28. The DIRA establishes a legislative framework within which Fonterra must operate in relation to TAF and specifically legislates for the Fonterra Unit referred to as the "veto security" (refer section 161A).

Listing Rule 3.13.1 – Notices of issue of Financial Products

29. The Manager of FSF sought a waiver from Rule 3.13.1 to the extent it requires the FSF to release to the market details of any issue, acquisition or redemption of Units related to Daily Trading.
30. In support of the application, the Manager submitted that:
- a. NZXR has confirmed that the information under the previous Rule is generally required to inform investors of the dilutionary effect on their quoted securities when securities are issued, acquired or redeemed. The structure of the FSF is such that each Unit

issued by FSF relates to the Economic Rights of a Fonterra share held in trust by the Custodian on behalf of the Trustee. Each Unit entitles the holder to these Economic Rights. While Daily Trading alters the number of Units, Daily Trading does not alter this one-for-one relationship between Units and the Economic Rights of Fonterra shares. Accordingly, Daily Trading does not have a dilutionary effect on the value of the Units and granting this waiver will not offend the policy behind Rule 3.13.1;

- b. the waiver would be limited to Daily Trading only, and would not apply to other issues, acquisitions or redemptions of Units (for example, a bonus issue of Units as a result of a bonus issue in respect of Fonterra shares), which could affect the value of Units;
- c. in the absence of the waiver, notifications would need to be made on an almost daily basis, and any notifications of events which could have a dilutionary effect on the value of the Units may not be highlighted due to the high number of announcements, meaning the policy intention of this Rule would not be met;
- d. the average daily Gross Movement and average daily Net Movement in the number of Units as a result of Daily Trading is minimal, representing approximately 0.1% of the total number of Units currently on issue. The market is well aware that changes of this level can be expected due to the structure of the FSF. Should there be a substantial movement in the number of Units on issue during one trading day the conditions of the waiver require that a notification, as otherwise required under Rule 3.13.1, be made to the market; and
- e. the Daily Trading information is generally not of any significant value to Unitholders (or Fonterra shareholders). Further, there will be no detrimental impact on Unitholders or Fonterra shareholder if they receive notifications in relation to Daily Trading on a monthly basis.

Listing Rule 4.1 – Issue of Equity Securities

- 31. The Manager of FSF sought a waiver from Rule 4.1 to allow the FSF to issue Units as set out in the Trust Deed, to both permit an issue of Units to be made to a transferor of a Fonterra share as well as to minor issuances made by Fonterra, without the need for Unitholder approval.
- 32. In support of the application, the Manager submitted that:
 - a. the ability for the FSF to issue Units in exchange for Fonterra shares is essential to the operation of TAF and this, together with reliance on the existing waiver, was clearly set out in the Offer Document; and
 - b. the FSF may issue Units in order to mirror issues by Fonterra (for example if Fonterra was to undertake a bonus issue, the FSF would contemporaneously undertake a bonus issue to preserve the one-for-one nature between Units and Fonterra shares).

Listing Rule 4.11 – Pricing of Unit issues

- 33. The Manager of FSF sought a waiver from Rule 4.11.1 in respect of the pricing of Units issued in accordance with the Trust Deed to reflect Fonterra shares transferred or issued to the Custodian.
- 34. In support of the application, the Manager submitted that as fully and accurately disclosed in the Offer Document, the Trust Deed sets out the provisions for the issue of Units and the

Manager has no discretion as to the pricing of the Units. Accordingly, the protection in Rule 4.11.1 is unnecessary.

Listing Rule 4.12 – Entitlement to Third Party financial products

35. The Manager of FSF sought a waiver from the requirement in Rule 4.12 that the Securities of a third party not be created or conferred other than in compliance with Rule 4.1 to the extent necessary to allow the FSF to pass on any Benefit or Distribution (as defined in the Trust Deed) to Unitholders that Fonterra passes on to shareholders, as required by the Trust Deed.
36. In support of the application, the Manager submitted that:
- a. the distribution by the FSF of Benefits and Distributions to Unitholders as permitted by the Trust Deed to reflect those provided by Fonterra to shareholders is integral to the operation of TAF, the FSF and the FSM; and
 - b. the manner in which the FSF may distribute such Benefits was fully and accurately disclosed in the Offer Document which provides comfort that Unitholders are fully informed as to the non-application of Rule 4.12.

Listing Rules 4.14.1 and 4.14.2 – Redemption of Units

37. The Manager of FSF sought a waiver from Rules 4.14.1 and 4.14.2 to the extent necessary to allow the FSF to redeem Units as required by the Trust Deed.
38. In support of the application, the Manager submitted that the principles underlying TAF, as clearly disclosed in the Offer Document, include that the FSF must match on a one-for one basis the redemption of Units by Permitted Persons, with the Custodian transferring one Fonterra share in respect of each Unit redeemed to the relevant Permitted Person.

Listing Rule 5.1.1 and definition of “Material Transaction”

39. The Manager of FSF sought a Ruling for the purposes of Rule 5.1.1 and the definition of “Material Transaction” that the acquisition or disposal of Economic Rights, and the issue or redemption of Units, in accordance with the Trust Deed are not “a related series of transactions” for the purposes of Rule 5.1.1 and the definition of “Material Transaction”.
40. In support of the application, the Manager submitted that:
- a. the acquisition and disposition of Economic Rights and the issue and redemption of Units reflect the ordinary course of business of the FSF and the investment mandate of the FSF as prescribed in the Trust Deed;
 - b. there is no necessary relationship between each issue of Units, redemption of Units or acquisition of Economic Rights – rather these are ongoing activities of the FSF; and
 - c. a Related Party would be unable to influence the FSF’s decision to issue or redeem Units or to acquire the Economic Rights as these activities are required to be conducted in the manner prescribed in the Trust Deed.

Listing Rules 5.1.1 and 5.2 – Major Transactions and Related Party Transactions

41. The Manager of FSF sought a waiver from the requirements in Rules 5.1.1 and 5.2 to seek Unitholder approval to allow the FSF to dispose of its assets as permitted by the termination provisions of the Trust Deed.



42. In support of the application, the Manager submitted that:
- a. the termination provisions in the Trust Deed were fully disclosed in the Offer Document and are a term of the Units;
 - b. the nature of the investments of the FSF are such that they cannot be freely held by other parties and therefore to facilitate the termination of the FSF it is likely that Fonterra or the nominee will be the purchaser;
 - c. NZXR confirmed in respect of the existing waiver that the mischief with which Rules 5.1.1 and 5.2 are concerned is not present if the FSF termination provisions are exercised.

Listing Rule 8.1.6(b) – Transfer restrictions

43. The Manager of FSF sought approval under Rule 8.1.6(b) to allow provisions restricting the transfer of relevant interests if that transfer would:
- a. cause a Unitholder (together with its associates) other than Fonterra to hold or have an interest in more than 15% of Units on issue or voting rights, and may require a sell down if this level is exceeded (clause 6.1 of the Trust Deed); and
 - b. cause or threaten to cause the Trust [or the FSF] to become ineligible to be a Portfolio Investment Entity or Foreign Investment PIE (clause 7.7 of the Trust Deed).
44. In support of the application, the Manager submitted that the above restrictions were accurately described in the Offer Document, and the FSF currently bears a Non-Standard designation to act as notification to the market of this matter.

Appendix 3 – Takeover Provisions

45. The Manager of FSF sought a Ruling that a transfer of Units to Fonterra will never be a Restricted Transfer for the purposes of Appendix 3 because section 161A of DIRA prohibits Fonterra from exercising voting rights in respect of any Units that it holds, so Fonterra would not be able to increase its control by virtue of such a transfer.
46. In support of the application, the Manager submitted that:
- a. although a transfer of Units to Fonterra could result in a change in the voting control of the remaining Unitholders, this would not result in a Restricted Transfer in respect of those Unitholders because the effective increase in the voting rights of the Unitholders would be “involuntary and occasioned by the action of another party” (i.e, Fonterra);
 - b. the takeover provisions contained in Appendix 3 have been incorporated into the Trust Deed and will otherwise apply to Unitholders who are insiders other than Fonterra, when a Unitholder effects a Restricted Transfer; and
 - c. Clause 6.1 of the Trust Deed imposes a restriction on any person (other than Fonterra) holding or having an interest in more than 15% of the Units on issue or the Voting Rights and Rule 4.13 will apply.



Appendix Two

Definitions

Equity Security has the meaning given in sections 8(2) and 8(5) of the FMC Act and also includes a Right, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Equity Security (and includes any Fund Security deemed to be an Equity Security under Rule 1.1.2).

Fund Security means a "managed investment product" as defined in sections 8(3) and 8(5) of the FMC Act in relation to a Managed Investment Scheme, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, a Fund Security.

Material Transaction means a transaction, or a related series of transactions, whereby an Issuer:

- (a) buys, acquires, gains, leases (as lessor or lessee), sells or otherwise disposes of, assets having an Aggregate Net Value above 10% of the Issuer's Average Market Capitalisation,
- (b) issues its own Financial Products, or acquires its own Equity Securities, having a market value above 10% of the Issuer's Average Market Capitalisation (except where Rule 4.5 applies or in the case of an issue of Debt Securities, in which case only the market value of Financial Products being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account),
- (d) enters into any guarantee, indemnity, underwriting, or similar obligation, or gives any security, which could expose the Issuer to liability above 10% of the Average Market Capitalisation of the Issuer,
- (e) provides or obtains any services (including the underwriting of Financial Products or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer, or
- (f) undertakes an amalgamation, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Issuer.

Rule 1.1.2 Eligibility for Listing as an Issuer of Equity Securities and Quotation of Equity Securities

The Manager of a Managed Investment Scheme may apply to List as an Issuer of Equity Securities, and to have the Financial Products of the Managed Investment Scheme Quoted as Equity Securities, rather than as Fund Securities. If NZX accepts such an application, the Financial Products will be deemed to be Equity Securities and not Fund Securities, and the Rules (including Appendix 3) will apply accordingly.

Rule 1.18 Non-standard Listings

An Issuer, or applicant for Listing, which does not comply fully with all applicable Rules may be Listed, at NZX's sole discretion, with the designation "Non Standard" or "NS". Such an Issuer must ensure that any advertisement (as that term is defined in section 6(1) of the FMC Act), Offer Document, Profile or statement for distribution which refers in any way to the Listing or to the Quotation of the Financial Products, and all annual reports of that Issuer, state prominently:

- (a) that the Issuer has a Non Standard designation, and
- (b) where it is desirable, taking into account the context and the relevance of the information to the recipients, the reasons for the Non Standard designation.

Rule 2.3 Director Nominations and Appointment

2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated by an Equity Security holder who will be entitled to attend and Vote at the meeting if he, she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.

2.3.2 An Issuer must comply with the following Director nomination process:

- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place,
- (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date,
- (c) there must be no restriction on who may be nominated as a Director, unless:
 - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
 - (ii) applicable legislation restricts who may be a Director of the Issuer,



- (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule, and
- (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

Rule 2.7 Rotation of Directors

2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment.

2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

Rule 2.8 Removal of Directors

2.8.1 All Directors (other than a Director appointed by an Equity Security holder under Rule 2.4) must be subject to removal from office by Ordinary Resolution.

Rule 2.10 Interested Directors

2.10.1 A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is interested. For this purpose, the term "interested" bears the meaning assigned in section 139 of the Companies Act 1993. If the Issuer is not a company registered under that Act, the reference to the "company" in that section will be read as a reference to the Issuer.

Rule 2.11 Directors' Remuneration

2.11.1 No remuneration may be paid by an Issuer, or its Subsidiaries (unless such Subsidiary is Listed), to a Director in his or her capacity as a Director without prior authorisation by an Ordinary Resolution. Such resolution must express Directors' remuneration as either a monetary sum per annum payable to:

- (a) all Directors of the Issuer in aggregate, or
- (b) any person who from time to time holds office as a Director of the Issuer.

2.11.2 A resolution for the purposes of Rule 2.11.1:

- (a) must only be approved if notice of the amount of any increase in remuneration has been given in the notice of meeting, and



- (b) may provide that the remuneration may, in whole or in part, be through an issue of Equity Securities, provided the issue is in compliance with Rule 4.7.

Rule 2.20 **Content of Governing Document for Issuers of Equity Securities**

2.20.1 The Governing Document of each Issuer of Quoted Equity Securities must:

- (a) incorporate by reference provisions consistent with, and having the same effect as, the following provisions, as modified by any Ruling relevant to the Issuer:
 - (i) Rule 2.1.1, Rule 2.2.1, Rule 2.5.1, Rule 2.8.1, Rule 2.9.1, Rule 2.10.1 and Rule 2.10.2,.....
- (d) provide that any Rulings authorising an act or omission which would otherwise be in breach of the Issuer's Governing Document will be deemed to be authorised by the Governing Document unless the Governing Document contains a contrary intention, and

.....

Rule 3.13 **Issues, acquisitions and redemption of capital**

3.13.1 If an Issuer issues, acquires or redeems:

- (a) Quoted Financial Products, or
- (b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,

the Issuer must, subject to Rule 3.13.3, provide for release through MAP in prescribed form (as applicable) details of:

- (c) the Class of Financial Product and ISIN,
- (d) the number of Financial Products issued, acquired or redeemed,
- (e) the nominal value (if any) and the issue, acquisition, or redemption price,
- (f) whether payment was in cash,
- (g) any amount paid up (if not in full),
- (h) for an issue of Convertible Financial Products or Options, the principal terms of Conversion (for example, the conversion price and conversion date and the ranking of the Financial Product in relation to other Classes of Financial Product) or the Option (for example, the exercise price and exercise date),



- (i) the percentage of the total Class of Financial Product issued, acquired or redeemed (calculated on the number of Financial Products of the Class, excluding any Treasury Stock, in existence immediately prior to the issue, acquisition or redemption),
- (j) the reason for the issue, acquisition or redemption,
- (k) the specific authority for the issue, acquisition or redemption (if any),
- (l) any terms or details of the issue, acquisition or redemption (such as an escrow provision),
- (m) the total number of Financial Products of the Class in existence after the issue, acquisition or redemption (excluding Treasury Stock) and the total number of Financial Products of the Class held as Treasury Stock after the issue, acquisition or redemption,
- (n) in the case of an acquisition of Equity Securities by an Issuer which is a company registered under the Companies Act 1993, whether those Equity Securities are to be held as Treasury Stock, and
- (o) the dates of issue, acquisition or redemption.

Subject to Rule 3.13.2, notices required by this Rule must be released through MAP within one Business Day after the issue, acquisition or redemption. For the purposes of this Rule, the sale or transfer of Treasury Stock by an Issuer is deemed to be an issue of Financial Products.

Rule 4.1 Issue of New Equity Securities

- 4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.
- 4.1.2 An Issuer may issue Equity Securities, without approval by Ordinary Resolution, by way of:
 - (a) a pro-rata Rights offer, bonus issue or a Share Purchase Plan in accordance with Rule 4.3 and, if applicable, Rule 4.4,
 - (b) an issue under an Issuer's 15% placement capacity in accordance with Rule 4.5.1,
 - (c) an issue to Employees, in accordance with Rule 4.6, or
 - (d) other issues for dividend reinvestment plans, director remuneration, takeovers, amalgamation, conversions and Minimum Holdings in accordance with Rules 4.7 to 4.9.



Rule 4.11 Issue of discounted Equity Securities

4.11.1

If:

- (a) an Issuer proposes to issue Equity Securities carrying Votes, or Financial Products which are Convertible into Equity Securities carrying Votes, under Rule 4.3.1(c), Rule 4.5.1 or Rule 4.6.1 (the “Affected Securities”), and
- (b) the issue price of an Affected Security is less than 85% of the Average Market Price, then
- (c) before issuing the Affected Securities, all Directors who voted in favour of the resolution must sign a certificate that the consideration for the Affected Securities is fair and reasonable to the Issuer and to other Equity Security holders,

provided that:

- (d) if the Issuer has more than one Class of Equity Securities Quoted, the Quoted Equity Securities in Rule 4.11.1(b) refers to the Class most like the Affected Securities or, in the case of Convertible Financial Products, the Equity Securities into which the Affected Securities Convert, and
- (e) in the case of Convertible Financial Products, any consideration payable on Conversion is at least 85% of the Average Market Price of the Equity Securities into which the Affected Securities Convert.

Rule 4.12 Entitlements to Third Party Securities

4.12.1

Entitlements conferred by the holding of an Issuer’s Equity Securities to Financial Products of a third party (whether or not that third party is an Issuer), may not be created or conferred other than in compliance with Rules 4.1 to 4.10, as if such Financial Products comprised an issue of Equity Securities of the Issuer.

Rule 4.14 Buy Backs and Redemption of Equity Securities

4.14.1

An Issuer may only acquire or redeem Equity Securities of that Issuer by:

- (a) an acquisition effected through NZX’s order matching market or through the order matching market of an Issuer’s Home Exchange,
- (b) an acquisition effected in compliance with:
 - (i) section 60(1)(a) (read together with section 60(2)) of the Companies Act 1993,
 - (ii) section 60(1)(b)(ii) (read together with section 61) of the Companies Act 1993, and:
 - (A) not made from a Director, or an Associated Person of a Director, of the Issuer, and



- (B) not of a size which would cause the number of Equity Securities of the same Class acquired under this Rule 4.14.1(b)(ii) either in the 12 months preceding the date of the acquisition or since the issuer was listed, whichever is earlier, to exceed 15% of the total number of Equity Securities of the same Class on issue at the commencement of that period,
 - (iii) section 61(7) of the Companies Act 1993, or
 - (iv) sections 110 or 118 of the Companies Act 1993, or other applicable legislation, if required by a shareholder pursuant to such sections or legislation,
- (c) a redemption in compliance with section 69(1)(a) of the Companies Act 1993,
- (d) an acquisition or redemption:
 - (i) approved in accordance with Rule 4.16.1,
 - (ii) of Equity Securities that were issued under Rule 4.6, or
 - (iii) from a holder who holds less than a Minimum Holding, or
- (e) a redemption of Equity Securities issued in compliance with Rule 4.2.1 or 4.3, where the Issuer is bound or entitled to redeem those Equity Securities pursuant to their terms of issue,

provided that for the purposes of Rule 4.14.1(b)(ii)(B):

- (f) Financial Products which may convert to Quoted Equity Securities are deemed to be of the same Class as the Quoted Equity Securities into which they may convert, and
- (g) the Financial Products referred to in paragraph (f) are deemed to be of the same number as the Quoted Equity Securities to which they may Convert, except that for the purpose of this calculation:
 - (i) in relation to the conversion ratio or conversion price, any reference to the market price (however described) of the underlying Quoted Equity Securities will instead be to the Average Market Price, and
 - (ii) any provisions for early Conversion at the option of a holder exercisable in limited circumstances (such as due to an event of default or change of control or similar) using a different formula or method will be disregarded.

4.14.2

Before an Issuer acquires its own Equity Securities, except from a holder with a less than a Minimum Holding, the Issuer must give at least 3 Business Days' notice through MAP. That notice must specify:

- (a) a period of time not exceeding 12 months from the date of the notice

within which the Issuer will acquire Quoted Equity Securities, and

- (b) the Class and maximum number of Quoted Equity Securities to be acquired in that period.

An Issuer may vary or cancel a notice at any time, subject to providing 3 Business Days' notice through MAP.

Rule 5.1 Disposal or Acquisition of Assets

5.1.1 An Issuer must not enter into any transaction, or a related series of transactions, to acquire, sell, lease (whether as lessor or lessee), exchange, or otherwise (except by way of charge) dispose of assets where the transaction or related series of transactions:

- (a) would significantly change, either directly or indirectly, the nature of the Issuer's business, or
- (b) involves a Gross Value above 50% of the Average Market Capitalisation of the Issuer,

unless the transaction, or related series of transactions, is:

- (c) approved by an Ordinary Resolution, or a special resolution if approval by way of special resolution is required under section 129 of the Companies Act 1993, or
- (d) conditional upon such approval required by paragraph (c) above.

Rule 5.2 Transactions with Related Parties

5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
- (b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

5.2.2 Rule 5.2.2 does not apply to:

- (a) any transaction entered into by an Issuer with a Bank as principal, on arm's length terms and in the normal course of the Bank's banking business,
- (b) the issue, acquisition or redemption of Financial Products, or the provision of financial assistance in connection with the purchase of Financial Products, or the payment of a distribution, where the Issuer gives each holder of Financial Products of the Class in

question the opportunity to receive the same benefit in respect of each Financial Product held (except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 4.4.1(e)),

- (c) the issue of Equity Securities by an Issuer under Rule 4.3.1(c) or Rule 4.8,
- (d) the issue of Equity Securities by an Issuer by way of an Accelerated Offer under Rule 4.3.1(a), provided that:
 - (i) Directors of the Issuer, excluding any Director that is an Associated Person of the Related Party, certify, in a form acceptable to NZX, that:
 - (A) the terms of the Accelerated Offer are fair, reasonable and in the best interests of the Issuer's Equity Security holders, other than the Related Party,
 - (B) the Issuer will pay and receive fair value under the Accelerated Offer,
 - (C) the Issuer was not unduly influenced in its decision to enter into the Accelerated Offer by the Related Party,
 - (D) the Related Party will be not be involved in, or influence, any allocation decision in relation to any bookbuild(s) undertaken in connection with the Accelerated Offer, and
 - (E) the Related Party will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Accelerated Offer on the same terms and conditions as other Equity Security holders or as an underwriter or sub underwriter on commercial terms.
- (e) an employment contract or contract for personal services which is a Material Transaction, where:
 - (i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Issuer,
 - (ii) the Independent Directors approving the contract sign and provide to NZX (not for market release) a certificate stating Rule 5.2.2(e)(i) has been complied with, and



- (iii) material particulars of the contract (including the Issuer's use of this exception) are disclosed in the next annual report of the Issuer,
- (f) indemnification of a Director or Employee of the Issuer, or a Director or Employee of a Related Body Corporate of the Issuer, which would be a Material Transaction, where, at the time the indemnity is to be granted, the relevant Director or Employee has not been involved in proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by them under the indemnity,
- (g) arrangements, amalgamations or compromises under Parts 13 or 15 of the Companies Act 1993,
- (h) a Material Transaction that is an employment agreement with a natural person who is not a Director of the Issuer, or
- (i) a Material Transaction with:
 - (i) a total value of, or
 - (ii) in the case of paragraph (e) of the definition of Material Transaction, a gross cost to the Issuer in any financial year of,

\$250,000 or less.

Rule 8.1 Transfer of Quoted Financial Products (common rules)

8.1.6 The Governing Document of an Issuer may:

.....

- (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or

Appendix 3 Takeover provisions

1.1.1 In this Appendix 3 unless the context otherwise requires:

.....

Restricted Transfer means:

- (a) a Transfer which would result in the Votes controlled by any person or group of persons who are Associated Persons of



each other, of any Class of Quoted Equity Securities of an Issuer:

- (i) exceeding 20% of the Votes attached to that Class, or
- (ii) if the person or group of persons controls 20% or more of the Votes attached to that Class, increasing by more than 5% in any period of 12 months excluding increases as a result of Transfers pursuant to a Restricted Transfer notice previously given by the person or group of persons, together with

.....

However, the purposes of this definition, acquisition of interests in Equity Securities of an Issuer may be disregarded:

- (a) where it is determined by NZX that the acquisition was involuntary and occasioned by the action of another party over which the acquiring party had no effective control or influence in the matter; or

.....

