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Gazette

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AMENDMENTS TO ARTICLES OF
ASSOCIATION OF NEW ZEALAND FUTURES
& OPTIONS EXCHANGE LIMITED

NEW ZEALAND FUTURES
& OPTIONS EXCHANGE RULES 1992

Sharebrokers Act 1908

New Zealand Futures & Options Exchange Limited

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 21st day of December 1992

Present:

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

Pursuant to section 11 of the Sharebrokers Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby approves the following amendments to the articles of association of the New Zealand Futures & Options Exchange Limited.

Article 1.1

Article 1.1 is amended by inserting the following definitions after the definitions of the terms "Board" and "commodity" respectively:

"Business Sale Agreement" means the Agreement between the Exchange as vendor, Aklaw Number Thirty Nine Limited as purchaser and Sydney Futures Exchange Limited as guarantor for the sale and purchase of business assets of the Exchange arising from acceptance of an offer for the purchase of such business assets dated 25 November 1991 as varied.

"Completion of the Business Sale" means completion of the sale and purchase of business assets of the Exchange pursuant to the Business Sale Agreement."

The existing definition of the term "Fidelity Fund" is omitted and the following definition substituted:

"means the fund established in accordance with Article 45 comprising all the amounts specified in paragraphs (a) to (g) inclusive of Article 45.2".

Article 42.6

The following new Article is inserted as Article 42.6:

"Notwithstanding any other provision of the Articles or of any By-Law, upon Completion of the Business Sale, the trading rights and obligations of Members and other persons having dealings with the Exchange or its Members and all other matters concerning the business of the Exchange or the Board and all outstanding contracts subject to the Articles and the By-Laws of the Exchange shall be governed and regulated by the business rules of the New Exchange (as that term is defined in the Business Sale Agreement) of Aklaw Number Thirty Nine Limited and all Members and clients shall be bound accordingly but without in any way diminishing any liability which Members or clients may have to the Exchange or any Member or client arising out of these Articles or the By-Laws up to Completion of the Business Sale."

Article 44.2

The following new Article is inserted as Article 44.2:

"Notwithstanding the provisions of Article 44.1, on Completion of the Business Sale the Exchange shall cease to carry on business except to the extent (if any) necessary to complete the transfer of all outstanding contracts to the jurisdiction of the New Exchange (as that term is defined in the Business Sale Agreement) and to administer any other outstanding matters relating to the affairs of the Exchange and its Members."

Article 45.23

The following new Article is inserted as Article 45.23:

"(a) For the avoidance of doubt and notwithstanding any other provision of these Articles or Association to the contrary, the power to appoint a new trustee of the trusts relating to the Fidelity Fund and the power to resettle all

or any part of the Fidelity Fund and to vary the terms of those trusts is vested solely in the trustee for the time being of those trusts.

(b) If any trustee of the trusts relating to the Fidelity Fund resigns as trustee, that trustee shall appoint a new trustee to act in its stead and that appointment and resignation shall be of simultaneous effect.

(c) At any time on or after Completion of the Business Sale the Exchange may appoint Aklaw Number Thirty Nine Limited as trustee of the trusts relating to the Fidelity Fund and may resettle all or any part of the Fidelity Fund on Aklaw Number Thirty Nine Limited as trustee of such trusts relating to the Fidelity Fund as may be established by Aklaw Number Thirty Nine Limited.

(d) Upon appointment of a new trustee or resettlement of the Fidelity Fund in accordance with clause (c), the Exchange shall cease to keep a Fidelity Fund and thereafter the Exchange and the Board shall cease to have any liability or obligations in relation to the Fidelity Fund."

BOB MACFARLANE, Acting for Clerk of the Executive Council.

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Sharebrokers Act 1908

New Zealand Futures & Options Exchange Rules 1992

CATHERINE A. TIZARD, Governor-General

At Wellington this 21st day of December 1992

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

Pursuant to section 11 of the Sharebrokers Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby approves the following Rules of the proposed New Zealand Futures & Options Exchange submitted by Aklaw Number Thirty Nine Limited, being a subsidiary of Sydney Futures Exchange Limited which is to acquire the business and undertaking of New Zealand Futures & Options Exchange Limited and which is to change its name to New Zealand Futures & Options Exchange Limited on completing that acquisition.

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SECTION 1—PRELIMINARY**1. INTRODUCTION**

- 1.1 New Zealand Futures & Options Exchange Limited (the "Company") operates a trading facility known as the New Zealand Futures & Options Exchange (the "Exchange") for the trading of contracts specified by the Company in Contract Specifications by persons wishing to trade in such contracts, whether on their own behalf or on behalf of other persons ("Dealers").
- 1.2 The Company is an authorised futures exchange under the Securities Amendment Act 1988 (the "Act").
- 1.3 The purpose of these Rules is:
 - (a) to define the basis on which Dealers may trade on the Exchange;
 - (b) to define the basis on which Dealers may deal in Contracts on behalf of other persons, on the Exchange or on any other exchange, and to regulate the conduct of Dealers in their dealings with clients; and
 - (c) to make provision for the specification, variation, and rescission of Contract Specifications by the Company.

2. DEFINITIONS

- 2.1 In these Rules, except where inconsistent with the subject or context:

"Act" means the Securities Amendment Act 1988.

"affiliated clients", in relation to a Dealer, means two or more clients which the Dealer knows, or with the exercise of care should know, or is advised by the Business Conduct Committee, are controlled by, or are under common control of, the same person, or by related or affiliated persons or entities, or are acting pursuant to an express or implied agreement or understanding that they will act in concert.

"another exchange" or "other exchange" means an exchange or market other than the Exchange, whether located in New Zealand or elsewhere, on which Contracts are traded.

"Appeal Board" means a board established pursuant to Rule 51.

"Approved Securities" means securities within any of the categories described in Rule 34.6.

"Australian bank" has the meaning given to that term in the Corporations Law (Australia).

"Authorised Signatory", in relation to a Dealer, means a person from time to time notified by the Dealer to the Business Conduct Committee in writing as having authority to sign statements and documents on behalf of the Dealer.

"Board" means the board of directors of the Company.

"Business", in relation to a person, means the business of trading in Contracts carried on by that person.

"Business Conduct Committee" means the committee established pursuant to Rule 48.

"business day" means any day of the week except Saturdays, Sundays, public holidays which are observed

throughout New Zealand, and any other day from time to time declared by the Company not to be a business day.

“class”, in relation to Contracts, means all Contracts which are subject to the same Contract Specifications.

“Clearing House” means any company from time to time appointed by the Company to act as a clearing house for the Exchange.

“Clearing House Regulations” means the regulations of the Clearing House for use in clearing Contracts traded on the Exchange.

“Clearing Member” means a person who is a member of the Clearing House.

“client”, in relation to a person, means any customer on behalf of whom the person trades, has traded, or proposes to trade, in Contracts.

“Client Acknowledgement” means an acknowledgement or agreement completed in accordance with Rule 31.

“Client Contract” means a contract between a Public Broker and a client arising pursuant to Rules 32.2 or 32.3.

“client money” has the meaning given to that term in the Regulations.

“client property” has the meaning given to that term in the Regulations.

“Committee” means the Business Conduct Committee.

“commodity” includes a security.

“Company” means New Zealand Futures & Options Exchange Limited.

“Contract” means:

- (a) a contract of a class specified by the Company in Contract Specifications; or
- (b) a futures contract or options contract traded, or to be traded, on another exchange.

“Contract Specifications” means specifications made by the Company prescribing the specific terms of, and terms of trading in, each class of Contract which may from time to time be traded on the Exchange.

“controller” means:

- (a) in relation to a company:
 - (i) any person in accordance with whose directions and instructions the persons occupying the position of directors of the company are accustomed to act (but disregarding advice given in a professional capacity); and
 - (ii) any person who is entitled to exercise, or control the exercise of, 20% or more of the voting power at any general meeting of the company or of another company of which the company is a subsidiary; and
- (b) in relation to an unincorporated body of persons:
 - (i) any person in accordance with whose directions and instructions the officers of the body are accustomed to act (but disregarding advice given in a professional capacity); and
 - (ii) any person who is entitled to exercise, or control the exercise of, 20% or more of the voting power on any resolution of the body;

and “control” and “controlled” shall be construed accordingly.

“Dealer” means a person within one of the classes of dealers described in Rule 4.

“discretionary account” means an account maintained for a client by an Exchange Broker in respect of which the client has given the Exchange Broker authority in writing to effect transactions on behalf of the client at the Exchange Broker’s discretion.

“EFP transaction” means an exchange for physical transaction effected in accordance with Rule 15.

“Exchange” has the meaning given to that term in Rule 1.1.

“Exchange Broker” means a Public Broker or an Introducing Broker.

“Fidelity Fund” means the fund maintained in accordance with Section 11 of these Rules.

“Financial Resources” and “Financial Resources Requirement” have the respective meanings given to those terms in Rule 29.

“give-up basis”, in relation to a trade by a Dealer, means the execution of that trade by the Dealer on the basis that the trade will be allocated to another Dealer and registered by the Clearing House in the name of that other Dealer.

“initial margin” means the amount of the performance bond required to be paid by a person in respect of a Contract entered into, or proposed to be entered into, by that person.

“Introducing Broker” means a person who is an Introducing Broker in accordance with these Rules.

“Market Contract” means a Contract traded on the Exchange by a Dealer.

“margin” means an initial margin or a variation margin.

“Open Contract” means a contract between a Clearing Member and the Clearing House arising from registration by the Clearing House of:

- (a) a Market Contract; or
- (b) a contract arising from the exercise of an option contained in an option contract registered by the Clearing House;

which has not been terminated, settled or invoiced back in accordance with the Clearing House Regulations.

“out of market”, in relation to a trade, means that the price of the trade was higher or lower than the then current market price for the relevant class of Contract.

“overseas bank” has the meaning given to that term in the Regulations.

“prescribed form” means a form prescribed from time to time by the Company, or the Business Conduct Committee, as the case may be.

“Principal Trader” means a person who is a Principal Trader in accordance with these Rules.

“Public Broker” means a person who is a Public Broker in accordance with these Rules.

“related company” has the meaning given to that term in the Companies Act 1955.

“registered bank” has the meaning given to that term in the Reserve Bank of New Zealand Act 1989.

“Regulations” means the Futures Industry (Client Funds) Regulations 1990.

“Rules” means these Rules as amended from time to time and includes the Contract Specifications.

“Regulatory Authority” means any authority, body or person having responsibility for or in connection with the regulation or supervision of dealing in Contracts or for the enforcement of any other law or regulation applicable to dealing in Contracts.

“security” includes a commodity.

“Trading Manager” means any person appointed by the Company to supervise the operation of Rules 13 and 14.

“Trading Permit” means a permit to trade on the Exchange issued pursuant to Rule 9.

“Trading Permit Holder” means the holder of a Trading Permit.

“Trading System” means the trading facility from time to time used by the Company to provide a means of trading Contracts on the Exchange.

“Trading System Operator” means a person who enters, releases, accepts or cancels bids or offers on the Trading System.

“trading rights”, in relation to a Dealer, means the rights conferred on the Dealer by these Rules in relation to the use of the trading facilities of the Exchange and dealing in Contracts.

“to trade” means to buy or sell Contracts, and the words “trade” and “trading” have corresponding meanings.

“Underlying Security” means a security, commodity, index, or futures contract, which is the underlying subject of a class of Contract.

“variation margin” means the difference between the value of a Contract at the time at which the Contract is made and the value of the Contract at any subsequent time.

“\$” means New Zealand dollars.

3. INTERPRETATION

3.1 In these Rules:

- (a) Words importing the singular number only include the plural number and vice versa.
- (b) The word “person” and words importing a person or persons include an individual, partnership, company, or unincorporated body of persons.
- (c) The word “company” includes any corporation or other body corporate.
- (d) A reference to “directors” of a company is, in the case of a corporation or other body corporate, a reference to persons holding the corresponding office.
- (e) Words importing one gender include the other genders.
- (f) A reference to a year is a reference to a calendar year.
- (g) Headings are included for convenience only and shall not affect the construction of these Rules.
- (h) The expressions “in writing” and “written” include all means of reproducing words in a tangible and permanently visible form.
- (i) A reference to a statute or any statutory regulations is a reference to that statute or those regulations as amended from time to time, or to any statute or regulations which replace them, as the case may be.
- (j) Any term or expression which is defined in the Act or the Regulations or any Contract Specifications has the same meaning in these Rules unless otherwise defined in these Rules.

3.2 For the purposes of these Rules a person (the “first person”) is deemed to be connected with another person (the “second person”) if the first person is so connected with the second person by reason of any domestic or business relationship (other than because the second person is a customer of the first person) that the first person can reasonably be expected to have influence over the second person’s judgment in investment matters or to be consulted by the second person before any such judgment is made, and if the first person is deemed to be so connected, the second person shall also be deemed to be connected with the first person.

3.3 A person is deemed to be independent for the purposes of Rules 48.1 and 51.1 unless that person:

- (a) is a director or employee of the Company or the Clearing House; or

- (b) is a director or employee of, or partner in, a Dealer; or
- (c) has a direct or indirect financial interest, whether legal or beneficial, and whether as shareholder, partner, or other equity participant, in the Company, the Clearing House or a Dealer, other than an interest not greater than 0.1% of the equity capital or funds of the relevant entity or, where that entity is a subsidiary of another entity, of that other entity; or
- (d) is a person who regularly or from time to time invests, directly or indirectly, in Contracts.

SECTION 2—GENERAL

4. CLASSES OF DEALERS

4.1 There are the following classes of Dealers:

- (a) Public Brokers;
- (b) Introducing Brokers;
- (c) Principal Traders.

4.2 A Public Broker:

- (a) may deal in Contracts on behalf of other persons and/or on its own behalf;
- (b) may accept and hold client money and client property;
- (c) may be a Trading Permit Holder.

4.3 An Introducing Broker:

- (a) may deal in Contracts on behalf of other persons and/or on its own behalf;
- (b) must not accept or hold client money or client property;
- (c) must not be a Trading Permit Holder.

4.4 A Principal Trader:

- (a) may deal in Contracts on its own behalf;
- (b) may be a Trading Permit Holder;
- (c) may, if it is a Trading Permit Holder, deal in Contracts on a give-up basis on behalf of another Principal Trader, or a Public Broker, but must not accept or hold any client money or client property on behalf of any such person.

5. OBSERVANCE OF RULES

5.1 All persons trading on the Exchange are bound by and must observe the provisions of these Rules, and every Contract made or purporting to be made on the Exchange, or related to any such Contract, shall be deemed to have been made subject to these Rules including the applicable Contract Specifications, and all persons concerned or affected shall be bound accordingly.

5.2 All decisions made or purporting to be made under these Rules by the Company, any of its employees, or any committee or Appeal Board established pursuant to these Rules, shall be final and binding on all persons trading on the Exchange and on all persons claiming or deriving any rights in respect of any Contract made or purporting to be made on the Exchange, or in respect of any contract related to any such Contract.

5.3 Dealers are expected at all times to observe the spirit of these Rules as evidenced by the principles set out in this Rule 5.3, and these Rules are to be interpreted in accordance with those principles. A Dealer must:

- (a) observe high standards of integrity and fair dealing;
- (b) act with due skill, care and diligence;
- (c) observe high standards of trading conduct;
- (d) ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject;

- (e) organise and control its internal affairs in a responsible manner, keep proper records, and have adequate arrangements to ensure that any staff are suitable, adequately trained and properly supervised and that there are well-defined compliance procedures; and
- (f) deal with regulatory authorities in an open and co-operative manner and keep each such authority promptly informed of anything which might reasonably be expected to be disclosed to it.

6. MISCELLANEOUS

6.1 Except as provided in this Rule, the Company will treat, and will take all reasonable steps to ensure that its officers, employees and agents and members of all committees and Appeal Boards appointed pursuant to these Rules will treat, all information concerning a Dealer's affairs or those of its officers, employees and clients which is acquired by them in the course of carrying out their functions or responsibilities pursuant to these Rules as confidential, except that any such information may be disclosed:

- (a) to the Securities Commission or any other Regulatory Authority for any purpose required by or pursuant to any law or the directive of the Commission or any such authority; or
- (b) pursuant to, or in accordance with, any arrangement to share information that may exist between the Company and any clearing house, Regulatory Authority or other person; or
- (c) for the purpose of enabling or assisting an auditor of a Dealer, or other authorised person, to discharge his or her legal duties or functions; or
- (d) if the person from whom the information was obtained consents to disclosure, or the information has already been published or is otherwise known to the public.

6.2 Neither the Company, nor any officer, employee or agent of the Company, nor any member of any committee or Appeal Board appointed pursuant to these Rules shall be liable to any person in contract, tort or otherwise for any action taken, or not taken, in exercise or purported exercise, in good faith, of any of their respective powers, authorities, discretions, or obligations, under or pursuant to these Rules.

6.3 Subject to Rule 6.4 no person who is a member of any committee or Appeal Board appointed pursuant to these Rules shall vote in respect of any matter to be considered by the committee or Appeal Board, as the case may be, or be counted in the quorum present at the meeting which considers the matter if that person:

- (a) is a director or employee of, or partner in, a Dealer or other person (including the Company) that may be directly and materially affected by the decision of the committee or Appeal Board; or
- (b) has a financial interest in a Dealer or other person (including the Company) that may be directly and materially affected by the decision of the committee or Appeal Board, not being an interest of less than 0.1% in the equity capital or funds of the Dealer or, where the Dealer is a subsidiary of another entity, of that other entity; or
- (c) has a material financial interest, whether legal or beneficial, in any Contract that may be directly and materially affected by the decision of the committee or Appeal Board; or

- (d) for any other reason has a material conflict of interest in relation to, or financial interest in the outcome of, the matter under consideration, unless a majority of the other members of the relevant committee or Appeal Board resolves that the conflict is not such as to necessitate the disqualification of that person.

6.4 For the purposes of Rule 6.3:

- (a) a decision of a committee or Appeal Board as to whether any person is, or is not, disqualified from voting in respect of any matter to be considered by that committee or Appeal Board or from being counted in the quorum present at the meeting which considers the matter shall be final and binding on that person and on all other persons affected by the decision of the committee or Appeal Board, as the case may be, in relation to the matter;
- (b) a member of a committee shall not be disqualified under Rule 6.3 from voting in respect of a matter to be considered by the committee or from being counted in the quorum present at the meeting which considers the matter by reason only of the fact that such person is a director or employee of the Company or a related company thereof or of the Clearing House or a related company thereof provided that a majority of the persons present and entitled to vote at the meeting are persons who are not disqualified under Rule 6.3 from voting on the matter or from being counted in the quorum present at the meeting;
- (c) a person who is disqualified from voting in respect of a matter to be considered by a committee or from being counted in the quorum present at the meeting which considers the matter shall not be disqualified from taking part in the discussion of the matter by the committee unless the committee resolves that such person be excluded from participation, or further participation, in the discussion of such matter.

6.5 A member of a committee or Appeal Board who has any interest or relationship which may disqualify that member from voting in respect of any matter to be considered by that committee or Appeal Board shall fully declare the nature of that interest or relationship to the other members of that committee or Appeal Board, as the case may be, prior to the consideration of the matter by that committee or Appeal Board.

6.6 Notwithstanding the provisions of Rules 6.3, 6.4 and 6.5 no decision of any committee or Appeal Board on any matter under these Rules shall be invalid by reason of the fact that any person who was, or ought to have been, disqualified under Rule 6.3 voted in respect of the matter, or was counted in the quorum present at the meeting which considered the matter, or took part in the discussion of the matter, or failed to comply with the provisions of Rule 6.5 in respect of the matter.

7. LEVIES AND FEES

7.1 A Trading Permit Holder shall pay to the Company:

- (a) an annual Trading Permit fee;
- (b) a transaction levy for each Contract traded by the Trading Permit Holder on the Exchange; and
- (c) mandatory settlement fees, option exercise fees, and any other fees or charges from time to time payable in respect of any class of Contract;

all such levies, fees and charges to be of such amounts, and to be calculated and payable in such manner, as may be prescribed by the Company from time to time.

- 7.2 An Exchange Broker shall pay to the Company an annual fee of such amount, if any, calculated and payable in such manner, as may be prescribed by the Company from time to time.
- 7.3 If a Dealer fails to pay any levy, fee or charge when due the Dealer shall pay to the Company interest on the unpaid amount from the due date for payment until payment in full is made, at such rate as is prescribed by the Company from time to time, but this provision is without prejudice to the powers of the Business Conduct Committee in respect of the Dealer's default.
- 7.4 The Company is not bound to refund or waive the whole or any part of any levy, fee or charge which has been paid, or is due to be paid, by a Dealer which has ceased for any reason to be a Dealer or whose trading rights have been suspended and, unless waived by the Company by notice in writing to the Dealer, all levies, fees and charges which are due but have not been paid shall remain due and payable by the Dealer notwithstanding such cessation or suspension.

SECTION 3—TRADING

8. TRADING PERMITS

- 8.1 No person may trade a Contract on the Exchange unless that person is the holder of a Trading Permit.
- 8.2 A Trading Permit confers on the Trading Permit Holder the right to trade Contracts on the Exchange in accordance with these Rules.
- 8.3 A Trading Permit may only be issued to a person who is:
- a Member of the Clearing House; and
 - a Public Broker or a Principal Trader.
- 8.4 A Trading Permit Holder is not entitled to trade on the Trading System while its trading rights are suspended except to such extent as may be necessary to comply with any order or direction of the Business Conduct Committee under Rule 50.

9. ISSUE OF TRADING PERMITS

- 9.1 An applicant for a Trading Permit shall:
- lodge with the Company a written application in the prescribed form and provide all information requested therein;
 - lodge with the Company a written application for approval as a Trading System Operator of each person who will be a Trading System Operator for the applicant, such application to be in the prescribed form and to contain all information requested therein;
 - acknowledge in writing that it is aware of these Rules and agrees to be bound by them, as amended from time to time;
 - provide the Company with written confirmation that the applicant has been accepted as a member of the Clearing House;
 - pay to the Company the prescribed application fee, if any, which will not be refundable; and
 - provide such further information as the Company from time to time requests to enable it to consider the application.
- 9.2 Where an applicant for a Trading Permit wishes to trade as a Principal Trader the applicant must provide to the Company a written undertaking in the form prescribed by the Company that it will not trade on behalf of other persons except for other Principal Traders, or for Public Brokers, on a give-up basis.
- 9.3 An applicant for a Trading Permit must satisfy the Company that it is a fit and proper person to hold a Trading Permit and in particular that:

- its business integrity, financial probity and character are suitable for a Trading Permit Holder;
 - it may reasonably be expected to comply with these Rules, and with the spirit of these Rules as set out in Rule 5.3;
 - where the applicant is a company its directors, those in control of its management, and those who have control or substantial control of the applicant are of good character and high business integrity;
 - each person who will be a Trading System Operator for the applicant is approved by the Company and each condition of such approval has been or will be satisfied; and
 - it meets any other requirements for the time being specified by the Company for the purposes of these Rules.
- 9.4 No person can be approved as a Trading System Operator unless the Company is satisfied that he or she is a fit and proper person to be a Trading System Operator and in particular that he or she:
- is of good character and high business integrity;
 - is a director or employee of, or partner in, the Trading Permit Holder by whom approval is sought; and
 - meets any other requirements for the time being specified by the Company for the purposes of these Rules.
- 9.5 In considering whether or not to grant an application for a Trading Permit or for approval of a Trading System Operator the Company may take into account any information from any source, including, without limitation, information relating to any business carried on, or to be carried on, by the applicant in conjunction with its Business.
- 9.6 The Company will promptly advise an applicant whether or not its application is approved. The Company may approve an application subject to such conditions as it considers appropriate. If an application for a Trading Permit is approved the applicant shall pay to the Company such portion of the annual Trading Permit fee for the then current period as the Company determines. The Company will then issue the applicant with a Trading Permit.
- 9.7 Where an application for a Trading Permit or for approval of a Trading System Operator is declined by the Company, or is approved subject to any conditions, the applicant may, by notice in writing to the Company, appeal against the decision in the manner prescribed in Rule 51.

10. CONTRACT SPECIFICATIONS AND OTHER TERMS

- 10.1 Each class of Contract listed for trading by the Company shall have the Contract Specifications from time to time specified by the Company and shall be traded in accordance with those Contract Specifications and the relevant provisions of these Rules. If there is a conflict between a provision of any Contract Specifications and any provision of these Rules, the provisions of these Rules shall prevail.
- 10.2 The Company may from time to time in its absolute discretion:
- list any class of Contract for trading on the Exchange;
 - delete any class of Contract from those listed for trading on the Exchange, in which event trading of Contracts in the relevant class shall thereafter only be permitted to enable the closing out of existing open positions except to the extent the Company deems such trading to be necessary for the maintenance of a fair and orderly market; or

- (c) vary any Contract Specifications provided that:
- (i) a variation of any Contract Specifications which affects liability under a Contract (where such liability is under the control of the Company) shall only become operative in respect of that Contract on or after three months from the date of the variation; and
 - (ii) any adjustment to a class of Contract in accordance with the relevant Contract Specifications shall not be deemed to be a variation of those Contract Specifications for the purposes of these Rules.
- 10.3 The adoption of any new Contract Specifications, or the rescission or variation of any existing Contract Specifications, pursuant to Rule 10.2 will constitute an alteration to these Rules to which the provisions of Section 12 apply.
- 10.4 The Company will from time to time introduce new settlement months for each class of Contract and may at any time withdraw any settlement month in respect of which there are no open positions.
- 10.5 (a) The effect of a Contract which is open on a mandatory settlement day is that on that day:
- (i) in the case of a cash settled Contract the parties must make an adjustment between them according to whether the settlement price is greater or less than the price at the time of making the Contract;
 - (ii) in the case of a deliverable Contract the parties must make or take delivery of the Underlying Security specified in the Contract Specifications in accordance with their respective liabilities under the Contract.
- (b) Cash adjustment or delivery must be made in such manner, at such place, to such person, and by no later than such time, as may be specified in the Contract Specifications.
- (c) A buyer or seller who does not settle with the Clearing House as required by the Rules will be considered to have defaulted.
- 10.6 (a) If any Contract of a particular class is open at the close of business for that class of Contract on the final trading day, the Clearing House will declare a mandatory settlement price for that class of Contract in accordance with the procedures set out in the Contract Specifications.
- (b) If in the opinion of the Company or the Clearing House a situation is developing or has developed which is capable of preventing the Clearing House from declaring a mandatory settlement price, the Clearing House may in consultation with the Company (unless consultation is impracticable in the circumstances) take such steps, if any, as it deems necessary in the circumstances to correct the situation so as to enable it to declare a mandatory settlement price and may give directions to Trading Permit Holders accordingly.
- (c) The Clearing House may announce an indicative settlement price as soon as practicable. If it does so, it will declare and announce the mandatory settlement price as soon as practicable after announcement of the indicative settlement price, but in any event no later than the time specified in the Contract Specifications. Neither the Company nor the Clearing House, nor any of their respective employees, shall be liable to any person in the event that the mandatory settlement price differs from the indicative settlement price for any reason whatever.
- (d) All decisions taken by the Clearing House in respect of mandatory settlements shall be final and binding.
- 10.7 (a) Where an Approved Settlement List is required for the purpose of determining a settlement price the Contract Specifications will specify the minimum number of parties to be approved by the Company for the purposes of the List. Parties may from time to time be added to, or deleted from, the Approved Settlement List by the Company. In approving parties for addition to or deletion from an Approved Settlement List the Company will have regard to the extent of their participation in the market for the Underlying Securities in the relevant class of Contract. Parties will be required to complete a form of undertaking agreeing to provide quotes as specified.
- (b) The Clearing House will request buying and selling quotes from the parties on the Approved Settlement List within the times specified in the Contract Specifications. All quotes must be confirmed to the Clearing House in writing.
- (c) The Clearing House will select at random the number of buying and selling quotes specified in the Contract Specifications and will calculate the midrate of each of the quotes and disregard the number of midrates specified in the Contract Specifications. The remaining midrates will be rounded in accordance with the procedures specified in the Contract Specifications.
- (d) The Clearing House will publish the names of the parties polled in arriving at the mandatory settlement price and the quotes submitted by those parties.
- 10.8 The Company may from time to time prescribe maximum position limits for any class of Contract, and may at any time vary any limits so prescribed. Where any maximum position limits are so prescribed for any class of Contract:
- (a) the Company will give notice of the prescribed limits, and of any subsequent variation thereof, to Dealers;
 - (b) a Dealer shall not exceed, or permit any client, or group of clients acting in concert to exceed, the maximum net position limits specified for the Contract; and
 - (c) a Dealer shall file with the Company when required to do so a report in the form prescribed by the Company, and shall report promptly to the Company any instance in which the Dealer has reason to believe that a client acting alone or in concert with others has exceeded, or is attempting to exceed, the maximum position limits prescribed for that class of Contract.
- 10.9 The following provisions shall apply in respect of exercise prices for each class of option Contract:
- (a) Trading in puts and calls on the first day of an option Contract month will be fixed at:
 - (i) an exercise price which is reasonably close to the value of the Underlying Security at the time the options are first opened for trading;
 - (ii) exercise prices above and below that mentioned in paragraph (i) at intervals determined by the Company.
 - (b) Trading in puts and calls in that class of Contract thereafter will be at the exercise prices determined by the Company from time to time.
 - (c) No new exercise prices for that class of Contract will be introduced in such period prior to the expiration date for trading as the Company from time to time determines.

- (d) An option shall be exercisable notwithstanding that the Underlying Securities have ceased to be traded, whether the cessation arises from suspension, delisting or otherwise.
- 10.10 Subject to the provisions of the Clearing House Regulations, the following procedures shall apply in respect of the exercise or abandonment of an option Contract:
- (a) The buyer may lodge a notice of exercise or abandonment in a form determined by the Clearing House in respect of the Contract. Where relevant, the buyer will indicate on the notice of exercise or abandonment the maximum aggregation in the transfer forms for delivery which it will accept.
 - (b) The Contract Specifications will specify the day or days on which a notice of exercise or abandonment must be given and the time by which the notice must be received by the Clearing House, to be effective. On the expiration date of the Contract a notice of exercise or abandonment may be lodged up to the time specified in the Contract Specifications for such purpose after the settlement price is determined.
 - (c) On the expiration date of an option Contract or, if the relevant Contract Specifications so provide, on the mandatory exercise day, the Clearing House will, unless otherwise directed by a notice of exercise or abandonment:
 - (i) exercise all in-the-money options, for which purpose an option shall be deemed to be in-the-money if the mandatory settlement price for the option lies above the exercise price in the case of a call option or below the exercise price in the case of a put option; and
 - (ii) allow all other options to expire.
 - (d) Where:
 - (i) a notice of exercise in respect of an option Contract has been lodged with the Clearing House; or
 - (ii) an option Contract has been exercised by the Clearing House on the expiration date or, if the relevant Contract Specifications so provide, on the mandatory exercise day;
 the Clearing House will notify the seller by no later than the time specified for the purpose in the Contract Specifications.
- 11. TRADING—GENERAL**
- 11.1 (a) The Company will from time to time prescribe the standard trading times for each class of Contract.
- (b) The Company may, whenever it considers such action appropriate:
- (i) suspend trading, or the commencement of trading, on the Trading System; or
 - (ii) extend the times for trading; or
 - (iii) specify further times for trading during any trading day.
- 11.2 All trading by Trading Permit Holders in Contracts listed on the Exchange must be done on the Exchange, during the times determined by the Company pursuant to Rule 11.1, in the manner directed by the Company from time to time. There shall be no off-Exchange trading with any other person in respect of any part of an order to buy or sell Contracts.
- 11.3 Each offer to buy or sell shall be made on the Exchange, and shall be open to the Trading Permit Holder first accepting it, for the whole or any part of such offer.
- 11.4 Trading on the Trading System will be preceded by a pre-opening phase prior to the Exchange opening for trading during which Trading Permit Holders may enter orders through the bulk order entry facilities on the Trading System. The pre-opening phase will be of such duration as the Company prescribes.
- 11.5 At the opening time prescribed by the Company in respect of each class of Contract, the Trading System will commence matching orders in that class of Contract. All orders matched in the opening phase will be executed at a common price in each traded month. Residual unfilled orders unable to be executed in the opening phase will then be carried over into the open trading period.
- 11.6 Open trading is the period immediately following the opening phase and it will continue until the prescribed closing time. All order types from time to time prescribed by the Company for trading on the Trading System will be acceptable during open trading.
- 11.7 The Company shall be deemed to be authorised by each Trading Permit Holder which is a party to a trade on the Exchange to present that trade to the Clearing House on behalf of the Trading Permit Holder for registration in accordance with the Clearing House Regulations.
- 11.8 A Trading Permit Holder shall not allocate any trade for registration in accordance with the Clearing House Regulations in the name of a person who is not a Dealer.
- 12. SUSPENSION OF TRADING ON TRADING SYSTEM**
- 12.1 If for any reason the Company suspends trading pursuant to Rule 11.1 the following provisions of this Rule 12 shall apply.
- 12.2 Upon receipt of advice from the Company that inter-office trading may commence Trading Permit Holders may continue to trade, in accordance with the following procedures:
- (a) details of each trade between Trading Permit Holders, including the time of the trade, must be recorded by both parties to the trade;
 - (b) details of each trade must be confirmed by facsimile to the Company by both Trading Permit Holders involved, in the prescribed form, within one hour of the trade occurring;
 - (c) the Company will, upon receipt of confirmation from both Trading Permit Holders involved, provided the trade is in accordance with these Rules, present the trade to the Clearing House for registration in accordance with the Clearing House Regulations.
- 12.3 Notice will be given by the Company to Trading Permit Holders and to the Business Conduct Committee as soon as reasonably possible of:
- (a) any suspension of trading;
 - (b) the lifting of any suspension of trading.
- 12.4 Upon the lifting of a suspension a new pre-opening phase will continue for such time as is prescribed by the Company. During that phase existing orders may be cancelled but no new orders will be accepted.
- 12.5 Immediately following the new pre-opening phase normal open trading will recommence and trading in accordance with Rule 12.2 must cease.
- 12.6 The Company will keep a log of events during any closed period, including the reason why the Trading System was closed.
- 12.7 The Company will keep a log of all confirmations of business transacted pursuant to Rule 12.2 and will make the information contained in the log available to Trading Permit Holders upon request.

12.8 If any Trading Permit Holder is at any time unable to access the Trading System but provision of the Trading System has not been suspended the Trading Permit Holder:

- (a) must notify the Clearing House and the Company as soon as practicable;
- (b) must leave its Trading System terminal switched on;
- (c) may trade on a give-up basis through another Trading Permit Holder.

13. MISTAKES

13.1 If a Trading Permit Holder claims that its Trading System Operator has made a mistake in inputting any order into the Trading System the following provisions of this Rule 13 will apply.

13.2 The Trading Permit Holder claiming the mistake must:

- (a) where possible, advise all other Trading Permit Holders that a mistake is claimed, by immediately activating the mistake notice keys on the Trading System; and
- (b) contact the Trading Manager immediately and advise the relevant number of the trade in respect of which the mistake is claimed.

13.3 The Trading Manager will then use the message facilities on the Trading System to advise Trading Permit Holders the number of the trade claimed as a mistake.

13.4 The Trading Manager will then decide whether any trade arising from the mistake should be cancelled. In making this decision, the Trading Manager will have regard to the following:

- (a) Whether the mistake has been claimed within a reasonable time from the time any trade subject to the mistake has been effected having due regard to all relevant circumstances. For the purposes of this Rule time is of the essence and a reasonable time will generally be deemed to be two minutes.
- (b) Whether any trade affected by the mistake is, in the opinion of the Trading Manager, out of market. In determining whether a trade is out of market, the Trading Manager may refer to trading activity immediately prior to the mistake and must consult with a minimum of three Trading Permit Holders.

13.5 After considering each of the factors referred to in Rule 13.4 and any other factors which the Trading Manager deems relevant, the Trading Manager will determine the trades, if any, which are to be cancelled and will where possible use the message facilities on the Trading System to notify all Trading Permit Holders of the numbers of any trades cancelled.

13.6 The Trading Manager will, prior to registration of the trades which are to be cancelled in accordance with Rule 13.5, direct the Clearing House to cancel those trades.

13.7 The Trading Permit Holder by which the mistake has been made shall pay to the Company on demand such sum as may be fixed by the Company from time to time for the purpose of this Rule 13.7.

13.8 Upon receipt of a sum pursuant to Rule 13.7 the Company shall pay to the Trading Permit Holders which are counterparties to the trades cancelled such sum as may be fixed by the Company from time to time for the purpose of this Rule 13.8.

13.9 A decision of the Trading Manager under this Rule 13 shall be final and binding on all Trading Permit Holders and on all persons claiming through or under any Trading Permit Holder.

14. OUT OF MARKET TRADING

14.1 If the Company or any Trading Permit Holder claims that a trade is out of market the following provisions of this Rule 14 will apply.

14.2 The Trading Manager will advise all Trading Permit Holders as soon as practicable:

- (a) that a particular trade is subject to review as being out of market; and
- (b) the name of the employee of the Trading Permit Holder who has claimed that the trade is out of market.

14.3 The Trading Manager will call upon those Trading Permit Holders who participated in the relevant trade to explain the circumstances of the trade and the Trading Permit Holders concerned shall then immediately provide a full explanation of the circumstances of the trade to the Trading Manager.

14.4 The Trading Manager will review the relevant trade to determine whether it is out of market. In doing so the Trading Manager will follow the procedures set out in Rule 13.4 except that for the purposes of Rule 13.4(a) a reasonable time will generally be deemed to be five minutes.

14.5 The Trading Manager will advise all Trading Permit Holders as soon as practicable of the outcome of the review of any trade which is claimed to be out of market.

14.6 The Trading Manager will, prior to registration of any trade which the Trading Manager has determined is out of market, direct the Clearing House to cancel that trade.

14.7 The Trading Permit Holders which participated in a cancelled out of market trade shall be liable, at the discretion of the Company, to pay to the Company on demand such sum as may be fixed by the Company from time to time for the purpose of this Rule 14.7.

14.8 A decision of the Trading Manager under this Rule 14 shall be final and binding on all Trading Permit Holders and on all persons claiming through or under any Trading Permit Holder.

15. EXCHANGE FOR PHYSICAL TRANSACTIONS

15.1 An exchange of a physical transaction for a Contract may be effected where:

- (a) a physical transaction in a commodity is completed by actual delivery, or a physical transaction in a commodity is entered into pursuant to which delivery of the commodity is required, or a transaction of a kind approved by the Company is entered into;
- (b) at or about the same time a futures or option contract is entered into between the same parties for the same quantity of the same commodity or a substantially similar commodity;
- (c) the physical transaction occurs outside the trading hours for the relevant class of Contract;
- (d) full details of the physical transaction are recorded in such form as may be prescribed by the Company and are available to the Company upon request; and
- (e) the contract is lodged with the Company with a request for registration as a Market Contract, together with a certificate in the prescribed form by the Trading Permit Holder lodging the contract that the transaction has been effected in accordance with these Rules, no later than the time at which the Exchange next opens for business.

- 15.2 No EFP transaction may be effected where the parties to each side of the physical transaction are the same, or are acting on behalf of the same person, or where both sides of the transaction are taken by the same Trading Permit Holder on its own account or in respect of the same client.
- 15.3 An EFP transaction may only be effected at a price which is reasonable having regard to the prices in the market for the Underlying Security of the relevant class of Contract immediately prior to the effecting of the transaction.
- 15.4 Upon receipt of a request by a Trading Permit Holder in accordance with this Rule 15 to register an EFP transaction the Company will present the Contract to the Clearing House for registration on behalf of the Trading Permit Holder involved in accordance with the Clearing House Regulations.
- 15.5 A Trading Permit Holder shall not effect an EFP transaction for a client for whom the Trading Permit Holder operates a discretionary account if the end result of the transaction will be the creation of a new open position.
- (c) pay to the Company the prescribed application fee, which is not refundable; and
- (d) provide such other information as the Company from time to time requests to enable it to consider the application.
- 17.2 An applicant for admission must satisfy the Company that it is a fit and proper person to carry on business of the kind and scale in respect of which it seeks admission and in particular that:

- (a) its business integrity, financial probity and character are suitable for the class of Dealer in respect of which it seeks admission;
- (b) it may reasonably be expected to comply with these Rules, and with the spirit of these Rules as set out in Rule 5.3;
- (c) where the applicant is a company, its directors, those in control of its management, and those who have control or substantial control, of the applicant are of good character and high business integrity;
- (d) it has the means of securing that individuals in its employment or under its control who, in the course of their employment or occupation, give investment advice to customers, or deal in or with Contracts for clients, are fit and proper persons to do so by virtue of their character, training and experience; and
- (e) it meets any other requirements for the time being specified by the Company for the purposes of these Rules.

16. PROHIBITIONS

- 16.1 For the purposes of this Rule 16 a director of the Company, or of Sydney Futures Exchange Limited, or of the Clearing House, who is not a managing or executive director, is not deemed to be an employee of that company.
- 16.2 No employee of the Company, or of Sydney Futures Exchange Limited, or of the Clearing House, may have a direct or indirect beneficial interest in any Contract traded on the Exchange or on any of the markets operated by Sydney Futures Exchange Limited.
- 16.3 No employee of the Company, or of Sydney Futures Exchange Limited, or of the Clearing House, may have a direct or indirect beneficial interest, whether as shareholder, partner, or other equity participant, in a Dealer, other than an interest not greater than 0.1% of the equity capital or funds of the Dealer or, where the Dealer is a subsidiary of another entity, of that other entity.
- 16.4 No director or employee of, or partner in, a Trading Permit Holder, who is a Trading System Operator, may have a direct or indirect beneficial interest in any Contract traded on the Exchange. Without limiting the meaning of the term "beneficial interest", a Trading System Operator shall, for the purposes of this Rule 16.4, be deemed to have a beneficial interest in any Contract which is traded for the account of any entity (other than the Trading Permit Holder of or in which the Trading System Operator is a director, employee or partner) over which the Trading System Operator has control.

SECTION 4—ADMISSION AND CHANGES IN CONTROL

17. ADMISSION OF DEALERS

- 17.1 An applicant for admission as a Dealer shall:
- (a) lodge with the Company a written application for admission, either as a Public Broker, or as an Introducing Broker, or as a Principal Trader, in the prescribed form and provide all information requested therein;
- (b) acknowledge in writing that it is aware of and accepts these Rules and agrees to be bound by them, as amended from time to time;
- 17.3 The Company will inquire into, and satisfy itself as to, whether or not an applicant is likely to be able to carry out its responsibilities as a Dealer. The Company may take into account any information or matter from any source, including, without limitation, information relating to the applicant or any business carried on, or to be carried on, by the applicant in conjunction with its Business.
- 17.4 After a review of all the information made available to it the Company will decide whether an applicant is qualified to be a Dealer. The Company may defer making a decision for such period as it considers necessary to carry out further investigation or allow for the provision of additional information.
- 17.5 The Company may approve an applicant for admission subject to such conditions as it considers appropriate.
- 17.6 The Company will advise the applicant whether or not an application is approved and, if approved, the conditions, if any, attached to the approval.
- 17.7 If the application is approved, and the conditions, if any, attached to the approval which are to be complied with prior to the applicant being admitted as a Dealer have been complied with the Company will issue the applicant with a certificate which shall entitle the applicant to act as a Dealer of the relevant class and may be used by the applicant for the purpose of application for a Trading Permit pursuant to Rule 9.
- 17.8 Where an application is declined by the Company, or is approved subject to any conditions, the applicant may, by notice in writing to the Company, appeal against the decision in the manner prescribed in Rule 51.

18. CHANGES OF CONTROL OF DEALERS

- 18.1 Where in relation to a Dealer there occurs (with or without the consent or concurrence, express or implied, of that Dealer), or there is proposed, a change in control of the Dealer having regard to the person or persons in whom control was vested at the time the Dealer became a Dealer, or who have subsequently been approved by the Company for the purposes of this Rule 18, then without prejudice to the provisions of Rule 18.7 the Dealer shall forthwith submit to the Company full particulars of the change or proposed change in control, together with an application for approval thereof.
- 18.2 The Company will promptly consider an application under Rule 18.1 and approve or decline the application, or approve it subject to such conditions as the Company considers appropriate.
- 18.3 The Company will advise the applicant whether or not an application is approved and, if approved, the conditions, if any, attached to the approval.
- 18.4 Where an application is declined by the Company, or is approved subject to any conditions, the applicant may, by notice in writing to the Company, appeal against the decision in the manner prescribed in Rule 51.
- 18.5 If approved by the Company, or by the Appeal Board on appeal, a change in control, if not already implemented, may be implemented within two months of the date of approval or such other period as the Company or Appeal Board, as the case may be, allows. If not so implemented, the approval will be deemed to have lapsed and the change in control may not thereafter be implemented unless and until a further approval is obtained in accordance with this Rule 18.
- 18.6 If the Company, or the Appeal Board on appeal, as the case may be, declines to approve a change in control of a Dealer which has already occurred then unless within one month thereafter, or within such extended time as the Company or the Appeal Board, as the case may be, allows, the change in control has been abrogated, or the control of the Dealer has been otherwise changed in a manner acceptable to the Company or Appeal Board, as the case may be, the trading rights of the Dealer shall be cancelled.
- 18.7 If any change in control of a Dealer occurs without the prior approval of the Company, the Business Conduct Committee may in its discretion suspend the trading rights of the Dealer either until an application for approval has been lodged under Rule 18.1 and approved or, if such an application has been lodged, until it has been approved by the Company, or the Appeal Board, as the case may be.

SECTION 5—BUSINESS CONDUCT—DEALERS**19. GENERAL**

- 19.1 A Dealer shall at all times:
- comply and act consistently with these Rules and with all decisions of the Company, the committees appointed pursuant to these Rules and any Appeal Board;
 - comply with all laws and regulations for the time being in force relating to dealing in Contracts;
 - ensure that it continues to satisfy all the conditions for admission as a Dealer of the relevant class, and where the Dealer is a Trading Permit Holder, for the grant of a Trading Permit.
- 19.2 A Dealer shall notify the Business Conduct Committee in writing immediately on the happening of any of the following events:

- the bankruptcy or insolvency of the Dealer, or in the case of a partnership any of the partners, or in the case of a company, any of the directors;
 - where the Dealer, or in the case of a partnership any of the partners, or in the case of a company any of the directors, is convicted of an indictable offence;
 - where, in the case of a company or any related company of the Dealer, a receiver, statutory manager, provisional liquidator or liquidator, or a similar officer, is appointed, or any resolution is passed or order made for the winding up or dissolution of the company or related company, as the case may be.
- 19.3 A Dealer shall, upon request by the Business Conduct Committee, promptly provide to the Committee such information concerning:
- the business and affairs of the Dealer;
 - the business and affairs of any client of the Dealer; and/or
 - the beneficial ownership of any Contract traded by or on instructions from the Dealer;
- as in the opinion of the Committee is necessary or desirable to enable it to carry out its functions under these Rules.
- 19.4 A Dealer shall upon request by the Business Conduct Committee authorise any clearing house or other person to provide to the Committee such information concerning the business and affairs of the Dealer and/or its clients as the Committee may request.
- 19.5 A Dealer shall ensure to the best of its ability that all information given by the Dealer to the Business Conduct Committee pursuant to these Rules is fair and accurate and that nothing which is material is omitted from it.
- 19.6 All reports, returns, accounts and other information to be provided or notified by a Dealer pursuant to these Rules shall be certified as correct by an Authorised Signatory of the Dealer.

20. ACCOUNTING RECORDS AND FINANCIAL REPORTING

- 20.1 A Dealer shall maintain accounting records which:
- correctly record and explain the transactions, and the financial position, of the Dealer;
 - enable compliance with these Rules to be conveniently ascertained by the Business Conduct Committee; and
 - are able to be conveniently and properly audited.
- 20.2 A Dealer shall:
- provide the Business Conduct Committee, at the cost of the Dealer, with a copy of its signed audited annual financial accounts, within three months after the Dealer's annual balance date;
 - promptly provide the Business Conduct Committee, at the cost of the Dealer, with such other financial reports and information as the Committee may from time to time reasonably request; and
 - make its accounting and other records available to the Business Conduct Committee upon request.

21. REPORTABLE POSITIONS

- 21.1 For the purposes of this Rule 21 a "reportable position" is a position held by a Dealer, either for the Dealer's own account or in respect of a client or affiliated clients, which at the close of trading on a business day is:

- (a) a gross open position which equals or exceeds:
- (i) such number of bought or sold futures Contracts in a particular commodity in any one delivery month; or
 - (ii) such number of bought or sold options positions in a single options series;
- as may be prescribed in each case by the Business Conduct Committee from time to time; or

- (b) a net open position which equals or exceeds:
- (i) such number of futures Contracts which are not covered by opposite positions in the same class of Contract in the same delivery month; or
 - (ii) such number of option Contracts which are not covered by opposite positions in the same option series;
- as may be prescribed in each case by the Business Conduct Committee from time to time.

21.2 Where a Dealer holds a reportable position it shall, no later than 12 noon on every business day, furnish or cause to be furnished to the Business Conduct Committee a daily report in the prescribed format.

21.3 The Business Conduct Committee may at any time call for a special report from any Dealer, requiring it to furnish to the Committee within the time and in the manner and form specified, the identity of any person in respect of whom the Dealer holds a reportable position and such other information relating to that position or that person as may be requested.

22. DISPENSATION FROM RULES

22.1 The Business Conduct Committee may, on the application of a Dealer or an applicant for admission as a Dealer, or of its own volition, modify the application of any Rule (other than a Rule which corresponds to a requirement of the Act or the Regulations) to adapt it to the particular circumstances of the Dealer or applicant, or to any particular class of Business carried on or to be carried on by the Dealer or applicant.

22.2 The Business Conduct Committee may not exercise the power conferred by Rule 22.1 in any case unless it appears to the Committee that:

- (a) compliance with the requirement in question would be unduly burdensome for the relevant Dealer or applicant having regard to the benefit which compliance would confer on clients of the Dealer or members of the public;
- (b) the exercise of the power is unlikely to prejudice clients of the Dealer or members of the public; and
- (c) the exercise of the power will not otherwise be inappropriate.

22.3 The power conferred by Rule 22.1 may be exercised unconditionally or subject to conditions. Each application will be considered by the Business Conduct Committee on its merits but the applicant will be required to demonstrate that the Rule, modification of which is sought, is unusually burdensome to the applicant in the applicant's particular circumstances.

22.4 If circumstances arise, beyond the control of a Dealer, which render it impossible or impracticable for the Dealer to comply with any requirement of these Rules, the Dealer shall immediately inform the Business Conduct Committee of the circumstances and of the steps, if any, which the Dealer proposes to take with regard thereto. The Business Conduct Committee may thereafter excuse the Dealer from compliance with that requirement (except where it is a requirement of the Act or the Regulations) but only for so long as the circumstances exist and on condition that the Dealer takes all practical steps and acts expeditiously to relieve the same.

23. UNDESIRABLE SITUATIONS AND PRACTICES

23.1 If the Company, the Business Conduct Committee, or the Clearing House suspects or anticipates the development, or possible development, of an Undesirable Situation (as defined in Rule 23.3), the Business Conduct Committee, in consultation with the Clearing House, shall appoint a special committee to investigate the matter (the "Special Committee"). The Special Committee shall comprise not fewer than three nor more than six persons and shall include a nominee of the Clearing House (if so nominated). The provisions of Rules 47.1 to 47.5 (inclusive) and 47.10 shall apply to a Special Committee appointed under this Rule 23.1.

23.2 The responsibilities of the Special Committee shall be to investigate the matters referred to it pursuant to Rule 23.1 and report its findings to the Company and the Clearing House without delay.

23.3 For the purposes of this Rule 23, an "Undesirable Situation" means any situation which threatens or may threaten fair, orderly or proper trading in, or liquidation, settlement, exercise or delivery of, any Contract and without affecting the generality of the foregoing, includes the occurrence, threat or possible threat of:

- (a) any contingency or event which affects or has affected, or is capable of affecting any Contract or Contracts or any market, where the consequences of strict enforcement of the Rules or Contract Specifications would, or would be likely to, preclude the maintenance of a fair or orderly market or fair or proper settlement of Contracts;
- (b) manipulative or attempted manipulative activity;
- (c) a corner or a squeeze;
- (d) an excessive position;
- (e) unwarranted speculation or undesirable practices;
- (f) action or proposed action by a government, government instrumentality, futures exchange or stock exchange or any other body in New Zealand, Australia or elsewhere, or any exceptional or unforeseen circumstance, which is at variance with, or which threatens or may threaten, just and equitable principles of trading or the public interest.

23.4 If:

- (a) a majority of the Special Committee reports that in its opinion an Undesirable Situation is developing or has developed; or
- (b) after such time as may be reasonable having regard to all the circumstances the Special Committee has not provided a report;

the Company may, in consultation with the Business Conduct Committee and after prior notification to the Clearing House, take whatever steps the Board considers appropriate to correct the situation and may give directions to Dealers accordingly.

- 23.5 In the event that a direction has been given to the Company by any Regulatory Authority in respect of any Undesirable Situation the Company may, in consultation with the Business Conduct Committee and after prior notification to the Clearing House, take whatever steps the Board considers necessary to enable compliance with the direction.
- 23.6 Without affecting the generality of Rules 23.4 and 23.5, the steps which the Company may, but is not obliged to, take under Rules 23.4 or 23.5 include any one or more of the following:
- suspending or curtailing trading generally, or trading in any class of Contract, for any one or more delivery months, for a specified period;
 - limiting trading generally, or trading in any class of Contract, to closing out of open positions;
 - deferring completion of Contracts, and/or extending the date for delivery under any Contract, for a specified period;
 - directing that any Contract be closed out at a specified price, or otherwise settled in accordance with the regulations of the Clearing House;
 - permitting any merchantable lot of a particular commodity, equal to or superior to the commodity as specified in any Contract, to be tendered subject to appropriate conditions as to compensation, and fixing the amount of any compensation payable;
 - directing that Contracts be settled at a price other than that determined in accordance with the Contract Specifications, as determined by the Board;
 - giving directions to Dealers to act in such manner as will in its opinion correct or assist in overcoming the situation or practice, including, without limitation, a direction to transfer any position to another Dealer.
- 23.7 Any decision of the Board under this Rule 23 as to whether or not the Company will act, and as to what action (if any) the Company will take, shall be binding upon all Dealers and upon all persons claiming through or under any Dealer.

24. INVESTIGATIONS AND INSPECTIONS

- 24.1 The Business Conduct Committee shall have responsibility for:
- investigating all allegations of misconduct, or suspected breaches of these Rules, by Dealers;
 - investigating all complaints by clients or members of the public against Dealers;
 - maintaining appropriate work inspection programmes to enable the Committee to ascertain whether Dealers are complying with these Rules;
 - carrying out such inspections to ensure that Dealers are complying with these Rules, the Act and any regulations made under it, or the applicable rules of any other exchange or organisation, as the Committee may from time to time consider appropriate.
- 24.2 In addition to its other powers under these Rules the Business Conduct Committee may at any time, of its own volition, carry out, on notice or otherwise, an investigation into the Business of a Dealer, or into any activity carried on by a Dealer that may affect its Business, where it appears to the Committee:
- that there are circumstances suggesting that the Dealer is not a fit and proper person to carry on Business of a particular kind or to the extent to which it is carrying it on or proposing to carry it on;

- that the Company, the Business Conduct Committee, or the Securities Commission or any other Regulatory Authority, has been furnished with false, inaccurate, inadequate, or misleading information; or
- to be appropriate or desirable for the protection of clients of the Dealer or members of the public.

- 24.3 A Dealer shall co-operate fully with any investigation or inspection carried out by the Business Conduct Committee or its agent pursuant to this Rule 24 and shall give the person or persons carrying out the investigation or inspection such assistance in connection therewith as the person or persons may require including:
- providing within the time specified by the Business Conduct Committee or its agent all information, papers and documents in the possession or under the control of the Dealer which are requested for the purposes of the investigation or inspection;
 - permitting its officers or other employees to be interviewed and ensuring as far as possible that they are made available for interview and answer truthfully and fully any questions put to them;
 - giving at all reasonable times full access to any premises where the Dealer carries on business or maintains records;
 - permitting documents, records or other material in its possession or under its control to be produced to, inspected and, where necessary, copied.
- 24.4 On completion of an investigation or inspection pursuant to this Rule 24 by an agent of the Business Conduct Committee the agent shall:
- promptly prepare a draft report of the agent's findings and forward a copy of the draft to the Dealer;
 - invite the Dealer to advise the agent, in writing, of any errors of fact in the draft report, within such time as the agent specifies.
- 24.5 The agent shall then:
- correct any errors of fact and forward a copy of the agent's report to the Business Conduct Committee and to the Dealer; and
 - invite the Dealer to provide its comments on the report to the Business Conduct Committee, in writing, within such time as the agent specifies.
- 24.6 Upon receipt of the report from the agent the Business Conduct Committee shall, if it thinks fit, consider the matter in accordance with Rule 49.

25. COMPLAINTS

- 25.1 A Dealer shall ensure that all complaints made to it in relation to its Business are promptly, thoroughly and fairly investigated and any appropriate action is taken. Any such investigation must be carried out by a senior officer or employee of the Dealer who was not concerned in the cause of the specific complaint, except in the case of a Dealer where this is not possible, in which case it shall be carried out by the most senior officer of the Dealer available. The complainant shall be promptly notified in writing of the result of the investigation and the action (if any) taken by the Dealer, and of the complainant's right to refer the complaint to the Business Conduct Committee. A copy of the notification shall also be sent to the Committee.
- 25.2 The Company shall ensure that all complaints made to the Company, whether in respect of a Dealer or the Company or any officers or employees of the Company, are promptly referred to the Business Conduct Committee.

25.3 The Business Conduct Committee will consider in accordance with Rule 49 any complaint made in writing against a Dealer by a client provided that:

- (a) the complaint relates to Business in the conduct of which the Dealer is subject to these Rules; and
- (b) the Dealer has been given an opportunity, where appropriate, by the complainant to investigate the substance of the complaint.

25.4 The Business Conduct Committee may from time to time prescribe a minimum fee which must be lodged with the Committee with a complaint. Such fee may be refunded at the discretion of the Business Conduct Committee.

26. CONDUCT OF CONNECTED OR ASSOCIATED PERSONS

26.1 Where the operation of the Exchange is, in the opinion of the Company or the Business Conduct Committee, being prejudicially affected by the conduct of any person not associated with the Exchange and any Dealer is associated or connected with that person, the Business Conduct Committee shall upon reference of the matter to it by the Company, or of its own volition, as the case may be, consider the matter in accordance with Rule 49.

26.2 If the Business Conduct Committee, after considering the matter, finds the opinion of the Company or the Committee, as the case may be, to be substantiated, it may call upon the Dealer concerned to cause the conduct under consideration to cease, failing which it may suspend the trading rights of the Dealer until the conduct has ceased but any such suspension shall be without prejudice to any other action which may be taken by the Committee under these Rules.

26.3 For the purposes of Rule 26.1 but without limiting the generality of that Rule or the provisions of Rule 3.2:

- (a) where a Dealer has control of a person, or a person has control of a Dealer, the Dealer shall be deemed to be associated or connected with that person;
- (b) a Dealer is deemed to be associated or connected with another person who is:
 - (i) an officer or employee of the Dealer;
 - (ii) an entity controlled by an officer or employee of the Dealer; or
 - (iii) an entity controlled by any person with whom the Dealer is deemed to be associated or connected by virtue of Rule 26.3(a).

27. RESIGNATION

27.1 Subject to Rule 27.2 a Dealer may resign as a Dealer by giving to the Business Conduct Committee not less than thirty days' notice in writing of its intention to do so, which in the case of a partnership must be given by a majority of the partners. Notice of the Dealer's intended resignation may be sent by the Business Conduct Committee to such other Dealers, if any, as in the circumstances the Committee thinks fit.

27.2 The resignation of a Dealer shall not be effective unless and until it is accepted by the Business Conduct Committee in writing.

27.3 The Business Conduct Committee may, where it has reasonable grounds for doing so, by notice in writing to a Dealer, refuse to accept a resignation if:

- (a) any matter affecting the Dealer is being investigated or, in the opinion of the Committee, should be investigated as a preliminary to a decision on the question whether or not the trading rights of the Dealer should be terminated or the Dealer should be otherwise disciplined; or

- (b) the Committee considers that it is desirable that a suspension of trading rights should be imposed upon the Dealer or that any suspension already imposed should continue in force; or

- (c) any obligation of the Dealer under these Rules remains outstanding.

27.4 Where notice is given by the Business Conduct Committee under Rule 27.3 it shall as soon as practicable take all reasonable steps to complete its investigation of, or to investigate, as the case may be, the matter which gave rise to the notice.

27.5 Without prejudice to any action which the Business Conduct Committee may thereafter take in respect of the Dealer in accordance with these Rules, and subject always to the provisions of Rule 27.6, if the Business Conduct Committee does not accept the resignation of a Dealer which has given notice under Rule 27.1, the resignation shall take effect from such date as is subsequently notified in writing by the Business Conduct Committee to the Dealer.

27.6 Notwithstanding acceptance by the Business Conduct Committee of a Dealer's resignation, the Dealer shall continue to be subject to the jurisdiction of the Committee for a period of one year thereafter:

- (a) in respect of its acts and omissions under the Rules committed before the acceptance; and
- (b) in respect of any proceedings instituted against the Dealer before the acceptance or, in respect of such acts and omissions, after the acceptance.

SECTION 6—BUSINESS CONDUCT—EXCHANGE BROKERS

28. GENERAL

28.1 An Exchange Broker shall establish and maintain compliance procedures which are sufficient to ensure that in all dealings with or on behalf of clients, each employee of the Exchange Broker understands, and may reasonably be expected to comply with, these Rules and the requirements of all laws and regulations which are applicable to the Exchange Broker.

28.2 An Introducing Broker shall not accept or hold any money or property on behalf of clients, and prior to accepting a client shall advise the client in writing of this prohibition. An Introducing Broker may accept from a client a crossed cheque marked "not negotiable account payee only" made payable to the client bank account of the Public Broker to which it has introduced the client provided such cheque is either delivered to that Public Broker or paid to the credit of a nominated account in respect of which that Public Broker is the sole signatory.

28.3 An Introducing Broker shall not introduce any client to a Public Broker unless the Introducing Broker has in force with that Public Broker an agreement which includes, as a minimum, the provisions contained in the form set out in Schedule 3 of these Rules. An Introducing Broker may enter into such an agreement with any one or more Public Brokers.

28.4 An Introducing Broker shall:

- (a) cause each client to give to the Public Broker appointed by the Introducing Broker as the Public Broker in respect of that client a Client Acknowledgement; and
- (b) place all orders on behalf of that client with that Public Broker.

28.5 A Public Broker and an Introducing Broker shall each notify the Business Conduct Committee of:

- (a) the existence of any agreement entered into by them pursuant to Rule 28.3;

- (b) the termination of any such agreement.
- 28.6 An Exchange Broker shall not permit any one client (in which context the expression "client" includes all persons related or affiliated to, associated or connected with, or financially dependent upon, the client) to represent such a percentage of the trading by the Exchange Broker as may prejudice or diminish the ability of the Exchange Broker to meet its obligations.
- 28.7 An Exchange Broker who is a Trading Permit Holder shall, when entering an order into the Trading System in consequence of instructions received from a client, use the identifier assigned to that client in accordance with Rule 35.2.

29. FINANCIAL RESOURCES REQUIREMENT

29.1 An Exchange Broker, unless it is a registered bank or an Australian bank (in which case it shall be exempt from this Rule 29), shall ensure that at all times its Financial Resources exceed its Financial Resources Requirement.

For the purposes of this Rule 29:

- (a) an Exchange Broker's Financial Resources are its Allowable Assets less its Liabilities, both as calculated and/or adjusted in accordance with Rule 29.4;
- (b) an Exchange Broker's Financial Resources Requirement is the aggregate of its Base Requirement (as calculated in accordance with Rule 29.2) plus its Investment Position Risk Requirement (as calculated in accordance with Rule 29.3).

29.2 An Exchange Broker's Base Requirement is the greater of:

- (a) its Absolute Minimum Requirement; which
 - (i) in the case of an Introducing Broker is: \$15,000
 - (ii) in the case of an Exchange Broker, all of whose customer business activities are subject to compliance with the Regulations is: \$150,000
 - (iii) in the case of any other Exchange Broker is: \$300,000
- (b) its Volume of Client Business Requirement; which is the aggregate of the following amounts:
 - (i) where the initial margin requirement for a client, or any affiliated clients, represents 20% or more of the total initial margins for all clients: 50% of the minimum initial margin requirement for each of those clients, or affiliated clients
 - (ii) where the initial margin requirement for a client, or any affiliated clients, represents less than 20% of the total initial margins for all clients: 20% of the minimum initial margin requirement for each those clients or affiliated clients

29.3 An Exchange Broker's Investment Position Risk Requirement is the aggregate of the following amounts calculated in respect of all Contracts, contracts for differences, and investments, held by the Exchange Broker for its own account, in respect of which exposure to loss is not limited to the purchase price:

- (a) margined transactions:

- (i) bought options the amount of the premium less initial margins paid
- (ii) all other margined transactions twice the initial margin requirement
- (b) non margined transactions 7.5% of market value, or, if there is no market value, 10% of original historic value.

29.4 In calculating the Financial Resources of an Exchange Broker the following rules shall apply:

- (a) Allowable Assets are:
 - (i) 100% of client money and client property:
 - (aa) held in client bank accounts or as specified client investments pursuant to the Regulations;
 - (bb) held in client funds accounts with any clearing house pursuant to the Regulations;
 - (cc) held in client funds accounts with any other Dealer pursuant to the Regulations where such amounts are not more than five days overdue.
 - (ii) 100% of the Exchange Broker's own money and property:
 - (aa) held with any registered bank or overseas bank or held in any property approved as suitable for specified client investments pursuant to the Regulations;
 - (bb) held with any exchange clearing house;
 - (cc) held with any other futures broker where such amounts are not more than five days overdue.
 - (iii) 100% of claims on any instrument designated with a risk weighting of 20% or less under the capital adequacy measurement regime applied by the Reserve Bank of New Zealand.
 - (iv) 75% of the market value of shares listed on a recognised stock exchange.
 - (v) Any debt due by any person to the Exchange Broker, to the extent that the Business Conduct Committee is satisfied that the debt is properly secured and the Exchange Broker has the right to set off amounts owed by it against that debt and that right is contained in an agreement with that person. For the purposes of this Rule 29.4(a)(v) "properly secured" in relation to a debt owed to an Exchange Broker means a debt which is secured by a charge in favour of the Exchange Broker over a readily realisable investment where the Exchange Broker has in its possession or under its control the document of title to that investment or asset or is otherwise able to realise it so as to discharge the debt.

All other assets shall be excluded except those for which prior written approval to their inclusion has been obtained from the Business Conduct Committee.

- (b) All Liabilities shall be included with the exception of:
 - (i) in the case of an Exchange Broker which is a corporate body, its paid up share capital and reserves;

- (ii) in the case of an Exchange Broker which is a partnership, individual or unincorporated association, the credit balances on partners' and proprietors' accounts;
- (iii) deferred taxation relating to fixed assets which have been excluded from the calculation of Allowable Assets;
- (iv) approved subordinated loans where these have been subordinated to the satisfaction of the Business Conduct Committee in an approved standard form;
- (v) the aggregate amount of secured loans for land and buildings; and for the purposes of this Rule 29.4(b)(v):
 - (aa) the amount of secured loans to be excluded from liabilities shall not exceed 75% of the "value" of land and buildings which are used as security for loans;
 - (bb) "value" shall be the lower of the amount of an independent valuation made not earlier than twelve months before the relevant date, and the net book value at which the land and buildings were included in the latest audited balance sheet of the Exchange Broker.

29.5 The Business Conduct Committee may from time to time:

- (a) exempt any Exchange Broker or class of Exchange Broker from compliance with all or any of the provisions of this Rule 29; or
- (b) vary any of the provisions of this Rule 29 insofar as they relate to any Exchange Broker or class of Exchange Broker; or
- (c) vary any of the provisions of Rule 29.2(b) insofar as they relate to the initial margin requirements of any client, or group or category of clients, of any Exchange Broker or class of Exchange Broker; or
- (d) require an Exchange Broker, in calculating its Financial Resources, to make such deduction as the Committee considers appropriate and reasonable after consultation with the Exchange Broker in respect of any contingent liability or commitment of the Exchange Broker, whether by way of a guarantee, or undertaking, or of any other nature.

30. ACCOUNTING RECORDS AND FINANCIAL REPORTING

30.1 An Exchange Broker, unless it is a registered bank or an Australian bank (in which case it shall be exempt from this Rule) shall provide the Business Conduct Committee with a copy of the Exchange Broker's balance sheet and a statement of the Exchange Broker's Financial Resources calculated in accordance with Rule 29:

- (a) as at the last day of the months of March, June, September and December in each year, within one month after each of such dates; and
- (b) as at such other dates as may be requested in writing by the Business Conduct Committee, within the time requested.

30.2 A Public Broker, unless it is a registered bank or an Australian bank (in which case it shall be exempt from this Rule), shall provide the Business Conduct Committee with a monthly return of the Public Broker's position with regard to client funds by the second business day following the last business day of each month.

31. CLIENT ACKNOWLEDGEMENTS

31.1 Subject to Rule 31.3 an Exchange Broker shall not provide any services to a client unless the client has completed a Client Acknowledgement, which, subject to the provisions of Rule 31.2, shall:

- (a) in the case of a Public Broker, be in the form set out in Schedule 1 of these Rules or contain as a minimum the matters set out in that form;
 - (b) in the case of an Introducing Broker, be in the form set out in Schedule 2 of these Rules or contain as a minimum the matters set out in that form;
- and a signed copy of the Client Acknowledgement is held by the Exchange Broker.

31.2 The Business Conduct Committee may in its discretion, on the application of an Exchange Broker, approve a form of Client Acknowledgment which does not comply strictly with the requirements of Rule 31.1, for use by that Exchange Broker in respect of all or any of its clients, provided that the Committee shall not, without prior consultation with the Commission, approve any such form which departs in any material respect from the principles underlying these Rules.

31.3 Where a client of an Exchange Broker is a Clearing Member, a Client Acknowledgement need not be completed in accordance with Rule 31.1(a) unless the Exchange Broker is to be authorised to trade on a discretionary basis for the client. Where by virtue of this Rule 31.3 a Client Acknowledgement is not required to be completed, the client shall in lieu thereof be deemed to have given an acknowledgement to the Exchange Broker in the form set out in Schedule 1 of these Rules with effect from the time the Exchange Broker accepts the first instruction from the client to trade in Contracts. The Exchange Broker shall forthwith give to the client written notice that the acknowledgement is deemed to have come into effect, together with a copy of the form of Client Acknowledgement set out in Schedule 1, and shall retain satisfactory evidence of the giving of such notice and copy.

32. MARKET CONTRACTS AND CLIENT CONTRACTS

32.1 When a Public Broker who is a Trading Permit Holder has an order to buy and an order to sell Contracts, at the same price, for the same commodity, and in the same month, the Public Broker may only make a Market Contract with itself if it has complied with the procedures for such transactions approved by the Company from time to time.

32.2 (a) Where a Public Broker who is a Trading Permit Holder has traded a Market Contract in consequence of an order received from a client there shall, by virtue of this Rule 32.2(a), simultaneously with such trade arise:

- (i) a Client Contract between the Public Broker and the client (each as principal) in the same terms as the Market Contract except that the Public Broker shall have the opposite position from that which it has in the Market Contract; and
- (ii) if the client is an Exchange Broker who is itself acting for a client, a Client Contract between that Exchange Broker and its client (each as principal) in the same terms as the Client Contract referred to in paragraph (i) except that the Exchange Broker shall have the opposite position from that which it has in the Client Contract referred to in paragraph (i).

(b) Where a Public Broker who is a Trading Permit Holder has entered into a Market Contract in consequence of an order received from a client who is a Clearing Member and allocates that contract to that Clearing Member client in

accordance with the Clearing House Regulations, then upon registration of the Market Contract in the name of that Clearing Member client by the Clearing House, all Client Contracts relating to that Market Contract shall be deemed never to have arisen except the Client Contract that has arisen between the Clearing Member client in whose name the Market Contract is registered and its client, if any, and any successive Client Contracts related to the same Market Contract.

- (c) The provisions of Rules 32.2(a)(ii) and 32.2(b) shall also apply (with all necessary modifications) where the Exchange Broker or Clearing Member client is acting for a client who is also a Clearing Member or where any successive client who is a Clearing Member is acting for a client who is also a Clearing Member.

32.3 (a) Upon registration of a Market Contract by the Clearing House it will, by virtue of the Clearing House Regulations, immediately be replaced by two Open Contracts (both of which will be subject to the Clearing House Regulations and be otherwise on the same terms as the Market Contract replaced by them) one between the original selling Public Broker (or any other Clearing Member to whom the sold position has been allocated) and the Clearing House (as buyer) each as principal, and the other between the original buying Public Broker (or any other Clearing Member to whom the bought position has been allocated) and the Clearing House (as seller) each as principal.

- (b) Except as required by law, by the Clearing House Regulations, or by these Rules neither the Clearing House nor the Company shall be obliged to recognise the interest of any other person in any Market Contract or Open Contract except the parties referred to in Rule 32.3(a).
- (c) A Client Contract shall automatically be varied, terminated, exercised, settled, closed out or otherwise affected in the same way, and at the same time, as the Market Contract or Open Contract to which it relates is varied, terminated, exercised, settled, closed out or otherwise affected by reason of the operation of these Rules or the Clearing House Regulations, or by reason of any action taken by the Company under these Rules or the Clearing House under the Clearing House Regulations, or for any other reason.
- (d) Without limiting Rule 32.3(c), when an Open Contract is settled and replaced by a new contract pursuant to the settlement to market procedure prescribed by the Clearing House Regulations, the related Client Contract shall automatically be settled at the same time and price and replaced by a new Client Contract between the Public Broker concerned and the client, which will similarly be subject to the provisions of this Rule 32.3.
- (e) If registration of an Open Contract is transferred to another Clearing Member in accordance with the Clearing House Regulations, any related Client Contract shall automatically be transferred to the same Clearing Member and the transferor Clearing Member must transfer to the transferee Clearing Member any cover held in respect of that Client Contract.

33. CLIENT PRIORITY AND ALLOCATION

- 33.1 Except as provided in Rule 32, an Exchange Broker shall not offer or allocate to a client any contract related to a Contract already obtained on the Exchange, other than pursuant to instructions previously received from that client.
- 33.2 Orders received from clients, and orders for an Exchange Broker's own account, must immediately be entered by

the Exchange Broker in the sequence in which they are received and recorded, unless it would be fair and equitable to enter those orders on a different basis. Where a different basis is used, the Exchange Broker shall clearly define that basis and apply it to all instructions and orders without giving any preference to any orders for its own account.

33.3 If an Exchange Broker has:

- (a) a material interest, whether direct or indirect, in any proposed transaction for a client or in the fact of its being effected (other than the interest arising solely from the Exchange Broker's participation as Exchange Broker therein); or

- (b) a relationship with another person which may place the Exchange Broker in a position where its duty to, or its interest in relation to, that other person conflicts with its duty to the client;

it shall not do anything which is, or is likely to be, unfairly prejudicial to the client.

34. CALLING OF MARGINS BY PUBLIC BROKERS

34.1 (a) A Public Broker shall call an initial margin from each client upon trading a Contract as a consequence of an order received from that client, unless in the case of a Market Contract entered into on the Exchange the client is a Clearing Member and the Market Contract has been allocated to that Clearing Member in accordance with the Clearing House Regulations.

- (b) The minimum initial margin to be called in respect of a Client Contract is an amount equal to the initial margin amount determined from time to time by the Clearing House in respect of the related Market Contract, provided that in the case of a bought option Contract, whether put or call, the maximum initial margin shall not exceed the amount of the contract premium.

- (c) The liability of a client for payment of an initial margin arises when a Contract is traded by a Public Broker as a consequence of an order received from the client, irrespective of the time when the call is made.

34.2 (a) Subject to Rule 34.2(b), a Public Broker may call variation margins from a client, unless in the case of a Market Contract the client is a Clearing Member and the Market Contract has been allocated to that Clearing Member in accordance with the Clearing House Regulations.

- (b) A Public Broker shall call variation margins from each client when the client's net margin position exceeds 25% of the clients' liability for initial margins. Notwithstanding the provisions of Rule 34.1 the minimum aggregate amount of margins which a Public Broker must call from a client in respect of the client's overall position under Client Contracts shall not be less than the aggregate margins that would be called by the Clearing House if that client was a Clearing Member holding only that overall position except where the aggregate amount of margins to be called would be \$1,000 or less in which event the making of a call shall be at the discretion of the Public Broker.

- (c) The liability of a client for payment of a variation margin arises at the time the margin comes into existence, irrespective of the time when the call is made.

34.3 (a) A call by a Public Broker for a margin must be satisfied by payment unless the Public Broker agrees to accept, and receives, Approved Securities.

- (b) When making a call for a margin, the Public Broker shall stipulate the period within which payment must be made or Approved Securities lodged. The period stipulated shall be the minimum period reasonably necessary, taking into account the circumstances of the client at the time the obligation arises.
 - (c) Payment of a margin or lodgment of cover must be made within the time stipulated, time being of the essence.
 - (d) A Public Broker shall maintain for a period of not less than two years internal records showing such particulars of all margin calls made by the Public Broker as are prescribed by the Business Conduct Committee from time to time.
- 34.4 (a) Where a client is in default by failing to pay a call or lodge Approved Securities or to comply with its cash settlement obligations, a Public Broker has the right to close out all or any existing Client Contracts or other futures or option positions held by the Public Broker on account of the client, without further notice to the client.
- (b) The time within which that right is exercised, and the extent to which it is exercised, shall be at the discretion of the Public Broker. The Public Broker shall not be liable to the client for any failure or delay in exercising that right.
 - (c) Any adjustment by way of profit or loss arising from the closing out, together with all interest and charges incurred, shall be settled between the Public Broker and the client.
- 34.5 Cover for a margin liability of a client shall be retained until such time as the liability is extinguished. If the liability is not extinguished, the cover may be realised and the proceeds applied against the liability.
- 34.6 The following securities are the Approved Securities for the purposes of these Rules:
- (a) a guarantee in favour of the Dealer concerned issued by a registered bank, or any other guarantee approved by the Business Conduct Committee;
 - (b) New Zealand government or local authority securities;
 - (c) gold bearing an assay mark approved by the Business Conduct Committee;
 - (d) silver bearing an assay mark approved by the Business Conduct Committee;
 - (e) bills of exchange accepted or endorsed by a registered bank;
 - (f) shares or debentures listed on a recognised stock exchange approved by the Business Conduct Committee;
 - (g) such other securities or credit facilities as may be approved by the Business Conduct Committee from time to time;
- provided that in the case of a security which is not transferable merely by delivery it is accompanied by the requisite form of transfer duly executed.

35. DEALING RECORDS

- 35.1 An Exchange Broker shall maintain for a period of not less than two years internal records showing such particulars in respect of instructions received from clients and of trades executed on its own account or for clients as are prescribed by the Business Conduct Committee from time to time.
- 35.2 An Exchange Broker shall assign a unique identifier of at least one character to each client to identify the client in the Exchange Broker's dealing records.

- 35.3 An Exchange Broker shall provide each client on a daily basis with written confirmation of each transaction executed for that client.
- 35.4 A Public Broker shall provide each client with a written monthly open position and current account statement in the prescribed form within five business days of the end of each calendar month.
- 35.5 An Exchange Broker shall, where it has been authorised in writing by a client to operate a discretionary account on behalf of that client, maintain full and complete records of each exercise of that discretionary authority, showing details of the Contract and the date and time each transaction is effected.

36. EXCESSIVE TRADING

- 36.1 An Exchange Broker shall not effect transactions with or for a client for whom the Exchange Broker operates a discretionary account unnecessarily, with unnecessary frequency, or in excessive size. In considering whether an account has been excessively traded:
- (a) regard will be had to all the circumstances of the operation of the account and whether the trades, either individually or taken as a whole, could reasonably have been regarded as being made in the client's best interests;
 - (b) other factors which will be taken into account include:
 - (i) the frequency and size of the trades;
 - (ii) the cost to the client in relation to the profit made or loss suffered;
 - (iii) the proportion of day, or day and overnight, trades;
 - (iv) the duration of positions held;
 - (v) the trading life of the account;
 - (vi) the instructions and objectives of the client;
 - (vii) the market conditions;
 - (viii) whether the liquidated positions are re-established;
 - (ix) which Contracts are traded;
 - (x) the rates of commission on each Contract.

37. INSIDER TRADING

- 37.1 An Exchange Broker shall not trade on behalf of:
- (a) a director, partner or employee of another Dealer; or
 - (b) a person with which any director, partner or employee of another Dealer is connected;
- unless the Exchange Broker has:
- (i) obtained a written consent from that other Dealer consenting to such director, partner, employee or person (as the case may be) trading in Contracts, and specifying any terms and conditions of such consent; and
 - (ii) provided a copy of such written consent to the Business Conduct Committee and received confirmation of receipt of the same from the Business Conduct Committee; and
 - (iii) attached a copy of such written consent to the signed Client Acknowledgement held by the Exchange Broker.

38. ADVERTISING AND PUBLISHING RULES

- 38.1 An Exchange Broker shall not issue or disseminate, or permit the issue or dissemination of, any advertisement or unsolicited business communication in writing, in respect of its Business, which:

- (a) is false or misleading; or
- (b) is likely to be prejudicial to the public image of the Exchange; or
- (c) has been disapproved, or is of a class that has been disapproved, by the Business Conduct Committee by notice in writing to the Exchange Broker concerned or to Exchange Brokers generally.

39. TRADING ON OTHER EXCHANGES

39.1 Where an Exchange Broker trades or proposes to trade in Contracts on another exchange in consequence of an order received from a client, if the Exchange Broker:

- (a) is a member of that other exchange, it shall comply with the business rules of that other exchange in relation to such transactions;
- (b) is not a member of that other exchange, it shall transmit orders relating to such transactions:
 - (i) in the case of an Introducing Broker, to a Public Broker; and
 - (ii) in the case of a Public Broker, to a member of that other exchange;

for execution in accordance with the business rules of that other exchange.

39.2 Where a Public Broker trades in Contracts on another exchange in consequence of an order received from a client:

- (a) if the business rules of the other exchange include provisions requiring the calling of initial margins (or the equivalent thereof) and/or variation margins (or the equivalent thereof), the Public Broker shall call margins from the client in accordance with those provisions, regardless of whether or not the Public Broker is a member of that other exchange, and shall not be obliged to comply with Rule 34 in respect of any of the relevant Contracts;
- (b) if the business rules of the other exchange do not include provisions requiring the calling either of initial margins (or the equivalent thereof), or of variation margins (or the equivalent thereof), the Public Broker shall call variation margins except to the extent that any initial margin paid, or cover provided, by the client exceeds the client's variation margin liability.

SECTION 7—ARBITRATION

40. JURISDICTION

40.1 The Business Conduct Committee may refer any dispute to arbitration under these Rules following an application made under Rule 41 provided that the dispute:

- (a) is between a Dealer and any other Dealer or, with the consent of the client, a client of the Dealer;
- (b) subject to Rule 40.2, arises in connection with the Business of the Dealer; and
- (c) subject to Rule 40.3, arises out of an act or omission which is alleged to have occurred within one year preceding the date of the reference.

40.2 The reference may, with the consent of the parties, include any matter incidental to the dispute which is conveniently dealt with at the same time.

40.3 The Business Conduct Committee may refer a dispute to arbitration under these Rules if the act or omission occurred outside the one year period if it considers it just and equitable to do so after taking into account any representations made by the parties in accordance with Rules 41.2 and 41.3.

40.4 Neither the Business Conduct Committee, its members or agents, nor the arbitrator, shall be liable to any person for any act or omission in connection with any proceedings under this Section of these Rules, other than, in the case of the arbitrator, an act done in bad faith.

41. APPLICATION FOR A REFERENCE

41.1 Before applying for a dispute to be referred to arbitration under these Rules, a person (the "claimant") shall first give seven days' notice to the other party (the "respondent", which expression includes each and every respondent as appropriate) of its intention to make such an application.

41.2 A claimant shall apply for a dispute to be referred to arbitration under these Rules by:

- (a) notice in writing to the Business Conduct Committee and the respondent containing the following information:
 - (i) the date of service of the notice referred to in Rule 41.1;
 - (ii) the name and address of the claimant and the respondent;
 - (iii) full particulars of the matter or matters in dispute;
 - (iv) the amount of the claim;
 - (v) confirmation that the application is made within one year of the date of the act or omission giving rise to the dispute, or, if outside that period, giving full reasons for the delay in making the reference;
 - (vi) if the claim does not exceed \$25,000, whether the claimant consents to the dispute being determined on the written statements of the parties; and
- (b) payment of a deposit of \$5,000 in respect of costs which may be payable by the claimant pursuant to Rule 45.

41.3 Within fourteen days of receipt of the notice referred to in Rule 41.2, the respondent shall give to the Business Conduct Committee and the claimant notice in writing:

- (a) responding to the claimant's particulars of the matter or matters in dispute;
- (b) giving particulars of any counterclaim by the respondent which arises from the act or transaction which is the subject of the dispute;
- (c) consenting to the reference being made or, if the respondent objects to the reference being made, the grounds for such objection;
- (d) if appropriate, replying to the reasons for the delay in making the application; and
- (e) if the claim does not exceed \$25,000, whether the respondent consents to the dispute being determined on the written statements of the parties.

41.4 A Dealer shall consent to a reference to arbitration unless it satisfies the Business Conduct Committee that it has reasonable grounds for refusing to do so. In considering whether a refusal by a Dealer to submit to arbitration is reasonable, the Business Conduct Committee will take into account any representations made by the claimant and the Dealer and all other relevant circumstances including:

- (a) the nature and size of the dispute;
- (b) whether the dispute affects parties other than the claimant and the respondent;
- (c) any other obligations upon the Dealer to submit to arbitration; and

- (d) any other remedies, rights and defences available to the parties, whether in proceedings before the courts, through arbitration, or by any other means, both under New Zealand law and the laws of any other relevant jurisdictions.

42. REFERENCE

42.1 If the respondent:

- (a) consents to the reference being made; or
 (b) does not consent to the reference but fails to satisfy the Business Conduct Committee that it has reasonable grounds for refusing its consent;

the Business Conduct Committee shall refer the dispute in writing to a sole arbitrator, or at its discretion to two or more arbitrators, designating who shall be the chairperson.

42.2 In these Rules, references to an "arbitrator" shall in each case include each and every arbitrator appointed under these Rules to conduct an arbitration, as the case may require.

42.3 In making the appointment referred to in Rule 42.1, the Business Conduct Committee shall have regard to all relevant circumstances including, in particular, the nature of the dispute, and the amount of the sums involved.

42.4 The Business Conduct Committee will notify the parties of the identity of the arbitrator or arbitrators as soon as practicable after his, her or their appointment.

43. PROCEDURE

43.1 An arbitrator may extend any time limit imposed under this Section of these Rules on the application of a party or otherwise, notwithstanding in exceptional circumstances that the period subject to the time limit may have expired.

43.2 An arbitrator may obtain independent legal advice in respect of the arbitration or any related matter.

43.3 The claimant and the respondent shall, within fourteen days of receiving notice of the appointment of an arbitrator under Rule 42.1, send to each other and to the Business Conduct Committee a copy of any document that they intend to use as evidence.

43.4 The arbitrator may require or allow any party to lodge with the Business Conduct Committee and every other party such other documents, statements or written information as may be considered necessary for the determination of the issues before the arbitrator.

43.5 The Business Conduct Committee will send to the arbitrator copies of all documents submitted under Rules 43.3 or 43.4.

43.6 (a) When the respondent has complied with Rule 41.3 and the period referred to in Rule 43.3 has elapsed the Business Conduct Committee shall, unless all parties to the dispute direct otherwise, serve each party to the dispute with a notice which shall specify the time, date (being a date no later than twenty-eight days after the date of the notice), and venue, for a pre-determination conference.

(b) Each party to the dispute shall attend the pre-determination conference. The Business Conduct Committee shall, after consultation with the parties, appoint a person to chair the conference.

(c) The conference chairperson shall use his or her best endeavours to resolve the dispute or to narrow any unresolved issues.

- (d) If the dispute is resolved at or before the conference, or prior to the arbitration hearing, the conference chairperson may, in his or her absolute discretion order the whole or any part of the deposit paid pursuant to Rule 41.2(b) to be refunded to the applicant.

43.7 As soon as practicable after:

- (a) the decision of the parties under Rule 43.6(a) that a pre-determination conference be dispensed with; or
 (b) the conclusion of any pre-determination conference concerning a dispute, if the parties have not advised the Business Conduct Committee that the dispute has been resolved;

the arbitrator shall proceed with the arbitration in such manner as the arbitrator determines or the parties agree.

43.8 The arbitrator may proceed with the arbitration notwithstanding any failure by a party to comply with this Section of these Rules or with his or her directions, or to attend any meeting or hearing, provided that the arbitrator has first given the parties due notice in writing of his or her intention so to do.

43.9 The arbitrator may determine a dispute on the written statements of the parties if the claim does not exceed \$25,000 and both parties consent.

43.10 A party may not be legally represented other than with the prior consent of the arbitrator.

43.11 If at any time the parties to an arbitration settle their differences they shall jointly or separately notify the Business Conduct Committee in writing forthwith. Should they fail to do so the parties shall be jointly and severally liable to the Business Conduct Committee for the costs of the Business Conduct Committee and the Company thereby incurred.

44. AWARD

44.1 If a reference is to three arbitrators the award may be by majority decision. If a reference is to two arbitrators and they are unable to agree upon their award they shall so inform the Business Conduct Committee. The Business Conduct Committee shall thereupon inform the parties that the two arbitrators are unable to agree and shall appoint a third arbitrator and the dispute shall be reheard by those three arbitrators, except to the extent that the parties may agree in writing that a rehearing is not required.

44.2 An award shall:

- (a) be in writing and be signed and dated by the arbitrator;
 (b) state the reasons on which it is based;
 (c) contain such order for payment of the costs of the award, and of the parties, as the arbitrator thinks fit; and
 (d) be sent by the arbitrator to the Business Conduct Committee as soon as reasonably practicable after it has been signed.

44.3 Upon receipt of an award, the Business Conduct Committee shall notify the parties that the award has been made and of the amount of the costs of the award. Thereupon each party may obtain a copy of the award upon payment to the Company of the amount of costs payable by that party. If a party fails to pay the costs payable by it within fourteen days of the date of notification by the Business Conduct Committee, the Company may, in its discretion, pay those costs and recover the amount from that party, without prejudice to the provisions of Rules 44.4 and 45.2.

44.4 Any failure by a Dealer to pay any costs payable by it in accordance with Rule 44.3 within fourteen days shall be regarded as a breach of these Rules.

45. COSTS

45.1 If at any time the parties to an arbitration settle their differences, the arbitrator shall determine the amount of the costs payable to him or her and the Business Conduct Committee, and shall direct by whom those costs or any part thereof must be paid, unless the parties have notified the Business Conduct Committee in writing that they have agreed by whom such costs are to be paid.

45.2 Where the Company pays the costs of an Award under Rule 44.3, each party shall be jointly and severally liable to the Company for payment of those costs.

45.3 Unless the parties to an arbitration agree in writing that this provision shall not apply and notify the Business Conduct Committee of such agreement within twenty-eight days of the date of the notification under Rule 42.4 if the arbitrator orders a party to pay the whole or any part of the costs of any other party the arbitrator may, after considering the costs claimed by any party, disallow any amounts which in the opinion of the arbitrator should not properly be payable by the party or parties ordered to pay such costs.

SECTION 8—COMMITTEES AND COMMITTEE PROCEDURES

46. COMMITTEES

46.1 There shall be a standing committee of the Exchange, known as the Business Conduct Committee, which shall be constituted in accordance with Rule 48.

46.2 The Company may from time to time appoint other committees of the Exchange for such purpose or purposes, and with such powers, as the Company thinks fit.

47. COMMITTEE PROCEDURES

47.1 A committee may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within fifteen minutes after the time appointed for holding the meeting, the persons present may choose one of their number to be chairperson of the meeting.

47.2 The quorum for committee meetings shall be three. Decisions of the committee shall require a two thirds majority of votes of the members present and voting.

47.3 A committee may meet and adjourn and otherwise regulate its proceedings in whatever manner it thinks fit.

47.4 The contemporaneous linking together by telephone or other means of communication of a number of committee members not less than a quorum, whether or not any of the members are out of New Zealand, shall be deemed to constitute a meeting of the committee.

47.5 A resolution in writing signed by all the committee members for the time being in New Zealand, shall be as valid and effectual as if it had been passed at a meeting of the committee duly convened and held, provided that the committee members signing such resolution would constitute a quorum. Any such resolution may consist of several documents in similar form each signed by one or more committee members. Any such document sent by a committee member by telegram, cable, facsimile copier, telex or other means of electronic communication in permanently visible form shall be deemed to have been signed by the committee member.

47.6 Appointments to a committee shall be made for a maximum term of three years provided that a member retiring under this Rule may, unless ineligible for reappointment, be reappointed for a further term or terms of a maximum of three years each.

47.7 The Company may review the membership of a committee at any time and subject to the provisions of these Rules may remove or replace any member then serving.

47.8 The Company shall promptly fill up any casual vacancy in a committee by appointing to the committee a person of the same category as the person who vacated office.

47.9 A committee may delegate any of its powers to a sub-committee consisting of such member or members of its body as the committee thinks fit and may, from time to time, revoke any such delegation. Any sub-committee so formed shall, in the exercise of the powers delegated to it, conform to any regulation that may, from time to time, be imposed upon it by the committee by which it was appointed. Decisions of a sub-committee shall require the unanimous approval of all members of the sub-committee. The provisions of Rules 47.3 to 47.8 shall (with all necessary modifications) apply to each sub-committee appointed pursuant to this Rule 47.9.

47.10 Any notice or other communication to be given to any committee shall be delivered or posted, addressed to that Committee, at the address for the time being of the principal place of business of the Exchange.

SECTION 9—BUSINESS CONDUCT COMMITTEE

48. CONSTITUTION AND FUNCTIONS

48.1 The Business Conduct Committee shall consist of five persons appointed by the Company of whom at least two shall be persons who are independent in terms of Rule 3.3. The Company will advise Trading Permit Holders before appointing a person to the Business Conduct Committee and give them a reasonable opportunity to comment on the proposed appointment.

48.2 The chairperson of the Business Conduct Committee shall be a person who is independent in terms of Rule 3.3

48.3 The functions of the Business Conduct Committee shall be to:

- (a) supervise the business conduct of Dealers;
- (b) exercise the powers of investigation, suspension and termination, and any other powers, conferred on the Business Conduct Committee by these Rules; and
- (c) recommend to the Board any changes to the Rules which the Committee considers necessary or desirable.

48.4 In order to assist it in fulfilling its functions under these Rules the Business Conduct Committee may:

- (a) appoint the Company, any officers or employees of the Company, the auditors of the Company or of the Exchange, or such other persons as the Committee sees fit, to act as agent or agents of the Committee in carrying out any investigation, inspection or other function;
- (b) employ, or otherwise seek advice or assistance from external investigators, auditors, accountants, lawyers and other experts, and such other persons as the Committee thinks fit.

48.5 The Business Conduct Committee may in its discretion, upon application by a Dealer or a client of a Dealer, make a ruling as to the interpretation or application of these Rules and any such ruling shall be binding upon the Dealer and the client and upon all persons claiming through or under the Dealer; provided that the Dealer or client may appeal against the ruling in the manner prescribed in Rule 51.

49. PROCEDURES AND GENERAL POWERS

49.1 Reference to the Business Conduct Committee may be made by:

- (a) the Company in respect of any matter concerning the conduct of a Dealer; or
- (b) the Company in respect of the approval of any Trading System Operator; or
- (c) a Dealer whenever these Rules provide for such a reference; or
- (d) a complainant under Rule 25; or
- (e) the Securities Commission.

49.2 When a reference is made to the Business Conduct Committee under Rule 49.1, unless the Dealer has already given the Committee its comments on any report in respect of the matter or the complaint by the Company or by any agent of the Committee, the Committee shall, subject to Rule 49.3, notify the Dealer in writing of the allegations or complaint made against it, inviting the Dealer to state, in writing, within such time as the Committee specifies, whether it agrees with any of the facts or allegations set out in the notice and, if so, whether it accepts that they or any of them constitute a breach of these Rules.

49.3 Notwithstanding Rule 49.2, the Business Conduct Committee shall not be required to disclose the identity of an informant, or to furnish any information which might lead to such disclosure, where the Committee is of the view that to do so would inhibit or prejudice the Company or the Committee or any other committee established under these Rules in carrying out its duties.

49.4 The Business Conduct Committee when considering any matter under these Rules, may regulate its sittings and adopt such procedures as it thinks fit provided that:

- (a) the Committee shall be governed by the rules of natural justice and shall give each party a reasonable opportunity to make written or oral representations, to call witnesses, and to cross examine any witness called against it;
- (b) the Committee may appoint an assessor to assist it in its deliberations;
- (c) the Committee may determine a matter on written representations if, having regard to the nature and gravity of the dispute, it is satisfied that it is suitable for such determination and, in the case of a complaint, the parties consent to such a procedure being adopted;
- (d) in determining a matter by way of oral hearing, the Committee:
 - (i) shall hear the matter in private, unless the Committee is of the opinion that the case is appropriate for public hearing;
 - (ii) may at its discretion permit the parties to be legally represented and to call witnesses to give evidence before it;
- (e) the Committee shall not be bound by any enactment or rule of law relating to the inadmissibility of evidence in proceedings before any court of law, but shall accept as conclusive any finding of fact made by such a court;

(f) where a reference against a Dealer is found to be proved, which shall be on a balance of probabilities, the Committee shall, before taking any action under Rule 49.5:

- (i) provide the Company with an opportunity to put before the Committee any matters known about the Dealer that may affect its decision; and
- (ii) allow the Dealer, or anyone on its behalf, to address the Committee in mitigation of penalty.

49.5 The Business Conduct Committee, after considering any matter referred to it, or investigating any matter of its own volition, may:

- (a) decide that no action should be taken;
- (b) issue a private warning or reprimand;
- (c) issue a notice of censure;
- (d) issue such recommendations, or give such advice, or issue such directions to remedy any matter revealed in the evidence or contained in any reports submitted to the Committee, as it sees fit;
- (e) fine a Dealer in such amount as the Committee considers appropriate;
- (f) recommend to the Company that any reports or any extract or summary thereof, or any finding of, or sanction imposed by, the Committee be published under Rule 49.11;
- (g) direct that a Dealer shall not accept Business from any new clients without the express consent of the Committee;
- (h) make a termination order or suspension order under Rule 50;
- (i) direct, by way of a compensation order, that the Dealer recompense any client who has suffered a readily determinable loss arising as a direct result of any matter on which the Committee has adjudicated and in respect of which the Dealer is at fault;

and shall make a written record of any action so taken.

49.6 If any party fails to attend a hearing before the Business Conduct Committee, the Committee may adjourn the hearing, or proceed in the absence of the complainant or the Dealer unless it appears to the Committee that there are reasonable grounds for the absence.

49.7 The Business Conduct Committee shall give written notice of its findings in respect of any matter and of any action taken under Rules 49.5, 49.13 and 49.14 to the Company and to the parties concerned, informing the parties, where appropriate, of their right of appeal under Rule 51.

49.8 Where any matter concerning a Dealer is under consideration by the Business Conduct Committee or the Appeal Board under these Rules the Dealer shall cooperate in any investigation carried out with regard thereto:

- (a) by providing all information, papers and documents concerning the matter which are in the possession or under the control of the Dealer; and
- (b) by rendering all such assistance as may be reasonable and necessary to enable the matter to be fully investigated.

49.9 If no notice of appeal is lodged by the Dealer or a complainant concerned under Rule 51 the findings of, or any action taken by, the Business Conduct Committee shall be deemed conclusive and binding upon the Dealer.

49.10 The Business Conduct Committee shall have discretion to make such orders as to costs in connection with, or preparatory to, a hearing as it thinks fit, and in the absence of any order such costs shall be borne by the Company.

49.11 Notification of any decision, finding or criticism made by the Business Conduct Committee, or of any action taken by the Business Conduct Committee, may be sent, together with any reasons for such decision, finding, criticism or action, in such terms as the Committee thinks fit, to:

- (a) the Securities Commission or any other Regulatory Authority;
- (b) any person or body to whom, in the opinion of the Business Conduct Committee, such notification should be given for the purposes of publication or otherwise for the protection of members of the public, except that where an appeal or reference to the Appeal Board in respect of such findings, criticism or action is pending, notification may not be made unless the Committee determines that notification or publication is necessary for the purposes of protection of clients of the Dealer or members of the public, notwithstanding that it may operate to the prejudice of the Dealer or any other named person.

49.12 The Business Conduct Committee may impose upon any Dealer additional or more stringent record keeping or reporting requirements under or in connection with any Rule for such period as the Committee thinks fit. A Dealer may within fourteen days after the imposition of any such requirement, or at any time following a material change in circumstance, request the Business Conduct Committee in writing to reconsider its decision and may make such written representations, and supply such written information, as it considers relevant.

49.13 If at any time it appears to the Business Conduct Committee that any Trading System Operator is not a fit and proper person to be a Trading System Operator having regard to the current criteria for approval of Trading System Operators under Rule 9.5, the Business Conduct Committee may withdraw, suspend, or impose such conditions as it thinks appropriate on the approval of that Trading System Operator, and shall make a written record of any actions so taken.

49.14 If at any time it appears to the Business Conduct Committee, as a result of consideration of any matter under these Rules, that any person employed by a Dealer is not a fit and proper person for employment in the Business of the Dealer, the Committee may issue a direction disqualifying that person from further employment by that Dealer, or any other Dealer, in its Business.

50. POWERS OF TERMINATION AND SUSPENSION

50.1 The Business Conduct Committee may terminate or suspend all or any of a Dealer's trading rights by making a termination order or a suspension order in accordance with the provisions of these Rules.

50.2 The Business Conduct Committee may exercise its powers under Rule 50.1:

- (a) on a reference under Rule 24.5(a) following the completion of an investigation, the completion of an inspection, or the failure of a Dealer to furnish information; or

(b) of its own volition and at its complete discretion.

50.3 (a) On an application being made to it by a suspended Dealer, or of its own volition, the Business Conduct Committee may at any time modify, extend, suspend or revoke any suspension order made by the Committee, or any suspension arising automatically under these Rules.

(b) On making an application under Rule 50.3(a), a suspended Dealer shall furnish the Business Conduct Committee with such information as the Committee requests, including, where the application relates to an automatic suspension by virtue of Rule 50.11, a detailed statement of any settlement made with its creditors.

50.4 The Business Conduct Committee may make a termination order, or a suspension order, in any case where in the opinion of the Committee a Dealer:

- (a) has ceased to be a fit and proper person to carry on Business of a particular kind or to the extent to which it is carrying on, or proposing to carry on, such Business; or
- (b) has ceased to satisfy any requirement imposed upon it as a condition of its admission as a Dealer or, in the case of a Dealer which is a Trading Permit Holder, of the grant of its Trading Permit, as the case may be; or
- (c) is guilty of misconduct in carrying on its Business; or
- (d) has contravened any provision of these Rules, or of the Act or any regulations made under it, or the applicable rules of any other exchange or regulatory organisation; or
- (e) has provided the Company, or the Committee, or any Regulatory Authority with false, inaccurate or misleading information in purported compliance with any requirement of these Rules; or
- (f) in any other case such action is appropriate for the protection of clients of the Dealer or members of the public.

50.5 The Business Conduct Committee may make a temporary suspension order in respect of all or any of a Dealer's trading rights where it appears to the Committee to be necessary for the protection of clients of the Dealer or members of the public. The period of temporary suspension shall not exceed twenty-eight days and may not be renewed on the same grounds unless, within that period, it is ratified by the Committee in accordance with Rule 50.9. The provisions of Rules 50.10 and 50.14(b) shall apply to a temporary suspension as though it were a suspension order under Rule 50.9.

50.6 Subject to Rule 50.5, at least fourteen days before the meeting at which the Business Conduct Committee proposes to consider making a termination order or a suspension order relating to a Dealer, the Committee shall give notice in writing of the meeting to the Dealer stating the matter or matters alleged against it, and informing the Dealer of its rights under this Rule 50.

50.7 Within seven days of receipt of a notice under Rule 50.6, the Dealer may serve any written representations it wishes to make on the Company for the attention of the Business Conduct Committee.

50.8 At the meeting of the Business Conduct Committee referred to in Rule 51.6 the Committee shall, if the Dealer so wishes, hear any representations made by or on behalf of the Dealer.

50.9 Upon hearing a case against a Dealer, or upon making a modification, extension, suspension or revocation of a suspension order, under this Rule 50, the Business Conduct Committee may:

- (a) exercise any of the powers set out in Rule 49.5, either in addition to or in place of making a termination order or suspension order;
- (b) make such directions and arrangements as it feels appropriate for the purpose of giving effect to a termination order or suspension order; and
- (c) make such order as to costs as it thinks fit, including the Company's costs of those proceedings, any related proceedings of the Committee and the costs of investigating the matters giving rise to such proceedings.
- 50.10 A Dealer which has been suspended shall comply with any order relating to it, including any directions and arrangements which may be made for the purpose of giving effect to the order, made by the Business Conduct Committee under these Rules. A suspended Dealer shall remain liable for all of its obligations as a Dealer other than as expressly provided in its suspension order.
- 50.11 If a Dealer:
- (a) suspends payment of its debts; or
- (b) calls a meeting of its creditors; or
- (c) (in the case of an individual or all the members of a partnership) has a bankruptcy order made against him, her, or all of them; or
- (d) (in the case of a company, society or partnership) has a receiver or statutory manager or similar person appointed of it or of all or any of its assets; or
- (e) enters into liquidation (except a voluntary liquidation for the purpose of an amalgamation or reconstruction);
- its trading rights shall be suspended (without any prior decision of the Business Conduct Committee being required) from the date of the relevant event or from such other date as the Business Conduct Committee determines.
- 50.12 Where a Dealer which has been suspended is not incorporated in New Zealand and does not have its principal place of Business in New Zealand, the suspension of trading rights shall not apply to any trading by that Dealer which:
- (a) does not arise out of orders or instructions placed with, or given to, any branch, office or employee of the Dealer in New Zealand; and
- (b) is not transacted on a market in New Zealand; and
- (c) is carried on from a place of Business of that Dealer situated outside New Zealand.
- 50.13 Notwithstanding that the Business Conduct Committee may have made a suspension order against a Dealer and that the order is the subject of a request for reconsideration or notice of appeal, the Business Conduct Committee may make a termination order in respect of that Dealer either on account of the continuation of the circumstances leading to the making of the suspension order or on account of other matters.
- 50.14 (a) A termination order shall be in writing and shall take effect on the determination of the appeal process referred to in Rule 51.
- (b) A suspension order shall be in writing and shall take effect in accordance with its terms immediately upon receipt by the Dealer concerned except that where the Business Conduct Committee considers it appropriate for the protection of clients of the Dealer or members of the public the order may be expressed to have immediate effect but shall be confirmed in writing forthwith to the Dealer.
- (c) Neither a termination order or a suspension order in respect of a Dealer shall affect any liability of the Dealer for payment of any moneys to the Company or any other person which was incurred in accordance with these Rules prior to the date of the relevant order.
- 50.15 Upon a termination order being made in respect of a Dealer:
- (a) all the trading rights of the Dealer shall immediately terminate and it shall cease to be a Dealer; and
- (b) the Dealer shall continue to be subject to the jurisdiction of the Company and the Business Conduct Committee for a period of one year after expulsion in respect of:
- (i) its acts and omissions while a Dealer;
- (ii) any proceedings instituted against it (whether by the Company, the Committee or otherwise) within that period; and
- (iii) any order relating to the Dealer, including any directions or arrangements which may be made for the purpose of giving effect to any order made by the Business Conduct Committee under these Rules.
- 50.16 Where a Trading Permit Holder has been suspended (other than by reason of any action by the Clearing House), or a termination order has been made in respect of a Trading Permit Holder:
- (a) all or any of the open positions held by the Trading Permit Holder may, with the consent of the Business Conduct Committee and the Clearing House, be transferred to a Public Broker who is a Trading Permit Holder and the Business Conduct Committee may appoint any person to take all such action in the name of the first-named Trading Permit Holder, and to execute all such documents and do all such other things, as may be necessary to give effect to such transfer; or
- (b) unless action is taken under Rule 50.16(a) the Trading Permit Holder (or the receiver, statutory manager, provisional liquidator, liquidator or similar officer of the Trading Permit Holder, as the case may be), may request a Public Broker who is a Trading Permit Holder to trade on its behalf and that Public Broker shall accept and act on such request unless it satisfies the Business Conduct Committee that it has reasonable grounds for declining to do so.
- 50.17 Any time limit or period referred to in this Rule 50 may, on the application of a Dealer, or the Company, or by the Business Conduct Committee of its own volition, be varied by the Business Conduct Committee.

SECTION 10—APPEAL BOARD

51. CONSTITUTION, PROCEDURES AND POWERS

51.1 Where any person gives notice in writing to the Company that it wishes to appeal against a decision of:

- (a) the Company under Rules 9, 17, 18 or 52.14; or
- (b) the Business Conduct Committee under Rules 48.4, 49 or 50;

in relation to that person (an "appellant"), the Company shall within ten business days, after prior consultation with the Commission, appoint a person or persons who are independent in terms of Rule 3.3 as an Appeal Board (the "Appeal Board") to review the decision and shall promptly notify the Appellant of the date and time when, and the place at which, the appeal will be considered.

51.2 Any notice to be given under Rule 51.1 shall:

- (a) be given within ten business days after the appellant receives notice of the decision against which it wishes to appeal;
- (b) include an address for service; and
- (c) be accompanied by the sum of \$1,500 or such other amount as the Business Conduct Committee determines by way of initial contribution, in whole or in part, towards the costs of the appeal, which amount shall be refundable if:
 - (i) the decision appealed against is reversed; or
 - (ii) a termination of trading rights is cancelled or reduced to a suspension, or a suspension is reduced or cancelled, or a fine is reduced or cancelled.

51.3 Pending a decision of the Appeal Board, unless the Business Conduct Committee otherwise determines:

- (a) a decision not to grant an application, or to refuse an admission or approval, shall stand;
- (b) a suspension of trading rights, or of any approval, which has been imposed by the Business Conduct Committee, shall remain in force;
- (c) a termination of trading rights shall be deemed to be a suspension of those trading rights pending the decision of the Appeal Board;
- (d) any conditions imposed by the Business Conduct Committee on any approval or grant of trading rights shall remain in force;
- (e) a fine imposed shall not be required to be paid.

51.4 The appellant:

- (a) shall state the grounds for its appeal by notice in writing to the Appeal Board; and
- (b) may request the opportunity to make an oral submission (which the Appeal Board may in its absolute discretion allow or refuse);

no later than five business days before the date fixed for consideration of the appeal by the Appeal Board.

51.5 In considering an appeal, the Appeal Board may adopt such procedure as it thinks fit provided that:

- (a) the proceedings shall be governed by the rules of natural justice and each party shall be given, in advance of the hearing of the appeal, copies of any documents to be produced in evidence;
- (b) the Appeal Board may determine a case on written representations if, having regard to the nature and gravity of the subject matter of the appeal, it is satisfied that the case is suitable for such determination and the Dealer consents to such a procedure being adopted;
- (c) the Appeal Board may determine an appeal by way of oral hearing, in which case it shall:
 - (i) hear the appeal in private, unless the Appeal Board is of the opinion that it is suitable for public hearing;
 - (ii) permit the parties to the appeal to be legally represented and to call witnesses to give evidence before it, except that no party may introduce evidence that could with reasonable diligence be made available, but was not made so available, to the Company or the Business Conduct Committee, as the case may be, without leave of the Appeal Board;

(d) the Appeal Board shall not be bound by any enactment or rule of law relating to the inadmissibility of evidence in proceedings before any court of law, but shall accept as conclusive any finding of fact made by such a court;

(e) the Appeal Board shall have regard to the same criteria, if any, as the Company or the Business Conduct Committee, as the case may be, is required by these Rules to have regard to in considering the matter in respect of which the appeal is made;

(f) if during the course of an appeal, a member of the Appeal Board becomes unable to act, the appeal may, with the consent of the appellant, continue notwithstanding;

(g) no finding of fact by the Company or the Business Conduct Committee shall be reversed by the Appeal Board unless it is satisfied that the finding cannot be justified upon the evidence available to the Company or the Business Conduct Committee, as the case may be, or that further evidence has become available which makes the finding unsafe and unsatisfactory;

(h) the Appeal Board shall be entitled to consider and rule on any question of law arising from any decision appealed against, including any question arising from the manner in which the proceedings of the Company or the Business Conduct Committee, as the case may be, were conducted.

51.6 The Appeal Board may, after hearing an appeal, confirm, revoke or vary any finding or decision, or order as to costs, made by the Company or the Business Conduct Committee, and may impose such other decision as it sees fit, or make any other further order as may in its opinion be required including an order for a rehearing before the same or a differently constituted Committee on such terms as are reasonable in the circumstances, but shall, before imposing a sanction:

- (a) provide the Company or the Business Conduct Committee, as the case may be, with an opportunity to put before the Appeal Board any matters known about the appellant that may affect its decision; and
- (b) allow the appellant, or anyone on its behalf, to address the Appeal Board in mitigation of penalty.

51.7 The Appeal Board shall make its decision as expeditiously as possible and no later than two months after its appointment.

51.8 The Appeal Board shall notify its decision, with reasons, to the appellant and to the Company, and may include in its decision an order for the payment of costs or expenses whether incurred by the Appeal Board, the appellant, the Business Conduct Committee or the Company.

51.9 A decision of the Appeal Board shall for the purposes of these Rules be deemed to be the decision of the Company or the Business Conduct Committee, as the case may be, and shall be final and binding on all persons affected.

51.10 Where the Appeal Board is constituted by more than one person its decision shall be by a majority of those persons.

51.11 It shall be a condition of the submission of an appeal to the Appeal Board that in appealing the appellant is deemed to have released the Appeal Board and its members from any claims, suits or actions for damages or for costs in respect of any decision made by the Appeal Board.

51.12 The Appeal Board may, on the application of the appellant or at its own discretion, extend any time limit applying to the process of appeal.

51.13 Any notice or other communication to be given to the Appeal Board shall be delivered or posted, addressed to the Appeal Board, at the address for the time being of the principal place of business of the Exchange.

SECTION 11—FIDELITY FUND

52. CONSTITUTION AND PURPOSE

52.1 In this Rule 52:

“agent” in relation to a Dealer includes any director, officer, employee or servant of the Member and where the Dealer is a partnership includes any partner in the Dealer;

“fraudulent misuse” includes misuse contrary to the provisions of any applicable law or regulation;

“NZFOE” means Level Ten (1992) Limited, the company which formerly owned and operated the Exchange;

“relative” in relation to any person means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister, of the person.

52.2 The Company shall maintain a fidelity fund, which shall be the property of the Company, but shall be kept separately from all its other property, and shall be held in trust for the purposes set out in this Rule 52.

52.3 The Fidelity Fund shall consist of:

- (a) the amount which constituted the fidelity fund of NZFOE at the date of adoption of these Rules by the Company and which on such date was resettled on the Company by NZFOE on the trusts set out in this Rule;
- (b) the initial contribution, if any, paid to the Company for payment into the Fidelity Fund by each new Dealer, as fixed from time to time by the Company;
- (c) annual contributions and levies paid by Dealers under Rule 53;
- (d) the interest and profits from time to time accruing from the investments of the Fidelity Fund; provided that unless and until the Company from time to time decides otherwise the net income from the Fidelity Fund shall be paid to the Company to be applied in defraying the general costs of administration of the Fidelity Fund and/or the business of the Company;
- (e) moneys recovered by or on behalf of the Company in exercise of a right of action conferred by this Rule 52;
- (f) moneys paid by an insurer pursuant to any contract of insurance or indemnity entered into by the Company pursuant to Rule 52.19; and
- (g) any other moneys lawfully paid into the Fidelity Fund by the Company or any other person.

52.4 Notwithstanding any other provision of these Rules or the Contracts (Privity) Act 1982 the Company shall have power from time to time to:

- (a) appoint a new trustee of the trusts relating to the Fidelity Fund in place of the Company;
- (b) vary all or any of the terms of the trusts relating to the Fidelity Fund;
- (c) transfer the Fidelity Fund to the trustee or trustees of any fidelity fund maintained by Sydney Futures Exchange Limited the benefit of which is to be made available to persons dealing with Dealers in place of the Fidelity Fund;
- (d) resettle the Fidelity Fund on such other person or persons, and upon such terms, as the Company may think fit.

52.5 Except as otherwise provided in this Rule 52, there shall be paid out of the Fidelity Fund, in such order as the Company deems proper:

- (a) the amount of all claims, including costs, allowed by the Company or established against the Fidelity Fund under this Rule 52;
- (b) the amount of all claims, including costs, allowed by the Company or established against the fidelity fund of NZFOE referred to in Rule 52.3(a) after the date of adoption of these Rules in accordance with the rules of that fund and which would have been payable out of that fund but for its resettlement upon the Company;
- (c) all legal and other expenses incurred in investigating, defending, settling or otherwise dealing with claims against the Fidelity Fund, or incurred in relation to the Fidelity Fund, or in the proper exercise by the Company or any of its officers, employees or agents of any of the rights, powers and authorities vested in the Company by this Rule 52;
- (d) all premiums payable in respect of contracts of insurance or indemnity entered into by the Company pursuant to Rule 52.19;
- (e) expenses incurred in administering the Fidelity Fund, including the salaries and wages of persons employed by the Company in relation to the Fidelity Fund; and
- (f) all other moneys payable out of the Fidelity Fund in accordance with these Rules or any applicable legislation.

52.6 The Company shall establish and keep proper accounting records in respect of the Fidelity Fund and shall:

- (a) cause a balance sheet in respect of the Fund to be made out at least once in every year as at the annual balance date of the Company; and
- (b) cause its auditors to audit the annual accounts of the Fidelity Fund, and to prepare a report on the accounts which shall be laid before the Board at the next meeting of the Board held after completion of the audit.

52.7 (a) The Company may appoint a committee to be known as the Fidelity Fund Committee which shall consist of not less than three persons, at least two of whom are members of the Board.

(b) The Company may delegate to the Fidelity Fund Committee all or any of its powers, authorities and discretions under this Rule 52 other than this Rule 52.7 and may at any time vary or revoke any such delegation.

(c) The provisions of Rule 47 shall apply to the Fidelity Fund Committee.

(d) The Fidelity Fund Committee may from time to time, with the prior approval of the Company, appoint a manager to manage the investments of the Fidelity Fund under the control of the Fidelity Fund Committee and/or to carry out such of its other duties as the Fidelity Fund Committee from time to time thinks fit.

52.8 The Company may from time to time advance any sums to the Fidelity Fund upon such terms as it thinks fit. Moneys so advanced may at any time be repaid from the Fidelity Fund to the general funds of the Company.

52.9 (a) Any moneys in the Fidelity Fund that are not immediately required for its purposes may be invested in such manner as the Company or the Fidelity Fund Committee, as the case may be, from time to time thinks fit.

(b) The investments and funds of the Fidelity Fund shall at all times be kept separate and apart from the general funds of the Company and may from time to time be held by a nominee company as trustee for the Fidelity Fund.

52.10 (a) Subject to the provisions of this Rule 52, where:

(i) a person (the "claimant") suffers pecuniary loss because of a defalcation, or because of fraudulent misuse of money or other property, by a Dealer or agent of a Dealer; and

(ii) the loss is suffered in respect of money or other property that was, in connection with the Dealer's dealings in Contracts (whether or not any of those dealings was effected on the Exchange) entrusted to or received by the Dealer or an agent of the Dealer:

(aa) for on behalf of the claimant or any other person; or

(bb) because a Dealer was trustee of the money or other property;

the Fidelity Fund shall be applied for the purpose of compensating the claimant to the extent that that pecuniary loss cannot be compensated by recourse to the Dealer's resources.

(b) The Company may disallow a claim against the Fidelity Fund in respect of a Dealer where the claimant was aware, or in the opinion of the Company ought reasonably to have been aware, that the Dealer was not permitted to trade on behalf of other persons, or was not permitted to receive or hold money or property on behalf of other persons.

(c) The Company may in assessing the amount payable to the claimant rely on the advice of the receiver, statutory manager, official assignee, provisional liquidator, liquidator or similar officer (as the case may be) of the Dealer, as to the amount, or maximum amount which will, or is likely to, be payable to that claimant out of the assets of the Dealer available for distribution to creditors.

(d) Except as otherwise provided in this Rule 52.10 and Rule 52.18, the maximum aggregate amount that may be paid to all claimants for the purpose of compensating them in accordance with this Rule 52.10 for pecuniary loss in respect of any one Dealer shall not exceed the sum of One Hundred Thousand Dollars (\$100,000) or the amount then in the Fidelity Fund, whichever is the lesser. Any amount that is paid from the Fidelity Fund shall, to the extent to which it is subsequently repaid to the Fund, be disregarded.

(e) If the Company, having regard to the ascertained or contingent liabilities of the Fidelity Fund, considers that the assets of the Fund so permit, it may apply out of the Fund such sums in excess of the amount limited by or under this Rule 52.10 as the Company, in its absolute discretion, thinks fit in or towards compensating persons who have suffered pecuniary loss and would but for such limitation be entitled to compensation in accordance with this Rule 52.10.

52.11 (a) Subject to the provisions of this Rule 52, a person who suffers pecuniary loss of the nature referred to in Rule 52.10 shall be entitled to claim compensation from the Fidelity Fund.

(b) A person shall not have a claim against the Fidelity Fund in respect of pecuniary loss in relation to money or other property suffered after the money or property has, in the due course of the administration of a trust, ceased to be under the sole control of the Dealer or its agent (as the case may be), in respect of whom the claim is made.

(c) A claimant shall not be entitled to receive any compensation pursuant to this Rule 52 until the claimant has taken all actions which the Company may in its absolute discretion prescribe in order effectively to recover or mitigate the pecuniary loss suffered by the claimant, including (without limitation) filing of a proof of debt with any receiver, statutory manager, official assignee, provisional liquidator, liquidator or similar officer, as the case may be, of the Dealer, and pursuit of such proceedings, or other legal or equitable remedies, as may be reasonable in the circumstances.

(d) A person shall not have a claim against the Fidelity Fund where that person:

(i) is a relative of; or

(ii) is a partner of; or

(iii) (being a company) is a related company of; or

(iv) is an officer of, or an officer of a related company of; or

(v) is a controller of;

a Dealer or its agent to whom Rule 52.10 applies; provided that the Company may in its absolute discretion allow a claim by a relative of a Dealer but shall not be obliged to give any reasons for allowing or disallowing a claim by any such relative.

(e) Subject to the provisions of this Rule 52, the amount which a claimant shall be entitled to claim as compensation from the Fidelity Fund shall be the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the amount or value of all moneys or other benefits received or receivable by the claimant from a source other than the Fidelity Fund in relation to the loss.

52.12 Where all persons who have submitted claims pursuant to Rule 52.11 have been fully compensated for pecuniary loss in accordance with the provisions of Rule 52.10 any agent of the Dealer in respect of whom compensation was paid who has made payment to a person in compensation for loss suffered by that person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the Fidelity Fund if the Company, having regard to all the circumstances, determines that the agent was not wholly or partly responsible for the loss and acted honestly and reasonably in the matter.

52.13 The Company shall cause to be published in a daily newspaper circulating in the locality in which the Dealer or the Dealer's agent to whom Rule 52.10 applies has or had its principal place of business a notice specifying a date, not being earlier than three months after the publication of the notice, on or before which claims for compensation from the Fidelity Fund, in relation to the person specified in the notice, may be made and a copy of such notice shall be sent to every Dealer. All claims shall be made in writing to the Company on or before the date specified in the notice and any claim that is not so made shall be deemed to be barred unless the Company in its absolute discretion shall determine otherwise.

52.14 (a) Subject to the provisions of this Rule 52, the Company may allow and settle a proper claim for compensation from the Fidelity Fund at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

- (b) If the Company disallows a claim, either wholly or partly, it shall give to the claimant, or to the person who lodged the claim on behalf of the claimant, as the case may be, notice of the disallowance and of the grounds therefor.
- (c) The Company, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the Company acts would not be sufficient to establish the guilt of that person in a criminal trial in respect of the defalcation or fraudulent misuse of property.
- (d) Any claimant who is dissatisfied with a decision of the Company under this Rule 52.14 may, by notice in writing to the Company, appeal against the decision in the manner prescribed in Rule 51.
- 52.15 The Company may at any time require a person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a Dealer or an agent of the Dealer or any other person, or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of any such securities, documents or statements of evidence by the first-mentioned person, the Company may disallow any claim by the person.
- 52.16 On payment out of the Fidelity Fund of any moneys in respect of a claim, the Company shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.
- 52.17 Money or other property belonging to the Company, other than the Fidelity Fund, shall under no circumstances be available for the payment of a claim under this Rule 52 except as provided in Rule 52.8.
- 52.18 (a) Where the amount in the Fidelity Fund is insufficient to pay the whole of the amount of all claims against it that have been allowed, the amount in the Fidelity Fund shall, subject to Rule 52.18(b), be apportioned among the claimants in such manner as the Company in its absolute discretion thinks equitable, and any such claims so far as they then remain unpaid shall be deemed to be charged against future receipts (if any) of the Fidelity Fund and paid out of the Fidelity Fund when moneys are available in it; provided always that nothing in this Rule 52 or Rule 53 shall oblige the Company, or entitle any liquidator of the Company, to make any levy upon Dealers or any of them, or to advance or contribute other moneys of the Company to the Fidelity Fund, to meet any deficiency which is charged upon future receipts of the Fund.
- (b) Where the aggregate of all claims that have been allowed pursuant to this Rule 52 exceeds the total amount that may, pursuant to Rule 52.10, be paid in respect of a Dealer, the total amount shall be apportioned among the claimants in such manner as the Company in its absolute discretion thinks equitable, and on payment out of the Fidelity Fund of that total amount in accordance with that apportionment, all such claims and any orders relating to those claims and all other claims against the Fidelity Fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that Dealer shall be discharged.
- 52.19 (a) The Company may, in its absolute discretion, enter into a contract with any person whereby the Company will be insured or indemnified, to the extent and in the manner provided in the contract, against liability in respect of claims against the Fidelity Fund under this Rule 52.
- (b) Such a contract may be entered into in relation to Dealers generally, or a particular Dealer or Dealers, or any class or classes of Dealers, or Dealers or any class or classes of Dealers generally with the exclusion of particular named Dealers.
- (c) No person who has a claim against the Fidelity Fund shall have any right of action in respect of that claim against any insurer with whom the Company has from time to time effected any contract of insurance or indemnity in accordance with Rule 52.19(a).
- (d) Neither the Company nor any member of the Board or of the Fidelity Fund Committee shall be liable to any person, whether a Dealer or not, for not effecting any contract of insurance or indemnity, or for effecting any contract of insurance or indemnity on any particular terms, or for damage alleged to have been suffered by any Dealer by the publication in good faith of a statement that a contract entered into under this Rule 52.19 does, or does not, as the case may be, apply in relation to that Dealer.
- 52.20 A Dealer in respect of whom any amount of compensation has been paid or is payable out of the Fidelity Fund to a claimant in accordance with this Rule 52 shall indemnify the Company and the Fidelity Fund in respect of such amount and all costs and expenses incurred by the Company in respect of the claim by that claimant and shall pay to the Company on demand the amount payable pursuant to this indemnity.

53. CONTRIBUTIONS AND LEVIES

- 53.1 A Dealer shall pay contributions to the Fidelity Fund, of such amounts, and payable at such time or times, as may from time to time be prescribed by the Company in respect of the class of Dealer to which that Dealer belongs.
- 53.2 If at any time the amount in the Fidelity Fund is insufficient to pay all amounts that at the time, are required to be paid under Rule 52, the Company may impose a levy on Dealers, or any class or classes of Dealers, for payment into the Fidelity Fund but the aggregate amount of the levies imposed by the Company under this Rule 53.2 at any time shall not exceed the maximum amount which the Company in its discretion, considers at that time is necessary in the circumstances to enable all known obligations of the Fidelity Fund under Rule 52 in the relevant year to be met in full.
- 53.3 The Company may in its absolute discretion differentiate between Dealers, or between different classes of Dealers, as regards the amount of initial contributions, annual contributions or levies and in particular, without limiting such discretion, may direct that no contribution, or no levy, shall be payable by any Dealers or class of Dealers who do not accept instructions to trade on behalf of other persons; provided always that in exercising its powers under this Rule 53.3 the Company shall fairly and equitably take into account the separate interests of each class of Dealer.
- 53.4 If a Dealer fails to pay any contribution or levy payable under this Rule 53 when due the Dealer shall pay to the Company interest on the unpaid amount from the due date for payment until payment in full is made, at such rate as is from time to time prescribed by the Company

but this provision is without prejudice to the powers of the Business Conduct Committee in respect of the Dealer's default.

53.5 The Company is not bound to refund or waive the whole or any part of any contribution or levy which has been paid, or is due to be paid, by a Dealer which has ceased for any reason to be a Dealer, or whose trading rights have been suspended, and all contributions and levies which are due by such a Dealer but have not been paid shall remain due and payable notwithstanding such cessation or suspension of the Dealer unless waived by the Company by notice in writing to the Dealer.

SECTION 12—ALTERATION OF RULES

54. ALTERATION OF RULES

54.1 The Board may from time to time add to, vary or rescind all or any of these Rules but no addition, variation or rescission shall take effect until it has first been approved by an ordinary resolution of the members of the Company.

54.2 An addition to, or variation or rescission of, these Rules pursuant to Rule 54.1 shall:

- (a) be effective from such date as is determined by the Company; and
- (b) unless otherwise specified by the Company, apply to all Contracts, whether entered into before or after that date, except as provided in Rules 10.2(b) and 10.2(c)(i).

54.3 The Company will give notice of all additions to, and variations and rescissions of, these Rules to Dealers but the accidental omission to give notice, or the non-receipt of notice, of any alteration, variation or rescission, by any Dealer, shall not invalidate that addition, variation or rescission, or delay its operation.

SCHEDULE 1

Client Acknowledgement

(For use by a Client of a Public Broker)

TO: _____
(Full legal name of Public Broker)

BY: _____
(Full legal name of Client)

Provisions Concerning Public Brokers and all Clients

The Client acknowledges that:

1. The Client has appointed the Public Broker as the Client's agent for the purpose of dealing in futures and options contracts ("Contracts") in accordance with the terms of this Client Acknowledgement.
2. The Public Broker is regulated in the conduct of its futures and options dealing business by New Zealand Futures & Options Exchange Limited (the "Company").
3. All business transacted on behalf of the Client is subject to the Rules of the futures and options exchange operated by the Company ("Exchange") (as altered from time to time) and the business rules, customs, usages and practices of any other exchange or market on which any such business may be transacted, and all instructions given by the Client to the Public Broker will be on the basis that the Rules of the Exchange and the rules, customs, usages and practices of any other such exchange or market, are binding upon and accepted by both the Client and the Public Broker.
4. The Client has given careful consideration to the Client's objectives, financial situation and needs and has formed

the opinion that dealing in Contracts is suitable for the Client's purposes.

5. The Client will take all reasonable steps to obtain and communicate to the Public Broker all information, and deliver or cause to be delivered to the Public Broker all documents, with respect to dealings in Contracts on the Exchange or any other exchange or market, which are requested by a person having a right to request such information or documents, and the Client hereby authorises the Public Broker to produce the information or documents to the requesting party.
6. Dealing in Contracts incurs the risk of loss, as well as the prospect of profit, and may create an obligation to give or take delivery, or make a cash adjustment, in accordance with the terms of a Contract.
7. The Public Broker will at all times be trading on the Exchange and on any other exchange or market as a principal notwithstanding that in certain trading the Public Broker will be acting on the instructions of clients and the Public Broker will incur a personal obligation when dealing in Contracts as a result of instructions received from the Client.
8. The Public Broker may deal in Contracts as principal on its own account and the Public Broker's directors, partners or employees (unless they are trading system operators) may deal in Contracts on their own account.
9. The Public Broker has the right to take the opposite position to the Client in Contracts, either on its own account or on behalf of other clients.
10. Any benefit or right obtained by the Public Broker upon registration of a Contract with the clearing house for any exchange or market as a result of the assumption of liability or a guarantee by that clearing house, or any other legal result, is personal to the Public Broker and does not pass to the Client.
11. The Client's telephone conversations with the Public Broker can be recorded by the Public Broker, or by the Company or the operator of any other exchange or market. The Client has the right to listen to any recording made by the Public Broker in the event of a dispute or anticipated dispute.
12. The Client will pay commission and/or management and any other fees at the rates notified by the Public Broker to the Client in writing from time to time.
13. Unless otherwise agreed in writing, the Public Broker is entitled to any interest on money and property of the Client which is segregated or invested by the Public Broker.
14. The Public Broker may call for payment of initial margins or deposits, or of variation margins (by whatever terms those obligations are described) by payment of such money, or lodgement of such Approved Securities in lieu thereof, as the Public Broker, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by dealing in Contracts as a result of instructions received from the Client.
15. The Client's liability in respect of margin calls is not limited to the amount, if any, deposited with the Public Broker.
16. Should the Client fail to meet a call, or lodge Approved Securities, then the Public Broker may (without prejudice

to any other rights or powers it may have) in its absolute discretion, and without creating an obligation to do so, close out, without notice, all or any of the Client's Contracts.

17. The time for payment of margins is of the essence and if no other time is stipulated by the Public Broker prior to calling a margin then the Client is required to comply within twenty-four hours.
18. Liability to pay an initial margin accrues at the time the trade is executed regardless of when a call is made.
19. Liability to pay a variation margin accrues at the time the margin comes into existence, regardless of when a call is made.
20. The Client is responsible to pay in cash any deficit owing to the Public Broker after closure and if the Client defaults in payment of such deficit, the Public Broker may realise any securities held by the Public Broker and apply the proceeds against that deficiency.
21. Where the Client is a clearing member of a clearing house and Contracts entered into by the Public Broker as a result of instructions received from the Client are registered in the name of the Client at that clearing house, clauses 14–20 (inclusive) of this Client Acknowledgement do not apply in respect of those Contracts.
22. The Public Broker has the right to refuse to deal on behalf of the Client in relation to any dealings in Contracts (other than closing out existing open positions held by, or on behalf of, the Client) or limit the number of open positions held by, or on behalf of, the Client, or both. The Public Broker will inform the Client of any refusal at or before the time the Client places the order or as soon as possible thereafter.
23. Without affecting any existing obligations or liabilities:
 - 23.1 the Client may cancel this Client Acknowledgement at any time by giving notice in writing to that effect to the Public Broker; or
 - 23.2 the Public Broker may at any time decline to accept any further instructions from the Client by giving notice in writing to that effect to the Client.
24. Upon cancellation of this Client Acknowledgement, the Public Broker will unless otherwise agreed in writing, close out all the Client's futures Contracts and close out, abandon or exercise any options Contracts not yet exercised.
25. The Client has read and understands the Risk Disclosure Statement attached to this Client Acknowledgement and the futures and options trading terms used in it have been explained to the Client by the Public Broker.

Provisions Relevant to Discretionary Accounts

(NB: This section should be struck out if the Client has not authorised the Public Broker to operate a discretionary account.)

The Client acknowledges that:

1. Subject to any limitations contained in writing (whereby the Client limits the Public Broker's discretion by reference to the markets to be traded, size of open position, number of Contracts to be traded per day, the proportion of money or property lodged with the Public Broker to be used for initial margins and other limitations as agreed in writing) between the Client and the Public Broker, the Client authorises the Public Broker to trade in Contracts on the Exchange or on

any other exchange or market, at the absolute discretion of the Public Broker and without further reference to, or approval by, the Client.

2. The Client may at any time by written notice instruct the Public Broker to:
 - (a) change any of the limitations referred to in clause 1 of this section;
 - (b) transfer any open position to a non-discretionary account of the Client, provided that the Client has lodged with the Public Broker a Client Acknowledgement in which this section relating to discretionary accounts has been struck out.
3. Giving instructions pursuant to clause 1 of this section may result in losses to the Client.

Provisions Concerning Public Brokers and Clients of Introducing Brokers

(NB: This section should be struck out if the Client has not been introduced to the Public Broker by an Introducing Broker.)

The Client acknowledges that:

1. The Client has appointed _____ [Name of Introducing Broker] as the Client's agent for the purposes of dealing in Contracts and has been introduced to the Public Broker by the Introducing Broker.
2. The Introducing Broker will be responsible for the giving of instructions on behalf of the Client to the Public Broker and the Public Broker is authorised to accept and act on such instructions and the Client is responsible for those instructions.
3. The Public Broker is responsible for trading, or the giving of instructions for trading, in Contracts on behalf of the Client in accordance with the Client's instructions given by the Client or the Introducing Broker.
4. In giving instructions to the Public Broker on behalf of the Client, the Introducing Broker acts as agent for the Client and not as agent for the Public Broker.
5. The Introducing Broker has no actual, implied or ostensible authority to speak or act in any manner on behalf of, or as agent for, the Public Broker.
6. The Public Broker may pay to the Introducing Broker a proportion of the commission or other fees paid by the Client to the Public Broker in respect of Contracts traded on behalf of the Client.
7. The Public Broker may either:
 - (a) pay any moneys owing to the Client directly to the Client at the Client's address; or
 - (b) pay any such moneys into a bank account of which the Client is the sole signatory, details of which account shall be given by the Client or by the Introducing Broker to the Public Broker in writing.
8. Subject only to the exception provided in clause 9 of this section:
 - (a) the Client will not deposit any money or property with the Introducing Broker, including without limiting the generality of the foregoing, any amount due for margins or commission;
 - (b) all money or property shall be deposited with the Public Broker.

9. The Client may either:

- (a) lodge cheques with the Introducing Broker with respect to the Client's obligations, such cheques to be crossed with two parallel transverse lines with the words "not negotiable account payee only" between, or substantially between, the lines and to be made payable to the Public Broker's Client Funds Account; or
- (b) deliver cheques to the Public Broker at its address or credit them directly to the Public Broker's bank account in a manner agreed between the Public Broker and the Client.

Appointment of Attorney

The Client hereby appoints the Company as attorney of the Client to do all things necessary to transfer any open positions held by the Public Broker on behalf of the Client to another Trading Permit Holder of the Company where the Public Broker's trading rights have been suspended other than as a result of default in meeting commitments to any clearing house.

Signed on behalf of the Client:

Full name of person signing:

Designation:
(being a duly authorised officer of the Client)

Signed on behalf of the Client:

Full name of person signing:

Designation:
(being a duly authorised officer of the Client)

DATED this day of 19

RISK DISCLOSURE STATEMENT

The risk of loss in trading in futures or options contracts can be substantial. You should therefore carefully consider whether that kind of trading is appropriate for you in the light of your financial circumstances. In deciding whether or not you will become involved in that kind of trading, you should be aware of the following matters:

- (a) You could sustain a total loss of the initial margin funds that you deposit with your broker to establish or maintain a position in a futures market.
- (b) If the market price moves against your position, you may be required, at short notice, to deposit with your broker additional margin funds in order to maintain your position. Those additional funds may be substantial. If you fail to provide those additional funds within the required time, your position may be liquidated at a loss and in that event you will be liable for any shortfall in your account resulting from that failure.
- (c) Under certain conditions, it could become difficult or impossible for you to liquidate a position. This can, for example, happen when there is a significant change in prices over a short period.
- (d) The placing of contingent orders (such as a "stop-loss" order) may not always limit your losses to the amounts that you may want. Market conditions may make it impossible to execute such orders.
- (e) A "spread" position is not necessarily less risky than a simple "long" or "short" position.
- (f) The high degree of leverage that is obtainable in futures or options trading because of small margin requirements can work against you as well as for you. The use of leverage can lead to large losses as well as large gains.
- (g) If you propose to trade in options, the maximum loss in buying an option is the amount of the premium, but the risks in selling an option are the same as in other futures trading.

This statement does not disclose all of the risks and other

significant aspects involved in trading on a futures or options market. You should therefore study futures and options trading carefully before becoming involved in it.

SCHEDULE 2

Client Acknowledgement

(For use by a Client of an Introducing Broker)

TO:
(Full legal name of Introducing Broker)

BY:
(Full legal name of Client)

Provisions Concerning Introducing Brokers and all Clients

The Client acknowledges that:

- 1. The Client has appointed the Introducing Broker as the Client's agent for the purpose of dealing in futures and options contracts ("Contracts") in accordance with the terms of this Client Acknowledgement.
- 2. The Introducing Broker is regulated in the conduct of its futures and options dealing business by New Zealand Futures & Options Exchange Limited (the "Company").
- 3. All business transacted on behalf of the Client is subject to the Rules of the futures and options exchange operated by the Company ("Exchange") (as altered from time to time) and the business rules, customs, usages and practices of any other exchange or market on which any such business may be transacted, and all instructions given by the Client to the Introducing Broker will be on the basis that the Rules of the Exchange and the rules, customs, usages and practices of any other such exchange or market, are binding upon and accepted by both the Client and the Introducing Broker.
- 4. The Client has given careful consideration to the Client's objectives, financial situation and needs and has formed the opinion that dealing in Contracts is suitable for the Client's purposes.
- 5. The Client will take all reasonable steps to obtain and communicate to the Introducing Broker all information, and deliver or cause to be delivered to the Introducing Broker all documents, with respect to dealings in Contracts on the Exchange or any other exchange or market, which are requested by a person having a right to request such information or documents, and the Client hereby authorises the Introducing Broker to produce the information or documents to the requesting party.
- 6. Dealing in Contracts incurs the risk of loss, as well as the prospect of profit, and may create an obligation to give or take delivery, or make a cash adjustment, in accordance with the terms of a Contract.
- 7. The Introducing Broker will be giving instructions on the Client's behalf to
[Name of Public Broker] to trade on the Exchange, or on other exchanges or markets.
- 8. The Introducing Broker is the Client's agent and not the Public Broker's agent and has no actual implied or ostensible authority to hold itself out as being authorised to speak or act in a manner on behalf of, or as agent for, the Public Broker.
- 9. The Public Broker, when carrying out the instructions given by the Introducing Broker on behalf of the Client, will at all times be trading on the Exchange and on any other exchange or market as a principal notwithstanding that in certain trading the Public Broker will be

- implementing instructions given to the Introducing Broker by the Client as principal of the Introducing Broker.
10. The Public Broker will incur a personal obligation when dealing in Contracts as a result of instructions given by the Introducing Broker on behalf of the Client.
 11. The Introducing Broker may deal in Contracts as principal on its own account and the Introducing Broker's directors, partners or employees (unless they are trading system operators) may deal in Contracts on their own account.
 12. The Introducing Broker has the right to take the opposite position to the Client in Contracts, either on its own account or on behalf of other clients.
 13. Any benefit or right obtained by the Public Broker upon registration of a Contract with the clearing house for any exchange or market as a result of the assumption of liability or a guarantee by that clearing house, or any other legal result, is personal to the Public Broker and does not pass to the Client.
 14. The Client's telephone conversations with the Introducing Broker can be recorded by the Introducing Broker, or by the Company or the operator of any other exchange or market. The Client has the right to listen to any recording made by the Introducing Broker in the event of a dispute or anticipated dispute.
 15. The Client will execute a Client Acknowledgement in favour of the Public Broker, who will hold all moneys received from the Client, or on the Client's account, and the Client will be under separate obligations as a client of the Public Broker.
 16. Subject only to the exception provided in clause 17 of this section:
 - (a) the Client will not deposit any money or property with the Introducing Broker, including, without limiting the generality of the foregoing, any amount due for margins or commission;
 - (b) all money or property will be deposited with the Public Broker.
 17. The Client may either:
 - (a) lodge cheques with the Introducing Broker with respect to the Client's obligations, such cheques to be crossed with two parallel transverse lines with the words "not negotiable account payee only" between, or substantially between, the lines and to be made payable to the Public Broker's Client Funds Account; or
 - (b) deliver cheques to the Public Broker at its address or credit them directly to the Public Broker's bank account in a manner agreed between the Public Broker and the Client.
 18. The Introducing Broker may either:
 - (a) give instructions to the Public Broker to pay any moneys owing to the Client directly to the Client at the Client's address; or
 - (b) give instructions to the Public Broker to pay any such moneys into a bank account of which the Client is the sole signatory, details of which account shall be given by the Client or by the Introducing Broker to the Public Broker in writing.
 19. As regards all money and property deposited with the Public Broker, or received by the Public Broker for or on behalf of the Client, the Public Broker will be bound to segregate the money and property in accordance with the law and the Rules of the Exchange.
 20. The Client will pay commission and/or management and any other fees at the rates notified by the Public Broker to the Client in writing from time to time.
 21. A proportion of such commissions and fees (if any) may be payable by the Public Broker to the Introducing Broker.
 22. An additional fee or fees (if any) may be payable by the Client to the Introducing Broker.
 23. Unless otherwise agreed in writing, the Public Broker is entitled to any interest on money and property of the Client which is segregated or invested by the Public Broker.
 24. The Public Broker may call for payment of initial margins or deposits, or of variation margins (by whatever terms those obligations are described) by payment of such money, or lodgement of such Approved Securities in lieu thereof, as the Public Broker, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by dealing in Contracts as a result of instructions received from the Introducing Broker on behalf of the Client.
 25. The Client's liability in respect of margin calls is not limited to the amount, if any, deposited with the Public Broker.
 26. Should the Client fail to meet a call, or lodge Approved Securities, then the Public Broker may (without prejudice to any other rights or powers it may have) in its absolute discretion, and without creating an obligation to do so, close out, without notice, all or any of the Client's Contracts.
 27. The time for payment of margins is of the essence and if no other time is stipulated by the Public Broker prior to calling a margin then the Client is required to comply within twenty-four hours.
 28. Liability to pay an initial margin accrues at the time the trade is executed regardless of when a call is made.
 29. Liability to pay a variation margin accrues at the time the margin comes into existence, regardless of when a call is made.
 30. The Client is responsible to pay in cash any deficit owing to the Public Broker after closure and if the Client defaults in payment of such deficit, the Public Broker may realise any securities held by the Public Broker and apply the proceeds against that deficiency.
 31. Where the Client is a clearing member of a clearing house and Contracts entered into by the Public Broker as a result of instructions received from the Introducing Broker on behalf of the Client are registered in the name of the Client at that clearing house, clauses 24-30 (inclusive) of this Client Acknowledgement do not apply in respect of those Contracts.
 32. The Public Broker has the right to refuse to deal on behalf of the Client in relation to any dealings in Contracts (other than closing out existing open positions held by, or on behalf of, the Client) or limit the number of open positions held by, or on behalf of, the Client, or both. The Public Broker will inform the Client of any refusal at or before

the time the Client places the order or as soon as possible thereafter.

33. Without affecting any existing obligations or liabilities:
- (a) the Client may cancel this Client Acknowledgement at any time by giving notice in writing to that effect to the Introducing Broker; or
 - (b) the Introducing Broker may at any time decline to accept any further instructions from the Client by giving notice in writing to that effect to the Client.
34. The Client has read and understands the Risk Disclosure Statement attached to this Client Acknowledgement and the futures and options trading terms used in it have been explained to the Client by the Introducing Broker.

Provisions Relevant to Discretionary Accounts

(NB: This section should be struck out if the Client has not authorised the Introducing Broker to operate a discretionary account.)

The Client acknowledges that:

1. Subject to any limitations contained in writing (whereby the Client limits the Introducing Broker’s discretion by reference to the markets to be traded, size of open position, number of Contracts to be traded per day, the proportion of money or property lodged with the Public Broker to be used for initial margins and other limitations as agreed in writing) between the Client and the Introducing Broker, the Client authorises the Introducing Broker to give instructions on the Client’s behalf to the Public Broker to trade in Contracts on the Exchange or on any other exchange or market, at the absolute discretion of the Introducing Broker and without further reference to, or approval by, the Client.

2. The Client may at any time by written notice instruct the Introducing Broker to:

- (a) change any of the limitations referred to in clause 1 of this section;
- (b) transfer any open position to a non-discretionary account of the Client, provided that the Client has lodged with the Introducing Broker a Client Acknowledgement in which this section relating to discretionary accounts has been struck out.

3. Giving instructions pursuant to clause 1 of this section may result in losses to the Client.

Signed on behalf of Client:

Full name of person signing:

Designation:
(being a duly authorised officer of the Client)

Signed on behalf of Client:

Full name of person signing:

Designation:
(being a duly authorised officer of the Client)

Dated this day of 19

RISK DISCLOSURE STATEMENT

The risk of loss in trading in futures or options contracts can be substantial. You should therefore carefully consider whether that kind of trading is appropriate for you in the light of your financial circumstances. In deciding whether or not you will become involved in that kind of trading, you should be aware of the following matters:

- (a) You could sustain a total loss of the initial margin funds that you deposit with your broker to establish or maintain a position in a futures market.
- (b) If the market price moves against your position, you may

be required, at short notice, to deposit with your broker additional margin funds in order to maintain your position. Those additional funds may be substantial. If you fail to provide those additional funds within the required time, your position may be liquidated at a loss and in that event you will be liable for any shortfall in your account resulting from that failure.

- (c) Under certain conditions, it could become difficult or impossible for you to liquidate a position. This can, for example, happen when there is a significant change in prices over a short period.
- (d) The placing of contingent orders (such as a “stop-loss” order) may not always limit your losses to the amounts that you may want. Market conditions may make it impossible to execute such orders.
- (e) A “spread” position is not necessarily less risky than a simple “long” or “short” position.
- (f) The high degree of leverage that is obtainable in futures or options trading because of small margin requirements can work against you as well as for you. The use of leverage can lead to large losses as well as large gains.
- (g) If you propose to trade in options, the maximum loss in buying an option is the amount of the premium, but the risks in selling an option are the same as in other futures trading.

This statement does not disclose all of the risks and other significant aspects involved in trading on a futures or options market. You should therefore study futures and options trading carefully before becoming involved in it.

SCHEDULE 3

FORM OF INTRODUCING BROKER—PUBLIC BROKER AGREEMENT

AGREEMENT dated the day of 19
 BETWEEN (“Public Broker”)
 AND (“Introducing Broker”)

Introduction

- A. The Introducing Broker carries on the business of dealing in futures and options contracts as an introducing broker on behalf of its clients (“Clients”).
 - B. The Introducing Broker and the Public Broker are authorised to act as Dealers on the futures and options exchange operated by New Zealand Futures & Options Exchange Limited (the “Exchange”).
 - C. The Public Broker has agreed to accept instructions from the Introducing Broker on behalf of clients of the Introducing Broker and to act as Public Broker in terms of this agreement and the agreement signed by each Client with the Public Broker.
- IT IS AGREED**

- 1. The Public Broker will accept instructions from the Introducing Broker to deal in futures and option contracts on behalf of clients of the Introducing Broker for whom the Public Broker has previously agreed to act (“Clients”) and the Public Broker will execute, or instruct third persons to execute, those instructions. The Public Broker may also accept instructions at any time direct from the Client.
- 2. The Introducing Broker will not give any instructions to the Public Broker on behalf of a Client until the Client has given or executed client acknowledgements or client agreements in an appropriate form with the Introducing

- Broker and the Public Broker. Copies of both acknowledgements or agreements will be held by the Introducing Broker and the Public Broker.
3. The Public Broker, the Introducing Broker and each Client will be bound by the provisions of the Rules of the Exchange and the business rules of any other futures or options exchange on which any dealing for that Client takes place.
 4. The Introducing Broker will be acting under this agreement as agent of the Client and not of the Public Broker and the Introducing Broker will not hold itself out as agent, partner or representative of the Public Broker or as authorised to speak or act in any manner on behalf of, or as agent of, the Public Broker.
 5. Where there is any inconsistency between the instructions given by the Introducing Broker and those given by a Client, the Public Broker is entitled to accept and act on the instructions of the Client.
 6. Where the Public Broker instructs third persons to deal in futures or options contracts on behalf of a Client, the Public Broker may share all commission and other remuneration with those persons in such manner as the Public Broker thinks fit.
 7. The Public Broker will pay the Introducing Broker commission on all business transacted by the Public Broker for each Client in accordance with this agreement, at such rate or rates as may from time to time be agreed upon by the parties. Such commission shall be payable only out of commission actually received by the Public Broker from the Client.
 8. The Introducing Broker shall promptly inform the Client of any call for payment or lodgement of cover by way of initial margin or variation margin (by whatever terms those obligations are described) which the Public Broker may make. If the Introducing Broker cannot readily be contacted the Public Broker shall make all reasonable efforts to inform the Client direct of any such call.
 9. The Introducing Broker shall inform the Client of any other amounts payable by the Client to the Public Broker promptly after being advised of such amounts by the Public Broker.
 10. The Public Broker shall send the Client monthly statements, open position statements and contract notes for all dealings in futures and options contracts by the Client with the Public Broker.
 11. The Public Broker reserves the right to refuse to deal on behalf of any Client in relation to any dealing in futures or options contracts (other than closing out existing open positions), or to limit the number of open positions held on behalf of any Client, or both. The Public Broker will inform the Introducing Broker of any refusal at or before the time at which the order is placed with the Public Broker, or as soon thereafter as reasonably possible.
 12. Either party may terminate this agreement at any time by giving the other seven days' notice in writing to that effect.
 13. Unless otherwise agreed between the parties, upon termination of this agreement the Public Broker will close out all contracts entered into on behalf of Clients and will close out, abandon or exercise any option not yet exercised, at the Public Broker's discretion.
 14. Termination shall not release either party from liability for any antecedent breach of any of the terms of this agreement.

EXECUTION

SIGNED by the Principal Broker _____

SIGNED by the Introducing Broker _____

BOB MACFARLANE, Acting for Clerk of the Executive Council. _____

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