



# New Zealand Gazette

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## NEW ZEALAND FUTURES & OPTIONS EXCHANGE RULES 1992

### New Zealand Futures & Options Exchange Rules 1992

CATHERINE A. TIZARD, Governor-General  
At Wellington this 28th day of February 1994

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL  
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 New Zealand Futures & Options Exchange Rules 1992.

#### *The New Zealand Futures & Options Exchange Rules are amended as follows:*

1. By inserting in Rule 2.1 immediately after the definition of "affiliated clients" the following new definition:

"allocate" in relation to a Trading Permit Holder, means to signify in accordance with the procedures from time to time prescribed by the Company that the bought or sold side of a Market Contract is to be registered in the name of another eligible person

nominated by that Trading Permit Holder, and "allocation" has a corresponding meaning.

2. By deleting the definitions of the terms "Clearing House Regulations and Clearing Member" in Rule 2.1 and substituting the following new definitions:

"Clearing By-Laws" means the by-laws of the Clearing House for use in clearing Contracts traded on the Exchange.

"Clearing Member" means a Dealer who is a member of the Clearing House.

"Clearing Member Guarantee" means a guarantee by a Clearing Member of the performance of all Contracts entered into by, or allocated to and confirmed by, a Trading Permit Holder which is not a Clearing Member, and an undertaking by that Clearing Member to cause all such Market Contracts to be registered by the Clearing House in its name (except where any such Market Contract is allocated to, and such allocation is confirmed by, another Clearing Member, or by another Trading Permit Holder in respect of which a current Clearing Member Guarantee is in existence), in the form set out in Schedule 4.

"Guarantor Clearing Member" in relation to a Trading Permit Holder which is not a Clearing Member

means a Clearing Member which is the guarantor under a current Clearing Member Guarantee in respect of that Trading Permit Holder.

3. By deleting the definition of the term "Client Contract" from Rule 2.1.

4. By deleting the definition of the term "give-up basis" in Rule 2.1 and substituting the following new definition of that term:

"give-up basis", in relation to a trade by Dealer, means the execution of that trade by the Dealer on the basis that the trade will be allocated to another Dealer.

5. By deleting the words "Clearing House Regulations" from the definition of "Open Contract" in Rule 2.1 and from Rules 10.10, 11.7, 11.8, 12.2(c) and 15.4 and substituting in each case the words "Clearing By-Laws".

6. By deleting Rule 8.3(a) and substituting the following new Rule 8.3(a):

(a) a member of the Clearing House or a person in respect of whom a current Clearing Member Guarantee is in existence; and

7. By deleting Rule 9.1(d) and substituting the following new Rule 9.1(d):

(d) provide the Company either with written confirmation that the applicant has been accepted as a Clearing Member or with a Clearing Member Guarantee in respect of the applicant;

8. By deleting from Rules 10.6(a), 10.6(d), 10.7(b), 10.7(c) and 10.7(d) the words "Clearing House" and substituting in each case the word "Company".

9. By deleting Rules 10.6(b) and (c) and substituting the following new Rules 10.6(b) and (c):

(b) If in the opinion of the Company a situation is developing or has developed which is capable of preventing the Company from declaring a mandatory settlement price, the Company may 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 Company 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 any of its 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.

10. By re-designating Rule 10.7(d) (as amended by clause 8 of these amendments) as Rule 10.7(e) and adding the following new rule as Rule 10.7(d):

(d) The Company will advise the Clearing House of the mandatory settlement price as soon as practicable but in any event no later than the time specified in the Contract Specifications.

11. By inserting the following new rule as Rule 10.8A:

10.8A The following provisions shall apply in respect of each class of option Contract:

(a) There shall be two types of option, namely:

(i) A call option ("call") whereby in consideration of the payment of a contract premium the buyer acquires the right to buy, at an exercise price selected from a list of such prices determined in accordance with Rule 10.9, and the seller assumes the obligation

to sell upon exercise of the option, the Underlying Security specified in the Contract Specifications.

(ii) A put option ("put") whereby in consideration of the payment of a contract premium the buyer acquires the right to sell, at an exercise price selected from a list of such prices determined in accordance with Rule 10.9, and the seller assumes the obligation to buy upon exercise of the option, the Underlying Security specified in the Contract Specifications.

(b) The payment of the Contract premium by the buyer of an option Contract shall be subject to the margin calling requirements set out in Rule 34 unless it is payable in full at the time the option Contract is traded.

12. By inserting the following new rules as Rules 10.10(e) and (f):

10.10(e) Where the buyer of an option Contract either:

(i) exercises or abandons the option in accordance with Rule 10.10(a); or

(ii) has the option automatically exercised by the Clearing House or expire worthless on the expiration date, in accordance with Rule 10.10(c);

and the contract premium, or cover for the contract premium, has not already been paid to or lodged with the Clearing House the buyer of the option shall pay the value of the contract premium to the Clearing House in accordance with the Clearing By-Laws.

(f) Where the seller of an option Contract has been given a notice of exercise by the Clearing House pursuant to Rule 10.10(d), it will from the time of receiving such notice be entitled to receive the net value of the contract premium.

13. By inserting the following new Rules as Rules 11.9 and 11.10 respectively:

11.9 A Trading Permit Holder which is not a Clearing Member may not trade a Contract on the Exchange, or be allocated a Contract which has been traded on the Exchange, unless such Contract is the subject of a current Clearing Member Guarantee in respect of that Trading Permit Holder.

11.10 Each Clearing Member shall be bound by, and shall comply with, the terms of any Clearing Member Guarantee to which it is a party.

14. By inserting the word "Securities" before the word "Commission" in Rules 31.2 and 51.1.

15. By deleting the words "AND CLIENT CONTRACTS" from the heading to Rule 32.

16. By deleting Rules 32.2 and 32.3 and substituting the following new Rules 32.2 and 32A:

32.2 (a) Upon registration of a Market Contract by the Clearing House it shall, by virtue of the Clearing By-Laws, immediately be extinguished and replaced by two Open Contracts with the Clearing House in accordance with the Clearing By-laws and the original parties to the Market Contract shall be released from their respective obligations to each other.

(b) All Contracts traded on the Exchange or otherwise pursuant to these Rules shall be between Trading Permit Holders as principals and except as required by the Clearing By-Laws or by these Rules neither the Clearing House nor the Company shall be obliged to recognise:

(i) the interest of any person in any Market Contract other than a Trading Permit Holder or Clearing Member which is a party thereto; nor

(ii) the interest of any person in any Open Contract

other than the Clearing Member which is a party thereto with the Clearing House.

### 32A. ALLOCATION, CONFIRMATION AND DESIGNATION OF TRADES

#### 32A.1 In this Rule 32A:

“Client” has for the purposes of this Rule and of the Clearing By-Laws the meaning given to that term in the Regulations or as otherwise prescribed by the Company from time to time.

“Client Trade” means a Trade held by a Dealer as a result of instructions received from a client.

“confirmation” means confirmation in accordance with the prescribed procedures that the bought or sold side of a Market Contract has been:

- (a) traded by a Trading Permit Holder; or
- (b) accepted by allocation from another Trading Permit Holder.

“designation” in relation to a Trade, means the indication or designation in accordance with the prescribed procedures that the Trade is a House Trade or Client Trade.

“Holder” means the Dealer in whose name a Trade is recorded in the Trading System or, where that Dealer is not a Clearing Member, its Guarantor Clearing Member, upon the Trade being confirmed (or being deemed to be confirmed) by the Dealer.

“House Trade” means any Trade other than a Client Trade.

“prescribed procedures” in relation to any allocation, confirmation, designation or rejection pursuant to this Rule 32A means the relevant procedures therefor prescribed by the Company from time to time.

“Trade” means the bought or sold side of a Market Contract.

#### 32A.2 A Trade may only be:

- (a) recorded in the name of:
  - (i) the Trading Permit Holder which executed the trade; or
  - (ii) a Trading Permit Holder or Clearing Member to whom the Trade is allocated, or deemed to be allocated, by the Trading Permit Holder referred to in paragraph (i) of this sub-clause.
- (b) allocated by the Trading Permit Holder referred to in sub-clause (a)(i) of this Rule.
- (c) allocated to a person which is a Trading Permit Holder or a Clearing Member.

#### 32A.3 Where a Trade is entered into by a Trading Permit Holder:

- (a) the Trading Permit Holder shall, in accordance with the prescribed procedures, either:
  - (i) designate the Trade as either a House Trade or a Client Trade; or
  - (ii) allocate the Trade to another person entitled to receive the allocation; or
  - (iii) reject the Trade, by notification of a dispute in accordance with the prescribed procedures.
- (b) a failure to designate or allocate or reject the Trade within the relevant time specified in the prescribed procedures shall be deemed to be a confirmation of the Trade and, subject to any provision of the Regulations, these Rules, or the Clearing By-Laws, the Trade shall be deemed to be designated as a House Trade provided that where particulars of a Trade are entered into the Trading

System the Trade shall be deemed to be recorded by both parties to the Trade.

(c) upon the resolution in accordance with these Rules or by agreement between the parties of a dispute in respect of a Trade, the Trade, as so resolved or agreed, shall be deemed to be confirmed by the party executing the Trade and the Company shall correct any entries in the Trading System accordingly.

32A.4 Where a Trading Permit Holder or Clearing Member receives an allocation of a Trade it may, in accordance with the prescribed procedures, either:

- (a) designate the Trade as either a House Trade or a Client Trade; or
- (b) allocate the Trade to another person entitled to receive the allocation.

32A.5 Any designation or allocation of a Trade by a Dealer shall be deemed to be a confirmation of that Trade by that Dealer and the last Holder of a Trade shall remain the Holder until the Trade is confirmed by any other eligible person to which the Trade is allocated.

32A.6 All designations and allocations shall be effected by the time specified in the prescribed procedures and all Trading Permit Holders and Clearing Members shall access the Trading System on a regular basis to ensure compliance with this requirement.

32A.7 Where the Trading Permit Holder which executed a Trade is not a Clearing Member:

- (a) subject to sub-clause (b) of this Rule the Trade shall be deemed to be immediately allocated to the Guarantor Clearing Member of the Trading Permit Holder;
- (b) any confirmation of the Trade by the Trading Permit Holder shall also be deemed to be a confirmation by the Guarantor Clearing Member of the Trading Permit Holder;
- (c) an allocation deemed to be made under sub-clause (a) of this Rule shall cease to apply upon the Trading Permit Holder allocating the Trade to another eligible person and the allocation being confirmed by that person prior to any further confirmation by the Guarantor Clearing Member of the Trading Permit Holder.

32A.8 The Company may correct an entry of particulars of a Trade in the Trading System:

- (a) prior to any confirmation of the Trade;
- (b) after that time, with the consent of the Holders of both sides of the Contract;
- (c) at any time, in accordance with a determination or finding of the Trading Manager in accordance with these Rules.

17. By deleting the words “AND ALLOCATION” from the heading to Rule 33.

18. By deleting the words “the Clearing House Regulations” from Rules 34.1(a) and 34.2(a) and substituting, in each case, the words “these Rules”.

19. By deleting the words “in respect of a Client Contract” from Rule 34.1(b) and by substituting the words “from a client in respect of a Contract”.

20. By deleting from Rule 34.2(b) the words “clients’ liability” and the words “under Client Contracts” and substituting the words “client’s liability” and the words “under Contracts traded on the Exchange” respectively.

21. By inserting immediately after Rule 34.2 the following new rule as Rule 34.2A:

34.2A(a) Where a client who has bought an option Contract either:

(i) exercises or abandons the option in accordance with Rule 10.10(a); or

(ii) has the option automatically exercised by the Clearing House or expire worthless on the expiration date, in accordance with Rule 10.10(c);

and the contract premium, or cover for the contract premium, has not already been paid to or lodged with the Public Broker the Public Broker shall call the value of the contract premium, unless the client is a Clearing Member and the option Contract has been allocated to that Clearing Member in accordance with the Clearing By-Laws.

(b) In the case of a bought option Contract, whether put or call, the total initial and variation margin liability shall not exceed the value of the contract premium.

22. By deleting the words "Client Contracts or other" from Rule 34.4(a).

23. By inserting the following new Rule as Rule 43.4A:

43.4A(a) If a claimant or a respondent carries on business as a Dealer from a place of business situated outside New Zealand it may at any time prior to the date of any pre-determination conference make a request in writing to the Business Conduct Committee that the dispute be determined on the written statements of the parties.

(b) The Business Conduct Committee shall, in considering a request pursuant to Rule 43.4A(a), have regard to all relevant circumstances including, in particular, the nature of the dispute and the amount of the sums involved and shall notify the parties and the arbitrator whether or not it agrees to any such request.

24. By deleting the words "Rules 43.3 or 43.4" from Rule 43.5 and substituting the words "Rules 43.3, 43.4 or 43.4A".

25. By inserting the following words at the end of Rule 43.9:

and must do so if the Business Conduct Committee agrees to a request pursuant to Rule 43.4A(a), and in any such event the provisions of Rules 43.6, 43.7, 43.9 and 43.10 shall not apply to the dispute

26. By inserting the word "or" immediately after the word "for" in Rule 52.10(ii)(aa).

27. By deleting Rule 50.11 and substituting the following new Rule 50.11:

50.11 If:

(a) a Dealer:

(i) suspends payment of its debts; or

(ii) calls a meeting of its creditors; or

(iii) (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

(iv) (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

(v) enters into liquidation (except voluntary liquidation for the purpose of an amalgamation or reconstruction); or

(b) a Dealer which is a Clearing Member ceases to be a Clearing Member (unless a Clearing Member Guarantee in respect of that Dealer is in existence at the time of such cessation and remains in full force), or if a Dealer is suspended as a Clearing Member; or

(c) a Clearing Member Guarantee in respect of a Dealer which is not a Clearing Member is terminated or otherwise ceases to be in full force for any reason and has not been replaced to the satisfaction of the Company;

the trading rights of that Dealer shall be suspended (without any prior decision of the Business Conduct Committee being required) from the time of the relevant event or from such other time as the Business Conduct Committee determines.

28. By inserting the following new Section as Section 13:

### **SECTION 13 - GOVERNING LAW**

#### **55. GOVERNING LAW**

55.1 These Rules, and all Contracts traded on the Exchange or otherwise traded pursuant to these Rules, shall be governed by and construed in accordance with the laws of New Zealand.

29. By inserting the following new Section as Section 14:

### **SECTION 14 - TRANSITIONAL PROVISIONS**

#### **56. DEFINITIONS FOR TRANSITIONAL PROVISIONS**

56.1 In Rules 57 and 58, except where inconsistent with the subject or context:

"Agreed Date" has the same meaning as in the LCH Deed of Release.

"Agreed Time" has the same meaning as in the LCH Deed of Release.

"LCH" means The London Clearing House Limited.

"LCH Deed of Release" means the deed entered into, or to be entered into, between the Company and LCH in the form set out in Schedule 5, or in such other form as may be prescribed by the Company.

"LCH Regulations" means the regulations entitled Membership Rules and Regulations of LCH for use in clearing the market of the Company.

"SFECH" means Sydney Futures Exchange Clearing House Pty Limited.

"Registered Positions" means all open positions with respect to Contracts traded on the Exchange which are registered with LCH pursuant to the LCH Regulations.

"Registrable Positions" means all open positions in respect of Contracts traded on the Exchange which are registrable with LCH, other than Registered Positions.

"Total Positions" means all open positions required to be registered by SFECH as at the opening of Exchange business on the Business Day immediately following the Agreed Date, comprising the Registered Positions referred to in Rule 58.4 and the Registrable Positions referred to in Rule 58.5.

#### **57. RELEASE OF LCH GUARANTEES**

57.1 The purpose of this Rule 57 is to facilitate the release of the guarantees subsisting from LCH to the Clearing Members under the LCH Regulations, such release being considered appropriate in the light of the termination of LCH's appointment as Clearing House on and from the Agreed Time.

57.2 This Rule 57 shall have effect on and from the date that the LCH Deed of Release is executed by all parties ("Effective Date").

57.3 Each Clearing Member as at the Effective Date irrevocably ratifies and confirms the appointment of the Company as its agent to execute for it and on its behalf the LCH Deed of Release.

57.4 Each Clearing Member as at the Agreed Time adopts the appointment of the Company referred to in Rule 57.3 and irrevocably ratifies and confirms the action of the Company as its agent in executing for it and on its

behalf the LCH Deed of Release, and without limiting the generality of that ratification and confirmation, confirms the authority of the Company to give the acknowledgement required by the Deed of Release.

57.5 The Company shall not be liable to any Clearing Member in respect of any damage or loss arising or occurring directly or indirectly by reason of the Company's execution of the LCH Deed of Release.

#### 58. GENERAL TRANSITIONAL PROVISIONS

58.1 The purpose of this Rule 58 is to facilitate the transfer of open positions from LCH to SFECH as Clearing House for the Exchange.

58.2 Each Clearing Member acknowledges that pursuant to the LCH Deed of Release, LCH shall release, discharge, abandon or re-deliver or cause to be released, discharged, abandoned, or re-delivered, any guarantees, securities or other non-cash cover held by LCH in respect of Contracts traded on the Exchange ("Non-Cash Cover").

58.3 (a) Each Clearing Member shall, no later than the time required by SFECH make arrangements whereby any Non-Cash Cover held by LCH at that date is replaced to its full value in favour of SFECH on or before the Business Day prior to the Agreed Date, by a bank guarantee, or other security, or a cash equivalent, acceptable to SFECH.

(b) Each Clearing Member shall, on or before the Business Day prior to the Agreed Date provide to SFECH and the Company such evidence as may be deemed necessary by SFECH of the replacement Non-Cash Cover established in accordance with Rule 58.3(a).

58.4 (a) Each Clearing Member acknowledges that, in accordance with the LCH Deed of Release, by the time determined in accordance with the LCH Deed of Release (the "Notification Time") LCH will provide the Company and SFECH with full particulars of all Registered Positions of each Clearing Member.

(b) At or before the Notification Time, each Clearing Member holding Registered Positions shall notify the Company and SFECH, in the form prescribed by the Company, details sufficient to transfer each such Registered Position to a clearing member of SFECH (including the number of such Registered Positions to be transferred to such clearing member).

58.5 At or before 7.00 pm on the Agreed Date (or if the Agreed Date is not a Business Day, the Business Day prior to the Agreed Date) each Clearing Member shall notify the Company and SFECH, in the form prescribed by the Company, details sufficient to enable registration by SFECH of Registrable Positions in the name of a clearing member of SFECH, such details to include the number of such Registrable Positions to be registered in the name of such clearing member.

58.6 Each Clearing Member hereby appoints the Chairman and Chief Executive of the Company jointly and severally its agent, to nominate a clearing member or clearing members of SFECH into whose name or names:

(a) Registered Positions are to be transferred, in the event of the Clearing Member failing for any reason to comply with Rule 58.4(b); and

(b) Registrable Positions shall be registered, in the event of the Clearing Member failing for any reason to comply with Rule 58.5.

58.7 Each Clearing Member acknowledges that upon:

(a) compliance by LCH with the LCH Deed of Release; and

(b) notification by each Clearing Member in

compliance with Rule 58.4(b) and 58.5, or nominations by the Chairman or Chief Executive as attorney under Rule 58.6;

SFECH shall, subject to the by-laws of SFECH, cause the Total Positions to be registered by it in the name of the clearing members who are authorised as transferees under Rules 58.4(b), 58.5 and 58.6 in accordance with the by-laws of SFECH.

#### 59. EXPIRY OF SECTION 14

Section 14 and Schedule 5 shall expire and be deemed to be cancelled upon the expiry of 15 months after the Effective Date but without affecting in any way the validity of any appointment, release, ratification, indemnity, transfer, acknowledgement or other act, matter or thing of any nature whatsoever made, given or done pursuant to any provisions of Section 14 prior to such expiry or of the LCH Deed of Release.

30. By inserting the following new clause as clause 10A in the Client Acknowledgement in Schedule 1:

10A. The Client has no rights, whether by way of subrogation or otherwise, against any person other than the Public Broker, in respect of Contracts traded on any exchange or market or traded pursuant to the rules, regulations or by-laws of any exchange or market, except to the extent (if any) provided by any applicable law.

31. By deleting clause 21 of the Client Acknowledgement in Schedule 1 and substituting therefor the following new clause 21:

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, or where such Contracts are registered in the name of a clearing member other than the Public Broker at the request of the Client, clauses 14-20 (inclusive) of this Client Acknowledgement do not apply in respect of those Contracts.

32. By inserting the following new clause as clause 10A in the Client Acknowledgement in Schedule 2:

10A. The Client has no rights, whether by way of subrogation or otherwise, against any person other than the Introducing Broker, in respect of Contracts traded on any exchange or market or traded pursuant to the rules, regulations or by-laws of any exchange or market, except to the extent (if any) provided by any applicable law.

33. By deleting clause 31 of the Client Acknowledgement in Schedule 2 and substituting therefor the following clause 31:

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, or where such Contracts are registered in the name of a clearing member other than the Public Broker at the request of the Client, clauses 24 - 30 (inclusive) of this Client Acknowledgement do not apply in respect of those Contracts.

34. By inserting the following new Schedule as Schedule 4:

### SCHEDULE 4

#### CLEARING MEMBER GUARANTEE

TO: NEW ZEALAND FUTURES & OPTIONS EXCHANGE LIMITED (the Company)

(the Guarantor Clearing Member)  
(Full legal name of Clearing Member)

hereby guarantees to the Company and to each Dealer the performance by, \_\_\_\_\_

(Full legal name of Trading Permit Holder)

(the "Guaranteed Trading Permit Holder") of all Market Contracts entered into by, or allocated to and confirmed by, the Guaranteed Trading Permit Holder and undertakes that it will cause all such Market Contracts to be registered by the Clearing House in the name of the Guarantor Clearing Member except where a Market Contract is allocated to, and such allocation is confirmed by, another Clearing Member or by another Trading Permit Holder in respect of which a current Clearing Member Guarantee is in existence.

The liability of the Guarantor Clearing Member under this guarantee and undertaking is unconditional and shall not be affected by anything which, but for this provision, might operate to release the Guarantor Clearing Member from its obligations including, without limiting the generality of the foregoing:

(a) any transaction or arrangement that may take place between the Guarantor Clearing Member or the Guarantor Trading Permit Holder and any other person; or

(b) the liquidation of the Guaranteed Trading Permit Holder or any other person.

This guarantee and undertaking shall remain in full force and effect unless terminated by the Guarantor Clearing Member by notice in writing to the Company and the Guaranteed Trading Permit Holder but termination shall not affect the rights of the Company or any Dealer under this guarantee and undertaking in respect of Market Contracts entered into by, or allocated to and confirmed by, the Guaranteed Trading Permit Holder prior to notification of such termination to Trading Permit Holders by the Company.

Terms used in this guarantee and undertaking which are not defined in this guarantee and undertaking but which are defined in the Rules shall have the meaning given to them by the Rules.

DATED this     day of             19

EXECUTION AS A DEED

THE COMMON SEAL of the GUARANTOR CLEARING MEMBER was affixed in the presence of:  
 \_\_\_\_\_ Director  
 \_\_\_\_\_ Director/Secretary

35. By inserting the following new schedule as Schedule 5:

#### SCHEDULE 5

THIS DEED is made on

BETWEEN

NEW ZEALAND FUTURES & OPTIONS EXCHANGE LIMITED of 10th Level, Stock Exchange Centre, 191 Queen Street, Auckland, New Zealand ("the Exchange")

AND

SYDNEY FUTURES EXCHANGE CLEARING HOUSE PTY LIMITED of 30-32 Grosvenor Street Sydney NSW 2000 ("SFECH")

AND

THE LONDON CLEARING HOUSE LIMITED of 1st Floor 105 Symonds Street Auckland New Zealand ("LCH")

#### RECITALS

A By Agreement dated 21 January 1985 ("the Clearing Agreement"), New Zealand Futures and Options Exchange Limited (then known as "New Zealand Futures Exchange Limited") appointed LCH (then known as "International Commodities Clearing House Limited") as the clearing house of the Market.

B By Agreement for Novation dated 17 December 1992 ("the Novation Agreement") the rights and obligations of New Zealand Futures & Options Exchange Limited under the Clearing Agreement, the Ticker Service Agreement and the Information Disclosure Agreement were novated in favour of the Exchange (then called "Aklaw Number Thirty Nine Limited").

C LCH has agreed to the termination of its appointment as clearing house of the Market such termination to take effect at the Agreed Time with SFECH to be appointed in its stead, effective from the time of such termination notwithstanding any other termination date arising pursuant to the terms of the Clearing Agreement.

D Under Clause 2.01 of the Clearing Agreement, LCH has agreed to register and clear, and to guarantee to Clearing Members the fulfilment by the other party of, all contracts traded on the Market and which are registered by LCH.

E Under Clause 9.04 of the Clearing Agreement, on termination of the Clearing Agreement, LCH is entitled, after consultation with the Exchange, to make such arrangements with regard to contracts traded on the Market which are still open at the date of termination as LCH may in its sole discretion deem expedient.

F The Exchange wishes to make arrangements for:

(a) LCH to be released from all obligations arising pursuant to the Clearing Agreement ("the Clearing Obligations") and the Novation Agreement and the Ticker Service Agreement and the Information Disclosure Agreement and for all those agreements to be terminated.

(b) LCH to be released from the Clearing Guarantees.

(c) SFECH pursuant to a separate agreement to assume the obligations of clearing house for the Exchange and pursuant to that agreement and pursuant to and in accordance with the By-Laws of SFECH and the Rules of the Exchange to register and assume the counterparty obligation to contracts registered with or registrable with LCH as at the Agreed Time.

(d) SunGard to enter into the Service Bureau Agreements.

G LCH will acknowledge that the arrangements made pursuant to Recital F hereof will constitute satisfactory arrangements for the purpose of Clause 9.04 of the Clearing Agreement, and will release any further right it may have under that Clause.

H The Exchange is prepared to agree to release LCH from the Guarantee Obligations and Clearing Obligations, and to provide in this Deed for a release by Clearing Members of the Clearing Guarantees, upon the conditions set out in this Deed.

THIS DEED WITNESSES

1. INTERPRETATION

1.1 Definitions

In this document unless the context otherwise requires:

"Agreed Date" means the day on which the Agreed Time occurs;

"Agreed Time" means the date and time agreed

between LCH, SFECH and the Exchange to be the termination of LCH's appointment as clearing house of the Market or midnight on 20 January 1995 whichever is the earlier;

"Business Day" means a day on which the Market is open for trading;

"Clearing Agreement" means the Agreement referred to in Recital A, as novated in the manner described in Recital B;

"Clearing Guarantees" means the guarantees by and the obligations of LCH to each Clearing Member under the LCH Regulations as the other party to each open contract traded on the Market and registered in the name of that Clearing Member, to perform the obligations of a seller or a buyer as the case may be under that open contract, as a principal to each such Clearing Member and also includes the obligations contained within the Clearing Agreement and arrangements between LCH and Clearing Members to give effect to the Clearing Agreement;

"Clearing Members" means the persons to whom LCH provides Clearing Guarantees on or immediately before the Agreed Date;

"Escrow Agent" means the person appointed by SFECH in accordance with clause 6.1 or such other person as is agreed by the parties, or is appointed by LCH in accordance with clause 6.1;

"Escrow Funds" means the total of the amounts held by LCH at 2.00pm on the date referred to in clause 5.1 for all Clearing Members in respect of initial margin liabilities and buffer-amounts for NZFOE Contracts, to the intent that the term "buffer amounts" refers to any additional amount which LCH may call in accordance with Regulation 12 of the LCH Regulations;

"Exchange" means New Zealand Futures & Options Exchange Limited (formerly known as Aklaw Number Thirty Nine Limited);

"Guarantee Obligations" means the obligations to guarantee arising under clause 2.01 of the Clearing Agreement as described in Recital F;

"Information Disclosure Agreement" means the agreement between LCH (then known as the International Commodities Clearing House Limited) and New Zealand Futures & Options Exchange Limited (formerly known as New Zealand Futures Exchange Limited) dated 19 August 1991;

"LCH" means The London Clearing House Limited;

"LCH Regulations" means the regulations entitled Membership Rules and Regulations of the London Clearing House Limited for use in clearing the Market;

"Market" means the market for the trading of futures and options contracts conducted by the Exchange;

"NZFOE Contracts" means contracts traded on the Market and registered by LCH;

"Service Bureau Agreements" means the agreements between the Exchange and SunGard for the supply to the Market of the Automated Trading System as described in the Clearing Agreement and the agreement between SFECH and SunGard for the provision of clearing facilities, on a service bureau basis;

"SFECH" means the Sydney Futures Exchange Clearing House Pty Limited;

"SunGard" means SunGard New Zealand Limited;

"Ticker Service Agreement" means the agreement between LCH (then known as International Commodities Clearing House Limited) and New Zealand Futures & Options Exchange Limited (then known as New Zealand Futures Exchange Limited) dated 7 October 1985.

## 1.2 Construction

In this document, unless the context otherwise requires:

(a) words importing:

(i) the singular include the plural and vice versa; and

(ii) any gender include the other genders;

(b) an obligation of two or more parties shall bind them jointly and severally;

(c) if a word or phrase is defined cognate words and phrases have corresponding definitions;

(d) a reference to:

(i) a person includes a corporation and a body politic;

(ii) a person includes the legal personal representatives, successors and assigns of that person;

(iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;

(iv) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;

(v) time is to local time in Auckland;

(vi) a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place shall be taken to refer to the person or body established or constituted or in place or by which its functions have become exercisable;

(e) a reference to moneys held by LCH means moneys held in cash by LCH and moneys standing to the credit of any account with a bank or other financial institution, where LCH has the capacity to control that account, directly or indirectly;

(f) a reference to an amount of currency is a reference to that amount in New Zealand Dollars.

## 2. COMING INTO EFFECT OF THIS DEED

2.1 The coming into effect of this Deed and the consequent obligations of the parties under this Deed are conditional upon:

(a) the authority of the Exchange to sign this Deed as agent for and on behalf of all Clearing Members being ratified and confirmed by amendments to the rules of the Exchange; and

(b) the coming into effect of the Service Bureau Agreements and notification by SunGard that the facilities to be provided pursuant to those agreements are available for use by the Exchange and SFECH.

2.2 The Exchange may establish its authority to sign this Deed for the purposes of clause 2.1 by effecting amendments to its Rules. The Exchange warrants that such amendments will give it that authority.

2.3 If this Deed has not come into effect by midday on 19 January 1995 it shall terminate immediately.

2.4 The validity of the Notice of Termination of the Clearing Agreement which has been given to the Exchange by LCH (the receipt of which is acknowledged by the Exchange) and to take effect at midnight on 20

January 1995 shall not in any way be affected or abrogated by the execution of this agreement. That Notice of Termination shall continue in force unless this Deed comes into effect before and continues in effect beyond midnight on 20 January 1995.

### 3. NON CASH COVER

3.1 On no later than 15 Business Days prior to the Agreed Date, LCH will provide to SFECH full particulars of all guarantees, securities and other non cash cover including currency held other than in New Zealand Dollars then held by it in respect of the liability of any Clearing Member to LCH arising out of NZFOE Contracts. LCH will not thereafter accept any other non cash cover in respect of any such liabilities.

### 4. NO ALTERATION OF INITIAL MARGIN

4.1 LCH will not after 15 Business Days prior to the Agreed Date either alter the method of calculation of initial margin amounts then in force or reduce initial margin rates below those then in force for NZFOE Contracts without, in either case, obtaining the prior consent of SFECH, which consent shall not be unreasonably withheld or delayed.

### 5. COVENANTS BY LCH

5.1 LCH covenants that it will on the last Business Day prior to the Agreed Time (or if the Agreed Time is a Business Day, on that day):

- (a) by 10.00am advise the Exchange and SFECH of the amount of money which it expects to hold for each Clearing Member in respect of initial margin liabilities for NZFOE Contracts upon the payment of all calls which have then been made by LCH;
- (b) by 11.30am provide to the Exchange and SFECH full particulars of NZFOE Contracts then registered in the name of each Clearing Member;
- (c) by 2.00pm advise the Exchange and SFECH of the amount held for each Clearing Member in respect of initial margin liabilities and buffer amounts for NZFOE Contracts; and
- (d) by 5.00pm pay to the Escrow Agent the Escrow Funds through the New Zealand Austraclear cash payment system.

### 6. ESCROW FUNDS, COMMISSION

6.1 SFECH shall appoint the Escrow Agent on or before 14 Business Days prior to the Agreed Date, failing which LCH may appoint the Escrow Agent. The Escrow Agent shall be appointed to hold and to deal with the Escrow Funds in accordance with this Deed. The Escrow Funds may be invested by the Escrow Agent in any manner nominated by SFECH and agreed to by LCH and such investment shall not be altered prior to the Agreed Time without the consent of LCH, such consent not to be unreasonably withheld or delayed. Any interest earned on such investments shall accrue for the benefit of and be paid by the Escrow Agent to SFECH or as SFECH shall in writing direct, however, SFECH shall remit to LCH an amount comprising:

- (a) interest earned up to the Agreed Time, on that part of the Escrow Funds which comprises the first \$50,000 held by LCH on behalf of each Clearing Member as at 2.00pm on the last Business Day prior to the Agreed Date (or if the Agreed Date is a Business Day on that day); and
- (b) a margin of 0.75% per annum on the interest earned on the remainder of the Escrow Funds up to midnight at the end of the Agreed Date.

6.2 Until the Agreed Time the Escrow Agent shall hold the Escrow Funds on account of LCH. As from that time

the Escrow Agent shall hold the Escrow Funds on account of SFECH or as it shall in writing direct.

6.3 The reasonable costs and charges of the Escrow Agent shall be shared equally by the Exchange and LCH.

6.4 The parties acknowledge that LCH shall account directly to Clearing Members in respect of commission collections on the NZFOE Contracts at midnight at the end of the Business Day prior to the Agreed Date (or if the Agreed Date is a Business Day, by the Agreed Time) and shall have no responsibility for the collection and remittance of commission thereafter.

### 7. RELEASE OF LCH AND TERMINATION OF AGREEMENTS

7.1 Subject to compliance by LCH with all of its obligations under clause 5, the Exchange:

- (a) on behalf of itself forever releases LCH from all Clearing Obligations and all Guarantee Obligations (other than in each case arising from any default of any Clearing Member or LCH prior to the Agreed Time) and the Novation Agreement and other than in relation to provisions expressed to survive the termination of those agreements the Ticker Service Agreement and the Information Disclosure Agreement;
- (b) on behalf of the Clearing Members and each of them, forever releases LCH from the Clearing Guarantees and from all or any liability or obligation thereunder after the Agreed Time and hereby terminates the Clearing Guarantees;
- (c) on behalf of the Clearing Members and each of them authorises LCH and confirms and ratifies the authority of LCH to pay the Escrow Funds to the Escrow Agent in accordance with this deed and acknowledges that no Clearing Member has any claim against LCH in respect of the Escrow Funds or in respect of such payment;

7.2 (a) LCH releases all guarantees, securities and other non cash cover held by LCH or any currency not in New Zealand Dollars held by LCH in respect of the liability of any Clearing Member to LCH arising out of NZFOE Contracts;

(b) to the extent that any guarantees, indemnities or other non cash cover referred to in this clause is incapable of release by way of this Deed, LCH covenants forthwith to take such further steps and to execute such further documents as may be necessary to effect the release, discharge or abandonment of such guarantees, securities or other non cash cover, and to arrange for the redelivery of such non cash cover as is capable of delivery to the relevant Clearing Member or as it may direct;

(c) LCH agrees to deliver to SFECH any commodity or instrument held by it pursuant to delivery obligations under open contracts and not due for delivery on the Agreed Date by not later than the time provided by clause 5.1 for the delivery of Escrow Funds.

7.3 LCH acknowledges and agrees that the provisions of this Deed, and in particular those of clauses 5, 6 and 7 and the assumption by SFECH of the obligations of a Clearing House for the Exchange referred to in Recital F(c) constitute satisfactory arrangements for the treatment of open positions for the purposes of Clause 9.04 of the Clearing Agreement, and LCH agrees that it has no further rights under Clause 9.04 of the Clearing Agreement.

7.4 This clause 7 shall come into effect at the Agreed Time.

7.5 In the event that at any time after the execution of this Deed and prior to the Agreed Time, a Clearing



Member is in default of its obligations to LCH which has not been remedied or in the reasonable opinion of any party there is an event of Force Majeure within the meaning of Regulation 19 of the LCH Regulations then a party which is aware of or believes there is such a default or event shall immediately and before the Agreed Time notify the other parties.

7.6 Upon the provision of a notice under clause 7.5, unless otherwise agreed in writing between the parties:

- (a) any Agreed Time shall have no effect and shall be deemed to have been cancelled and not agreed to; and
- (b) the provisions of sub-clauses 7.1, 7.2, 7.3 and 7.4 shall not take effect; and
- (c) any moneys paid to the Escrow Agent pursuant to this Deed may be withdrawn by LCH and any property or commodity delivered by LCH pursuant to clause 7.2 shall be returned to LCH.

7.7 As soon as practicable after circumstances giving rise to the application of clause 7.6 the parties shall agree a further Agreed Time for the purposes of the fulfilment of the provisions of this Deed.

8. INDEPENDENT AUDIT

8.1 LCH agrees to the appointment by SFECH of an independent auditor to conduct such checks as are necessary to ensure that LCH has complied with its obligations under clause 5. LCH shall co-operate fully with the independent auditor. If that auditor shall detect any unintentional error of LCH, LCH shall promptly rectify the same, in which event such error shall not be regarded (for the purpose of this Deed) as a failure by LCH to comply with its obligation under clause 5. The reasonable fees of the independent auditor will be shared equally by LCH and SFECH. The parties acknowledge that in acting pursuant to this clause 8.1 the independent auditor shall be acting as an expert and not as an arbitrator, and the determination shall, in the absence of manifest error be final and conclusively binding on the parties.

9. TERMINATION OF APPOINTMENT AND AGREEMENTS

It is agreed that:

- (a) LCH's appointment as clearing house for the Market, and its obligations under the Clearing Agreement shall be terminated at the Agreed Time; and
- (b) all of LCH's obligations under the Clearing Agreement and the Novation Agreement and the Ticker Service Agreement and the Information Disclosure Agreement shall terminate and those agreements shall otherwise be terminated at the Agreed Time.

10. MISCELLANEOUS

10.1 Notices

All notices and other communications provided for or permitted in this Deed shall be sent by hand delivery, or by facsimile transmission to the addresses of each party as shown in the description of the parties in this Deed, or to such other address or person as any party may specify by notice in writing to the other parties. All such notices or other communications shall be deemed to have been duly given or made when delivered by hand, if telexed, when answer-back received and, if sent by facsimile transmissions, when receipt acknowledged.

10.2 Entire Agreement

This Deed constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and extinguishes all prior agreements and understandings between the parties with respect to the

matters covered hereby and all representations of warranties previously given.

10.3 Amendments

This Deed may not be amended modified or supplemented except by a written instrument executed by persons duly authorised on behalf of the parties.

10.4 Waiver

No waiver by either party of any default in the strict and literal performance of or compliance with any provision, condition or requirement herein shall be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement herein nor to be a waiver of or in any manner release either party from strict compliance with any provision, condition or requirement in the future nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

10.5 Execution by the Exchange

The parties acknowledge that the Exchange signs this Deed:

- (a) on its behalf, and so as to bind itself; and
- (b) as agent for, and so as to bind, the Clearing Members.

The Exchange warrants that it has authority to sign this Deed as agent for and so as to bind the Clearing Members.

10.6 Acknowledgment

As agent for Clearing Members the Exchange acknowledges that no Clearing Member will take any action against LCH as a result of the payments made by LCH to SFECH in accordance with this Deed.

10.7 Indemnity

SFECH indemnifies LCH with respect to any liability which it may suffer as a result of any breach of The Futures Industry (Client Funds) Regulations 1990 of New Zealand arising from the performance of its obligations pursuant to this Deed.

10.8 Governing Law

This agreement is governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any proceeding in connection with this agreement.

EXECUTED by the parties as a deed

THE COMMON SEAL of NEW ZEALAND FUTURES & OPTIONS EXCHANGE LIMITED is affixed by authority of its Board in the presence of:

\_\_\_\_\_ Director  
 \_\_\_\_\_ Name of Director (print)  
 \_\_\_\_\_ Secretary  
 \_\_\_\_\_ Name of Secretary (print)

THE COMMON SEAL of SYDNEY FUTURES EXCHANGE CLEARING HOUSE PTY LIMITED ACN 050 615 864 is affixed by authority of its Board in the presence of:

\_\_\_\_\_ Director  
 \_\_\_\_\_ Name of Director (print)  
 \_\_\_\_\_ Secretary  
 \_\_\_\_\_ Name of Secretary (print)

SIGNED for and on behalf of THE LONDON

CLEARING HOUSE LIMITED by its Attorney in the  
presence of:

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Attorney

MARIE SHROFF, Clerk of the Executive Council.

