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NEW ZEALAND STOCK EXCHANGE RULES 1996

The New Zealand Stock Exchange Rules 1996

MICHAEL HARDIE BOYS, Governor-General

At Wellington this 21st day of October 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

Pursuant to section 7 (3) of the Sharebrokers Amendment Act 1981, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby approves the following Rules of the New Zealand Stock Exchange.

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NEW ZEALAND STOCK EXCHANGE RULES 1996

1. Interpretation

1.1 Definitions: In these Rules:

- “Act” means the Sharebrokers Amendment Act 1981.
- “Approved Security” has the meaning set out in Rule 26.2(b).
- “Board” means the Board of Directors of the Exchange as constituted by Rules 10.1 and 10.2.
- “Chairman” means the Chairman of the Board.
- “Company” means a company registered under the Companies Act 1955 or the Companies Act 1993.
- “Deputy Chairman” means the Deputy Chairman of the Board.
- “Exchange” means the New Zealand Stock Exchange established by section 3 of the Act.

“Fidelity Guarantee Fund” has the meaning set out in Rule 25.

“Full time” means employment predominantly in the stockbroking business of a member firm.

“Individual associate member” means an individual member who has met the requirements for associate membership set out in Rule 5.

“Individual full member” means:

- (a) an individual member who has met the requirements for full membership set out in Rule 5; and
- (b) all members of the Exchange who were individual members under the rules of the Exchange in force immediately prior to the coming into force of these Rules.

“Individual member” means a natural person who is either an individual associate member of the Exchange, or an individual full member of the Exchange.

“Inspector” has the meaning set out in Rule 23.

“Listing Rules” means the New Zealand Stock Exchange Listing Rules, as amended from time to time.

“Managing Director” means the managing director of the Exchange or the person for the time being carrying out the duties of the managing director as provided in Rule 10.29.

“Managing Principal” in relation to a member firm means an individual full member who is a principal of a member firm and is responsible for carrying out the duties of the managing director or managing partner, whichever is appropriate.

“Member” means a member of the Exchange, and includes both individual members and member firms, except where a contrary intention appears.

“Member firm” means:

- (a) a member which is a company; or
- (b) a partnership of individual full members, or of companies, or of an individual full member or members and another person or persons; or
- (c) an individual full member in practice as a sole trader;

in each case who has met the requirements for admission of member firms set out in Rule 6; and

- (d) all company members of the Exchange, all partnerships of individual members of the Exchange, and all individual members of the Exchange in practice as sole traders, in each case who were members of the Exchange under the rules of the Exchange in force immediately prior to the coming into force of these Rules.

“Membership Appeal Committee” means the committee established by the Board pursuant to Rule 7.3.

“Personal place of business” means:

- (a) in relation to an individual full member, the stockbroking office where the member ordinarily works; and
- (b) in relation to a member firm, the registered office (if a company) or the principal stockbroking office where it conducts business (if a sole trader or a partnership).

“Principal” means an individual full member:

- (a) in practice as a sole trader; or
- (b) who is a partner, director or shareholder of a member firm; or
- (c) who is a director of, or controlling shareholder in, a company which holds directly or indirectly

more than 20% of the issued capital of a member firm; or

- (d) who has or has had at any time a relationship with a member firm giving that individual full member the right or opportunity to influence or control the direction of that member firm which, in the opinion of the Board, would reasonably require that individual full member to be regarded at the material time as a principal of that member firm.

“Principal stockbroking office” means the stockbroking office of the member firm designated as such in accordance with Rule 8.11.

“Rules” means the New Zealand Stock Exchange Rules 1996, as amended from time to time.

“Securities” has the meaning set out in the Listing Rules, and includes any other derivative financial instrument.

“Stock” or “stocks” includes shares and vice versa.

“Stockbroker” includes sharebroker and vice versa.

“Stockbroking” includes sharebroking and vice versa.

“Stockbroking business” includes:

- (a) trading in securities as principal, or for and on behalf of or as agent for, any other person;
- (b) the giving of investment advice relating to securities to any other person for remuneration; and
- (c) any other business which a member firm conducts relating to securities and which impacts on the financial position of the member firm.

“Stockbroking office” means any place from which a stockbroking business is conducted, including the provision of advice or the acceptance or lodgement of orders for the purchase or sale of securities.

“Suspension” has the meaning set out in Rule 21.6.

1.2 Construction:

- (a) The headings are inserted for convenience only and shall not affect the construction of these Rules.
- (b) Words importing persons include firms and corporations unless the context otherwise requires.
- (c) Words importing one gender include the other genders.
- (d) Words importing the singular include the plural, and vice versa.
- (e) Reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.

2. Objects

2.1 Functions of the Exchange: As prescribed by section 4(1) of the Act, the functions of the Exchange are:

- (a) To operate a national stock exchange, which may be wholly or in part operated through the establishment of regional stock exchanges;
- (b) To promote and specify the conditions and terms for the listing and trading of securities on its exchange;
- (c) To regulate and promote uniformity in the conduct of its members and of business by its members;
- (d) To promote the interests of its members and members of the public in relation to the listing, trading, underwriting, and marketing of securities.

2.2 Powers of the Exchange: As prescribed by section 4(2) of the Act, the Exchange shall have all such powers as are reasonably necessary or expedient to carry out its functions.

3. Membership

3.1 Classes of membership: Membership of the Exchange shall comprise the following classes:

- (a) Individual associate member;
- (b) Individual full member; and
- (c) Member firm.

4. Application for membership

4.1 Application in writing: Application for membership shall be made in writing to the Board.

4.2 Requirements of application: An application for membership shall:

- (a) state that the applicant agrees to comply fully with the Rules and at all times will observe good stockbroking practice; and
- (b) provide evidence of the applicant's eligibility under Rules 5 or 6, as the case may be.

5. Requirements for admission of individual members

5.1 The Board shall admit as an individual member of the Exchange a natural person who has applied for membership of the Exchange in accordance with Rule 4 if:

- (a) The person supplies evidence satisfactory to the Board to the effect that: In the case of an application to become an individual associate member:
 - (i) He holds a sharebroker's licence;
 - (ii) He has obtained a pass in such examinations as the Board may from time to time prescribe or, within three months of the gazetting of these Rules, has satisfied the Board that he has sufficient experience to warrant acceptance for associate membership;
 - (iii) He is currently working under the supervision of an individual full member, and has had full time experience for a continuous period of at least the previous six months under the supervision of an individual full member, or has had equivalent securities industry experience; and
 - (iv) He will at all times fully observe the Rules and will carry out his responsibilities as a member and stockbroker honestly and diligently. Without limiting the power of the Board to satisfy itself with regard to this requirement, it may accept references from at least two suitable persons (other than persons connected with the member firm then employing the applicant) as evidence of the applicant's intentions in this matter.

In the case of an application to become an individual full member:

- (v) He holds a sharebroker's licence;
- (vi) He has been employed full time for a total of not less than three years in the five year period immediately preceding his application for membership in the stockbroking office of a member firm or of a member of an overseas stock exchange recognised by the Exchange, or has had equivalent securities industry experience;
- (vii) He has obtained a pass in such further examinations as the Board may from time to time prescribe.

In exceptional circumstances, the Board may consider and accept evidence of experience or qualifications, either in reduction of the three year full time employment requirement or extension of the five year period, or exemption from the examination qualifications required, but not both; and

- (viii) He will at all times fully observe the Rules, and will carry out his responsibilities as a member and stockbroker honestly and diligently. Without

limiting the power of the Board to satisfy itself with regard to this requirement, it may accept references from at least two suitable persons (other than persons connected with the member firm then employing the applicant) as evidence of the applicant's intentions in this matter;

- (b) The person has delivered to the Board a statutory declaration stating that the person is a fit and proper person without record of dishonest or fraudulent activities, and in particular stating whether or not he has:
- (i) been excluded from any other organisation which is equally committed to high standards of professional conduct; or
 - (ii) committed an act of bankruptcy; or
 - (iii) been of unsound mind; or
 - (iv) been prohibited from being a director or promoter of, or managing, a company; or
 - (v) been found liable for insider trading or any other breach of the provisions of the Securities Amendment Act 1988, or for an offence under the Companies Act 1955 or Companies Act 1993 or other companies or securities legislation; or
 - (vi) been an officer of a company that has been ordered by the Court to be wound up or put in liquidation, in each case because it is insolvent while that person was an officer of the company;
- (c) The person provides in writing and, if required by the Board, by statutory declaration, such other information in addition to that specified above as the Board may request; and
- (d) Such fees as are set by the Board as a condition of membership have been paid.

6. Requirements for admission of member firms

6.1 The Board shall admit as a member firm of the Exchange a firm that has applied for membership in accordance with Rule 4 if:

- (a) (If a company) the firm provides evidence satisfactory to the Board to the effect that:
 - (i) The requirements of Rule 8.6 are met;
 - (ii) It holds a sharebroker's licence; and
 - (iii) It will at all times fully observe the Rules and will carry out its responsibilities as a member firm and stockbroker honestly and diligently.
- (b) Each principal of the firm and (if a company) each director has delivered to the Board a statutory declaration stating that:
 - (i) (if a company) the requirements of Rule 8.6 are met; and
 - (ii) in any case, he will ensure that the firm will at all times fully observe the Rules;
- (c) Such fees as are set by the Board as a condition of membership have been paid; and
- (d) The requirements for a stockbroking office are met in accordance with Rule 9.

7. Admission to membership

7.1 Board considers application: The Board shall consider all applications for membership of the Exchange. The Board shall review each application for membership and satisfy itself that the requirements of all relevant Rules, including Rules 4, 5, 6, 8 and 9 (as appropriate), have been met.

7.2 Appeal of application decision: An unsuccessful applicant for membership of the Exchange shall have the right of appeal against this decision.

7.3 Membership Appeal Committee: The Board shall establish a standing committee, to be known as the Membership Appeal Committee, to hear any appeal against an unsuccessful membership application.

7.4 Composition of Membership Appeal Committee: The Membership Appeal Committee shall consist of three persons of suitable standing in the business community, at least one of whom shall be an individual full member of the Exchange, and at least one of whom shall be a barrister or solicitor of not less than seven years standing currently in practice. The Disciplinary Committee referred to in Rule 18 may, at any time at the option of the Board, and for such period as the Board determines, serve as, and act in the capacity of, the Membership Appeal Committee. The quorum for a meeting of the Membership Appeal Committee shall be 3 persons.

7.5 Remuneration of Membership Appeal Committee: The remuneration and expenses of the members of the Membership Appeal Committee incurred in carrying out their duties shall be determined by the Board and shall be paid by the Exchange.

7.6 Appointments to the Membership Appeal Committee: Except where the Board determines pursuant to Rule 7.4 that the Disciplinary Committee shall act as the Membership Appeal Committee, appointments to the Membership Appeal Committee shall be made by the Board and shall be for a maximum term of three years, provided that the Board may reappoint any member of this committee for a further term or terms. The persons who were members of the Membership Appeal Committee under the rules of the Exchange in force immediately prior to the coming into force of these Rules shall continue in such office in accordance with the terms of their respective appointments.

7.7 Review of membership of Membership Appeal Committee: The Board shall have power to review the membership of the Membership Appeal Committee at any time and shall have power to remove or replace any persons then serving upon any reasonable ground for doing so. As examples of reasonable grounds (but without in any way limiting the right of the Board to decide that a particular ground is reasonable), a person may be removed and replaced who becomes of unsound mind or is declared bankrupt or makes any arrangement or composition with his creditors.

7.8 Costs of appeal: The Membership Appeal Committee shall have the power to make any ruling regarding the costs of the appeal which it deems appropriate. It shall be a condition of any appeal that, at the time the appeal is lodged, the appellant gives an undertaking acceptable to the Membership Appeal Committee regarding the payment of costs in the event that they are awarded against him.

7.9 Proceedings of Membership Appeal Committee: The Membership Appeal Committee may, in lieu of a meeting, transact business by letter, facsimile, telex, telephone or any commonly used form of electronic communication. Unless otherwise provided by these Rules, the Membership Appeal Committee shall have the power to regulate its proceedings in whatever manner it deems appropriate.

8. Conditions of Membership

8.1 Conduct of members: Every member shall:

- (a) At all times observe proper ethical standards and act with honesty, integrity, fairness, due skill and care, diligence and efficiency and within the member's competence;
- (b) Refrain from any action, conduct, matter or thing which may be detrimental to the well-being or proper conduct of the Exchange, or which may discredit the

Exchange and its members or bring the Exchange or members generally into disrepute; and

- (c) Comply with the Rules and at all times observe good stockbroking practice.

8.2 No trading of securities for employees of other members: No member shall buy or sell securities for an employee of any other member.

8.3 Description of member: No member shall, in respect of his activities as a stockbroker, describe his occupation in any way other than as an individual associate member, an individual full member, a member firm, or generally, a member, as the case may be, of the Exchange.

8.4 Description of member's conduct: Where any member is in any way associated with any group or association, whether incorporated or not, the functions or purposes of which include the provision in New Zealand of any services of any sort falling within the objects of the Exchange, then:

- (a) The member shall in all circumstances clearly identify to all persons with whom that member may deal and all other persons who may become aware of the member's conduct, the distinction between conduct undertaken by the member as a member of the Exchange, and conduct undertaken in the course of or by virtue of the member's association with that other body:

Provided always that if after appropriate warning, a member continues to breach this Rule, then the Board may, in addition to exercising any disciplinary powers, suspend the member until appropriate arrangements are made for full dissemination of advice identifying the precise scope of that member's activities as a member of the Exchange.

- (b) In relation to the dissemination of information or provision of access to facilities that are provided by the Exchange for members (in this Rule collectively described as 'the services'), all members acknowledge:

(i) the services are provided to members of the Exchange on a basis of the cost of those services being in whole or in part shared by the members of the Exchange;

(ii) the services may incorporate or rely upon material in respect of which the Exchange enjoys copyright; and

(iii) the services may incorporate information produced for the confidential use of members only, without it being specifically delineated but in circumstances that require all members to respect absolutely that confidentiality.

If the Board is satisfied that a member is misusing the access to those services for the purpose of promoting or conducting business in the course of its association with any other organisation as described in Rule 8.4, the Board may at any time restrict access for that member to the services or suspend participation by that member in the facilities provided by the Exchange.

8.5 Payment of fees: Every member firm shall, in respect of every individual member associated with that member firm (whether as a partner, director, shareholder, employee, agent or otherwise) pay such fees, levies and other expenses as shall from time to time be fixed or incurred on behalf of such member by the Exchange. In addition, each individual member shall also be liable to pay such fees, levies or other expenses if his member firm is unable, through default or other financial difficulty, to make or complete the appropriate payment and the individual member's liability shall be limited to the amount owing and

still unpaid. There may be differentiation as regards the amount of such fees, levies or other expenses as between different classes of membership, between member firms, individual members who are not shareholders of, or partners in, member firms, and individual members who are shareholders of, or partners in, member firms and between individual members themselves, if in the opinion of the Board such differentiation is not unreasonable in the particular circumstances.

8.6 Obligations of principals and directors of companies: Every member firm which is a company and every individual full member who is a director of a member firm which is a company, shall ensure that at all times:

- (a) A majority of the directors of the company are individual full members of the Exchange:

Provided that for the purposes of this Rule 8.6, the Board may resolve that a member of an approved overseas stock exchange shall be deemed to be a member until and if such resolution is revoked.

- (b) Shareholders' funds of the company less advances or loans to related parties (other than transactions for securities trading and settlement) are at least equal to \$1 million.

- (c) The articles of association or constitution of the company provide that:

(i) The company agrees to be bound by the Rules;

(ii) The directors required to form a quorum for a directors' meeting shall include a majority of directors who are individual full members of the Exchange; and

(iii) The directors may not delegate their powers as directors by power of attorney or in any other manner:

Provided that a director who is an individual full member of the Exchange may appoint as his alternate director only a person who is an individual full member of the Exchange.

For the avoidance of doubt, this Rule shall not prevent the proper delegation by directors who are executive officers of the company of their executive powers.

- (d) The registered office of the company is located at a stockbroking office of the company, except that where the company is a wholly owned subsidiary of any other company with its registered office in New Zealand, the member firm's registered office may be situated at the same location as that of its parent company.

- (e) The articles of association or constitution of the company comply in all material respects with the standard form (if any) prescribed from time to time by the Board, and the determination of the Board that the articles of association or constitution of a company do or do not at any time comply with this Rule 8.6(e) shall be final and binding on the member firm.

8.7 Beneficial owners of shares must be identifiable: All member firms which are companies shall provide the Managing Director with a schedule of their shareholders, and identify the beneficial owners of such shares and the number of shares held by each beneficial owner. The Managing Director shall maintain a file of such schedules, and the file shall be open for inspection by any person at a place nominated by the Managing Director.

8.8 Change in ownership of shares must be notified: Where there is a change in either the registered ownership or the beneficial ownership of any shares in a member firm which is a company, the directors shall immediately advise the Managing Director, giving full details of the change and

also confirming the identity of the beneficial owner of such shares so that the file referred to in Rule 8.7 may be updated.

8.9 Notification of new director: Whenever a new director of a member firm which is a company is appointed, the member firm shall promptly deliver to the Exchange a statutory declaration by the director stating that the member firm is complying with Rule 8.6 and that the director will ensure that the member firm will abide by the Rules.

8.10 Notification of Companies Office filing: Whenever a member firm which is a company files with the Registrar of Companies an annual return, financial statements or a notice of a change in its share capital, or its directors or its articles of association or constitution, it shall at the same time send a copy of such return, financial statements or notice to the Managing Director.

8.11 Managing Principal and Principal Stockbroking Office: Every member firm shall designate one individual full member to be Managing Principal, and one office as its principal stockbroking office.

8.12 Client advisers and investment advisers to be at least individual associate members: Each member firm shall ensure that all of its employees, officers, agents and principals who are acting as client advisers and/or investment advisers must be at least individual associate members, provided that this Rule shall not apply for a transitional period of six months following the coming into force of these Rules.

8.13 Suspension: Failure by a member firm to comply with any of Rules 8.6 to 8.12 shall render the member firm liable to suspension by the Board without further notice. A suspension pursuant to this Rule shall continue until such Rules are complied with, in each case to the satisfaction of the Board.

9. Stockbroking offices

9.1 Name of stockbroking office: No individual member shall operate any stockbroking office under a name which is different from that of his member firm.

9.2 Control of stockbroking office: Every principal stockbroking office shall be under the direct full time control of a principal. Any other stockbroking office shall be under the direct full time control of an individual member.

9.3 Requirements for establishing a new member firm: An individual full member wishing to establish a new member firm shall first be required to satisfy the Board that:

- (a) He and any other member with whom he is associated in the venture is able to meet the capital and equity requirements set out in these Rules;
- (b) His business plan, management controls and office and accounting systems are of an acceptable standard when measured against those already in place in other member firms. For the purposes of this Rule, a certificate to the appropriate effect from the Inspector will be required;
- (c) His senior staff are suitably experienced and capable to enable his business to be conducted in a way which will not place other members and the investing public at financial risk; and
- (d) He has fully met all obligations arising from his previous activities as a principal of a member firm.

9.4 Effect of admission to membership: Any person admitted to membership who is at the time of his admission a principal or director of a stockbroking business and wishes to continue to operate that business as a member firm in terms of these Rules shall first satisfy the Board that he and his business are able to meet the criteria set out in Rule 9.3.

9.5 Notice of proposed stockbroking office: A member firm wishing to open further stockbroking offices in addition to its principal stockbroking office or to join in partnership or become formally associated with another member shall give the Exchange at least 21 days' written notice of its intention to do so. In the case of a stockbroking office, the notice shall state the full address of the office and the full name of the individual member under whose direct full time control it will be placed. On receipt of any such notice, the Managing Director shall promptly advise all members of its details.

9.6 Application to overseas stockbroking offices: Where a member firm has a stockbroking office situated overseas:

- (a) Subject to Rule 9.6(b), the provisions of these Rules which relate to the operation of stockbroking offices shall apply in respect of that overseas stockbroking office except in so far as they conflict with any requirements, whether statutory or otherwise, that apply in the jurisdiction in which that stockbroking office is situated; and
- (b) Rule 22 shall apply in respect of that stockbroking office, except that an Inspector appointed under Rule 23 may appoint an overseas chartered accountant in public practice as his agent and delegate to him any or all of his powers as inspector in relation to that stockbroking office.

10. Board of Directors

10.1 Board to manage the Exchange: The business and affairs of the Exchange shall be managed by, and under the control of, a board of directors (the "Board"). The powers of the Board shall be subject only to such limitations as are expressly imposed by these Rules.

10.2 Composition of the Board: The Board shall consist of up to 10 persons, of whom at least four shall be individual full members, at least two shall be non-members, and one shall be the Managing Director.

10.3 Manner of appointment: All appointments to the Board, other than that of the Managing Director, shall be by election at a general meeting of members, and such appointees shall be subject to nomination as specified by these Rules. All directors of the Board under the rules of the Exchange in force immediately prior to the coming into force of these Rules shall continue in office as directors, in each case in accordance with the terms of his appointment.

10.4 Nominations for member appointees: Nominations for member appointees to the Board shall be made by two other individual full members and submitted in writing to the Managing Director no later than five weeks prior to the date of the annual meeting. All persons nominated shall confirm in writing to the Managing Director their willingness to accept nomination.

10.5 Nominations for non-member appointees: No person who is not a member, other than the Managing Director, shall be eligible for election to the Board unless he has first been nominated by the Board and he has suitable business experience (as determined by the Board). Any person so nominated shall signify in writing his willingness to accept the nomination, and the nomination shall be submitted in writing to the Managing Director no later than five weeks prior to the date of the annual meeting.

A non-member director elected to the Board shall:

- (a) Not be employed concurrently in any office of the Exchange or any of its member firms;
- (b) Be entitled to all information and any notices circulated to members and may attend and vote at general meetings of members; and
- (c) Not by reason of his election become a member of the Exchange.

10.6 Remuneration of directors: All directors shall be entitled to remuneration at such a rate or by such sum as the members may at any general meeting from time to time determine. The remuneration so determined shall apply to the year specified in such determination and to all subsequent years until altered by the members in general meeting.

10.7 Notice of proposal to vary remuneration: The remuneration shall not be altered unless notice of intention to move accordingly, stating the amount of the proposed increase or decrease, has been given in the notice convening the relevant meeting.

10.8 Fixing and payment of remuneration: The remuneration of the directors may be fixed individually or collectively or both. Remuneration payable to any directors collectively shall be divided amongst them in such proportions and in such manner as they may determine, and in default of such determination shall be divided amongst them equally.

10.9 Expenses: The directors shall be entitled to be paid reasonable expenses incurred in attending meetings of the Board and whenever else engaged on the business or affairs of the Exchange.

10.10 Special remuneration: The Board may allow special remuneration by a fixed sum or salary to any director rendering any special services or undertaking work additional to that normally required of the directors. This provision shall also empower the Board to authorise additional payment to the Chairman where his commitment to the affairs of the Exchange substantially exceeds that reasonably expected of a non-executive chairman.

10.11 Professional services: Any director or any member firm of which that director is a member or partner may act in a professional capacity for the Exchange and shall be entitled to remuneration for professional services as if the director were not a director. A director or that director's member firm shall not act as auditor to the Exchange.

10.12 Rotation of directors: At each annual meeting, two member directors and one non-member director shall retire from office and may offer themselves for re-election. The directors who retire by rotation and who offer themselves for re-election shall be deemed to have been nominated in accordance with Rule 10.4 or 10.5, as the case may be. The directors to retire shall be those who have been longest in office since their last election, except that the requirements of this Rule may be satisfied in the first instance by any vacancies which may have arisen for any other reason.

10.13 Rotation determined by lot for same day appointments: As between persons who became directors on the same day, those to retire by rotation shall (unless they otherwise agree) be determined by lot.

10.14 Time of retirement: A retiring director who is not standing for re-election shall hold office until the closure or adjournment of the meeting at which he retires.

10.15 Termination of appointment: The appointment of any director shall be terminated:

- (a) At any time agreed upon by a majority of the Board; or
- (b) Upon the death or resignation in writing of that director; or
- (c) By a resolution approved by a majority of those members present in person or by proxy at any general meeting of members.

10.16 Election of Chairman and Deputy Chairman: At its first meeting following the annual meeting, the Board shall elect two of its members to act as Chairman and Deputy Chairman.

10.17 Casual vacancies: If any member of the Board is

unable or unwilling to act for the term or balance of the term for which he was appointed, then the Board at its discretion may appoint another person (being an individual full member or non-member as appropriate) to fill the casual vacancy so created until the date of the next general meeting at which the person appointed to fill the casual vacancy shall retire and a new director is appointed.

10.18 Reappointment: Any person appointed to the Board to fill a casual vacancy in terms of Rule 10.17 shall be eligible for nomination and reappointment to the Board by the meeting at which he has retired.

10.19 Power to appoint sub-committees: The Board shall have power to appoint sub-committees, with such powers, special or general, as it may from time to time and in any particular case determine.

10.20 Power to bring charges: The Board or any delegate authorised for the purposes of this Rule may, in its or his absolute discretion and after making such enquiries (if any) as it or he thinks fit, bring a charge or charges against a member or members if, in the opinion of the Board, or any such delegate, the member may be or may have been:

- (a) guilty of a breach of any Rule including failure to observe good stockbroking practice; or
 - (b) guilty of any act, matter or thing detrimental to the well-being or proper conduct of the Exchange; or
 - (c) (i) in partnership with a non-member; or
 - (ii) engaged as an employee a person; or
 - (iii) in an association or a contractual relationship with another party; or
 - (iv) engaged as a principal, a person;
- in each case who has been guilty of conduct which, if committed by a member, would justify the Disciplinary Committee imposing on him any of the penalties referred to in Rule 18.8.

10.21 Power to receive and consider complaints: The Board or any delegate authorised for the purpose of this Rule shall have power to receive complaints about members or the conduct of members, to reject summarily any complaints which appear to be insubstantial or frivolous, and otherwise to refer such complaints to a complaints committee or to the Board as a possible basis for considering if charges should be brought against the member under Rule 10.20.

10.22 Further powers of Board: The Board shall have power to:

- (a) Impose on members such fees, levies and other charges, whether as a condition of membership or otherwise, as it sees fit.
- (b) Impose on any member in respect of a breach of any Rule a fine of up to \$20,000 (plus GST or any other applicable tax). There shall be a right of appeal to the Disciplinary Committee against the imposition of a fine under this Rule 10.22(b).
- (c) Suspend or terminate the membership of any member for any breach of any Rule which, in the Board's opinion, constitutes a material, wilful, prolonged or repeated breach. There shall be a right of appeal by the member concerned to the Disciplinary Committee against any suspension or termination of membership under this Rule 10.22 (c). The Board shall bear the costs of appeal of that member if that member is found on appeal not to have been in breach of the relevant Rule under this Rule 10.22 (c).
- (d) Delegate to any person, sub-committee of the Board or other committee or body, whether incorporated or unincorporated, and whether or not it includes or comprises persons who are not members, any of the powers, rights and discretions of the Board including

the power of delegation on such terms and conditions as the Board may from time to time specify.

10.23 Meetings of the Board: Meetings of the Board shall be held at such time and place and upon such notice to its members as the Chairman may from time to time appoint or determine.

10.24 Chairman of meeting: In the absence of both the Chairman and Deputy Chairman from any meeting of the Board, the members of the Board present shall elect from their number a chairman for that meeting.

10.25 Quorum: The quorum for a meeting of the Board shall be four.

10.26 Voting: Questions arising at meetings of the Board shall be decided by a majority of the votes cast.

10.27 Number of votes: Each member of the Board shall have one vote, and in the event of an equality of votes the Chairman shall have a second or casting vote.

10.28 Conduct of business other than at meetings: The Board may, in lieu of a meeting, transact business by letter, facsimile, telex, telephone or any commonly used form of electronic communication but the following rules shall apply:

- (a) Every reasonable effort (having regard to the urgency of the matter) shall be made to refer the business to every member of the Board;
- (b) The provisions of Rules 10.25 to 10.27 shall apply as if the questions were determined at a meeting; and
- (c) A minimum of four votes cast shall be necessary to determine the question.

10.29 Managing Director: The secretariat of the Exchange shall be the responsibility of the Managing Director who shall be appointed by, and be accountable to, the Board. In any temporary absence of the Managing Director, the Board may appoint any other person to that position for the period of absence of the Managing Director. The person holding office as Managing Director under the rules of the Exchange in force immediately prior to the coming into force of these Rules shall continue in office as Managing Director in accordance with the terms of his appointment.

10.30 Chairman unable or unwilling to act: Where by these Rules any thing or matter is required to be done by the Chairman and the Chairman is unwilling or unable to act, such thing or matter may be done by the Deputy Chairman or failing him, then by the Board.

10.31 Interested directors: No director of the Board shall vote at any meeting on any matter in which he is personally interested, and on that matter he shall not be included among the directors present for the purpose of the quorum.

11. General meetings of members

11.1 Annual general meeting: The financial year of the Exchange shall end on a date to be determined from time to time by the Board. An annual general meeting of members shall be held after the end of each financial year, not later than fifteen months following the preceding annual general meeting and in any event not later than four months after the end of the financial year.

Such annual general meeting shall be held at a time and place to be determined by the Board. Members shall be advised of the place and date of each annual general meeting no later than six weeks prior to the date on which such annual general meeting is to be held.

11.2 Business at annual meeting: At the annual meeting of members or any adjournment thereof, the business shall be to receive the report and financial statements, consider resolutions from the Chairman, the Board, and members, conduct elections to the Board and transact any other business whatever that may be introduced in accordance

with these Rules. Notice of any resolution to be proposed at the annual general meeting shall be given to the Managing Director no later than five weeks prior to the date of such annual general meeting. All other meetings of members shall be deemed to be special meetings.

11.3 Notice of annual general meeting: At least 21 days' notice shall be given of all annual general meetings. The accidental omission to send a notice to a member or the non receipt of a notice by a member shall not invalidate the proceedings at that meeting. The notice shall specify the place, day and hour of the meeting, the latest time for receipt of proxies, and the business to be transacted at the meeting.

11.4 Convening of meetings: General meetings of members shall be convened on the requisition of the Chairman, the Board or by not less than 10% of those persons who are individual full members of the Exchange at the date on which the requisition is deposited in terms of Rule 11.5.

11.5 Requisition of members: Every requisition shall be in writing, shall state the objects of the meeting and shall be deposited at the office of the Managing Director.

11.6 Notice of other general meeting: The Board shall within seven days of the date of deposit of the requisition convene a meeting to be held within 40 days from the said date. Notice in writing of such meeting shall be sent to all members not later than 21 days prior to the meeting. The accidental omission to send a notice to a member or the non-receipt of a notice by a member shall not invalidate the proceedings of that meeting. The notice shall specify the place, day and hour of the meeting, the latest time for receipt of proxies, the objects of the meeting as specified in the requisition and any other business which the Board may wish to refer to the meeting.

11.7 Chairman of meeting: The chairman shall preside at every general meeting but if he is not present a member appointed by the Board shall preside.

11.8 Quorum: No business shall be transacted at any general meeting unless a quorum of not less than 50% of the members eligible to vote is present in person or by proxy at the time of the commencement of the meeting. If within 30 minutes of the time appointed for the meeting a quorum is not present, then the meeting shall be dissolved (in the case of a meeting requisitioned by members) or in any other case adjourned to such time and place as the chairman shall determine. If at the adjourned meeting a quorum is not present within 30 minutes of the time appointed for the meeting, then the members present in person or by proxy shall constitute a quorum.

11.9 Adjournment: The chairman may adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting from which the adjournment took place. If a meeting of members is adjourned for less than 30 days, then it shall not be necessary to give notice of the time and place of the adjourned meeting, other than by announcement at the meeting which is adjourned.

11.10 Other business: No business other than that specified in the notice of meeting shall be transacted at any general meeting, except with the consent of the chairman.

11.11 Votes of members: At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll shall be demanded by the chairman or by not less than five members eligible to vote on that matter. Each individual full member shall have one vote, which is exercisable by that member present in person or by proxy. Each member firm shall have one vote which is exercisable by one of its principals present in person or by proxy. In the case of an equality of votes, the chairman

shall have a second or casting vote. In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure and voting, the decision of the chairman shall be final and binding.

11.12 Proxies: No person shall hold a proxy to attend and vote on behalf of a member unless he is an individual full member or the chairman of the meeting or a Board member. A proxy must be appointed by notice in writing signed by the member and the notice must state whether the appointment is for a particular meeting or for a specified term not exceeding 12 months.

11.13 Notice of appointment of proxy: A notice of appointment of a proxy may be communicated to the Managing Director by facsimile transmission, provided it is received by the Managing Director within the time set out in the notice of the meeting. The latest time for receipt by the Managing Director of proxies shall be determined from time to time by the Board, provided that such time shall be no earlier than 1 week before, and no later than 24 hours before, the time of the meeting.

11.14 Those not eligible to vote: No individual associate member, or member who is in default or suspended shall be eligible to vote at a general meeting of members. Where there is any dispute about a member's eligibility to vote, a ruling shall be given by the chairman, whose decision shall be final.

12. Listing

12.1 Where a prospectus states that an application has been made under the Listing Rules to list an issuer, or to quote securities, on the Exchange, no member shall deal in the securities concerned until the issuer has been listed by, or the securities quoted on, the Exchange or such listing or quotation has been refused.

13. Authority to Act

13.1 Deemed authority to act on offer to public: Subject to Rule 13.2, all members shall be deemed to have authority to act as brokers to, or to be associated with, any flotation where a prospectus or other document soliciting applications for shares or other securities or capable of promoting inquiries for shares or other securities is issued to members of the public as contemplated in the definition of "offer of securities to the public" in the Securities Act 1978.

13.2 Assurance of authority to act required on listing: In the case of any flotation or further issue of shares or other securities for which listing is being or will be sought, no member shall have authority to act unless the issuer or its organising broker has sought and received assurance from the Exchange that authority to act has not been withdrawn. In considering an application for assurance of authority to act, the Exchange shall have regard to whether the requirements of the general law and the Rules and the Listing Rules have been or are likely to be complied with, the standing and repute of the issuer and such other matters as the Exchange may consider to be relevant in the interests of the investing public and the standing of members.

13.3 Application for assurance of authority to act: Application for assurance of authority to act shall be made by the member acting as organising broker to the Board or to any delegate of the Board, and shall be accompanied by such fee as may from time to time be prescribed by the Board.

13.4 Meaning of "flotation": The term "flotation" where it is used in Rule 13 shall not include the issue of debentures or stock by the New Zealand Government or by any local authority within New Zealand.

13.5 Effect of assurance of authority to act: Assurance of authority to act given to any one member shall be deemed to be authority for all other members to be associated with

the particular flotation, but shall not confer upon such other members any right to demand to be allowed to place a portion of the issue.

14. Underwriting

14.1 Upon receipt of an application for assurance pursuant to Rule 13.3 that a member has authority to act in a flotation which it is underwriting, whether wholly or in part or in conjunction with any other person, the Board may request the Inspector to verify, by examination of the records of the applicant, the details contained in the application in so far as they relate to the underwriting of the flotation, and to report to the Board on the accuracy of such application with any comments which he considers may affect the Board's consideration of the application. In considering the application, the Board shall satisfy itself that the obligations likely to devolve upon the member are within its financial capacity.

15. Contracts

15.1 Dealing as principal: In contracts between member firms for the sale and purchase of securities, they shall be held to be principals to each other, unless a written arrangement to the contrary is made between buying and selling brokers at the time the contract is made.

15.2 Evidence of transaction: The inclusion of a transaction in a member firm's matched trade report shall be prima facie evidence that the transaction has taken place and of the terms of the trade.

15.3 Transaction not invalidated by refusal of registration of transfer: Refusal by the board of directors of any company to register a transfer shall not invalidate a contract between member firms.

15.4 Transactions with clients: All transactions with clients shall be evidenced by the issue of a written contract note no later than the day following the execution of a client instruction by the member firm. The Exchange may from time to time prescribe the form of contract note to be used by member firms.

16. Delivery and settlement

16.1 Member firms' delivery and settlement obligations: In order to ensure that member firms at all times meet their obligations regarding delivery of documents relating to securities transactions and their settlement all member firms shall deliver and settle according to the procedures and within the time limits recognised as good stockbroking practice.

16.2 Effect of client failure to deliver: Each member firm shall specify in its terms of business or other equivalent agreement with clients that where any client of a member firm has failed to meet a delivery obligation, the member firm concerned shall have the right to pass on, and the client shall have the obligation to meet, any charge or levy incurred by the member firm because of the client's failure to make delivery within the time needed to enable the member firm to meet the time limits recognised as good stockbroking practice.

16.3 Good stockbroking practice to apply: Each member firm shall specify in its terms of business or other equivalent agreement with clients that where a client has failed to settle with a member firm, both parties shall have the rights and obligations recognised as good stockbroking practice regarding cancellation of the contract and the mitigation of any loss relating thereto.

17. Trading activities and transaction reporting

17.1 Conduct and reporting of trading: Members shall conduct and report trading of securities on the Exchange in accordance with good stockbroking practice.

18. Discipline

18.1 Disciplinary Committee:

(a) The Board shall appoint a Disciplinary Committee consisting of:

- (i) a barrister of not less than seven years standing currently in practice who shall be chairman;
- (ii) at least one, and not more than three, individual full members, none of whom shall be a member of the Board; and
- (iii) one member of the public (not a barrister or solicitor or an individual member) to be the independent member.

The persons appointed as members of the Disciplinary Committee under the rules of the Exchange in force immediately prior to the coming into force of these Rules shall continue in office in accordance with the terms of their respective appointments.

- (b) Subject to Rules 18.1(e) and 18.1(f), each appointment of a chairman shall be for a term of five years, but the Board may reappoint any chairman for a further term or terms at its complete discretion.
- (c) Subject to Rules 18.1(e) and 18.1(f), each appointment of a member of the Disciplinary Committee (other than the independent member) shall be for a term of three years, provided that the Board may at its complete discretion appoint a retiring member for a further term or terms.
- (d) Each appointment of the independent member shall be for a period of one year, but may also be renewed.
- (e) The Board may from time to time remove from office any member of the Disciplinary Committee or fill any vacancy in its membership or appoint any additional member within the limits of Rule 18.1(a).
- (f) No person who has reached the age of 70 years shall be eligible for appointment as a member of the Disciplinary Committee. Any member of the Disciplinary Committee reaching that age shall retire from the Disciplinary Committee at the conclusion of the next annual meeting of the Exchange and shall not be eligible for reappointment.
- (g) The remuneration and expenses of the Disciplinary Committee shall be as determined by the Board and shall be paid by the Exchange.
- (h) The appointment of the independent member shall be advised by the Exchange to the Securities Commission, to whom the independent member shall report at least once in each year.

18.2 Quorum:

- (a) The quorum for a meeting of the Disciplinary Committee shall consist of the chairman and at least two other members of the Committee, one of whom shall be the independent member.
- (b) If the chairman of the Disciplinary Committee, or the independent member or any other member through absence or any other cause, is unable to act, the Board shall as necessary appoint a suitably qualified person to act in his place during the period of his inability to act.

18.3 Members' interests:

- (a) At the hearing of any charge against a member, no member of the Disciplinary Committee who is concerned or implicated in or whose member firm is concerned or implicated in that charge shall be eligible to attend any meeting of the Disciplinary Committee in respect of that charge.
- (b) The chairman or the independent member shall as soon as is practicable after being advised of any charge, declare any interest in connection with the parties to, or the subject matter of, the charge. In such

a case, he shall not be eligible to attend any hearing of that charge and the Board shall appoint another chairman or independent member for that hearing only.

18.4 Powers of the Disciplinary Committee:

- (a) Without limiting or derogating from any other provisions of these Rules, the Disciplinary Committee shall have power to hear any charge made against any member and referred to it by the Board or its delegate.
- (b) The Disciplinary Committee may, by notice in writing signed by its chairman or by any person nominated by its chairman to act as its secretary, require any person (including any officer or employee of a member firm) to attend and give evidence before it at the hearing of a charge and/or to produce for inspection all books, records, tapes, documents, and any information held on any other media that are in the custody or under the control of the person relating to the subject matter of any such hearing.
- (c) The Disciplinary Committee shall have power to enquire into any charge by the Board that a member:
 - (i) is in partnership with a non-member; or
 - (ii) has engaged as an employee a person; or
 - (iii) has entered into an association or contractual relationship with another party; or
 - (iv) has engaged as a principal a person;
 in each case, who has been guilty of conduct which if committed by a member would justify the Disciplinary Committee imposing on him any of the penalties referred to in Rule 18.8.
- (d) If the Disciplinary Committee shall find any charge as contemplated by Rule 18.4(c) proved, it may order:
 - (i) in the case of a non-member partner, that the partnership be dissolved; or
 - (ii) in the case of an employee, that such employee be dismissed; or
 - (iii) in the case of an association or contractual relationship, that it be terminated; or
 - (iv) in the case of a principal, that such person's engagement be terminated.
- (e) If any member fails to carry out an order of the Disciplinary Committee made under Rule 18.4(d), the Disciplinary Committee may suspend him until the order is complied with.
- (f) At any time after a charge has been made against any member, the Disciplinary Committee may of its own motion and without the necessity of giving any prior notice to the member, make an order suspending his membership until the charge has been heard and disposed of. The Disciplinary Committee shall give public notice of the fact of interim suspension unless there are extraordinary circumstances which justify postponement of such notice.
- (g) The member in respect of whom any interim suspension order is made may at any time apply to the Disciplinary Committee for the revocation of the order and the Disciplinary Committee may grant, on such terms as it thinks fit, or refuse, any such application.
- (h) A member who has been suspended under Rule 18.8 may apply to the Disciplinary Committee for revocation of his suspension and the Disciplinary Committee may grant, on such terms as it thinks fit, or refuse, such application.
- (i) The Disciplinary Committee may require as a condition of granting an application under Rule 18.4(h) that the member pay, as well as his current

year's subscription to the Exchange, an additional amount not exceeding a year's subscription and, in the case of a member firm, any amount payable by a member firm to the fidelity guarantee fund during the period of the applicant's suspension. The additional amount payable shall be applied for the general purposes of the Exchange.

(j) The Disciplinary Committee shall hear and determine any appeal by a member from the decision of a complaints committee appointed in terms of Rule 18.11(a) or from the decision of the Board made under Rule 10.22(c). Such appeal shall be by way of complete rehearing, unless the Disciplinary Committee decides otherwise.

(k) No charges against members shall be open to challenge on the grounds that the same, or substantially similar allegations, are made against one or more individual members and against a member firm with which the individual members are associated. Charges against a member firm may raise allegations as to conduct or omission by any natural persons employed by, or officers in, that member firm.

18.5 Notice of hearing: The Disciplinary Committee shall give at least 10 days' notice in writing (or such lesser period as may be agreed upon by the parties concerned) to the member against whom a charge has been made, specifying the nature of such charge and the date, place and time of the meeting of the Disciplinary Committee called to consider that matter. Such notice shall be deemed to have been received by the member on the day of delivery or of facsimile transmission to the principal stockbroking office of the member or its member firm, as the case may be, or three days after posting to such office.

18.6 Procedure:

- (a) Except as otherwise provided in these Rules, the Disciplinary Committee shall regulate its own procedure.
- (b) The Disciplinary Committee may require evidence to be given either orally or in writing and may require any evidence to be verified by statutory declaration.
- (c) The chairman of the Disciplinary Committee may require that any oral evidence be received only after the witness has taken an appropriate oath or affirmation.
- (d) At any hearing of the Disciplinary Committee, a member charged shall be given all reasonable opportunity of being heard and shall be entitled to be represented by counsel if such member so chooses.
- (e) The Disciplinary Committee shall provide a written summary of its reasons for any decision it makes in determining a charge against a member and its choice of any penalty imposed.

18.7 Statement of findings:

- (a) The Disciplinary Committee shall forward to the Board the written summary of reasons required under Rule 18.6(e).
- (b) The Board shall prepare a statement of the circumstances preliminary to the hearing of any complaint and the findings of the Disciplinary Committee on every charge and the penalty (if any) imposed.
- (c) The statement prepared in terms of Rule 18.7(b) shall identify the defendant member by name (unless no findings adverse to the member have been made, in which case the Board shall, at its discretion, decide whether to identify the member charged) and shall be made available by the Board to members only or generally following the expiry of the appeal period

specified in Rule 18.11(k). In each case where a member or other complainant (rather than the Board) made the complaint resulting in the charges, that member or complainant shall be provided with a copy of the statement of findings prepared in terms of Rule 18.7(b).

18.8 Penalties: If, after hearing any charge, the Disciplinary Committee finds that the member has been guilty of a breach of any Rule, including failure to observe good stockbroking practice, or of any act, matter or thing detrimental to the well-being or proper conduct of the Exchange, it may, if it thinks fit, do one or more of the following things:

- (a) Expel the member from membership; or
- (b) Suspend the member for a stated period; or
- (c) Order the member to pay to the Exchange, within a specified time, a sum by way of penalty not exceeding \$100,000 for an individual member or \$1,000,000 for a member firm, plus GST or any other applicable tax; or
- (d) Censure the member.

18.9 Costs and expenses:

- (a) After hearing any charge or application, the Disciplinary Committee may at its discretion make an order as to costs, including:
 - (i) the costs and expenses of and incidental to any investigation or hearing; and
 - (ii) the legal costs of the Exchange, whether in relation to the proceedings before the Disciplinary Committee or in prior proceedings before a complaints committee appointed in terms of Rule 18.11(a). All witnesses' expenses shall be paid by the Exchange and shall be recoverable in terms of any order that the Disciplinary Committee may make in relation thereto.
- (b) Every person (other than a member or an officer or employee of a member firm) who gives evidence or attends to give evidence at a hearing by the Disciplinary Committee shall be entitled to reimbursement for his proper travelling expenses.
- (c) Every person (whether or not a member) who gives evidence or attends to give evidence at a hearing by the Disciplinary Committee may, at the discretion of the Committee, be paid such sum as the Disciplinary Committee may determine for travelling and other expenses including time spent giving evidence or attending the hearing.

18.10 Failure to pay costs or attend:

- (a) Any member who fails within the time stated in any order of the Disciplinary Committee to pay any sum ordered to be paid by way of penalty or costs or expenses may be suspended by the Board until such sum is paid. Should any part of the sum remain unpaid for one month following the date of suspension, in the absence of any circumstance which in the opinion of the Board provides reasonable and substantial justification for such failure to pay, the Board may thereafter, at its complete discretion, expel the member promptly.
- (b) Every member commits a breach of these Rules who without lawful justification refuses or fails:
 - (i) to attend and give evidence when required to do so by the Disciplinary Committee; or
 - (ii) to answer truly and fully any question put to him by a member of the Disciplinary Committee; or
 - (iii) to produce to the Disciplinary Committee any

book, tape, document, paper or other record required of him.

18.11 Complaints committee:

- (a) The Board or its delegates shall have the power to appoint one or more complaints committees, either on a standing basis or to consider a particular matter, to investigate and consider complaints which, in the opinion of the Board or its delegates, are neither frivolous nor requiring the attention of the Disciplinary Committee.
- (b) A complaints committee shall consist of a minimum of one individual full member who shall not be a member either of the Board or of the Disciplinary Committee, and shall hear any reasonable charge or complaint made against any member of the Exchange. Every person appointed as a member to a complaints committee under the rules of the Exchange in force immediately prior to the coming into force of these Rules shall continue in office in accordance with the terms of his appointment.
- (c) Where any member of a complaints committee is unable to act because of absence or because he or his member firm is concerned or implicated in a charge, then the Board shall, if necessary, appoint another member in his place to consider and hear the particular charge.
- (d) The following rules relating to the Disciplinary Committee shall, *mutatis mutandis* and with the exceptions stated in this Rule 18.11(d), apply to a complaints committee:
 - (i) Rule 18.3(a) as to members' interests;
 - (ii) Rules 18.4(b) as to evidence;
 - (iii) Rule 18.5 as to notice of hearing, except that the period shall be five business days and a complaints committee may deal with the matter on consideration of the evidence submitted and without giving a date, time or place of hearing;
 - (iv) Rule 18.6 as to procedure, except that representation by counsel shall not be permitted without the consent of all parties;
 - (v) Rule 18.7 as to statement of findings, except that the summary referred to in Rule 18.7(a) may be provided to the Board in a summary of findings in respect of matters heard by the complaints committee over a period of up to six months, and a summary statement of findings subsequently prepared by the Board need not, at the discretion of the Board, identify each defendant member. The preliminary statement referred to in Rule 18.7(b) need not be provided in order for a complaints committee to consider a complaint;
 - (vi) Rule 18.8 as to penalties, except that a complaints committee may not suspend or expel a member nor may it impose any fine exceeding \$20,000, plus GST or any other applicable tax, in respect of any one charge;
 - (vii) Rule 18.9 as to costs and expenses; and
 - (viii) Rule 18.10 as to failure to pay costs or attend, subject to a member's rights to appeal a finding.
- (e) Where a complaints committee decides that the member in question has no case to answer, then the complainant shall be so informed and a written report of the findings given to both the chairman and the independent member of the Disciplinary Committee.
- (f) A complaints committee shall have the power to employ legal assistance.
- (g) A complaints committee may decline either to hear or

to continue hearing a charge and instead refer it to the Disciplinary Committee.

- (h) A complaints committee may also resolve after hearing a charge that its powers as to penalties are not sufficient and refer the matter to the Disciplinary Committee.
- (i) The Disciplinary Committee in respect of any charge referred to it in terms of Rules 18.11(g) or 18.11(h) shall have the discretion to rehear any or all matters previously heard by a complaints committee.
- (j) In terms of Rule 18.4(j), there shall be a right of appeal to the Disciplinary Committee against the findings of a complaints committee with regard to findings and penalties (including the amount of costs).
- (k) Any appeal made in terms of Rule 18.11(j) shall be in writing and shall be lodged with the Managing Director not later than 10 days after the member concerned has been given written notice (in the same manner as provided for under Rule 18.5) of the findings of the complaints committee.
- (l) A member may appeal against a penalty (but not a finding) of a complaints committee to another complaints committee, composed of a different member or members. In respect of any such appeal, the outcome of the appeal including any increase or decrease in penalties (up to a maximum of \$20,000, plus GST or any other applicable tax, in respect of any one charge) or costs, shall be binding on the member. The appeal shall represent a waiver by that member of any further right to appeal to the Disciplinary Committee.

19. Disputes

19.1 Disputes between members referred to Board: All disputes between members shall be referred for determination to a director of the Board who shall act as arbitrator.

19.2 If a director of the Board is unable or unwilling to act: Where no director of the Board is able or willing to act as arbitrator in a dispute, the Board shall nominate an individual full member (not being a director) to act as arbitrator.

19.3 Determination final: Any determination under Rules 19.1 or 19.2 shall be final and binding on the members in dispute.

19.4 Hearing of disputes: The provisions of Rule 18.3 shall *mutatis mutandis* apply to hearings of disputes as if references in Rule 18.3 to the Disciplinary Committee were references to the Board, a director of the Board or any individual full member appointed under Rule 19.2, as the case may be.

19.5 Statement of findings: The Board, a director of the Board or any other individual full member appointed under Rule 19.2, as the case may be, may prepare and circulate to members or to such members as it thinks fit, a statement of its findings on any dispute.

19.6 Orders for costs: The Board, a director of the Board or any other individual full member appointed under Rule 19.2, as the case may be, may make such order as it considers fit regarding the payment of costs of the hearing of any dispute.

19.7 Condition precedent to court action: It shall be a condition precedent to the commencement of any action by a member against any other member in respect of any stockbroking transaction or any transaction to which any Rule applies, that the dispute shall be first determined in the manner provided by these Rules, and thereafter action shall be commenced only for the enforcement of the decision given under these Rules and then only after the

member sued shall have, after 14 days' notice in writing, refused or neglected to carry out such decision. In any such action, no member shall dispute the correctness of such decision or award, or the fact that it was given in accordance with these Rules.

20. Defaulting Members

20.1 Member in default: A member firm shall be deemed to be a defaulter in each of the following cases:

- (a) Where it is so declared by the Chairman after it has failed to deliver the securities or pay the money demanded of it pursuant to any Rule relating to delivery and settlement.
- (b) Where the Board has made such enquiries (if any) as it thinks fit and resolves that in its opinion the member firm is in difficulties and has failed or is likely to fail to meet its liabilities.
- (c) Where it has committed an act of bankruptcy or has become bankrupt or is insolvent or has called a meeting of its creditors or has made a composition with its creditors or assignment for the benefit of its creditors.
- (d) Where the Board has made such enquiries (if any) as it thinks fit and resolves that in its opinion other circumstances exist which justify such member firm being considered a defaulter in order to protect the financial interests of members or of the investing public or for such other reasons as may be considered to be relevant in the interests of the Exchange and its members in the proper and efficient conduct of the Exchange's affairs.

20.2 Chairman to notify members: Where a member firm has been deemed to be a defaulter under Rule 20.1, that decision shall be notified immediately by the Chairman to all members.

20.3 Contracts and Defaulters:

- (a) Subject to the provisions of these Rules, every uncompleted contract with a member firm shall be deemed to be rescinded, closed and terminated as from the time the member firm becomes a defaulter and, where the contract is partially uncompleted, that contract shall be deemed to be rescinded, closed and terminated as to the uncompleted balance.
- (b) The Board (whose decision shall be final) shall determine the market price on the day the member firm becomes a defaulter and any surplus or deficiency in respect of such uncompleted contract or balance thereof shall be determined accordingly.
- (c) The defaulter shall be liable to the other member firm for any such deficiency and such other member firms shall account to the defaulter for any surplus.
- (d) Every member firm involved with a defaulter on a rescinded contract shall promptly inform the Exchange of the details.

20.4 Declaration of default and suspension: The Board may declare any member firm a defaulter and may suspend such member firm from membership of the Exchange for such time as it shall think fit.

20.5 Member's obligation to report: In any case where it comes to the knowledge of a member that another member of the Exchange has failed to meet his obligations, such member shall promptly report the circumstances of the case to the Chairman. Failure to so report such circumstances is a breach of these Rules.

20.6 Chairman to investigate: The Chairman upon receiving a report that a member firm has failed to meet its obligations, shall immediately cause an investigation of the matter to be made and shall simultaneously advise the Board that the affairs of such member firm are under

investigation. He shall similarly advise the result of such investigation when completed.

20.7 Members to facilitate inquiries: Where any inquiries as to the credit or position of any member firm of the Exchange are being made by the Exchange, every other member shall on request facilitate such inquiries and make all necessary inquiries into dealings with the member firm whose position is being investigated.

21. Suspension and Loss of Membership

21.1 Suspension of principal on default of member firm: Where a member firm has been declared a defaulter in terms of Rules 20.1 or 20.4, every principal of that member firm shall, from the time such declaration of default has been made, be deemed to be suspended until further notice.

21.2 Suspended member to provide assistance: Any individual full member suspended under Rule 21.1 shall, as a condition of retaining his membership:

- (a) Provide all reasonable assistance to the receiver, liquidator, special manager or any other appropriate person to enable both the financial position of the member firm to be established and the reconciliation of accounts with all other member firms to be completed; and
- (b) Contribute financially his appropriate share:
 - (i) to the costs of the resolution of the member firm's affairs; and
 - (ii) to the funding of any liability which the member firm might have to its clients and stockbroking creditors after determining the member firm's recoverable assets.

21.3 Financial contribution of suspended member: The amount of the appropriate share in Rule 21.2(b) shall be determined by the Board. The Board shall give the suspended member an opportunity to explain to the Board his view on what constitutes an appropriate share. In making such a determination, the Board shall have regard to the view of the suspended member, the interest which an individual full member has in the member firm, the extent to which the individual full member was in a position to influence or control the direction of the member firm, and any other matters which the Board reasonably regards as relevant to enable the appropriate share to be determined.

21.4 Other grounds for suspension: A member firm and/or all or any of its principals (as appropriate) may be suspended by the Board pursuant to these Rules, including Rules 8.13, 10.22(c), 23.6 and 24.4 or by the Disciplinary Committee pursuant to Rule 18.

21.5 Application to lift suspension: Any individual full member or a member firm, as the case may be, who has been suspended in terms of these Rules may apply in writing to the Board for that suspension to be lifted. Without limiting the discretion of the Board to decide the matter, it shall be reasonable grounds for the suspension to be lifted where:

- (a) The individual full member or member firm, as the case may be, is able to show to the satisfaction of the Board that in the circumstances of his or its case, it might not have been appropriate for the suspension to be imposed; or
- (b) (in the case of suspension under Rule 21.1) the individual full member is able to provide evidence satisfactory to the Board of his ongoing commitment to meet the obligations set out in Rule 21.2.

21.6 Effect of suspension generally: For the purposes of any Rule which provides for suspension of a member, "suspension" means that the member concerned shall not, for the period of the suspension, be entitled to exercise any of his or its rights as a member, including:

- (a) the right to practise stockbroking as a member;
- (b) the right to hold any position or office which must be held by a member, whether in his member firm or in the Exchange;
- (c) the right to vote at any meeting of members; and
- (d) the right to hold himself out to the public as a member. Suspension shall not, however, excuse a member from meeting any of his or its obligations to the Exchange, including the obligation to pay all fees and levies as they fall due.

21.7 Loss of membership: A person shall cease to be a member:

- (a) In the case of an individual member, if he:
 - (i) has not represented a member firm full time for a total of six months out of the last 12 months, unless granted leave of absence by the Board. Such leave of absence by an individual associate member or an individual full member must be applied for in writing to the Board prior to the expiry of the relevant 12 month period; or
 - (ii) makes a false declaration to the Exchange when applying for membership,
but in each case, such termination shall not release the member from any outstanding obligations owed by him to the Exchange at that time; or
- (b) If he has delivered his resignation in writing to the Board and the Board has accepted the same. The Board shall not withhold its acceptance without good reason. Good reason shall include, for example, if the member has not settled all outstanding fees and levies owed to the Exchange and any other expenses incurred in respect of that individual full member by the Exchange; or
- (c) On termination of membership by the Board (which may be without further notice to the member):
 - (i) (in the case of an individual full member suspended under Rule 21.2) if in the opinion of the Board, the member does not provide satisfactory evidence of his on-going commitment to meet the obligations set out in Rule 21.2; or
 - (ii) if any of the events listed in Rule 5.1(b)(i) to (vi) occurs after the date the person became an individual member and the Board in its complete discretion decides to terminate the member's membership; or
 - (iii) under the powers provided in Rule 10.22(c); or
- (d) On expulsion by the Disciplinary Committee pursuant to Rule 18.8 or by the Board pursuant to Rule 18.10; or
- (e) If he fails to pay any fees, levies or other charges set by the Board which are due and payable as a condition of membership.

21.8 Conditions for re-eligibility for membership: Any individual full member who has his membership terminated in terms of Rule 21.7(a) or Rule 21.7(c)(i) without having met any obligations imposed under Rule 21.2 or without having paid all outstanding fees, levies and other expenses, shall not be eligible to subsequently apply for readmission to membership until all such obligations have been discharged to the satisfaction of the Board.

21.9 Evidence: For the purposes of Rule 21.7(c)(ii), proof of the occurrence of any of the matters listed in Rule 5(b)(i) to (vi) in relation to an individual member may be given by a certificate containing evidence of the matter and purporting to be signed by, in the case of a conviction, the Registrar or other proper officer of any Court by which the individual member was convicted and in any other case, by

an appropriate person who has knowledge of the matter concerned.

22. Members' accounts, audit and supply of information

22.1 Accounts and records: Every member firm shall keep books of account and records containing complete and correct records and explanations of the affairs and transactions of its stockbroking business. The books, records and explanations shall be kept separate and distinct from the books and other records of any other business in which the member firm may be involved, and shall be in such form as the Board shall from time to time determine. They must be sufficient to enable an auditor to supply the certificate of audit and report as required by Rule 22.2.

22.2 Audit certificate and report: When notified by the Board, a member firm shall, within the time specified in such notification, supply to the Chairman a certificate of audit and report from a practising chartered accountant who, failing appointment by mutual consent between the member firm and the Board, may be appointed by the Board at the expense of the member firm. The certificate and report shall deal with such financial matters as the Board shall from time to time determine.

22.3 Inspection of records: The Board shall have full and absolute power at any time to call upon any member firm to produce promptly, for inspection by the Board or its duly appointed representatives, all books, letters, telexes, telegrams or copies thereof, and other documents relating to its business as a stockbroker. The Board may also require members and their clerks to appear before the Board or its duly appointed representatives at any time, and to give such information as may be required in connection with such business.

22.4 Financial statements: Every member firm shall provide copies of its latest financial statements to the Inspector immediately following completion of such financial statements.

23. Inspector of the Exchange

23.1 Board to appoint inspector: The Board shall appoint either an individual or an appropriate firm, neither of whom shall be a member of the Exchange, to be or to provide appropriate personnel to carry out the duties of the inspector of the Exchange (the "Inspector"). Any individual or firm so appointed shall be a chartered accountant, or a firm of chartered accountants, in public practice. The Board may, at its sole discretion, appoint an alternate Inspector (who shall be a chartered accountant or firm of chartered accountants, in public practice and not a member of the Exchange) if for any substantial reason it considers this necessary.

(a) Each Inspector or alternate Inspector shall be directly responsible for work carried out by him under the provisions of these Rules.

(b) Neither the Inspector nor the alternate Inspector (if any) nor any member of their firm shall take any part in the accounting work involved with the day to day recording of stockbroking transactions for a member firm. Provided the principle of independence of the Inspector remains paramount, an Inspector may undertake for a member firm such accounting work as the preparation of annual accounts from a trial balance supplied by the member firm, preparing and lodging tax returns, or offering advice to the member firm on improving its accounting methods or its office procedures.

23.2 Powers of inspector: The Inspector is empowered to inspect the financial records and related documents of each member firm at any time he considers necessary, and to require from any member firm an explanation of any item or state of affairs whatsoever in relation to the member

firm's stockbroking business, which, in the opinion of the Inspector, appears to need an explanation or to be at variance with these Rules or with what is recognised as good stockbroking practice:

Provided that the Inspector may require to be given access to information concerning the member firm's assets, either private or of another business, when, in the Inspector's opinion, it is advisable to demonstrate the member firm's overall solvency.

23.3 Inspector to be satisfied by maintenance of records: Each member firm shall be required to satisfy the Inspector that its accounts and related subsidiary records are being maintained in a satisfactory and systematic manner and are being kept regularly up to date.

23.4 Inspector to be satisfied of internal systems: Each member firm shall be required to satisfy the Inspector that it has in place reasonable internal systems and checks, both in respect of the activities of employees able to initiate and control securities transactions and also in respect of principals, partners, shareholders and directors.

23.5 Supply of information to Inspector: Every member firm shall supply to the Inspector on a continuing basis such information as may be requested by the Inspector.

23.6 Failure to comply: Failure to comply with Rules 22 and 23 involving the supply of information shall render the member firm liable for immediate suspension by the Board.

24. Capital Adequacy Requirements

24.1 Member firm to maintain liquid capital: In order to ensure that member firms are at all times capable of meeting their financial obligations and except as otherwise provided in this Rule 24, every member firm shall at all times maintain its liquid capital at or above the prescribed level.

24.2 Exceptions: A member firm may be temporarily excused from compliance with Rule 24.1 in respect of a particular transaction if to do so is in accordance with good stockbroking practice.

24.3 Definitions: For the purposes of this Rule 24 the terms "liquid capital" and "prescribed level" shall be determined in accordance with good stockbroking practice.

24.4 Board's power to suspend: Where a member firm is unable to comply with the requirements of Rule 24.1 and has not in terms of Rule 24.2 been temporarily excused from such compliance, the Board may, if it sees fit, pending any other action by the Board including possible expulsion from membership, suspend both the member firm and all or any of its principals until such time as it is satisfied that the member firm is once again in a position to comply with these requirements.

25. Fidelity Guarantee Fund

25.1 Board to make arrangements for fidelity guarantee fund: The Board shall make arrangements for a fidelity guarantee fund (the "fidelity guarantee fund") for the purpose of meeting just claims from persons who have suffered pecuniary loss from a stockbroking transaction as a result of a member firm being unable to meet its financial obligations:

Provided however that nothing in this Rule or the establishment and maintenance of the fidelity guarantee fund shall constitute a legal obligation to any such claimant.

25.2 Management of fidelity guarantee fund: The management of the fidelity guarantee fund shall be vested in and controlled solely by the Board which may in its absolute discretion constitute a Fidelity Guarantee Fund Committee to assist with such management. The Fidelity Guarantee Fund Committee shall be accountable to the

Board and shall have such powers as the Board from time to time determines.

25.3 Member firm to give security: Every member firm which is not a company and carries on any business in addition to the business of stockbroking shall give security by bond (at such time for such amount and in such form as shall be determined by the Board) to secure the fidelity of such member firm.

25.4 Member to give security in respect of partner/s: Every member who is in partnership with any person who is not a member (whether or not such person is in the opinion of the Board actively engaged in stockbroking) shall (in addition to compliance with Rule 25.3) take out and maintain a bond to secure the fidelity of that person in respect of each type of business (other than stockbroking) engaged in by him, each such bond to be in the sum of \$20,000 or such larger figure as the Board may from time to time determine, and such bond shall be in favour of or assigned to the Exchange, provided that this Rule shall not apply in respect of any business where that person is already covered by a fidelity arrangement covering real estate agents or chartered accountants or by some other fidelity arrangement approved for the time being by the Board.

25.5 Member firm to pay annual contribution: Every member firm shall pay such annual contribution and such additional levy as from time to time be fixed by the Board, provided that the total amount of all contributions and additional levies paid by member firms in any one year shall not, in aggregate, exceed the sum of \$1,000,000 and the Board may differentiate between member firms in setting the amount of any levy payable by any class of member firm. No person shall be entitled to a refund of any contributions or additional levies paid under this Rule 25.5.

25.6 Insurance: The Board shall also have the power to enter into any contract of insurance which may either supplement, replace or otherwise contribute to any payment made from the fidelity guarantee fund as a result of any just claim being met.

25.7 Payment of premium: The premium for such insurance may at the complete discretion of the Board, be paid from the capital of the fidelity guarantee fund, the income of the fidelity guarantee fund, special levies upon member firms or upon market transactions or any combination thereof.

25.8 Limit on claims: Subject to Rule 25.10, a person claiming to have suffered a loss under Rule 25.1 and seeking reimbursement under the fidelity guarantee fund or any scheme of insurance related thereto shall not be entitled to receive more than \$20,000 (or such greater amount as the Board may in its absolute discretion determine) in respect of any loss suffered as a result of the acts or defaults of any one member or his member firm.

25.9 Further limit on claims: Subject to Rule 25.10, the total amount payable out of the fidelity guarantee fund or any scheme of insurance related thereto, to meet claims (as limited by Rule 25.8) arising out of the inability of any member firm to meet the financial obligations of such member firm shall be limited to the lesser of:

- (a) the amount/s claimed; and
- (b) \$500,000, or such greater amount as may be from time to time determined by the Board.

25.10 Board's discretion to determine claim: Subject to Rules 25.8 and 25.9, the Board in its absolute discretion shall determine the extent (if any) to which any claim on the fidelity guarantee fund shall be met.

26. Short Sales

26.1 Short sales to comply with good stockbroking practice: No member firm shall enter into a short sale contract, either on its own behalf or knowingly for a client,

unless such short sale is undertaken in compliance with good stockbroking practice.

26.2 Definitions: For the purposes of this Rule 26:

- (a) the term "Approved Security" means any security which in the opinion of the Board has sufficient liquidity in the market and is from time to time designated as such by the Board;
- (b) the term "short sale" means a sale of any Approved Security where at the time of the sale, the seller does not have a presently exercisable and unconditional right to vest the security in the buyer and related expressions shall have a corresponding meaning; and.

27. Miscellaneous and Common Seal

27.1 Appointment of odd lot dealers: Odd lot dealers shall be appointed to deal with sales of parcels of securities not amounting to a marketable parcel as defined by or under these Rules.

27.2 Members to protect buyer's rights in respect of certain securities: Where existing security holders are given the right to apply for new securities offered to security holders prior to delivery of securities sold for cash, members shall take such action as may be required by good stockbroking practice to protect the rights of the buyers in respect of the securities so offered.

27.3 Members to protect buyer's and seller's rights in respect of dividend and other entitlements: Members shall take such action as may be required by good stockbroking practice to protect the rights of buyers and sellers in respect of entitlements to dividends, interest, or capital distributions and in regard to settlement.

27.4 Rights in respect of calls on securities being sold: The rights and obligations of buyers and sellers with regard to calls made on securities the subject of sale shall be as recognised by good stockbroking practice.

27.5 Securities transfers: Securities transfers as defined by the Securities Transfer Act 1991 must be used for all transactions in New Zealand registered securities and the Board may determine the procedures to be adopted with regard to the completion and processing of all such transfers.

27.6 Common seal: The Exchange shall have a common seal which shall be kept in the custody of the Managing Director and shall be used only by the authority of a resolution of the Board, and every instrument to which the common seal is affixed shall be signed by a member of the Board and countersigned by a second member of the Board.

28. Financial

28.1 Power to invest: The Board shall have power to invest the funds of the Exchange in such manner as it thinks fit.

28.2 Power to borrow: The Exchange shall have power to borrow or raise or secure the payment of money in such manner as the Board thinks fit, and may for that purpose

mortgage/charge or otherwise encumber all or any of the assets of the Exchange.

28.3 Board to control funds: The control of the funds of the Exchange shall be vested in the Board.

28.4 Board may delegate: The Board may delegate to any member or members, authority to control, invest or use such part of the funds of the Exchange as it thinks fit.

29. Amendment to Rules

29.1 Requirements for alteration: These Rules or any of them may be altered (by way of rescission, amendment, addition, or otherwise) if:

- (a) approved by a resolution passed by a 3/4ths majority of the votes cast by members entitled to vote at an annual or special meeting of members; and
- (b) approved in accordance with Section 7(3) of the Act.

29.2 Notice of intention to propose an alteration: No resolution for alteration of these Rules or any of them shall be submitted to a meeting of members unless the same has been proposed by the Chairman, by the Board, or by a member and unless notice in writing of intention to submit such resolution shall have been given to the Managing Director within sufficient time to enable him to give the notice referred to in Rule 29.3.

29.3 Notice of proposed alteration: Fourteen days' notice in writing of details of the proposed alteration shall be given by the Managing Director to the Board and to members.

29.4 Requirements for re-consideration of proposal: No proposed alteration if rejected by members shall, without the consent of the Board, be reconsidered by members for six calendar months from the date of the meeting at which it was rejected.

29.5 Timing of further alterations: Where a Rule is altered, no further alteration to the Rule shall, without the consent of the Board, be considered by members for six calendar months from the date on which such altered Rule took effect.

29.6 Effect of alteration: Any amendment or repeal of any of these Rules shall not affect the validity of any proceedings completed, action taken or decision made under the Rule or Rules so amended or repealed. Unless any transitional Rule is put in place, any proceedings commenced or action taken under a Rule being repealed or amended shall be completed according to the provisions of the Rule prior to its amendment or repeal.

29.7 Previous rules repealed: Upon the date these Rules are published in the *Gazette*, the New Zealand Stock Exchange Rules 1993 (as amended) and all previous rules approved under Section 7 of the Act shall be revoked.

MARIE SHROFF, Clerk of the Executive Council.

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