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RULES FOR THE APPOINTMENT/ELECTION OF DIRECTORS OF THE NEW ZEALAND DAIRY BOARD

**NOTICE RELATING TO RULES FOR
APPOINTMENT AND ELECTION OF DIRECTORS
OF THE NEW ZEALAND DAIRY BOARD**

NOTICE is hereby given that, having received the approval of the dairy industry and the written consent of the Minister of Agriculture as required by Section 3C(3) of the Dairy Board Act 1961, the Rules for Appointment and Election of Directors of the New Zealand Dairy Board as set out below, were formally approved by the Dairy Board at its meeting on 23 September 1997 and their publication in the Gazette authorised.

J. B Murray
Secretary
NEW ZEALAND DAIRY BOARD

RULES FOR APPOINTMENT AND ELECTION
OF DIRECTORS OF THE NEW ZEALAND DAIRY BOARD
(incorporating the manner of election)

1. BACKGROUND

Legislative Framework

- 1.1 Section 3AA of the Dairy Board Act 1961 ("the Act") provides that the New Zealand Dairy Board ("the Board") will comprise 13 Directors. Two Directors will be appointed by the Minister of Agriculture on the Board's recommendation (being people who, in the Board's opinion are qualified by commercial experience to be Directors). The balance will be either:
- (a) appointed by a Co-operative Company; or
 - (b) elected by a group of Co-operative Companies.
- 1.2 A "Co-operative Company" is a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996.
- 1.3 Section 3C of the Act provides that the Board may from time to time, by notice in the *Gazette*, authorise a Co-operative Company to appoint or a group of Co-operative Companies to elect a specified number of Directors.
- 1.4 Section 3C(4) provides that no Co-operative Company or group of Co-operative Companies may be involved in the tenure of more than five Directors to the Board.
- 1.5 Section 3G of the Act provides that the Board must approve a manner of election of Directors by groups of Co-operative Companies.
- 1.6 The determinations of the Board referred to in paragraphs 1.3 and 1.5 are subject to both the approval of the dairy industry and of the Minister of Agriculture.

Approval of Dairy Industry

- 1.7 The approval of the dairy industry for these purposes is provided for in Section 2C of the Act. In brief this requires the approval, at a meeting of duly authorised representatives of Co-operative Companies or in writing, of Co-operative Companies whose aggregate voting milksolids during the most recent complete season and the two seasons before it was more than 75% of the aggregate quantity of the voting milksolids of all Co-operative Companies for that period.

Authorisation of Appointment and Election of Directors

- 1.8 Pursuant to Section 3C of the Act and in accordance with the approval of more than 75% of the dairy industry and the written consent of the Minister of Agriculture as required by subsection (3) of Section 3C, the Secretary has given notice in the *Gazette* of 3 October 1997, No.145, page 3345 (being the second notice issued under subsection (1) of Section 3C) that the Dairy Board has:
- (a) authorised the Co-operative Companies referred to in Clause 3.1 to appoint Directors as specified therein;
 - (b) authorised the group of Co-operative Companies referred to in Clause 4.1 to elect Directors as set out in that clause;
 - (c) specified the terms for which each of the Directors appointed or elected in accordance with (a) and (b) is to serve after publication of the notice (see Clause 14).

Term of Office

- 1.9 Section 4 of the Act provides, in general, that a Director shall hold office for a four-year term, such term expiring on 30 June in the fourth year following his appointment or election. The term of office for a Director who is over 64 years of age either before or after his/her appointment or election will be less than four years and after 68 will be on an annual basis. A Director will continue in office until a successor comes into office except that where a new notice has been gazetted reconstituting electing groups or appointing companies, or where a company ceases to be a member of an electing group, the Directors involved shall go out of office on the earlier of six months after the date of the notice or on the date of the appointment or election of a successor.

Review of Rules

- 1.10 The rights of appointment and election of Directors set out in these Rules have been made on the basis that a Co-operative Company has a right to appoint a Director or a group of Co-operative Companies have a right to elect a Director for approximately every 9% of total milksolids held by them. The dairy industry expects these Rules to be reviewed in 2001 and every five years thereafter. In addition, the industry expects these rules to be reviewed if requested by any co-operative company or group of co-operative companies holding 10% or more of total milksolids.

- 1.11 Where section 15V of the Act applies to an amalgamation or acquisition, then the "successor", will for the purposes of these Rules be treated as also having succeeded to the total milksolids of its predecessor.

2. **DEFINITIONS**

- 2.1 In these Rules, the following terms will have the following meanings unless the context otherwise requires:

"**Act**" means the Dairy Board Act 1961 as amended from time to time;

"**Board**" means the New Zealand Dairy Board established under the Dairy Board Act 1961;

"**Electing Group**" means the group of Co-operative Companies specified in Clause 4 of these Rules;

"**Elector**" means a Co-operative Company entered on the Roll of Electors;

"**Extraordinary Vacancy**" has the same meaning as in the Dairy Board Act 1961;

"**Related Company**" has the same meaning as in the Companies Act 1993;

"**Rules**" means these rules, as may be amended from time to time, for the appointment and election of Directors of the Board;

"**Secretary**" means the person for the time being appointed as Secretary of the Board who shall act as Returning Officer in any election;

"**Voter**" means an Elector with voting entitlement and includes that Elector's Voting Representative;

"**Total milksolids**"

- (a) in relation to a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35(1)(a) and (b) of that Act, means the milksolids contained in New Zealand origin milk or cream acquired and owned by the manufacturer or by a related company of the manufacturer or by any company effectively controlled by the manufacturer during the season but does not include milksolids contained in dairy produce sold or transferred by the manufacturer (or its related company or effectively controlled

company) to any person and subsequently reacquired by the manufacturer (or its related company or effectively controlled company) in any form;

- (b) in relation to a co-operative milk marketing company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35(1)(b) and (c) of that Act (not being a related company to a manufacturer or a company effectively controlled by a manufacturer referred to in paragraph (a) above), means milksolids contained in any milk or cream supplied by supplying shareholders to the company for human consumption in New Zealand in liquid form as milk or cream.

“Voting Representative” means a person appointed in the manner set out in these Rules to nominate and to exercise the vote of a Co-operative Company in an election for a Director.

- 2.2 Any term or expression which is not defined in these Rules, but which is defined in the Act, has the meaning given to it by the Act.

3. APPOINTMENT OF DAIRY BOARD DIRECTORS

- 3.1 The following Co-operative Companies are duly authorised to appoint Directors to the Board as specified:

<u>Company</u>	<u>No. Directors</u>
Kiwi Co-operative Dairies Limited	3
Northland Co-operative Dairy Company Limited	1
The New Zealand Co-operative Dairy Company Limited	5

- 3.2 A Co-operative Company which appoints a Director to the Board pursuant to this Clause 3 will immediately upon doing so, request the appointee to give the Secretary, in writing, details of his or her name, address, occupation and date of birth and such other information as the Board may reasonably require.
- 3.3 If at any one time more than one appointment is to be made by a Co-operative Company, the company making the appointment shall also advise the Secretary in writing of the term of office each appointed Director is to serve pursuant to the schedule in clause 14.

3.4 Upon receipt of the information referred to in Clauses 3.2 and 3.3, the Board shall give notification of the appointment to the appointee with a copy to the appointing Co-operative Company.

4. **ELECTION OF DAIRY BOARD DIRECTORS**

4.1 All Co-operative Companies except:

- (a) those named in clause 3.1; and
- (b) any related company (as defined in the Companies Act 1993) of a company named in clause 3.1; and
- (c) any company which is effectively controlled by a company named in clause 3.1

shall form the "New Zealand Electing Group" and are authorised to elect to the Board two directors.

4.2 Except in the case of the first election of two persons to be elected by the New Zealand Electing Group, if more than one person is nominated for election (in accordance with Clause 7 of these Rules) to fill a vacancy in the New Zealand Electing Group, a poll will be taken of the voters (if more than one) comprising the New Zealand Electing Group, and the Secretary will cause voting papers to be printed in Form No 2 attached to these Rules and an election shall be held. A poll will likewise be taken if more than two persons are nominated for the first election.

4.3 The voting entitlement of a Co-operative Company which is a member of the New Zealand Electing Group, on an election of a Director will be one vote for each kilogram of the Total milksolids.

4.4 Where a Director elected by the New Zealand Electing Group is also a director of an Elector, then that Elector will be entitled to nominate a candidate for the election of the other Director to be elected by the New Zealand Electing Group but will not be entitled to vote in that election except for that amount of its Total milksolids which exceeds 9% of Total milksolids of all those Co-operative Companies specified in clause 3.1, or forming part of the New Zealand Electing Group.

4.5 Where more than one vacancy occurs at the same time, in respect of the Directors elected by the New Zealand Electing Group, voting for each vacancy shall be

undertaken separately and not concurrently to enable effect to be given to clause 4.4.

4.6 For the purposes of this clause, the Total milksolids produced by:

- (a) a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35(1)(a) and (b) of that Act, will be the Total milksolids of the company (including that of any related company or company effectively controlled by it) for the most recent complete season and the two seasons before it for which production figures are available to the Board pursuant to clause 4.7;
- (b) a co-operative milk marketing company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35(1)(b) and (c) of that Act, will be determined by the Board by calculating the aggregate milk volume credited to supplying shareholders for the most recent complete season and the two seasons before it for which figures will be available to the Board pursuant to clause 4.7, converted to milksolids equivalent using a standard total milksolids factor determined by the Board.

4.7 The figures to be used by the Board in calculating the Total milksolids of:

- (a) a company (including any related company or effectively controlled company) referred to in clause 4.6(a) will be those figures used in the annual totals supplied and certified as correct by the company in returns to the Board; and
- (b) a company referred to in clause 4.6(b) will be those milk volume figures supplied to the Board and certified as correct by the relevant company (and adjusted as appropriate pursuant to clause 4.6).

4.8 The costs of every election shall be paid by the Board.

4.9 Clauses 3.2, 3.3, and 3.4 shall apply mutatis mutandi to the election of any Director pursuant to this clause 4.

5. COMPILATION OF ROLLS

5.1 The Secretary will compile a Roll of Electors comprising Co-operative Companies in the New Zealand Electing Group and their voting entitlements.

- 5.2 The Secretary will send to each Co-operative Company on the Roll of Electors ("roll") a voting paper as set out in Form No 2 attached to these Rules.
- 5.3 The name of each Voting Representative shall be inserted following the name of the relevant Co-operative Company in the New Zealand Electing Group.
- 5.4 The roll shall (subject to the provisions of Clause 5.5) be closed on the first Wednesday in the month of May in each year and shall thereupon be available for inspection for a period of 5 working days at the office of the Secretary during ordinary office hours.
- 5.5 Any person may by notice in writing to the Secretary at any time during the said period of 5 working days object that the name or voting entitlement of any Co-operative Company is incorrectly set out or is wrongly inserted in or omitted from the roll, and the Secretary, after making such inquiries as he or she thinks fit, may during the said period of 5 working days or within 3 working days thereafter alter the roll accordingly, and the decision of the Secretary as to any such objection shall be final.
- 5.6 Any Co-operative Company whose name is added to the roll pursuant to Clause 5.5 hereof may at any time thereafter appoint a Voting Representative in manner hereinafter provided, and the name of such Voting Representative shall be inserted in the roll accordingly.

6. VOTING REPRESENTATIVE

- 6.1 Every Co-operative Company in the New Zealand Electing Group may appoint a Voting Representative to vote on the company's behalf in accordance with its voting entitlement with power also to nominate a candidate on its behalf in an election of a Director to represent the New Zealand Electing Group.
- 6.2 The Voting Representative of every Co-operative Company shall be appointed by instrument in accordance with its constitution and the Companies Act 1993.
- 6.3 Every such instrument of appointment shall be delivered or forwarded by post addressed to the Secretary who shall cause particulars of the person set out in the instrument to be entered on the roll in accordance with clause 5.3.
- 6.4 The decision of the Secretary as to the validity of any instrument of appointment shall be final, and no election shall be affected by reason that any person appearing on the roll as authorised to vote on behalf of any Co-operative Company is not in fact so authorised.

- 6.5 If any person so authorised shall die or the Co-operative Company appointing him or her, in its sole discretion wishes to revoke the appointment, such Co-operative Company may by instrument executed as set out above notify the Secretary to that effect and appoint in the same manner some other person in his or her place.
- 6.6 An entry of a Voting Representative may be made in the roll at any time whether before or after the closing of the roll and so far as it authorises a nomination or the casting of a vote shall take effect from the time when the instrument of appointment was received by the Secretary.

7. VACANCIES

Three months before the term of any Director is due to expire, the Secretary shall:

- (a) in the case of Co-operative Companies authorised to appoint Directors, invite the company concerned to advise the Secretary of the appointee to take office on 1 July of that year in accordance with Clause 3.2; or
- (b) in the case of elected Directors, the Secretary shall notify all Electors of the vacancy and call for nominations.

8. NOMINATIONS

- 8.1 No person shall be eligible for election as an elective member of the Board unless he or she has been nominated by one or more Co-operative Companies the names of which appear on the roll compiled pursuant to Clause 5 and unless by writing to the Secretary he or she has accepted nomination.
- 8.2 Each Co-operative Company being a member of the New Zealand Electing Group (whether or not it has a voting entitlement) will be entitled to nominate one person (but not more than one) as a candidate in respect of each Director to be elected by the New Zealand Electing Group.
- 8.3 A nomination shall be completed in Form No 1 attached or in such other form approved by the Secretary from time to time.
- 8.4 Nominations will be received by the Secretary up until 4.00pm on the third Friday in the month prior to the month in which the election is to be held.
- 8.5 If only one person is nominated for election such person will be deemed to have been duly elected and will be declared elected by the Secretary by notice under his or her hand.

9. POLLS

- 9.1 If more than one person shall have been duly nominated for election a poll shall be taken, and the Secretary shall cause voting-papers to be printed in Form No 2 attached.
- 9.2 The Secretary shall forward by post addressed to each Voter at the address appearing on the roll a voting-paper in Form No 2.
- 9.3 On proof to his or her satisfaction by statutory declaration or otherwise that a voter has not received his, her or its voting-paper in due course of post or that any voting-paper received by a Voter was accidentally destroyed before being used, the Secretary may issue a further voting-paper to such Voter bearing on its face the required number with an additional distinguishing mark to indicate its issue under this clause.
- 9.4 Unless otherwise determined by the Board any poll to be taken in any year will close on a day designated by the Board in the month of June in the year of an election.
- 9.5 Except as otherwise provided by the Board no voting paper will be valid unless it is received by the Secretary by the date required and in the form provided.

10. SCRUTINEERS

Any candidate for election as an elective member of the Board may by writing under his or her hand addressed to the Secretary and delivered to him or her not less than two clear days before the closing of the poll appoint a scrutineer for the purposes of the poll.

11. RESULT OF ELECTION

- 11.1 Immediately upon the closing of any poll the Secretary will in the presence of such scrutineers as are present, determine the validity of any vote and shall reject any voting paper not appearing to him or her to be the genuine voting paper of a Co-operative Company enrolled as an Elector. The Secretary will then add the value of every effective vote cast in favour of each respective candidate to determine the highest polling candidate or candidates.
- 11.2 Where there is an equality in the value of votes between any candidates, and the addition of a vote would entitle one of such candidates to be declared elected, the Secretary will determine by lot which candidate will be elected.

- 11.3 If at any time two Directors are to be elected by the New Zealand Electing Group for differing terms, the highest polling candidate shall fill the vacancy for the longer term and the next highest polling candidate shall fill the second longest term. In the case of an equality of votes the Secretary will determine the matter by lot.
- 11.4 The candidates deemed to be elected will be declared elected by the Secretary by notice under his or her hand.
- 11.5 The Secretary will be the sole and absolute judge of the regularity and propriety of all matters connected with any election, and no election will be called in question on the ground that a voting paper was not received by any voter, or that a voting paper from any voter was not received by the Secretary was irregular in form, or that any vote was irregularly cast, or that any voting paper was wrongly accepted, or wrongly rejected, or that any voting entitlement was wrongly computed, or that any effective vote was wrongly computed, or that any other irregularity occurred in connection with any election unless in the opinion of the Secretary such irregularity materially affected the result of the election and occurred otherwise than in good faith.

12. EXTRAORDINARY VACANCIES

- 12.1 **Elected Directors:** In the event of an Extraordinary Vacancy occurring in any year in the office of a Director elected by the New Zealand Electing Group, the Board will within 3 months of the vacancy occurring notify all Electors of the vacancy and call for nominations pursuant to clause 8. Where necessary the Board will conduct an election to fill the vacancy for the balance of the term of office (see Section 7(3A) of the Act).
- 12.2 When an election is required pursuant to Clause 12.1, the Secretary will give notice to Electors and shall in such notice appoint:
- (a) a day as being the date on which the roll of Electors will be closed;
 - (b) the latest day and time at which nominations will be received; and
 - (c) the day and hour for the closing of the poll, being not less than 10 working days after the day appointed for the nomination of candidates pursuant to paragraph 12.2(b).
- 12.3 **Appointed Directors:** In the event of an Extraordinary Vacancy occurring in any year in the office of a Director appointed pursuant to clause 3.1, the Board will, as soon as practicable, request the appointing Co-operative Company to make a new

appointment in accordance with the provisions of Clause 3 of these Rules for the balance of the term of office (see Section 7(3A) of the Act).

- 12.4 **Commercial Directors:** In the event of an Extraordinary Vacancy occurring in any year in the office of a Director appointed by the Minister under Section 3AA(a) of the Act, the Board will, as soon as practicable, recommend a replacement to the Minister of Agriculture to be appointed by the Minister for the balance of the term of office (see Section 7(3) of the Act).

13. DEPUTIES

In the event of incapacity arising from illness, absence, or other sufficient cause, the Minister may, pursuant to Section 6 of the Act, appoint a Deputy for any Director on advice of the Secretary certifying the cause and advising, as the case may be, the name of the deputy nominated by the Co-operative Company which appointed the incapacitated Director, or nominated by the Board in the case of a Director appointed by the Minister, or elected by the New Zealand Electing Group.

14. ROTATION

The initial terms ending 30 June in the year specified below against a Co-operative Company or the New Zealand Electing Group shall be served by the Directors appointed or elected according to these Rules.

Appointing Companies/ Electing Group	Expiration Date			
	1998	1999	2000	2001
Kiwi (3)	1	1	1	
Northland (1)			1	
NZCDC (5)	1	1	1	2
New Zealand Electing Group (2)	1		1	
Commercial Directors (2)		1		1

- 14.1 In respect of the New Zealand Electing Group, the Secretary will, by lot, determine which Director's term of office will expire in 1998 and which Director's term of office will expire in the year 2000.

15. **GENERAL**

These Rules will be read subject to all applicable provisions of the Act.

Dated this 23rd day of September 1997

Form No 1

NOMINATION FORM

Date:

The Secretary
New Zealand Dairy Board
PO Box 417
WELLINGTON

Dear Sir

DIRECTOR - NEW ZEALAND DAIRY BOARD

This Company nominates:

Full Name:

Address:

.....

Date of Birth:

as a candidate for election as a Director to the New Zealand Dairy Board.

The
(Name of Co-operative Company)

By
.....

NOTES

- (a) A nomination form shall be signed by the Voting Representative or by two persons, such persons being either Directors, Secretary, or Chief Executive Officer of the Company. The persons signing should add the capacity in which they sign (e.g., Voting Representative, Director, or Secretary, etc) after their name.
- (b) The consent of the candidate is not required on the nomination form, but the nominating persons shall warrant by completing the nomination that they have obtained the consent of the nominee. The nominee should confirm his/her acceptance in writing to the Secretary.
- (c) Closing date for nominations: Nominations must be received in the Head Office of the Board not later than 4 pm on the day of 19 . The Board will acknowledge the receipt of any nomination. For obvious reasons companies are advised to ensure that their nomination should reach Wellington early in order that the non-receipt of a confirmation may enable appropriate enquiry to be made to trace a nomination form.

Form No 2

NO.

UNDER THE DAIRY BOARD ACT 1961

VOTING PAPER

ELECTION OF A DIRECTOR TO THE
NEW ZEALAND DAIRY BOARD

(Name of Co-operative Company
Represented by Voter)

Directions

The voter is to leave untouched the name of the candidate for whom he/she desires to vote and to draw a line with a pen or pencil through the names of the candidate or candidates for whom he/she does not desire to vote.

Initials of Issuing Officer

Should a voter leave uncanceled the name of more than one candidate then the voting paper is invalid.

After voting, return it to the Secretary of the Board.



