



# NZX Limited Regulatory Governance Committee (“RGC”)

## TERMS OF REFERENCE

August 2013

Amended August 2014

Amended November 2016



## Constitution

These Terms of Reference for the Regulatory Governance Committee ("**Committee**") were approved by the NZX Limited ("**NZX**") Board ("**Board**") in November 2016. The Committee is a committee of the Board.

## Review and Approval

These Terms of Reference shall be reviewed at the instigation of the Committee or the Board. Any changes to these Terms of Reference require the approval of the Board.

## Purpose

The purpose of the Committee is to assist the Board in fulfilling its governance responsibilities relating to NZX's regulatory function for its registered markets, its designated settlement system, NZCDC, and any other matters referred to it by the Board. The Committee does not have any authority to make regulatory decisions and will not become involved in day-to-day operations or management functions and decision-making.

## Responsibilities

The Committee, the Board, the Head of Market Supervision, the Head of Policy and Legal each have distinct roles and responsibilities relating to NZX's regulatory function. These can be broadly described as follows:

- **Board of Directors** – accountable for the discharge of NZX's regulatory function and NZX's compliance with its general obligations in respect of its licensed markets under Financial Markets Conduct Act 2013.
- **Head of Market Supervision** – accountable to the Board and responsible for discharge of NZX's regulatory function.
- **Head of Policy and Legal** – accountable to the CEO and responsible for market development and policy work.
- **Committee** – responsible for facilitating the Board's governance of NZX's regulatory function. The Committee's prime focus is intended to be monitoring of the quality of regulatory decision-making by the review of decisions and/or the decision-making process relating to completed matters made in performance of the regulatory function and providing a forum for consultation by the Head of Market Supervision in relation to regulatory matters. The Board has delegated responsibility for the day-to-day discharge of the regulatory function to the Head of Market Supervision. The Committee has no delegation to make regulatory decisions, nor any authority to reverse or alter any decision made.

The Committee's specific duties and responsibilities are detailed in Appendix 1. The Committee has no responsibility in respect of the Listing process, the approval of new products for trading or the process of accreditation of a new participant. The Committee may review any rulings or waivers granted to an Issuer or Participant even if granted prior to Listing or accreditation. The Committee has no mandate to initiate engagement with external stakeholders.



The Committee shall take into consideration that NZX directors are required by law to act in the best interests of NZX when making decisions. In doing so, the NZX directors take into account the need for NZX to obey local and international laws and regulations as appropriate to its businesses.

NZX holds a licence to operate a financial product market and is the operator of a designated settlement system. The Financial Markets Conduct Act 2013 requires NZX to operate its financial product markets in a fair, orderly and transparent manner. The members of the Committee shall take these legal and regulatory requirements into consideration when making decisions and advising the Board on matters which impact these areas of NZX.

## Membership

The Committee shall be appointed by the Board and shall consist of no less than three non-executive NZX Directors plus up to two independent persons (“**Non-Director Members**”) with relevant skills and expertise. Membership of the Committee shall be for a term determined by the Board.

The Board shall determine the composition of the Committee.

The Head of Market Supervision shall attend ex-officio, however the Committee Chair may at any time require the Head of Market Supervision to withdraw to facilitate discussion. At least annually, the Committee will meet without executives present for at least part of the meeting.

The Committee Chair will be appointed by the Board and shall not be the Chair of the Board.

## Meetings

Reasonable notice of meetings and the business to be conducted shall be given to the members of the Committee.

The Committee shall meet a minimum of twice annually, and will otherwise meet as the Committee Chair considers necessary in order to fulfil its duties. The Committee Chair is required to call a meeting if requested to do so by any Committee member, any Board Director or the Head of Market Supervision.

A quorum of the Committee is three members.

## Attendance at Meetings

The Committee may invite any person (including the Head of Policy and Legal) to attend part or all of any meeting in order to assist the Committee with its work but the Committee may request they withdraw from any part of a meeting.

## Role of Committee Members

Non-Director Members may participate in the Committee in the same manner as a NZX Director member, including for the purposes of recorded attendance and receipt of information.

However, these Terms of Reference are not intended to confer on the Committee and, in particular a Non-Director Member, any authority, power or duty delegated by the Board and

in particular no Non-Director member is authorised to act or be deemed by his or her actions to act as or be a shadow or deemed director of NZX.

Neither the Committee nor any of its members owe any duty of care, and do not accept any responsibility or liability to persons other than NZX.

## Secretarial

The Board Secretary will act as Secretary to the Committee.

The Secretary shall ensure that the agenda and supporting documentation are circulated to Committee members and the Head of Market Supervision prior to each meeting.

The Secretary shall be responsible for keeping the minutes of meetings of the Committee and circulating them to members and attendees of the meeting, and ensuring they are made available to other Board Directors.

The Secretary shall ensure that complete records of the proceedings of the Committee including agendas, minutes, papers, advice and reports are kept and all such documentation is appropriately and securely filed and retained in a permanent form in a manner that meets the requirements of the NZX Conflicts Management Policy relating to the quarantine of regulatory information.

## Authority

The Committee is authorised by the Board to undertake any activity within its Terms of Reference.

The Committee shall have the authority to direct any investigations deemed necessary by itself or the Board.

The Committee shall have access to the Head of Market Supervision and management and the ability to consult independent experts where considered necessary to carry out its duties.

The Head of Market Supervision has access to the Committee, the Committee Chair and the Chair of the Board.

The Committee is authorised by the Board to obtain independent professional advice if it considers this necessary.

## Reporting

Copies of the minutes of meetings of the Committee shall be circulated to the Committee and to the Board. These may be redacted to ensure maintenance of confidential information, recognising that Board members may have a personal interest or potential conflicts in relation to a particular matter considered by the Committee.

The Committee discharges its responsibilities *inter alia* by reporting to the Board. In relation to any recommendations, the Committee does not have any authority to commit the Board to their implementation.

The Committee shall provide a report (which may be oral) to the Board on its proceedings since the previous such report at each scheduled regular Board meeting.



The Committee shall ensure that matters that are properly the province of the full Board are dealt with by the full Board.

## Conflicts of Interest

No Committee member shall receive material for or participate in Committee discussions in relation to a matter in respect of which he or she may have a personal interest or other potential conflict, for example, a relationship with a Participant when matters related to participants are being discussed, or an advisory relationship with a Listed Entity or a relevant shareholding in a Listed Entity when that entity is being discussed. In this respect Committee members are subject to the same restrictions as NZX regulatory staff members in relation to commercial or regulatory personal conflicts (see ***Regulatory Code of Conduct as part of the NZX Conflict Management Policy***). The member must declare any conflict where the Committee proposes to discuss a matter on which that member is conflicted. The conflicted member must excuse himself or herself from discussions and decision making on matters on which the member is conflicted.

Where a member considers that his or her objectivity may be at risk because of a conflict of interest, he or she must identify that to the rest of the Committee and, where appropriate, recuse himself or herself from any deliberations and consideration of the matter.



## Appendix 1

# Duties and Responsibilities of the NZX Regulatory Governance Committee

This appendix supplements the Committee's Terms of Reference. It expands upon the Committee's objective on pages 2-3 by providing details of the Committee's operational duties, responsibilities and procedures.

1. Review the quality of decisions made in discharge of the regulatory function. Unless otherwise determined by the Committee, this will be achieved by the:
  - Review of a selection of decisions made in exercise of the regulatory function to determine whether they are: consistent with the relevant Rules and any policy or guidance issued by NZX; logical and appropriate in the circumstances, with any discretions reasonably exercised, have followed appropriate process and made in accordance with the delegated authorities approved by the Board (the review to include, without limitation, decisions made to not refer a matter to the NZ Markets Disciplinary Tribunal (the "**NZMDT**"));
  - Review of the arrangements for referral by Market Services to Regulation of matters for investigation and enforcement action by Regulation and adherence to these arrangements; and
  - Review of the performance of NZX Regulation against the Service Levels from time to time approved by the Board.
2. Provide a forum for consultation by the Head of Market Supervision in relation to regulatory matters on request by the Head of Market Supervision.
3. Refer to the Board issues identified in its work that the Committee considers may require a response from the Board following discussion with Head of Market Supervision and/or CEO as appropriate.
4. Review changes to NZX's regulatory policy that require Board approval prior to being submitted to the Board for approval.
5. Report to the Board in respect of work of the Committee.
6. At least annually the Committee shall meet with the Chair of the NZMDT.
7. Except as set out in these Terms of Reference, the Committee will establish its own procedures.

