Rules

of

New Zealand Financial Markets Association Incorporated

March 2008
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Rules of New Zealand Financial Markets Association Incorporated

1. Interpretation

1.1 Definitions

In these Rules, unless the context otherwise requires:

Act means the Incorporated Societies Act 1908;

Affiliate Member means a member of the Association under clause 4.9;

Annual General Meeting has the meaning set out in clause 8.1(a);

Appointment Year means, with respect to a Director, each period that the Director holds office commencing on the date of an Annual General Meeting and ending on the date of the next Annual General Meeting;

Association means New Zealand Financial Markets Association Incorporated;

Auditor means the person appointed to audit the Association in accordance with clause 18.4;

Board means the board of Directors of the Association;

Chair means the chairperson of a meeting of the Members, the Board or a Committee, as the context permits;

Chief Executive Officer means a person appointed for the time being to perform the duties of a chief executive officer of the Association under these Rules, for the time that the person is appointed to that role;

Code of Ethics/Code of Conduct means the documents so or similarly entitled, as published by the Association from time to time;

Committee means any committee of the Association established pursuant to clauses 13.9;

Committee Member means a member of any Committee;

Director means a person appointed for the time being to perform the duties of a director of the Association under these Rules, for the time that the person is holding the office of director;

Eligible Persons means those persons who are eligible to be appointed Directors pursuant to clause 10.3;

Financial Intermediary Member means a member of the Association under clause 4.7;

Financial Markets Entity means:

(a) any entity or body (whether incorporated or not but not including an individual) participating in, or carrying on business in, the wholesale banking and financial markets in New Zealand or overseas; and

(b) such other entities or bodies at any time and from time to time that the Board determines to be Financial Markets Entities;
Financial Markets Member means a member of the Association under clause 4.2;

Incorporation Date means the date on which the Association is incorporated pursuant to the Act;

International Member means a member of the Association under clause 4.5;

Joining Fee means, in respect of a Member, any fee payable by that Member pursuant to clause 4.13(a);

Large Financial Markets Member means a Financial Markets Member that meets certain criteria as published by the Board from time to time;

Medium Financial Markets Member means a Financial Markets Member that meets certain criteria as published by the Board from time to time;

Member means an entity or body whose name is entered for the time being in the Register as a member of the Association;

Partner Member means a member of the Association under clause 4.11;

Register means the register of Members kept by the Association under the Act;

Representative means, in respect of a Committee or Working Group, an officer or employee of a Member who represents that Member on that Committee or Working Group;

Rules means these rules, as amended from time to time;

Seal means the common seal of the Association;

Secretary means a person appointed for the time being to perform the duties of the secretary of the Association;

Small Financial Markets Member means a Financial Markets Member that meets certain criteria as published by the Board from time to time;

Termination Event means, in respect of a Member, the appointment of an administrator, liquidator, statutory manager or receiver to that Member, or any other event described as a Termination Event in these Rules;

Treasurer means a person appointed for the time being to perform the duties of the treasurer of the Association; and

Working Group means a working group established by a Committee under clause 13.5.

1.2 Construction

In these Rules, unless the context otherwise requires:

(a) the headings appear as a matter of convenience and do not affect the construction of these Rules;

(b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of these Rules;
(c) a reference to any statute, statutory regulation or other statutory instrument includes the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;

(d) words or expressions defined in the Act have the same meaning in these Rules;

(e) the singular includes the plural and vice versa and one gender includes the other genders;

(f) the words written and writing include facsimile communications and any other means of communication resulting in permanent visible reproduction;

(g) the word person includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;

(h) a reference to a business day means a day which banks are open for general banking business in Auckland, Wellington and Christchurch;

(i) a provision of these Rules (except that specifying the time for deposit of proxies with the Association) which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day;

(j) unless the context otherwise requires, a reference to a time of day means that time of day in New Zealand;

(k) for the purposes of determining the length of a period (but not its commencement), a reference to:

(i) a day means a period of time commencing at midnight and ending 24 hours later; and

(ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month; and

(l) where a period of time is specified and is to be calculated before or after a given day, act or event, it must be calculated without counting that day or the day of that act or event.

2. **Name of Association**

The name of the Association is New Zealand Financial Markets Association Incorporated.

3. **Objects of Association**

The objects of the Association are to:

(a) represent the common interests of Members in dealing with issues relevant to the good reputation of the wholesale banking and financial markets in New Zealand and the regulation of them by Government and regulatory authorities;

(b) promote and facilitate the development and maintenance in New Zealand of efficient and competitive wholesale banking and financial markets;
encourage responsible self-regulation by establishing efficient and ethical market practices and conventions and preparing and maintaining standard documentation;

promote high professional standards by sponsoring education programmes and awarding accreditation by the Association to individuals engaged in the wholesale banking and financial markets who reach a required level of professional skill and knowledge;

keep Members informed of developments and issues relevant to the regulation of wholesale banking and financial markets, including legal, taxation and accounting matters;

consult Members on issues of common interest and represent the views of Members in submissions to Government, regulatory authorities and other institutions;

make public statements on behalf of Members in accordance with Association policy;

act as a research and information centre by collecting and disseminating data that will support the development of the wholesale banking and financial markets and assist Members in conducting their business;

maintain and promote the wholesale banking and financial markets as essential elements of the New Zealand financial system and New Zealand’s capital markets;

promote the export of wholesale banking and financial services from New Zealand to regional and global markets; and

engage in any other activity which the Directors consider to be supportive of, or incidental to, any other object in this clause.

4. **Membership**

4.1 **Membership**

(a) The membership of the Association will consist of Financial Markets Members, Partner Members and Affiliate Members.

(b) The Board may create additional classes of Members which carry such rights or restrictions of membership as are determined by the Board.

4.2 **Financial Markets Members**

The Financial Markets Members of the Association are:

(a) on the Incorporation Date, each entity that is listed as such in Schedule 1 to these Rules; and

(b) after the Incorporation Date:

(i) each of those entities that remains a Financial Markets Member; and

(ii) each other entity that:

(A) is a Financial Markets Entity; and

(B) has been admitted by the Board to membership of the Association as a Financial Markets Member after making an application for membership pursuant to clause 5.
4.3 **Categories of Financial Markets Members**

(a) Each Financial Markets Member will be categorised, in accordance with criteria published by the Board from time to time, as:

(i) a Large Financial Markets Member; or

(ii) a Medium Financial Markets Member; or

(iii) a Small Financial Markets Member.

(b) The Board is to publish criteria as soon as possible after the Incorporation Date.

(c) For the purpose of this initial publication of criteria only:

(i) each Director has one vote; and

(ii) a quorum for a meeting of the Board for the purpose of approving those criteria is five Directors.

(d) The Board is to review the criteria from time to time.

4.4 **Rights of Financial Markets Members**

(a) Financial Markets Members, depending on the type of membership they hold, will have a specified number of votes.

(b) The number of votes for each membership type will be determined by the Board.

(c) Each Financial Markets Member has:

(i) the right to receive notices of, attend and be heard at any meeting of Members;

(ii) the right to cast its allotted votes under clause 8.8 at any meeting of Members; and

(iii) subject to clause 10, the right to nominate a Director.

4.5 **International Members**

International Members of the Association are:

(a) a bank registered in its country of operation by the appropriate regulatory authority or an offshore wholesale financial intermediary; and

(b) an active participant in the New Zealand wholesale financial markets.

4.6 **Rights of International Members**

Each International Member has:

(a) the right to receive notices of and attend any meeting of Members; but

(b) no right to vote at any meeting of Members;

(c) the right to be elected to a Committee.
4.7 **Financial Intermediary Members**

Each Financial Intermediary Member are:

(a) an authorised futures dealer in New Zealand as defined by the Securities Act 1988; and

(b) registered with the New Zealand Companies Office; and

(c) an organisation that conducts their business from a premise based in New Zealand.

4.8 **Rights of Financial Intermediary Members**

Each Financial Intermediary Member has:

(a) the right to receive notices of and attend any meeting of Members; but

(b) no right to vote at any meeting of Members.

(c) the right to be elected to a Committee.

4.9 **Affiliate Members**

The Affiliate Members of the Association are:

(a) on the Incorporation Date, each entity that is listed as such in Schedule 1 to these Rules; and

(b) after the Incorporation date:

   (i) each of those entities that remains an Affiliate Member, and;

   (ii) each other entity that:

      (A) is a statutory authority, official regulator or similar regulatory body governing, regulating or administering financial markets in New Zealand or elsewhere; and

      (B) has been admitted by the Board to membership of the Association as an Affiliate Member after making an application for membership pursuant to clause 5.

4.10 **Rights of Affiliate Members**

Each Affiliate Member has:

(a) the right to receive notices of and attend any meeting of Members; but

(b) no right to vote at any meeting of Members, other than in accordance with clause 10.5.

4.11 **Partner Members**

(a) There are no Partner Members of the Association on the Incorporation Date.
4.12 Rights of Partner Members

Each Partner Member has:

(a) the right to receive notices of and attend any meeting of Members; but

(b) no right to vote at any meeting of Members, other than in accordance with clause 10.5.

4.13 Fees payable by Members

(a) Upon admission to membership, a new Member must pay to the Association such amount as the Board may from time to time determine to be payable as a joining fee.

(b) Each Member must pay to the Association such annual subscription fee or special project fee as the Board may from time to time determine with respect to each Member or class of Members.

(c) The Board must notify Members of such annual subscription and project fees in writing.

(d) Any joining fee, annual subscription fee or special project fee notified to a Member by the Board is payable by the Member to the Association at the expiry of 30 days from the date the Member is notified in writing of the fee by the Board unless, prior to the expiry of such 30-day period, the Member has resigned from membership in accordance with clause 6.1.

(e) If any Member has not paid any joining fee, annual subscription fee or special project fee within 90 days of the date that it is due, a Termination Event occurs in respect of that Member on the date that is 90 days from the date the fee is due.

4.14 Membership not transferable

(a) No membership interest, benefit or right of any Member is capable of being sold or transferred in any manner whatsoever.

(b) A membership interest automatically lapses if there is any such purported sale or transfer or agreement to do so.

5. Admission to membership

5.1 Consideration of application by Board

(a) An application for membership as a Financial Markets Member, an International Member, a Financial Intermediary Member, a Partner Member or an Affiliate Member or any other class of membership must be:

(i) made to the Board;

(ii) in writing signed by or on behalf of the applicant; and
(iii) supported by the documents or evidence considered necessary by the Board to
demonstrate eligibility for membership in accordance with clause 4.

(b) If an application complies with paragraph (a), the Board may consider the application for
membership as soon as practicable after its receipt and determine, in its discretion, the
acceptance or rejection of the application.

(c) The Board may, in its discretion:

(i) waive the requirement in paragraph (a) for an application for membership; and

(ii) instead extend to a potential Member an invitation for membership.

5.2 Acceptance or rejection of membership application

(a) If an application for membership is accepted:

(i) the Secretary must notify the applicant of admission; and

(ii) the name and details of the applicant must be entered in the Register as a Financial
Markets Member, International Member, Financial Intermediary Member, Partner
Member, Affiliate Member or other Member, as the case may be.

(b) If an application for membership is rejected, the Secretary must notify the applicant that
the application has been rejected.

(c) The Board is not required to give reasons for rejecting or accepting an application for
membership.

5.3 Register of Members

(a) A register of the Members of the Association must be kept in accordance with the Act.

(b) The following must be entered in the Register in respect of each Member:

(i) the full name of the Member;

(ii) the address, telephone, facsimile number and electronic mail address of the
authorised or primary contact of the Member;

(iii) the date of admission to and, if applicable, cessation of membership;

(iv) the class of membership to which the Member is admitted; and

(v) such other information as the Board may require.

5.4 Change of Member details

Each Member must notify the Secretary in writing of any change in the name, address,
telephone, facsimile number, or electronic mail address of the Member, or of the authorised or
primary contact of that Member, within one month after the change.

5.5 Membership rights and obligations

Each Member is entitled to all the rights of the relevant class of membership and must comply with:
6. **Resignation and cessation of membership**

6.1 **Resignation**

(a) A Member may resign from membership of the Association by giving written notice to that effect to the Association, addressed to the Secretary.

(b) The resignation of a Member is deemed to take effect from the date such notice is given to the Association.

(c) The Secretary must amend the Register accordingly.

6.2 **Cessation of membership**

(a) The Board may at any time, in its absolute discretion, resolve that the membership of any Member, for whatever reason, be cancelled effective either:

   (i) immediately; or

   (ii) at the expiration of the period with respect to which a Member’s annual subscription fee is payable; or

   (iii) at such other time as the Board determines, in its absolute discretion.

(b) The Board is not required to give reasons why the membership of a Member is cancelled.

(c) Upon the passing of that resolution:

   (i) the Member concerned ceases to be a member at the time determined by the Board; and

   (ii) the Secretary must amend the Register accordingly.

6.3 **Other cessation of membership**

(a) A Member ceases to be a member on any Termination Event occurring in respect of the Member (including non-payment of any fees) unless the Board has at the request of the Member otherwise resolved.

(b) Upon cessation of membership, the Secretary must amend the Register accordingly.
6.4 No refund of fees

(a) Upon a Member ceasing to be a member, for any reason whatsoever, any fee at that time due and payable to the Association but remaining unpaid remains due and payable, notwithstanding that the Member ceases to be a member.

(b) Upon a Member ceasing to be a member, for any reason whatsoever, no fee paid by the Member to the Association is refundable to the Member.

7. No profits for Members

7.1 Transfer of income or assets

(a) The assets and income of the Association must be applied solely in furtherance of the objects of the Association.

(b) No portion of the assets or income of the Association may be paid or transferred, directly or indirectly, to any Member, except as proper and reasonable compensation for services rendered or expenses incurred on behalf of the Association.

7.2 Money and other assets of Association

The Association may only use money and other assets if:

(a) it is in furtherance of an object of the Association;

(b) it is not for the sole personal or individual benefit of any Member; and

(c) the use has been approved by the Board.

7.3 Additional powers

The Association may:

(a) employ persons for the furtherance of its objects;

(b) invest in any investment that is approved by the Board; and

(c) borrow money or provide security for any purpose that is approved by the Board.

7.4 Payments, services and information

Nothing in clause 7.1 prevents the payment in good faith of:

(a) remuneration to any officer or employee of the Association for services actually rendered to the Association, provided the remuneration is reasonable compensation for the services provided; or

(b) an amount to any Member in return for any services actually rendered to the Association (whether by the Member or any entity in which the Member has an interest or is a member) or for goods supplied in the ordinary and usual course of business; or

(c) reasonable and proper rent for premises let by any Member to the Association.
8. **Meetings of Members**

8.1 **Convening of meetings**

(a) An Annual General Meeting of the Association must be held annually at a date to be determined by the Board.

(b) A meeting may be convened by the Board whenever it so determines.

8.2 **Notice of meetings**

(a) Unless otherwise determined by the Board, at least 21 days’ notice of a meeting is required to be given.

(b) Such notice must specify:

(i) the place;

(ii) the day;

(iii) the time of meeting; and

(iv) in the case of special business, the general nature of that business.

(c) For the purposes of clause 8.2(b), all business that is transacted at a meeting, with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors, is special business.

(d) Accidental omission to give notice of a meeting by the Association to, or the non-receipt of notice of a meeting by, any Member does not invalidate proceedings at that meeting.

8.3 **Cancellation of meetings**

(a) The Board may cancel a meeting.

(b) A meeting may only be cancelled in accordance with paragraph (a) if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in the notice of meeting.

8.4 **Quorum at meetings**

(a) Business may not be transacted at a meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

(b) A quorum is the presence in person or by proxy or attorney of the Members who together hold not less than 25 per cent. of the votes of all Members entitled to vote at the meeting.

(c) If a quorum is not present within half an hour from the time appointed for the meeting, or a longer period allowed by the Chair, the meeting will be dissolved.

8.5 **Appointment of Chair**

(a) The Chair elected by the Board as chair of its meetings will preside as Chair at every meeting of the Association.
The Directors present at a meeting must elect one of their number to chair the meeting if:

(i) a Director has not been elected as Chair; or

(ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.

The Members present at a meeting must elect one of their number to chair the meeting if:

(i) no Directors are present within 15 minutes after the time appointed for the holding of the meeting; or

(ii) no Director present is willing to take the chair.

8.6 Chair’s powers

(a) The ruling of the Chair on all matters relating to the order of business, procedure and conduct of a meeting is final.

(b) No motion of dissent from a ruling of the Chair can be accepted.

(c) The Chair, in his or her discretion, may expel any Member or Director from a meeting if the Chair reasonably considers that the Member’s or Director’s conduct is inappropriate behaviour.

(d) The following conduct may be considered inappropriate in a meeting:

(i) the use of offensive or abusive language which is directed to any person, object or thing; or

(ii) attendance at the meeting while under the influence of any kind of drug, including but not limited to any alcoholic substance; or

(iii) the use or consumption of any drug by a person at the meeting.

8.7 Adjournment of meetings

(a) The Chair may, with approval by a resolution of Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting to another time and place.

(b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

(c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

(d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

8.8 Voting rights

At a meeting of Members,
(a) each Member of a class entitled to vote at a meeting has the right to be represented at any meeting of Members by any proxy, attorney or representative appointed in accordance with clause 9.2; and

(b) (i) each Large Financial Markets Member has three votes;

(ii) each Medium Financial Markets Member has two votes; and

(iii) each Small Financial Markets Member has one vote; and

(c) each Member of another class entitled to vote at a meeting has one vote.

8.9 Voting majority

(a) Any resolution arising at a meeting is passed only if at least 75 per cent. of all votes, calculated (subject to clause 4.4(c)) in accordance with paragraph (c), of those members, and entitled to vote, and present in person, or by proxy, attorney or representative, are in favour of the resolution put to the meeting, other than a ballot of Members to elect Directors pursuant to clause 10.5 (c) who are elected pursuant to the procedures set out in that clause.

8.10 Objections to voter qualification

(a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.

(b) An objection to the qualification of a voter must be referred to the Chair, whose decision is final.

(c) A vote which is not disallowed by the Chair pursuant to these Rules is valid for all purposes.

8.11 Mode of calling and holding meetings

A meeting may be:

(a) called using any mode of communication which gives a Member written notice of the meeting, including facsimile and electronic mail; and

(b) held using any technology that gives those Members attending the meeting a reasonable opportunity to participate.

9. Proxies and representatives

9.1 Proxies, attorneys and representatives of Members

(a) At meetings of Members, each Financial Markets Member or other Member entitled to vote may vote in person or by proxy, attorney or representative where the proxy, attorney or representative is appointed in accordance with clause 9.2(a) and (b).

(b) Subject to the terms of the appointment, a person attending as a proxy, attorney or representative of a voting Member has all the powers of the voting Member.
9.2 **Appointment of proxies, attorneys or representatives**

(a) A Financial Markets Member or other Member entitled to vote may appoint another person as that Member's proxy, attorney or representative to attend and vote instead of that Member.

(b) A proxy, attorney or representative must be:

(i) the Chair of the Board, or

(ii) any officer or employee of the Member making the appointment; or

(iii) an officer or employee of any other Member entitled to vote.

(c) A document appointing a proxy, attorney or representative must be:

(i) in writing, in any form permitted by the Board; and

(ii) signed by the Member making the appointment.

9.3 **Authority of proxies, attorneys or representatives**

(a) A document appointing a proxy, attorney or representative may specify the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution or matter.

(b) Where the document so provides, the person concerned is not entitled to vote on the resolution or matter except as specified in the document.

(c) Except as expressly provided by the document appointing a proxy, attorney or representative, an appointment of a proxy, attorney or representative confers authority to do all things that the Member can do in respect of the meeting.

9.4 **Verification of proxies, attorneys or representatives**

(a) Before the time for holding the meeting or adjourned meeting at which a proxy, attorney or representative proposes to vote:

(i) the document appointing the proxy, attorney or representative must be deposited with the Association; and

(ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority must be deposited with the Association.

(b) Those documents must be received by the Association at its office, or by fax or electronic mail, prior to the time the meeting commences.

(c) If a meeting is adjourned, an appointment and any authority received by the Association before the resumption of the meeting is effective for the resumed part of the meeting.

9.5 **Validity of proxies, attorney or representatives**

A document appointing a proxy, attorney or representative is invalid if it is not received prior to the time the meeting commences in accordance with clause 9.4(b).
9.6 **Revocation of appointment of proxies, attorneys or representatives**

A vote given in accordance with the terms of a proxy, power of attorney or appointment of representative is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of that revocation is received by the Association before the commencement of the meeting or adjourned meeting at which the document is used.

10. **Appointment and retirement of Directors**

10.1 **Initial Directors**

The initial Directors are those persons named in Schedule 2 to these Rules.

10.2 **Number of Directors**

(a) The number of Directors must be not less than five.

(b) After the first Annual General Meeting after the Incorporation Date, the number of Directors appointed under this clause 10 must be not more than 10, or such other maximum number determined by the Board from time to time.

10.3 **Persons eligible to be appointed Directors**

(a) A Financial Markets Member may nominate a person to be a Director.

(b) A person cannot be nominated by a Financial Markets Member, or appointed a Director, unless that person is:

   (i) the chief executive officer (or equivalent) of the Member;

   (ii) the chief executive officer (or equivalent) or head of institutional banking (or equivalent) or head of wholesale markets (or equivalent) of the Member; or

   (iii) any other person who is a senior executive of the Member that the Board determines to be an Eligible Person; or

   (iv) any other person that the Board deems to be an Eligible Person.

(c) No Financial Markets Member may appoint more than one Director.

10.4 **Appointment and removal of Directors**

Subject to the other sub-paragraphs of this clause, Directors may be appointed by Members or removed by the Association in a meeting.

10.5 **Nomination of Eligible Person for appointment as Director**

(a) Each Financial Markets Member may nominate one Eligible Person for election as a Director from the date of an Annual General Meeting by notice in writing:

   (i) signed by the Financial Markets Member and accompanied by the written consent of the Eligible Person so nominated (which may be endorsed on the nomination form); and
(ii) delivered to the Secretary not less than 35 days or some other period determined by the Board from time to time before the date fixed for the holding of that Annual General Meeting.

(b) If nominations are received in number equal to or less than the vacancies arising, then those nominated are taken to be elected.

(c) If more nominations are received than there are vacancies to fill, a ballot is to be held at the Annual General Meeting to be conducted in such manner as the Chair thinks fit.

(i) Each Member present in person, or by proxy, attorney or representative and entitled to vote, is entitled to vote for any number of candidates not exceeding the number of vacancies.

(ii) Those candidates equal in number to the number of vacancies who attract the most votes will be declared elected.

(d) Appointment of Directors takes effect from the time immediately following the Annual General Meeting for which they are nominated for election.

10.6 Period of office

(a) At the first Annual General Meeting following the Incorporation Date, all Directors must retire from office, all of whom are eligible for nomination and re-election.

(i) At the second and each subsequent Annual General Meeting, one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third must retire from office.

(ii) Those Directors to retire in each year are those longest in office, but as between Directors appointed on the same day, those to retire are those who agree to retire, or as determined by lot.

(iii) All retiring Directors are eligible for nomination and re-election, subject to clause 10.6(b).

(b) No person shall be eligible to hold office as a Director for a period exceeding six consecutive Appointment Years without the prior approval of the Board.

(c) A person continues to hold office as a Director until the time he or she retires or resigns as a Director, is removed as a Director, vacates his or her office, or ceases to be an Eligible Person.

10.7 Retirement of Directors

(a) A Director may retire from office by giving notice in writing to the Association of his or her intention to retire.

(b) A notice of resignation takes effect at the later of:

(i) the time of giving the notice; or

(ii) the expiration of the period, if any, specified in the notice.
10.8 **Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant under these Rules, the office of Director becomes vacant if the Director:

(a) becomes a bankrupt or makes any arrangement or composition with his or her creditors; or

(b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(c) is absent without the consent of the Board from the meetings of the Board held during a continuous period of more than six months and the Board resolves that the office of that Director be vacated; or

(d) becomes prohibited from being a director by reason of an order made under the Companies Act 1993.

10.9 **Casual vacancies**

(a) The Board may appoint any Eligible Person of any Financial Markets Member to fill any casual vacancy arising from any Director ceasing to hold office for any reason, or as an addition to the existing Board.

(b) Any such person so appointed must retire at the next Annual General Meeting following his or her appointment and is eligible for nomination and re-election.

10.10 **Alternate or substitute Directors**

A Director may appoint any person or another Director to be an alternate or substitute Director in his or her place only with the approval of the Chair.

11. **Directors’ remuneration**

11.1 **Directors fees**

(a) Subject to clause 11.2, the Directors are not entitled to any fees for their services as Directors.

(b) Each Director is entitled to reimbursement of his or her reasonable expenses incurred in performing duties as a Director only if such expenses are approved by the Board.

11.2 **Prior approval by Directors**

Notwithstanding anything else in these Rules, no payment of any kind which is permitted to be paid to a Director by these Rules can be made to a Director until that payment is approved by the Board.

12. **Proceedings of Board**

12.1 **Methods of holding meetings**

A meeting of the Board may be held either:
by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

12.2 Notice of meeting

(a) A Director or, if requested by a Director to do so, an employee of the Association approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 12.2 and clause 12.3.

(b) Each Director must be given not less than two days’ notice of a meeting of the Board, unless:

(i) the Director waives that right; or

(ii) in the opinion of the Chair or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which case such notice as is practicable in the circumstances shall be given.

(c) Notice may be given to a Director in any of the following ways:

(i) by delivery of the notice to the Director, in which case the notice is deemed to be given when delivered; or

(ii) by sending the notice by facsimile transmission to the facsimile number given by the Director to the Association for the purpose of receiving notices, in which case the notice is deemed to be given when sent; or

(iii) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice is deemed to be given three days after it is posted; or

(iv) by sending by electronic means in accordance with any request made by the Director from time to time for such purpose.

12.3 Contents of notice

A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio, or audio and visual, communication, the manner in which the Director will be contacted to participate at the time of the meeting.

12.4 Waiver of irregularity

An irregularity in a notice of meeting is waived if:

(a) all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity; or

(b) if all Directors entitled to receive notice of the meeting agree to the waiver.

12.5 Quorum

(a) Subject to clause 4.3(c), quorum for a meeting of the Board is any number of Directors who together hold not less than 25 per cent. of the total voting rights of the Board, as
12.6 **Lack of quorum**

(a) If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following day at the same time and place.

(b) If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present constitute a quorum.

12.7 **Insufficient number of Directors**

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Members, but for no other purpose.

12.8 **Voting at Board meetings**

(a) Any resolution arising at a meeting of the Board is passed only if at least 75 per cent. of all votes, calculated (subject to clause 4.3(c)) in accordance with paragraph (c), of those Directors present at the meeting, and entitled to vote, are in favour of the resolution put to the meeting.

(b) A decision of that majority is for all purposes a decision of the Board.

(c) (i) Each Director who is nominated by a Large Financial Markets Member has three votes.

(ii) Each Director who is nominated by a Medium Financial Markets Member has two votes.

(iii) Each Director who is nominated by a Small Financial Markets Member has one vote.

12.9 **Chief Executive Officer**

(a) The Board may appoint a person as Chief Executive Officer.

(b) (i) The Chief Executive Officer is a member of the Board.

(ii) However, the Chief Executive Officer is not entitled to vote on any matters and is not to be counted towards a quorum.

(c) The terms of appointment of the Chief Executive Officer are to be determined by the Board from time to time.

12.10 **Appointment of Chair, Deputy Chair and Treasurer**

(a) The Board may elect the following office bearers who must be Directors of the Association:
(i) a Chair to chair Board meetings;
(ii) a deputy Chair; and
(iii) a Treasurer.

(b) Each office bearer:

(i) holds office for one Appointment Year or until he or she otherwise ceases to hold office; and

(ii) is eligible for re-election to the office to which he or she is appointed for subsequent Appointment Years.

12.11 **Director’s contracts**

(a) Subject to section 20 of the Act, if a Director is interested in a contract or proposed contract with the Association and the financial benefit to the Director under the contract is not prohibited by the Act:

(i) the Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Association, whether as vendor, purchaser or otherwise;

(ii) a contract or arrangement entered into by or on behalf of the Association in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and

(iii) the Director is not liable to account to the Association for a profit realised from that contract or arrangement by reason of the Director holding that office.

(b) A Director and a firm in which the Director is interested may act in a professional capacity for the Association.

(c) The Director and that firm are entitled to remuneration for professional services as if the Director were not a Director.

(d) Nothing in this clause authorises a Director or a firm in which the Director is interested to act as auditor of the Association.

12.12 **Declarations of interest**

(a) A Director may not:

(i) be counted in any quorum considering any contract or proposed contract with the Association in which he or she is interested; or

(ii) vote in respect of any such contract or proposed contract, unless

(iii) the Director discloses the existence and nature of that interest to the Board prior to voting; and

(iv) if he or she does so vote without making disclosure, his or her vote may not be counted.
Such Director may (whether or not the disclosure is made) attest the affixation of the seal to such a contract.

12.13 Delegation of powers to Committee

(a) The Board may delegate any of its powers to Committees consisting of Directors or other persons as it thinks fit to act in New Zealand or elsewhere.

(b) The exercise of a power by a Committee in accordance with these Rules is to be treated as the exercise of that power by the Board.

(c) In the exercise of any powers delegated to it, a Committee must conform to the directions of the Board.

12.14 Proceedings of Committees

Except as provided in a direction of the Board, the meetings and proceedings of a Committee formed by the Board is governed by the provisions of these Rules, in so far as they are applicable, as if meetings and proceedings of the Committee were meetings and proceedings of the Board.

12.15 Validity of acts of Board

All acts done by any meeting of the Board or of a Committee of Directors or by any person acting as a Director are valid notwithstanding:

(a) any defect in the appointment of any Director or person acting as a Director; or

(b) that they or any of them were disqualified.

12.16 Minutes

(a) The Board must cause minutes of all proceedings of meetings of Members and of meetings of the Board to be entered after the relevant meeting is held, in books kept for the purpose.

(b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

12.17 Circulating resolution of Directors

(a) A resolution in writing, signed or assented to by not less than 75 per cent. of Directors entitled to vote on that resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

(b) Each Director must be given notice of the form of the proposed resolution.

(c) The resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors.

(d) A copy of the resolution must be entered in or kept with the records of Board proceedings.
13. **Committees**

13.1 **Establishment of Committees**

The Board may establish one or more Committees on such terms and having such role as determined by the Board, comprising Representatives who are:

(a) resident in New Zealand or overseas; and

(b) in the opinion of the Board, have the capacity and experience to make a material contribution in assisting the Association to achieve one or more of its objects.

13.2 **Appointment and removal of Committee members**

(a) Each Representative is to be appointed by the Board upon terms determined by the Board and for a fixed period.

(b) A person ceases to be a Representative immediately upon the expiration of the period of his or her appointment or earlier upon the lapsing of his or her appointment.

(c) The Board may at any time by notice in writing to any Representative notify him or her that, from a nominated date, his or her status as Representative lapses.

(d) The Board is not required to give reasons for the decision.

13.3 **Role of Committee**

The role of any Committee established by the Board must be determined by the Board and documented in the terms of reference for the Committee.

13.4 **Formation of Committee**

(a) Each Representative must be an officer or employee of a Financial Market Member or any person who, in the opinion of the Board, has the capacity and experience to make a material contribution in assisting the Committee to achieve one or more of its objects.

(b) The number of Representatives is to be determined by the Chair of the Committee.

(c) The number of Representatives on any Committee must not be more than eight.

(d) Representative status runs for no more than two years, each period of office ending on 31 March of each year ending in an odd number.

(e) Each Financial Market Member may nominate a Representative with suitable expertise and experience for any Committee before 31 March of each year ending in an odd number.

(i) If more than eight Financial Market Members nominate a Representative for a particular Committee, the Committee's Representatives are to be determined by the Board.

(ii) A Member is limited to one Representative on any Committee, unless the Committee is made up of Representatives from other Committees.
If a Representative is unable to attend a Committee meeting, he or she must make every effort to nominate an alternate and brief him or her on the matters to be determined as discussed at the Committee meeting.

Failure of a Representative to attend three consecutive Committee meetings without an adequate explanation may result in the Board terminating the Member's representation on the Committee.

13.5 Working Groups

(a) Committees may establish working groups for a one-off purpose, such as preparing an industry submission or looking at a specific area of the market.

(b) Representatives in a Working Group are to be individuals.

(c) Representatives in a Working Group need not necessarily be an officer or employee of a Member.

(d) A Working Group may comprise any number of Representatives as determined by the relevant Committee.

13.6 Responsibilities of Committee and Working Group

(a) Each Representative on a Committee or Working Group must attend meetings and actively contribute to the affairs of the Committee or Working Group.

(b) Each Representative must have regard to the objects of the Association when making contributions to the affairs of the Committee or Working Group.

13.7 Composition of Committee and Working Group

(a) Each Committee and Working Group must elect a Chair and a deputy Chair.

(b) The Association must provide a secretariat to support each Committee.

(c) Committees may invite observers to attend and participate in discussions at meetings, where the observer brings expertise not currently available and which enhances the knowledge base of the Committee.

(d) An observer does not have voting rights.

13.8 Meeting agenda

(a) The Association must prepare a draft agenda for approval by the Chair, aiming to distribute it to Representatives a week before the meeting.

(b) The agenda for each meeting should include:

(i) a confirmation of the minutes of the previous meeting;

(ii) progress on action items from previous meetings;

(iii) new business items for the meeting;

(iv) any other business; and
(v) setting (or confirming) the date, time and place for the next meeting.

13.9 Committee and Working Group meetings

(a) Committees and Working Groups will meet as required.

(b) Telephone and videoconference linkages can be used to facilitate meetings.

(c) The Chair or, in his or her absence, the deputy Chair, will preside over each meeting. If neither the Chair nor the Deputy Chair attends, the Committee or Working Group will elect a Representative of a Financial Markets Member to preside over that meeting.

(d) A quorum for a meeting is 50 per cent. of the Representatives on a Committee or Working Group.

(e) Costs incurred in preparing for and attending Committee and Working Group meetings are for the account of the organisations represented, unless otherwise approved by the Board.

(f) Financial Market Members who are not directly represented on a Committee or Working Group can raise issues:

(i) to be included on the agenda of each meeting of the Committee or Working Group; or

(ii) to present in person at a meeting, of a Committee or Working Group.

(g) In relation to paragraph (e) above, approval or otherwise rests with the Chair.

13.10 Minutes

(a) Minutes of meetings will be drafted by the Association in accordance with guidelines of the Association and sent to the Chair for approval.

(b) Approved minutes should be sent to members, ideally within 10 business days of the meeting.

(c) Minutes should be posted to the Association’s website for viewing by all Financial Markets Members within one week of the meeting.

13.11 Voting

(a) Committees and Working Groups should work towards reaching a consensus.

(b) Where matters have to be determined by a vote, an affirmative vote from at least 75 per cent. of the Committee or Working Group present is required for the matter to be carried.

(c) Before finalising its view on a matter it considers significant in a market context, a Committee should consult the broader membership of the Association, where possible, if this process might capture views not fully represented during its discussions.

13.12 Remuneration of Committee

The Board may remunerate each Representative on a Committee in accordance with the agreement reached with him or her (including the reimbursement of all agreed expenses).
14. Secretary

14.1 Appointment of Secretary

(a) The Board may appoint one or more secretaries.

(b) The Board may at any time terminate the appointment or appointments.

14.2 Conditions of appointment

(a) No person appointed as Secretary may be a Director unless the Board resolves otherwise.

(b) The Board may determine the terms and conditions of appointment of a Secretary, including remuneration.

(c) Any Secretary may carry out any act or deed required by these Rules to be carried out by the Secretary.

15. Seals and execution of documents

15.1 Custody of Seal

The Board must provide for a Seal and for its safe custody.

15.2 Execution of documents

(a) The Association may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:

(i) two Directors; or

(ii) a Director and the Secretary; or

(iii) a Director and some other person appointed by the Board for the purpose.

(b) The Association may execute a document without the use of the Seal if the document is signed by:

(i) two Directors; or

(ii) a Director and the Secretary; or

(iii) a Director and some other person appointed by the Board for the purpose.

16. Professional misconduct and disciplinary matters

All matters of professional misconduct and all disciplinary matters affecting members of the Association shall be dealt with by the board in accordance with the complaints procedure as set from time to time by the Board.

(a) For the purposes of this Rule 16 professional misconduct by a member shall mean:
(i) conduct violating the NZFMA Code of Ethics and Code of Conduct; or

(ii) conduct violating the criminal law of New Zealand; or

(iii) any negligence or incompetence or dishonourable or corrupt practice which is or may be discreditable to the Association; or

(iv) any other acts or omissions amounting to unprofessional conduct.

17. **Surplus assets on winding-up or dissolution**

Upon winding-up or dissolution of the Association, any remaining property or assets after satisfaction of all debts and liabilities will not be paid to, distributed among or transferred to the Members, but will be distributed or transferred to some other entity determined by the Members at or before the time of winding-up or dissolution, which:

(a) has objects similar to the objects of the Association; and

(b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 7.

18. **Accounts, audit and records**

18.1 **Accounts**

(a) The Board must cause proper accounting and other records to be kept in accordance with the Act.

(b) The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Act.

18.2 **Financial year**

The financial year of the Association begins on 1 April and ends on 31 March, or any other dates that the Board decides from time to time.

18.3 **Audit**

(a) An auditor of the Association must be appointed.

(b) The remuneration of the auditor must be fixed and agreed by the Board.

18.4 **Appointing an Auditor**

(a) The Auditor must audit the Association's accounts, and must certify that they are correct.

(b) The Auditor must be a member of the New Zealand Society of Accountants or have a similar qualification, and must not be employed by or an officer of a Member.

(c) If the Association appoints an Auditor who is unable to act for any reason, the Board must appoint another Auditor as a replacement.
18.5 Rights of inspection

(a) The Board may determine whether, to what extent and at what times and places and under what conditions, the accounting records and other documents of the Association or any of them are open to the inspection of Members (other than Directors).

(b) A Member (other than a Director) has no right to inspect any document of the Association except as provided by law or authorised by the Board or the Association.

19. Rules

19.1 Power to formulate rules of Association

Without limiting the Board’s powers under these Rules, the Board may from time to time pass resolutions to make regulations and rules relating to:

(a) the qualifications of Members and applicants for membership;

(b) the procedure and timing of an application for admission;

(c) procedure for nomination of Directors;

(d) the delegation by the Board of its powers to Committees;

(e) the power, role and function of any officer, employee or Directors; and

(f) any other matter not being inconsistent with these Rules which relates to the operations or business of the Association.

19.2 Rule changes

(a) When a rule change is approved by the Board, the new rules will be filed with the Registrar of Incorporated Societies, and advised to the Registrar in the required form.

(b) No rule change takes effect until this is done.

20. Notices

20.1 Persons authorised to give notices

(a) A notice by either the Association or a Member in connection with these Rules may be given on behalf of the Association or Member by a solicitor, Director or Secretary of the Association.

(b) The signature of a person on a notice given by the Association may be written, printed or stamped.

20.2 Method of giving notices

A notice by the Association or a Member in connection with these Rules may be given to the addressee by:

(a) delivering it to a street address of the addressee; or
(b) sending it by prepaid ordinary post (airmail if outside New Zealand) to a street or postal address of the addressee; or

(c) sending it by facsimile or electronic mail to the facsimile number or electronic mail address of the addressee.

20.3 **Addresses for giving notices to Members**

(a) The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

(b) The facsimile number or electronic mail address of a Member is the number which the Member may specify by written notice to the Association as the facsimile number or electronic mail address to which notices may be sent to the Member.

20.4 **Address for giving notices to Association**

(a) The street and postal address of the Association is the registered office for the time being of the Association.

(b) The facsimile number or electronic mail address of the Association is the number which the Association may specify for the time being by written notice to the Members as the facsimile number or electronic mail address to which notices may be sent to the Association.

20.5 **Time notice of meeting is given**

A notice of meeting given in accordance with these Rules is to be taken as given, served and received:

(a) if delivered in writing to the street address of the addressee, at the time of delivery; or

(b) if it is sent by post to the street or postal address of the addressee, on the business day after posting; or

(c) if sent by facsimile or electronic mail to the facsimile number or electronic mail address of the addressee, at the time transmission is completed.

20.6 **Time other notices are given**

A notice given in accordance with these Rules is to be taken as given, served and received:

(a) if delivered in writing to the street address of the addressee, at the time of delivery; or

(b) if it is sent by post to the street or postal address of the addressee, on the second (fifth if outside New Zealand) business day after posting; or

(c) if sent by facsimile or electronic mail to the facsimile number or electronic mail address of the addressee, at the time transmission is completed.

20.7 **Proof of giving notices**

The sending of a notice by facsimile or electronic mail and the time of completion of transmission may be proved conclusively by production of:
(a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or

(b) a print out of an acknowledgment of receipt of the electronic mail.

20.8 **Persons entitled to notice of meeting**

(a) Notice of every meeting of Members must be given by a method authorised by these Rules to:

(i) every Member;

(ii) every Director; and

(iii) the auditor for the time being of the Association (if any).

(b) No other person is entitled to receive notices of meetings of Members.
Schedule 1 – Initial Members

1. Financial Markets Members
   Westpac Banking Corporation
   ANZ National
   Bank of New Zealand
   Auckland Savings Bank
   Hong Kong Shanghai Banking Corporation
   Citibank
   Kiwibank
   Deutsche Bank

2. Affiliate Members
   Reserve Bank of New Zealand
Schedule 2 – Initial Directors

John Body
Adam Boyd
Patrick O’Rourke
Lloyd Cartwright
Paul Duncan
Graeme Liddell
Trevor Pye
Richard Schofield