

NZ RegCo

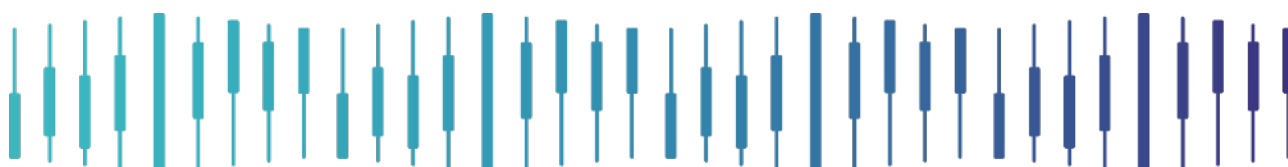
NZ'S LISTED
MARKET REGULATOR

17 December 2024

NZ RegCo Decision

Fonterra Co-operative Group Limited (NS) (**FCG**)

Application for Rulings and Waivers from NZX
Definitions of "Associated Person", "Disqualifying
Relationship", "Related Party" and "Issuer", Listing Rules
2.2, 2.3, 2.5, 2.10.2, 2.11, 2.13.2(c), 2.20.1(a), 2.20.1(c),
3.4.2, 4.3.1(a), 4.3.1(b), 4.9.1, 4.14.1, 4.14.2, 4.15.1,
4.15.2, 5.1.1, 5.2.1, 6.1.1, 7.1.2(a), 7.8.3 and 8.1.4(d)
Rulings on new Listing Rule definitions, the decisions of
the Board of FCG, Milk Price disclosure, and Transfers
of Quoted Financial Products
Approvals under Listing Rules 6.2 and 8.1.6(b)



Background

1. Fonterra Co-operative Group Limited (**FCG**) is a co-operative company registered under the Companies Act 1993 and under the Co-operative Companies Act 1996, operating in the dairy industry in New Zealand. As at the date of this decision, FCG's co-operative shares (**Shares**) are quoted on the Fonterra Shareholders Market (**FSM**), a private market operated by NZX Limited (**NZX**).
2. FCG's shareholders include the following:
 - a. supplying shareholders, being farmers who supply milk to FCG and meet its terms of supply;
 - b. secondary shareholders, being sharemilkers on farms that supply milk to FCG who have a sharemilking agreement with a supplying shareholder, which includes agreement for the sharemilker to hold Shares as a secondary shareholder; and
 - c. farmers who are associated with a supplying shareholder, being:
 - i. sharemilkers under a sharemilking arrangement with a supplying shareholder;
 - ii. contract milkers under a contract milking arrangement with a supplying shareholder; and
 - iii. dairy farmland owners who have leased their land (including milking platform) to a supplying shareholder,(together, the **Farmer Shareholders**).
3. Under FCG's constitution, the amount of Shares a Farmer Shareholder is entitled to hold is linked to the amount of milk they supply to FCG over a dairy season. The number of Shares that a Farmer Shareholder is required to hold moves in line with changes in milk production from one season to the next. The purpose of the FSM was to allow Farmer Shareholders to buy and sell Shares in a private market among themselves (**TAF**).
4. The Dairy Industry Restructuring Act 2001 (**DIRA**) requires FCG to appoint one or more market makers.
5. FCG has determined to transition from the FSM to the NZX Main Board. FCG has applied for the rulings, waivers and approvals set out in this decision given its co-operative nature and the obligations under DIRA to allow FCG to List, and have its Shares quoted, on the NZX Main Board (the **Migration**).
6. The applicable ruling, waiver or approval set out in this decision:
 - a. may not apply if the information in respect of it is not or ceases to be full and accurate in all material respects; and
 - b. takes effect from date of the Migration (the **Migration Date**).
7. NZX Regulation Limited (**NZ RegCo**) grants the various ruling, waiver or approval decisions below on the basis that the information provided by FCG is complete and accurate in all material respects.
8. As FCG will not be able to fully comply with all the applicable Rules, NZ RegCo has determined to apply a Non-Standard (NS) designation over FCG to act as a notification to the market that FCG has unique governance arrangements in place.

9. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Confidentiality

10. FCG applied for these waivers as it began preparing for the Migration. FCG has requested that these decisions be kept confidential until an announcement of the Migration is released to the market.

11. In accordance with Rule 9.7.2(a), NZ RegCo grants FCG's request.

Ruling on new Listing Rule definitions

Decision

12. NZ RegCo rules that the following definitions be included in Part A (*Definitions*) of the Rules, in the appropriate alphabetical order.

Authorised Fund means any person or persons authorised by the Board to perform the role and functions of an "Authorised Fund" as set out in the Issuer's constitution.

Co-operative Council means the Councillors who number not less than the required quorum, acting together as the Co-operative Council, who have been elected or appointed in accordance with the Issuer's constitution.

Councillor has the meaning given in the Issuer's constitution.

Custodian means a person designated as a "custodian" by the Issuer for the purposes of these Rules being a person whom the Board is satisfied may act as a "custodian" in accordance with the Issuer's constitution.

FSF means the Fonterra Shareholders' Fund, established by trust deed dated 23 October 2012.

FSF Manager means the manager of the FSF from time to time.

FSF Units means units in the FSF which entitle holders to an interest or right to participate in any capital, assets, earnings, royalties, or other property of the FSF, and which are Listed on the Main Board.

Market Maker has the meaning given to that term in the NZX Participant Rules.

Milk means whole milk, cream and any other component or classification of a mammary secretion of a cow, as may be specified by the Board.

Milk Price means a price for Milk supplied to the Issuer by shareholders in a Season.

Milk Price Manual means the manual referred to in section 150F of the Dairy Industry Restructuring Act 2001, which sets out the policies and methodology for the Milk Price Panel to use in its determination of the Milk Price to be recommended to the Directors of the Issuer.

Nominee of the Director means:

- (a) a spouse, domestic companion, child or parent of the Director, or
- (b) a nominee or trustee for the Director or any person referred to in paragraph (a) provided that, in respect of a nominee or trustee who acts for more than one person, when considering a matter in respect of that nominee or trustee, only the interest held for the Director or any person referred to in paragraph (a) will be considered, or
- (c) an entity controlled by the Director or any person referred to in paragraph (a).

Season has the meaning given in the Dairy Industry Restructuring Act 2001.

Supplying Shareholder means any person who supplies Milk to the Issuer and is entered into the Issuer's share register as a holder of its co-operative shares in accordance with the Issuer's constitution.

Reasons

13. In coming to the decision to grant this ruling, NZ RegCo has considered that these definitions are required in light of the rulings and waivers granted in other sections of this decision.

Ruling on definition of "Associated Person"

Decision

14. NZ RegCo grants FCG a ruling that the definition of "Associated Person" in the Rules be amended to:

a. include the following as sub-paragraph (i):

"(i) neither the Issuer nor a Director of the Issuer is an Associated Person of:

i. the FSF, nor the FSF Manager, trustee or Custodian in respect of the FSF acting in their capacity as FSF Manager, trustee or Custodian,

ii. a Market Maker acting in its capacity as a Market Maker, or

iii. the trustees of the trust, the trustees of which are the holders of all the shares in the Custodian, where, in the case of the Director of the Issuer, that Director has been selected by the Issuer to be such a trustee,

and no such person referred to in subclause (i) i. to iii. inclusive, when acting in that capacity, is an Associated Person of the Issuer or a Director of the Issuer."

b. replace the full stop at the end of sub-paragraph (h) with a comma.

Reasons

15. In coming to the decision to grant this ruling, NZ RegCo has considered that:

a. each person referred to in sub-paragraphs (i) i. to iii. act in that capacity pursuant to the FSF structure to facilitate the operation of the FSF; and

b. FCG submits that each of these persons should not be deemed to be an Associated Person of FCG or a Director of FCG solely due that person acting in that capacity.

Ruling on definition of "Disqualifying Relationship"

Decision

16. NZ RegCo grants FCG a ruling that the definition of "Disqualifying Relationship" in the Rules be amended to include the following provision at the end of the definition:

"Without limiting the definition, a Director shall be deemed to have a Disqualifying Relationship if:

(a) the Director or any Nominee of the Director is a Substantial Product Holder of the Issuer or the Authorised Fund, other than solely as a consequence of:

(i) being a Director of the Issuer; or

(ii) the Issuer or a Related Body Corporate of the Issuer having a Relevant Interest in FSF Units; or

(iii) the Director or any Nominee of the Director having a Relevant Interest in FSF Units in their capacity as a trustee of a trust in respect of which they are not a beneficiary; or

- (b) *the Director or a Nominee of the Director would be qualified to be elected as a Director of the Issuer in accordance with clause 12.3 of the Issuer's constitution;*

For the purposes of this definition, notwithstanding the above, a Director of the Issuer will not have a Disqualifying Relationship:

- (i) because they are a trustee of a trust and in that capacity hold shares in the Custodian; or*
- (ii) because they are a beneficiary of the trust referred to in (i) in their capacity as a Supplying Shareholder; or*
- (iii) because they are appointed by the Issuer to be a director of the Custodian or the FSF Manager."*

Reasons

17. In coming to the decision to grant the ruling set out above, NZ RegCo has considered that:
- a. sub-paragraphs (a) and (b) above expand on who is not "Independent" by including Substantial Product Holders of FCG or the FSF (with certain exceptions) and those persons who can be elected as a **"Farmer Director"** (being a person who meets the qualifications set out in clause 12.3 of FCG's constitution to be elected as a Director by FCG's shareholders (**Shareholders**)); and
 - b. certain exceptions should apply to facilitate the operation of the FSF, noting that a Director holding such office acts as a representative of FCG in such capacity.

Ruling on definition of "Related Party"

Decision

18. NZ RegCo grants FCG a ruling that the definition of "Related Party" in the Rules be amended to
- a. include the following as sub-paragraph (g) at the end of the definition:

"(g) that person is acting in their role as the Custodian, or FSF Manager or trustee of the FSF, or as a Market Maker."
 - b. delete the word "or" at the end of sub-paragraph (e); and
 - c. replace the full stop at the end of sub-paragraph (f) with the words ", or".

Reasons

19. In coming to the decision to grant the ruling set out above, NZ RegCo has considered that:
- a. FCG may need to contract with the Custodian, the FSF Manager, the trustee of the FSF and/or the Market Makers for the proper operation of the FSF; and
 - b. such persons should not be deemed Related Parties of FCG as a result of FCG's contractual arrangements with these persons for the operation of the FSF.

Ruling on definition of "Issuer"

Decision

20. NZ RegCo grants FCG a ruling that sub-paragraph (c) of the definition of "Issuer" in the Rules be amended by replacing the full stop at the end of that sub-paragraph with the following sentence:

"except that it does not include the Custodian (and, in relation to the disclosure of information, does not include the FSF Manager)."

Reasons

21. In coming to the decision to grant the ruling above, NZ RegCo has considered that this ruling is required to clarify that, for the purposes of the Rules and disclosure, neither the Custodian nor the FSF Manager could be seen as FCG.

Waiver from Listing Rule 2.2 and 2.3

Decision

22. Subject to the condition set out below, NZ RegCo grants FCG a waiver from Rule 2.2 and Rule 2.3 to allow Farmer Directors to be elected by Shareholders otherwise than in accordance with Rule 2.2 and 2.3.
23. The waiver above is granted on the condition that the Shareholders who may vote on the election of Farmer Directors are all Shareholders at the record date for determining the entitlement to vote who would have been entitled to attend and vote at a meeting of Shareholders if the election had been at a meeting of Shareholders.

Reasons

24. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. the waiver granted allows FCG to continue to run its election process for Farmer Directors in the manner that it does currently;
 - b. FCG's current nomination and election process for Farmer Directors is thoroughly understood by Shareholders and reflects the co-operative nature of FCG; and
 - c. FCG has submitted, and NZ RegCo has no reason not to accept, that FCG's election procedures are a robust and appropriate method of providing representation for Shareholders while ensuring there is appropriate independence on FCG's Board.

Waiver from Listing Rule 2.5

Decision

25. NZ RegCo grants FCG a waiver from Rule 2.5 as FCG's constitution does not permit a Director to appoint an alternate.

Reasons

26. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. FCG's constitution does not permit a Director to appoint an alternate, and FCG submits that, due to its co-operative structure, it is not appropriate that Directors have the power to appoint an alternate;
 - b. clause 48.4(d) of FCG's constitution provides that the Rules override FCG's constitution where inconsistent; and
 - c. therefore, this waiver is required to ensure that Rule 2.5 does not override FCG's constitution to permit the appointment of alternate Directors.

Ruling on Listing Rule 2.10.2

Decision

27. NZ RegCo grants FCG a ruling that Rule 2.10.2 be amended to:
- a. insert the following provisions as new Rules 2.10.2(c) and 2.10.2(d):

"(c) which gives rise to the interest is a transaction in the ordinary course of business of the Issuer and is between:

 - (i) the Issuer and that Director in his or her capacity as a Supplying Shareholder, or*
 - (ii) the Issuer and any person referred to in section 139 of the Companies Act 1993 which gives rise to the interest of the Director, in that person's capacity as a Supplying Shareholder,*

and is a transaction or matter with all or a number of Supplying Shareholders, and where the transaction or matter is not with all Supplying Shareholders, the terms of the transaction or matter (and the level of participation, if applicable) are determined according to criteria that apply to that number of Supplying Shareholders generally, or

(d) is one in respect of which the Director of the Issuer is interested because he or she has been selected by the Board to be, and is therefore also:

 - (i) a Director of the FSF Manager, or*
 - (ii) a Director of the Custodian, or*
 - (iii) a trustee of a trust, the trustees of which are the holders of all the shares of the Custodian."*
 - b. replace the full stop at the end of Rule 2.10.2(b) with the words ", or".

Reasons

28. In coming to the decision to grant the ruling set out above, NZ RegCo has considered that:

- a. the policy behind Rule 2.10.1 is to prevent situations arising whereby Directors who have a material vested interest in a transaction may be involved in discussions or authorise the entry into, or implementation of, matters that are detrimental to the interests of Security Holders as a result of that interest;
- b. Rule 2.10.2 provides carve outs to the restrictions set out in Rule 2.10.1 in respect of interested Directors, and the ruling above extends the carve outs contained in Rule 2.10.2;
- c. as a co-operative, FCG submits that it is important to Shareholders that a majority of the Board are persons with a direct or indirect interest in a Supplying Shareholder;
- d. the "interest" test under section 139 of the Companies Act 1993 does not require the Director to be a party to a transaction; it is sufficient if they may derive a material financial benefit from the transaction;
- e. FCG submits that many decisions of the Board impact Supplying Shareholders and FCG is constantly interacting with its Supplying Shareholders on a wide range of issues, with Farmer Directors being Supplying Shareholders or associated with Supplying Shareholders through their direct or indirect interest;
- f. therefore, given FCG will seek to enhance value for Shareholders in its decision making, Farmer Directors could be interested in many of the significant decisions FCG makes by deriving a material financial benefit;
- g. FCG submits, and NZ RegCo has no reason not to accept, that not permitting the Farmer Directors to vote in circumstances described at new Rule 2.10.2(c) is inappropriate for a number of reasons:
 - i. it is directly contrary to the position sought by Shareholders; that FCG is controlled by Supplying Shareholders (with more than half of the Board being Farmer Directors, each of whom have a direct or indirect interest in a Supplying Shareholder);
 - ii. there are legitimate reasons why the Board may take action in relation to a particular group of Supplying Shareholders rather than all Supplying Shareholders;
 - iii. if FCG had to seek regulatory approval or formal Shareholder approval before carrying out any new supplier initiative or changing any existing initiative, this would result in significant operational delays and inefficiencies for FCG; and
 - iv. FCG is operating in a competitive global industry and needs to be able to make decisions in relation to its suppliers in an agile and dynamic way to remain competitive for milk supply;
- h. the carve-out in new Rule 2.10.2(c) is qualified by the need to be with all Supplying Shareholders or, if not with all Supplying Shareholders, that the level of participation is determined according to criteria that apply to that number of suppliers generally, which ensures that Farmer Directors or the Supplying Shareholder associated with them are not getting any 'special benefit' or 'favourable treatment' under any supplier initiative; and
- i. FCG Directors should not be prevented from voting in the circumstances described in new Rule 2.10.2(d) as those Directors are appointed to those positions to representing FCG, and have no personal interest in the relevant person.

Waiver from Listing Rule 2.11

Decision

29. NZ RegCo grants FCG a waiver from Rule 2.11 in respect of the remuneration of Independent Directors (being those Directors who do not meet the criteria to be Farmer Directors as set out in clause 12.3 of the FCG's constitution). The waiver is granted for the period commencing on the Migration Date until the date that the remuneration set for the Independent Directors is ratified by Shareholders. Thereafter, any increase in the remuneration for Independent Directors must be approved by Shareholders in accordance with the Rules.

Reasons

30. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. the waiver will permit the level of remuneration for Independent Directors to be what it is currently, which is the same level of remuneration set for Farmer Directors (and such remuneration was approved by the Shareholders); and
 - b. the waiver from Rule 2.11 is only transitory, and the Rules require FCG to seek shareholder approval for any future increases to Independent Director remuneration.

Waiver from Listing Rule 2.13.2(c)

Decision

31. NZ RegCo grants FCG a waiver from Rule 2.13.2(c) on the conditions that:
- a. there be at least two Independent Directors on the Audit Committee;
 - b. one of the Independent Directors on the Audit Committee is the Chair of that Committee;
 - c. at least one Independent Director on the Audit Committee has an accounting or financial background; and
 - d. there are no more than five members on the Audit Committee.

Reasons

32. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. FCG is a closed share-register dairy co-operative. In November 2023, Shareholders approved reducing the size of FCG's Board, and have indicated a strong desire for majority Farmer Director representation on FCG's Board;
 - b. a Farmer Director is not eligible for status as Independent Director due to his or her direct or indirect interest as a Supplying Shareholder, which is a consequence of FCG's co-operative structure;
 - c. FCG has been operating in accordance with FSM Listing Rule requirements for an extended period. Under the FSM Listing Rules there is no requirement for any members of FCG's Audit Committee to be Independent Directors;

- d. as a majority of FCG's Board are non-Independent Directors, and FCG is in the process of reducing its number of Directors, it will be difficult for FCG to meet the requirement under Rule 2.13.2(c) to have an Audit Committee with a majority of Independent Directors without excluding Farmer Directors or decreasing the number of Independent Directors on other Committees to rebalance the workload between Directors; and
- e. FCG's minimum Board committee size is five directors, and without the waiver, there would be no ability for the Audit Committee to operate should something unforeseen happen to an Independent Director (such as illness or a sudden resignation) until an urgent waiver could be obtained.

Ruling on decisions of the Board

Decision

33. NZ RegCo rules that FCG must comply with following requirement:

"The following decisions of the Board must be approved by a majority of not less than 75% of the Directors participating at the Board meeting to consider the matter (and being entitled to vote and be counted in the quorum for that purpose) and such majority must include at least a majority of the Independent Directors who are entitled to vote and be counted in the quorum for that purpose:

- (a) a decision to pay an aggregate amount for Milk in excess of the aggregate amount for Milk calculated pursuant to the Milk Price Manual,*
- (b) a decision to amend or replace the Milk Price Manual,*
- (c) a decision to promote, or support, an amendment to, or replacement of, the Issuer's constitution that would have a material adverse effect on the rights attached to the co-operative shares of the Issuer which are from time to time held by the Custodian in respect of which economic rights have been granted to the trustee of the FSF, or*
- (d) a decision to appoint as an Independent Director a person who has not been supported by a majority of the directors of the FSF Manager of the FSF who are not also Directors of the Issuer (with such support evidenced by advice as to such support from that FSF Manager)."*

Reasons

34. In coming to the decision to grant the ruling set out above, NZ RegCo has considered that:

- a. this ruling provides protection for the FSF Unit Holders;
- b. it is appropriate for NZ RegCo to grant a ruling rather than having the obligation incorporated into FCG's constitution, as an obligation under the constitution can be altered by Shareholders; and
- c. the same protection was afforded to FSF Unit Holders under FSM Listing Rule 1.6.3, and FCG submits that it is appropriate to continue to give FSF Unit Holders this protection.

Waiver from Listing Rule 2.20.1(a) and 2.20.1(c)

Decision

35. NZ RegCo grants FCG a waiver from Rules 2.20.1(a) and 2.20.1(c) of the Rules. The waiver is granted for the period commencing on the Migration Date until the date the requisite amendments to FCG's constitution that are required to comply with Rule 2.20.1(a) and 2.20.1(c) are approved by Shareholders.

Reasons

36. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. FCG intends to amend its constitution to comply with Rule 2.20.1(a) and Rule 2.20.1(c) (subject to the waivers set out in this decision), such amendments to take effect upon approval by Shareholders;
 - b. therefore, a transitory waiver from Rules 2.20.1(a) and 2.20.1(c) is appropriate, to give FCG time to amend its constitution to comply with Rule 2.20.1(a) and Rule 2.20.1(c); and
 - c. NZ RegCo is comfortable granting FCG a transitory waiver for the following reasons:
 - i. FCG's constitution already requires FCG to comply with the Rules, and further provides that if any provision in the constitution is inconsistent with the Rules, that provision shall be deemed to be amended, or deleted, to the extent necessary to make that provision consistent with the Rules; and
 - ii. therefore, even without explicit incorporation of the provisions set out under Rules 2.20.1(a) and 2.20.1(c) in the constitution, FCG is required to comply those provisions.

Ruling on Listing Rule 3.4.2

Decision

37. NZ RegCo grants FCG a ruling that Rule 3.4.2 of the Rules be amended by replacing the full stop at the end of that Rule with the following sentence:

" , or where the waiver from Listing Rule 5.1.1 and/or Listing Rule 5.2.1 applies (or would apply if the reference to 10% in the definition of "Material Transaction" was a reference to 5%)."

Reasons

38. In coming to the decision to grant the waiver above, NZ RegCo has considered that:
- a. Rule 3.4.2 provides exceptions to the requirement under Rule 3.4.1 for an Issuer to disclose details of a transaction or a related series of transactions with a Related Party through MAP;
 - b. this ruling extends the exceptions under Rule 3.4.2, by including the transactions which are contemplated by the decisions made in respect of Rule 5.1.2 and Rule 5.2.2 in this decision document; and

- c. FCG submits that, in circumstances where shareholder approval is not required for a transaction or a related series of transactions because the rulings in respect of Rule 5.1.2 and Rule 5.2.2 apply, FCG should also not be required to disclose details of that transaction or related series of transactions on MAP.

Ruling on Milk Price disclosure

Decision

39. NZ RegCo rules that FCG must comply with following Rule:

"If the Board sets a Milk Price for any Season that is not the same as the Milk Price recommended by the Milk Price Panel in respect of that Season, and the Milk Price determined by the Board exceeds the Milk Price that was determined in accordance with the Milk Price Manual for that Season, the Issuer shall disclose that fact through MAP, and provide details of its decision (including reasons for such decision being made)."

Reasons

40. In coming to the decision to grant the ruling above, NZ RegCo has considered that:
 - a. the policy behind this ruling is to provide protection for FSF Unit Holders;
 - b. it is appropriate for NZ RegCo to grant a ruling rather than having the obligation incorporated into FCG's constitution, as an obligation under the constitution can be altered by Shareholders; and
 - c. the same protection was afforded to FSF Unit Holders under FSM Listing Rule 2.4.3, and FCG submits that it is appropriate to continue to give FSF Unit Holders this protection.

Ruling on Listing Rule 4.3.1(a) and 4.3.1(b)

Decision

41. NZ RegCo grants FCG a ruling that Rules 4.3.1(a) and 4.3.1(b) be amended by removing the reference to "Voting and".

Reasons

42. In coming to the decision to grant the ruling above, NZ RegCo has considered that the ruling is appropriate as a Supplying Shareholder has one vote for every 1,000 kilograms of milksolids supplied to FCG, but excluding any milk for which the Supplying Shareholder does not hold Shares in accordance with the FCG's Share Standard. Accordingly, it is not possible for FCG to comply with the requirement under Rules 4.3.1(a) and 4.3.1(b) to issue Shares to maintain proportionate Voting rights.

Ruling on Listing Rule 4.9.1

Decision

43. NZ RegCo grants FCG a ruling that Rule 4.9.1 be amended to:

- a. include the following as new Rule 4.9.1(e):

"(e) the issue is made to the Custodian in respect of the FSF to facilitate the operation of the FSF."

- b. delete the word "or" at the end of Rule 4.9.1(c); and
- c. replace the full stop at the end of Rule 4.9.1(d) with the words ", or".

Reasons

44. In coming to the decision to grant the ruling above, NZ RegCo has considered that it is appropriate to grant the ruling in order to facilitate the operation of the FSF.

Ruling on Listing Rule 4.14.1

Decision

45. NZ RegCo grants FCG a ruling that Rule 4.14.1 be amended as follows:

- a. the following provisions shall be inserted after Rule 4.14.1(e):

"(f) any acquisition, redemption or surrender of shares permitted or required to be made by the Issuer under the Co-operative Companies Act 1996, or

(g) an acquisition or redemption permitted or required to be made by the Issuer under the Dairy Industry Restructuring Act 2001, or from a Custodian in respect of the FSF, or from a Custodian on behalf of one or more Market Makers,"

- b. Rule 4.14.1(b)(ii)(A) shall be amended by beginning with the phrase "subject to Rule 4.14.1(j),";
- c. Rule 4.14.1(f) shall be renumbered as Rule 4.14.1(h), and the word "and" at the end of that Rule shall be deleted;
- d. Rule 4.14.1(g) shall be renumbered as Rule 4.14.1(i), and the full stop at the end of that Rule shall be deleted and replaced with the words ", and"; and
- e. the following new Rule 4.14.1(j) shall be inserted at the end of Rule 4.14.1:

"(j) Rule 4.14.1(b)(ii)(A) will not apply if the acquisition is made from a Director of the Issuer or an Associated Person of such a Director where the Director or Associated Person is a Supplying Shareholder and the acquisition is from all or a number of Supplying Shareholders (and where the acquisition is not made from all Supplying Shareholders, the terms of the acquisition and the level of participation, if applicable, is determined according to criteria applying to that number of Supplying Shareholders generally)."

Reasons

46. In coming to the decision to grant the ruling above, NZ RegCo has considered that:

- a. new Rule 4.14.1(f) preserves FCG's right to acquire, redeem or surrender shares under the Co-operative Companies Act 1996;

- b. new Rule 4.14.1(e) is required to facilitate the operation of the FSF; and
- c. given Farmer Directors will also be Supplying Shareholders or associated with Supplying Shareholders through their direct or indirect interest, the addition of Rule 4.14.1(j) is required to allow Rule 4.14.1(b)(ii)(A) to apply even if a Director, or an associated person, participates in an acquisition of Equity Securities in their capacity as a Supplying Shareholder if they are but one of a number of participants and do not receive any favourable treatment.

Ruling on Listing Rule 4.14.2

Decision

47. NZ RegCo grants FCG a ruling that Rule 4.14.2 be amended by inserting the following words after the reference to "Minimum Holding":

"or an acquisition, surrender or redemption under Rule 4.14.1(f) and 4.14.1(g),"

Reasons

48. In coming to the decision to grant the ruling set above, NZ RegCo has considered that this ruling is required to align Rule 4.14.2 with the variations made to Rule 4.14.1 under the ruling set out in this decision.

Ruling on Listing Rule 4.15.1

Decision

49. NZ RegCo grants FCG a ruling that Rule 4.15.1 be amended to:

- a. insert the following provision as new Rule 4.15.1(c):

"(c) is permitted by the Dairy Industry Restructuring Act 2001."

- b. delete the word "or" at the end of Rule 4.15.1(a); and
- c. replace the full stop at the end of Rule 4.15.1(b) with the words ", or".

Reasons

50. In coming to the decision to grant the ruling above, NZ RegCo has considered that:
- a. FCG is permitted under section 161D of the Dairy Industry Restructuring Act 2001 to give financial assistance in certain limited circumstances to facilitate the operation of the FSF; and
 - b. therefore, this ruling is required to allow FCG to give financial assistance if this is permitted by DIRA.

Ruling on Listing Rule 4.15.2

Decision

51. NZ RegCo grants FCG a ruling that:

- a. Rule 4.15.2(a) be amended by inserting the following phrase after the phrase "or Associated Person of a Director":

"except where participation is determined according to criteria applying to all persons eligible to receive the financial assistance and the persons so eligible are not solely persons who are Employees, Directors of the Issuer, or Associated Persons of Directors of the Issuer,"

- b. Rule 4.15.2 be amended by inserting the following as new Rules 4.15.2(d) and 4.15.2(e):

"(d) the financial assistance is given to a Market Maker, Custodian, FSF Manager or trustee of the FSF, or any other person for the purposes of the establishment or operation of the FSF, or

(e) the financial assistance is given to a person to facilitate the acquisition of the Equity Securities issued by the Issuer and held by the Custodian on behalf of the FSF upon the cessation of the FSF or the FSF ceasing to be an Authorised Fund for the purposes of the Issuer's constitution."

and omitting the use "or" at the end of Rule 4.15.2(b)(iii).

Reasons

52. In coming to the decision to grant the ruling above, NZ RegCo has considered that:

- a. given that Farmer Directors are Supplying Shareholders or associated with Shareholders through their direct or indirect interest, the ruling above is appropriate as it allows Farmer Directors to participate in financial assistance where they are not the sole persons receiving the financial assistance, and participation is determined according to criteria applying to all persons eligible to receive the financial assistance;
- b. this ruling:
 - i. is necessary to facilitate the operation of the FSF as it allows FCG to meet the costs of operating the FSF and the costs of participant who operate the FSF; and
 - ii. is necessary to allow FCG to fund a party if the FSF is removed or it ceases to be authorised and its activities are assumed by another party, which becomes the "Authorised Fund".

Waiver from Listing Rule 5.1.1

Decision

53. NZ RegCo grants FCG a waiver from Rule 5.1.1(b) to the extent required to allow FCG to enter into and perform its Primary Business Undertakings, these being:

- a. any transaction or series of linked or related transactions entered into by FCG relating to the purchase and payment by FCG for Milk, or
- b. any transaction or series of linked or related transactions entered into by FCG with a customer for the supply by FCG of dairy products derived from, or manufactured using, Milk supplied to FCG.

54. This waiver is made on the conditions that:

- a. FCG's Directors certify to NZX that the granting of the waiver is in the best interest of each of:
 - i. FCG; and
 - ii. Shareholders as a whole;
- b. FCG's Directors certify to NZX that the transactions comprising the Primary Business Undertakings will:
 - i. not significantly change the nature of FCG's business; and
 - ii. be in the ordinary course of FCG's business;
- c. FCG's Directors certify to NZX that the transactions comprising the Primary Business Undertakings are in the best interest of each of:
 - i. FCG; and
 - ii. Shareholders as a whole;
- d. FCG's Directors include in the certificate referred to in conditions (a), (b) and (c) a summary of the core grounds for the certifications given under each limb of conditions (a), (b), and (c), described above,
- e. the certificate referred to in conditions (a) to (d) be published by NZX to the market alongside the publication of this waiver decision; and
- f. the waiver, its conditions and implications are disclosed in FCG's first annual report after the publication of the waiver.

Reasons

55. In coming to the decision to grant the waiver above, NZ RegCo has considered that:

- a. the granting of this waiver will not offend the policy behind Rule 5.1.1, as the policy behind Rule 5.1.1 is to regulate transactions that are so significant to the Issuer and therefore so likely to impact shareholders' interests, that shareholders should have an opportunity to consider and vote on the transaction before it can take effect. The Primary Business Undertakings are business as usual transactions for FCG in respect of its core business undertaking, and therefore do not offend this policy;
- b. the entry into and performance of the Primary Business Undertakings are arrangements where FCG is undertaking business as usual activities involving the collection and processing of the milk supplied to it by its Shareholders and in selling the resulting products, rather than

being transactions that change the nature of its business. The conditions of the waiver require the Directors of FCG to give certification to this effect which will be published to market;

- c. the NZX Guidance Note Major and Related Party Transactions contemplates waivers being granted from Rule 5.1.1 where an Issuer is entering into arrangements where it is receiving cash under a contract in excess of 50% of the Issuer's Average Market Capitalisation where the Issuer is undertaking business as usual activities;
- d. other than in respect of the Primary Business Undertakings, FCG must comply with the requirements of Rule 5.1.1, meaning that when seeking to enter into any transaction that would significantly change its nature of business or involves a Gross Value above 50% of its Average Market Capitalisation which is not a Primary Business Undertaking, FCG must seek shareholder approval; and
- e. the major transaction provisions of the Companies Act 1993 provide that a transaction the value of which exceeds 50% of the value of the company's assets must be approved by a special resolution of shareholders, or be contingent upon such approval. This requirement cannot be waived. Shareholders retain the protections of the Companies Act 1993 for transactions that are significant compared to the value of the company's assets, and will have the opportunity to vote on these transactions.

Waiver from Listing Rule 5.2.1

Decision

56. NZ RegCo grants FCG a waiver from Rule 5.2.1 to the extent required to allow FCG to enter into and perform:

- a. any transaction entered into in the ordinary course of business of FCG with all or a number of Supplying Shareholders, and where the transaction is not with all Supplying Shareholders, the terms of the transaction (and the level of participation, if applicable) are determined according to criteria that apply to that number of Supplying Shareholders generally; or
- b. any transaction or series of linked or related transactions entered into by FCG with its Supplying Shareholders for the purchase and payment by FCG for Milk supplied by Supplying Shareholders,

(together the **Exempted Rule 5.2 Transactions**) without seeking shareholder approval.

57. This waiver is granted on the conditions that:

- a. FCG's Directors certify to NZX that the granting of the waiver is in the best interest of each of:
 - i. FCG; and
 - ii. Shareholders as a whole;
- b. FCG's Directors certify to NZX that:
 - i. it will not enter into the Exempted Rule 5.2 Transactions due to, and the terms of the Exempted Rule 5.2 Transactions will not be subject to, undue influence by the relevant Related Party; and

- ii. any Exempted Rule 5.2 Transactions will be on arm's length terms;
- c. FCG's Directors include in the certificate a summary of the core grounds for the certifications given under each limb of conditions (a) and (b) described above;
- d. the certificate referred to in conditions (a), (b), and (c) be published by NZX to the market alongside the publication of the waiver; and
- e. the waiver, its conditions and implications are disclosed in FCG's first annual report after the publication of the waiver.

Reasons

58. In coming to the decision to grant the waiver set out above, NZ RegCo has considered that:
- a. the purpose of Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, such transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer's decision to enter into a transaction or agree to its terms. NZ RegCo may waive the requirement to obtain shareholder approval of a Material Transaction with a Related Party if it is satisfied that the personal connections with, or involvement or personal interest of, any Related Party are immaterial or have not influenced the promotion of, or the decision to enter into, the transaction or its terms and conditions. NZ RegCo does not consider that granting this waiver offends the policy of the Rule;
 - b. FCG, as a co-operative company, undertakes a number of initiatives that are in the ordinary course of its business which apply to a number of its Supplying Shareholders, and a Farmer Director could participate in that initiative as a Supplying Shareholder; and
 - c. where a specified cohort of Supplying Shareholders is identified as being impacted by one of FCG's initiatives, the level of participation by the Farmer Director as a member of that specified cohort is determined according to criteria that apply to that specific cohort generally. This ensures that Farmer Directors and related parties will not receive any 'special benefit' or 'favourable treatment' that would ordinarily require shareholder approval under the Rules.

Ruling on Listing Rule 6.1.1

Decision

59. NZ RegCo grants FCG a ruling that Rule 6.1.1 be amended by deleting the sentence "*Votes must be counted according to the votes attached to the Financial Products of each Financial Product holder entitled to Vote and voting*".

Reasons

60. In coming to the decision to grant this ruling, NZ RegCo has considered that the waiver is appropriate given voting rights of a Shareholder is dependent upon the Shareholder's supply of milksolids to FCG, but excluding milk for which the Shareholder does not hold Shares in accordance with FCG's Share Standard.

Approval under Listing Rule 6.2

Decision

61. NZ RegCo grants FCG approval pursuant to Rule 6.2 to determine Shareholder voting entitlements in accordance with its constitution.

Reasons

62. In coming to the decision to grant this approval, NZ RegCo has considered that:

- a. its approval is required pursuant to Rule 6.2 in order for FCG to determine Shareholder voting entitlements in accordance with its constitution; and
- b. it is appropriate to provide its approval to facilitate FCG's co-operative governance structure.

Ruling on Listing Rule 7.1.2(a)

Decision

63. NZ RegCo grants FCG a ruling that Rule 7.1.2(a) be amended by

- a. adding the following new Rules 7.1.2(a)(ix) and 7.1.2(a)(x):

"(ix) amendments to the by-laws of the Co-operative Council, or

(x) approval of:

(A) the Co-operative Council programme and budget;

(B) the remuneration of Councillors; and

(C) the remuneration of the members of the Directors' Remuneration Committee."

- b. deleting the word "or" at the end of Rule 7.1.2(a)(vii); and
- c. replacing the full stop at the end of Rule 7.1.2(a)(viii) with a comma.

Reasons

64. In coming to the decision to grant this ruling, NZ RegCo has considered that it is appropriate to grant this ruling to avoid NZ RegCo needing to review FCG's notice of meeting when administrative matters in respect of the Co-operative Council and the Directors' Remuneration Committee are included in the notice of meeting.

Waiver from Listing Rule 7.8.3

Decision

65. NZ RegCo grants FCG a waiver from Rule 7.8.3 in respect of any notice of meeting to consider a resolution to appoint, elect or re-elect Farmer Directors.

Reasons

66. In coming to the decision to grant this waiver, NZ RegCo has considered that:
- a. in accordance with FCG's constitution, the election or re-election of Farmer Directors does not take place at a meeting of shareholders to consider a resolution to appoint Farmer Directors, but by holding of a postal vote run by a separate body and overseen by the Co-operative Council; and
 - b. the rationale for granting this ruling is consistent with rationale for granting the waivers in respect of Rule 2.2 and 2.3 in this decision.

Ruling on Listing Rule 8.1.4(d)

Decision

67. NZ RegCo grants FCG a ruling that Rule 8.1.4(d) is deleted and replaced with the following:

"(d) the Issuer is a co-operative company registered under the Co-operative Companies Act 1996 and either:

- (i) the registration would result in Quoted Financial Products being transferred to persons that are not "transacting shareholders" (as defined in that Act); or*
- (ii) the transfer is prohibited, or may otherwise be declined, in accordance with the Issuer's constitution."*

Reasons

68. In coming to the decision to grant this waiver, NZ RegCo has considered that FCG permits persons who are not "transacting shareholders" to be Shareholders, but limits who those persons are under its constitution.

Approval of Governing Document under Listing Rule 8.1.6(b)

Decision

69. NZ RegCo approves the following provisions in FCG's constitution which impose restrictions on the transfer of Quoted Financial Products:
- a. clause 2.3(a): the Board has absolute discretion to decide whether or not to accept an application by a person to become a Shareholder;
 - b. clause 2.4: the Board may not admit certain persons as a Shareholder;
 - c. clause 3.1 & 3.2: no Shareholder may hold shares in excess of the prescribed limit;
 - d. clause 3.14: as it applies to limits (both as to purchasing and disposing);
 - e. clause 3.17: independent agent has power to acquire and dispose of shares;

- f. clause 3.20: power to require a Shareholder to reduce their shareholding;
- g. clause 3.23: power of the Board to specify a Base Limit;
- h. clause 3.24: power to require disposal of Shares;
- i. clause 4: compliance and remedies;
- j. clauses 6.4 & 6.6: limits applicable to the Registered Volume Provider;
- k. clause 7: limits on the participation by the Authorised Fund;
- l. clause 30.4: restrictions on whom shares may be transferred;
- m. clause 30.5: transfer restrictions in respect of Sharemilkers; and
- n. clause 30.7: right of the Board to refuse to register transfers.

Reasons

70. In coming to the decision to grant the approval above, NZ RegCo has considered that the approval is fundamental to maintaining FCG's co-operative ownership structure – where only permitted persons can be Shareholders and there are restrictions on the minimum number and maximum number of Shares that can be held.

Ruling on Transfers of Quoted Financial Products

Decision

71. NZ RegCo grants FCG a ruling that FCG must comply with the following rule:

*"The Issuer must not refuse to accept or register a transfer of Quoted Shares solely on the grounds that the transfer involved an interim transfer of title to a person not entitled to hold such shares under the Issuer's constitution (a "**Restricted Person**") provided that the interim transfer of title was required for the Restricted Person to facilitate the transfer of title to the ultimate purchaser as part of the operating share transfer system."*

Reasons

72. In coming to the decision to grant the ruling set out above, NZ RegCo has considered that:
- a. due to its co-operative ownership structure, FCG's constitution only permits certain persons to hold Shares, and restricts who Shares can be transferred to;
 - b. however, during the trading day, brokers, dealers and clearing agents (who are not permitted to hold Shares under FCG's constitution) will nonetheless be recorded as holders of Shares to give effect to the NZX Clearing System; and
 - c. this ruling grants an exception to the restrictions under FCG's constitution (and ensures that the ruling overrides the relevant restrictions in FCG's constitution) by allowing the brokers, dealers and clearing agents to hold legal title to Shares to facilitate the transfer of title to Shares to the ultimate purchaser, provided that those persons have an agreement with FCG governing the terms of their involvement in facilitating the trading of Shares.