

**NZ RegCo**

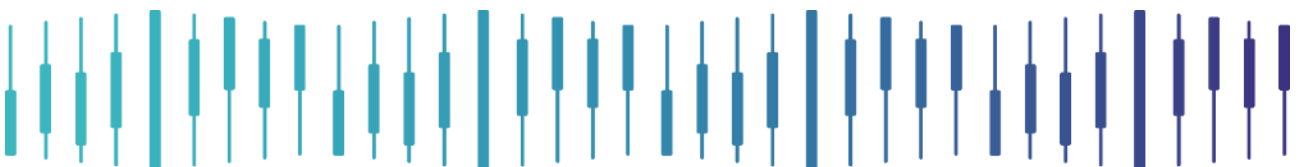
NZ'S LISTED  
MARKET REGULATOR

*29 August 2023*

# NZ RegCo Decision

Livestock Improvement Corporation Limited (LIC)  
(NS) Amended and restated waivers, approvals and  
Rulings decision under the NZX Listing Rules

Definitions of “Minimum Holdings” and “Renounceable”,  
NZX Listing Rules 2.3.1, 2.3.2, 4.15, 6.2.4, 6.6.1,  
8.1.6(b) and 3.13.1



## Background

1. The amended and restated decision from NZX Regulation Limited (**NZ RegCo**) for the Rulings and waivers set out in the decisions below:
  - a. will not apply if the information provided by LIC is not, or ceases to be, full and accurate in all material respects; and
  - b. will take effect once shareholder approval of the 2023 Constitutional Changes has been granted, and the 2023 Constitutional Changes have been adopted (**Effective Date**).
2. This decision relates to prior waiver, Ruling and approval decisions granted by NZ RegCo and its predecessor NZX Regulation on 30 August 2019, 31 August 2020 and 1 October 2020 (**Historical Decisions**). This decision amends, restates and consolidates all active waiver, Ruling and approval decisions documented under the Historical Decisions and relied on by LIC as at the Effective Date.
3. The information on which this decision is based is set out in Appendix One to this decision.
4. The Rules to which these decisions relate are set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meaning given to them in the NZX Listing Rules (**Rules**), and in Appendix One.

## Ruling on definition of “Minimum Holdings”

### Decision

6. On the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants a Ruling that the term “Shareholding Requirement” (the **Shareholding Requirement**) as defined in LIC’s Constitution (the **Constitution**) replaces “Minimum Holdings” for the purposes of the definition of “Minimum Holdings” in the Glossary of the Rules.

### Reasons

7. In coming to the decision to provide the waiver set out in paragraph 6 above, NZ RegCo has considered that:
  - a. the Ruling is required to ensure that LIC’s shareholdings reflect the Share Standard requirements set out in its Constitution, which is integral to its co-operative ownership structure; and
  - b. LIC has previously been granted a waiver from an equivalent provision in one or more of the Historical Decisions and LIC’s operating structure has not materially changed.

## Ruling on definition of “Renounceable”

### Decision

8. On the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC a Ruling to the extent that the definition of “Renounceable” refers to a Right or an offer of securities by LIC that is transferrable to any person entitled to hold those securities under the Constitution for the purposes of the Rules.

## Reasons

9. In coming to the decision to provide the Ruling set out in paragraph 8, NZ RegCo has considered that:
- a. this waiver is required to facilitate LIC's co-operative structure; and
  - b. LIC has previously been granted a waiver from NZ RegCo under the Historical Decisions and LIC's operating structure has not materially changed.

## Waiver from Listing Rules 2.3.1 and 2.3.2

### Decision

10. Subject to the conditions in paragraph 11, and on the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC waivers from:
- a. Rule 2.3.1, to allow director nominations for Elected Directors by Users to be restricted by:
    - i) region, as set out in clause 22.4(b) of the Constitution; and
    - ii) qualification, as set out in Schedule 3 of the Constitution; and
  - b. Rule 2.3.2, to allow the nomination procedures for Appointed Directors and Elected Directors (including casually appointed directors) as set out in Schedule 3 of the Constitution.
11. The waivers contained in paragraph 10 are provided on the conditions that:
- a. LIC bears a "Non Standard" designation to alert investors to LIC's unique governance arrangements; and
  - b. these waivers cease to have effect in the event of any further changes to LIC's governance structure (excluding the 2023 Constitutional Changes).

### Reasons

12. In coming to the decision to provide the waivers set out in paragraph 10 above, NZ RegCo has considered that:
- a. the waivers allow LIC's corporate governance structure and Constitution to operate, reflecting the co-operative nature of LIC;
  - b. LIC's current Elected Directors' nomination, appointment and ratification process is understood by LIC's shareholders and reflects the co-operative nature of LIC;
  - c. LIC's Elected Directors have been elected by LIC's shareholders on a regional basis, and its Appointed Directors are appointed by the Board, in accordance with the procedures set out in the Constitution;
  - d. LIC has submitted, and NZ RegCo has no reason not to accept, that the election procedures are a robust, democratic and appropriate method of providing representation on a regional basis for LIC's shareholders and introducing the skills of external directors (i.e. non co-operative members), while ensuring there is appropriate independence on LIC's Board;
  - e. LIC's governance structure and nomination procedures have been considered and approved by LIC's shareholders on 15 October 2020, and the 2023 Constitutional Changes must also be considered and approved by LIC shareholders at its 2023 Annual Meeting before coming into effect; and
  - f. LIC has previously been granted a waiver from NZ RegCo under the Historical Decisions and the relevant features of LIC's governance structure have not materially changed.

## Waiver from Listing Rule 3.13.1

### Decision

13. Subject to the conditions in paragraph 15, and on the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC a waiver from Rule 3.13.1 to the extent that this Rule requires LIC to release to the market details of Nil Paid Shares (issued under the Reclassification) which are converted into Fully Paid Shares.
14. For the avoidance of doubt, LIC does not need to release a notice under Rule 3.13.1 if no Nil Paid Shares have been fully paid up within the calendar month.
15. The waiver contained in paragraph 13 above is provided on the conditions that:
  - a. LIC must give to NZX for release to the market details of the Nil Paid Shares that are converted into Fully Paid Shares for a calendar month in the form as required under Rule 3.13.1, aggregating the number of Nil Paid Shares that have been paid up (if any) to provide monthly totals;
  - b. notices required under this paragraph 15.a must be provided to NZX no later than on the first business day of the calendar month following the calendar month to which the notice relates; and
  - c. every notice made under this paragraph 15.a must clearly be identified as a payment notice for Nil Paid Shares and include a reference that the notice is being made in reliance on this waiver and where a copy of the waiver is available.

### Reasons

16. In coming to the decision to provide the waiver set out in paragraph 13 above, NZ RegCo has considered that:
  - a. the information provided under Rule 3.13.1 is generally required to inform investors of the dilutionary effect on their quoted securities when securities are issued, acquired or redeemed. The structure of the Reclassification is such that each Nil Paid Share issued to LIC shareholders carries the same dividend and voting rights as attached to the Fully Paid Shares. The Nil Paid Shares were issued to ensure that the relative values and rights attaching to the two classes of shares were equalised;
  - b. the number of shares displayed on the NZX register will not include Nil Paid Shares and that LIC shareholders are not being diluted by any conversion from Nil Paid Shares to Fully Paid Shares. Therefore, the granting of this waiver will not offend the policy behind Rule 3.13.1;
  - c. LIC submits, and NZX has no reason not to accept, that managing approximately 9,000 shareholders and their ability to pay up their respective Nil Paid Shares at any time (pursuant to the Constitution) would otherwise create unnecessary complexity and administrative burden to LIC if it had to release daily notices under Rule 3.13.1;
  - d. this waiver is limited to the Nil Paid Shares issued under the Reclassification only, which are converted to Fully Paid Shares, and will not apply to other issues, acquisitions or redemptions of units (for example, a bonus issue of units as a result of a bonus issue in respect of LIC shares), which could affect the value of units;
  - e. in the absence of a waiver, notifications under Rule 3.13.1 would have to be made on a daily basis. Notices of events which could have a dilutionary effect on the value of the units may not be highlighted due to the similarities in the announcements and therefore, the policy intention of this Rule would not be met;

- f. NZ RegCo considers that notices which would be provided under Rule 3.13.1 to document the payment of Nil Paid Shares are generally not of any significant value to LIC shareholders. Further, NZ RegCo considers that there will be no detrimental impact on shareholders if they receive these notifications on a monthly basis; and
- g. LIC has previously been granted a waiver from an equivalent provision under the NZAX Rules in an NZ RegCo decision dated 23 July 2018, under the Rules in the Migration Decision and the October 2020 Decision.

## Waiver from Listing Rule 6.2.4

### Decision

- 17. Subject to the conditions in paragraph 18, and on the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC a waiver from Rule 6.2.4 to allow the Nil Paid Shares to carry full voting rights.
- 18. The waiver contained in paragraph 17 above is provided on the conditions that:
  - a. Nil Paid Shares with full voting rights are only issued for the purpose of the Reclassification; and
  - b. LIC clearly and prominently discloses this waiver, its conditions, and its implications in LIC's annual reports, during the period the waiver is relied on.

### Reasons

- 19. In coming to the decision to provide the waiver set out in paragraph 17 above, NZ RegCo has considered that:
  - a. the policy behind Rule 6.2.4 is to ensure that the voting rights of fully paid shareholders are not unfairly diluted as a result of the issue of partly paid, or unpaid, shares. NZ RegCo is comfortable that the granting of this waiver does not offend the policy of this Rule as the Nil Paid Shares were issued to Users on a pro rata basis to their holdings of Co-operative Control Shares before the Share Simplification Restructure;
  - b. LIC's shareholders approved the Share Simplification Restructure on 14 March 2018;
  - c. LIC has submitted, and NZ RegCo has no reason not to accept, that following the completion of the Share Simplification Restructure, this waiver remains relevant to facilitate its implementation, as there are outstanding Nil Paid Shares held by LIC Users. The simplification of the two classes of shares required partial consideration to be provided to ensure that all shareholders were receiving the correct amount of ordinary shares (including both fully paid and Nil Paid); and
  - d. LIC has previously been granted a waiver from NZ RegCo under the Historical Decisions and LIC's structure has not materially changed.

## Waiver from Listing Rule 6.6.1

### Decision

- 20. Subject to the condition in paragraph 21, and on the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC a waiver from Rule 6.6.1 to allow the lien provision in clause 18 in the Constitution to be read in place of this Rule.

21. The waiver contained in paragraph 20 is conditional on LIC bearing a “Non Standard” designation to act as notification to the market of its unique co-operative company structure.

## Reasons

22. In coming to the decision to provide the waiver set out in paragraph 20 above, NZ RegCo has considered that:
- a. LIC shareholders are also customers of LIC, and must transact with the company to remain as co-operative members and shareholders. As a result, LIC shareholders are likely to have amounts owing to LIC on multiple accounts which are not specifically tied to the shares that they hold in LIC;
  - b. Rule 6.6.1 restricts an Issuer’s lien on Equity Securities to unpaid amounts relating to, and owing on, Equity Securities. LIC’s broader lien, as provided in the Constitution, reflects the commercial transactional relationship between a company and its customers. In the absence of a waiver, LIC’s ability to recoup amounts owed on products and services supplied on credit to shareholders may be prejudiced;
  - c. the Constitution, since 2002 (following the enactment of the Dairy Industry Restructuring Act 2001), has contained a lien provision of the same breadth, allowing LIC to recover amounts presently payable by a shareholder on account. LIC’s co-operative structure and its application of liens under the Constitution have not materially changed; and
  - d. under the Historical Decisions, LIC was granted Rulings that the equivalent provision under the NZAX Rules and the Rules did not apply to LIC due to its “Non Standard” designation. LIC will retain its “Non Standard” designation under the Rules to alert investors to its unique company structure.

## Waiver from Listing Rule 4.15.1

### Decision

23. Subject to the conditions in paragraph 24, and on the basis that the information provided by LIC is complete and accurate in all material respects, NZ RegCo grants LIC a waiver from Rule 4.15.1 to allow LIC to provide financial assistance to an Approved Holding Entity, for the purposes of, or in connection with, the acquisition of Equity Securities issued, or to be issued, under the Voluntary Investment Scheme.
24. The waiver contained in paragraph 23 is provided on the conditions that:
- a. Key terms of the Voluntary Investment Scheme and the arrangements entered into by the Approved Holding Entity are disclosed to LIC shareholders since the Voluntary Investment Scheme was established and launched in 2020; and
  - b. The terms of the Voluntary Investment Scheme, including quantum of financial assistance, are approved by Independent Directors who are not LIC co-operative members and who are not entitled to utilise the Voluntary Investment Scheme or hold the LIC shares.

### Reasons

25. In coming to the decision to provide the waiver set out above, NZ RegCo has considered that:
- a. The policy behind Rule 4.15.1 is to ensure that Directors and others closely associated with an Issuer do not unduly influence a proposal to receive financial assistance from the issuer. Any financial assistance given under the Voluntary Investment Scheme is given solely to the

Approved Holding Entity to cover its costs and does not cover the costs of the shares, which will be borne by the participants of the Voluntary Investment Scheme directly;

- b. While the financial assistance is given directly to an Approved Holding Entity that administers LIC's Voluntary Investment Scheme, the purpose of the financial assistance is to allow Directors and other senior, shareholding managers to participate in the co-operative in a meaningful way, creating alignment with other shareholders without being in breach of the law;
- c. The financial assistance is given on an arms-length basis, and in accordance with LIC's Governing Document; and
- d. LIC has previously been granted a waiver from this Rule by NZ RegCo under the Historical Decisions and LIC's operating structure has not materially changed.

## Approvals under Listing Rule 8.1.6(b)

### Decision

- 26.** Subject to the conditions in paragraph 27, and on the basis that the information provided to NZ RegCo is full and accurate in all material respects, NZ RegCo grants LIC approval to include the following restrictions in the Constitution:
- a. LIC is restricted in relation to the voting securities that may be issued, as set out in clause 3.2(b) of the Constitution, thereby maintaining its co-operative structure;
  - b. ordinary shares in LIC may only be held by or transferred to certain persons, as set out in clause 3.2(c) of the Constitution;
  - c. ordinary shares in LIC shall not be held or acquired for the benefit of any person who is not a User, unless an exception is provided, as set out in clause 3.2(d) of the Constitution;
  - d. no person shall hold a relevant interest in more than 5% of the total number of ordinary shares in LIC on issue, as set out in clause 6.3(a) of the Constitution;
  - e. LIC may require Users who have spent in excess of the Minimum Purchase Amount to compulsorily acquire sufficient ordinary shares to meet the Shareholding Requirement, as set out in clause 7.1 of the Constitution;
  - f. LIC may require Users who no longer spend the Minimum Purchase Amount to compulsorily dispose of their ordinary shares, as set out in clause 7.2 of the Constitution; and
  - g. while the Dairy Industry Restructuring Act 2001 restricts voting rights in LIC, no person can exercise, or control the exercise of, more than 1% of the maximum number of votes exercisable at any meeting of LIC, as outlined at clause 20.4 of the Constitution.
- 27.** The approvals contained in paragraph 26 above are conditional on:
- a. LIC retaining its "Non Standard" designation to act as notification to the market of this matter;
  - b. there being no further changes to the Constitution or corporate governance structure (except to reflect the changes approved at the 2020 Annual Meeting to the Constitution e.g. Governance Changes or the 2023 Constitutional Changes); and
  - c. the approved restrictions and their implications being clearly disclosed in LIC's Service Rules which are released annually to coincide with the farming season (June 1 – 31 May) (the Service Rules).

## Reasons

- 28.** In coming to the decision to provide the approvals set out in paragraph 26, NZ RegCo has considered that:
- a.** the transfer restrictions were approved by LIC shareholders on 14 March 2018 when the shareholders approved the Constitution which came into effect on 19 July 2018, and again on 15 October 2020 in relation to the 2020 Constitutional Changes;
  - b.** the transfer restrictions are clearly disclosed in the Constitution and the Service Rules;
  - c.** it is appropriate to approve the transfer restrictions so that LIC is able to maintain their co-operative structure, and to comply with their statutory duties;
  - d.** the condition contained in paragraph 27(c) ensures that Users will be fully informed of all restrictions on the issue, acquisition and transfer of their ordinary shares; and
  - e.** LIC has previously been granted a waiver from NZ RegCo under the Historical Decisions and LIC's shareholding restrictions have not materially changed.



# Appendix One

## Background

1. Livestock Improvement Corporation Limited (**LIC**) is a Listed Issuer with a “Non Standard” (**NS**) designation on the NZX Main Board (**NZX**). LIC migrated from the NZX Alternative Board (**NZAX**) to the NZX Main Board with effect on 1 July 2019.
2. LIC is a farmer-owned co-operative company registered under the Companies Act 1993, operating in the dairy industry in New Zealand.
3. Prior to LIC’s current form as a co-operative company, LIC was a wholly-owned subsidiary of the New Zealand Dairy Board. LIC was established under the Dairy Industry Restructuring Act 2001 (**DIRA**), with a number of elements of LIC’s governance and ownership structure mandated by DIRA. Given LIC’s co-operative structure, certain corporate governance requirements cannot apply to LIC, or it would create adverse effects.
4. LIC’s shareholders are its customers who spend more than the prescribed minimum expenditure on qualifying products and services in a season (the **Users**) (the **Minimum Purchase Amount**), and employees of LIC (up to a maximum of 5%). It is compulsory for customers of LIC purchasing LIC’s products and services to hold a certain number of shares in LIC based on their expenditure with LIC (the **Share Standard**).
5. LIC shareholders are only able to nominate and vote for directors that represent their region (**Elected Directors**). The regional elections are a key part of the process to ensure appropriate representation of LIC’s shareholders.
6. LIC, until 19 July 2018, had two classes of shares on issue:
  - a. Co-operative Control shares which were not Quoted but had voting rights attached, as well as the right to a specified nominal priority dividend (**Co-operative Control Shares**); and
  - b. Investment shares which were Quoted on the NZAX and did not carry voting rights, but carried a right to a dividend which was subordinate to the priority dividend paid on Co-operative Control Shares (**Investment Shares**).
7. Co-operative Control Shares had a nominal value of \$1.00. Investment Shares did not have a nominal value, and were traded at the market price on the NZAX.
8. LIC had altered its capital structure to reclassify the two classes of shares into a single class of ordinary shares to be Quoted on the NZAX (the **Share Simplification Restructure** or the **Reclassification**). The objective of the Reclassification was to create a sustainable capital structure that aligned LIC’s economic and voting rights.
9. Due to the difference in value and rights attaching to the two classes of shares, the shares needed to be equalised before the reclassification could occur. In order to equalise the two classes of shares, LIC:
  - a. issued three nil paid Co-operative Control shares for every one Co-operative Control Share held. Once reclassified into Ordinary Shares, nil paid shares carry full dividend and voting rights but retain an outstanding liability (**Nil Paid Shares**); and
  - b. subdivided every Investment Share held into four fully paid Investment Shares (**Fully Paid Shares**).
10. On 20 July 2018, the Investment Shares and Co-operative Control Shares were reclassified into ordinary shares, following the issuance of Nil Paid Shares, maintaining the pre-restructure shareholding proportions. Nil Paid Shares are not included as part of the number of LIC ordinary

shares on issue because they are not tradeable until they are paid up by their respective shareholders. However, Nil Paid Shares retain full voting rights as if it were Fully Paid Shares.

11. Shareholders with Nil Paid Shares are required to pay up over time, with all dividends paid on the Nil Paid Shares and any Ordinary Shares required to be held to satisfy the Shareholding Requirement being used for this purpose. LIC shareholders may also choose to make additional payments on their Nil Paid Shares at other times.
12. Link Market Services maintains the register of Nil Paid Shares. As set out above in the waiver to Rule 3.13.1, LIC will update the number of ordinary shares on issue each month after Nil Paid Shares are paid up by LIC shareholders and convert into Fully Paid Shares.
13. LIC shareholders are encouraged to only make voluntary payments for their Nil Paid Shares on a quarterly basis to reduce the cost and complexity of LIC's administration. However, LIC shareholders are able to pay up their Nil Paid Shares at any time as permitted by the Constitution.

### **Previous application for waivers from, or Rulings in respect of, various requirements in the NZX Listing Rules**

14. LIC previously relied on a number of waivers and rulings from the NZAX Listing Rules (the **NZAX Rules**), which were granted by NZ RegCo to both allow LIC to maintain its co-operative structure, and to implement the Share Simplification Restructure.
15. As part of its migration to the NZX Main Board, LIC applied for the re-documentation of these Rulings and waivers that were granted by NZ RegCo in 9 February 2018 and 19 July 2018. The waivers and rulings decision was granted on 1 July 2019 when LIC migrated to the Main Board (**Migration Decision**).
16. LIC has, to date, relied on all of the waivers published in the Migration Decision.

### **Further background information relating to LIC's governance structure changes**

17. On 2 September 2020, LIC announced it would introduce the relevant proposal (**Governance Changes**) at its 2020 annual meeting of shareholders on 15 October 2020 (**2020 Annual Meeting**) through amendments of the LIC Constitution (**Constitution**), for LIC shareholder approval (**2020 Constitutional Changes**).
18. LIC previously had approximately 10,500 shareholders, spread across four regions (Northern, Midland, Central and Southern regions as defined in its 19 July 2018 Constitution). Under the amendments to the Constitution approved at the 2020 Annual Meeting, it simplified LIC's shareholder voting regions into two – North Island and South Island.
19. Prior to the Governance Changes being approved, the Elected Directors made up seven out of the 10 directors, with the remaining being Board appointed directors from outside of the co-operative. Following the approval of the Governance Changes, Elected Directors make up six of the 10 directors, with the remaining being appointed directors (**Appointed Directors**).
20. The revised LIC Constitution was approved at the 2020 Annual Meeting and the governance structure relating to LIC directors is as follows:
  - a. up to three Elected Directors may be elected to represent the North Island Region;
  - b. up to three Elected Directors may be elected to represent the South Island Region; and
  - c. up to four Appointed Directors.
21. Under the Governance Changes, LIC shareholders approved reducing the Elected Director terms to approximately three years (instead of four years) and aligning their election timing with the annual shareholders meeting in October each year.

22. Other Governance Changes included changes to the Shareholder Representation Group (**SRG**) (previously, LIC Shareholder Council). The changes relating to the SRG and the Shareholder Council took effect from 1 January 2021.
23. All of the changes voted on by LIC Shareholders are set out in detail within the notice of meeting for the 2020 Annual Meeting, as announced on nzx.com on 2 September 2020.
24. At its 2023 Annual Meeting, LIC will put forward a number of further constitutional changes to its shareholders to vote on (**2023 Constitutional Changes**) to give effect to a number of process improvements that LIC has identified since implementing the 2020 Constitutional Changes.
25. The 2023 Constitutional Changes are largely administrative in nature, and LIC has submitted that the Constitutional Changes do not impact upon the underlying policy or rationale for granting any of the waivers, rulings or approvals documented in the Historical Decisions.
26. A number of the waivers and rulings documented in the Historical Decisions are conditional on there being no further changes to LIC's constitution or governance arrangements. In light of this, LIC have requested that NZ RegCo reissue an amended and restated waiver decision to refer to the 2023 Constitutional Changes to make it clear that the waivers granted continue to apply in light of the 2023 Constitutional Changes.

### Further background information relating to Financial Assistance Waivers

27. LIC implemented a voluntary investment scheme (the **Voluntary Investment Scheme**) so that eligible directors and senior managers are able to invest in LIC without the risk of breaching securities trading restrictions. The Voluntary Investment Scheme is a fixed trading plan under the Financial Markets Conduct Act 2013.
28. Pursuant to LIC's Governing Document, the Board of LIC approved one or more persons to be an approved holding entity to administer any voluntary investment scheme or dividend reinvestment plan adopted by the Board (**Approved Holding Entity**). The Approved Holding Entity is a Board appointed third party who administers the Voluntary Investment Scheme by acquiring shares on behalf of the Voluntary Investment Scheme participants.
29. LIC has paid money to the Approved Holding Entity to meet the Approved Holding Entity's administrative costs and brokerage fees for the shares that are acquired on a participant's behalf. This financial assistance was, and will continued to be provided on arm's length terms, and represents a de minimus amount annually. The terms and the quantum payable under the arrangement must be approved by Independent Directors who are not co-operative members and who are not entitled to utilise the Voluntary Investment Scheme or hold LIC shares.
30. The cost of any shares acquired under the Voluntary Investment Scheme are borne by the participants (i.e. eligible Directors and senior, shareholding managers) directly.
31. LIC has applied for the re-documentation of a waiver that was previously granted by NZX Regulation on 30 August 2019 to ensure that all active waivers relied upon by LIC are documented in a single decision. LIC also submits that there have been no material changes in LIC's structure or circumstances since the previous waiver was granted 2019.
32. For ease of reference, LIC has requested that this waiver be consolidated into this amended, restated waivers and Ruling decision.

### Glossary Definition of "Minimum Holdings"

33. LIC has sought a Ruling that "Shareholding Requirement" as defined in the Constitution replaces "Minimum Holdings" for the purposes of the definition in the Glossary of the Rules.
34. In support of its application, LIC submits that the Ruling is required to ensure that the ownership of the co-operative reflects the amount spent by each of its Users.

## **Glossary Definition of “Renounceable”**

- 35.** The definition of “Renounceable” is tied to Rights that are transferrable by a holder of securities to another person. Due to LIC’s co-operative structure, only persons who make the Minimum Purchase Amount and meet the Share Standard are able to hold and transfer securities in LIC. Accordingly, LIC has sought a Ruling such that the definition restricts trading of LIC shares only to persons entitled to hold those securities.
- 36.** In support of this application, LIC submits that:
- a. to reflect the co-operative nature of LIC, the right to transfer securities in LIC must be limited to persons who are entitled to hold securities in LIC; and
  - b. the right to hold securities is defined in clause 2.1 of the Constitution.

## **Listing Rules 2.3.1 and 2.3.2 – Appointment, Nomination, Rotation, Removal and Ratification of Directors**

- 37.** LIC’s current nomination, appointment and election process has been in place since it was a subsidiary of the New Zealand Dairy Board, and has been carried across to its current Constitution. Due to its co-operative structure, LIC’s current nomination, appointment and election process is inconsistent with the Rules. Accordingly, LIC has sought waivers from:
- a. Rule 2.3.1, to allow director nominations by Users to be restricted by:
    - i) region, as set out in clause 22.4(b) of the Constitution; and
    - ii) qualification, as set out in Schedule 3 of the Constitution; and
  - b. Rule 2.3.2, to allow the nomination procedures for Appointed Directors and Elected Directors (including casually appointed directors), as set out in Schedule 3 of the Constitution.
- 38.** In support of this application, LIC submits that in respect of:
- a. Rule 2.3.1:
    - i) LIC has two regions (North Island and South Island, as set out in the Constitution) and shareholders are only able to nominate and vote for director(s) that represent their region. The regional elections are a key part of the process to ensure appropriate representation of LIC’s shareholders;
    - ii) The respective Elected Directors make up six out of the ten directors, with the remaining being Board appointed directors from outside of the co-operative, being Appointed Directors; and
    - iii) LIC’s election process is robust, democratic and an appropriate method of providing representation on a regional basis for LIC’s shareholders and introducing skills of external directors (i.e. non co-operative members) while ensuring there is appropriate independence on LIC’s Board.
  - b. Rule 2.3.2:
    - i) Schedule 3 of the Constitution would be read in place of the Rule. The clause imposes the following restrictions:
      - A. an Elected Director must be an ordinary shareholder of LIC, or a shareholder of a company or a member of a partnership which is an ordinary shareholder of LIC. That ordinary shareholder must use at least one of LIC’s herd testing options and/ or GeneMark Whole Herd testing, and must submit a minimum of 60% of one of their herds for artificial breeding to semen marketed by LIC;
      - B. no person shall be eligible for election as an Elected Director, or if elected shall

immediately vacate office, if in the opinion of the Board that person, directly or indirectly, has a continuing business arrangement with respect to products, services or livestock competing with the products, services or livestock offered or owned by LIC to such an extent that that person should cease to be eligible to be or continue to be an Elected Director; and

- C. no person shall hold office as an LIC Elected or Appointed Director and a SRG Member (previously, a Shareholder Councillor) concurrently and any person who is holding office as both an LIC Director and a SRG Member shall forthwith resign his or her office as a SRG Member.
- ii) LIC's director nomination process is thoroughly understood by LIC's shareholders, and serves to protect the interests of the co-operative by broad representation throughout New Zealand in a defined process; and
- iii) there is a high threshold of 75% approval by shareholders for changes to the Constitution, in which the Governance Changes were approved under.

### **Listing Rule 3.13.1 – Notices of issue of Financial Products**

39. LIC sought a waiver from Rule 3.13.1 to the extent that this Rule requires LIC to release to the market details of Nil Paid Shares which are converted into Fully Paid Shares issued under the Reclassification.

40. In support of the application, LIC has submitted that:

- a. the information provided under Rule 3.13.1 is generally required to inform investors of the dilutionary effect on their quoted securities when securities are issued, acquired or redeemed. The structure of the Reclassification is such that each Nil Paid Share issued to LIC shareholders carry the same dividend and voting rights attached to the Fully Paid Shares. The Nil Paid Shares were issued to ensure that the relative values and rights attaching to the two classes of shares were equalised;
- b. the number of shares displayed on the NZX register will not include Nil Paid Shares and LIC shareholders are not being diluted by any conversion from Nil Paid Shares to Fully Paid Shares. Therefore, the granting of this waiver will not offend the policy behind Rule 3.13.1;
- c. managing approximately 9,000 shareholders and their ability to pay up their respective Nil Paid Shares at any time (in accordance with the Constitution) would otherwise create unnecessary complexity and administrative burden to LIC if it had to release daily notices until Rule 3.13.1;
- d. this waiver is limited to the Nil Paid Shares, which are converted to Fully Paid Shares, issued under the Reclassification only, and will not apply to other issues, acquisitions or redemptions of units (for example, a bonus issue of units as a result of a bonus issue in respect of LIC shares), which could affect the value of units;
- e. in the absence of a waiver, notifications under Rule 3.13.1 would have to be made on a daily basis. Notices of events which could have a dilutionary effect on the value of the units may not be highlighted due to the similarities in the announcements and therefore, the policy intention of this Rule would not be met; and
- f. notices which would be provided under Rule 3.13.1 to document the payment of Nil Paid Shares is generally not of any significant value to LIC shareholders;

### **Listing Rule 6.2.4 – Votes attaching to financial products**

41. Rule 6.2.4 requires any security that is not fully paid to carry a proportional fraction of the voting rights that would be exercisable if the security were fully paid. LIC has applied for a waiver from Rule 6.2.4 to allow LIC to issue the Nil Paid Shares, with full voting rights.

42. In support of the application, LIC submitted that:
- a. the policy behind Rule 6.2.4 is to ensure that the voting rights of fully paid shareholders are not unfairly diluted as a result of the issue of partly paid, or unpaid, shares. The granting of this waiver does not offend the policy of this Rule as the Nil Paid Shares were issued to Users on a pro rata basis to their holdings of Co-operative Control Shares;
  - b. LIC's shareholders approved the Share Simplification Restructure on 14 March 2018; and
  - c. this waiver is required to continue to facilitate the implementation of the Share Simplification Restructure, and to provide partial consideration for the simplification of the two classes of shares.

### **Listing Rule 6.6.1 – Lien and forfeiture**

43. NZAX Rule 8.2.1 (being the equivalent of Rule 6.6.1), included an exception for “Non Standard” Issuers to not have to comply with the NZAX Rule 8.2.1. This exception has not been carried across into Rule 6.6.1.
44. LIC has applied for a waiver from Rule 6.6.1 to allow its lien provision in clause 18 of the Constitution to be read in place of this Rule. This is effectively a continuation of the previous Ruling granted to LIC under NZAX Rule 8.2.1.
45. In support of this application, LIC submitted that:
- a. LIC's lien is broader because of the close, transacting nature of the commercial relationship between the company and the customer. The co-operative nature of LIC means that the LIC shareholders must transact with the company to remain as co - operative members and shareholders;
  - b. it is, and has always been, a fundamental term of co-operative membership (and therefore of shareholding) that amounts owed to LIC by its members are secured by a lien over its shares. This enables LIC to have comfort as to its ability to recoup amounts owed (e.g. when products or services are supplied on credit). As a provision of significant importance, it is expressly provided for in the Constitution;
  - c. the Constitution, since 2002 (following the enactment of the Dairy Industry Restructuring Act 2001), has contained a lien provision of the same breadth allowing LIC to recover money presently payable by a shareholder on any account. The Constitution has not changed since it was previously granted a Ruling confirming that NZAX Rule 8.2.1 did not apply to LIC; and
  - d. in the absence of a waiver, a substantive change to the Constitution and its Service Rules would be required. LIC's ability to recover all amounts owing from LIC's customers (being its shareholders) would be prejudiced, and the co-operative nature of the company would be undermined.

### **Listing Rule 8.1.6(b) – Transfer restrictions**

46. Rule 8.1.6(b) allows an Issuer to include restrictions on the issue, acquisition, or transfer of relevant interests in securities in its Constitution subject to NZX's approval.
47. LIC has sought approval under Rule 8.1.6(b) for the following restrictions to reflect the co-operative nature of LIC's shares:
- a. LIC is restricted in relation to the voting securities that may be issued, as set out in clause 3.2(b) of the Constitution, thereby maintaining its co-operative structure;
  - b. Ordinary shares in LIC may only be held by or transferred to certain persons, as set out in clause 3.2(c) of the Constitution;

- c. No person shall hold a relevant interest in more than 5% of the total number of ordinary shares in LIC on issue, as set out in clause 6.3(a) of the Constitution;
- d. LIC may require Users who have spent in excess of the Minimum Purchase Amount to compulsorily acquire sufficient ordinary shares to meet the Shareholding Requirement, as set out in clause 7.1 of the Constitution;
- e. LIC may require Users who no longer spend the Minimum Purchase Amount to compulsorily dispose of their ordinary shares, as set out in clause 7.2 of the Constitution; and
- f. While the Dairy Industry Restructure Act 2001 restricts voting rights in LIC, no person can exercise, or control the exercise of, more than 1% of the maximum number of votes exercisable at any meeting of LIC, as outlined in clause 20.4 of the Constitution.

**48.** In support of the application, LIC submitted that:

- a. the transfer restrictions were approved by shareholders on 14 March 2018 when the shareholders approved the Constitution, which came into effect on 19 July 2018;
- b. the provisions relating to transfer restrictions are accurately described in the Constitution, and LIC's Service Rules, which are released annually to coincide with the farming season (June 1 – 31 May); and
- c. LIC currently bears a "Non Standard" designation to act as notification to the market of this matter.



## Appendix Two

### Definitions

NZ RegCo has set out two versions of the definition of Renounceable below as at the date of this waiver, a revised definition was submitted to the FMA for approval as part of NZX Policy's consultation on the Capital Raising and Listing Settings Review. Until the FMA has approved the changes to the Listing Rules arising out of the consultation, the current definition of Renounceable will apply to this waiver.

- Minimum Holding** means a holding of a Class of Financial Products having a value of at least \$1,000 calculated:
- (a) prior to Quotation, at the issue or sale price of such Financial Products specified in any Offer Document (and, if expressed as an indicative price range, the mid-'point of that range); or
  - (b) at any other time, at the Average Market Price.
- Renounceable<sup>1</sup>** in relation to a Right or offer of Equity Securities means a Right or offer of Equity Securities that is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates).
- Renounceable<sup>2</sup>** in relation to a Right or an offer of Equity Securities means that:
- (a) the Right issued in relation to the offer of Equity Securities is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates) and Quoted; or
  - (b) the offer of Equity Securities in relation to which the Right is issued includes one or more bookbuild(s) for the Shortfall, in respect of which the net proceeds are accounted to non-participating holders of Equity Securities (including any holder excluded from the offer under Rule 4.4.1(e)).

### Rule 2.3

#### Director Nominations and Appointment

- 2.3.1 No person (other than a Director retiring at the meeting) may be elected as a Director at a meeting of an Issuer's Equity Security holders unless that person has been nominated by an Equity Security holder who will be entitled to attend and Vote at the meeting if he, she or it continues to hold Equity Securities on the date on which the entitlement to attend and Vote at the meeting is determined.
- 2.3.2 An Issuer must comply with the following Director nomination process:
- (a) the closing date for nominations must be no more than two months before the date of the relevant meeting at which the election is to take place;

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<sup>1</sup> The current definition of Renounceable under the Rules.

<sup>2</sup> The proposed, revised definition of Renounceable.



- (b) the closing date for nominations must be announced to the market at least 10 Business Days prior to such closing date;
- (c) there must be no restriction on who may be nominated as a Director, unless:
  - (i) the Governing Document requires Directors to hold certain Financial Products to qualify as a Director, or
  - (ii) applicable legislation restricts who may be a Director of the Issuer;
- (d) subject to (c) above, there must be no precondition to the nomination of a Director other than compliance with the time limits in this Rule; and
- (e) details of all nominations received prior to the closing date (and not later withdrawn) must be included in the notice of the relevant meeting.

### **3.13**

#### **Issues, acquisitions and redemption of capital**

##### **3.13.1**

If an Issuer issues, acquires or redeems:

- (a) Quoted Financial Products, or
- (b) Financial Products Convertible into Quoted Equity Securities or Options to acquire Quoted Equity Securities,  
the Issuer must, subject to Rule 3.13.3, provide for release through MAP in prescribed form (as applicable) details of:
  - (c) the Class of Financial Product and ISIN,
  - (d) the number of Financial Products issued, acquired or redeemed,
  - (e) the nominal value (if any) and the issue, acquisition, or redemption price,
  - (f) whether payment was in cash,
  - (g) any amount paid up (if not in full),
  - (h) for an issue of Convertible Financial Products or Options, the principal terms of Conversion (for example, the conversion price and conversion date and the ranking of the Financial Product in relation to other Classes of Financial Product) or the Option (for example, the exercise price and exercise date),
  - (i) the percentage of the total Class of Financial Product issued, acquired or redeemed (calculated on the number of Financial Products of the Class, excluding any Treasury Stock, in existence immediately prior to the issue, acquisition or redemption),
  - (j) the reason for the issue, acquisition or redemption,
  - (k) the specific authority for the issue, acquisition or redemption (if any),
  - (l) any terms or details of the issue, acquisition or redemption (such as an escrow provision),
  - (m) the total number of Financial Products of the Class in existence after the issue, acquisition or redemption (excluding Treasury Stock) and

the total number of Financial Products of the Class held as Treasury Stock after the issue, acquisition or redemption,

- (n) in the case of an acquisition of Equity Securities by an Issuer which is a company registered under the Companies Act 1993, whether those Equity Securities are to be held as Treasury Stock, and
- (o) the dates of issue, acquisition or redemption.

Subject to Rule 3.13.2, notices required by this Rule must be released through MAP within one Business Day after the issue, acquisition or redemption. For the purposes of this Rule, the sale or transfer of Treasury Stock by an Issuer is deemed to be an issue of Financial Products.

## **Rule 4.15.1 Financial Assistance**

4.15.1

As Issuer must not give financial assistance for the purpose of, or in connection with, the acquisition of its Equity Securities except if that assistance:

- (a) complies with Rule 4.15.2, or
- (b) is approved in accordance with Rule 4.15.1.

## **Rule 6.2 Votes attaching to Financial Products**

6.2.4

Each Financial Product which is not fully paid will carry the fraction of the Vote which would be exercisable if the Financial Product was fully paid that is proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call).

## **Rule 6.6 Lien and forfeiture**

6.6.1

An Issuer's lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Securities shall be restricted to one in respect of:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and
- (b) any amount which the Issuer may be called upon to pay under any legislation in respect of the specific Securities, whether or not the due date for payment thereof has passed.

## **Rule 8.1 Transfer of Quoted Financial Products (common rules)**

8.1.1

Subject to the provisions of any legislation, and to Rule 8.1.4, Rule 8.1.6(a), Rule 8.1.6(b) and Rule 8.2, no Issuer may impose, in its Governing Document or otherwise, any restriction on the right of a holder of a Quoted Financial Product to transfer that Financial Product, or any restriction upon registration of a properly completed transfer of Quoted Financial Products.

8.1.6

The Governing Document of an Issuer may:

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- (b) with the prior approval of NZX, incorporate any other provision restricting the transfer of Relevant Interests in Financial Products, or