

# NZX Regulation Decision

## AMP NZ Office Trust

### Application for Waivers from the NZSX Listing Rules

#### Background

##### Summary of APT

1. AMP NZ Office Trust ("APT") is a unit trust under the Unit Trusts Act 1960 ("Act") with APT Units Listed on the NZSX market ("APT Unit").
2. The trustee of APT is Perpetual Trustee Limited ("Trustee").
3. The major APT investors (based on holdings at 31 August 2010) are:
  - (a) Haumi Company Limited, a New Zealand subsidiary of a major institutional investor, which owns 19.90% of the APT Units on issue as general partner of Haumi (NZ) Limited Partnership ("HNZLP");
  - (b) The Accident Compensation Corporation, which owns 8.79% of the APT Units on issue; and
  - (c) ING (Institutional Group) ("ING NZ"), which owns 6.47% of the APT Units on issue.
4. The manager of APT, AMP Haumi Management Limited ("Manager") is a joint venture company in which AMP Capital Investors (New Zealand) Limited ("AMPCI") and Haumi Development Auckland Limited ("HDAL") (as the general partner of Haumi Development Limited Partnership) who each own 50% of the shares. The Manager manages the company pursuant to a management agreement between the Manager and the Trustee ("Management Agreement").
5. Approximately 98.5% of holders of APT Units ("APT Unit Holders") have addresses in New Zealand (and these APT Unit holders Holders hold approximately 99.7% of APT Units), while with the remaining approximately 1.5% of APT Unit Holders have overseas addresses. These percentages are based on APT's APT Units register ("APT Unit Register") as at 31 August 2010.

##### Summary of Corporatisation

6. APT proposes to convert APT's unit trust structure to a company structure by redeeming the APT Units currently on issue in exchange for transferring ordinary shares in a company registered under the Companies Act 1993 ("the Corporatisation").
7. APT proposes to effect the Corporatisation by completing the following key steps:

- (a) APT has incorporated a new company, AMP NZ Office Limited (“ANZOL”) and if APT Unit Holders approve the Corporatisation will transfer all the assets and liabilities of APT to ANZOL (conditional upon completion of the Corporatisation process outlined below).
  - (b) ANZOL will enter into a listing agreement with NZX, and will become a Listed Issuer under the NZSX Listing Rules (“Rules”) on the date on which its shares are Quoted.
  - (c) ANZOL will enter into a new management agreement (“New Management Agreement”) with the Manager. The New Management Agreement will take effect conditional on the approval of the Corporatisation by APT Unit Holders and implementation of the Corporatisation.
  - (d) APT will amend its trust deed (“Trust Deed”) to enable the redemption of APT Units in consideration for the issue of shares in ANZOL (or the payment of cash) to APT Unit Holders. The Trust Deed amendment will also bring into effect the proposed new management fee structure to apply to the current financial year (i.e. even if the Corporatisation does not proceed). These amendments must be approved by extraordinary resolution of APT Unit Holders. APT intends to hold a meeting of APT Unit Holders on 21 October 2010 for this purpose (“APT Unit Holder Meeting”).
  - (e) APT will redeem all but a small number of APT Units in consideration for the transfer of shares in ANZOL (“ANZOL Shares”) to APT Unit Holders, except that APT Unit Holders in certain overseas jurisdictions (and potentially HNZLP) will receive cash for some or all of their APT Units instead of shares (“Redemption”). The Redemption is intended to result in ANZOL having virtually identical shareholders (and relative control percentages) as the APT Unit Holders immediately prior to the Corporatisation. It is intended that the Redemption will occur on 30 October/1 November based on APT Unit holdings in the APT Unit Register at the close of trading on 28 October 2010 (“Record Date”).
  - (f) Quotation of ANZOL Shares on the NZSX market will occur from 1 November 2010 (“Corporatisation Date”).
8. The Corporatisation will be made under the terms set out in a registered prospectus to be distributed to all APT Unit Holders (which will include the notice of meeting for the Corporatisation meeting (“Corporatisation Notice of Meeting”) to be registered on 5 October 2010 (“Corporatisation Offer Document”).
9. As a result of the complex nature of the component transactions of the Corporatisation, and the resultant corporate governance structure of ANZOL, APT requires a number of waivers from the Rules to allow the Corporatisation to proceed. APT seeks waivers from the following Rules: 3.3, 3.3.8, 5.1, 5.2.1, 5.2.2, 5.4.1 , 6.2.2(c), 7.6.5, 8.3 and 9.2.1.
10. Further details of the waiver applications and the steps required to give effect to the Corporatisation are set out in the background sections of the waiver applications below.

## **Application 1 - Rule 7.6.5 (Voting of APT Unit Holder Groups)**

11. APT has approached NZX Markets Supervision (“NZXMS”) for a waiver from the requirement in Rule 7.6.5 that the Redemption be approved by separate resolutions of members of each separate group of APT Unit Holders whose rights or entitlements are materially affected in a similar way by the Redemption.

### **Background to the Application**

12. All APT Units on issue as at the Record Date will be redeemed as part of the Corporatisation (except for the small number of APT Units issued to ANZOL, as discussed in paragraph 14(d) below).
13. APT submits that its objective is that as many APT Unit Holders as reasonably possible receive ANZOL Shares in consideration for the Redemption of their APT Units. However:
  - (a) APT has a relatively small number of APT Units held by overseas APT Unit Holders (as at 31 August 2010 approximately 1.5% of all APT Unit Holders who together hold approximately 0.3% of the APT Units). Overseas APT Unit Holders, based on the APT Unit Register at 31 August 2010, are shown in the table in Appendix 1;
  - (b) APT has sought international legal advice on whether the proposal to transfer ANZOL Shares in consideration for the redemption of APT Units would give rise to securities law obligations in certain overseas jurisdictions. This advice was sought from those jurisdictions in which there are currently significant APT Unit holdings, being: Australia, USA, United Kingdom, Hong Kong, Singapore and Switzerland. APT considers that, for other overseas jurisdictions, the number of APT Units held in those jurisdictions is too small to justify the cost of obtaining legal advice in those jurisdictions.
  - (c) APT proposes that the only persons entitled to attend and/or vote at the APT Unit Holder Meeting, and/or receive ANZOL Shares, be those APT Unit Holders who are resident in New Zealand, Australia, Hong Kong, Switzerland, certain states in the USA and (in respect of receiving ANZOL Shares only, but not attendance and voting) the UK, being those jurisdictions for which APT has received advice that it is legal for those APT Unit Holders to attend and/or vote at the APT Unit Holder Meeting and/or receive ANZOL Shares. APT submits that compliance with overseas securities laws (including the cost of obtaining advice on whether, and if so, how compliance is possible) in other jurisdictions is not practically possible or is disproportionately onerous relative to the holdings of APT Units in those jurisdictions.
  - (d) This means that:
    - (i) APT Unit Holders with addresses not in New Zealand, Australia, Hong Kong, Switzerland and certain states in the USA ("Excluded Holders") will not be entitled to attend the APT Unit Holder meeting or to vote on the matters requiring APT Unit Holder approval; and
    - (ii) Excluded Holders would not be receive ANZOL Shares, but would instead be cashed out (except for those in the United Kingdom ("UK Unit Holders"), who will still receive ANZOL Shares but will not be entitled to vote at the APT Unit Holder Meeting or receive the Corporatisation Offer Document).
14. For completeness, APT would also like to note:
  - (a) All Excluded Holders who are cashed out will be required to be treated pro rata under the Corporatisation as to their entitlement to cash:
    - (i) under the Corporatisation the cash paid to an APT Unit Holder in consideration for the Redemption of an APT Unit will be an amount certified by the Manager to the Trustee as an amount the Manager considers to be fair and reasonable having regard to the volume weighted average price of APT Units on the NZSX market over such period prior to the Record Date for the redemption as the Manager considers appropriate; and
    - (ii) under the Corporatisation proposal to be put to APT Unit Holders, the cash amount to be paid to those Excluded Holders who are cashed out will be calculated based on the volume weighted

average price of APT's APT Units on the NZSX over the five trading days commencing on 18 October 2010 (which corresponds to the five trading days after the proposed Record Date for APT's first quarter distribution);

- (b) The total number of APT Units actually cashed out under the Corporatisation will depend on the APT Unit holdings on the Record Date of APT Unit Holders with addresses outside of Australia, New Zealand and the United Kingdom. APT does not expect there would be a material change in the percentage APT Unit holding of overseas persons to be "cashed out".
- (c) APT has also capped at 1% the number of APT Units that can be redeemed for cash, to ensure that APT Unit Holders voting in relation to the Corporatisation are substantially the same as the shareholders of ANZOL immediately after the Corporatisation is implemented. This cap is a condition to certain exemptions granted by the Takeovers Panel in respect of the Corporatisation.
- (d) APT proposes to issue a nominal number of APT Units (say 100 APT Units) to ANZOL and a wholly owned subsidiary of ANZOL after the Record Date but before the implementation of the Corporatisation (which includes the Redemption). The purpose of this is to ensure the continued existence of APT as a APT Unit trust under the Unit Trust Act 1960 (albeit with all APT Units owned directly or indirectly by ANZOL); and
- (e) APT proposes, and HNZLP has agreed, that if HNZLP's shareholding in ANZOL as a result of the Corporatisation would exceed 20% as a result of cashing out overseas holders, a portion of its APT Units will be redeemed for cash (not ANZOL Shares) if and to the extent required to ensure that HNZLP's shareholding in ANZOL as a result of the Corporatisation does not exceed 20%. In addition to the thresholds under the Takeovers Code, the 20% cap on HNZLP's is also required for ANZOL to be a Portfolio Investment Entity ("PIE") (APT is currently a PIE).

#### **Rule 7.6.5**

- 15. In the view of APT, it is arguable that Excluded Holders would be a separate group for the purposes of Rule 7.6.5 because:
  - (a) Excluded Holders will not be entitled to vote in relation to the Corporatisation; and
  - (b) Excluded Holders (other than those in the United Kingdom) will receive cash, rather than ANZOL Shares, in consideration for the redemption of their APT Units.
- 16. HNZLP might also be argued to be a separate group for the purposes of Rule 7.6.5, because Rule 7.6.5 also refers to "entitlements" and it might be argued that, while cashing out some of the APT Units held by HNZLP may not affect HNZLP's rights in a different way to other APT Unit Holders who are not Excluded Holders, it may affect its entitlements in a different way (in so far as HNZLP receives cash (in part) rather than (just) ANZOL Shares).
- 17. APT submit that it may also be argued that ANZOL (and its relevant subsidiaries) are a separate group for the purposes of Rule 7.6.5 as the APT Units issued to ANZOL will not be redeemed.

#### **Application**

- 18. APT seeks waivers from any requirements for any of the following to approve the redemption of APT Units as separate groups:

- (a) all Excluded Holders, and each sub-group of Excluded Holders (being (i) those Excluded Holders the consideration for the redemption of whose APT Units is ANZOL Shares and (ii) those Excluded Holders the consideration for the redemption of whose APT Units is cash);
- (b) HNZLP, in respect of any APT Units held by HNZLP the consideration for the redemption of which is cash (rather than ANZOL Shares); and
- (c) ANZOL (and its relevant subsidiaries), in respect of any APT Units issued to ANZOL (and its relevant subsidiaries) after the Record Date for the redemption of APT Units but before the implementation of the Corporatisation.

19. The waiver is sought on the basis that:

*The Corporatisation is unlikely to proceed if Excluded Holders' are required to vote*

- (a) Without a waiver from the requirement under Rule 7.6.5 to obtain the approval of Excluded Holders (as a separate group for the purposes of Rule 7.6.5), the Corporatisation would almost certainly not proceed (for the reasons referred to in paragraph 13(c) above, APT submits that compliance with overseas securities law in the relevant jurisdictions to allow Excluded Holders to vote is not practically possible or is disproportionately onerous relative to the holders of APT Units in those jurisdictions).

*A waiver would be analogous to Rule 7.3.4(h)*

- (b) A waiver from the obligation to obtain separate approval of Excluded Holders is analogous to an existing exception in Rule 7.3.4(h). This exception allows an Issuer to be exempt from the requirement to proportionately issue Equity Securities where the issue would be in a jurisdiction outside of New Zealand where legal requirements would make it unduly onerous for the Issuer to make the offer in that jurisdiction. APT considers a waiver in the terms described in paragraph 18 above is analogous to Rule 7.3.4(h) for the following reasons:
  - (i) a key principle underlying Rule 7.3.4(h) is that the vast majority of holders of Equity Securities should not be disadvantaged by an inability to proceed with an offer or issue of securities if the requirements of Rule 7.3.4(a), (b) or (c) cannot practicably be met due to an inability to issue or offer securities to holders in overseas jurisdictions where compliance with local securities law is practically impossible or unduly onerous;
  - (ii) APT has sought local legal advice and assessed whether or not compliance with securities laws requirements in certain material overseas jurisdictions is practically possible in relation to those jurisdictions, or is disproportionately onerous relative to the holdings of APT Unit Holders in those jurisdictions. Where compliance is practically possible, and not disproportionately onerous, APT is taking necessary steps to comply (for example, APT has obtained certain relief from ASIC for APT Unit Holders in Australia and exemptions from the Attorney-General of the State of New York for APT Unit Holders in New York);
  - (iii) APT has formed a view that compliance with local law requirements in relation to other overseas jurisdictions is not practically possible or is unduly onerous having regard to the number of APT Unit Holders in those jurisdictions;
  - (iv) as indicated in paragraph 18 above, if Excluded Holders are treated as a separate group of APT Unit Holders whose approval is required for the Redemption, then the Corporatisation would also certainly not proceed;

- (v) a waiver (on the terms described in paragraph 18) would avoid the likelihood that the Corporatisation would not proceed, an outcome that APT considers detrimental to the interests of the vast majority of APT Unit Holders.
20. APT notes that the Corporatisation will be conditional on the number of APT Units redeemed for cash not exceeding 1% of all APT Units on issue on the Record Date .

## Application 1 - Rule 7.6.5

21. Rule 7.6.5 provides:

**7.6.5** An Issuer may acquire or redeem Equity Securities under Rule 7.6.1(d), or give financial assistance under Rule 7.6.4(b), if the precise terms and conditions of the specific proposal (the “Proposal”) to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements are materially affected in a similar way by the Proposal.

## Application 1 - Decision

22. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants APT waivers from the requirements of Rule 7.6.5, for any of the following persons to approve the Redemption as separate groups:
- (a) all Excluded Holders, and each sub-group of Excluded Holders (being (i) those Excluded Holders for whom the consideration for the Redemption of APT Units is ANZOL Shares and (ii) those Excluded Holders for whom the consideration for the redemption of APT Units is cash); and
  - (b) HNZLP, in respect of any APT Units held by HNZLP for which the consideration for redemption of which is cash (rather than ANZOL Shares).
23. The waiver in paragraph 22(a) is granted on the condition that the number of APT Units which are redeemed for cash under the Redemption does not exceed 1% of all APT Units on the Record Date.
24. NZXMS declines to grant a waiver in respect of ANZOL, as NZXMS considers that ANZOL is not a separate group of APT Unit Holder for the purposes of Rule 7.6.5.

## Application 1 - Reasons

25. In coming to the decision to grant a waiver from the requirement in Rule 7.6.5 that Excluded Holders (or any sub-group thereof) be required to approve the Redemption as a separate group, NZXMS has considered:
- (a) The policy of the requirement in Rule 7.6.5, that the Redemption be approved by all holders whose rights and entitlements are materially affected in a similar way, is designed to prevent the approval of a transaction by a group of holders that would unfairly advantage that group to the detriment of other holders.
  - (b) The valuation mechanism (VWAP) for the APT Units to be redeemed is an objective measure, serving to ensure that Excluded Holders obtain fair value for their APT Units.

- (c) As noted in paragraph 13 APT has carried out investigations as to the feasibility of including the Excluded Holders in the vote on the Redemption. APT submits, and NZXMS has no reason not to accept, that the right to vote on the Redemption resolution is not practically able to be extended to all Excluded Holders, due to securities law regimes of overseas jurisdictions. As a result, without a waiver from Rule 7.6.5, the Corporatisation will most likely not be able to proceed.
  - (d) The condition set out in paragraph 23, above, will ensure that the maximum number amount of APT Units held by APT Unit Holders who will not be entitled to vote on the Redemption and who will be cashed out will not exceed 1% of APT Units.
  - (e) It is appropriate that the rights of minority Equity Security Holders to participate in a transaction be sensibly balanced against the interests of the Issuer and all Equity Security Holders by ensuring that an Issuer is able to complete transactions without undue expense and complication. In this regard NZXMS notes that the cost of extending the offer to all Excluded Holders (presuming that this is legally possible) may not be in the best interests of APT and all other APT Unit Holders.
26. In coming to the decision to grant a waiver from the requirement in Rule 7.6.5 that HNZLP approve the Redemption as a separate group of APT Unit Holder, NZXMS has considered:
- (a) HNZLP has agreed to a scale back of its holding by the redemption of its APT Units to prevent a breach of the 20% limit as a result of the Corporatisation;
  - (b) HNZLP's entitlements will only be redeemed if, and to the extent that, the Redemption would otherwise result in HNZLP's holding in ANZOL exceeding 20% APT Units in APT as a result of the Redemption of the Excluded Holders. Only the smallest proportion of HNZLP's APT Unit holding will be redeemed that is necessary to return HNZLP to a holding of 20% or less in ANZOL.
  - (c) HNZLP will have the chance to vote on the Redemption resolution as a major APT Unit Holder;
  - (d) Without a waiver from Rule 7.6.5 there could be a danger of APT losing its PIE status, which would be detrimental to ANZOL Shareholders.
27. In coming to the decision to decline to grant APT a waiver from Rule 7.6.5 in respect of ANZOL, NZXMS considered that:
- (a) ANZOL (and its relevant subsidiaries) will not become an APT Unit Holder until after the Record Date, and the APT Unit Holders having APT Units redeemed are all those APT Unit Holders on the APT Units Register as at the Record Date; and
  - (b) No action is being taken in respect of the rights or entitlements attaching to APT Units issued after the Record Date and the rights attaching to the APT Units held by ANZOL (and its relevant subsidiaries) are not being affected in any way by the Corporatisation.

## Application 2 - Rule 8.3 (Voting of Interest Groups)

### Background to the Application

28. Rule 8.3 provides that "every Issuer shall comply with the provisions of section 116 and 117 of the Companies Act, whether or not the Issuer is a company registered under that Act".
29. Section 117 of the Companies Act provides that "a company must not take action that affects the rights attached to shares unless that action has been approved by a special resolution of each interest group".

30. Section 116 of the Companies Act defines “interest group” as:

*in relation to any action or proposal affecting rights attached to shares, a group of shareholders whose affected rights are identical, and whose rights are affected by the action or proposal in the same way; and subject to subsection 2(b) of this section, who comprise the holders of one or more classes of shares in the company.*

31. For largely the same reasons as those referred to in paragraphs 15 to 17, APT considers that:
- (a) it is arguable that Excluded Holders (and separate sub-groups of them) would be a separate “interest group” for the purposes of section 116 of the Companies Act; and
  - (b) APT doubt, but nevertheless consider that it might be argued that, ANZOL (and its relevant subsidiaries) and/or HNZLP are also separate “interest groups” for the purposes of section 116 of the Companies Act.

### **Application**

31. APT seeks waivers from any requirement for any of the following to approve the Redemption under the “interest group” provisions of the Companies Act applied under Rule 8.3:
- (a) Excluded Holders, and each sub-group of Excluded Holders (being (i) those Excluded Holders the consideration for the redemption of whose APT Units is ANZOL Shares and (ii) those Excluded Holders the consideration for the redemption of whose APT Units is cash);
  - (b) HNZLP, in respect of any APT Units held by HNZLP the consideration for the redemption of which is cash (rather than ANZOL Shares); and
  - (c) ANZOL (and its relevant subsidiaries), in respect of any APT Units issued to ANZOL (and its relevant subsidiaries) after the Record Date for the redemption of APT Units but before the implementation of the Corporatisation.
32. These waivers are sought on the same basis as the waiver from Rule 7.6.5 (see paragraph 19 above).

## **Application 2 - Rule 8.3**

33. Rule 8.3 provides:

Every Issuer shall comply with the provisions of sections 116 and 117 of the Companies Act 1993, whether or not the Issuer is a company registered under that Act. For the purposes of this Rule 8.3.1, those sections shall be deemed to be modified so that:

- (a) references in those sections to “shares” shall (subject to Rule 8.3.2) be deemed to include references to all Equity Securities of that Issuer, and references to “shareholders” shall be read accordingly; and
- (b) in respect of Issuers which are not companies registered under the Companies Act 1993, references to the “company” shall be deemed to be references to the Issuer, and references to preemptive rights under section 45 of that Act shall be deemed to be deleted from those sections; and

- (c) in respect of Equity Securities which are not shares of a company registered under the Companies Act 1993:
- (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
  - (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

## Application 2 - Decision

34. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants APT a waiver from any requirement for any of the following to approve the Redemption under the “interest group” provisions of the Companies Act applied under Rule 8.3:
- (a) Excluded Holders, and each sub-group of Excluded Holders (being (i) those Excluded Holders the consideration for the redemption of whose APT Units is ANZOL Shares and (ii) those Excluded Holders the consideration for the redemption of whose APT Units is cash); and
  - (b) HNZLP, in respect of any APT Units held by HNZLP the consideration for the redemption of which is cash (rather than ANZOL Shares).
35. NZXMS declines to grant APT a waiver in respect of ANZOL (and its relevant subsidiaries) as NZXMS considers that ANZOL (and its relevant subsidiaries) will not form a separate “interest group” of APT Unit Holder for the purposes of Rule 8.3 in respect of the Redemption.

## Application 2 - Reasons

36. In coming to the decision to grant a waiver from the requirement in Rule 8.3 that the Excluded Holders (or any sub-group thereof) and HNZLP be required to approve the Redemption as a separate “interest group” under Rule 8.3, NZXMS has considered the same matters as set out in paragraphs 25 and 26, above.
37. In coming to the decision to decline to grant APT a waiver from Rule 8.3 in respect of ANZOL (and its relevant subsidiaries), NZXMS has considered that for the reasons outlined in paragraph 27, above, ANZOL (and its relevant subsidiaries) is not a separate “interest group” for under Rule 8.3.

## Application 3 - Rule 6.2.2(c) (Financial Assistance)

38. APT has approached NZXMS seeking a waiver from the requirement in Rule 6.2.2(c) that ANZOL provide an Appraisal Report in relation to the provision of financial assistance by APT to ANZOL to allow ANZOL and a wholly owned subsidiary of ANZOL to subscribe for 100 APT Units from APT.

### Background to the Application

39. It is proposed that APT continue in existence as a unit trust (wholly-owned by ANZOL) after the Corporatisation is effected, to enable it to be wound up in due course in an orderly manner. To achieve this, it is proposed that, after the Record Date for the redemption but before the Redemption is effected, APT issue to ANZOL and a wholly-owned subsidiary of ANZOL a nominal number (100) of new APT Units. These APT Units

would not be redeemed (as they would be issued after the Record Date), and so would be the only APT Units left on issue following the Redemption (thereby making APT a wholly-owned “subsidiary” of ANZOL).

40. APT proposes that this issue of APT Units be approved by APT Unit Holders to the extent required by Rule 7.3.1. APT also proposes that ANZOL will be capitalised with sufficient cash to enable ANZOL to pay for those APT Units (which will be issued at a market price) (“Capitalisation”). It is proposed that the Capitalisation will be approved to the extent that it constitutes “financial assistance” by APT under Rule 7.6.5. Rule 6.2.2(c) requires that an Appraisal Report address this financial assistance, because ANZOL is an “Associated Person” of directors of the Manager.

### Application

41. APT submits that an Appraisal Report to consider the Capitalisation is unnecessary, given that:
- (a) the amount of the financial assistance involved is *de minimis* (and expected to be less than \$100 based on the current market price of APT Units at the date of this decision); and
  - (b) the transaction is entirely “in-house” – i.e. is between APT and ANZOL, and does not involve any payment of funds or issue of securities to any third party.
42. APT also notes that:
- (a) the Capitalisation will not be required if the Corporatisation is not approved, and the Capitalisation is conditional upon the Corporatisation being approved;
  - (b) on the other hand, the Capitalisation is merely an implementational step required to effect the Corporatisation, if the Corporatisation is approved.
43. APT seeks a waiver from Rules 6.2.2(c), to the extent required, to the extent it would otherwise require that the Corporatisation Notice of Meeting be accompanied by an Appraisal Report which addresses any “financial assistance” involved in the Capitalisation.

### Application 3 - Rules 6.2.2 and 7.6.5

44. Rule 6.2.2 provides:
- 6.2.2 A notice of meeting to consider a resolution of the nature referred to in Rule 6.2.1 shall be accompanied by an Appraisal Report if;
- (a) the resolution is required by Rule 7.5; or
  - (b) in the case of an issue, the issue is intended or is likely to result in more than 50% of the Securities to be issued being acquired by Directors or Associated Persons of Directors of the Issuer:  
 ...
  - (c) in the case of an acquisition or redemption or the giving of financial assistance, it is intended or likely that more than 50% of the Securities to be acquired or redeemed will be Securities held by Directors or Associated Persons of Directors of the Issuer, or that more than 50% of the total financial assistance to be given will be given to such persons
45. Rule 7.6.5 provides:

- 7.6.5** An Issuer may acquire or redeem Equity Securities under Rule 7.6.1(d), or give financial assistance under Rule 7.6.4(b), if the precise terms and conditions of the specific proposal (the “Proposal”) to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Issuer whose rights or entitlements are materially affected in a similar way by the Proposal.

### Application 3 - Decision

46. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants APT a waiver from the requirement in Rule 6.2.2(c) that the Corporatisation Notice of Meeting be accompanied by an Appraisal Report which addresses the Capitalisation.

### Application 3 - Reasons

47. In coming to the decision to grant APT a waiver from Rule 6.2.2(c), NZXMS has considered:
- (a) The amount to be provided as financial assistance is de minimis (and expected to be less than \$100, based on the market price of APT Units at the date of this decision). NZXMS accepts that the expense for APT in obtaining an Appraisal Report, which is ultimately borne by APT Unit Holders, would be disproportionate to the potential mischief to APT Unit Holders from a transaction of this quantum.
  - (b) The Capitalisation is an internal transaction within the APT group, which will not result in any value transfer outside of the APT group.
  - (c) The terms on which the financial assistance under the Capitalisation will be provided are not unduly complicated or difficult for APT Unit Holders to understand. An Appraisal Report is not likely to assist shareholders in evaluating the terms of the financial assistance and is unlikely to be of benefit to APT Unit Holders.
  - (d) The purpose underlying Rule 6.2.2(c) is to ensure that security holders being asked to vote on resolutions to approve transactions to which Rule 6.2.2(c) applies receive the benefit of an independent evaluation that appropriately scrutinises the merits of such transactions, to ensure that security holders are not prejudiced by transactions that are implemented by parties that will benefit from them. In this case, given the very minor nature of the transaction, the APT Unit Holder protection through the enforcement of the requirement for an Appraisal Report is not warranted.

### Application 4 - Rule 5.4.1 (Suspension of Trading)

48. APT seeks a waiver from the restriction in Rule 5.4 that a trading halt may not be for a period exceeding two Business Days, to allow for the suspension of all trading in APT Units for the period of three Business Days between the close of business on 26 October 2010 (“Suspension Date”) and the Corporatisation Date (1 November 2010).

#### Background to the Application

49. It is essential that the APT Unit Register is stable from the Record Date for the Corporatisation, as (if the Corporatisation proposal is approved) all APT Units held by APT Unit Holders on the Record Date will be redeemed, and ANZOL Shares (or cash) transferred.

50. The process APT proposes for this is the following:
- (a) trading (on-market and off-market) in APT Units will be suspended from the close of the trading day on the Suspension Date until the Corporatisation Date. APT will formally give notice to NZX requesting a suspension of trading of APT Units (if APT Unit Holders approve the Corporatisation) from the Suspension Date to the Record Date;
  - (b) the Record Date will be at least 3 business days after the Suspension Date (i.e. the date from which trading in the APT Units is suspended – this will give time for any trades made prior to suspension to settle on a T+3 basis);
  - (c) no trades in APT Units will be registered after the Suspension Date (including off-market trades); and
  - (d) on the Corporatisation Date, ANZOL Shares and/or cash will be distributed to APT Unit Holders recorded on the APT Units register on the Record Date.

#### **Application**

51. APT seeks a waiver from the requirement in Rule 5.4.1(a) that Securities may not be halted for a period longer than two Business Days, to allow for trading in APT Units to be suspended between the close of business on the Suspension Date until the Corporatisation Date.

### **Application 4 - Rule 5.4.1**

52. Rule 5.4.1 provides:

**5.4.1** An Issuer may request:

- (a) by notice in writing to NZX, that trading in its Securities be halted by NZX for a period not to exceed two Business Days; or

...

### **Application 4 - Decision**

53. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants APT a waiver from Rule 5.4.1(a) to allow trading in APT Units to be halted for the three Business Days from the close of business on the Suspension Date until the Corporatisation Date, on the condition that this trading halt shall only come into place in the event that the Corporatisation is approved by APT Unit Holders.

### **Application 4 - Reasons**

54. In deciding to grant APT a waiver from Rule 5.4.1, NZXMS has considered:
- (a) In order to calculate entitlements for the Redemption it is essential that the APT Unit Register of APT is stable between the Suspension Date and the Record Date.
  - (b) Trades on NZX's markets settle on a T+3 timeframe. The extended period of three Business Days for the halt is necessary to ensure that all trades of APT Units have time to settle between the last date of trading and the Record Date.

- (c) There is precedent for the granting of waivers from Rule 5.4 in circumstances where an extended trading halt is a necessary element of a transaction (Auckland International Airport Limited, 26 January 2010); and
- (d) Taking into consideration APT's submission that the Corporatisation is in the best interest of all APT Unit Holders, NZXMS is satisfied that a three Business Day trading halt is necessary for the the Corporatisation to proceed, and as such that a waiver from Rule 5.4.1 is appropriate.

## **Application 5 - Rule 9.2 (Transfer of the New Management Agreement)**

55. APT seeks an ongoing waiver from Rule 9.2.1, so that if a transfer of the New Management Agreement to a majority shareholder of ANZOL is proposed in the future, additional ANZOL Shareholder approval will not be required under Rule 9.2.1, subject to the material terms of the New Management Agreement remaining the same.

### **Background to the Application**

56. APT will put to APT Unit Holders for approval the New Management Agreement, including a term that any person who acquires more than 50% of ANZOL's shares be entitled to acquire the Manager's interests in the New Management Agreement (at an agreed price or valuation) from the Manager.
57. The acquisition of the New Management Agreement by a 50% shareholder will involve a Related Party of ANZOL (Rule 9.2.3(b)). Accordingly, if the acquisition of the New Management Agreement by a 50% shareholder involves the entry by ANZOL into a transaction, this will constitute a Material Transaction with a Related Party for the purposes of Rule 9.2 (because, under the New Management Agreement, ANZOL obtains services in respect of which the annual gross cost to ANZOL in a financial year is likely to exceed 1% of the Average Market Capitalisation of ANZOL (Rule 9.2.2(e)).
58. APT submits that, if the transfer of the New Management Agreement was unable to proceed without minority shareholder approval (or a waiver) at the time, it is likely that potential offerors would be deterred from making takeover offers for ANZOL – to the detriment of all investors. APT consider that, as APT's purpose in pursuing the Corporatisation is to increase alignment with the interests of investors, this would be an unfortunate outcome.
59. Although APT Unit Holders will vote on the transferability of the New Management Agreement, the actual transfer of the New Management Agreement may only occur some time in the future, after the Corporatisation is complete. Thus, although APT Unit Holder approval is being sought under the policy of Rule 9.2.1, this will not be effective to authorise the future transfer of the New Management Agreement to a majority shareholder in ANZOL. A waiver from Rule 9.2.1 is therefore necessary.

### **Application**

60. Accordingly, APT seeks:
- (a) a ruling to the effect that the exercise of the rights referred to in paragraph 56 above (and any consequent transfer or novation of the New Management Agreement to a controlling shareholder or its nominee) would not require approval under Rule 9.2 as a Material Transaction with a Related Party; or
  - (b) a waiver from Rule 9.2 to the same effect.

61. As a condition of this waiver, APT propose that the terms of the New Management Agreement are not materially altered as part of a transfer of the New Management Agreement to the controlling shareholder or its nominee, unless the alterations are approved by shareholders in accordance with Rule 9.2 or made in accordance with a waiver granted by NZXMS. This will ensure that the terms and conditions of the New Management Agreement approved by APT Unit Holders continue notwithstanding its transfer.

## Application 5 - Rule 9.2

62. Rule 9.2 provides:

### **Rule 9.2 Transactions with Related Parties**

9.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.

## Application 5 - Decision

63. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants APT and ANZOL a waiver from Rule 9.2.1 so that additional ANZOL Shareholder approval is not required where the New Management Agreement is transferred to a holder of more than 50% of ANZOL's Shares, on the following conditions:

- (a) Entry into the New Management Agreement, including that the Manager's interests in the New Management Agreement may be transferred to a majority shareholder in ANZOL (or its nominee), are approved by APT Unit Holders at the APT Unit Holder Meeting;
- (b) During the time that ANZOL continues to rely on this waiver, the waiver and its effect, as well as the conditions on which it is granted, are published in the Corporatisation Offer Document, each annual report of ANZOL and each Offer Document or Prospectus issued by ANZOL following the Corporatisation.
- (c) The terms of the New Management Agreement are not materially altered as part of a transfer of the New Management Agreement to the controlling shareholder or its nominee, unless the alterations are approved by ANZOL Shareholders in accordance with Rule 9.2 or made in accordance with a waiver granted by NZXMS.

## Application 5 - Reasons

64. In deciding to grant APT a waiver from Rule 9.2.1 in respect of the transfer provisions of the New Management Agreements, NZXMS has considered:

- (a) The policy underlying Rule 9.2.1 is to ensure that Security Holders have the opportunity to review and approve, on a fully informed basis, all Material Transactions with Related Parties. APT Unit Holders, holding at least 99% of the APT Units will be shareholders in ANZOL following the Corporatisation, will have the opportunity to vote on the transferability of the New Management Agreement as part of the Corporatisation. This meets the policy of Rule 9.2.1.
- (b) APT has submitted that the requirement for minority ANZOL Shareholder approval for any transfer of the New Management Agreement is likely to materially reduce the chances of a takeover offer being made for ANZOL. APT submits that this is not in the best interests of ANZOL Shareholders. Where an Issuer makes a commercial judgement, which is approved by Security Holders, NZX should give effect to such Security Holders' election, where that election does not undermine the policy of the rule.
- (c) The condition set out in paragraph 63(b) will ensure that all new investors in ANZOL following the Corporatisation are provided with sufficient notice that the Manager's interest in the New Management Agreement is transferable without prior shareholder approval.
- (d) The condition set out in paragraph 63(c) will ensure that the terms of the New Management Agreement will remain materially the same as those that were approved by APT Unit Holders at the APT Unit Holder Meeting, and that the major shareholder receiving the transfer cannot use the transfer as an opportunity to influence the terms of the New Management Agreement in its favour.

## Application 6 - Waiver from Rule 3.3 - Board Composition

65. APT seeks a waiver from the requirements of Rule 3.3 to allow the Board of ANZOL to be structured so as to allow the Manager to elect two directors and any 15%+ ANZOL Shareholder to be entitled to appoint a director.

### Background to the Application

#### *Board Composition*

66. APT proposes that following Corporatisation the ANZOL board be composed as follows:
- (a) The Manager shall have the right to appoint two directors, who shall not be required to rotate under Rule 3.3.11.
  - (b) Any ANZOL Shareholder which holds more than 15% of the ANZOL Shares carrying votes ("15%+ Shareholder") shall have the right to appoint one director, who also shall not be required to rotate under Rule 3.3.11. Reflecting Rule 3.3.8(b), any ANZOL Shareholder exercising such an appointment right would not be entitled to vote on the election of other directors of ANZOL.
  - (c) In order to ensure that a 15%+ shareholding does not allow an ANZOL Shareholder to appoint a proportion of directors greater than the proportion of the ANZOL Shares that it holds, ANZOL proposes to include in its constitution a requirement that there be a minimum of 7 ANZOL directors on the ANZOL board (subject to reasonable endeavours of the Board to replace directors of the ANZOL board that are removed or resign from the board on short notice).
  - (d) Four (or more) additional directors shall be elected (or, if necessary, appointed) so that a majority of the board is "independent of the manager" (and the persons who control the manager). For example, if the manager appoints two directors, and a 15%+ Shareholder Associated with the Manager elects to

appoint one director, then four additional directors (who are independent of the manager or the persons who control the manager) would be elected by the remaining shareholders (or if required, appointed by directors).

- (e) The directors who are independent of the manager would retire by rotation in accordance with Rule 3.3.11. For these purposes:
- (i) directors appointed by a 15%+ Shareholder (para 66(b) above) will be **included** in the number of directors upon which the calculation of the third required to retire would be based; but
  - (ii) directors appointed by the manager will be **excluded** from that number.

The result will be that:

- (iii) if the board is a seven person board comprising two manager appointees, one 15%+ shareholder appointee and four directors independent of the manager, then two of the directors independent of the manager will be required to retire at the ANZOL annual meeting each year, but shall be eligible for re-election at that meeting;
  - (iv) if another 15%+ Shareholder also appoints a director, the number of directors independent of the manager required to retire at the ANZOL annual meeting will still be two. (If directors appointed by the manager were not excluded from the calculation, as proposed in para 66(e)(b) above, then three of the four directors independent of the manager would be required to retire. In the opinion of APT this is undesirable.)
- (f) To ensure compliance with the requirements under the Rules for a minimum number of “Independent Directors” (as defined under Rule 1.6.1), the ANZOL board would be entitled to appoint the required number of additional directors (if any) who do not have a Disqualifying Relationship and are accordingly “Independent Directors” for the purpose of complying with the Rules.

*Determining if a director is “independent of the manager”*

67. For the purposes of determining whether a director is “independent of the manager”, APT proposes to exclude any persons who are associated with the manager or the persons who control the manager. Accordingly, APT proposes to incorporate into the ANZOL constitution the following definition:

*“Independent of the Manager* means, in respect of any Director (including any alternate Director), that the Director is:

- (a) a Director who is not an Associated Person of any of the following:
  - (i) the Manager;
  - (ii) a shareholder in the Manager; or
  - (iii) a related company of a shareholder in the Manager; or
- (b) a Director whom, pursuant to any Ruling or other written consent of NZX, is to be treated as being Independent of the Manager.”

68. APT notes two points on the proposed definition:

- (a) APT proposes that the definition should be linked to shareholding in the manager (and related companies of a shareholder) rather than to substantial security holders in the manager as the definition of substantial security holder is too broad in this context and could capture relationships that are too remote; and
- (b) APT has proposed an ability for NZX to give rulings, waivers, or other written consents that a person is “Independent of the Manager” as there may be circumstances in which it is not appropriate or necessary to treat particular Directors as not being “Independent of the Manager”.

*Suspension of requirement for majority of directors to be “independent of the manager”*

- 69. While the manager will be entitled to appoint two directors to the board, it need not do so. If it elects not to do so (and accordingly removes any directors previously appointed by it), the requirement for a majority of the directors to be independent of the manager will be suspended (though the usual Listing Rule requirements for a minimum number of “Independent Directors” (as defined in the Listing Rules) would continue to apply).
- 70. APT proposes that any person acquiring more than 50% of ANZOL will be entitled to acquire the New Management Agreement (at an agreed price or independent valuation). This is to ensure that the externalised management arrangements do not deter would-be acquirers from making takeover offers for ANZOL.
- 71. However, this outcome will not eventuate if, upon acquiring the New Management Agreement, the controlling shareholder must immediately give up the right to control the composition of the board (because of the requirement for a majority of directors to be independent of the manager).
- 72. That prospect can be avoided by suspending the requirement for a majority of directors to be independent of the manager at any time that the manager does not exercise its appointment rights. An acquirer of a 50%+ stake in ANZOL would then know that it could acquire the Management Agreement without giving up the right which any controlling shareholder has to control the composition of the board (subject to Listing Rule requirements for a minimum number of Independent Directors).

*Listing Rule Implications*

- 73. APT considers the director appointment right for a 15%+ Shareholder would be proportional with that person’s shareholding in ANZOL (assuming a seven-member board of directors), and in this sense is consistent with Rule 3.3.8(b).
- 74. However APT acknowledges that the proposal for the Manager to appoint up to two directors is not usual.
- 75. Given this, APT proposes that, at any time that any director has been appointed by the Manager:
  - (a) the chairman of ANZOL’s board (and any meeting of its board) must be one of the directors who is “independent of the manager”;
  - (b) a meeting of the ANZOL board shall not be quorate unless at least half of the directors (including alternate directors) attending the meeting are “independent of the manager”; and
  - (c) in the event of an equality of votes on a matter before the board, the chair of the meeting (a director who, as noted above, must be independent of the manager) may exercise a casting vote.
- 76. APT notes that the Rules do not restrict an Issuer from placing a provision in its Constitution requiring that there be a minimum number of directors.

**Application**

77. APT seeks a waiver from Rule 3.3 to allow the Board of ANZOL to be structured so as to allow the Manager to elect two directors and any 15%+ ANZOL Shareholder to be entitled to appoint a director.
78. In this context APT submits that it wishes to minimise the prospect of any “disconnect” between the day-to-day management of ANZOL (by the Manager) and ANZOL’s strategic direction (as determined by ANZOL’s board). APT does not consider this prospect exists under the unit trust structure because the board of the Manager is, in effect, the board of APT. APT wishes to minimise the prospect of any such “disconnect” arising after the implementation of the Corporatisation by ensuring that the Manger is as fully informed as practicable about the Board’s view - and considers that the Manager’s board-appointed rights are significant in this context.

### Application 6 - Rule 3.3

79. The relevant parts of Rule 3.3 provide:

3.3.5 No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Rule 3.3.5. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. An Issuer shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the Issuer before the closing date for nominations shall be given by the Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Issuer shall specify in such notice the Board’s view on whether or not the nominee would qualify as an Independent Director.

...

3.3.8 The Constitution may give a Security holder the right to appoint Directors, so long as:

- (a) the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the Issuer attaching to Securities held by the appointer; and
- (b) if the appointer exercises its rights to appoint Directors, then the appointer has no right to Vote upon the election of other Directors.

3.3.11 Subject to Rule 3.3.12, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.

...

3.3.12 The following Directors shall be exempt from the obligation to retire pursuant to Rule 3.3.11:

- (a) Directors appointed pursuant to Rule 3.3.11; and
- (b) Directors appointed by the Directors, who are offered for re-election pursuant to Rule 3.3.6; and
- (c) one Executive Director (if the Constitution so provides).

The Directors referred to in (a) and (c) shall be included in the number of Directors upon which the calculation for the purposes of Rule 3.3.12 is based. The Directors referred to in (b) shall be excluded from that number.

## Application 6 - Decision

80. On the basis that the information provided is full and accurate in all material respects, NZXMS grants APT and ANZOL a waiver from Rule 3.3 to the extent necessary to allow the holder of the New Management Agreement to elect two directors to the Board of ANZOL who shall not be required to retire by rotation under Rule 3.3.11, on the following conditions:
- (a) The ability of the manager to elect two directors to the board of ANZOL, on the terms set out in this waiver decision, is approved by APT Unit Holders at the Corporatisation Meeting.
  - (b) This waiver is subject to the ANZOL constitution containing provisions as set out in clauses 66 - 67 above, and these remaining in full force and effect and materially the same as set out in this application, unless ANZOL Shareholders vote to amend the ANZOL constitution or NZXMS agrees to exercise its discretion to amend the terms of this waiver;
  - (c) This waiver, its effect on ANZOL, and the conditions on which it was granted, are published in each annual report and Offer Document of ANZOL published by ANZOL after the Corporatisation.
  - (d) Each director appointed by the Manager is identified in each annual report of ANZOL as having been appointed by the Manager, including a statement that as that director has been appointed by the Manager that director is not required to retire by rotation under Rule 3.3.11.
  - (e) In the event that the Manager elects not to exercise its right to elect two directors of the Board of ANZOL (and any directors appointed by the Manager are retired by the Manager), the conditions as to election of directors independent of the Manager shall not apply.
81. On the basis that the information provided is full and accurate in all material respects, NZXMS grants APT a waiver from Rule 3.3.8, to allow the ANZOL constitution to give 15%+ Shareholders the right to appoint a director to the board of ANZOL, on the following conditions:
- (a) That the constitution of ANZOL contains a provision requiring that the ANZOL board consist of a minimum of seven directors if a 15%+ Shareholder has exercised its appointment right.
  - (b) In the event that a 15% shareholder appoints a director, Rule 3.3.8(b) will apply so that the 15% shareholder shall have no right to vote on the election of other directors.
  - (c) This waiver, its effect on ANZOL, and the conditions on which it was granted, are published in each annual report and Offer Document of ANZOL published by ANZOL following the Corporatisation.

## Application 6 - Reasons

82. In coming to the decision to grant ANZOL a waiver from Rule 3.3 to allow the Manager to have the right to appoint two Directors to the Board of ANZOL, NZX has considered:
- (a) A summary of the terms of the proposed New Management Agreement, the terms of this waiver and the right of the Manager to appoint two directors have been included in the Corporatisation Offer Document (and a full copy of the Management Agreement will be available to APT Unit Holders on request). APT Unit Holders will have the opportunity to vote on whether to approve the New Management Agreement and the corporate governance provisions for ANZOL.

- (b) APT have submitted, and NZXMS has not reason not to accept, that the Corporatisation is a move towards corporate governance for ANZOL that will better align the interests of the Board of ANZOL and shareholders, and is therefore of benefit to ANZOL shareholders.
  - (c) The conditions that will be entrenched in the constitution of ANZOL relating to the requirement to have a majority of the Board who is independent will ensure that the balance on the ANZOL board between directors appointed by the Manager and those appointed by shareholders will remain in favour of shareholders.
  - (d) As a result of its unique board structure ANZOL will be designated as a non-standard Issuer under Rule 5.1.4. This non-standard designation, and the requirements that ANZOL to take steps to make sure that investors are aware of the “Non Standard” designation, will assist in ensuring that future investors in ANZOL are made aware of ANZOL’s unique board structure.
83. In coming to the decision to grant APT a waiver from Rule 3.3.8 to allow the ANZOL constitution to give a 15% + Shareholder the right to appoint a director, NZXMS has considered:
- (a) The proposed corporate governance structure, including the right of 15%+ Shareholders to appoint a director to the Board of ANZOL, are set out in the Corporatisation Offer Document. APT Unit Holders will therefore have the opportunity to vote to determine whether or not the Corporatisation, including the new constitution and Board composition, will proceed.
  - (b) The proposed ability of a 15%+ Shareholder to appoint a Director is broadly in line with the provisions of Rule 3.3.8. Given that it is a condition of this appointment right that the Board of ANZOL has a minimum of seven Directors, at any time that a 15%+ Shareholder has exercised this right, no 15%+ Shareholder will gain a right to appoint a number of directors that is proportionally greater than the proportion of ANZOL shares held by the shareholder.
  - (c) Given the complexities of the ANZOL Board structure arising from the requirement that a majority of the Directors are independent of the Manager, giving 15%+ Shareholders the right to appoint a number of Directors directly proportionate to their ANZOL shareholding could have adverse consequences for the composition of the Board. NZXMS accepts APT’s submissions that setting the shareholder appointment right at 15% provides certainty as to the composition of the Board.

## Application 7 - Waivers in relating to Listing and Quotation

### Background to the Applications

84. ANZOL will apply for Listing and Quotation of its ordinary shares in accordance with the relevant Listing Rules. Although an application for Listing will be made by ANZOL, given that ANZOL will be materially similar to APT in a number of key respects, APT considers it appropriate for NZXMS to grant waivers in respect of the usual Listing, Quotation and offering document requirements. This will reduce the cost, time and complexity associated with compliance with various Listing Rules that contemplate an application for Listing and/or Quotation by an entity:
- (a) unknown to NZX and the market; or
  - (b) in respect of securities that relate to underlying assets that the market is unfamiliar with.

85. APT does not consider the granting of waivers from the obligation to disclose the information above will materially adversely affect ANZOL shareholders, NZX or the market.
86. In addition, as ANZOL will become party to a Listing Agreement prior to the notice of meeting being sent to APT Unit Holders (and three weeks before the Corporatisation is effected), APT and ANZOL wish to be clear as to the basis upon which the Rules will apply to it prior to the Corporatisation (i.e. while it remains a wholly-owned subsidiary of APT).

### Applications

87. APT seeks, on behalf of ANZOL, waivers from:
- (a) Rule 5.1.1, to the extent that an application for Listing shall be made through a Primary Market Participant acting as an Organising Participant.
  - (b) Rule 5.2.1, to the extent that the Rule requires that at an application for quotation of a class of securities to be made through a Primary Market Participant acting as Organising Participant.
  - (c) Rule 5.2.2(b), to the extent that the Rule requires that an application for Quotation under Rule 5.2.1 be submitted with evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of securities for which quotation is sought.
  - (a) the requirement in Rule 7.1.5(c) that the Corporatisation Offering Document shall contain in its subscription application a field for subscribers to insert their CSN number (Rule 7.1.5(c).
  - (b) the requirement in Rule 7.1.10 that the Corporatisation Offering Document, after stating that application may be made to the Issuer, shall state that they may be lodged with any Primary Market Participant, the Organising Participant or any other channel approved by NZX.
  - (c) the requirement in Rule 7.1.13 for the Corporatisation Offer Document to specify the period within which refunds of subscription money will be made, and whether or not interest will be paid on amounts refunded to subscribers.

### Application 7 - Rules 5.1, 5.2 and 7.1

88. The relevant parts of Rule 5.1.1 provide:

5.1.1 Any person may apply to NZX for Listing either:

...

Application shall be made through a Primary Market Participant acting as Organising Participant.

89. Rule 5.2.1 provides:

An Issuer, or applicant for Listing, may apply to NZX for a Class or Classes of its Securities to be Quoted on the NZSX or NZDX. Separate application must be made for each Class of Securities, through a Primary Market Participant acting as Organising Participant, except that the application need not be made through an Organising Participant in the case of an application to Quote a Class of Securities where the Securities to be Quoted are rights to Securities that are already Quoted.

90. The relevant part of Rule 5.2.2(b) provides:

5.2.2 The following information and material shall be submitted with an application under Rule 5.2.1:

...

(b) evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of Securities for which Quotation is sought or a certificate is provided under Rule 7.4 of the NZX Participant Rules (whichever is applicable); and

91. The relevant parts of Rule 7.1.5(c) provide:

7.1.5 Every Offering Document shall contain:

...

(c) in its subscription application a field for subscribers to insert their CSN number (if any).

92. Rule 7.1.10 provides:

7.1.10 Every Offering Document, after stating that applications may be made to the Issuer, shall state that they may be lodged with any Primary Market Participant, the Organising Participant or any other channel approved by NZX (in that order) in time to enable forwarding to the appropriate place prior to the application closing date.

93. Rule 7.1.13 provides:

7.1.13 Each Offering Document shall specify:

- (a) the period within which a refund of subscription moneys will be made to applicants for Securities to whom allotments are not made; and
- (b) whether or not interest will be paid on amounts refunded in terms of (a) and, if so, the basis upon which interest will be calculated.

## Application 7 - Decision

94. On the basis that the information provided to NZXMS is full and accurate in all material respects, NZXMS grants ANZOL waivers from:

- (a) Rules 5.1.1 and 5.2.1, to the extent that those Rules require that at an application for listing and quotation of a class of securities to be made through a Primary Market Participant acting as Organising Participant; and
- (b) Rule 5.2.2(b), to the extent that the Rule requires that an application for Quotation under Rule 5.2.1 be submitted with evidence that the Primary Market Participant has sought assurance from NZX that Authority to Act has not been withdrawn in respect of securities for which quotation is sought
- (c) the requirement in Rule 7.1.5(c) that the Corporatisation Offering Document shall contain in its subscription application a field for subscribers to insert their CSN number (Rule 7.1.5(c);
- (d) the requirement in Rule 7.1.10 that the Corporatisation Offering Document, after stating that application may be made to the Issuer, shall state that they may be lodged with any Primary Market Participant, the Organising Participant or any other channel approved by NZX; and
- (e) the requirement in Rule 7.1.13 for the Corporatisation Offer Document to specify the period within which refunds of subscription money will be made, and whether or not interest will be paid on amounts refunded to subscribers.

## Application 7 - Reasons

95. In coming to the decision to grant APT waivers from Rules 5.1.1, 5.2.1 and 5.2.2(b), NZXMS considered that, as the offer of ANZOL Shares is being made pro rata solely to existing APT Unit Holders in exchange for redemption of their APT Units (other than for certain Excluded Holders), and no subscription monies are to be received by APT, a Primary Market Participant acting as Organising Participant is not required to ensure the success of the Corporatisation;
96. In coming to the decision to grant APT a waiver from Rule 5.2.1 and from Rule 7.1.5(c) NZXMS has considered that as subscribers under the offer will be those recorded on the register of APT on the Record Date, and New Shares will essentially be issued to these APT Unit Holders pro rata, there is no requirement for the Unit Holders to fill out an application form for the New Shares.
97. In coming to the decision to grant APT a waiver from Rule 7.1.10, NZXMS has considered that there will be no Organising Participant for the Corporatisation.
98. In coming to the decision to grant APT a waiver from Rule 7.1.13, NZXMS has considered that no subscription money will be received in respect of the Corporatisation. Rule 7.1.13 is therefore not relevant for the Corporatisation.

## Confidentiality

99. APT have submitted that this decision, and the information contained within this decision, are confidential and commercially sensitive. APT request that this decision remains confidential until the Corporatisation Offer Document is distributed to APT Unit Holders.
100. NZXMS grants APT's request for confidentiality, as it accords with the policy of Rules 1.11.2 and 1.11.4 and the footnotes to those Rules.

**ENDS.**

## APPENDIX 1 – APT OVERSEAS UNIT HOLDERS

The following table sets out overseas unit holdings registered in APT's unit register as at 31 August 2010:

<i>Location</i>	<i>Units</i>	<i>% of Units</i>	<i>Holders</i>	<i>% of Holders</i>	<i>Entitled to vote</i>	<i>Cash / shares</i>
Andorra	6,250.00	0000063	1.00	0.01264	No	Cash
Australia	1,274,838.00	0.12778	49.00	0.61955	Yes	Shares
Bahrain	7,609.00	0.00076	1.00	0.01264	No	Cash
Canada	165,166.00	0.01655	5.00	0.06322	No	Cash
Chile	8,000.00	0.00080	1.00	0.01264	No	Cash
China	25,870.00	0.00259	3.00	0.03793	No	Cash
France	40,200.00	0.00403	2.00	0.02529	No	Cash
Germany	6,550.00	0.00066	1.00	0.01264	No	Cash
Hong Kong	64,644.00	0.00648	4.00	0.05058	Yes	Shares
Japan	18,895.00	0.00189	3.00	0.03793	No	Cash
Norfolk Island	6,500.00	0.00065	1.00	0.01264	No	Cash
Papua New Guinea	13,300.00	0.00133	1.00	0.01264	No	Cash
Qatar	4,300.00	0.00043	1.00	0.01264	No	Cash
Singapore	159,820.00	0.01602	4.00	0.05058	No	Cash
Spain	6,500.00	0.00065	1.00	0.01264	No	Cash
Switzerland	160,214.00	0.01606	3.00	0.03793	Yes	Shares
Thailand	2,260.00	0.00023	1.00	0.01264	No	Cash
UAE	38,280.00	0.00384	1.00	0.01264	No	Cash
UK	569,244.00	0.05705	23.00	0.29081	No	Shares
USA	381,624.00	0.03825	15.00	0.18966	Yes	Shares
<b>Sub-totals:</b>						
<b>Overseas Holders</b>	<b>2,960,064.00</b>	0.29668	<b>121.00</b>	1.52990		
<b>Non-voting</b>	<b>1,078,744.00</b>	0.10812	<b>50.00</b>	0.63219		
<b>Cashed out</b>	<b>509,500.00</b>	0.05107	<b>27.00</b>	0.34138		
<b>TOTAL APT</b>	<b>997,718,478.00</b>	<b>100.0000000</b>	<b>7,909.00</b>	<b>100.0000000</b>		