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Credit Union Baywide Rules

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1. Definitions and Interpretation

1.1 **Definitions:** In these Rules unless the context otherwise requires:

Act means the Friendly Societies and Credit Unions Act 1982;

Annual General Meeting means an annual general meeting of Members called in accordance with these Rules;

Associate Director means a person appointed in accordance with Rule 14.8.1;

Association means the New Zealand Association of Credit Unions (trading as Co-op Money NZ) or such other association as the Board may determine from time to time;

Board means the Directors numbering not less than the required quorum acting as the Board of Directors, being the directing body of the Credit Union;

Chair means the chairperson of the Board elected in accordance with Rule 16.1;

Credit Union means Credit Union Baywide;

Credit Union Security means a credit union security issued under section 107A of the Act and defined in Rule 6.6;

Director means a person appointed in accordance with Rule 14.3 and continuing in office for the time being, in accordance with these Rules, as a director of the Credit Union;

Distribution has the meaning set out in section 117A of the Act;

Enterprise has the meaning set out in section 110(3) of the Act;

Exemption Notice means any exemption notice for or applicable to credit unions issued by the FMA pursuant to the FMC Legislation;

Fit and Proper Person Policy means the Credit Union's Fit and Proper Person Policy as determined by the Board from time to time;

FMA means the Financial Markets Authority;

FMC Legislation means the Financial Markets Conduct Act 2013;

Member means any person who is listed on the Register of Members and for the avoidance of doubt, includes a Non-Qualifying Member;

NBDT Act means the Non-bank Deposit Takers Act 2013;

Non-Qualifying Member has the meaning given to that term in Rule 5.6.1;

Ordinary Resolution means a resolution of Members approved by more than 50 percent of the votes of those Members entitled to vote and voting on the matter;

Receiver means a receiver, or a manager, or a receiver and manager appointed under the Trust Deed in respect of any property;

Registered Office has the meaning given to that term in Rule 29.1;

Related has the meaning set out in section 110(4) of the Act;

Register of Members means the register of Members and Non-Qualifying Members required to be kept by the Credit Union under the Act;

Registrar means the Registrar of Friendly Societies and Credit Unions;

Rules means this document, as amended from time to time;

Securitisation Entity means a trust or other special purpose vehicle established for the purpose of acquiring loans and related rights as part of a securitisation programme;

Share means a share issued by the Credit Union as defined in the Act and does not include a Credit Union Security;

Special Meeting means any meeting of Members called under these Rules that is not an Annual General Meeting;

Special Resolution means a resolution of Members approved by not less than 75 percent of the votes of those Members entitled to vote and voting on the matter;

Solvency Test has the meaning given to that term in section 117D of the Act;

Subsidiary means a company which is for the time being a subsidiary of the Credit union within the meaning of section 5 of the Companies Act 1993 (as if the Credit Union were a company within the meaning of that Act) and an “in-substance subsidiary” and any other person to be treated as a subsidiary according to New Zealand GAAP from time to time;

Suitability Notice means a Suitability Notice as defined in the NBDT Act;

Supervisor means a licensed supervisor under the Financial Markets Supervisors Act 2011 appointed by the Board pursuant to the Trust Deed; and

Trust Deed means the Trust Deed entered into between the Credit Union and the Supervisor for the monitoring of the affairs of the Credit Union in accordance with the FMC Legislation.

1.2 Where a word or expression contained in these Rules is not defined above it shall bear the same meaning as in the Act at the date on which these Rules become binding on the Credit Union.

1.3 **Interpretation:** These Rules shall be interpreted in accordance with the following:

1.3.1 the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions;

1.3.2 headings are included for the purposes of convenience only and do not affect the interpretation of these Rules;

1.3.3 the singular includes the plural and vice versa; and

1.3.4 a reference to:

(a) a *Rule* is a reference to a rule in these Rules unless stated otherwise; and

(b) a statute is to a New Zealand statute and includes all regulations, orders, bylaws, codes and notices made under or pursuant to such a statute and includes references to all amendments to that statute whether by subsequent statute or statute passed in substitution for the statute.

2. Relationship between these Rules and the Act

2.1 Subject to the Act, the Rules are binding, in accordance with their terms, as between the Credit Union and each Member and each Member.

2.2 The Credit Union will, upon request, supply a copy of the Rules to a Member.

2.3 Subject to Rule 2.4 below, the Credit Union has, both within and outside New Zealand:

2.3.1 the rights, powers, duties and obligations set out in the Act; and

2.3.2 full capacity, rights, powers and privileges to carry on or undertake any business or activity, to do any act, or to enter into any transaction, provided that the carrying on or undertaking of the business or activity, the doing of the act, or the entering into the

transaction is directly in pursuance of the Credit Union's objects or is incidental to the Credit Union's objects.

2.4 Rule 2.3 above applies to the Credit Union except to the extent negated or modified by the Act, or by these Rules in accordance with the Act.

2.5 The Board, each Director, and each Member have the rights, powers, duties and obligations set out in the Act, except to the extent they are negated or modified by these Rules, in accordance with the Act.

3. **Name of the Credit Union**

The legally registered name of the Credit Union is Credit Union Baywide.

4. **Objects**

4.1 The Credit Union's objects are:

4.1.1 the promotion of thrift among its members by the accumulation of their savings;

4.1.2 the use and control of Members' savings for their mutual benefit including for making loans to Members and Enterprises related to Members under section 110(1)(b) of the Act;

4.1.3 the provision of products and services to Members and to Enterprises related to Members under section 110(2) of the Act;

4.1.4 the training and education of Members in the wise use of money and in the management of their financial affairs; and

4.1.5 at the discretion of the Credit Union and as a minor adjunct to the other objects, the welfare of Members and the making of donations for charitable, cultural, benevolent or philanthropic purposes.

5. **Common Bond Membership**

5.1 **Qualification for Membership:** Membership in the Credit Union is limited to:

5.1.1 individuals who currently reside or formerly resided in New Zealand, including any individual aged 16 years or younger;

5.1.2 a charitable entity as defined in the Charities Act 2005; and

5.1.3 an incorporated society registered under the Incorporated Societies Act 1908.

5.2 **Membership Application:** The Credit Union may admit an applicant as a Member if:

5.2.1 the applicant qualifies for admission to membership under Rule 5.1;

5.2.2 the applicant has completed an application in a form prescribed by the Credit Union;

5.2.3 the applicant applies for at least one fully paid-up Share; and

5.2.4 the application has been approved by the Credit Union.

5.3 **Jointly Owned Shares:** A Share may be held by two or more Members jointly, but for the purposes of the Act, the first named account holder shall be deemed to be the Member to whom the Share was allotted and to whom the provisions of the Act apply accordingly.

5.4 **Register of Members:** The Credit Union must maintain a Register of Members in accordance with section 130 of the Act. The Register of Members must be kept at the Registered Office and is open to inspection during ordinary office hours by any Member of the Credit Union.

5.5 **Voting Rights:**

5.5.1 Each Member has one vote.

5.5.2 Notwithstanding Rule 5.5.1, no Member under the age of 16 on the closing date for voting is entitled to vote.

5.5.3 Where a Share in the Credit Union is held by two or more persons jointly, then the first named account holder is the Member entitled to vote.

5.6 **Non-Qualifying Members:**

5.6.1 Subject to Rule 5.6.2, a Member who no longer meets the qualifications for membership under this Rule 5 is entitled to retain that membership (**Non-Qualifying Member**).

5.6.2 The number of Non-Qualifying Members cannot exceed 10 percent of the total membership of the Credit Union.

5.6.3 If the number of Non-Qualifying Members exceeds 10 percent of the total membership of the Credit Union, the Credit Union may terminate the membership of as many Non-Qualifying Members as is necessary to reduce the number to 10 percent of the total membership.

5.6.4 In the event of termination under Rule 5.6.3, a Member will have the same rights and be subject to the same obligations as if they were a Member withdrawing from the Credit Union under Rule 5.7.

5.7 **Withdrawal from Credit Union:** A Member, or the Member's personal representative, may withdraw from the Credit Union at any time. In such event, all amounts paid in on:

5.7.1 Shares, shall be paid to the Member as funds become available and only after deducting any amounts due from the Member to the Credit Union; and

5.7.2 Credit Union Securities (if any) shall be paid subject to the terms of issue.

5.8 **Membership Termination:**

5.8.1 A Member may have their membership terminated by the Credit Union:

(a) if the Member fails to hold at least one fully paid-up Share in the Credit Union; or

(b) at the discretion of the Credit Union, if it believes that it has reasonable grounds to do so. This may include, but is not limited to, the right to terminate if the Credit Union is required to do so in accordance with any law or regulation, the Member has acted unlawfully, the Member has acted abusively or inappropriately to Credit Union staff, or the Member has breached the terms and conditions of membership; or

(c) in any other case, by a two-thirds majority vote of the Members present at a Special Meeting duly called for that purpose.

5.8.2 In the event of membership termination, a Member shall have the same rights and be subject to the same obligations as if the Member was withdrawing from the Credit Union under Rule 5.7.

6. **Shares and Securities**

6.1 **Shares:**

6.1.1 All Shares rank equally and each Share has a value of one dollar which may be paid for in whole or in part. No Share will be allotted to a Member until it has been fully paid.

- 6.1.2 The maximum amount of Shares which may be held by a Member shall be fixed by the Board from time to time.
- 6.1.3 The minimum amount of Shares which must be held by a Member is one fully paid-up Share.
- 6.1.4 Subject to Rule 6.4, Shares in the Credit Union are not transferable and the Credit Union will not issue a certificate to a Member denoting ownership of a Share.
- 6.1.5 A Share may be held by two or more Members jointly in accordance with Rule 5.3.
- 6.2 **Value and Consolidation of Shares:**
- 6.2.1 If the Credit Union has accumulated losses, and if recommended by the Board and approved by a Special Resolution of Members:
- (a) the value of a Share may be written down; and/or
 - (b) a Share may be consolidated with other Shares held by a Member;
- in reduction of any accumulated losses of the Credit Union in the same proportion as all other Shares issued in the capital of the Credit Union are written down and consolidated.
- 6.3 **Withdrawal of Shares:**
- 6.3.1 Subject to Rules 6.3.2 and 6.3.3, money paid in on Shares may be withdrawn at any time by any means including, without limitation, automatic payment, TXT, Eftpos, other electronic debit transaction, direct debit, cheque, or by way of telephone instruction.
- 6.3.2 The Credit Union has the right at any time to require Members to give 60 days' notice of their intention to withdraw the whole or any part of the money paid in on Shares.
- 6.3.3 If a withdrawal of Shares would reduce a Member's paid up holding in the Credit Union to less than the Member's total liability (including any contingent liability) to the Credit Union whether as borrower, guarantor, or otherwise then:
- (a) in the case of a Non-Qualifying Member, the withdrawal will not be permitted; and
 - (b) in any other case, the withdrawal will be permitted at the discretion of the Credit Union.
- 6.4 **Nomination of Shares on Death:**
- 6.4.1 Notwithstanding Rule 6.1.4, a Member may nominate a person to receive any Shares that a Member may have in the Credit Union on his or her death or any sum of money payable by the Credit Union at that time.
- 6.4.2 The nomination must be in writing, on a form prescribed by the Credit Union and delivered at or sent to the Registered Office.
- 6.4.3 The maximum value of Shares or sum of money nominated by the Member must not exceed the maximum specified in the Act.
- 6.5 **Transmission of Shares:**
- 6.5.1 Where a Member dies, the survivor (where the deceased was a joint holder), and the legal personal representative of the deceased (where the deceased was a sole holder), are the only persons recognised by the Credit Union as having any title to the deceased's interest in the Shares.

- 6.5.2 Nothing contained in this Rule 6.5 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons.
- 6.5.3 Where a Member dies or becomes bankrupt, the Member's personal representative or the assignee or trustee of the property of a bankrupt Member, will be entitled, upon the production of such evidence as may from time to time be properly required by the Credit Union, to be paid all amounts paid in on Shares as funds become available and after deducting any amounts due from the Member to the Credit Union.
- 6.6 **Credit Union Securities:** The Credit Union may issue Credit Union Securities to Members, on the following terms:
- 6.6.1 Credit Union Securities are transferable only between Members and confer no voting rights;
- 6.6.2 in the event of the Credit Union:
- (a) being wound up, claims for Credit Union Securities will not be paid until all creditors' claims and claims relating to Shares have been paid; and
 - (b) incurring losses that exceed its retained earnings and reserves, the value of the Credit Union Securities will be written down accordingly; and
- 6.6.3 any such additional terms as the Credit Union considers fit in accordance with applicable law.

7. **Loans**

- 7.1 The Credit Union may make loans (with or without security) on such conditions as it determines, to:
- 7.1.1 Members for such purposes as shall be determined by the Credit Union; and
 - 7.1.2 Enterprises, if such Enterprise is Related to a Member and meets the other criteria outlined in the Act.
- 7.2 The Credit Union will establish and maintain policies which must include, but is not limited to:
- 7.2.1 the form of the loan application;
 - 7.2.2 the maximum amount of any secured or unsecured loan that the Credit Union may make;
 - 7.2.3 the maximum term of a loan;
 - 7.2.4 the circumstances in which loans are to be repaid, the interest rate and any fees payable in relation to a loan; and
 - 7.2.5 if, and in what circumstances, any form of insurance is required.

8. **Products and Services**

- 8.1 **Products and Services:** The Credit Union may provide products and services to:
- 8.1.1 Members;
 - 8.1.2 Enterprises:
 - (a) which have loans with the Credit Union under Rule 7.1.2; and
 - (b) Enterprises, where the Enterprise is Related to a Member and meets the other criteria outlined in the Act.
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8.2 Fees, Levies and Charges:

- 8.2.1 The Credit Union may, from time to time, set fees, levies and charges payable by a Member in respect of their admission to membership or in relation to any administration, account or other services provided by the Credit Union.
- 8.2.2 The Credit Union will publish and make available to Members the fees, levies and charges described in Rule 8.2.1, with such fees, levies and charges to take effect from the date nominated by the Credit Union at the time of publication.
- 8.2.3 Where the Credit Union incurs a charge from another organisation, or incurs legal fees when acting on a Member's behalf, the Credit Union may pass those costs on to the Member.

9. Operations

9.1 Investments:

- 9.1.1 The Credit Union may make investments in accordance with the Trust Deed and Board policies.
- 9.1.2 Without limiting Rule 9.1.1, the Credit Union may invest by way of loan or otherwise in other credit unions and/or the Association and/or Subsidiaries.

9.2 **Borrowing:** The Credit Union may borrow money if the borrowing is authorised by, and in accordance, with the Trust Deed.

9.3 Securitisation:

- 9.3.1 The Board may, from time to time, subject to first obtaining any consent required from the Supervisor, for the purpose of promoting the Credit Union's objects and, in particular, to enable the Credit Union to make loans to Members, authorise the entry by the Credit Union into securitisation arrangements in relation to loans made by the Credit Union. Without limiting this general authority, the Board may authorise the Credit Union to:
 - (a) enter into agreements and deeds to establish one or more Securitisation Entities which may be a subsidiary of the Credit Union;
 - (b) dispose of loans to, and acquire loans from, a Securitisation Entity;
 - (c) lend to a Securitisation Entity (including on a secured or unsecured or subordinated basis);
 - (d) enter into servicing and trust management arrangements in connection with a Securitisation Entity; and
 - (e) enter into any other agreements, and do any other thing, which is necessary or incidental to the establishment of a Securitisation Entity and its ongoing funding and operation.

9.4 **Subsidiaries:** The Credit Union may, subject to first obtaining the consent of the Supervisor, establish a Subsidiary to own or operate any part of its business or incorporate or acquire (or permit any change of ownership or control of) any Subsidiary.

9.5 Business Service Arrangements:

- 9.5.1 The Credit Union may from time to time enter into arrangements with third parties, including the Association, (**Provider**) for the provision of services to it (or the Members, through the Credit Union) (**Services**).
- 9.5.2 The Credit Union may enter into continuity of business service arrangements with the Provider and the service providers of that Provider (**COS Arrangements**), so as to ensure the continuation of the Services in the event that the Provider defaults in its obligations to the Credit Union (or the Members).

- 9.5.3 Where the Services (or services substantially similar to the Services) are supplied by the Provider to multiple parties, including the Credit Union, (**Purchaser Group**) then the Credit Union may enter into arrangements with the Purchaser Group in respect of the COS Arrangements, including acting as agent for the Purchaser Group in respect of the COS Arrangements.

10. **Dividends, Interest and Distributions**

- 10.1 **Payment of Dividends:** Subject to the Trust Deed and the Act, dividends may be declared to Members as follows:
- 10.1.1 in the course of, and/or at the end of, each financial year the Board may declare a dividend from the net earnings received by the Credit Union;
 - 10.1.2 fully paid-up Shares which at the end of the financial year have been held for a period of less than 12 months, shall be entitled to a dividend, if declared, in an amount in direct proportion to the period that the Shares were so held; and
 - 10.1.3 on other terms and conditions as approved by the Board.
- 10.2 **Payment of Interest:** Subject to the Trust Deed and the Act, interest may be paid on Shares or other securities at the rate or rates and on the terms determined by the Credit Union from time to time.
- 10.3 **Payment of Distributions:** The Board, may, if it is satisfied on reasonable grounds that the Credit Union will immediately after the Distribution is made, satisfy the Solvency Test, authorise, in writing, a Distribution by the Credit Union to a Member in accordance with the Credit Union Securities terms of issue.

11. **Donations**

- 11.1 The Board may make donations for charitable, cultural, benevolent or philanthropic purposes.

12. **Meetings of Members**

- 12.1 **Annual General Meeting:** The Board must call an Annual General Meeting of Members to be held not later than 31 October in each calendar year, at such time and place as determined by the Board.
- 12.2 **Special Meetings:** A Special Meeting of Members:
- 12.2.1 may be called at any time by the Board; and
 - 12.2.2 must be called by the Board on the written request of the Registrar, the Supervisor or Members in accordance with section 120 of the FMC Legislation.
- 12.3 **Chair of Meetings of Members:**
- 12.3.1 Subject to Rule 12.3.3, if the Chair is present at a meeting of Members, he or she must chair the meeting.
 - 12.3.2 If at any meeting of Members, the Chair is not present within 15 minutes of the time appointed for the commencement of the meeting, the Vice-Chair will chair the meeting. If the Vice-Chair is not present, the Directors present may choose one Director to chair the meeting (**Acting Chair**).
 - 12.3.3 If a meeting of Members has been called by the Supervisor or the Registrar, the Registrar or the Supervisor (as the case may be) may appoint the chair.

- 12.4 **Notice of Meeting:** Notice of the date, time and place of a meeting of Members must be given to every Member entitled to receive notice of the meeting and to every Director, every Associate Director, Supervisor and auditor of the Credit Union, by sending a notice not less than 14 days before the date of the meeting (**Notice of Meeting**).
- 12.5 **Contents of Notice of Meeting:** The Notice of Meeting must state:
- 12.5.1 the nature of the business to be transacted at the meeting;
 - 12.5.2 details of any Director vacancies for which elections are being held;
 - 12.5.3 the resolutions (if any) requiring the approval of Members;
 - 12.5.4 the method of voting approved by the Board; and
 - 12.5.5 a proxy form (if applicable).
- 12.6 **Members Entitled to Notice of Meeting:** The Members entitled to receive a Notice of a Meeting are the Members at the close of business on the week immediately preceding the day on which the notice is sent.
- 12.7 **Changes to Notice of Meeting:** The order of business set out in the Notice of Meeting can be varied or suspended at the meeting.
- 12.8 **Irregularities in Notice of Meeting:** An irregularity in a Notice of Meeting is waived if all the Members entitled to attend and vote at the meeting, attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.
- 12.9 **Omission to Give Notice:** The accidental omission to give Notice of Meeting to, or the failure to receive Notice of Meeting by, a Member does not invalidate the proceedings at that meeting.
- 12.10 **Method of Holding Meeting:** A meeting of Members may be held either:
- 12.10.1 by a number of Members, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 12.10.2 by means of audio or audio and visual communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 12.11 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Members.
- 12.12 **Representatives:** A Member that is a charitable entity or an incorporated society may appoint a representative to act on its behalf. A representative is entitled to attend, be heard and vote at a meeting of Members. Rules 13.3.4 to 13.3.6 in relation to appointment of a proxy, apply with any necessary modification to the appointment of a representative, as if the representative were a proxy.
- 12.13 **Supervisor Attendance:** The Supervisor, through any of its agents, attorneys or representatives, may attend any meeting of the Credit Union and have the right to speak and be heard at any such meeting, whether in relation to any matter arising during the course of the business of that meeting or any other matter which the Supervisor wishes to raise at the meeting.

13. **Voting at Meetings of Members**

- 13.1 **Quorum:**
- 13.1.1 A quorum for a meeting of Members is present if there are 15 Members or their proxies present.
 - 13.1.2 No business may be transacted at a meeting of Members if a quorum is not present.

- 13.1.3 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to a date not less than seven or more than 30, days thereafter.
- 13.1.4 Written notice of the time and place of the adjourned meeting must be sent to each Member at least five days before the adjourned meeting.
- 13.1.5 If at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Members present or their proxies are a quorum.
- 13.2 **Voting:**
- 13.2.1 Subject to Rule 13.2.2, the Board will approve (and advise in the relevant Notice of Meeting) the method by which a Member may exercise the right to vote at any meeting of Members, from one or more of the following options:
- (a) by being present in person; or
 - (b) by being represented by a proxy in accordance with Rule 13.3.1; or
 - (c) by electronic voting in accordance with Rule 13.4.
- 13.2.2 At a meeting of Members, voting in person (or by proxy) may be approved by the Board, in relation to procedural matters at any time.
- 13.2.3 The Chair, Vice-Chair or Acting Chair (as the case may be), in addition, to their own personal vote, has a casting vote (unless the meeting has been called by the Supervisor under the Trust Deed).
- 13.3 **Proxies:**
- 13.3.1 If approved by the Board under Rule 13.2.1(b), a Member may exercise the right to vote either by being present at a meeting or by appointing a proxy.
- 13.3.2 A proxy for a Member is entitled to attend, be heard, and vote at a meeting of Members as if the proxy were the Member. If the Member and the Member's proxy are both present at a meeting, the Member may not speak or vote at that meeting.
- 13.3.3 A proxy need not be a Member of the Credit Union.
- 13.3.4 A proxy must be appointed by notice in writing, signed by the Member using such form as the Credit Union may from time to time direct. The notice must state the particular meeting for which the appointment applies.
- 13.3.5 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Credit Union at its registered office, or at any other address as is specified for that purpose in the Notice of Meeting, at least 48 hours prior to the meeting or adjourned meeting.
- 13.3.6 Unless written notice of the following event or events has been received by the Credit Union prior to the meeting, a vote given by a proxy will be valid even if any of the following occurs:
- (a) the Member has died or has become mentally disordered; or
 - (b) the proxy, or the authority under which the proxy was given, has been revoked; or
 - (c) there has been a transfer of the beneficial ownership of the Share in respect of which the proxy was given.

- 13.4 **Electronic Vote:** If approved by the Board under Rule 13.2.1(c), a form for registration for electronic voting shall be sent with each Notice of Meeting. A Member may exercise the right to vote by electronic voting as follows:
- 13.4.1 by registering for electronic voting, (and the electronic vote shall be in such form as the Credit Union may from time to time direct, subject to these Rules and any relevant laws); and
 - 13.4.2 by completing an electronic vote prior to close of voting as determined by the Credit Union.
- 13.5 **Postal Vote:** A Member may not exercise their right to vote at a meeting by casting a postal vote.

14. **Directors Appointment and Removal**

- 14.1 **Number of Directors:** Subject to Rule 23.4, the Board shall consist of seven (7) Directors.
- 14.2 **Qualification:** A person is eligible for election as a Director of the Credit Union if:
- 14.2.1 the person is a Member;
 - 14.2.2 the person is an individual and not a charitable entity or incorporated society;
 - 14.2.3 the person is at least 18 years of age;
 - 14.2.4 the individual was not an employee of the Credit Union in the three years prior to the date of the election;
 - 14.2.5 meets the Fit and Proper Person Policy; and
 - 14.2.6 is not disqualified from holding office under Rule 14.7.
- 14.3 **Nomination:**
- 14.3.1 Each year, Members will be:
 - (a) Advised of the Director vacancies that will arise at the Annual General Meeting; and
 - (b) given the opportunity to nominate another Member as a potential candidate to fill the vacancy.
- 14.4 **Appointment:** The Directors are the persons appointed from time to time as Directors following:
- 14.4.1 their election by Members at an Annual General Meeting or a Special Meeting; or
 - 14.4.2 their appointment as a Transferring Director under Rule 23.4 pursuant to a transfer of engagements; or
 - 14.4.3 their appointment under Rules 14.7 or 16.10 following an event of vacancy on the Board, and in each case subject to the Reserve Bank of New Zealand either accepting the relevant Suitability Notice or issuing a notice of no objection in relation to that person's Suitability Notice
- 14.5 **Term:** A Director is elected for a term of up to three years, or until the election and appointment of a successor. Each year, two or three Directors will retire on rotation, but may be eligible for re-election.
- 14.6 **Directors' Powers of Appointment:** In the event of a vacancy on the Board caused by the disqualification of a Director under Rule 14.7, the Board will appoint a Member to fill the vacant office and that Member will hold such office until the next Annual General Meeting of Members or until the election and appointment of a successor.

- 14.7 **Disqualification and Removal:** A person will be disqualified from holding the office of Director or Associate Director and will vacate their office immediately, if they:
- 14.7.1 resign by notice in writing to the Credit Union; or
 - 14.7.2 cease to be a Member; or
 - 14.7.3 become bankrupt or make any arrangement or composition with their creditors generally; or
 - 14.7.4 become a protected person under the Protection of Personal Property Rights Act 1988 or of unsound mind under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - 14.7.5 have been convicted of an offence involving fraud or dishonesty; or
 - 14.7.6 are deceased; or
 - 14.7.7 have received a notice of disqualification from the Supervisor; or
 - 14.7.8 are barred from holding office under legislation affecting financial institutions, or if any public disclosure is required to be made by the Credit Union in respect of that Director or Associate Director concerning previous bankruptcy, conviction for a crime of dishonesty, prohibition as a director or manager by a Court or Tribunal, or conviction for failing to make such a disclosure; or
 - 14.7.9 are involved in legal or other proceedings against the Credit Union; or
 - 14.7.10 have their appointment terminated by the Board either:
 - (a) in accordance with clause 16.10; or
 - (b) for ongoing and persistent breaches of Board governance policy; or
 - 14.7.11 fail to meet or maintain the requirements under the Fit and Proper Person Policy; or
 - 14.7.12 fail to meet or maintain the requirements under the Suitability Notice and/or the Reserve Bank of New Zealand issues a notice of objection in relation to their Suitability Notice.
- 14.8 **Associate Directors:**
- 14.8.1 The Board may appoint up to three Associate Directors, each appointment subject to the Reserve Bank of New Zealand either accepting the relevant Suitability Notice or issuing a notice of no objection in relation to that Suitability Notice.
 - 14.8.2 Every Associate Director must meet the requirements of Rules 14.2.
 - 14.8.3 An Associate Director will receive notice of Board meetings and will have speaking rights at those meetings.
 - 14.8.4 An Associate Director does not have any voting rights, nor are they to be counted in the quorum of a meeting of the Board.

15. **Powers and Duties of the Board**

15.1 **Powers of the Board:**

- 15.1.1 The business and affairs of the Credit Union must be managed by or under the direction or supervision of the Board, except to the extent that the Act, the Trust Deed or these Rules provides otherwise.
- 15.1.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the business and affairs of the Credit Union, except to the extent that these

Rules, the Trust Deed or the Act expressly requires those powers to be exercised by Members, the Supervisor, the Registrar or any other person.

15.2 **Trust Deed:**

15.2.1 The Board will ensure the Credit Union complies with the Trust Deed.

15.3 **Chief Executive Officer:**

15.3.1 The Board is responsible for the appointment of the Chief Executive Officer of the Credit Union.

15.3.2 The remuneration and expenses of the Chief Executive Officer will be determined and/or approved by the Board in its absolute discretion.

15.3.3 The Chief Executive Officer may attend all meetings of the Board as an ex officio member.

15.4 **Duties of Directors:** A Director when exercising powers or performing duties:

15.4.1 must act in good faith and in what the Director believes to be the best interests of the Credit Union; and

15.4.2 must otherwise comply with their common law duties to the Credit Union.

15.5 **Delegation of Powers:**

15.5.1 The Board may establish such committees as it sees fit to carry out delegated functions as the Board may direct, including but not limited to:

(a) a Director Nominating Committee; and

(b) an Audit and Risk Committee; and

15.5.2 The Board may authorise employees to carry out delegated functions of the Credit Union.

15.5.3 The Board must establish policies for the guidance of employees or committees in the exercise of any powers so delegated or authorised.

15.6 **Insurance:** The Board must take out and maintain a policy or policies of insurance providing cover against any fraud or other dishonesty of any of its Directors or any of the Credit Union's employees in accordance with section 133 of the Act.

16. **Proceedings of the Board**

16.1 **Chair, Vice-Chair:**

16.1.1 The Directors may elect one of their number as Chair of the Board and Vice-Chair of the Board.

16.1.2 The Vice-Chair shall have and exercise all the powers, authority and duties of the Chair during the absence of the Chair or during any period when the Chair is unable to act.

16.1.3 The Chair and Vice-Chair, hold that office for one year, or until they die, resign, are removed or the Directors elect a successor in their place (whichever is the sooner).

16.2 **Chair:**

16.2.1 The Chair will preside at all meetings of the Board.

16.2.2 If the Chair is not present within 15 minutes after the time appointed for the commencement of the meeting, the Vice-Chair, will chair the meeting. If the Vice-Chair is not present, the Directors present may choose one Director to chair the meeting (**Acting Chair**).

- 16.3 **Meetings:**
- 16.3.1 The Board together with the Chief Executive Officer (as ex officio without vote) will meet on such occasions as shall be agreed.
- 16.3.2 The Chair, or in their absence the Vice-Chair, or in their absence, the Chief Executive Officer, may call a meeting of the Board at any time and must do so upon the written request of any three Directors.
- 16.4 **Notice of Meeting:** Notice of a meeting will be given in such manner as the Board may from time to time determine.
- 16.5 **Method of Holding Meetings:** A meeting of the Board may be held either:
- 16.5.1 by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- 16.5.2 by means of audio or audio and visual communication by which all the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.
- 16.6 **Quorum:**
- 16.6.1 A quorum for a meeting of the Board is a minimum of 51 percent of the Directors.
- 16.6.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 16.6.3 If a quorum is not present within 30 minutes of the time appointed for the meeting, the meeting may be adjourned. Written notice of an adjourned meeting need not be given to the Directors.
- 16.7 **Voting:**
- 16.7.1 Every Director has one vote.
- 16.7.2 Directors are not entitled to vote by proxy.
- 16.7.3 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour.
- 16.7.4 A Director present at a meeting of the Board is presumed to have agreed to and to have voted in favour of a resolution of the Board, unless they expressly dissent from, or vote against the resolution at the meeting.
- 16.7.5 Subject to Rule 20.3.1, a Director may vote in respect of any matter in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.
- 16.7.6 At any meeting of the Board, the Chair, Vice-Chair or Acting Chair (as the case may be), in addition, to their own personal vote, has a casting vote.
- 16.8 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- 16.9 **Resolutions in Lieu of Meeting:**
- 16.9.1 A resolution in writing, signed or assented to by the required majority of the Directors, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

- 16.9.2 Any such resolution may consist of several documents (including email or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 16.9.3 A copy of any such resolution must be entered in the minute records of Board proceedings.
- 16.10 **Removal:** If a Director fails to attend three consecutive regular meetings of the Board, or otherwise fails to perform any of the duties of the office, the Board may terminate the Director's appointment on the grounds they have vacated their office. This vacancy will then be filled in accordance with Rule 14.6.
- 16.11 **Other Proceedings:** Except as provided in this Rule 16, the Board may regulate its own procedure.

17. Director Remuneration

- 17.1 **Director Expenses:** Subject to Board approval, each Director is entitled to be paid for all reasonable travel, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in conjunction with the Credit Union's business.
- 17.2 **Authorisation of Payment:** Fees and meeting payments may be paid to the Directors in such amounts and manner as the Board in its absolute discretion may determine, provided however that the total fees, and meeting payments (but excluding expenses) must not exceed that sum which has been approved at an immediately preceding Annual General Meeting (or adjourned Annual General Meeting) of the Members of the Credit Union.
- 17.3 **Increase in Director Remuneration:** Notwithstanding Rule 17.2, in the event of acceptance of a transfer of engagements pursuant to Rule 23, the maximum total sum shall be temporarily increased to remunerate new Directors on the same basis as the incumbent Directors until the date of the next Annual General Meeting on a pro-rata basis for the length of service of the new Directors.

18. Indemnity and Insurance

- 18.1 **Indemnities and insurance:** The Credit Union may, with the prior written approval of the Board, do any of the following:
- 18.1.1 indemnify a Director or employee of the Credit Union for any costs referred to in section 527(1) of the FMC Legislation;
- 18.1.2 indemnify a Director or an employee of the Credit Union in respect of any liability or costs referred to in section 527(2) of the FMC Legislation; and
- 18.1.3 effect insurance for a Director or employee of the Credit Union in respect of any liability or costs referred to in section 528(1) of the FMC Legislation.
- 18.2 **Definitions:** Words given extended meanings by section 530 of the FMC Legislation have those extended meanings in this clause 18.

19. Trust Deed

- 19.1 In order to comply with the FMC Legislation and any Exemption Notice, the Credit Union must maintain a Trust Deed with a Supervisor pursuant to which:
- 19.1.1 the Supervisor covenants to monitor the affairs of the Credit Union for the benefit of Members;

- 19.1.2 the Supervisor may in certain circumstances give directions in respect of the administration of the affairs of the Credit Union which are binding on the Credit Union;
 - 19.1.3 the Credit Union agrees to grant to the Supervisor a charge in and over its secured property and assign by way of security to the Supervisor all secured property that constitutes present or future rights or things in action; and
 - 19.1.4 the Credit Union covenants with the Supervisor that it will comply with all applicable laws, and will meet its obligations under the Trust Deed, applicable law, contract or otherwise.
- 19.2 Any directions given by the Supervisor to the Board under the powers conferred on the Supervisor in the Trust Deed shall be given effect to by each Director and be binding on all Members.

20. **Conflict of Interest**

20.1 For the purposes of this Rule 20 and no other Rule:

Key Person includes a Director, Associate Director or any other member of the Board (including a member of a committee or sub-committee of the Board), the Chief Executive Officer and any other Senior Officer as that term is defined in the NBDT Act;

Interests Register means the interests register maintained by the Board;

Conflict of Interest is a situation where there exists a relationship between a Key Person and those listed below where such relationship is likely to affect the interests of the Credit Union or that Key Person's independence and impartiality:

- (a) a Member;
- (b) an employee;
- (c) a spouse, de facto partner, child, or member of immediate household;
- (d) a parent, uncle, aunt, brother, sister, or immediate relationship through marriage;
- (e) a cousin in the first degree of blood relationship;
- (f) a business partner or former business partner;
- (g) a relative or close personal friend or associated person in circumstances which is deemed by the other members of the Board or committee or sub-committee of the Board to constitute a conflict of interest; and
- (h) an entity, where the Key Person has a significant financial interest or a significant ownership interest in that entity.

20.2 **Notice of Interest to be Given:** A Key Person must immediately after becoming aware of the fact that an actual or potential Conflict of Interest exists in relation to a matter or transaction, cause to be entered in the Interests Register, and disclose to the Board or committee the nature of the Conflict of Interest.

20.3 In circumstances where a Conflict of Interest exists:

- 20.3.1 the disclosure of a Conflict of Interest at any Board, committee or sub-committee meeting (as the case may be) will be promptly entered in the Interests Register or documented in the minutes where the Conflict of Interest relates to that meeting only;
- 20.3.2 the Key Person should not participate in any discussion or decision-making except by consent of the Board, committee or sub-committee; and

20.3.3 the minutes of any Board, committee, or sub-committee must disclose the voting participation as well as the name of any Key Person abstaining for reason of a Conflict of Interest rather than record a consensus decision.

20.4 Any decision which is made or taken in breach of Rule 20.3 is invalid.

21. **Accounts**

21.1 **Financial Year:** The financial year of the Credit Union shall end on 30 June each calendar year.

21.2 **Accounting Records:**

21.2.1 The Board must ensure accounting records are kept that comply with the requirements of the Act and the FMC Legislation.

21.2.2 The accounting records must be kept at the registered office or, subject to the requirements of the Act and the FMC Legislation, at such other place or places as the Board thinks fit, and shall always be open to inspection by any Director, the Supervisor and the FMA.

21.2.3 No Member (not being a Director) will have any right of inspecting any accounting records unless permitted by an enactment.

21.3 **Financial Statements and Annual Return:** The Board must:

21.3.1 in accordance with the requirements of the Act and the FMC Legislation, ensure audited financial statements and an annual return are prepared and sent to the Registrar;

21.3.2 ensure that a copy of the last financial statements and auditor's report are available for inspection at the Registered Office and on the Credit Union's website; and

21.3.3 on the application of a Member or any other person, supply a copy of the annual return and auditor's report in accordance with section 129 of the Act, including by way of publication on the website operated by the Credit Union.

21.4 **Appointment of Auditor:** The Credit Union must, during each financial year, appoint a qualified auditor to audit its financial statements for that year in accordance with the Act, the FMC Legislation and the Trust Deed.

22. **Method of Contracting**

22.1 **Method of Contracting:** A contract or other enforceable obligation may be entered into by the Credit Union as follows:

22.1.1 a deed, may be entered into on behalf of the Credit Union in writing by:

(a) two or more Directors; or

(b) by a Director whose signature must be witnessed; or

(c) one or more attorneys appointed by the Credit Union in accordance with Rule 22.2.

22.1.2 a contract, if required by law to be in writing, may be entered into on behalf of the Credit Union in writing by a person acting under the Credit Union's express or implied authority; and

22.1.3 an obligation not required by law to be in writing, may be entered into on behalf of the Credit Union in writing or orally, by a person acting under the Credit Union's express or implied authority.

22.2 **Appointment of Attorney:**

22.2.1 The Credit Union may, by an instrument in writing executed in accordance with Rule 22.1.1:

- (a) appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. Any act of an attorney in accordance with that instrument will bind the Credit Union; and
- (b) appoint any Receiver appointed by the Supervisor and each of the Supervisor's officers for the time being, severally, to be the Credit Union's attorney or attorneys for such purposes and with such powers, authorities and discretions and for such period and subject to such conditions as the Board may think fit.

23. **Amalgamations and Transfers of Engagements**

23.1 **Amalgamation:** The Credit Union may, if approved by Special Resolution, amalgamate with one or more credit unions to form one credit union.

23.2 **Transfer of Engagements:** The Credit Union may:

23.2.1 if approved by Special Resolution, transfer its engagements to any other credit union that has undertaken to fulfil the engagements of the Credit Union; or

23.2.2 if approved by a 75 percent majority of the Board, accept a transfer of engagements from any other credit union and undertake to fulfil the engagements of that credit union.

23.3 **Information to Members:** Information relating to the terms of a proposed amalgamation or transfer must be sent to every Member not less than 14 days before the date of the meeting at which the resolution for the amalgamation or transfer is to be proposed.

23.4 **Transferring Directors:**

23.4.1 When accepting a transfer of engagements under Rule 23.2.2, the Board may retain one or more (but not exceeding four) directors and one or more (but not exceeding two) associate directors of the transferring credit union (**Transferring Directors**).

23.4.2 Each Transferring Director will hold office as additional Directors and additional Associate Directors of the Credit Union for an agreed period which will not in any case exceed three years.

23.4.3 Each Transferring Director must meet the requirements of Rule 14.2.

23.4.4 The appointment of a Transferring Director must be advised to Members in writing, which may be by way of publication of the appointment on the website operated by the Credit Union.

23.4.5 The Transferring Directors are in addition to the number of Directors and Associate Directors specified in Rules 14.1 and 14.8.1 respectively.

24. **Liquidation**

24.1 **Appointment of Liquidator:** The Credit Union may be put into liquidation by the appointment of a liquidator:

24.1.1 by a Special Resolution of Members; or

24.1.2 by an order of the High Court following an application by the Credit Union, a Member, a creditor of the Credit Union or the Registrar.

24.2 **Division among Members:** In the event of the winding up of the Credit Union or on or before the Credit Union's removal from the New Zealand register (including pursuant to Rule 25), any assets remaining after the payment of debts, repayment of share capital and discharge of other liabilities of the Credit Union will, if approved by an Ordinary Resolution of Members, either be:

24.2.1 transferred to the Association; or

24.2.2 applied for charitable purposes.

25. **Removal from the Register**

25.1 **Request to Registrar:** If the Credit Union:

25.1.1 has ceased to operate, has discharged in full its liabilities to all its known creditors, and has distributed its remaining assets to those persons entitled to them or otherwise in accordance with these Rules; or

25.1.2 has no assets remaining after paying its debts in full or in part, and no creditor has applied to the High Court for an order putting the Credit Union into liquidation,

the Board may, if approved by a Special Resolution of Members, request the Registrar to remove the Credit Union from the New Zealand register.

26. **Amendment of the Rules**

26.1 **Amendment:** The Rules may be amended by an Ordinary Resolution of Members.

26.2 **Technical Amendment:** The Credit Union shall, to the extent necessary to comply with the FMC Legislation, any Exemption Notice, Registrar amendment under section 26 of the Act or the Trust Deed, amend these Rules.

26.3 **Registration:** Any amendment of the Rules has no effect until the amendment is registered in accordance with section 106B of the Act.

27. **Disputes**

27.1 **Disputed Decision:** Every Member (including a former Member) may dispute a decision made by the Credit Union which affects:

27.1.1 their entitlement to be or continue to be a Member, or to be reinstated as a Member; or

27.1.2 any other rights arising out of their membership.

27.2 **Dispute Procedure:** The procedure for dealing with a dispute is as follows:

27.2.1 Any Member who wishes to lodge a dispute with the Credit Union must do so in writing, setting out the reasons why the Member believes the decision made by the Credit Union is wrong (**Dispute Notice**).

27.2.2 The Dispute Notice must be lodged within 28 days of receiving notice of the decision the Member wishes to dispute. If the Dispute Notice is lodged outside that time frame, the Credit Union is not obliged to consider the Dispute Notice.

27.2.3 The Credit Union must acknowledge receipt of the Dispute Notice within seven business days of receipt and must refer the dispute as soon as practicable to the President of the Law Society of the district in which the Registered Office of the Credit Union is located for the matter to be heard by an arbitrator.

27.2.4 The process for hearing the dispute will be determined between the parties at the time or, failing agreement, by the arbitrator.

27.3 The decision of the arbitrator will be final (including any decision as to the apportionment of costs).

28. Investigations

28.1 **Member Application:** Applications may be made to the Registrar for an investigation into the affairs of the Credit Union or for the calling of a Special Meeting of the Credit Union as follows:

28.1.1 where the membership of the Credit Union does not exceed 1,000 Members, on an application made by one-fifth of the whole number of Members; or

28.1.2 where the membership of the Credit Union exceeds 1,000 Members, on an application made by 200 Members.

29. Notices

29.1 **Registered Office:** The registered office of the Credit Union is 100 St Aubyn Street East, Hastings or at such other place as the Board may from time to time decide. Notice of any change in the registered office shall be sent to the Registrar in accordance with the Act.

29.2 **Notices in Writing:** All notices given in accordance with these Rules must be made in writing.

29.3 **Notices to the Credit Union:** Notices to the Credit Union may be sent marked to the attention of the Chief Executive Officer of the Credit Union by:

29.3.1 email to the Chief Executive Officer; or

29.3.2 post to the Registered Office; or

29.3.3 personal delivery to the Registered Office.

29.4 **Notices to Members:**

29.4.1 Every Member must notify the Credit Union of their postal and/or email address for notices and any other contact details and, promptly notify the Credit Union of any changes.

29.4.2 Notices to Members may be sent by, email, post or personal delivery to the Members' address for notices, marked for the attention of the Member.

29.4.3 If a Member has provided an alternative address for notices, the Member is deemed to have consented to receiving notices (including in electronic form) under these Rules to any of those addresses.

29.4.4 Where a Member has opted out of receiving communications and a Notice of Meeting is required to be sent to the Member, then notice will (unless otherwise required by the Registrar) be deemed to have been effected by:

(a) advertising it in newspapers with suitable circulation; or

(b) posting it on the Credit Union's website; or

(c) displaying it in Credit Union branches.

29.4.5 The Board may, in its sole discretion, also advertise any notice to Members in the Public Notices column of newspapers with suitable circulation.

29.4.6 Where a Share is held by two or more Members jointly, service on the first named account holder shall constitute service on all joint Members.

29.5 **Deemed Delivery:** Unless otherwise specified in these Rules, all notices will be deemed to have been delivered as follows:

- 29.5.1 if communicated by email, on the working day on which the email is despatched, or, if despatched after 5pm or on any day other than a working day, on the next working day after the date of despatch;
 - 29.5.2 if posted, on the third working day after posting; or
 - 29.5.3 on the day of delivery, if delivered by hand (including by courier).
- 29.6 **Proof of Notice being sent:** To establish proof of a notice being sent, it will be sufficient to prove:
- 29.6.1 in the case of a notice sent by email, that the notice was properly addressed and sent by email; and
 - 29.6.2 in the case of a notice sent by post or delivered by hand (including by courier), that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid.
- 29.7 **Failure to Receive a Notice:** Delivery or service in accordance with this Rule 29 will be valid and effectual even though the Member or Credit Union may not actually receive the notice.