

Proposed changes to Oversight Board Charter

Public consultation paper, May 2019



PURPOSE

1. This paper invites feedback from any interested parties on proposed changes to the Charter for GDT Events Oversight Board and Rulings Panel relating to changes to the size and composition of the Oversight Board.
2. The GDT Events Oversight Board discussed the proposed changes on 7 October 2018 and 8 May 2019. The Board approved for Global Dairy Trade to undertake public consultation on the changes, and it will consider the feedback received prior to deciding whether to adopt the proposed changes.

EXECUTIVE SUMMARY

1. Experience since the GDT Events Oversight Board was established in December 2015 indicates there is a need to consider how the Oversight Board could operate more effectively in applying its oversight responsibility for GDT Events, and in providing advice to GDT on the development of its business strategies and related initiatives.
2. To accomplish these goals requires an Oversight Board whose size, composition and tenure consistently reflects relevant skills, combined with a breadth of knowledge and experience across the global dairy ingredients industry.
3. The proposed amendments to the Charter will achieve the following:
 - a. Reduce the size of the Oversight Board to 10 members, comprising three groups of three members each and an independent chair;
 - b. For the bidder and seller groups, provide the Oversight Board with discretion to elect one member of each group based on expected contribution to GDT's objectives, while retaining specific rules for selecting the two remaining appointed members of each group;
 - c. For the Finance & Markets Group, provide the Oversight Board with discretion to elect two members with relevant experience, with the remaining third member to be an operator of a Recognised Financial Market;
 - d. For the Bidder Group, change the selection rule to remove the product category criterion so that the selection is based solely on traded quantity and the same geographical regions as applied to the seller group.
4. Other amendments are proposed as noted below and identified in the attached marked-up version of the draft Charter. A clean version is also provided for ease of reference.

SIZE AND COMPOSITION OF THE OVERSIGHT BOARD

Proposal 1: Size of Oversight Board and member groups

5. *It is proposed that the Oversight Board be limited to 10 members, comprising three groups of three members each and an independent chair. (refer Clause 2.1)*
6. The Oversight Board was established in December 2015 as a transition from the previous Advisory Board of five bidder and five seller members. With the addition of three financial markets representatives and an independent chair, the transition resulted in a Board of 14 members.
7. The Charter provided that once the initial terms were completed the maximum number of bidder and seller members would each reduce to four members, resulting in a maximum board size of 12 members.
8. The current situation is that two seats have been left vacant (one bidder and one seller), resulting in a total of 10 members.
9. In addition to the chair, the Oversight Board currently comprises a Bidder Group, a Seller Group, and a Finance Group. These groups are tied into the voting system, whereby the passing of a resolution requires at

least one vote in favour from each group (in addition to a two-thirds majority and the owner of GDT).

10. This approach has worked well, and we expect it will continue to do so provided each group comprises not less than three members.

Proposal 2a: Bidder and seller groups to each have one elected member and two appointed members

11. *It is proposed that selection of the bidder and seller members be changed from the current process where all three members of each group are appointed by GDT according to specific rules detailed in the Charter to a process where the Oversight Board elects one member of each of the Bidder Group and Seller Group based on expected contribution to GDT's objectives, while retaining specific rules for the Oversight Board to appoint the other two members of each group. (refer Clause 2.1 and Appendix 1, Part A)*
12. The current Charter tightly prescribes the composition of the bidder and seller groups through specified appointment rules.
13. While this achieves a spread of representation based on objective criteria, experience has shown that the current approach inhibits the Oversight Board's ability to ensure an appropriate breadth of skills, knowledge and experience relevant to the Oversight Board's oversight role and contribution to GDT's business strategies.
14. The 2018 re-selection of Oversight Board members also highlighted that the current approach can result in significant change in the members selected, particularly the Bidder Group which experienced a complete turnover in 2018.
15. There is benefit in loosening these constraints by introducing discretion for the Oversight Board to select one member of each of the bidder and seller groups, while ensuring the balance of stakeholder interests is maintained by retaining objective appointment rules for the other two members of each group.

Proposal 2b: Nomination criteria for elected members of bidder and seller groups

16. *It is proposed that the criteria for nominating a person for election to the bidder or seller group be as flexible as possible within guidelines that may be set by the Oversight Board, with the expectation that a nominee will be an active bidder or seller on GDT Events, a bidder or seller's affiliate, a known buyer or seller of dairy products or an individual with relevant knowledge, insight or experience of bidder or sellers' behaviours and interests, and will be likely to make a positive contribution to the Oversight Board. (refer Appendix 1, Part A, Para. h)*

Proposal 3: Finance & Markets Group to have one appointed member and two elected members

17. *It is proposed that selection of the Finance & Markets Group members be changed from the current process that gives GDT broad discretion to a process where the Oversight Board determines the members as follows:*
 - a. *The operator of a Recognised Financial Market be an appointed member;*
 - b. *The Oversight Board to elect a broker, clearing member or other participant of a relevant financial market who is expected to make a positive contribution to the Oversight Board and the Trading Platform;*
 - c. *The Oversight Board to elect a third member with relevant experience in a financial or physical commodity market or other digital platform, broader governance and regulatory experience, or who meets the criteria in 'a' or 'b', who is expected to make a positive contribution to the Oversight Board and the Trading Platform.*
(refer Clause 2.1 and Appendix 1, Part B)
18. The current Charter provides GDT with discretion to appoint three financial members based on broad guidelines that encourage the appointment of the operator of a Recognised Financial Market and the largest broking and clearing members of that market.
19. Recognised Financial Market means a financial market that has been approved by GDT to settle financial instruments by reference to the Winning Prices for a Product offered on the Trading Platform, currently being the NZX Dairy Derivatives Market.
20. Proposal 3 replaces GDT's current broad discretion with specific rules for appointing a Recognised Financial Market operator and discretion for the Oversight Board to elect two other members with relevant financial or other market, digital platform, governance or regulatory experience.

CRITERIA FOR SELECTING BUYER GROUP APPOINTED MEMBERS

Proposal 4: Bidder Group appointment criteria

21. *It is proposed that selection criteria for the Bidder Group appointed members be changed by removing the product category criteria and aligning the geographical region criterion to the same as those used for the Seller Group appointed members. (refer Appendix 1, Part A)*
22. The current Charter provides that the Bidder Group members be selected and appointed based on traded quantity, region and product category, in a manner that results in the members being spread across geographical regions (Americas & Europe; Asia & Oceania; and Middle East & Africa) and product categories (cream; powders; and other).
23. The product category criterion worked reasonably well when the Bidder Group comprised five members, but with the reduced number of members it results in arbitrary outcomes given that many bidders purchase a combination of powders, cream and other products on the platform.
24. The proposal in this paper to provide for only two Bidder Group appointed members means that the current 3x3 matrix formed from three product categories and three geographical areas is no longer appropriate for selection of the two members.
25. In contrast, the seller group selection criteria (being based solely on traded quantity and regions) is simpler and has proven robust.
26. Analysis of traded quantities suggests that the bidder group selections would be largely unaffected by using the seller group regions (Americas; Europe, Middle East & Africa; and Asia, Oceania & Rest of World) versus the current bidder group regions (Americas & Europe; Asia & Oceania; and Middle East & Africa).
27. In summary, the above proposal will result in the two appointed members for each of the Bidder Group and Seller Group being determined by largest traded quantity and regional distribution as shown in Figure 1:

Figure 1: Example of regional distribution of bidder and seller appointed members

| | Americas | Africa, Europe & Middle East | Asia, Oceania & Rest of World |
|--------------|----------|---------------------------------|----------------------------------|
| Bidder Group | I | | II |
| Seller Group | II | I | |

OTHER AMENDMENTS

28. The revised Charter also includes the following proposed changes:
 - a. Replace pre-determined election and appointment terms with discretion for the Oversight Board to determine the appropriate term of each member at the time the election or appointment is made, subject to the limit that no term may exceed three years (refer Clause 2.5(a));
 - b. Introduce a tenure limit on individual persons such that no person is eligible to serve more than three consecutive terms, while retaining the current position that there is no limit to a company's tenure as member of the Oversight Board (refer Clause 2.5(b));
 - c. In the event the Oversight Board is unable to fill a seat due either to lack of nominations or failure to achieve the necessary voting majority, the seat will remain vacant while the chair consults with members between meetings to resolve the situation as soon as reasonably possible (refer Clause 2.7);
 - d. Change the provision that a member may be removed from the Oversight Board for failing to attend three consecutive meetings to allow removal after failing to attend two consecutive meetings (refer Clause 3.1(c));
 - e. Introduce a provision for members to be reimbursed for reasonable travel and accommodation expenses in attending meetings, and for elected members who do not have an economic interest in

the operation of GDT Events to be remunerated appropriately (refer Clause 12);

- f. For bidder and seller group appointments, provide greater stability of appointments over time by increasing the period over which traded quantities are used in the appointment process from 12 months to 24 months (refer Appendix 1, Part A, Paragraphs b and c);
- g. Introduce new provisions relating to how Oversight Board members vote on new members nominated for election, including that successful election of a member requires at least two thirds majority of the members and at least one member in favour from each member group (refer Appendix 1, Part A(i), Part (b(f) and Part C)).

29. Consequential and miscellaneous amendments are proposed in Clauses 2.2, 3.1(a) and (c), 3.2 and the Definitions section.

PROCESS AND TIMING

- 30. The proposed changes discussed above are open for feedback from interested stakeholders for three weeks until close of business **Wednesday 5 June 2019**.
- 31. If the consultation process results in only minor changes, the Oversight Board will vote on the proposed changes by written resolution, with the revised Charter taking effect immediately.
- 32. If substantive submissions are received, the Oversight Board may defer further consideration to its next meeting in October.



**CHARTER
FOR GDT
EVENTS
OVERSIGHT BOARD
AND RULINGS PANEL**

MARCH 2018

**DRAFT [MONTH] 2019
MARKED UP VERSION 1.32.0**

CHARTER FOR GDT EVENTS OVERSIGHT BOARD AND RULINGS PANEL

1. OBJECTIVE AND ROLE

~~1.1.1.~~ The objective and the role of the Oversight Board are as set out in the Rules.

~~1.2.2.~~ The Members will carry out the objective and the role of the Oversight Board in accordance with the Rules and this Charter.

~~1.3.3.~~ GDT is the market administrator pursuant to Rule B4.1. This role involves compiling and distributing certain Participant-related information under the Rules and carrying out certain other functions specified in the Rules including the monitoring of, and publicly commenting on, Trading Platform outcomes and providing secretarial functions in respect of the Oversight Board and the Rulings Panel. In particular, GDT will provide notifications to the Oversight Board pursuant to Rule B4.6.

~~2.~~ APPOINTMENT OF MEMBERS

~~2.~~ MEMBERSHIP

~~2.1.1.~~ **Membership and Appointment:** The Oversight Board will comprise the following Members:

- (a) up to ~~five~~three Members that ~~are Sellers, appointed by GDT from the Bidder Group, comprising two Appointed Members and one Elected Member~~ in accordance with Appendix One;
- (b) up to ~~five~~three Members that ~~are Bidders, appointed by GDT from the Seller Group, comprising two Appointed Members and one Elected Member~~ in accordance with Appendix ~~Two~~One;
- (c) up to three Members that ~~are from the Finance & Markets Group (generally, representatives of the parties that operate, or participate in, the Relevant Recognised Financial Markets, appointed from time to time by GDT, having regard to the guidelines for appointment set out in-), comprising one Appointed Member and two Elected Members in accordance with~~ Appendix ~~Three~~One; and
- (d) the Chairperson appointed in accordance with clause ~~7.7.~~

~~provided that following the term of appointment of the Initial Members (as listed on the Information Website), the size of each of the Seller Group and Bidder Group will be reduced to up to a maximum of four Members and the process set out in Appendix One and Appendix Two to appoint the fifth member of each such group will be ignored.~~



2.2 Initial Members: The initial Members of the Oversight Board are those persons listed on the Information Website, each of whom is deemed to have been appointed in accordance with this Charter ("**Initial Members**").

2.2. Restriction: In no circumstances may an individual or organisation be appointed or elected to, or serve as a Member of, the Oversight Board concurrently with any other Representative or Affiliate of that individual or organisation, regardless of which Member Group either belongs to.

2.3.2.3. Member Representatives: Members (other than the Chairperson or any other individuals) will appoint a Representative to attend meetings of the Oversight Board and participate in meetings on their behalf. A Representative:

- (a) may be removed and replaced by the appointing Member at any time; and
- (b) must, in fulfilling his/ or her Oversight Board role, observe all Member obligations included in this Charter as if he/ or she is a Member.

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2.42.4. Best Interests: All Members shall, in fulfilling their Oversight Board role, act in a manner that they believe to be consistent with the objective and role of the Oversight Board, as set out in the Rules, and may only take into account the interests of an individual Member where they consider those interests are consistent with the objective and role of the Oversight Board. Notwithstanding the immediately preceding sentence, nothing in this Charter shall require a Member to act in a manner contrary to its own interests or a Representative to act in a manner contrary to the interests of its appointing Member.

2.5. Term:

(a) The term of appointment of each of the ~~Initial~~current Members is listed on the Information Website. Any Members that are subsequently appointed or ~~reappointed~~elected (as the case may be) to the Oversight Board shall hold such membership for a term of up to three years, ~~as determined by the Oversight Board~~ (or GDT in respect of the appointment of the Chairperson under clause 7.2) at the relevant time and having regard to the objective of ensuring a degree of continuity of membership on the Oversight Board.

2.5(b) A Member who is qualified to remain a Member under the provisions of this Charter shall be eligible for reappointment ~~as a Member at the expiry of such term or re-election as a Member at the expiry of such term, provided that in no event will any individual (either as a Representative of a Member or as a Member in his or her own right, including as the Chairperson) serve on the Oversight Board for a period of more than nine consecutive years.~~

2.62.6. Acknowledgement letter: All Members appointed ~~or elected~~ to the Oversight Board ~~subsequently to the Initial Members~~ must provide a signed letter to GDT, in a form approved by GDT, acknowledging that they will, and they will procure that their Representatives will, comply with this Charter before they ~~may~~ perform any role or function as a Member. Once a Member has been appointed ~~or elected~~ and provided such a letter, the appointment ~~or election~~ of that Member ~~and their term of appointment~~ will be notified on the Information Website.

2.7. Vacant seats: Where there is a vacant seat in any Member Group in terms of membership on the Oversight Board and that seat is unable to be filled due to:

- (a) a person declining their invitation to become a Member of the Oversight Board;
- (b) the failure of GDT or the Oversight Board to nominate a person for election; or
- (c) the failure of the Oversight Board to approve a nominee for election.

~~that seat will remain vacant. The Chairperson will consult with Members in order to achieve a resolution and fill any vacancy as soon as reasonably practicable.~~

3. REMOVAL OF MEMBERS

3.43.1. Removal: ~~The Chairperson, on the recommendation of~~ GDT:



- (a) may remove or suspend a Member of the Seller Group or the Bidder Group from time to time by notification on the Information Website and to the Oversight Board where the Member has been appointed or elected (as the case may be) pursuant to clause 2-4-2.1 and that Member:
- (i) is no longer a Seller or Bidder on the Trading Platform (as applicable); provided that, in respect of Members elected to the Seller Group or Bidder Group, such person was elected on the basis that they were a registered Seller or Bidder at the time; or
 - (ii) has been suspended by GDT from one or more Trading Events in accordance with Rule A5.5;
- (b) may remove or suspend a Member of the Finance & Markets Group from time to time by notification on the Information Website and to the Oversight Board, including in circumstances where the Member of the Finance & Markets Group no longer meets the guidelines for appointment set out in Appendix ThreeOne;
- (c) may remove or suspend a Member from time to time by notification on the Information Website and to the Oversight Board where the Member has been appointed or elected pursuant to clause 2-4-2.1 and The Chairperson determines, in its sole discretion, acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, to remove that Member (including on account of that Member (or the Representative of that Member) failing to attend threetwo consecutive meetings of the Oversight Board); and
- (d) must immediately remove a Member by notification on the Information Website and to the Oversight Board where that Member requests that it be removed resigns by letter to the Chairperson.

3.2. **Vacancy:** If a person ceases to be a Member of the Oversight Board part way through their term of appointment, the intention is that a replacement Member will be appointed or elected in accordance with this Charter. No person that has been removed from the Oversight Board in accordance with this Charter will be eligible for reappointment or re-election at a later time without the Chairperson's consent (or GDT's consent in respect of the appointment of the Chairperson).

4. MEETINGS OF OVERSIGHT BOARD

4.14.1. **Annual meeting:** The Oversight Board shall hold an annual meeting of Members at least once every calendar year. The annual meeting shall be called by GDT.

4.24.2. **Special meetings:** A special meeting of the Oversight Board may be called by:

- (a) GDT at any time; or
- (b) a Member at any time by the Member requesting GDT to call a special meeting. GDT must call a meeting within 20 Working Days of such a request.

4.34.3. **Time and place of meetings:** Each meeting of the Oversight Board shall be held at such time and place as GDT determines.

4.44.4. **Other attendees at meetings:** A representative of each of GDT, the Trading Manager and/or any other invitee of GDT may attend any meeting of the Oversight Board ("**Operational Attendees**") and may provide comments or information at any meeting that each respective Operational Attendee considers, acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, assists the functioning of the Oversight Board.

4.54.5. **Forms of meeting:** A meeting of the Oversight Board may be held either:

- (a) by a number of the Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4.64.6. **Procedure:** Except as provided in this Charter, the Oversight Board may regulate its own procedure.

5. NOTIFICATIONS



5.45.1. Meeting Notices: Written notice of the time and place of a meeting of the Oversight Board shall be sent to every Member by GDT ("**Meeting Notices**"), not less than 10 Working Days before the meeting. However, if GDT, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, considers it desirable or necessary in the circumstances it may convene a meeting at shorter notice and shall specify in the Meeting Notice why it considers a shorter notice period is desirable or necessary in those circumstances.

5.25.2. Contents of Meeting Notice: A Meeting Notice shall include:

- (a) the nature of the topics that are to be discussed at the meeting, which may include the topics specifically listed at Rule B4.6, in sufficient detail to enable a Member to form a reasoned judgment in relation to it (including nominations for Chairperson pursuant to clause 7.1);
- (b) the documents to be submitted to the meeting for consideration by the Oversight Board;

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- (c) any notification from GDT required pursuant to Rule B4.6 that has not yet been provided by way of separate update notice ("**Update Notice**"); and
- (d) any reasons why a shorter notice period for the meeting is desirable or necessary in the circumstances (if applicable pursuant to clause 5.1).

5.35.3. Meeting Notice suggestions: Members and/or Operational Attendees may contact GDT at any time after a meeting has been called until 10 Working Days before the meeting to make suggestions on the contents of the Meeting Notice. GDT shall consider such suggestions in good faith and in a manner GDT believes to be consistent with the objective and role of the Oversight Board.

5.45.4. Confidentiality and use of notices: Members must ensure that they observe the requirements set out in clause ~~14-13~~ in relation to any Update Notice or Meeting Notice received from GDT.

6. PROCEEDINGS AT MEETINGS OF OVERSIGHT BOARD

6.46.1. Requirement for quorum: Subject to clause ~~6-3, 6.3~~, no matters shall be considered at a meeting of the Oversight Board if a quorum is not present.

6.26.2. Quorum: Subject to clause ~~6-3, 6.3~~, a quorum for a meeting of the Oversight Board is 50% or more of the Members present in person (or in accordance with clause 4.5), including at least one Member from each Member Group, and the Owner.

6.36.3. Lack of quorum: If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to ~~the same day in the following week at the same time and place, or to~~ such other date, time and place as the Members may agree. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, then so long as the Owner is present at that meeting, the Members present are a quorum. If, at an adjourned meeting, the quorum does not include at least one Member from each Member Group, the requirement in clause ~~6-4-6.4~~ for a resolution of the Oversight Board to be passed with a vote from at least one Member of each Member Group will not apply to resolutions passed in that adjourned meeting, provided that any such resolutions will still require a vote from at least one Member of each Member Group that is represented at the adjourned meeting and the Owner.

6.46.4. Voting: Every Member has one vote. A resolution of the Oversight Board is passed if it is agreed to by:

- (a) subject to clause ~~6-3, 6.3~~, at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group; and
- (b) the Owner.



6.56.5. Written resolution: A written resolution, signed or assented to by the Owner and at least two thirds of the Members, including at least one Member from each Member Group, entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Oversight Board duly convened and held.

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7. CHAIRPERSON OF MEETINGS OF OVERSIGHT BOARD

7.47.1. Nominations: If a Chairperson has not yet been appointed pursuant to clause 7.2-7.2, or has been removed or has retired pursuant to clause 7.3-7.3, Members and/or Operational Attendees may contact GDT to suggest a potential nominee for the position within a reasonable time before the next scheduled meeting of the Oversight Board. GDT shall consider such suggestions in good faith and in a manner it believes to be consistent with the objective and role of the Oversight Board and in accordance with clause 7.4-7.4. Once GDT considers that it has a suitable nominee for Chairperson, it may advise Members by way of a Meeting Notice that a meeting of the Oversight Board will be held in which the Members will be asked to vote on the appointment of that person as the Chairperson (and GDT will specify the name, background and qualification of its nominee in the Meeting Notice).

7.27.2. Appointment: The Chairperson nominated by GDT, and notified to the Oversight Board under clause 7.4-7.1, will be appointed if he or she is approved by at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group that is represented at the meeting.

7.37.3. Replacement: The Chairperson:

- (a) may be removed by at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group that is represented at the meeting; and
- (b) must retire at the end of a his or her term of appointment, being a period not exceeding three years following his or her appointment under clause 7.2-7.2,

in which case a new Chairperson shall be appointed in accordance with clauses 7.4-7.1 and 7.2-7.2. Members may discuss the removal of, and vote to remove, a Chairperson even if such removal is not contemplated in the Meeting Notice for the relevant meeting. A Chairperson that retires at the conclusion of a period his or her term of three years appointment will remain eligible for reappointment in accordance with clause 7.4-7.1 (subject to clause 2.5(b)).

7.47.4. Independence: The Chairperson shall be an independent third party who is not a current representative or Affiliate of GDT, the Trading Manager, any market operator or participant in a Relevant Recognised Financial Market, any Seller or any Bidder.

7.57.5. Chairperson: Subject to clause 7.6-7.6, the Chairperson shall chair all meetings of the Oversight Board.

7.67.6. Alternate chairperson: If a Chairperson is currently appointed but is not present at a meeting, or a Chairperson is not currently appointed, and a quorum is present at a meeting, Members may appoint, by a majority of votes, a Member or Operational Attendee from GDT to chair that particular meeting. Members may discuss the appointment of, and vote for, an alternate chairperson even if such a vote is not contemplated in the Meeting Notice for the relevant



meeting. For the avoidance of doubt, the sole power of the alternate chairperson will be to chair a meeting of the Oversight Board at which the Chairperson is not present.

8. MINUTES OF MEETINGS OF OVERSIGHT BOARD

8.18.1. Minutes: The Oversight Board shall ensure that minutes are kept of all proceedings at meetings of the Oversight Board. Minutes that have been signed as true and correct by the Chairperson, or an alternate chairperson appointed pursuant to clause 7.6, are prima facie evidence of the proceedings.

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~~Chairperson, or an alternate chairperson appointed pursuant to clause 7.6, are prima facie evidence of the proceedings.~~

8.28.2. Publication: All minutes that are signed in accordance with clause ~~8.4~~ 8.1 shall be published on the Information Website within 10 Working Days of the meeting, except where deemed commercially confidential by the Oversight Board or GDT.

9. AMENDMENTS TO THE RULES

9.49.1. Approval: Subject to Rule B2.9, the approval of the Oversight Board must be obtained prior to GDT implementing any changes to the Rules (each a "Rule Change"). This approval must be sought from the Oversight Board after the public consultation phase has been completed and once the wording of the Rule Change has been finalised by GDT. Before any final decision is made by the Oversight Board regarding a Rule Change, the Oversight Board will discuss, in good faith, with GDT any concerns the Oversight Board has, or outstanding information it requires, in relation to the Rule Change.

9.29.2. Analysis: To assist with the Oversight Board's evaluation of a Rule Change:

- (a) GDT will provide the Oversight Board with summaries of all valid third party submissions made in relation to the Rule Change, as well as any variations proposed to be made to the Rule Change as a consequence of the public consultation process; and
- (b) the Chairperson may commission expert legal and/or economic analysis to be carried out to determine the likely impact of the Rule Change, with any such analysis to be provided to the Members and to GDT.

10. RECOMMENDATIONS OF OVERSIGHT BOARD

10.410.1 Recommendations:

- (a) The Oversight Board may resolve pursuant to clauses ~~6.4~~ 6.4 or ~~6.5~~ 6.5 to communicate recommendations to GDT on such matters as it sees fit having regard to the objective and role of the Oversight Board.
- (b) As set out in Rule B1.65, any recommendation made by the Oversight Board (including under clause ~~11.3(a)~~ 11.3(a)) will be considered by GDT in good faith and in a manner that is consistent with the Guiding Principles but GDT will not be under any obligation to adopt or follow such recommendation.



- (c) Notwithstanding clause ~~40.1(b)~~, ~~10.1(b)~~, where the Oversight Board resolves to recommend that a change be made to the Rules (whether by introducing a new Rule or by amending or revoking an existing Rule), GDT, acting in good faith, will work with the Oversight Board to prepare a rule change proposal to be submitted for public consultation, unless GDT reasonably believes that there are commercially justifiable reasons not to do so or to otherwise delay such rule change proposal. The fact that such a rule change proposal has been submitted for public consultation will in no way limit or avoid the need for such Rule change to be subsequently approved by GDT and the Oversight Board, as contemplated by Rule B2.2.

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11. RULINGS PANEL

11.1.1 Establishment:

- (a) Subject to clause ~~11(b)~~-11.1(b), the Chairperson shall be responsible for convening a Rulings Panel (in accordance with Appendix ~~Four~~Two) from time to time for the purpose of hearing and determining any complaints referred to him or her by GDT under Rule B3.3 ("**Complaint**"), unless he or she reasonably considers that the Complaint is vexatious, frivolous, or is, in substance, a dispute to which Rule A2.5 applies.
- (b) If either the Chairperson is conflicted in relation to a Complaint or there is no Chairperson currently appointed to the Oversight Board, the Rulings Panel may be convened in relation to a Complaint in accordance with the process set out in Appendix ~~Four~~Two, provided that the Oversight Board is satisfied that the Complaint is not vexatious, frivolous, or, in substance, a dispute to which Rule A2.5 applies.

11.2 **Funding:** GDT will meet the reasonable costs and remuneration of the members of the Rulings Panel.

11.3 Powers:

- (a) The Rulings Panel may do any of the following:
 - (i) hear and determine in a written decision any Complaint in accordance with this clause 11.1 and Appendix ~~Four~~Two;
 - (ii) determine for the purposes of Rule A5.4(a) that a breach of the Rules has occurred, in which case receipt of the Rulings Panel's written decision by the Participant in breach constitutes notice for the purposes of that Rule (but, for the avoidance of doubt, even if the Rulings Panel makes a determination for the purposes of Rule A5.4(a) that a breach has occurred, remedy of that breach will be to the reasonable satisfaction of GDT); and/or
 - (iii) require a Participant in respect of whom a Complaint has been upheld to reimburse the reasonable costs and expenses incurred by GDT (including any costs incurred under clause 11.2) in relation to a Complaint.
- (b) A Rulings Panel may not adjudicate disputes to which Rule A2.5 applies or disputes between Participants that otherwise arise at law. For the avoidance of doubt, no party to a Complaint (or any other person) shall, by virtue of a decision of a Rulings Panel, be restricted in bringing any action in a court or arbitration or equivalent adjudicative body in respect of the same subject matter as the Complaint or decision, and neither the Panel's decision nor any findings within a decision will bind the parties in any such action.

- (c) A Rulings Panel may rely on its members' own judgement and opinion and will not be acting as an arbitral tribunal for the purposes of the [New Zealand](#) Arbitration Act 1996.

11.411.4. Composition: The Rulings Panel shall be constituted in accordance with Appendix ~~Four~~[Two](#) ("Rulings Panel"), but will ordinarily ~~be comprised of~~[comprise](#):

- (a) the Chairperson; and

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- (b) two independent persons appointed in accordance with Appendix ~~Four~~Two.

~~11.5~~11.5. **No liability:** No member of the Rulings Panel (including, for the avoidance of doubt, the Chairperson) is liable, including for negligence, in respect of anything done or omitted to be done in their capacity as a member of the Rulings Panel, and are indemnified by GDT for any costs or losses incurred by them in connection with their conduct (other than fraudulent or dishonest conduct) as a member of the Rulings Panel.

~~11.6~~11.6. **Process:** The appointment of a Rulings Panel and the process by which the Rulings Panel determines a Complaint are set out in Appendix ~~Four~~Two.

~~11.7~~11.7. **Decisions and publication:**

- (a) All decisions made by a Rulings Panel shall be either unanimous or by a majority decision.
- (b) A final written decision made by a Rulings Panel will be a final and binding determination between the parties in relation to a Complaint, but will not bind or restrict in any way GDT's power to issue a future ruling under Rule B3.4 or to amend its Rules, and will not bind GDT or any future Rulings Panel in relation to the same conduct by other Participants or similar conduct by the same Participants.
- (c) All decisions shall be published on the Information Website within 10 Working Days of the decision, except where deemed (in whole or in part) commercially confidential by the Rulings Panel in its decision, or by the Oversight Board or GDT (in which case, the decision, or any parts of it deemed to be commercially confidential, will not be published).
- (d) At the conclusion of each year, the Oversight Board may elect to publish a report on the Information Website summarising the nature and number of Complaints that have been referred to the Rulings Panel for determination during the course of that year, and the Rulings Panel's decisions in relation to them.

12. REMUNERATION ~~AND OTHER BENEFITS OF MEMBERS~~ AND REIMBURSEMENT

~~12.1~~ **Remuneration and costs:** ~~Subject to clause 13, Members and their Representatives are not entitled to; From time to time GDT may authorise the payment of reasonable remuneration for a person carrying out their respective duties as Members and Representatives and will bear their own costs in relation to the carrying out of those duties, including, without limitation, travel to and attendance at a Member of the Oversight Board meetings.~~

~~13.~~ **BENEFITS OF OTHER PARTIES**



13.4.12.1. Costs: The Chairperson and/or any independent person appointed to the Rulings Panel may be reimbursed for their reasonable costs and/or remunerated by GDT for carrying out their role, as agreed with GDT from time to time. intention is that remuneration will only be considered in respect of a Member that does not have an economic interest in the operation of the Trading Platform (for example, is not a registered Seller or Bidder or a Recognised Financial Market operator who has an indirect financial interest in the operation of the Trading Platform).

12.2. Costs: Members (including, for clarity, the Chairperson) are entitled to be reimbursed for all reasonable travel and accommodation expenses properly incurred in attending meetings of the Oversight Board, provided that such expenses have been agreed by GDT in advance.

14.13. CONFIDENTIALITY AND USE OF INFORMATION

14.1 Members, the Chairperson, the Rulings Panel, GDT, the Trading Manager and the Operational Attendees must be mindful of their competition law obligations and, therefore, must observe the following to govern the conduct of all meetings, negotiations, discussions, Rulings Panel

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13.1. processes and other correspondence between Members in connection with the fulfilment of the Oversight Board role:

- (a) ~~In fulfilling their Oversight Board role,~~ Members shall not have access to, nor discuss with other Members, any non-public information held by any other Member, GDT, the Rulings Panel and/or the Trading Manager relating to, or arising from, one or more Trading Event(s) including, without limitation, information referred to in Rules C1.8, C1.9, C2.1, C2.2, C2.3, C2.5, C2.10, C2.11, C5.17, C5.18 C7.1, C7.3, C7.4 and C7.8. In fulfilling their Oversight Board role, Operational Attendees must not disclose any such information to Members.
- (b) any other non-public information held by GDT, the Rulings Panel and/or the Trading Manager not referred to in clause ~~14.1(a)-13.1(a)~~, above, may be disclosed by GDT, the Rulings Panel and/or the Trading Manager to Members provided that clauses ~~14.1(d)(i) and (ii) apply.~~ 13.1(c)(i) and (ii) apply. For the avoidance of doubt, such information may include, without limitation:
 - (i) GDT's non-public proposals under consideration in relation to the conduct, or operation, of future Trading Events; and/or
 - (ii) Any other non-public information held by GDT, the Rulings Panel and/or the Trading Manager that GDT considers needs to be disclosed to Members in order for GDT to comply with Rule B4.6.
- ~~(c) Members will not have communications with other Members in relation to, or in connection with, the fulfilment of their Oversight Board role outside of the meetings of the Oversight Board (including any position on the Rulings Panel).~~
- ~~(d)(c) Subject to clauses 7.3 and 7.6, in fulfilling their Oversight Board role (including any position on~~ Subject to clauses 7.3 and 7.6, in attending meetings (including any meeting of the Rulings Panel), Members must not discuss any topic with any other Member, or disclose any document to any other Member unless:
 - (i) that topic or document has been included:
 - ~~(aa)~~ (aa) in the Complaint that has been provided to the Rulings Panel pursuant to Rule B3.3 or any subsequent information that has been supplied to the Rulings Panel solely in connection with the Complaint; or
 - ~~(bb)~~ (bb) in the Meeting Notice circulated in advance of a meeting of the Oversight Board, pursuant to clauses ~~5.2(a) and (b), 5.2(a) and (b)~~, as being a topic for discussion or a document that will be disclosed at the meeting; and



- (ii) it is demonstrably necessary for the purposes of fulfilling the objective and role of the Oversight Board (set out at clause 1.1) or the Rulings Panel (as applicable).

~~(e)(d)~~ For the avoidance of doubt, ~~in fulfilling their Oversight Board role,~~ Members must not exchange or discuss:

- ~~(i)~~ specific, non-aggregated, commercially sensitive confidential information relating to any individual Member's price, terms of sale, customers,

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(i) suppliers, non-public future plans, or costs, including any information that a Member has received on a confidential basis from GDT pursuant to the Rules;

(ii) any topic or specific aspect of a Member's respective business that is not necessary for fulfilling the objective and role of the Oversight Board (set out clause 1.1); or

(iii) any proposal that would have the purpose or effect of unfairly damaging any Bidder or Seller.

(f)(e) No contract, arrangement or understanding may arise between Members as to the conduct of a Member's business as a result of any discussions or negotiations in connection with the fulfilment of the Oversight Board role.

(g)(f) Each Member, Chairperson and Operational Attendee must ensure that any Confidential Information that it receives, including Update Notices or Meeting Notices, is marked "*Confidential and subject to common interest privilege*" and kept in a separate file. The file cover shall be marked "*Confidential and subject to common interest privilege*".

(h)(g) A Member, Chairperson or Operational Attendee must not disclose Confidential Information to any person, or make use of, or act on, the Confidential Information, except:

(i) for the purpose of carrying out the role and function of the Oversight Board or the Rulings Panel (as the case may be);

(ii) as required by law; or

(iii) in accordance with clause (f)(f) below.

(i)(h) Each Member will nominate and provide the Chairperson with a record, updated as necessary, of their team of officers, employees or advisers that require access to Confidential Information for the purposes of assisting the Member to carry out the role and function of the Oversight Board (the "**Teams**") (external advisers may be listed by firm/organisation name). This record will be kept on file by the Chairperson. Any Representative must be a member of a Member's Team in order to be appointed under clause 2.3.2.3. The following protocols will apply in relation to the Teams:

(i) Confidential Information will not be disseminated beyond the Team members and will only be disclosed to the Team members for the purpose of carrying out the role and function of the Oversight Board.



- (ii) The Team will not be any broader than is absolutely necessary to assist the Member in carrying out the role and function of the Oversight Board.
- (iii) To the greatest extent possible the Team members that are internal officers, employees or advisers of a Member should be senior personnel.
- (iv) Members may add persons to their respective Teams members as necessary to assist the Member in carrying out the role and function of the Oversight Board by providing the Chairperson with an updated record of their Team members.

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~~Oversight Board by providing the Chairperson with an updated record of their Team members.~~

- (v) Before assisting the Member to perform its Oversight Board role or function, or accessing any Confidential Information, each Team member must have explained by a legal counsel approved by GDT, the application of competition laws, in order to facilitate a clear understanding of the principles underlying the restrictions on the exchange and/or use of Confidential Information contained in this Charter, as well as of the range of conduct that is prohibited by, and the range of possible penalties for proven breaches of, competition laws.
- (vi) Each Member, and their respective Team members, must take all reasonable steps necessary to protect Confidential Information in their possession from being improperly accessed by any persons not in their Team.

~~(j)(i)~~ Each Member must destroy any Confidential Information held in its file once it considers, in its reasonable judgment, that it no longer requires that Confidential Information to enable it to carry out the role and function of the Oversight Board.

~~(k)(i)~~ In the event of uncertainty as to the competition law implications of exchange of any particular piece of Confidential Information, or discussion on any particular topic, a Member, Chairperson or Operational Attendee should consult with GDT immediately.

~~(j)(k)~~ The Chairperson, any Operational Attendee and/or any Member, may terminate a meeting at any time if he/she considers that any discussion, or information exchange, is taking place that may contravene any competition laws, and GDT's legal counsel must be informed of such termination immediately by telephone call from the Chairperson.

~~(m)(l)~~ If the Chairperson, any Operational Attendee or any Member becomes aware of any discussion, or information exchanges, between Members that it considers may contravene any competition laws, it will report that immediately by telephone call to GDT's legal counsel.

15.14. AMENDMENT TO CHARTER

15.14.1. This Charter (including for the avoidance of doubt the appendices) may be amended by GDT from time to time by following the rule change procedure set out in Rule B2 of the Rules, including in response to a recommendation by the Oversight Board as contemplated by clause ~~10.1(e)~~-~~10.1(c)~~.



16.15. DEFINITIONS AND INTERPRETATION

15.1. Definitions: In this Charter, unless the context otherwise requires:

"Appointed Member" means a Member appointed by the Chairperson to its relevant Member Group in accordance with the objective criteria in Appendix One.

16.1 "Affiliate" means in relation to any person:
(a) any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, that person. A person will be deemed to control another

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(a) _____ person if that person possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of that other person, whether by operation of law, by contract, through the ownership of voting securities or otherwise; and

(b) any director, officer or employee, representative or agent of that person or any other person described in paragraph (a).

"**Bidder**" means a GDT Events Participant who is accepted as eligible to participate in a Trading Event and has signed an approved Participation Agreement.

"**Bidder Group**" means the group of Members that are appointed ~~by GDT~~ or elected pursuant to clause ~~2.1(b)-2.1(a)~~ of this Charter.

"**Confidential Information**" means non-public information received by a Member, Chairperson, Operational Attendee or member of the Rulings Panel, in the performance of its Oversight Board role or Rulings Panel role (as the case may be), for as long as that information is not public knowledge (unless it has become public information as a result of a breach of this Charter in which case it shall continue to be Confidential Information).

"**Chairperson**" means the chairperson of the GDT Events Oversight Board, appointed by the Oversight Board under section ~~7.4-7.2~~.

"**Charter**" means this charter, as amended from time to time in accordance with clause ~~15.14~~.

"**Elected Member**" means a Member elected by the Oversight Board to its relevant Member Group in accordance with the criteria for election in Appendix One.

"**Finance & Markets Group**" means the group of Members that are appointed ~~by GDT~~ or elected pursuant to clause ~~2.1(e)-2.1(c)~~ of this Charter.

"**GDT**" means GlobalDairyTrade Holdings Limited, the entity that operates the Trading Platform in conjunction with the Trading Manager.

"**Information Website**" means the GDT Information Website located at the address ~~www.globaldairytrade.info~~, www.globaldairytrade.info, or any other web address specified by GDT.

"**Member**" means a person, entity, ~~or~~ business or individual appointed or elected as a member of the GDT Events Oversight Board in accordance with the Rules and this Charter.

"**Member Group**" means each of the Seller Group, Bidder Group and Finance & Markets Group.

"**Oversight Board**" means the GDT Events Oversight Board, consisting of the Members, established by GDT to carry out the objective and the role set out in the Rules.

"**Owner**" means the ultimate owner of GDT, being currently Fonterra Co-operative Group Limited.

"**Participant**" means a person (other than GDT) who has entered into a Participation Agreement.

"**Person**" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

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"**Product**" means any one of the dairy products listed on the Information Website, from time to time, as being for sale through the Trading Platform.

~~"**Representative**" means an individual that is appointed as the representative of a Member pursuant to clause 2.3.~~

"**Relevant Recognised Financial Market**" means a financial market that has been approved by GDT to settle financial instruments by reference to the Winning Prices for a Product offered on the Trading Platform.

~~"**Representative**" means an individual that is appointed as the representative of a Member pursuant to clause 2.3.~~

"**Rules**" means the GDT Trading Event Rules dated December 2015, as amended from time to time.

~~"**Seller**"~~ means a Participant who is accepted as eligible to use the Trading Platform to offer one or more Products for sale during a Trading Event and has signed an approved Participation Agreement.

"**Seller Group**" means the group of Members that are appointed ~~by GDT~~ or elected pursuant to clause ~~2.1(a)-2.1(b)~~ of this Charter.

"**Trading Event**" means the GDT trading events at which Sellers offer dairy Products for sale via the Trading Platform in accordance with the Rules.

"**Trading Manager**" means the Trading Manager appointed under Rule B4.~~25~~ of the Rules.

"**Trading Platform**" means the trading platform known as GDT Events through which Trading Events are held and includes all activities and infrastructure associated with the operation of Trading Events.

~~"**Working Day**"~~ has the meaning set out in section 2 of the New Zealand Companies Act 1993.

46.215.2 Interpretation: In this Charter, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Charter;
 - (b) the singular includes the plural and vice versa;
 - (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
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- (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) **“written”** and **“in writing”** include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Rules have the same meaning in this Charter;

A large, stylized graphic of the letters 'D' and 'R' in a vibrant pink color. The 'D' is on the left and the 'R' is on the right, both rendered in a thick, rounded, sans-serif font. The 'D' has a slightly irregular, hand-drawn appearance. The 'R' is also thick and rounded, with a curved top and a straight vertical stem that ends in a small, rounded tip.

- (f) where any word or expression is defined in this Charter, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections are references to clauses and sections in this Charter, unless stated otherwise.

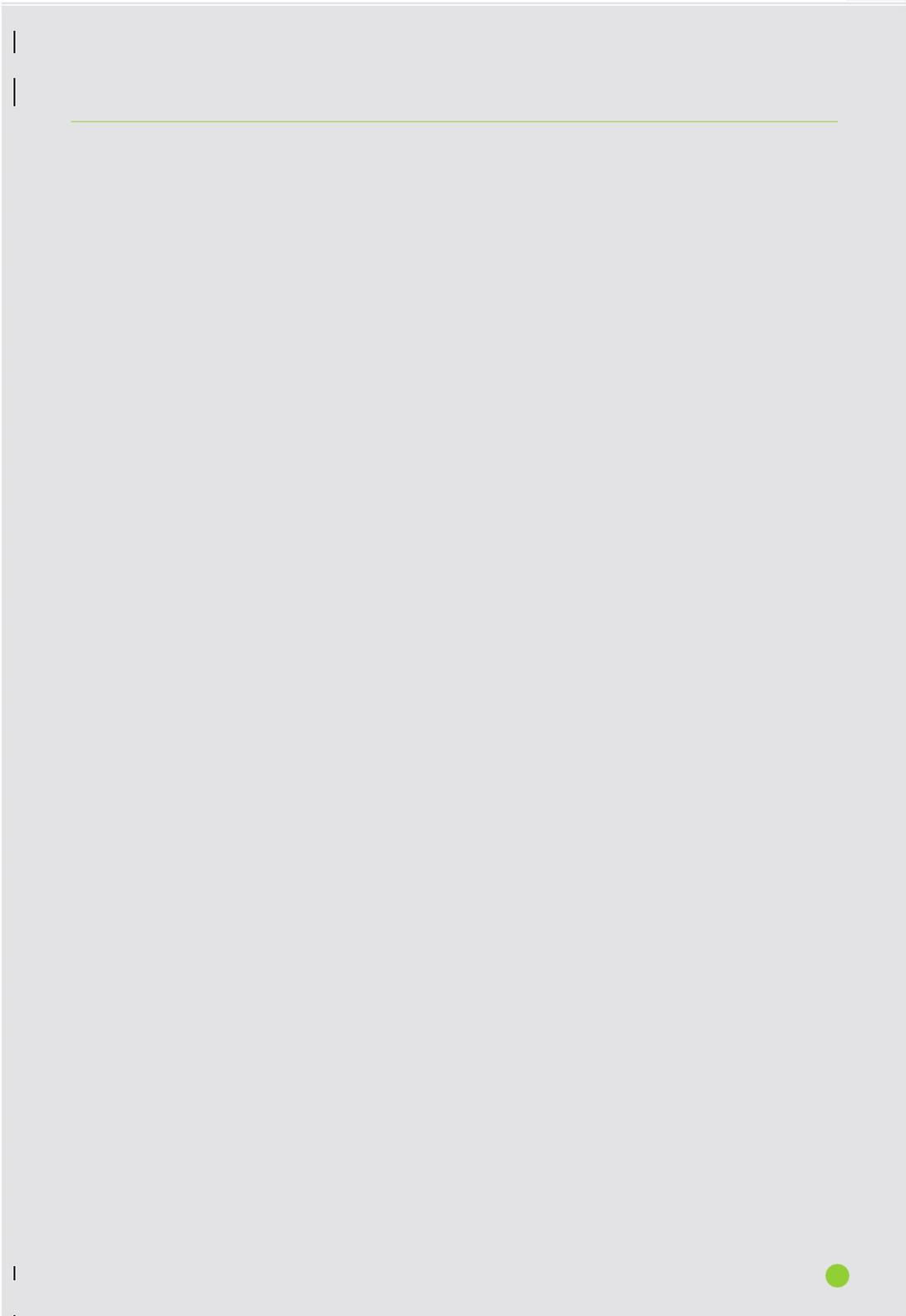
16.315.3 Charter to prevail: To the extent there is any conflict between:

- (a) a provision in this Charter and a provision in the Rules; or
- (b) a word or expression defined or explained in the Rules and a word or expression defined or explained in this Charter,

the provision, word or expression in this Charter prevails.



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APPENDIX ONE

Part A: Bidder and Seller Appointment Process

The Seller representation Group appointment and election process

The Bidder and Seller Group appointment and election process operates as follows:

- a. Each Bidder and Seller is assigned a region:
 - i. in respect of each Bidder, according to the country identified by the Bidder during their registration process; and
 - ii. in respect of each Seller, based on that Seller's largest source of supply offered on the Trading Platform over the 1224 months prior to the month of the selection process,
 - a. with the regions being defined as Americas; Europe, Middle East & Africa; and Oceania, Asia & Rest of World (Americas includes (including all of North & South America and Latin America.); Africa, Europe, & Middle East & Africa includes (including Eastern Europe and Russia.); and Asia, Oceania & Rest of World.

Bidder and Seller Group Appointed Members

- b. The first three Sellers would Bidder Group Appointed Members will be selected appointed as follows:
 - i. The first Seller-selected Appointed Member of the Bidder Group is the Seller Bidder with the largest offer quantity traded over past 12 the preceding 24 months; and
 - ii. The second Seller-Appointed Member of the Bidder Group is the Bidder with the next largest seller quantity traded over the preceding 24 months who is in a different region from the first Bidder.
- c. The Seller Group Appointed Members will be appointed as follows:
 - ii. The first Appointed Member of the Seller:
 - i. The third Seller-Group is the Seller with the largest quantity traded over the preceding 24 months; and
 - iii. ii. The second Appointed Member of the Seller Group is the Seller with the next largest Seller quantity traded over the preceding 24 months who is in the last remaining a different region not covered by from the first two Sellers Seller.
- d. The first For clarity, the two Appointed Members in each Member Group will cover at least two of the three Sellers will be sufficient to ensure each region is covered by one Seller regions in each respective group at any given time, as illustrated below:

Example only:

| | Americas | Africa, Europe, & Middle East & Africa | Asia, Oceania, Asia & Rest of World |
|------------------------|----------|--|-------------------------------------|
| <u>ii</u> Bidder Group | ii | i | ii |
| <u>Seller Group</u> | ii | i | |

Inserted Cells

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e. To make up to five Sellers, the last two Seller will be selected as follows:

- i. The fourth Seller is the next largest Seller across all regions;
- ii. The fifth and last Seller is the next largest Seller who is in a region not covered by the fourth Seller.

e. If a Bidder or a Seller is a group of associated businesses, the Oversight Board may, in its absolute discretion acting in good faith and in a manner that is consistent with its objective and role, select one of that Bidder or Seller's (as the case may be) associated businesses as a Member instead of that Bidder or Seller.

The end result will be that some regions will be covered by more than one Seller, as illustrated below:

Example only:

| Americas | Europe, Middle East & Africa | Oceania, Asia & Rest of World |
|----------|------------------------------|-------------------------------|
| ii | ii | i |
| i | | v |

~~d.f.~~ If one or more ~~selected~~~~appointed~~ Members decline their invitation, a replacement Member will be ~~selected~~~~appointed~~ using the above process, ~~amended~~~~applied~~ such that it results in a spread of representation as described above.

Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board.

~~g.~~ Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board. If an ~~intention to accept~~~~if acceptance~~ is not received within the set timeline, the invitation will be considered as declined and GDT will proceed with the invitation of another Member.

~~If a Member initially accepts their invitation but ceases to be a Member of the Oversight Board part way through their term, a replacement Member will be added using the above process, amended such that it results in a spread of representation as described above. No Member that has been removed from the Oversight Board by GDT in accordance with the Charter will be eligible for reselection without GDT's consent, and the above process will be amended to reflect this intention.~~

~~e.~~ If a Seller is a group of associated businesses, GDT may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, ~~select one of that Seller's associated businesses as a Member instead of appointing that Seller as a Member.~~

~~f.~~ In no circumstances may a Seller be appointed to, or serve as a Member of, the Oversight Board concurrently with any Affiliate of that Seller, regardless of which Member Group that Affiliate belong to.





APPENDIX TWO

Bidder Appointment Process

The Bidder representation Bidder and Seller Group Elected Members

- h. Nominations for the third Member of each of the Bidder and Seller Groups will be made by GDT or an existing Member of the Oversight Board. An individual or organisation may be nominated in accordance with nomination guidelines that may be published by the Oversight Board from time to time. Without limiting such guidelines, the expectation is that a nominee will be an active Bidder or Seller, a Bidder or Seller's Affiliate, a known buyer or seller of dairy products or an individual with relevant knowledge, insight or experience of Bidder or Sellers' behaviours and interests (as applicable), and will be likely to make a positive contribution to the Oversight Board.
- i. In order for an individual or organisation nominated in accordance with (h) above to be elected they must be approved by a two thirds majority of the Members of the Oversight Board voting at a meeting (including via postal vote), including at least one vote in favour from a Member of each Member Group in accordance with clause 6.4(a) of the Charter.

Part B: Finance & Markets Group appointment and election process

The Finance & Markets Group appointment and election process operates as follows:

- a. — Each Bidder is assigned a region, product category, and category volume as follows:

 - ~~i. — The region will be assigned to the Bidder according to the country identified by the Bidder during their registration process (the three regions are Asia & Oceania, Middle East & Africa, and Americas & Europe);~~

The product category will be assigned to the Bidder according to the category in which they purchased the largest quantity over the 12 months prior to the month of the selection process (Appointed Member)
- a. The Finance & Markets Group Appointed Member will be the operator of the Recognised Financial Market with the largest trading quantity (MT) of the Products for which Winning Prices on the Trading Platform are an input into the calculation of settlement of a financial instrument on that Recognised Financial Market.
- b. If such operator declines an appointment as a Member, the Oversight Board may elect a further Member to the Finance & Markets Group under the criteria in (e) below.

Elected Members

- ~~ii. — Nominations for the three product categories are cream, powders, and other);~~
- ~~iii. — The category volume for a Bidder will be the total quantity purchased in the Bidder's product category over the 12 months prior to the month of the selection process.~~
- b. — The first three Bidders are selected as follows:

 - ~~i. — The first bidder selected~~**second Member of the Finance & Markets Group will be the Bidder with the largest category volume across all product categories — this bidder will stand for a particular region and product category;**

- ii.—The second Bidder will be the bidder with the next largest category volume who is in a different region and different product category from the first Bidder;
- iii.—The third bidder will be the Bidder with the next largest category volume who is in the last remaining region and last remaining product category not covered by the first two bidders.

The first three Bidders will be sufficient to ensure each region and each product category is covered made by one bidder, as illustrated below:

Example only:

| | Americas and Europe | Asia & Oceania | Middle East & Africa |
|---------|---------------------|----------------|----------------------|
| Cream | | i | |
| Powders | i | | |
| Other | | | i |

e.—To make up to five Bidders, the last two Bidders will be selected as follows:

- i.—The fourth Bidder will be the Bidder with the largest category volume who is in a region/product category combination not already covered by the previous three Bidders;

- ii. The fifth and last Bidder will be the Bidder with the next largest category volume who is in a region/product category combination not already covered by the previous four bidders.

The end result will be that some regions and some product categories will be covered by more than one Bidder, as illustrated below:

Example only:

| | Americas and Europe | Asia & Oceania | Middle East & Africa |
|---------|---------------------|----------------|----------------------|
| Cream | i | i | |
| Powders | ii | | v |
| Other | | | ii |

- d. If one or more selected Members decline their invitation a replacement Member will be selected using the above process amended such that it results in a spread of representation as described above.

~~Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board. If an intention to accept is not received within the set timeline, the invitation will be considered as declined and GDT will proceed with the invitation of another member.~~

~~If a Member initially accepts their invitation but ceases to be a GDT or an existing Member of the Oversight Board part way through their term, a replacement Member will be added using the above process, amended such that it results in a spread of representation as described above. No Member that has been removed from The second Member must be a broker, clearing member or other participant of a Recognised Financial Market. In considering candidates for nomination, GDT and the Oversight Board by GDT in accordance with the Charter will be eligible for reselection without GDT's consent, and the above process will be amended to reflect this intention.~~

- e. If a Bidder is a group of associated businesses, GDT may, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, select one of that Bidder's associated businesses as a Member instead of appointing that Bidder as a Member.
- f. In no circumstances may a Bidder be appointed to, or serve as a Member of, the Oversight Board concurrently with any Affiliate of that Bidder, regardless of which Member Group that Affiliate belongs to.





APPENDIX THREE

Finance Group Appointment Guidelines

c. GDT may appoint persons from the Relevant Financial Markets to the Oversight Board in its sole discretion. Without limiting that discretion, GDT may, but is not obliged to, have regard to all or any of the following factors ~~when selecting persons from the Relevant Financial Markets;~~

- ~~the value of trading undertaken on each Relevant Financial Market in respect of financial instruments settled by reference to the Winning Prices for Products offered on the Trading Platform;~~

~~*i. the largest~~the established broking ~~and/or~~ clearing members, ~~by value,~~ on each ~~Relevant~~Recognised Financial Market in respect of financial instruments settled by reference to the Winning Prices for Products offered on the Trading Platform;

- ~~the period in which a~~ person~~member~~ has been a ~~market operator of, or~~ participant in, a ~~Relevant~~Recognised Financial Market;

~~*ii. and~~ the solvency, standing and reputation of ~~a market operator of, or~~that participant ~~in, a Relevant Financial Market;~~ and

~~iii. any other factor which GDT considers~~the potential for a particular financial industry participant to be relevant ~~make a positive contribution to the Oversight Board and Trading Platform.~~

d. If no appointment is made under the criteria in light(c) above, including in circumstances where a person nominated for appointment declines to accept that appointment, the Oversight Board may elect a further Member to the Finance & Markets Group under the criteria in (e) below.

e. Nominations for the third Member of the purpose, role and function Finance & Markets Group will be made by GDT or an existing Member of the Oversight Board, as amended. The third Member of the Finance & Markets Group must be:

i. another Recognised Financial Market operator or a member appointed under the criteria in (c) above; or

ii. any other person with relevant experience in a financial or physical commodity market, other digital platform (including ecommerce platform), or with other relevant governance and/or regulatory experience, who is expected to make a positive contribution to the Oversight Board and Trading Platform.

f. In order for an individual or organisation nominated in accordance with (c) or (e) above to be elected they must be approved by a two thirds majority of the Members of the Oversight Board voting at a meeting (including via postal vote), including at least one vote in favour from a Member of each Member Group in accordance with clause 6.4(a) of the Charter.



Part C: Voting on elections

*a. A Member of the Oversight Board may exercise the right to vote on Member election matters by casting a postal vote. The postal vote must be sent as a notice to the Chairperson not less than 48 hours before the start of the meeting, or such other time to be determined by the Oversight Board. For the avoidance of doubt, a postal vote may be cast using electronic means.



b. If a Member nominated by GDT or a Member of the Oversight Board is an entity or business, the proposed Representative of that Member must be confirmed in writing prior to the Oversight Board voting on whether or not to elect that Member.

c. For the purposes of the approval of persons nominated in accordance with this Appendix One, a written resolution, signed or assented to by at least two thirds of the Members, including at least one Member from each Member Group, is as valid and effective.

APPENDIX ~~FOUR~~TWO

Rulings Panel Process

1. 1. The Participant(s) or GDT (as the case may be) making the Complaint, and the Participant(s) named in the Complaint, are referred to in this Appendix as "Parties".
2. 2. A Rulings Panel shall comprise:
 - (a) (a) _____ the Chairperson (subject to clause 3(a) below); and
 - (b) (b) _____ two independent persons, appointed in accordance with clause 3 below.
3. 3. In order to convene a Rulings Panel:
 - (a) (a) The Chairperson shall confirm to GDT that he or she has no conflict of interest in relation to the Complaint and is otherwise available to hear the Complaint. If that confirmation is provided to the satisfaction of GDT, the Chairperson shall be appointed as Chairperson of the Rulings Panel. If that confirmation is not provided or if there is no Chairperson currently appointed (excluding any alternate Chairperson appointed to chair an Oversight Board meeting in accordance with clause ~~7-6-7.6~~ of the Charter), then three persons shall be appointed under sub clauses (b) to (d) instead of two.
~~(b) to (d) instead of two.~~
 - (b) (b) The Chairperson, or in the case where the Chairperson is unable to be appointed to the Rulings Panel for the purposes of clause (a) above, GDT or, if GDT is the party making the Complaint, the Oversight Board, shall nominate two further persons to be appointed to the Rulings Panel to hear the Complaint. In so nominating, the Chairperson (or GDT or the Oversight Board, as the case may be) may have regard to the qualifications and expertise of the proposed nominees in light of the particular Complaint, but may make any such nomination in his or her (or its, as the case may be) absolute discretion.
 - (c) (c) The Chairperson (or GDT or the Oversight Board, as the case may be) shall seek written confirmation from each proposed nominee that he or she has no conflicts of interest in relation to the particular Complaint and is otherwise available to hear the Complaint. If that confirmation is provided, to the satisfaction of the Chairperson (or GDT or the Oversight Board, as the case may be), the name of the nominee(s) shall be provided to the Parties, who may provide submissions within 3 working days on the appropriateness of the nominee(s) to be appointed to the Rulings Panel to hear the Complaint. The Chairperson (or GDT or the Oversight Board, as the case may be) must consider any such submissions, but has absolute discretion (including in relation to conflicts of interest) as to the appointment of any members of the Rulings Panel.
 - (d) (d) Once the Chairperson (or GDT or the Oversight Board, as the case may be) has considered the Parties' submissions (if any) as to the identity of the nominees, he or she (or

it) may appoint a nominee or nominees to the Rulings Panel by informing the nominee(s) in writing, which notice shall be copied to the Parties.

~~(e)~~ (e) In the event three persons have been appointed to the Rulings Panel by GDT or the Oversight Board (as the case may be) in accordance with clauses (b) to (d) above,



GDT or the Oversight Board (as the case may be) will determine which of those three persons shall act as Chairperson of that Rulings Panel.

~~(f)~~ (f) Once the Rulings Panel has been convened, its Chairperson will seek the Parties' views on the most appropriate and efficient means of hearing and determining the Complaint. For the avoidance of doubt, the Rulings Panel may in its absolute discretion determine the procedure for hearing and determining a Complaint.

~~(g)~~ (g) The Rulings Panel must:

~~(i)~~ (i) give the Party against whom a Complaint has been lodged a reasonable opportunity to respond to the Complaint; and

~~(ii)~~ (ii) where, at any stage prior to issuing a final decision, a majority of the Rulings Panel considers there is material uncertainty about the interpretation of a particular Rule, seek a written statement from GDT as to its view of the intended meaning and/or correct interpretation of that Rule (and such written statement must be made available to the Parties prior to the Rulings Panel's determination of the Complaint).

~~(h)~~ (h) The Rulings Panel may (subject always to clause (g)(i) above):

~~(i)~~ (i) require a Party to provide information to the Rulings Panel, whether by way of documents, statements of evidence or submissions;

~~(ii)~~ (ii) appoint an expert or other advisor of its own volition (and, if so, the Oversight Board will pay that expert or advisor's reasonable costs); and/or

~~(iii)~~ (iii) determine the Complaint "on the papers" or following a hearing with the Parties (however, if the Rulings Panel convenes a hearing, it must invite all Parties to attend and give them a reasonable opportunity to present their position).

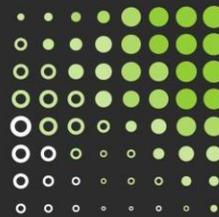
~~(i)~~ (i) The Rulings Panel may make any order referred to in clause ~~11.3(a)~~11.3(a) of the Charter, whether sought by a Party, or ordered of the Rulings Panel's own volition, subject only to clause (k) below.

~~(j)~~ (j) Failure of a Party to comply with a procedural direction or request of the Rulings Panel may result in an adverse inference being drawn in respect of a Complaint, or a Complaint being determined against the Party in default, but is not itself a breach of the Rules.

~~(k)~~ (k) The Rulings Panel must provide its draft decision to all the Parties, who will then have 10 working days to provide any comments it wishes in writing, including as to

whether any material within the draft decision is commercially sensitive or confidential. The Rulings Panel may, but is not obliged to, take such comments into account, and must then deliver a final decision.

~~(+)~~ ~~(1)~~ There is no right of appeal of any kind from a decision of the Rulings Panel.



**GLOBALTM
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CHARTER FOR GDT EVENTS OVERSIGHT BOARD AND RULINGS PANEL

DRAFT [MONTH] 2019
CLEAN VERSION 2.0

CHARTER FOR GDT EVENTS OVERSIGHT BOARD AND RULINGS PANEL

1. OBJECTIVE AND ROLE

- 1.1. The objective and the role of the Oversight Board are as set out in the Rules.
- 1.2. The Members will carry out the objective and the role of the Oversight Board in accordance with the Rules and this Charter.
- 1.3. GDT is the market administrator pursuant to Rule B4.1. This role involves compiling and distributing certain Participant-related information under the Rules and carrying out certain other functions specified in the Rules including the monitoring of, and publicly commenting on, Trading Platform outcomes and providing secretarial functions in respect of the Oversight Board and the Rulings Panel. In particular, GDT will provide notifications to the Oversight Board pursuant to Rule B4.6.

2. MEMBERSHIP

- 2.1. **Membership:** The Oversight Board will comprise the following Members:
 - (a) up to three Members that form the **Bidder Group**, comprising two Appointed Members and one Elected Member in accordance with Appendix One;
 - (b) up to three Members that form the **Seller Group**, comprising two Appointed Members and one Elected Member in accordance with Appendix One;
 - (c) up to three Members that form the **Finance & Markets Group** (generally, representatives of the parties that operate, or participate in, the Recognised Financial Markets), comprising one Appointed Member and two Elected Members in accordance with Appendix One; and
 - (d) the Chairperson appointed in accordance with clause 7.
- 2.2. **Restriction:** In no circumstances may an individual or organisation be appointed or elected to, or serve as a Member of, the Oversight Board concurrently with any other Representative or Affiliate of that individual or organisation, regardless of which Member Group either belongs to.
- 2.3. **Member Representatives:** Members (other than the Chairperson or any other individuals) will appoint a Representative to attend meetings of the Oversight Board and participate in meetings on their behalf. A Representative:
 - (a) may be removed and replaced by the appointing Member at any time; and
 - (b) must, in fulfilling his or her Oversight Board role, observe all Member obligations included in this Charter as if he or she is a Member.
- 2.4. **Best Interests:** All Members shall, in fulfilling their Oversight Board role, act in a manner that they believe to be consistent with the objective and role of the Oversight Board, as set out in the Rules, and may only take into account the interests of an individual Member where they consider those interests are consistent with the objective and role of the Oversight Board. Notwithstanding the immediately preceding sentence, nothing in this Charter shall

require a Member to act in a manner contrary to its own interests or a Representative to act in a manner contrary to the interests of its appointing Member.

2.5. **Term:**

- (a) The term of appointment of each of the current Members is listed on the Information Website. Any Members that are subsequently appointed or elected (as the case may be) to the Oversight Board shall hold such membership for a term of up to three years, as determined by the Oversight Board (or GDT in respect of the appointment of the Chairperson under clause 7.2) at the relevant time and having regard to the objective of ensuring a degree of continuity of membership on the Oversight Board.
- (b) A Member who is qualified to remain a Member under the provisions of this Charter shall be eligible for reappointment or re-election as a Member at the expiry of such term, provided that in no event will any individual (either as a Representative of a Member or as a Member in his or her own right, including as the Chairperson) serve on the Oversight Board for a period of more than nine consecutive years.

2.6. **Acknowledgement letter:** All Members appointed or elected to the Oversight Board must provide a signed letter to GDT, in a form approved by GDT, acknowledging that they will, and they will procure that their Representatives will, comply with this Charter before they perform any role or function as a Member. Once a Member has been appointed or elected and provided such a letter, the appointment or election of that Member and their term of appointment will be notified on the Information Website.

2.7. **Vacant seats:** Where there is a vacant seat in any Member Group in terms of membership on the Oversight Board and that seat is unable to be filled due to:

- (a) a person declining their invitation to become a Member of the Oversight Board;
- (b) the failure of GDT or the Oversight Board to nominate a person for election; or
- (c) the failure of the Oversight Board to approve a nominee for election,

that seat will remain vacant. The Chairperson will consult with Members in order to achieve a resolution and fill any vacancy as soon as reasonably practicable.

3. REMOVAL OF MEMBERS

3.1. **Removal:** The Chairperson, on the recommendation of GDT:

- (a) may remove or suspend a Member of the Seller Group or the Bidder Group from time to time by notification on the Information Website and to the Oversight Board where the Member has been appointed or elected (as the case may be) pursuant to clause 2.1 and that Member:
 - (i) is no longer a Seller or Bidder on the Trading Platform (as applicable), provided that, in respect of Members elected to the Seller Group or Bidder Group, such person was elected on the basis that they were a registered Seller or Bidder at the time; or
 - (ii) has been suspended by GDT from one or more Trading Events in accordance with Rule A5.5;

- (b) may remove or suspend a Member of the Finance & Markets Group from time to time by notification on the Information Website and to the Oversight Board where the Member of the Finance & Markets Group no longer meets the guidelines for appointment set out in Appendix One;
- (c) may remove or suspend a Member from time to time by notification on the Information Website and to the Oversight Board where the Member has been appointed or elected pursuant to clause 2.1, and the Chairperson determines, in its sole discretion, acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, to remove that Member (including on account of that Member (or the Representative of that Member) failing to attend two consecutive meetings of the Oversight Board); and
- (d) must immediately remove a Member by notification on the Information Website and to the Oversight Board where that Member resigns by letter to the Chairperson.

3.2. **Vacancy:** If a person ceases to be a Member of the Oversight Board part way through their term of appointment, the intention is that a replacement Member will be appointed or elected in accordance with this Charter. No person that has been removed from the Oversight Board in accordance with this Charter will be eligible for reappointment or re-election at a later time without the Chairperson's consent (or GDT's consent in respect of the appointment of the Chairperson).

4. MEETINGS OF OVERSIGHT BOARD

4.1. **Annual meeting:** The Oversight Board shall hold an annual meeting of Members at least once every calendar year. The annual meeting shall be called by GDT.

4.2. **Special meetings:** A special meeting of the Oversight Board may be called by:

- (a) GDT at any time; or
- (b) a Member at any time by the Member requesting GDT to call a special meeting. GDT must call a meeting within 20 Working Days of such a request.

4.3. **Time and place of meetings:** Each meeting of the Oversight Board shall be held at such time and place as GDT determines.

4.4. **Other attendees at meetings:** A representative of each of GDT, the Trading Manager and/or any other invitee of GDT may attend any meeting of the Oversight Board ("**Operational Attendees**") and may provide comments or information at any meeting that each respective Operational Attendee considers, acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, assists the functioning of the Oversight Board.

4.5. **Forms of meeting:** A meeting of the Oversight Board may be held either:

- (a) by a number of the Members who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4.6. **Procedure:** Except as provided in this Charter, the Oversight Board may regulate its own procedure.

5. NOTIFICATIONS

5.1. **Meeting Notices:** Written notice of the time and place of a meeting of the Oversight Board shall be sent to every Member by GDT ("**Meeting Notices**"), not less than 10 Working Days before the meeting. However, if GDT, in its absolute discretion acting in good faith and in a manner that is consistent with the objective and role of the Oversight Board, considers it desirable or necessary in the circumstances it may convene a meeting at shorter notice and shall specify in the Meeting Notice why it considers a shorter notice period is desirable or necessary in those circumstances.

5.2. **Contents of Meeting Notice:** A Meeting Notice shall include:

- (a) the nature of the topics that are to be discussed at the meeting, which may include the topics specifically listed at Rule B4.6, in sufficient detail to enable a Member to form a reasoned judgment in relation to it (including nominations for Chairperson pursuant to clause 7.1);
- (b) the documents to be submitted to the meeting for consideration by the Oversight Board;
- (c) any notification from GDT required pursuant to Rule B4.6 that has not yet been provided by way of separate update notice ("**Update Notice**"); and
- (d) any reasons why a shorter notice period for the meeting is desirable or necessary in the circumstances (if applicable pursuant to clause 5.1).

5.3. **Meeting Notice suggestions:** Members and/or Operational Attendees may contact GDT at any time after a meeting has been called until 10 Working Days before the meeting to make suggestions on the contents of the Meeting Notice. GDT shall consider such suggestions in good faith and in a manner GDT believes to be consistent with the objective and role of the Oversight Board.

5.4. **Confidentiality and use of notices:** Members must ensure that they observe the requirements set out in clause 13 in relation to any Update Notice or Meeting Notice received from GDT.

6. PROCEEDINGS AT MEETINGS OF OVERSIGHT BOARD

6.1. **Requirement for quorum:** Subject to clause 6.3, no matters shall be considered at a meeting of the Oversight Board if a quorum is not present.

6.2. **Quorum:** Subject to clause 6.3, a quorum for a meeting of the Oversight Board is 50% or more of the Members present in person (or in accordance with clause 4.5), including at least one Member from each Member Group, and the Owner.

6.3. **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to such other date, time and place as the Members may agree. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, then so long as the Owner is present at that meeting, the Members present are a quorum. If, at an adjourned meeting, the quorum does not include at

least one Member from each Member Group, the requirement in clause 6.4 for a resolution of the Oversight Board to be passed with a vote from at least one Member of each Member Group will not apply to resolutions passed in that adjourned meeting, provided that any such resolutions will still require a vote from at least one Member of each Member Group that is represented at the adjourned meeting and the Owner.

- 6.4. **Voting:** Every Member has one vote. A resolution of the Oversight Board is passed if it is agreed to by:
- (a) subject to clause 6.3, at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group; and
 - (b) the Owner.
- 6.5. **Written resolution:** A written resolution, signed or assented to by the Owner and at least two thirds of the Members, including at least one Member from each Member Group, entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Oversight Board duly convened and held.

7. CHAIRPERSON OF MEETINGS OF OVERSIGHT BOARD

- 7.1. **Nominations:** If a Chairperson has not yet been appointed pursuant to clause 7.2, or has been removed or has retired pursuant to clause 7.3, Members and/or GDT may suggest a potential nominee for the position within a reasonable time before the next scheduled meeting of the Oversight Board. GDT shall consider such suggestions in good faith and in a manner it believes to be consistent with the objective and role of the Oversight Board and in accordance with clause 7.4. Once GDT considers that it has a suitable nominee for Chairperson, it may advise Members by way of a Meeting Notice that a meeting of the Oversight Board will be held in which the Members will be asked to vote on the appointment of that person as the Chairperson (and GDT will specify the name, background and qualification of its nominee in the Meeting Notice).
- 7.2. **Appointment:** The Chairperson nominated by GDT, and notified to the Oversight Board under clause 7.1, will be appointed if he or she is approved by at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group that is represented at the meeting.
- 7.3. **Replacement:** The Chairperson:
- (a) may be removed by at least two thirds of the Members present at a meeting, including at least one vote from a Member of each Member Group that is represented at the meeting; and
 - (b) must retire at the end of a his or her term of appointment, being a period not exceeding three years following his or her appointment under clause 7.2,

in which case a new Chairperson shall be appointed in accordance with clauses 7.1 and 7.2. Members may discuss the removal of, and vote to remove, a Chairperson even if such removal is not contemplated in the Meeting Notice for the relevant meeting. A Chairperson that retires at the conclusion of his or her term of appointment will remain eligible for reappointment in accordance with clause 7.1 (subject to clause 2.5(b)).

- 7.4. **Independence:** The Chairperson shall be an independent third party who is not a current representative or Affiliate of GDT, the Trading Manager, any market operator of or participant in a Recognised Financial Market, any Seller or any Bidder.
- 7.5. **Chairperson:** Subject to clause 7.6, the Chairperson shall chair all meetings of the Oversight Board.
- 7.6. **Alternate chairperson:** If a Chairperson is currently appointed but is not present at a meeting, or a Chairperson is not currently appointed, and a quorum is present at a meeting, Members may appoint, by a majority of votes, a Member or Operational Attendee from GDT to chair that particular meeting. Members may discuss the appointment of, and vote for, an alternate chairperson even if such a vote is not contemplated in the Meeting Notice for the relevant meeting. For the avoidance of doubt, the sole power of the alternate chairperson will be to chair a meeting of the Oversight Board at which the Chairperson is not present.

8. MINUTES OF MEETINGS OF OVERSIGHT BOARD

- 8.1. **Minutes:** The Oversight Board shall ensure that minutes are kept of all proceedings at meetings of the Oversight Board. Minutes that have been signed as true and correct by the Chairperson, or an alternate chairperson appointed pursuant to clause 7.6, are prima facie evidence of the proceedings.
- 8.2. **Publication:** All minutes that are signed in accordance with clause 8.1 shall be published on the Information Website within 10 Working Days of the meeting, except where deemed commercially confidential by the Oversight Board or GDT.

9. AMENDMENTS TO THE RULES

- 9.1. **Approval:** Subject to Rule B2.9, the approval of the Oversight Board must be obtained prior to GDT implementing any changes to the Rules (each a "**Rule Change**"). This approval must be sought from the Oversight Board after the public consultation phase has been completed and once the wording of the Rule Change has been finalised by GDT. Before any final decision is made by the Oversight Board regarding a Rule Change, the Oversight Board will discuss, in good faith, with GDT any concerns the Oversight Board has, or outstanding information it requires, in relation to the Rule Change.
- 9.2. **Analysis:** To assist with the Oversight Board's evaluation of a Rule Change:
- (a) GDT will provide the Oversight Board with summaries of all valid third party submissions made in relation to the Rule Change, as well as any variations proposed to be made to the Rule Change as a consequence of the public consultation process; and
 - (b) the Chairperson may commission expert legal and/or economic analysis to be carried out to determine the likely impact of the Rule Change, with any such analysis to be provided to the Members and to GDT.

10. RECOMMENDATIONS OF OVERSIGHT BOARD

10.1. Recommendations:

- (a) The Oversight Board may resolve pursuant to clauses 6.4 or 6.5 to communicate recommendations to GDT on such matters as it sees fit having regard to the objective and role of the Oversight Board.
- (b) As set out in Rule B1.5, any recommendation made by the Oversight Board (including under clause 11.3(a)) will be considered by GDT in good faith and in a manner that is consistent with the Guiding Principles but GDT will not be under any obligation to adopt or follow such recommendation.
- (c) Notwithstanding clause 10.1(b), where the Oversight Board resolves to recommend that a change be made to the Rules (whether by introducing a new Rule or by amending or revoking an existing Rule), GDT, acting in good faith, will work with the Oversight Board to prepare a rule change proposal to be submitted for public consultation, unless GDT reasonably believes that there are commercially justifiable reasons not to do so or to otherwise delay such rule change proposal. The fact that such a rule change proposal has been submitted for public consultation will in no way limit or avoid the need for such Rule change to be subsequently approved by GDT and the Oversight Board, as contemplated by Rule B2.2.

11. RULINGS PANEL

11.1. Establishment:

- (a) Subject to clause 11.1(b) the Chairperson shall be responsible for convening a Rulings Panel (in accordance with Appendix Two) from time to time for the purpose of hearing and determining any complaints referred to him or her by GDT under Rule B3.3 ("**Complaint**"), unless he or she reasonably considers that the Complaint is vexatious, frivolous, or is, in substance, a dispute to which Rule A2.5 applies.
- (b) If either the Chairperson is conflicted in relation to a Complaint or there is no Chairperson currently appointed to the Oversight Board, the Rulings Panel may be convened in relation to a Complaint in accordance with the process set out in Appendix Two, provided that the Oversight Board is satisfied that the Complaint is not vexatious, frivolous, or, in substance, a dispute to which Rule A2.5 applies.

11.2. **Funding:** GDT will meet the reasonable costs and remuneration of the members of the Rulings Panel.

11.3. Powers:

- (a) The Rulings Panel may do any of the following:
 - (i) hear and determine in a written decision any Complaint in accordance with this clause 11 and Appendix Two;
 - (ii) determine for the purposes of Rule A5.4(a) that a breach of the Rules has occurred, in which case receipt of the Rulings Panel's written

decision by the Participant in breach constitutes notice for the purposes of that Rule (but, for the avoidance of doubt, even if the Rulings Panel makes a determination for the purposes of Rule A5.4(a) that a breach has occurred, remedy of that breach will be to the reasonable satisfaction of GDT); and/or

- (iii) require a Participant in respect of whom a Complaint has been upheld to reimburse the reasonable costs and expenses incurred by GDT (including any costs incurred under clause 11.2) in relation to a Complaint.
 - (b) A Rulings Panel may not adjudicate disputes to which Rule A2.5 applies or disputes between Participants that otherwise arise at law. For the avoidance of doubt, no party to a Complaint (or any other person) shall, by virtue of a decision of a Rulings Panel, be restricted in bringing any action in a court or arbitration or equivalent adjudicative body in respect of the same subject matter as the Complaint or decision, and neither the Panel's decision nor any findings within a decision will bind the parties in any such action.
 - (c) A Rulings Panel may rely on its members' own judgement and opinion and will not be acting as an arbitral tribunal for the purposes of the New Zealand Arbitration Act 1996.
- 11.4. **Composition:** The Rulings Panel shall be constituted in accordance with Appendix Two ("**Rulings Panel**"), but will ordinarily comprise:
- (a) the Chairperson; and
 - (b) two independent persons appointed in accordance with Appendix Two.
- 11.5. **No liability:** No member of the Rulings Panel (including, for the avoidance of doubt, the Chairperson) is liable, including for negligence, in respect of anything done or omitted to be done in their capacity as a member of the Rulings Panel, and are indemnified by GDT for any costs or losses incurred by them in connection with their conduct (other than fraudulent or dishonest conduct) as a member of the Rulings Panel.
- 11.6. **Process:** The appointment of a Rulings Panel and the process by which the Rulings Panel determines a Complaint are set out in Appendix Two.
- 11.7. **Decisions and publication:**
- (a) All decisions made by a Rulings Panel shall be either unanimous or by a majority decision.
 - (b) A final written decision made by a Rulings Panel will be a final and binding determination between the parties in relation to a Complaint, but will not bind or restrict in any way GDT's power to issue a future ruling under Rule B3.4 or to amend its Rules, and will not bind GDT or any future Rulings Panel in relation to the same conduct by other Participants or similar conduct by the same Participants.
 - (c) All decisions shall be published on the Information Website within 10 Working Days of the decision, except where deemed (in whole or in part) commercially confidential by the Rulings Panel in its decision, or by the Oversight Board or GDT

(in which case, the decision, or any parts of it deemed to be commercially confidential, will not be published).

- (d) At the conclusion of each year, the Oversight Board may elect to publish a report on the Information Website summarising the nature and number of Complaints that have been referred to the Rulings Panel for determination during the course of that year, and the Rulings Panel's decisions in relation to them.

12. REMUNERATION AND REIMBURSEMENT

- 12.1. **Remuneration:** From time to time GDT may authorise the payment of reasonable remuneration for a person carrying out their respective duties as a Member of the Oversight Board. The intention is that remuneration will only be considered in respect of a Member that does not have an economic interest in the operation of the Trading Platform (for example, is not a registered Seller or Bidder or a Recognised Financial Market operator who has an indirect financial interest in the operation of the Trading Platform).
- 12.2. **Costs:** Members (including, for clarity, the Chairperson) are entitled to be reimbursed for all reasonable travel and accommodation expenses properly incurred in attending meetings of the Oversight Board, provided that such expenses have been agreed by GDT in advance.

13. CONFIDENTIALITY AND USE OF INFORMATION

- 13.1. Members, the Chairperson, the Rulings Panel, GDT, the Trading Manager and the Operational Attendees must be mindful of their competition law obligations and, therefore, must observe the following to govern the conduct of all meetings, negotiations, discussions, Rulings Panel processes and other correspondence between Members in connection with the fulfilment of the Oversight Board role:
 - (a) Members shall not have access to, nor discuss with other Members, any non-public information held by any other Member, GDT, the Rulings Panel and/or the Trading Manager relating to, or arising from, one or more Trading Event(s) including, without limitation, information referred to in Rules C1.8, C1.9, C2.1, C2.2, C2.3, C2.5, C2.10, C2.11, C5.17, C5.18 C7.1, C7.3, C7.4 and C7.8. In fulfilling their Oversight Board role, Operational Attendees must not disclose any such information to Members.
 - (b) any other non-public information held by GDT, the Rulings Panel and/or the Trading Manager not referred to in clause 13.1(a) above, may be disclosed by GDT, the Rulings Panel and/or the Trading Manager to Members provided that clauses 13.1(c)(i) and (ii) apply. For the avoidance of doubt, such information may include, without limitation:
 - (i) GDT's non-public proposals under consideration in relation to the conduct, or operation, of future Trading Events; and/or
 - (ii) Any other non-public information held by GDT, the Rulings Panel and/or the Trading Manager that GDT considers needs to be disclosed to Members in order for GDT to comply with Rule B4.6.

- (c) Subject to clauses 7.3 and 7.6, in attending meetings (including any meeting of the Rulings Panel), Members must not discuss any topic with any other Member, or disclose any document to any other Member unless:
 - (i) that topic or document has been included:
 - (aa) in the Complaint that has been provided to the Rulings Panel pursuant to Rule B3.3 or any subsequent information that has been supplied to the Rulings Panel solely in connection with the Complaint; or
 - (bb) in the Meeting Notice circulated in advance of a meeting of the Oversight Board, pursuant to clauses 5.2(a) and (b), as being a topic for discussion or a document that will be disclosed at the meeting; and
 - (ii) it is demonstrably necessary for the purposes of fulfilling the objective and role of the Oversight Board (set out at clause 1.1) or the Rulings Panel (as applicable).
- (d) For the avoidance of doubt, Members must not exchange or discuss:
 - (i) specific, non-aggregated, commercially sensitive confidential information relating to any individual Member's price, terms of sale, customers, suppliers, non-public future plans, or costs, including any information that a Member has received on a confidential basis from GDT pursuant to the Rules;
 - (ii) any topic or specific aspect of a Member's respective business that is not necessary for fulfilling the objective and role of the Oversight Board (set out clause 1.1); or
 - (iii) any proposal that would have the purpose or effect of unfairly damaging any Bidder or Seller.
- (e) No contract, arrangement or understanding may arise between Members as to the conduct of a Member's business as a result of any discussions or negotiations in connection with the fulfilment of the Oversight Board role.
- (f) Each Member, Chairperson and Operational Attendee must ensure that any Confidential Information that it receives, including Update Notices or Meeting Notices, is marked "*Confidential and subject to common interest privilege*" and kept in a separate file. The file cover shall be marked "*Confidential and subject to common interest privilege*".
- (g) A Member, Chairperson or Operational Attendee must not disclose Confidential Information to any person, or make use of, or act on, the Confidential Information, except:
 - (i) for the purpose of carrying out the role and function of the Oversight Board or the Rulings Panel (as the case may be);
 - (ii) as required by law; or

- (iii) in accordance with clause (i) below.
- (h) Each Member will nominate and provide the Chairperson with a record, updated as necessary, of their team of officers, employees or advisers that require access to Confidential Information for the purposes of assisting the Member to carry out the role and function of the Oversight Board (the "**Teams**") (external advisers may be listed by firm/organisation name). This record will be kept on file by the Chairperson. Any Representative must be a member of a Member's Team in order to be appointed under clause 2.3. The following protocols will apply in relation to the Teams:
 - (i) Confidential Information will not be disseminated beyond the Team members and will only be disclosed to the Team members for the purpose of carrying out the role and function of the Oversight Board.
 - (ii) The Team will not be any broader than is absolutely necessary to assist the Member in carrying out the role and function of the Oversight Board.
 - (iii) To the greatest extent possible the Team members that are internal officers, employees or advisers of a Member should be senior personnel.
 - (iv) Members may add persons to their respective Teams members as necessary to assist the Member in carrying out the role and function of the Oversight Board by providing the Chairperson with an updated record of their Team members.
 - (v) Before assisting the Member to perform its Oversight Board role or function, or accessing any Confidential Information, each Team member must have explained by a legal counsel approved by GDT, the application of competition laws, in order to facilitate a clear understanding of the principles underlying the restrictions on the exchange and/or use of Confidential Information contained in this Charter, as well as of the range of conduct that is prohibited by, and the range of possible penalties for proven breaches of, competition laws.
 - (vi) Each Member, and their respective Team members, must take all reasonable steps necessary to protect Confidential Information in their possession from being improperly accessed by any persons not in their Team.
- (i) Each Member must destroy any Confidential Information held in its file once it considers, in its reasonable judgment, that it no longer requires that Confidential Information to enable it to carry out the role and function of the Oversight Board.
- (j) In the event of uncertainty as to the competition law implications of exchange of any particular piece of Confidential Information, or discussion on any particular topic, a Member, Chairperson or Operational Attendee should consult with GDT immediately.
- (k) The Chairperson, any Operational Attendee and/or any Member, may terminate a meeting at any time if he/she considers that any discussion, or information exchange, is taking place that may contravene any competition laws, and GDT's legal counsel must be informed of such termination immediately by telephone call from the Chairperson.

- (l) If the Chairperson, any Operational Attendee or any Member becomes aware of any discussion, or information exchanges, between Members that it considers may contravene any competition laws, it will report that immediately by telephone call to GDT's legal counsel.

14. AMENDMENT TO CHARTER

- 14.1. This Charter (including for the avoidance of doubt the appendices) may be amended by GDT from time to time by following the rule change procedure set out in Rule B2 of the Rules, including in response to a recommendation by the Oversight Board as contemplated by clause 10.1(c).

15. DEFINITIONS AND INTERPRETATION

- 15.1. **Definitions:** In this Charter, unless the context otherwise requires:

"Appointed Member" means a Member appointed by the Chairperson to its relevant Member Group in accordance with the objective criteria in Appendix One.

"Affiliate" means in relation to any person:

- (a) any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, that person. A person will be deemed to control another person if that person possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of that other person, whether by operation of law, by contract, through the ownership of voting securities or otherwise; and
- (b) any director, officer or employee, representative or agent of that person or any other person described in paragraph (a).

"Bidder" means a GDT Events Participant who is accepted as eligible to participate in a Trading Event and has signed an approved Participation Agreement.

"Bidder Group" means the group of Members that are appointed or elected pursuant to clause 2.1(a) of this Charter.

"Confidential Information" means non-public information received by a Member, Chairperson, Operational Attendee or member of the Rulings Panel, in the performance of its Oversight Board role or Rulings Panel role (as the case may be), for as long as that information is not public knowledge (unless it has become public information as a result of a breach of this Charter in which case it shall continue to be Confidential Information).

"Chairperson" means the chairperson of the GDT Events Oversight Board, appointed by the Oversight Board under section 7.2.

"Charter" means this charter, as amended from time to time in accordance with clause 14.

"Elected Member" means a Member elected by the Oversight Board to its relevant Member Group in accordance with the criteria for election in Appendix One.

"Finance & Markets Group" means the group of Members that are appointed or elected pursuant to clause 2.1(c) of this Charter.

"**GDT**" means GlobalDairyTrade Holdings Limited, the entity that operates the Trading Platform in conjunction with the Trading Manager.

"**Information Website**" means the GDT Information Website located at the address www.globaldairytrade.info, or any other web address specified by GDT.

"**Member**" means a person, entity, business or individual appointed or elected as a member of the GDT Events Oversight Board in accordance with the Rules and this Charter.

"**Member Group**" means each of the Seller Group, Bidder Group and Finance & Markets Group.

"**Oversight Board**" means the GDT Events Oversight Board, consisting of the Members, established by GDT to carry out the objective and the role set out in the Rules.

"**Owner**" means the ultimate owner of GDT, being currently Fonterra Co-operative Group Limited.

"**Participant**" means a person (other than GDT) who has entered into a Participation Agreement.

"**Person**" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"**Product**" means any one of the dairy products listed on the Information Website, from time to time, as being for sale through the Trading Platform.

"**Recognised Financial Market**" means a financial market that has been approved by GDT to settle financial instruments by reference to the Winning Prices for a Product offered on the Trading Platform.

"**Representative**" means an individual that is appointed as the representative of a Member pursuant to clause 2.3.

"**Rules**" means the GDT Trading Event Rules dated December 2015, as amended from time to time.

"**Seller**" means a Participant who is accepted as eligible to use the Trading Platform to offer one or more Products for sale during a Trading Event and has signed an approved Participation Agreement.

"**Seller Group**" means the group of Members that are appointed or elected pursuant to clause 2.1(b) of this Charter.

"**Trading Event**" means the GDT trading events at which Sellers offer dairy Products for sale via the Trading Platform in accordance with the Rules.

"**Trading Manager**" means the Trading Manager appointed under Rule B4.5 of the Rules.

"**Trading Platform**" means the trading platform known as GDT Events through which Trading Events are held and includes all activities and infrastructure associated with the operation of Trading Events.

"Working Day" has the meaning set out in section 2 of the New Zealand Companies Act 1993.

15.2. **Interpretation:** In this Charter, unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Charter;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) **"written"** and **"in writing"** include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Rules have the same meaning in this Charter;
- (f) where any word or expression is defined in this Charter, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections are references to clauses and sections in this Charter, unless stated otherwise.

15.3. **Charter to prevail:** To the extent there is any conflict between:

- (a) a provision in this Charter and a provision in the Rules; or
- (b) a word or expression defined or explained in the Rules and a word or expression defined or explained in this Charter,

the provision, word or expression in this Charter prevails.

APPENDIX ONE

Part A: Bidder and Seller Group appointment and election process

The Bidder and Seller Group appointment and election process operates as follows:

- a. Each Bidder and Seller is assigned a region:
 - i. in respect of each Bidder, according to the country identified by the Bidder during their registration process; and
 - ii. in respect of each Seller, based on that Seller's largest source of supply offered on the Trading Platform over the 24 months prior to the month of the selection process,

with the regions being defined as **Americas** (including all of North & South America and Latin America); **Africa, Europe & Middle East** (including Eastern Europe and Russia); and **Asia, Oceania & Rest of World**.

Bidder and Seller Group Appointed Members

- b. The Bidder Group Appointed Members will be appointed as follows:
 - i. The first Appointed Member of the Bidder Group is the Bidder with the largest quantity traded over the preceding 24 months; and
 - ii. The second Appointed Member of the Bidder Group is the Bidder with the next largest quantity traded over the preceding 24 months who is in a different region from the first Bidder.
- c. The Seller Group Appointed Members will be appointed as follows:
 - i. The first Appointed Member of the Seller Group is the Seller with the largest quantity traded over the preceding 24 months; and
 - ii. The second Appointed Member of the Seller Group is the Seller with the next largest quantity traded over the preceding 24 months who is in a different region from the first Seller.
- d. For clarity, the two Appointed Members in each Member Group will cover at least two of the three regions in each respective group at any given time, as illustrated below:

Example only:

| | Americas | Africa, Europe & Middle East | Asia, Oceania & Rest of World |
|---------------------|-----------------|---|--|
| Bidder Group | I | | II |
| Seller Group | II | I | |

- e. If a Bidder or a Seller is a group of associated businesses, the Oversight Board may, in its absolute discretion acting in good faith and in a manner that is consistent with its objective and role, select one of that Bidder or Seller's (as the case may be) associated businesses as a Member instead of that Bidder or Seller.
- f. If one or more appointed Members decline their invitation, a replacement Member will be appointed using the above process, applied such that it results in a spread of representation as described above.
- g. Invited Members will have a specified time to accept an invitation to become a Member of the Oversight Board. If acceptance is not received within the set timeline, the invitation will be considered as declined and GDT will proceed with the invitation of another Member.

Bidder and Seller Group Elected Members

- h. Nominations for the third Member of each of the Bidder and Seller Groups will be made by GDT or an existing Member of the Oversight Board. An individual or organisation may be nominated in accordance with nomination guidelines that may be published by the Oversight Board from time to time. Without limiting such guidelines, the expectation is that a nominee will be an active Bidder or Seller, a Bidder or Seller's Affiliate, a known buyer or seller of dairy products or an individual with relevant knowledge, insight or experience of Bidder or Sellers' behaviours and interests (as applicable), and will be likely to make a positive contribution to the Oversight Board.
- i. In order for an individual or organisation nominated in accordance with (h) above to be elected they must be approved by a two thirds majority of the Members of the Oversight Board voting at a meeting (including via postal vote), including at least one vote in favour from a Member of each Member Group in accordance with clause 6.4(a) of the Charter.

Part B: Finance & Markets Group appointment and election process

The Finance & Markets Group appointment and election process operates as follows:

Appointed Member

- a. The Finance & Markets Group Appointed Member will be the operator of the Recognised Financial Market with the largest trading quantity (MT) of the Products for which Winning Prices on the Trading Platform are an input into the calculation of settlement of a financial instrument on that Recognised Financial Market.
- b. If such operator declines an appointment as a Member, the Oversight Board may elect a further Member to the Finance & Markets Group under the criteria in (e) below.

Elected Members

- c. Nominations for the second Member of the Finance & Markets Group will be made by GDT or an existing Member of the Oversight Board. The second Member must be a broker, clearing member or other participant of a Recognised Financial Market. In

considering candidates for nomination, GDT and the Oversight Board may have regard to all or any of the following factors:

- i. the established broking or clearing members on each Recognised Financial Market in respect of financial instruments settled by reference to the Winning Prices for Products offered on the Trading Platform;
 - ii. the period in which a member has been a participant in a Recognised Financial Market and the solvency, standing and reputation of that participant; and
 - iii. the potential for a particular financial industry participant to make a positive contribution to the Oversight Board and Trading Platform.
- d. If no appointment is made under the criteria in (c) above, including in circumstances where a person nominated for appointment declines to accept that appointment, the Oversight Board may elect a further Member to the Finance & Markets Group under the criteria in (e) below.
- e. Nominations for the third Member of the Finance & Markets Group will be made by GDT or an existing Member of the Oversight Board. The third Member of the Finance & Markets Group must be:
- i. another Recognised Financial Market operator or a member appointed under the criteria in (c) above; or
 - ii. any other person with relevant experience in a financial or physical commodity market, other digital platform (including ecommerce platform), or with other relevant governance and/or regulatory experience, who is expected to make a positive contribution to the Oversight Board and Trading Platform.
- f. In order for an individual or organisation nominated in accordance with (c) or (e) above to be elected they must be approved by a two thirds majority of the Members of the Oversight Board voting at a meeting (including via postal vote), including at least one vote in favour from a Member of each Member Group in accordance with clause 6.4(a) of the Charter.

Part C: Voting on elections

- a. A Member of the Oversight Board may exercise the right to vote on Member election matters by casting a postal vote. The postal vote must be sent as a notice to the Chairperson not less than 48 hours before the start of the meeting, or such other time determined by the Oversight Board. For the avoidance of doubt, a postal vote may be cast using electronic means.
- b. If a Member nominated by GDT or a Member of the Oversight Board is an entity or business, the proposed Representative of that Member must be confirmed in writing prior to the Oversight Board voting on whether or not to elect that Member.
- c. For the purposes of the approval of persons nominated in accordance with this Appendix One, a written resolution, signed or assented to by at least two thirds of the Members, including at least one Member from each Member Group, is as valid and effective.

APPENDIX TWO

Rulings Panel Process

1. The Participant(s) or GDT (as the case may be) making the Complaint, and the Participant(s) named in the Complaint, are referred to in this Appendix as "Parties".
2. A Rulings Panel shall comprise:
 - (a) the Chairperson (subject to clause 3(a) below); and
 - (b) two independent persons, appointed in accordance with clause 3 below.
3. In order to convene a Rulings Panel:
 - (a) The Chairperson shall confirm to GDT that he or she has no conflict of interest in relation to the Complaint and is otherwise available to hear the Complaint. If that confirmation is provided to the satisfaction of GDT, the Chairperson shall be appointed as Chairperson of the Rulings Panel. If that confirmation is not provided or if there is no Chairperson currently appointed (excluding any alternate Chairperson appointed to chair an Oversight Board meeting in accordance with clause 7.6 of the Charter), then three persons shall be appointed under sub clauses (b) to (d) instead of two.
 - (b) The Chairperson, or in the case where the Chairperson is unable to be appointed to the Rulings Panel for the purposes of clause (a) above, GDT or, if GDT is the party making the Complaint, the Oversight Board, shall nominate two further persons to be appointed to the Rulings Panel to hear the Complaint. In so nominating, the Chairperson (or GDT or the Oversight Board, as the case may be) may have regard to the qualifications and expertise of the proposed nominees in light of the particular Complaint, but may make any such nomination in his or her (or its, as the case may be) absolute discretion.
 - (c) The Chairperson (or GDT or the Oversight Board, as the case may be) shall seek written confirmation from each proposed nominee that he or she has no conflicts of interest in relation to the particular Complaint and is otherwise available to hear the Complaint. If that confirmation is provided, to the satisfaction of the Chairperson (or GDT or the Oversight Board, as the case may be), the name of the nominee(s) shall be provided to the Parties, who may provide submissions within 3 working days on the appropriateness of the nominee(s) to be appointed to the Rulings Panel to hear the Complaint. The Chairperson (or GDT or the Oversight Board, as the case may be) must consider any such submissions, but has absolute discretion (including in relation to conflicts of interest) as to the appointment of any members of the Rulings Panel.
 - (d) Once the Chairperson (or GDT or the Oversight Board, as the case may be) has considered the Parties' submissions (if any) as to the identity of the nominees, he or she (or it) may appoint a nominee or nominees to the Rulings Panel by informing the nominee(s) in writing, which notice shall be copied to the Parties.
 - (e) In the event three persons have been appointed to the Rulings Panel by GDT or the Oversight Board (as the case may be) in accordance with clauses (b) to (d) above, GDT or the Oversight Board (as the case may be) will determine which of those three persons shall act as Chairperson of that Rulings Panel.

- (f) Once the Rulings Panel has been convened, its Chairperson will seek the Parties' views on the most appropriate and efficient means of hearing and determining the Complaint. For the avoidance of doubt, the Rulings Panel may in its absolute discretion determine the procedure for hearing and determining a Complaint.
- (g) The Rulings Panel must:
 - (i) give the Party against whom a Complaint has been lodged a reasonable opportunity to respond to the Complaint; and
 - (ii) where, at any stage prior to issuing a final decision, a majority of the Rulings Panel considers there is material uncertainty about the interpretation of a particular Rule, seek a written statement from GDT as to its view of the intended meaning and/or correct interpretation of that Rule (and such written statement must be made available to the Parties prior to the Rulings Panel's determination of the Complaint).
- (h) The Rulings Panel may (subject always to clause (g)(i) above):
 - (i) require a Party to provide information to the Rulings Panel, whether by way of documents, statements of evidence or submissions;
 - (ii) appoint an expert or other advisor of its own volition (and, if so, the Oversight Board will pay that expert or advisor's reasonable costs); and/or
 - (iii) determine the Complaint "on the papers" or following a hearing with the Parties (however, if the Rulings Panel convenes a hearing, it must invite all Parties to attend and give them a reasonable opportunity to present their position).
- (i) The Rulings Panel may make any order referred to in clause 11.3(a) of the Charter, whether sought by a Party, or ordered of the Rulings Panel's own volition, subject only to clause (k) below.
- (j) Failure of a Party to comply with a procedural direction or request of the Rulings Panel may result in an adverse inference being drawn in respect of a Complaint, or a Complaint being determined against the Party in default, but is not itself a breach of the Rules.
- (k) The Rulings Panel must provide its draft decision to all the Parties, who will then have 10 working days to provide any comments it wishes in writing, including as to whether any material within the draft decision is commercially sensitive or confidential. The Rulings Panel may, but is not obliged to, take such comments into account, and must then deliver a final decision.
- (l) There is no right of appeal of any kind from a decision of the Rulings Panel.