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## Allied Farmers Limited

### Notice of Special Meeting of Shareholders

Notice is given that a special meeting of shareholders of Allied Farmers Limited (“**ALF**” or the “**Company**”) will be held at 11:00am on Thursday 11 July 2024 via the Virtual Meeting Platform (“**Meeting**”). The Meeting will be an online-only meeting, meaning that shareholders of the Company (“**Shareholders**”) will not be able to attend the meeting in person, but will be able to:

- attend and participate at the meeting virtually via the Virtual Meeting Platform provided by the Company’s share registrar, MUFG Corporate Markets (formally Link Market Services), at [www.virtualmeeting.co.nz/alfsm24](http://www.virtualmeeting.co.nz/alfsm24); or
- participate in the meeting by proxy.

Further details on how to do so are set out in this Notice of Meeting and the Virtual Meeting Online Portal Guide filed on the market announcement platform of the NZX and available on the Company’s website ([www.alliedfarmers.co.nz](http://www.alliedfarmers.co.nz)).

The Board has determined that, due to the very low level of Shareholder turnout at previous in-person meetings, the additional costs of holding an in-person or hybrid meeting significantly outweigh the potential benefits. The Board appreciates the support and understanding of our Shareholders regarding these arrangements and encourages all Shareholders to participate in the Meeting online and ask any questions either ahead of time (see details below) or during the Meeting online.

#### AGENDA

**1. Chair’s Introduction**

**2. Special Resolution**

To consider, and if thought fit, to pass the following special resolution (“**Resolution**”):

“That the Company’s constitution be amended, with effect on a date to be determined by the Board, in the manner summarised in this Notice of Meeting (the specific amendments being in the form to be tabled at the Meeting and signed by the Chair of the Meeting for the purposes of identification).”

*Refer to the Explanatory Notes on page 4 for further details on the Resolution.*

**3. General Business**

To consider any other matter that may properly be brought before the Meeting.

By Order of the Board of Directors

Shelley Ruha

7 June 2024

## PROCEDURAL NOTES

### Voting Entitlements

Voting entitlements of the Meeting will be determined with reference to the Company's share register as at 5:00pm NZT on Tuesday 9 July 2024 ("**Record Date**"). Only those persons who are registered Shareholders on the Record Date will be entitled to attend and vote at the Meeting.

### Online Meeting

All Shareholders will have the opportunity to attend and participate in the Meeting online via an internet connection using the Virtual Meeting Platform at [www.virtualmeeting.co.nz/alfsm24](http://www.virtualmeeting.co.nz/alfsm24). Shareholders will require a CSN/Holder Number for verification purposes. Shareholders attending and participating in the Meeting will be able to vote and ask questions during the Meeting. The Company strongly recommends that shareholders log in to the online portal at least 15 minutes prior to the scheduled start time for the meeting.

More information regarding online attendance at the Meeting (including how to vote and ask questions during the Meeting) is available in the Virtual Meeting Online Portal Guide, which is available at:

<https://bcast.linkinvestorservices.co.nz/generic/docs/OnlinePortalGuide.pdf>.

The Company also offers the facility for Shareholders to submit questions to the Board in advance of the Meeting at <https://investorcentre.linkgroup.nz/voting/ALF>, or by using the Voting Form.

### Proxy vote

Shareholders may attend online and vote at the Meeting or may appoint a proxy (who need not be a Shareholder) to attend online and vote on their behalf by completing and returning the enclosed Voting Form. If you return the Voting Form without directing the proxy how to vote on any particular matter, the proxy may vote as he/she thinks fit or abstain from voting.

Shelley Ruha, as Chair of the Meeting, is willing to act as proxy for any Shareholder who may wish to appoint her for that purpose, and she intends to vote for the Resolution where she is given a "Proxy Discretion". All Shareholders wishing to appoint the Chair as proxy should clearly indicate on their Voting Form whether they wish to direct the Chair to vote for or against, or to abstain from voting on, the Resolution.

If you do not name a person as your proxy (but have completed the Voting Form in full) or your named proxy does not attend the meeting, the Chair will be appointed your proxy and will vote in accordance with your express direction.

A company that is a Shareholder may appoint a representative to attend the Meeting on its behalf in the same manner as it may appoint a proxy.

Shareholders wishing to appoint a proxy (or representative) must complete and send the Voting Form so that it is received by MUFG Corporate Markets no later than 11:00am on Tuesday 9 July 2024.

To appoint your proxy and vote please go to the MUFG Corporate Markets website at:

<https://investorcentre.linkgroup.nz/voting/ALF>.

You will require your CSN/Holder number to successfully validate your holding. Follow the prompts if you wish to appoint a proxy and, if desired, to provide voting instructions to your proxy. A Shareholder will be taken to have signed the Voting Form by lodging it in accordance with the instructions on the website.

Alternatively, please complete and sign the enclosed Voting Form and return it in one of the following manners:

**Mail:** If mailing from within New Zealand, please place in the reply-paid envelope provided. If mailing from outside New Zealand please place in the pre-addressed envelope, affix the postage from the country of mailing and post to MUFG Corporate Markets, PO Box 91976, Victoria Street West, Auckland 1142, New Zealand.

**Deliver:** MUFG Corporate Markets, Level 30 PwC Tower, 15 Customs Street West, Auckland, New Zealand.

**Scan & email:** [meetings@linkmarketservices.com](mailto:meetings@linkmarketservices.com)

### **Resolution**

The Resolution is a special resolution.

A special resolution is a resolution approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the resolution in person or by proxy.

### **Voting Restrictions**

There are no voting restrictions applicable to the Resolution.

### **Shareholder questions**

Shareholders attending the Meeting will be given the opportunity to raise questions during the Meeting. Shareholders may also submit written questions on the bottom of the Voting Form.

Alternatively written questions can be sent:

- online at <https://investorcentre.linkgroup.nz/voting/ALE>; or
- by email to [meetings@linkmarketservices.com](mailto:meetings@linkmarketservices.com).

## EXPLANATORY NOTES

The Company is seeking shareholder approval to certain amendments to its constitution that are designed to preserve the significant value in the Company's available tax losses.

The proposed amendments are summarised in these Explanatory Notes and the specific amendments will be tabled at the Meeting and signed by the Chair of the Meeting for the purposes of identification (the "Constitutional Amendments"). A copy of the Company's constitution with the proposed Constitutional Amendments shown by way of mark-up is available on the Company's website (at [www.alliedfarmers.co.nz](http://www.alliedfarmers.co.nz)).

### **The Board supports the Constitutional Amendments and strongly recommends that shareholders vote in favour of the Resolution.**

If you have any questions regarding the Constitutional Amendments, please do not hesitate to contact Ross O'Neill (Legal Counsel & Company Secretary) at [Ross.O'Neill@alliedfarmers.co.nz](mailto:Ross.O'Neill@alliedfarmers.co.nz).

### **Background**

The Company has a valuable tax loss asset. During FY23, the Company obtained a Private Ruling from Inland Revenue that significantly increased the available tax losses. As a result of the Ruling, the Company had unused tax losses as at 30 June 2023 of approximately \$186 million. This is an approximate 8 times multiple of the Company's market capitalisation as at 6 June 2024, being the date immediately preceding the date of this Notice of Meeting. If future taxable profits are available to use those tax losses, their value to the Company and its shareholders is approximately double the market capitalisation of the Company as at 6 June 2024, being the date immediately preceding the date of this Notice of Meeting.

Those tax losses belong to the Company and its subsidiaries (the "Group").

The Group's ability to utilise those tax losses is dependent on it meeting shareholder continuity requirements under the Income Tax Act 2007. Given the age of the tax losses, the Group is not able to rely on the business continuity test to carry forward those tax losses.

In general terms, under the shareholder continuity test for the carry forward of tax losses, the Group will be able to carry the unused losses forward if at least 49% of the Company's voting shares are treated as being held by the same shareholders from when the loss arose up until (and including) the year in which the Group uses the losses. Generally, a company is allowed to treat all of the shares held by shareholders with voting interests of less than 10% as being held by a 'notional single person' for the purposes of testing shareholder continuity. However off-market transfers of shares between persons not associated with the Company with 5% or more voting interests in the Company (or on-market transfers between persons with 10% or more voting interests) that are known (or could reasonably be known) by the Board to not meet the continuity requirements can give rise to a breach of shareholder continuity.

The Board is acutely conscious of the risk of loss of a significant asset arising from a failure to maintain shareholder continuity. Accordingly, the Board believes it is now appropriate to update its constitution, through the adoption of the Constitutional Amendments, to protect the Company's tax loss asset for the benefit of all shareholders. The Constitutional Amendments, discussed further below, are intended to significantly strengthen the Company's ability to restrict share transfers that could cause a breach of shareholder continuity.

Broadly, the Constitutional Amendments introduce restrictions on any person having a ‘relevant interest’ (as defined in the Financial Markets Conduct Act 2013)<sup>1</sup> in shares that comprises or exceeds 5% of shares in the Company, subject to limited exceptions described below (the “**Ownership Threshold**”).

The Constitutional Amendments will not guarantee that the necessary shareholder continuity to preserve the Group’s tax losses is maintained, as the shareholder continuity rules under the Income Tax Act measure continuity of ‘voting interests’ and ‘market value interests’ (as defined under the Income Tax Act), as opposed to continuity of relevant interests (as defined in the Financial Markets Conduct Act). However, those concepts share a high degree of overlap and the Company considers that basing the Constitutional Amendments on relevant interests presents the Company with the best opportunity in practice to minimise the risk of loss of shareholder continuity and resultant forfeiture of all or part of its tax loss asset. This is because unlike the technical concepts of voting interests and market value interests (which could be difficult for an investor to understand in order to then comply with), the relevant interest concept is commonly understood among investors and other market participants as there is already an obligation at law on persons to publicly disclose the acquisition of a 5% or more relevant interest in the Company or any other NZX-listed issuer.

## **Overview of the proposed Constitutional Amendments**

### **Restrictions on transfer**

In order to ensure that a person does not breach the Ownership Threshold, the Constitutional Amendments provide for the following restrictions:

- (a) **Limitation on issue, acquisition and redemption of shares:** The Company must not issue, acquire or redeem any shares if the Company has actual knowledge that such issue, acquisition or redemption would result in a person breaching the Ownership Threshold.

*(clause 5 of the proposed new schedule 3 to the constitution)*

- (b) **Refusal to register share transfers:** The Board must decline to register a transfer of shares if the Board knows or believes that the transfer of those shares will or is likely to result in any person breaching the Ownership Threshold.

*(clause 8 of the proposed new schedule 3 to the constitution)*

### **Effect of exceeding the Ownership Threshold**

If a person does breach the Ownership Threshold, the Constitutional Amendments provide the following:

- (a) **Automatic suspension of voting rights attaching to ‘Affected Shares’:** The Shareholder of any shares in which a person has a relevant interest in excess of the Ownership Threshold (“**Affected Shares**”) will not be entitled to exercise the votes attached to those Affected Shares at any meeting of shareholders. Any such vote cast will be disregarded. This suspension of voting rights will be automatic with effect from the point in time immediately prior to that person breaching the Ownership Threshold and will not be dependent on the Board having first made a determination that shares are Affected Shares. However, nothing will prevent the Shareholder from attending a shareholder meeting and a

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<sup>1</sup> In broad terms, a person has a ‘relevant interest’ in a share if the person (a) is the registered holder or beneficial owner of the share; or (b) has the power to exercise, or control the exercise of, a right to vote attached to the share or has the power to acquire or dispose of, or to control the acquisition or disposition of, that share. A person may also have a ‘relevant interest’ in a share to which another person has a ‘relevant interest’ depending on the nature of the relationship between them.

resolution passed at a meeting will not be invalid where votes exercised in breach of the voting restriction were counted by the Company in good faith and without knowledge of the breach. The suspension of voting rights attaching to Affected Shares will continue until those shares or relevant interest(s) in those shares are disposed of such that those shares cease to be Affected Shares.

*(clauses 10 and 14 of the proposed new schedule 3 to the constitution)*

- (b) **Disposal of Affected Shares:** Any Shareholder that holds shares which the Board has determined to be Affected Shares (see below for further details as to when the Board can determine that shares are Affected Shares) will be required to dispose of shares or relevant interest(s) in shares such that the Affected Shares cease to be Affected Shares. This disposal must take place within 20 working days of the Board making the determination that the relevant shares are Affected Shares. The Board will also have the ability to sell any Affected Shares on behalf of a shareholder (in a manner first approved by NZX) if the Board is not satisfied that those Affected Shares have ceased to be Affected Shares within that 20 working day period.

*(clause 13 of the proposed new schedule 3 to the constitution)*

### **Ascertaining whether a breach has occurred**

To ensure that the Company can monitor for potential breaches of the Ownership Threshold, the Constitutional Amendments provide that:

- (a) the Company may require a Shareholder to provide it with a statutory declaration (or other evidence required by the Board) if the Board knows or believes that a person is, or may be, in breach of the Ownership Threshold. That statutory declaration is required to include, where applicable, details of all persons who have a relevant interest in any shares held by that Shareholder;
- (b) if a Shareholder fails to provide the necessary information to the Company, the Board can (by giving notice to that Shareholder) deem any shares held by that Shareholder to be Affected Shares from the time at which the Board believes a breach of the Ownership Threshold may have occurred until that Shareholder complies with the Company's request for information and the Board is otherwise satisfied that the shares are not in fact Affected Shares; and
- (c) if the Board is of the opinion that the information received from a Shareholder, or any other information held or known to the Board, reveals that any person has a relevant interest in breach of the Ownership Threshold in the shares of a particular Shareholder, the Company must make a determination on the matter, including as to whether any of the shares of the particular Shareholder are Affected Shares. The Company must give that Shareholder the opportunity make representations to the Company before it makes a determination on these matters.

*(clauses 3, 11 and 12 of the proposed new schedule 3 to the constitution)*

### **Exceptions**

The Constitutional Amendments contain various exceptions to the restrictions which are designed to ensure that persons' existing holdings are not unfairly prejudiced by the Constitutional Amendments, permit the Company to continue to incentivise its employees under employee share purchase schemes, permit takeover transactions and exempt certain relevant interests held by trustee corporations and nominee companies. Further details regarding each those exceptions are set out below:

(a) **Existing holdings of 5% or more:** The Constitutional Amendments contain an exception for persons with existing relevant interests in 5% or more of shares in the Company, given any impact on shareholder continuity of those holdings will have already occurred. Those persons' holdings will effectively be grandfathered at the percentage of shares in which they had a relevant interest at the time the Constitutional Amendments are first announced to the market (the "Effective Time"). That is, any such person will not be required to reduce their relevant interest below 5% of shares, but will not be permitted to increase their relevant interest in shares while it remains at or above 5% of shares (except where it has reduced as a result of an issue of shares by the Company, other than under a pro-rata offer of shares to shareholders). According to public disclosures, there are two persons with relevant interests in 5% or more of the Company's shares as at the Effective Time:

- (i) Richard Milsom, the Company's managing director (who holds 15.8% of the Company's shares); and
- (ii) WAF Limited (which holds 19.99% of the Company's shares).

*(definitions of "Effective Time Holding" and "Breach the Ownership Threshold" in clause 1 of the proposed new schedule 3 to the constitution)*

(b) **Exception for employee share purchase schemes**

- (i) The Company operates a long-term incentive plan under which it grants performance rights to certain employees (the "LTIP"). Each performance right entitles the participant to receive one ordinary share in the Company (subject to the satisfaction of certain vesting conditions). Mr Milsom, the Company's managing director, is currently the only LTIP participant and he holds 144,032 performance rights under the LTIP at the Effective Time.
- (ii) The Constitutional Amendments contain an exception to allow persons to have a relevant interest in 5% or more of shares as a result of:
  - (i) an issue or transfer of shares to Mr Milsom on the vesting of any of the 144,032 performance rights held by him under the LTIP at the Effective Time; and
  - (ii) an issue or transfer of shares to that person under any employee share purchase scheme operated by the Company (including the LTIP), where such issue or transfer is approved by an ordinary resolution of the Company.
- (iii) The above exception will operate to grandfather the existing LTIP performance rights held by Mr Milsom into the new constitutional restrictions, as well as provide for future issues or transfers of shares under employee share purchase schemes of the Company as an exception to the 5% cap on relevant interests with the approval of shareholders.

*(definitions of "Permitted ESPS Transaction", "Permitted Transaction", "Permitted Transaction Holding" and "Breach the Ownership Threshold" in clause 1 of the proposed new schedule 3 to the constitution)*

(c) **Exceptions for takeover activity:**

- (i) The Constitutional Amendments also include exceptions for relevant interests acquired pursuant to a Takeovers Code-compliant transaction permitted under rule 7 of the Code (being

a full or partial takeover offer, acquisition or allotment of shares with shareholder approval, or compulsory acquisition of shares under the Code).

- (ii) This will allow a takeover offer for the Company made under the Code to proceed notwithstanding the Constitutional Amendments. Similarly, a takeover offer made by way of a scheme of arrangement would be able to proceed notwithstanding the Constitutional Amendments, because the Company's constitution could be changed as part of the scheme and shareholder approval process.
- (iii) The Constitutional Amendments will prevent stake building in respect of 5% or more of shares (as a prospective investor will be in breach of the Ownership Threshold if they acquire 5% or more of shares). However, to compensate for this, the Constitutional Amendments also include exceptions for relevant interests acquired in 5% or more of shares through the entry into of a lock-up agreement in connection with a takeover offer or a voting agreement in connection with a scheme of arrangement for the Company. These exceptions will allow prospective suitors of the Company to continue to utilise these common mechanisms to assist them in proceeding with a takeover offer or scheme or arrangement for the Company.

*(definitions of "Permitted Transaction", "Permitted Transaction Holding" and "Breach the Ownership Threshold" in clause 1 of the proposed new schedule 3 to the constitution)*

(d) **Exception for trustee corporations and nominee companies**

The Constitutional Amendments contains an exception for trustee corporations and nominee companies (that hold securities on behalf of a large number of separate underlying beneficial holders) provided certain conditions are satisfied.

*(definitions of "Approved Nominee" and "Breach the Ownership Threshold" in clause 1 of the proposed new schedule 3 to the constitution)*

### **Expiry of restrictions**

The purpose of the Constitutional Amendments is to preserve the Group's tax losses until they are used or are no longer available to the Group (e.g. due to a change in legislation). Therefore, the restrictions will not continue in perpetuity, rather, they will remain in place until the earlier of:

- (a) the date on which the Board determines, on a reasonable basis, that all of the tax losses available to be utilised by the Group at the Effective Time have been utilised or are no longer available to the Group; and
- (b) any cessation date approved by a special resolution of the Company.

*(clause 20 of the proposed new schedule 3 to the constitution)*

### **Other amendments**

The remaining clauses in the Constitutional Amendments deal with consequential matters or matters required to effectively implement the provisions outlined above, including:

- (a) **No liability:** Except for as specially provided in the Company's constitution and to the maximum extent permitted by law, neither the Company nor any of its directors, officers, employees, agents or



advisers shall have any liability to persons in connection with the exercise of any of the powers under the Constitutional Amendments.

*(clause 16 of the proposed new schedule 3 to the constitution)*

- (b) **Finality of decisions:** Any decisions and actions made or performed by or on behalf of the Company or the Board in connection in connection with the exercise of any of the powers set out in the Constitutional Amendments are final and not subject to appeal or review.

*(clause 18 of the proposed new schedule 3 to the constitution)*

#### **Potential additional impacts of Constitutional Amendments**

The Board has also considered the following potential impacts of the Constitutional Amendments:

- (a) **Potential impact on the demand and market price of shares:** The Constitutional Amendments will, in effect, mean investors are unable to acquire shareholdings of between 5% and 20% of the Company's shares. Currently, an investor can only acquire a shareholding above 20% under a Takeovers Code-compliant transaction or scheme of arrangement, and this is not proposed to change. The directors cannot assess what, if any, impact the adoption of the Constitutional Amendments may have on the demand for the Company's shares or the Company's share price as this is speculative, and these matters are influenced by a number of factors, of which the Constitutional Amendments are only one. However, the Board considers that any negative impact on the demand for, or the market price for, the Company's shares attributable to the Constitutional Amendments should be outweighed over time by the opportunity for value creation through the availability of tax losses to be offset against future earnings.
- (b) **Potential impact on the Company's ability to raise capital:** The Constitutional Amendments could impact the Company's ability to raise capital from investors seeking to acquire a shareholding of 5% or more of the Company's shares. However, on balance, the Board considers that any negative impact on the Company's capital raising ability is outweighed by the benefits described above.

#### **NZ RegCo approval and waiver**

NZ RegCo has granted the Company:

- (a) approval under Rule 8.1.6, in relation to the proposed amendments which grant the Board ability to restrict transfers of the Company's securities; and
- (b) a waiver from Rule 8.1.5, in relation to the Board's ability to suspend voting rights attaching to Affected Shares.

NZ RegCo's approval under Rule 8.1.5 and waiver from Rule 8.1.6 have been granted subject to certain conditions. Those conditions can be summarised as follows:

- (a) the Company will be given a non-standard ("NS") designation, in terms of its listing on the NZX Main Board;
- (b) the Company must appropriately disclose an outline and explanation of the provisions in the Constitutional Amendments that restrict the transfer of the Company's shares, and of the circumstances in which voting rights are suspended ("**Outline and Explanation of the Effects**") in any offering documents for equity securities, or securities convertible into equity securities, offered by the Company and statements provided to security holders under Rule 8.3.1;

- (c) this Notice of Meeting must include an Outline and Explanation of the Effects;
- (d) the Company must include an Outline and Explanation of the Effects on its website and include reference to that disclosure in each annual report published by the Company;
- (e) the Company must obtain approval from NZX in relation to the method of sale prior to exercising its power to require the compulsory sale of Affected Shares on behalf of a Shareholder; and
- (f) the Outline and Explanation of the Effects must include an explanation that:
  - (i) should the Board become aware that a transfer of the Company's shares would, if registered, cause a breach of the Ownership Threshold, the Board will decline to register that transfer of shares; and
  - (ii) if certain of the Company's shares are Affected Shares, the voting rights attached to those Affected Shares are automatically suspended until the shares or relevant interest(s) in those shares are disposed of such that the Affected Shares cease to be Affected Shares.

The Company therefore considers that the proposed amendments can be adopted in a manner that is consistent with the Rules. The Company also considers that the conditions set out above will increase the likelihood of Shareholders and potential Shareholders being aware of the ownership restrictions in the Company's constitution.

#### **Consequences if Resolution not approved**

If the Resolution is not passed by the requisite majority of shareholders, the amendments which are strongly recommended by the Board will not be made. In this case, the Board expects that it would proceed as follows:

- (a) seek to ascertain the reasons why the Resolution was not approved;
- (b) consider whether the proposed amendments to the Company's constitution could be varied in a manner which adequately address those reasons but still addresses the risk of loss of value arising from a failure by the Company to maintain shareholder continuity (as discussed under the heading "Background" on page 4 above); and
- (c) if so, seek NZ RegCo's approval of these varied amendments and then convene a special meeting of shareholders to seek approval of those varied amendments.

The Board believes that this will not be necessary, and that shareholders pass the Resolution at the Meeting:

- (a) At a minimum, these steps would entail additional cost for the Company.
- (b) Additionally, they would also entail a (potentially material) delay, during which the Company would be potentially exposed to transactions that could result in shareholder continuity being lost (resulting in the Group's tax losses being forfeited) which could be prevented under the Constitutional Amendments – a risk which, given the awareness of these issues resulting from this Notice of Meeting, may be greater than previously it was.