



Reserve Bank of New Zealand (Designated Settlement Systems) Amendment Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 29th day of October 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 156ZD of the Reserve Bank of New Zealand Act 1989, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the advice of the Minister of Finance given in accordance with a recommendation of the Reserve Bank of New Zealand, makes the following order.

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Schedule

New Schedules 1 and 2 inserted

Order

- 1 Title**

This order is the Reserve Bank of New Zealand (Designated Settlement Systems) Amendment Order 2013.
- 2 Commencement**

This order comes into force on the 28th day after the date of its notification in the *Gazette*.
- 3 Principal order**

This order amends the Reserve Bank of New Zealand (Designated Payment Systems) Order 2004 (the **principal order**).
- 4 Clause 1 amended (Title)**

In clause 1, replace “Payment” with “Settlement”.
- 5 Clauses 3 to 8 replaced**

Replace clauses 3 to 8 with:
- “3 References to former Title**

As from the commencement of this clause, every reference in any enactment and in any document to the Reserve Bank of New Zealand (Designated Payment Systems) Order 2004 must, unless the context otherwise provides, be read as a reference to the Reserve Bank of New Zealand (Designated Settlement Systems) Order 2004.

“Part 1

“Designation of CLS System

- “4 Interpretation**
- “(1)** In this Part, unless the context otherwise requires,—
 - “**CLS contact person** has the meaning given to it in clause 8
 - “**CLS System** means the continuous linked settlement system operated by CLS Bank International.
- “(2)** Any term that is defined in the Reserve Bank of New Zealand Act 1989 and used, but not defined, in this order has the meaning as in that Act.

- “5 Designation of CLS System as designated settlement system**
The CLS System is declared to be a designated settlement system.
- “6 Documents that evidence rules of CLS System**
The documents that evidence the rules of the CLS System are—
“(a) the CLS Bank International Rules; and
“(b) the Settlement Member Agreement.
- “7 Specified operator of CLS System**
CLS Bank International is the specified operator of the CLS System.
- “8 Contact person for CLS System**
Notices relating to the CLS System must be given to the person occupying the position of Head of Legal of CLS Bank International (the **CLS contact person**).
- “9 Conditions to which designation of CLS System is subject**
The designation of the CLS System as a designated settlement system is subject to the conditions in Schedule 1.
- “10 Operator is participant in CLS System**
CLS Bank International is—
“(a) the operator of the CLS System; and
“(b) a participant in the CLS System.
- “11 CLS System is pure payment system**
The CLS System is a pure payment system.

“Part 2

“Designation of Exchange Settlement Account System

- “12 Interpretation**
“(1) In this Part, unless the context otherwise requires,—

“**ESAS contact person** has the meaning given to it in clause 16

“**Exchange Settlement Account System** means the exchange settlement account system owned by, and operated and managed by or on behalf of, the Reserve Bank of New Zealand.

“(2) Any term that is defined in the Reserve Bank of New Zealand Act 1989 and used, but not defined, in this order has the meaning as in that Act.

“**13 Designation of Exchange Settlement Account System as designated settlement system**

The Exchange Settlement Account System is declared to be a designated settlement system.

“**14 Documents that evidence rules of Exchange Settlement Account System**

The documents that evidence the rules of the Exchange Settlement Account System are—

- “(a) the Exchange Settlement Account Terms and Conditions (Incorporating Service Levels); and
- “(b) the Settlement Submission Mechanism Notice.

“**15 Specified operator of Exchange Settlement Account System**

The Reserve Bank of New Zealand is the specified operator of the Exchange Settlement Account System.

“**16 Contact person for Exchange Settlement Account System**

Notices relating to the Exchange Settlement Account System must be given to the Chief Financial Officer of the Reserve Bank of New Zealand (the **ESAS contact person**).

“**17 Conditions to which designation of Exchange Settlement Account System is subject**

The designation of the Exchange Settlement Account System as a designated settlement system is subject to the conditions in Schedule 2.

“18 Operator is participant in Exchange Settlement Account System

The Reserve Bank of New Zealand is—

- “(a) the operator of the Exchange Settlement Account System; and
- “(b) a participant in the Exchange Settlement Account System.

“19 Exchange Settlement Account System is pure payment system

The Exchange Settlement Account System is a pure payment system.”

6 New Schedules 1 and 2 inserted

After clause 19 (as inserted by clause 5 of this order), insert the Schedules 1 and 2 set out in the Schedule of this order.

Schedule

cl 6

New Schedules 1 and 2 inserted**Schedule 1**

cl 9

**Conditions of designation of CLS System
as designated settlement system****1 Conditions of designation**

While CLS Bank International continues to be regulated and supervised by the Federal Reserve and there continues to be a co-operative oversight arrangement for the CLS System in accordance with the Protocol for the Co-operative Oversight Arrangement for CLS (the **Protocol**), the designation of the CLS System as a designated settlement system is subject to the following conditions:

- (a) that the CLS System complies, and continues to comply, with all laws and regulatory requirements (whether of New Zealand, another country, or any jurisdiction of another country) relating to its operation; and
- (b) that the specified operator notifies the Reserve Bank of New Zealand immediately either directly or through the

Schedule 1—*continued*

oversight committee established by the Protocol upon becoming aware that any of the following has occurred, or is likely to occur:

- (i) a material non-compliance with the risk management framework, or with a law or regulatory requirement (whether of New Zealand, another country, or any jurisdiction of another country) relating to the CLS System's operation;
 - (ii) an event that materially increases risk to the CLS System;
 - (iii) an outage or other material incident relating to the CLS System; and
- (c) that the specified operator notifies the Reserve Bank of New Zealand a reasonable time before there is a change—
- (i) of operator; or
 - (ii) of the CLS system's contact person; and
- (d) that the specified operator publishes at least every 3 years, or more frequently if there is a material change to the system or its environment, a self-assessment carried out against the required standards; and
- (e) that, if required to do so by the Reserve Bank of New Zealand acting in accordance with the Protocol, the specified operator reports to the Reserve Bank of New Zealand, or publishes information, on—
- (i) the financial statements for, and financial resources of, the CLS System over the reporting period; and
 - (ii) the risk management of the CLS System over the reporting period and the extent to which risks have been managed in accordance with the risk management framework; and
 - (iii) the operational performance of the CLS System over the reporting period; and
 - (iv) the governance of the CLS System over the reporting period; and

Schedule 1—*continued*

- (v) any changes that have been made to the risk management framework over the reporting period and the reasons for those changes.

2 Definitions

In these conditions,—

Federal Reserve means the United States Federal Reserve System, which includes the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York
material non-compliance, material increase of risk, and material incidents include matters that are likely to compromise the integrity of the CLS System or undermine confidence in the CLS System

reasonable time before means a period of time that, in the circumstances, is sufficient to allow the Reserve Bank of New Zealand to properly consider the effect of a change on the CLS System before the change occurs

required standards means—

- (a) the *Principles for financial market infrastructures* published by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions; or
- (b) any standard that replaces those principles; or
- (c) any standard against which the Federal Reserve requires the specified operator to carry out a self-assessment with respect to the CLS system

risk management framework means any policy or procedure of the system operators concerning the management of their risks in relation to the CLS System.

Schedule 2

cl 17

**Conditions of designation of Exchange
Settlement Account System as designated
settlement system****1 Conditions of designation**

The designation of the Exchange Settlement Account System as a designated settlement system is subject to the following conditions:

- (a) that the Exchange Settlement Account System complies, and continues to comply, with all laws and regulatory requirements (whether of New Zealand, another country, or any jurisdiction of another country) relating to its operation; and
- (b) that the ESAS contact person notifies the Prudential Supervision Department of the Reserve Bank of New Zealand immediately upon becoming aware that any of the following have occurred, or may occur:
 - (i) a material non-compliance with the risk management framework, or a law or regulatory requirement (whether of New Zealand, another country, or any jurisdiction of another country) relating to the operation of the Exchange Settlement Account System;
 - (ii) an event that materially increases the risk to the Exchange Settlement Account System;
 - (iii) an outage or material incident; and
- (c) that the ESAS contact person notifies the Prudential Supervision Department of the Reserve Bank of New Zealand a reasonable time before there is a change—
 - (i) to the risk management framework; or
 - (ii) of operator; or
 - (iii) of the ESAS contact person; or
 - (iv) of any of the senior management responsible for the operation of the Exchange Settlement Account System; and
- (d) that at the intervals and for the reporting periods required by the Exchange Settlement Account Terms and Conditions, the specified operator publishes an audit report on the Exchange Settlement Account System; and

Schedule 2—*continued*

- (e) that the specified operator publishes at least every 3 years, or more frequently if there is a material change to the system or its environment, a self-assessment carried out against the required standards; and
- (f) that the specified operator publishes annually, within 3 months of its balance date, information on—
 - (i) the financial statements for, and financial resources of, the Exchange Settlement Account System over the financial year ended on the balance date; and
 - (ii) the risk management of the Exchange Settlement Account System over the financial year ended on the balance date and the extent to which risks have been managed in accordance with the risk management framework; and
 - (iii) the operational performance of the Exchange Settlement Account System over the financial year ended on the balance date; and
 - (iv) the governance of the Exchange Settlement Account System over the financial year ended on the balance date; and
 - (v) any changes that have been made to the risk management framework over the financial year ended on the balance date and the reasons for these changes.

2 Definitions used in this schedule

In this schedule,—

material non-compliance, material increase of risk, and material incidents include matters that are likely to—

- (a) compromise the integrity of the Exchange Settlement Account System; or
- (b) undermine confidence in the Exchange Settlement Account System

reasonable time before means a period that, in the circumstances, is sufficient to allow the Prudential Supervision Department of the Reserve Bank of New Zealand to properly con-

Schedule 2—*continued*

sider the effect of a change on the Exchange Settlement Account System before the change occurs

required standards means the *Principles for financial market infrastructures* published by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions or any standard that replaces those principles

risk management framework means any policy or procedure of the specified operator concerning the management of its risks in relation to the Exchange Settlement Account System.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on the 28th day after its notification in the *Gazette* and varies the Reserve Bank of New Zealand (Designated Payment Systems) Order 2004 (the **principal order**).

Part 5C of the Reserve Bank of New Zealand Act 1989 provides for the designation of settlement systems and gives statutory backing for finality of settlement and netting through a designated settlement system. Designation under Part 5C is an opt-in regime, requiring a person to apply for a settlement system to be designated.

This order amends the principal order to apply a number of standard conditions to the designation of both the CLS System and the Exchange Settlement Account System and to change the contact person in the case of the CLS System.

This order specifies in full—

- the documents that evidence the rules of each system:
- the specified operator of each system:
- the contact person for each system:

- the conditions to which the designation of each system as a designated settlement system is subject:
- that CLS Bank International is the operator of, and a participant in, the CLS System:
- that the Reserve Bank of New Zealand is the operator of, and a participant in, the Exchange Settlement Account System:
- that both systems are pure payment systems.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 31 October 2013.
This order is administered by the Reserve Bank of New Zealand.
