



Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 30th day of August 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 156N 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 and the Minister of Commerce given in accordance with a joint recommendation of the Reserve Bank of New Zealand and the Securities Commission, makes the following order.

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Order

1 Title

This order is the Reserve Bank of New Zealand (Designated Settlement System—NZCDC) Order 2010.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

NZ Clearing means New Zealand Clearing Limited, a wholly owned subsidiary of NZCDC

NZ Depository means New Zealand Depository Limited, a wholly owned subsidiary of NZCDC

NZCDC means New Zealand Clearing and Depository Corporation Limited, a wholly owned subsidiary of NZX Limited

NZCDC contact person has the meaning given to it in clause 7

NZCDC settlement system means the settlement system owned by, and operated and managed by or on behalf of, NZCDC and includes—

- (a) the operation of the central counterparty clearing house by NZ Clearing; and
- (b) the operation of the central product depository by NZ Depository; and
- (c) the performance of the custodian trustee role by NZD Nominee; and
- (d) a system for the transfer of legal title to securities, including by electronic means

NZD Nominee means New Zealand Depository Nominee Limited, a wholly owned subsidiary of NZ Depository.

4 NZCDC settlement system declared to be designated settlement system

The NZCDC settlement system is declared to be a designated settlement system.

5 Documents that evidence rules of settlement system

The documents that evidence the rules of the NZCDC settlement system are—

- (a) the New Zealand Clearing Limited Clearing and Settlement Rules;
- (b) the New Zealand Depository Limited Depository Operating Rules;
- (c) procedure 1.1 of the New Zealand Depository Limited Depository Operating Procedures (relating to the amendment of the rules);
- (d) the following provisions of the New Zealand Clearing Limited Clearing and Settlement Procedures:
 - (i) procedure 1.1 (relating to the amendment of the rules);
 - (ii) procedure 3.11.5 (relating to the margin calculation of stock loans);
 - (iii) procedure 6.2 (relating to approved products).

6 Specified operator of settlement system

NZ Clearing—

- (a) is the specified operator of the NZCDC settlement system; and
- (b) is an operator to whom section 103A of the Personal Property Securities Act 1999 applies.

7 Contact person for settlement system

Notices relating to the NZCDC settlement system must be given to NZCDC's Chief Operating Officer and Head of Risk (the **NZCDC contact person**).

8 Conditions to which designation is subject

The designation of the NZCDC settlement system as a designated settlement system is subject to the conditions in the Schedule.

9 Operators are participants in settlement system

Both NZ Clearing and NZ Depository are—

- (a) operators of the NZCDC settlement system; and
- (b) participants in the NZCDC settlement system.

Schedule

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**Conditions to designation of NZCDC
settlement system as designated settlement
system****1 Conditions to designation**

The designation of the NZCDC settlement system as a designated settlement system is subject to the following conditions:

- (a) that the NZCDC settlement 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 NZCDC contact person notifies the joint regulators immediately upon becoming aware that any of the following has occurred, or may occur:
 - (i) a material non-compliance with the financial resources policy, 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 NZCDC settlement system's operation; or
 - (ii) an event that materially increases risk to the NZCDC settlement system; or
 - (iii) an outage or material incident; and
- (c) that the NZCDC contact person notifies the joint regulators immediately upon becoming aware that any of the

- specified agreements will, or may, terminate or expire;
and
- (d) that there is no change to any of the following without the prior written approval of the joint regulators:
 - (i) the constitution of a system operator;
 - (ii) the ownership of the shares of a system operator;
and
 - (e) that the NZCDC contact person notifies the joint regulators a reasonable time before there is a change—
 - (i) to the financial resources policy; or
 - (ii) to the risk management framework; or
 - (iii) of system operators; or
 - (iv) of the NZCDC settlement system's contact person; or
 - (v) to an existing delegation or assignment of a system operator's material powers, discretions, rights, and obligations, other than as advised to the joint regulators before the day on which this order comes into force; or
 - (vi) to any of the specified agreements; or
 - (vii) of directors or senior managers of a system operator or of the NZCDC settlement system; and
 - (f) that the NZCDC contact person notifies the joint regulators a reasonable time before a new delegation or assignment of a system operator's material powers, discretions, rights, and obligations is made; and
 - (g) that each of the system operators obtains and maintains appropriate insurance having regard to its legal arrangements with third parties (including NZX Limited and its subsidiaries) and to its business, operations, and risks; and
 - (h) that each of the system operators takes reasonable steps to ensure that all participants who apply to lend securities through the securities lending facility that is operated as part of the NZCDC settlement system are aware that that lending—
 - (i) will be uncollateralised as between the participant and NZ Clearing; and

- (ii) may be to NZ Clearing in circumstances where NZ Clearing is borrowing securities to cover the obligations of another participant who failed to deliver securities when required to do so; and
- (i) that, at the intervals and for the reporting periods required by the joint regulators, NZCDC—
 - (i) publishes an audit report on the NZCDC settlement system; and
 - (ii) publishes a self-assessment carried out against the required standards; and
 - (iii) reports to the joint regulators, and, if required to do so by the joint regulators, publishes information, on—
 - (A) the financial statements for, and financial resources of, the NZCDC settlement system over the reporting period and the extent to which financial resources have been maintained in accordance with the financial resources policy; and
 - (B) the risk management of the NZCDC settlement system over the reporting period and the extent to which risks have been managed in accordance with the risk management framework; and
 - (C) the operational performance of the NZCDC settlement system over the reporting period; and
 - (D) the governance of the NZCDC settlement system over the reporting period; and
 - (E) any changes that have been made to the financial resources policy or the risk management framework over the reporting period and the reasons for those changes.

2 Definitions used in this schedule

In this schedule,—

financial resources policy—

- (a) means any policy or procedure of the system operators concerning—

- (i) the quantity of capital that they consider is required to support the operation of the NZCDC settlement system; or
 - (ii) the method for calculating the capital requirement referred to in subparagraph (i); or
 - (iii) their financial performance or financial position in relation to the NZCDC settlement system; and
- (b) includes—
- (i) the NZCDC Capital Management Policy; and
 - (ii) the NZCDC Investment Policy; and
 - (iii) the NZCDC Treasury Policy; and
 - (iv) the deed between NZCDC and NZX Limited dated 27 July 2010 that relates to the provision of additional risk capital funding by NZX Limited to NZCDC

material non-compliance, material increase of risk, and material incidents include matters that could—

- (a) compromise the integrity of the NZCDC settlement system; or
- (b) undermine confidence in the NZCDC settlement system; or
- (c) cause the financial resources of the NZCDC settlement system to be less than the minimum level set in accordance with the financial resources policy

reasonable time before means a period of time that, in the circumstances, is sufficient to allow the joint regulators to properly consider the effect of a change on the NZCDC settlement system and the system operators before the change occurs

required standards means—

- (a) the *Recommendations for Securities Settlement Systems* and the *Recommendations for Central Counterparties* published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions; or
- (b) any standard that replaces those recommendations

risk management framework means any policy or procedure of the system operators concerning the management of

their risks in relation to the NZCDC settlement system, and includes—

- (a) the NZCDC Risk Management Framework; and
- (b) the NZ Clearing Default Management Procedures; and
- (c) the NZ Clearing Margin and Collateral Management Procedure; and
- (d) the NZCDC Business Continuity Plan

specified agreements means—

- (a) the agreement between NZCDC, NZ Clearing, NZ Depository, and NZX Limited dated 27 July 2010 that relates to—
 - (i) the provision of infrastructure and services by NZX Limited to NZCDC, NZ Clearing, and NZ Depository; and
 - (ii) insurance arrangements; and
- (b) an addendum between NZCDC, NZ Clearing, NZ Depository, NZX Limited, and Tata Consultancy Services Limited dated 27 May 2010 to the software licence agreement between NZX Limited and Tata Consultancy Services Limited dated 22 October 2007; and
- (c) the data licence agreement between NZX Limited, NZCDC, NZ Clearing, and NZ Depository dated 27 July 2010; and
- (d) the arrangement between NZ Clearing, NZ Depository, and NZX Limited dated 27 July 2010 that relates to the sharing, use, and disclosure of information about their activities as (as applicable) system operators and the operator of securities markets; and
- (e) the agreement between NZCDC, NZ Clearing, NZ Depository, and NZX Limited dated 27 July 2010 that relates to the secondment of senior managers and employees of NZX Limited to NZCDC, NZ Clearing, and NZ Depository

system operator means—

- (a) NZCDC;
- (b) NZ Clearing;
- (c) NZ Depository;

- (d) NZD Nominee.

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 day after the date of its notification in the *Gazette*.

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. Part 5C also makes the Reserve Bank and the Securities Commission joint regulators of designated settlement systems. Designation under Part 5C is an opt-in regime, requiring a person to apply for a settlement system to be designated.

In this order, the NZCDC settlement system is declared to be a designated settlement system for the purposes of Part 5C. The order also specifies—

- the documents that evidence the rules of the NZCDC settlement system;
- the specified operator of the NZCDC settlement system;
- that the specified operator of the NZCDC settlement system is an operator to whom section 103A of the Personal Property Securities Act 1999 applies;
- the contact person for the NZCDC settlement system;
- conditions to which the designation of the NZCDC settlement system as a designated settlement system is subject;
- that New Zealand Clearing Limited and New Zealand Depository Limited are both operators of, and participants in, the NZCDC settlement system.

**Reserve Bank of New Zealand (Designated
Settlement System—NZCDC) Order 2010**

2010/277

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 September 2010.

This order is administered by the Reserve Bank of New Zealand.
