

Proactive release of Cabinet paper and related document to Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Amendment Order 2021

13 April 2021

This package of documents – related to the Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Amendment Order 2021 – has been proactively released by the Reserve Bank on behalf of the Minister of Finance and Minister of Commerce and Consumer Affairs. This package is available on the Reserve Bank’s website at <http://rbnz.govt.nz/research-and-publications/information-releases>

The documents are:

LEG-21-SUB-0012 Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Amendment Order 2021

LEG-21-MIN-0012 Minute of Decision: Reserve Bank of New Zealand (Designated Settlement System – NZCDC) Amendment Order 2021

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In Confidence

Office of the Minister of Finance

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021

Proposal

- 1 This paper seeks authorisation for the submission to the Executive Council of the Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021 (the Order). The Order amends the existing order for NZCDC, a designated settlement system under Part SC of the Reserve Bank of New Zealand Act 1989 since 2010.

Relation to government priorities

- 2 This proposal is an operational matter that requires Cabinet approval because an Order in Council is required. The making of the Order requires no new policy decisions.

Background

- 3 NZCDC settlement system is a designated settlement system under Part SC of the Reserve Bank of New Zealand Act 1989 (the Act). The system's primary function is to clear and settle securities and derivatives trades made on the public exchanges operated by NZX Limited.
- 4 It is jointly regulated by the Reserve Bank of New Zealand (RBNZ) and the Financial Markets Authority (FMA).

Analysis

- 5 In 2020, NZX Limited and NZCDC Limited, the operators for the settlement system, proposed changing their regulatory governance by establishing a wholly-owned operating subsidiary (NZX Regulation Limited - RegCo). RegCo will perform all frontline regulatory functions of the exchanges on behalf of NZX Limited and NZCDC Limited (such as monitoring and enforcing compliance with its Market Rules relating to NZX Main Board and operation of the NZCDC system).
- 6 The proposed changes have been designed to improve the independence of regulatory decision-making, with RegCo being structurally separated from NZX Limited's commercial and operational activities and having a separate board with a majority of independent directors.
- 7 Other consequential changes include changes to the conflict management policies and procedures, as well as some enhancement to the annual conflict oversight audit which is undertaken by independent external advisers.

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- 8 The joint regulators support the proposal for RegCo to be responsible for the oversight of NZCDC Limited's rules relating to operation of the clearing house and depository, and consider that this change is an enhancement of the previous arrangements for regulatory decision making.
- 9 Under section 156ZD of the Reserve Bank of New Zealand Act 1989, the designation of a settlement system can be varied on the advice of the Minister of Finance and Minister of Commerce and Consumer Affairs in accordance with a joint recommendation from the RBNZ and FMA.
- 10 The joint regulators recommended that an Order in Council be drafted to vary the existing designation order for the NZCDC settlement system. The Minister of Finance and the Minister of Commerce and Consumer Affairs agreed with that recommendation, and directed that the Order be drafted.

Financial Implications

- 11 There are no financial implications of the proposal.

Life of the Order

- 12 The life of this Order will be dependent on the anticipated enactment of the FMI Bill currently before Parliament. When this Bill is enacted and comes into full effect, this Order will be repealed and replaced by provisions contained in the Bill. The Bill contains a transition period and it is estimated that it will come into full effect during 2022.

Timing and 28-day rule

- 13 The Order will come into force on 8 March 2021.
- 14 A waiver of the 28 day rule is sought because variation to designation does not require compliance on the part of the public and will align the regulatory requirements for the NZCDC settlement system with its new regulatory governance structure.

Compliance

- 15 The Order is not inconsistent with:
- the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 2020;
 - relevant international standards and obligations; and
 - *Legislation Guidelines* (2018 ed.) published by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 16 There appear to be no grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

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- 17 The Order has been certified by parliamentary counsel as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 18 A regulatory impact statement is not required. The Order represents the exercise of a power in the Reserve Bank of New Zealand Act 1989. The only parties directly affected are NZX Limited and NZCDC Limited which have been consulted about the Order.

Consultation

- 19 NZX Limited and NZCDC Limited have been consulted in the course of drafting the Order. No other consultation was necessary.

Communications

- 20 NZX Limited and NZCDC Limited, as the operators of the NZCDC settlement system, will be notified of the designation, and details of the Order will be posted on the Reserve Bank and Financial Markets Authority websites.

Recommendations

The Minister of Finance and the Minister of Commerce and Consumer Affairs recommend that the Committee:

- 1 note that the joint regulators have, under section 156ZD of the Reserve Bank of New Zealand Act 1989, jointly recommended that the Order be varied;
- 2 note that the Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021 will amend the existing Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Order 2010;
- 3 agree to waive the 28 day rule so that the Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021 can come into force on the day after the date of its notification in the Gazette.
- 4 authorise the submission to the Executive Council of the Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Hon Dr David Clark

Minister of Commerce and Consumer Affairs



Cabinet Legislation Committee

Minute of Decision

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Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021

Portfolios Finance / Commerce and Consumer Affairs

On 25 February 2021, the Cabinet Legislation Committee:

- 1 **noted** that the Reserve Bank of New Zealand and the Financial Markets Authority, as joint regulators, have recommended, under section 156ZD of the Reserve Bank of New Zealand Act 1989, that the Reserve Bank of New Zealand (Designated Settlement System-NZCDC) Order 2010 be amended to reflect structural changes to NZX Limited's regulatory oversight arrangements, in particular, the establishment of NZX Regulation Limited;
- 2 **noted** that the Reserve Bank of New Zealand (Designated Settlement System - NZCDC) Amendment Order 2021 gives effect to the above proposal;
- 3 **authorised** the submission to the Executive Council of the Reserve Bank of New Zealand (Designated Settlement System-NZCDC) Amendment Order 2021 [PCO 23372/7.0];
- 4 **noted** that:
 - 4.1 a waiver of the 28-day rule is sought so that the Order can come into force on 8 March 2021;
 - 4.2 the waiver is sought on the grounds that variation to designation does not require compliance on the part of the public and will align the regulatory requirements for the NZCDC settlement system with its new regulatory governance structure;
- 5 **agreed** to a waiver of the 28-day rule so that the Order can come into force on 8 March 2021.

Gerrard Carter
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Grant Robertson
Hon Clu-is Hipkins (Chair)
Hon Andrew Little
Hon Kris Faafoi
Hon Dr David Clark
Hon Dr Ayesha Verrall

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Finance
Minister of Commerce and Consumer Affairs

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