

September 21, 2022

Closed Days Guidance – 1998 FX and Currency Option Definitions

New Zealand Queen Elizabeth II Memorial Day 2022

The International Swaps and Derivatives Association, Inc. (“ISDA”) announces the following guidance for parties to over-the-counter FX derivative transactions that are affected by the Queen Elizabeth II Memorial Day in New Zealand.

*On September 12, 2022, the New Zealand Prime Minister announced that Monday, September 26, 2022, would be a public holiday to mark the passing of Her Majesty Queen Elizabeth II.¹ Following this announcement, draft legislation has been produced to provide for a one-off day of commemoration, the Queen Elizabeth II Memorial Day (“**Memorial Day**”), in honour of the life and service of Her Majesty Queen Elizabeth II.*

ISDA understands that:

- (i) Memorial Day is to be classified as a “public holiday” under section 44 of the New Zealand Holidays Act 2003;*
- (ii) there will be no trading restrictions on Memorial Day (unlike certain trading restrictions on other New Zealand public holidays such as (inter alia) Christmas Day and Good Friday); and*
- (iii) the draft bill designating September 26, 2022 provides that Memorial Day is not to be considered as a business day or a working day for the purpose of obligations requiring a person to perform an action within, by, or no sooner than a specified number of business or working days.²*

As a consequence, it is ISDA’s understanding that on September 26, 2022, certain New Zealand commercial banks are expected to be closed for general business. Currently ISDA understands that:

- the following New Zealand banks will not be generally open for business and that, accordingly, Memorial Day will generally not be a good value date for New Zealand Dollar over-the-counter wholesale financial markets transactions, including foreign exchange within these institutions: ANZ Bank New Zealand Limited, ASB Bank*

¹ <https://www.beehive.govt.nz/release/public-holiday-26-september-mark-passing-queen-elizabeth-ii>

² https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_127122/queen-elizabeth-ii-memorial-day-bill#:~:text=The%20purpose%20of%20this%20bill%20is%20to%20provide,holiday%20in%20accordance%20with%20the%20Holidays%20Act%202003.

*Limited, Bank of New Zealand, Kiwibank and Westpac Banking Corporation - NZ Branch.*³

- *based on information from the New Zealand Financial Markets Association, September 26, 2022 will generally not be a settlement day for foreign exchange.*
- *Bloomberg will treat September 26, 2022 as a non-business day for NZD foreign exchange transactions for settlement purposes, consequently spot trades executed through a Bloomberg platform on Thursday, September 22, 2022 will settle on Tuesday, September 27, 2022.*
- *CLS Services Ltd will be closed and there will be no NZD settlement on September 26, 2022 on the CLS Settlement payment system (settlement system for foreign exchange payments).*
- *The Reserve Bank of New Zealand Exchange Settlement Account System (ESAS) will be open as usual and NZClear will remain open on a limited basis.*⁴
- *NZDFIX fixings will not be published on Thursday, September 26, 2022, and that the relevant BFIX fixings will be published as normal on such day.*

ISDA is not aware of any commercial banks in Auckland and Wellington that propose to open on September 26, 2022 for general business.

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly and efficient valuation and settlement of positions by market participants. This guidance illustrates the consequences of the above market closures based on the provisions described in the 1998 FX and Currency Option Definitions (the “**FX Definitions**”). This guidance does not provide views on conventions or consequences, which parties may have bilaterally agreed, that deviate from such provisions, nor does it cover transactions which are not subject to the FX Definitions and for which no bilateral agreement has been reached regarding the subject matter of this guidance. This guidance includes a description of provisions contained in the FX Definitions that may be relevant to market participants. **This guidance is not legal advice and market participants should consult their legal advisors as appropriate.** Market participants should not rely on this guidance for any purpose but should review the contractual terms of each affected transaction in order to understand the effects of the events described above. ISDA does not assume any responsibility for this guidance and it is not intended to set a precedent. Parties are not obliged to follow this guidance and may choose alternate means of addressing the aforementioned event. In

³ https://www.nzfma.org/Site/news/market_notice_2022-03.aspx

As specified on the Reserve Bank of New Zealand website on May 18, 2022 (<https://www.rbnz.govt.nz/financial-stability/about-the-new-zealand-financial-system/the-banking-sector#:~:text=The%20New%20Zealand%20subsidiaries%20of,credit%20ratings%20by%20international%20standards>), the banks listed in this paragraph are responsible for 85% of bank lending in New Zealand.

⁴ <https://www.rbnz.govt.nz/hub/news/2022/09/operational-functionality-update-of-esas-and-nzclear-on-26-september-2022>

addition, firms should consider contacting their counterparties to discuss the consequences for their transactions.

For cleared transactions and transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable clearing house or confirmation platform, as applicable.

Please note that this guidance may be updated from time to time.

.....

1 FX Definitions

1.1 Settlement Date; Premium Payment Date

The definition of ‘Business Day’ in the FX Definitions provides that, for the purposes of a Settlement Date or Premium Payment Date, a day will be a Business Day if ‘*commercial banks effect [...] delivery of the currency to be delivered [...] in accordance with the market practice of the foreign exchange market*’ in the relevant financial center specified.

It is ISDA’s understanding that commercial banks representing a significant majority of bank lending in New Zealand will not settle payments in New Zealand Dollars (NZD) pursuant to FX transactions on September 26, 2022, (the “**Relevant Date**”). On that basis, the requirement for commercial banks to effect delivery of NZD in accordance with market practice of the foreign exchange market does not appear to be satisfied. Consequently, the Relevant Date should not be considered to be a Business Day where Wellington and/or Auckland are relevant financial centers for the purposes of settlement and payment on the Settlement Date and Premium Payment Date and the relevant Business Day Convention should apply to those dates. In the absence of a specified Business Day Convention in the parties’ confirmation, the Following Business Day Convention will apply.

1.2 Valuation Date; Averaging Date; exercise of Options

The definition of ‘Business Day’ in the FX Definitions provides that, for the purposes of a Valuation Date, Averaging Date, Exercise Date, Specified Exercise Date, Expiration Date and the Exercise Period, a day will be a Business Day if ‘*commercial banks are open [...] for business (including dealings in foreign exchange in accordance with the market practice of the foreign exchange market)*’ in the relevant financial center specified.

It is ISDA’s understanding that commercial banks representing a significant majority of bank lending in New Zealand will not be open for general business (including dealings in foreign exchange) on the Relevant Date. On this basis, the requirement for ‘commercial banks to be open for business (including dealings in foreign exchange [...])’ does not appear

to be satisfied. Consequently, the Relevant Date should not be considered to be a Business Day in Wellington or Auckland for the purposes of valuation on a Valuation Date or Averaging Date, or for exercise of a Currency Option Transaction on an Expiration Date, Specified Exercise Date or any day during the Exercise Period. For transactions where Wellington and/or Auckland are relevant financial centers for Business Days, the Valuation Date, Averaging Date, Expiration Date, and Specified Expiration Date will therefore adjust in accordance with the applicable Business Day Convention. Unless otherwise specified in documentation entered into by the parties, the Business Day Convention set out for the relevant day in the FX Definitions will apply (see below).

Certain transactions provide for separate Business Days for valuation and settlement. If Business Days for settlement specify Wellington and/or Auckland as the financial centers but Business Days for valuation do not, a Business Day adjustment of the Valuation Date should not be required for such transactions (unless there is a holiday in the financial center(s) specified for valuation Business Days), notwithstanding that the Settlement Date will be subject to adjustment in accordance with paragraph 1.1 (*Settlement Date; Premium Payment Date*) of this guidance.

If the Relevant Date is the day for fixing the spot rate pursuant to the Settlement Rate Option (in respect of the Reference Currency and Settlement Currency as appropriate) where the rate is viewed on a day *other than* the Valuation Date, the day for fixing the spot rate will adjust as set out in the relevant Settlement Rate Option (i.e. [x] Business Days following the Rate Calculation Date (either the Valuation Date or the Averaging Date)).

The presumed Business Day Conventions/adjustments that apply pursuant to the FX Definitions are as follows:

Valuation Date (Section 1.16(f)) Averaging Date (Section 3.8(a))	Preceding Business Day Convention
Expiration Date (Section 3.5(d)) Specified Exercise Date (Section 3.5(h))	Following Business Day Convention
A day during the Exercise Period (American Currency Options) (Section 3.6(b))	Exercise on the Relevant Date will be deemed as exercise on the next valid Business Day during the Exercise Period.