

September 21, 2022

Closed Days Guidance – 2021 ISDA Interest Rate Derivatives Definitions and 2006 ISDA 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 interest rate 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*

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.

exchange within these institutions: ANZ Bank New Zealand Limited, ASB Bank 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 (the settlement system for foreign exchange payments) will be closed.*
- *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*
- *New Zealand Financial Markets Association has announced that consistent with other public holidays it will not be publishing the Bank Bill Benchmark Rate (BKBM) on September 26, 2022.⁵*

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

On the basis of the New Zealand Financial Markets Association announcement referred to above, the following Floating Rate Options will not be published on September 26, 2022:

- *under the 2021 Definitions, NZD-BKBM Bid, NZD-BKBM FRA; and*
- *under the 2006 Definitions, NZD-BBR-BID, NZD-BBR-ISDC, NZD-BBR-FRA*

In addition, Bloomberg has announced that September 26, 2022 will not constitute a 'Business Day', an 'IBOR Business Day' or a 'Reference Rate Business Day', as those terms are defined under the IBOR Fallback Rate Adjustment Rule Book, for the purposes of Fallback Rate (NZIONA) (as defined in the 2021 Definitions and the 2006 Definitions). On that basis, no 'Reference Rates' will be published and no IBOR fallback rates will be calculated and published in or for the New Zealand markets on September 26, 2022.⁶

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>

⁵ https://www.nzfma.org/Site/news/market_notice_2022-02.aspx

⁶ https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks_UPDATE_Additional-Non-Business-Days-Sep22.pdf

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 default provisions described in the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”) and the 2006 ISDA Definitions (the “**2006 Definitions**”). This guidance does not provide views on conventions or consequences, which parties may have bilaterally agreed, that deviate from such presumed provisions, nor does it cover transactions which are not subject to the 2021 Definitions or the 2006 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 2021 Definitions and the 2006 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 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.

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Guidance

1 2021 Definitions and 2006 Definitions

ISDA understands that on a public holiday in New Zealand, businesses including banks are permitted to open for trading and although certain public holidays have trading restrictions, this is not the case in respect of Memorial Day.

The definition of ‘Business Day’ in the 2021 Definitions and the 2006 Definitions provides that a day will only be a ‘Business Day’ if:

1. [2021 Definitions] “*commercial banks and foreign exchange markets are open for general business (including settling payments and dealings in foreign exchange and foreign currency deposits)*”,
2. [2006 Definitions] “*commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits)*”,

in the relevant financial center specified for the purpose of Business Days.

The definition of ‘Banking Day’ in the 2006 Definitions is “*any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits)*” in the relevant city.

While the wording differs slightly between 2021 Definitions and the 2006 Definitions, the Business Day definitions require that on the relevant day:

1. commercial banks are open for general business;
2. foreign exchange markets are open for general business;
3. commercial banks and foreign exchange markets settle payments; and
4. commercial banks and foreign exchange markets are open for dealing in foreign exchange and foreign currency deposits.

If any one of these elements is not satisfied, it will not be a Business Day.

Banking Day under the 2006 Definitions requires that:

1. commercial banks are open for general business; and
2. commercial banks are open for dealing in foreign exchange and foreign currency deposits.

Based on ISDA’s understanding of banks’ approach to Memorial Day as set out above, commercial banks representing a significant majority of bank lending in New Zealand will not be open for general business on Memorial Day. On this basis, the requirement

for ‘commercial banks to be open for general business’ does not appear to be satisfied.

Against this background, September 26, 2022 (the “**Relevant Date**”) should not be considered to be a Business Day for the purposes of the 2021 Definitions and the 2006 Definitions or a Banking Day for the purposes of the 2006 Definitions.

Consequently, the Relevant Date should not be treated as:

- a Business Day (under the 2021 Definitions) or a Banking Day (under the 2006 Definitions) for the purposes of Floating Rate Options where the rate for a Reset Date is fixed by reference to Business Days or Banking Days, as applicable;
- a Business Day for the purposes of Payment Dates, Period End Dates and Reset Dates;
- a Valuation Business Day; or
- an Exercise Business Day,

in each case, in respect of Wellington and Auckland (or Wellington or Auckland) as the relevant financial center.

In respect of any Floating Rate Option that is fixed on a Wellington and Auckland Business Day⁷, under the 2021 Definitions, or a Wellington and Auckland Banking Day, under the 2006 Definitions, parties should consult the terms of the relevant Floating Rate Option as to the consequences (e.g., if the fixing is one Wellington and Auckland Business Day following a Reset Date falling on Friday, September 23, 2022, the fixing day⁸ will move to Tuesday, September 27, 2022). In respect of any Floating Rate Option that is fixed on the Reset Date, parties should refer to the Business Day Convention that is applicable to Reset Dates, which if a Business Day Convention is not specified will be the Business Day Convention applicable to Floating Amount Payer Period End Dates (2021 Definitions) or Floating Rate Payer Payment Dates (2006 Definitions).

In respect of each Date for Payment (under the 2021 Definitions), Payment Date (under the 2006 Definitions) and each Period End Date (under both the 2021 Definitions and the 2006 Definitions), the relevant day will adjust in accordance with the Business Day Convention specified by the parties or, if none is specified, the default Business Day Convention set out in the relevant definitional booklet as

⁷ In the 2021 Definitions, the definition of Fixing Day for NZD-BKBM Bid and NZD-BKBM FRA is the Reset Date. The equivalent Floating Rate Options in the 2006 Definitions also use the Reset Date for the fixing date. NZD-NZIONA and NZD-NZIONA-OIS Compound in the 2021 Definitions and the 2006 Definitions use Wellington and Auckland Business Days/Banking Days as the Applicable Business Day on which to fix the official cash rate.

⁸ In the 2021 Definitions, this day is referred to as the “Fixing Day”. There is no equivalent defined term in the 2006 Definitions.

follows:

2021 Definitions

- Initial Exchange Date; Premium Payment Date: Following Business Day Convention;
- Interim Exchange Date; Final Exchange Date; Payment Date: Modified Following Business Day Convention;
- Period End Dates: Modified Following Business Day Convention; and
- Cash Settlement Valuation Date: Preceding Business Day Convention.

2006 Definitions

- Initial Exchange Date; Premium Payment Date: Following Business Day Convention;
- Interim Exchange Date; Periodic Exchange Date; Final Exchange Date; Payment Date: Modified Following Business Day Convention; and
- Period End Date; Cash Settlement Valuation Date (in respect of an Exercise Date or Mandatory Early Termination Date): Modified Following Business Day Convention.

Under the 2021 Definitions, the Effective Date and Termination Date are both subject to the No Adjustment Business Day Convention, unless otherwise specified in the Confirmation. Under the 2006 Definitions neither date is subject to adjustment in accordance with any Business Day Convention (unless otherwise specified in the Confirmation).

Note that, under both the 2021 Definitions and the 2006 Definitions, in respect of a Termination Date that is also a Payment Date falling on the Relevant Date, unless otherwise specified in the relevant Confirmation, the Payment Date that falls on such Termination Date will be adjusted in accordance with the Business Day Convention specified for such Payment Dates even though the actual Termination Date will not adjust (unless adjustment in accordance with the Following, Modified Following or Preceding Business Day Convention has been specified to apply).

Swaptions

In respect of any single currency swaption involving U.S. Dollars (a “**USD Swaption**”) for which ‘Wellington or ‘Auckland’ or ‘Wellington and Auckland’ has been specified as an additional financial center in the Confirmation for the purpose

of Exercise Business Days, for the purposes of an Expiration Date⁹ falling on the Relevant Date, under both the 2021 Definitions and the 2006 Definitions the Expiration Date shall instead be the immediately preceding Exercise Business Day (which, for Wellington, Auckland and New York financial centers, is expected to be Friday, September 23, 2022).

Under both the 2021 Definitions and the 2006 Definitions, for any single currency swaption other than a USD Swaption, in respect of an Expiration Date¹⁰ falling on the Relevant Date, where ‘Wellington or ‘Auckland’ or ‘Wellington and Auckland’ is a financial center for the purpose of Exercise Business Days¹¹, the Expiration Date shall roll to the next following Exercise Business Day (expected to be September 27, 2022).

Physically Settled Swaptions

Under both the 2021 Definitions and the 2006 Definitions, in respect of a Physically Settled Swaption, the terms of the underlying transaction are set out in the Confirmation. Consequently, if the underlying transaction has an Effective Date of September 26, 2022, this will not adjust for the Relevant Date, unless otherwise specified in the Confirmation.

Under both the 2021 Definitions and the 2006 Definitions, in respect of a Cleared Physically Settled Swaption where the underlying transaction has an Effective Date of September 26, 2022 and to which Cleared Physical Settlement applies, once the Swaption is exercised and the underlying transaction submitted for clearing, the terms of the underlying transaction will become subject to any agreement related to clearing in place between the parties and the rules of any relevant clearinghouse, unless the underlying transaction fails to clear in which case the terms of any agreement to clearing between the parties will apply.

Cash Settled Swaptions

Under both the 2021 Definitions and the 2006 Definitions, in respect of a Cash Settled Swaption, the terms of the underlying transaction are set out in the Confirmation. Consequently, if the underlying transaction has an Effective Date of September 26, 2022, this will not adjust for the Relevant Date, unless otherwise specified in the Confirmation.

⁹ This consequence applies only if Exercise Business Days are defined to include Business Days (under the 2021 Definitions) or Banking Days (under the 2006 Definitions) in Wellington and/or Auckland.

¹⁰ See Footnote 6 above.

¹¹ Unless otherwise specified in the Confirmation, where the ISDA Settlement Matrix applies, Exercise Business Days are set out in the ISDA Settlement Matrix.

The Cash Settlement Payment Date, unless otherwise specified in the Confirmation, will be the date specified in the ISDA Settlement Matrix. For NZD Swaptions, this is specified in the ISDA Settlement Matrix to be two Auckland and Wellington Business Days following the Exercise Date. The Exercise Date is the date on which the Swaption is exercised. Where exercise takes place at expiration on the Expiration Date, this date adjusts as set out above if this is specified to be September 26, 2022. The Cash Settlement Payment Date will accordingly adjust in line with the Expiration Date.

The Cash Settlement Amount (2006 Definitions) and the Fallback Cash Settlement Amount (2021 Definitions) is determined as at the Cash Settlement Valuation Date. Unless otherwise specified in the Confirmation, the Cash Settlement Valuation Date will be the date specified in the ISDA Settlement Matrix. For NZD Swaptions, this is the Exercise Date. Where exercise takes place at expiration on the Expiration Date, this date adjusts as set out above. The Cash Settlement Valuation Date will accordingly adjust in line with the Expiration Date. Where Collateralized Cash Price or Par Yield Curve – Unadjusted is the applicable Cash Settlement Method¹² the Settlement Rate will be determined as of the adjusted Cash Settlement Valuation Date.

NZD NZIONA Swaps

For the purposes of NZD-NZIONA-OIS Compound (in the 2021 Definitions), NZD-NZIONA-OIS-COMPOUND (in the 2006 Definitions) or NZD-NZIONA when used with OIS Compounding¹³ in either the 2021 Definitions or the 2006 Definitions, September 26, 2022 will not be an Applicable Business Day.

If September 26, 2022 falls on a day other than the first day of the Calculation Period, the rate for September 26, 2022 as a relevant day “i” will be the level of NZIONA (the official cash rate) for the immediately preceding Applicable Business Day (which is expected to be Friday, September 23, 2022). In practice, this will have no impact given that the official cash rate is not updated daily and was not scheduled to be updated on September 26, 2022.

If September 26, 2022 is the first calendar day in the Calculation Period, the 2021 Definitions expressly includes such day within the definition of “**do**” so that the rate for NZIONA (the official cash rate) for such day will be the rate for the immediately preceding Applicable Business Day (which is expected to be Friday, September 23, 2022). This language was introduced into the 2021 Definitions to more accurately

¹² Collateralized Cash Price is the default Cash Settlement Method for NZD BKBM (Bank Bill Benchmark Rate) and NZD NZIONA Swaptions set out in the ISDA Settlement Matrix under the 2021 Definition and Par Yield Curve – Unadjusted is the default Cash Settlement Method for those NZD Swaptions under the 2006 Definitions.

¹³ This analysis applies equally to Compounding with Lookback and Compounding with Lockout.

reflect what ISDA understands to have been standard practice under the 2006 Definitions.¹⁴

¹⁴ To the extent firms have documented a swap referencing NZIONA using NZD-NZIONA and OIS Compounding pursuant to the 2006 Definitions, the analysis set out in respect of the 2021 Definitions will apply.