

September 21, 2022

Closed Days Guidance – Equity Derivatives

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 equity derivative transactions that are affected by the Queen Elizabeth II Memorial Day in New Zealand.

*On September 12, 2022, the Prime Minister of Zealand announced that Monday, September 26, 2022, would be a public holiday to mark the passing of Her Majesty Queen Elizabeth II. 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.¹*

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:

- 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

- *the New Zealand Stock Exchange (“NZX”) will be closed.*⁴
- *the securities clearance and settlement systems in New Zealand will be closed.*⁵
- *NZX updated its trading calendars in response to the announcement on September 14, 2022.*

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 main equity definitional booklets, master confirmation agreement templates and other ISDA published documentation expressly referred to in this guidance. ISDA understands that parties frequently bilaterally agree to amend the provisions of those definitional booklets, those master confirmation agreement templates and other ISDA published documentation when executing trades or agreeing the terms of their trading relationships. This guidance does not cover any such deviations. This guidance includes a description of provisions contained in the main equity definitional booklets, those master confirmation agreement templates and other ISDA published documentation expressly referred to in this guidance 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 transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable confirmation platform.

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

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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.nzx.com/announcements/398794>

⁵ <https://www.nzx.com/announcements/398794>

Guidance

1 2002 ISDA Equity Derivatives Definitions (the “2002 Equity Definitions”)⁶

1.1 *Exchange Business Days; Scheduled Trading Days*

ISDA understands that NZX will not be open for trading for its regular trading session on September 26, 2022 (the “**Relevant Date**”) and therefore the Relevant Date should not be treated as an Exchange Business Day for that exchange (either because it is not deemed to be a Scheduled Trading Day (see second paragraph below) or because it is deemed to be a Scheduled Trading Day, but NZX does not open (see third paragraph below)).

The Memorial Day announcement was made fourteen days prior to the Relevant Date. This guidance has therefore been produced on the basis that the closure of NZX is scheduled and that the Relevant Date is therefore not a Scheduled Trading Day when either the Exchange or Related Exchange is NZX. This is consistent with the approach adopted in relation to previous guidance ISDA has issued in relation to market closure events.

However, ISDA is aware that some market participants have interpreted ‘Scheduled Trading Day’ by reference to the schedule of an Exchange/Related Exchange as at the Trade Date of the relevant Transaction (the “**Trade Date STD Approach**”) and may therefore consider the Relevant Date to be a Scheduled Trading Day when either the Exchange or Related Exchange is NZX. Where parties agree that the Relevant Date constitutes a non-scheduled closure, for the purposes of a Transaction with a Trade Date prior to the date upon which the schedules of NZX were updated (September 14, 2022), then the Relevant Date should not be treated as an Exchange Business Day but should be treated as a Scheduled Trading Day that is a Disrupted Day and, unless otherwise discussed below, the guidance set out in this document should be adjusted accordingly in accordance with the consequences for Disrupted Days set out in the 2002 Equity Definitions and, if relevant, in the applicable Master Confirmation Agreement.

1.2 *Exercise/expiration of Option Transactions*

If a Commencement Date, Potential Exercise Date (Bermuda Option) or Expiration Date falls on the Relevant Date, such Commencement Date, Potential Exercise Date or Expiration Date should instead be the next following Scheduled Trading Day (which is expected to be September 27, 2022). If the Relevant Date falls in the

⁶ This Section of the guidance covers Transactions documented under the 2002 Equity Definitions and also Transactions documented under the master confirmation agreements detailed below. It does not cover any additional supplements, master confirmations or standard terms used in conjunction with the 2002 Equity Definitions.

Exercise Period for an American Option and the notice of exercise is given on the Relevant Date, then that notice will be deemed given on the next following Scheduled Trading Day (which is expected to be September 27, 2022).

1.3 Valuation of Options, Swaps and Forwards

Valuation Date

If a Valuation Date in respect of a Transaction falls on the Relevant Date, such Valuation Date should instead be the next following Scheduled Trading Day (which is expected to be September 27, 2022).

If Futures Price Valuation applies to an Index Transaction, and the Official Settlement Price is published on the Valuation Date, such day should be treated as the Valuation Date irrespective of whether such day is a Scheduled Trading Day.

Averaging Dates

If an Averaging Date in respect of a Transaction falls on the Relevant Date, such Averaging Date should instead be the next following Scheduled Trading Day (which is expected to be September 27, 2022).

1.4 Payments and deliveries

Based on ISDA's understanding of banks' approach to Memorial Day, commercial banks representing a significant majority of bank lending in New Zealand will not be open for business on Memorial Day. On this basis, the requirement for 'commercial banks to be open for business' does not appear to be satisfied. Accordingly, the Relevant Date will not be a Currency Business Day in Wellington and Auckland.

It is also ISDA's understanding that equity securities clearance and settlement systems will not be open on the Relevant Date. Accordingly, the Relevant Date will not be a Clearance System Business Day in Wellington and Auckland.

In respect of a Transaction where the Settlement Currency is NZD, if any of the Cash Settlement Payment Date, Premium Payment Date, Dividend Payment Date or Prepayment Date that is specified in the Confirmation falls on the Relevant Date (or is otherwise determined by the terms of the Confirmation to fall on the Relevant Date), such date will instead be the next following Currency Business Day for NZD, expected to be September 27, 2022. Payments in respect of a Transaction where the Settlement Currency is NZD which are due on an Initial Exchange Date, Final Exchange Date or Prepayment Date (where the Prepayment Payment Date is not otherwise specified in the Confirmation) that is specified to fall on the Relevant Date (or is otherwise determined by the terms of the Confirmation to fall on the Relevant Date) should instead be due on the next following Currency Business Day for NZD that is also an Exchange Business Day, expected to be September 27, 2022.

Deliveries due on a Settlement Date falling on the Relevant Date will be made on the next following Clearance System Business Day, expected to be September 27, 2022.

2 Pan-Asia Interdealer Master Equity Derivatives Confirmation Agreement (the “Pan-Asia MCA”)

2.1 The guidance set out in paragraph 1 above should be equally applicable to Transactions documented under the 2009 Pan-Asia Interdealer Master Equity Derivatives Confirmation Agreement (and the Annexes attached to it).

2.2 However, in addition, the following points should be noted for the Pan-Asia Interdealer Index Swap General Terms Confirmation (“PAIIS”):

2.2.1 *Scheduled Trading Day where Multiple Exchange applies*

For Index Transactions where Multiple Exchange applies, “Scheduled Trading Day” is defined as any day on which (a) the Index Sponsor is scheduled to publish the level of the Index, and (b) the Related Exchange is scheduled to be open for trading during its regular trading session.

As such, for Index Transactions where Multiple Exchange applies and assuming that NZX is a Related Exchange (i.e. an exchange where trading has a material effect on the overall market for futures or options contracts relating to the Index), the Relevant Date will not be a Scheduled Trading Day even if the Index Sponsor is scheduled to publish the level of the Index on the Relevant Date because the Related Exchange is not scheduled to be open for trading during its regular trading session.

2.2.2 *Valuation where Multiple Exchange does not apply*

If Multiple Exchange does not apply, then if:

- (i) the Final Price election is ‘Close’ and the final Valuation Date falls on the Relevant Date (not being a Scheduled Trading Day), in accordance with Section 6.2, the Valuation Date would move to the next Scheduled Trading Day (which is expected to be September 27, 2022);
- (ii) the Final Price election is “Hedge Execution”, there will be no impact and the Final Execution Period will be extended out as necessary to allow the Hedging Party to terminate its Hedge Positions; or
- (iii) a Termination Notice (pursuant to an Optional Early Termination) is delivered on the Relevant Date, as such day will not be an Exchange Business Day, the Termination Notice shall be deemed to have been

given at the opening of business on the next Exchange Business Day (which is expected to be September 27, 2022).

If Multiple Exchange does not apply and the parties use the Trade Date STD Approach, then if:

- (iv) the Final Price election is ‘Close’ and the final Valuation Date falls on the Relevant Date, the Final Price shall be determined by the Calculation Agent in accordance with limb (ii)(b) of the definition of “Final Price” in the PAIS. This involves using the formula/method for calculation of the Index and taking the price of each non-affected security as at close on the Relevant Date and taking the price for each affected security (i.e. each security for which the Relevant Date will not be a Component Security Scheduled Trading Day)⁷ as at close on the following Scheduled Trading Day that is not a Disrupted Day, up to a maximum of eight Scheduled Trading Days roll;
- (v) the Final Price election is “Hedge Execution”, there will be no impact and the Final Execution Period will be extended out as necessary to allow the Hedging Party to terminate its Hedge Positions; or
- (vi) a Termination Notice (pursuant to an Optional Early Termination) is delivered on the Relevant Date, as such day will not be an Exchange Business Day, the Termination Notice shall be deemed to have been given at the opening of business on the next Exchange Business Day (which is expected to be September 27, 2022).

2.2.3 *Payments*

If the Payment Date and the Cash Settlement Payment Date⁸ would ordinarily fall on the Relevant Date, the Payment Date and Cash Settlement Payment Date will be moved to the next Currency Business Day (which is expected to be September 27, 2022).

2.3 In addition, the following points should be noted for the Pan-Asia Interdealer Share Swap General Terms Confirmation (“PAISS”):

2.3.1 *Payments*

If the Payment Date is specified to fall on the Cash Settlement Payment Date and such Payment Date and Cash Settlement Payment Date would ordinarily fall on the Relevant Date, the Payment Date and Cash Settlement Payment

⁷ “Component Security Scheduled Trading Day” is defined as, in respect of a Component Security, any day on which the Exchange is scheduled to be open for trading for its regular trading session. As such, the Relevant Date, in respect of a Component Security, would not be a Component Security Scheduled Trading Day.

⁸ By default, the Payment Date is specified to fall on the Cash Settlement Payment Date.

Date will be moved to the next Currency Business Day (which is expected to be September 27, 2022).

If the Payment Date is not specified to be the Cash Settlement Payment Date, and is specified to fall on the Relevant Date, the Modified Following Business Day Convention will apply, unless another Business Day Convention is specified in the Transaction Supplement.

3 Second Revised 2007 AEJ Master Variance Swap Confirmation Agreement (“AEJ VS MCA”)

The following guidance is for Index Variance Swap Transactions and Share Variance Swap Transactions confirmed under an AEJ VS MCA.

Index Variance Swap and Share Variance Swap

If “Multiple Exchange” applies, the guidance below only applies if,

1. the Relevant Date is a day on which the Index Sponsor is scheduled to publish the level of the Index, and
2. NZX is a Related Exchange for the purposes of the relevant Index.

3.1 *Observation Days (other than the Valuation Date)*

The AEJ VS MCA – Annex IVS and Annex SVS both provide, for the purposes of an Observation Day and the Observation End Date only, that “*a day shall not be a Scheduled Trading Day if it is known at any time before that day that an Exchange or Related Exchange is not scheduled to be open for trading for its regular trading session on that day.*” Accordingly, for the purpose of Observation Days, the Relevant Date would not be a Scheduled Trading Day and, hence, would not be an Observation Day.

3.2 *Expected N*

“Expected N” is defined in the AEJ VS MCA as “*The number specified as such in the relevant Transaction Supplement or, if not so specified, the number of days that, **as of the Trade Date**, are expected to be Scheduled Trading Days for the period from, but excluding, the Observation Start Date to, and including, the Observation End Date.*”.

Unless otherwise specified, if the Trade Date of such a Variance Swap Transaction is before the date on which the updates performed by NZX took place (September 14,

2022), Expected N will include the Relevant Date falling in the period from, but excluding, the Observation Start Date to, and including, the Observation End Date.

Unless otherwise specified, if the Trade Date of such a Variance Swap Transaction is on or after the date on which the updates performed by NZX took place (September 14, 2022), Expected N will not include the Relevant Date falling in the period from, but excluding, the Observation Start Date to, and including, the Scheduled Valuation Date.

3.3 *Observation End Date and Valuation Date*

The Observation Period is the period from, but excluding, the Observation Start Date to, but excluding, the Observation End Date, and the Valuation Date.

The Observation End Date is the Scheduled Valuation Date, which means “*any original date that, but for (i) the fact that it is not a Scheduled Trading Day, or (ii) the occurrence of an event causing a Disrupted Day, would have been a Valuation Date.*”.

If the Observation End Date falls on the Relevant Date, the Observation End Date will not adjust.

If the Valuation Date set out in the Confirmation is specified to be the Relevant Date, the Valuation Date will be adjusted to the next Scheduled Trading Day that is not a Disrupted Day (which is expected to be September 27, 2022).

If Futures Price Valuation is applicable and the Scheduled Valuation Date falls on the Relevant Date and the Official Settlement Price is:

- (i) not published on such date, the Valuation Date will be postponed and will be the first succeeding Scheduled Trading Day on which the Official Settlement Price is published (which is expected to be September 27, 2022); or
- (ii) published on such date, the Valuation Date will be the Relevant Date.

3.4 *Payment*

The Cash Settlement Payment Date falls the specified number of Currency Business Days after the Valuation Date. If the Cash Settlement Payment Date was due to fall on the Relevant Date, it will be moved to the next Currency Business Day (which is expected to be September 27, 2022).

4 Second Revised 2005 AEJ Interdealer Master Equity Derivatives Confirmation Agreement

The guidance set out in paragraph 1 above should be equally applicable to this document (and the Annexes attached to it).

5 Revised 2008 AEJ Master Equity Derivatives Confirmation Agreement

The guidance set out in paragraph 1 above is also relevant to this document (and the related Annexes).

6 2011 ISDA Equity Definitions – Index Volatility Swaps

The following guidance is for equity derivative transactions confirmed under the Equity Matrix for Index Volatility Swaps (General Terms Confirmation, Definitions, and Terms Supplement) where the terms defined in such Equity Matrix are sourced from the 2011 ISDA Equity Derivatives Definitions (“Index Volatility Transactions”).

6.1 *Scheduled Trading Day*

For such Index Volatility Transactions, a Scheduled Trading Day is a day that is both a scheduled Exchange Business Day (determined as of the Trade Date) and a day on which the Index Sponsor is scheduled to publish a value for the Index (determined as of the Trade Date). As such, where the relevant Exchange is NZX, if the Trade Date of the relevant Transaction is before the date on which NZX updated its trading calendars (September 14, 2022), the Relevant Date should be a Scheduled Trading Day.