



## **Financial Markets Conduct (Approval of Catalyst Electronic Transfer System) Order 2021**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 17th day of May 2021

Present:

Her Excellency the Governor-General in Council

This order is made under section 376 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Commerce and Consumer Affairs given in accordance with a recommendation of the Financial Markets Authority made in accordance with section 376(4) of that Act.

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#### **Order**

##### **1 Title**

This order is the Financial Markets Conduct (Approval of Catalyst Electronic Transfer System) Order 2021.

## 2 Commencement

This order comes into force on 21 June 2021.

## 3 Approval of system for electronic transfer of financial products

The system known as the Catalist Electronic Transfer System, the essential requirements of which are described in the Schedule, is approved for the transfer of financial products to which subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 applies.

### Schedule

#### Description of Catalist Electronic Transfer System

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## 1 Interpretation

(1) In this schedule,—

**Act** means the Financial Markets Conduct Act 2013

**auction** means a process, conducted by Catalist Markets Limited in accordance with the user terms and conditions and lasting for a defined period of time, in which specified financial products are traded

**authorised representative**, in relation to a user, means a person who, in accordance with the user terms and conditions,—

- (a) the user has authorised to submit orders on the user's behalf; and
- (b) has provided evidence that they have been given the authority described in paragraph (a); and
- (c) has had their identity verified by Catalist Markets Limited

**Catalist issuer** means an issuer of specified financial products that are or may be traded in an auction

**ETS Internet site** means an Internet site maintained by or on behalf of Catalist Markets Limited through which users or authorised representatives access their electronic account and submit orders

**ISIN**, in relation to a specified financial product, means the International Securities Identification Number for that specified financial product

**order** means—

- (a) an order by a transferor or their authorised representative to dispose of specified financial products; or
- (b) an order by a transferee or their authorised representative to acquire specified financial products

**register** means a register that records the holders of specified financial products

**specified financial product** has the same meaning as in section 371 of the Act

**system** means the Catalist Electronic Transfer System

**user** means a user of the system that—

- (a) is a holder of specified financial products; or
- (b) acquires (or intends to acquire) specified financial products

**user terms and conditions** means the terms and conditions published on an Internet site maintained by or on behalf of Catalist Markets Limited that apply to a user's or an authorised representative's participation in an auction and use of the ETS Internet site.

- (2) In order to be **suitably qualified** for the purposes of clause 2(q), a person does not need to be an accountant or an auditor.

## 2 System description

The Catalist Electronic Transfer System is the system controlled and administered by Catalist Markets Limited for the electronic transfer of specified financial products. The essential requirements of the system are the following:

### *Connecting to system*

- (a) a user or a user's authorised representative may access the system only—
  - (i) after agreeing to the user terms and conditions; and
  - (ii) through the user's or authorised representative's electronic account using the ETS Internet site:
- (b) each user's and authorised representative's electronic account must be protected by a password and encryption, and dual-factor authentication is required every time an order is submitted:

### *Electronic submission of order for specified financial product*

- (c) to submit an order relating to specified financial products, a user or their authorised representative must electronically enter (or electronically confirm) the following information and instructions:
  - (i) the name of the specified financial products:
  - (ii) the name of the Catalist issuer:
  - (iii) the ISIN (if any):
  - (iv) whether the order is for the disposal or the acquisition of the specified financial products:
  - (v) the maximum number of the specified financial products to which the order applies:
  - (vi) the maximum purchase price that may be paid (if the order is for the acquisition of the specified financial products):

- (vii) the minimum sale price that may be accepted (if the order is for the disposal of the specified financial products):
- (d) by submitting an order, a user irrevocably authorises Catalist Markets Limited to do the following if the order results in a transaction for the user:
  - (i) transfer the specified financial products in accordance with the information and instructions submitted under paragraph (c); and
  - (ii) make any payment required for the transaction in accordance with the user terms and conditions:
- (e) an order by a transferor for disposal of specified financial products may be accepted only after Catalist Markets Limited has verified that the transferor is the product holder of the specified financial products:

*Electronic transfer of specified financial products*

- (f) every user authorises Catalist Markets Limited to effect transfers of specified financial products and to make any payments necessary to effect these transactions, and this authorisation is irrevocable:
- (g) Catalist Markets Limited must transfer specified financial products in accordance with the final results of an auction:
- (h) the results of an auction are final when the auction has been closed and every cleared payment is held on trust, in accordance with the user terms and conditions, for the amounts due to every user who, under the results of the auction, is a transferor:
- (i) if Catalist Markets Limited is acting as the registrar in relation to the specified financial products, the system transfers the specified financial products by subtracting the relevant number of specified financial products from the transferor's electronic account and adding that number of specified financial products to the transferee's electronic account:
- (j) if Catalist Markets Limited is not acting as the registrar in relation to the specified financial products, Catalist Markets Limited must issue instructions to the relevant registrar through a secure, prearranged connection to update the register with the changes to holdings of the specified financial products:
- (k) each user is able to view their holding of the specified financial products through their electronic accounts immediately after the transfer of the specified financial products has been recorded on the ETS Internet site in accordance with the final results of an auction:
- (l) before a payment can be transferred out of Catalist Markets Limited's trust account, the payment must be authorised by 2 individuals authorised for that purpose by Catalist Markets Limited:
- (m) the settlement of a transaction made using the system is final and irrevocable:

- (n) Catalist Markets Limited must maintain a complete record of all of the transactions made using the system, including the data from auctions that result in the transfer of the specified financial products:

*Further requirements*

- (o) each user must indemnify the following persons against all losses and damages suffered, and costs and expenses incurred, resulting from the wrongful transfer of specified financial products that occurs because of a breach of the user terms and conditions by the user:
- (i) Catalist Markets Limited;
  - (ii) Catalist issuers;
  - (iii) each other user;
  - (iv) every other person who has a beneficial interest in specified financial products that are or may be traded in an auction:
- (p) Catalist Markets Limited must require a Catalist issuer that keeps its own register (or a third party that keeps a register on behalf of a Catalist issuer) to have adequate business processes and controls to prevent operational errors, and an appropriately secure system for communications with Catalist Markets Limited relating to the register:
- (q) Catalist Markets Limited must have systems in place to ensure that,—
- (i) at least once a year, technical testing of the system is carried out by a person who is suitably qualified and independent of Catalist Markets Limited;
  - (ii) the independent person prepares a report that states whether, in the independent person's opinion, there is reasonable assurance that the system is suitably designed to meet the essential requirements set out in this schedule and has operated effectively throughout the period since the system was first operated or since testing was last carried out (whichever is the most recent);
  - (iii) the independent person's report is provided to the FMA as soon as practicable after the testing is carried out.

Michael Webster,  
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, which comes into force on 21 June 2021, approves a system for the electronic transfer of specified financial products. The system is controlled and adminis-

tered by Catalyst Markets Limited. The system approved by this order will effect the transfer of financial products that are traded in auctions conducted by Catalyst Markets Limited.

### **Regulatory impact assessment**

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment in November 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/financial-markets-conduct-act/development-of-financial-market-conduct-act-regulations/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 May 2021.

This order is administered by the Ministry of Business, Innovation, and Employment.