



ESAS Access Review: Proposed Access Criteria

Payments NZ Limited submission

November 2024

Introduction

Payments NZ Limited (“Payments NZ”) is pleased to respond to the Reserve Bank of New Zealand, Te Pūtea Matua (“the Reserve Bank”) consultation on proposed access criteria for ESAS.

Payments NZ has a particular interest in the access criteria for ESAS because an applicant wishing to become a direct settlement participant in a clearing system¹ managed by Payments NZ must have an ESAS account with the Reserve Bank.

As noted in our earlier submission on the risk assessment framework for ESAS, we believe it is important that there is alignment between the Reserve Bank’s approach for assessing whether to grant an ESAS account and the approach which Payments NZ follows when considering applications to join one or more of its clearing systems. This is appropriate in terms of efficiency, and will ensure that there is a streamlined process for applicants wishing to participate in the payment system.

We note that the Reserve Bank is considering expanding access to ESAS beyond the existing participants to a range of different organisations, including those who are “carrying on business that is assessed as net beneficial to New Zealand”. The Reserve Bank has also outlined criteria which will be assessed when considering applications for an ESAS account and is seeking views on whether:

- the proposed access criteria allow for opening participation in ESAS; and
- the access criteria are easy to follow, and whether there are any particular areas where additional guidance or explanation is needed.

Proposed access criteria

The Reserve Bank has proposed that ESAS accounts be available to applicants who meet the specified criteria, which includes:

- business activity criteria;
- AML/CFT compliance criteria;
- prudential and governance criteria;
- operational criteria; and
- ESAS terms and conditions enforceability criteria for overseas applicants.

Business activity criteria

We support the Reserve Bank’s proposals that the following entities would be eligible to apply for an ESAS account:

- licensed deposit takers;
- entities operating a designated FMI;

¹ Payments NZ manages the bulk electronic, consumer electronic and high value clearing systems. An applicant wishing to join the bulk electronic clearing system (SBI) or the high value clearing system must have an ESAS account. An applicant wishing to join the consumer electronic clearing system only who does not have an ESAS account must have an agreement with an SBI participant pursuant to which, amongst other things, the SBI participant agrees to send and receive files on its behalf.

- overseas deposit takers;
- overseas FMs.

In relation to the Reserve Bank's views on applicant's carrying out eligible business activities being able to apply for an ESAS account, we note that:

- we support the inclusion of organisations that are "carrying on the business of directly settling debts on behalf of third parties in New Zealand dollars". However, some further clarity could be helpful – i.e. that ESAS will be open to organisations (which satisfy the access criteria) that want to join the payment system and interchange and settle payments on behalf of third parties with other participants in the payment system. We also note that the Reserve Bank consultation document does not refer to stablecoin users. Other jurisdictions have introduced the potential for stablecoin issuers to hold reserves in central bank currency to back the value of the stablecoin. It is our understanding that these organisations could (and should) fit the proposed eligibility criteria for ESAS accounts as organisations that are interchanging and settling payments on behalf of third parties;
- we are unclear about the rationale as to why all ESAS account holders would not automatically be eligible for OCR on overnight balances held in their accounts. We are concerned that excluding some more specialised organisations from receiving OCR may undermine their ability to effectively contribute to a competitive payment system and result in them being at a significant disadvantage. It is our view that there should be a fair and consistent approach to OCR eligibility which will promote competition and ensure a level playing field;
- while we agree that there should be scope for applicants who do not fit within one of the four activities specified by the access criteria to apply for an ESAS account, we do not support the proposal that the Reserve Bank undertake a "net benefit assessment" to determine whether the proposed use of ESAS aligns with the purposes of ESAS and is of net benefit to Aotearoa New Zealand. The proposed thresholds (e.g. enhancing soundness and efficiency, contributing to economic growth, and enhancing the wellbeing of New Zealanders) appear to be a very high bar, are somewhat nebulous and subjective, and will be challenging to assess. We believe that a simpler assessment is required. In the Payments NZ rules, an organisation is eligible to obtain an interchange number if it has a "genuine business need". This may be a more useful test to apply, noting that an applicant is still required to satisfy the AML/CFT compliance criteria, prudential and governance criteria and operational criteria.

AML/CFT compliance criteria

We acknowledge the importance of applicants being reporting entities for AML/CFT (and to be in compliance with their obligations under this regime). We note that the Reserve Bank expects to "monitor ongoing compliance with AML/CFT obligations carefully."

There are currently three supervisory agencies specified in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – although it is likely that there will be a single agency undertaking this role in the future.

If AML/CFT risk assessments and compliance programmes have already been undertaken by a supervisory agency, it is important that the Reserve Bank's proposals to "monitor ongoing compliance...carefully" do not duplicate the assessment which has already been undertaken.

Prudential and governance criteria

The Reserve Bank intends, where possible, to rely on prudential regulation and supervision to manage many relevant risks, noting that prudentially regulated entities are "subject to certain requirements that are relevant to assessing risk."

We endorse this approach in relation to prudential requirements, and this is similar to the approach set out in Payments NZ's access rules. Payments NZ applies a risk-based approach to applications to participate in a clearing system and the independent directors of Payments NZ, when considering whether an applicant satisfies prudential requirements, may have regard to whether an applicant is prudentially regulated. This ensures that applicants are not required to duplicate assessments which have already been undertaken by a regulator.

However, when Payments NZ was established, one of the key drivers was to open up direct access to the payment system to non-banks (and potentially non-regulated entities). Payments NZ therefore developed prudential requirements – which reflect those which apply to regulated entities – and which could be used to assess a non-regulated entity wishing to join a clearing system. This ensured that there was a level playing field and that a new applicant would not:

- introduce significant risk into the clearing system; or
- undermine the integrity or reputation of the clearing system.

Payments NZ's access rules comply with the Principles for Financial Market Infrastructures² by being objective, risk-based, and publicly disclosed, and which permit fair and open access.

We note that the Reserve Bank's proposed prudential criteria which would be applied to non-regulated entities largely mirror the prudential requirements in the Payments NZ access rules. We believe that this is appropriate. We would like to work with the Reserve Bank to ensure that we avoid any duplication between Reserve Bank processes and our own processes, noting that an applicant should not need to be separately assessed against the same criteria by both the Reserve Bank and Payments NZ (if it wishes to join a clearing system managed by Payments NZ).

In undertaking any assessment, it is important that independent advice is provided. This provides assurance that a consistent approach is taken to assessing applications.

The assessment should also be holistic in nature, as this allows some discretion to be applied where an applicant, in the round, meets the prudential requirements but might not be able to satisfy a particular element (e.g. due to its corporate structure).

If there are ESAS account holders who are not regulated entities, there may be challenges with on-going compliance monitoring. There may also be potentially difficult situations to manage if an ESAS account holder were, at some time in the future, no longer able to satisfy all the

² Issued by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions

prudential requirements. We do believe that the Reserve Bank should give consideration to developing a supervisory regime for payment service providers which would enable ongoing monitoring of, and the ability to require actions from, these entities, thereby enhancing the overall safety and efficiency of the financial system.

We note that the criteria set out in clause 8 will need some refinement, in particular:

- 8.4.1 refers to an access guarantee or a standby liquidity facility agreement: the Payments NZ access rules define these documents and provide templates to enable an applicant to understand exactly what is required and we believe that the Reserve Bank criteria should expressly acknowledge that the form of the documents in the Payments NZ rules meet the Reserve Bank's requirements;
- 8.4.2 refers to documented risk management frameworks, systems and policies: there should be a requirement that these are adequate – and an independent assessment of their adequacy should be required;
- 8.4.3 refers to the need for regular internal and external audits with documented responses to audit findings: there should be a requirement to address any issues within specified timeframes and a threshold test for reporting of adverse findings which could impact the purposes of ESAS;
- 8.4.5 refers to an applicant having never been subject to any investigation inquiry: this should only be relevant where there has been an adverse finding against the applicant and should be assessed on a case by case basis.

Operational criteria

The operational criteria again largely reflect the operational risk requirements in the Payments NZ rules. In assessing these, it is important that there is an adequacy threshold and that an independent assessment (e.g. against international standards) is carried out. The Payments NZ rules also take into account whether the applicant is a branch or a subsidiary of a major international financial institution of standing and repute and whether the applicant has operated successfully for some time offering the payments goods or services.

We would encourage the Reserve Bank to give further consideration to how the adequacy of the operational requirements should be assessed, and by whom. Where an applicant who is seeking an ESAS account is also wishing to join a Payments NZ clearing system, it is important that there is integration and alignment between the assessment requirements of the Reserve Bank and Payments NZ so that the process for an applicant is streamlined and that any duplication is avoided. It would also be appropriate to consider whether there should be a requirement for an ESAS account holder who wishes to interchange and settle payments with other ESAS account holders in the high value payments sector to become a participant in the Payments NZ high value clearing system.

We acknowledge that the Reserve Bank and Payments NZ may have different risk thresholds and a focus on different operational risk requirements. For example, Payments NZ's access requirements recognise that:

- operational failure poses a significant risk to the safe and efficient operation of our clearing systems and the requirements set out in our access rules are designed to mitigate this risk;
- risks arising from financial, liquidity or operational issues are more likely to impact other ESAS account holders rather than the Reserve Bank and the access rules include requirements to minimise these risks.

Managing operational risks appropriately, and ensuring on-going compliance with operational requirements, will allow the payment system to remain interoperable, innovative, safe, open and efficient.

The Reserve Bank should give consideration to how it will monitor on-going compliance with operational requirements.

The Reserve Bank may also have different requirements depending on the purpose for which the ESAS account is granted – i.e. the standard may be higher for an account holder who wishes to settle and interchange with other ESAS account holders than it would be for an account holder who wishes to only hold deposits with the Reserve Bank.

General comments

Payments NZ supports the proposals of the Reserve Bank to open access to ESAS to a broader range of institutions, such as non-bank payment services providers, subject to maintaining the integrity and robustness of the ESAS system.

We endorse the risk-based approach which the Reserve Bank proposes (subject to our comments above), noting that it is essential that there are clear and risk-based requirements for access to ESAS and that appropriate mitigants are put in place, particularly as some of these risks are more likely to impact other ESAS account holders rather than the Reserve Bank.

We note that the application of the prudential and governance criteria and the operational criteria to applicants wishing to obtain an ESAS account will, in effect, be a *de facto* regulatory regime for payment service providers. However, there are challenges with this approach, particularly in relation to:

- on-going compliance monitoring;
- the ability to require actions when requirements are no longer being met; and
- ensuring that any new requirements are adhered to in a timely manner.

To promote a sound and efficient financial system, we would encourage the Reserve Bank to consider introducing a supervisory regime for payments service providers. This would provide greater oversight and could simplify the process for applicants wishing to obtain an ESAS account (and join a clearing system) by removing the need for a comprehensive assessment of prudential requirements.

The Reserve Bank may also wish to consider the option of imposing conditions on non-regulated ESAS account holders (as part of the ESAS terms and conditions) to enable on-going, and effective, oversight and enable the Reserve Bank to mitigate any identified risks.

Conclusion

Payments NZ supports the Reserve Bank's review of its access criteria and proposals to allow a broader range of applicants to apply for an ESAS account. One of Payments NZ's objectives is to encourage new entities becoming participants in clearing systems based on fair and reasonable access criteria – and all direct settlement participants are required to have an ESAS account. We are encouraged by the work which the Reserve Bank is undertaking and look forward to working with the Reserve Bank as it develops and refines its access criteria for ESAS accounts. This will ensure that the process for new entrants wishing to become part of the payment system is streamlined and efficient.

A handwritten signature in black ink, appearing to read 'Steve Wiggins', with a long horizontal flourish extending to the right.

Steve Wiggins
Chief Executive
Payments NZ

