

## APPENDIX A

# TERMS AND CONDITIONS OF WESTPAC FIRsTS

>>This Appendix sets out the Terms and Conditions of Westpac FIRsTS as they are set in an annexure to the constitution of Westpac First Trust. It is important to note, however, that documents apart from these Terms and Conditions also affect rights attaching to Westpac FIRsTS (see Section Eight of this PDS for a summary of other important documents).

NOTE: The footnotes in this Appendix do not form part of the Terms and Conditions. They have been added to assist you where the Terms and Conditions refer to documents not extracted in this PDS.

As at the date of this PDS the WFT Manager referred to in these Terms and Conditions is the Issuer.

**Westpac First Trust Constitution – Annexure A**

**1. Issue of Westpac FIRs TS**

On and subject to these Conditions and the Constitution each Westpac FIRs TS will be issued in consideration of the payment of the Application Price. The Westpac FIRs TS are interests in a registered managed investment scheme, being the Westpac First Trust. Westpac FIRs TS do not represent deposits or securities of Westpac.

**2. Distribution**

**2.1 Distribution**

A Holder on the Register on the Record Date is entitled to receive on the Distribution Payment Date immediately following that Record Date a Distribution per Westpac FIRs TS.

The Distribution entitlement of each Holder is an amount calculated with the following formula:

<b>Distribution = <math>\frac{A \times C}{B}</math></b>
<p>where: <b>A</b> is the number of Westpac FIRs TS held by the Holder on the Record Date;  <b>B</b> is the number of Westpac FIRs TS on issue on the Record Date; and  <b>C</b> is the income (if any) of the Trust for the Distribution Period.</p>

**2.2 Distribution payable in arrears**

Subject to this condition 2, Distributions will be payable in arrears on each Distribution Payment Date.

**2.3 Entitlement to Distributions**

The Holders entitled to be paid a Distribution for a Distribution Period will be those Holders as at 5:00pm on the relevant Record Date.

**2.4 Calculations**

All calculations of Distributions will be rounded to four decimal places. Each Holder is entitled to the relevant Distributions so calculated, but directs the WFT Manager to disregard any fraction of a cent when making payments to that Holder.

**3. Tax and amounts owing**

Each Holder irrevocably directs the WFT Manager to deduct from any Distribution payable to that Holder the amount of any withholding or other tax, duty or levy required by law to be paid or deducted in respect of such amount. If any such payment or deduction has been made and the amount of the payment or deduction accounted for by the WFT Manager to the appropriate authority and the balance of the amount payable has been paid to the Holder concerned, then the full amount payable to such Holder shall be deemed to have been duly paid and satisfied by the WFT Manager. The WFT Manager shall pay the full amount required to be paid or deducted to the relevant revenue authority within the time allowed for such payment without incurring penalty under the applicable law and shall, if required by any Holder, deliver to that Holder a copy of the relevant receipt issued by the revenue authority without delay after it is received by the WFT Manager.

**4. Distribution and Capital Stopper**

**4.1 Stopper**

Where a Distribution equal to the Scheduled Distribution Amount is not paid in full within a period of 20 Business Days after a relevant Distribution Payment Date, Westpac must not, without the approval of a Special Resolution, declare or pay any interest, distributions, dividends on or return any capital on, or redeem or repurchase, any Capital Securities that rank equally with or junior to the Preference Shares, Alternative Securities or Convertible Debentures, unless and until:

- (a) the WFT Manager has made consecutive Distributions, equal to the full amount and number of the Scheduled Distribution Amounts, during the 12 month period commencing on the payment date of the first consecutive Distribution; or
- (b) the WFT Manager has paid or Westpac (with the approval of APRA) has provided funds to the WFT Manager or Westpac (with the approval of APRA) has provided funds to the manager of the Westpac Second Trust and the manager of the Westpac Second Trust has provided those funds to the WFT Manager to pay an Optional Distribution.

**4.2 Resumption of Payments**

If Westpac or the WFT Manager has made payments in accordance with condition 4.1(a) or (b), or all the Westpac FIRs TS have been redeemed or Exchanged, Westpac may declare or pay without the approval of a Special Resolution, any interest, distributions, dividends on or return any capital on, or redeem or repurchase, any Capital Securities.

## TERMS AND CONDITIONS OF WESTPAC FIRS<sub>TS</sub>

### 4.3 Stopper to not apply in some circumstances

The restrictions in condition 4.1 do not apply to:

- (a) pro rata payments on the Preference Shares, Alternative Securities or Convertible Debentures (as the case may be) and Capital Securities that rank equally with the Preference Shares, Alternative Securities or Convertible Debentures;
- (b) repurchases, redemptions or other acquisitions of shares of Westpac in connection with:
  - (i) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants of Westpac or any Westpac Entity;
  - (ii) a dividend plan or shareholder share purchase plan; or
  - (iii) the issuance of shares of Westpac, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction entered into prior to the occurrence of the failure to pay a Distribution on the relevant Distribution Date;
- (c) an exchange, redemption or conversion of any class or series of Westpac's shares, or any shares of a Westpac Entity, for any class or series of Westpac's shares, or of any class or series of Westpac's indebtedness for any class or series of Westpac's shares;
- (d) the purchase of fractional interests in shares of Westpac under the conversion or exchange provisions of the shares or the security being converted or exchanged;
- (e) any declaration of a dividend in connection with any shareholders' rights plan, or the issuance of rights, shares or other property under any shareholders' rights plan, or the redemption or repurchase of rights pursuant to the plan;
- (f) payments by Westpac under Annexure C of the Constitution or Annexure A of the constitution of the Westpac Second Trust<sup>1</sup> or the Currency Swap; or
- (g) any dividend in the form of shares, warrants, options or other rights where the dividend shares or the shares issuable upon exercise of such warrants, options or other rights are the same class or series of shares as those on which the dividend is being paid or rank equal or junior to those shares.

<sup>1</sup> Payments made by Westpac under Annexure C of the Constitution and Annexure A of the constitution of the Westpac Second Trust refer to payments under the Westpac Undertaking. See Section 8.7 of the PDS for a summary of the terms of the Westpac Undertaking.

## 5. Distribution Reset

### 5.1 Reset

If, following receipt of a notice from Westpac under and in accordance with clause 5.9 of the WBC Convertible Debenture Deed or condition 2.9 of Annexure B of the Constitution of the Westpac First Trust<sup>2</sup>, the manager of the Westpac Second Trust gives a notice to the WFT Manager under clause 9.7 of the constitution of the Westpac Second Trust specifying:

- (a) the Rollover Date; and/or
  - (b) the frequency of the Distribution Payment Dates and the next Distribution Payment Date; and/or
  - (c) the Margin; and/or
  - (d) the market rate basis for determining the Market Rate,
- for the purposes of the constitution of the Westpac Second Trust, then:
- (e) the date of the next Rollover Date to follow the Current Rollover Date; and/or
  - (f) the frequency of the Distribution Payment Dates and the next Distribution Payment Date; and/or
  - (g) Margin, and/or
  - (h) the Market Rate based on that market rate basis for determining the Market Rate,

as the case may be, applicable to the Westpac FIRS<sub>TS</sub>, will be changed automatically to correspond to the reset made under clause 9.7 of the constitution of the Westpac Second Trust.

### 5.2 Notice

The WFT Manager shall give notice to Holders of each matter specified as reset as soon as practicable after it receives notice from the manager of the Westpac Second Trust under clause 9.7 of the constitution of the Westpac Second Trust.

<sup>2</sup> The notice from Westpac under clause 5.9 of the WBC Convertible Debenture Deed or condition 2.9 of Annexure B of the Constitution of the Westpac First Trust refer to a notice from Westpac resetting the terms of the underlying Convertible Debentures or the Westpac Preference Shares respectively. See Sections 8.4(e) and 8.5(d) of the PDS for more information.

**6. Exchange**

**6.1 Exchange**

Exchange of any Westpac FIRs TS will take effect on the Exchange Date.

**6.2 Issue of Holder Exchange Notice and Consequences**

- (a) Holders may, in respect of some or all of their Westpac FIRs TS, and at least 35 Business Days prior to a Current Rollover Date, deliver a Holder Exchange Notice to Westpac and thereafter must not deal with, transfer, dispose of or otherwise encumber the Westpac FIRs TS which are the subject of the Holder Exchange Notice. The WFT Manager and Westpac may make such arrangements as either considers necessary to enforce this restriction on these Holders dealing with those Westpac FIRs TS and the Holders agree to those arrangements.

Where a Holder does not deliver a Holder Exchange Notice to Westpac at least 35 Business Days prior to the Current Rollover Date, the Holder will be deemed to have accepted the terms applying to the Further Period.

- (b) On receipt of a Holder Exchange Notice delivered pursuant to condition 6.2(a), Westpac must do one of the following in relation to the Westpac FIRs TS which are the subject of the Holder Exchange Notice:
- (i) by the relevant Exchange Date, acquire all of those Westpac FIRs TS in consideration for the issue of Ordinary Shares, the number of which will be calculated in accordance with condition 6.7(a); or
  - (ii) subject to APRA approval, acquire all of those Westpac FIRs TS for cash, at the Application Price per Westpac FIRs TS, on the relevant Exchange Date; or
  - (iii) exchange all of those Westpac FIRs TS on the relevant Exchange Date by procuring that those Westpac FIRs TS are acquired by a third party for the Application Price per Westpac FIRs TS and deliver the proceeds to the Holder.

Westpac will have sole discretion to determine which option to exercise.

- (c) At least 21 Business Days prior to the relevant Exchange Date Westpac will give notice to Holders who have lodged Holder Exchange Notices with Westpac of which mechanism of Exchange referred to in condition 6.2(b) (if any) it has chosen. If Westpac does not make a specific election in accordance with this condition, then condition 6.2(b)(i) will apply.

**6.3 Holder Exchange upon Control Event**

- (a) Westpac will notify the Holders of the occurrence of a Control Event in accordance with these Conditions as soon as practicable after becoming aware that a Control Event has occurred.
- (b) Holders may, in respect of some or all of their Westpac FIRs TS, and within 20 Business Days following notification of a Control Event, deliver a Holder Exchange Notice to Westpac and thereafter must not deal with, transfer, dispose of or otherwise encumber the Westpac FIRs TS which are the subject of the Holder Exchange Notice.
- (c) Upon receipt of the Holder Exchange Notice delivered to Westpac pursuant to condition 6.3(b), Westpac must Exchange all Westpac FIRs TS which are the subject of the Holder Exchange Notice for:
- (i) subject to APRA approval, cash consideration equal to the aggregate of:
    - (A) the Application Price per Westpac FIRs TS; and
    - (B) if the Exchange Date is not a Distribution Payment Date, any income that would otherwise have been payable up to the Exchange Date; or
  - (ii) Ordinary Shares. The number of Ordinary Shares to be issued upon Exchange will be calculated in accordance with condition 6.7(a).
- Westpac will have sole discretion to determine which option to exercise.

**6.4 Westpac Exchange**

- (a) Subject to this condition and the approval of APRA, Westpac may, if otherwise permitted:
- (i) at any time upon the occurrence of a Tax Event or Regulatory Event;
  - (ii) after the First Rollover Date, at least 21 Business Days prior to any Distribution Payment Date, provided at that time a Floating Rate Basis applies to the Market Rate;
  - (iii) at any time where Holders requisition a meeting to approve an amendment to the Constitution or change of the responsible entity of the Trust and Westpac has not given its consent (in its absolute discretion) to such amendment or change of responsible entity;
  - (iv) at any time when the ability of the WFT Manager to redeem the Westpac FIRs TS and/or Westpac's ability to acquire Westpac FIRs TS is or will be impaired or removed; or
  - (v) at least 21 Business Days prior to any Rollover Date,

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Exchange, all or a portion (on a pro-rata basis) of the Westpac FIRS TS for cash consideration equal to the Purchase Price per Westpac FIRS TS, by serving a Westpac Exchange Notice on the Holders in which event settlement will occur on the Exchange Date.

- (b) Subject to this condition, Westpac may, if otherwise permitted:
- (i) at any time upon the occurrence of a Tax Event or Regulatory Event;
  - (ii) after the First Rollover Date, at least 21 Business Days prior to any Distribution Payment Date, provided at that time a Floating Rate Basis applies to the Market Rate;
  - (iii) at any time where Holders requisition a meeting to approve an amendment to the Constitution or change of responsible entity of the Trust and Westpac has not given its consent (in its absolute discretion) to such amendment or change of responsible entity;
  - (iv) at any time when the ability of the WFT Manager to redeem the Westpac FIRS TS and/or Westpac's ability to acquire Westpac FIRS TS are or will be impaired or removed; or
  - (v) at least 21 Business Days prior to any Rollover Date,

Exchange, all or a portion (on a pro-rata basis) of the Westpac FIRS TS in consideration for the issue of a number of Ordinary Shares calculated in accordance with condition 6.7(a), by serving a Westpac Exchange Notice on the Holder in which event settlement will occur on the Exchange Date.

### 6.5 Purchase Price

Where Westpac has elected to Exchange a Holder's Westpac FIRS TS in accordance with conditions 6.4(a) or 6.4(b), the Purchase Price shall equal the Application Price.

### 6.6 Conflict of Exchange Notices

- (a) An Exchange Notice, once given, is irrevocable except as set out in condition 6.6(b).
- (b) Westpac will not be restricted from serving a Westpac Exchange Notice on the Holder where the Holder has delivered an Exchange Notice to Westpac under condition 6.2(a) or condition 6.3(b). In these circumstances, the Westpac Exchange Notice prevails over any Holder Exchange Notice which shall be automatically cancelled to the extent of the inconsistency between the two notices.
- (c) A Holder Exchange Notice can only be given by the Holder of the Westpac FIRS TS.

### 6.7 Exchange of Westpac FIRS TS for Ordinary Shares

- (a) If Westpac chooses the mechanism of Exchange described in condition 6.2(b)(i) above, a Holder elects to Exchange some or all of its Westpac FIRS TS in accordance with condition 6.3(c)(ii), Westpac elects to Exchange some or all of the Holder's Westpac FIRS TS in accordance with condition 6.4(b), condition 7.1 applies, or the WFT Manager redeems a Holder's Westpac FIRS TS in accordance with condition 8, the number of Ordinary Shares to be issued to each Holder per Westpac FIRS TS that is to be redeemed or Exchanged, is the lesser of 100 Ordinary Shares and the number of shares calculated as follows:

$$\text{OS} = \frac{\text{Conversion Price}}{\text{VWAP} \times (1 - \text{DF})}$$

where: **OS** is the number of Ordinary Shares to be issued for each Westpac FIRS TS.

**Conversion Price** is:

- (i) the Application Price where the conversion is pursuant to condition 6.2(b)(i) or condition 7.1;
- (ii) the aggregate of the Application Price and, if the Exchange Date is not a Distribution Payment Date, subject to APRA's approval, income which would otherwise have been payable by reference to the period up to the Exchange Date where the conversion is pursuant to condition 6.3;
- (iii) the Purchase Price where the conversion is pursuant to condition 6.4(b); or
- (iv) the Redemption Price where the redemption is pursuant to condition 8.

**DF** is the Discount Factor, and is:

- (i) 0, where Westpac has elected an Exchange in accordance with:
  - (A) condition 6.4(b)(iii); or
  - (B) condition 6.4(b)(iv);or compulsory redemption is to occur under condition 8 in relation to the matters referred to in conditions 6.4(b)(iii) or 6.4(b)(iv); and
- (ii) 0.025 in any other case.

Where, by application of the above formula, the total number of Ordinary Shares to be issued to a Holder, in respect of the total number of Westpac FIRS TS that are the subject of an Exchange Notice or are to be redeemed includes a fraction of an Ordinary Share, that fraction shall be disregarded.

- (b) All the amounts of OS in the formula will be added together for each Holder's total holding of Westpac FIRS TS subject to conversion and the total number of additional Ordinary Shares will be calculated based on their total holding of Westpac FIRS TS subject to that conversion (with such total additional Ordinary Shares being rounded down to the nearest whole number).

#### 6.8 Adjustments to VWAP

- (a) For the purposes of calculating VWAP in condition 6.7(a):
- (i) where, on some or all of the Business Days in the Reference Period, Ordinary Shares have been quoted on ASX as *cum* dividend or *cum* any other distribution or entitlement and the Westpac FIRS TS will be Exchanged for Ordinary Shares after the date those Ordinary Shares no longer carry that entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted *cum* dividend or *cum* entitlement shall be reduced by an amount ("**Cum Value**") equal to:
- (A) (in the case of a dividend or other cash distribution), the amount of that dividend or cash distribution;
- (B) (in the case of an entitlement which is traded on ASX on any of those Business Days), the volume weighted average price of all such entitlements sold on ASX during the Reference Period on the Business Days on which those entitlements were traded; or
- (C) (in the case of an entitlement not traded on ASX during the Reference Period or a non-cash distribution), the value of the entitlement or non-cash distribution as reasonably determined by the Westpac Board; and
- (ii) where, on some or all of the Business Days in the Reference Period, Ordinary Shares have been quoted ex dividend, ex distribution or ex entitlement, and the Westpac FIRS TS will be Exchanged for Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the business days on which those Ordinary Shares have been quoted ex dividend, ex distribution or ex entitlement shall be increased by the Cum Value.

#### 6.9 Adjustment for Capital Reconstruction

Where the Ordinary Shares are reconstructed, consolidated, divided or reclassified (other than by way of a bonus issue, which is dealt with under condition 6.8 above), into a lesser or greater number of securities, during a Reference Period the VWAP shall be adjusted by the Westpac Board as they consider appropriate to ensure

that the Holders are in an economic position in relation to their Westpac FIRS TS that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment. Any adjustment made by the Westpac Board will constitute an alteration to these Conditions and these Conditions will be construed accordingly. Any such adjustment will promptly be notified to all Holders by Westpac.

#### 6.10 Optional redemption if Westpac acquires Westpac FIRS TS

If Westpac acquires Westpac FIRS TS from a Holder pursuant to these conditions then:

- (a) Westpac may (in its discretion in accordance with clause 6 of the Constitution) apply to the WFT Manager for redemption of those Westpac FIRS TS at the Application Price per Westpac FIRS TS or hold those Westpac FIRS TS; and
- (b) condition 7.2 shall apply.

#### 6.11 Automatic Redemption

If Westpac elects a method of Exchange that would result in Westpac holding a right or interest in shares of Westpac:

- (a) Westpac shall give a notice to the WFT Manager in which it specifies the Westpac FIRS TS to be Exchanged;
- (b) those Westpac FIRS TS shall be automatically redeemed on the Exchange Date for no consideration and Westpac shall not acquire that right or interest in Westpac FIRS TS or shares of Westpac;
- (c) Westpac shall comply with its obligation to issue the Ordinary Shares or pay the Application Price in cash to the Holder in accordance with the relevant provision of this condition 6;
- (d) upon that automatic redemption the WFT Manager shall be released from any obligation or claim in relation to the Westpac FIRS TS so redeemed; and
- (e) the WFT Manager shall give a notice to the manager of the Westpac Second Trust specifying the number of Westpac FIRS TS so automatically redeemed, and directing the manager of the Westpac Second Trust to cancel the corresponding number of Preferred Units under clause 9.4(d) of the constitution of the Westpac Second Trust.

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### 7. Compulsory Redemption on Ordinary Share Conversion Event

#### 7.1 General

- (a) Subject to Westpac being under no legal impediment to issuing Ordinary Shares, and also subject to condition 7.2, upon the occurrence of an Ordinary Share Conversion Event, Westpac FIRsTS will automatically be redeemed for Ordinary Shares. The number of Ordinary Shares payable for each Westpac FIRsTS so redeemed will be calculated in accordance with condition 6.7(a). The Ordinary Shares will be:
- (i) those shares issued upon the conversion of the Convertible Debentures to the manager of the Westpac Second Trust but which may be allotted directly to the Holders; or
  - (ii) if the Convertible Debentures have converted into Preference Shares or Alternative Securities, those shares issued upon the conversion of the Preference Shares or Alternative Securities but which may be allotted directly to the Holders.
- (b) Upon the Ordinary Shares being allotted to a Holder the related Westpac FIRsTS shall be taken to have been redeemed and Westpac and the Holders shall cease to have any claim in respect of them.

#### 7.2 Limitation if Westpac holds Westpac FIRsTS

If Westpac acquires Westpac FIRsTS, then, unless otherwise permitted by law, its rights as the Holder shall not include any right to have the Westpac FIRsTS compulsorily Exchanged or redeemed for any share in Westpac (or unit of a share in Westpac) or to have any such share or unit of a share transferred or allotted to it.

#### 7.3 Redemption of Westpac FIRsTS held by Westpac

- (a) If at any time:
- (i) Westpac holds Westpac FIRsTS;
  - (ii) those Westpac FIRsTS are not being redeemed under clause 6.10 of the Constitution; and
  - (iii) an Ordinary Share Conversion Event or a Preference Share Conversion Event occurs,

the WFT Manager shall give a notice to the manager of the Westpac Second Trust and to Westpac specifying that the above circumstances have occurred, the number of Westpac FIRsTS Westpac holds and that it is a notice under this condition.

- (b) Upon the manager of the Westpac Second Trust and Westpac receiving the notice under condition 7.3(a), the Westpac FIRsTS that Westpac holds shall be taken to have been redeemed and Westpac shall cease to have any claim in respect of them.

### 8. Compulsory Redemption

**8.1** Pursuant to the power of the WFT Manager to redeem Westpac FIRsTS under clause 6 of the Constitution, Holders will have all of their Westpac FIRsTS redeemed by the WFT Manager at the Redemption Price on the Redemption Date where;

- (a) Westpac has exercised its redemption rights under clauses 6.2(b) of the WBC Convertible Debenture Deed,<sup>3</sup> and the proceeds of that redemption are not reinvested by the manager of the Westpac Second Trust in accordance with clause 11.4 of the constitution of the Westpac Second Trust;<sup>4</sup>
- (b) Westpac redeems the Preference Shares or Alternative Securities for cash; or
- (c) Convertible Debentures, Preference Shares or Alternative Securities are converted into Ordinary Shares.

**8.2** Subject to condition 7.2, the Redemption Price shall be payable either in cash or in specie by the allotment of Ordinary Shares at the direction of the WFT Manager and the manager of the Westpac Second Trust.

**8.3** Where the Redemption Price is payable in specie by the allotment of Ordinary Shares, the number of Ordinary Shares payable for each Westpac FIRsTS so redeemed will be calculated in accordance with condition 6.7(a).

**8.4** For the purposes of this condition 8, the Redemption Price is the Application Price.

### 9. Entitlement to Capital and Ranking

**9.1** Each Westpac FIRsTS confers an undivided beneficial interest in the Assets.

**9.2** Westpac FIRsTS are equal amongst themselves in all respects. However, the rights attaching to them are affected by conditions 7.2 and 7.3.

3 Clause 6.2(b) of the WBC Convertible Debenture Deed entitles Westpac to redeem the underlying Convertible Debentures for cash:

- where Holders requisition a meeting to approve an amendment to the Constitution of the Westpac First Trust or a change of responsible entity to which Westpac has not consented; or
- when the ability of the trustee of the Westpac First Trust to redeem Westpac FIRsTS or the ability of Westpac to acquire Westpac FIRsTS is or will be impaired.

4 Clause 11.4 of the constitution of the Westpac Second Trust permits Westpac, subject to the approval of relevant authorities, to direct the WFT Manager to reinvest cash received on redemption of the underlying Convertible Debentures and to reinvest that cash in securities with similar features to the Convertible Debentures. See Section 8.4(j) of the PDS for more information.

**9.3** The Ordinary Shares issued upon Exchange or redemption of the Westpac FIRS TS shall from the Exchange Date rank *pari passu* in all respects with all other Ordinary Shares then on issue.

#### 10. Transfers

Where a Holder executes a transfer of less than all Westpac FIRS TS registered in the Holder's name, and the specific Westpac FIRS TS to be transferred are not identified, the WFT Manager may register the transfer in respect of such of the Westpac FIRS TS registered in the name of the transferor as the WFT Manager determines in its absolute discretion, provided the aggregate number or amount of Westpac FIRS TS registered as having been transferred equals the aggregate number or amount of the Westpac FIRS TS expressed to be transferred in the transfer.

#### 11. Notifications to be final

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained by the Westpac Board for the purposes of the provisions of these Conditions will (in the absence of negligence, wilful default, bad faith or manifest error) be binding on Westpac, the WFT Manager and all Holders.

#### 12. Quotation

The WFT Manager will apply for official quotation on the Official List of ASX of the Westpac FIRS TS and Westpac shall apply for quotation of any Ordinary Shares issued as a result of an Exchange.

#### 13. Consolidation and division of Westpac FIRS TS

As contemplated in clause 3.4 of the Constitution, the Westpac FIRS TS may be consolidated or divided as determined by the WFT Manager,<sup>5</sup> provided that all of the Westpac FIRS TS are so dealt with in the same way.

#### 14. Definitions

The following words have these meanings in these Conditions unless the contrary intention appears:

**Alternative Security** means a perpetual non-cumulative security issued by Westpac that ranks equally with the Preference Shares, and is equivalent to a Preference Share in terms of the entitlement to income and the return of capital.

**Applicable GAAP** means the accounting principles applicable to the preparation of the financial statements of Westpac and its subsidiaries from time to time as set forth in its financial statements.

**Application Price** in respect of each Westpac FIRS TS means \$100.

**APRA** means the Australian Prudential Regulation Authority or any authority succeeding to its powers and responsibilities.

**APRA Event** means:

- (a) APRA shall have determined in writing that Westpac has a Tier 1 Capital Ratio of less than 5% (or such other percentage as may be required from time to time by APRA) or a total risk-based capital ratio of less than 8% (or such other percentage as may be required from time to time by APRA);
- (b) APRA shall have issued a written directive to Westpac under applicable banking regulations, legislation or guidelines for Westpac to increase its capital;
- (c) APRA shall have appointed a statutory manager to Westpac under Australian law or commenced proceedings for the winding-up of Westpac; or
- (d) the retained earnings of Westpac shall have fallen below zero.

**Assets** means all the property, rights and income of the Trust, but not application money or property in respect of which Westpac FIRS TS have not yet been issued, proceeds of redemption which have not yet been paid or any amount to which a Holder has a vested and indefeasible interest.

**ASX** means Australian Stock Exchange Limited.

**Australian dollars, \$** and **AUD** means the lawful currency of Australia.

**Business Day** means a weekday on which banks are open for business in Sydney and either Wellington or the city in which the Head Office of the Current Branch is located.

<sup>5</sup> Refer Listing Rules, Chapter 7 – reorganisations of capital.



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**Capital Securities** means any equity, hybrid or subordinated debt capital security issued by Westpac where distributions on such securities rank equal with or junior to the Preference Shares, but excluding the Convertible Debentures, the Alternative Securities and the Preference Shares.

**Conditions** means these terms and conditions.

**Constitution** means the constitution of the Westpac First Trust dated on or about 28 October 2002.

**Control Event** means the occurrence of any of the following events:

- (a) a takeover bid (as defined in the Corporations Act), or any type of equivalent offer made under any successor sections of the Corporations Act relating to takeovers, is at any time made to acquire all or a portion (being greater than 50%) of the Ordinary Shares and the offer is, or becomes, unconditional and:
  - (i) the voting power of the offeror in Westpac is, or becomes, greater than 50%; or
  - (ii) the Westpac Board issue a statement recommending acceptance of the offer; or
- (b) a court makes an order to approve a scheme of arrangement under Part 5.1 of the Corporations Act (or any successor sections of the Corporations Act relating to schemes of arrangement) which, when implemented, will result in a person's voting power in Westpac being more than 50%.

**Convertible Debenture** means a New Zealand dollar convertible debenture proposed to be issued by Westpac and constituted under the WBC Convertible Debenture Deed.

**Currency Swap** means the ISDA Master Agreement to be entered into in relation to the WBC Convertible Debenture Deed between the manager of the Westpac Second Trust and the Currency Swap Provider acting through its Australian Branch and the Schedule and any confirmation to it.

**Currency Swap Provider** means Westpac.

**Current Branch** means Westpac's New Zealand branch or the branch of Westpac through which Westpac elects to act in respect of the Convertible Debentures under clause 18 of WBC Convertible Debenture Deed.

**Current Rollover Date** means the Rollover Date immediately following the automatic adjustment of the Rollover Date under condition 5.1 (or the First Rollover Date as the case may be).

**Distributable Profits** means at the time

- (a) the consolidated net profits after income tax of Westpac for the current financial year to date (or such other amount as determined by APRA in its discretion to be appropriate in Westpac's circumstances for the purposes of Westpac's Tier 1 Capital elements); less
- (b) the aggregate amount of any dividends or distributions paid or payable by Westpac or any of its subsidiaries before the relevant Interest Payment Date under or on the Preference Shares, the Alternative Securities, the Ordinary Shares, or any other Tier 1 qualifying Capital Security in relation to the current financial year to date, but not including any dividend or distribution paid or payable to Westpac or any of its subsidiaries.

**Distribution** means a distribution of income calculated in accordance with condition 2.1 and payable to a Holder.

**Distribution Payment Date** means:

- (a) 31 March, 30 June, 30 September, 31 December in each year;
  - (b) in the case of any Further Period, the date determined in accordance with condition 5.1; and
  - (c) in relation to Westpac FIRS<sup>TS</sup> that are to be exchanged or redeemed, the date those Westpac FIRS<sup>TS</sup> are exchanged, or redeemed (not being an Exchange Date under paragraph (b) of the definition of Exchange Date).
- The first Distribution date shall be 31 March 2003.

**Distribution Period** means:

- (a) for the first Distribution Period, the period from (and excluding) the date the Westpac FIRS<sup>TS</sup> are issued to (and including) the next Distribution Payment Date;
- (b) for the last Distribution Period, the period from (and excluding) the preceding Distribution Payment Date to (and including) the date of final distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from (and excluding) the preceding Distribution Payment Date to (and including) the next occurring Distribution Payment Date.

**Event of Default** means the happening of any one or more of the following events:

- (a) a Liquidation Event occurs in respect of Westpac;
- (b) Westpac ceases or suspends the conduct of all of its business; or
- (c) Westpac makes a payment in breach of clause 5.8 of the WBC Convertible Debenture Deed<sup>6</sup> or condition 4.1.

<sup>6</sup> Clause 5.8 of the WBC Convertible Debenture Deed requires Westpac to comply with the terms of the Stopper contained in condition 4.1 of these Terms and Conditions.

**Exchange** means in relation to Westpac FIRS TS:

- (a) the transfer of Westpac FIRS TS to Westpac in consideration for the issue of Ordinary Shares or cash, as the case may be, as contemplated by condition 6; or
- (b) the automatic redemption of Westpac FIRS TS under condition 6.11,

and **Exchanged** is to be construed accordingly.

**Exchange Date** means:

- (a) where an Exchange is requested by the Holder pursuant to condition 6.2(a), the Rollover Date immediately following receipt by Westpac of a Holder Exchange Notice;
- (b) where an Exchange follows the occurrence of a Control Event pursuant to condition 6.3, 50 Business Days after the occurrence of the Control Event;
- (c) where an Exchange is elected by Westpac pursuant to condition 6.4, the next Distribution Payment Date, or if Westpac determines that it is not practical for that date to be an Exchange Date, in which case it shall be the next Distribution Payment Date after the first mentioned Distribution Payment Date; and
- (d) in relation to any redemption under condition 7, the day on which the Ordinary Share Conversion Event occurs.

**Exchange Notice** means a Westpac Exchange Notice or a Holder Exchange Notice.

**First Rollover Date** means the Distribution Payment Date next following the fifth anniversary of the Issue Date or, if not a Business Day, the following Business Day.

**Floating Rate Basis** means that the Market Rate applying to Westpac FIRS TS is determined on a floating rate basis in accordance with paragraph (a) of the definition of Swap Rate.

**Further Period** means each period between successive Rollover Dates subsequent to the Initial Period.

**Holder** means a person registered as the holder of a Westpac FIRS TS (including persons jointly Registered) as the context may require.

**Holder Exchange Notice** means a notice given by a Holder to Westpac under condition 6.2(a) or 6.3(b), substantially in the form of Schedule 1.

**Initial Market Rate** means the rate publicly announced by the WFT Manager on or before the Issue Date.

**Initial Period** means the period between the Issue Date and the First Rollover Date.

**Issue Date** of a Westpac FIRS TS means the date on which the Holders pay the application moneys to the WFT Manager and Westpac FIRS TS are issued under the Constitution.

**Liabilities** means all present liabilities of the Trust including any provision which the Trustee decides should be taken into account in determining the liabilities of the Trust.

**Liquidation Event** means:

- (a) a proceeding is commenced by Westpac or a person that controls Westpac for an order that Westpac be dissolved, wound up or liquidated or for the appointment of a provisional liquidator, liquidator, administrator, controller or similar official in respect of Westpac (but not just the Current Branch) or all or substantially all of its property;
- (b) a proceeding is commenced by another person for an order that Westpac be dissolved, wound up or liquidated (but not just the Current Branch) and is not dismissed within 21 days of filing; or
- (c) a provisional liquidator, liquidator, administrator, controller or similar official is appointed in respect of Westpac (but not just the Current Branch) on all or substantially all of its property and such appointment is not revoked or set aside within 21 days of such appointment.

**Listing Rules** means the listing rules of ASX as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

**Margin** means:

- (a) in respect of the Initial Period, the margin equal to the margin payable on the Convertible Debentures during that period; and
- (b) in respect of any Further Period, the margin specified by Westpac with the approval of APRA, and notified to the WFT Manager by the manager of the Westpac Second Trust under condition 5.1.

**Market Rate** means for the Initial Period, the Initial Market Rate and for any Further Period:

- (a) the Swap Rate appropriate to the term of the Further Period based on the market rate basis notified to the WFT Manager by the manager of the Westpac Second Trust under condition 5.1; or
- (b) if no such notice is given by the WFT Manager for a Further Period, the Market Rate for the following Further Period shall be determined on the same basis as the Initial Period or if there is a preceding Further Period the immediately preceding Further Period (as applicable).

## TERMS AND CONDITIONS OF WESTPAC FIRS TS

**Optional Distribution** means an amount equal to the sum of all Scheduled Distribution Amounts not paid on any prior Distribution Payment Date, other than:

- (a) Scheduled Distribution Amounts not paid prior to a preceding Optional Distribution; and
- (b) Scheduled Distribution Amounts not paid prior to the commencement of the 12 month period referred to in condition 4.1(a).

**Ordinary Share Conversion Event** means the occurrence of:

- (a) an APRA Event; or
- (b) an Event of Default.

**Ordinary Shares** means ordinary shares in Westpac.

**Ordinary Units** means the ordinary units issued by the trustee of the Westpac Second Trust under the Westpac Second Trust.

**Purchase Price** means the amount determined in accordance with condition 6.5.

**Preference Share Conversion Event** means the occurrence of:

- (a) the date 50 years from the date on which the Convertible Debentures are issued; or
- (b) a failure by Westpac to pay interest when due under the WBC Convertible Debenture Deed, whether or not the Westpac Board has declared that interest is then payable, and that failure continues unremedied by Westpac for a period of 21 days.

**Preference Shares** means preference shares in Westpac which have the rights specified in Annexure B to the Constitution.

**Preferred Units** means the preferred units issued by the trustee of the Westpac Second Trust under the Westpac Second Trust.

**Record Date** means, in respect of any payment or delivery to be made by the WFT Manager under these Conditions, the date which is 11 Business Days before the Distribution Payment Date for the payment or delivery or such other date as may be required by ASX.

**Redemption** means the redemption of Westpac FIRS TS in accordance with condition 8.

**Redemption Date** means the date Westpac FIRS TS are or are to be redeemed under condition 8.

**Reference Period** means the 20 Business Days immediately preceding the Exchange Date.

**Register** means the register of Holders kept by the WFT Manager under the Corporations Act and includes any sub-register established and maintained under the Clearing House Electronic Sub-Register System (as defined in the Listing Rules).

**Regulatory Event** means:

- (a) receipt by Westpac of advice from a reputable legal counsel that, as a result of any amendment to, clarification of, or change (including any announcement of a prospective change) in, any law or regulation thereunder affecting securities laws of Australia or the jurisdiction of the Current Branch or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment, clarification or change is effective or pronouncement, action or decision is announced on or after the Issue Date (including clarification that does not change the law but differs from Westpac's understanding of the law at the date of the Constitution) additional requirements would be imposed on Westpac in relation to the Convertible Debentures, or the Westpac FIRS TS or the Westpac Second Trust Units or which amendments, clarifications or changes negatively impact the WFT Manager or the Holders which Westpac determines, at its sole discretion, to be unacceptable; or
- (b) the determination by Westpac that there is a risk that Westpac is not or will not be entitled to treat all of the Convertible Debentures, the Westpac FIRS TS or the Preferred Units in the Westpac Second Trust as Tier 1 Capital under APRA guidelines.

**Rollover Date** means the First Rollover Date and each other date thereafter determined in accordance with condition 5.1 or, if any of these dates is not a Business Day, the following Business Day. A Rollover Date must be a Distribution Payment Date.

**SCH Business Rules** means the business rules made by ASX Settlement and Transfer Corporation Pty Limited, being approved as the securities clearing house under the Corporations Act.

**Scheduled Distribution Amount** means, in relation to a Distribution Payment Date:

- (a) the Australian Dollar amount paid by the Currency Swap Provider under the Currency Swap on that date;
- (b) the Australian Dollar amount that would have been payable by the Currency Swap Provider under the Currency Swap on that date, assuming interest for the relevant Distribution Period was paid on the Convertible Debentures; or

- (c) following the issue of the Preference Shares or Alternative Securities, the Australian Dollar amount that would have been payable as a dividend or distribution on the Preference Shares or Alternative Securities if the dividend or distribution had been declared or paid, as the case may be.

**Special Resolution** means a resolution approved by at least three-quarters of all Holders present and entitled to vote on the resolution.

**Swap Rate** means:

- (a) in the case of a Floating Rate Basis, the average mid rate for 90 Day Bills (expressed as a percentage per annum), or the average mid-rate for 180 Day Bills, as applicable having regard to most recent adjustment under condition 5.1, which average rate is displayed on the page of the Reuters Monitor System designated 'BBSW' on the first Business Day of each Distribution Period occurring during the Further Period, or if there is a manifest error in the calculation of that average rate or that average rate is not displayed by 10:00am (Sydney time) on that date the rate specified in good faith by Westpac at or around that time on that date having regard, to the extent possible, to:
- (i) the rates otherwise bid and offered for 90 Day Bills (or 180 Day Bills, as applicable) or for funds of that tenor, at or around the time (including, without limitation, the sets of bid and offer rates for Bills of that tenor displayed on that page 'BBSW' at that time on that date); or
- (ii) if bid and offer rates for 90 Day Bills (or 180 Day Bills, as applicable) are not otherwise available, the rates otherwise bid and offered for funds of that tenor at or around that time; and
- (b) in the case of a fixed rate basis, the rate expressed as a percentage per annum calculated as the mid-point of the quoted average swap reference rates at 10.00am (Sydney time) on the Australian swap reference rates page SWAPREF of the Australian Financial Markets Association or AFMA service (or any page which replaces that page) on the Rollover Date as applicable to the tenor of the Further Period, and where appropriate, adjusted for the number of scheduled Distribution Payment Dates per annum in that Further Period or, if that does not appear by that time on the relevant date, the rate advised by Westpac in good faith on the relevant date, having regard, to the extent possible, to the swap rates for the term of the relevant Further Period otherwise bid and offered at or around 10.00am (Sydney time) on the relevant date.

**Tax Act** means:

- (a) the Income Tax Assessment Act 1936 (Commonwealth) or the Income Tax Assessment Act 1997 (Commonwealth) as the case may be as amended and a reference to any section of the Income Tax Assessment Act 1936 (Commonwealth) includes a reference to that section as rewritten in the Income Tax Assessment Act 1997 (Commonwealth);
- (b) any other Act setting the rate of income tax payable; and
- (c) any regulation promulgated thereunder.

**Tax Event** means the receipt by Westpac of an opinion from a reputable legal counsel or other tax adviser in Australia or the jurisdiction in which the Current Branch is located experienced in such matters to the effect that, as a result of:

- (a) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties (or any regulations thereunder) of either such jurisdiction or any political subdivision or taxing authority thereof or therein affecting taxation;
- (b) any judicial decision, official administrative pronouncement, published or private ruling, interpretative decision, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt or make any of those things) ("**Administrative Action**"); or
- (c) any amendment to, clarification of, or change in, the pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which amendment, clarification, change or Administrative Action is effective or which pronouncement or decision is announced on or after the Issue Date, there is more than an insubstantial risk that:
- (i) Westpac would be exposed to more than a *de minimus* increase in its costs including grossing-up for withholding tax in relation to the Convertible Debentures or any Holder or any holders of the Westpac Second Trust Units would be similarly exposed to such an increase;
- (ii) there would be more than a *de minimus* increase in the taxes, duties or government charges imposed on the WFT Manager in respect of the Westpac FIRS TS, or imposed on the holder of the Convertible Debentures, or any Holder or holder of the Westpac Second Trust Units;

## TERMS AND CONDITIONS OF WESTPAC FIRS<sub>TS</sub>

- (iii) any payment under the Convertible Debentures, Westpac FIRs<sub>TS</sub> or the Westpac Second Trust Units would be a frankable dividend or frankable distribution within the meaning of Division 202 of the Tax Act; or
- (iv) any payment under the Convertible Debentures will not be deductible to Westpac.

**Tier 1 Capital** means at any time any equity, debt or hybrid so described by APRA.

**Trust** means the trust established under the Constitution.

**VWAP** means the average of the daily volume weighted average sale price of Ordinary Shares sold on ASX during the relevant Reference Period, subject to any adjustments made under condition 6.8(a), but does not include any transaction defined in the ASX Business Rules as 'special' crossings prior to the commencement of normal trading, crossings during the after hours adjust phase nor any overseas trades or the exercise of options over Ordinary Shares, and provided that in a case where Westpac FIRs<sub>TS</sub> are converted as a direct result of a Control Event, the VWAP can be no greater than the final offer price under the takeover bid or the consideration payable under the scheme of arrangement for Ordinary Shares.

**WBC Convertible Debenture Deed** means the deed so entitled to be entered into between Westpac and Westpac Property Funds Management Limited relating to the issue of Convertible Debentures.

**Westpac** means Westpac Banking Corporation (ABN 33 007 457 141).

**Westpac Board** means a committee appointed by the board of directors of Westpac.

**Westpac Exchange Notice** means a notice given by Westpac to a Holder under condition 6.4 requiring the transfer of a Holder's Westpac FIRs<sub>TS</sub> to Westpac.

**Westpac FIRs<sub>TS</sub>** means units in the Trust which are Fixed Interest Resettable Trust Securities issued under the Constitution and having the rights, obligations and entitlements set out in this Annexure A.

**Westpac Second Trust** means the trust named the Westpac Second Trust established under the constitution dated on or about the date of the Constitution and between Westpac Financial Services Limited and Westpac.

**Westpac Second Trust Units** means the Preferred Units and the Ordinary Units.

### 15. Interpretation

**15.1** In these Conditions unless the contrary intention appears:

- (a) a reference to these Conditions is a reference to these Conditions as modified, supplemented or replaced from time to time;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it;
- (g) a reference to time is a reference to Sydney time;
- (h) a reference to a condition is a reference to a condition of these Conditions;
- (i) headings are inserted for convenience and do not affect the interpretation of these Conditions; and
- (j) if Alternative Securities are issued, a reference to a provision in Annexure B in relation to the Preference Shares shall be taken to be a reference to the corresponding provision in the terms and conditions of the Alternative Securities.

**SCHEDULE 1**

**Holder Exchange Notice<sup>1</sup>**

[I/We refer to the notice dated ..... in the ..... informing me/us of the occurrence of a Control Event.]

I/We, being holder(s) of Westpac FIRsTS, hereby give notice, pursuant to and in accordance with condition 6.2/condition 6.3 (delete where inapplicable) of the terms and conditions of the Westpac FIRsTS, wish to Exchange ..... of those Westpac FIRsTS.

I/We represent, both at the time of giving this notice and separately at the time my/our Westpac FIRsTS are Exchanged pursuant to this notice, both for the benefit of Westpac and the person who purchases my/our Westpac FIRsTS (if applicable):

(a) I/We am/are the legal and beneficial owner of the Westpac FIRsTS; and

(b) the Westpac FIRsTS are free and clear of any interest or power reserved in or over any interest in any Westpac FIRsTS including, without limitation, under a bill of sale, mortgage, charge, lien, pledge, option, trust or power, by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

Words and expressions defined in and for the purposes of the Constitution (including its annexures) have the same meanings where used in this notice.

[Name and signature of holder(s)]

Dated: .....

A corporation must execute by signing by two directors, a director and secretary or a sole director/secretary or under its corporate seal (if it has one). In the case of joint holders, all holders must sign. Where the notice is signed under a power of attorney, the attorney warrants that he or she has received no notice of revocation of the power by death of the grantor or otherwise.

<sup>1</sup> This proforma notice constitutes the Holder Exchange Notice referred to in clause 6.2 of these Terms and Conditions and Annexure A to the Constitution of the Westpac First Trust.