

The Hongkong and Shanghai Banking Corporation Limited, Sydney Branch
and
Holders of SPS II

Westpac SPS II Transfer - Nominated Party Deed Poll

Project Fox

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This Deed Poll is dated		16 July	2014
Deed Poll by	The Hongkong and Shanghai Banking Corporation Limited, Sydney Branch (AFSL no. 301737, ABN 65 117 925 970) of Level 32, 580 George Street, Sydney NSW 2000 (<i>Nominated Party</i>)		
For the benefit of	Each person who is registered as a Holder of SPS II as at 9.00am on the Transfer Date (<i>Holder</i>)		
Recitals			
A	In accordance with the Terms, Westpac has elected for Transfer to occur in relation to the SPS II		
B	Pursuant to the Transfer, Westpac has engaged the Nominated Party to acquire the SPS II from Holders.		
C	At the request of Westpac and following the issue of a Transfer Notice by Westpac, subject to the conditions set out in this Deed Poll, the Nominated Party undertakes to acquire SPS II from the Holders for Face Value on the Transfer Date.		

This deed witnesses as follows:

1 Definitions and Interpretation

1.1 Definitions

Appointment Agreement means the agreement entered into between Westpac and the Nominated Party in respect of the Transfer.

ASX means the Australian Securities Exchange or ASX Limited, as the context requires.

Offer means the offer by Westpac of Westpac Capital Notes 2 pursuant to the Prospectus.

Prospectus means the prospectus in respect of the Offer dated 15 May 2014 or any replacement or supplementary prospectus.

Registry means Link Market Services Pty Limited.

Selective Buy-Back means the proposed off-market selective buy-back by Westpac of the SPS II held by the Nominated Party (after completion of the Transfer) in accordance with Division 2 of Part 2J of the Corporations Act.

SPS II mean those Westpac Stapled Preferred Securities II issued by Westpac pursuant to a prospectus dated 2 March 2009, comprising a Preference Share and a Note, that are on issue as at the Transfer Date.

Terms or **Preference Share Terms** means the terms of the Preference Shares as set out in Schedule 1 to this deed poll, as amended from time to time.

Transfer Date means 30 September 2014.

1.2 Interpretation

- (a) In this deed poll, unless otherwise defined capitalised terms have the meaning given to them in the Preference Share Terms set out in Schedule 1 to this deed poll.
- (b) The interpretation provisions in clause 1 of the Preference Share Terms apply to this deed poll, save that the words 'these terms of issue' shall be read as 'this deed poll'.

2 Deed operates as a deed poll

- (a) This deed is executed as a deed poll. Each Holder has the benefit of this deed, and is entitled to enforce this deed poll against the Nominated Party in accordance with its terms even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.
- (b) This deed operates as a deed as between the Nominated Party and the Holders.
- (c) The Nominated Party enters into this deed as principal, and not on behalf of any other party.

3 Transfer

- (a) Westpac has elected for Transfer to occur in relation to the SPS II on the Transfer Date in accordance with clause 5.1 of the Terms.
- (b) Subject to the terms of this deed, the Nominated Party has agreed to acquire from the Holders the SPS II for which Westpac has elected Transfer to occur.

4 Undertaking to pay and perform

- (a) Subject to paragraph 4(b), the Nominated Party undertakes to each Holder to acquire for the Face Value each of the SPS II in relation to which Westpac has elected for Transfer to occur from the Holders on the Transfer Date.
- (b) The Nominated Party will be under no obligation under this deed unless:
 - (i) Westpac provides to the Nominated Party immediately available funds to acquire the SPS II pursuant to the Transfer by no later than 9.45am on the Transfer Date, which Westpac has undertaken to the Nominated Party to do; and
 - (ii) Westpac complies with certain obligations under the Appointment Agreement, including issuing a valid Transfer Notice in accordance with the Terms, and issuing any other notices related to the Selective Buy-Back that is proposed to occur following completion of the Transfer; and
 - (iii) none of the following occur:
 - (A) Westpac is or becomes insolvent or a statutory manager is or has been appointed to it;
 - (B) an event which would make it illegal for the Nominated Party to satisfy its obligations under the Appointment Agreement (including under this deed); and
 - (C) a government agency takes certain action in relation to the Transfer or the proposed Selective Buy-Back; and
 - (iv) the Nominated Party meets the credit rating requirements under the Terms,and if these conditions are not satisfied (or, if applicable, not waived by the Nominated Party) by the relevant time, this deed will terminate.
- (c) The Nominated Party's obligations under this deed will be satisfied by the payment of the Face Value for each SPS II to be acquired by the Nominated Party, to the Registry for distribution to Holders. The Nominated Party has no liability under this deed to distribute funds directly to Holders, nor for any delay or failure by the Registry to distribute funds to Holders.
- (d) The Registry and Westpac will be solely responsible for registration of the Transfer of the SPS II and distribution of funds to Holders.

- (e) There is no duty on the Nominated Party to take any step to ensure that the Registry or Westpac complies with any obligation, representation, undertaking or takes any action under the Terms or the Prospectus.

5 Custody of deed poll

The Nominated Party will deliver this deed poll to the Registry to be held on behalf of Holders in New South Wales or in such other jurisdiction as may be agreed between Westpac and the Registry.

6 Waiver

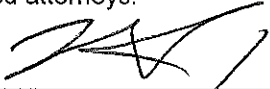
- (a) Waiver of any right arising from a breach of this deed or of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver. Notwithstanding the foregoing, Westpac may, on behalf of Holders, waive any immaterial breach of this deed by the Nominated Party.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this deed; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed or on a default under this deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

7 Governing Law and jurisdiction

- (a) This deed poll is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Executed and delivered as a Deed in Sydney.

**Signed, sealed and delivered by The
Hongkong and Shanghai Banking
Corporation Limited, Sydney Branch by its
duly authorised attorneys:**



Attorney

HAMISH KELLY

Print Name

Attorney

Print Name

Schedule 1 Preference Share Terms

Preference Share Terms

1 Form, Face Value and issue price

- (a) Preference Shares are fully paid, unsecured, perpetual, non-cumulative preference shares in the capital of Westpac. They are issued, and may be Redeemed or Converted by Westpac, on the terms set out in these Preference Share Terms.
- (b) Each Preference Share will be issued by Westpac as fully paid at an issue price of \$100 (**Face Value**).
- (c) The Preference Shares are designated as the '2008 Series II Preference Shares' and comprise a separate class of shares in the capital of Westpac.
- (d) Westpac, any Substituted Issuer, each Preference Shareholder and each beneficial owner of any Stapled Security, any Note or any Preference Share agree to treat the Notes and the Preference Shares as equity for United States federal, state and local, income and franchise tax purposes.

2 Stapling

2.1 Stapling

- (a) Stapling shall automatically take place immediately after the time that the Initial Purchaser is entered into the Register of Shareholders as the first holder of Preference Shares (the Initial Purchaser having prior to that time been entered into the Register of Noteholders as the first holder of Notes) such that Notes previously issued are linked together with Preference Shares which are on issue on a one to one basis.
- (b) While Stapling applies, so far as the law permits, one Note and one Preference Share together comprise one Stapled Security.
- (c) While Stapling applies, Westpac must not:
 - (i) do any act, matter or thing (including registering any transfer of any Note or Preference Share); or
 - (ii) refrain from doing any act, matter or thing, if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Note or Preference Share no longer being Stapled (except as provided in clause 2.2).

2.2 Cessation of Stapling

Once Stapled, all Preference Shares continue to be Stapled to Notes on a one to one basis, and vice versa, until the occurrence of an Assignment Event (for those specified Stapled Securities) in which case each Preference Share and each Note (which comprise those Stapled Securities in relation to which an Assignment Event has occurred) is automatically Unstapled at that time.

2.3 Register

Westpac must ensure that the Register of Shareholders is maintained and that it records the names of the Preference Shareholders, the number of Preference Shares held, the number of Notes held by a Preference Shareholder and any additional information required by the Corporations Act or the ASX Listing Rules. Westpac may maintain the Register of Shareholders jointly with the Register of Noteholders.

2.4 Restriction on transfers

- (a) If a Preference Share is Stapled to a Note, no transfer of a Preference Share may occur from a transferor to a transferee without the Note that is Stapled to that Preference Share being also transferred at the same time by the same transferor to the same transferee, and vice versa. Westpac must refuse to register any transfer of such Preference Share which is Stapled to a Note, if that transfer is not accompanied by a transfer of the Note that is Stapled to that Preference Share by the same transferor to the same transferee at the same time.
- (b) If a Preference Share is Stapled to a Note, it cannot be transferred or assigned or mortgaged, charged or otherwise encumbered separately from the Note that is Stapled to it, and vice versa.

3 Dividends

3.1 No dividends while Stapled

For so long as a Preference Share is Stapled to a Note, the Preference Shareholder shall not be entitled to receive any dividends from Westpac in respect of the Preference Share.

3.2 Dividends

Upon a Preference Share becoming Unstapled, subject to these Preference Share Terms, the Preference Share entitles the Preference Shareholder on a Record Date to receive on the relevant Dividend Payment Date a dividend (**Dividend**) calculated using the following formula:

$$\text{Dividend} = \frac{\text{Dividend Rate} \times \text{Face Value} \times N}{365}$$

where:

Dividend Rate (expressed as a percentage per annum) is calculated using the following formula:

$$(90 \text{ day Bank Bill Rate} + \text{Preference Share Margin}) \times (1 - \text{Tax Rate})$$

where:

Bank Bill Rate (expressed as a percentage per annum) means, for each Dividend Period, the average mid-rate for bills of a term of 90 days which average rate is displayed on Reuters page BBSW (or any page that replaces that page) at 10.30am (Sydney time) on, in the case of the first Dividend Period, the Preference Share Issue Date, and in the case of any other Dividend Period, the first Business Day of that Dividend Period, or if there is a manifest error in the calculation of that average rate or that average rate is not displayed at 10.30am (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:

- (a) the rates otherwise bid and offered for bills of a term of 90 days or for funds of that tenor displayed on Reuters page BBSW (or any page which replaces that page) at that time on that date; and
- (b) if bid and offer rates for bills of a term of 90 days are not otherwise available, the rates otherwise bid and offered for funds of that tenor at or around that time on that date;

Preference Share Margin (expressed as a percentage per annum) is the same as the Note Margin;

Tax Rate (expressed as a decimal) means the Australian corporate tax rate applicable to the franking account of Westpac at the relevant Dividend Payment Date; and

N means in respect of:

- (c) the first Dividend Payment Date, the number of days from (but excluding) the preceding Interest Payment Date on or prior to the occurrence of an Assignment Event until (and including) the first Dividend Payment Date or, if no Interest Payment Date has yet occurred, the period from (and including) the Preference Share Issue Date until (and including) the first Dividend Payment Date; and
 - (d) each subsequent Dividend Payment Date, the number of days from (but excluding) each Dividend Payment Date until (and including) the next Dividend Payment Date,
- (each a **Dividend Period**).

3.3 Gross-Up Amount of Dividend not franked to 100%

If any Dividend will not be franked to 100% under Part 3-6 of the Tax Act (or any provisions that revise or replace that Part), otherwise than because of any act by, or circumstance affecting, any particular Preference Shareholder, each Preference Share entitles the Preference Shareholder on a Record Date to receive on the relevant Dividend Payment Date an amount (the **Gross-Up Amount**) calculated using the following formula:

$$\text{Gross-Up Amount} = \text{ED} - \text{D}$$

where:

$$\text{ED} = \frac{\text{D}}{1 - [\text{Tax Rate} \times (1 - \text{Franking Rate})]}$$

where:

D means the Dividend entitlement on that Dividend Payment Date as calculated under clause 3.2; and

Franking Rate (expressed as a decimal) means the percentage of Dividend that would carry franking credit benefits (within the meaning of Part 3-6 of the Tax Act or any provisions that revise or replace that Part) applicable to the relevant Dividend entitlement on that Dividend Payment Date.

3.4 Conditions to Dividends and Gross-up Amounts (any Optional Dividends)

- (a) A Dividend and Gross-Up Amount (and any Optional Dividend) must not be paid to Preference Shareholders if:
 - (i) the Westpac Directors, in their absolute discretion, have not determined that the Dividend and Gross Up Amount (or Optional Dividend) is payable;
 - (ii) the amount of the Dividend and Gross-Up Amount (or Optional Dividend) will exceed Distributable Profits, unless APRA otherwise gives its prior written approval; or
 - (iii) in the case of:
 - (A) a Dividend and Gross-Up Amount, APRA otherwise objects to the payment; or
 - (B) an Optional Dividend, APRA has not given its prior written approval to the payment.
- (b) Without limiting clause 3.4(a)(i), the Westpac Directors will not determine a Dividend and Gross Up Amount (or Optional Dividend) to be payable if, in their opinion, making the payment would result in Westpac becoming, or being likely to become, insolvent for the purposes of the Corporations Act.
- (c) Dividends and Gross-Up Amounts (and Optional Dividends) shall be paid in accordance with clause 9. For the purposes of making any Dividend and Gross-Up Amount (and

Optional Dividend) payment in respect of a Preference Shareholder's total holding of Preference Shares, any fraction of a cent will be disregarded.

3.5 Dividends are non-cumulative

Dividends and Gross-Up Amounts are non-cumulative. If all or any part of a Dividend and Gross-Up Amount (or Optional Dividend) is not paid because of the provisions of clause 3.4 or because of any applicable law, Westpac has no liability to pay such Dividend and Gross-Up Amount (or Optional Dividend) to the Preference Shareholder and, notwithstanding Westpac's absolute discretion (subject to APRA's prior written approval) to pay an Optional Dividend under clause 3.6, the Preference Shareholder has no claim (including, without limitation, on the winding up of Westpac) in respect of such non-payment. Non-payment of a Dividend and Gross-Up Amount (or Optional Dividend) because of the provisions of clause 3.4, or because of any applicable law, does not constitute an event of default.

No interest accrues on any unpaid Dividends and Gross-Up Amounts (or Optional Dividends), and the Preference Shareholder has no claim or entitlement in respect of interest on any unpaid Dividends and Gross-Up Amounts (or Optional Dividends).

3.6 Optional Dividend

Upon the Preference Shares becoming Unstapled, if Westpac fails to pay all or any part of a Dividend on the Preference Shares on any Dividend Payment Date or failed to pay any Interest on the Notes in the period before Unstapling occurred, Westpac may, with the prior written approval of APRA, pay a dividend (an **Optional Dividend**) equal to the unpaid amount of the Interest (and Gross-Up Amount as defined in and calculated under the Note Terms, if any) or Dividend (and Gross-Up Amount calculated under these Preference Share Terms) scheduled to have been paid on the Notes and/or the Preference Shares during the 12 months immediately preceding the date on which Westpac pays the Optional Dividend.

3.7 Dividend Payment Dates

Subject to this clause 3, Dividends and Gross-Up Amounts (other than Optional Dividends) are to be paid in arrear on the following dates (each a **Dividend Payment Date**):

- (a) provided that the first Dividend Payment Date is not before 30 June 2009 and subject to clause 3.1:
 - (i) 30 September, 31 December, 31 March and 30 June of each year until (and including) 30 June 2014;
 - (ii) 30 September 2014 and thereafter, if the Preference Shares have not been Redeemed or Converted, 31 December, 31 March, 30 June and 30 September of each year, commencing from (and including) 31 December 2014 until the Preference Shares are Redeemed or Converted; and
- (b) the Redemption Date or the Conversion Date (as the case may be) on which such Preference Shares are Redeemed or Converted, provided that such Redemption Date or Conversion Date is a date that is after the date on which the Preference Shares become Unstapled.

3.8 Record Dates

- (a) A Dividend and Gross-Up Amount is only payable on a Dividend Payment Date to those persons registered as Preference Shareholders on the Record Date for that Dividend and Gross-Up Amount.

- (b) An Optional Dividend is only payable on the date of payment determined by the Westpac Directors to those persons registered as Preference Shareholders on the Record Date for that Optional Dividend.

3.9 Deductions

Westpac may deduct from any Dividend and Gross-Up Amount or Optional Dividend payable the amount of any withholding or other tax, duty or levy required by law to be deducted or withheld in respect of such amount. If any such deduction or withholding has been made and the amount of the deduction or withholding accounted for by Westpac to the relevant revenue authority and the balance of the Dividend and Gross-Up Amount or Optional Dividend payable has been paid to the relevant Preference Shareholder, then the full amount payable to such Preference Shareholder shall be deemed to have been duly paid and satisfied by Westpac.

Westpac shall pay the full amount required to be deducted or withheld to the relevant revenue authority within the time allowed for such payment without incurring any penalty under the applicable law and shall, if required by any Preference Shareholder, deliver to that Preference Shareholder confirmation of the payment made to the revenue authority without delay after it is received by Westpac.

3.10 Restrictions in the case of non-payment

Subject to clause 3.11, if:

- (a) after the Assignment Event Date, for any reason a Dividend and Gross-Up Amount has not been paid in full within 20 Business Days after the relevant Dividend Payment Date; or
- (b) in respect of an Interest Payment Date on or before the Assignment Event Date, Interest and Gross-Up Amount (as defined in the Note Terms) scheduled to be paid on a Note was not paid in full within 20 Business Days of the relevant Interest Payment Date;

Westpac must not:

- (c) pay any interest, declare or pay any dividends or distributions on any Capital Securities ranking equally with or junior to Preference Shares in respect of those payments; or
- (d) redeem, reduce, cancel or acquire for any consideration, any Capital Securities (other than Capital Securities ranking equally with or in priority to Preference Shares for a return of capital in a winding-up of Westpac),

unless:

- (e) four consecutive Dividends and Gross-Up Amounts (if any) scheduled to be paid on Preference Shares thereafter have been paid in full;
- (f) an Optional Dividend has been paid to all Preference Shareholders equal to the aggregate amount of any Unpaid Distributions which were scheduled to be paid in the 12 months before the date of payment of the Optional Dividend;
- (g) all Preference Shares have been Redeemed or Converted; or
- (h) a Special Resolution of the Preference Shareholders has been passed approving such action,

and APRA does not otherwise object.

3.11 Restrictions not to apply in certain circumstances

The restrictions in clause 3.10 do not apply to:

- (a) pro rata payments on Preference Shares and on Capital Securities ranking equally with Preference Shares in respect of those payments;
- (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 member of the Westpac Group;
 - (ii) a dividend plan or shareholder share purchase or disposal 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 Dividend on the relevant Dividend Payment Date;
- (c) an exchange, redemption or conversion of any class or series of Westpac's shares, or any shares of a member of the Westpac Group, 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 payment or 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) 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 equally with or junior to those shares; and
- (g) Westpac or any of its controlled entities purchasing shares in Westpac in connection with transactions for the account of customers of Westpac or any of its controlled entities or in connection with the distribution or trading of shares in Westpac in the ordinary course of business.

3.12 Dividends on Preference Shares are preferred

Preference Shareholders are entitled (subject to these Preference Share Terms) to receive Dividends and Gross-Up Amounts:

- (a) in priority to holders of Ordinary Shares; and
- (b) equally with the holders of Equal Ranking Capital Securities.

4 Conversion or Redemption

4.1 Conversion or Redemption by Preference Shareholders

Preference Shareholders have no right to seek or initiate Conversion or Redemption.

4.2 Conversion Conditions

- (a) Where indicated in these terms, Conversion is subject to the satisfaction of the **Conversion Conditions**, which are that:
 - (i) the Test Conversion Number on the 25th Business Day before the Relevant Date is no greater than 90% of the Maximum Conversion Number (First Conversion Condition); and

- (ii) the Conversion Number on the Relevant Date is no greater than the Maximum Conversion Number (Second Conversion **Condition**).
- (b) Relevant Date means:
 - (i) for mandatory Conversion, each of the dates set out in clauses 4.4(b)(i) and 4.4(b)(ii);
 - (ii) for early Conversion, the relevant Conversion Date.

4.3 Test Conversion Number and Maximum Conversion Number

- (a) The **Test Conversion Number** means the Conversion Number calculated under clause 4.10(a) using the Test Reference Period and assuming that:
 - (i) in respect of mandatory Conversion, the Relevant Date is the Mandatory Conversion Date; and
 - (ii) in respect of early Conversion, the Relevant Date is the Conversion Date notified in the Conversion Notice under clause 4.5(g) or the Early Mandatory Conversion Date (as relevant).
- (b) Subject to any adjustments under clauses 4.12 to 4.16, the **Maximum Conversion Number** is equal to the number of Ordinary Shares calculated (to four decimal places) using the following formula:

$$\text{Maximum Number Conversion} = \frac{\text{Face Value}}{0.5 \times \text{VWAP}}$$

where:

VWAP (expressed as a dollars and cents amount) means the VWAP during the Reference Period;

where:

Reference Period means the period of 20 Business Days on which trading in the Ordinary Shares took place immediately preceding, but not including, the Preference Share Issue Date.

- (c) Westpac will make an announcement to ASX to notify Preference Shareholders of the Maximum Conversion Number within a reasonable period after the Preference Share Issue Date.

4.4 Mandatory Conversion

- (a) Subject to clause 5, on the Mandatory Conversion Date, Westpac must Convert all Preference Shares on issue at that date into Ordinary Shares under clauses 4.8 and 4.10.
- (b) The **Mandatory Conversion Date** will be the earlier of:
 - (i) 30 September 2014; and
 - (ii) the first Dividend Payment Date after 30 September 2014, on which both Conversion Conditions are satisfied.
- (c) If, in respect of any Relevant Date for mandatory Conversion, the First Conversion Condition is not satisfied:
 - (i) Westpac will make an announcement to ASX not less than 20 Business Days prior to the Relevant Date notifying Preference Shareholders that mandatory Conversion will not proceed on the Relevant Date; and

- (ii) Westpac may, subject to APRA's prior written approval, elect to Redeem all (but not some) Preference Shares on the Relevant Date in accordance with clause 4.9 by issuing an Early Conversion/Redemption Notice not less than 20 Business Days prior to the Relevant Date.

4.5 Early Conversion or Redemption

- (a) Westpac may serve an Early Conversion/Redemption Notice:
 - (i) in respect of some or all of the Preference Shares, following the occurrence of a Tax Event or Regulatory Event; or
 - (ii) in respect of all (but not some) Preference Shares, if an Acquisition Event occurs.
- (b) Westpac must notify Preference Shareholders of the occurrence of an Acquisition Event by announcement to ASX as soon as practicable after becoming aware of the occurrence of that event.
- (c) If Westpac serves an Early Conversion/Redemption Notice, Westpac must include in that notice which, or which combination, of the following it intends to do in respect of Preference Shares the subject of the notice:
 - (i) Convert Preference Shares into Ordinary Shares under clauses 4.8 and 4.10; or
 - (ii) Redeem Preference Shares in accordance with clause 4.9 on the relevant Redemption Date.
- (d) Westpac may only apply the mechanisms in clause 4.5(c) if APRA has given its prior written approval to such mechanisms being applied.
- (e) Westpac may apply the mechanism in clause 4.5(c)(i) only if the Conversion Conditions are satisfied.
- (f) Where Westpac has elected to serve an Early Conversion/Redemption Notice under clause 4.5(a), Westpac must serve the Early Conversion/Redemption Notice:
 - (i) subject to paragraph (ii), no later than 20 Business Days after APRA has given its prior written approval to the application of any of the mechanisms in clause 4.5(c) in respect of some or all of the Preference Shares; or
 - (ii) in respect of an Acquisition Event, no later than the 10th Business Day immediately following the Acquisition Event.
- (g) If Westpac serves an Early Conversion/Redemption Notice under clause 4.5(a), the Conversion Date or Redemption Date (as appropriate) is the date stated in the Early Conversion/Redemption Notice provided that:
 - (i) the Conversion Date, where relevant, is a Business Day that is no earlier than 25 Business Days and no later than 30 Business Days after the date of the Early Conversion/Redemption Notice; or
 - (ii) the Redemption Date, where relevant, is a Business Day that is no earlier than 10 Business Days and no later than 20 Business Days after the date of the Early Conversion/Redemption Notice.
- (h) Subject to clause 4.6, if an Acquisition Event occurs and Westpac has not issued an Early Conversion/Redemption Notice under clause 4.5(a)(ii) within 10 Business Days after the Acquisition Event, Westpac must, provided the Conversion Conditions are satisfied, Convert all Preference Shares on issue on the date which is 40 Business Days after the Acquisition Event (or such other date notified by Westpac which must be within 5

Business Days of that date) (the **Early Mandatory Conversion Date**) into Ordinary Shares under clauses 4.8 and 4.10.

- (i) If, in respect of the Relevant Date for early Conversion, the First Conversion Condition is not satisfied:
 - (i) Westpac will make an announcement to ASX not less than 21 Business Days prior to the Relevant Date notifying Preference Shareholders that Conversion will not proceed on the Relevant Date; and
 - (ii) Westpac may, subject to APRA's prior written approval, elect to Redeem all (but not some) Preference Shares on the Relevant Date in accordance with clause 4.9 by issuing an Early Conversion/Redemption Notice not less than 21 Business Days prior to the Relevant Date.

4.6 Issue of Ordinary Shares of a successor holding company

Where there is a scheme of arrangement in respect of the replacement of Westpac as the ultimate holding company of the Westpac Group and the successor holding company satisfies the requirements of paragraphs (A) to (D) under the definition of Acquisition Event, mandatory Conversion of the Preference Shares may not occur on the Early Mandatory Conversion Date. Instead, the Preference Share Terms may be amended as contemplated in clause 11.3.

4.7 Early Conversion/Redemption Notice irrevocable

An Early Conversion/Redemption Notice given by Westpac under clause 4.5(a) is irrevocable and may include any other information that Westpac considers necessary or appropriate to effect the Conversion or Redemption in an orderly manner.

4.8 Meaning of Conversion

Each Preference Share, on any Conversion, confers all of the rights attaching to one fully paid Ordinary Share but these rights do not take effect until 5.00pm on the Conversion Date.

At that time:

- (a) all other rights and restrictions conferred on Preference Shares under these Preference Share Terms will no longer have any effect (except for any rights relating to a Dividend payable on or before the Conversion Date and any rights to any allotment of additional Ordinary Shares issued upon Conversion under clause 4.10, which will subsist); and
- (b) each Preference Share on Conversion will rank equally with all other Ordinary Shares then on issue and Westpac will issue a statement that the holder of those shares holds a share so ranking.

The variation of the status of, and the rights attaching to, a Preference Share under this clause 4.8 and any allotment of additional Ordinary Shares under clause 4.10 is, for the purposes of these Preference Share Terms, together termed 'Conversion'. Conversion does not constitute redemption, cancellation or buy-back of a Preference Share or an issue, allotment or creation of a new share (other than any additional Ordinary Shares allotted under clause 4.10).

4.9 Meaning of Redemption

Redemption, in respect of a Preference Share, means the Preference Share is redeemed, bought back (other than by an on-market buy-back) or cancelled pursuant to a reduction of capital (or any combination of these) for an amount of cash equal to the Face Value. Subject to APRA's prior written approval (if required), if Westpac elects to Redeem the Preference Shares, the following provisions apply:

- (a) Westpac will Redeem the Preference Shares specified in the Early Conversion/Redemption Notice by payment of the Face Value and any due but Unpaid Distributions per Preference Share to the Preference Shareholder on the relevant Redemption Date;
- (b) upon payment of the Face Value and any due but Unpaid Distributions per Preference Share, all other rights conferred, or restrictions imposed, by those Preference Shares held by that Preference Shareholder under these Preference Share Terms will no longer have effect;
- (c) if the Redemption involves a buy-back of Preference Shares:
 - (i) each Preference Shareholder agrees to accept the buy-back offer for their Preference Shares to which the Early Conversion/Redemption Notice relates and will be deemed to have sold those Preference Shares to Westpac on the Redemption Date. For the avoidance of doubt, no agreement arises under this clause 4.9(c)(i) until the later of the date the Early Conversion/Redemption Notice is sent to Preference Shareholders, the date all relevant consents to the buy-back have been procured and the record date for the final Dividend to be paid as identified in the Early Conversion/Redemption Notice; and
 - (ii) if under applicable law Preference Shareholders are entitled to vote on a resolution to approve that buyback, each Preference Shareholder agrees to vote in favour of that resolution;
- (d) if the Redemption involves a reduction of capital with respect to Preference Shares and under applicable law Preference Shareholders are entitled to vote on a resolution to approve that reduction of capital, each Preference Shareholder agrees to vote in favour of that resolution.

4.10 Conversion and issue of Ordinary Shares

- (a) On the Conversion Date in respect of any Conversion:
 - (i) each Preference Share being Converted will Convert into one fully paid Ordinary Share; and
 - (ii) each Preference Shareholder will be allotted an additional number of fully paid Ordinary Shares for each Preference Share that is being Converted equal to **one less than** the Conversion Number, where the Conversion Number means the number of Ordinary Shares calculated (to four decimal places) using the following formula:

$$\text{Conversion Number} = \frac{\text{Face Value}}{\text{VWAP} \times (1 - \text{Conversion Discount})}$$

where:

VWAP (expressed as a dollars and cents amount) means the VWAP during the Reference Period;

where:

Reference Period means for the purpose of calculating the Conversion Number:

- (A) for the Test Conversion Number, the period of trading in the Ordinary Shares on ASX on the 25th Business Day before the Relevant Date (or if trading in Ordinary Shares did not occur on that date, the period of

trading on the last Business Day prior to that date on which trading in Ordinary Shares occurred) (**Test Reference Period**);

- (B) for Conversion in respect of an Acquisition Event, the lesser of:
- (1) 20 Business Days on which trading in the Ordinary Shares took place immediately preceding, but not including, the relevant Conversion Date; and
 - (2) the number of Business Days that Ordinary Shares are quoted for trading on ASX or the principal securities exchange on which Ordinary Shares are then quoted following the occurrence of the Acquisition Event and preceding, but not including, the Conversion Date, or if there is no trading in Ordinary Shares after the Acquisition Event, the offer price for Ordinary Shares under the relevant Acquisition Event; and
- (C) in all other cases, the period of 20 Business Days on which trading in the Ordinary Shares took place immediately preceding, but not including, the relevant Conversion Date.

Conversion Discount (expressed as a decimal) means 0.01.

- (b) Where the total number of Ordinary Shares that a Preference Shareholder is entitled to in respect of the total number of Preference Shares being Converted at that time includes a fraction, that fraction will be disregarded.

4.11 Adjustments to VWAP

For the purposes of calculating VWAP in clause 4.10(a):

- (a) 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 Preference Shares will Convert into Ordinary Shares after the date those Ordinary Shares no longer carry that dividend, distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend, cum distribution or cum entitlement shall be reduced by an amount (**Cum Value**) equal to in the case of:
- (i) a dividend or other distribution, the amount of that dividend or distribution including, if the dividend or distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or distribution who is a natural person resident in Australia under the Tax Act;
 - (ii) an entitlement that is not a dividend or other distribution under clause 4.11(a)(i) and 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
 - (iii) an entitlement that is not a dividend or other distribution under clause 4.11(a)(i) and which is not traded on ASX during the Reference Period, the value of the entitlement as reasonably determined by the Westpac Directors;
- (b) 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 Preference Shares will Convert into 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; and

- (c) where the Ordinary Shares are reconstructed, consolidated, divided or reclassified into a lesser or greater number of securities during a Reference Period, the VWAP shall be adjusted by the Westpac Directors as they consider appropriate. Any adjustment made by the Westpac Directors will constitute an alteration to these Preference Share Terms and will be binding on all Preference Shareholders and these Preference Share Terms will be construed accordingly. Any such adjustment will promptly be notified to all Preference Shareholders.

4.12 Adjustments to Maximum Conversion Number for rights issues or bonus issues

- (a) Subject to clauses 4.12(b) and 4.12(c), if Westpac makes a rights issue (including an issue of the kind known as a 'jumbo issue', where offers to certain institutional holders, or beneficial holders, are made in advance of offers to other holders) or bonus issue (in either case being a pro rata issue) of Ordinary Shares to Ordinary Shareholders generally, the Maximum Conversion Number will be adjusted immediately under the following formula:

$$CN = CNo \times P \times \frac{(RD + RN)}{(RD \times P) + (RN \times A)}$$

where:

CN means the Maximum Conversion Number applying immediately after the application of this formula;

CNo means the Maximum Conversion Number applying immediately before the application of this formula;

P means the VWAP during the period from (and including) the first Business Day after the announcement of the rights or bonus issue to ASX up to (and including) the last Business Day of trading cum rights or bonus issue (or if there is no period of cum rights or bonus issue trading, an amount reasonably determined by the Westpac Directors as representing the value of an Ordinary Share cum the rights or bonus issue);

RD means the number of Ordinary Shares on issue immediately before the issue of new Ordinary Shares under the rights or bonus issue;

RN means the number of Ordinary Shares issued under the rights or bonus issue; and

A means the subscription price per Ordinary Share for a rights issue (and is zero in the case of a bonus issue).

- (b) No adjustment to the Maximum Conversion Number will occur if **A** exceeds **P**.
- (c) Clause 4.12(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (d) For the purpose of this clause 4.12, an issue will be regarded as a pro rata issue notwithstanding that Westpac does not make offers to some or all Ordinary Shareholders with registered addresses outside Australia, provided that in so doing Westpac is not in contravention of ASX Listing Rules.

4.13 Adjustments to Maximum Conversion Number for off market buy-backs

- (a) Subject to clause 4.13(b), if Westpac undertakes an off market buy-back under a buy-back scheme which but for any applicable restrictions on
- (b) transfer would be generally available to holders of Ordinary Shares (or otherwise cancels Ordinary Shares for consideration), the Maximum Conversion Number will be adjusted immediately using the following formula:

$$CN = CNo \times P \times \frac{(BD - BN)}{(BD \times P) - (BN \times A)}$$

where:

CN means the Maximum Conversion Number applying immediately after the application of this formula;

CNo means the Maximum Conversion Number applying immediately before the application of this formula;

P means the VWAP during the 20 Business Days before the announcement to ASX of the buy-back (or cancellation);

RD means the number of Ordinary Shares on issue immediately before the buy-back (or cancellation);

RN means the number of Ordinary Shares bought back (or cancelled); and

A means the buy-back (or cancellation) price per Ordinary Share.

- (a) No adjustment to the Maximum Conversion Number will occur if **P** exceeds **A**.

4.14 Adjustment to Maximum Conversion Number for return of capital

If Westpac makes a pro rata return of capital to holders of Ordinary Shares without cancellation of any Ordinary Shares, the Maximum Conversion Number will be adjusted under the following formula:

$$CN + CNo \times \frac{P}{P - C}$$

where:

CN means the Maximum Conversion Number applying immediately after the application of this formula;

CNo means the Maximum Conversion Number applying immediately before the application of this formula;

P means the VWAP during the period from (and including) the first Business Day after the announcement to ASX of the return of capital up to and including the last Business Day of trading cum the return of capital (or if there is no period of cum return of capital trading, an amount reasonably determined by the Westpac Directors as representing the value of an Ordinary Share cum the return of capital); and

C means with respect to a return of capital, the amount of the cash and/or the value (as reasonably determined by the Westpac Directors) of any other property distributed to Ordinary Shareholders per Ordinary Share (or such lesser amount such that the difference between **P** and **C** is greater than zero).

4.15 Other adjustments to Maximum Conversion Number

Where the Ordinary Shares are reconstructed, consolidated, divided or reclassified into a lesser or greater number of securities, the Maximum Conversion Number shall be adjusted by Westpac as it reasonably considers appropriate (consistently with the way in which the number of Ordinary Shares the subject of an option over Ordinary Shares would have been adjusted under the ASX Listing Rules). Any adjustment made by Westpac will constitute an alteration to these Preference Share Terms and will be binding on all Preference Shareholders and these Preference Share Terms will be construed accordingly. Any such adjustment will promptly be notified to all Preference Shareholders.

4.16 Westpac's sole discretion regarding adjustments to Maximum Conversion Number

Despite the provisions of clauses 4.12 to 4.15, where:

- (a) the effect of any of the adjustment provisions set out in clauses 4.12 to 4.15 is not, in the reasonable opinion of Westpac, appropriate in any particular circumstances (including because more than one adjustment provision applies); or
- (b) any other event occurs in relation to Westpac that may have a dilutive or concentrative effect on the value of the Ordinary Shares,

and, in the reasonable opinion of Westpac, such occurrence would affect the relative values of Preference Shares and the Ordinary Shares, Westpac may (subject to APRA's prior written approval):

- (c) make such alterations to the Face Value and the Maximum Conversion Number as it reasonably considers appropriate or necessary to maintain that relativity; or
- (d) extend an entitlement to the Preference Shareholders to participate in such event based upon the number of Ordinary Shares to which those Preference Shareholders would have been entitled if their Preference Shares had been Converted on a date nominated by Westpac to maintain the relativity.

4.17 On-market buy-backs

Subject to APRA's prior written approval (if required), Westpac may buy back Preference Shares at any time and at any price by an on-market buy-back.

4.18 Power of attorney

Each Preference Shareholder irrevocably appoints each of Westpac, its officers and any liquidator or administrator of Westpac (each an **Attorney**) severally to be the attorney of the Preference Shareholder with power in the name and on behalf of the Preference Shareholder to sign all documents and transfers and do any other thing as may in the Attorney's opinion be necessary or desirable to be done in order for the Preference Shareholder to observe or perform the Preference Shareholder's obligations under these Preference Share Terms including, but not limited to:

- (a) accepting any buy-back offer or exercising voting power in relation to any consent or approval required for Redemption or Conversion; or
- (b) voting in favour of any scheme of arrangement in respect of the proposed replacement of Westpac as the ultimate holding company of the Westpac Group under which Preference Shareholders may receive shares in the successor holding company and where the scheme does not, in the reasonable opinion of Westpac, otherwise adversely affect the interests of Preference Shareholders; or
- (c) as otherwise contemplated under these Preference Share Terms.

The power of attorney given in this clause 4.18 is given for valuable consideration and to secure the performance by the Preference Shareholder of the Preference Shareholder's obligations under these Preference Share Terms and is irrevocable.

5 Transfer Notice

5.1 Transfer Notice

- (a) No less than 30 Business Days, and no more than 50 Business Days prior to a Relevant Date for mandatory Conversion, Westpac may issue to Preference Shareholders a notice (**Transfer Notice**) specifying that all Stapled Securities (or following the occurrence of an

Assignment Event where Preference Shares remain outstanding, all Preference Shares then outstanding) will be acquired by a party nominated by Westpac (the **Nominated Party**) on the Mandatory Conversion Date for cash for the amount of the Face Value per Stapled Security or Preference Share (as applicable).

- (b) The Nominated Party:
- (i) may not be an affiliate of Westpac unless otherwise approved by APRA in writing; and
 - (ii) must have a senior credit rating of either any of:
 - (A) 'A+' or higher senior credit rating by Standard & Poor's Ratings Services; or
 - (B) 'Aa3' or higher senior credit rating by Moody's Investors Service, Inc.; or
 - (C) "A-1+" or higher short term credit rating by Standard & Poor's Ratings Services; or
 - ~~(B)~~(D) "P-1" or higher short term credit rating by Moody's Investors Service, Inc.
- (c) Westpac must not issue a Transfer Notice if it believes in good faith that there is a more than insubstantial risk that the Nominated Party will be unable (or will otherwise not be required) to fulfil its obligations under the Transfer Notice or that the transfer to the Nominated Party would otherwise not occur.
- (d) If, following the issue of a Transfer Notice in respect of the Mandatory Conversion Date, the Nominated Party fails (or is otherwise not required) to fulfil its obligations under the Transfer Notice, then:
- (i) the transfer to the Nominated Party will not occur and Preference Shareholders will continue to hold the Stapled Securities (or following an Assignment Event, the Preference Shares); and
 - (ii) Conversion to Ordinary Shares will not occur on that date, but may, subject to satisfaction of the Conversion Conditions, occur on the next possible Mandatory Conversion Date.
- (e) A Transfer Notice given in accordance with this clause shall bind Preference Shareholders in accordance with its terms.

5.2 Early Transfer Notice

- (a) Following the occurrence of a Tax Event, Regulatory Event or Acquisition Event, Westpac may issue to Preference Shareholders a notice (an **Early Transfer Notice**) specifying that all Stapled Securities or, following the occurrence of an Assignment Event where the Preference Shares remain outstanding, all Preference Shares then outstanding, will be acquired by the Nominated Party on the relevant Conversion Date for cash equal to the Face Value per Stapled Security or Preference Share (as applicable). If Westpac serves an Early Transfer Notice under this clause, the Conversion Date is the date stated in the Early Transfer Notice provided that the Conversion Date is a Business Day that is no later than 30 Business Days after the date of the Early Transfer Notice.
- (b) Clauses 5.1(b) to (e) apply to an Early Transfer Notice given under clause 5.2 as if references to 'Transfer Notice' were references to 'Early Transfer Notice' and references to 'Mandatory Conversion Date' were references to 'Conversion Date'.

6 Preference Shares general rights

6.1 Ranking on winding-up

Preference Shares and due but unpaid Dividends on them will rank upon a winding-up of Westpac:

- (a) senior to Ordinary Shares;
- (b) senior to any Junior Ranking Capital Securities;
- (c) equally among themselves and with all other Equal Ranking Capital Securities;
- (d) junior to, equally with or senior to any other notes or preference shares Westpac may issue, as may be designated in the terms of issue for such notes or preference shares; and
- (e) junior to, and are conditional on the prior payment in full of, the claims of all Senior Creditors.

6.2 Not deposit liabilities

Preference Shares are not deposit liabilities of Westpac and are not subject to the depositor protection provisions of Australian banking legislation.

6.3 Further issues

Westpac reserves the right to issue further Preference Shares or preference shares, or permit the exchange of shares to preference shares, which rank senior to, equally with or behind existing Preference Shares, whether in respect of dividends, return of capital on a winding-up or otherwise. Such an issue does not constitute a variation or cancellation of the rights attached to the then existing Preference Shares.

6.4 No set-off

Any amount due to a Preference Shareholder in respect of Preference Shares may not be set off against any claims by Westpac on the Preference Shareholder.

6.5 Return of capital

If there is a return of capital on a winding-up of Westpac, Preference Shareholders will be entitled to receive out of the assets of Westpac available for distribution to holders of shares and securities of Westpac, in respect of each Preference Share held, an amount of cash (**Liquidation Sum**) equal to the sum of:

- (a) the amount of any Unpaid Distributions; and
- (b) the Face Value,

before any return of capital is made to Ordinary Shareholders or any other Junior Ranking Capital Securities. A winding up of Westpac is the only form of default which could occur in respect of the Preference Shares which would give rise to an obligation on Westpac to pay the Liquidation Sum, and does not affect the subordination of the Preference Shares as set out in clause 6.1.

6.6 Shortfall on winding-up

If, upon a return of capital on a winding-up of Westpac, there are insufficient funds to pay in full the Liquidation Sum and the amounts payable in respect of any other shares or securities in Westpac ranking equally with Preference Shares on a winding-up of Westpac, Preference Shareholders and the holders of any such other shares and securities will share in any

distribution of assets of Westpac in proportion to the amounts to which they are entitled respectively.

6.7 No participation in surplus assets

Preference Shares do not confer on their Preference Shareholders any further right to participate in the surplus assets of Westpac on a winding-up of Westpac beyond payment of the Liquidation Sum.

6.8 No other rights

Preference Shares do not confer on Preference Shareholders any right to participate in profits or property of Westpac except as set out in these Preference Share Terms.

Preference Shares do not confer on Preference Shareholders any right to subscribe for new securities in Westpac or to participate in any bonus issues of shares in Westpac's capital.

7 Voting rights

7.1 Voting

Preference Shareholders will not be entitled to vote at any general meeting of Westpac except in the following circumstances:

- (a) on a proposal:
 - (i) to reduce the share capital of Westpac;
 - (ii) that affects rights attached to Preference Shares;
 - (iii) to wind up Westpac; or
 - (iv) for the disposal of the whole of the property, business and undertaking of Westpac;
- (b) on a resolution to approve the terms of a share buy-back agreement other than a resolution to approve a Redemption;
- (c) during a period in which a Dividend or part of a Dividend is in arrears; or
- (d) during the winding-up of Westpac.

7.2 General meeting

At a general meeting of Westpac, Preference Shareholders are entitled, when entitled to vote in respect of the matters listed in clause 7.1:

- (a) on a show of hands, to exercise one vote; and
- (b) on a poll, to one vote for each Preference Share.

8 Notice and reports

Each Preference Shareholder is entitled to receive notice of any general meeting of Westpac and a copy of every circular and like document sent out by Westpac to Ordinary Shareholders and to attend and speak at general meetings of Westpac.

9 Payments

- (a) Any Dividend or Optional Dividend or other money payable on or in respect of the Preference Shares must be paid:
 - (i) in Australian dollars only; and
 - (ii) free of any set off, deduction or counter claim except as required by law.

- (b) All calculations of payments will be rounded to four decimal places. For the purposes of making any payment in respect of a Preference Shareholder's aggregate holding of Preference Shares, any fraction of a cent will be disregarded.
- (c) If the date scheduled for any payment under these Preference Share Terms is not a Business Day, then the payment will be made on the next Business Day (and without any interest or other payment in respect of such delay).
- (d) Westpac may pay a person entitled to any Dividend or Optional Dividend or other amount payable in respect of a Preference Share by:
 - (i) crediting an account nominated in writing by that person;
 - (ii) cheque made payable to the person, sent to the address of that person as notified to Westpac by that person; or
 - (iii) any other manner as Westpac determines.
- (e) Westpac may send a cheque referred to in clause 9(d)(ii), if relevant, to:
 - (i) the address in the Register of the Preference Shareholder;
 - (ii) if that Preference Share is jointly held, the address in the Register of the Preference Shareholder named first in the Register in respect of the Preference Share; or
 - (iii) any other address which that person directs in writing.
- (f) If Westpac decides to make a payment by electronic or other means determined under clause 9(d)(iii) and an account is not nominated by the Preference Shareholder or joint Preference Shareholder, Westpac may hold the amount payable in a separate account of Westpac until the Preference Shareholder or joint Preference Shareholder nominate an account, without any obligation to pay interest, and the amount so held is to be treated as having been paid to the Preference Shareholder or joint Preference Shareholder at the time it is credited to that separate account of Westpac.
- (g) All amounts payable but unclaimed may be invested by Westpac as it thinks fit for the benefit of Westpac until claimed or until required to be dealt with in accordance with any law relating to unclaimed monies.
- (h) Westpac, in its absolute discretion, may withhold payment to a Preference Shareholder where it is required to do so under any applicable law, including any law prohibiting dealings with terrorist organisations or money laundering, or any other type of sanction, or where it has reasonable grounds to suspect that the Preference Shareholder may be subject to any such law or sanction or involved in acts of terrorism or money laundering, and may deal with such payment and the Preference Shareholder's Preference Shares in accordance with such applicable law or the requirements of any relevant government or regulatory authority. Westpac shall not be liable for any costs or loss suffered by a Preference Shareholder in exercising its discretion under this clause, even where a Preference Shareholder later demonstrates that they were not subject to such law or sanction.

10 Quotation

Westpac must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of Preference Shares on the financial market operated by ASX.

11 Amendment of these Preference Share Terms

11.1 Amendment without consent

Subject to complying with all applicable laws and with APRA's prior written approval (except in the case of paragraph (a)(iii) below), Westpac may, without the authority, assent or approval of Preference Shareholders, amend these Preference Share Terms:

- (a) if Westpac is of the opinion that the amendment is:
 - (i) of a formal, minor or technical nature;
 - (ii) made to cure any ambiguity;
 - (iii) made to correct any manifest error;
 - (iv) expedient for the purpose of enabling the Preference Shares or the Stapled Securities to be listed for quotation or to retain listing on any stock exchange or to be offered for, or subscription for, sale under the laws for the time being in force in any place and it is otherwise not considered by Westpac to be materially prejudicial to the interests of Preference Shareholders or holders of Stapled Securities as a whole;
 - (v) necessary to comply with the provisions of any statute, the requirements of any statutory authority the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Preference Shares or the Stapled Securities are quoted; or
 - (vi) effected under clause 4.11(c), 4.15 or 4.16;
- (b) generally, in any case where such amendment is considered by Westpac not to be materially prejudicial to the interests of Preference Shareholders or holders of Stapled Securities as a whole.

11.2 Amendment with consent

Without limiting clause 11.1, Westpac may, with APRA's prior written approval, amend these Preference Share Terms if the amendment has been approved by a Special Resolution.

11.3 Amendment for successor holding company

- (a) Westpac may, with APRA's prior written approval, but without the authority, assent or approval of Preference Shareholders, amend these Preference Share Terms if Westpac is replaced as the ultimate holding company of the Westpac Group (the **Replacement**), to the extent necessary, and subject to complying with all relevant laws, to ensure that Preference Shareholders may, if appropriate, participate in any relevant arrangements in respect of or in connection with the Replacement.
- (b) If any amendment under clause 11.3(a) would result in ordinary shares of the successor holding company being issued to Preference Shareholders, each Preference Shareholder agrees to become a member of the successor holding company immediately prior to the issue of those shares and appoints Westpac as its attorney as contemplated under clause 4.18 to do all things necessary or desirable to give effect to this clause 11.3(b).
- (c) Nothing in this clause 11.3 prevents Westpac from proposing, or limits, any scheme of arrangement or other similar proposal that may be put to Preference Shareholders or other members of Westpac.

11.4 Meanings

In this clause **amend** includes modify, cancel, alter or add to and **amendment** has a corresponding meaning.

12 Governing Law

These Preference Share Terms are governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and agrees that it will not object to the venue or claim that the relevant action or proceedings have been brought in an inconvenient forum.

12.1 Definitions and interpretation

13 Definitions

The following words and expressions in bold have these meanings in these Preference Share Terms unless the contrary intention appears or the context otherwise requires.

Acquisition Event means:

- (a) a takeover bid is made to acquire all or some Ordinary Shares and the offer is, or becomes, unconditional and the bidder has a relevant interest in more than 50% of the Ordinary Shares on issue; or
- (b) a court orders one or more meetings to be convened to approve a scheme of arrangement under Part 5.1 of the Corporations Act which scheme would result in a person having a relevant interest in more than 50% of the Ordinary Shares that will be on issue after the scheme is implemented and either:
 - (i) the relevant classes of members pass a resolution approving the scheme; or
 - (ii) an independent expert issues a report that the proposals in connection with the scheme are in the best interests of the holders of Ordinary Shares; or
 - (iii) Preference Shareholders are treated as being a separate class for the purposes of a scheme of arrangement in respect of the replacement of Westpac as the ultimate holding company of the Westpac Group.

Notwithstanding the foregoing, the proposed replacement of Westpac as the ultimate holding company of the Westpac Group shall not constitute an Acquisition Event if:

- (A) the proposed successor holding company complies with all applicable legal requirements and obtains any necessary regulatory approvals (including APRA's prior written approval);
- (B) the proposed successor holding company agrees to take any necessary action to give effect to an amendment to the Preference Share Terms as contemplated in clause 11.3(a);
- (C) the ordinary shares of the proposed successor holding company are to be listed on an internationally recognised stock exchange; and
- (D) the proposed replacement of Westpac and the events described in paragraphs (A) to (C) would not, in the reasonable opinion of Westpac, otherwise adversely affect the interests of Preference Shareholders.

Administrative Action means any judicial decision, official administrative pronouncement or action, published or private ruling, interpretative decision, regulatory procedure or policy, application of a regulatory procedure or policy and any notice or announcement (including any notice or announcement of intent to adopt or make any of those things).

APRA means the Australian Prudential Regulation Authority (ABN 79 635 582 658) or any

authority succeeding to its powers or responsibilities.

Assignee has the same meaning as in the Note Terms.

Assignment Event has the same meaning as in the Note Terms.

Assignment Event Date has the same meaning as in the Note Terms.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASX means ASX Limited (ABN 98 008 624 691).

ASX Listing Rules means the listing rules of ASX from time to time with any modifications or waivers in their application to Westpac, which ASX may grant.

ASX Market Rules means the operating rules of ASX from time to time.

Bank Bill Rate has the meaning given to that term in clause 3.2.

Business Day means a business day as defined in the ASX Listing Rules.

Capital Securities means shares or any equity, hybrid or subordinated debt capital security (whether comprised of one or more instruments) issued by Westpac excluding the Preference Shares. **Capital Security** has the corresponding meaning.

Conversion has the meaning given in clause 4.8 and includes mandatory Conversion under clauses 4.4 and 4.5(h) and **Convert** and **Converted** have corresponding meanings.

Conversion Conditions has the meaning given to that term in clause 4.2.

Conversion Date means the Mandatory Conversion Date, the Early Mandatory Conversion Date or, in respect of early Conversion, the date on which Conversion is to occur as notified in the Early Conversion/Redemption Notice under clause 4.5(g), as the context requires.

Conversion Number has the meaning given to that term in clause 4.10.

Corporations Act means the *Corporations Act 2001* (Cth).

Distributable Profits means the lesser of Level 1 Distributable Profits and Level 2 Distributable Profits.

Dividend has the meaning given to that term in clause 3.2.

Dividend Payment Date has the meaning given to that term in clause 3.7 whether or not a Dividend and Gross-Up Amount is paid on that date.

Dividend Period has the meaning given to that term in clause 3.2.

Dividend Rate has the meaning given to that term in clause 3.2.

Early Conversion/Redemption Notice means a notice given by Westpac to a Preference Shareholder under clause 4.4(c)(ii) or 4.5(a).

Early Mandatory Conversion Date has the meaning given to that term in clause 4.5(h).

Equal Ranking Capital Securities means:

- (a) in the case of a dividend, distribution or interest in respect of the Capital Security, a Capital Security (including TPS 2003 Preference Shares, TPS 2004 Preference Shares, TPS 2006 Preference Shares and SPS 2008 Preference Shares) which ranks or is expressed to rank for payment of the dividend, distribution or interest equally with Preference Shares; and
- (b) in the case of redemption or repayment of, reduction of capital on, cancellation of or acquisition of the Capital Security, a Capital Security (including TPS 2003 Preference Shares, TPS 2004 Preference Shares, TPS 2006 Preference Shares and SPS 2008 Preference Shares) which ranks or is expressed to rank equally with Preference Shares for repayment or a return of capital if Westpac is wound up.

Face Value has the meaning given to that term in clause 1(b).

Franking Rate has the meaning given to that term in clause 3.3.

Gross-Up Amount has the meaning given to that term in clause 3.3.

Initial Purchaser means Macquarie Group Holdings New Zealand Limited.

Interest has the meaning given to that term in the Note Terms.

Interest Payment Date has the meaning given to that term in the Note Terms.

Junior Ranking Capital Securities means:

- (a) in the case of a dividend, distribution or interest in respect of the Capital Security, a Capital Security which ranks for payment of the dividend, distribution or interest behind Preference Shares; and
- (b) in the case of redemption or repayment of, reduction of capital on, cancellation of or acquisition of the Capital Security, a Capital Security which:
 - (i) is, or is expressed to be, subordinated on a winding up of Westpac to the claims of Preference Shareholders; or
 - (ii) ranks behind Preference Shares for repayment or a return of capital if Westpac is wound up.

Level 1 and Level 2 means those terms as defined by APRA from time to time.

Level 1 Distributable Profits means:

- (a) the aggregate of the consolidated profits after tax of Westpac, its subsidiaries and other entities whose financial results are required to be consolidated with Westpac on a Level 1 basis (calculated before any dividends or distributions on Westpac's Upper Tier 2 Capital and Tier 1 Capital (on a Level 1 basis)) for the immediately preceding two six-monthly financial periods for which results have been publicly announced (or such other amount as determined by APRA in its discretion to be appropriate in Westpac's circumstances for the purposes of paying dividends or distributions on Westpac's Upper Tier 2 and Tier 1 Capital on a Level 1 basis), less
- (b) the aggregate amount of dividends or distributions paid or payable by Westpac, its subsidiaries and other entities whose financial results are required to be consolidated with Westpac on a Level 1 basis, on its Upper Tier 2 Capital and Tier 1 Capital in the twelve months to and including the applicable Dividend Payment Date, but excluding:
 - (i) dividends or distributions paid or payable to a member of the Level 1 group; and
 - (ii) dividends or distributions payable in relation to the Stapled Securities on the applicable Dividend Payment Date.

Level 2 Distributable Profits means:

- (a) the aggregate of the consolidated profits after tax of Westpac, its subsidiaries and other entities whose financial results are required to be consolidated with Westpac on a Level 2 basis (calculated before any dividends or distributions on Westpac's Upper Tier 2 Capital and Tier 1 Capital (on a Level 2 basis)) for the immediately preceding two six-monthly financial periods for which results have been publicly announced (or such other amount as determined by APRA in its discretion to be appropriate in Westpac's circumstances for the purposes of paying dividends or distributions on Westpac's Upper Tier 2 and Tier 1 Capital on a Level 2 basis), less
- (b) the aggregate amount of dividends or distributions paid or payable by Westpac, its subsidiaries and other entities whose financial results are required to be consolidated with Westpac on a Level 2 basis, on Upper Tier 2 Capital and Tier 1 Capital (on a Level 2 basis) in the twelve months to and including the applicable Dividend Payment Date, but excluding:
 - (i) dividends or distributions paid or payable to a member of the Level 2 group; and
 - (ii) dividends or distributions payable in relation to the Stapled Securities on the applicable Dividend Payment Date.

Liquidation Sum has the meaning given in clause 6.5.

Mandatory Conversion Date has the meaning given to that term in clause 4.4(b).

Maximum Conversion Number has the meaning given to that term in clause 4.3(b).

Nominated Party has the meaning given to that term in clause 5.1(a).

Note means fully paid, perpetual, unsecured, non-cumulative, subordinated notes having the terms set out in the Note Terms and issued under the Note Deed Poll.

Note Deed Poll means the deed poll executed by Westpac on or about 20 February 2009.

Note Margin has the meaning given in the Note Terms.

Note Terms means the terms of issue of the Notes.

Optional Dividend has the meaning given to that term in clause 3.6.

Ordinary Share means a fully paid ordinary share in the capital of Westpac.

Ordinary Shareholder means a person whose name is registered as the holder of an Ordinary Share.

Preference Share has the meaning given in clause 1(a).

Preference Share Issue Date means the date on which Preference Shares are issued, which is expected to be on or about 31 March 2009.

Preference Share Margin has the meaning given to that term in clause 3.2.

Preference Share Terms means these terms of issue of Preference Shares.

Preference Shareholder means a person entered on the Register of Shareholders as the holder of a Preference Share.

Record Date means for payment of:

- (a) a Dividend and Gross-Up Amount, the date which is 7 calendar days before the Dividend Payment Date for that Dividend and Gross-Up Amount; and
- (b) an Optional Dividend, the date prior to the date of payment of the Optional Dividend that is determined by Westpac,

or such other date as may be required by ASX and adopted by Westpac.

Redemption has the meaning given in clause 4.9 and

Redeem and **Redeemed** have corresponding meanings.

Reference Period has the meaning given in clause 4.10(a).

Redemption Date means the date on which Redemption is to occur as notified in the Early Conversion/Redemption Notice under clause 4.5(g).

Register of Noteholders means the register of the holders of Notes maintained by Westpac or its agent and includes any subregister established and maintained under the Clearing House Electronic Subregister System operated by ASTC.

Register of Shareholders means the register of the holders of Preference Shares maintained by Westpac or its agent and includes any subregister established and maintained under the Clearing House Electronic Subregister System operated by ASTC.

Regulatory Event means either:

- (a) receipt by Westpac of advice from a reputable legal counsel to the effect that, as a result of:
 - (i) any amendment to, clarification of, or change (including any announcement of a prospective change) in, the laws or regulations of Australia; or

- (ii) any Administrative Action or any amendment to, clarification of, or change in an Administrative Action,

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 Administrative Action is announced on or after the Preference Share Issue Date (whether or not the subject of a notice or announcement prior to that date) (including clarification that does not change the law but differs from Westpac's understanding of the law at the Preference Share Issue Date):

- (i) additional requirements would be imposed on Westpac in relation to the Preference Shares or, prior to the occurrence of an Assignment Event, the Stapled Securities; or
- (ii) there would be a negative impact on Westpac or holders of Preference Shares or, prior to the occurrence of an Assignment Event, the holders

which Westpac determines, at its sole discretion, to be unacceptable; or

- (b) the determination by Westpac (at its sole discretion) that there is a risk that the Stapled Securities, or following an Assignment Event, the Preference Shares will not be included (in whole or in part) in Westpac's non-innovative residual Tier 1 Capital on a Level 1 or Level 2 basis (except where the non-inclusion results by reason only of any applicable limitation on the amount or composition of Westpac's Tier 1 Capital on a Level 1 or Level 2 basis).

Relevant Date has the meaning given to that term in clause 4.2(b).

Senior Creditors means all creditors of Westpac (present and future), including depositors of Westpac and all holders of Westpac's senior or subordinated debt:

- (a) whose claims are admitted in the winding-up of Westpac; and
- (b) whose claims are not made as holders of indebtedness arising under:
 - (i) an Equal Ranking Capital Security; or
 - (ii) a Junior Ranking Capital Security.

SPS 2008 Preference Shares means the preference shares of Westpac designated as SPS 2008 Series 1 Preference Shares.

Special Resolution means:

- (a) a resolution passed at a meeting of Preference Shareholders or Noteholders (as the case may be) by a majority of at least 75% of the votes validly cast by Preference Shareholders or Noteholders (as the case may be) in person or by proxy and entitled to vote on the resolution; or
- (b) the written approval of Preference Shareholders or Noteholders (as the case may be) holding at least 75% of the Preference Shares or Notes (as the case may be) on issue.

Stapled means the state that results from Stapling.

Stapled Security means a Preference Share Stapled to a Note.

Stapling means the linking together of a Preference Share to a Note together with the restrictions on transfers of Notes and Preference Shares in clauses 2.1 and 2.4 of the Note Terms and clauses 2.1 and 2.4 of these Preference Share Terms.

Substituted Issuer has the meaning given to that term in the Note Terms.

Tax Act means:

- (a) the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) as the case may be and a reference to any section of the *Income Tax Assessment Act 1936* (Cth) includes a reference to that section as rewritten in the *Income Tax Assessment Act 1997* (Cth); and
- (b) any other law setting the rate of income tax payable; and

- (c) any regulation made under such laws.

Tax Event means:

- (a) any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties (or any regulations made under such laws or treaties) of any jurisdiction or any political subdivision or taxing authority of the jurisdiction;
- (b) any Administrative Action or any amendment to, clarification of, or change in, an Administrative Action,

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 Administrative Action is announced, on or after the Preference Share Issue Date (whether or not the subject of a notice or announcement prior to that date), where Westpac has received an opinion from a reputable legal counsel or other tax adviser experienced in such matters to the effect that, as a result of such amendment, clarification, change or Administration Action (or amendment, clarification or change in respect of an Administrative Action), there is more than an insubstantial risk that:

- (a) the Westpac Group would be exposed to a more than *de minimis* increase in its costs, including non-deductibility of interest or the obligation to gross up for withholding tax, in relation to the Stapled Securities, the Preference Shares or any of the loans arising from the application of funds raised from the Stapled Securities, or any holder of Stapled Securities or Preference Shares would be exposed to such an increase in relation to the Stapled Securities or the Preference Shares; or
- (b) there would be more than a *de minimis* increase in the taxes, duties or government charges imposed on the Westpac Group in respect of or resulting from the Stapled Securities or the Preference Shares, or loans arising from the application of funds raised from the Stapled Securities or imposed on any holder of Stapled Securities or Preference Shares; or
- (c) Preference Shares or Notes would not be treated as equity interests for Australian taxation purposes or any Dividend or Interest would not be a frankable distribution within the meaning of Division 202 of the Tax Act or holders of Preference Shares or Notes would be denied or otherwise not be entitled to franking credit benefits in respect of frankable distributions (other than where the Preference Shareholder's lack of entitlement to franking credit benefits in respect of frankable distributions is a result of the actions of the Preference Shareholder) or franking debits would be posted to Westpac's franking account.

Tax Rate has the meaning given to that term in clause 3.2.

Test Conversion Number has the meaning given to that term in clause 4.3.

Test Reference Period has the meaning given to that term in clause 4.10.

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

TPS 2003 Preference Shares means the preference shares of Westpac designated as 2003 Series 1 Preference Shares.

TPS 2004 Preference Shares means the preference shares of Westpac designated as 2004 Series 1 Preference Shares.

TPS 2006 Preference Shares means the preference shares of Westpac designated as 2006 Series 1 Preference Shares.

Unpaid Distributions means any unpaid Dividends and Gross-Up Amount in respect of the Preference Shares (including an Optional Dividend) and any unpaid Interest and Gross-Up Amount in respect of the Notes.

Unstapled means:

- (a) in relation to a Preference Share, not being Stapled to a Note; and

- (b) in relation to a Note, not being Stapled to a Preference Share.

Upper Tier 2 Capital means at any time any equity, debt or hybrid so described by APRA.

VWAP means, subject to any adjustments under clause 4.11, the average of the daily volume weighted average sale prices (rounded to the nearest full cent) of Ordinary Shares sold on ASX during the relevant period or on the relevant days but does not include any 'crossing' transacted outside the 'Open Session State' or any 'special crossing' transacted at any time, each as defined in the ASX Market Rules or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares.

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

Westpac Directors means some or all of the directors of Westpac acting as a board.

Westpac Group means Westpac and its controlled entities.

13.1 Interpretation

The following rules of interpretation apply in these Preference Share Terms unless the contrary intention appears or the context otherwise requires.

- (a) Definitions and interpretation under Westpac's constitution will also apply to these Preference Share Terms unless the contrary intention is expressed.
- (b) Unless the context otherwise requires, if there is any inconsistency between the provisions of these Preference Share Terms and Westpac's constitution then, to the maximum extent permitted by law, the provisions of these Preference Share Terms will prevail.
- (c) Unless otherwise specified, the Westpac Directors may exercise all powers of Westpac under these Preference Share Terms as are not, by the Corporations Act or by Westpac's constitution, required to be exercised by Westpac in general meeting.
- (d) Notices may be given by Westpac to a Preference Shareholder in the manner prescribed by Westpac's constitution for the giving of notices to members of Westpac and the relevant provisions of Westpac's constitution apply with all necessary modification to notices to Preference Shareholders.
- (e) Unless otherwise specified, a reference to a clause is a reference to a clause of these Preference Share Terms.
- (f) If a calculation is required under these Preference Share Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places.
- (g) If a payment is required to be made under these Preference Share Terms, unless the contrary intention is expressed, the payment will be made in Australian dollars only.
- (h) Any provisions which refer to the requirements of APRA or any other prudential regulatory requirements will apply to Westpac only if Westpac is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time.
- (i) Any provisions in these Preference Share Terms requiring the prior written approval by APRA for a particular course of action to be taken by Westpac do not imply that APRA has given its consent or approval to the particular action as of the Preference Share Issue Date.
- (j) The terms takeover bid, relevant interest, scheme of arrangement, buy-back and on-market buy-back when used in these Preference Share Terms have the meaning given in the Corporations Act.

- (k) Headings and boldings are for convenience only and do not affect the interpretation of these Preference Share Terms.
- (l) The singular includes the plural and vice versa.
- (m) 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.
- (n) If an event under these Preference Share Terms must occur on a stipulated day which is not a Business Day, then the event will be done on the next Business Day.
- (o) A reference to \$, dollars or cents is a reference to the lawful currency of Australia. A reference to time in these Preference Share Terms is a reference to Sydney, New South Wales, Australia time.
- (p) Calculations, elections and determinations made by Westpac under these Preference Share Terms are binding on Preference Shareholders in the absence of manifest error.
- (q) If any provision of these Preference Share Terms is prohibited or unenforceable in its terms but would not be prohibited or unenforceable if it were read down, and is capable of being read down, that provision must be read down accordingly. If, despite this clause, a provision is still prohibited or unenforceable, if the provision would not be prohibited or unenforceable if a word or words were omitted, the relevant words must be severed and, in any other case, the whole provision must be severed. However, the remaining provisions of the Preference Share Terms are of full force and effect.