



HERBERT  
SMITH  
FREEHILLS

# Westpac SPS Transfer - Nominated Party Deed Poll

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UBS AG, Australia Branch (AFSL no. 230187, ABN  
47 088 129 613)

**Holders of SPS**

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## Deed poll

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Date ▶ 10 July 2013

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Deed poll by: UBS AG, Australia Branch (AFSL no. 230187, ABN 47 088 129 613)  
of Level 16, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000  
**(Nominated Party)**

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For the benefit of: **Each person who is registered as a Holder of SPS as at 9.00am  
on the Transfer Date**  
**(Holder)**

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Recitals

- 1 Westpac has elected for Transfer to occur in relation to the SPS.
- 2 Pursuant to the Transfer, Westpac has engaged the Nominated Party to acquire the SPS from Holders.
- 3 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 from the Holders for Face Value on the Transfer Date in accordance with the Preference Share Terms.

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This deed witnesses as follows:

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## 1 Definitions and interpretation

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- (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'.



- (c) "Appointment Agreement" means the agreement entered into between Westpac and the Nominated Party in respect of the Transfer.
- (d) "ASX" means the Australian Securities Exchange or ASX Limited, as the context requires;
- (e) "Offer" means the offer by Westpac of Westpac Subordinated Notes II pursuant to the Prospectus;
- (f) "Prospectus" means the prospectus in respect of the Offer dated 10 July 2013;
- (g) "Registry" means Link Market Services Pty Limited.
- (h) "SPS" mean those Westpac Stapled Preferred Securities issued by Westpac pursuant to a prospectus dated 26 June 2008, comprising a Preference Share and a Note, that are on issue as at the Transfer Date.
- (i) "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.
- (j) "Transfer Date" means 26 September 2013.

## 2 Deed operates as a deed poll

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- (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

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- (a) Westpac has elected for Transfer to occur in relation to the SPS 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 for which Westpac has elected Transfer to occur.

## 4 Undertaking to pay and perform

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- (a) Subject to paragraph (b), the Nominated Party undertakes to each Holder to acquire for the Face Value each of the SPS 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:
- (1) Westpac provides to the Nominated Party immediately available funds to acquire the SPS 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
  - (2) Westpac complies with certain obligations under the Appointment Agreement, including issuing a valid Transfer Notice in accordance with the Terms, and issuing other notices related to the Conversion and/or Redemption that is proposed to occur following completion of the Transfer; and
  - (3) to the extent some or all of the SPS will be Converted following completion of the Transfer:
    - (A) certain conditions in the Terms relating to that Conversion are satisfied; and
    - (B) Westpac's ordinary shares remain quoted and trading on the ASX at all times prior to Conversion (subject to certain exceptions); and
  - (4) 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 Conversion and/or Redemption; and
  - (5) 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 delivery of the Face Value for each SPS 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.
- (d) The Registry and Westpac will be solely responsible for registration of the Transfer of the SPS 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

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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

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- (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:
  - (1) a right arising from a breach of this deed; or
  - (2) 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

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- (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.



## Signing page


Executed as a deed poll

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Signed sealed and delivered by

**UBS AG, Australia Branch**

By its authorised signatories

sign here ►   
\_\_\_\_\_  
Authorised Signatory

print name ROBERT VANDERZEIL

sign here ►   
\_\_\_\_\_  
Authorised Signatory

print name ANDREW BUCHANAN

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