

# Terms of Business

For Professional Clients and Eligible Counterparties of  
Westpac Banking Corporation

Date: 1 January 2022



# CONTENTS

<b>Introduction.....</b>	<b>2</b>
<b>Our services .....</b>	<b>4</b>
<b>Your instructions .....</b>	<b>9</b>
<b>How we execute your orders.....</b>	<b>13</b>
<b>Conflicts of interest, Confidential Information and Data Protection .....</b>	<b>16</b>
<b>Representations and warranties .....</b>	<b>21</b>
<b>Termination .....</b>	<b>26</b>
<b>Complaints and compensation .....</b>	<b>28</b>
<b>Interpretation.....</b>	<b>29</b>



This client agreement, together with any accompanying documents (including the cover letter) or any agreements expressed to be supplemental to these terms (as amended from time to time) (this "Agreement") sets out the terms of business between you and us. Please therefore read it carefully.

Please let us know as soon as possible if there is anything which you do not understand or if you have any concerns relating to services provided under this Agreement.

# Introduction

## 1.1 Scope

- (a) This Agreement sets out the basis on which we will advise, deal in and arrange deals in investments, enter into Transactions and provide such other services as may be agreed between us from time to time.
- (b) Subject to Applicable Law and this Agreement there will be no restrictions on the Transactions in respect of which we may advise you or deal with you.

## 1.2 Our classification

Westpac Banking Corporation (“Westpac”) is authorised by the Prudential Regulation Authority (PRA) and subject to regulation by the Financial Conduct Authority (FCA) and limited regulation by the PRA. Our principal place of business is Camomile Court, 23 Camomile Street, London EC3A 7LL (United Kingdom).

## 1.3 Your classification

- (a) Based on the information available to us, we will classify and treat you as a "professional client" or as an “eligible counterparty”, each as defined in our Regulatory Obligations. Unless we hear from you to the contrary, we shall conduct business with you according to our categorisation of you.
- (b) If we classify you as an eligible counterparty, we are no longer required to provide you with certain protections under our Regulatory Obligations that we otherwise provide to professional clients. We will still provide our services to you on arms-length commercial terms.
- (c) You may request, in writing, to be re-categorised by us as either a professional client or eligible counterparty. If we agree to re-categorise you as either:
  - (i) a professional client, certain additional rights and obligations will be afforded to you. We shall be under no obligation to agree to such re-categorisation. If we do so agree, we may require you to enter into an updated agreement in order to reflect additional rights and protections afforded to you; or
  - (ii) an eligible counterparty, the protections and investor compensation rights lost will include, by way of example only, our obligation:
    - (A) to act in your best interests;
    - (B) not to give or receive inducements;
    - (C) to achieve best execution; and
    - (D) to execute orders subject to certain constraints as regards timing and handling relative to other clients’ orders.
- (d) We do not provide services to “retail clients”, as defined under our Regulatory Obligations. If you ask to be treated as a retail client, we will not be in a position to provide our services to you.
- (e) You agree to keep us informed about any change that could affect your client classification. In particular, you must notify us of your classification under EMIR and (if applicable) provide us with

a completed ISDA Master Regulatory Disclosure Letter, or take such other action as we require, so we can meet our Regulatory Obligations. If you do not provide us with such information, you agree to be bound by the classification that we determine for you in our absolute discretion.

## **1.4 Accepting this Agreement**

You accept the terms of this Agreement by conducting business with us. If you have not conducted business with us, you will nonetheless be deemed to have accepted the terms of this Agreement on the 10<sup>th</sup> Business Day following receipt, unless you have notified us in writing otherwise.

## **1.5 Amending this Agreement**

- (a) We may amend the terms of this Agreement:
  - (i) by giving at least 10 Business Days' written notice to you, with such changes taking effect on the date specified in the notice;
  - (ii) immediately if a change is required to comply with Applicable Law.
- (b) You may only amend or vary this Agreement with our prior written consent.
- (c) Unless otherwise agreed, an amendment will not affect any outstanding Instruction or Transaction or any legal rights or obligations which may already have arisen.

## **1.6 Assignment**

- (a) We may assign our rights under this Agreement, without your prior consent, to any Affiliate or to a successor to us pursuant to a merger, consolidation or sale of all or substantially all of our stock or assets or all or a substantial portion of the business to which this Agreement relates.
- (b) You may assign your rights under this Agreement with our prior written consent.

# Our services

## 2.1 Our services

- (a) We offer a range of investment services. In particular, we can provide dealing services in respect of the following investments:
  - (i) government and semi-government bonds;
  - (ii) corporate bonds;
  - (iii) derivatives;
  - (iv) options;
  - (v) futures;
  - (vi) contracts for differences; and
  - (vii) related instruments.
- (b) This list is only illustrative. Other services, or services in respect of other investments, may be provided as specifically agreed with you, and will be subject to the terms and conditions set out in this Agreement unless expressly agreed otherwise.
- (c) In deciding to accept our services, in giving us any Instruction or in entering into any Transaction or where we have provided you with investment advice, you will have already assessed, either independently or using such third party advisors as you may deem appropriate, the risks involved in the particular products, investments and/or any related services and strategies which may include, without limitation, any of (or combination of) the following: credit risk, market risk; liquidity risk; interest rate risk; FX risk; business, operational and insolvency risk; and taxation, legal and regulatory risk. We may separately provide additional disclosure to you in relation to a particular service, product or transaction. Please also refer to the Risk Warning Notice and product disclosures relating to Fixed Income Securities and Futures and Options set out at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>, each of which are hereby incorporated into this Agreement.
- (d) We may from time to time agree to provide you with wholesale deposit and other banking facilities; provision of these services will be subject to the terms set out at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>.

## 2.2 Our capacity

- (a) **We will generally only act as principal in any Transaction with you, and deal with you on an 'arm's length' basis.** Where we act as principal, we will be the counterparty to Transactions with you. In some cases, we will execute at around the same time an identical transaction in the marketplace - for example when executing your orders on the order book of a Regulated Market, Multilateral Trading Facility or Organised Trading Facility.
- (e) We do not provide agency services and will not be acting in the capacity of agent for any party.

## 2.3 Where you act as agent for an Underlying Client

- (a) This section sets out the basis on which we will provide services under this Agreement to you where you are acting as agent for an Underlying Client. Where you are acting for your own account the terms set out in this clause shall not apply.
- (b) On being notified of an Underlying Client in accordance with clause (e) below, we may require (and you agree to provide immediately upon request) any information and associated documentation relating to the verification of the identity of your Underlying Client and any beneficial owners or persons acting on behalf of the client, and such other information as we may require including any information to enable us to form a credit and counterparty risk assessment in respect of any Transaction and to fulfil our obligations under our Regulatory Obligations and Applicable Law (including the MLR 2017). You also agree to provide to us on request copies of the relevant sections of any of your Underlying Clients' constitutive documents relating to the relevant Underlying Client's capacity to enter into Transactions and appoint an agent to act on its behalf. In providing such documents, you will represent and warrant that any such documents shall be, to the best of your knowledge, true and accurate in all material respects. You shall not omit or withhold information which would render the information supplied to us to be false or inaccurate in any material respect. If you act as agent for more than one Underlying Client, you agree to provide the foregoing information in respect of each Underlying Client.
- (c) Each Transaction will be entered into by you as agent for and on behalf of an Underlying Client (by code name or otherwise) in accordance with this Clause and Clause 6 below. Unless we agree in writing, we shall treat you alone as our client and we shall not treat any Underlying Client as our client for the purposes of our Regulatory Obligations.
- (d) We shall in respect of each Underlying Client establish and maintain one or more separate sub-accounts (each an "Underlying Client Account"). We shall, subject to these terms, administer Underlying Client Accounts which we reasonably believe relate to different Underlying Clients separately. You undertake, as agent for the relevant Underlying Client and on your own behalf in respect of each Instruction given, to specify within 2 hours of giving an Instruction (or such other time as we may reasonably specify) sufficient information for us to identify the Underlying Client Account to which the relevant Instruction relates. Unless you specify a specific Underlying Client Account you shall be personally liable for your own account in respect of the relevant Transaction. You further undertake, as agent for each Underlying Client and on your own behalf, to notify us immediately if any two or more Underlying Client Accounts relate to the same Underlying Client.
- (e) You agree to forward to an Underlying Client any documentation in relation to such Underlying Client that we are required to provide under our Regulatory Obligations or Applicable Law and which we make available to you for that purpose.
- (f) You, as agent for the Underlying Client retain full responsibility for making all investment decisions with respect to any Underlying Client. We will not be responsible for judging the merits or suitability of any Transaction to be entered into on behalf of an Underlying Client.
- (g) Unless otherwise required under Applicable Law, we shall have no responsibility for your or any Underlying Client's compliance with any Applicable Laws governing or affecting your conduct or that of any Underlying Client, or for your or any Underlying Client's compliance with any Applicable Laws governing or affecting Transactions.
- (h) If after the date of this Agreement we agree in writing from time to time to provide services to you under the terms of this Agreement where you act as agent on behalf of a new Underlying Client (a "New Underlying Client"), as at the date of such written agreement, your representations in this Agreement shall be deemed to be repeated by you on your own account and as agent for the New Underlying Client.
- (i) References to "you" or to "your" shall, where the context so permits or requires, be construed so as to include each of your Underlying Clients, provided that this shall not affect the provisions of

clauses (c), (d), (f) and (g) which make it clear that we shall treat you alone as our client and will not treat any Underlying Client as our client for the purposes of our Regulatory Obligations.

## **2.4 Suitability and advice**

- (a) We do not generally provide investment advice, unless separately agreed with you. Where we do so, we will notify you either generally or on each occasion of advice.
- (b) We will not provide tax advice. In addition, we will not at any time be deemed to be under any duty to provide tax advice.
- (c) Nothing in this Agreement will give rise to fiduciary or equitable duties on our part or on the part of any of our Affiliates save as expressly provided in the Agreement or by virtue of the specific Regulatory Obligations placed upon us or as may be otherwise contracted between us.

## **2.5 Appropriateness**

- (a) When we provide you with investment services other than investment advice, we may require information regarding your knowledge and experience in the investment field relevant to the specific type of product or service offered or requested so as to enable us to assess whether the investment service or product envisaged is appropriate for you.
- (b) Where a bundle of services or products is envisaged, the assessment shall consider whether the overall bundled package is appropriate.
- (c) To enable us to carry out an applicable appropriateness assessment, as mentioned, we require certain information from you. We will liaise with you as necessary to obtain this information.

## **2.6 Provision of information**

- (a) You agree to provide complete and accurate information as we may reasonably require in order to enable us to provide our services hereunder and, in particular, to carry out any applicable appropriateness assessments. If you fail to provide us with the necessary information, we may be unable to provide you with services or we may not be able fully to assess your circumstances when providing the services.
- (b) You represent and warrant that any information you have provided us with (or will provide us with) in accordance with Clause 2.6(a) above is correct, complete up-to-date and not misleading.
- (c) You agree to notify us as soon as reasonably practicable in writing of any information that may be relevant to appropriateness, in particular any material changes in your circumstances.

## **2.7 Determinations made by us**

- (a) We will assume that any information provided to us in accordance with Clause 2.6 is accurate and we will have no responsibility to you if such information changes or becomes inaccurate, unless you have informed us of such changes.
- (b) We will rely on the information provided by you unless we are aware that the information is manifestly out of date, inaccurate or incomplete.
- (c) We are entitled to assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to the particular investment services, transactions or products.
- (d) If we deem a product or Transaction not appropriate for you, we will advise you accordingly. If you do not provide us with the information we require to make such assessment, or the information you provide is insufficient, we will advise you that this will prevent us from verifying whether the product or Transaction is appropriate for you.



## 2.8 Complex and non-complex products

- (a) To the extent applicable, we have a regulatory obligation under Applicable Law to assess the appropriateness of any execution-only Transaction or service (or transmission of orders) for you in relation to complex products. This means that Westpac will seek information from you to determine whether you have the relevant knowledge and experience to understand the risks involved in the Transaction or service envisaged. If you fail to provide any information or sufficient information in this regard, there is a risk that we will not be able to assess whether you have the necessary knowledge and experience to understand the risks involved. In these circumstances, if you still wish us to proceed we may do so, but we will not have been able to determine that the Transaction or service is appropriate for you.
- (b) If we consider that a Transaction or service is not appropriate for you, we may:
  - (i) accept your order, but will warn you that it may not be appropriate for you and that you may be exposing yourself to risks that fall outside your knowledge and experience; or
  - (ii) refuse your order where we do not believe it is in your best interests to proceed.
- (c) We do not have an obligation under Applicable Law to assess the appropriateness of execution-only Transactions or services (or transmission of orders) in relation to non-complex products. As a result, you will not benefit from the protection of Applicable Law on assessing appropriateness.
- (d) Although we do not necessarily provide the full range of such products, as background (as amended by the FCA Handbook from time to time) non-complex products include: shares traded on regulated markets, bonds or other forms of securitised debt and units in regulated collective investment schemes. Complex instruments include but are not limited to: derivatives transactions, structured products, hedge funds and private equity funds. For reference, investment trusts and non-UCITS retail schemes (NURS) are neither automatically non-complex nor automatically complex. Under Applicable Law, we would be required to assess the appropriateness of execution-only transactions in relation to non-complex products where we also grant you new credit, loan or overdraft facilities (in other words where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities).

## 2.9 Research

Where we provide Investment Research, trading and market commentary, non-independent research or other information (to the extent separately agreed):

- (a) this is incidental to your dealing relationship with us and does not amount to advice;
- (b) if it contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you will not pass it on contrary to that restriction;
- (c) we give no representation, warranty or guarantee as to the accuracy or completeness of any such information or as to the legal, regulatory, tax or other consequences of any Transaction; and
- (d) prior to despatch, we may have acted upon it ourselves, shared it with other clients or counterparties or made use of the information on which it is based. We do not make representations as to the time of receipt by you and cannot guarantee that you will receive such information at the same time as other clients. Any published research reports or recommendations may appear in one or more screen information service.

## 2.10 Bundled services

The services provided to you by us may be provided to you as bundled services with other services and/or products, in which case we will provide you with a list of the charges for each separate component and the bundled services together.

## **2.11 Electronic trading**

Where we provide electronic trading services to you, either directly or through an electronic network or platform, separate terms apply to the provision of those services as a supplement to this Agreement and can be found at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk> (the "Electronic Trading Terms"). In relation to the provision of those services, in the event of any inconsistency between the Electronic Trading Terms and this client agreement, the Electronic Trading Terms will prevail.

# Your instructions

## 3.1 Method

- (a) You may give us Instructions in writing (including fax), by Electronic Means or orally (including by telephone), unless we tell you that Instructions can only be given in a particular way.
- (b) If any Instructions are received by us by telephone, computer or other medium we may ask you to confirm such Instructions in writing, though we will be authorised to follow Instructions notwithstanding your failure to confirm them in writing.
- (c) You accept that any Instructions sent by Electronic Means may not be secure, reliable or timely.

## 3.2 Your authority

- (a) We assume all Instructions are complete and we will be entitled to act for you upon Instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such Instructions.
- (b) It is your responsibility to ensure that Transactions are authorised or carried out by individuals who have been properly authorised by you. We will not be liable to you or, where you are acting as agent, to the Underlying Client, if we accept and act upon Instructions from individuals who do not have the necessary authority.

## 3.3 Right to cancel or refuse Instructions

- (a) We may, but will not be obliged to, accept Instructions to enter into a Transaction (subject to any Applicable Law).
- (b) We will notify you if we decline to enter into a proposed Transaction (subject to any Applicable Law otherwise). We will not be obliged to give a reason for doing so.
- (c) We can only cancel your Instructions if we have not acted upon those Instructions. Instructions can only be withdrawn or amended by you with our consent.

## 3.4 Changes in the market

We will not be responsible for any delay or change in market conditions between the time that we receive your Instructions and the time of execution of any resulting Transaction, unless due to our negligence, fraud or wilful default.

## 3.5 Basis of dealing

- (a) We may arrange (without needing to give notice to you) for a Transaction to be executed, in whole or in part, by selling an investment to you from another client, or a client of an Affiliate of ours, or vice-versa.
- (b) You will promptly deliver any Instructions, money, documents or property deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us for

the purpose of enabling us to perform our obligations under the relevant matching Transaction on a market or with an intermediate broker.

- (c) We may arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Affiliate of ours, and may not be in the United Kingdom. Neither we nor our Personnel will be liable to you for any act or omission of an intermediate broker or agent. No responsibility will be accepted for intermediate brokers or agents selected by you.
- (d) We may require you to limit the number of open positions which you may have with us at any time and you hereby authorise us in our sole discretion to close out any one or more Transactions in order to ensure that such position limits are maintained.
- (e) Where securities have been sold to us by you, you confirm that you are aware of and ensure compliance with the relevant short selling rules under Applicable Law, including those of the market where the sale will take place. You must adequately inform us of the nature of the sale and whether you have organised a stock loan transaction to cover any short sales.
- (f) You must ensure that short sales in sovereign debt (which includes debt issued by certain institutions/entities such as government departments, agencies, members of federal states and the European Investment Bank) are covered in accordance with Article 13 of the EU Short Selling Regulation or UK Short Selling Regulation (as applicable) prior to executing such short sales.

### **3.6 Client Money and Assets**

- (a) We will not ordinarily (and will not be obliged to) hold investments or other assets on your behalf by way of safe custody.
- (b) If any investments are provided to us as collateral on a title transfer basis (that is where you transfer full ownership to us for the purpose of securing your obligations), such collateral will not be treated as safe custody assets subject to the Custody Rules. You acknowledge that, in the event of our insolvency, you will be a general creditor and such investments or other assets may not be available to be paid to you.
- (c) In respect of any money we hold on your behalf in an account with ourselves, we act as banker and not as trustee under the Client Money Rules. In particular, we will not segregate your money from ours and we will not be liable to account to you for any profits made by our use as banker of such funds. As a result, we will not hold your money in accordance with the Client Money Rules, and if we fail, you will be treated as an ordinary creditor in respect of any such funds deposited with us, the Client Money Rules relating to distribution of client money will not apply to these sums, and you will not be entitled to share in any distribution under those rules.
- (d) Where you transfer full ownership of cash to Westpac for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations in respect of Transactions entered into with Westpac, such cash shall not be held as Client Money. Westpac will not hold money under Client Money Rules.
- (e) Where cash is transferred to Westpac and is held subject to a security interest established under a separate agreement, you hereby expressly grant to Westpac a right of use over such cash. Upon the exercise of such right of use, you hereby agree to transfer all rights to that cash to Westpac and that cash will not be Client Money.
- (f) You should be aware of certain risks and consequences which may be involved in:
  - (i) granting consent to a right of use of collateral provided under a security collateral arrangement; and/or
  - (ii) concluding a title transfer collateral arrangement.

Please refer to the notification titled 'SFTR Information Statement' contained at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>. This is given to you by Westpac in compliance with Article 15 of UK SFTR and Article 15 of EU SFTR.

### 3.7 Settlement

- (a) We may effect a net settlement with or for you where permitted by Applicable Law.
- (b) If you have not delivered the appropriate funds or securities to us on the due date for settlement, you are responsible for any losses we incur, including market buy-ins, fines and other market censures or other actions we take as a result.
- (c) Where we settle your transactions (or where applicable your Underlying Client's transactions) on a delivery versus payment basis through a commercial settlement system (such as Clearstream or Euroclear) you agree that we may do so under the delivery versus payment exemption under the Client Money Rules and Custody Rules.
- (d) Pursuant to this exemption we are not obliged to treat money as client money or assets as safe custody assets unless the payment or delivery in question has not occurred by the close of business on the third business day following the date on which we intended to make either the payment or delivery in question.

### 3.8 Reporting and confirmations

- (a) We may be required under Applicable Law to make public information about your Transactions or to report such information to a Regulator or to an execution venue. You agree to waive any duty of confidentiality attaching to the information which we reasonably disclose.
- (b) We may from time to time be required to make public quotes in respect of Financial Instruments.
- (c) Where we are trading in commodity derivatives, we may be required to provide information relating to your positions in such Financial Instruments, as well as those of your own clients and clients thereof (until the end client is reached) (the "client chain") pursuant to Applicable Law or the rules or procedures of the execution venue or the applicable Regulator.
- (d) We may require you to provide or update any information relating to you or other members of the client chain as is necessary for us to comply with Applicable Law in relation to market transparency requirements, position reporting requirements, and transaction reporting requirements as we consider arise in respect of your Transactions or the services provided or expected to be provided to you. You agree to deliver to us such information as we request in time for us to comply with reporting requirements. You represent to us that such information as you deliver is, at the time of delivery, true, accurate and complete in every material respect; and that we may rely on the information without investigation, unless and until you inform us otherwise; and you undertake to provide us promptly any material changes or updates.
- (e) You acknowledge and agree that you are separately responsible for ensuring that you comply with any obligations applicable to you under Applicable Law to make public, provide or report information regarding your orders and their execution or your positions. For the avoidance of doubt, without separate written agreement, we do not undertake to make public, provide or report such information on your behalf or in a manner that seeks to satisfy any obligations applicable to you.
- (f) Where we are required, or have otherwise agreed, to do so, we will send you Confirmations by the end of the trading day or earlier for any Transactions that we have executed on your behalf on that trading day. We may provide (or make available) this Confirmation by Electronic Means, in which case it will have the same effect as if provided to you in hard copy. We are not required to provide such Confirmations if the same information is to be promptly dispatched to you by another person.

- (g) Confirmations will, in the absence of manifest error, be conclusive and binding on you unless we receive from you a detailed objection in writing within one Business Day of a Confirmation taking effect or we notify you of an error in the Confirmation within the same period.
- (h) You must inform us of any change to your e-mail address and other contact details, the non-receipt of a Confirmation, or whether any Confirmations are incorrect before settlement.
- (i) For trades in derivative instruments subject to the risk mitigation requirements of EMIR you agree that, where we send you an electronic Confirmation of the terms of the trade, that Confirmation will be agreed between us unless you object within the timeframe prescribed for agreeing Confirmations by EMIR.

### **3.9 Record keeping**

- (a) You agree to keep adequate records in accordance with Applicable Law to demonstrate the nature of any Instructions submitted and the time at which any orders are submitted.
- (b) Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion and as required by Applicable Law, such as Data Protection Legislation.

# How we execute your orders

## 4.1 Best execution

If you are classified as a "professional client", we will provide you with best execution when executing orders on your behalf where applicable under our Regulatory Obligations and in accordance with our Order Execution Policy.

## 4.2 Aggregation

We may aggregate your orders with those of other clients and with our own orders. In some cases, this may result in you obtaining a less favourable price or outcome than would otherwise have been the case in respect of a Transaction. In other cases it may operate to your advantage. If we aggregate a client order with a transaction for our own account and the aggregated order is partially executed, we will allocate the related trade to you in priority to us.

## 4.3 Partial Fills

Unless you instruct us otherwise, you agree that Westpac may execute your orders on a partial fill basis to the extent consistent with our Regulatory Obligations – for example where full volume cannot be achieved at the specified price or spread.

## 4.4 Stop Loss Orders and Take Profit Orders

- (a) Westpac reserves the right to decline Instructions for Stop Loss or Take Profit orders, and/or to pass on any slippage to the customer.
- (b) Westpac will not accept or offer Stop Losses or Take Profit Instructions with execution at a guaranteed fill. You acknowledge and agree that the final price achieved may not be the same as the order price specified in the Instruction.
- (c) You acknowledge and agree that Westpac may transact in the market prior to the stop loss level being reached in order to execute the Order at a level close to the Stop Loss Order level, unless you have expressly instructed us otherwise. Any Transaction intended to manage the Stop Loss Order will be proportionate to the size of the Stop Loss Order and will not be executed with the intention of triggering the Stop Loss Order. However, there is a possibility that any Transactions intended to manage the Stop Loss Order, or other Transactions performed as part of our market making activities, may increase the possibility of the trigger being reached.
- (d) If you have told us not to act in the market with relation to this particular order, we will execute the order as soon as possible after the Stop Loss level is breached. However, we may still be active in the market as part of Westpac's market making or other activities.

## 4.5 Trading outside Regulated Markets/Multilateral Trading Facilities/Organised Trading Facilities

We may execute orders on your behalf outside trading venues (such as a Regulated Market, Multilateral Trading Facility or Organised Trading Facility).

## 4.6 Information about our Order Execution Policy

- (a) Our Order Execution Policy Disclosure Statement is available on our website <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>, which you should check periodically. You confirm that you have read and agree to our Order Execution Policy Disclosure Statement. We will notify you of material changes to our Order Execution Policy.
- (b) We are required to obtain your prior consent to our Order Execution Policy. You will be deemed to provide such consent when you give us Instructions (including an order) after receipt of this Agreement.
- (c) We are also required to obtain your prior express consent before we execute an order outside of a trading venue (such as a Regulated Market, Multilateral Trading Facility or Organised Trading Facility) in respect of an instrument which is tradable on such a venue, which you will have provided by executing and returning the customer consent provided to you.
- (d) We will use our reasonable endeavours to execute any order promptly.
- (e) In accepting your orders we do not represent or warrant that it will be possible to execute such order according to your Instructions (for example, where Applicable Law prevents us from doing so).
- (f) We will carry out an order on your behalf only when the relevant market is open for dealings.
- (g) We will deal with any Instructions received outside market hours as soon as possible when the relevant market is next open for business (in accordance with the Rules of that market).
- (h) Transactions in derivatives may be subject to EMIR and certain requirements under Dodd-Frank. Such Transactions are subject to additional terms and conditions set out at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>.

## 4.7 Our charges

- (a) Where appropriate, we will charge for our investment services on a basis to be negotiated with you. All charges will include any taxes imposed by any competent authority on any account opened or Transaction effected by or cleared for you; any fees or other charges imposed by a market or any clearing organisation; interest on any amount due to us at the rates then charged by us (and which are available on request); and any other value added or other applicable taxes of any of the foregoing, including any withholding tax.
- (b) You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- (c) Any charges due to us may be deducted at our discretion from any funds held by us on your behalf in your account (and/or, where you are acting on behalf of an Underlying Client, in the relevant Underlying Client Account) and will be paid by you, either for your own account or on the Underlying Client's behalf (as the case may be) as stated in the relevant Confirmation or advice.
- (d) All payments to us under this Agreement will be promptly made in freely transferrable and immediately available same day funds and in such currency as we may from time to time specify, to the bank account designated by us for such purpose. All such payments will be made by you (where you are acting as agent, on the relevant Underlying Client's behalf) without deduction or withholding.



- (e) Relevant provisions in relation to FATCA which apply to the Agreement between us are set out at the following website address: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>.

## **4.8 Systematic Internaliser**

Where Westpac's London Branch is acting as a systematic internaliser in accordance with Article 18 of UK MiFIR, it is required to publish firm quotes under certain conditions. The basis on which Westpac will make available these quotes to clients is set out in our Systematic Internaliser Disclosure Statement published at: <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>.

# Conflicts of interest, Confidential Information and Data Protection

Westpac and its Affiliates provide a broad range of banking and financial services across international markets, including consumer, business and institutional banking and wealth management services in multiple capacities. We have branches, affiliates, offices and controlled entities in a range of global locations. As a result, from time to time, we or one of our Affiliates may have, directly or indirectly, a material interest or relationship with a third party which may give rise to a conflict of interest or potential conflict of interest. You consent to us acting in a manner which we consider appropriate to manage any such conflicts where they arise.

Westpac and its affiliates have implemented policies and procedures, which are designed to ensure conflicts of interests are managed consistently and appropriately, and to treat clients and counterparties fairly. A copy of our summary policy on conflicts will be available at the following website address <https://www.westpac.com.au/about-westpac/global-locations/westpac-uk>.

Where we do not have reasonable confidence that we are able to manage a conflict of interest we will, as a last resort, disclose that conflict of interest to you prior to providing the relevant service. We will not be liable to account to you for any benefit made or received by us or any of our Affiliates in those circumstances.

If you have any concerns regarding how these potential conflicts will be managed, please do not hesitate to discuss your concerns with the Westpac professionals with whom you are dealing.

Westpac's activities are also subject to Applicable Laws in the jurisdictions in which we operate, and these may lead to jurisdictional differences in the manner in which we conduct our activities.

## 5.1 Different order types

- (a) Westpac may receive order types and engage in Transactions in many different ways, including:
  - (i) fixed price orders. Westpac may accept an order from you to buy from you or sell to you at a fixed price. In those cases, Westpac trades with you as a principal, and when you place such an order with us, the decision as to if and when we execute a Transaction with you at the requested price will be at our sole discretion until, and unless, you cancel the order;
  - (ii) benchmark orders (including fixing, market closing, time weighted average price (TWAP)). Westpac may accept an order from you to buy from you or sell to you at a price determined in relation to a third-party benchmark, e.g. a fixing price, a market closing price, or a market time-weighted average price which may be fixed or target published by a trading venue;
  - (iii) market orders (at best, specific instructions and algorithmic execution). Westpac may accept an order from you to buy from you or sell to you at a price determined by prevailing market conditions. This includes “at best” orders for immediate execution, order with specific instructions (e.g. to break the order into tranches executed over a given time period) and automated algorithmic execution strategies, which may be referenced against specific price sources;
  - (iv) limit orders (stop loss, take profit, good til done, good til cancelled, one cancels other). Westpac may accept a limit order from you to buy from you or sell to you if the market reaches a certain level, or according to other criteria agreed with you; and
  - (v) contingent orders (fill or kill).
- (b) Our trading activity in connection with each of these order types could affect market prices and your final execution prices, potentially against your interests. For example, to manage our own risk in relation to filling your order, we may execute trades with other participants on the same venues, or when the market is close to the price level of (or trigger level for) your order, or around the time that the benchmark is being calculated.
- (c) In the case of each order type above, conflicts of interest may arise in relation to Westpac’s ongoing trading activity, decisions in relation to hedging, the exercise of discretion in relation to hedging and execution of trades for other clients or with other participants, which may affect the market prices or benchmark prices achieved for you.
- (d) Orders may be executed through a variety of means, including internal market making desk, other dealers, market makers and trading firms.
- (e) Where Westpac acts with discretion in executing an order, Westpac may enter into transactions through internal sources of liquidity or in the market at different times and prices in order to execute your order, and ultimately provide you with an overall fill that takes into account these executions. The price of any transaction we execute with you may include what we believe to be a reasonable bid-ask spread and/or markup, as described below.

## 5.2 Impact of Westpac’s market activity

- (a) Westpac may act in various roles across financial markets. These activities may include:
  - (i) publication of research;
  - (ii) the provision of financial advice or other services, including (1) to associates or other customers who may have interests in investments or underlying assets which conflict with your own; and (2) where this may result in our customers or counterparties engaging in trading or other activities;
  - (iii) trading for our own account and/or for the account of customers and/or other counterparties – including trading at the same times as or before executing Transactions for you;

- (iv) matching (e.g. by way of a cross) your Transaction with that of another customer by acting on that other customer's behalf as well as yours;
- (v) buying from you and selling immediately to another customer, or vice versa;
- (vi) holding a position (including a short position) in the investment concerned, a related investment or asset underlying the investment;
- (vii) interests in products, markets, data providers, index sponsors, clearing houses, settlement systems and other market utilities;
- (viii) providing liquidity to a trading venue, clearing member or exchange member;
- (ix) acting as a calculation agent, valuation agent, collateral agent or determining party;
- (x) acting as an executing broker or clearing broker. Where we act as executing broker for the execution of your Transactions, we may have discretion to decide where to direct your orders. We may derive financial or other benefits from such decisions;
- (xi) trading to source liquidity for market making purposes;
- (xii) trading to liquidate risk resulting from client facilitation activity;
- (xiii) hedging activity, which may include pre-hedging. We may adjust our hedge on an ongoing basis and may close out or unwind hedge positions. Our market activities in relation to hedging may occur or become more frequent or of greater magnitude:
  - in connection with or in anticipation of the initiation or termination or exercise of your Transactions;
  - on or before a valuation or observation date; or
  - in the case of option Transactions, when the price, level or value of the underlying instrument is near the exercise level or level at which a barrier or other condition may be satisfied.

We are under no duty to inform you about the nature or extent of our hedging activities except where expressly agreed in writing;

- (xiv) awareness of non-public information which may be relevant to your Transactions; and
  - (xv) using third parties to market or solicit counterparties and/or Transactions.
- (b) Westpac's activities or interests and the interests or activities of our other customers and counterparties may at times be adverse to your interests or Transactions you undertake with us, or may affect the economics of Transactions you undertake.
- (c) Westpac generally enters into Transactions to earn a profit and/or to manage the risks of exposures Westpac has accumulated or will accumulate through the conduct of its business. We may charge an explicit fee or commission on a Transaction, or our rate, quote or price for a Transaction may include a markup that is not disclosed. These charges will affect your profit or loss on any Transaction. Such fees, commissions or mark ups may vary between clients, products and in different market conditions. It is also possible that we may earn a substantial return from hedging positions related to a Transaction, even where the value of the Transaction to you falls or does not increase by the same amount. We may also be paid a structuring fee distinct from payments made in connection with a Transaction.
- (d) Unless required by Applicable Law, this Agreement or otherwise expressly agreed with you, we shall not be required to disclose or account to you for profits, benefits, commissions, non-monetary benefits or other remuneration made or received by us or any of our Affiliates by reason of any Transaction or any matching Transaction. For example, where trading on some markets, we may receive a rebate which may be in relation to a specific client order. We will provide you with details of the nature and amount of such fees, commission and/or non-monetary benefits to

the extent required by Applicable Law or this Agreement, but neither we nor any Affiliate will be liable to account to you for any such fee, commissions or non-monetary benefits.

### 5.3 Order management

- (a) Our receipt of an Instruction and any indication we provide to you that we are “working” on trade execution with you, is our indication that we are willing (but not obligated) to enter into all or a portion of a trade at the price requested by you, and we will exercise discretion as to the timing and manner of execution, as well as the amount of your fill, which is dependent on our ability to access liquidity (such as in the case of “market” or “at best” orders) or liquidity at the relevant or better price (such as in the case of “limit” orders). In addition, for Transactions you ask us to execute at “market” or “at best”, any upside or downside fluctuations in the price at the time of execution may be passed to you. For other types of “limit” requests, Westpac reserves the right to retain all or part of any price improvements in the market, in light of the greater risk we take in executing such requests. In any case, your transaction will likely include a reasonable bid-ask spread and/or markup as described above.
- (b) Your Instruction may also be subject to prioritisation and/or aggregation that may result in either Westpac’s own trades or other client trades being executed ahead of, or alongside, any trades we execute with you, which may impact the price of your Transactions, the timing of execution and the amount of your fill. There may also be inherent latencies at both internal and external venues that result in delays between the time we receive your requests and the time we seek to execute.
- (c) Latencies at internal or external venues may result in delays between the time we receive your Instruction and the time we seek to execute it. These latencies and our related risk management practices may impact whether we execute all or a portion of your Instructions and the price at which transactions are executed. If we determine to execute, the costs or benefits of any price changes arising from these latencies may, in our discretion, be retained by us or passed on to you.

### 5.4 Confidential Information & Data Protection

- (a) Words and expressions used in this Clause 5.4 and not defined in this Agreement shall have the meaning assigned to them in the Data Protection Legislation relevant to the processing in question.
- (b) Westpac takes all reasonable steps to protect confidential customer or counterparty information.
- (c) Westpac may however make use of your confidential information in order to:
  - (i) test liquidity or execute trades with other parties to source liquidity (by using the economic terms of the Transaction, not the counterparty identity);
  - (i) execute hedging or other risk-mitigation transactions; or
  - (ii) analyse or disseminate aggregated and anonymised information regarding transactions or requests, as part of market commentary, market colour or trade ideas.
- (d) Westpac may also share confidential or counterparty information:
  - (i) as required or requested by Regulators or governmental agencies, or where we believe there is a public duty to disclose or where we consider our interests require us to do so;
  - (ii) with our Affiliates;
  - (iii) with entities who provide services to us or our Affiliates or who act as agents for us or our Affiliates, or to whom we transfer or propose to transfer any of our rights or duties under this Agreement;

- (iv) to credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks; or
- (v) at your request or with your consent.
- (e) We will not be obliged to disclose to you or take into consideration any fact, matter or finding which might involve a breach of duty or confidence to any other person, or which comes to the notice of any of our directors, officers, employees or agents but does not come to the actual notice of the individual or individuals dealing with you.
- (f) With respect to the transfer of personal data from you to Westpac in connection with the provision of our services:
  - (i) you acknowledge and agree that you are a data controller with respect to your processing of that personal data; and
  - (ii) Westpac acknowledges and agrees that it is a data controller with respect to our processing of that personal data.

Notwithstanding the above, the parties do not jointly determine the purposes and means of processing, and as such should not be considered to be joint controllers.

- (g) Any personal data which you provide under this Agreement is supplied for the purpose of facilitating the performance of Westpac's obligations and the exercise of Westpac's rights under this Agreement.
- (h) You shall take appropriate measures to ensure, on a continuing basis, that any personal data provided under this Agreement is accurate and up to date.
- (i) Before providing us with any personal data in connection with this Agreement you should ensure that the relevant individuals are aware:
  - (i) of our identity, and the fact that we will be a data controller in respect of their personal data for the purposes permitted by these terms;
  - (i) that, to the extent required by Data Protection Legislation, further information on data protection is available on Westpac's website;
  - (ii) that we may share their personal data with our Affiliates and other select third parties for the purpose of performing our obligations and exercising our rights under this Agreement, and for efficient administration of the Westpac group (including as required by Applicable Law for compliance with disclosure and reporting requirements);
  - (iii) that this may involve disclosure of their information as discussed above and/or transfer of their information, including to countries outside the United Kingdom, which in all cases we would ensure is done in accordance with applicable Data Protection Legislation; and
  - (iv) that they have certain rights of access to, erasure of, and correction of, their information, in accordance with applicable Data Protection Legislation, which they may exercise by contacting us.
- (j) You may have rights of access to some or all of the information we hold about you, to have inaccurate information corrected and to tell us that you do not wish to receive marketing information, under Data Protection Legislation. If you wish to exercise any of these rights, please contact us in writing.
- (k) If any Regulator makes any enquiry of us in respect of the services we provide to you under this Agreement, including (without limitation) in connection with a Transaction, you shall fully cooperate with us in responding to such enquiry and promptly supply such information as we may reasonably require or as required by such Regulator with respect to such enquiry.

# Representations and warranties

## 6.1 Representations

- (a) You represent and warrant to us on your own behalf and, where acting as agent, on behalf of each relevant Underlying Client, as at the effective date of this Agreement and as of the date of each Instruction or Transaction that:-
  - (i) you are duly organised and validly existing under the laws of the jurisdiction of your organisation or incorporation and, if relevant under such law, in good standing;
  - (ii) you are not, and no Underlying Client is, a state or separate entity within the meaning of the State Immunity Act 1978, and that an Underlying Client shall, at the time an Instruction is given in respect of it, have the characteristics and conform to any criteria agreed between us from time to time;
  - (iii) you have obtained and will maintain all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to lawfully enter into and perform your obligations incurred in connection with this Agreement and each Transaction and to grant the security interests and powers referred to in this Agreement (including, where relevant, full legal and documented authority to engage with us in all business you carry on with us on behalf of an Underlying Client pursuant to this Agreement, and to use the resources of the Underlying Client to meet any of its obligations under this Agreement and any Transactions);
  - (iv) you have full capacity to enter into this Agreement and each Transaction and have taken and will take all necessary corporate and other action to authorise you to enter into and perform your obligations under this Agreement and under all Transactions;
  - (v) in entering into any Transaction, you have no reason to believe that you or, where applicable, your Underlying Client would not be able to perform any settlement obligations thereunder;
  - (vi) by entering into and performing the Transactions you will not violate any Applicable Law and you have no reason to believe that you or, where applicable, your Underlying Client, is restricted or prohibited from engaging in such Transactions or performing your/its obligations under Applicable Law;
  - (vii) no litigation, arbitration, administrative proceedings or investigations are current, pending or threatened which may have a material adverse effect on your ability to perform your obligations under this Agreement;
  - (viii) there are no proceedings pending or threatened against you for winding up or bankruptcy and no judicial manager, receiver, trustee or similar official has been appointed in respect of you or your assets.

- (ix) no Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination or any combination of the above) an Event of Default has occurred and is continuing;
- (x) this Agreement and each Transaction are your valid and binding obligations enforceable against you in accordance with their terms, subject only to Applicable Law;
- (xi) you are permitted under your constitution and any Applicable Law to enter into Transactions and are financially able to sustain any loss which may result from Transactions, and that entering into such Transactions is a suitable investment vehicle for you;
- (xii) any information which you provide or have provided to us in relation to, without limitation, your financial position, domicile or other matters is accurate and not misleading in any material respect;
- (xiii) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer under this Agreement, free and clear of any security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which such securities may be held; and
- (xiv) where you are entering into a Transaction as agent for an Underlying Client:
  - 1) you have complied with your obligations under Applicable Law in relation to the suitability and/or appropriateness of any Transaction for the Underlying Client and (where not acting in the exercise of your discretion) have determined the capability of the Underlying Client to evaluate the risks associated with any Transaction or service and provided the Underlying Client with all necessary information to enable it to make such evaluation;
  - 2) notwithstanding any provision of this Agreement to the contrary, you agree that we may settle directly with the Underlying Client and shall be entitled to take any action to effect the same; and
  - 3) you shall immediately notify us if you cease to act for any Underlying Client or if the basis upon which you act changes in any way that would affect this Agreement or any Transaction made hereunder.
- (b) You represent to us on the date of this Agreement and on each date and at each time on which you enter into a Relevant Transaction that you have notified us of your status under EMIR and that, if you are a Non-Financial Counterparty, you have provided us with a completed ISDA Master Regulatory Disclosure Letter (or such other confirmation that we require) and that the representation(s) given by you pursuant to it accurately reflect your Non-Financial Counterparty status.
- (c) You represent, warrant and undertake that you are now and will be at all material times in the future in compliance with all Applicable Law concerning money-laundering, anti-bribery and corruption and economic sanctions programmes applicable in the jurisdiction(s) in which you operate. Please also note that:
  - (i) We are required to comply with Applicable Law in relation to the identification of each of your Underlying Clients for anti-money laundering purposes. As such, if we do not receive satisfactory evidence of your identity or that of your Underlying Clients within a reasonable time, we reserve the right to cease to deal with you in respect of any one or more of your Underlying Clients. For the avoidance of doubt, providing evidence of the identity of your Underlying Client will not make your Underlying Client a client of Westpac.
  - (ii) If you are a UK or EU regulated credit or financial institution, or a financial sector firm regulated in a third country deemed equivalent, we deal with you on the understanding that you are complying with applicable UK or EU laws or regulations (or the local equivalent) concerning money-laundering, record keeping and client due diligence measures, and that



evidence of the identification of any counterparty (including any relevant Underlying Client) will have been obtained and recorded under procedures maintained by you.

- (iii) You must retain copies of the data and documents referred to in the above for a period of days as set out in Regulation 40 of the MLR 2017.
- (iv) In respect of (i) above, where we have agreed to place reliance on the customer due diligence you have performed, you must not undertake simplified due diligence measures in identifying your Underlying Clients (as defined in the MLR 2017) but must undertake at a minimum the standard level of due diligence and you must not “pass on” your requirement to identify and verify your Underlying Clients’ identities to other firms. Our understanding is that you will be performing these activities as an entity that falls into the criteria defined in Regulation 39 of the MLR 2017.

## 6.2 Covenants

You, acting on your own account, or as agent for each Underlying Client, covenant to us that:

- (a) you and each Underlying Client shall at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in Clause 6.1;
- (b) you and each Underlying Client shall use all reasonable steps to comply with all Applicable Law in relation to this Agreement and any Transaction, so far as they are applicable to you and your relevant Underlying Client, or us;
- (c) upon demand, you shall provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Law;
- (d) you shall promptly notify us of any Event of Default with respect to yourself or any of your Underlying Clients;
- (e) you will not send Instructions (including orders) or otherwise take any action that could create a false impression of the demand or value for a financial instrument, or send orders which you have reason to believe are in breach of Applicable Law; and
- (f) you shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position.

## 6.3 Liability

- (a) This Agreement limits our liability to the extent permitted under Applicable Law.
- (b) Our obligations and liabilities to you are limited to those set out in this Agreement or those which we have under Applicable Law (including our Regulatory Obligations).
- (c) Neither we nor our Affiliates nor our or their Personnel shall be liable for any Losses arising, suffered or incurred by you or your Underlying Client (including any Transaction or where we have declined to enter into a proposed Transaction) unless such Losses are the direct result of our or their respective negligence, wilful default or fraud.
- (d) Nothing in this Agreement will limit our liability for death or personal injury resulting from our negligence or for any liability which cannot be lawfully excluded or limited. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under the regulatory system (as defined in the FCA Handbook) which may not be excluded or restricted by agreement or otherwise.
- (e) Neither we, nor our Affiliates nor any of our or their Personnel have liability for Losses suffered by you or any third party for any:

- (i) consequential, indirect or special damage;
- (ii) direct or indirect loss of profits;
- (iii) direct or indirect loss of goodwill; or
- (iv) direct or indirect loss of business opportunity arising under or in connection with this Agreement,

regardless whether the possibility of such Losses was disclosed to, or could have reasonably been foreseen by us or our Affiliates or any of our or their Personnel.

- (f) We do not accept liability for any adverse tax implications of any Transactions or services, or by reason of any delay or change in market conditions before any particular Transaction is effected.

## **6.4 No waiver**

A failure or delay in exercising any right, power or privilege in respect of this Agreement will not operate as a waiver of any such right, power or privilege, and a single or partial exercise of any right, power or privilege will not preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

## **6.5 Indemnity**

- (a) You must pay us any sums as we require from time to time in or towards satisfaction of any debit balance on any of your accounts.
- (b) You indemnify and hold harmless us, our Affiliates and our and their Personnel on a full indemnity basis from and against any Losses which we may suffer or incur in connection with executing a Transaction or any matching Transaction on a market or with an intermediate broker or as a result of any misrepresentation by you or any breach by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights, except where such Losses arise directly as a result of our negligence, fraud or wilful default.

## **6.6 Third Party Rights**

Other than an Affiliate, any successor to us and our and their Personnel, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

## **6.7 Force Majeure**

- (a) If we or our Affiliates or our or their Personnel are prevented from performing any of our or their obligations under this Agreement by Force Majeure, we shall serve notice in writing on the other party specifying the nature and extent of the circumstances.
- (b) There will be no obligation to perform any of our obligations under this Agreement on the occurrence of a Force Majeure event or while a Force Majeure event is continuing.
- (c) We shall use all reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of a force majeure circumstance and/or we shall take all reasonable steps to resume performance as soon as is reasonably possible following the cessation of a force majeure event.
- (d) In any event we shall not be liable to you for any delayed, partial or non-performance of our obligations hereunder by reason of Force Majeure.

## **6.8 Market action**

If any Regulator takes any action which affects a Transaction, we shall be entitled to take any steps which we consider necessary or reasonably desirable in order to correspond with such action or mitigate any loss (to us or our Affiliates) incurred as a result of such action. Any such steps we take shall be binding on you and shall not give rise to any liability for us, our Affiliates or our respective Personnel.

# Termination

## 7.1 Termination without cause

Unless required by Applicable Law, either party may terminate this Agreement (and the relationship between us) by giving 5 Business Days' written notice.

## 7.2 Events of default

We may terminate this Agreement immediately and without notice to you if in our discretion, we consider that:

- (a) you are in material breach of obligations owed by you, whether arising under this Agreement, or any Applicable Law; or
- (b) you file or have filed against you a petition for winding up, pass a resolution for winding up or have a receiver, liquidator, administrator or similar officer appointed over all or any part of your assets or undertaking, or

each an "Event of Default".

## 7.3 Amounts immediately due and payable

- (a) Upon terminating this Agreement, all amounts payable by you (if you are acting as an agent, on behalf of each Underlying Client) to us shall become immediately due and payable, including:
  - (i) all outstanding fees, charges and commissions;
  - (ii) any expenses incurred by us in terminating this Agreement;
  - (iii) any Losses incurred by us in closing out Transactions or settling outstanding obligations incurred by us on your behalf (including, if you are acting as an agent, for each Underlying Client).
- (b) For the purposes of this Clause (b) and Clause 7.5(c), it shall also be an Event of Default if one of the events described in Clauses 7.2(a)-(b) occurs in relation to an Underlying Client. If an Event of Default occurs in respect of an Underlying Client ('Defaulting Underlying Client'), and at such time we provide services to you in respect of more than one Underlying Client, then we shall no longer provide services to you as agent for the Defaulting Underlying Client, and all amounts payable by you on behalf of that Defaulting Underlying Client to us shall become immediately due and payable, including:
  - (i) all outstanding fees, charges and commissions;
  - (ii) any expenses incurred by us in terminating the provision of our services under the terms of this Agreement to you as agent on behalf of the Defaulting Underlying Client; and
  - (iii) any losses incurred by us in closing out Transactions or settling outstanding obligations incurred by us on your behalf for the Defaulting Underlying Client.
- (c) Termination of this Agreement with you or with you as agent for the Defaulting Underlying Client (as the case may be) shall not affect outstanding rights, obligations and Transactions, which shall

continue to be governed by this Agreement and in particular by the provisions of Clauses 3.6, 4, 5.4, 6.1, 6.3, 6.7, 7.4, 7.5 and 9.8, which will continue to apply until all obligations have been fully performed notwithstanding termination of this Agreement.

## **7.4 Interest**

- (a) If you default in paying us any amount when it is due (the "due amount"), we reserve the right to charge interest (before and after judgment) on the due amount, such interest to be payable from (and including) the date of default at the rate as reasonably determined by us to be the cost of funding such overdue amount. Interest will accrue on a daily basis and will be due and payable by you (including, if you are acting as an agent, on behalf of the relevant Underlying Client) as a separate debt.
- (b) No delay in exercising our right to retain such interest and no partial payment of such interest shall be deemed to compromise our right to receive the full amount of such interest.

## **7.5 Rights Over Client Investments**

- (a) We shall at all times have a general lien on all investments for the time being in our possession or control and due to you (including, if you are acting as an agent, due to an Underlying Client), irrespective of whether or not we have made advances in connection with such investments.
- (b) Without prejudice to our other rights, and without notice to you, on an Event of Default in relation to you (as opposed to an Underlying Client), or at any time after we have determined, in our absolute discretion, that it is necessary for our protection for a reason relating to you (as opposed to an Underlying Client) we may:
  - (i) sell or realise any or all of the investments which may be in our possession or control and held to the account of you (and, if you are acting as an agent, each Underlying Client) in such manner and at such prices or prices, and whether upon tender of cash or credit, as we may think fit, and apply the proceeds thereof to reduce or discharge all liabilities or indebtedness to us or to any third party; and
  - (ii) cancel, replace, hedge, close out, terminate or reverse any Transaction or enter into any other Transaction or do anything which has the effect of reducing or eliminating our loss or liability under or in respect of any of the contracts, positions or commitments undertaken for your account (including, if you are acting as an agent, for each Underlying Client's Account).
- (c) If an Event of Default occurs in respect of an Underlying Client (as opposed to you) or at any time after we have determined, in our absolute discretion, that it is necessary for our protection for a reason relating to the Underlying Client (as opposed to you), we may exercise these rights only in respect of the relevant Underlying Client's Account.
- (d) Without prejudice to any other right we may have, whether at law or otherwise we shall be entitled to combine all accounts and set-off any amount at any time owing from you (including, if you are acting as an agent, on behalf of an Underlying Client) to us on any account against any amount owing by us to you or standing to your credit (including, if you are acting as an agent, for the account of the relevant Underlying Client or standing to the credit of that relevant Underlying Client) on any account with us.

# Complaints and compensation

## 8.1 Complaints procedure

- (a) If you have a complaint you should in the first instance speak to your normal contact within Westpac.
- (b) If you are an eligible complainant (as defined in the FCA Rules) you may have the right to refer your complaint to the Financial Ombudsman Service. The Financial Ombudsman Service is a free and independent statutory dispute-resolution scheme for financial services. Details of who are eligible complainants can be obtained from the Financial Ombudsman Service. The Financial Ombudsman Service's website is at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk) and they can be contacted at:

The Financial Ombudsman Service

Exchange Tower

London E14 9SR

United Kingdom

email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

telephone: 0800 0234 567 or 0300 1239 123

## 8.2 Compensation

- (a) We are a member of the Financial Services Compensation Scheme in the United Kingdom (the "Scheme"). The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim (e.g. deposits or investments) the claimants hold with respect to the relevant institution. Payments under the Scheme are subject to a maximum payment to any eligible claimant of GBP 85,000.
- (b) Further details of the Scheme are available on request or at the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).
- (c) We are required to provide you with, and annually re-provide, an information sheet in relation to the protection provided for your eligible deposits with us.

# Interpretation

## 9.1 Defined Terms

In this Agreement, the following terms have the meaning set out below:

<b>Affiliate</b>	Any entity controlled directly or indirectly by, or under common control with, Westpac (as the case may be).
<b>Applicable Law</b>	Regulatory Obligations or any other rules of a relevant regulatory authority, Rules and all other applicable laws, rules and regulations as in force from time to time as applicable to this Agreement.
<b>Bank Recovery and Resolution Regimes and</b>	The UK's Special Resolution Regime as implemented in the Banking Act 2009 (as amended from time to time) and the EU BRRD.
<b>BRR Entity</b>	Those UK or EEA entities within the scope of a Bank Recovery and Resolution Regime, including UK or EEA credit institutions, certain UK or EEA investment firms and/or certain UK or EEA subsidiaries or parents of such entities.
<b>BRR Financial Instrument</b>	All financial instruments issued by a BRR Entity.
<b>BRR Resolution Authority</b>	Any resolution authority empowered to apply the resolution tools or exercise the resolution powers under a Bank Recovery and Resolution Regime.
<b>Business Day</b>	A day other than a Saturday or Sunday on which banks are generally open for business in London.
<b>Client Money</b>	The meaning set out in the FCA's Handbook.
<b>Client Money Rules</b>	The provisions of the FCA's Handbook relating to the treatment of client money.
<b>Communication</b>	Any notice, Confirmation or other communication.
<b>Confirmation</b>	A confirmation, statement or note issued by us to you confirming the details of a Transaction.
<b>Custody Rules</b>	The provisions of the FCA's Handbook relating to the treatment of client assets.
<b>Data Protection Legislation</b>	All Applicable Law from time to time relating to the processing of personal data and privacy including (where applicable): <ul style="list-style-type: none"> <li>(a) the General Data Protection Regulation (EU) 2016/679 of the European Parliament as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018;</li> <li>(b) the Data Protection Act 2018; and</li> <li>(c) guidance and codes of practice or conduct issued by a Regulator.</li> </ul>
<b>Dodd-Frank</b>	The Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith.
<b>Electronic Means</b>	Any method of sending a Communication using an electronic or telecommunications system or network, and including the internet or any use of a website's functionality or e-mail communication, but excluding verbal Communications between individuals.

<b>EMIR</b>	UK EMIR or EU EMIR, as applicable.
<b>EU BRRD</b>	The Bank Recovery and Resolution Directive 2014/59/EU,
<b>EU EMIR</b>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EU EMIR), each Commission Delegated Regulation supplementing EU EMIR and each Commission Implementing Regulation laying down implementing technical standards according to EU EMIR.
<b>EU SFTR</b>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 (as amended from time to time)
<b>EU Short Selling Regulation</b>	The European Regulation on Short Selling 236/2012.
<b>Event of Default</b>	Any of the events of default listed in Clause 7.2 (Termination).
<b>FCA</b>	The Financial Conduct Authority, including any successor authority
<b>FCA Rules</b>	The rules of the FCA and the “regulatory system” as defined therein.
<b>Financial Instrument</b>	The meaning set out in UK MiFID II.
<b>Fixed Income Security</b>	Any debt security traded on a market or similar in all material respects to securities traded on a market which carries a right to interest at a predetermined rate but carries no right to participate in the results of the issuer and where any discount or premium on issue or redemption is deemed to be a right to interest.
<b>Force Majeure</b>	<p>Any cause preventing either party from performing any or all of its obligations which arises from or are attributable to either acts, events or omissions or accidents beyond the reasonable control of the party so prevented, including but without limitation</p> <p>(a) any breakdown, delay, malfunction or failure of transmission, act of God, war, terrorism, emergency (as defined in the Civil Contingencies Act 2004), malicious damage, civil commotion, communication or computer failures, industrial action, acts and regulations of any governmental or supra national bodies or authorities; or</p> <p>(b) the failure of any relevant intermediate broker or agent, custodian, sub-custodian, dealer, market, exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations,</p> <p>save where any of the foregoing is directly due to our or their respective negligence, fraud or wilful default.</p>
<b>Instruction</b>	Any order, direction, instruction or request from you or on your behalf pertaining to the provision of services by us to you pursuant to this Agreement, including an instruction to enter into or execute a Transaction.
<b>Investment Research</b>	The meaning set out in the FCA Handbook.
<b>Losses</b>	Losses, liabilities, damages, penalties, claims, actions, judgments, suits, disbursements, costs or expenses of any nature (including those incurred to a dealer, market or clearing house and reasonable legal fees and other reasonable costs and expenses relating to investigating or defending any demands, charges or claims), taxes, imposts and levies of any kind or nature whatsoever. Loss will have a corresponding meaning.
<b>Market Disruption Event</b>	Any event that (in our reasonable opinion) materially disrupts normal trading in an investment or asset on a market, exchange or trading facility, including major system malfunctions or disruptions, circuit breakers and other trading halts and any other market events which are outside Westpac’s or its Affiliates’ control.
<b>MLR 2017</b>	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
<b>Multilateral Trading Facility</b>	The meaning set out in the FCA Handbook.



<b>Organised Trading Facility</b>	The meaning set out in the FCA Handbook.
<b>Personnel</b>	Any officer, director, employee, agent, contractor, sub-contractor or consultant.
<b>Portfolio Data</b>	In respect of a party providing or required to provide such data, the key terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail determined by us.
<b>Portfolio Reconciliation Risk Mitigation Techniques</b>	The portfolio reconciliation risk mitigation techniques for OTC derivatives transactions within the meaning of EMIR.
<b>PRA</b>	The Prudential Regulation Authority, including any successor authority
<b>Product Agreement</b>	Any existing or future agreement including without limitation: <ul style="list-style-type: none"> <li>(a) any master agreement (being a comprehensive documentation of standard terms and conditions and definitions) including without limitation an ISDA Master Agreement, PSA ISMA Global Master Repurchase Agreement, ISLA Global Master Securities Lending Agreement, International Foreign Exchange Master Agreement, Cleared Derivatives Execution Agreement, or Master Counterparty Agreement;</li> <li>(b) confirmation;</li> <li>(c) confidentiality agreement;</li> <li>(d) mandate letter;</li> <li>(e) underwriting agreement; or</li> <li>(f) similar document between you and us, other than this Agreement, which sets out the legal terms applicable to trading of a particular type or types of product, but excluding any terms of business that pre-date this Agreement.</li> </ul>
<b>Regulated Market</b>	The meaning given to it in the FCA's Handbook.
<b>Regulator</b>	The PRA, FCA and any other body responsible for promulgating an Applicable Law.
<b>Regulatory Obligations</b>	The rules of the FCA and/or PRA.
<b>Relevant Transaction</b>	Any OTC derivative transaction which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques under EMIR.
<b>Rules</b>	Articles, rules, regulations and procedures applicable to a Multilateral Trading Facility, Regulatory Market or other market on which we execute Transactions with or for you, as in force from time to time.
<b>UK EMIR</b>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EU EMIR), each Commission Delegated Regulation supplementing EU EMIR and each Commission Implementing Regulation laying down implementing technical standards according to EU EMIR, each as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).
<b>UK MiFID II</b>	Directive 2014/65/EU on markets in financial instruments as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).
<b>UK MiFIR</b>	Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).
<b>UK SFTR</b>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).

<b>UK Short Selling Regulation</b>	The European Regulation on Short Selling 236/2012 as it forms part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (as amended from time to time).
<b>Transaction</b>	Any transaction subject to this Agreement, and includes: <ul style="list-style-type: none"><li>(a) a contract made on a market or pursuant to the Rules of a market;</li><li>(b) a contract which is subject to the Rules of a market; or</li><li>(c) a contract which would (but for its term to maturity only) be a contract made on, or subject to the Rules of a market and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the Rules of a market;</li><li>(d) in any of cases (a), (b) and (c) being a future, option, contract for differences, spot or forward contract of any kind in relation to a commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof;</li><li>(e) a transaction which is matched with any transaction within paragraph (a), (b) or (c) of this definition; or</li><li>(f) any other transaction which we both agree will be a Transaction.</li></ul>
<b>Underlying Client</b>	Any counterparty agreed to in writing by us from time to time on behalf of which you are authorised as agent to enter into Transactions with us under this Agreement. Where an Underlying Client does not constitute a single legal person, this term means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing. References to "the Underlying Client" will be construed as references to "each Underlying Client".
<b>Underlying Client Account</b>	The meaning given to in Clause 2.3 (Underlying Client Accounts).
<b>Westpac</b>	Westpac Banking Corporation

## 9.2 Interpretation

In this Agreement:

- (a) a reference to a "Clause" must be construed as a reference to a Clause of this Agreement, unless the context requires otherwise;
- (b) a reference to any statute or statutory instrument or Applicable Law includes any modification, amendment, extension or re-enactment of that instrument;
- (c) a reference to a "document" includes any electronic document;
- (d) the masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context requires;
- (e) words and phrases defined as a matter of Applicable Law have the same meaning in this Agreement unless expressly defined otherwise in this Agreement;
- (f) headings are for ease of reference only and do not form part of this Agreement;
- (g) all provisions contained on webpage links which are specifically referred to in this Agreement are incorporated into and will form part of this Agreement as if they were contained herein.

## 9.3 Time is of the essence

Time shall be of the essence in respect of all of your obligations under this Agreement, including in relation to any Transactions.

## 9.4 Inconsistency

This Agreement:

- (a) supersedes any previous agreement between you and us on the same subject matter, and governs each Transaction entered into or outstanding between us on or after the date this Agreement takes effect;
- (b) is supplemental to any Product Agreement/s we have entered into or may enter into with you from time to time or any relevant separate netting, margining or collateral agreement. The terms and conditions of any Product Agreement shall prevail in relation to Transactions covered by such Product Agreements in the event of any inconsistencies with this Agreement, except that this Agreement shall prevail to the extent necessary to ensure compliance with our Regulatory Obligations. This Agreement will, however, continue to govern all other aspects of the relationship between you and us otherwise.

## **9.5 Entire Agreement**

- (a) This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement at the effective date of this Agreement to the exclusion of any terms implied by law which may be excluded by contract. Save where required by Applicable Law (including our Regulatory Obligations), we do not assume any obligations towards you other than as set out under the express terms of the Agreement.
- (b) You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in equity, contract, tort or under the Misrepresentation Act 1967) for any representation (other than a fraudulent misrepresentation) that is not set out in this Agreement.
- (c) So far as permitted by Applicable Law and except in the case of fraud, you agree and acknowledge that your only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement will be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies.

## **9.6 Applicable Law**

This Agreement and all Transactions effected with Westpac are subject to Applicable Law so that:

- (a) nothing in this Agreement shall exclude or restrict any obligation which we have to you under Applicable Law, and if there is any conflict between this Agreement and any Applicable Law, the latter will prevail; and
- (b) neither we nor our Affiliates or our or their Personnel shall have liability to you where we in good faith take steps (or omit to take steps) which we consider necessary to ensure compliance with any Applicable Law, including our reporting obligations.

## **9.7 Severability**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired.

## **9.8 Governing Law and Jurisdiction**

- (a) This Agreement, any Transactions effected with Westpac pursuant to this Agreement and any non-contractual obligations arising out of or in connection with the Agreement are governed by, and will be construed in accordance with, the laws of England.

- (b) For our benefit, you irrevocably submit to the exclusive jurisdiction of the English courts, which will have jurisdiction to settle any disputes which may arise out of or in connection with the validity, effect, interpretation or performance of this Agreement or any non-contractual obligations arising out of or in connection with this Agreement, and waive any objection to proceedings in any such court on the grounds of inconvenient forum.
- (c) This clause will not prevent us, in our absolute discretion, from taking proceedings in the courts of any other country which may have jurisdiction.

## 9.9 Immunity from suit

You (on your own behalf and on behalf of each Underlying Client) irrevocably waive to the fullest extent permitted by Applicable Law, with respect to you (or your Underlying Client) and your or its revenue and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agree that you will not claim any immunity in any proceedings. You consent generally in respect of any proceedings to the giving of any relief or the issue of any process in connection with such proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

## 9.10 Notices

- (a) All communications between you and us must be in English.
- (b) Communications may be made by whatever means unless this Agreement or Applicable Law require otherwise.
- (c) We may send any written Communications to you by hand, first class mail or Electronic Means. In each case, Communications shall be made in accordance with the communication details last notified to us, and which you shall be responsible for keeping current. Any such written communication shall be deemed received by you, whether actually received by you or not, if we can demonstrate that the correct communication details were affixed.
- (d) Unless otherwise notified to you from time to time or otherwise provided by this Agreement, all written Communication from you to us shall be sent to The Compliance Officer, 1st floor, Camomile Court, 23 Camomile Street, London EC3A 7LL, United Kingdom.
- (e) Telephone conversations and electronic Communications between you and us that result or may result in transactions in financial instruments will be recorded. We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. You agree to give any necessary notice to your Personnel that such recording may take place. Such records will be our sole property and accepted by you as evidence of the orders or Instructions given. These recordings will be used in the determination of disputes and resolution of dealing queries. Recordings may also be used in investigations by regulatory or law enforcement authorities upon production of the appropriate and properly completed notice or order. A copy of the recording of such conversations and Communications will be available on request for a period of five years and, where requested by the relevant competent authority, for a period of up to seven years. By dealing with ourselves after having received this letter, we assume that you give consent to this practice.

## **9.11 Service of Process**

If you do not have a permanent place of business in England and Wales, you agree to accept service of process in any location in which you transact business or through delivery to any affiliate of yours at its place of business in England and Wales and you waive any defences or challenges to such service of process. This does not affect our right to serve process in another manner permitted by law.

