



BNK Banking Corporation Limited
(ABN 63 087 651 849)

Information Memorandum

\$14,000,000 Floating Rate Subordinated Notes

Date

30 September 2021

Issuer

BNK Banking Corporation Limited (ABN 63 087 651 849)

Lead Manager

Laminar Capital Pty Ltd (ABN 33 134 784 740)

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1. Important Notice

1.1 General information

This information memorandum (**Information Memorandum**) relates to the offer by BNK Banking Corporation Limited (ABN 63 087 651 849) (the **Issuer**) of \$14,000,000 floating rate unsecured, subordinated notes (**Subordinated Notes**). In certain circumstances, the Subordinated Notes may be redeemed, Written-Off or Converted into ordinary shares (**Ordinary Shares**) of the Issuer.

The Issuer is authorised as an authorised deposit taking institution (**ADI**) under the *Banking Act 1959* (Cth) (**Banking Act**). The Issuer and its subsidiaries are referred to in this Information Memorandum as the **Group**.

The Subordinated Notes are expected to qualify as Tier 2 Capital of the Issuer under the prudential standard for ADIs APS 111 (**APS 111**) made by the Australian Prudential Regulation Authority (**APRA**).

1.2 Notes are not protected accounts and are complex financial instruments

The Subordinated Notes are not protected accounts or deposit liabilities of the Issuer for the purposes of the Banking Act, are not protected accounts for the purposes of the Financial Claims Scheme established under Division 2AA of Part II of the Banking Act and are not guaranteed or insured by any government agency or compensation scheme. Payments on the Subordinated Notes may be affected by provisions of the Banking Act.

The Subordinated Notes are complex financial instruments intended for issue and sale solely to professional and sophisticated investors who have the skill and experience necessary to make their own investigations and analysis of the risks involved in investments in instruments of that kind and of the Issuer without the need for disclosure to investors under the Corporations Act 2001 (Cth) (Corporations Act). If you are not such an investor then the Subordinated Notes are not a suitable investment for you. If in any doubt, consult your financial adviser.

1.3 Responsibility

This Information Memorandum has been prepared and issued by the Issuer. No other party accepts responsibility for the information contained in this Information Memorandum.

1.4 No recommendation or advice

Nothing in this Information Memorandum constitutes a recommendation or statement of opinion (or a report of either of these things) by the Issuer or by the Registrar or any other agent, adviser or representative of the Issuer described herein (together, the **Agents**) or of the Lead Manager, that any recipient of the Information Memorandum should proceed with an investment in any Subordinated Notes. In addition, this Information Memorandum contains only general information and does not take into account the objectives, financial situation or needs of any potential investor.

No advice is given in respect of the taxation treatment of investors or any other matter in connection with an investment in any Subordinated Notes. Descriptions in this Information Memorandum of taxation or other matters calling for any professional opinion or judgement are included for information purposes only based on the Issuer's understanding of such matters and should be confirmed by each investor with its own professional advisers in light of its own particular circumstances.

1.5 Recipients must make their own independent investigations

This Information Memorandum is intended for the exclusive use of investors to whom it is delivered by the Issuer in accordance with the conditions set out in this Information Memorandum to assist such recipients to determine whether to proceed with a further evaluation of an investment in Subordinated Notes. Recipients must make (and will be taken to have made) their own independent investigation and analysis of the Subordinated Notes and the Issuer and obtain such advice as they deem necessary before deciding whether to proceed with an investment in the Subordinated Notes. Recipients must not rely solely on the information contained in this Information Memorandum for the purposes of making an investment decision.

Whilst the Issuer believes that the information contained in the Information Memorandum is not misleading or deceptive, this Information Memorandum is not a prospectus or other disclosure document for the purposes of the Corporations Act and does not contain all information that prospective investors may require in order to make an informed decision as to whether to proceed with an investment in the Subordinated Notes. This Information Memorandum is not suitable for, and is not to be provided to, any 'retail client' as defined in section 761G of the Corporations Act.

This Information Memorandum may not be reproduced or given to any other person, or be used for any purpose except as described above.

1.6 Role of Agents and Lead Manager

The only role of the Agents and the Lead Manager in the preparation of this Information Memorandum has been to confirm to the Issuer that their respective descriptions (if any) in the 'Directory' at the end of this Information Memorandum are accurate as at the Preparation Date (as defined below). Apart from the foregoing, none of the Agents or Lead Manager and none of their respective related bodies corporate, officers or employees have independently verified the information contained in this Information Memorandum. Accordingly, none of the Agents or Lead Manager accept any responsibility for or makes any representation or warranty as to the completeness, accuracy or currency of this Information Memorandum.

Each of the Agents and Lead Manager acts in relation to the Subordinated Notes in accordance with its agreement with the Issuer and not in any other capacity. None of the Agents or Lead Manager has any duty to any actual or prospective investor in any Subordinated Note. In particular, no such party has any responsibility for, makes any representation as to, or has any duty to review, the financial condition or affairs of the Issuer or the completeness, accuracy or currency of the information contained in this Information Memorandum.

Each of the Agents and the Lead Manager, and each of their respective related bodies corporate, officers or employees, may be paid fees or receive other benefits from the Issuer and may have pecuniary or other interests in the Subordinated Notes, or benefit from the offer, issue or sale of the Subordinated Notes pursuant to other arrangements, and may act as a principal in dealing in any Subordinated Notes.

1.7 Information provided on behalf of the Issuer

The Issuer has made available to potential investors in Subordinated Notes copies of:

- this Information Memorandum; and
- each document incorporated by reference in this Information Memorandum,

subject to, and on terms not inconsistent with, the conditions contained in this Information Memorandum.

The Lead Manager is not authorised to provide any other information, and no person other than the Lead Manager is authorised to provide any information, on behalf of the Issuer or any of its related bodies corporate in connection with the Notes unless authorised in writing by the Issuer.

Prospective investors should not rely on any other information as having been authorised or provided on behalf of the Issuer in connection with the offer, issue or sale of the Subordinated Notes.

1.8 Restrictions on sale and distribution

No prospectus or other disclosure document has been or will be lodged with the Australian Securities and Investments Commission (**ASIC**) in relation to the Subordinated Notes. Accordingly, the Subordinated Notes may only be offered for issue or sale, and invitations to subscribe for or purchase Subordinated Notes may only be made, where the minimum aggregate amount payable by the offeree is at least \$500,000 (or its equivalent in another currency, in each case disregarding any amounts lent by the offeror or its associates) or where the offer or invitation otherwise does not require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act and such action complies with all applicable laws and regulations. In addition, Subordinated Notes must not be offered or sold, and this Information Memorandum must not be provided, to any person that is a 'retail client' as defined in section 761G of the Corporations Act.

The offering and sale of Subordinated Notes and the distribution of this Information Memorandum may also be restricted by law in other jurisdictions and persons who wish to acquire, offer or sell Subordinated Notes, or who are in possession of this Information Memorandum, must inform themselves of and observe such restrictions. Neither the Issuer nor any of the Agents nor the Lead Manager, represents that any Subordinated Notes may at any time be lawfully offered or sold, or that this Information Memorandum may at any time be lawfully distributed, in any jurisdiction.

In addition, as the Subordinated Notes may be Converted into Ordinary Shares, ownership of the Subordinated Notes and Conversion of Subordinated Notes held by an investor will be subject to laws restricting the ownership or acquisition of Ordinary Shares or rights to acquire Ordinary Shares. These laws include the Corporations Act, the *Foreign Acquisition and Takeovers Act 1975* (Cth) and the *Financial Sector (Shareholders) Act 1998* (Cth). Prospective investors in the Subordinated Notes must inform themselves of, and observe, all such laws.

Applicants for Subordinated Notes will be required to undertake to the Issuer to comply with certain restrictions in relation to the offer or sale of the Subordinated Notes and the distribution of this Information Memorandum as set out in Section 6 of this Information Memorandum.

1.9 No offer

This Information Memorandum does not, and is not intended to, constitute an offer or invitation by or on behalf of the Issuer, or by or on behalf of any Agent or the Lead Manager, to any person to subscribe for, purchase or otherwise deal in any Subordinated Notes.

1.10 Documents incorporated by reference

This Information Memorandum is to be read in conjunction with the following documents, which are incorporated in, and taken to form part of, this Information Memorandum:

- the constitution of the Issuer as amended from time to time (the **Constitution**);
- the deed poll dated on or about 28 September 2021 executed by the Issuer in relation to the Subordinated Notes (**Subordinated Note Deed Poll**);
- all amendments and supplements to this Information Memorandum prepared by the Issuer from time to time; and
- all documents issued by the Issuer and expressly stated to be incorporated in this Information Memorandum by reference).

References to this Information Memorandum include each document incorporated by reference in it.

Copies of the Constitution and the Subordinated Note Deed Poll are, and copies of other documents incorporated by reference in this Information Memorandum may be available on the Issuer's website

at www.bnk.com.au. Documents incorporated by reference and not available on Issuer's website will, at the Issuer's election, either be sent upon request to actual or prospective investors in Subordinated Notes without charge, or made available for inspection at the Issuer's office specified in the 'Directory' at the end of this Information Memorandum.

1.11 Currency of information

The information contained in this Information Memorandum has been prepared as of its Preparation Date (as defined below). Neither the delivery of this Information Memorandum nor any offer, issue or sale of Subordinated Notes at any time implies that the information contained in this Information Memorandum is correct at any time subsequent to the Preparation Date of that information. The Issuer does not assume any obligation to the holders of any Subordinated Notes to update this Information Memorandum at any time.

In this Information Memorandum, '**Preparation Date**' means:

- in relation to any information incorporated by reference in this Information Memorandum, the date indicated on its face as being its date of release or effectiveness; and
- in relation to all other information contained in this Information Memorandum, the date indicated on the face of this Information Memorandum.

1.12 Definitions

Capitalised terms used in this Information Memorandum have the same meaning given to them in the terms and conditions of the Subordinated Notes (**Conditions**) (set out in Section 5 below) unless otherwise specified.

2 Information about the issue

The following is a brief summary only and should be read in conjunction with the rest of this Information Memorandum including all information incorporated by reference in it.

Issuer	BNK Banking Corporation Limited (ABN 63 087 651 849).
Lead Manager	Laminar Capital Pty Ltd (ABN 33 134 784 740)
Registrar	<p>Austraclear Services Limited</p> <p>The Registrar acts as agent solely for the Issuer and may be replaced in accordance with the Conditions.</p> <p>See Condition 15.</p>
Issue Date	30 September 2021.
Status and ranking	<p>The Subordinated Notes will be direct, subordinated and unsecured obligations of the Issuer and rank:</p> <ol style="list-style-type: none"> 1 ahead of the claims of Junior Ranking Creditors; 2 equally among themselves and with the claims of holders of Equal Ranking Securities; and 3 behind all claims of Senior Creditors and all liabilities mandatorily preferred by law. <p>As at the Preparation Date, the Issuer has no creditors that would constitute Junior Ranking Creditors (excluding holders of ordinary shares in the Issuer).</p> <p>The Subordinated Notes are not deposit liabilities of the Issuer and are not protected accounts for the purposes of the Banking Act, are not protected accounts for the purposes of the Financial Claims Scheme established under Division 2AA of Part II of the Banking Act and are not guaranteed or insured by any government, government agency or compensation scheme of Australia or any other jurisdiction or by any other person.</p> <p>See Condition 4.</p>
Interest	<p>Subordinated Notes will bear interest at the Interest Rate from time to time and be payable quarterly in arrear on each Interest Payment Date. Payment of interest on any Interest Payment Date is subject to the Issuer being able to make the payment and remain solvent.</p> <p>The Interest Rate applicable during each quarterly Interest Period will be the sum of the three month Australian Bank Bill Swap Rate on the first day of the Interest Period plus the Margin.</p> <p>The Margin is 3.95% per annum.</p> <p>Interest Payment Dates for the Subordinated Notes will be each 30 December, 30 March, 30 June and 30 September in each year commencing on 30 December 2021 and subject to adjustment in accordance with the Business Day Convention.</p>

See Conditions 1.1 and 5.2.

Maturity Date	30 September 2031
Optional Redemption Dates	<p>30 September 2026 and each Interest Payment Date after that date.</p> <p>The Issuer may redeem the Subordinated Notes on any Optional Redemption Date subject to APRA's prior written approval and the other conditions in Condition 6.6 being satisfied.</p> <p>See Condition 6.3.</p>
Early redemption for tax or regulatory event	<p>The Issuer may redeem the Subordinated Notes if a Regulatory Event or Tax Event occurs, subject to APRA's prior written approval and the other conditions in Condition 6.6 being satisfied.</p> <p>See Condition 6.2.</p>
Conversion or Write-Off on Trigger Event Date	<p>A Non-Viability Trigger Event occurs upon:</p> <ol style="list-style-type: none"> 1 APRA issuing a written determination to the Issuer that the Conversion or Write-Off of Relevant Securities is necessary because, without it, APRA considers the Issuer would become non-viable; or 2 a determination by APRA, notified to the Issuer in writing, that without a public sector injection of capital, or equivalent support, the Issuer would become non-viable. <p>If a Non-Viability Trigger Event occurs then, on the Trigger Event Date:</p> <ol style="list-style-type: none"> 1 the Issuer must Convert or Write-Off, or procure the Conversion or Write-Off of: <ul style="list-style-type: none"> • all Relevant Securities; or • an amount of Relevant Securities if the Non-Viability Trigger Event is one described in paragraph 1 above and APRA is satisfied that conversion or write off of that amount will be sufficient to ensure that the Issuer will not become non-viable; 2 if all Relevant Securities are required to be Converted or Written-Off under these provisions, the Issuer must immediately Convert all the Subordinated Notes; and 3 if some but not all Relevant Securities are required to be Converted or Written-Off under Condition 7.2(a), the Issuer must determine the amount (if any) of Subordinated Notes to be Converted in accordance with these provisions on the following basis: <ul style="list-style-type: none"> • first, all Relevant Tier 1 Securities must be Converted or Written-Off before any Conversion of the Subordinated Notes; and • second, if Conversion or Write-Off of all Relevant Tier 1 Securities is less than the amount sufficient to satisfy APRA that the Issuer would not become non-viable, an amount of Subordinated Notes must be Converted and an amount of other Relevant Tier 2 Securities must be Converted or Written-Off in an aggregate amount which when added to the amount of Relevant Tier 1 Securities Converted or Written-Off will satisfy APRA that the Issuer will not become non-

viable. In selecting the Subordinated Notes to be Converted and other Relevant Tier 2 Securities to be Converted or Written Off the Issuer will endeavour to treat Holders and holders of other Relevant Tier 2 Securities on an approximately proportionate basis or in a manner that is otherwise, in its opinion, fair and reasonable but may discriminate to take account of minimum denominations, the effect on marketable parcels and other logistical considerations and the need to effect Conversion immediately.

A Non-Viability Determination takes effect, and the Issuer must perform the obligations in respect of the determination, immediately on the day it is received by the Issuer, whether or not such day is a Business Day.

Where Conversion of a Subordinated Note required to be Converted due to a Non-Viability Trigger Event does not occur on the Trigger Event Date and the Issuer is not otherwise able to issue the Ordinary Shares required to be issued in respect of such Conversion within five Business Days after the Trigger Event Date, then Conversion will not occur and the Subordinated Note will be terminated and written off. In such circumstances, Holders will not receive any compensation.

See Condition 7.

Restrictions on issue of Ordinary Shares

In order to be able to receive Ordinary Shares, Holders must have provided certain information to the Issuer, the Issuer must be satisfied that it is legally able to issue the Ordinary Shares to the relevant Holder and certain other conditions must be satisfied.

The Conditions include provision for the Ordinary Shares that would otherwise be issued to a Holder on a Conversion required due to a Non-Viability Trigger Event to be issued to a nominee for sale and payment of the net proceeds of sale to such Holder in certain circumstances, but neither the Issuer nor such nominee will have any duty to the Holder in respect of such sale.

See Conditions 7 to 8.

Substitution of Approved Acquirer as issuer of ordinary shares

The Conditions contain provisions for the substitution of an Approved Acquirer as the issuer of the ordinary shares to be issued to Holders on Conversion in certain circumstances.

See Condition 8.5.

Events of default

No Holder may take any other action or exercise any other remedy as a consequence of an Event of Default except as specified in Condition 9.2.

Holders have no right to accelerate the date for payment of a Subordinated Note except following an Event of Default resulting from a winding up of the Issuer.

See Condition 9.

Change of control – investor put

Not applicable. The Conditions do not contain any provisions to protect the position of Holders in the event of a change of control of the Issuer.

Form	<p>The Subordinated Notes will be debt obligations of the Issuer constituted by and owing under the Subordinated Note Deed Poll executed by the Issuer and dated on or about 28 September 2021 (Subordinated Note Deed Poll) and will take the form of entries in a register (Register) maintained by the Registrar. Certificates will not be issued in respect of the Subordinated Notes unless required by law or the Issuer determines otherwise.</p>
Title	<p>Title to a Subordinated Note vests absolutely in the person entered in the Register as the holder thereof, subject to rectification of the Register for fraud or error.</p> <p>Unless required by law, neither the Issuer nor any Agent will recognise any person other than the registered holder as having any interest in a Subordinated Note.</p>
Transfers	<p>Subordinated Notes may only be transferred in whole and by a transfer and acceptance form in accordance with the Conditions.</p> <p>A transfer takes effect on the transferee's name being entered in the Register.</p> <p>Any stamp duty or other taxes payable in connection with the transfer of a Subordinated Note are for the account of the Holder.</p>
Payments	<p>Payments in respect of the Subordinated Notes will be made in accordance with the Condition 10.</p> <p>Subject to certain exceptions, if the Issuer is required to make a deduction or withholding from payments on the Subordinated Notes in respect of Australian tax, the Issuer will pay such Additional Amount as may be necessary to ensure that Holders receive a net amount equal to the full amount that would have been received if the deduction or withholding had not been made.</p> <p>See Conditions 10.7 and 10.9.</p>
Meetings and amendments	<p>The Subordinated Note Deed Poll contains provisions for meetings of Holders to consider matters affecting their interests, and for the passing of resolutions without holding meetings, including for the purpose of approving amendments to the Conditions. Such matters to be approved by prescribed majorities of Holders. Certain amendments may also be made without the approval of Holders.</p>
Stamp duty and taxes	<p>As at the date of this Information Memorandum, no ad valorem stamp duty is payable in any Australian State or Territory on the issue or transfer of the Subordinated Notes.</p> <p>A brief overview of the Australian taxation treatment of payments of interest and certain other amounts on Subordinated Notes is set out in Section 7 entitled "<i>Australian Taxation Summary</i>" below.</p> <p>Investors should obtain their own taxation and other applicable advice regarding the taxation and other fiscal status of investing in any Subordinated Notes.</p>
Foreign Account Tax Compliance Act (FATCA)	<p>Implications for the Issuer</p> <p>The Issuer is a Reporting Australian Financial Institution under the intergovernmental agreement (IGA) entered into between the</p>

Australian and United States governments in relation to FATCA on 28 April 2014.

As a Reporting Financial Australian Institution, the Issuer is required to:

- conduct due diligence on prospective investors in the Subordinated Notes. Prospective investors in Subordinated Notes will need to provide the Issuer with certain information, or documentation, or both when applying for Subordinated Notes;
- report information in respect of certain investors in and their holdings of Subordinated Notes to the Australian Taxation Office (**ATO**). Broadly, the Issuer will report to the ATO information in respect of investors who are:
 - United States citizens or residents;
 - certain types of United States entities; or
 - certain types of non-United States entities that are controlled by one or more United States citizens or residents; and
- report to the ATO the details of any payments made to “Non-participating Financial Institutions”, as defined in the IGA.

Implications for investors in Subordinated Notes

If an investor in Subordinated Notes does not provide the Issuer with the required information and/ or documentation on request, the Issuer may report information in respect of the prospective investor to the ATO and, in limited potential future circumstances, the Issuer may be required to make deductions from payments made in favour of such investors in Subordinated Notes.

FATCA withholding may also be required in limited potential future circumstances in respect of payments made to an investor in Subordinated Notes who has failed to comply with its own FATCA reporting obligations.

The Issuer is not required to gross-up amounts withheld from payments under or in connection with FATCA.

In accordance with the IGA, the ATO will share information reported to it by Australian financial institutions with the United States Internal Revenue Service.

Investors in Subordinated Notes should seek their own legal advice in relation to either the impact of the Issuer’s due diligence and reporting obligations under the IGA, or in relation to the possibility of withholding under the IGA or FATCA more generally. Affected investors should also seek their own legal advice regarding their individual FATCA obligations, including the impact of any relevant intergovernmental agreement.

Common Reporting Standard

The OECD Common Reporting Standard for Automatic Exchange of Financial Account Information (**CRS**) will require certain financial institutions to report information regarding certain accounts to their local tax authority and follow related due diligence procedures.

On 3 June 2015, Australia signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (**MCAA**), which facilitates the implementation of the CRS on a multilateral basis.

From 1 July 2017, financial institutions are required to apply due diligence procedures relevant to the CRS.

Investors in Subordinated Notes may be requested to provide to the Issuer certain information and certifications to ensure compliance with the CRS. A jurisdiction that has signed the MCAA may provide Issuer reported information to other jurisdictions that have signed the MCAA.

Governing law	The Subordinated Notes, and all related documents, will be governed by the laws of New South Wales, Australia.
Selling restrictions	The offer, sale and delivery of Subordinated Notes and the distribution of this Information Memorandum and other materials in relation to the Subordinated Notes are subject to such restrictions as may apply in any country in which such offer, sale, delivery or distribution may occur. The restrictions which applicants for Subordinated Notes will be required to agree to observe for specific jurisdictions are provided at Section 6 entitled 'Selling and Distribution Restrictions' below.
Use of proceeds	The Issuer will use the proceeds of issue of the Subordinated Notes for general corporate purposes.
Clearing System	<p>Transactions in Subordinated Notes may be carried out through the Austraclear System. Subordinated Notes which are held in the Austraclear System will be registered in the name of Austraclear Limited. Payments through the Austraclear System may only be made in Australian dollars.</p> <p>Transactions relating to interests in the Subordinated Notes may also be carried out through the settlement system operated by Euroclear Bank SA/NV (Euroclear) or the settlement system operated by Clearstream Banking, société anonyme (Clearstream, Luxembourg). Interests in the Subordinated Notes traded in the Austraclear System may be held for the benefit of Euroclear or Clearstream, Luxembourg. In these circumstances, entitlements in respect of holdings of interests in Subordinated Notes in Euroclear would be held in the Austraclear System by a nominee of Euroclear (currently HSBC Custody Nominees (Australia) Limited) while entitlements in respect of holdings of interests in Subordinated Notes in Clearstream, Luxembourg would be held in the Austraclear System by a nominee of J.P. Morgan Chase Bank, N.A. as custodian for Clearstream, Luxembourg.</p> <p>The rights of a holder of interests in a Subordinated Note held through Euroclear or Clearstream, Luxembourg are subject to the respective rules and regulations for accountholders of Euroclear and Clearstream, Luxembourg, the terms and conditions of agreements between Euroclear and Clearstream, Luxembourg and their respective nominee and the rules and regulations of the Austraclear System. In addition, any transfer of interests in a Subordinated Note, which is held through Euroclear or Clearstream, Luxembourg will, to the extent such transfer will be recorded on the Austraclear System, be subject to the Corporations Act and the requirements for minimum consideration as set out in the Conditions.</p> <p>The Issuer will not be responsible for the operation of the clearing arrangements, which is a matter for the clearing institutions, their nominees, their participants and the investors.</p> <p>Where Subordinated Notes are held in Austraclear, for the purposes of determining the person entitled to be issued Ordinary Shares, or,</p>

where Ordinary Shares are issued to a nominee in accordance with Condition 7.8, the person entitled to the net proceeds of sale of such shares, the Issuer will treat the relevant Austraclear Participant (or the person who has been identified by the Austraclear Participant to the satisfaction of the Issuer as the person on whose behalf that Austraclear Participant holds its interest in the Subordinated Notes (provided that person is a person to whom the Subordinated Notes could be transferred in accordance with the Conditions)) as the holder of the Subordinated Notes. Any investor who is not an Austraclear Participant will have to maintain arrangements with an Austraclear Participant in order to hold an interest in Subordinated Notes or to receive any Ordinary Shares issued on Conversion. The Issuer has no responsibility for these arrangements or for the performance by any Austraclear Participant of its obligations.

Listing	The Issuer does not intend to arrange or facilitate the listing of Subordinated Notes on any stock exchange.
Ratings	The Issuer does not intend to arrange for or facilitate a rating of the Subordinated Notes by any credit rating agency.
ISIN	AU3FN0063269.

3 Information about the Issuer

This Information Memorandum does not contain or purport to contain information about the Issuer that an investor would require for the purpose of evaluating an investment in the Subordinated Notes.

The Issuer is listed on Australian Securities Exchange Limited (**ASX**) and prepares and makes publicly available a range of reports and other materials in relation to the Issuer, its financial position and its business, including:

- audited annual consolidated financial statements and unaudited semi-annual consolidated financial statements the Issuer and its subsidiaries lodged with ASX and the Australian Securities and Investments Commission (**ASIC**);
- quarterly 'Pillar 3' disclosure reports published on <https://bnk.com.au/investor-centre/disclosure-statements/>; and
- announcements made by the Issuer to ASX and released to the market via the ASX market announcements platform in accordance with the ASX listing rules.

Investors should refer to and ensure they have considered all relevant publicly available information in relation to the Issuer when making an investment decision in the Subordinated Notes.

4 Risk Factors

An investment in the Subordinated Notes is subject to a range of risks.

Prospective investors should consider carefully the risks set forth below and the other information contained or referred to in this Information Memorandum prior to making any investment decision with respect to the Subordinated Notes.

These risks include risks affecting the Issuer and its businesses, which could have a material adverse effect on operations, financial condition or prospects of the Issuer, which, in turn, could have a material adverse effect on the amount which investors will receive in respect of the Subordinated Notes or Ordinary Shares issued on Conversion of the Subordinated Notes. This Information Memorandum does not describe or purport to describe these risks. Potential investors should ensure that they have considered and made an assessment of these risks in light of all available information relating to the Issuer and its business. See Section 3 of this Information Memorandum in relation to information about the Issuer.

In addition, risks arising from the nature of financial markets or investment in securities generally, or from the specific terms of the Subordinated Notes, could adversely affect the trading price of the Subordinated Notes or the rights of investors under the Subordinated Notes or otherwise result in investors losing some or all of their investment. Some of the risks arising from the specific terms of the Subordinated Notes are also described below. Prospective investors should note that the risks described below are not the only such risks. There may be additional risks and any of these risks could adversely affect the return received by an investor in the Subordinated Notes or result in a total loss of an investor's investment.

- The Interest Rate will fluctuate over time and so may become more or less attractive.
- The Issuer is not required to redeem the Subordinated Notes until their maturity date in 30 September 2031. Holders may therefore be required to bear the risk of their investment in the Subordinated Notes for a long time. The Issuer may also elect to redeem the Subordinated Notes early in certain circumstances and with the prior written approval of APRA, in which case holders will be required to bear the tax consequences of such early redemption and may not be able to re-invest the proceeds in an equally attractive investment. Investors should not expect that APRA's approval will be given for any redemption of Subordinated Notes at the option of the Issuer.
- There is no liquid market for the Subordinated Notes and investors should not expect such a market is likely to develop. The price, if any, for which Subordinated Notes may be sold will be affected by a range of factors.
- The number of Ordinary Shares received on Conversion is determined by reference to the trading price of Ordinary Shares over a period prior to Conversion. This may not reflect the value of the Ordinary Shares or the price for which they may be sold, especially if the Ordinary Shares have been suspended from trading. The number of Ordinary Shares issued on Conversion is also limited by a maximum conversion number. The maximum conversion number is adjusted for only limited corporate actions and accordingly other corporate actions may affect the value of the maximum conversion number. There may be no market in the Ordinary Shares issued on Conversion, the Issuer may be unable to procure the listing of the Ordinary Shares on ASX, and the Ordinary Shares may not be able to be offered for sale by the Holder without disclosure to investors under Part 6D.2 of the Corporations Act. Accordingly, there can be no assurance that a holder will be able to sell the Ordinary Shares received on Conversion readily or for an amount equal to the face value of the Subordinated Notes.
- If Conversion is required due to a Non-Viability Trigger Event and for any reason Conversion cannot be effected within 5 Business Days, the Subordinated Notes will be Written-Off and holders will receive no compensation.

- It is not certain what events or circumstances would give rise to a Non-Viability Trigger Event because such events and circumstances have not been prescribed by APRA but may be determined by it in its discretion.
- Subordinated Notes are subordinated to other creditors of the Issuer. In the event of a winding up of the Issuer, holders of Subordinated Notes are likely to suffer the loss of some or all of their investment.
- The Conditions of the Subordinated Notes do not restrict the Issuer from issuing prior or equal ranking indebtedness.
- Holders of the Subordinated Notes have only the limited rights provided by the Conditions and have no right to vote at any general meeting of the Issuer or in respect of any Conversion (or, if applicable, Write-Off) of the Subordinated Notes following a Non-Viability Trigger Event.
- The precise order or priority in which the Subordinated Notes may be subject to Conversion (or, if applicable, Write-Off) following a Non-Viability Trigger Event, and the return (if any) to investors in a winding up of the Issuer, relative to other instruments of the Issuer is subject to uncertainty because these matters depend on the interaction of the terms of the Subordinated Notes with the terms of other relevant instruments, which are complex, and the facts and circumstances prevailing at that time. There is no assurance that the Issuer will have other Relevant Securities on issue at the time a winding up or Non-Viability Trigger Event occurs, in which case the full amount of losses required to be borne by Relevant Securities would be borne by the Subordinated Notes. In addition, Conversion of Subordinated Notes after Conversion of other instruments may be disadvantageous to Holders because of the impact of the earlier Conversion of such other instruments on the value of Ordinary Shares and the application of the maximum conversion number.
- The terms of the Subordinated Notes are subject to amendment without the consent of the holders. These amendments may include the substitution of an Approved Acquirer (which may be listed on ASX or on another securities exchange) in place of the Issuer as the issuer of the ordinary shares to be issued to Holders on Conversion and the risks associated with such conversion may be different to, or greater than, the risk associated with Conversion into Ordinary Shares. The terms may also be amended or their terms waived with the approval of a prescribed majority of the Holders or at a meeting of Holders whether or not all Holders approve the amendment or waiver.

An investment in the Subordinated Notes will also be subject to other risks related to the nature of the Subordinated Notes not identified above. In particular, Subordinated Notes are hybrid securities which have very complex features and the risks they can pose are often poorly understood by investors. See *ASIC Report 365 Hybrid Securities* for more information about the risks associated with investing in hybrid securities.

The Subordinated Notes are intended for issue and sale solely to professional and sophisticated investors who have the skill and experience necessary to make their own investigations and analysis of the risks referred to above and other risks that may be involved in an investment in the Subordinated Notes without the need for disclosure to investors under Part 6D.2 of the Corporations Act. If you are not such an investor then the Subordinated Notes are not a suitable investment for you. If in any doubt, consult your financial adviser.

5 Terms and Conditions of the Subordinated Notes

*The following are the terms and conditions (**Conditions**) of the subordinated notes (**Subordinated Notes**) issued by BNK Banking Corporation Limited (ABN 63 087 651 849) (**Issuer**) under the Subordinated Note Deed Poll (**Subordinated Note Deed Poll**) executed by the Issuer on or about 28 September 2021.*

Each Holder and any person claiming through or under a Holder is deemed to have notice of and is bound by these Conditions, the Subordinated Note Deed Poll and the Information Memorandum. Copies of each of these documents are available for inspection by any Holder at the offices of the Issuer and the Registrar at their respective addresses specified in the Information Memorandum.

1 Interpretation

1.1 Definitions

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

Additional Amount has the meaning given in Condition 10.7.

Agency Agreement means an agreement entered into between the Issuer and an Agent under which the Issuer appoints the Agent to act as Agent.

Agent means the Registrar or any other agent appointed by the Issuer to act on its behalf in relation to the Subordinated Notes.

APRA means the Australian Prudential Regulation Authority as constituted under the *Australian Prudential Regulation Authority Act 1998* (Cth) or any successor authority responsible for the prudential regulation of the Issuer.

ASX means, as the context requires, ASX Limited (ABN 98 008 624 691) or the securities exchange operated by it.

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

ASX Operating Rules means the market operating rules of the ASX as amended, varied or waived (whether in respect of the Issuer or generally) from time to time.

Attorney has the meaning given in Condition 8.3.

Austraclear Regulations means the regulations known as the “Regulations and Operating Manual” established by Austraclear as amended, varied or waived (whether in respect of the Issuer or generally) from time to time to govern the use of the Austraclear System.

Austraclear System means the system operated by Austraclear for holding securities and electronic recording and settling of transactions in those securities between members of that system.

Banking Act means the *Banking Act 1959* (Cth).

Business Day means:

- (a) for the purposes of Conditions 7 to 8, a day which is a business day within the meaning of the ASX Listing Rules;

- (b) for all other purposes, a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in Sydney.

Business Day Convention means, in relation to a date on or by or by reference to which anything is required to be done, that if the date is not a Business Day it is postponed to the first following day that is a Business Day unless that day falls in the next calendar month in which case that date will be brought forward to the first preceding day that is a Business Day, provided that if 30 September 2026 is not a Business Day then the Interest Payment Date and Optional Redemption Date falling on that date will be postponed to the first following Business Day.

Condition means the correspondingly numbered condition in these Conditions.

Conversion means, in relation to any Tier 1 Capital Security or Tier 2 Capital Security, conversion into ordinary shares of the Issuer as contemplated by paragraph 1(a) of Attachment J of APS 111 (as interpreted or applied by APRA at the time of issue of such Tier 1 Capital Security or Tier 2 Capital Security) in accordance with its terms or by operation of law and, in relation to a Subordinated Note means the Subordinated Note is immediately and irrevocably converted into Ordinary Shares, in accordance with and subject to Conditions 7 to 8 and Schedule 1, and “**Convert**”, “**Converting**” and “**Converted**” have corresponding meanings.

Conversion Number has the meaning given in Schedule 1.

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

Day Count Fraction means, in respect of the calculation of an amount for any period of time, the actual number of days in that period divided by 365.

Denomination means the notional face value of a Subordinated Note, being initially \$10,000.

Dollars and **\$** mean the lawful currency of Australia.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention arrangement and any “security interest” as defined in section 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); or
- (a) third party right or interest, or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Equal Ranking Securities means all Relevant Tier 2 Securities of the Issuer.

Event of Default has the meaning given to it in Condition 9.

External Administrator means, in respect of a person:

- (a) a liquidator, a provisional liquidator, an administrator, judicial manager or a statutory manager of that person; or
- (b) a receiver, or a receiver and manager, in respect of all or substantially all of the assets and undertakings of that person,

or in either case any similar official.

Extraordinary Resolution has the same meaning as in the Meetings Provisions.

FATCA means the *Foreign Account Tax Compliance Act* provisions, sections 1471 through 1474 of the United States Internal Revenue Code (including any regulations or official interpretations issued, agreements entered into or non-U.S. laws enacted with respect to those provisions).

Foreign Holder means a Holder:

- (a) whose address in the Register is a place outside Australia; or
- (b) who the Issuer otherwise believes may not be a resident of Australia or may be a person to whom the issue of Ordinary Shares may be restricted by the laws of any other jurisdiction.

Group means the Issuer and its subsidiaries.

Holder means:

- (a) for the purposes of determining the person entitled to be issued or to be treated as the holder of Ordinary Shares in connection with a Conversion of Subordinated Notes (or, where Condition 7.8 applies, to be paid the net proceeds of sale of such shares) and the amount of their entitlements for so long as such Subordinated Notes are held in the Austraclear System, a person who is an Austraclear Participant (as defined in the Austraclear Regulations) in whose security record the Subordinated Notes are recorded or who has been identified by such person to the satisfaction of the Issuer as the person on whose behalf that person holds its interest in the Subordinated Notes (provided that person is a person to whom the Subordinated Notes could be transferred in accordance with these Conditions); and
- (b) for all other purposes, a person whose name is for the time being entered in a Register as the holder of a Subordinated Note (or, where a Subordinated Note is held jointly by two or more persons, the persons whose names appear in the Register as the joint holders of that Subordinated Note).

Holder Details Notice means a notice in the form (if any) available from the Registrar and specifying the information required by Condition 8.2.

Inability Event means the Issuer or any Related Body Corporate of either of them is prevented by applicable law or order of any court or action of any government authority or External Administrator (including regarding the insolvency, winding up or other external administration of the Issuer or such Related Body Corporate) or any other reason from performing any of their obligations in connection with a Conversion of Subordinated Notes.

Information Memorandum means the information memorandum prepared by or on behalf of, and approved in writing by, the Issuer in relation to the Subordinated Notes and dated 30 September 2021, including all supplements to and documents incorporated by reference in it.

Interest Determination Date means the first Business Day of each Interest Period.

Interest Payment Date means 30 December, 30 March, 30 June and 30 September of each year, commencing on 30 December 2021, in each case subject to adjustment in accordance with the Business Day Convention.

Interest Period means a period beginning on and including an Interest Payment Date and ending on but excluding the next succeeding Interest Payment Date, provided that:

- (a) the first Interest Period commences on and includes the Issue Date; and
- (b) the final Interest Period ends on but excludes the Maturity Date.

Interest Rate means, in respect of an Interest Period, the rate determined in accordance with Condition 5.2 for that Interest Period.

Issue Date means 30 September 2021.

Issue Date VWAP means the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Issue Date, as adjusted in accordance with paragraphs 4 to 7 (inclusive) of Schedule 1.

Issuer means BNK Banking Corporation Limited (ABN 63 087 651 849).

Junior Ranking Creditors means creditors of the Issuer whose claims against the Issuer:

- (a) arise under Junior Ranking Securities; or
- (b) are postponed to the claims of Holders under section 563AA or section 563A of the Corporations Act.

Junior Ranking Securities means:

- (a) all ordinary shares in the capital of the Issuer; and
- (b) all Relevant Tier 1 Securities of the Issuer and any other securities or instruments issued by the Issuer after 1 January 2013 which are eligible for inclusion in its Tier 1 Capital at the time of issue of such securities or instruments.

Margin means 3.95 per cent. per annum.

Maturity Date means 30 September 2031 subject to adjustment in accordance with the Business Day Convention.

Meetings Provisions means the provisions for the convening and holding of meetings of, and passing of resolutions by, Holders set out in Schedule 2 of the Subordinated Note Deed Poll.

Non-Viability Determination means a determination of APRA referred to in Conditions 7.1(a) or 7.1(b).

Non-Viability Trigger Event has the meaning given in Condition 7.1.

Optional Redemption Date means 30 September 2026 (adjusted, if necessary, in accordance with the Business Day Convention) or any Interest Payment Date after that date.

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

Outstanding means, in relation to a Subordinated Note, that:

- (a) the Subordinated Note has not been redeemed or Converted or Written-Off in full; and
- (b) the Holder has not become unable to make any claim in respect of the Subordinated Note as a result of the operation of Condition 12.

Outstanding Principal Amount means, in relation to a Subordinated Note, the initial Denomination of the Subordinated Note less the aggregate of any parts of the principal amount of that Subordinated Note that have been redeemed or Converted or Written-Off.

Payment Date means a date for payment on a Subordinated Note, including an Interest Payment Date and the Maturity Date.

Payment Default has the meaning given in Condition 9.1(a).

Rate Disruption Event means that, in the Issuer's opinion the Reference Rate:

- (a) has been discontinued or otherwise ceased to be calculated or administered; or
- (b) is no longer generally accepted in the Australian market as a reference rate appropriate to floating rate debt securities of a tenor and interest period comparable to that of the Subordinated Notes.

Record Date means, in relation to payments of interest or principal on a Subordinated Note, the eighth calendar day before the relevant date for payment.

Redemption Amount means:

- (a) in relation to the redemption of a Subordinated Note (other than pursuant to a Conversion or Condition 9.2), 100% of the Outstanding Principal Amount of the

Subordinated Note together with all accrued but unpaid interest on the Subordinated Note; and

- (b) in relation to the redemption of a Subordinated Note as part of a Conversion, 100% of the Outstanding Principal Amount of the Subordinated Note (and to avoid doubt does not include any accrued but unpaid interest on the Subordinated Note).

Reference Rate means the Australian Bank Bill Swap Rate administered by the ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for a period of three months.

Register means a register, including any branch register, of Holders established and maintained by or on behalf of the Issuer in which is entered the names and addresses of Holders, the amount of Subordinated Notes held by each Holder, and any other particulars which the Issuer thinks fit.

Registrar means the registrar in relation to the Subordinated Notes specified in the Information Memorandum, or any replacement registrar appointed by the Issuer from time to time in relation to the Subordinated Notes.

Regulatory Event has the meaning given in Condition 6.2(b).

Related Body Corporate means, in relation to a corporation, a body corporate that is related to that corporation by virtue of section 50 of the Corporations Act.

Related Entity has the meaning given by APRA from time to time.

Relevant Fraction means 0.2.

Relevant Screen Page means the Refinitiv (previously Thomson Reuters) page "BBSW".

Relevant Securities means:

- (a) Relevant Tier 1 Securities; or
- (b) Relevant Tier 2 Securities.

Relevant Tier 1 Securities means Tier 1 Capital Securities that, in accordance with their terms or by operation of law, are capable of being Converted or Written-Off upon the occurrence of a Non-Viability Trigger Event.

Relevant Tier 2 Securities means Tier 2 Capital Securities that, in accordance with their terms or by operation of law, are capable of being Converted or Written-Off upon the occurrence of a Non-Viability Trigger Event, and includes:

- (a) the \$8,750,000 Tier 2 Capital Securities issued by the Issuer under the deed poll dated 1 February 2021; and
- (b) the \$1,250,000 Tier 2 Capital Securities issued by the Issuer under the deed poll dated 12 May 2021.

Replacement Rate means a rate other than the Reference Rate that is generally accepted in the Australian market as the successor to the Reference Rate, or if the Issuer is not able, after making reasonable efforts, to ascertain such rate, or there is no such rate:

- (a) a reference rate that is, in the Issuer's opinion, appropriate to floating rate debt securities of a tenor and interest period most comparable to that of the Subordinated Notes; or
- (b) such other rate as the Issuer determines having regard to available comparable indices.

Senior Creditor means all the Issuer's present and future creditors, including depositors and accountholders, other than creditors in respect of Equal Ranking Securities or Junior Ranking Creditors.

Subordinated Note means a debt obligation of the Issuer constituted by, and owing under, the Subordinated Note Deed Poll to a Holder, the details of which are recorded in, and evidenced by, inscription in the Register.

Subordinated Note Deed Poll means the deed poll in relation to Subordinated Notes executed by the Issuer on or about 28 September 2021.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), as the case may be.

Tax Event has the meaning given in Condition 6.2(a).

Taxes means taxes, levies, imposts, deductions, charges or withholdings and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties and expenses in connection with them.

Tier 1 Capital means Tier 1 capital (as defined by APRA from time to time) of the Issuer on a Level 1 basis or Level 2 basis.

Tier 1 Capital Security means a share, note or other security or instrument constituting Tier 1 Capital.

Tier 2 Capital means Tier 2 capital (as defined by APRA from time to time) of the Issuer on a Level 1 basis or Level 2 basis.

Tier 2 Capital Security means a share, note or other security or instrument constituting Tier 2 Capital.

Trigger Event Date shall mean the date on which APRA notifies the Issuer of a Non-Viability Determination as contemplated in Condition 7.1.

Trigger Event Notice has the meaning given to it in Condition 7.2.

VWAP means, subject to any adjustments under Schedule 1, the average of the daily volume weighted average sale prices (such average being rounded to the nearest full cent) of Ordinary Shares sold on the ASX during the VWAP Period or on the relevant days but does not include any "Crossing" transacted outside the "Open Session State" or any "Special Crossing" transacted at any time, each as defined in the ASX Operating Rules, or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares.

VWAP Period means in respect of a Conversion on a Trigger Event Date, the 5 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Trigger Event Date.

Winding Up Default has the meaning given in Condition 9.1(b).

Written-Off means, in respect of a Tier 1 Capital Security or Tier 2 Capital Security, written-off as provided in paragraph 1(c) of Attachment J of APS 111 (as interpreted or applied by APRA at the time of issue of such Tier 1 Capital Security or Tier 2 Capital Security) in accordance with its terms or by operation of law, and in relation to the Subordinated Notes has the meaning given to it in Condition 7.7.

1.2 Interpretation

In these Conditions unless the contrary intention appears:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, body corporate, an unincorporated association or an authority;

- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (f) a reference to an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not in connection with those standards, in accounting principles and practices generally accepted in Australia;
- (g) any provisions which refer to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;
- (h) any provisions which require APRA's consent or approval will apply only if APRA requires that such consent or approval be given at the relevant time;
- (i) any provisions in these Conditions requiring the prior approval of APRA for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as of the Issue Date of the applicable Subordinated Note;
- (j) a reference to any term defined by APRA (including, without limitation, "Additional Tier 1 Capital", "Level 1", "Level 2", "Related Entity", "Tier 1 Capital" and "Tier 2 Capital") shall, if that term is replaced or superseded in any of APRA's applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term;
- (k) a reference to a term defined by the ASX Listing Rules, the ASX Settlement Operating Rules or the ASX Operating Rules shall, if that term is replaced in those rules, be taken to be a reference to the replacement term;
- (l) in respect of Ordinary Shares, if the principal securities exchange on which the Ordinary Shares are listed becomes other than the ASX, unless the context otherwise requires, a reference to the ASX shall be read as a reference to that principal securities exchange and a reference to the ASX Listing Rules, the ASX Settlement Operating Rules, the ASX Operating Rules or any term defined in any such rules, shall be read as a reference to the corresponding rules of that exchange or corresponding defined terms in such rules (as the case may be).

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of these Conditions.

1.4 Rounding

For the purposes of any calculations required pursuant to these Conditions (unless otherwise specified):

- (a) all percentages resulting from such calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with halves being rounded up);
- (b) all figures shall be rounded to five significant figures (with halves being rounded up); and

- (c) all amounts that fall due and payable shall be rounded to the nearest cent (with halves being rounded up).

2 Form, denomination and title

2.1 Constitution under Subordinated Note Deed Poll

The Subordinated Notes are registered debt obligations of the Issuer constituted by, and owing under, the Subordinated Note Deed Poll and take the form of entries in the Register. Each entry in the Register constitutes a separate and individual acknowledgment to the relevant Holder of the indebtedness of the Issuer to the relevant Holder.

2.2 Independent obligations

The obligations of the Issuer in respect of each Subordinated Note constitute separate and independent obligations which the Holder to whom those obligations are owed is entitled to enforce without having to join any other Holder or any predecessor in title of a Holder.

2.3 Currency and denomination

Subordinated Notes are denominated in Dollars and in the amount of \$10,000.

2.4 Issue restrictions

Subordinated Notes may only be issued if the consideration payable is a minimum of \$500,000 (disregarding any monies lent by the Issuer or its associates) or the offer or invitation does not otherwise require disclosure to investors under Part 6D.2 or 7.9 of the Corporations Act and the Holder is not a 'retail client' as defined in section 761G of the Corporations Act.

2.5 Register conclusive

Entries in the Register in relation to a Subordinated Note constitute conclusive evidence that the person so entered is the registered holder of the Subordinated Note subject to rectification for fraud or error. Subject to the Corporations Act, no Subordinated Note will be registered in the name of more than three persons. A Subordinated Note registered in the name of more than one person is held by those persons as joint tenants. Subordinated Notes will be registered by name only without reference to any trusteeship. The person registered in the Register as a Holder will be treated by the Issuer and the Registrar as absolute owner of that Subordinated Note and neither the Issuer nor the Registrar is, except as ordered by a court or as required by statute, obliged to take notice of any other claim to a Subordinated Note.

2.6 Holder absolutely entitled

Upon a person acquiring title to any Subordinated Note by virtue of becoming a Holder in respect of that Subordinated Note, all rights and entitlements arising by virtue of the Subordinated Note Deed Poll in respect of that Subordinated Note vest absolutely in the Holder, such that no person who has previously been the Holder in respect of that Subordinated Note has or is entitled to assert against the Issuer or the Registrar or the Holder for the time being and from time to time any rights, benefits or entitlements in respect of the Subordinated Note.

2.7 Location of Register

The Register will be established and maintained in New South Wales unless otherwise agreed with the Registrar.

2.8 Certificates

No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Subordinated Note unless the Issuer determines that certificates should be made available or it is required to do so pursuant to any applicable law or regulation.

3 Transfers

3.1 Limit on transfer

Subordinated Notes may only be transferred:

- (a) in whole;
- (b) if the consideration payable at the time of transfer is a minimum amount of \$500,000 (disregarding any monies lent by the transferor or its associates) or if the offer or invitation giving rise to the transfer does not otherwise require disclosure to investors under Part 6D.2 or 7.9 of the Corporations Act and the transferee is not a 'retail client' as defined in section 761G of the Corporations Act; and
- (c) where the transfer complies with any applicable law or directive of the jurisdiction where the transfer takes place.

3.2 Transfer procedures

- (a) Application for the transfer of Subordinated Notes must be made by the lodgement of a transfer form with the Registrar. Transfer forms are available from the Registrar. Each form must be accompanied by such evidence (if any) as the Registrar or the Issuer may require to prove the title of the transferor or the transferor's right to transfer the Subordinated Note and be signed by both the transferor and the transferee (and in respect of a transferor or a transferee that is or intends to be a joint holder of a Subordinated Note (as the case may be) such transfer form must be signed by all such joint holders).
- (b) Subordinated Notes lodged in the Austraclear System will be transferable only in accordance with the Austraclear Regulations.

3.3 Registration of transfer

The transferor of a Subordinated Note is deemed to remain the holder of that Subordinated Note until the name of the transferee is entered in the Register in respect of that Subordinated Note.

3.4 No charge on transfer

Transfers will be registered without charge provided any taxes, duties or other governmental charges (if any) imposed in relation to the transfer have been paid.

3.5 Estates

A person becoming entitled to a Subordinated Note as a consequence of the death or bankruptcy of a Holder or of a vesting order or a person administering the estate of a Holder may, upon producing such evidence as to that entitlement or status as the Registrar considers sufficient, transfer the Subordinated Note or, if so entitled, become registered as the Holder in respect of that Subordinated Note.

3.6 Unincorporated associations

A transfer to an unincorporated association is not permitted.

3.7 Transfer of unidentified Subordinated Notes

Where the transferor executes a transfer of less than all Subordinated Notes registered in its name, and the specific Subordinated Notes to be transferred are not identified, the Registrar may (subject to the limit on minimum holdings) register the transfer in respect of such of the Subordinated Notes registered in the name of the transferor as the Registrar thinks fit, provided the aggregate Outstanding Principal Amount of the Subordinated Notes registered as having been transferred equals the aggregate Outstanding Principal Amount of the Subordinated Notes expressed to be transferred in the transfer.

4 Status

4.1 Status

Subordinated Notes constitute direct, subordinated and unsecured obligations of the Issuer and rank:

- (a) ahead of the claims of Junior Ranking Creditors;
- (b) equally among themselves and with the claims of holders of Equal Ranking Securities; and
- (c) behind all claims of Senior Creditors and all liabilities mandatorily preferred by law.

4.2 Payments in a winding up

In a winding up of the Issuer, a Holder's claim for an amount owing by the Issuer in connection with a Subordinated Note is subordinated to the claims of Senior Creditors of the Issuer, in that:

- (a) all claims of Senior Creditors must be paid or provided for in full before the Holder's claim is paid; and
- (b) until the Senior Creditors have been paid or provided for in full, the Holder must not claim in the winding up in competition with the Senior Creditors so as to diminish any distribution, dividend or payment which, but for that claim, the Senior Creditors would have been entitled to receive,

and such Holder's claim and the Issuer's liability in respect of the Subordinated Note will be further limited to the extent necessary to allow the claims of all Senior Creditors to be

paid in full and the claims of all Holders and the claims of holders of Equal Ranking Securities to be paid on a pro rata basis.

4.3 No set-off

A Holder does not have any right to set-off any amounts owing to it by the Issuer in respect of Subordinated Notes against any amount owing by it to the Issuer in connection with the Subordinated Notes or otherwise.

The Issuer does not have any right to set-off any amounts owing to it by a Holder in respect of Subordinated Notes against any amount owing by it to the Holder in connection with the Subordinated Notes or otherwise.

4.4 Acknowledgements by Holder

Each Holder irrevocably acknowledges and agrees that:

- (a) Condition 4.2 is a debt subordination for the purposes of section 563C of the Corporations Act;
- (b) it must not exercise its voting rights as an unsecured creditor in the winding up or administration of the Issuer to defeat the subordination in Condition 4.2;
- (c) the debt subordination effected by Condition 4.2 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity;
- (d) it must pay or deliver to the liquidator any amount or asset received on account of its claim in the winding up of the Issuer in connection with a Subordinated Note in excess of its entitlement under Condition 4.2;
- (e) there is no limit on the amount of debt or other obligations which rank equally with or ahead of the Subordinated Notes that may be incurred or assumed by the Issuer; and
- (f) nothing in these Conditions shall be taken to require the consent of any Senior Creditor to any amendment of this Condition 4.

4.5 No Guarantee

A Subordinated Note is not a deposit liability of the Issuer or a protected account for the purposes of the Banking Act, is not a protected account for the purposes of the Financial Claims Scheme established under Division 2AA Part II of the Banking Act and is not guaranteed or insured by any government, government agency or compensation scheme of Australia or any other jurisdiction or by any other person.

5 Interest

5.1 General

Subordinated Notes bear interest on their Outstanding Principal Amount during each Interest Period at the Interest Rate for that Interest Period subject to and in accordance with this Condition 5.

5.2 Interest

- (a) The Interest Rate for each Interest Period will be, subject as provided below, the rate shown for the Reference Rate which appears on the Relevant Screen Page as at 12 noon (Sydney time) (**Relevant Time**) on the Interest Determination Date for that Interest Period plus the Margin, all as determined by the Issuer.
- (b) If no rate for the Reference Rate appears on the Relevant Screen Page at the Relevant Time on the Interest Determination Date, the rate determined by the Issuer, or if it does appear but the Issuer determines that there is a manifest error in that rate, the Interest Rate is such other substitute or successor base rate that an alternate financial institution appointed by the Issuer determines, in its sole discretion, is most comparable to the Reference Rate and is consistent with industry accepted practices, which rate is notified in writing to the Issuer by such alternate financial institution, plus the Margin. The rate determined by such alternate financial institution and notified in writing to the Issuer will be expressed as a percentage rate per annum and will be rounded up, if necessary, to the next higher one ten-thousandth of a percentage point (0.0001 per cent).

If the Issuer is unable to determine a rate for an Interest Period in accordance with the above provisions, the Interest Rate applicable to the Subordinated Notes during that Interest Period will be the Interest Rate applicable to the Subordinated Notes during the immediately preceding Interest Period.
- (c) If the Issuer determines that a Rate Disruption Event has occurred, then subject to APRA's prior written approval, the Issuer:
 - (1) shall use as the Reference Rate such Replacement Rate as it may determine;
 - (2) shall make such adjustments to these Conditions as it determines are reasonably necessary to calculate the Interest Rate in accordance with such Replacement Rate; and
 - (3) in making the determinations under paragraphs (1) and (2) above:
 - (A) shall act in good faith and in a commercially reasonable manner;
 - (B) may consult with such sources of market practice as it considers appropriate; and
 - (C) may otherwise make such determination in its discretion;

Holders should note that the use of a Replacement Rate will require APRA's approval, which may or may not be given.
- (d) The amount of interest payable on a Subordinated Note in respect of each Interest Period will be calculated by multiplying the product of the Interest Rate for such Interest Period and the Outstanding Principal Amount of the Subordinated Note by the applicable Day Count Fraction and rounding the resultant figure to the nearest cent (with halves being rounded upwards).
- (e) The Issuer will, as soon as practicable on or after the Interest Determination Date, determine the Interest Rate and the amount of interest payable on a Subordinated Note for that Interest Period and promptly notify the Registrar and each Holder of that determination.
- (f) The Issuer's determination is, in the absence of manifest error, final and binding on the Issuer, each Agent and each Holder.

5.3 Accrual and payment of interest

- (a) Interest accrues on a daily basis on each Subordinated Note during each Interest Period on which it is Outstanding and will be payable in arrears on each Interest Payment Date (subject to Condition 5.3(c)) and on the Maturity Date. Whenever it is necessary to calculate amount of interest payable for less than a full Interest Period, such interest will be calculated by multiplying the Outstanding Principal Amount of the Note by the Interest Rate for the relevant Interest Period and then multiplying the resulting product by the number of whole days in the Interest Period that have elapsed divided by 365.
- (b) Interest ceases to accrue on a Subordinated Note as from the due date for redemption of the Subordinated Note unless the relevant payment is not made in which case interest will continue to accrue thereon (as well after as before any demand or judgment) at the rate then applicable to the Outstanding Principal Amount of the Subordinated Note until the date on which the relevant payment is made.
- (c) The Issuer's obligation to pay interest on each Interest Payment Date is subject to the Issuer being able to make the payment and remain solvent. Interest which remains unpaid under this Condition 5 remains owing and must be paid on the first Interest Payment Date in which the Issuer is able to make the payment and remain solvent, or on the date in which the Subordinated Note is required to be redeemed (whichever occurs first).

6 Redemption and purchase

6.1 Redemption on maturity

Unless previously redeemed, or purchased and cancelled, each Subordinated Note shall be redeemed on the Maturity Date by payment of its Redemption Amount. A Subordinated Note may only be redeemed or purchased prior to the Maturity Date if:

- (a) such redemption or purchase is pursuant to Condition 6.2 or on or after the fifth anniversary of the Issue Date of that Subordinated Note;
- (b) the Issuer has obtained the prior written approval of APRA; and
- (c) the conditions in Condition 6.6 are satisfied.

6.2 Redemption for taxation reasons and regulatory reasons

- (a) Redemption for taxation reasons

A **Tax Event** occurs if the Issuer receives an opinion from reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of:

- (1) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
- (2) any judicial decision, administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (**Administrative Action**); or

- (3) any amendment to, clarification of, or change in an Administrative Action that provides for a position that differs from the current generally accepted position,

in each case, by any legislative body, court, governmental authority or regulatory, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which amendment, clarification, change or Administrative Action is effective, or which pronouncement or decision is announced, on or after the Issue Date and which is not expected by the Issuer on the Issue Date, there is a more than an insubstantial risk which the directors of the Issuer determine (having received all approvals they consider in their absolute discretion to be necessary) at their absolute discretion to be unacceptable that:

- (4) the Issuer, on the occasion of the next payment due in respect of the Subordinated Notes, would be required to make payment of any Additional Amount;
- (5) any interest payable on any Subordinated Note will not be allowed as a deduction for the purposes of Australian income tax to any material extent; or
- (6) the Issuer or the consolidated tax group of which it is a member or the head entity of such consolidated tax group would be exposed to more than a *de minimis* increase in its costs (including without limitation through the imposition of any Taxes, assessments or other charges) in connection with any Subordinated Note.

If a Tax Event occurs then the Issuer may, notwithstanding Condition 6.1(a), at any time, on giving not more than 30 days' nor less than 15 days' notice to the Registrar and the Holders, redeem all (but not some only) of the Subordinated Notes for their Redemption Amount provided that the Issuer did not on the Issue Date expect that matters giving rise to the Tax Event would occur, the prior written approval of APRA has been obtained and the conditions in Condition 6.6 are satisfied.

Prior to publication of any such notice of redemption, the Issuer shall deliver to the Registrar a certificate signed by an authorised person of the Issuer stating that the conditions precedent to the right of the Issuer so to redeem have occurred.

Any notice given under this Condition 6.2(a) is irrevocable and obliges the Issuer to redeem the Subordinated Notes at the time and in the manner specified in the notice.

- (b) Redemption for regulatory reasons

A **Regulatory Event** occurs if:

- (1) the Issuer receives an opinion from a reputable legal counsel that, as a result of any amendment to, clarification of or change (including any announcement of a prospective change) in, any law or regulation, or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment, clarification or change is effective, or pronouncement, action or decision is announced, on or after the Issue Date that additional requirements would be imposed on the Issuer, or a Related Body Corporate of the Issuer, in relation to or in connection with the Subordinated Notes which the directors of the Issuer determine, in their absolute discretion, to be unacceptable and more than *de minimis*; or

- (2) the Issuer determines that the Issuer (or any holding company of the Issuer that is subject to capital requirements imposed by APRA which recognise such a category of capital or its equivalent) is not or will not be entitled to treat all Subordinated Notes as Tier 2 Capital (or, in the case of holding company of the Issuer, the relevant equivalent category of capital applicable to the holding company) (as applicable) or the treatment of the Subordinated Notes for the purposes of determining the capital requirements applicable to any holding company of the Issuer that is subject to capital requirements prescribed by APRA would be adversely affected.

If a Regulatory Event occurs, the Issuer may, notwithstanding Condition 6.1(a), at any time, on giving not more than 30 days' nor less than 15 days' notice to the relevant Agents and the Holders, redeem all (but not some only) of the Subordinated Notes for their Redemption Amount provided the Issuer did not on the Issue Date expect that the matters giving rise to the Regulatory Event would occur, the prior written approval of APRA has been obtained and the conditions in Condition 6.6 are satisfied.

Prior to publication of any such notice of redemption, the Issuer shall deliver to the Registrar a certificate signed by an authorised person of the Issuer stating that the conditions precedent to the right of the Issuer so to redeem have occurred.

Subject to Condition 7, any notice given under this Condition 6.2(b) is irrevocable and obliges the Issuer to redeem the Subordinated Notes at the time and in the manner specified in the notice.

6.3 Early redemption at the option of the Issuer

The Issuer may, having given not more than 30 days' nor less than 15 days' notice to the Registrar and the Holders redeem all (but not some only) of the Subordinated Notes on any Optional Redemption Date for their Redemption Amount, provided the prior written approval of APRA has been obtained and the conditions in Condition 6.6 are satisfied.

The notice referred to in the preceding paragraph shall specify:

- (a) the due date for redemption; and
- (b) the Redemption Amount for the Subordinated Notes.

Subject to Condition 7, any notice given under this Condition 6.3 is irrevocable and obliges the Issuer to redeem the Subordinated Notes at the time and in the manner specified in the notice.

6.4 Redemption at the option of Holders

Holders have no right to require early redemption of Subordinated Notes.

6.5 Purchase of Subordinated Notes

Subordinated Notes may at any time be purchased in the open market or otherwise and at any price by the Issuer or any Related Entity of the Issuer provided the prior written approval of APRA has been obtained and the conditions in Condition 6.6 are satisfied.

All unmatured Subordinated Notes purchased in accordance with this Condition 6.5 must be cancelled by the Issuer, subject to compliance with all legal and regulatory requirements.

For the purposes of the Meetings Provisions, in determining whether the provisions relating to quorum, meeting and voting procedures are complied with, any Subordinated Notes held in the name of the Issuer or any Related Body Corporate will be disregarded.

6.6 Redemption condition for Subordinated Notes

A redemption of Subordinated Notes in accordance with Condition 6.2 or Condition 6.3 and any purchase of Subordinated Notes in accordance with Condition 6.5, must not occur unless either:

- (a) the Subordinated Notes are replaced, concurrently with or prior to the redemption or purchase, with Tier 1 Capital or Tier 2 Capital of the same or better quality (for the purposes of APRA's prudential standards) and the replacement of the Subordinated Notes is done under conditions that are sustainable for the income capacity of the Issuer; or
- (b) APRA is satisfied, having regard to the capital position of the Issuer and the Group, that the Subordinated Notes do not have to be replaced.

The Issuer's determination as to whether the above conditions are satisfied is conclusive and binding on the Holders.

Holders should not expect that APRA's approval will be given for any redemption or purchase of the Subordinated Notes.

7 Conversion or Write-Off following Non-Viability Trigger Event

7.1 Non-Viability Trigger Event

A **Non-Viability Trigger Event** occurs upon:

- (a) the issuance to the Issuer of a written determination from APRA that Conversion or Write-Off of Relevant Securities is necessary because, without it, APRA considers that the Issuer would become non-viable; or
- (b) a determination by APRA, notified to the Issuer in writing, that without a public sector injection of capital, or equivalent support, the Issuer would become non-viable.

7.2 Conversion on Trigger Event Date

If a Non-Viability Trigger Event occurs then, on the Trigger Event Date:

- (a) the Issuer must Convert or Write-Off, or procure the Conversion or Write-Off of:
 - (1) unless sub-paragraph (2) applies, all Relevant Securities; or
 - (2) if the Non-Viability Trigger Event arises under Condition 7.1(a), a sufficient amount of Relevant Securities such that APRA is satisfied that conversion or write off of that amount will be sufficient to ensure that the Issuer will not become non-viable;
- (b) if all Relevant Securities are required to be Converted or Written Off under Condition 7.2(a), the Issuer must immediately Convert all the Subordinated Notes;
- (c) if some but not all Relevant Securities are required to be Converted or Written-Off under Condition 7.2(a), the Issuer must determine the amount (if any) of

Subordinated Notes to be Converted in accordance with Condition 7.2(a) on the following basis:

- (1) first, all Relevant Tier 1 Securities must be Converted or Written-Off before any Conversion of the Subordinated Notes; and
- (2) second, if Conversion or Write-Off of all Relevant Tier 1 Securities is less than the amount sufficient to satisfy APRA that the Issuer would not become non-viable, an amount of Subordinated Notes must be Converted and an amount of other Relevant Tier 2 Securities must be Converted or Written-Off in an aggregate amount which when added to the amount of Relevant Tier 1 Securities Converted or Written-Off will satisfy APRA that the Issuer will not become non-viable; and
- (3) in determining the amount of Subordinated Notes to be Converted and the amount of other Relevant Tier 2 Securities to be Converted or Written-Off in accordance with Condition 7.2(c)(2), the Issuer must endeavour to treat the Holders and holders of other Relevant Tier 2 Securities on an approximately proportionate basis or in a manner that is otherwise, in its opinion, fair and reasonable but may discriminate to take account of minimum denominations, the effect on marketable parcels and other logistical considerations and the need to effect Conversion immediately,

and the Issuer must immediately:

- (4) determine that Conversion will be effected in respect of a portion of the Subordinated Notes or in respect of a part of each Subordinated Note and the Subordinated Notes or parts thereof (as applicable) in relation to which the Conversion is to take effect and in making that determination may make any decisions with respect to the identity of the Holders at that time as may be necessary or desirable to ensure Conversion occurs in an orderly manner, including disregarding any transfers of Subordinated Notes that have not been settled or registered at that time provided that such determination does not impede or delay the immediate Conversion of the relevant amount of Subordinated Notes; and
- (5) do all things required to complete the Conversion of the Subordinated Notes or parts thereof so determined,

provided always that such determination does not impede or delay the immediate Conversion of the relevant amount of Subordinated Notes;

- (d) the Issuer must give notice of its determination pursuant to Condition 7.2(c) (a **Trigger Event Notice**) as soon as practicable to the Holders, which must specify:

- (1) the Trigger Event Date;
- (2) the amount of the Subordinated Notes Converted; and
- (3) the relevant amount of other Relevant Securities Converted or Written-off; and

- (e) none of the following events shall prevent, impede or delay the Conversion of Subordinated Notes as required by Condition 7.2(a):

- (1) any failure or delay in the Conversion or Write-off of other Relevant Securities;
- (2) any failure or delay in giving a Trigger Event Notice;
- (3) any failure or delay in quotation of Ordinary Shares to be issued on Conversion; or

- (4) any requirement to determine or select the amount of Subordinated Notes to be Converted or Written-Off (as applicable) in accordance with this Condition 7.2.

A Non-Viability Determination takes effect, and the Issuer must perform the obligations in respect of the determination, immediately on the day it is received by the Issuer, whether or not such day is a Business Day.

7.3 Conversion of a portion of a Subordinated Note

If any Subordinated Note is to be Converted only in part:

- (a) the Subordinated Note will be deemed to be divided into two Subordinated Notes having the respective denominations of the amount to be Converted and the amount not to be Converted;
- (b) Conversion (or, if Condition 7.6 applies, Write-Off) will occur in respect of the Subordinated Note having the denomination equal to the amount to be Converted;
- (c) the Issuer shall instruct the Registrar to make appropriate entries in the Register to reflect such division and Conversion so that the Denomination and Outstanding Principal Amount of Subordinated Note which continues to be held by the Holder is reduced to an amount equal to the non-Converted portion of such Subordinated Note; and
- (d) to avoid doubt, the amount of interest payable in respect of that Subordinated Note on each Interest Payment Date falling immediately after that Trigger Event Date will be reduced and calculated on the Outstanding Principal Amount of that Subordinated Note as so reduced.

7.4 Conversion immediate and irrevocable

Notwithstanding any other provision in these Conditions:

- (a) on the Trigger Event Date the relevant amount (as determined under Condition 7.2) of the Subordinated Notes must be Converted immediately and irrevocably; and
- (b) from the Trigger Event Date, the Issuer shall treat any Holder to whom Ordinary Shares are required to be issued in connection with such Conversion as the holder of the relevant number of Ordinary Shares and will take all such steps, including updating any register, required to record the Conversion and the issuance of such Ordinary Shares.

7.5 Failure to issue Ordinary Shares

If the Issuer fails to issue the Ordinary Shares required to be issued in respect of the Conversion of a Subordinated Note on the Trigger Event Date to the relevant Holder (or to a nominee in accordance with Condition 7.8), the Subordinated Note which would otherwise be subject to Conversion shall remain Outstanding and be treated as held by the Holder until:

- (a) the Ordinary Shares are issued to the Holder (or to a nominee in accordance with Condition 7.8); or
- (b) the Subordinated Note is Written-Off in accordance with these Conditions;

provided, however, that the sole right of the Holder in respect of Subordinated Notes or portions thereof that are subject to Conversion is its right to be issued the Ordinary Shares required to be issued pursuant to the Conversion of such Subordinated Notes or portions thereof in accordance with Schedule 1 (subject to its compliance with these Conditions) or

to receive the proceeds from their sale pursuant to Condition 7.8 (as applicable) and the remedy of such Holder against the Issuer in respect of the Issuer's failure to issue the Ordinary Shares in accordance with Schedule 1 is limited to seeking an order for specific performance of the Issuer's obligations to issue the Ordinary Shares in accordance with Schedule 1 to the Holder (or to a nominee in accordance with Condition 7.8), in each case, in accordance with these Conditions.

This Condition 7.5 does not affect the obligation of the Issuer to issue the Ordinary Shares when required in accordance with these Conditions.

7.6 Write-Off of Subordinated Notes

Notwithstanding any other provision of these Conditions, where a Subordinated Note is required to be Converted and due to an Inability Event or for any other reason Conversion does not occur on the Trigger Event Date and the Issuer is not otherwise able to issue the Ordinary Shares required to be issued in respect of such Conversion within five Business Days after the Trigger Event Date, then:

- (a) the Subordinated Note will not be Converted and instead will be Written-Off on the sixth Business Day after the Trigger Event Date; and
- (b) the Issuer shall notify the Holder as promptly as practically possible that Conversion of the Subordinated Note has not occurred and that such Subordinated Note has been Written-Off,

and, where a Subordinated Note is Written-Off, Write-Off will have effect on and from the Trigger Event Date.

7.7 Meaning of "Written-Off"

For the purposes of this Condition 7, **Written-Off** shall mean that, in respect of a Subordinated Note that is otherwise subject to Conversion and a Trigger Event Date:

- (a) the Subordinated Note that is otherwise subject to Conversion will not be Converted on that date and will not be Converted or redeemed under these Conditions on any subsequent date; and
- (b) the rights of the relevant Holder of the Subordinated Note or portion thereof (including to any right to receive Ordinary Shares upon Conversion thereof or any payment thereunder) in relation to such Subordinated Note or portion thereof are immediately and irrevocably terminated and written-off,

and **Write-Off** has a corresponding meaning.

7.8 Issue to nominee

If any Subordinated Note is required to be Converted under this Condition 7 and:

- (a) the Subordinated Notes are held by a Foreign Holder or by a person to whom the Issuer believes the issue of the required number of Ordinary Shares may result in a contravention of applicable law; or
- (b) for any reason (whether or not due to the fault of the Holder) the Issuer has not received the information required by Condition 8.2 prior to the Trigger Event Date and the lack of such information would prevent the Issuer from issuing the Ordinary Shares to the Holder on the Trigger Event Date,

then, on the Trigger Event Date:

- (c) where Condition 7.8(a) applies, the Issuer shall issue the Ordinary Shares required to be issued in respect of the Conversion to the Holder only to the extent (if at all) that the Issuer is satisfied that the laws of both the Commonwealth of Australia and the Holder's country of residence, and any other country whose laws may restrict the issue of Ordinary Shares to the Holder, permit the issue of Ordinary Shares to the Holder (but as to which the Issuer is not bound to enquire), either unconditionally or after compliance with conditions which the Issuer in its absolute discretion regards as acceptable and not unduly onerous; and, to the extent the Issuer is not obliged to issue Ordinary Shares to the Holder, the Issuer will, subject to applicable laws, issue the balance of the Ordinary Shares to a nominee in accordance with Condition 7.8(e);
- (d) in any other case, the Issuer will, subject to applicable laws, issue all the Ordinary Shares required to be issued in respect of the Conversion to a nominee in accordance with Condition 7.8(e); and
- (e) the Issuer will issue the Ordinary Shares required to be issued to a nominee under Condition 7.8(c) or 7.8(d) in respect of the Holder to a competent nominee (which may not be a Related Entity of the Issuer) on terms that:
 - (1) where Condition 7.8(b) applies, the nominee will hold such Ordinary Shares and will, subject to applicable laws, transfer Ordinary Shares to such Holder promptly after such Holder provides the nominee with the information required to be provided by such Holder under Condition 8.2 (as if a reference in Condition 8.2(c) is a reference to the nominee and a reference to the issue of Ordinary Shares is a reference to the transfer of Ordinary Shares) but only where such information is provided to the nominee within 30 days of the date on which Ordinary Shares are issued to the nominee upon Conversion of such Subordinated Note and failing which the nominee will, subject to applicable laws, sell the Ordinary Shares and pay the proceeds to such Holder in accordance with Condition 7.8(e)(2); and
 - (2) subject to Condition 7.8(e)(1), the nominee will as soon as reasonably possible after issue of the Ordinary Shares sell those Ordinary Shares and, subject to applicable laws, pay a cash amount equal to the net proceeds received, after deducting any applicable brokerage, stamp duty and other taxes, costs and charges, to the Holder.

Neither the Issuer nor the nominee owes any obligations or duties to the Holders in relation to the price at which Ordinary Shares are sold or has any liability for any loss suffered by a Holder as a result of the sale of Ordinary Shares.

Nothing in this Condition 7.8 shall affect the Conversion of the Subordinated Notes of a Holder who is not a person to which any of Condition 7.8(a) to 7.8(b) (inclusive) applies.

7.9 Holder acknowledgements

For the purposes of Conversion as required by this Condition 7, each Holder irrevocably acknowledges and agrees as a fundamental term of the Subordinated Notes:

- (a) that it is obliged to accept Ordinary Shares upon a Conversion of the Subordinated Notes it holds notwithstanding anything that might otherwise affect a Conversion of such Subordinated Notes including:
 - (1) any change in the financial position of the Issuer or the Group since the issue of such Subordinated Notes;
 - (2) any disruption to the market or potential market for the Ordinary Shares or to capital markets generally; or

- (3) any breach by the Issuer of any obligation in connection with such Subordinated Notes;
- (b) that where Condition 7.2 applies:
 - (1) there are no other conditions to a Non-Viability Trigger Event occurring as and when provided in Condition 7.1;
 - (2) Conversion must occur immediately on the occurrence of a Non-Viability Trigger Event and that may result in disruption or failures in trading or dealings in the Subordinated Notes;
 - (3) it will not have any rights to vote in respect of any Conversion; and
 - (4) the Ordinary Shares issued on Conversion may not be quoted at the time of issue, or at all;
- (c) that where Condition 7.6 applies, no conditions or events will affect the operation of that Condition and such Holder will not have any rights to vote in respect of any Write-Off under that Condition and has no claim against the Issuer arising in connection with the application of that Condition;
- (d) that none of the following shall prevent, impede or delay the Conversion or (where relevant) Write-Off of the Subordinated Notes:
 - (1) any failure to or delay in the Conversion or Write-Off of other Relevant Securities;
 - (2) any failure or delay in giving a Trigger Event Notice or other notice required by this Condition 7;
 - (3) any failure or delay in quotation of the Ordinary Shares to be issued on Conversion or in the taking of such action as is needed to make them freely tradeable;
 - (4) any failure or delay in Converting any Subordinated Note in part pursuant to the provisions of Condition 7.3; and
 - (5) any requirement to select or adjust the number or amount of Subordinated Notes to be Converted in accordance with Condition 7.2(c); and
- (e) that where Subordinated Notes are Converted it has no right to receive payment of any amount payable in respect of the transfer of its Subordinated Notes contemplated by the definition of Conversion.

8 General provisions relating to Conversion

8.1 Consent to become a member

For the purposes of Conversion under Condition 7, each Holder by becoming a Holder and by delivering any Holder Details Notice irrevocably consents to becoming a member of the Issuer upon the Conversion of the relevant amount of Subordinated Notes and agrees to be bound by the constitution of the Issuer, in each case in respect of the Ordinary Shares issued to such Holder on Conversion.

8.2 Provision of information

Where a Subordinated Note (or portion thereof) is required to be Converted under Condition 7, a Holder wishing to receive Ordinary Shares must have provided to the Issuer in a Holder Details Notice to be given no later than the Trigger Event Date (or, in the case

where Condition 7.8(e) applies, within 30 days of the date on which Ordinary Shares are issued upon such Conversion):

- (a) its name and address (or the name and address of any person in whose name it directs the Ordinary Shares to be issued) for entry into any register of title and receipt of any certificate or holding statement in respect of any Ordinary Shares;
- (b) the security account details to which the Ordinary Shares may be credited; and
- (c) such other information as is reasonably requested by the Issuer for the purposes of enabling it to issue the Conversion Number of Ordinary Shares to such Holder (but the Issuer has no duty to seek or obtain such information).

Where Ordinary Shares are issued to a nominee in respect of the Conversion of the Subordinated Notes of a Holder, the Holder must provide such information as is requested by the nominee in connection with the transfer of Ordinary Shares, or payment of the proceeds of sale of the Ordinary Shares, to such Holder in accordance with Condition 7.8(e).

8.3 Power of Attorney

Each Holder appoints each of the Issuer, each of its officers and any External Administrator of the Issuer (each an “**Attorney**”) severally to be the attorney of the Holder with power in the name and on behalf of the Holder to sign all documents and transfers and do any other thing as may in the Attorney’s opinion be necessary or desirable to be done in order for the Holder to observe or perform the Holder’s obligations under these Conditions including, but not limited to, effecting any transfers of Subordinated Notes or, for the purposes of Conversion, making or consenting to any entry in the Register, or in the Issuer’s register of members, or exercising any voting power in relation to any consent or approval required for Conversion.

The power of attorney given in this Condition 8.3 is given for valuable consideration and to secure the performance by the Holder of the Holder’s obligations under these Conditions and is irrevocable.

8.4 Obligations subject to laws

The obligations of the Issuer and any nominee in respect of any issue of or dealing with any Ordinary Shares or the proceeds of sale of such Ordinary Shares are subject in all cases to all applicable laws and regulations.

8.5 Substitution of Approved Acquirer as issuer of Ordinary Shares

Where:

- (a) either of the following occurs:
 - (1) a takeover bid is made to acquire all or some of the Ordinary Shares and such offer is, or becomes, unconditional, all regulatory approvals necessary for the acquisition to occur have been obtained and either:
 - (A) the bidder has at any time during the offer period, a relevant interest in more than 50 per cent. of the Ordinary Shares on issue; or
 - (B) the directors of the Issuer acting as a board, issue a statement that at least a majority of its directors who are eligible to do so have recommended acceptance of such offer (in the absence of a higher offer); or

- (2) a court orders the holding of meeting(s) to approve a scheme of arrangement under Part 5.1 of the Corporations Act, which scheme would result in a person having a relevant interest in more than 50 per cent. of the Ordinary Shares that will be on issue after the scheme is implemented and:
 - (A) all classes of members of the Issuer pass all resolutions required to approve the scheme by the majorities required under the Corporations Act to approve the scheme; and
 - (B) all conditions to the implementation of the scheme including any necessary regulatory approval (but not including approval of the scheme by the court) have been satisfied or waived;
- (b) the bidder or the person having a relevant interest in the Ordinary Shares of the Issuer after the scheme is implemented or any entity that controls (within the meaning of section 50AA of the Corporations Act) the bidder or the person having the relevant interest is a company (**Approved Acquirer**) whose ordinary shares are or will be quoted on ASX or another securities exchange; and
- (c) the Approved Acquirer executes a deed poll in favour of the Holders agreeing with effect on and from the date of substitution to be bound by the obligations of the Issuer under the Subordinated Note Deed Poll and these Conditions (as amended pursuant to paragraphs (d) and (e) below), including delivering fully paid ordinary shares in the capital of the Approved Acquirer under all circumstances where the Issuer would otherwise have been required to deliver Ordinary Shares;

then the Issuer may without the consent of any Holder (but with the prior written approval of APRA) vary these Conditions by making such amendments as in the Issuer's reasonable opinion are necessary, convenient or appropriate to effect the substitution of the Approved Acquirer as the issuer of the ordinary shares on Conversion in the manner contemplated by these Conditions (or in such other manner approved by APRA as contemplated by paragraph (d)), which may without limitation include:

- (d) providing that on the date a Subordinated Note is to be Converted:
 - (1) the Subordinated Note will be immediately and irrevocably transferred by the Holder free from Encumbrances to the Approved Acquirer;
 - (2) the Approved Acquirer will issue the Conversion Number of Ordinary Shares (which, to avoid doubt, will be ordinary shares in the Approved Acquirer) to the Holder (or to a nominee in accordance with Condition 7.8) (and, for the purposes of determining the Conversion Number of Ordinary Shares in any case, the provisions of Schedule 1 shall apply subject to such variations as are in the Issuer's reasonable opinion necessary, convenient or appropriate); and
 - (3) the Subordinated Note will be converted into ordinary shares in the capital of the Issuer or written off in the manner separately agreed between the Issuer and the Approved Acquirer on or about the date of such variation (or as may be subsequently varied with APRA's prior written approval); and/or
- (e) making such other amendments to these Conditions as are in the Issuer's reasonable opinion necessary, convenient or appropriate to provide for the conversion of the Subordinated Notes into ordinary shares of the Approved Acquirer as contemplated by paragraph 1(a) of Attachment J of APS 111 (as interpreted or applied by APRA at the time) in such other manner as APRA may approve.

Without limiting paragraph (d) and (e):

- (1) each Holder makes the acknowledgments set out in Condition 7.9 and gives the consents in Condition 8.1 in relation to the Approved Acquirer and ordinary shares in the Approved Acquirer; and
- (2) this Condition 8.5 may apply any number of times such that, where, following the substitution of an Approved Acquirer for the Issuer as the issuer of Ordinary Shares on Conversion in accordance with this Condition 8.5, the events contemplated by paragraphs 8.5(a) to 8.5(c) occur in relation to such Approved Acquirer, the Issuer and such Approved Acquirer may, without the authority, approval or assent of the Holders, effect a further substitution in accordance with this Condition 8.5.

The Issuer or the Approved Acquirer must notify the Holders of the particulars of any substitution in accordance with this Condition 8.5 as soon as practicable after the substitution.

To avoid doubt:

- (3) the manner in which the Issuer and an Approved Acquirer agree a Subordinated Note is to be converted or written off in accordance with paragraph (d)(3) must be appropriate to result in an increase in the Common Equity Tier 1 Capital of the Issuer on a Level 1 basis and a Level 2 basis to the same extent as if the substitution of the Approved Acquirer had not occurred (and in the case of a conversion will provide for the Approved Acquirer to automatically subscribe for Ordinary Shares of the Issuer in such amount as may be necessary to ensure that the capital position of the Issuer on a Level 1 basis and a Level 2 basis is equivalent to the position that would have applied if the substitution had not occurred and the Issuer was required to issue Ordinary Shares to the Holder); and
- (4) upon an Approved Acquirer being substituted as the issuer of the ordinary shares to be issued on Conversion in accordance with this Condition 8.5, then (without prejudice to any obligation of the Issuer to issue Ordinary Shares to the Approved Acquirer as contemplated in paragraph (d)) the Issuer is released from its obligation to issue Ordinary Shares on Conversion to the Holders.

9 Events of Default

9.1 Events of Default

An **Event of Default** occurs if:

(a) **(Payment Default)** either:

- (1) the Issuer does not pay any principal amount due and payable in respect of the Subordinated Notes within 10 days of its due date; or
- (2) the Issuer does not pay any interest or other amount due and payable in respect of the Subordinated Notes within 30 days of its due date,

in either case (to avoid doubt) other than as permitted by Condition 5.3(c) (a **Payment Default**); or

(b) **(Winding Up Default)** either:

- (1) a court order is made by a court of competent jurisdiction in Australia for the winding up of the Issuer and that order is not successfully appealed or permanently stayed within 60 days of the making of that order; or
- (2) an effective resolution for the winding up of the Issuer is passed by the shareholders of the Issuer entitled to vote on such resolution,

in each case, other than for the purposes of a consolidation, amalgamation, merger or reconstruction which has been approved by the shareholders of the Issuer or by a court of competent jurisdiction under which the surviving entity has assumed or will assume expressly or by law all obligations of the Issuer in respect of the Subordinated Notes (a **Winding Up Default**).

9.2 Consequences of an Event of Default

- (a) **(Payment Default)** Subject to Condition 9.4, if a Payment Default occurs, then a Holder may, subject to Condition 9.2(b), institute proceedings:
 - (1) in a court of competent jurisdiction against the Issuer to recover any principal, interest, or other amount in respect of the Subordinated Notes not paid by the Issuer as specified in Condition 9.1(a), subject to the Issuer being able to pay that principal, interest or other amount and remaining solvent after making that payment;
 - (2) in a court of competent jurisdiction against the Issuer to obtain an order for specific performance of any other obligation in respect of the Subordinated Notes; and/or
 - (3) for a winding up of the Issuer.
- (b) **(No acceleration)** Upon the occurrence of a Payment Default, Holders will have no right to accelerate the Issuer's payment obligations under the Subordinated Notes or to take any other action which has the same economic effect as an acceleration.
- (c) **(Winding Up Default)** If a Winding Up Default occurs in relation to the Issuer, a Holder may, in addition to taking any of the actions specified in Condition 9.2(a), by notice to the Issuer and the Registrar declare that such Subordinated Notes are immediately due and payable at their Outstanding Principal Amount together with accrued interest and any other amounts accrued under the Subordinated Notes and, subject to Condition 4.2, may prove in the winding up for an amount equal to such amount.
- (d) **(No other remedies)** No Holder may take any other action or exercise any other remedy as a consequence of an Event of Default except as specified in this Condition 9.2.

9.3 Amounts unpaid remain debts

Any amount not paid due to Condition 9.2(a)(1) accumulates and remains a debt owing to the Holder by the Issuer until it is paid.

9.4 Rectification

A Holder's right to take any of the actions contemplated in Condition 9.2 terminates if the situation giving cause to it has been cured before such right is exercised.

9.5 Notification

If an Event of Default occurs, the Issuer must promptly after becoming aware of it notify the Registrar of the occurrence of the Event of Default (specifying details of it) and procure that the Registrar promptly notifies the relevant Holders of the occurrence of the Event of Default in accordance with Condition 16.

10 Payments

10.1 Record Date

Payments to Holders will be made according to the particulars recorded in the Register at 5.00pm (Sydney time) on the relevant Record Date.

10.2 Joint holders

When a Subordinated Note is held jointly, payment will be made to the holders in their joint names unless requested otherwise.

10.3 Method of payments when Subordinated Notes are in the Austraclear System

If the Subordinated Notes are in the Austraclear System, payments in respect of each Subordinated Note will be made by crediting on the relevant Payment Date the amount then due to the account of the Holder in respect of that Subordinated Note in accordance with the Austraclear Regulations.

10.4 Method of payments when Subordinated Notes are not in the Austraclear System

If the Subordinated Notes are not in the Austraclear System, payments in respect of each Subordinated Note will be made by crediting on the Payment Date the amount then due to an account in Australia previously notified by the Holder in respect of that Subordinated Note to the Issuer and the Registrar. If the Holder has not notified the Issuer and the Registrar of such an account by close of business on the relevant Record Date or upon application by the Holder to the Issuer and the Registrar no later than close of business on the relevant Record Date, payments in respect of the relevant Subordinated Note will be made by cheque, mailed on the relevant Interest Payment Date, in the case of payments of interest, or on the due date for redemption or repayment, in the case of payments of principal, at the Holder's risk to the Holder (or to the first named of joint registered holder) of such Subordinated Note at the address appearing in the Register as at the Record Date. Cheques to be despatched to the nominated address of a Holder will in such cases be deemed to have been received by the Holder on the relevant Payment Date and no further amount will be payable by the Issuer in respect of the relevant Subordinated Note as a result of payment not being received by the Holder on the due date.

10.5 Business Days

All payments must be made in accordance with the Business Day Convention, provided that nothing in this clause applies to any payment referred to in paragraph 1(b)(1) of Schedule 1 which must occur on the Trigger Event Date as provided in paragraph 1(b)(1) of Schedule 1.

10.6 Payment subject to fiscal laws

Payments (whether in respect of principal, redemption amounts, interest or otherwise) in respect of the Subordinated Notes are subject in all cases to applicable provisions of fiscal and other laws, regulations and directives.

10.7 Taxation and Additional Amounts

All payments (whether in respect of principal redemption amount, interest or otherwise) in respect of the Subordinated Notes will be made without set-off or counterclaim and free and clear of, and without deduction of or withholding on account of any Taxes now or hereafter imposed, levied, collected, withheld or assessed in the Commonwealth of Australia or any political subdivision therein or thereof unless such withholding or deduction is required by law. In that event the Issuer will pay such additional amounts (**Additional Amounts**) as may be necessary in order that the net amount received by the Holders after such withholding or deduction equals the respective amounts which would otherwise have been receivable in respect of the Subordinated Notes in the absence of such withholding or deduction, except that no Additional Amounts are payable in relation to any payments in respect of any Subordinated Note:

- (a) to, or to a third party on behalf of, a Holder who is liable to such Taxes in respect of such Subordinated Note by reason of his having some connection with the Commonwealth of Australia or any political subdivision therein or thereof other than the mere holding of such Subordinated Note or receipt of payment (whether in respect of principal, redemption amount, interest or otherwise) in respect thereof;
- (b) to, or to a third party on behalf of, a Holder who could lawfully avoid (but has not so avoided) such deduction or withholding by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or similar cause for exemption to any tax authority in the place where payment under the Subordinated Note is made;
- (c) where payment to the Holder is delayed as a result of the Holder having failed to provide valid account details to which payment may be made by the Issuer in accordance with these Conditions except to the extent that a Holder would have been entitled to Additional Amounts had payment been made on the date on which it would otherwise have been due;
- (d) which are subject to such Taxes as a result of the Holder being party to or participating in a scheme to avoid Taxes, being a scheme to which the Issuer was neither a party to nor participating in;
- (e) to, or to a third party on behalf of, a Holder who is liable to the Taxes in respect of the Subordinated Note by reason of the Holder being an associate of the Issuer within the meaning of section 128F(9) of the Tax Act;
- (f) to, or to a third party on behalf of a Holder, if that person has not supplied an appropriate tax file number an Australian Business Number or exemption details;
- (g) to, or to a third party on behalf of, a Holder where the deduction or withholding is as a result of direction under section 255 of the Tax Act or section 260-5 of Schedule 1 to the Taxation Administration Act or any similar provision requiring the Issuer to deduct from any payment to any other party; or
- (h) in connection with any withholding or deduction required, or which the Issuer determines should be made, in connection with FATCA.

10.8 Currency indemnity

The Issuer waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if a Holder receives an amount in a currency other than that in which it is due:

- (a) it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate taking into account any costs of conversion; and
- (b) the Issuer satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion.

10.9 FATCA

The Issuer may withhold or make deductions from payments or from the issue of Ordinary Shares to a Holder or to a nominee in accordance with Condition 7.8 where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of the Subordinated Notes may be subject to FATCA, and may deal with such payment, and any such Ordinary Shares in accordance with FATCA (which may include, without limitation, where any withholding or deduction in respect of Ordinary Shares is required, issuing such shares to a nominee, agent or broker selected by the Issuer on terms that such Ordinary Shares will be sold (and without any duty to the Holder in respect of the terms of such sale) and the proceeds of such sale being remitted to any applicable revenue or other authority). If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any Additional Amounts or other further amounts or issue any further Ordinary Shares on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of the Subordinated Notes for or in respect of any such withholding or deduction. A dealing with such payment and any Ordinary Shares in accordance with FATCA satisfies the Issuer's obligations to that Holder to the extent of the amount of that payment or issue of Ordinary Shares.

11 Further issues

The Issuer may from time to time, without the consent of any Holder, issue further Subordinated Notes having the same terms and conditions as the Subordinated Notes in all respects (or in all respects except for the first payment of interest, if any, on them and/or their denomination) so as to form part of the Subordinated Notes.

Nothing in these Conditions limits the Issuer or any of its Related Bodies Corporate issuing other notes or securities on whatever terms they think fit.

12 Time limit for claims

A claim against the Issuer for a payment under a Subordinated Note is void unless such claim is made within 10 years (in the case of principal and redemption amount) and 5 years (in the case of interest and other amounts) from the date on which the payment was originally due (or would have been due had the Holder provided valid details for payment).

13 Meetings of Holders

Meetings of Holders may be convened in accordance with the Meetings Provisions. Any such meeting may consider, and make decisions binding on all Holders in respect of, any matters affecting the interests of Holders, including, without limitation, the variation of the terms of the Subordinated Notes by the Issuer and the granting of approvals, consents and waivers, and the declaration of an Event of Default.

14 Variations

14.1 To cure ambiguities

Subject to Condition 14.3, these Conditions and the Subordinated Note Deed Poll may be varied by the Issuer, without the consent of any Holder if, in the reasonable opinion of the Issuer, the variation:

- (a) is necessary or advisable to comply with any law;
- (b) is necessary to correct an obvious error, or otherwise of a formal, technical or administrative nature only;
- (c) is made to cure any ambiguity or correct or supplement any defective or inconsistent provision;
- (d) is in connection with the substitution of an Approved Acquirer as issuer of the Ordinary Shares under and in accordance with (and as defined in) Condition 8.5; or
- (e) is not materially prejudicial to the interests of the Holders as a whole.

14.2 Approval by Holders

Subject to Condition 14.3, these Conditions and Subordinated Note Deed Poll may otherwise be varied by the Issuer with the approval of the Holders by Extraordinary Resolution.

No variation to these Conditions other than as specified in Condition 14.1 and this Condition 14.2 has effect in relation to the Holders who hold Subordinated Notes at the date of any variation deed, unless they otherwise agree in writing. A variation will take effect in relation to all subsequent Holders.

14.3 Restriction on variation of Conditions

The Issuer must not vary the Conditions unless it has obtained the prior written approval of APRA if the variation may affect the eligibility of the Subordinated Notes as Tier 2 Capital.

14.4 Other documents

The Issuer may vary or terminate any Agency Agreement or other deed or agreement entered into in connection with any Subordinated Note without the consent of Holders provided that so long as any Subordinated Notes are Outstanding there is a Registrar appointed in respect of such Subordinated Notes.

14.5 Meaning of “vary”

In this Condition 14, “vary” includes amend, novate, assign, modify, add to, cancel or alter and “variation” has a corresponding meaning.

15 Agents

15.1 Appointment of Agent

The Issuer has appointed the Registrar, and may from time to time appoint any other agent, to act as its agent in respect of certain matters relating to the Subordinated Notes.

15.2 Role of the Agents

In acting under its Agency Agreement in connection with the Subordinated Notes, each Agent acts solely as agent of the Issuer and does not assume any obligations towards or relationship of agency or trust for or with any of the Holders save as may be otherwise expressly agreed between the Issuer and the relevant Agent in its Agency Agreement.

15.3 Change of Agent

The Issuer reserves the right at any time to terminate the appointment of any Agent in accordance with its Agency Agreement or otherwise and to appoint a successor or additional Agent, provided, however, that the Issuer must at all times maintain the appointment of a Registrar with its specified office in Australia. Notice of any such termination of appointment will be given to the Holders in accordance with Condition 16.

16 Notices

16.1 Notices to the Issuer, the Registrar and the Agent

A notice or other communication in connection with a Subordinated Note to the Issuer, the Registrar or another Agent must be in writing and may be given by prepaid post or delivery to the address of the addressee or by facsimile to the facsimile number of the addressee specified:

- (a) in the Information Memorandum; or
- (b) as otherwise agreed between those parties from time to time and notified to the Holders.

16.2 Notices to Holders

A notice or other communication in connection with a Subordinated Note to the Holders must be in writing and may be given by:

- (a) an advertisement published in The Australian Financial Review or any other newspaper or newspapers circulating in Australia generally; or
- (b) prepaid post (airmail if posted to or from a place outside Australia) or delivery or by facsimile to the address of facsimile address, as the case may be, of each Holder or any relevant Holder as shown in the Register at the close of business three Business Days prior to the dispatch of the relevant notice or communication.

16.3 Effective on receipt

Unless a later time is specified in it, a notice, approval, consent or other communication takes effect from the time it is received, except that if it is received after 5.00pm in the place of receipt or on a non-business day in that place, it is to be taken to be received at 9.00am on the next succeeding Business Day in that place.

16.4 Proof of receipt

Subject to Condition 16.3, proof of posting of a letter or of dispatch of a facsimile or of publication of a notice is proof of receipt:

- (a) in the case of a letter, on the third (seventh, if outside Australia) day after posting; and
- (b) in the case of a facsimile, on receipt by the sender of a successful transmission report; and
- (c) in the case of publication, on the date of such publication.

17 Governing law and jurisdiction

17.1 Governing law

The Subordinated Notes are governed by the law in force in the State of New South Wales.

17.2 Jurisdiction

The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts of appeal from them.

Schedule 1 to the Conditions

1 Conversion

If the Issuer must Convert a Subordinated Note in accordance with the Conditions, then, subject to this Schedule 1, the following provisions apply:

- (a) the Issuer will allot and issue on the Trigger Event Date a number of Ordinary Shares in respect of the Nominal Amount of that Subordinated Note equal to the Conversion Number, where the Conversion Number (but subject to the Conversion Number being no more than the Maximum Conversion Number) is a number calculated according to the following formula:

$$\text{Conversion Number} = \frac{\text{Nominal Amount}}{99\% \times \text{VWAP}}$$

where:

“Nominal Amount” means the Outstanding Principal Amount of the Subordinated Note required to be Converted in accordance with Condition 7.

“VWAP” (expressed in dollars and cents) means the VWAP during the VWAP Period; and

“Maximum Conversion Number” means a number calculated according to the following formula:

$$\text{Maximum Conversion Number} = \frac{\text{Nominal Amount}}{\text{Issue Date VWAP} \times \text{Relevant Fraction}}$$

- (b) on the Trigger Event Date (and whether or not Ordinary Shares have been allotted under paragraph (a)):
- (1) the Subordinated Notes (including the rights of each Holder (including to payment of interest) in relation to the Nominal Amount of each Subordinated Note or portion thereof that is being Converted) will automatically and without any action being required of the Issuer be deemed to have been immediately and irrevocably redeemed for an amount payable by the Issuer equal to the Nominal Amount of that Subordinated Note (or portion thereof) that is being Converted and the Issuer will be taken to have applied that Nominal Amount (or portion thereof) by way of payment for subscription for the Ordinary Shares to be allotted and issued under paragraph (a) of this Schedule 1. Each Holder is taken to have irrevocably directed that any amount payable under paragraph 1(b)(1) of this Schedule 1 is to be applied as provided for in paragraph 1(b)(1) of this Schedule 1 and no Holder has any right to payment in any other way; and
 - (2) all rights to the payment of interest in respect of the Subordinated Note or the relevant portion thereof (including any arrears of interest) are immediately and irrevocably terminated;
- (c) any calculation under paragraph (a) of this Schedule 1 shall, unless the context requires otherwise, be rounded to four decimal places provided that if the total number of additional Ordinary Shares to be allotted to a Holder in respect of the aggregate Nominal Amount of the Subordinated Notes it holds which are being

Converted includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded; and

- (d) the rights attaching to Ordinary Shares issued as a result of Conversion do not take effect until 6.00pm (Sydney, Australia time) on the Trigger Event Date (unless another time is required for Conversion on that date in the case of a Conversion required by Condition 7). At that time all other rights conferred or restrictions imposed on that Subordinated Note under the Conditions will no longer have effect to the extent of the Nominal Amount of that Subordinated Note being Converted (except for the right to receive the Ordinary Shares as set forth in paragraph 1 of this Schedule 1 and Condition 7).

2 Adjustments to VWAP

For the purposes of calculating VWAP in the Conditions:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, Ordinary Shares have been quoted on the ASX as cum dividend or cum any other distribution or entitlement and the relevant Nominal Amount of Subordinated Notes will Convert into Ordinary Shares after the date those Ordinary Shares no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement shall be reduced by an amount (**Cum Value**) equal to:
 - (1) (in case of a dividend or other distribution), the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or other distribution who is both a resident of Australia and a natural person under the Tax Act;
 - (2) (in the case of any other entitlement that is not a dividend or other distribution under paragraph 2(a)(1) of this Schedule 1 which is traded on the ASX on any of those Business Days), the volume weighted average sale price of all such entitlements sold on the ASX during the VWAP Period on the Business Days on which those entitlements were traded; or
 - (3) (in the case of any other entitlement which is not traded on the ASX during the VWAP Period), the value of the entitlement as reasonably determined by the directors of the Issuer; and
- (b) where, on some or all of the Business Days in the VWAP Period, Ordinary Shares have been quoted on the ASX as ex dividend or ex any other distribution or entitlement, and the relevant Nominal Amount of Subordinated Notes will Convert into Ordinary Shares which would be entitled to receive the relevant dividend or other distribution or entitlement, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement shall be increased by the Cum Value.

3 Adjustments to VWAP for divisions and similar transactions

- (a) Where during the relevant VWAP Period there is a change in the number of the Ordinary Shares on issue as a result of a division, consolidation or reclassification of the Issuer's share capital (not involving any cash payment or other distribution to or by holders of Ordinary Shares) (a **Reorganisation**), in calculating the VWAP

for that VWAP Period the daily VWAP applicable on each day in the relevant VWAP Period which falls before the date on which trading in Ordinary Shares is conducted on a post Reorganisation basis shall be adjusted by multiplying the relevant daily VWAP by the following formula:

$$\frac{A}{B}$$

where:

A means the aggregate number of Ordinary Shares immediately before the Reorganisation;

and

B means the aggregate number of Ordinary Shares immediately after the Reorganisation.

- (b) Any adjustment made by the Issuer in accordance with paragraph 3(a) of this Schedule 1 will, absent manifest error, be effective and binding on the Holders under these terms and these terms will be construed accordingly. Any such adjustment must be promptly notified to all Holders.

4 Adjustments to Issue Date VWAP

For the purposes of determining the Issue Date VWAP, corresponding adjustments to VWAP will be made in accordance with paragraphs 2 and 3 of this Schedule 1 during the 20 Business Day period over which VWAP is calculated for the purposes of determining the Issue Date VWAP. On and from the Issue Date adjustments to the Issue Date VWAP:

- (a) may be made in accordance with paragraphs 5 to 7 of this Schedule 1 (inclusive); and
- (b) if so made, will cause an adjustment to the Maximum Conversion Number.

5 Adjustments to Issue Date VWAP for bonus issues

- (a) Subject to paragraph 5(b) of this Schedule 1 below, if, at any time after the Issue Date, the Issuer makes a pro rata bonus issue of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_o \times \frac{RD}{RD + RN}$$

where:

V means the Issue Date VWAP applying immediately after the application of this formula;

V_o means the Issue Date VWAP applying immediately prior to the application of this formula;

RN means the number of Ordinary Shares issued pursuant to the bonus issue; and

RD means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the bonus issue.

- (b) Paragraph 5(a) of this Schedule 1 does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (c) For the purpose of paragraph 5(a) of this Schedule 1, an issue will be regarded as a pro rata issue notwithstanding that the Issuer does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of the ASX Listing Rules.
- (d) No adjustments to the Issue Date VWAP will be made under this paragraph 5 of this Schedule 1 for any offer of Ordinary Shares not covered by paragraph 5(a) of this Schedule 1, including a rights issue or other essentially pro rata issue.

6 Adjustment to Issue Date VWAP for divisions and similar transactions

- (a) If, at any time after the Issue Date, a Reorganisation occurs, the Issuer shall adjust the Issue Date VWAP by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reorganisation by the following formula:

$$\frac{A}{B}$$

where:

A means the aggregate number of Ordinary Shares immediately before the Reorganisation; and

B means the aggregate number of Ordinary Shares immediately after the Reorganisation.

- (b) Any adjustment made by the Issuer in accordance with paragraph 6(a) of this Schedule 1 will, absent manifest error, be effective and binding on Holders under these terms and these terms will be construed accordingly.
- (c) Each Holder acknowledges that the Issuer may consolidate, divide or reclassify securities so that there is a lesser or greater number of Ordinary Shares at any time in its absolute discretion without any such action requiring any consent or concurrence of any Holders.

7 No adjustment to Issue Date VWAP in certain circumstances

- (a) Despite the provisions of paragraphs 5 and 6 of this Schedule 1, no adjustment shall be made to the Issue Date VWAP where such adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect.
- (b) The fact that no adjustment is made for an issue of Ordinary Shares except as covered by paragraphs 5(a) and 6(a) of this Schedule 1 shall not in any way restrict the Issuer from issuing Ordinary Shares at any time on such terms as it sees fit nor require any consent or concurrence of any Holders.

8 Announcement of adjustment to Issue Date VWAP

The Issuer will notify Holders (an **Adjustment Notice**) of any adjustment to the Issue Date VWAP under this Schedule 1 within 10 Business Days of the Issuer determining the adjustment and the adjustment set out in the announcement will be final and binding.

9 Ordinary Shares

Each Ordinary Share issued or arising upon Conversion of a Subordinated Note (or portion thereof):

- (a) is issued fully paid in consideration of the application of the relevant Nominal Amount (or portion thereof) in accordance with paragraph 1(b)(1) of this Schedule 1; and
- (b) ranks *pari passu* with all other fully paid Ordinary Shares.

10 Listing Ordinary Shares issued on Conversion

The Issuer, at its cost:

- (a) must use reasonable endeavours to list the Ordinary Shares issued upon Conversion of the Subordinated Notes on the ASX; and
- (b) in the case of Conversion on account of a Non-Viability Trigger Event must use reasonable endeavours to procure that the Ordinary Shares issued upon Conversion are able to be freely traded after their issue date on the ASX in compliance with all requirements of the Corporations Act, all other applicable laws of Australia and the ASX Listing Rules without requirement for further disclosure or other action by any Holder or persons to whom its shares are issued (except in case of applicable law other than Chapter 6D of the Corporations Act, to the extent that a restriction on trading is attributable to the particular circumstances of the Holder and is not otherwise within the control of the Issuer).

6 Selling and Distribution Restrictions

The distribution and use of this Information Memorandum, and the offer or sale of Subordinated Notes, may be restricted by law in certain jurisdictions. Neither the Issuer nor any Agent nor the Lead Manager represents that this document may be lawfully distributed, or that any Subordinated Notes may be lawfully offered, in compliance with the laws of any jurisdiction. In particular, no action has been taken by any of those parties which would permit a public offering of any Subordinated Notes or distribution of this Information Memorandum in any jurisdiction where action for such purpose is required.

No Subordinated Notes may be offered or sold, directly or indirectly, and neither this Information Memorandum nor any advertisement or other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations. Persons acquiring any Subordinated Notes or into whose possession this Information Memorandum comes must inform themselves about, and observe, any such restrictions.

Each subscriber for Subordinated Notes will be required to agree not to offer any Subordinated Notes for purchase, or issue invitations to buy any Subordinated Notes, or sell or deliver any Subordinated Notes in any jurisdiction or distribute this Information Memorandum or any other offering materials in any jurisdiction, except in a manner and in such circumstance as will result in compliance with all applicable laws. In addition, each subscriber will be required to agree to observe the specific selling restrictions set out below.

6.1 Australia

No prospectus or other disclosure document (as defined in the Corporations Act) in relation to the Subordinated Notes has been or will be lodged with the ASIC. Each subscriber will be required to represent and agree, that it:

- (a) has not (directly or indirectly) made or invited, and will not make or invite, an offer of the Subordinated Notes for sale in Australia (including an offer or invitation which is received by a person in Australia); and
- (b) has not distributed or published, and will not distribute or publish, any Information Memorandum or any other offering material or advertisement relating to any Subordinated Notes in Australia,

unless:

- (c) the aggregate consideration payable by each offeree or invitee is at least \$500,000 (or its equivalent in an alternate currency, in either case, disregarding moneys lent by the offeror or its associates) or the offer or invitation does not otherwise require disclosure to investors under Parts 6D.2 or 7.9 of the Corporations Act;
- (d) the offer or invitation does not constitute an offer to a 'retail client' as defined for the purposes of section 761G of the Corporations Act;
- (e) such action complies with any other applicable laws, regulations or directives in Australia; and
- (f) such action does not require any document to be lodged with ASIC or any other regulatory authority in Australia.

6.2 Other

The Issuer is not offering and will not offer, and has not and will not take any action to permit an offering of, the Subordinated Notes for issue or sale in any jurisdiction outside Australia or to any U.S. person (as defined in Regulation S of the U.S. Securities Act of 1933 (the **Securities Act**), a **U.S. person**) or other person to whom the offer, issue or sale of the Subordinated Notes may be restricted by the laws of any jurisdictions outside Australia.

Each subscriber will be required to represent and agree that:

- (a) the subscriber is not, and is not acting for the account or benefit of, a U.S. person or other person to whom the offer, issue or sale of the Subordinated Notes may be restricted by the laws of any jurisdiction outside Australia; and
- (b) will not offer the Subordinated Notes for sale in any jurisdiction outside Australia or to any person except in circumstances that will result in compliance with all applicable laws and not require any action to be taken by the Issuer.

7 Australian Taxation Summary

The following is a summary of the Australian tax consequences of an investment in the Subordinated Notes, based on the *Income Tax Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth) (collectively, the **Tax Act**), and any relevant regulations, rulings or judicial interpretations and administrative policies and practices, as at the date of this Information Memorandum. It is general in nature and should be treated with appropriate caution.

This summary is not exhaustive and, in particular, it does not deal with the position of certain classes of investors in Subordinated Notes (including dealers in securities, custodians or other third parties who hold Subordinated Notes on behalf of any absolute beneficial holders of Subordinated Notes). It does not consider the possible tax implications for investors under the tax laws of jurisdictions other than Australia.

The summary is not intended to be, nor should it be construed to be, legal or tax advice to any particular investor. Purchasers of Subordinated Notes should consult their own tax advisers for specific advice regarding the consequences, in their particular circumstances, under Australian tax laws, and the laws of any other taxing jurisdiction, of the ownership of or any dealing in any Subordinated Notes. Any such dealing would need to comply with the selling restrictions and securities law generally.

7.1 Interest withholding tax

(a) Payments of Interest

A payment of interest in respect of a Subordinated Note to either a non-resident of Australia for Australian tax purposes that does not acquire their Subordinated Notes in the course of carrying on a business at or through a permanent establishment in Australia, or an Australian tax resident who acquires the Subordinated Notes in the course of carrying on business at or through a permanent establishment outside Australia (each an **Offshore Holder**), will be subject to Australian interest withholding tax (**IWT**) at the rate of 10% of the gross amount of the payment, unless an exemption applies, including the exemption in section 128F of the Tax Act or relief from Australian IWT that may be available under a tax treaty.

(b) Section 128F Exemption

An exemption from IWT is available in respect of interest paid on the Subordinated Notes if the requirements of section 128F of the Tax Act are satisfied.

The Issuer proposes to issue the Subordinated Notes in a manner which meets the requirements of the 'public offer test' in section 128F of the Tax Act.

In summary, the issue of the Subordinated Notes should satisfy the 'public offer test' if it results from them being offered for issue:

- (1) to 10 or more persons carrying on a business of providing finance, or investing or dealing in securities, in the course of operating in financial markets who are not "associates" (as defined in section 128F(9) of the Tax Act) of each other;
- (2) to 100 or more qualifying potential investors;
- (3) as a result of being accepted for listing on a stock exchange;
- (4) as a result of negotiations being initiated via electronic or other market sources used by financial markets for dealing in instruments similar to the Subordinated Notes; or
- (5) to a dealer, manager or underwriter who, under an agreement with the Issuer, offers the Subordinated Notes for sale within 30 days in one of the preceding methods.

The public offer test will not be satisfied if, at the time of issue, the Issuer knew or had reasonable grounds to suspect that the Subordinated Notes, or an interest in the Subordinated Notes, was being,

or would later be, acquired either directly or indirectly by an Offshore Associate of the Issuer other than one acting in the capacity of a dealer, manager or underwriter in relation to the placement of the Subordinated Notes or in the capacity of a clearing house, custodian, funds manager or responsible entity of a registered scheme within the meaning of the Corporations Act.

For these purposes, an Offshore Associate means an associate (as defined in section 128F(9) of the Tax Act) of the Issuer that is either a non-resident of Australia that does not acquire the Subordinated Notes in carrying on a business at or through a permanent establishment in Australia or, alternatively, a resident of Australia that acquires the Subordinated Notes in carrying on a business at or through a permanent establishment outside of Australia.

In addition to the prohibition against issuing the notes to certain Offshore Associates, the section 128F exemption will not be available in respect of interest paid to a person if, at the time when the amount is paid, the Issuer knows, or has reasonable grounds to suspect, that the person is an Offshore Associate other than an Offshore Associate that receives the payment in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme.

(c) Exemption Available Under Certain Double Tax Treaties

If the exemption in section 128F of the Tax Act does not apply, an Offshore Holder who is a non-resident of Australia may be eligible for relief from Australian IWT under a tax treaty between Australia and the Offshore Holder's country of residence depending on the nature of the Offshore Holder and the provisions of the relevant tax treaty (for instance if the Offshore Holder is a financial institution in the United Kingdom, US, France, Japan, New Zealand or certain other countries). Prospective purchasers of Subordinated Notes should consult their tax advisers regarding their entitlement to benefits under a tax treaty.

(d) Payment of Additional Amounts

If the Issuer is compelled by law to withhold or deduct an amount in respect of any Taxes (including Australian withholding taxes), then subject to certain exclusions set out in Condition 10.7, the Issuer must pay to the Holder such additional amount (**Additional Amount**) as may be necessary in order that the net amount received by the holder after such withholding or deduction equals the respective amount which would otherwise have been receivable in the absence of such withholding or deduction.

In such circumstances, and subject to Condition 6.2, the Issuer may have an option to redeem all of the Subordinated Notes.

7.2 Income tax matters

(a) Interest Income

Assuming that the requirements in section 128F of the Tax Act are satisfied in respect of a Subordinated Note (see Section 7.1 above), amounts of interest derived by a holder who is a non-resident of Australia and who does not hold the Subordinated Note in the course of carrying on business at or through a permanent establishment in Australia, will not be subject to Australian income tax.

An Australian resident, or a non-resident who holds a Subordinated Note in the course of carrying on business at or through a permanent establishment in Australia (each an Australian holder), will generally be assessable for Australian tax purposes on the interest income in respect of the Subordinated Note. Whether the assessable income will be recognised on a cash receipts or accruals basis will depend upon the tax status of the particular Australian holder, the Conditions and whether the rules on the 'Taxation of Financial Arrangements' in Division 230 of the Tax Act (TOFA rules – see below) apply to the Australian holder.

Special rules may apply to the taxation of an Australian resident holder who holds a Subordinated Note in the course of carrying on business at or through a permanent establishment outside Australia. The application of those special rules varies depending on the country in which that permanent

establishment is located. Prospective purchasers of Subordinated Notes with those circumstances should contact their tax advisers for specific advice relating to their particular circumstances.

(b) Profits or Gains on Disposal or Redemption of Subordinated Notes

A non-resident holder

Any profit or gain made on a disposal or a redemption of a Subordinated Note by a non-resident who does not hold the Subordinated Note in carrying on business at or through a permanent establishment in Australia will not be subject to Australian income tax, if such profit or gain does not have an Australian source and is not deemed to be income that consists of interest or that is in the nature of interest.

Whether a profit or gain on a disposal or redemption of a Subordinated Note has an Australian source is a question of fact that must be determined on the basis of the circumstances existing at the time of the disposal or redemption. In general, the profit or gain should not have an Australian source if the Subordinated Note is:

- (1) acquired and held by the non-resident holder outside Australia; and
- (2) held (at all times) in carrying on a business or activities conducted exclusively outside Australia; and
- (3) disposed of to another non-resident, either directly or through a non-resident agent, where all negotiations are conducted outside Australia and all transaction documents are concluded outside Australia.

However, this is not an exhaustive list of the factors that can determine source, nor would the absence of one of these elements, of itself, mean that there is an Australian source. The determination of source will depend on a weighing up of all the relevant circumstances.

If the profit or gain on the disposal or redemption of the Subordinated Note has an Australian source, the non-resident holder may be eligible for relief from Australian tax on such profit or gain, under a tax treaty between Australia and the non-resident holder's country of residence, provided the profit or gain is not deemed to be interest or in the nature of interest (in which case Australian IWT potentially applies – refer to the discussion in Section 7.1 above). Prospective purchasers of Subordinated Notes should consult their tax advisers regarding their entitlement to benefits under a tax treaty.

An Australian holder

Any gain or loss made by an Australian holder on the disposal or redemption of a Subordinated Note will generally be assessable or deductible (as the case may be) for Australian tax purposes. The precise rules which give effect to the recognition and timing of any such gain or loss will vary depending on the status of the Australian holder and whether the TOFA rules apply to the Australian holder (see below).

If a Subordinated Note is acquired by an Australian holder at a discount or premium to its face value, the discount or premium may be recognised as a gain or loss to the Australian holder for Australian tax purposes before the disposal or redemption of the Subordinated Note occurs. The timing and method by which the discount or premium is recognised as a gain or loss will vary depending on the tax status of the Australian holder and whether the TOFA rules apply (see below).

(c) Taxation of Financial Arrangements (TOFA) Rules

Division 230 of the Tax Act (the **TOFA rules**) contains a set of rules for the taxation of Subordinated Notes if a holder is subject to the TOFA rules.

Certain taxpayers are generally excluded from the TOFA rules, unless they elect otherwise. The excluded taxpayers include:

- (1) individuals;

- (2) superannuation funds and managed investment schemes with assets worth less than \$100 million;
- (3) certain financial entities with aggregated turnover of less than \$20 million; or
- (4) other entities that have: (i) aggregated turnover of less than \$100 million; and (ii) assets of less than \$300 million; and (iii) financial assets of less than \$100 million.

Broadly, the TOFA rules:

- (1) set out the methods under which gains and losses from financial arrangements, such as the Subordinated Notes, will be brought to account for Australian tax purposes;
- (2) recognise gains and losses from financial arrangements on a realisation basis only if the gains and losses are not sufficiently certain. Otherwise, gains and losses will be recognised for Australian tax purposes on a compounding accruals basis, unless one of the elective methods applies; and
- (3) effectively remove the capital/revenue distinction for most financial arrangements by treating gains and losses on revenue account, except where specific rules apply.

The TOFA rules do not alter the rules relating to the imposition of Australian IWT. In particular, they do not affect the IWT exemption available under section 128F of the Tax Act (discussed in Section 7.1 above).

(d) Conversion of Subordinated Notes

A non-resident holder

A non-resident who does not hold their Subordinated Notes in carrying on business at or through a permanent establishment in Australia will generally not make a taxable gain or loss if their Subordinated Notes are Converted into Ordinary Shares. This is because either the gain or loss is not subject to Australian tax or, if it is, any gain or loss should be disregarded under:

- (1) section 26BB and section 70B of the Tax Act that deals with the taxation of “traditional securities” (which should include Subordinated Notes); and
- (2) section 130-60 of the Tax Act that provides a type of roll-over from Australian capital gains tax (CGT).

An Australian holder

For an Australian holder that is not subject to the TOFA rules (refer above), any gain or loss arising on Conversion of their Subordinated Notes should generally be disregarded for the purposes of section 26BB and section 70B as well as the CGT rules, as described above.

The default position for a holder subject to the TOFA rules is that the Conversion of their Subordinated Notes should not give rise to a balancing adjustment event. The consequence of this is that no gain or loss should arise for income tax purposes on Conversion. However, holders who are subject to the TOFA rules should take their own independent tax advice as the actual treatment for any individual holder will depend on their own particular circumstances (including, what elections (if any) they have made under the TOFA rules).

(e) Taxation Treatment of Ordinary Shares

Australian CGT rules

Ordinary Shares acquired by a holder as a consequence of Conversion should be treated as having a cost base and a reduced cost base for CGT purposes equal to the cost base of the holder's Subordinated Notes at the time of Conversion. For CGT purposes, the acquisition date of Ordinary Shares should be the time of Conversion. This would be relevant in the case of any subsequent disposal of Ordinary Shares.

Any capital gain or capital loss made by a non-resident holder from a disposal of their Ordinary Shares is likely to be disregarded on the basis that Ordinary Shares are not likely to be “taxable Australian property” at the time of the disposal.

Non-resident holders should seek their own taxation advice in relation to the operation of the Australian CGT rules in the event their Subordinated Notes are Converted into Ordinary Shares.

Additional considerations apply where the Ordinary Shares are held as trading stock or revenue assets for Australian income tax purposes, and holders should seek their own taxation advice referable to their particular circumstances.

Dividend withholding tax

Australian dividend withholding tax (**DWT**) potentially applies to dividends paid in respect of Ordinary Shares by the Issuer to either:

- (1) a non-resident holder that does not acquire and hold their Ordinary Shares in the course of carrying on a business at or through a permanent establishment in Australia, or
- (2) an Australian resident who acquires and holds their Ordinary Shares in the course of carrying on business at or through a permanent establishment outside Australia.

Australian DWT is imposed at a general rate of 30%. However, it may be that no DWT applies or that this rate is reduced in various circumstances, including under:

- (3) Australia’s domestic law (for example, because the applicable dividend is partially or fully “franked”), or is conduit foreign income; and
- (4) a tax treaty between Australia and a holder’s country of residence.

A holder should consider the application of DWT in the event their Subordinated Notes are Converted into Ordinary Shares. The Issuer does not “gross up” dividend payments on Ordinary Shares on account of the imposition of DWT.

Holders subject to the TOFA rules

The TOFA rules should generally not apply to Ordinary Shares, unless a holder that is subject to the TOFA rules has made one or more of the specific TOFA elections.

7.3 Other Australian tax matters

(a) Stamp Duty

No ad valorem stamp duty is payable in any Australian State or Territory on the issue or transfer of the Subordinated Notes.

(b) Goods and Services Tax

Neither the issue, acquisition or disposal of Subordinated Notes, nor the receipt or payment of interest or principal, will give rise to a liability for goods and services tax (**GST**) in Australia, on the basis that the supply of Subordinated Notes will comprise either an input taxed financial supply or (in the case of an offshore purchaser) a GST-free supply.

(c) ABN/TFN Withholding

Section 12-140 of Schedule 1 to the *Taxation Administration Act 1953* (**Taxation Administration Act**) imposes a type of withholding tax at the rate of 49% (currently) on the payment of interest on certain registered securities issued by an Australian issuer, unless the payee has quoted an Australian tax file number (**TFN**) (in certain circumstances), an Australian Business Number (**ABN**) or proof of some other exception (as appropriate).

Assuming that the requirements of section 128F of the Tax Act are satisfied in respect of a Subordinated Note, then the withholding requirements of section 12-140 of Schedule 1 to the Taxation Administration Act should not apply to payments made to a holder who is a non-resident

and who does not hold the Subordinated Note in carrying on business at or through a permanent establishment in Australia. Payments to other classes of holders may be subject to withholding where the holder does not quote a TFN or ABN or provide proof of an appropriate exemption (as applicable).

(d) **Death Duties**

No Subordinated Notes will be subject to death, estate or succession duties imposed by Australia, or by any political subdivision or authority therein having power to tax, if held at the time of death.

(e) **Supply Withholding Tax**

Payments in respect of the Subordinated Notes can be made free and clear of any “supply withholding tax” imposed under section 12-190 of Schedule 1 to the Taxation Administration Act.

This is on the basis that the payments are either for supplies that are input taxed (where the Subordinated Notes were issued to Australian resident holders or non-resident holders who carry on an enterprise in Australia) or are for supplies made by non-resident holders that do not carry on an enterprise in Australia.

(f) **Direction by the Commissioner**

The Commissioner may give a direction under section 255 of the Tax Act or section 260-5 of Schedule 1 to the Taxation Administration Act or any similar provision requiring the relevant Issuer to deduct from any payment to any other party (including a holder of Subordinated Notes) any amount in respect of tax payable by that other party.

However, the Commissioner does not habitually exercise this power and should only be expected to do so in certain limited circumstances, including where that other party has an outstanding liability related to its taxation affairs.

(g) **Automatic exchange of information**

The Issuer has certain reporting and due diligence obligations under:

- (1) the Intergovernmental Agreement entered into on 28 April 2014 between the Australian and United States Governments in relation to FATCA; and
- (2) the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information entered into on 3 June 2015.

Further information regarding these obligations is set out in Section 2 of this Information Memorandum.

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