



# NZX Regulation Decision

ASB Bank Limited (“ABB”)

Application for a waiver from NZX Debt Market Listing  
Rules 5.2.3 and 6.3.2

17 February 2017

**Background**



1. The information on which these decisions are based is set out in Appendix One to this decision. These decisions will not apply if that information is not, or ceases to be, full and accurate in all material respects.
2. The Rules to which these decisions relate are set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.

## Waiver from NZX Debt Market Listing Rule 5.2.3

### Decision

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by ABB is complete and accurate in all material respects, NZXR grants ABB a waiver from Rule 5.2.3, as modified by the Ruling, in respect of the ABB060s for a period of six months from the Quotation Date, to the extent that this Rule requires the ABB060s be held by at least 100 Members of the Public holding at least 25% of the ABB060s on issue.
5. The waiver in paragraph 4, above, is provided on the conditions that:
  - a. ABB clearly and prominently discloses the waiver and its implications in the Terms Sheet for the ABB060s and any other Offering Document relating to an offer of ABB060s made during the period of this waiver;
  - b. ABB clearly and prominently discloses this waiver, its conditions, and its implications in its half-year report, and its annual report, for the period the waiver is relied upon;
  - c. ABB discloses liquidity as a risk in the Terms Sheet for the ABB060s; and
  - d. ABB notifies NZXR as soon as practicable if there is a material reduction to the total number of Members of the Public holding at least a Minimum Holding of the ABB060s, and/or the percentage of ABB060s held by Members of the Public holding at least a Minimum Holding.

### Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
  - a. Debt Securities are generally not subject to the same degree of trading activity as Equity Securities. NZX is satisfied that sufficient liquidity can exist in a secondary market for debt securities with a smaller number of security holders;
  - b. ABB has advised that it expects the spread of the ABB060s will increase to meet the spread requirements of Rule 5.2.3 over time. ABB may meet the spread requirements at the time of Quotation. The ABB060s are being offered through the Lead Manager, primary market participants and other financial intermediaries without a public pool, but ABB expects that the ABB060s will be quickly sold down by institutional investors after initial quotation. This expectation is based on ABB's experience with the ABB030s. ABB has advised that it is not in a position to confirm as at the date of this waiver that the spread requirements will be met at the time of Quotation;
  - c. ABB has appointed Commonwealth Bank of Australia as lead manager who will assist with the wide distribution of the ABB060s in the primary and secondary markets;

- d. the conditions, contained in paragraph 5a., 5b. and 5c. above, require ABB to provide access to information about this waiver and its implications to prospective investors as part of the Offer, as well as those wishing to trade in the ABB060s for the period of this waiver. Investors can take this information into account when making their investment decision;
- e. the condition contained in paragraph 5d. above requires ABB to provide information that will allow NZXR to monitor any material reduction in the spread of the ABB060s over the period of this waiver;
- f. the waiver is granted for six months. This gives NZXR the opportunity to reconsider the spread of the ABB060s in six months' time if ABB considers a waiver is still required; and
- g. there is precedent for this decision.

## **Waiver from NZX Debt Market Listing Rule 6.3.2 – International Post**

### **Decision**

- 7. On the basis that the information provided by ABB is complete and accurate in all material respects, NZXR grants ABB a waiver from Rule 6.3.2, so that notices sent to holders of ABB Notes with an address outside of New Zealand, by international post, are deemed to be received on the fourteenth day after the date of posting.

### **Reasons**

- 8. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:
  - a. Rule 6.3.2 provides that notices posted to overseas addresses are deemed to have been received by the ABB Note holder 24 hours after the time of posting. This timeframe provides certainty for Issuers as to when delivery can be deemed to have occurred;
  - b. holders of Securities will not be disadvantaged by the waiver as delivery is deemed to have occurred after a longer time-period than the one provided in Rule 6.3.2; and
  - c. the Deed Poll provides that receipt is deemed to have occurred on the fourteenth day after the notice is posted as prepaid airmail. The waiver aligns the time period for when a holder of a Quoted Security is deemed to have received notice under Rule 6.3.2, with the Deed Poll.

## **Waiver from NZX Debt Market Listing Rule 6.3.2 – Electronic Mail**

### **Decision**

- 9. NZXR declines to grant ABB a waiver from Rule 6.3.2, to the extent that this Rule requires that electronic mail shall be deemed to have been received on the day that the notice is delivered.



## Reasons

10. In coming to the decision to provide the waiver set out in paragraph 9 above, NZXR has considered that:
  - a. Rule 6.3.2 provides that notices sent electronically to the electronic addresses were deemed to have been received by the Quoted Security holder twenty four hours after the time of posting. This timeframe provides certainty for Issuers and security holders as to when delivery can be deemed to have occurred; and
  - b. holders of Securities may be disadvantaged by the granting of this waiver as, should transmission of the electronic mail be instantaneous, delivery is deemed to have occurred in a shorter time-period than the one provided in Rule 6.3.2.

## Confidentiality

11. ABB has requested that this application and any decision be kept confidential until such time as the Offer of Notes is announced to the market.
12. In accordance with Footnote 1 to Rule 1.11.2 NZXR grants ABB's request.



## Appendix One

1. ASB Bank Limited (**ABB**) is a Listed Issuer with bonds Quoted on the NZX Debt Market (**Debt Market**).
2. ABB issued \$650 million unsecured, unsubordinated, medium term, fixed rate notes on 26 November 2015 and 26 May 2016 which were Quoted on the Debt Market on or about 31 August 2016 and will mature on 26 May 2021 (**ABB040s**).
3. ABB intends to make an offer of unsecured, unsubordinated, medium term, fixed rate notes (**ABB060s**) under the exclusion set out in Schedule 1, Clause 19 of the Financial Markets Conduct (**PMC**) Act 2013 (**Offer**).
4. The Offer will open on or about 20 February 2017 and close on or about 22 February 2017. The lead manager of the Offer will conduct a bookbuild on or about 22 February 2017 in order to determine the ABB060s' margin (**Bookbuild**), which will be used to determine the ABB060s' interest rate. ABB intends to Quote the ABB060s on the Debt Market on or about 27 February 2017 (**Quotation Date**).
5. The ABB060s mature on or about 24 February 2022.
6. ABB will release a terms sheet on or prior to the date the Offer opens, setting out the main terms of the ABB060s (**Terms Sheet**).
7. In accordance with NZX Regulation's (**NZXR**) Ruling on NZDX Listing Rule (**Rule**) 5.2.3 issued on 29 September 2015 (**the Ruling**), the ABB060s are required to be held by at least 100 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained.
8. ABB has engaged with a lead manager in respect of the anticipated bonds. The lead manager is unable to give assurances in respect of the spread of the ABB060s.
9. The Offer is structured so that all of the ABB060s are reserved for clients of the lead manager of the Offer, primary market participants and other approved financial intermediaries. There is no public pool for the Offer. ABB has sought a waiver from Rule 5.2.3 that it is uncertain whether the ABB060s will satisfy the spread requirements of Rule 5.2.3, when the ABB060s are initially Quoted on the Debt Market.
10. The full terms and conditions of the ABB Notes are contained in the deed poll dated 18 October 2007 as amended and restated on 30 August 2016 (**Deed Poll**).
11. The Deed Poll provides that notices sent by international post, which have been given to holders of ABB Notes who have supplied ABB with an address that is outside of New Zealand, are deemed to be received on the fourteenth day after having been posted as prepaid airmail.



## Appendix Two

### Rule 5.2 Quotation of Securities

- 5.2.3 A Class of Securities will generally not be considered for Quotation on the NZSX or NZDX unless those Securities are held by at least 500 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained, or NZX is otherwise satisfied that the Issuer will maintain a spread of Security holders which is sufficient to ensure that there is a sufficiently liquid market in the Class of Securities.

#### Ruling on NZX Debt Market Listing Rule 5.2.3 – 29 September 2015

For the purposes of Rule 5.2.3, a Class of Debt Securities will generally not be considered for Quotation on the NZDX unless those Securities are held by at least 100 Members of the Public holding at least 25% of the number of Securities of that Class issued, with each Member of the Public holding at least a Minimum Holding, and those requirements are maintained.

### Rule 6.3 Other Notices

- 6.3.2 If a holder of a Quoted Security has no registered address within New Zealand and has not supplied to the Issuer an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices for that Quoted Security holder shall be posted to such physical address or sent electronically to such electronic address, and shall be deemed to have been received by that Quoted Security holder 24 hours after the time of posting.

