



NZX Regulation Decision

ASB Bank Limited (**ABB**)

Application for a waiver from NZX Listing Rule 3.14.1(b)

1 July 2019



Waiver from NZX Listing Rule 3.14.1(b)

Decision

1. Subject to the conditions in paragraph 2 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 3.14.1(b) to the extent that if an exchange of ABB Tier 2 Notes occurs on account of a non-viability event ABB is not required to give notice in accordance with Rule 3.14.1(b) in relation to the exchange at least 5 Business Days before exchange occurs.
2. The waiver contained in paragraph 1 is granted on the following conditions:
 - a. the notice required by Rule 3.14.1(b) must be given as soon as practicable and in any event before the Debt Market opens for trading on the Business Day after the exchange occurs;
 - b. ABB clearly and prominently discloses in the Offer Document for any Offer of Future Notes the information required by Rule 3.14.1(b) which is known at the date of the Offer; and
 - c. ABB clearly and prominently discloses in the Offer Document for any Future Notes this waiver, its conditions and its implications.
3. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
4. The Rules to which this decision relates are set out in Appendix Two to this decision.
5. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

6. In coming to the decision to grant the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. ABB has submitted, and NZXR has no reason not to accept, that if exchange is required on account of a non-viability event, it will be unable to provide 5 Business Days' notice as required by Rule 3.14.1(b) as the RBNZ and APRA standards require exchange to occur immediately;
 - b. ABB will be required, as a condition of this waiver, to disclose in the Offer Document for any Offer of Future Notes the implications of this waiver. NZXR is satisfied that this will inform the holders of Future Notes that on the occurrence of a non-viability event, the market will not be given advance notice;
 - c. the condition in paragraph 2(b) will ensure that holders of Future Notes will have notice of all information about the exchange that is known at the date of the Offer and the condition in paragraph 2(a) will ensure that all other information that is required to be disclosed under Rule 3.14.1(b) is disclosed as soon as practicable;



- d. ABB summarises features of ABB Tier 2 Notes in half and full year disclosure statements which provides any potential on-market buyers of ABB Tier 2 Notes with notice of the exchange feature; and
- e. if a non-viability event occurs, ABB will be required, by virtue of the terms of the Deed Poll, to give notice as soon as practicable that exchange has occurred to NZX and holders of the ABB Tier 2 Notes.



Appendix One

1. ASB Bank Limited (**ABB**) is a Listed Issuer with Securities Quoted on the on the NZX Debt Market (**Debt Market**). These include the ABB030s, which mature on 15 June 2024, and the ABB050s, which mature on 15 December 2026 (the **Quoted ABB Notes**).
2. The Quoted ABB Notes are classified as debt in the financial statements of ABB, and are treated as Tier 2 capital for both ABB under the Reserve Bank of New Zealand's (**RBNZ**) standards and Commonwealth Bank of Australia (**CBA**) group (on a level 2 basis) under Australian Prudential Regulation Authority's (**APRA**) standards.
3. ABB may from time to time make further offers (**Offer**) of Notes that will similarly be classified as debt in the financial statements of ABB, and may be treated as Tier 2 capital for both ABB under the RBNZ standards and CBA group (on a level 2 basis) under APRA standards (**Future Notes**).
4. To qualify as a Tier 2 capital, an instrument must fulfil certain criteria, including to provide an unrestricted commitment of funds and be available to absorb losses in a winding up. The terms of Quoted ABB Notes and any Future Notes (together, **ABB Tier 2 Notes**) must meet this criteria, in particular:
 - a. **Subordination:** The ABB Tier 2 Notes are subordinated in right of repayment to depositors and general creditors of ABB;
 - b. **Term:** The ABB Tier 2 Notes have a fixed term of approximately 10 years. ABB may also redeem the ABB Tier 2 Notes on the Call Option Date (approximately 5 years after issuance) or on any Interest Payment Date after the Call Option Date, or if a specified tax or regulatory event occurs. Redemption prior to maturity is subject to certain conditions being satisfied, including obtaining the consent of the RBNZ and APRA;
 - c. **Interest Payments:** Interest is scheduled to be paid quarterly in arrear on each Interest Payment Date (subject to the condition that ABB remains solvent and the ABB group is solvent after payment); and
 - d. **Loss absorption:** The ABB Tier 2 Notes are required to be exchanged for ordinary shares in CBA if a non-viability event occurs in respect of either ABB or CBA. The point of non-viability is determined by either the RBNZ or a statutory manager (in the case of ABB) or APRA (in the case of CBA). Loss absorption occurs as follows:
 - i. if ABB is required to exchange ABB Tier 2 Notes because a non-viability event has occurred:
 - a. each ABB Tier 2 Note that is exchanged will be transferred by the relevant holder to ASB Holdings Limited (ABB's immediate holding company); and
 - b. CBA will issue the relevant holder a number of ordinary shares in CBA, determined in accordance with a formula set out in the terms set out in the Deed Poll; and
 - ii. as a consequence of exchange, the holders of ABB Tier 2 Notes will cease to hold ABB Tier 2 Notes, and instead they will hold ordinary shares in CBA. If for any reason the ABB Tier 2 Notes are not able to be exchanged for ordinary shares in CBA when required, the ABB Tier 2 Notes will be written off.

5. As a registered bank, ABB is subject to the prudential supervision of the RBNZ.
6. ABB releases half and full year disclosure statements to market which include a summary of the ABB Tier 2 Notes, including that they may be exchanged in certain scenarios.
7. NZX has updated the NZX Listing Rules, effective from 1 January 2019 (**Rules**). This waiver decision re-documents prior waiver decisions granted by NZX Regulation (**NZXR**) dated 10 March 2014 and 29 September 2016 to reflect the updated Rule references.



Appendix Two

Rule 3.14 Distributions, conversion and calls

Rule 3.14.1 An Issuer must release through MAP, at least 5 Business Days before the Record Date, the details of a proposal to:

- (a) pay or distribute a benefit on Quoted Financial Products,
 - (b) proceed with a Conversion on Quoted Financial Products, or a Conversion of any Financial Products into Quoted Financial Products, or
 - (c) make a call on a Quoted Financial Product,
- in the form prescribed by NZX from time to time

