



# NZX Regulation Decision

Westpac Banking Corporation (“WBC”)

Application for waivers from NZX Listing Rules 3.14.1, 3.5, 3.6 and 3.7

30 April 2020



## Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2020 (**Rules**). This waiver decision re-documents a prior waiver decision granted by NZX Regulation (**NZXR**) dated 22 July 2016 (the **Original Waiver**).

## Waiver from Rule 3.14.1 in the Event of Conversion due to Non-Viability Trigger Event

### Decision

2. Subject to the conditions in paragraph 3 below, and on the basis that the information provided by WBC is complete and accurate in all material respects, NZXR grants WBC a waiver from Rule 3.14.1 so that, if Conversion of the WBC010s occurs on account of a non-viability trigger event, WBC is not required to give notice for the purposes of Rule 3.14.1 in relation to the Conversion, at least five Business Days before the Conversion occurs.
3. The waiver contained in paragraph 2 is granted on the following conditions:
  - a. the notice required by Rule 3.14.1 must be given as soon as practicable and in any event before the NZDX opens for trading on the Business Day after Conversion occurs;
  - b. the information required by the Original Waiver which was known at the date of the Product Disclosure Statement (**PDS**), was disclosed in the PDS; and
  - c. this waiver decision is published on the Disclose Register of the New Zealand Companies Office in respect of the issue of the Notes.
4. 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.
5. The Rule to which this decision relates is set out in Appendix Two to this decision.
6. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

### Reasons

7. In coming to the decision to provide the waiver set out in paragraph 2 above, NZXR has considered that:
  - a. WBC has submitted, and NZXR has no reason not to accept, that if Conversion is required on account of a non-viability trigger event, it will be unable to provide five Business Days' notice as required by Rule 3.14.1, given that APRA standards require Conversion to occur immediately;
  - b. WBC originally disclosed the implications of the Original Waiver in the PDS for the Notes. NZXR was and remains satisfied that this informed the original Noteholders that on the occurrence of a non-viability trigger event, the market will not be given advanced notice;
  - c. This waiver will be published on the Disclose Register to ensure that if potential secondary market investors in the Notes looked at the Disclose Register as part of any background due diligence, they would have notice of this decision;



- d. The condition in paragraph 3(a) will ensure that all information that is required to be disclosed under Rule 3.14.1 is disclosed as soon as practicable; and
- e. if a non-viability trigger event occurs, the terms of the Deed Poll require WBC to give notice to Noteholders as soon as practicable, that Conversion has occurred.

## Waivers from Rules 3.5, 3.6 and 3.7

### Decision

- 8. Subject to the conditions in paragraph 9 below, and on the basis that the information provided by WBC is complete and accurate in all material respects, NZXR grants WBC waivers from Rules 3.5, 3.6 and 3.7 in respect of the WBC010s.
- 9. The waivers contained in paragraph 8 are granted on the following conditions:
  - a. WBC shall release any preliminary announcements that it prepares in accordance with ASX Rule 4.3A, through NZX, at the same time that they are released through ASX;
  - b. WBC shall:
    - i. comply with all of the ASX Rules regarding its half-year and annual reports; and
    - ii. release its half-year and annual reports through NZX at the same time that they are released through ASX;
  - c. WBC prepares all of its financial statements in accordance with the Corporations Act and the ASX Rules;
  - d. this waiver decision is published on the Disclose Register of the New Zealand Companies Office in respect of the issue of the Notes.
- 10. The information on which this decision is based is set out in Appendix One to this decision. These waivers will not apply if that information is not or ceases to be full and accurate in all material respects.
- 11. The Rules to which this decision relates are set out in Appendix Two to this decision.
- 12. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

### Reasons

- 13. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
  - a. NZXR has no reason not to believe that WBC currently complies with all relevant requirements under ASX Rules and Corporations Act in the preparation of its preliminary announcements, annual and half-year reports and financial statements;
  - b. as WBC is incorporated in Australia and subject to the Corporations Act, WBC has submitted, and NZXR has no reason not to accept, that it is more appropriate for WBC to exclusively comply with the requirements of the Corporations Act and the ASX Rules;
  - c. WBC has submitted, and NZXR has no reason not to accept, that the disclosure requirements for preliminary announcements, half-year and annual reports under the



Corporations Act and the ASX Rules are similar to the disclosure requirements under Rules 3.5, 3.6 and 3.7. From this, NZXR has no reason not to accept WBC's submission that it sees no reason why Noteholders would be materially prejudiced by WBC preparing preliminary announcements, half-year and annual reports in accordance with the Corporations Act and the ASX Rules exclusively;

- d. current WBC010s investors are aware of WBC's reporting obligations. This decision confirms that the WBC reporting obligations in relation to the WBC010s remain the same as they have been from Quotation;
- e. while the Rules contain certain disclosure exemptions for Registered Banks, only the New Zealand branch of WBC is regulated by RBNZ and prepares disclosure statements. As the obligations under the Notes are those of WBC as a whole, this waiver provides certainty on an on-going basis as to the disclosure obligations of WBC;
- f. WBC is still subject to its continuous disclosure obligations under Rule 3.1, which requires WBC to disclose any Material Information; and
- g. there is precedent for this decision.



## Appendix One

1. Westpac Banking Corporation (**WBC**) is a NZX Foreign Exempt Issuer that has Equity Securities Quoted on the NZX Main Board. The Australian Securities Exchange (**ASX**) is WBC's Home Exchange.
2. WBC is incorporated in Australia and it is subject to the Corporations Act 2001 (**Corporations Act**).
3. WBC is a registered bank in New Zealand for the purposes of the Reserve Bank of New Zealand Act 1989. As a registered bank, WBC's New Zealand business is subject to the prudential supervision of the Reserve Bank of New Zealand (**RBNZ**). WBC, as an authorised deposit taking institution in Australia is subject to prudential supervision by the Australian Prudential Regulation Authority (**APRA**).
4. In 2016, WBC issued NZ\$400 million of fully paid, redeemable, subordinated, unsecured, fixed rate Notes (**WBC010s**). The WBC010s were quoted on the NZX Debt Market (**NZDX**) on 2 September 2016. The WBC010s have a term of ten years, with the terms and conditions of the WBC010s contained in a deed poll in respect of the WBC010s (**Deed Poll**). The WBC010s are not quoted on any other exchange.
5. The WBC010s are classified as Tier 2 capital for WBC, under the APRA standards.
6. WBC may elect to redeem all or some of the WBC010s on each interest payment date, after five years or thereafter from the WBC010s' allotment date (**First Optional Redemption Date**), or if a specified tax or regulatory event occurs. Early redemption is subject to certain conditions being satisfied, including WBC obtaining APRA's prior written approval (which approval may not be given).
7. WBC must redeem all of the WBC010s that have not previously been redeemed, converted, or written off, ten years after WBC010s' allotment date (**Maturity Date**).
8. To qualify as Tier 2 capital, an instrument must fulfil certain criteria, including providing a permanent and unrestricted commitment of funds, and being freely available to absorb losses, if the bank is in financial stress. The terms of the WBC010s must meet these criteria, in particular:
  - a. **Subordination:** WBC010s are subordinated in right of repayment to all depositors and unsubordinated creditors of WBC.
  - b. **Term:** WBC010s have a term of ten years, subject to WBC's right to redeem the WBC010s on the First Optional Redemption Date, or if a specified tax or regulatory event occurs. Early redemption prior to the Maturity Date is subject to certain conditions being satisfied, including WBC obtaining the prior written approval of APRA (which may not be given).
  - c. **Interest Payments:** Interest payments are scheduled to be paid quarterly in arrear, but are subject to the condition that WBC is solvent at the time that the interest payment is due and WBC will remain solvent immediately after the payment is made.
  - d. **Loss absorption:** all or some of the WBC010s may be required to be converted into ordinary shares in WBC if a non-viability trigger event occurs in respect of WBC. The point of non-viability is determined by APRA. Loss absorption occurs as follows:
    - i. if WBC is required to convert the WBC010s because a non-viability trigger event has occurred:



1. WBC will issue in Australian dollars, WBC ordinary shares for each WBC010 held subject to the Maximum Conversion Number (as defined in the Deed Poll); and
  2. the number of ordinary shares is determined in accordance with a formula set out in the Deed Poll,  
  
(together, the **Conversion**); and
- ii. As a consequence of Conversion, holders will be issued with WBC ordinary shares and will cease to have any rights under the WBC010s. If for any reason the WBC010s that are to be Converted are not able to be Converted when required following a non-viability trigger event, those WBC010s will be written off.



## 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 of 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.

### **Rule 3.5 Results Announcement**

Rule 3.5.1 Subject to Rule 3.5.3, each Issuer of Quoted Equity Securities or Quoted Debt Securities must release a Results Announcement through MAP no later than 60 days after the end of each financial year or half year.

Rule 3.5.2 A Results Announcement for a full financial year may be made before, or together with, the release of an annual report.

Rule 3.5.3 If an Issuer is required to consolidate the financial results of another Listed Issuer, it may make its Results Announcement up to 5 Business Days after the earlier of the release of other Listed Issuer's Results Announcement and the timeframe required by Rule 3.5.1.

### **Rule 3.6 Preparation and delivery of Annual Reports**

Rule 3.6.1 Each Issuer of Quoted Equity Securities or Quoted Debt Securities must within three months after the end of each financial year:

- (a) prepare an annual report, which must contain all information required by all applicable laws and these Rules, and
- (b) deliver, subject to Rule 3.6.2, the annual report to:
  - (i) NZX by release through MAP (including by URL link to the annual report on an Issuer's website) before or at the same time as it is made available to Quoted Financial Product holders, and
  - (ii) Each Quoted Financial Product holder in accordance with Rule 3.6.3.

Rule 3.6.2 An Issuer that comes within the State-Owned Enterprises Act 1986 is not required to issue an annual report to its Quoted Financial Product holders or NZX until that report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by the Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or

published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.

**Rule 3.6.3** Annual reports must be made available to Quoted Financial Product holders by:

- (a) Sending to Quoted Financial Product holders:
  - (i) a hard copy of the annual report, or
  - (ii) a notice under 209(3) of the Companies Act 1993, or
- (b) complying with regulations 61B to 61F of the FMC Regulations.

For the purposes of this Rule 3.6.3, sections 209 to 209C of the Companies Act 1993 and regulations 61B to 61F of the FMC Regulations will be deemed to be modified so that:

- (c) “shareholders” are members of the relevant Class of Quoted Financial Product holders of that Issuer,
- (d) “company” includes all Issuer, whatever their structure,
- (e) “board of a company” includes the Manager of a Managed Investment Scheme,
- (f) “annual report” means an annual report as required by Rule 3.6.1,
- (g) references to “working days after it is prepared” and “working days after the annual report for the period is prepared” are, for an Issuer that is a State Enterprise complying with regulations 61B to 61F of the FMC Regulations, interpreted as “working days after the annual report has been provided to the Minister responsible for the State Enterprise in accordance with the requirements of the State-Owned Enterprises Act 1986 and laid by that Minister responsible for that State Enterprise before the House of Representatives in accordance with the State Owned Enterprises Act 1986 or published in the Gazette under section 17(2A) of the State-Owned Enterprises Act 1986, whichever is the earlier.”

**Rule 3.7 Contents of Annual Report**

**Rule 3.7.1** The annual report of an Issuer of Quoted Equity Securities or Quoted Debt Securities must contain:

- (a) the information required to be published by subpart 5 of Part 5 of the FMC Act and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act,





- (b) audited financial statements and the associated audit report in accordance with the requirements of Part 7 of the FMC Act (unless the Issuer is exempt from Part 7 of that Act) or other applicable law,
- (c) the names and holdings of the registered holders having the 20 largest holdings of Quoted Financial Products at a date not earlier than two months before publication of the annual report, provided that, where known to the issuer, Quoted Financial Products held through New Zealand Central Securities Depository Limited must be treated as being held by the persons on whose behalf New Zealand Central Securities Depository Limited is holding those Quoted Financial Products (and, for the avoidance of doubt, New Zealand Central Securities Depository Limited will not be treated as a registered holder) for the purposes of determining the 20 largest holdings,
- (d) details of the Quoted Financial Products, and Financial Products that may Convert to Quoted Financial Products, in which each Director has a Relevant Interest at the balance date of the financial year in respect of which the annual report is prepared,
- (e) details of the spread of Quoted Financial Product holders as a date not earlier than two months before the publication of the annual report,
- (f) the current credit rating status (if any) of the Issuer,
- (g) a summary of all waivers:
  - (i) granted and published by NZX following an application by the Issuer, or
  - (ii) relied upon by the Issuer (regardless of when such waiver was granted or published),

in the 12 month period preceding the Issuer's balance date (or reference to where this information can be found on the Issuer's website, where it must remain available until publication of the next annual report),
- (h) details of any public exercise of NZX's powers set out in Rule 9.9.3, and
- (i) for an Issuer of Quoted Equity Securities, the additional information set out in Rule 3.8.1.

Rule 3.7.2 Any Issuer which extends its annual balance date must:

- (a) prepare a report containing such information, to be released through MAP at such time as NZX requires, and



- (b) comply with Rule 3.21.2.

