



NZX Regulation Decision

Westpac Banking Corporation ("WBC")

Application for waivers and rulings from NZX Debt Market Listing Rules 1.14.1, 1.14.2, 3.2.1(a), 5.1.7, 5.1.8, 7.12.2, 10.3, 10.4 and 10.5

22 July 2016



Waiver from Rule 3.2.1(a)

Decision

1. On the basis that the information provided by Westpac Banking Corporation (**WBC**) is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants WBC a waiver from NZX Debt Market Listing Rule (**Rules**) 3.2.1(a) so that the Deed Poll is not required to provide that the appointment of a new trustee is to be approved by an extraordinary resolution of holders of the WBC010s (**Noteholders**).
2. 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.
3. The Rule to which this decision relates is set out in Appendix Two to this decision.
4. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. registered banks are exempt from the requirement to have a trustee under the Financial Markets Conduct Act 2013 in recognition of their alternative regulatory supervision structure;
 - b. given that the general law recognises alternative regulatory structures for registered banks (including prudential supervision by the RBNZ and APRA) NZXR accepts that it is appropriate to grant a waiver from the requirements in Rule 3.2.1(a), which would otherwise add an extra layer of supervision that was not envisioned by the general law; and
 - c. NZXR has granted similar waivers in respect of debt issues by other registered banks.

Waiver from Rule 7.12.2 in respect of Routine Payments of Interest

Decision

6. Subject to the conditions in paragraph 7 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 7.12.2 in respect of routine payments of interest on the WBC010s.
7. The waiver contained in paragraph 6 is granted on the following conditions:
 - a. the timing of, and record date for, the routine payments of interest are disclosed in the product disclosure statement for the Offer of the WBC010s (**PDS**);
 - b. the process for determining the interest rate and the date on which the interest rate will be announced via NZX, are disclosed in the PDS;



- c. the interest rate that will apply until the First Optional Redemption Date will be announced via NZX on or before the date the WBC010s are issued;
 - d. the interest rate that will apply from the First Optional Redemption Date will be announced via NZX immediately after the First Optional Redemption Date;
 - e. the waiver, its conditions and its implications are disclosed in the PDS; and
 - f. this waiver is published on the Disclose Register in respect of the Offer.
- 8. The information on which this decision is based is set out in Appendix One to this decision.
 - 9. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
 - 10. The Rule to which this decision relates is set out in Appendix Two to this decision.
 - 11. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

- 12. In coming to the decision to provide the waiver set out in paragraph 6 above, NZXR has considered that:
 - a. due to the possibility of the WBC010s being Converted into ordinary shares in WBC under certain situations, the WBC010s constitute Convertible Debt Securities and the exception in Rule 7.12.4 does not apply;
 - b. although the WBC010s are technically Convertible Debt Securities, they will have features typical of subordinated Debt Securities while they are Quoted on the NZDX;
 - c. the interest payments to be made on the WBC010s are routine payments (subject to WBC's satisfaction of a solvency condition). The conditions set out in paragraph 7 will ensure that Noteholders have certainty as to the amounts and timing of interest payments; and
 - d. WBC will be subject to Rule 7.12.6 and will be required to notify NZX immediately, in the event that interest is not paid on the due date, due to WBC not meeting the solvency condition.

Waiver from Rule 7.12.2 in the Event of Conversion due to Non-Viability Trigger Event

Decision

- 13. Subject to the conditions in paragraph 14 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 7.12.2 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 7.12.2 in relation to the Conversion, at least ten Business Days before the Conversion occurs.
- 14. The waiver contained in paragraph 13 is granted on the following conditions:



- a. the notice required by Rule 7.12.2 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 Rule 7.12.2 which is known at the date of the PDS, is disclosed in the PDS;
 - c. the waiver, its conditions and its implications are disclosed in the PDS; and
 - d. this waiver is published on the Disclose Register in respect of the Offer.
15. 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.
16. The Rule to which this decision relates is set out in Appendix Two to this decision.
17. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

18. In coming to the decision to provide the waiver set out in paragraph 13 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 ten Business Days' notice as required by Rule 7.12.2, given that APRA standards require Conversion to occur immediately;
 - b. WBC will be required, as a condition of this waiver, to disclose the implications of this waiver in the PDS. NZXR is satisfied that this condition will inform Noteholders that upon the occurrence of a non-viability trigger event, the market will not be given advanced notice;
 - c. the condition in paragraph 14(b) will ensure that Noteholders will have notice of all information about Conversion that is known at the date of the PDS. The condition in paragraph 14(a) will ensure that all other information that is required to be disclosed under Rule 7.12.2 is disclosed as soon as practicable; and
 - d. 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 10.3, 10.4 and 10.5

Decision

19. Subject to the conditions in paragraph 20 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 10.3, 10.4 and 10.5 in respect of the WBC010s.
20. The waivers contained in paragraph 19 is 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. the waivers, their conditions and their implications are disclosed in the PDS; and
 - e. these waivers are published on the Disclose Register in respect of the Offer.
21. 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.
22. The Rules to which this decision relates are set out in Appendix Two to this decision.
23. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.

Reasons

24. In coming to the decision to provide the waiver set out in paragraph 19 above, NZXR has considered that:
- a. 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, NZXR was comfortable with WBC's submission that it would be 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 10.3, 10.4 and 10.5. 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. WBC is still subject to its continuous disclosure obligations under Rule 10.1, which requires WBC to disclose any Material Information; and
 - e. there is precedent for this decision.

Rulings from Rules 1.14.1, 1.14.2, 5.1.7 and 5.1.8

25. Subject to the conditions set out in paragraph 26, and on the basis that the information provided by WBC is complete and accurate in all material respects, NZXR Rules that for the purposes of Rules 1.14.1, 1.14.2, 5.1.7 and 5.1.8, WBC will remain an Overseas Listed Issuer in respect of its Equity Securities Quoted on the NZX Main Board, notwithstanding the Quotation of the WBC010s, and NZX will solely be the Home Exchange in respect of



the WBC010s Quoted on the NZDX, and the WBC010s will be subject to the Rules, with the exception of the Rules listed in Appendix 5.

26. The Ruling in paragraph 25 is provided on the condition that the ASX will remain WBC's Home Exchange in respect of its Equity Securities Quoted on the NZX.

Reasons

27. In coming to the decision to provide the ruling set out in paragraph 25 above, NZXR has considered that:
- a. the policy behind Rules 5.1.7 and 5.1.8 provides that an Overseas Listed Issuer shall be deemed to satisfy and comply with all of the Rules, with the exception of Section 1, Rule 5.1.7, 5.3, 5.4, and 5.5.2 so long as it remains listed on its Home Exchange;
 - b. given that the WBC010s will only be Quoted on the NZDX, WBC was concerned with the possibility of losing its status as an Overseas Listed Issuer, for the purposes of Rules 5.1.7 and 5.1.8; and
 - c. without the benefit of this ruling, WBC will be required to comply with all of the Rules, notwithstanding its status as an Overseas Listed Issuer. Such an outcome would undermine the efficiencies that an Overseas Listed Issuer status is meant to achieve. However, by virtue of the WBC010s being Quoted on the NZDX exclusively, there are strong policy grounds for preventing WBC from being able to rely on the deeming provisions of Rules 5.1.7 and 5.1.8 in their entirety in respect of the WBC010s. This ruling will remove the deeming provisions of Rules 5.1.7 and 5.1.8 in respect of the WBC010s, with the effect that WBC will be required to comply with all of the Rules in respect of the WBC010s, with the exception of the Rules listed in Appendix 5 as well as any Rules which NZXR has granted WBC waivers from.

Confidentiality

30. WBC has requested that this application and any decision be kept confidential until WBC has announced the Offer.
31. In accordance with Footnote 1 to Rule 1.11.2, NZXR grants WBC's request.



Appendix One

1. Westpac Banking Corporation (**WBC**) is an Overseas Listed 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. WBC intends to offer (**Offer**) up to NZ\$250 million of fully paid, redeemable, subordinated, unsecured, fixed rate Notes (**WBC010s**) with unlimited oversubscriptions, as set out in a product disclosure statement in respect of the Offer. The WBC010s will only be offered to investors who are resident in New Zealand. WBC will look to Quote the WBC010s on the NZX Debt Market (**NZDX**) exclusively, on or about 2 September 2016. The WBC010s will 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**).
5. The WBC010s will be 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 1.14 Rules Which Apply to Issuers

Rule 1.14.1 All the provisions of the Rules apply to an Issuer of Equity Securities of which are Quoted.

Rule 1.14.2 All the provisions of the Rules, other than those listed in Appendix 5, apply to an Issuer that does not have Equity Securities Quoted.

Rule 3.2 Trust Deeds for Debt Securities

Rule 3.2.1 Every Trust Deed governing Debt Securities shall provide that:

- (a) the appointment of new trustee is to be approved by an extraordinary resolution of the holders of the Securities to which the Trust Deed relates; and

Rule 5.1 Listing

Rule 5.1.7 An Overseas Listed Issuer shall:

- (a) be deemed (subject to Rule 5.1.8) to satisfy and comply with all the Rules so long as it remains listed on its Home Exchange, provided that NZX may, at any time, by notice to any Overseas Listed Issuer, declare that any of the Rules shall thereafter apply to that Issuer, whether or not the rules of its Home Exchange contain a similar or analogous provision, and whether or not that Issuer is then complying with any such provision; and
- (b) application has been made to NZX for a Class or Classes of its Securities quoted on its Home Exchange to be Quoted on NZX, be deemed to satisfy and comply with all of the Rules for so long as those Securities remain Quoted on its Home Exchange; and
- (c) give to NZX the same information and notices it is required to give to its Home Exchange, at the same time as it is required to give such information and notices to its Home Exchange; and
- (d) include in its annual report:
 - i. a statement to the effect that the Home Exchange corporate governance rules and principles may materially differ from NZX's corporate governance rules and the principles of the Corporate Governance Best Practice Code; and
 - ii. a reference to where investors may find more information about the corporate governance and principles of the Issuer's Home Exchange.

Rule 5.1.8 Notwithstanding Rule 5.1.7, all of Section 1, Rule 5.1.7, Rule 5.3, Rule 5.4 and Rule 5.5.2, and this Rule 5.1.8, shall apply, with the necessary modifications to each Overseas Listed Issuer.



Rule 7.12 Announcements

Rule 7.12.2 Where any benefit is to be paid or distributed on Quoted Securities (including dividends, interest or bonus issues) or any Conversion of Securities or call on Securities is to take place, the Issuer shall give to NZX, forthwith after any Director's recommendation and at least 10 Business Days before the Record Date to determine entitlements or obligations, full details of the benefit, Conversion or call, including the information in the table below. That information shall be supplied in the form set out in Appendix 7.

Event	Information Required
Dividend	<ul style="list-style-type: none">- Security description- ISIN- Total amount of dividend- Cents per share- Imputation tax credits per share (where applicable to six decimal places)- Withholding tax cents per share (where applicable to six decimal places)- Source of dividend- Payable date- Record Date- Strike price for any issue in lieu of dividend- Excluded income per share (PIE Issuers only, where applicable to six decimal places)- Foreign dividend payment credits per share (where applicable to six decimal places)
Interest	Details no less than the equivalent required above for a dividend.
Bonus Issue	Full details of the issue including timing, entitlement and tax information.
Conversions	Full details of the nature and timing of the Conversion including pricing, entitlement and



Event	Information Required
	conversion ratio information.
Calls	Full details of the call including the Securities affected, and payment details.

Rule 10.3 Preliminary Announcements

Rule 10.3.1 Each Issuer shall make an announcement pursuant to Rule 10.3.2 through NZX for public release, in the manner prescribed by Rule 10.2 as soon as the Material Information is available, and in any event;

- (a) before the release of each annual report, and not later than 60 days after the end of the financial year to which that report relates; and
- (b) before the release of each half-year report and not later than 60 days after the end of the financial half-year to which that report relates.

Rule 10.3.2 Each preliminary announcement, whether for a full year or a half year, shall include the information and otherwise address the matters specified by the relevant section of Appendix 1.

Rule 10.4 Annual and Half-Year Reports

Rule 10.4.1 Subject to Rule 10.4.3 each Issuer shall within three months of the end of each Issuer's financial years:

- (a) Deliver to NZX electronically, in the format specified by NZX from time to time; and
- (b) Make available to each Quoted Security holder in accordance with Rule 10.4.4,

an annual report. That annual report shall be delivered to NZX before or at the same time as it is made available to Quoted Security holders in accordance with Rule 10.4.4, and shall contain all information:

- (c) required by law;
- (d) required in a preliminary announcement by Rule 10.3.2; and
- (e) required by Rule 10.4.4, Rule 10.4.5 and Rule 10.4.7.

The financial statements in that annual report shall be audited and shall be accompanied by an audit report in accordance with the requirements of the Financial Reporting Act 1993.

Rule 10.4.2 Each Issuer shall within three months after the end of the first six months of each financial year of the Issuer:

- (a) deliver to NZX electronically, in the format specified by NZX from time to time; and



- (b) make available to each Quoted Security holder in accordance with Rule 10.4.4,

a half-year report. That half-year report shall be delivered to NZX before, or at the same time as, it is made available to Quoted Security Holders in accordance with Rule 10.4.4. That half-year report shall include the information and otherwise address the matters prescribed by the relevant section of Appendix 1.

Rule 10.4.3 An Issuer that is a State enterprise (as defined in the State-Owned Enterprises Act 1986) is not required to issue to its Quoted Security holders an annual report (in accordance with Rule 10.4.1) or a half-year report (in accordance with Rule 10.4.2) until that annual report or half-year 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 10.4.4 An Issuer shall make an annual or half-year report available to Quoted Security holders as required by Rule 10.4.1 or Rule 10.4.2, by sending to Quoted Security holders either:

- (a) A copy of the annual report or half-year report (as the case may be); or
- (b) A notice containing the statements referred to in section 209(3) of the Companies Act 1993 and complying with sections 209A and 209B of the Companies Act 1993.

Provided that for the purposes of Rule 10.4.4 and Rule 10.4.6, sections 209 to 209B of the Companies Act 1993 shall be deemed modified so that:

- (c) references in that section to “shareholders” shall be deemed to be references to members of the relevant Class of Quoted Security holders of that Issuer; and
- (d) in respect of an Issuer which is not a company, references to “company” shall be deemed to be references to the Issuer; and
- (e) in respect of a Managed Fund, references to “board of a company” shall be deemed to be references to the Manager; and
- (f) references to “annual report” shall (for the purposes of compliance with Rule 10.4.2) be deemed to be a reference to a half-year report; and
- (g) section 209(3)(d) shall not apply to the half-year report; and
- (h) references to “annual report” shall be deemed to be references to an annual report as required by Rule 10.4.1.

Provided also that an Issuer will be deemed to have made any half-year report available to Quoted Security holders if that Issuer's most recent annual notification under Rule 10.4.4(b) explicitly stated that it applied to the next half-year report under the Rules. Where a half-year report is deemed to have been made available in this way, a Quoted Security holder's election in respect of receipt of the relevant annual report, if any, shall apply in connection with that



half-year report, except that an election to receive a concise annual report must be treated to include an election to receive the relevant half-year report.

Rule 10.4.5 The annual report of an Issuer shall contain:

- (a) the information required to be published by Sub part 3 of Part 2 of the Securities Markets Act 1988 and, in the case of a company registered under the Companies Act 1993, the information required by section 211 of that Act; and
- (b) the names and holdings of Equity Securities of the holders having the 20 largest holdings of Quoted Equity Securities on the register of the Issuer as at a date not earlier than 2 months before the date of the publication of the annual report; and
- (c) the Equity Securities, and Securities that may Convert to Equity Securities, in which each Director has a Relevant Interest at the balance date of the current financial year; and
- (d) details of the spread of Quoted Security holders at a date not earlier than 2 months before the date of the publication of the annual report; and
- (e) the current credit rating status (if any) of the Issuer; and
- (f) a summary of all waivers:
 - (i) granted and published by NZX in the 12 month period preceding the balance date of the Issuer (or a reference to where a summary of waivers are published on the Issuer's website, which summary must be available until publication of the next annual report); and
 - (ii) relied upon by the Issuer.
- (g) details of any exercise of NZX's powers set out in Rule 5.4.2 where the exercise is already public knowledge; and
- (h) a statement of any corporate governance policies, practices and processes, adopted or followed by the Issuer; and
- (i) a statement on whether and, if so, how the corporate governance principles adopted or followed by the Issuer materially differ from the Corporate Governance Best Practice Code or a clear reference to where such statement may be found on the Issuer's public website; and
- (j) a quantitative breakdown, as to the gender composition of the Issuer's Directors and Officers as at the Issuer's balance date and including comparative figures for the prior balance date of the Issuer. Comparative figures are not required to be provided in respect of balance dates falling in periods before the effective date of this Rule; and
- (k) a statement from the Board of the Issuer providing its evaluation of the Issuer's performance with respect to its diversity policy (if applicable); and



- (l) a statement as to which of its Directors are Independent Directors and which of its Directors are not Independent Directors, as at the balance date of the Issuer; and
- (m) details of any Director who has been appointed pursuant to provisions of the Constitution complying with Rule 3.3.8, and the Security holder which appointed that Director.

Rule 10.4.6 Where a concise annual report is prepared in relation to the same accounting period as an annual report, that report shall contain:

- (a) The disclosures required by section 209(5) of the Companies Act 1993 (modified in the manner set out in Rule 10.4.4; and
- (b) The information required by Rule 10.4.5(e), Rule 10.4.5(f) and 10.4.5(g).

Rule 10.4.7 Any Issuer which extends its half-year reporting period or changes its annual balance date to a later date shall make a report containing such information, and to be released at such time, as NZX shall require in respect of the existing half-year reporting period or the period ending on the existing balance date.

Rule 10.4.8 Each Issuer shall supply to any Advisor or Trading Participant who so requests, free of charge, a copy of any document referred to in Rule 10.3 or Rule 10.4.

Rule 10.5 Financial Statements

Rule 10.5.1 The financial statements of each Issuer shall comply with applicable Financial Reporting Legislation.

Rule 10.5.2 NZX may require an Issuer to provide, in its financial statements or otherwise, information additional to that required by Financial Reporting Legislation.

