

ASB BANK LIMITED
Issuer

**AMENDMENT AND RESTATEMENT DEED IN
RELATION TO THE NOTE DEED POLL DATED 18
OCTOBER 2007**

DEED dated 27th June 2019

MADE BY

ASB BANK LIMITED ("Issuer")

INTRODUCTION

- A. The Issuer has executed a deed poll dated 18 October 2007 (as amended and restated from time to time, most recently on 30 August 2016) constituting the issue of notes by the Issuer ("**Note Deed Poll**").
- B. The Issuer wishes to amend and restate the Note Deed Poll in the manner and on the terms and conditions set out in this deed.
- C. In accordance with clause 15.1(a) of the Note Deed Poll, the amendments contained in this deed may be made by the Issuer without the consent of any Noteholder on the basis that they are convenient for the purpose of obtaining or maintaining a quotation of Notes on a stock exchange in New Zealand.

AGREEMENT

1. INTERPRETATION

- 1.1 **Definitions:** Capitalised terms used but not defined in this deed have the meanings given to them in the Note Deed Poll.
- 1.2 **Interpretation:** In this deed, unless the context indicates a contrary intention:
 - (a) headings are inserted for convenience only and do not affect the interpretation of this deed;
 - (b) words importing the singular include the plural and vice versa and words denoting individuals include other persons and vice versa;
 - (c) a reference to any document includes reference to that document as modified, novated, supplemented, amended, varied or replaced from time to time; and
 - (d) a reference to any party to this deed or any other document includes its successors and permitted assigns.

2. AMENDMENT AND RESTATEMENT

- 2.1 With effect on and from 1 July 2019, the Note Deed Poll shall be amended and restated in the form set out in the Schedule.
- 2.2 Except to the extent amended and restated by this deed, the Note Deed Poll continues in full force and effect.

3. GOVERNING LAW

- 3.1 This deed is governed by and is to be construed in accordance with New Zealand law.

EXECUTED AS A DEED

SIGNED on behalf of **ASB BANK LIMITED** by its attorneys:

CR Ferguson
 Signature of attorney

Carl Ferguson
 Chief Risk Officer
 ASB BANK LIMITED
 Name of attorney

Jon Raby
 Signature of attorney

Jon Raby
 Chief Financial Officer
 Name of attorney

In the presence of:

G. Boyd
 Signature of witness

G. Boyd
 Name of witness

BANKER
 Occupation

AUCKLAND
 City/town of residence

SCHEDULE

Amended and Restated Note Deed Poll


CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

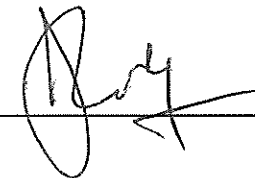
We **Jon Raby** and **Carl Ferguson**
Chief Financial Officer **Chief Risk Officer**
both of Auckland, New Zealand, hereby severally certify:
ASB BANK LIMITED

- 1 THAT by Deed dated 3 August 2018 ASB Bank Limited appointed the persons holding, or from time to time acting in, the following ASB Bank offices as its attorneys on the terms and subject to the conditions set out in the said Deed:

Each Director of ASB Bank Limited
Chief Executive Officer
General Counsel & Company Secretary
Chief Financial Officer
Chief Risk Officer
Executive General Manager Business Banking
Executive General Manager Technology & Operations
Executive General Manager Retail Banking
Executive General Manager Private Banking, Wealth & Insurance
Executive General Manager Corporate Strategy
Executive General Manager Digital, Data & Brand
Executive General Manager People

2. THAT at the date of signing we have not received any notice of or information of the revocation of that appointment by the winding up of the said company or otherwise.





SIGNED at Auckland this 27th day of **JUNE** 2019

Note Deed Poll

ASB Bank Limited (Issuer)

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This deed is dated 18 October 2007 as amended and restated from time to time and most recently on 1 July 2019.

PARTIES

ASB Bank Limited (*Issuer*)

BACKGROUND

- A The Issuer intends to issue Notes from time to time to any person.
- B This deed sets out the terms and conditions of the relevant Notes and the obligations of the Issuer to the Noteholders.

COVENANTS

1 INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires:

Approved Issuer Levy means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Note, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of that interest to be made to any non-resident for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent pursuant to section RF 12(1) of the Income Tax Act 2007.

Bank Bill Rate means, in relation to a Floating Rate Note or an Extendible Note:

- (a) (i) if the Interest Period is of a duration of one, two, three, four, five or six months, the bank bill reference mid-rate (styled "FRA"), determined by the Issuer, as displayed at or about 10.45am on the Bloomberg Professional Service page reference "NZFM" (or its successor page) on its Issue Date (or such other date as the Issuer may determine) and the first day of each subsequent Interest Period for that Note, for bank bills having a term approximately equal to that Interest Period for that Note; or
- (ii) if the Interest Period is longer than one month but shorter than six months, and not two, three, four or five months, the rate resulting from straight line interpolation (rounded upwards if necessary to the nearest four decimal places) between the bank bill reference mid-rate (styled "FRA") determined by the Issuer as displayed at or about 10.45am on the Bloomberg Professional Service page reference "NZFM" (or its successor page) on its Issue Date (or such other date as the Issuer may determine) and the first

day of each subsequent Interest Period for that Note, for bank bills having a term:

- (A) shorter than but closest to that Interest Period; and
 - (B) longer than but closest to that Interest Period; or
 - (iii) if a rate is unable to be determined in accordance with paragraphs (i) or (ii), the average (rounded if necessary to the nearest four decimal places) of the mean bid and offered rates quoted to the Issuer by three registered banks at or about 10.45am for bank bills with a term approximately equal to that Interest Period for that Note; or
 - (iv) if the rate is unable to be determined in accordance with paragraphs (i), (ii) or (iii), the rate per annum reasonably determined by the Issuer; or
- (b) any other reference rate as may be specified in the Conditions for that Note as the "Bank Bill Rate".

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland and Wellington.

Call Option Exercise Date means, in respect of an Extendible Series, if a Maturity Notice is received by the Issuer in respect of that Extendible Series in accordance with clause 8.4, the next Interest Payment Date of that Extendible Series.

Call Option Date means, in relation to a Fixed Rate Note or a Floating Rate Note, the date specified as such in the Conditions applicable to that Note.

Call Option Period means, in respect of an Extendible Series, the period commencing at the time a Maturity Notice is received by the Issuer (in accordance with clause 8.4) and ending at 5pm on the second Business Day following receipt of such Maturity Notice.

Class means:

- (a) in relation to Notes, each category of Note which the Issuer determines in its reasonable discretion should be treated as constituting a separate class of Notes, which determination shall be based on the principle that a separate Class or separate Classes should not be constituted unless there are material differences in the Conditions of the relevant Notes or, if applicable, material differences in the impact or effect on separate classes of Noteholders of any action proposed to be taken, provided that differences in the maturity date, interest rate, any interest payment date or the calculation of interest between Notes shall not themselves be deemed to be material differences; and

- (b) in relation to Noteholders, the Noteholders of each separate Class of Notes.

Conditions means, in respect of any Note, the terms and conditions of the relevant Note as specified to be applicable to such Note in any deed, agreement, offering circular, information memorandum, prospectus, investment statement, disclosure document, terms of offer, terms sheet, pricing or other supplement, application form or other document (whether supplemental to this deed or not) issued or executed by the Issuer, or issued on behalf of the Issuer, in relation to the issue, allotment or offering of such Note, but for the avoidance of doubt excludes any profile issued in respect of any Note that is quoted on the NZX Debt Market.

Day Count Fraction means, in respect of the calculation of an Interest Amount:

- (a) if *Actual/365 (fixed)* is specified in the applicable Conditions, the actual number of days in the Interest Period in respect of which payment is being made divided by 365;
- (b) if *Actual/365* or *Actual/Actual* is specified in the applicable Conditions, the actual number of days in the Interest Period in respect of which payment is being made divided by:
- (i) 365; or
 - (ii) if any portion of that Interest Period falls in a leap year, the sum of:
 - (aa) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366; and
 - (bb) the actual number of days in that portion of the Interest Period falling in a year other than a leap year divided by 365;
- (c) if *360/360* or *Bond Basis* is specified in the applicable Conditions, the number of days in the Interest Period in respect of which payment is being made divided by 360 (the number of days to be calculated on the basis of a year of 360 days with twelve 30-day months, unless:
- (i) the last day of the Interest Period is the 31st day of a month but the first day of the Interest Period is a day other than the 30th or 31st day of a month, in which case the month which includes that last day will not be considered to be shortened to a 30-day month; or
 - (ii) the last day of the Interest Period is the last day of the month of February, in which case the month of February will not be considered to be lengthened to a 30-day month); or

- (d) if *RBNZ Bond Basis* is specified in the applicable Conditions, one divided by the number of Interest Payment Dates in a year.

Dollars and *\$* means the lawful currency for the time being of New Zealand.

Early Redemption Date:

- (a) in respect of a Fixed Rate Note or a Floating Rate Note has the meaning given to that term in clause 8.5(a); and
- (b) in respect of an Extendible Series, has the meaning given to that term in clause 8.6(a).

Event of Default means any of the events specified in clause 14.1.

Extendible Note means any Note in respect of which its Maturity Date can be extended in accordance with this deed and its terms as set out in the applicable Conditions.

Extendible Series means each series of Extendible Notes issued pursuant to the terms of this deed, as identified in the applicable Conditions.

Extraordinary Resolution means an extraordinary resolution of Noteholders or the Noteholders of a particular Class (as the case requires) as defined in the Schedule.

FATCA means Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into or non-US laws enacted in relation to those sections).

Final Maturity Date means, in respect of an Extendible Note, the date specified as such in the applicable Conditions.

Fixed Rate Note means, at any time, a Note which bears interest at that time at a fixed rate.

Floating Rate Note means, at any time, a Note which bears interest at that time at a floating rate.

Initial Maturity Date means, in respect of an Extendible Note, the date specified as such in the applicable Conditions.

Interest Amount means the amount of interest payable in respect of that Note, being the amount determined in accordance with clauses 7.3(a) or 7.3(b) or 7.3(c) respectively.

Interest Payment Date means each due date for payment of interest on that Note as specified in the relevant Conditions and recorded as such in the Register.

Interest Period means the period from and including an Interest Payment Date (or, in the case of the first period, the Issue Date) to but excluding the next Interest Payment Date (or, in the case of the last period, the Redemption Date).

Interest Rate means, in respect of a Note, the rate of interest payable on that Note as determined in accordance with the relevant Conditions and recorded as such in the relevant Register, being, in the case of a Fixed Rate Note, a Floating Rate Note or an Extendible Note, the interest rate referred to in clause 7.2.

Interest Rate Set Date means, in relation to a Fixed Rate Note, the date upon which the Interest Rate for that Note is set, as specified in the relevant Conditions and recorded as such in the Register.

Issue Date means, in relation to a Note, the date of issue of that Note as specified in the relevant Conditions and recorded as such in the Register.

Issuer means ASB Bank Limited.

Issuer Call Date means, in respect of an Extendible Series, the date specified as such in the Conditions applicable to that Extendible Series.

Margin means, in relation to a Note, the interest margin for that Note, expressed as a percentage per annum, as specified in the relevant Conditions and recorded as such in the Register.

Maturity Date means:

- (a) in relation to a Note (other than an Extendible Note), the due date for repayment of the Principal Amount of that Note as specified in the applicable Conditions and recorded as such in the Register; and
- (b) in relation to an Extendible Note, the due date for repayment of the Principal Amount of that Note being the Initial Maturity Date as may be extended from time to time in accordance with this deed and the applicable Conditions.

Maturity Notice has the meaning ascribed to it in clause 8.4.

Member has the meaning ascribed to it in the NZClear Rules.

Note means an unsecured note, bond or other debt instrument issued by the Issuer which, by its terms, has the benefits of this deed and the Conditions and, without limitation, includes a Fixed Rate Note, a Floating Rate Note and an Extendible Note.

Note Moneys means, at any time and in relation to a Note, all moneys payable on or in relation to that Note to the relevant Noteholder pursuant to the terms and conditions of

the relevant Note, and where used without reference to a Note, means all such moneys payable on or in relation to all Notes at that time to all Noteholders.

Noteholder means, in relation to a Note, a person whose name is for the time being entered in the Register as the owner of that Note or, where a Note is owned jointly by more than one person, the persons whose names appear in the Register as the joint owners of that Note.

NZClear Rules means the terms and conditions, known as the “NZClear System Rules”, which govern the use of the NZClear System, as amended or replaced from time to time.

NZClear System means the securities clearing and settlement system facility operated by the Reserve Bank of New Zealand (or any successor operator).

NZX Debt Market means the market operated by NZX on which listed debt securities are traded.

NZX means NZX Limited, and includes any person or authority which may in the future assume and perform the functions of NZX Limited.

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

Outstanding Notes means all Notes which have been issued but have not been redeemed or otherwise discharged in full or purchased and cancelled.

Principal Amount means, in relation to any Note, the amount (other than interest, fees and costs) payable on the redemption of such Note, being the amount recorded as such in the Register in respect of that Note, inclusive of the premium (if any) payable on redemption in accordance with the Conditions in respect of that Note.

Record Date means in relation to a payment due on:

- (a) a Fixed Rate Note, the tenth day before the scheduled date for that payment (regardless of whether or not that scheduled date is a Business Day), or if that tenth day is not a Business Day, the Business Day immediately preceding that tenth day.
- (b) a Floating Rate Note or an Extendible Note, the tenth day before the due date for that payment (as determined in accordance with clause 9.5), or if that tenth day is not a Business Day, the Business Day immediately preceding that tenth day.

Redemption Amount means, in relation to a Note, the amount determined in accordance with clause 8.2.

Redemption Date means, in relation to a Note or an Extendible Series the earlier of:

- (a) its Maturity Date; and
- (b) if the Issuer exercises its right to redeem that Note or Extendible Series pursuant to and in accordance with clause 8.5(a) or clause 8.6(a), as applicable, its Early Redemption Date.

Reference Rate means, in relation to a Fixed Rate Note, the reference rate as specified in the Conditions for that Note and recorded as such in the Register.

Register means each register opened and maintained by the Registrar in respect of the Notes.

Registrar means Computershare Investor Services Limited or such other registrar appointed by the Issuer from time to time and includes their successor and permitted assigns.

Registrar and Paying Agency Agreement means the agency agreement between the Issuer and Computershare Investor Services Limited dated 16 March 2004, as amended, novated, supplemented or replaced from time to time.

unclaimed money has the meaning ascribed to it in clause 9.7.

1.2 **References**

Except to the extent that the context otherwise requires, any reference in this deed to:

the *dissolution* of any person includes the bankruptcy, winding-up or liquidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;

a *governmental agency* includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law;

a *law* includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute or other legislative measure, in each case of any jurisdiction whatever;

a *person* includes an individual, firm, company, corporation, trust or other body (in each case, whether or not having separate legal personality);

tax includes any present or future liability to tax (whether direct or indirect), any impost, duty, deduction or withholding of any nature and whatever called (including, for the

avoidance of doubt, Approved Issuer Levy), imposed or levied by any governmental agency, together with any cost, interest, penalty, fee or other amount imposed or made on, or in relation to, or as a result of any of the foregoing; and

written and *in writing* include all means of reproducing words in a tangible and permanently visible form.

1.3 **Miscellaneous**

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) Unless the context otherwise requires:
 - (i) words denoting the singular number include the plural and vice versa and words denoting any gender include every other gender;
 - (ii) a reference to any legislation includes all regulations and other instruments under the legislation and all amendments, replacements, consolidations or re-enactments of such legislation, regulations and instruments;
 - (iii) a reference to a clause or the Schedule is a reference to a clause of or a schedule to this deed;
 - (iv) a reference to a person includes that person's successors and permitted assigns; and
 - (v) a reference to any deed, agreement or other instrument shall be read as referring to such deed, agreement or other instrument as from time to time modified, supplemented or novated.

1.4 **Rights of Noteholders**

- (a) The Issuer acknowledges that the benefit of this deed extends to each Noteholder and is enforceable by each Noteholder pursuant to the Contracts (Privity) Act 1982.
- (b) Each Noteholder may enforce its rights under this deed independently from the Registrar and each other Noteholder.

1.5 **Obligations to Noteholders only**

The Issuer makes this deed poll in favour of the Noteholders and its obligations under this deed are obligations owed to the Noteholders only and not to any other person.

1.6 **Further issues**

The Issuer may from time to time, without the consent of Noteholders, issue notes, bonds or other debt obligations on such terms and conditions as the Issuer may think fit.

2 NOTES

2.1 General

The Issuer may issue Notes under this deed at the times, to such persons, in such amounts, upon such terms and conditions and at the prices as the Issuer may from time to time determine.

2.2 Terms of Issue

Without limiting the generality of clause 2.1, Notes may be issued either at par or at a premium or at a discount, and bearing such respective rates of interest (whether fixed, variable or determined by a stated method), as the Issuer may from time to time determine. Each Extendible Note will be issued as part of an Extendible Series.

2.3 Issue of Notes

A Note is issued and created by the Registrar entering into the Register the particulars of that Note. Each Note shall be held by the relevant Noteholder with the benefit of and subject to the following provisions, terms and conditions (referred to in this deed as the "**terms and conditions of the relevant Note**"):

- (a) **This deed:** such of the provisions of this deed as are applicable thereto having regard to such Note; and
- (b) **Conditions:** the relevant Conditions in respect of such Note;

and all terms and conditions of the relevant Note shall be binding upon the Issuer and the relevant Noteholder and all persons claiming under or through them respectively. Where, in respect of any Note, there is any inconsistency between the provisions of this deed and the relevant Conditions in respect of such Note, the relevant Conditions shall prevail. Each Noteholder and all persons claiming by or through them are deemed to have notice of all the terms and conditions of the relevant Note.

2.4 Term and details of Notes

The Issuer must notify the Registrar, or ensure that the Registrar is notified, of all information relative to Notes for entry into the Register and of the name and address details of any person who is to be entered in the Register as a Noteholder for the purpose of issuing a Note.

2.5 Uncertificated Notes

Each Note shall be in uncertificated book entry form.

3 COVENANT TO PAY: PROVISIONS AFFECTING NOTEHOLDERS' RIGHTS

3.1 Covenant to Pay

The Issuer covenants that it will pay the Note Moneys in relation to all Notes issued by it as and when due and payable in accordance with the Registrar and Paying Agency

Agreement (if applicable) and the terms and conditions of the relevant Notes to or to the order of the Noteholders in the currency and manner in which the same is payable.

3.2 Pro Tanto Satisfaction

Notwithstanding clause 3.1, every payment to Noteholders of or on account of the Note Moneys due and payable on a Note in accordance with the terms and conditions of the relevant Note shall be in satisfaction pro tanto of the indebtedness acknowledged and covenanted to be paid in clause 3.1.

3.3 Commissions

The Issuer shall be at liberty to pay a commission, procuration fee or brokerage to any person for subscribing for, underwriting the subscription of, or obtaining subscriptions for, any Notes.

4 REGISTRATION AND TITLE

4.1 Register

Subject to clause 5.5, the Notes will be issued in denominations of not less than \$1, or as otherwise specified in the Conditions. The Issuer will at all times where Notes are outstanding cause the Registrar to maintain the Register for each series of Notes and to record the ownership and such other details of the Notes as required by law or under the relevant Conditions of the Notes, provided that any failure by the Register to record the relevant details in the Register shall not affect the application of such Conditions to the relevant Notes.

4.2 Register conclusive

Any entry in the Register in respect of a Note of the name and address of a person and the amount owed to that person and any determination of the amount owing in respect of a Note is conclusive evidence of title to that Note or the amount owing subject to rectification for fraud and error.

4.3 Non recognition of interests

Except as required by law or as ordered by a court of competent jurisdiction, the Issuer and the Registrar must treat the person whose name is entered in the Register as a Noteholder as the absolute beneficial owner of that Note. This clause applies despite any notice of ownership, trust, encumbrance or interest in that Note. No recognition of any trust, encumbrance or interest shall be entered on the Register. The Issuer is not liable to any Noteholder for relying on the Register or for accepting in good faith as valid any detail recorded on the Register subsequently found to be forged, irregular or not authentic.

4.4 Certified extracts

Upon request by a Noteholder and at that Noteholder's expense, the Registrar will provide to that Noteholder a certified extract of the details entered in the Register in

relation to that Noteholder and any Note registered in its name, alone or jointly. Such an extract does not evidence title to any Note.

4.5 **Certificates**

At the request of a Noteholder, or otherwise as required by any applicable law or the NZX Listing Rules, the Issuer shall procure the Registrar to issue to that Noteholder, a certificate, notice of registration or statement of holding in relation to the Notes held by that Noteholder, such certificate, notice or statement to be in the form agreed between the Issuer and the Registrar and to contain all information required by applicable law or the NZX Listing Rules. A certificate, notice of registration or statement of holding in respect of a Note will not constitute a document of title. Entitlement will be determined solely by entry in the Register and, in the case of the beneficial interest in Notes lodged in the NZClear System, the records of the NZClear System.

4.6 **Inspection**

A Noteholder may inspect any Register to the extent to which it relates to Notes held by that Noteholder and take copies or extracts of the same at all reasonable times during office hours, subject to applicable laws and regulations.

4.7 **Closure**

The Issuer may from time to time close any Register for any period or periods not exceeding in the aggregate thirty (30) days in any one year, provided that the right of the Noteholders to inspect and take copies of that Register shall not be prejudiced by such closure.

4.8 **Death or dissolution of Noteholder**

Without limitation to clause 5, the Registrar will register a transfer of a Note to or by a person who is entitled to do so as a result of:

- (a) the death, insanity, bankruptcy or dissolution (as applicable) of a Noteholder; or
- (b) the making of any vesting orders by a governmental agency,

in accordance with any applicable law, and upon such evidence, as the Issuer or the Registrar may require.

Where Notes are entered in the Register in the name of a deceased person who has two or more personal representatives, the Registrar may decline to give effect to a transfer of any such Notes unless the transfer and acceptance form is executed by all of those representatives.

4.9 **Multiple Owners**

If more than three persons are the owners of a Note, the names of only three such persons will be entered in the Register. If more than one person is the owner of a Note, the address of only one of them will be entered in the Register. If more than one address

is notified to the Registrar, the address recorded in the Register will be the address of the Noteholder whose name is recorded first in the Register. Two or more persons registered as Noteholders will be taken to be joint owners with a right of survivorship between them.

4.10 **Change in Registrar**

Subject to the Registrar and Paying Agency Agreement, the Issuer may vary or terminate the appointment of the Registrar under the Registrar and Paying Agency Agreement and appoint a new Registrar at any time, provided that the Registrar must continue in office until a new Registrar has been appointed.

5 **TRANSFER**

5.1 **Transfer form**

Title to a Note may be transferred by:

- (a) a transfer in any commonly used form signed by the transferor and the transferee and produced to the Registrar;
- (b) in the case of Notes which are quoted on the NZX Debt Market, means of the settlement system operated by NZX; or
- (c) any other method of transfer approved by the Issuer and the Registrar and delivered to the Registrar.

5.2 **Notes separate**

Each Note is a separate debt of the Issuer and may, subject to clause 5.3, be transferred separately from any other Note owned by a Noteholder.

5.3 **Transfers of Extendible Notes**

An Extendible Note:

- (a) during a Call Option Period or at any time after the Issuer has provided an irrevocable notice to the Noteholder pursuant to clause 8.6(b) or (c), may not be transferred by the Noteholder; and
- (b) at all other times, may only be transferred, if such transfer would result in the transferee holding all Notes in the applicable Extendible Series.

5.4 **Transfers of Fixed Rate Notes and Floating Rate Notes**

- (a) Subject to clause 5.5, Notes may only be transferred in integral multiples of \$1,000, with at least \$1,000 being transferred at any one time. Subject to clause 5.5, a Noteholder may transfer a part of his or her holding provided that no such transfer will be effected if such transfer would result in the transferor (if it continues to hold Notes following such transfer) or the transferee holding Notes of

a particular series or tranche of Notes with a Principal Amount of less than \$5,000, or (subject to the NZX Listing Rules, in the case of Notes which are quoted on the NZX Debt Market) such other amount as the Issuer agrees (the “*minimum Principal Amount*”). In the event that a Noteholder holds Notes of a particular series or tranche of Notes with a Principal Amount of less than the applicable minimum Principal Amount, then the Issuer may require the Noteholder to sell such holding of Notes of that series or tranche on such terms and conditions as the Issuer may reasonably require.

- (b) For the purpose of this clause 5.4 only, “Note” means a Fixed Rate Note or a Floating Rate Note.

5.5 Minimum Denominations and Multiples

The Issuer may, from time to time, and (in the case of Notes which are quoted on the NZX Debt Market) subject to the NZX Listing Rules, vary the minimum denominations of Notes (generally, or for Notes of a particular series or tranche) that may be issued and held by Noteholders and the integral multiples of such Notes that may be issued or transferred by Noteholders. Such amounts shall be specified in the relevant Conditions applicable to Notes of the applicable series or tranche and recorded as such in the Register.

5.6 Passing of title

Entry of the name of a transferee of a Note in the Register at the relevant time will constitute the passing of title in that Note. The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document, and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective.

5.7 NZClear System

Members will be able to settle purchases and sales of interests in Notes entered in the NZClear System through the NZClear System in accordance with the NZClear Rules. The Issuer will not be responsible for any loss occasioned by the failure of the NZClear System or the failure of any person (except the Issuer) to perform its obligations under the NZClear Rules or otherwise.

5.8 Selling restrictions

Each Noteholder shall only offer for sale or sell any Note in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered and in accordance with all selling restrictions applying to such Notes as set out in the relevant Conditions. In the event that the Issuer suffers any liability, cost, loss or damage as a consequence of a Noteholder failing to comply with the requirements of this clause 5.8, or as a consequence of a Noteholder selling any Note in breach of any applicable selling restrictions, then the relevant Noteholder will indemnify the Issuer in respect of that liability, cost, loss or damage. Any moneys paid by the Issuer in respect of the liability, cost, loss or damage may be recovered from the Noteholder as a due debt to the Issuer

and may be withheld from any further payments to that Noteholder. Nothing in this clause 5.8 limits or affects any other right or remedy of the Issuer.

5.9 Terms of Note prevail

The provisions of this clause 5 shall be subject to any terms and conditions of the relevant Note which restrict or prescribe procedures for the transfer thereof or which otherwise exclude or are inconsistent with such provisions.

6 STATUS

Subject in each case to any other terms and conditions of a relevant Note set out in the Conditions in respect of that Note, Notes are direct, unsecured and unsubordinated obligations of the Issuer and rank pari passu amongst themselves and rank at least pari passu with all other unsecured and unsubordinated obligations incurred or assumed by the Issuer, other than those mandatorily preferred by law.

7 INTEREST

7.1 Interest

Unless otherwise specified in the relevant Conditions, each Fixed Rate Note, Floating Rate Note and Extendible Note will bear interest from its Issue Date at the applicable Interest Rate and will cease to bear interest on its Redemption Date, unless payment of the Principal Amount is improperly withheld or refused. In such case interest will continue to accrue on a daily basis on the overdue Principal Amount at the Interest Rate applying to that Note as at the due date (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount of that Note is made.

7.2 Payment of interest

In respect of each Note, the Issuer will pay interest on each Interest Payment Date:

- (a) on each Fixed Rate Note, at the rate per annum equal to the aggregate of the Reference Rate and the Margin for that Note;
- (b) on each Floating Rate Note for each Interest Period, at the rate per annum equal to the aggregate of the Bank Bill Rate for that Interest Period (as determined by the Issuer) and the Margin for that Note; and
- (c) on each Extendible Note for each Interest Period, at the rate per annum equal to the aggregate of the Bank Bill Rate for that Interest Period (as determined by the Issuer) and the Margin for that Note.

7.3 Calculation of Interest Amount

Unless otherwise specified in the relevant Conditions:

- (a) in relation to each Fixed Rate Note, the Issuer will apply the Interest Rate to the Principal Amount of the relevant Note for a period of 365 days to give the annual interest payment. The Interest Amount for any Interest Period will be the same proportion of that annual interest payment as the number of months in the Interest Period (rounded to the nearest month) bears to twelve;
- (b) the Interest Amount for each Floating Rate Note for each Interest Period will be calculated by the Issuer by applying the applicable Interest Rate to the Principal Amount of the relevant Note, multiplying that sum by the relevant Day Count Fraction and rounding the resultant figure to the nearest cent; and
- (c) the Interest Amount for each Extendible Note for each Interest Period will be calculated by the Issuer by applying the applicable Interest Rate to the Principal Amount of the relevant Note, multiplying that sum by the relevant Day Count Fraction and rounding the resultant figure to the nearest cent.

7.4 **Publication of Interest Rate**

The Registrar will, if requested in writing by any relevant Noteholder, and only to the extent such information is able to be determined by it at the time from the details recorded in the Register, notify that Noteholder of the Interest Rate, Interest Amount(s) and Interest Payment Date(s) applicable to the Notes of that Noteholder.

8 **REDEMPTION**

8.1 **Maturity**

Subject to clauses 10 and 14, the Issuer will pay each Redemption Amount on the relevant Redemption Date.

8.2 **Redemption Amount**

The Redemption Amount payable on a Redemption Date in respect of a Note is the Principal Amount of that Note, unless, in respect of a Note that is not quoted on the NZX Debt Market, otherwise specified in the Conditions applicable to that Note.

8.3 **Interest**

The Issuer will also pay on the Redemption Date the accrued interest (if any) from, and including, the last Interest Payment Date on which interest was actually paid in respect of that Note to, but excluding, that Redemption Date.

8.4 **Extension of Maturity Date for an Extendible Series**

The Maturity Date of an Extendible Series will be automatically extended by a further three calendar months on each Interest Payment Date prior to (but excluding) the date which is 12 months prior to the Final Maturity Date of that Extendible Series unless the Issuer receives a notice in writing from the Noteholder no less than 10 Business Days prior to the relevant Interest Payment Date (such notice being a *Maturity Notice*) that the

Maturity Date of that Extendible Series will not be automatically extended on the next Interest Payment Date.

8.5 Issuer call option – Fixed Rate Notes / Floating Rate Notes

(a) If there is a Call Option Date applicable to a Fixed Rate Note or a Floating Rate Note, the Issuer may elect to redeem that Note:

(i) on that Call Option Date; or

(ii) on any Interest Payment Date occurring after the that Call Option Date,

such date being an “**Early Redemption Date**”.

(b) The Issuer will exercise its rights under clause 8.5(a) by providing irrevocable notice in writing to the relevant Noteholder not later than the Record Date falling immediately before the Early Redemption Date notifying that Noteholder of the Issuer’s intention to redeem the Note on the Early Redemption Date.

8.6 Issuer call option - Extendible Notes

(a) The Issuer may elect to redeem an Extendible Series:

(i) if the Issuer receives a Maturity Notice in accordance with clause 8.4, on the Call Option Exercise Date; or

(ii) on the Issuer Call Date,

such date being an “**Early Redemption Date**”.

(b) The Issuer will exercise its rights under clause 8.6(a)(i) by providing irrevocable notice in writing to the Noteholder during the Call Option Period notifying that Noteholder of the Issuer’s intention to redeem the Extendible Series on the Early Redemption Date.

(c) The Issuer will exercise its rights under clause 8.6(a)(ii) by providing irrevocable notice in writing to the Noteholder not later than the Record Date falling immediately before the Issuer Call Date notifying that Noteholder of the Issuer’s intention to redeem the Extendible Series on the Early Redemption Date.

8.7 Form of notice

Any notice given for the purposes of clause 8.5 or 8.6 must specify the:

(a) relevant Note or Extendible Series subject to redemption;

(b) Early Redemption Date; and

- (c) Redemption Amount at which the Note or Extendible Series is to be redeemed.

9 PAYMENTS

9.1 Payments to Noteholders

Payments to Noteholders, whether of:

- (a) the Redemption Amount, on any Redemption Date; or
- (b) the Interest Amount, on any Interest Payment Date or otherwise,

will be made on behalf of the Issuer by the Registrar on the relevant due date by:

- (c) a cheque made payable to the Noteholder (or the first named of joint owners) and mailed to the address appearing in the Register of that Noteholder; or
- (d) if the Noteholder has applied in writing (including in any application form for the relevant Note, any form of transfer pursuant to this deed or any other form of notice) to the Registrar prior to the Record Date for the relevant payment, electronic transfer to an account maintained with the Issuer or any other financial institution in New Zealand by the Noteholder (or the first named of joint owners) (which may include, for the avoidance of doubt, payments made under the NZClear System).

If a payment is made to a Noteholder using the method described in clause 9.1(c), that payment shall be deemed to have been received by that Noteholder on the due date for payment if the cheque was sent to the Noteholder on or before the due date, even if the cheque does not actually arrive on that date.

If payment is made to a Noteholder using the method described in clause 9.1(d), that payment shall be deemed to have been received by that Noteholder on the due date for payment if an irrevocable instruction for the making of that payment by electronic transfer is given, being an instruction which would reasonably be expected to result, in the ordinary course of banking business, in the funds the subject of the transfer reaching the account of the Noteholder on or before the due date, even if the funds the subject of the transfer do not actually reach that account on that date.

In either case, no further amount will be payable by the Issuer in respect of the relevant Note as a result of such cheque not being received by the Noteholder on the due date or funds the subject of such electronic transfer not reaching the account of the Noteholder on the due date.

9.2 **Noteholders**

For the purposes of clause 9.1, the Noteholder to whom payment will be made is the Noteholder (or the first named of joint Noteholders) shown as such in the Register at the close of business on the Record Date in respect of the relevant payment.

9.3 **Deductions or withholdings**

Except as otherwise specified in the Conditions in respect of a Note:

- (a) **Payments free and clear:** each payment under each Note must be made:
- (i) free of any restriction or condition;
 - (ii) free and clear of, and (except to the extent required by law or as provided in this clause 9.3 and in clause 9.4) without deduction or withholding on account of, any taxes; and
 - (iii) (except to the extent required by law or as provided in this clause 9.3) without any deduction or withholding (whether by way of set-off, counterclaim or otherwise);
- (b) **Non-resident withholding tax:** where New Zealand's non-resident withholding tax regime applies to a payment to Noteholders, non-resident withholding tax will be deducted in respect of that payment.

If the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to such a Noteholder, then, unless requested otherwise by such Noteholder in writing and agreed to by the Issuer (or the Registrar on its behalf), the Issuer (or the Registrar on its behalf):

- (i) must pay the Approved Issuer Levy to the appropriate governmental authority; and
 - (ii) may recover the amount of Approved Issuer Levy paid by deducting the amount from the interest (or deemed interest) payable to that Noteholder;
- (c) **Resident withholding tax:** where New Zealand's resident withholding tax regime applies to a payment made to Noteholders, resident withholding tax will be deducted in respect of that payment, unless the Noteholder establishes to the satisfaction of the Issuer (or the Registrar on its behalf) by means of production of a current certificate of exemption from resident withholding tax or otherwise at least 10 Business Days prior to the relevant Record Date for the relevant payment of interest, that no such tax need be deducted;
- (d) **Highest rate:** if the Issuer is to make any deduction or withholding on account of New Zealand withholding taxes from any payment to a Noteholder (including, if

applicable, any other person who beneficially derives interest under the relevant Note) as stated in this clause 9.3, it must make the deduction or withholding at the highest rate applicable unless the Noteholder can demonstrate to the Issuer (and the Issuer accepts) that a lesser rate is appropriate;

- (e) **No gross-up:** the Issuer is not required to, and will not, make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Notes under clause 9.3(b) or (c). If, in respect of any Note and for whatever reason, the Registrar or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Noteholder (including, if applicable, any other person who beneficially derives interest under the relevant Note), then the relevant Noteholder will indemnify the Registrar and the Issuer in respect of that liability. Any moneys paid by the Registrar or the Issuer in respect of the liability may be recovered from the Noteholder as a debt due to the Registrar or to the Issuer and may be withheld from any further payments to that Noteholder. Nothing in this clause 9.3(e) limits or affects any other right or remedy of the Registrar or the Issuer; and
- (f) **Tax status:** the Issuer and the Registrar are entitled, for the purposes of this clause 9.3, to rely solely upon any evidence produced or statement made by (or on behalf of) a Noteholder in relation to that Noteholder's tax status or tax residency, and to regard the Noteholders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Notes. Neither the Issuer nor the Registrar is obliged to take any action or make any adjustments on account of any withholdings or deductions already made as a result of any change or alteration of a Noteholder's tax status or tax residency previously notified to, or assumed by, the Issuer and the Registrar. The Noteholder is solely responsible for establishing to the satisfaction of the Issuer (or the Registrar on its behalf), not later than 10 Business Days prior to the relevant Record Date for the relevant payment of interest, that there has been a change or alteration of a Noteholder's tax status or tax residency previously notified to, or assumed by, the Issuer and the Registrar.

9.4 **FATCA**

- (a) The Issuer, in its absolute discretion, may withhold or deduct payments to a Noteholder where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Noteholder or a beneficial owner of Notes may be subject to FATCA, and may deal with such payment and the Noteholder's Notes in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Noteholder or a beneficial owner of Notes for or in respect of any such withholding or deduction.

- (b) Each Noteholder will, within 10 Business Days of request by the Issuer, supply to the Issuer such forms, documentation and other information relating to its status under FATCA as the Issuer reasonably requests for the purposes of the Issuer's compliance with FATCA.

9.5 Time of payment

If the date for payment of any Redemption Amount or Interest Amount in respect of a Note is not a Business Day, the due date for that payment is instead the next succeeding Business Day unless that Business Day would fall in the next succeeding month, in which case the due date for that payment is instead the immediately preceding Business Day. The Noteholder is not entitled to any further interest or other payment in respect of any such delay.

9.6 Reinstatement

If a payment made by the Issuer to a Noteholder pursuant to this deed is avoided by law:

- (a) that payment will be deemed not to have discharged or affected the obligation of the Issuer in relation to which that payment was made or received; and
- (b) the Noteholder and the Issuer will be deemed to be restored to the position in which each would have been, and may exercise all the rights which each would have had, if that payment had not been made.

9.7 Unclaimed money

In the event that any payment of Note Moneys either paid into the bank account of the Noteholder last advised to the Issuer or the Registrar or sent or made by or on behalf of the Issuer to a Noteholder at its last address recorded in the Register in respect of that Noteholder is either returned unclaimed or, in the case of a cheque, not presented for payment within 6 months of the date of issue (such amount, or in the case of an unrepresented cheque, the amount representing the value of that cheque, being "**unclaimed money**"), then:

- (a) all unclaimed money must be retained by the Issuer or the Registrar for the relevant Noteholder concerned without any obligation to invest or pay interest on that amount; and
- (b) if the unclaimed money is not claimed within five years after its due date:
 - (i) it is taken to be forfeited to the Issuer for the Issuer's benefit and shall not longer be treated as unclaimed money; and
 - (ii) the person who otherwise would have been entitled to it is entitled to receive payment only of an amount equal to the amount forfeited if the person produces evidence which satisfies the Issuer (in its absolute

discretion) that the person would have been entitled to receive that payment if the unclaimed money had not been forfeited.

9.8 **Role of the Registrar**

In acting under the Registrar and Paying Agency Agreement and in connection with the Notes, the Registrar acts solely as the agent of the Issuer and does not assume any obligations towards, or relationship of agency or trust for or with, any of the Noteholders.

10 **REPURCHASE AND CANCELLATION**

The Issuer may, at any time during the term of the Notes, purchase Notes on the open market or by private contract at any price. Notes purchased by or for the account of the Issuer may be cancelled or resold at the option of the Issuer.

11 **REPRESENTATIONS AND WARRANTIES**

11.1 **Representations and Warranties**

The Issuer represents and warrants to each Noteholder that:

- (a) **Status:** it is a corporation duly incorporated and validly existing with indefinite corporate existence, capable of suing and being sued, and has the power and authority to own its assets and to carry on its business as, and in such place or places as, it is now being conducted;
- (b) **Power and Authority:** it has the corporate power to, and has taken all necessary corporate action to authorise it to, enter into, exercise its rights and perform and comply with its obligations under this deed and the Registrar and Paying Agency Agreement and to issue Notes; and
- (c) **Valid Obligations:** this deed and the Registrar and Paying Agency Agreement constitute and the Notes, when issued, will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, subject to equitable principles of general application and insolvency, bankruptcy, reorganisation, moratorium or similar laws affecting creditors' rights generally.

11.2 **Repetition**

The representations and warranties contained in clause 11.1 will be deemed to be repeated by the Issuer on each date on which a Note is issued by reference to the facts and circumstances then existing in favour of the Noteholders of Notes to be issued on that date.

12 **GENERAL COVENANTS**

The Issuer covenants with the Noteholders that while any Note Moneys remain outstanding under or in connection with this deed:

- (a) **Authorisations:** it will obtain, make, do, fulfil and maintain in full force and effect all approvals, authorisations, consents, licences, registrations, notifications or other acts, conditions and things from time to time required under any applicable laws or regulations to enable it to enter into and perform its obligations under this deed, to ensure that such obligations are legally binding and enforceable, and to make this deed admissible in evidence in the courts of New Zealand;
- (b) **Maintain Accounts:** it will keep proper accounting records in accordance with its obligations under all applicable laws or regulations;
- (c) **Notice of Changes and Breach:** it will promptly after becoming aware thereof give notice to the Noteholders, in accordance with clause 13 of:
 - (i) Events of Default: the occurrence of any event or circumstance referred to in clause 14.1; and
 - (ii) Agency Agreement: any appointment, resignation or removal of the Registrar or change in its office or any material change in or termination of the Registrar and Paying Agency Agreement.

13 NOTICES

13.1 Method of notices

All notices or other communications to be given or made by a party to this deed or a Noteholder:

- (a) must be in writing and addressed as follows:
 - (i) if to ASB Bank Limited, to its principal place of business, which as at the date of this deed is:

Level 2, ASB North Wharf
12 Jellicoe Street
Auckland 1010

E-mail: funding@asb.co.nz
Attention: Head of Funding and ALM
 - (ii) if to Computer Investor Services Limited, to its principal place of business, which as at the date of this deed is:

Level 2, 159 Hurstmere Rd
Takapuna
Auckland 0622

Private Bag 92119
Auckland 1142

E-mail: wholesaleissues@computershare.co.nz
Facsimile: (09) 488 8787
Attention: Account Manager

or to such other address as may be notified by the Issuer or the Registrar, as the case may be, to the other party and Noteholders from time to time; and

- (iii) if to a Noteholder, to the address for that Noteholder as shown in the Register at the close of business 7 days prior to despatch of the relevant notice, request, application, certificate, demand, consent, approval, agreement or other communication; and
- (b) will be deemed to be duly given or made:
- (i) (in the case of delivery in person) when delivered personally or to the address, place of business or registered office of the intended recipient referred to in clause 13.1;
 - (ii) (in the case of post within New Zealand) on the second day after having been posted as prepaid ordinary mail;
 - (iii) (in the case of international post) on the fourteenth day after having been posted as prepaid airmail;
 - (iv) if sent by e-mail, on the later of 24 hours after sending the email and the date it is delivered; and
 - (v) (in the case of facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

13.2 Time of notice

If any notice or other communication is deemed to have been given or made pursuant to clause 13.1 after 4.00pm in the place to which such communication is addressed or on a day which is not a working day in that place, it will be deemed to be duly given or made at 9.00am on the next working day in that place. This clause 13.2 does not apply to such communications to a Noteholder.

14 EVENTS OF DEFAULT

14.1 Events of Default

An Event of Default occurs in respect of a Note if:

- (a) the Issuer fails to pay the Principal Amount of, or any interest on, the Note within 14 days of the due date; or
- (b) the Issuer becomes insolvent or the Issuer applies for or consents to or suffers the appointment of a liquidator or receiver of the Issuer or the whole or any part of its assets or undertaking or makes or enters into a general assignment or an arrangement or composition with or for the benefit of its creditors; or
- (c) any event occurs which is specified in the Conditions applicable to that Note as an Event of Default.

14.2 Consequences of default

If an Event of Default occurs in respect of a Note, a Noteholder may, by notice to the Issuer (with a copy to the Registrar) declare all of the Notes held by that Noteholder to be due and payable on the next Business Day after service of the notice unless, prior to that date, the Issuer has cured or otherwise made good all Events of Default subsisting prior to that date. Payment of the amount determined as set out below in respect of that notice will be made by the Issuer in the manner determined pursuant to clause 9.1 as if the next Business Day after the service of the notice was the relevant due date for payment.

14.3 Amount payable on default

If a Noteholder gives notice to the Issuer pursuant to clause 14.2, the Issuer must redeem the applicable Notes by paying or procuring to be paid to that Noteholder, the aggregate as at the date of payment of the Redemption Amount of each Note, together with all accrued and unpaid interest.

15 AMENDMENTS

15.1 Amendments

The Issuer may make any modifications, amendments or additions to this deed or to the terms and conditions of any Note:

- (a) **No Consent:** without the consent of the Noteholders if the same:
 - (i) **Technicalities:** shall be made to correct a manifest error or is of a formal, technical or administrative nature;
 - (ii) **Other Obligations:** is necessary to ensure that the tenor or nature of the obligations imposed upon the Issuer hereunder correspond with or do not

conflict with the obligations imposed on the Issuer under or pursuant to any applicable statutory provision;

- (iii) **Quotations:** shall be convenient for the purpose of obtaining or maintaining a quotation of any Note on any stock exchange in New Zealand or elsewhere;
 - (iv) **Applicable Law:** shall be made to comply with the requirements or any modification of the requirements of any applicable law;
 - (v) **Note:** in relation to any modifications or additions to any Note, is permitted by the terms and conditions of the relevant Note; or
 - (vi) **Otherwise Appropriate:** is an appropriate and reasonable modification or addition in all the circumstances in so far as they relate to this deed and the Issuer (as to which modifications or additions which are necessary or convenient for complying with any practice of the New Zealand financial markets or for complying with banking practice, or are necessary, convenient or useful for the purpose of any financial market, banking or business practice or technique or method adopted by the Issuer or persons which carry on similar business to the Issuer, shall be prima facie deemed reasonable and appropriate), provided that any such modification or addition is in the Issuer's opinion (which opinion shall be final and conclusive) not likely to have a material adverse effect on the Issuer or to be or become materially prejudicial to the general interests of Noteholders; or
- (b) **Consent:** if the same shall be approved:
- (i) **In writing:** in writing by the particular Class or Classes of Noteholders affected by the modification or amendment; or
 - (ii) **Extraordinary Resolutions:** by an Extraordinary Resolution of the particular Class or Classes of Noteholders affected by the modification or amendment,

in each case in accordance with the provisions of the Schedule.

For the avoidance of doubt:

- (a) the resetting of the Interest Rate applicable to a Note in accordance with the terms and conditions of the relevant Note as set out in the Conditions in respect of that Note; and
- (b) the entry by the Issuer into any additional deed that is supplemental to or amends this deed in connection with the issuance of further Notes,

shall not be regarded as a modification or amendment to the terms and conditions of any Note for the purposes of this clause 15.1.

15.2 No notice required

The Issuer shall not be required to give notice to a Noteholder of any modification, amendment or addition to the provisions of this deed.

15.3 Amendment binding

Any amendment, modification or addition made pursuant to this clause 15 will bind all Noteholders from time to time and the rights and entitlements of all Noteholders in or under this deed and the Conditions will be read and construed accordingly.

16 WAIVER

Subject to any applicable law, by notice to the Issuer, any breach or anticipated breach by the Issuer of this deed or of the terms and conditions of any Note may be waived in whole or in part, for a specified period or indefinitely or on such other terms and conditions as may be approved by:

- (a) **Relevant Noteholder:** the Noteholder concerned;
- (b) **In Writing:** in writing by the particular Class or Classes of Noteholders affected by the breach or anticipated breach pursuant to and in accordance with clause 14 of the Schedule; or
- (c) **Extraordinary Resolution:** An Extraordinary Resolution of the particular Class or Classes of Noteholders affected by the breach or anticipated breach.

17 MEETINGS OF NOTEHOLDERS

Meetings of Noteholders may be convened in accordance with the provisions of the Schedule. Any such meeting may consider any matters affecting Noteholders' interests.

18 GOVERNING LAW AND JURISDICTION

This deed and the Notes shall be governed by, and construed in accordance with, the laws of New Zealand and each Noteholder from time to time and each of the Issuer and the Registrar irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

Signed as a Deed

ASB Bank Limited by its attorneys:

Attorney

Attorney

In the presence of:

Witness

Occupation

Address

SCHEDULE

Noteholders' Meetings

1 **Interpretation**

References in this Schedule to Noteholders shall include only the Noteholders comprising the Class or Classes for which any meeting is convened, except where the context indicates otherwise, and "**Note**" shall be construed accordingly.

2 **Convening**

The Issuer may, the Issuer must (on the written request of any one or more Noteholders entitled to receive in aggregate not less than 5% in Principal Amount of Outstanding Notes for the time being) and any one or more Noteholders entitled to receive in aggregate not less than 5% in Principal Amount of Outstanding Notes for the time being may convene a meeting (which includes, if there is only one Noteholder in a Class, the attendance of that person at the place at the time specified pursuant to this Schedule) of Noteholders or, if appropriate, a meeting of Noteholders of one or more particular Class.

3 **Notice**

(a) At least 15 Business Days' notice (exclusive of the day on which the notice is given and of the day on which the meeting is held) specifying the day, time and place of meeting must be given to each other party and to each Noteholder by the convener of the meeting in accordance with clause 13 of this deed, other than to Noteholders who have waived their right to receive such notice and who have communicated such waiver to the Registrar in writing. The notice will also specify the nature of the resolutions to be proposed.

(b) Voting certificates may be obtained from and proxy forms given to the Registrar not later than 7 days before the time fixed for the meeting.

4 **Short notice**

Notwithstanding that a meeting is called by shorter notice than that specified in clauses 3 or 5(c) of this Schedule, it will be deemed to be duly called if so agreed to by at least 75% of Noteholders having right to attend and vote at that meeting.

The accidental non-receipt of notice by any Noteholder does not invalidate the proceedings at any meeting or any resolution passed in writing.

5 **Quorum**

(a) At any meeting any one or more persons present in person holding voting certificates or being proxies and being entitled to receive or representing in the aggregate not less than 10% in Principal Amount of Outstanding Notes for the time being will (except for the purpose of passing an Extraordinary Resolution) form a quorum for the transaction of business. No business (other than the choosing of a chairperson) will be transacted at any meeting unless the requisite

quorum is present at the commencement of business. The quorum at any such meeting for passing an Extraordinary Resolution will (subject as provided below) be one or more persons present in person holding voting certificates or being proxies and being entitled to receive or representing in the aggregate not less than 50% in Principal Amount of Outstanding Notes for the time being.

- (b) If within 30 minutes from the time fixed for any meeting a quorum is not present, the meeting will, if convened by Noteholders, be dissolved. In any other case it will stand adjourned for such period, not being less than 7 days nor more than 42 days, and to such place, as may be decided by the chairperson nominated pursuant to clause 6 of this Schedule. At such adjourned meetings one or more persons present in person holding voting certificates or being proxies (whatever the Principal Amount of the entitlement or represented) will form a quorum and may pass a resolution (including an Extraordinary Resolution) and decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had a quorum been present at such meeting.
- (c) Notice of an adjourned meeting at which an Extraordinary Resolution is to be submitted shall be given to the same persons as those who were given notice of the original meeting and otherwise shall be given in the same manner (except in respect of the period of notice, which shall be not less than 3 days' notice) as notice of the original meeting. Such notice shall state that the Noteholders present at the adjourned meeting whatever their number and whatever the nominal amount of Notes held or represented by them shall form a quorum. No notice shall be required of any other adjourned meeting.

6 Chairperson

The person (who may, but need not, be a Noteholder) nominated in writing by the Issuer will take the chair at every meeting but, if no such nomination is made or if at any meeting the person nominated is not present within 15 minutes after the time fixed for the meeting, the Noteholders present will choose one of their number to be chairperson, failing which the Issuer may appoint a chairperson. The chairperson of an adjourned meeting need not be the same person as was chairperson of the original meeting.

7 Adjournment

The chairperson may with the consent of (and must if directed by) any meeting adjourn a meeting from time to time and from place to place but no business will be transacted at any adjourned meeting except business which might properly have been transacted at the meeting from which the adjournment took place.

8 Right to attend and speak

No person is entitled to attend and speak at any meeting other than the Noteholders, the Issuer and the Registrar or any director, officer, solicitor or any other person authorised by any of the above to do so.

9 Proxies

- (a) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a company, under the hand of an officer or attorney so authorised.
- (b) A person appointed to act as a proxy need not be a Noteholder. A holder of a proxy has the right to speak at the meeting.
- (c) Not less than 7 days (or such other shorter period as the Registrar may agree and as specified in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the person named in the instrument proposes to vote, the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy of such power or authority certified in such manner as the Registrar may require will be:
 - (i) deposited at such place as the Registrar, or the Issuer with the approval of the Registrar, may direct, and as set out in the notice convening the meeting; or
 - (ii) if no such place is appointed, sent to the Registrar at the address of the Registrar set out in clause 13.1(a)(ii) of this deed (or otherwise specified for the purposes of that clause).

Except as set out below, if a proxy is not deposited at the place and in the time specified, the instrument of proxy will not be treated as valid. The Registrar may, in its absolute discretion, accept as valid any instrument of proxy, notwithstanding that such instrument or any power of attorney or other authority is received or produced at a place other than that specified above or out of time.

- (d) An instrument of proxy may be in any usual or common form or in such other form as the Registrar may approve and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- (e) A proxy whether in usual or common form or not will, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed.
- (f) An instrument of proxy in favour of:
 - (i) an officer of the Registrar or of any other entity; or
 - (ii) the chairperson of any meeting (howsoever expressed),

is valid and effectual as though it were in favour of a named person and will, in the case of subparagraph (i), constitute the person holding the office or anyone acting in that office and, in the case of subparagraph (ii), constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not), the lawful proxy of the appointor.

10 Voting procedure and polls

- (a) A resolution put to the vote at a meeting will be decided on a show of hands unless it is an Extraordinary Resolution or a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Registrar or any representative of the Registrar or by the Issuer or by any Noteholder or Noteholders holding or representing not less than 5% in Principal Amount of Outstanding Notes for the time being that are entitled to vote at that meeting. Unless a poll is so demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. A resolution will be passed by a simple majority of persons present in person or by proxy unless it is an Extraordinary Resolution.
- (b) In the case of an Extraordinary Resolution or if a poll is duly demanded, a poll will be taken in such manner as the chairperson may direct, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. On a poll, each Noteholder or proxy present will have one vote for each \$1 in Principal Amount of the Notes registered in the name of the Noteholder or the grantor of the proxy, as the case may be.
- (c) A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken, either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. No notice need be given of a poll not taken immediately.
- (d) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) On a poll, a person entitled to more than one vote need not use all the votes to which that person is entitled or cast all the votes that person uses in the same way.
- (f) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment is valid, notwithstanding the previous death, insanity or (in the case of a company) receivership or liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the

authority under which the proxy was executed, provided that no intimation in writing of such death, insanity, liquidation or revocation is received by the Registrar at its address set out in clause 13.1(a)(ii) of this deed (or otherwise specified for the purposes of that clause) 48 hours or more before the commencement of the meeting or adjourned meeting at which the proxy is used.

- (g) Notwithstanding anything else in this Schedule, in relation to any vote (whether on a show of hands or otherwise), each Noteholder may only be represented by one person, being the person first named on the Register, even if the Note is held by more than one person jointly.

11 **Extraordinary resolutions**

Unless otherwise expressly stated in this deed, the expression "**Extraordinary Resolution**" when used in this deed means a resolution passed at a meeting of Noteholders duly convened and held in accordance with this Schedule, at which Noteholders holding at least 75% in Principal Amount of Outstanding Notes held by those persons who are entitled to vote and who vote on the question, and the expression "**Extraordinary Resolution**" referring to any Class of Noteholders shall have a corresponding meaning in relation to meetings of such Class.

Subject to clause 12 of this Schedule, the Noteholders have the following powers exercisable by Extraordinary Resolution:

- (a) power to sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the Note Moneys;
- (b) power to sanction the exchange of Notes for or the conversion of Notes into shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
- (c) power to postpone the day when any Notes shall become payable and to suspend or postpone or, with the concurrence of the Issuer, to accelerate the payment of interest on Notes;
- (d) power to sanction any release, modification, waiver, variation, moratorium or compromise or any arrangement in respect of the rights of Noteholders against the Issuer or against its assets howsoever such rights arise;
- (e) power to assent to any modification or addition to the provisions contained in this deed or any Conditions in respect of a Note prepared or agreed to by the Issuer;
- (f) power to give any sanction, assent, release or waiver of any breach or default by the Issuer under any of the provisions of this deed or any Conditions in respect of a Note or any Event of Default;

- (g) power to sanction any scheme for the reconstruction of the Issuer for the amalgamation of the Issuer with any other company where such sanction is necessary; and
- (h) power to give any consent, approval, dispensation, authorisation or waiver, or to take any other action, able to be given or taken by the Noteholders under the provisions of this deed or the Conditions in respect of a Note.

12 **Resolutions binding**

Subject to this clause, a resolution (whether passed at a meeting duly convened or held in accordance with this Schedule or passed in writing in accordance with clause 14 of this Schedule) will be binding upon all Noteholders and such Noteholders and the Registrar will be bound to give effect thereto, provided that:

- (a) a resolution of Noteholders which affects Noteholders of a particular Class only, as opposed to the rights of Noteholders generally, is not binding on the Noteholders of that particular Class unless the Noteholders of that particular Class have agreed to be bound thereby in a meeting at which clause 5 of this Schedule applies as if the Class owned by those Noteholders were the only Notes;
- (b) a resolution of Noteholders which affects more than one Class but which does not give rise to a conflict of interest between the Noteholders of any of the Classes affected is not binding on the Noteholders of those Classes unless the Noteholders of those Classes have agreed to be bound thereby in a meeting at which clause 5 of this Schedule applies as if the aggregate of the Classes owned by those Noteholders were the only Notes;
- (c) a resolution of Noteholders which affects more than one Class and which gives or may give rise to a conflict of interest between the Noteholders of any of the Classes so affected is not binding on the Noteholders of those Classes unless the Noteholders of each of those Classes have agreed to be bound thereby in meetings of each of those Classes which clause 5 of this Schedule applies as if each of those Classes owned by those Noteholders were the only Notes;
- (d) a resolution of all Noteholders or of Noteholders of a Class which affects a particular Noteholder only, rather than the rights of all Noteholders of that Class generally, will not be binding on that Noteholder unless that Noteholder has agreed to be bound thereby; and
- (e) no Extraordinary Resolution which purports to have any of the following effects upon any Note owned by a Noteholder is valid unless agreed to by that Noteholder:

- (i) the release or variation of any obligation to pay the Principal Amount, the Redemption Amount or any interest;
- (ii) the alteration of any date upon which any part of the Principal Amount, the Redemption Amount or any interest is payable;
- (iii) the alteration of the basis of calculation or currency of any payment to be made under any Note or the circumstances in which any such amount becomes payable; or
- (iv) varying this clause 12.

The Issuer may rely on, and the Noteholders will be bound by, a legal opinion from a leading law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Notes, does not give rise to a conflict of interest, for the purpose of determining the meeting or meetings which need to be held for the purposes of this clause 12.

Where an amendment requiring approval of the Noteholders relates to or arises from any general change in the constitution, affairs or business of the Issuer, such approval will not be required to be dealt with by way of separate meetings of each Class of Noteholders unless the Issuer determines that there is a material difference in the effect of such resolution on those Classes.

13 Minutes to be kept

Minutes of all resolutions and proceedings at every meeting of Noteholders will be made by the Issuer or, if the Issuer is not present at any meeting, by some person appointed by the chairperson of that meeting for that purpose and will be duly entered in books from time to time provided for that purpose by the Issuer. Any minutes purporting to be signed by the chairperson of the meeting at which the resolutions were passed or the proceedings were conducted, will be prima facie evidence of the matters therein stated, and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had.

14 Passing of resolutions by instrument in writing

Notwithstanding the preceding provisions of this Schedule, a resolution of Noteholders (including an Extraordinary Resolution) may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing which have been signed by Noteholders entitled to receive not less than 50% in Principal Amount of Outstanding Notes for the time being in relation to a resolution and by Noteholders entitled to receive not less than 75% in Principal Amount of Outstanding Notes for the time being in relation to an Extraordinary Resolution, in each case referring to Outstanding Notes held by those persons who are entitled to vote and who vote on the question. Any such instrument will be effective upon presentation to the Issuer for entry in the records

referred to in clause 13 of this Schedule. For the avoidance of doubt, a resolution passed pursuant to this clause 14 may consist of several documents in similar form, each of which has been signed by one or more Noteholders.

Any such resolution may be signed by a Noteholder, or an agent or attorney of the Noteholder duly authorised in writing, or if the Noteholder is a company, by a director, or by an attorney so authorised by the company.

15 **Notes held by the Issuer or Subsidiary**

For the avoidance of doubt, neither the Issuer nor any Subsidiary will be entitled to exercise any voting rights in respect of any Notes which it may hold at any time, and any such Notes held by the Issuer or any such Subsidiary shall not be included for the purposes of determining:

- (a) the Principal Amount of Outstanding Notes; or
- (b) the majority of Noteholders, at any meeting.