

Securities Act (Westpac Banking Corporation – Australian Bank Accounts) Exemption Notice 2011

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- 1 Title**
This notice is the Securities Act (Westpac Banking Corporation – Australian Bank Accounts) Exemption Notice 2011.
- 2 Commencement**
This notice comes into force on 21 December 2011.
- 3 Expiry**
This notice expires on the close of 30 November 2016.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
call account means an account opened with Westpac by a subscriber in New Zealand for specified securities



call debt security means a debt security under which —

- (a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after such a demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

investment grade credit rating means a credit rating —

- (a) of BBB- or better by Standard & Poor's or by Fitch Ratings; or
- (b) of Baa3 or better by Moody's Investors Service

Regulations means the Securities Regulations 2009

specified securities means call debt securities offered by Westpac in New Zealand of which Westpac is the issuer and which are denominated in Australian dollars and which will be held in a call account in Australia

Westpac means Westpac Banking Corporation, a company incorporated in Australia.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption from section 33(1)(b) of Act

Westpac and every person acting on its behalf are exempted from section 33(1)(b) of the Act in respect of any advertisement relating to the specified securities.

6 Exemption from regulation 24 of Regulations

Westpac and every person acting on its behalf are exempted from regulation 24 of the Regulations in respect of any advertisement relating to the specified securities.

7 Conditions of exemptions in clauses 5 and 6

- (1) The exemptions in clauses 5 and 6 are subject to the following conditions:
 - (a) at the time the offer of specified securities is made and at the time of the allotment of the specified securities, Westpac must—

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- (i) be licensed or authorised by the central banking authority of the Commonwealth of Australia to carry on banking business in that jurisdiction; and
 - (ii) be a registered bank (as defined in the Act) in New Zealand; and
 - (iii) have an investment grade credit rating for its long-term senior unsecured obligations, and that credit rating must be available on the Internet site of Westpac; and
 - (b) any advertisement in New Zealand for the specified securities must state —
 - (i) that the most recent published financial statements, annual report, and capital adequacy and risk disclosures of Westpac are publicly available; and
 - (ii) the Internet site where those documents can be obtained free of charge; and
 - (c) at the time a call account is opened with Westpac, Westpac must provide the subscriber with a description of the terms and conditions and the fees and charges relating to the call account; and
 - (d) at the time a call account is opened with Westpac and before the first allotment of specified securities to the subscriber in that account, the information specified in subclause (2) must be given to the subscriber.
- (2) The information referred to in subclause (1)(d), which must be set out under the heading “Important Information for New Zealand Depositors”, is as follows:
- (a) the name and address of Westpac in Australia; and
 - (b) that Westpac is a company incorporated in Australia and therefore may not be subject in all respects to New Zealand law; and
 - (c) that the call account with Westpac will be operated under the laws of the Commonwealth of Australia; and
 - (d) that Westpac is not a participant in the New Zealand Crown retail deposit guarantee scheme relating to guarantees given by the Minister of Finance on behalf of the Crown in respect of certain financial institutions and that any call debt security issued by Westpac will not be covered by a New Zealand Crown guarantee; and



- (e) that the call account is denominated in Australian dollars and may carry with it a currency risk; and
 - (f) the Internet site where the most recent published financial statements, the annual report, and capital adequacy and risk disclosures of Westpac can be obtained free of charge; and
 - (g) the following, which must be set out under the subheading “Agreement as to Jurisdiction”:
 - (i) that, in respect of a dispute concerning the specified securities, Westpac—
 - A agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - B has instructed the New Zealand agent for service referred to in subparagraph (iii) below to accept service on behalf of Westpac; and
 - C agrees that the statement is an agreement with each customer for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) that, despite the statements in subparagraph (i), the contract in respect of the securities may not always be enforceable in New Zealand courts; and
 - (iii) the name and address for service of the person in New Zealand who has been appointed by Westpac to accept service in New Zealand of any document on its behalf.
- (3) Subclause (2)(d) does not apply if there is no New Zealand Crown retail deposit guarantee scheme under which guarantees may be given in respect of New Zealand registered banks at the time the statement or information must be given to the subscriber.

8 Exemption from regulation 30(2) of Regulations

Westpac and every person acting on its behalf are exempted from regulation 30(2) of the Regulations in respect of any advertisement relating to the specified securities in so far as regulation 30(2) requires a certificate for the purposes of regulation 30(1) of the Regulations to be in the form set out in Schedule 14 of the Regulations.

9 Condition of exemption in clause 8

The exemption in clause 8 is subject to the condition that the certificate for the purposes of regulation 30(1) of the Regulations is in the same form as set out in Schedule 14 of the Regulations except that instead of paragraph (c) there is inserted the following:

“(c) the advertisement does not contain any matter that is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities.”

Dated at Auckland this 20th day of December 2011



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 21 December 2011 and expires on the close of 30 November 2016.

This notice relates to an offer by Westpac Banking Corporation (Westpac) of call debt securities. The offer is to be made in New Zealand, but the call debt securities will be issued in Australia and the call accounts will be Australian call accounts.

Westpac is a company registered in Australia and is also a registered bank in New Zealand.

As a registered bank, under section 33(1)(b) of the Securities Act 1978 (the Act) Westpac must make offers of securities in an authorised advertisement. Under regulation 24 of the Securities Regulations 2009 (the Regulations), the advertisement must not be inconsistent with the disclosure statement, made pursuant to section 81 of the Reserve Bank of New Zealand Act 1989, relating to the securities. Under regulation 30(2) of the Regulations the prescribed form of certificate for an advertisement must contain a certification that the advertisement does not contain any

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matter that is inconsistent with the disclosure statement for the securities.

This notice exempts Westpac from section 33(1)(b) of the Act and regulations 24 and 30(2) of the Regulations, subject to conditions.

The Financial Markets Authority (FMA), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant these exemptions because—

- the call debt securities held in call accounts located in Australia to be offered by Westpac are “transactional” deposits, similar to call accounts offered by registered banks in New Zealand:
- Westpac is licensed or otherwise authorised by the central banking authority in the Commonwealth of Australia to carry on banking business in that jurisdiction:
- the financial information relevant to the call debt securities is the information in relation to the entire business of Westpac rather than the New Zealand business as is provided in the Westpac disclosure statement produced pursuant to the Reserve Bank of New Zealand Act 1989. Conditions of the exemptions require subscribers to have access to financial and other information about the Australian operations of Westpac that would allow them to assess the risks of opening such Australian call accounts and the financial strength of Westpac:
- in light of the limited application of the exemptions to Australian call debt securities offered by Westpac, and the alternative licensing and disclosure requirements imposed by the notice which are suited to the nature of these securities, FMA considers that the exemptions will not cause significant detriment to subscribers, and that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.

