

## Macquarie Group Limited

ABN 94 122 169 279

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MACQUARIE

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# ASX/Media Release

## MACQUARIE GROUP CAPITAL NOTES 3 TERMS AMENDMENT

**SYDNEY, 19 August 2024** - Macquarie Group Limited (ASX: MQG; ADR: MQBKY) (“MGL”) has today amended the terms of the Macquarie Group Capital Notes 3 (“MCN3”) issued by MGL on 7 June 2018 (ASX: MQGPC). The amendments have been made to facilitate the Reinvestment Offer under which Eligible MCN3 Holders may apply to reinvest some or all of their MCN3 in Macquarie Group Capital Notes 7 (“MCN7”), as outlined in the initial prospectus for the MCN7 lodged with ASIC today by Macquarie (the “Prospectus”).

The amendments to the terms of the MCN3 take effect from today and apply to all MCN3, regardless of whether they are reinvested into MCN7. The amendments are detailed in the attached amending deed.

Capitalised terms not defined in this announcement take their meaning from the Prospectus.

## Contacts

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This document has been authorised for release by Sam Dobson, Head of Investor Relations.

# Amending Deed

Dated 19 August 2024

in relation to the Macquarie Group Capital Notes 3 issued on 7 June 2018  
by Macquarie Group Limited (ABN 94 122 169 279)

**King & Wood Mallesons**  
Level 27  
Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia  
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# Amending Deed

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# Amending Deed

## Details

<b>Parties</b>	<b>Issuer and Trustee</b>	
<b>Issuer</b>	Name	<b>Macquarie Group Limited</b>
	ACN	122 169 279
	Address	1 Elizabeth Street Sydney NSW 2000
	Fax	+61 2 8232 7780
	Attention	Company Secretary
<b>Trustee</b>	Name	<b>Certane CT Pty Ltd (formerly known as AET Corporate Trust Pty Limited)</b>
	ACN	106 424 088
	Address	Level 6  80 Clarence Street, Sydney NSW 2000
	Email	ct.notes@certane.com
	Attention	Relationship Manager
	<b>Date of Deed</b>	19 August
<b>Recitals</b>	<b>A</b>	On 7 June 2018, the Issuer issued A\$1,000,000,000 Macquarie Group Capital Notes (“ <b>MCN3</b> ”).
	<b>B</b>	The Issuer wishes to amend the terms and conditions of the MCN3 in order to facilitate a reinvestment offer for a new issue of capital notes on the terms set out in this Deed.
	<b>C</b>	The Issuer is of the opinion that the amendments to the terms and conditions of the MCN3 contemplated by this Deed are not materially adverse to the interests of holders of MCN3 as a whole.
	<b>D</b>	By entering into this Deed, the parties intend to amend the terms and conditions of the MCN3 as set out in this Deed with effect from the Effective Date.

# Amending Deed

## General terms

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### 1 Interpretation

Unless the contrary intention appears, these meanings apply:

**Effective Date** means the date of this Deed.

**MCN3 Trust Deed** means the MCN3 Trust Deed executed by the Issuer and the Trustee on 7 May 2018.

**Original Document** means Schedule 2 to the MCN3 Trust Deed.

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### 2 Amendments

As from the Effective Date, the Original Document is amended as set out in the marked up copy of the Original Document attached as Annexure A to this Deed.

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### 3 Confirmation and acknowledgement

#### 3.1 Confirmation

Each party confirms that, except as provided for in clause 2 (“Amendments”), no other amendments are to be made to the Original Document.

#### 3.2 Conflict

If there is a conflict between the Original Document and this Deed, the terms of this Deed prevail.

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### 4 Limitation of liability – Trustee

Clauses 7.1 (“Limitation of Liability”) to 7.9 (“Acting on directions”) of the MCN3 Trust Deed apply to this Deed as if they were fully set out in this Deed and as if references to “this deed” were references instead to this Deed.

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### 5 General

Clauses 21.1 (“Governing law”) and 21.2 (“Jurisdiction”) of the MCN3 Trust Deed and Schedule 1 (“Definitions and Interpretation”) to the MCN3 Trust Deed apply to this Deed as if they were fully set out in this Deed.

**EXECUTED** as a deed

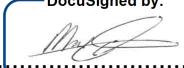
# Amending Deed

## Signing page

### Issuer

**SIGNED, SEALED AND DELIVERED** )  
 by )  
 Morag Home )  
 ..... )  
 and )  
 Mahesh Perera )  
 ..... )  
 as attorneys for **MACQUARIE GROUP** )  
**LIMITED** under power of attorney dated )  
 9 August 2024 in accordance with )  
 section 126(1) of the Corporations Act )  
 2001 (Cth) )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

DocuSigned by:



.....

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

DocuSigned by:

**Mahesh Perera**

.....

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

**Trustee**

**SIGNED, SEALED AND DELIVERED**

by

Steven Woods & Vincent Touchard

Name

as attorney for **CERTANE CT PTY LTD**  
**(ACN 106 424 088)** who certifies that  
he/she has not received notice of any  
revocation of the power of attorney  
dated 23 December 2020



Signature

Steven Woods  
Senior Client Service Associate

Vincent Touchard  
Director, Custody & Corporate Trust

# Amending Deed

## Annexure A



# Terms and Conditions of the MCN3

*These Terms have been established pursuant to, and are incorporated by reference into, the MCN3 Trust Deed. In the event of any inconsistency between the MCN3 Trust Deed and these Terms, the provisions of these Terms shall prevail.*

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## 1 Form and ranking

### 1.1 Issue Price

Each Macquarie Group Capital Note 3 (“**MCN3**”) is issued fully paid for an issue price of A\$100 (“**Issue Price**”).

### 1.2 Form

- (a) The MCN3 are fully paid, unsecured, subordinated notes of the Issuer which are mandatorily convertible into Ordinary Shares.
- (b) Subject, if required by these Terms, to the prior written consent of APRA, each MCN3 may be:
  - (i) Redeemed or Resold by the Issuer; or
  - (ii) Exchanged for fully paid Ordinary Shares,in accordance with these Terms.
- (c) The MCN3 cannot be Redeemed, Resold or Exchanged at the option of a Holder.
- (d) The MCN3 do not represent protected accounts of an ADI or any member of the Macquarie Group for the purposes of the Banking Act or any similar law of any jurisdiction and nor do they represent deposits with, or deposit liabilities of, any member of the Macquarie Group for any other purposes of the Banking Act or the laws of any jurisdiction.
- (e) Except for a claim made on the Issuer in accordance with these Terms and the MCN3 Trust Deed, a Holder has no claim on any member of the Macquarie Group for payment of any amount or the performance of any obligation in respect of any MCN3 held by that Holder.
- (f) The MCN3 are not obligations of the Australian Government or of any other government and, in particular, are not guaranteed or insured by the Commonwealth of Australia or any government, government agency or compensation scheme in any jurisdiction or by any other person.
- (g) The MCN3 are constituted by the MCN3 Trust Deed of which these Terms form part.

### 1.3 Entries in the Register

The MCN3 are issued when they are entered in the Register.

## 1.4 CHESS

The MCN3 will be lodged into and dealt with in CHESS. While the MCN3 remain in CHESS:

- (a) the rights and obligations of a person holding the MCN3; and
- (b) all dealings (including transfers and payments) in relation to the MCN3 within CHESS,

will be subject to and governed by the ASX Settlement Operating Rules (but without affecting any provisions of these Terms which may cause the MCN3 to cease to be Relevant Securities forming part of Eligible Capital).

No certificates will be issued to Holders unless the Issuer determines that certificates should be available or are required by law.

## 1.5 Ranking

Subject to the MCN3 Trust Deed, and except to the extent mandatorily provided by law, each MCN3 ranks for payment, and ranks in a Winding Up of the Issuer:

- (a) senior to Ordinary Shares;
- (b) equally with all other MCN3 in all respects;
- (c) equally with all Equal Ranking Obligations; and
- (d) subordinate to all Senior Creditors in respect of distributions and payments in a Winding Up of the Issuer.

## 1.6 Independent obligations

Each entry in the Register constitutes a separate and individual acknowledgement to the relevant Holder of the Issuer's indebtedness to, and the obligations of the Issuer to, the relevant Holder under these Terms.

## 1.7 No other rights

Except as expressly provided in these Terms in respect of Exchange, MCN3 confer no rights on a Holder to:

- (a) subscribe for securities, or to participate in any bonus issues of securities, of the Issuer or any other member of the Macquarie Group; or
- (b) to otherwise participate in the profits or property of the Issuer or any other member of the Macquarie Group, except by receiving payments as set out in these Terms.

Nothing in these Terms limits the ability of any member of the Macquarie Group, in its absolute discretion from time to time, from issuing shares or other securities of any kind.

---

# 2 Distributions

## 2.1 Distributions

Subject to these Terms, each MCN3 entitles the Holder as at a Record Date to receive on each Distribution Payment Date a cash distribution for the Distribution

Period ending on that Distribution Payment Date (“**Distribution**”) calculated according to the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{A\$100} \times \text{N}}{365}$$

where:

**Distribution Payment Date** means, in respect of an MCN3:

- (a) each 15 March, 15 June, 15 September and 15 December commencing on 17 September 2018 until (but not including) the date on which that MCN3 has been Redeemed or Exchanged in accordance with these Terms; and
- (b) the Redemption Date or, subject to clause 8.6(c), the Resale Date or an Exchange Date, except where the Exchange is on account of a Non-Viability Event;

**Distribution Rate** means:

(Reference Rate + Margin) × Franking Adjustment Factor

where:

- (a) **Reference Rate** means, for a Distribution Period, the rate (expressed as a percentage per annum):
  - (i) designated “BBSW” in respect of prime bank eligible securities having a tenor closest to the Distribution Period which rate ASX (or its successor as administrator of that rate) publishes through information vendors at approximately 10:15am (or such other time at which such rate is accustomed to be so published) (“**Publication Time**”) on the first day of that Distribution Period;
  - (ii) if such rate is not so published by 10:30am (or such other time that is 15 minutes after the then prevailing Publication Time) on that day, or if it does appear but the Issuer determines that there is an obvious error in that rate, “Reference Rate” means the rate determined by the Issuer having regard to comparable indices then available and provided that where an MCN3 is Resold on a day which is not a scheduled quarterly Distribution Payment Date, the Reference Rate for the Distribution Period commencing on the Resale Date is the Reference Rate for the Distribution Period preceding the Resale Date;

- (b) **Franking Adjustment Factor** means:

$$\frac{(1 - T)}{1 - [T \times (1 - F)]}$$

where:

- (i) **F** means the Franking Rate; and
- (ii) **T** means the Tax Rate;
- (c) **Margin** means the rate (expressed as a percentage per annum) determined under the Bookbuild; and

**N** means, for a Distribution Period, the number of days in that Distribution Period; and

**Record Date** means, for any payment of Distributions:

- (a) the date which is eight calendar days before the relevant Distribution Payment Date;
- (b) such other date as is determined by the Issuer, in its absolute discretion, and announced to the Holders on ASX and which is before the Record Date which would have been determined under paragraph (a) above; or
- (c) such other date as may be required by, or agreed by the Issuer with, ASX.

## **2.2 Business Days**

If a Distribution Payment Date is a day which is not a Business Day, then the Distribution Payment Date becomes the next day which is a Business Day.

## **2.3 Distribution payment conditions**

The payment of any Distribution will be made unless:

- (a) the Issuer, in its absolute discretion, determines that the Distribution is not payable to Holders;
- (b) payment of the Distribution would result in the Issuer breaching APRA's capital adequacy requirements applicable to it;
- (c) payment of the Distribution would result in the Issuer becoming, or being likely to become, insolvent for the purposes of the Corporations Act; or
- (d) APRA objects to the payment of the Distribution.

In determining not to pay a Distribution, the Issuer shall consider payment of Distributions as if it were payment of a dividend on a preference share which is an Equal Ranking Obligation.

## **2.4 Non-payment of Distributions**

- (a) Distributions are non-cumulative. If all or any part of any Distribution is not paid because of clause 2.3, the Issuer has no liability to pay the unpaid amount of the Distribution and Holders have no claim or entitlement in respect of any person in respect of such non-payment and such non-payment does not constitute an event of default however described, determined or defined.
- (b) No interest accrues on any unpaid Distributions and the Holders have no claim or entitlement in respect of interest on any unpaid Distributions.
- (c) If all or any part of a Distribution will not be paid in whole or part because of clause 2.3, the Issuer must give notice to the Trustee, Registrar and ASX promptly after determining or becoming aware that payment will not be made.

## **2.5 Dividend Restriction**

- (a) If, for any reason, an amount of any Distribution has not been paid in full on the relevant Distribution Payment Date, a Dividend Restriction shall

apply from that date until the next Distribution Payment Date unless the Distribution is paid in full within 10 Business Days of the relevant Distribution Payment Date.

**“Dividend Restriction”** means that the Issuer must not, without prior approval of a Special Resolution of Holders:

- (i) determine, declare or pay any Ordinary Share Dividend; or
  - (ii) undertake any Buy-Back or Capital Reduction.
- (b) The Dividend Restriction does not apply:
- (i) in connection with any employment contract, employee equity plan, other benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants of a member of the Macquarie Group;
  - (ii) in connection with the Issuer or a member of the Macquarie Group purchasing Ordinary Shares:
    - (A) in connection with transactions for the account of customers of a member of the Macquarie Group; or
    - (B) with the prior written approval of APRA, in connection with the distribution or trading of any securities of the Issuer or any other shares in the capital of the Issuer in the ordinary course of business; or
  - (iii) to the extent that at the time a Distribution has not been paid on the relevant Distribution Payment Date, the Issuer is legally obliged to pay on or after that date an Ordinary Share Dividend or is legally obliged to complete on or after that date a Buy-Back or Capital Reduction.

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## 3 Scheduled Mandatory Exchange

### 3.1 Scheduled Mandatory Exchange

Subject to this clause 3 and clauses 4.8 and 16, the Issuer must Exchange all (but not some) of the MCN3 for Ordinary Shares in accordance with clause 9 on the Mandatory Exchange Date.

### 3.2 Mandatory Exchange Date

The **“Mandatory Exchange Date”** is the first to occur of the following dates:

- (a) 15 December 2027 (the **“Scheduled Mandatory Exchange Date”**) (a **“Scheduled Mandatory Exchange”**); or
- (b) any Distribution Payment Date (within the meaning of paragraph (a) of the definition of that term) after the Scheduled Mandatory Exchange Date (a **“Deferred Mandatory Exchange Date”**),

(each a **“Relevant Mandatory Exchange Date”**) on which the Exchange Conditions relevant to those dates as described in clause 3.3 are satisfied, unless the MCN3 have been or will be Redeemed or Exchanged before that date.

### 3.3 Exchange Conditions

The Exchange Conditions in respect of a Relevant Mandatory Exchange Date are:

- (a) the Daily VWAP on the 25th Business Day immediately preceding (but not including) the Relevant Mandatory Exchange Date (or, if that day is not an ASX Trading Day, the last ASX Trading Day prior to that day) is greater than 56% of the Issue Date VWAP ("**First Exchange Condition**");
- (b) the VWAP during the 20 ASX Trading Days immediately preceding (but not including) the Relevant Mandatory Exchange Date is such that the number of Ordinary Shares to be issued (calculated in accordance with clause 9.1 as if it were not limited by the Maximum Exchange Number applicable to the Relevant Mandatory Exchange Date) is less than or equal to the Maximum Exchange Number applicable to a Relevant Mandatory Exchange Date ("**Second Exchange Condition**");
- (c) no Suspension Event applies in respect of the Relevant Mandatory Exchange Date ("**Third Exchange Condition**"); and
- (d) the Issuer is not Delisted as at the Relevant Mandatory Exchange Date ("**Fourth Exchange Condition**"),

together, the "**Exchange Conditions**".

### 3.4 Mandatory Exchange Notices

- (a) Between the 25th and 21st Business Day (inclusive) before a Relevant Mandatory Exchange Date, the Issuer will notify Holders as to whether or not the First Exchange Condition is satisfied in relation to that Relevant Mandatory Exchange Date and, if it is not, that Exchange will not occur.
- (b) If the First Exchange Condition is satisfied in relation to that Relevant Mandatory Exchange Date, and any of the other Exchange Conditions are not satisfied in relation to a Relevant Mandatory Exchange Date, the Exchange will not occur and the Issuer will notify Holders on or as soon as practicable after the Relevant Mandatory Exchange Date that Exchange did not occur.

Failure to give a notice when required by this clause 3.4 (including where in accordance with clause 13 such notice takes effect only after the last date for the giving of that notice) does not affect the obligations of the Issuer and the Holders to Exchange each MCN3 for Ordinary Shares when required in accordance with these Terms.

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## 4 Non-Viability Event Exchange

### 4.1 Non-Viability Event

A "**Non-Viability Event**" will occur if APRA has notified the Issuer in writing that:

- (a) Relevant Securities must be subject to Loss Absorption because, without such Loss Absorption, APRA considers the Issuer would become non-viable; or
- (b) it has determined that without a public sector injection of capital, or equivalent support, the Issuer would become non-viable.

## **4.2 Exchange on account of a Non-Viability Event**

Subject to this clause 4, if a Non-Viability Event occurs, the Issuer must immediately, in accordance with this clause 4 and clause 9, Exchange:

- (a) in the case of a Non-Viability Event described in clause 4.1(a), some or all MCN3 in the amount determined in accordance with clause 4.3; or
- (b) in the case of a Non-Viability Event described in clause 4.1(b), all MCN3.

## **4.3 Determination of number of MCN3 to be Exchanged**

In determining the number of MCN3 which must be Exchanged in accordance with this clause 4 the following applies:

- (a) the aggregate face value of all Relevant Securities subject to Loss Absorption must equal the amount APRA has notified the Issuer (or if APRA has not notified the Issuer of that amount, the amount determined by the Issuer) to be necessary to satisfy APRA that the Issuer will not become non-viable;
- (b) Relevant Securities that are Equal Ranking Obligations must be subject to Loss Absorption before other Relevant Securities are subject to Loss Absorption (unless the terms of such other Relevant Securities otherwise provide); and
- (c) MCN3 and other Relevant Securities that are Equal Ranking Obligations must be subject to Loss Absorption on a proportionate basis (unless the terms of any such other security provide for that security to be subject to Loss Absorption other than on a proportionate basis with MCN3 and other such securities), or such other basis as the Issuer considers fair and reasonable (subject to such adjustment as the Issuer may determine to take into account the effect on marketable parcels and whole numbers of Ordinary Shares and any MCN3 or other Relevant Securities that are Equal Ranking Obligations),

provided always that nothing in the making of the determination or the adjustments is to delay or impede the immediate Exchange of the MCN3 on the Non-Viability Exchange Date.

## **4.4 Treatment of Holders**

- (a) If, in accordance with clauses 4.2 and 4.3, only some MCN3 are to be Exchanged, the Issuer will endeavour to treat Holders on an approximately proportionate basis, but may discriminate to take account of the effect of marketable parcels and other similar considerations and the need to effect the Exchange immediately.
- (b) In determining the identity of the Holder at the time that the Exchange is to take effect on the Non-Viability Exchange Date the Issuer may make any decision as may be necessary or desirable to ensure Exchange occurs in an orderly manner, including disregarding any transfers of MCN3 that have not been settled or registered at that time.

## **4.5 Exchange is automatic and irrevocable**

If a Non-Viability Event has occurred and all or some of the MCN3 are required to be Exchanged in accordance with clause 4.2, then, subject to clause 4.6:

- (a) Exchange of the relevant MCN3 will be taken to have occurred in accordance with clause 9 immediately upon the date of occurrence of the Non-Viability Event;
- (b) none of the following shall prevent, impede or delay the Exchange of the MCN3 as required by clause 4.2:
  - (i) any failure to or delay in the conversion or write-off of other securities issued as Relevant Securities;
  - (ii) any failure to or delay in giving a Non-Viability Exchange Notice;
  - (iii) any failure or delay in quotation of the Ordinary Shares to be issued on or arising from the Exchange; or
  - (iv) any requirement to select or adjust the amount of the MCN3 to be Exchanged in accordance with clause 4.3; and
- (c) from the Non-Viability Exchange Date the Issuer shall, subject to clause 15.2(b), treat the Holder in respect of its MCN3 as the holder of the Exchange Number of Ordinary Shares and will take all such steps, including updating any register, required to record the Exchange.

#### **4.6 Conditions to Exchange on account of a Non-Viability Event**

An Exchange on account of a Non-Viability Event is not subject to the Exchange Conditions or any other condition except as provided in this clause 4 and clause 9.17.

#### **4.7 Non-Viability Exchange Notices**

As soon as practicable after the occurrence of a Non-Viability Event, the Issuer must give notice that the Exchange has occurred ("**Non-Viability Exchange Notice**") to the Holders, the Trustee, the Registrar and ASX.

A Non-Viability Exchange Notice must specify:

- (a) the details of the Non-Viability Event to which the Non-Viability Exchange Notice relates;
- (b) the date on which the Exchange occurred; and
- (c) the number of MCN3 Exchanged and the number of other Relevant Securities and other Relevant Securities that are Equal Ranking Obligations that are subject to Loss Absorption.

Failure to give a Non-Viability Exchange Notice when required by this clause 4.7 (including where in accordance with clause 13 such notice takes effect only after the Non-Viability Exchange Date) does not affect the obligations of the Issuer and the Holders to Exchange each MCN3 for Ordinary Shares when required in accordance with these Terms or affect or impede the Exchange in any way.

#### **4.8 Priority of Exchange obligations**

An Exchange on account of a Non-Viability Event takes place on the relevant date, and in the manner required by clause 9 notwithstanding anything in clauses 3, 5, 6, 7, 8 or 16 (and any Optional Exchange Notice, Acquisition Exchange Notice, Redemption Notice or Resale Notice in respect of the MCN3 given before the Non-Viability Exchange Date but in respect of which the Redemption or Resale has not completed will be taken to be revoked and of no force or effect).



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## 5 Optional Exchange

### 5.1 Optional Exchange

Subject to this clause 5 and to clause 16, by notice (an “**Optional Exchange Notice**”) to Holders the Issuer may, in its sole discretion, elect to:

- (a) Exchange all or some of the MCN3 on any Scheduled Optional Exchange Date; and
- (b) Exchange all or some of the MCN3 following the occurrence of a Tax Event or a Regulatory Event.

An Optional Exchange Notice is irrevocable and takes effect despite anything in clause 3, except as provided in clauses 4.8 and 16.

### 5.2 Scheduled Optional Exchange Dates

The Scheduled Optional Exchange Dates are the Distribution Payment Dates falling on or about:

- (a) 16 December 2024 (the “**First Scheduled Optional Exchange Date**”);
  - (b) 16 June 2025 (the “**Second Scheduled Optional Exchange Date**”); and
  - (c) 15 December 2025 (the “**Third Scheduled Optional Exchange Date**”),
- (each a “**Scheduled Optional Exchange Date**”).

### 5.3 Contents of the Optional Exchange Notice

An Optional Exchange Notice must specify:

- (a) in the case of an Optional Exchange Notice given following the occurrence of a Tax Event or Regulatory Event, the details of the Tax Event or Regulatory Event to which the Optional Exchange Notice relates; and
- (b) the date on which the Exchange is to occur (an “**Optional Exchange Date**”), which:
  - (i) in the case of Exchange on a Scheduled Optional Exchange Date, is the relevant Scheduled Optional Exchange Date falling no earlier than 25 Business Days after the date of the Optional Exchange Notice;
  - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 25 Business Days nor more than 60 Business Days after the date of the Optional Exchange Notice; or
  - (iii) in any case, is such other date as APRA may require.

### 5.4 Optional Exchange Restriction

The Issuer may not elect to Exchange under this clause 5 if:

- (a) on the second Business Day before the date on which an Optional Exchange Notice is to be sent by the Issuer (or, if that Business Day is not an ASX Trading Day, the last ASX Trading Day prior to that day) (the “**Non-Exchange Test Date**”) the Daily VWAP on that date is less than or

equal to 25% of the Issue Date VWAP (the “**First Optional Exchange Restriction**”); or

- (b) the Issuer is Delisted as at the Non-Exchange Test Date (the “**Second Optional Exchange Restriction**” and together with the First Optional Exchange Restriction, the “**Optional Exchange Restrictions**”).

## 5.5 Conditions to Exchange occurring once elected by the Issuer

If the Issuer has given an Optional Exchange Notice but, if the Exchange Date were a Relevant Mandatory Exchange Date for the purposes of clause 3, any one or more of the Second Exchange Condition (tested on the basis of the Maximum Exchange Number applicable to an Optional Exchange Date), the Third Exchange Condition or the Fourth Exchange Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these Terms:

- (a) the Exchange Date will be deferred until the first Distribution Payment Date (within the meaning of paragraph (a) of the definition of that term) on which:
  - (i) the Daily VWAP on the 25th Business Day immediately preceding (but not including) that Distribution Payment Date (or, if that day is not an ASX Trading Day, the last ASX Trading Day prior to that day) is greater than 25% of the Issue Date VWAP; and
  - (ii) each of the Second Exchange Condition (tested on the basis of the Maximum Exchange Number applicable to an Optional Exchange Date), the Third Exchange Condition and the Fourth Exchange Condition would be satisfied if that Distribution Payment Date were a Relevant Mandatory Exchange Date for the purposes of clause 3,(the “**Deferred Exchange Date**”);
- (b) the Issuer must Exchange the MCN3 on the Deferred Exchange Date (unless the MCN3 are Exchanged or Redeemed earlier in accordance with these Terms); and
- (c) until the Deferred Exchange Date, all rights attaching to the MCN3 will continue as if the Optional Exchange Notice had not been given.

The Issuer will notify Holders on or as soon as practicable after an Exchange Date in respect of which this clause 5.5 applies that Exchange did not occur on that Exchange Date (a “**Deferred Exchange Notice**”).

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## 6 Acquisition Event Exchange

### 6.1 Exchange on account of an Acquisition Event

If an Acquisition Event occurs, subject to clause 4.8, the Issuer must Exchange all but not some of the MCN3 in accordance with this clause 6, unless the Directors determine that:

- (a) as at the Acquisition Exchange Date the Issuer will be, or will be likely to be, Delisted (except where, despite the Issuer being Delisted, the Exchange would be in the best interests of Holders as a whole); or

- (b) the Exchange Number of Ordinary Shares to be issued in Exchange for an MCN3 (calculated in accordance with clause 9.1 as if it were not limited by the Maximum Exchange Number applicable to an Acquisition Exchange Date) would exceed the Maximum Exchange Number applicable to an Acquisition Exchange Date (except where, despite the Exchange Number being limited to the Maximum Exchange Number applicable to an Acquisition Exchange Date, the Directors determine that the Exchange would be in the best interests of Holders as a whole).

Exchange on account of an Acquisition Event is not subject to any Exchange Conditions or other conditions except as expressly provided in this clause 6.

## 6.2 Acquisition Exchange Notice

No later than 5.00pm (Sydney time) on the tenth Business Day after the occurrence of the Acquisition Event, the Issuer must give each Holder a notice (an “**Acquisition Exchange Notice**”) specifying:

- (a) details of the Acquisition Event to which the notice relates; and
- (b) if an Exchange is to occur:
  - (i) the date on which the Exchange is to occur (an “**Acquisition Exchange Date**”), which is to be:
    - (A) no later than the second Business Day prior to the date reasonably determined by the Issuer to be the last date on which holders of Ordinary Shares can participate in the bid, scheme or arrangement concerned;
    - (B) such other earlier date as the Issuer may reasonably determine having regard to the best interests of Holders as a whole and the timing of the Acquisition Event concerned (provided that the Acquisition Exchange Date must be at least 25 Business Days after the date of the Acquisition Exchange Notice); or
    - (C) such other date as APRA may require; and
  - (ii) whether any Distribution will be paid in respect of the MCN3 on the Acquisition Exchange Date; or
- (c) otherwise, the reason why an Exchange is not to occur.

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## 7 Optional Redemption

### 7.1 Optional Redemption

Subject to clause 7.2, by notice (a “**Redemption Notice**”) to Holders, the Issuer may, in its sole discretion, but with APRA’s prior written approval of such Redemption, elect to:

- (a) Redeem all or some of the MCN3 on a Scheduled Optional Exchange Date; or
- (b) Redeem all or some of the MCN3 following the occurrence of a Tax Event or a Regulatory Event.

A Redemption Notice, once given, is irrevocable and takes effect despite anything in clause 3, except as provided in clauses 4.8 and 16.

Holders should not expect that APRA's approval will be given for any Redemption of the MCN3.

## 7.2 Redemption conditions

A Redemption in accordance with clause 7.1 must not occur unless either:

- (a) the MCN3 which are to be Redeemed are replaced, concurrently with the Redemption or beforehand, with securities forming part of Eligible Capital of the same or better quality from APRA's perspective, and the replacement of those MCN3 is done under conditions which are sustainable for the income capacity of the Level 3 Group; or
- (b) APRA is satisfied that the capital position of the Level 3 Group is sufficient after the MCN3 are Redeemed.

## 7.3 Contents of the Redemption Notice

A Redemption Notice must specify:

- (a) in the case of Redemption following the occurrence of a Tax Event or Regulatory Event, the details of the relevant Tax Event or Regulatory Event;
- (b) the date on which the Redemption is to occur (the "**Redemption Date**"), which:
  - (i) in the case of a Scheduled Optional Exchange Date, will be the next Scheduled Optional Exchange Date falling no earlier than 5 Business Days after the date of the Redemption Notice; and
  - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 5 Business Days nor more than 60 Business Days after the date of the Redemption Notice; and
- (c) if less than all of the outstanding MCN3 are to be Redeemed, the proportion of each Holder's holding which is to be Redeemed.

## 7.4 Redemption Price

On the Redemption Date:

- (a) each MCN3 being Redeemed will be Redeemed by payment of the Issue Price of that MCN3 (the "**Redemption Price**") to the relevant Holder recorded on the Register at 10.00am on the Redemption Date (or such other time required by the ASX Listing Rules); and
- (b) Distributions from (and including) the immediately preceding Distribution Payment Date and up to (but excluding) the Redemption Date will be paid in respect of the MCN3 being Redeemed on such date, to the extent the conditions of payment of Distributions under clause 2.3 are met.

## 7.5 No right of Holders to require Redemption

No MCN3 can, or will, be Redeemed at the option of a Holder.

## 7.6 Effect of Redemption

Upon payment of the Redemption Price and any Distribution payable on the Redemption Date, all other rights conferred, or restrictions imposed, by each MCN3 being Redeemed on that date will no longer have effect and that MCN3 will be cancelled.

## 7.7 Partial Redemption or Resale

If some but not all of the outstanding MCN3 are Redeemed in accordance with this clause 7 or Resold in accordance with clause 8, the Issuer must select the MCN3 to be Redeemed or Resold:

- (a) in a manner that is, in the opinion of the Issuer, fair and reasonable; and
- (b) in compliance with any applicable law, directive or requirement of ASX.

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# 8 Resale

## 8.1 Issuer may give Resale Notice

On any date on which it may issue a Redemption Notice, in lieu of such Redemption Notice, the Issuer may, in its sole discretion, but with APRA's prior written approval of such Resale, issue to each Holder a notice (a "**Resale Notice**") specifying that all or some of each Holder's holding of the MCN3 will be Resold.

A Resale Notice to a Holder must specify:

- (a) the date on which the Resale is to occur (the "**Resale Date**"), which:
  - (i) in the case of a Scheduled Optional Exchange Date, will be the next Scheduled Optional Exchange Date falling no earlier than 5 Business Days after the date of the Resale Notice; and
  - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 5 Business Days nor more than 60 Business Days after the date of the Resale Notice;
- (b) the name of each Nominated Party to whom that Holder's offer under clause 8.3 is being made and, where there is more than one Nominated Party, the basis for determining the MCN3 to be purchased by each Nominated Party, and any special provisions to be applied if there is a Non-Completing Nominated Party; and
- (c) any conditions that will apply to the Resale,

and, subject to clauses 4.8, 8.2, 8.6 and 16, once given is irrevocable.

Holders should not expect that APRA's approval will be given for any Resale of the MCN3.

## 8.2 Appointment of Nominated Party

- (a) The Issuer may not appoint itself or a Related Entity of the Issuer as a Nominated Party.
- (b) The Issuer may appoint one or more Nominated Parties for the Resale on such terms as may be agreed between the Issuer and the Nominated Parties (and, to the extent any such conditions may cause the MCN3 to

cease to be Eligible Capital, with the prior written approval of APRA) including:

- (i) as to the conditions of any Resale, the procedures for settlement of such Resale and the circumstances in which the Resale Notice may be amended, modified, added to or restated;
  - (ii) as to the substitution of another entity (not being the Issuer or a Related Entity of the Issuer) as Nominated Party if, for any reason, the Issuer is not satisfied that the Nominated Party will perform its obligations under clause 8; and
  - (iii) as to the terms on which any MCN3 acquired by a Nominated Party may be Exchanged or otherwise dealt with.
- (c) If the Issuer appoints more than one Nominated Party in respect of a Resale, all or any of the MCN3 held by a Holder which are being Resold may be purchased for the Resale Price by any one or any combination of the Nominated Parties, as determined by the Issuer.

### **8.3 Irrevocable offer to sell**

- (a) If the Issuer gives a Resale Notice in accordance with clause 8 each Holder on the Resale Date is taken to irrevocably offer to sell the MCN3 that are the subject of the Resale Notice to the Nominated Party or Nominated Parties on the Resale Date for a purchase price per MCN3 equal to the Issue Price of that MCN3 (the "**Resale Price**").
- (b) Subject to payment of the Resale Price on the Resale Date and any other conditions to the Resale specified in the Resale Notice, each MCN3 which is to be Resold will be transferred to the relevant Nominated Party or Nominated Parties free from any Encumbrance.
- (c) Clause 11 applies to the payment of the Resale Price as if references in clause 11 to the Issuer were references to the Nominated Party.

### **8.4 Effect of transfer**

The transfer will convey to the relevant Nominated Party all rights to:

- (a) Distributions payable on the MCN3 in respect of any Distribution Payment Date arising after the Resale Date;
- (b) be issued with Ordinary Shares on Exchange on or after the Resale Date; and
- (c) any Redemption Price payable on or after the Resale Date,

but excluding any Distribution payable on the MCN3 in respect of any Distribution Payment Date on or before the Resale Date, which, to the extent the conditions of payment of Distribution under clause 2.3 are met, shall be paid by the Issuer to the Holder of the MCN3 entitled to such amounts as otherwise provided in these Terms.

### **8.5 Terms after Resale**

If any MCN3 are Resold in accordance with these Terms, subject to clause 8.2, these Terms will apply in all respects to the MCN3 held by the Nominated Party on and from the Resale Date.

## 8.6 Nominated Party not completing

If, for any reason, a Nominated Party does not pay the Resale Price in full on the relevant Resale Date (a “**Non-Completing Nominated Party**”):

- (a) unless the Resale Price is paid in full within two Business Days following the Resale Date, the Resale Notice will be void insofar as it relates to MCN3 referable to the Non-Completing Nominated Party and any obligations of the Holder and Non-Completing Nominated Party in respect of the Resale of the MCN3 that is the subject of the Resale Notice will terminate;
- (b) the Holder will continue to hold the MCN3 that are the subject of the Resale Notice which are referable to the Non-Completing Nominated Party; and
- (c) the Issuer has no liability for the Non-Completing Nominated Party not paying the Resale Price and the Resale Date will not be a Distribution Payment Date unless:
  - (i) such date would otherwise have been a Distribution Payment Date; or
  - (ii) a Distribution is paid on that date to Holders whose MCN3 have been transferred to a Nominated Party on or within two Business Days following that date.

## 8.7 No right of Holders to require Resale

No MCN3 can, or will, be Resold at the option of a Holder.

## 8.8 Resale of Reinvestment MCN3 on the Reinvestment Date

- (a) The Issuer may, by giving a Resale Notice to Holders, elect to Resell all or some of the Reinvestment MCN3 on the Reinvestment Date, subject to APRA’s prior written approval.
- (b) A Resale Notice given under this clause 8.8 shall specify the Reinvestment Date as the “Resale Date” and clause 8.1(a) shall not apply to such notice.
- (c) Notwithstanding clause 8.8(a):
  - (i) if, for any reason, the MCN7 Prospectus is withdrawn, any Resale Notice given under clause 8.8(a) shall be taken to have been revoked in full and no Resale of Reinvestment MCN3 shall occur; and
  - (ii) if, and to the extent that, the Issuer determines not to issue MCN7 to a Holder on the Reinvestment Date, any Resale Notice given under clause 8.8(a) shall be taken to have been revoked to that extent and no Resale of that Holder’s Reinvestment MCN3 shall occur to the extent of such revocation.
- (d) The Reinvestment MCN3 acquired by the Nominated Party may be redeemed as separately agreed between the Issuer and the Nominated Party.

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## 9 Exchange Mechanics

### 9.1 Exchange

On an Exchange Date, subject to clauses 4.8, 9.14 and 9.17, the Issuer will allot and issue the Exchange Number of Ordinary Shares to the Holders (or as they may direct) for each MCN3 held by the Holder.

The “**Exchange Number**” will be calculated by the Issuer in accordance with the following formula:

$$\text{Exchange Number} = \frac{\text{Issue Price}}{0.99 \times \text{Exchange Date VWAP}}$$

subject to the Exchange Number being no greater than the Maximum Exchange Number, where:

- (a) **Exchange Date VWAP** (expressed in Australian Dollars) means the VWAP during the VWAP Period;
- (b) **VWAP** means, subject to any adjustment under clauses 9.3 or 9.4, for a period or relevant number of days, the average of the Daily VWAPs (such average being rounded to the nearest full cent) of Ordinary Shares sold on ASX during the relevant period or on the relevant days; and
- (c) **VWAP Period** means, for the purposes of calculating the Exchange Date VWAP and the Exchange Number:
  - (i) in the case of an Exchange on a Relevant Mandatory Exchange Date or an Optional Exchange Date, the 20 ASX Trading Days immediately preceding, but not including, that Exchange Date;
  - (ii) in the case of an Exchange on account of an Acquisition Event, the lesser of 20 ASX Trading Days and the number of ASX Trading Days that Ordinary Shares are entitled to trade on ASX after the occurrence of the Acquisition Event immediately preceding, but not including, the Acquisition Exchange Date; and
  - (iii) in the case of an Exchange on account of a Non-Viability Event, the 5 ASX Trading Days immediately preceding, but not including, the Non-Viability Exchange Date; and
- (d) the “**Maximum Exchange Number**” will be calculated by the Issuer on the Issue Date in accordance with the following formula for each MCN3 held by the Holder:

$$\text{Maximum Exchange Number} = \frac{\text{Issue Price}}{\text{Exchange Floor Price}}$$

where:

- (i) **Exchange Floor Price** means Issue Date VWAP x the Relevant Percentage;
- (ii) **Issue Date VWAP** is the VWAP during the 20 ASX Trading Days immediately preceding, but not including, the Issue Date (as such number may be adjusted under clauses 9.5, 9.6 or 9.7); and



- (iii) **Relevant Percentage** is:
- (A) if the Exchange is occurring on a Relevant Mandatory Exchange Date, 50%; and
  - (B) if the Exchange is occurring on any other Exchange Date, 20%.

Each Holder's rights (including to payment of Distributions other than the Distribution, if any, payable on the Exchange Date) in relation to each MCN3 that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Issue Price of that MCN3 and the Issuer will apply that Issue Price by way of payment for the subscription for the Ordinary Shares to be allotted and issued under this clause 9.1. Each Holder is taken to have irrevocably directed that any amount payable under this clause 9.1 is to be applied as provided for in this clause 9.1 and no Holder has any right to payment in any other way.

If the total number of Ordinary Shares to be allotted to a Holder in respect of their aggregate holding of MCN3 upon Exchange includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded.

## 9.2 Holder information

Each Holder agrees to provide to the Issuer (and, where clause 9.14 applies, the Sale Agent) any information necessary or desirable to give effect to an Exchange.

## 9.3 Adjustments to VWAP

For the purposes of calculating VWAP in these Terms:

- (a) where, on some or all of the ASX Trading Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and the MCN3 will be Exchanged for Ordinary Shares after the date those Ordinary Shares no longer carry that dividend or any other distribution or entitlement, then the VWAP on the ASX Trading Days on which those Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement shall be reduced by an amount ("**Cum Value**") equal to:
  - (i) in case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or other distribution who is both a resident of Australia and a natural person under the Tax Act and eligible to receive a franked distribution;
  - (ii) in the case of any other entitlement that is not a dividend or other distribution under clause 9.3(a)(i) and which is traded on ASX on any of those ASX Trading Days, the volume weighted average sale price of all such entitlements sold on ASX during the VWAP Period on the ASX Trading Days on which those entitlements were traded; or
  - (iii) in the case of any other entitlement which is not traded on ASX during the VWAP Period, the value of the entitlement as reasonably determined by the Directors; and
- (b) where, on some or all of the ASX Trading Days in the VWAP Period, Ordinary Shares have been quoted on ASX as ex dividend or ex any

other distribution or entitlement, and the MCN3 will be Exchanged for Ordinary Shares which would be entitled to receive the relevant dividend or other distribution or entitlement, the VWAP on the ASX Trading Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement shall be increased by the Cum Value.

#### 9.4 Adjustments to VWAP for divisions and similar transactions

- (a) Where during the relevant VWAP Period there is a change in the number of the Ordinary Shares on issue as a result of a Reclassification, in calculating the VWAP for that VWAP Period the Daily VWAP applicable on each day in the relevant VWAP Period which falls before the date on which trading in Ordinary Shares is conducted on a post Reclassification basis shall be adjusted by multiplying the VWAP by the following fraction:

$$\frac{A}{B}$$

where:

- (i) **A** means the aggregate number of Ordinary Shares immediately before the Reclassification; and
- (ii) **B** means the aggregate number of Ordinary Shares immediately after the Reclassification.
- (b) Any adjustment made by the Issuer in accordance with clauses 9.3 and 9.4(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly. Any such adjustment must be notified to all Holders as soon as reasonably practicable following its determination by the Issuer.

#### 9.5 Adjustments to Issue Date VWAP

For the purposes of determining the Issue Date VWAP, adjustments to VWAP will be made in accordance with clauses 9.3 and 9.4(a) during the VWAP Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made in accordance with clauses 9.6 and 9.7; and
- (b) if so made, will correspondingly cause an adjustment to the Maximum Exchange Number.

#### 9.6 Adjustments to Issue Date VWAP for bonus issues

- (a) Subject to clause 9.6(b) below, if the Issuer makes a pro rata bonus issue of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_0 \times \frac{RD}{RD + RN}$$

where:

- (i) **V** means the Issue Date VWAP applying immediately after the application of this formula;

- (ii) **V<sub>0</sub>** means the Issue Date VWAP applying immediately prior to the application of this formula;
  - (iii) **RN** means the number of Ordinary Shares issued pursuant to the bonus issue; and
  - (iv) **RD** means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the bonus issue.
- (b) Clause 9.6(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
  - (c) For the purpose of clause 9.6(a), an issue will be regarded as a pro rata issue notwithstanding that the Issuer does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of the ASX Listing Rules.
  - (d) No adjustments to the Issue Date VWAP will be made under this clause 9.6 for any offer of Ordinary Shares not covered by clause 9.6(a), including a rights issue or other essentially pro rata issue.
  - (e) The fact that no adjustment is made for an issue of Ordinary Shares except as covered by clause 9.6(a) shall not in any way restrict the Issuer from issuing Ordinary Shares at any time on such terms as it sees fit nor be taken to constitute a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence.

## 9.7 Adjustment to Issue Date VWAP for divisions and similar transactions

- (a) If at any time after the Issue Date there is a change in the number of Ordinary Shares on issue as a result of a Reclassification, the Issuer shall adjust the Issue Date VWAP by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reclassification by the following fraction:

$$\frac{A}{B}$$

where:

- (i) **A** means the aggregate number of Ordinary Shares immediately before the Reclassification; and
  - (ii) **B** means the aggregate number of Ordinary Shares immediately after the Reclassification.
- (b) Each Holder acknowledges that the Issuer may consolidate, divide or reclassify securities so that there is a lesser or greater number of Ordinary Shares at any time in its absolute discretion without any such action constituting a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence.

## **9.8 No adjustment to Issue Date VWAP in certain circumstances**

Despite the provisions of clauses 9.6 and 9.7, no adjustment shall be made to the Issue Date VWAP where such cumulative adjustment (rounded if applicable) would be less than 1% of the Issue Date VWAP then in effect. Any adjustment not made in accordance with this clause 9.8 shall be carried forward and taken into account in determining whether any subsequent adjustment shall be made.

## **9.9 Announcement of adjustment to Issue Date VWAP**

If the Issuer determines an adjustment to the Issue Date VWAP under clauses 9.6 and 9.7, such an adjustment will be:

- (a) determined as soon as reasonably practicable following the relevant event; and
- (b) notified to Holders (an “**Adjustment Notice**”) within 10 Business Days of the Issuer determining the adjustment.

The adjustment set out in the Adjustment Notice will be final and binding on Holders and these Terms will be construed accordingly.

## **9.10 Listing of Ordinary Shares**

The Issuer agrees to use all reasonable endeavours to list the Ordinary Shares issued or arising from an Exchange on ASX.

## **9.11 Status of Ordinary Shares**

The Ordinary Shares issued or arising from an Exchange will rank equally with all other fully paid Ordinary Shares.

## **9.12 Effect of Exchange**

When an Exchange of an MCN3 occurs all other rights conferred or restrictions imposed on that MCN3 under these Terms will no longer have effect (except for rights relating to a Distribution which is payable but has not been paid on or before the Exchange Date) and the MCN3 is cancelled.

## **9.13 Failure to Exchange**

- (a) Subject to clauses 9.14(g) and 9.17, if, in respect of an Exchange of an MCN3, the Issuer fails to issue the Ordinary Shares in respect of an MCN3 to, or in accordance with the instructions of, the relevant Holder on the applicable Exchange Date or to the Sale Agent where clause 9.14 applies, that MCN3 remains on issue (and, without limitation, clause 2 applies) until:
  - (i) the Ordinary Shares are issued to, or in accordance with the instructions of, that Holder or, where clause 9.14 applies, to the Sale Agent; or
  - (ii) that MCN3 is Redeemed in accordance with these Terms,and the remedies of the Trustee and a Holder in respect of that failure are limited to seeking an order for specific performance of the Issuer's obligations to issue Ordinary Shares.
- (b) This clause 9.13 does not affect the obligation of the Issuer to deliver the Ordinary Shares or of the Holder to transfer MCN3 when required in accordance with these Terms.

#### 9.14 Holders whose Ordinary Shares are to be sold

Subject to clause 9.17, if any MCN3 of a Holder are required to be Exchanged and if:

- (a) the Holder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of the Exchange (whether entirely or to the extent specified in the notice), which notice may be given at any time on or after the Issue Date and no less than 15 Business Days prior to the Exchange Date;
- (b) the MCN3 are held by a Foreign Holder;
- (c) for any reason (whether or not due to the fault of a Holder):
  - (i) the Issuer does not receive any information required by it in accordance with these Terms so as to impede the Issuer from issuing the Ordinary Shares to the Holder on the Exchange Date; or
  - (ii) a FATCA Withholding is required to be made in respect of any Ordinary Shares to be delivered as a result of that Exchange; or
- (d) the Issuer is of the opinion that under an Applicable Shareholding Law the Holder is prohibited from acquiring some or all of the Exchange Number of Ordinary Shares on the Exchange Date, (to the extent it is so prohibited, an “**Ineligible Holder**”),

then the Issuer will use reasonable endeavours to appoint a “**Sale Agent**” (which is not the Issuer or any Related Body Corporate of the Issuer) on such terms as the Issuer considers reasonable, who will act in accordance with paragraph (f) where the Issuer, the Trustee and the Sale Agent can be satisfied that the obligation in paragraph (f) may be performed in respect of the relevant Holder and the relevant Ordinary Shares in accordance with all applicable laws and without the Issuer, the Trustee or the Sale Agent having to take steps which any of them regard as onerous.

On the Exchange Date:

- (e) where paragraph (a), (b) or (d) applies, the Issuer will issue the Exchange Number of Ordinary Shares to the Holder only to the extent (if at all) that:
  - (i) where paragraph (a) applies, the Holder’s notice referred to in paragraph (a) indicates the Holder wishes to receive them;
  - (ii) where paragraph (b) applies, the Issuer is satisfied that the laws of both Australia and the Foreign Holder’s country of residence permit the issue of the Exchange Number of Ordinary Shares to the Foreign Holder as contemplated by this clause 9 (but as to which the Issuer is not bound to enquire), either unconditionally or after compliance with conditions which the Issuer, in its absolute discretion, regards as acceptable and not unduly onerous; and
  - (iii) where paragraph (d) applies, the issue would result in the Holder receiving the maximum number of Ordinary Shares the Holder is permitted to acquire in compliance with an Applicable Shareholding Law as at the Exchange Date;
- (f) otherwise, subject to paragraph (g) and clause 9.17, the Issuer will issue:

(i) where paragraph (a), (b) or (d) applies, the balance of the Exchange Number of Ordinary Shares; or

(ii) where paragraph (c) applies, the Exchange Number (in full),

in respect of that Holder to the Sale Agent on the terms that, at the first reasonable opportunity to sell the Ordinary Shares, the Sale Agent will arrange for their sale and pay to the relevant Holder on a date determined by the Sale Agent a cash amount equal to the Attributable Proceeds of the relevant Holder or, where paragraph (c)(ii) applies, the Sale Agent will deal with the Ordinary Shares in accordance with FATCA. The issue of Ordinary Shares to the Sale Agent will satisfy all obligations of the Issuer in connection with the Exchange, the MCN3 will be deemed Exchanged and will be dealt with in accordance with clause 9.1 and, on and from the issue of Ordinary Shares, the rights of a Holder the subject of this clause 9.14 are limited to its rights in respect of the Ordinary Shares or the Attributable Proceeds as provided in this clause 9.14; and

(g) where paragraph (f) applies in respect of a Holder and a Sale Agent is unable to be appointed, or either or both of the Issuer and the Sale Agent is of the opinion that the issue of Ordinary Shares to the Sale Agent and subsequent sale in accordance with paragraph (f) cannot be undertaken in accordance with an Applicable Shareholding Law or other applicable law (or can be undertaken in accordance with an Applicable Shareholding Law or applicable law only after the Issuer or the Sale Agent take steps which either or both the Issuer and the Sale Agent regard as onerous), then:

(i) in respect of a Non-Viability Exchange Date, but without in any way limiting clause 9.17, if either or both of the Issuer and the Sale Agent is of the opinion that the issue of Ordinary Shares cannot be undertaken within 5 Business Days of the Non-Viability Exchange Date to the Sale Agent in accordance with paragraph (f) or otherwise to the relevant Holder in accordance with this clause 9, then the relevant MCN3 will be Written-Off; or

(ii) in respect of an Exchange Date other than a Non-Viability Exchange Date:

(A) the issue of Ordinary Shares to the Sale Agent in accordance with paragraph (f) shall occur as soon as practicable after the Issuer is able to issue the relevant Ordinary Shares to the Sale Agent in accordance with an Applicable Shareholding Law and other applicable laws (and without the Issuer or the Sale Agent taking steps which either or both of the Issuer and the Sale Agent regard as onerous); and

(B) on and from the Exchange Date, the MCN3 of the relevant Holder remain on issue (and, without limitation, clause 2 applies) until the first to occur of:

(aa) the issue of the relevant Ordinary Shares in accordance with paragraphs (f) and (g)(ii)(A) or otherwise to that relevant Holder in accordance with this clause 9;

(ab) the relevant MCN3 are Redeemed in accordance with these Terms; or

- (ac) the date which is 6 months after the Exchange Date, upon which date an Exchange will not occur in respect of the balance of the Holder's MCN3 at that date and such MCN3 will be automatically cancelled for no consideration.

Nothing in this clause 9.14 shall affect the Exchange of MCN3 to a Holder which is not a person to which any of paragraphs (a) to (d) (inclusive) applies.

### **9.15 No duty on sale**

For the purpose of clause 9.14, none of the Issuer, the Trustee, the Sale Agent or any other person owes any obligations or duties to the Holders in relation to the price at which Ordinary Shares are sold or has any liability for any loss suffered by a Holder as a result of the sale of Ordinary Shares.

### **9.16 No right of Holders to require Exchange**

No MCN3 can, or will, be Exchanged at the option of a Holder.

### **9.17 Write-Off on failure to perform Exchange**

- (a) Notwithstanding any other provisions of this clause 9, if, for any reason (including, without limitation, an Inability Event) an MCN3 which, but for this clause would be required to be Exchanged, has not been Exchanged within 5 Business Days of the Non-Viability Exchange Date, then Exchange of that MCN3 will not occur and that MCN3 will instead be Written-Off.
- (b) The Issuer must give notice to Holders if that Exchange has not occurred by operation of this clause 9.17, but failure to give that notice shall not affect the operation of this clause.

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## **10 Acknowledgements and appointments**

### **10.1 Acknowledgements**

Each Holder, by subscribing for, purchasing or otherwise acquiring an MCN3:

- (a) is taken to have notice of, and irrevocably agrees to be bound by, the terms of the MCN3 Trust Deed and these Terms;
- (b) upon an Exchange, consents to becoming a member of the Issuer and agrees to be bound by the constitution of the Issuer;
- (c) agrees that any Redemption, Resale or Exchange shall occur on a Redemption Date, Resale Date or Exchange Date (as the case may be) in accordance with these Terms;
- (d) agrees that it is obliged to accept the Ordinary Shares in respect of its MCN3 upon an Exchange Date, notwithstanding anything which might otherwise affect the Exchange including:
  - (i) any change in the financial position of the Issuer or the Macquarie Group since the Issue Date;
  - (ii) any disruption to the market or potential market for the Ordinary Shares or to capital markets generally;

- (iii) it being impossible or impracticable to list the Ordinary Shares on ASX; or
  - (iv) it being impossible or impracticable to sell or otherwise dispose of the Ordinary Shares;
- (e) acknowledges and agrees that Exchange must occur immediately on the occurrence of a Non-Viability Event and that may result in disruption or failures in trading or dealings in the MCN3;
- (f) acknowledges and agrees that:
  - (i) if Exchange does not occur in the circumstances contemplated in clauses 9.14(g) or 9.17, each MCN3 will be Written-Off; and
  - (ii) each of clause 9.14(g) and 9.17 is a fundamental term of the MCN3 and where it applies, no other conditions or events will affect its operation;
- (g) agrees to provide to the Issuer any information that the Issuer considers necessary or desirable, or to take any and all such action as is within the reasonable control of that Holder, to give effect to a Redemption, Resale or an Exchange;
- (h) acknowledges and agrees that it has:
  - (i) no right to request a Redemption, Resale or an Exchange;
  - (ii) to the fullest extent permitted by law:
    - (A) no right to initiate the Winding Up of the Issuer or any other member of the Macquarie Group or to have any such entity placed in administration; or
    - (B) to cause a receiver or receiver and manager to be appointed in respect of any such entity,

merely on the grounds that a Distribution or any other amount is not paid; and
  - (iii) no rights against any member of the Macquarie Group in connection with the MCN3 except as expressly provided in these Terms and under the MCN3 Trust Deed;
- (i) acknowledges and agrees that these Terms contain no events of default (however described, determined or defined). Accordingly (but without limitation), failure to pay in full, for any reason, a Distribution on the scheduled Distribution Payment Date will not constitute an event of default; and
- (j) acknowledges and agrees it has no remedies on account of a failure by the Issuer to issue Ordinary Shares in accordance with clause 9 other than (and subject always to clauses 9.14(g) and 9.17) to seek specific performance of the obligation to issue the Ordinary Shares.

## 10.2 Appointment of attorneys, agents and directions

Each Holder irrevocably:

- (a) appoints each of the Issuer, the Issuer's Authorised Officers and any liquidator, administrator, statutory manager or other similar official of the



Issuer (each an “**Appointed Person**”) severally to be the attorneys of the Holder and the agents of the Holder, with the power in the name and on behalf of the Holder to:

- (i) do all such acts and things (including, without limitation, signing all documents, instruments or transfers or instructing CHESS) as may, in the opinion of the Appointed Person, be necessary or desirable to be done in order to give effect to, record or perfect a Redemption, Resale or Exchange in accordance with clauses 3, 4, 5, 6, 7, 8 and 9 or, where clauses 9.14(g) and 9.17 apply, a Write-Off in accordance with that clause; or
  - (ii) do all other things which an Appointed Person reasonably believes to be necessary or desirable to give effect to these Terms; and
  - (iii) appoint in turn its own agent or delegate; and
- (b) authorises and directs the Issuer and/or the Registrar to make such entries in the Register, including amendments and additions to the Register, which the Issuer and/or the Registrar may consider necessary or desirable to record:
- (i) a Redemption, Resale or an Exchange; or
  - (ii) where clause 9.14(g) or 9.17 applies, a Write-Off in accordance with that clause.

The power of attorney given in this clause 10.2 is given for valuable consideration and to secure the performance by the Holder of the Holder’s obligations under these Terms and is irrevocable and shall survive and not be affected by the subsequent disability or incapacity of the Holder (or, if such Holder is an entity, by its dissolution or termination). An Appointed Person shall have no liability in respect of any acts duly performed in accordance with power of attorney given in this clause 10.2.

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## **11 Payments to Holders**

### **11.1 Currency of payments**

All payments of amounts in respect of any MCN3 will be made in Australian Dollars.

### **11.2 Calculation of payments**

All calculations of payments will be rounded to the nearest four decimal places (with 0.00005 being rounded to 0.0001). For the purposes of making any payment in respect of a Holder’s aggregate holding of MCN3, any amount less than A\$0.01 will be disregarded.

### **11.3 Payments and issues and deliveries of securities subject to laws**

All payments and issues and deliveries of securities are subject in all cases to:

- (a) compliance by the Issuer with applicable laws; and
- (b) any applicable fiscal or other laws in the place of payment, issue or delivery, but without prejudice to the provisions of clause 11.4.

No commissions or expenses shall be charged to the Holders in respect of such payments (except in respect of the calculation of Attributable Proceeds in accordance with clause 9.14(f)).

#### 11.4 Deductions

- (a) The Issuer, the Trustee, the Sale Agent and any financial institutions or intermediaries through which payments are made or securities issued or delivered, may withhold or deduct from any amount payable or securities issuable or deliverable to a Holder the amount of any withholding, deduction or other tax, duty or levy required by law to be withheld or deducted in respect of such payment, including, without limitation:
- (i) any withholding or deduction of taxes, interest or penalties required under FATCA ("**FATCA Withholding**"); or
  - (ii) where the Issuer, the Trustee, the Sale Agent and any financial institution or intermediary (as applicable) has reasonable grounds to suspect that a Holder or a beneficial owner of any MCN3 (or any financial institution or intermediary through which the payment is to be made) may be subject to a FATCA Withholding in respect of the payment of that amount.

For the avoidance of doubt, any withholding or deduction required under FATCA is a tax, the withholding or deduction of which is required by applicable law for purposes of this clause 11.

- (b) In addition, where Ordinary Shares are required to be delivered to a Holder upon an Exchange, and the Issuer is required or entitled to make a FATCA Withholding, then the Issuer is entitled to deal with any Ordinary Shares comprising that FATCA Withholding in accordance with clause 9.14.
- (c) Each Holder shall be deemed to authorise the Issuer, the Trustee, the Sale Agent and any financial institutions or intermediaries through which payments are made to deal with payments, securities to be issued or delivered and the Holder's MCN3 in accordance with FATCA, including remitting, or otherwise dealing with, any amounts or securities comprising a FATCA Withholding, or reporting payment or account or other information to the IRS or other relevant revenue or taxing authority in accordance with the applicable requirements under FATCA.
- (d) If any withholding or deduction is required by applicable law, the Issuer, the Trustee or the Sale Agent, (as applicable) must remit the full amount required to be withheld or deducted, or remit or otherwise deal with the total number of securities, to or as required by the relevant revenue or taxing authority within the time allowed for such remittance or dealing without incurring a penalty under the applicable law.
- (e) If:
- (i) a withholding or deduction is made in accordance with this clause 11;
  - (ii) the amount of the withholding or deduction is, or number of or rights in respect of securities withheld are, accounted for by the Issuer, the Trustee or the Sale Agent (as applicable) to the relevant revenue or taxing authority; and

- (iii) the balance of the amount payable has been paid, or the balance of the securities to be issued or delivered are issued or delivered, to the Holder,

then the Issuer's or the Trustee's (or Sale Agent's) (as applicable) obligation to make the payment to the Holder is taken to have been satisfied in full.

### **11.5 No set-off**

A Holder has no right to set-off any amounts owing by it to a member of the Macquarie Group against any claims owing by the Issuer or another member of the Macquarie Group to such Holder. The Issuer has no right to set-off any amounts owing by it to a Holder in respect of the MCN3 against any claims owing by the Holder to it or any member of the Macquarie Group.

### **11.6 Payment method**

Subject to clauses 11.1 and 11.3, all moneys payable by the Issuer to a Holder may be paid in any manner the Issuer decides, which may include any of the following:

- (a) by any method of direct crediting determined by the Issuer to the Holder or Holders shown on the Register or to such person or place directed by them;
- (b) by sending on or before the payment date a cheque, through the post at the Holder's risk directed to the physical or postal address of the Holder as shown in the Register or, in the case of joint Holders, to the physical or postal address notified to the Registrar for receipt of such moneys (and in default of notification, to the physical or postal address shown in the Register as the address of the joint Holder first named in that Register); or
- (c) by cheque sent through the post directed to such other physical or postal address as the Holder or joint Holders in writing direct.

A cheque sent through the post on or before the date for payment is taken to have been received on the payment date.

### **11.7 Unpresented cheques**

- (a) Cheques issued by the Issuer that are not presented within 6 months of being issued, or such lesser period as determined by the Issuer, may be cancelled.
- (b) Where a cheque which is cancelled was drawn in favour of a Holder, the moneys are to be held by the Issuer for the Holder as a non-interest bearing deposit until the Holder or any legal personal representative of the Holder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

### **11.8 Unsuccessful attempts to pay**

Subject to applicable law, where the Issuer:

- (a) decides that an amount is to be paid to a Holder by a method of direct credit and the Holder has not given a direction as to where amounts are to be paid by that method;

- (b) attempts to pay an amount to a Holder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful; or
- (c) has made reasonable efforts to locate a Holder but is unable to do so,

the amount of the unsuccessful payment will be held by the Issuer for the Holder as a non-interest bearing deposit with a bank selected by the Issuer until the first to occur of the following:

- (i) the Holder or any legal personal representative of the Holder claims the amount;
- (ii) the Issuer determines as permitted by clause 11.10 to refuse any claim in respect of the amount, in which case the Issuer may treat the amount as its own; or
- (iii) the Issuer is entitled or obliged to deal with the amount in accordance with the legislation relating to unclaimed moneys.

Holders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due.

### **11.9 Payment to joint Holders**

A payment to any one of joint Holders will discharge the Issuer's liability in respect of the payment.

### **11.10 Time limit for claims**

A claim against the Issuer for a payment under an MCN3 is void unless made within 5 years from the date on which payment first became due.

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## **12 Title and transfer of MCN3**

### **12.1 Title**

Title to an MCN3 passes when details of the transfer are recorded in the Register.

### **12.2 Effect of entries in the Register**

Each entry in the Register for an MCN3 constitutes an entitlement to the benefits given to the Holder under these Terms and the MCN3 Trust Deed in respect of the MCN3.

### **12.3 Register conclusive as to ownership**

An entry in the Register in relation to an MCN3 constitutes conclusive evidence that the person so entered is the absolute owner of that MCN3, subject to correction for fraud or error.

### **12.4 Non-recognition of interests**

- (a) Except as required by clause 9 and by law, and save as provided below, the Issuer and the Registrar must treat the person entered in the Register in respect of an MCN3 as the absolute owner of that MCN3.
- (b) No notice of any trust, Encumbrance or other interest in, or claim to, any MCN3 will be entered in the Register. None of the Issuer or the

Registrar need take notice of any trust, Encumbrance or other interest in, or claim to, any MCN3, except as ordered by a court of competent jurisdiction or required by law.

- (c) This clause 12.4 applies whether or not a payment has been made when scheduled on an MCN3 and despite any notice of ownership, trust, Encumbrance or other interest in the MCN3.

## **12.5 Joint Holders**

Where two or more persons are entered in the Register as joint Holders of an MCN3 then they are taken to hold the MCN3 jointly, but the Registrar is not bound to register more than four persons as joint Holders of an MCN3.

## **12.6 Transfers**

A Holder may transfer an MCN3:

- (a) in accordance with the rules and regulations of CHES;
- (b) by a proper transfer under any other applicable computerised or electronic system recognised by the Corporations Act (or as the Issuer may otherwise accept); or
- (c) subject to clause 1.4, by any proper or sufficient instrument of transfer of marketable securities under applicable law, provided such instrument is delivered to the Registrar with any evidence the Registrar requires to prove title to or the right to transfer the MCN3.

The Holder is responsible for any stamp duty or other similar taxes which are payable in any jurisdiction in connection with a transfer, assignment or other dealing with MCN3.

## **12.7 Transferee takes subject to terms**

A transferee of, or any person claiming, an interest in an MCN3 takes subject to these Terms and the MCN3 Trust Deed.

## **12.8 Other transfers void**

A purported transfer otherwise than in accordance with these Terms and the MCN3 Trust Deed or grant of an interest in an MCN3 otherwise than by way of transfer is, to the fullest extent permitted by law, void.

## **12.9 Issuer may request holding lock or refuse to register transfer**

If MCN3 are quoted on ASX, and if permitted to do so by the ASX Listing Rules and the Corporations Act, the Issuer may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of MCN3 approved by and registered on the CS Facility's electronic subregister or MCN3 registered on an issuer-sponsored subregister, as the case may be; or
- (b) refuse to register a transfer of any MCN3.

## **12.10 Issuer must request holding lock or refuse to register transfer**

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of MCN3

approved by and registered on the CS Facility's electronic subregister or MCN3 registered on an issuer-sponsored subregister, as the case may be, if the Corporations Act or the ASX Listing Rules require the Issuer to do so.

- (b) The Issuer must refuse to register any transfer of any MCN3 if the Corporations Act or the ASX Listing Rules require the Issuer to do so.

### **12.11 Notice of holding locks and refusal to register transfer**

If, in the exercise of its rights under clauses 12.9 and 12.10, the Issuer requests the application of a holding lock to prevent a transfer of MCN3 or refuses to register a transfer of MCN3, it must, within 2 months after the date on which the transfer was lodged with it, give written notice of the request or refusal to the Holder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

### **12.12 Delivery of instrument**

If an instrument is used to transfer any MCN3 according to clause 12.6, it must be delivered to the Registrar, together with such evidence (if any) as the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the MCN3.

### **12.13 Refusal to register**

- (a) A transferor of an MCN3 is deemed to remain a Holder until the transfer is Registered and the name of the transferee is entered in the Register.
- (b) The Issuer may refuse to register a transfer of any MCN3 if:
  - (i) such registration would contravene these Terms; or
  - (ii) the Corporations Act or any other law or regulation binding on the Issuer forbids registration.

If the Issuer refuses to register a transfer, the Registrar must give the lodging party notice of the refusal and the reasons for it within 5 Business Days after the date on which notice of the transfer was delivered to it.

### **12.14 No liability to persons other than Holders**

The Issuer is not liable to pay any amount to any person claiming an interest in an MCN3 in connection with that MCN3 other than the Holder.

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## **13 Notices and other communications**

### **13.1 Notices to Holders**

All notices and other communications to Holders must be in writing and must be:

- (a) left at the address of or sent by prepaid post (airmail, if appropriate) to the address of the Holder (as shown in the Register at the close of business on the day which is 5 Business Days before the date of the notice or communication);
- (b) (if available) issued to Holders through CHES in accordance with any applicable rules and regulations of CHES;

- (c) so long as the MCN3 are quoted on ASX, by publication of an announcement on ASX;
- (d) given by an advertisement published in the Australian Financial Review, The Australian or in any other newspaper nationally circulated within Australia;
- (e) sent by email or electronic message to the electronic address (if any) of the Holder (as shown in the Register at the close of business on the day which is 5 Business Days before the date of the notice or communication); or
- (f) given in any other way agreed between the Issuer and any Holder (and in agreeing in such way, the Issuer and such Holders may have regard to the dates by which notice is to be given under these Terms).

### 13.2 Notices to the Issuer or the Trustee

All notices and other communications to the Issuer or the Trustee must be in writing and must be:

- (a) if to the Issuer, sent by fax to the fax number, or left at the address, or sent by prepaid post (airmail, if appropriate) to the address, set out below:

Name: Macquarie Group Limited

Address: [1 Elizabeth Street](#)~~50 Martin Place~~  
Sydney NSW 2000  
Australia

Attention: Company Secretary

Fax: +61 2 8232 7780

- (b) if to the Trustee, addressed as specified from time to time in accordance with the MCN3 Trust Deed; and
- (c) given in any other way reasonably determined by the Issuer or, in the case of clause 13.2(b), the Trustee and notified to Holders.

For the purposes of this clause 13.2, the Issuer's address for notices and other communications is the address set out above or as otherwise notified by the Issuer to Holders.

### 13.3 When effective

Communications take effect from the time they are received or taken to be received under clause 13.4 (whichever happens first) unless a later time is specified.

### 13.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, the day immediately following the day on which the notice was posted (or 4 days after posting if sent from one country to another);

- (b) if addressed and transmitted to the person by fax, to the fax number specified in accordance with clause 13.2, on the Business Day following its transmission;
- (c) if sent by e-mail, to the electronic address in respect of the Holder as specified in accordance with clause 13.1, on the day following its transmission to that electronic address;
- (d) if issued to Holders through CHESS, on the date of the issuance unless the sender receives an automated message that the e-mail has not been delivered;
- (e) if announced on ASX, on the date of the announcement; or
- (f) if published in a newspaper, on the first date that publication has been made in the required newspaper.

### **13.5 Receipt outside business hours**

Despite clauses 13.3 and 13.4, if communications are received or taken to be received under clause 13.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am in the place of receipt on the next Business Day and take effect from that time unless a later time is specified.

### **13.6 Effect of failure to give notice**

If the Issuer is required to give a notice in relation to any act, matter or determination, the accidental omission to give that notice to a Holder does not invalidate the notice in relation to Holders generally, or affect the validity of that act, matter or determination.

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## **14 Amendment of Terms**

### **14.1 Amendment without consent**

Subject to complying with the Corporations Act and all other applicable laws and directives, the Issuer may amend these Terms and the MCN3 Trust Deed, with the prior written approval of APRA (to the extent any such amendment may cause the MCN3 to cease to be Relevant Securities forming part of Eligible Capital) but without the consent of the Holders or the Trustee:

- (a) if the Issuer is of the opinion that the amendment is:
  - (i) of a formal, minor or technical nature;
  - (ii) made to correct any ambiguity or any manifest or proven error;
  - (iii) expedient for the purpose of enabling the MCN3 to be listed for quotation or to retain a listing on any Stock Exchange, to be cleared or settled through any clearing system or to retain clearance and settlement through any clearing system or to be offered for sale, Resold, or subscribed for, under the laws for the time being in force in any place and, in each case, it is otherwise not considered by the Issuer to be materially adverse to the interests of Holders as a whole;
  - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority;



- (v) in respect of any time or notice period stated, required or permitted in respect of any Exchange, as is necessary or appropriate to give effect to such Exchange; or
- (vi) made to:
  - (A) alter the terms of any MCN3:
    - (aa) to be or other otherwise to remain as a Relevant Security forming part of Eligible Capital; or
    - (ab) to align them with any other Relevant Security eligible for inclusion as Eligible Capital issued after the issue date of such MCN3; or
  - (B) alter the definition of Relevant Securities on account of the issue (after the date of any MCN3) of any other Relevant Securities forming part of Eligible Capital; or
  - (C) give effect to any agreement with the Nominated Party to which MCN3 have been Resold; and
- (b) if the Issuer is of the opinion that the amendment does not, taken as a whole and in conjunction with all other amendments, if any, made contemporaneously with the amendments, materially adversely affect the interests of Holders as a whole,

provided that, notwithstanding anything else in this clause 14.1, any amendments which may have an adverse effect on the Trustee's personal rights and obligations under the Transaction Documents must first be approved by the Trustee in writing (such approval not to be unreasonably withheld or delayed).

#### **14.2 Amendment without consent where Approved Acquirer**

Without limiting clause 14.1, subject to complying with the Corporations Act and all other applicable laws and directives, the Issuer may make amendments to these Terms and the MCN3 Trust Deed, with the prior written approval of APRA (to the extent any such amendments may cause the MCN3 to cease to be Relevant Securities eligible for inclusion as Eligible Capital) but without the consent of the Holders or the Trustee which are, in the Issuer's reasonable opinion, necessary and appropriate to effect the substitution of the Approved Acquirer as the issuer of Ordinary Shares whenever MCN3 are required to be Exchanged in the manner contemplated by these Terms, including without limitation:

- (a) amendments to the definition of "Exchange" such that, unless APRA otherwise agrees, on the Exchange Date:
  - (i) each MCN3 that is to be Exchanged will be automatically transferred by each Holder free from Encumbrance to the Approved Acquirer (or another subsidiary of the Approved Acquirer which is a holding company of the Issuer on the Exchange Date) (the "Transferee");
  - (ii) each Holder will be issued a number of ordinary shares in the capital of the Approved Acquirer equal to the Exchange Number; and
  - (iii) as between the Issuer and the Transferee, the MCN3 held by the Transferee as a result of the transfer will be Exchanged for a

number (rounded down to the nearest whole number) of Ordinary Shares the aggregate value of which equals the aggregate Issue Price of the transferred MCN3;

- (b) amendments and additions to the definitions of “Acquisition Event”, “Macquarie Group”, “Regulatory Event” and “Tax Event”; and
- (c) amendments and additions to any term defining the rights of Holders if the Exchange is not effected which is appropriate for the MCN3 to be or to remain as Relevant Securities eligible for inclusion as Eligible Capital,

provided that, notwithstanding anything else in this clause 14.2, any amendments which may have an adverse effect on the Trustee’s personal rights and obligations under the Transaction Documents must first be approved by the Trustee in writing (such approval not to be unreasonably withheld or delayed).

### **14.3 Amendment with consent**

Without limiting clauses 14.1 and 14.2, the Issuer may, with APRA’s prior written approval (to the extent any such amendment may cause the MCN3 to cease to be Relevant Securities eligible for inclusion as Eligible Capital), amend these Terms or the MCN3 Trust Deed, if the amendment has been approved by a Special Resolution and by the Trustee in writing.

### **14.4 Meanings**

In this clause 14, “**amend**” includes modify, cancel, alter, adjust or add to and “**amendment**” has a corresponding meaning.

### **14.5 Notice of amendments**

Any amendment of these Terms or the MCN3 Trust Deed made in accordance with this clause 14 must be promptly notified by the Issuer to Holders.

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## **15 General provisions**

### **15.1 Enforcement of the MCN3 Trust Deed and the Terms**

- (a) Subject to paragraph (b) below, only the Trustee may enforce the provisions of the MCN3 Trust Deed or these Terms and only in accordance with their terms and subject to the limitations and to the protections afforded to the Trustee set out in the MCN3 Trust Deed.
- (b) No Holder shall be entitled to proceed directly against the Issuer to enforce the performance of any of the provisions of the MCN3 Trust Deed or these Terms unless:
  - (i) the Trustee, being entitled and having become bound to take proceedings in accordance with the MCN3 Trust Deed, fails to do so within 14 days; and
  - (ii) such failure is continuing,

and then only in accordance with their terms and subject to the limitations set out in the MCN3 Trust Deed.

## 15.2 Voting and meetings

- (a) The MCN3 Trust Deed contains provisions for convening meetings of the Holders to consider any matter affecting their interests, including any amendment of these Terms which requires the consent of Holders.
- (b) Holders will have no voting rights in respect of any member of the Macquarie Group.
- (c) Subject to applicable law, Holders are not entitled to be provided with copies of:
  - (i) any notices of general meetings of the Issuer; or
  - (ii) other documents (including annual reports and financial statements) sent by the Issuer to holders of Ordinary Shares or other securities (if any) in the Issuer.

## 15.3 Listing

The Issuer must use its best endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, quotation of the MCN3 on ASX on or as soon as possible after the Issue Date and maintain quotation on ASX until all MCN3 have been Exchanged, Redeemed or Written-Off.

## 15.4 Purchases

Subject to APRA's prior written approval and applicable law, any member of the Macquarie Group may purchase MCN3 at any time and at any price. Such MCN3 may, at the option of the acquirer, be held, resold or cancelled.

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## 16 Winding Up

### 16.1 Ranking in Winding Up

- (a) If an order of a court of competent jurisdiction in Australia is made (other than an order successfully appealed or permanently stayed within 30 days), or an effective resolution passed, for the Winding Up of the Issuer in Australia, the Issuer is liable to redeem each MCN3 for its Liquidation Amount in accordance with, and subject to, this clause 16.
- (b) In the Winding Up of the Issuer in Australia, a Holder is entitled, subject to the terms of the MCN3 Trust Deed and to this clause 16, to claim on a subordinated basis in accordance with clauses 1.5 and 16.1(c) for payment in cash of an amount equal to the Liquidation Amount but has no further or other claim on the Issuer in the Winding Up.
- (c) In a Winding Up of the Issuer in Australia:
  - (i) Holders shall be entitled to prove only for any sums payable in respect of the MCN3 as a debt which are subject to, and contingent upon the prior payment in full of, the Senior Creditors;
  - (ii) Holders shall be entitled to claim for payment in cash of an amount equal to the Liquidation Amount and that claim ranks equally with all Equal Ranking Obligations; and

- (iii) Holders waive, to the fullest extent permitted by law, any right to prove in any such Winding Up as a creditor ranking for payment in any other manner.

## **16.2 Agreements of Holders as to subordination**

Each Holder irrevocably agrees:

- (a) that this clause 16 is a debt subordination for the purposes of section 563C of the Corporations Act;
- (b) that it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act to the extent that a holder of a preference share which is an Equal Ranking Obligation would not be entitled to such interest;
- (c) not to exercise any voting or other rights as a creditor in any Winding Up or administration of the Issuer in any jurisdiction:
  - (i) until after all Senior Creditors have been paid in full; or
  - (ii) otherwise in a manner inconsistent with the ranking and subordination contemplated by clauses 1.5 and 16.1;
- (d) that it must pay or deliver to the liquidator or administrator any amount or asset received on account of its claim in any Winding Up or administration of the Issuer in any jurisdiction in respect of the MCN3 in excess of its entitlement under clauses 1.5 and 16.1;
- (e) that it must pay in full all liabilities it owes the Issuer before it may receive any amount or asset on account of its claim in any Winding Up or administration in any jurisdiction in respect of an MCN3; and
- (f) that the debt subordination effected by clauses 1.5 and 16.1 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity.

## **16.3 No charge**

Nothing in clause 1.5 or this clause 16 shall be taken to:

- (a) create a charge or security interest on or over any right of the Holder; or
- (b) require the consent of any Senior Creditor to any amendment of these Terms.

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## **17 Governing law, jurisdiction and service of documents**

### **17.1 Governing law**

The MCN3, including these Terms, are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.

### **17.2 Jurisdiction**

The Issuer irrevocably agrees for the benefit of the Holders that the courts of New South Wales, Australia are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with the MCN3 and accordingly has submitted to the non-exclusive jurisdiction of the courts of New South Wales.

### 17.3 Service of process

Without preventing any other method of service, any document in any action may be served on the Issuer by being delivered or left at its registered office or principal place of business.

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## 18 Interpretation and definitions

### 18.1 Interpretation

Unless otherwise specified or the contrary intention appears:

- (a) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- (b) if a calculation is required under these Terms, the result of the calculation will be rounded to four decimal places (with 0.00005 being rounded to 0.0001);
- (c) headings and bold typeface are for convenience only and do not affect the interpretation of these Terms;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a statute, ordinance, directive, code, law, prudential standard or the rules of any Stock Exchange includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them and references to law includes statutes, ordinances, codes, directives or common law and principles of equity having general application;
- (f) a reference to the “**Corporations Act**” as it relates to the Issuer is to that Act as may be modified in relation to the Issuer by the Australian Securities and Investments Commission;
- (g) if under these Terms an event must occur on a stipulated day, or a day is stipulated, which is not a Business Day, then, except in the cases of a Non-Viability Event and a Non-Viability Exchange Date, the stipulated day will be taken to be the next Business Day;
- (h) a reference to “**Australian Dollars**”, “**AUD**”, “**A\$**” or “**cents**” is a reference to the lawful currency of Australia;
- (i) calculations, elections and determinations made by or on behalf of the Issuer or the Directors under these Terms are binding on Holders in the absence of manifest error or fraud;
- (j) a reference to a party to an agreement, deed, authority or other instrument includes a reference to any successor, replacement, assignee, substitute or addition of the party according to that agreement, deed, authority or instrument;
- (k) any references to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;
- (l) any requirement for APRA’s consent or approval will apply only so long as MCN3 form part of Eligible Capital and if APRA requires that such consent or approval be given at the relevant time;

- (m) any requirements for the prior approval or consent of APRA for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as of the Issue Date;
- (n) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (o) a reference to an agreement, deed or other instrument includes a reference to that agreement, deed or instrument as amended, modified, added to or restated from time to time;
- (p) the terms “**takeover bid**”, “**relevant interest**”, “**scheme of arrangement**”, “**buy-back**”, “**subsidiary**” and “**holding company**” when used in these Terms have the meaning given in the Corporations Act;
- (q) a reference to the “interests of Holders as a whole” will, if MCN3 are held beneficially by a Nominated Party, be a reference to the interests of Holders other than the Nominated Party;
- (r) the words “**includes**” or “**including**”, “**for example**” or “**such as**” do not exclude a reference to other items, whether of the same class or genus or not;
- (s) if the principal securities exchange on which the Ordinary Shares are quoted is other than ASX, unless the context otherwise requires a reference to ASX shall be read as a reference to that principal securities exchange and a reference to the ASX Listing Rules, ASX Operating Rules or any term defined in any such rules, shall be read as a reference to the corresponding rules of that exchange or corresponding defined term in such rules (as the case may be);
- (t) a reference to any term defined by APRA shall, if that term is replaced or superseded in any of APRA’s applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term;
- (u) where these Terms refer to a person’s opinion or to a person’s regard or consideration or being satisfied with respect to any step, act, matter or thing, that opinion, regard, consideration or satisfaction may be held, formed or made by the person in the person’s absolute discretion; and
- (v) for the purposes of clause 14.1, in determining whether an amendment is not materially adverse to, or does not materially adversely affect, the interests of Holders as a whole, the taxation and regulatory capital consequences to Holders (or any class of Holders) and other special consequences which are personal to a Holder (or any class of Holders) do not need to be taken into account.

## 18.2 Definitions

In these Terms, the following meanings apply unless the contrary intention appears:

**Acquisition Event** means:

- (a) a takeover bid is made to acquire all or some of the Ordinary Shares and the offer is, or becomes, unconditional and as a result of the bid the

bidder (and its associates as defined in section 12 of the Corporations Act) has a relevant interest in more than 50% of the Ordinary Shares on issue;

- (b) a court approves a scheme of arrangement which, when implemented, will result in a person (and its associates as defined in section 12 of the Corporations Act) having a relevant interest in more than 50% of the Ordinary Shares on issue; or
- (c) a person together with its associates as defined in section 12 of the Corporations Act;
  - (i) acquires or comes to hold beneficially more than 50% of the voting shares (as defined in the Corporations Act) in the capital of the Issuer; or
  - (ii) enters into an agreement to beneficially acquire more than 50% of the voting shares (as defined in the Corporations Act) in the capital of the Issuer and the agreement to acquire is, or becomes, unconditional,

(for the purposes of this definition, each an “**event**”), other than as part of a solvent reorganisation of the relevant entity where the persons holding relevant interests in the ordinary equity capital (being listed on the ASX) of the bidder or other person (“**Approved Acquirer**”) acquiring a relevant interest in more than 50% of the Ordinary Shares on issue or beneficially acquiring more than 50% of the voting shares in the capital of the Issuer are, or will be, substantially the same, and in substantially the same proportions, as the persons who held relevant interests in the Ordinary Shares or who held beneficially voting shares in the capital of the Issuer immediately prior to the event where:

- (i) the event is initiated by the Directors or would not, in the Issuer’s reasonable opinion, otherwise be materially adverse to the interests of Holders as a whole; and
- (ii) the Approved Acquirer agrees for the benefit of Holders to:
  - (A) issue listed ordinary share capital in all circumstances where the Issuer would have otherwise been obliged to issue Ordinary Shares as contemplated by these Terms;
  - (B) use all reasonable endeavours to ensure continued quotation of the MCN3 on a Stock Exchange; and
  - (C) comply with the obligations and restrictions as apply to the Issuer in connection with the MCN3 (with all necessary and appropriate modifications);

**Acquisition Exchange Date** has the meaning given in clause 6.2;

**Acquisition Exchange Notice** has the meaning given in clause 6.2;

**ADI** means an authorised deposit-taking institution under the Banking Act;

**Adjustment Notice** has the meaning given in clause 9.9;

**Applicable Shareholding Law** means any law in force in Australia or any relevant foreign jurisdiction which limits or restricts the number of shares in the Issuer in which a person may have an interest or over which it may have a right or power, including, without limitation, Chapter 6 of the Corporations Act, the

Foreign Acquisitions and Takeovers Act 1975 (Cth), the Financial Sector (Shareholdings) Act 1998 (Cth) and Part IV of the Competition and Consumer Act 2010 (Cth);

**Appointed Person** has the meaning given in clause 10.2;

**Approved Acquirer** has the meaning given in the definition of Acquisition Event;

**APRA** means the Australian Prudential Regulation Authority or any authority succeeding to its powers and responsibilities;

**ASX** means ASX Limited (ACN 008 624 691) or the Australian Securities Exchange, as the context requires;

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

**ASX Operating Rules** means the market operating rules of ASX as amended, varied or waived (whether in respect of the Issuer or generally) from time to time;

**ASX Settlement Operating Rules** means the settlement operating rules of ASX as amended, varied or waived (whether in respect of the Issuer or generally) from time to time;

**ASX Trading Day** means a business day within the meaning of the ASX Listing Rules on which trading in Ordinary Shares takes place;

**Attributable Proceeds** means, in respect of a Holder to whom clause 9.14(f) applies, an amount equal to the Proceeds per Share multiplied by the number of Ordinary Shares issued and sold in accordance with clause 9.14(f) in respect of that Holder;

**Authorised Officer** means a person appointed by the party to act as an authorised officer for the purposes of these Terms by notice to the Issuer;

**Banking Act** means the Banking Act 1959 (Cth);

**Bookbuild** means the process conducted prior to the opening of the Offer where brokers and investors bid for the MCN3 and, on the basis of those bids, the Issuer, in consultation with the joint lead managers to the Offer, determines the Margin;

**Business Day** means a day which is (i) a business day within the meaning of the ASX Listing Rules; and (ii) for the purpose of determining an Exchange Date (other than a Non-Viability Exchange Date) or the calculation or payment of a Distribution or of any other sum, a day on which banks are open for general business in Sydney, Australia;

**Buy-Back** means a transaction involving the acquisition by the Issuer of its Ordinary Shares pursuant to an offer made in its discretion in accordance with the provisions of Part 2J of the Corporations Act;

**Capital Reduction** means a reduction in capital initiated by the Issuer in its discretion in respect of its Ordinary Shares in any way permitted by the provisions of Part 2J of the Corporations Act;

**Change in Law** has the meaning given to it in the definition of Regulatory Event;

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd (ACN 008 504 532), or any system that replaces it relevant to the MCN3 (including in respect of the transfer or Exchange of MCN3);



**Control** has the meaning given in the Corporations Act;

**Corporations Act** means the Corporations Act 2001 (Cth);

**CS Facility** has the same meaning as “Prescribed CS Facility” in the Corporations Act;

**CS Facility Operator** means the operator of a CS Facility;

**Cum Value** has the meaning given in clause 9.3;

**Daily VWAP** means the volume weighted average sale price (rounded to the nearest full cent) of Ordinary Shares sold on ASX on a day but does not include any “Crossing” transacted outside the “Open Session State”, or any “Special Crossing” transacted at any time, each as defined in the ASX Operating Rules, or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares;

**Deferred Exchange Date** has the meaning given in clause 5.5;

**Deferred Exchange Notice** has the meaning given in clause 5.5;

**Deferred Mandatory Exchange Date** has the meaning given in clause 3.2;

**Delisted** means, in respect of the Issuer and an Exchange Date:

- (a) that Ordinary Shares have ceased to be listed or admitted to trading on ASX (and continue not to be listed or admitted to trading on that date); or
- (b) an Inability Event applies on the relevant date preventing the Exchange of the MCN3 of Holders generally;

**Directors** means some or all of the Voting Directors (as defined in the Issuer’s constitution) of the Issuer acting as a board;

**Distribution** has the meaning given in clause 2.1;

**Distribution Payment Date** has the meaning given in clause 2.1;

**Distribution Period** means each period commencing on (and including) a Distribution Payment Date and ending on (but excluding) the next Distribution Payment Date. However:

- (a) the first Distribution Period commences on (and includes) the Issue Date; and
- (b) the final Distribution Period ends on (and excludes) the Exchange Date, Redemption Date or Resale Date, as applicable;

**Distribution Rate** has the meaning given in clause 2.1;

**Dividend Restriction** has the meaning given in clause 2.5;

**Eligible Capital** has the same meaning as “eligible capital” in the conditions in the schedule to the NOHC Authority or the equivalent concept in any subsequent or replacement authority given by APRA in favour of the Issuer or in any prudential standard determined by APRA relevant to the definition of the capital of the Issuer;

**Encumbrance** means any mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust

arrangement, any other security agreement or security arrangement (including any security interest under the Personal Property Securities Act 2009 (Cth)) and any other arrangement of any kind having the same effect as any of the foregoing;

**Equal Ranking Obligations** means any present or future obligation of, or claim against, the Issuer that exists or may arise in connection with:

- (a) the MCN;
- (b) the MCN2;
- (c) any other:
  - (i) preference share, security or capital instrument issued by the Issuer; or
  - (ii) obligation of, or claim against, the Issuer in respect of a preference share, security or capital instrument issued by a member of the Macquarie Group,

which preference share, security, capital instrument of, or obligation or claim against, the Issuer ranks, or is expressed to rank, equally with the MCN3 or any other Equal Ranking Obligation;

**Exchange** means, in respect of an MCN3, the allotment and issue of Ordinary Shares in respect of that MCN3 in accordance with and subject to clause 9, and **Exchangeable**, **Exchanged** and **Exchanging** have corresponding meanings;

**Exchange Conditions** has the meaning given in clause 3.3;

**Exchange Date** means a Mandatory Exchange Date, Non-Viability Exchange Date, Optional Exchange Date or Acquisition Exchange Date on which the MCN3 must be Exchanged (any relevant Exchange Conditions applicable to that date having been met);

**Exchange Date VWAP** has the meaning given in clause 9.1;

**Exchange Floor Price** has the meaning given in clause 9.1;

**Exchange Number** has the meaning in clause 9.1;

**FATCA** means the Foreign Account Tax Compliance Act provisions set out in sections 1471 through to 1474 of the US Internal Revenue Code ("**Code**") (and including any current or future regulations or official interpretations thereof issued in respect of these provisions, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices or similar laws implementing an inter-governmental approach on such provisions and any agreement entered into by the Issuer pursuant to or in connection with any of the foregoing);

**FATCA Withholding** has the meaning given in clause 11.4;

**First Exchange Condition** has the meaning given in clause 3.3;

**First Optional Exchange Restriction** has the meaning given in clause 5.4;

**First Scheduled Optional Exchange Date** has the meaning given in clause 5.2;

**Foreign Holder** means a Holder whose address in the Register is a place outside Australia or who the Issuer otherwise believes may not be a resident of Australia;

**Fourth Exchange Condition** has the meaning given in clause 3.3;

**Franking Adjustment Factor** has the meaning given in clause 2.1;

**Franking Rate** means the franking percentage, as defined under Part 3-6 of the Tax Act, for a Distribution as at the relevant Distribution Payment Date (expressed as a decimal) multiplied by the proportion of the relevant Distribution that is frankable;

**Holder** means a person Registered as the holder of an MCN3;

**Inability Event** means any of the Issuer or any of its Related Bodies Corporate is prevented by applicable law, an order of any court, an action of any government authority (including regarding the insolvency, Winding Up or other external administration of the Issuer or a Related Body Corporate), or for any other reason, from observing and performing their obligations in respect of an Exchange (including in connection with the issue of Ordinary Shares);

**Ineligible Holder** has the meaning given in clause 9.14;

**IRS** means the Internal Revenue Service of the United States of America;

**Issue Date** means the date the MCN3 are issued, expected to be 7 June 2018;

**Issue Date VWAP** has the meaning given in clause 9.1;

**Issue Price** has the meaning given in clause 1.1;

**Issuer** means Macquarie Group Limited (ACN 122 169 279), a company incorporated under the laws of Australia;

**Level 3 Group** means the Issuer and such other entities included from time to time in the calculation of the Issuer's capital requirements on a Level 3 basis (or its equivalent, in either case, as defined by APRA from time to time);

**Liquidation Amount** means an amount equal to the Issue Price;

**Loss Absorption** means, in respect of a security, any conversion or exchange (by whatever method) into ordinary shares or writing-off of that security in accordance with their terms or by operation of law when APRA gives a notice described in clause 4.1 (including an Exchange or Write-Off of MCN3);

**Macquarie Group** means the Issuer and each entity it Controls;

**Mandatory Exchange Date** has the meaning given in clause 3.2;

**Margin** has the meaning given in clause 2.1;

**Maximum Exchange Number** has the meaning given in clause 9.1;

**MCN** means the subordinated notes of the Issuer described as the "Macquarie Group Capital Notes" and issued under a trust deed entitled "MCN Trust Deed" dated 14 May 2013 (as amended);

**MCN2** means the subordinated notes of the Issuer described as the "Macquarie Group Capital Notes 2" and issued under a trust deed entitled "MCN Trust Deed" dated 23 November 2015 (as amended);

**MCN3** has the meaning given in clause 1.1;

**MCN3 Trust Deed** means the trust deed in respect of MCN3 dated on or about 7 May 2018, as amended from time to time;

**MCN7** means [the capital notes to be issued by the Issuer on the terms and conditions set out in the MCN7 Prospectus.](#)

**MCN7 Prospectus** means [the prospectus lodged by the Issuer with the Australian Securities and Investments Commission on or about 19 August 2024 and any replacement or supplementary prospectus.](#)

**NOHC Authority** means the authority to be a non-operating holding company of an authorised deposit-taking institution given by APRA in favour of the Issuer on 5 September 2007 (as amended from time to time) under the Banking Act;

**Nominated Party** means, subject to clause 8.2, one or more third parties selected by the Issuer in its absolute discretion;

**Non-Completing Nominated Party** has the meaning given in clause 8.6;

**Non-Exchange Test Date** has the meaning given in clause 5.4;

**Non-Viability Event** has the meaning given in clause 4.1;

**Non-Viability Exchange Date** means the date of occurrence of the Non-Viability Event;

**Non-Viability Exchange Notice** has the meaning given in clause 4.7;

**Offer** means the invitation made under the Prospectus by the Issuer for persons to subscribe for the MCN3;

**Optional Exchange Date** has the meaning given in clause 5.3;

**Optional Exchange Notice** has the meaning given in clause 5.1;

**Optional Exchange Restrictions** has the meaning given in clause 5.4;

**Ordinary Share** means a fully paid ordinary share in the capital of the Issuer;

**Ordinary Share Dividend** means any interim, final or special dividend payable in accordance with the Corporations Act and the constitution of the Issuer in respect of Ordinary Shares;

**Proceeds per Share** means, in respect of Ordinary Shares issued and sold in accordance with clause 9.14(f), an amount equal to the net proceeds of the sale of such Ordinary Shares, actually received after deducting any applicable brokerage, stamp duties and other taxes, charges and expenses, divided by the number of such Ordinary Shares issued and sold;

**Prospectus** means the prospectus for the Offer;

**Publication Time** has the meaning given in clause 2.1;

**Reclassification** means a division, consolidation or reclassification of the Issuer's share capital (not involving any cash payment or other distribution or compensation to or by holders of Ordinary Shares or to or by any entity in the Macquarie Group);

**Record Date** has the meaning given in clause 2.1;

**Redemption** means, in respect of an MCN3, the MCN3 is redeemed by payment of cash in accordance with and subject to clause 7 and “**Redeem**”, and “**Redeemed**” have the corresponding meanings;

**Redemption Date** has the meaning given in clause 7.3;

**Redemption Notice** has the meaning given in clause 7.1;

**Redemption Price** has the meaning given in clause 7.4;

**Reference Rate** has the meaning given in clause 2.1;

**Register** means the register, including any branch register, of Holders established and maintained by, or on behalf of, the Issuer;

**Registered** means recorded in the Register;

**Registrar** means a person appointed by the Issuer to maintain the Register;

**Regulatory Event** means:

- (a) a law or regulation applicable in the Commonwealth of Australia or any State or Territory of Australia or any directive, order, standard, requirement, guideline or statement of APRA (whether or not having the force of law), which affects the Issuer (a “**Regulation**”) is introduced, amended, clarified or changed or its application changed; or
- (b) an announcement is made that a Regulation will be introduced, amended, clarified or changed or its application changed; or
- (c) a decision is made by any court or other authority interpreting, applying or administering any Regulation,

in each case, which event occurs on or at any time after the Issue Date and was not expected by the Issuer as at the Issue Date (each such event a “**Change in Law**”) and the Issuer determines that, as a result of that Change in Law:

- (i) any of the MCN3 are not eligible for inclusion as Eligible Capital;
- (ii) additional requirements (including regulatory, capital, financial, operational or administrative requirements) would be imposed in connection with the MCN3 which the Issuer determines, in its absolute discretion, might have a material adverse effect on the Issuer; or
- (iii) to have any of the MCN3 outstanding would be unlawful or impractical or would cause the Issuer to be exposed to a more than *de minimis* increase in its costs in connection with those MCN3;

[Reinvestment Date](#) means the issue date of the MCN7, as determined in accordance with the MCN7 Prospectus.

[Reinvestment MCN3](#) means any MCN3 for which the Resale proceeds are to be reinvested in the MCN7 under the Reinvestment Offer.

[Reinvestment Offer](#) means the offer made by the Issuer to eligible Holders to reinvest some or all of their MCN3 on the terms and conditions set out in the MCN7 Prospectus.

**Related Body Corporate** has the meaning given in the Corporations Act;

**Related Entity** has the meaning given to it by APRA from time to time;

**Relevant Mandatory Exchange Date** has the meaning given in clause 3.2;

**Relevant Percentage** has the meaning given in clause 9.1;

**Relevant Security** means a security of the Issuer that, in accordance with its terms or by operation of law, may require Loss Absorption if APRA gives a notice described in clause 4.1 (including the MCN, MCN2 and the MCN3);

**Resale** means the transfer of MCN3 to one or more Nominated Parties in accordance with clause 8.1 [or clause 8.8](#) and “Resell” and “Resold” have the corresponding meanings;

**Resale Date** has the meaning given in clause 8.1 [and includes the date specified as a “Resale Date” in a Resale Notice given under clause 8.8](#);

**Resale Notice** has the meaning given in clause 8.1;

**Resale Price** has the meaning given in clause 8.3;

**Sale Agent** means person appointed by the Issuer to sell Ordinary Shares in accordance with clause 9.14, and includes an agent of that person;

**Scheduled Mandatory Exchange** has the meaning given in clause 3.2;

**Scheduled Mandatory Exchange Date** has the meaning given in clause 3.2;

**Scheduled Optional Exchange Date** has the meaning given in clause 5.2;

**Second Exchange Condition** has the meaning given in clause 3.3;

**Second Optional Exchange Restriction** has the meaning given in clause 5.4;

**Second Scheduled Optional Exchange Date** has the meaning given in clause 5.2;

**Senior Creditors** means all present and future creditors of the Issuer whose claims are:

- (a) entitled to be admitted in the Winding Up of the Issuer; and
- (b) not expressed to rank equally with, or subordinate to, the claims of the Holders under these Terms;

**Special Resolution** means:

- (a) a resolution passed at a meeting of Holders duly convened and held (or by way of postal ballot) in accordance with the MCN3 Trust Deed by the affirmative vote of at least 75% of the votes validly cast by Holders in person or by proxy and entitled to vote on the resolution; or
- (b) the consent in writing of Holders holding at least 75% of the MCN3 then on issue;

**Stock Exchange** means ASX or such other stock or securities exchange on which the MCN3 may be listed from time to time;

**Suspension Event** means, in respect of a date, trading of Ordinary Shares on ASX is suspended for a period of consecutive days which includes:

- (a) at least 5 consecutive Business Days prior to that date; and
- (b) that date;

**Tax Act** means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth), as the context requires;

**Tax Event** means that, on or after the Issue Date, the Issuer receives an opinion of nationally recognised legal counsel or other nationally recognised tax adviser in Australia experienced in such matters, that there is more than an insubstantial risk which the Issuer determines, at its absolute discretion, to be unacceptable that, as a result of a Tax Event Trigger and in connection with MCN3:

- (a) a franking debit will arise in the franking account of the Issuer in respect of any Distribution (the terms “franking debit” and “franking account” being within the meaning of Division 205 of the Tax Act) in addition to any franking debit that would, or is expected to, arise from the relevant Distribution in the absence of the Tax Event Trigger;
- (b) any Distribution would not be a frankable dividend or distribution within the meaning of Division 202 of the Tax Act; or
- (c) the Issuer is or will become exposed to more than a *de minimis* increase in its costs (including without limitation through the imposition of any taxes, duties, assessments, or other governmental charges or the loss of any deductions);

**Tax Event Trigger** means:

- (a) an amendment to, change in or announcement that there will be a change in, any laws or regulations affecting taxation in the Commonwealth of Australia or any State or Territory of Australia;
- (b) a judicial decision interpreting, applying or clarifying any laws or regulations affecting taxation in the Commonwealth of Australia or any State or Territory of Australia;
- (c) an administrative pronouncement, ruling, confirmation, advice or action that represents an official position, including a clarification of an official position of the governmental authority or regulatory body making the administrative pronouncement or taking any action, in each case, affecting taxation in the Commonwealth of Australia or any State or Territory of Australia; or
- (d) a challenge asserted or threatened in writing in connection with an audit or investigation of the Issuer in connection with MCN3 by the Australian Tax Office or other relevant taxing authority in the Commonwealth of Australia or any State or Territory of Australia,

which amendment, change or announcement that there will be a change, or which action or clarification or challenge occurs, on or after the Issue Date and was not expected by the Issuer as at the Issue Date;

**Tax Rate** means the Australian corporate tax rate applicable to the franking account of the Issuer on the relevant Distribution Payment Date (expressed as a decimal);

**Terms** means these terms and conditions;

**Third Exchange Condition** has the meaning given in clause 3.3;

**Third Scheduled Optional Exchange Date** has the meaning given in clause 5.2;

**Transaction Documents** means:

- (a) the MCN3 Trust Deed (including these Terms); and
- (b) any other document agreed by the parties to the MCN3 Trust Deed to be a Transaction Document for the purposes of the MCN3 Trust Deed (and provided that no such agreement will be made if the document may cause the MCN3 to cease to be Relevant Securities forming part of Eligible Capital unless the written approval of APRA to the agreement has been obtained);

**Transferee** has the meaning given in clause 14.2;

**Trustee** means AET Corporate Trust Pty Limited (ACN 106 424 088) or any replacement trustee under the MCN3 Trust Deed from time to time;

**VWAP** has the meaning given in clause 9.1;

**VWAP Period** has the meaning given in clause 9.1;

**Winding Up** means, with respect to an entity, the winding up, termination or dissolution of the entity, but does not include any winding up, termination or dissolution for the purposes of a consolidation, amalgamation, merger or reconstruction (the terms of which have been approved by the shareholders of the entity or by a court of competent jurisdiction) under which the continuing or resulting entity effectively assumes the entire obligations of the entity in respect of the MCN3; and

**Written-Off** means, in respect of an MCN3, that the Holder's rights under that MCN3 (including to payment of the Liquidation Amount and Distributions and to be Exchanged) are immediately and irrevocably terminated for no consideration with effect on and from the Non-Viability Exchange Date and "**Write-Off**" has a corresponding meaning.

### **18.3 Inconsistency with ASX Listing Rules and ASX Settlement Operating Rules**

So long as the MCN3 are quoted on ASX and in CHESS, these Terms as they relate to those MCN3 are to be interpreted in a manner consistent with applicable ASX Listing Rules and ASX Settlement Operating Rules (together, the "**Rules**"), except to the extent that an interpretation consistent with those Rules may cause the MCN3 to cease to be Relevant Securities forming part of Eligible Capital.