

MACQUARIE

**Macquarie PMI LLC***(a limited liability company formed in the State of Delaware)***U.S.\$400,000,000****Preferred Membership Interests**

guaranteed on a limited, subordinated and discretionary basis by

**Macquarie Group Limited***(incorporated with limited liability in Australia)*

(ABN 94 122 169 279)

The U.S.\$400,000,000 Preferred Membership Interests (the **PMIs**) will be unsecured and subordinated limited liability company interests of Macquarie PMI LLC (the **Issuer**). The PMIs will be Exchanged into fully paid preference shares (the **Preference Shares**) in the capital of Macquarie Group Limited (the **Guarantor**) on the date that falls 25 years after the date on which the PMIs are issued (expected to be 2 December 2010, the **Issue Date**) or earlier in the circumstances as described in the terms and conditions of the PMIs (the **PMI Terms**) and may be Redeemed by the Issuer prior to any Exchange in certain limited circumstances (see "*Terms and Conditions of the PMIs - clause 4 ("Redemption") and clause 5 ("Exchange")*"). The PMIs are not Redeemable or Exchangeable at the option of the holders of the PMIs (**PMI Holders**).

The PMIs are non-cumulative and confer a right to distributions (each a **Distribution**) for the period commencing on (and including) the Issue Date at the rate of 8.375% per annum (see "*Terms and Conditions of the PMIs - clause 3 ("Distributions")*"). Subject to the provisions of the PMI Terms relating to the deferral or non-payment thereof (including a discretion being exercised not to make the payment), Distributions will be payable on each PMI semi-annually in arrear on each six calendar month anniversary of the Issue Date commencing on the date falling six calendar months after the Issue Date and until (but excluding) the Redemption Date or Exchange Date for that PMI (see "*Terms and Conditions of the PMIs - clause 3 ("Distributions")*").

The payments of certain amounts due in respect of the PMIs will be irrevocably guaranteed on a limited, subordinated and discretionary basis by the Guarantor (the **Guarantee**) (see "*Form of the Guarantee*" and, in particular, the limitations on payment set out in "*clause 5 ("Limitations on Payment")*" of the Guarantee). If a discretion has been exercised not to pay a Distribution, then no amount in respect of that Distribution will be payable under the Guarantee.

The PMIs are expected to be assigned on issue a credit rating of "BBB" by Standard & Poor's (Australia) Pty Ltd (**S&P**), "Baa3" by Moody's Investors Service Pty Limited (**Moody's**) and "BBB" by Fitch Australia Pty Ltd (**Fitch**). A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by the assigning rating agency. Credit ratings are for distribution only to a person (a) who is not a "retail client" within the meaning of section 761G of the Corporations Act 2001 of Australia (the **Australian Corporations Act**) and is also a sophisticated investor, professional investor or other investor in respect of whom disclosure is not required under Parts 6D.2 or 7.9 of the Australian Corporations Act, and (b) who is otherwise permitted to receive credit ratings in accordance with applicable law in any jurisdiction in which the person may be located. Anyone who is not such a person is not entitled to receive this Offering Circular and anyone who receives this Offering Circular must not distribute it to any person who is not entitled to receive it.

**An investment in the PMIs involves certain risks. For a discussion of these risks see "*Risk Factors*".**

Approval in-principle has been received from the Singapore Exchange Securities Trading Limited (the **SGX-ST**) for the listing and quotation of the PMIs on the official list of the SGX-ST.

The SGX-ST assumes no responsibility for the correctness of any of the statements made or opinions expressed or reports contained herein. Admission to the official list of the SGX-ST and quotation of the PMIs on the SGX-ST are not to be taken as an indication of the merits of the Issuer, the Guarantor or the PMIs. The PMIs will be traded in a minimum board lot size of S\$200,000 (or equivalent in another currency) for so long as the PMIs are listed on the SGX-ST.

**None of the PMIs, the Guarantee or the Preference Shares have been or will be registered under the United States Securities Act of 1933, as amended (the U.S. Securities Act) or with any securities regulatory authority of any state or other jurisdiction of the United States. Unless they are so registered, the PMIs may be offered only in transactions that are exempt from, or not subject to registration under, the U.S. Securities Act or the securities laws of any other jurisdiction. Accordingly, the PMIs are only being offered outside the United States in reliance on and in accordance with Regulation S under the U.S. Securities Act and in accordance with applicable laws. Prospective investors should read the section entitled "*Subscription and Sale*" for information on restrictions that apply to the purchase and sale of the PMIs.**

**The PMIs are not guaranteed or insured by the Australian Government, the U.S. Federal Deposit Insurance Corporation or any other government, government agency or insurance or compensation scheme of Australia, the United States or any other jurisdiction. The PMIs are not deposit liabilities of Macquarie Bank Limited (ABN 46 008 583 542) (MBL), or of any other entity that the Guarantor controls (as defined in the Australian Corporations Act), for the purposes of section 13A(3) of the Banking Act 1959 of Australia (the Australian Banking Act) or any similar law of any jurisdiction and are not "protected accounts" of MBL, or of any other entity that the Guarantor controls, for the purposes of the Australian Banking Act.**

Each PMI will be issued in registered form and in denominations of U.S.\$100,000 and integral multiples of U.S.\$1,000 above that amount (in each case, the **Principal Amount** of a PMI). The PMIs will be initially represented by a global certificate (the **Global Certificate**), which will be registered in the name of a nominee of, and deposited with a common depository for, Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, *société anonyme* (**Clearstream, Luxembourg**). The Global Certificate will be exchangeable for definitive certificates representing PMIs in registered form (the **Definitive Certificates**) only in certain limited circumstances (see "*Terms and Conditions of the PMIs of the PMIs - clause 2.2 ("Entries in the Register and PMI Certificates")*").

Joint Lead Managers

BofA Merrill Lynch

Credit Suisse

J.P. Morgan

Macquarie Capital  
Advisers Limited

Co-Managers

Barclays Capital

Citi

HSBC

26 November 2010

The Issuer and the Guarantor (only in relation to information relating to it) accept responsibility for the information contained in this Offering Circular. To the best of the knowledge of the Issuer and the Guarantor (each having taken all reasonable care to ensure that such is the case), the information (in the case of the Guarantor, relating to it) contained in this Offering Circular is in accordance with the facts and does not omit anything likely to affect the import of such information.

The SGX-ST takes no responsibility for the contents of this Offering Circular, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this Offering Circular.

In this Offering Circular, references to the **Guarantor** and **MGL** are to Macquarie Group Limited, references to the **Group** are to the Guarantor together with each entity it controls (as defined in the Australian Corporations Act, and including the Issuer), references to **S\$** are to Singapore dollars, references to **A\$** and **AUD** are to Australian dollars, references to **U.S. dollars**, **USD** and **U.S.\$** are to United States dollars and references to **euro** and **€** are to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended.

This Offering Circular is to be read in conjunction with all documents which are deemed to be incorporated herein by reference (see "*Documents Incorporated by Reference*"). This Offering Circular shall be read and construed on the basis that such documents are incorporated by reference into, and form part of, this Offering Circular.

None of the Joint Lead Managers or the Co-Managers (together, the **Managers**) nor any Agent (as defined below), any of their respective affiliates, any external advisor to the Issuer or the Guarantor, or any of the foregoing (each an **Other Person**) has (unless expressly stated otherwise) independently verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is made and no responsibility or liability is accepted by any Manager or any Agent or Other Person as to the accuracy or completeness of the information contained in or incorporated by reference into this Offering Circular or any other information provided by the Issuer or the Guarantor in connection with the offer of the PMIs under this Offering Circular (the **Offer**) or the PMIs themselves. None of the Managers nor any Agent or Other Person accepts any liability in relation to the information contained in or incorporated by reference into this Offering Circular or any other information provided by the Issuer or the Guarantor in connection with the Offer or the PMIs.

No person is or has been authorised by the Issuer, the Guarantor, the Managers or any Agent or Other Person to give any information or to make any representation not contained in or not consistent with this Offering Circular or any other information supplied in connection with the Offer or the PMIs and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Guarantor, the Managers or any Agent or Other Person.

Neither this Offering Circular nor any other information supplied in connection with the Offer or the PMIs (a) is intended to provide the basis of any credit or other evaluation, or (b) should be considered as a recommendation by the Issuer, the Guarantor, the Managers or any Agent or Other Person that any recipient of this Offering Circular or any other information supplied in connection with the Offer or the PMIs should purchase any PMIs. Each investor contemplating purchasing any PMIs should make its own independent investigation of the financial condition and affairs, and its own appraisal of the creditworthiness, of the Issuer and the Guarantor. Neither this Offering Circular nor any other information supplied in connection with the Offer or the PMIs constitutes an offer or invitation by, or on behalf of, the Issuer, the Guarantor, any of the Managers or any Agent or Other Person to any person to subscribe for or to purchase any PMIs.

Neither the delivery of this Offering Circular nor the offering, sale or delivery of the PMIs shall in any circumstances imply that the information contained herein concerning the Issuer, the Guarantor or any other member of the Group is correct at any time subsequent to the date hereof or that any other information supplied in connection with the Offer or the PMIs is correct as of any time subsequent to the date indicated in the document containing the same. The Managers and the Agents expressly do not undertake to review the financial condition or affairs of the Issuer or the Guarantor during the life of the Offer or to advise any investor in the PMIs of any information coming to their attention.

If the terms of the Offer are modified or amended in a manner which would make this Offering Circular, as so modified or amended, inaccurate or misleading, an amendment or supplement to this Offering Circular or a new offering circular will be prepared.

This Offering Circular has not been and will not be registered as a prospectus with the Monetary Authority of Singapore and the PMIs are offered by the Issuer pursuant to the exemptions invoked under Sections 274 and 275 of the Securities and Futures Act, Chapter 289 of Singapore (the **SFA**).

Accordingly, this Offering Circular and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the PMIs may not be circulated or distributed, nor may the PMIs be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor pursuant to Section 274 of the SFA, (ii) to a relevant person under to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

**THE PMIs HAVE NOT BEEN NOR WILL BE REGISTERED UNDER THE U.S. SECURITIES ACT OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES. THE PMIs MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS (AS DEFINED IN REGULATIONS UNDER THE U.S. SECURITIES ACT) UNLESS THE PMIs ARE REGISTERED UNDER THE U.S. SECURITIES ACT OR OFFERED AND SOLD PURSUANT TO AND IN ACCORDANCE WITH AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.**

**THE PMIs HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY IN THE UNITED STATES, NOR HAVE THE FOREGOING AUTHORITIES APPROVED THIS OFFERING CIRCULAR OR DETERMINED IF THIS OFFERING CIRCULAR IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE IN THE UNITED STATES.**

**NO PARTY MAKES ANY REPRESENTATION TO ANY INVESTOR IN THE PMIs REGARDING THE LEGALITY OF ITS INVESTMENT UNDER ANY APPLICABLE LAWS. ANY INVESTOR IN THE PMIs SHOULD BE ABLE TO BEAR THE ECONOMIC RISK OF AN INVESTMENT IN THE PMIs FOR AN INDEFINITE PERIOD OF TIME.**

**THE PMIs ARE NOT GUARANTEED OR INSURED BY THE AUSTRALIAN GOVERNMENT, THE U.S. FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT, GOVERNMENT AGENCY OR INSURANCE OR COMPENSATION SCHEME OF AUSTRALIA, THE UNITED STATES OR ANY OTHER JURISDICTION. THE PMIs ARE NOT DEPOSIT LIABILITIES OF MBL, OR OF ANY MEMBER OF THE GROUP, FOR THE PURPOSES OF SECTION 13A(3) OF THE AUSTRALIAN BANKING ACT OR ANY SIMILAR LAW OF ANY JURISDICTION, AND ARE NOT "PROTECTED ACCOUNTS" OF MBL, OR OF ANY OTHER MEMBER OF THE GROUP, FOR THE PURPOSES OF THE AUSTRALIAN BANKING ACT.**

Other than MBL, no Group entity referred to in this Offering Circular is an authorised deposit-taking institution (an **ADI**) for the purposes of the Australian Banking Act. The obligations of any such entity do not represent deposit liabilities, "protected accounts" or other liabilities of MBL. Further, MBL does not guarantee or otherwise provide assurance in respect of the obligations of any such entity, unless noted otherwise.

This Offering Circular does not constitute an offer to sell, or the solicitation of an offer to subscribe for or purchase, any PMIs in any jurisdiction. The distribution of this Offering Circular and the offer or sale of the PMIs may be restricted by law in certain jurisdictions. None of the Issuer, the Guarantor, the Managers or any Agent or Other Person represents that this Offering Circular may be lawfully distributed, or that the PMIs may be lawfully offered, in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, or assumes any responsibility for

facilitating any such distribution or offering. In particular, no action has been taken by any of the Issuer, the Guarantor, the Managers or any Agent or Other Person which is intended to permit a public offering of the PMIs or distribution of this Offering Circular in any jurisdiction where action for that purpose is required. Accordingly, no PMIs may be offered or sold, directly or indirectly, and neither this Offering Circular nor any advertisement or other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with applicable laws and regulations. Persons into whose possession this Offering Circular or any PMIs may come must inform themselves about, and observe, any such restrictions on the distribution of this Offering Circular and the offering and sale of the PMIs. In particular, there are restrictions on the distribution of this Offering Circular and the offer or sale of the PMIs in the United States, the European Economic Area, the United Kingdom, Switzerland, Australia, Japan, Hong Kong and Singapore (see "*Subscription and Sale*").

In connection with the issue of the PMIs, Credit Suisse Securities (Europe) Limited, J.P. Morgan Securities Ltd. and Merrill Lynch International (the **Stabilising Managers**) (or any person acting on behalf of the Stabilising Managers) may over-allot the PMIs or effect transactions (outside Australia and on a financial market operated outside Australia) with a view to supporting the market price of the PMIs at a level higher than that which might otherwise prevail. However, there is no assurance that the Stabilising Managers (or persons acting on behalf of the Stabilising Managers) will undertake stabilisation action. Any stabilisation action may begin on or after the date on which adequate public disclosure of the terms of the offer of the PMIs is made and, if begun, may be ended at any time, but it must end no later than the earlier of 30 days after the Issue Date and 60 days after the date of the allotment of the PMIs. Any stabilisation action or over-allotment must be conducted by the Stabilising Managers (or persons acting on behalf of the Stabilising Managers) in accordance with all applicable laws and rules.

The Issuer and the Guarantor have agreed to pay the Managers fees for undertaking their respective roles and reimburse them for certain of their expenses incurred in connection with the Offer and the issue of the PMIs. The Managers and any of their affiliates, directors and employees may have pecuniary or other interests in the PMIs and may also have interests pursuant to other arrangements and may receive fees, brokerage and commissions and may act as a principal in dealing in any PMIs.

### **Forward Looking Statements**

This Offering Circular contains forward-looking statements including, without limitation, words and expressions such as **expect, believe, plan, intend, estimate, project, anticipate, may, will, would, could** or similar words or statements (however, these words are not the exclusive means of identifying forward looking statements), in particular, in the sections "*Description of the Issuer*" and "*Description of the Guarantor*" in this Offering Circular, in relation to future events, the Group's prospects, its expected financial condition, its business strategies, the future developments of the Group's operations and industry and the future development of the general domestic, regional and global economy.

These statements are based on assumptions regarding the Group's present and future business strategy and the environment in which it expects to operate in the future. These matters and the Group's future results could differ materially from those expressed or implied by these forward-looking statements and although these forward-looking statements reflect its current view of future events, they are not a guarantee of future performance or other matters. In addition, the Group's future performance may be affected by various factors and risks including, without limitation, those discussed in the section entitled "*Risk Factors*".

Should one or more of these or other risks or uncertainties materialise, or should any underlying assumptions prove incorrect, actual outcomes may vary materially from those indicated. Prospective investors should therefore not place undue reliance on any of these forward-looking statements. Neither the delivery of this Offering Circular (or any part thereof) nor the issue, offering, purchase or sale of any PMIs shall, under any circumstances, constitute a continuing representation or create any suggestion or implication that there has been no change in the affairs of the Issuer or the Guarantor or any statement of fact or information contained in this Offering Circular since the date of this Offering Circular or the date on which this Offering Circular has been most recently amended or supplemented.

In this Offering Circular, statements of, or references to, intentions of the Issuer, the Guarantor or those of any of the directors of any of them are made as at the date of this Offering Circular. Any such intentions may change in light of future developments.

Each of the Issuer, the Guarantor, the Managers and the Agents and Other Persons expressly disclaims any obligation or undertaking to release, publicly or otherwise, any updates or revisions to any forward-looking statement contained herein to reflect any change in the Issuer's or the Guarantor's expectations with regard thereto or any change in events, conditions, assumptions or circumstances on which any such statement was based or any change in the intentions of the Issuer, the Guarantor or any of their respective directors.

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## DOCUMENTS INCORPORATED BY REFERENCE

The documents described below shall be deemed to be incorporated into, and to form part of, this Offering Circular:

- the 2009 annual report and the 2010 annual report of the Guarantor, which include the audited annual financial statements of the Guarantor, and the Guarantor consolidated with its subsidiaries, for the financial years ended 31 March 2009 and 31 March 2010 and the auditor's reports in respect of such annual financial statements;
- the Interim Directors' Report and Financial Report Half-Year ended 30 September 2010 of the Guarantor, which includes the financial statements of the Guarantor consolidated with its subsidiaries for the financial half year ended 30 September 2010; and
- all supplements or amendments to this Offering Circular published by the Issuer or the Guarantor from time to time (which themselves may expressly incorporate additional documents into, and forming part of, this Offering Circular).

Any statement contained herein or in a document which is deemed to be incorporated herein by reference shall be deemed to be modified or superseded for the purpose of this Offering Circular to the extent that a statement contained in any such subsequent document which is deemed to be incorporated herein by reference modifies or supersedes such earlier statement (whether expressly, by implication or otherwise). Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Offering Circular.

The Issuer and the Guarantor will provide, without charge, to each person to whom a copy of this Offering Circular has been validly delivered, upon the request of such person, a copy of any or all of the documents deemed to be incorporated herein by reference unless such documents have been modified or superseded as specified above. Requests for such documents should be directed to the Issuer or the Guarantor at its registered office set out at the end of this Offering Circular. In addition, such documents will be available from the specified offices of the Principal Paying Agent.

Documents incorporated in this Offering Circular by reference are also available on the Guarantor's internet site [www.macquarie.com.au](http://www.macquarie.com.au).

The information on any websites referred to in this Offering Circular or any website directly or indirectly linked to such websites is not incorporated by reference into, and does not form part of, this Offering Circular and should not be relied upon.

## OVERVIEW OF THE OFFER

*The following overview does not purport to be complete and is taken from, and is qualified in its entirety by, the remainder of this Offering Circular and the PMI Terms, the terms and conditions of the Preference Shares (**Preference Share Terms**) and the terms and conditions of the Guarantee (**Guarantee Terms**). Words and expressions defined in the PMI Terms or, if the context so requires, the Preference Share Terms or the Guarantee Terms, shall have the same meanings when used in this overview.*

Issuer: Macquarie PMI LLC, a limited liability company formed in the State of Delaware, United States of America.

Guarantor: Macquarie Group Limited (ABN 94 122 169 279), on a limited, subordinated and discretionary basis.

Rating: The PMIs are expected to be assigned on issue a credit rating of "BBB" by S&P, "Baa3" by Moody's and "BBB" by Fitch.

**A credit rating is not a recommendation to buy, sell or hold the PMIs and may be subject to revision, suspension or withdrawal at any time by the assigning rating agency.**

Description: Preferred Membership Interests (or PMIs), being unsecured and subordinated limited liability company interests in the Issuer. The PMIs may be Redeemed in certain limited circumstances and are Exchangeable into non-cumulative, perpetual, redeemable and unsecured Preference Shares in the Guarantor, each as described further below.

Guarantee: Pursuant to the Guarantee, the Guarantor guarantees the Guaranteed Payments on a limited, subordinated and discretionary basis. The Guaranteed Payments are, collectively, payments in respect of:

- any Distributions or Optional Distributions due and payable on the PMIs, but only to the extent that:
  - the Issuer has received the funds necessary to pay such Distributions or Optional Distributions from payments on the Subordinated Notes, the Convertible Notes or any Eligible Assets, whilst, in any case, they remain an asset of the Issuer; and
  - the Guarantor, in its absolute discretion, does not object to the payment of the Distributions or Optional Distributions;
- any Additional Amounts;
- any Liquidation Amount; and
- any other amounts to which the PMI Holders are entitled in respect of the PMIs, including on a Redemption or Exchange of such PMIs.

Subject to the Guarantee Terms, the Guarantor will only be obliged to make any Guaranteed Payment in respect of



Distributions or Optional Distributions on any PMIs to the extent the Guarantor, in its sole discretion, has not informed the Issuer that such Distribution or Optional Distribution should not be paid. The Guarantor will also not be obliged to make any Guaranteed Payment in respect of Distributions or Optional Distributions on any PMIs to the extent that:

- the Guarantor does not have Distributable Profits; or
- an APRA Payment Condition is continuing,

unless APRA has given its prior written approval to the payment of the Distribution or Optional Distribution.

(See "*Form of the Guarantee*").

Preference Shares:

Non-cumulative, perpetual, redeemable preference shares in the capital of the Guarantor which may be Redeemed in certain limited circumstances and which confer on the Preference Share Holders:

- a right to distributions payable from time to time out of the profits of the Guarantor at the discretion of the Directors and otherwise equivalent to the right to Distributions which would have been scheduled to be payable on the PMIs at that time had the Exchange not occurred (including to the full amount of the Distribution in respect of the Distribution Period in which the Exchange Date occurs), such distributions being payable in priority to distributions on ordinary shares of the Guarantor;
- a right to a return of capital in a winding-up of the Guarantor in an amount equal to the Liquidation Amount of the Preference Share, out of the surplus, if any, available to shareholders in priority to holders of ordinary shares of the Guarantor;
- no further or other right to participate in the assets of the Guarantor or a return of capital in the event of a winding-up; and
- certain voting rights,

each in accordance with the Preference Share Terms (see "*Terms and Conditions of the Preference Shares*").

Status of the PMIs:

The PMIs are unsecured and subordinated obligations of the Issuer.

Except to the extent mandatorily provided by law, each PMI ranks for payment, and ranks in a winding-up of the Issuer:

- equally with all other PMIs in all respects; and
- senior to any other limited liability company interest in the Issuer,

and the rights of a PMI Holder are, in respect of that PMI, subordinate to all Senior Creditors of the Issuer.

Status of the Preference Shares:

The Preference Shares are non-cumulative, perpetual, redeemable and unsecured preference shares in the capital of the Guarantor.

Except to the extent mandatorily provided by law, each Preference Share ranks for payment, and ranks in a winding up of the Guarantor:

- equally with all other Preference Shares in all respects;
- equally with each other instrument that the Guarantor may issue or has issued which is on terms that are expressed to or which will rank equally with the Preference Shares (and including any preference shares in the capital of the Guarantor that may be issued pursuant to the instruments described as the “A\$600,000,000 Macquarie Convertible Preference Securities” issued on 8 July 2008); and
- senior to the ordinary shares of the Guarantor,

and the rights of a holder of a Preference Share (each a **Preference Share Holder**) are, in respect of that Preference Share, subordinate to all Senior Creditors of the Guarantor.

No other guarantees:

Neither the PMIs nor the Preference Shares are guaranteed or insured by the Australian Government, the U.S. Federal Deposit Insurance Corporation or any other government, government agency or insurance or compensation scheme of Australia, the United States or any other jurisdiction. Neither the PMIs nor the Preference Shares are deposit liabilities of MBL, or of any other member of the Group, for the purposes of section 13A(3) of the Australian Banking Act or any similar law of any jurisdiction, and are not “protected accounts” of MBL, or of any member of the Group, for the purposes of the Australian Banking Act.

Set-off:

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

Form of the PMIs:

The PMIs will be issued in registered form by entry in the Register and will be initially represented by the Global Certificate as described in “*Form of the PMIs*”.

Denominations: Each PMI will be issued in denominations of U.S.\$100,000 and integral multiples of U.S.\$1,000 above that amount.

Each Preference Share will be issued with an issue price of U.S.\$1,000.

Issue Price: 100.00%.

Offer Size: U.S.\$400,000,000.

Distributions: Half-yearly Distributions at the Distribution Rate payable semi-annually in arrear on each six calendar month anniversary of the Issue Date commencing on (and including) the date falling six calendar months after the Issue Date and until (but excluding) the Redemption Date or Exchange Date for that PMI. Distributions are subject to the Distribution Payment Tests described below.

Distribution Rate: 8.375% per annum.

Distribution Payment Tests: The payment of all or any part of a Distribution or Optional Distribution is subject to:

- the Issuer, in its absolute discretion:
  - not having exercised its discretion not to pay that Distribution; or
  - having exercised its discretion to pay that Optional Distribution;
- the Guarantor, in its absolute discretion, not objecting to the payment of that Distribution or Optional Distribution;
- an equivalent provision or concept to the Dividend Restriction not having been caused to apply in respect of any securities or other capital instruments issued by a member of the Group and *prima facie* applying to restrict payments of Distributions or any Optional Distributions under the PMIs; and
- there being no APRA Payment Condition subsisting on the relevant Distribution Payment Date or Optional Distribution Payment Date,

(the **Distribution Payment Tests**).

Non-payment of Distributions and Optional Distributions: Distributions and Optional Distributions are non-cumulative. Neither the Issuer nor the Guarantor has any liability to pay any Unpaid Distribution.

The Issuer may, in its absolute discretion, but subject to the Distribution Payment Tests and with the consent of the Guarantor and APRA's prior written approval, pay Optional Distributions in respect of any amount of an Unpaid

Distribution.

Dividend Restriction:

A Dividend Restriction applies if the Issuer fails to pay a Distribution in full within 20 Business Days of the relevant Distribution Payment Date for that Distribution.

The Dividend Restriction shall apply until the first of the following occurs:

- the Issuer makes an Optional Distribution equal to the amount of any Unpaid Distributions attributable to the two Distribution Periods immediately preceding the Distribution Period in which the relevant Optional Distribution Payment Date occurs;
- the Issuer pays in full each Distribution scheduled to be paid on two successive Distribution Payment Dates both occurring after the date on which the Dividend Restriction first applies; or
- all PMIs have been Redeemed or Exchanged but, in the case of an Exchange, without prejudice to any similar distribution restrictions in the Preference Share Terms.

So long as a Dividend Restriction applies, no member of the Group (other than in respect of any securities or other capital instruments issued by MBL or any entity it Controls) will, without the prior approval of an Extraordinary Resolution of the PMI Holders:

- pay any interest, dividend or other distribution, or make any other payment, in respect of any MGL Pari Passu Securities or MGL Junior Securities; or
- redeem, reduce, cancel, buy-back or repurchase any MGL Pari Passu Securities or MGL Junior Securities.

The Dividend Restriction is subject to a number of exceptions fully set out in the PMI Terms.

No Events of Default:

The PMI Terms do not include any events of default (howsoever described, determined or defined).

Redemption:

The Issuer may Redeem, in its sole discretion, but with APRA's prior written approval:

- some or all of the PMIs on the date falling five years after the Issue Date or on any scheduled Distribution Payment Date thereafter; or
- all (but not some) of the PMIs following the occurrence of an Early Redemption Event (being a Regulatory Event or a Tax Event).

The Issuer must, but subject to APRA's prior written

approval, Redeem all (but not some) of the PMIs within 13 months of an Acquisition Event.

The PMIs are not Redeemable at the option of the PMI Holders.

The PMIs will be Redeemed at the Redemption Price.

Redemption Price:

In respect of each PMI, an amount equal to the Principal Amount of the PMI together with an amount equal to any Distribution that was scheduled to be paid on the next Distribution Payment Date in respect of the PMI for the then current Distribution Period, but calculated only for the period from (and including) the previous Distribution Payment Date (or, in the case of the first Distribution Period, the Issue Date) and ending on (but excluding) the relevant Redemption Date.

Exchange:

The PMIs will be Exchanged into Preference Shares if an Exchange Event has occurred (unless the PMIs are Redeemed for cash prior to, or on, the relevant Exchange Date).

Each of the following is an Exchange Event:

- a MGL Breach of Undertaking Event that, if capable of remedy, is not remedied within 20 Business Days of its occurrence, in which case all (but not some) of the PMIs shall be Exchanged;
- a Capital Event that, if capable of remedy, is not remedied within 20 Business Days of its occurrence, in which case all (but not some) of the PMIs shall be Exchanged;
- the Issuer has received notice from APRA that it requires an Exchange of the PMIs to occur and such requirement is not withdrawn by APRA within 20 Business Days of the Issuer first receiving such notice, in which case some or all of the PMIs shall be Exchanged as required by APRA;
- the Guarantor, in its absolute discretion, electing that an Exchange occur, in which case some or all of the PMIs shall be Exchanged as determined by the Guarantor;
- the Principal Amount of a PMI not being paid in full to a PMI Holder within 20 Business Days of an applicable Redemption Date, in which case all (but not some) of the PMIs shall be Exchanged;
- APRA has not approved a Redemption of the PMIs in connection with the occurrence of an Acquisition Event within 20 Business Days of a request to so approve such Redemption, in which case all (but not some) of the PMIs shall be

Exchanged; and

- the fifth Business Day prior to date that falls 25 years after the Issue Date, in which case all (but not some) of the PMIs shall be Exchanged.

The PMIs are not Exchangeable at the option of the PMI Holders.

Effect of Exchange:

On an Exchange, the PMI Holders will receive Preference Shares having an aggregate issue price equal to the aggregate Principal Amount of the PMIs they then hold and are then being Exchanged.

If, in respect of an Exchange of a PMI, Preference Shares are not delivered to, or in accordance with the instructions of, the relevant PMI Holder on the applicable Exchange Date, that PMI remains on issue and the provisions of the PMI Terms relating to Distributions continue to apply until the Preference Shares are so delivered or the PMI is Redeemed in accordance with the PMI Terms.

An amount equal to any accrued but unpaid Distribution for a Distribution Period in which an Exchange occurs will be treated as an equivalent amount of an accrued Dividend for the purposes of any first distribution under the Preference Share Terms.

On an Exchange, a Foreign Holder of any PMIs will not receive Preference Shares unless the Issuer is satisfied that the laws of both Australia and the Foreign Holder's country of residence permit the delivery of Preference Shares to that Foreign Holder (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. Such Preference Shares will instead be delivered to a nominee who will sell the Preference Shares and pay a cash amount equal to the net proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to the Foreign Holder accordingly.

Voting Rights:

The LLC Agreement contains provisions for convening meetings of the PMI Holders to consider any matter in connection with the PMI Terms affecting their interests, including any variation of the PMI Terms which requires the consent of the PMI Holders.

Variation of the PMI Terms:

The Issuer may amend the PMI Terms without the consent of the PMI Holders in certain circumstances, including where the Issuer is of the opinion that the amendment is not likely to be materially prejudicial to the interests of the PMI Holders as a whole or is of a formal, minor or technical nature, to cure ambiguities or correct manifest errors, to enable listing of the PMIs, or where necessary to comply with any statute or the requirements of any statutory authority (other than an amendment made to comply with a prudential standard dealing with capital management promulgated by APRA and applying to the Guarantor).

Otherwise, the Issuer may only amend the PMI Terms with the approval of an Extraordinary Resolution of the PMI Holders and subject to APRA's prior written approval.

Taxation:

A brief overview of the taxation treatment of payments on, and gains realised on the disposal of, the PMIs and the Preference Shares in the United States, Australia and Singapore is set out in "*Taxation*".

**However, investors should obtain their own taxation advice regarding the taxation status of investing in any PMIs or Preference Shares.**

Clearing Systems:

The PMIs will be initially represented by the Global Certificate, which will be registered in the name of a nominee of, and deposited with a common depositary for, Euroclear and Clearstream, Luxembourg. The Global Certificate will be exchangeable for Definitive Certificates only in certain limited circumstances. See "*Form of the PMIs*".

Clearance and Settlement:

The PMIs have been accepted for clearance by Euroclear and Clearstream, Luxembourg under the following codes:

ISIN: XS0562354422

Common Code: 056235442

Principal Paying Agent and Calculation Agent:

Deutsche Bank AG, Hong Kong Branch.

Registrar and Principal Transfer Agent:

Deutsche Bank Luxembourg S.A.

Agents:

The Principal Paying Agent and Calculation Agent and the Registrar and Principal Transfer Agent and each other issuing agent, paying agent, listing agent, calculation agent, transfer agent and/or registrar that may be engaged by the Issuer in respect of the PMIs from time to time.

Listing and Admission to Trading:

Approval in-principle has been received for the listing and quotation of the PMIs on the official list of the SGX-ST. The PMIs may also be listed on such other or further Stock Exchange(s) as may be agreed between the Issuer and the Managers.

Admission to the official list of the SGX-ST and quotation of the PMIs on the SGX-ST are not to be taken as an indication of the merits of the Issuer, the Guarantor or the PMIs. The PMIs will be traded in a minimum board lot size of S\$200,000 (or equivalent in another currency) for so long as the PMIs are listed on the SGX-ST.

In the event that the PMIs are Exchanged for Preference Shares, the Guarantor will apply for the Preference Shares to be listed on a relevant Stock Exchange.

Governing Law:

The PMIs are governed by, and construed in accordance with, the laws of the State of Delaware.

Other relevant documentation and instruments (including the Preference Share Terms and the Guarantee) are or will be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.

Selling Restrictions:

There are restrictions on the offer, sale, distribution and transfer of the PMIs in the United States, the European Economic Area, the United Kingdom, Switzerland, Australia, Japan, Hong Kong and Singapore and such other restrictions as may be required in connection with the offering, sale, distribution and transfer of the PMIs (see "*Subscription and Sale*").

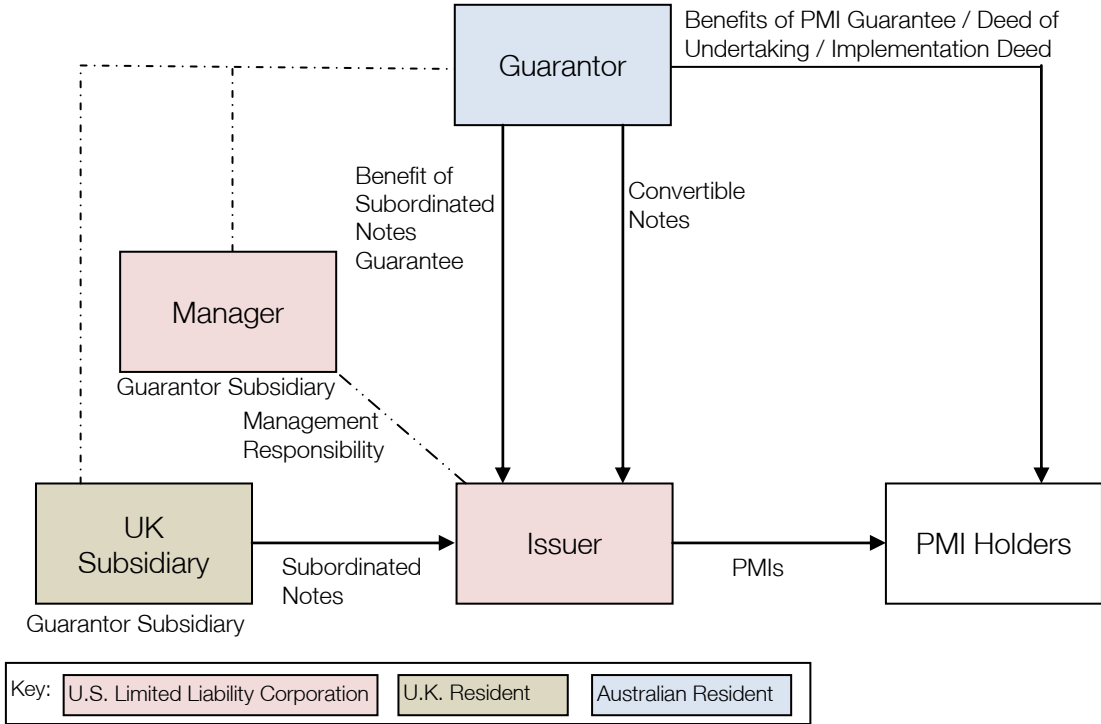
Other Matters:

A structure diagram and brief summary of the initial use of proceeds from the issue of the PMIs (including descriptions of certain documents not referred to above) is set out in "*Structure Overview*" below.



**STRUCTURE OVERVIEW**

The diagram below provides an overview of the initial use of the proceeds of the issue of the PMIs and the corporate structure. The main transaction documents have been identified.



Macquarie PMI LLC is the Issuer of the PMIs. The Issuer is managed by Macquarie PMI Manager LLC, a limited liability company formed in the State of Delaware, United States of America, pursuant to the LLC Agreement.

The PMIs are issued with the benefit of the Guarantee from the Guarantor. The PMI Holders also have the benefit of:

- a **Deed of Undertaking** given by the Guarantor and pursuant to which the Guarantor undertakes to the PMI Holders to ensure that, if Distributions are not paid by the Issuer in full within 20 Business Days of the relevant Distribution Payment Date, the Dividend Restriction will apply; and
- an **Implementation Deed** between the Issuer and the Guarantor and pursuant to which the Guarantor undertakes, amongst other matters, to comply with the Dividend Restriction and to issue Preference Shares in accordance with the PMIs. The Issuer holds the benefit of these promises on trust for the PMI Holders.

The Issuer will use the proceeds to subscribe for **Subordinated Notes** issued by a subsidiary of the Guarantor incorporated in England & Wales and resident for tax purposes in the United Kingdom (**UK Subsidiary**). The Subordinated Notes will be redeemed on the date falling five Business Days prior to the date that is 25 years after their issue date but may be redeemed earlier in certain limited circumstances. The Subordinated Notes pay interest semi-annually in arrear at the same rate and on the same dates as Distributions are scheduled to be paid under the PMIs but such interest payments are subject to similar payment restrictions as apply to the PMIs. The payments of all amounts scheduled to be paid in respect of the Subordinated Notes will be irrevocably guaranteed on a limited, subordinated basis by the Guarantor pursuant to a Subordinated Notes Guarantee Deed Poll.

Pursuant to a **Convertible Note Subscription and Other Matters Agreement**, the Guarantor will also issue **Convertible Notes** to the Issuer. Pursuant to the Convertible Note Subscription and Other Matters Agreement, the Subordinated Notes may also be assigned to the Guarantor. The terms and conditions

of the Convertible Notes are similar to those of the PMIs and the Subordinated Notes, provided that the Convertible Notes will only start to pay interest to the Issuer (semi-annually in arrear at the same rate and on the same dates as Distributions are scheduled to be paid under the PMIs) if the Subordinated Notes are assigned to the Guarantor (or at its direction) or if that assignment right is extinguished. The Convertible Notes will convert into Preference Shares at any time at which the PMIs are Exchanged. Unless the PMIs are to be Redeemed for cash, the Issuer has directed the Guarantor that any Preference Shares to be issued under the Convertible Notes will be issued directly to PMI Holders.

## RISK FACTORS

*Prospective investors should carefully consider the risks and uncertainties described below and the other information contained in this Offering Circular before making an investment in the PMIs. The risks described below are not the only ones relevant to the Issuer, the Guarantor, the Group, the PMIs, the Guarantee or the Preference Shares. The business, financial condition and results of operations of the Issuer, the Guarantor and the Group could be materially adversely affected by any of these risks. There are a number of factors, including those described below, that may adversely affect the ability of the Issuer and the Guarantor to make payment on the PMIs, the Guarantee or the Preference Shares (as the case may be). Additional risks not presently known to the Issuer or the Guarantor or that they currently deem immaterial may also impair their business operations.*

### **(a) Risks relating to the Group's business**

The factors described below represent the inherent risks relating to the Group. Neither the Issuer nor the Guarantor represents that the statements below regarding the risks relating to it are exhaustive. Prospective investors should carefully consider the risks below and the other information in this Offering Circular.

The Guarantor is the ultimate holding company for all other companies and entities within the Group. The Guarantor is not a subsidiary of, nor controlled by, any other company.

The financial prospects of any entity are sensitive to the underlying characteristics of its business and the nature and extent of the commercial risks to which the entity is exposed. There are a number of risks faced by the Group, including those that encompass a broad range of economic and commercial risks, many of which are not within their control. The performance of all of the Group's major businesses can be influenced by external market and regulatory conditions. If all or most of the Group's businesses were affected by adverse circumstances in the same period, overall earnings would suffer significantly. The Group's risk management framework incorporates active management and monitoring of risks including market, credit, equity, liquidity, operational, compliance, foreign exchange, legal, regulatory and reputational risks. These risks create the potential for the Group to suffer loss.

#### ***Market conditions, including funding***

Global market conditions are subject to periods of volatility and change which can negatively impact market liquidity, increase credit spreads and reduce funding availability. Since 2008, global equity and debt markets have experienced some difficult conditions. These challenging market conditions have resulted in periods of reduced liquidity, extreme volatility and declining asset prices, as well as greater counterparty credit risk, widening of credit spreads and lack of price transparency in credit and other markets.

Market conditions also led to the failure of a number of financial institutions and the intervention of government authorities and central banks around the world. Notwithstanding some improvement in global economic conditions, conditions remain difficult and there is no assurance that market conditions will continue to improve. If the economic climate worsens in the future, the Group's financial performance, business or strategy may be adversely affected.

The Group relies on equity and debt markets to fund its business. Further instability in these markets may affect the Group's ability to access funding, particularly the ability to issue long-term debt securities, to replace maturing liabilities in a timely manner and to access the funding necessary to grow its businesses. In addition, an increase in credit spreads may increase the Group's cost of funding. Further, volatile and deteriorating markets may reduce activity and the flow of transactions, which may adversely impact the Group's financial performance. Other risks associated with funding that the Group may face are over reliance on a particular funding source or a simultaneous increase in funding costs across a broad range of sources.

Changes in investment markets, including changes in interest rates, exchange rates and returns from equity, listed and unlisted investment assets, property and other investments, as well as adverse economic conditions, will affect the financial performance of the Group, for instance, through its ability to

earn base and performance fees and other advisory and client facilitation fees. In addition, the Group may be indirectly adversely affected by any negative performance of a Group-managed fund, as investors and lenders may associate a Group-managed fund with the Macquarie brand.

In poor market conditions, the Group may be required to hold its investment assets for longer, or sell these assets at a lower price than expected. This may impact the Group's rate of return on these assets and require funding for longer periods than anticipated. This may include situations where potential buyers of the Group's investment assets are unable to obtain financing to purchase assets that the Group currently holds or purchases.

Continuing capital market volatility may require the Group to make writedowns of its funds management assets and other investments and loan impairment provisions. This would impact the Group's financial performance.

### ***Liquidity risk***

The Group is exposed to the risk that it is unable to meet its financial commitments when they fall due, which could arise due to mismatches in cashflows. Liquidity is essential to the Group's businesses. Liquidity could be impaired by an inability to access credit and debt markets, an inability to sell assets or unforeseen outflows of cash or collateral. In difficult credit and debt markets the Group may be forced to find alternative funding sources or fund its operations at a higher cost.

As the global economic crisis emerged, governments and central banks around the globe implemented relief measures in an attempt to restore confidence in financial systems and bolster economic growth. There can be no assurance, however, that such measures will result in a sustained long-term stabilisation of financial markets. In addition, governments have begun to withdraw or alter their support of such relief measures and it is not clear what effect these actions will have on global economic conditions or the Group's financial condition. If access to public bond markets over the medium term worsens, and other existing avenues of term funding become unavailable, the Group may need to consider selling liquid assets.

The commercial soundness of many financial institutions may be closely interrelated as a result of credit, trading, clearing or other relationships among the financial institutions. As a result, in light of recent significant volatility in the financial sector and the capital markets, concerns, whether well-founded or not, about, or default by, any large financial institution, or by a sovereign that guarantees the indebtedness or other commercial transactions of such an institution, could cause further market-wide liquidity problems which may adversely affect financial institutions such as the Group.

### ***Legal, regulatory, compliance and documentation risk***

Some of the Group's businesses are highly regulated, including regulation relating to prudential and liquidity requirements. Failure to comply with legal and regulatory requirements, including tax laws and regulations, or government policies, may have an adverse effect on the Group and its reputation among customers and regulators in the market.

The Group could also be adversely affected by future changes in legal, regulatory and compliance requirements (including requirements relating to licensing and the management of conflicts of interest). In particular, any change in regulation of the Group to increase the requirements for capital adequacy or liquidity, or a change in accounting standards, could have an adverse effect on the Group's businesses. Legal and regulatory requirements may also restrict the ability of subsidiaries of the Guarantor to make dividend and other payments to the Guarantor.

A number of regulatory changes have been implemented or proposed in various jurisdictions as a result of the global economic crisis, which may affect certain business activities of the Group. It is not possible to predict what further future regulatory or related changes may result from the global economic crisis or the affect any such changes would have on the Group and its businesses.

The Group is also exposed to the risk of inappropriate documentation of contractual relationships.

### ***New business, acquisitions and future growth risk***

A feature of the operating strategy of the Group is growth and diversification. A number of the Group's recent acquisitions and planned business initiatives and expansions of existing businesses into new jurisdictions may bring the Group into contact, directly or indirectly, with individuals and entities that are new clients, with new asset classes and other new products or new markets. These business activities expose the Group to new and enhanced risks including reputation risks arising from dealing with a range of new counterparties and investors, along with these activities being exposed to the range of risks described in this Offering Circular.

With respect to acquisitions, the Group may become subject to unknown liabilities of an acquired business, may not achieve expected synergies, cost savings or may otherwise incur losses. The Group may lose market share or customers, or may face disruptions to operations and the Group's management time may be diverted to facilitate the integration of acquired businesses.

### ***Market risk***

Market risk is the exposure to adverse changes in the value of the Group's trading portfolios as a result of changes in market prices or volatility, including risks arising from foreign exchange rates, interest rates, equities, commodities, derivatives (which are subject to settlement and other risks) and the correlation of market prices and rates within and across markets. Any decline in global asset markets, including equity, property, and other asset markets, or in market liquidity, could adversely impact the Group's results of operations and financial condition. In addition, a decline in asset prices could negatively impact the fees the Group receives from funds that it manages and that invests in such assets.

Furthermore, declining asset prices could adversely impact the Group's customers and the security the Group holds against loans, which may impact the Group's results of operations due to default. These risks may impact the value of financial instruments and other financial assets that are carried at fair market value.

### ***Credit ratings risk***

The Group is assigned credit ratings by various rating agencies based on an evaluation of a number of factors, including the Group's ability to maintain a stable and diverse earnings stream, strong capital ratios, strong credit quality and risk management controls, diverse funding sources and disciplined liquidity monitoring procedures. If one or more of these credit ratings were downgraded this could have the effect of increasing the cost of funds raised by the Group from financial markets, reducing the Group's ability to access certain capital markets, triggering contingent obligations under certain of its contracts, and/or adversely impacting the willingness of counterparties to deal with the Group. A rating downgrade could be driven by the occurrence of one or more of the risk factors described in this Offering Circular or by other events.

### ***Competition risk***

The Group faces significant competition from local and international competitors, which compete vigorously for participation in the various markets and sectors across which the Group operates. In particular, the Group competes, both in Australia and internationally, with asset managers, retail and commercial banks, investment banking firms, and other investment and service firms. Any trend toward consolidation in the global financial services industry may create stronger competitors with broader ranges of product and service offerings, increased access to capital, and greater efficiency and pricing power. The effect of competitive market conditions may adversely impact the earnings and assets of the Group.

### ***Interest rate risk***

Interest rate risk arises from a variety of sources including mismatches between the repricing periods of assets and liabilities. As a result of these mismatches, movements in interest rates can affect earnings or the value of the Group.

### ***Exchange rate risk***

The Group's financial statements are presented in Australian dollars. However, a portion of the Group's operating income is derived from offshore business activities, which are conducted in a broad range of currencies. Further, where the Group conducts business activities offshore, capital and funding are generally deployed locally and thus the Group's capital is held and funding is sourced in a broad range of currencies. As such, changes in currency exchange rates may adversely impact the Group's financial results, operations, capital and funding position.

### ***Credit risk***

The Group is exposed to the risk of financial loss as a result of failure by a client or other counterparty to meet its contractual obligations. The Group assumes counterparty risk in connection with its lending, trading, derivatives and other businesses where it relies on the ability of a third party to satisfy its financial obligations to the Group on a timely basis. The resultant credit exposure will depend on a number of factors, including declines in the financial condition of the counterparty, the value of property the Group holds as collateral and the market value of the counterparty instruments and obligations the Group holds.

### ***Operational risk***

The daily operations of the Group may result in financial loss, adverse regulatory consequences or reputational damage due to a variety of operational risks including business decisions, technology risk (including failure of the Group's business systems or those of its counterparties and service providers), fraud, compliance with legal and regulatory obligations, counterparty performance, business continuity planning, legal and litigation risk, environmental obligations, data integrity and processing risk, managing conflicts of interests and key person risk.

The availability of adequate insurance cover is important in order to mitigate the risks across the Group's business activities.

While the Group has adopted policies and procedures to control exposure to, and limit the extent of, these risks, there are inherent limitations in any risk management control system and control breakdowns and system failures can occur.

### ***Staff recruitment and retention***

The Group is reliant on the ability to hire and retain appropriately qualified staff. In order to do this, the Group must compensate employees at or above market levels. Current or future laws or regulatory or public scrutiny may restrict the Group's ability to move its staff from one jurisdiction to another or change the way the Group remunerates its employees. If the Group is unable to continue to attract and retain qualified employees, its performance, including its competitive position, could be materially adversely affected.

### ***Reputational risk***

The Group is substantially dependent on its brand and reputation. If the Group suffers damage to its reputation, including damage to the brands used by the Group and the funds it manages, for instance, as a result of a conflict of interest, this could reduce business volume as clients might be reluctant to do business with the Group due to their negative perceptions. This would adversely impact the Group's earnings.

### ***Tax risk***

Future tax developments or changes to tax laws may also have a material adverse effect on the Group. The Group operates in a range of jurisdictions with different tax regimes which are subject to change. The Group's after tax earnings may be impacted by changes to the tax treatment of the Guarantor or any of its controlled entities.

### *Poor performance of funds*

The Group's financial condition and results of operation are directly and indirectly affected by the results of the funds or the assets it manages; particularly the Group's managed funds. As such, poor performance of funds may cause a decline in the Group's revenue and results of operations may adversely affect the Group's ability to raise capital for future funds and may also affect the Group's brand and reputation.

### *Other risks*

The Group's profitability is also subject to a number of other risks including political risk, risks from external events, strategic risks (including acquisitions and internal restructures), litigation and any associated contingent liabilities.

## **(b) Risks relating to the PMIs and the Preference Shares**

### *Investor suitability*

Each potential investor in any PMIs must determine the suitability of an investment in the PMIs and, in the event of an Exchange Event, the Preference Shares, in light of its own circumstances. In particular, each potential investor should:

- have sufficient knowledge and experience to make a meaningful evaluation of the PMIs, the merits and risks of investing in the PMIs, the rights attaching to the PMIs, when and how the PMIs may be Exchanged into Preference Shares and the information contained in, or incorporated by reference into, this Offering Circular or any applicable supplement to this Offering Circular;
- have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of their particular financial situation, an investment in the PMIs and the impact the PMIs (and potentially the Preference Shares) will have on their overall investment portfolio;
- have sufficient financial resources and liquidity to bear all the risks of an investment in the PMIs for an indefinite period of time, including where the currency for payments in respect of the PMIs (or Preference Shares) is different from the potential investor's currency;
- understand thoroughly the PMI Terms, the Preference Share Terms and the other documents relating to the PMIs and the transactions connected with them and be familiar with the behaviour of any relevant interest rates and financial markets; and
- be able to evaluate (either alone or with the help of a financial advisor) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

The PMIs are complex financial instruments. A potential investor should not invest in PMIs unless it has the expertise (either alone or with a financial advisor) to evaluate how the PMIs will perform under changing conditions, the resulting effects on the value of the PMIs, the impact of an Exchange Event, as well as the impact this investment will have on the potential investor's overall investment portfolio.

### *Exchange for Preference Shares*

On the occurrence of certain Exchange Events (unless the PMIs are Redeemed for cash prior to, or on, the relevant Exchange Date), the PMIs will be Exchanged for Preference Shares. Exchange Events include where the Guarantor elects, in its absolute discretion, that the PMIs will be so Exchanged, where proceedings are commenced for a winding-up of the Issuer or Guarantor and on the occurrence of the fifth Business Day prior to the date that falls 25 years after the Issue Date. Potential investors in the PMIs should consider the possibility or eventuality that an Exchange Event may or will occur and that the Preference Shares may be subject to investor restrictions or otherwise not be suitable for that investor.

In the event that the PMIs are Exchanged, potential investors should be aware that the Preference Share Terms contain similar terms to the PMI Terms. In particular, Dividends are discretionary, subject to Dividend Payment Tests and are non-cumulative.

The risks described in this Offering Circular applying to the PMIs may also apply to the Preference Shares due to these similarities.

### ***Insolvency laws***

In the event that the Issuer becomes insolvent, insolvency proceedings in respect of the Issuer will be governed by the federal bankruptcy laws of the United States and certain applicable Delaware state laws. Any bankruptcy case in respect of the Issuer would be filed in the United States Bankruptcy Court and federal law would govern procedure in any such case. In addition, Delaware state laws would be applied when determining certain property rights. For example, the laws governing the validity of liens or rules protecting certain property from creditors (known as exemptions), derive from and would be determined in accordance with Delaware state law. Bankruptcy laws in the United States are different from those in other jurisdictions. The procedural and substantive provisions of the bankruptcy laws in the United States are generally more favourable to secured creditors than comparable provisions of laws of other jurisdictions. These provisions afford debtors and unsecured creditors only limited protection from the claims of secured creditors.

In the event that the Guarantor becomes insolvent, insolvency proceedings in respect of the Guarantor will be governed by Australian law. Potential investors should be aware that Australian insolvency laws are different from the insolvency laws in other jurisdictions. In particular, the voluntary administration procedure under the Australian Corporations Act, which provides for the potential re-organisation of an insolvent company, differs significantly from similar provisions under the insolvency laws of other jurisdictions. If the Guarantor becomes insolvent, the treatment and ranking of Preference Share Holders and the Guarantor's ordinary shareholders under Australian law may be different from the treatment and ranking of Preference Share Holders and the Guarantor's ordinary shareholders if the Guarantor were subject to the bankruptcy laws or the insolvency laws of other jurisdictions.

### ***Distributions and Dividends may not be paid***

#### ***Distributions on the PMIs***

Potential investors should be aware that the payment of a Distribution is discretionary and there is a risk that Distributions will not be paid. The Issuer may elect not to pay a Distribution at any time. If the Distribution Payment Tests are not met, the Issuer may be unable to pay a Distribution. The Distribution Payment Tests require that:

- the Issuer, in its absolute discretion, has not exercised its discretion not to pay that Distribution;
- the Guarantor, in its absolute discretion, has not objected to the payment of that Distribution;
- an equivalent provision or concept to the Dividend Restriction not having been caused to apply in respect of any securities or other capital instruments issued by a member of the Group and *prima facie* applying to restrict payments of Distributions under the PMIs; and
- there being no APRA Payment Condition subsisting on the relevant Distribution Payment Date.

The Issuer is not an operating company. Further, the LLC Agreement provides that its objectives are limited and that it may only hold limited assets, which are restricted to the Subordinated Notes, the Convertible Notes, other Eligible Assets and certain other assets as may be approved from time to time by its manager, Macquarie PMI Manager LLC (each an **Eligible Asset** and, together, the **Eligible Assets**). The Subordinated Notes and the Convertible Notes contain similar payment tests and discretions to those under the PMIs. If distributions are not paid on the Subordinated Notes, the Convertible Notes or any other Eligible Asset, then the Issuer may not have sufficient funds to pay Distributions.



Potential investors should be aware that payment under the Guarantee is subject to certain conditions and there is a risk that no payment will be made under the Guarantee in respect of Distributions and Optional Distributions. Subject to the Guarantee Terms, the Guarantor will only be obliged to make any Guaranteed Payment in respect of Distributions or Optional Distributions on any PMIs to the extent the Guarantor, in its sole discretion, has not informed the Issuer that such Distribution or Optional Distribution should not be paid. The Guarantor will also not be obliged to make any Guaranteed Payment in respect of Distributions or Optional Distributions on any PMIs to the extent that (i) the Guarantor does not have Distributable Profits, or (ii) an APRA Payment Condition is continuing, in each case, unless APRA has given its prior approval to the payment of the Distribution or Optional Distribution.

#### *Dividends on the Preference Shares*

In the event the PMIs are Exchanged for Preference Shares, potential investors should be aware that the payment of Dividends on the Preference Shares is discretionary, and there is a risk that Dividends may not be paid. The payment of any Dividend is subject to certain requirements, including that Dividends will not be payable where the Guarantor, in its absolute discretion, has determined that the payment of any such Dividend is not fair and reasonable to its shareholders as a whole, or the payment may prejudice the Guarantor's ability to pay its creditors. The Preference Shares into which the PMIs are Exchanged are subject to similar payment tests and discretions to those under the PMIs.

For both the PMIs and the Preference Shares, potential investors should be aware that Distributions and Dividends are non-cumulative. Therefore, if a Distribution or Dividend is not paid, the PMI Holders or the Preference Share Holders (as the case may be) will have no right to receive that Distribution or Dividend at a later time. The PMI Terms and Preference Share Terms contain no events of default and, accordingly, failure to pay a Distribution or Dividend is not an event of default and the PMI Holders and Preference Share Holders (as the case may be) have no remedy for the non-payment. Each of the Issuer and the Guarantor may, in their absolute discretion, subsequently pay some or all of the Unpaid Distribution or Unpaid Dividend by declaring an Optional Distribution or Optional Dividend (subject to APRA giving its prior written approval and the Distribution Payment Tests or Dividend Payment Tests (as applicable) being met). However, any payment of Optional Distributions or Optional Dividends is discretionary.

A Dividend Restriction applies to the Group (other than in respect of any securities or other capital instruments issued by MBL or any entity it Controls) if the Issuer fails to pay a Distribution or Dividend in full within 20 Business Days of the relevant Distribution Payment Date or Dividend Payment Date. The Dividend Restriction is subject to a number of exceptions which are fully set out in the PMI Terms and Preference Share Terms.

#### ***The PMIs and the Preference Shares are subject to optional Redemption***

The Issuer and the Guarantor each have certain rights to Redeem the PMIs or Preference Shares respectively. Further, at any time, there may not be an incentive to Redeem and the PMI Holders and Preference Share Holders have no rights to call for Redemption of the PMIs or the Preference Shares (as the case may be).

Each of the Issuer (in relation to the PMIs) and the Guarantor (in relation to the Preference Shares) may Redeem some or all of the PMIs and/or Preference Shares, subject to APRA's prior written approval, and in their absolute discretion, on any Distribution Payment Date or Dividend Payment Date (as applicable) from (and including) the fifth anniversary of the Issue Date. Each of the Issuer and the Guarantor may also, at their option and subject to APRA's prior written approval, Redeem all (but not some) of the PMIs or Preference Shares (as applicable) upon the occurrence of a Regulatory Event or a Tax Event. Each of the Issuer and the Guarantor must also, subject to APRA's prior written approval, Redeem the PMIs or Preference Shares (as applicable) within 13 months of an Acquisition Event. In all cases, the Redemption Price will be an amount equal to the Principal Amount of the PMIs or the issue price of the Preference Shares, together with an amount equal to any accrued but unpaid Distributions on the PMIs or accrued but unpaid Dividends on the Preference Shares (as applicable) for the current Distribution Period or Dividend Period – see “*Terms and Conditions of the PMIs - clause 4 (“Redemption”)”* and “*Terms and Conditions of the Preference Shares - clause 4 (“Redemption”)”*”.

APRA is not obliged to give approval for Redemption and, depending upon the facts and circumstances at the time, may not give such approval. Potential investors should be aware that they may be required to hold the PMIs or Preference Shares for an indefinite period of time.

When the Issuer or Guarantor is permitted to do so, it may be that Redemption of the PMIs or Preference Shares will occur where the cost of borrowing is lower than the Distribution Rate on the PMIs or the Dividend Rate on the Preference Shares (as the case may be). Therefore, if the PMIs or Preference Shares are Redeemed, PMI Holders or Preference Share Holders may not be able to reinvest the proceeds of that Redemption at an effective return as high as that as the PMIs or Preference Shares being so Redeemed.

### ***The obligations under the PMIs and the Preference Shares are subordinated and unsecured***

The Issuer's obligations under the PMIs, and the Guarantor's obligations under the Guarantee and the Preference Shares, will be unsecured and subordinated to the interests of Senior Creditors of the Issuer or the Guarantor, as the case may be.

In a winding-up of the Issuer, the PMIs will be Exchanged for Preference Shares (unless the PMIs are Redeemed for cash prior to, or on, the relevant Exchange Date). The Preference Shares will rank in a winding-up of the Guarantor subordinate in priority of payment to the claims of all Senior Creditors of the Guarantor, equally amongst themselves and with each other instrument that the Guarantor may issue or has issued which is on terms that are expressed to or which will rank equally with the Preference Shares and senior to the ordinary shares in the Guarantor (see "*Terms and Conditions of the Preference Shares - clause 2 ("Form and ranking")*"). Accordingly, the obligations under the PMIs or the Preference Shares may not be satisfied unless the Guarantor can satisfy, in full, all other obligations ranking senior to the Preference Shares.

In addition, neither the PMI Terms, the Preference Share Terms nor the Guarantee Terms restrict the Issuer or any member of the Group in any way from issuing further capital instruments or incurring indebtedness which may rank senior to or equally with the PMIs or the Preference Shares.

If there is a shortfall of funds on a winding-up of the Issuer or the Guarantor, there is a risk that the PMI Holders and/or the Preference Share Holders will not receive a full (or any) return of their investment.

### ***Credit ratings may change***

Independent credit rating agencies have assigned ratings to the PMIs and the Guarantor. There is a risk that the credit ratings of the PMIs or the Guarantor could be reviewed, withdrawn or downgraded which may impact the market price and liquidity of the PMIs or the Preference Shares.

### ***Regulatory treatment may change***

The Basel Committee for Banking Supervision (the **Committee**) has issued a comprehensive reform package which requires strengthening of global capital and liquidity regulations. The Committee is seeking to agree the proposals by the end of 2010 for implementation by 2012. APRA, as a member of the Committee, has indicated that it will adopt these requirements.

In conjunction with these changes, APRA is proposing to extend its current prudential supervision framework of conglomerate groups, which include the Guarantor. As part of the proposed approach, capital requirements of the Guarantor will be more closely aligned with the regulation as applied to banks and as a consequence, the changes proposed by the Committee.

APRA has confirmed that the PMIs meet the requirements of eligible hybrid capital under the current regulatory framework applicable to the Guarantor. In addition, APRA has confirmed that after the framework is amended, at a minimum, the PMIs will be eligible for the same transitional relief that will be available for eligible instruments of banks. While the transition arrangements are yet to be finalised, it is likely that APRA will allow transitional relief for the PMIs until five years from the Issue Date. The transition relief is expected to be consistent with the phase out as described in the Committee's press release of 12 September 2010.

There is a risk that unforeseen changes to any of the Committee's proposals, APRA's interpretation of these proposals or APRA's conglomerates proposals may result in a Regulatory Event. If a Regulatory Event does occur, the Issuer or the Guarantor may or may not choose to Redeem the PMIs or Preference Shares, subject to APRA approval.

### ***The issue structure may be changed***

The PMI Terms, the Preference Share Terms and other related documents allow the Issuer and the Guarantor to make changes to the issue structure and terms in certain limited circumstances, including where the changes are not materially prejudicial to the interests of the PMI Holders as a whole. There is a risk that such changes may not suit the interests of an individual PMI Holder or Preference Share Holder.

Additionally, provisions within the PMI Terms and the LLC Agreement permit a defined majority of the PMI Holders to agree to modifications to the PMI Terms and, in doing so, to bind all PMI Holders, including any PMI Holders who did not attend and vote at the relevant meeting and those PMI Holders who voted contrary to the majority. Equivalent provisions are also included in the Preference Share Terms.

### ***The PMIs and Preference Shares have limited voting rights***

A PMI Holder has limited voting rights in respect of meetings of members of the Issuer and limited voting rights at a meeting of the PMI Holders or creditors. Further, a PMI Holder has no voting rights at a meeting of shareholders of the Guarantor or any other member of the Group.

In addition, the PMI Holders have no right to apply for the winding-up or administration of the Issuer or the Guarantor, or to cause a receiver and/or statutory manager to be appointed in respect of the Issuer or the Guarantor merely on the grounds that a scheduled Distribution is not made.

A Preference Share Holder has the same rights as those conferred by the Constitution of the Guarantor upon the holders of ordinary shares of the Guarantor in relation to receiving notices of general meetings, reports, balance sheets and accounts and attending and being heard at general meetings of the Guarantor. However, Preference Shares only entitle Preference Share Holders to vote at general meetings of the Guarantor in limited circumstances, including in relation to a proposal to reduce the Guarantor's share capital or that affects the rights attached to the Preference Shares.

### ***Tax***

A brief overview of the taxation treatment of payments on, and gains realised on the disposal of, the PMIs and the Preference Shares in the United States, Australia and Singapore is set out in "Taxation". The overview provided is brief, applies only in limited jurisdictions and takes no account of an investor's circumstances. As such, it may be inappropriate or incorrect for some potential investors.

**Investors should obtain their own taxation advice regarding the taxation status of investing in any PMIs or Preference Shares.**

*Exceptions to gross-up.* If, in respect of a payment under the PMIs, the Guarantee or the Preference Shares (as the case may be), the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such payment, and where such deduction is imposed or levied by or on behalf of:

- Australia;
- the United States;
- any other jurisdiction in which the Issuer or Guarantor (as applicable) is a tax resident at any relevant time; or

- any jurisdiction in which a Paying Agent is appointed from time to time and the withholding, tax, duty or levy was imposed or levied because the payment was made by a paying agent in that jurisdiction,

the Issuer, in respect of the PMIs, or the Guarantor, in respect of the Guarantee and the Preference Shares (as applicable) shall pay such additional amount to an applicable PMI Holder or Preference Share Holder as will result in the receipt by the PMI Holder or Preference Share Holder, after such deduction, of the amount which would have been received by the PMI Holder or Preference Share Holder in respect of that payment if no such deduction had been required, subject to certain exceptions as provided in clause 7 (“Payments to PMI Holders”) of the PMI Terms, clause 6 (“Taxation”) of the Guarantee Terms and clause 8 (“Payments to Holders”) of the Preference Share Terms. If an exception applies, the Issuer or the Guarantor (as the case may be) will make the required withholding or deduction and shall not pay any additional amounts to the PMI Holders or Preference Share Holders (as applicable) in respect thereof. See “*Taxation*”.

*Certain U.S. federal income tax risks.* In general terms, a Non-U.S. Holder (as defined in “*Taxation - Certain U.S. Federal Income Tax Considerations*”) will be subject to U.S. federal income tax in respect of its investment in the PMIs (and potentially on the other transaction instruments and the receipt and/or disposition of any Preference Shares) only in the limited circumstance that (a) the Issuer is found to be conducting a trade or business in the United States, (b) the Non-U.S. Holder conducts a trade or business in the United States or (c) in the case of a foreign individual, the Non-U.S. Holder is present in the United States for 183 days or more in the taxable year and, in each case, certain other requirements are met. Potential investors are urged to consult “*Taxation - Certain U.S. Federal Income Tax Considerations*”.

*Tax treatment may change.* Each of the Issuer and the Guarantor may also, at their option and subject to APRA’s prior written approval, Redeem the PMIs or Preference Shares (as applicable) upon the occurrence of a “Tax Event” (as defined under the PMI Terms or the Preference Share Terms (as applicable)). The Guarantor has received taxation advice in respect of its expected taxation treatment in each of the Relevant Tax Event Jurisdictions. However, there is a risk that a Tax Law Change occurs on or after the Issue Date that results in a Tax Event including a more than *de minimis* amount of taxes, assessments or other governmental charges in connection with the PMIs, the Preference Shares, the Subordinated Notes, the Convertible Notes or any other Eligible Asset.

If a Tax Event does occur, the Issuer or the Guarantor may or may not choose to Redeem the PMIs or Preference Shares, subject to APRA’s prior written approval. (See “*Terms and Conditions of the PMIs - clause 4 (“Redemption”)*” and “*Terms and Conditions of the Preference Shares - clause 4 (“Redemption”)*”).

### ***Change of law***

The PMI Terms and Preference Share Terms are based on the relevant law in effect as at the date of this Offering Circular. No assurance can be given as to the impact of any possible judicial decision, change to law or administrative practice after the date of issue of the PMIs. There is a risk that unforeseen future changes in relevant law may result in a Regulatory Event. If a Regulatory Event does occur, the Issuer or the Guarantor may or may not choose to Redeem the PMIs or Preference Shares, subject to APRA approval.

### ***Change of accounting treatment***

The Issuer and the Guarantor have received accounting advice as to the accounting treatment of the PMIs (or any Preference Shares) as a ‘liability’. There is a risk that changes in applicable accounting standards, regulations or generally accepted practice that results in a change to the accounting treatment of the PMIs (or any Preference Shares) may result in a Regulatory Event. If a Regulatory Event does occur, the Issuer or the Guarantor may or may not choose to Redeem the PMIs or Preference Shares, subject to APRA approval.

(c) **Risks relating to the market for the PMIs and Preference Shares generally**

*The secondary market generally*

The PMIs and the Preference Shares will have no established trading market when issued, and one may never develop. If a market does develop, it may not be liquid.

Additionally, the Issuer has the right to Redeem, and the Guarantor has the right to require the Redemption of, some or all of the PMIs and/or Preference Shares in certain circumstances. This would reduce the aggregate amount of the PMIs or Preference Shares on issue and is likely to reduce market liquidity. Therefore, investors may not be able to sell their PMIs or Preference Shares easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. Illiquidity may have a severely adverse effect on the market value of the PMIs or Preference Shares.

In addition, the PMI Holders should be aware of the risk that global credit market conditions may result in a general lack of liquidity in the secondary market for instruments similar to the PMIs or Preference Shares. Such lack of liquidity may result in investors suffering losses on the PMIs or Preference Shares in secondary resales even if there is no decline in the performance of the assets of the Group.

*Listing*

Approval in-principle has been received for the listing and quotation of the PMIs on the official list of the SGX-ST. In the event that the PMIs are Exchanged for Preference Shares, the Guarantor will apply for the Preference Shares to be listed on a relevant Stock Exchange. No assurance can be given that if and once listed on the SGX-ST and/or any other applicable Stock Exchange the PMIs or the Preference Shares (as the case may be) will at all times remain listed on that Stock Exchange and it may not be possible to list the PMIs or Preference Shares (as applicable) on any stock or securities exchange.

*Exchange rate risks and exchange controls*

Interest payments and potential principal payments on the PMIs and the Preference Shares will be made in USD. This presents certain risks relating to currency conversions if a PMI Holder's financial activities are denominated principally in a currency or currency unit (the **Holder's Currency**) other than USD. These include the risk that exchange rates may significantly change (including changes due to devaluation of USD or revaluation of the Holder's Currency) and the risk that authorities with jurisdiction over the Holder's Currency may impose or modify exchange controls. An appreciation in the value of the Holder's Currency relative to USD would decrease (1) the Holder's Currency-equivalent yield on the PMIs or Preference Shares, (2) the Holder's Currency-equivalent value of the principal potentially payable on the PMIs or Preference Shares, and (3) the Holder's Currency-equivalent market value of the PMIs or Preference Shares.

Government and monetary authorities may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, PMI Holders and/or Preference Share Holders may receive less interest or principal than expected, or no interest or principal.

*Interest rate risks*

Investment in the PMIs involves the risk that subsequent changes in market interest rates may adversely affect the value of the PMIs or the Preference Shares. As interest rates fluctuate, there is a risk that the Distribution Rate payable on the PMIs or the Dividend Rate payable on the Preference Shares will become less attractive when compared to the rates of return on other comparable securities and consequently the market value of the PMIs or the Preference Shares may fluctuate. PMI Holders may suffer unforeseen losses due to fluctuations in market values or fluctuations in interest rates making the rate of return on comparable securities or investments more favourable than the rate of return under the PMIs or the Preference Shares.

### ***Credit ratings may not reflect all risks***

Independent credit rating agencies may assign credit ratings to the PMIs, the Issuer and the Guarantor. The ratings may not reflect the potential impact of all risks related to the structure, the market, the additional factors discussed above and any other factors that may affect the value of the PMIs or Preference Shares. A credit rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, cancellation, reduction or withdrawal at any time by the assigning rating agency.

### ***Legal investment considerations may restrict certain investments***

The investment activities of certain investors are subject to investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent (1) the PMIs or Preference Shares are legal investments for it, (2) the PMIs or Preference Shares can be used as collateral for various types of borrowing, and (3) other restrictions apply to its purchase or pledge of any PMIs or Preference Shares. Financial institutions should consult their legal advisers or the appropriate regulators to determine the appropriate treatment of the PMIs or Preference Shares under any applicable risk-based capital or similar rules.

### ***Definitive Certificates***

Because the PMIs may be issued in denominations consisting of a minimum denomination of U.S.\$100,000 plus one or more integral multiples of U.S.\$1,000 in excess thereof, it is possible that the PMIs may be traded in amounts that are not integral multiples of such minimum denomination.

In such a case, a PMI Holder who, as a result of transferring such amounts, holds an aggregate Principal Amount of PMIs which is less than the minimum denomination in their account with the relevant clearing system at the relevant time may not receive a Definitive Certificate in respect of such holding (should Definitive Certificates be issued) and would need to purchase a Principal Amount of PMIs such that their aggregate holding amounts to a minimum denomination of U.S.\$100,000.

If Definitive Certificates are issued, PMI Holders should be aware that Definitive Certificates which have a denomination that is not an integral multiple of the minimum denomination of U.S.\$100,000 may be illiquid and difficult to transfer.

## FORM OF THE PMIs

The PMIs will initially be represented by the Global Certificate. Prior to expiry of the distribution compliance period (as defined in Regulation S under the U.S. Securities Act), if any, applicable to the PMIs, beneficial interests in the Global Certificate may not be offered or sold to, or for the account or benefit of, a U.S. person and may not be held otherwise than through Euroclear or Clearstream, Luxembourg and such Global Certificate will bear a legend regarding such restrictions on transfer.

The Global Certificate will be registered in the name of a nominee of, and deposited with a common depository for, Euroclear and Clearstream, Luxembourg. Persons holding beneficial interests in the Global Certificate will be entitled or required, as the case may be, under the circumstances described below, to receive physical delivery of Definitive Certificates.

Payments of the Redemption Price, Distributions or any other amount in respect of the PMIs will, in the absence of provision to the contrary, be made to the person shown on the Register as the registered holder of the Global Certificate in the manner provided in the PMI Terms. An entry in the Register in relation to a PMI constitutes conclusive evidence that the person so entered is the absolute owner of that PMI, subject to correction for fraud or error. Except as required by law, the Issuer, the Registrar and any Agents must treat the person entered in the Register in respect of a PMI as the absolute owner of that PMI. None of the Issuer, the Guarantor nor any Agent will have any responsibility or liability for any aspect of the records relating to or payments or deliveries made on account of beneficial ownership interests in the Global Certificate or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Interests in the Global Certificate will be exchangeable (free of charge), in whole but not in part, for Definitive Certificates only upon the occurrence of a Certification Event. The Issuer will promptly give notice to the PMI Holders in accordance with the PMI Terms if a Certification Event occurs. In the event of the occurrence of a Certification Event, Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in the Global Certificate) may give notice to the Registrar requesting exchange and, in the event of the occurrence of a Certification Event of a type described in paragraph (b) of the definition of that term, the Issuer may also give notice to the Registrar requesting exchange. Any such exchange shall occur not later than 45 days after the date of receipt of the first relevant notice by the Registrar. For so long as any PMIs are listed on the SGX-ST and the rules of the SGX-ST so require, the Issuer shall appoint and maintain a paying agent in Singapore (where such PMIs may be presented or surrendered for payment or Redemption) in the event that the Global Certificate is exchanged for Definitive Certificates. In addition, in the event that the Global Certificate is exchanged for Definitive Certificates, an announcement of such exchange will be made on the SGX-ST and such announcement will include all material information with respect to the delivery of the Definitive Certificates, including details of the paying agent in Singapore.

Interests in the Global Certificate may, subject to compliance with all applicable restrictions, be transferred to a person who wishes to hold such interest in the Global Certificate. No beneficial owner of an interest in the Global Certificate will be able to transfer such interest, except in accordance with the rules and operating procedures of Euroclear and Clearstream, Luxembourg, in each case, to the extent applicable.

For so long as any PMI is represented by the Global Certificate held on behalf of Euroclear and/or Clearstream, Luxembourg, each person (other than Euroclear and/or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg, as the case may be, as the holder of a particular nominal amount of such PMIs (in which regard any certificate or other document issued by Euroclear and/or Clearstream, Luxembourg as to the nominal amount of such PMIs standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Guarantor and their respective agents as the holder of such nominal amount of such PMIs for all purposes (including, without limitation, for the purposes of voting and quorum requirements) other than with respect to the payment of the Redemption Price, Distributions and any other amount payable on such nominal amount of such PMIs, for which purposes the registered holder of the Global Certificate shall be treated by the Issuer, the Guarantor and their respective agents as the holder of such nominal amount of such PMIs in accordance with and subject to the terms of the Global Certificate, the PMI Terms, the LLC Agreement and the Agency Agreement, and the expressions **PMI Holder** and **holder of PMIs** and related expressions shall be construed accordingly.

Any reference herein to Euroclear and/or Clearstream, Luxembourg shall, whenever the context so permits, be deemed to include a reference to any additional, successor or alternative clearing system as may otherwise be approved by the Issuer, the Guarantor and the Principal Paying Agent.

## TERMS AND CONDITIONS OF THE PMIS

*The following are the terms and conditions of the PMIs in the form in which they are set out in the LLC Agreement. Words and phrases set out in this section have the meanings given, and are interpreted in accordance with, the PMI Terms.*

These terms and conditions (“**Terms**”) have been established pursuant to, and are incorporated by reference into, this limited liability company agreement of Macquarie PMI LLC to which they are annexed (“**LLC Agreement**”). In the event of any inconsistency between the LLC Agreement and these Terms, the provisions of these Terms shall prevail.

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### 1 Denomination

Each PMI will be issued in denominations of US\$100,000 and integral multiples of US\$1,000 above that amount which must be paid for in full on application.

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### 2 Form and ranking

#### 2.1 Form

- (a) Each PMI is a limited liability company interest in the Issuer conferring the rights set out in these Terms.
- (b) PMIs are unsecured and subordinated obligations of the Issuer and, subject, if required below, to the prior written consent of APRA, each is:
  - (i) Redeemable by the Issuer; or
  - (ii) Exchangeable into fully paid Preference Shares,in accordance with these Terms.
- (c) PMIs are not Redeemable or Exchangeable at the option of a PMI Holder.
- (d) PMIs are issued according to the LLC Agreement of which these Terms form part.
- (e) PMIs do not represent protected accounts of any member of the Macquarie Group for the purposes of section 13A(3) of the Banking Act or any similar law of any jurisdiction nor do they represent deposits with, or deposit liabilities of, any member of the Macquarie Group for any other purposes of the Banking Act and they are not insured by the U.S. Federal Deposit Insurance Corporation.
- (f) PMIs are guaranteed only to the limited extent provided in the Guarantee.
- (g) Except for a claim made on the Issuer in accordance with these Terms and to the limited extent provided in the Guarantee, a PMI Holder has no claim on any member of the Macquarie Group for payment of any amount in respect of any PMIs held by that PMI Holder.
- (h) PMIs are not obligations of the Australian Government or any other government and, in particular, are not guaranteed or insured by the Commonwealth of Australia or any other government, government agency or compensation scheme in any jurisdiction.

#### 2.2 Entries in the Register and PMI Certificates

- (a) Each PMI is issued in registered form by entry in the Register.
- (b) PMIs will be initially represented by a global certificate in the form attached as an annex to the LLC Agreement (“**Global Certificate**”), which will be registered in the name of a nominee of, and deposited with a common depository for, Euroclear and Clearstream, Luxembourg.
- (c) On the occurrence of a Certification Event, the Global Certificate will be exchangeable (in whole, but not in part, and in the manner set out in the LLC Agreement) for definitive certificates in the



form attached as an annex to the LLC Agreement (“**Definitive Certificates**” and, together with the Global Certificate, the “**PMI Certificates**”). The Issuer must notify PMI Holders in accordance with clause 9 (“Notices and other communications”) of the occurrence of a Certification Event. However, if PMIs have been transferred in amounts that are not an integral multiple of US\$100,000, a PMI Holder who, as a result of transferring such amounts, holds an aggregate Principal Amount of PMIs which is not an integral multiple of US\$100,000 in their account with the relevant clearing system at the time may not receive a Definitive Certificate in respect of such holding not in an integral multiple of US\$100,000 and may be required to purchase a Principal Amount of PMIs such that their aggregate holding amounts to US\$100,000 (or an integral multiple thereof).

- (d) If a PMI Certificate is damaged or defaced, or is alleged to have been lost, stolen or destroyed, a new PMI Certificate may be issued by the Issuer on payment of such fee and on such terms as to evidence, indemnity and as to the payment of out-of-pocket expenses as the Issuer may reasonably determine in accordance with the provisions of the LLC Agreement.
- (e) Each PMI Holder shall be admitted as a member of the Issuer.

### 2.3 Ranking

Except to the extent mandatorily provided by law, each PMI ranks for payment, and ranks in a winding up of the Issuer:

- (a) equally with all other PMIs in all respects; and
- (b) senior to any other limited liability company interest in the Issuer,

and the rights of a PMI Holder are, in respect of that PMI, subordinate to all Senior Creditors of the Issuer.

## 3 Distributions

### 3.1 Distributions

Subject to these Terms, on each Distribution Payment Date the Issuer will pay to each PMI Holder a distribution (“**Distribution**”) in respect of each multiple of US\$1,000 of PMIs held by that PMI Holder for the period commencing on (and including) the preceding Distribution Payment Date (or, in the case of the first Distribution Period, the Issue Date) and ending on (but excluding) that Distribution Payment Date, a Redemption Date or an Exchange Date (“**Distribution Period**”) calculated according to the following formula:

- (a) unless paragraph (b) below applies, for each Distribution Period ending on (but excluding) a scheduled Distribution Payment Date or any other date that would have been a scheduled Distribution Payment Date but for such date also being a Redemption Date or an Exchange Date:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{US\$1,000}}{2}$$

provided that:

- (b) for each Distribution Period that ends on a Redemption Date or an Exchange Date that is not also a scheduled Distribution Payment Date, the relevant Distribution will be calculated according to the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{US\$1,000} \times \text{N}}{360}$$

where, for the purposes of this clause 3.1 (“Distributions”):

**Distribution Rate** means 8.375% (expressed as a percentage per annum); and

**N** means, in respect of each Redemption Date or Exchange Date that is not also a scheduled Distribution Payment Date, the number of days from (and including) the preceding Distribution Payment Date to (but excluding) that Redemption Date or Exchange Date.

### 3.2 Effect of Exchange on Distributions and Unpaid Distributions

- (a) If a PMI is Exchanged in accordance with clause 5 ("Exchange"):
- (i) subject to paragraph (b) below, no Distribution is payable, nor shall any amount of such Distribution be deemed to have accrued for the Distribution Period ending on (but excluding) the relevant Exchange Date; and
  - (ii) in accordance with the Preference Share Terms, in respect of each Preference Share for which a PMI is Exchanged:
    - (A) the Exchanged Proportion of the amount of any Distribution that was scheduled, but for the Exchange, to be paid in respect of that PMI for that Distribution Period up to (but excluding) the relevant Exchange Date will be treated as an equivalent amount of a Dividend scheduled to be paid on the next succeeding Dividend Payment Date (together with any further amount of Dividend scheduled to be paid in respect of the period from (and including) the relevant Exchange Date to (but excluding) that Dividend Payment Date) in accordance with clause 3.1 ("Dividends") of the Preference Share Terms; and
    - (B) the Exchanged Proportion of the amount of any Unpaid Distribution in respect of that PMI that has not been paid on or before the relevant Exchange Date will be treated as an equivalent amount of Unpaid Dividend,

where the "Exchanged Proportion" is equal to:

$$\frac{\text{US\$1,000}}{\text{Principal Amount}}$$

- (b) For the purposes of these Terms, if a PMI is to be Exchanged in accordance with clause 5 ("Exchange") and the applicable Exchange Date would have been a Distribution Payment Date but for such date also being an Exchange Date, then, subject to clause 3.4 ("Distribution payment tests"), if the Issuer makes the Distribution in accordance with these Terms, the Exchange will be deemed to occur after payment of such Distribution and no amounts will be treated as having accrued to the Preference Share under paragraph (a) above.

Capitalised terms used in this clause 3.2 ("Effect of Exchange on Distributions and Unpaid Distributions") which are not defined in these Terms have the same meaning as in the Preference Share Terms.

### 3.3 Distribution Payment Dates

Subject to clause 3.4 ("Distribution payment tests"), Distributions will be paid on each US\$1,000 multiple of PMIs that have not been Redeemed or Exchanged, semi-annually in arrear on each six calendar month anniversary of the Issue Date commencing on the date falling six calendar months after the Issue Date and until (but excluding) the Redemption Date or Exchange Date for those PMIs, each a "Distribution Payment Date".

If a Distribution Payment Date is a day which is not a Business Day, then that day remains the Distribution Payment Date and the Distribution scheduled to be paid on that day will be paid on the next day which is a Business Day, unless that day falls in the next calendar month, in which case that date is brought forward to the first preceding day that is a Business Day, in any case, without any adjustment of the amount of the Distribution or any other payment in respect of the delay in payment.

### 3.4 Distribution payment tests

The payment of all or any part of a Distribution or an Optional Distribution is subject to:

- (a) the Issuer, in its absolute discretion:
- (i) not having exercised its discretion not to pay that Distribution; or
  - (ii) having exercised its discretion to pay that Optional Distribution;

- (b) MGL, in its absolute discretion, not objecting to the payment of that Distribution or Optional Distribution;
- (c) an equivalent provision or concept to the Dividend Restriction not having been caused to apply in respect of any securities or other capital instruments issued by a member of the Macquarie Group and *prima facie* applying to restrict payments of Distributions or Optional Distributions under the PMIs; and
- (d) there being no APRA Payment Condition subsisting on the relevant Distribution Payment Date or Optional Distribution Payment Date.

The Issuer must provide the PMI Holders with written notice if a Distribution will not be, or has not been, made no later than five Business Days after the relevant Distribution Payment Date on which such Distribution was scheduled but not made. Once given, such notice will constitute notice to the PMI Holders that Distributions scheduled to be made on any succeeding Distribution Payment Date will not be made and shall apply until such time as the Issuer provides further notice that Distributions will recommence to be made.

### 3.5 Optional Distributions

- (a) Subject to clause 3.4 (“Distribution payment tests”) and clause 3.6 (“Non-payment of Distributions and Optional Distributions”), the Issuer, in its absolute discretion, but with the consent of MGL and APRA’s prior written approval, may determine a Distribution (“**Optional Distribution**”) to be payable by the Issuer on any date (“**Optional Distribution Payment Date**”) in an amount less than or equal to the aggregate amount of any Distributions not paid on a PMI (that unpaid amount, an “**Unpaid Distribution**”) on a relevant Distribution Payment Date because of clause 3.4 (“Distribution payment tests”). For the avoidance of doubt, Optional Distributions will not constitute any amounts of interest in respect of Unpaid Distributions.
- (b) In order to make an Optional Distribution in accordance with these Terms, the Issuer must provide the PMI Holders with written notice of the Optional Distribution at least five Business Days before the relevant Optional Distribution Payment Date.

### 3.6 Non-payment of Distributions and Optional Distributions

- (a) Distributions and Optional Distributions are non-cumulative. Neither the Issuer nor MGL has any liability to pay any Unpaid Distribution and, notwithstanding the ability of the Issuer to make an Optional Distribution in accordance with clause 3.5 (“Optional Distributions”), no PMI Holder has any claim against any person (including in a winding up of the Issuer) in respect of such Unpaid Distribution.
- (b) If all or any part of an Optional Distribution is declared, determined or otherwise resolved to be paid and is not paid on the relevant Optional Distribution Payment Date, whether by virtue of clause 3.4 (“Distribution payment tests”) or otherwise, the Optional Distribution does not become an Unpaid Distribution and neither the Issuer nor MGL has any liability to pay the Optional Distribution and no PMI Holder has any claim against any person (including in a winding up of the Issuer) in respect of such Optional Distribution.
- (c) The non-payment of a Distribution (or any part thereof) because of clause 3.4 (“Distribution payment tests”), or the non-payment of an Optional Distribution (or any part thereof), does not constitute an event of default.
- (d) No interest accrues on any Unpaid Distribution or Optional Distribution and no PMI Holder has any claim or entitlement in respect of interest on any Unpaid Distribution or Optional Distribution.

### 3.7 Record Dates

- (a) A Distribution is payable on a Distribution Payment Date only to those persons Registered as PMI Holders on the Record Date for that Distribution.
- (b) An Optional Distribution is payable on an Optional Distribution Payment Date only to those persons Registered as PMI Holders on the Record Date for that Optional Distribution.

### 3.8 Dividend Restriction

If the Issuer fails to pay a Distribution in full within 20 Business Days of the relevant Distribution Payment Date for that Distribution, a Dividend Restriction shall apply until the first of the following occurs:

- (a) the Issuer makes an Optional Distribution equal to the amount of any Unpaid Distributions attributable to the two Distribution Periods immediately preceding the Distribution Period in which the relevant Optional Distribution Payment Date occurs;
- (b) the Issuer pays in full each Distribution scheduled to be paid on two successive Distribution Payment Dates both occurring after the date on which the Dividend Restriction first applies; or
- (c) all PMIs have been Redeemed or Exchanged but, in the case of an Exchange, without prejudice to any similar distribution restrictions in the Preference Share Terms.

**“Dividend Restriction”** means that no member of the Macquarie Group will, without the prior approval of an Extraordinary Resolution:

- (a) pay any interest, dividend or other distribution, or make any other payment, in respect of any MGL Pari Passu Securities or MGL Junior Securities; or
- (b) redeem, reduce, cancel, buy-back or repurchase any MGL Pari Passu Securities or MGL Junior Securities.

The Dividend Restriction does not apply to:

- (a) payments on MGL Pari Passu Securities made *pro-rata* with a payment on the PMIs;
- (b) a repurchase, redemption or other acquisition of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of Macquarie Group in connection with:
  - (i) 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) a dividend reinvestment plan or shareholder share purchase plan; or
  - (iii) the issuance of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of MGL, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction entered into prior to the date on which the Dividend Restriction first applies;
- (c) an exchange, redemption or conversion of:
  - (i) any class or series of MGL Pari Passu Securities or any shares of a subsidiary of MGL for any class or series of MGL Pari Passu Securities or MGL Junior Securities;
  - (ii) any class or series of MGL Junior Securities or any shares of a subsidiary of MGL for any class or series of MGL Junior Securities; or
  - (iii) any class or series of MGL's indebtedness for any class or series of MGL Pari Passu Securities or MGL Junior Securities, provided such indebtedness ranked for the payment of interest in priority to, or *pari passu* with, those MGL Pari Passu Securities or MGL Junior Securities immediately prior to exchange, redemption or conversion;
- (d) the purchase of fractional interests in shares in the capital of MGL under the conversion or exchange provisions of the shares or the security being converted or exchanged;
- (e) any payment, declaration or determination of, or other resolution to pay, a dividend in connection with any shareholder's rights plan, or the issuance of rights, shares or other property under any shareholder's rights plan, or the redemption or repurchase of rights pursuant to the plan;
- (f) any dividend in the form of shares, warrants, options or other rights where the dividend shares or the shares issuable upon exercise of such warrants, options or other rights are the same class or

series of shares as those on which the dividend is being paid or rank equal to or junior to those shares; or

- (g) any distribution by way of a rights issue raising capital.

Nothing in the Dividend Restriction prohibits a member of the Macquarie Group from purchasing MGL's shares in connection with transactions for the account of customers of a member of the Macquarie Group or in connection with the distribution or trading of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of MGL in the ordinary course of business.

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## 4 Redemption

### 4.1 Redemption

The Issuer:

- (a) may, in its sole discretion, but with APRA's prior written approval, Redeem:
- (i) some or all of the PMIs on the date falling five years after the Issue Date or on any scheduled Distribution Payment Date thereafter; or
  - (ii) all (but not some) of the PMIs following the occurrence of an Early Redemption Event; and
- (b) must, but subject to APRA's prior written approval, Redeem all (but not some) of the PMIs within 13 months of an Acquisition Event,

in each case at the Redemption Price.

### 4.2 Early Redemption Event

An "Early Redemption Event" occurs if either of the following occurs:

- (a) a Regulatory Event; or
- (b) a Tax Event.

### 4.3 Notice of Redemption

In order to Redeem any PMIs in accordance with these Terms, the Issuer must provide the relevant PMI Holders with written notice of its election to require the Redemption of, or obligation to Redeem, those PMIs ("**Redemption Notice**") which notice must state:

- (a) the Redemption Date on which Redemption is to occur, being a day not less than five Business Days and no more than 60 Business Days after the date of the Redemption Notice;
- (b) if less than all outstanding PMIs are being Redeemed on the relevant Redemption Date, the proportion of PMIs to be Redeemed on that Redemption Date; and
- (c) the Redemption Price for those PMIs.

A Redemption Notice is irrevocable once given.

### 4.4 Redemption Price

If any PMIs are to be Redeemed in accordance with this clause 4 ("Redemption"), on the relevant Redemption Date the Issuer must pay or deliver, or procure the payment or delivery, to the PMI Holders the Redemption Price in respect of each PMI which is Redeemed, where the "**Redemption Price**" is an amount equal to the Principal Amount of the PMI together with an amount equal to any Distribution that was scheduled to be paid on the next Distribution Payment Date in respect of the PMI for the then current Distribution Period, but calculated, in accordance with clause 3.1(b) ("Distributions"), only for the period

from (and including) the previous Distribution Payment Date (or, in the case of the first Distribution Period, the Issue Date) and ending on (but excluding) the relevant Redemption Date.

#### **4.5 No right of PMI Holders to require Redemption**

The PMIs are not Redeemable at the option of the PMI Holders.

#### **4.6 Partial Redemption**

If some but not all outstanding PMIs are Redeemed, the Issuer must, in each case, endeavour to treat all PMI Holders:

- (a) in the case of PMIs represented by the Global Certificate, where the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, in accordance with the rules of Euroclear and/or Clearstream, Luxembourg, as the case may be; and
- (b) in the case of PMIs represented by Definitive Certificates, as far as practicable, equally according to the proportion that the aggregate Principal Amount of Definitive Certificates held by that PMI Holder bears to the aggregate Principal Amount of all Definitive Certificates, provided that any final rounding or allocation shall be in the sole discretion of the Issuer and, in the absence of manifest error, binding on the PMI Holders.

#### **4.7 Effect of Redemption**

Upon Redemption of a PMI and payment of the Redemption Price in respect of that PMI, all other rights conferred, or restrictions or obligations imposed, by that PMI will no longer have effect.

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## **5 Exchange**

### **5.1 Exchange**

Subject to clause 4 ("Redemption"), if an Exchange Event has occurred, the Issuer will Exchange the relevant PMIs (as set out in clause 5.2 ("Exchange Event")) by the delivery of Preference Shares having an aggregate issue price equal to the aggregate Principal Amount of the relevant PMIs being Exchanged to, or in accordance with any prior instructions of, the relevant PMI Holder on the applicable Exchange Date. For the avoidance of doubt:

- (a) the Issuer may give notice that a PMI is to be Redeemed after an Exchange Event has occurred and, in such cases, that PMI will be Redeemed and not Exchanged; and
- (b) if a Redemption Date under clause 4 ("Redemption") and an Exchange Date under this clause 5 ("Exchange") fall on the same day, the PMIs will be Redeemed and not Exchanged.

### **5.2 Exchange Event**

An "Exchange Event" is the first in time of any of the following events to occur (and, to the extent specified, the applicable Exchange Event shall occur only on the expiration of any specified period having elapsed):

- (a) a MGL Breach of Undertaking Event that, if capable of remedy, is not remedied within 20 Business Days of its occurrence, in which case all (but not some) of the PMIs shall be Exchanged;
- (b) a Capital Event that, if capable of remedy, is not remedied within 20 Business Days of its occurrence, in which case all (but not some) of the PMIs shall be Exchanged;
- (c) the Issuer has received notice from APRA that it requires an Exchange of the PMIs to occur and such requirement is not withdrawn by APRA within 20 Business Days of the Issuer first receiving such notice, in which case some or all of the PMIs shall be Exchanged as required by APRA;
- (d) MGL, in its absolute discretion, electing that an Exchange occur, in which case some or all of the PMIs shall be Exchanged as determined by MGL;

- (e) the Principal Amount of a PMI not being paid in full to a PMI Holder within 20 Business Days of an applicable Redemption Date, in which case all (but not some) of the PMIs shall be Exchanged;
- (f) APRA has not approved a Redemption of the PMIs within 20 Business Days of a request to so approve pursuant to clause 4.1(b) (“Redemption”), in which case all (but not some) of the PMIs shall be Exchanged; or
- (g) the fifth Business Day prior to the date that falls 25 years after the Issue Date, in which case all (but not some) of the PMIs shall be Exchanged.

If some only of the PMIs are to be Exchanged then, as far as practicable, the PMIs of each PMI Holder to be Exchanged will be equal to the proportion that the aggregate Principal Amount of PMIs held by that PMI Holder bears to the aggregate Principal Amount of all PMIs (with any fractions rounded to a whole number of PMIs in a fair and equitable manner as determined by MGL in its sole discretion and, in the absence of manifest error, such rounding will be binding on the PMI Holders).

### 5.3 Exchange Notice

As soon as practicable after the occurrence of an Exchange Event, but in any event no later than 5.00 pm (Sydney time) on the fifth Business Day after the occurrence of the Exchange Event, the Issuer must provide each PMI Holder with written notice of the Exchange of the PMIs (“**Exchange Notice**”) stating the Exchange Date determined in accordance with clause 5.4 (“Exchange Date”) and, if less than all then outstanding PMIs are to be Exchanged, the applicable Principal Amount of their PMIs to be Exchanged.

An Exchange Notice is irrevocable once given. Failure to give an Exchange Notice when required by this clause 5.3 (“Exchange Notice”) does not affect the obligation of the Issuer to Exchange each PMI for Preference Shares when required in accordance with these Terms.

### 5.4 Exchange Date

The “**Exchange Date**”, in respect of an Exchange occurring pursuant to an Exchange Event occurring under:

- (a) clauses 5.2(a), (b), (c), (e), (f) or (g) (“Exchange Event”), will be the fifth Business Day after the date the Exchange Event occurs (for the avoidance of doubt, being the date after the lapse of the 20 Business Days period referred to in the relevant paragraph of clause 5.2 (“Exchange Event”) if applicable); and
- (b) clause 5.2(d) (“Exchange Event”), will be the date specified as the Exchange Date in the Exchange Notice given under clause 5.3 (“Exchange Notice”),

or, in any case, such other date on which APRA, or the ASX Listing Rules (or the equivalent rules of any stock exchange on which the Preference Shares are to be listed), may require the Exchange to occur.

### 5.5 Mechanism to effect Exchange

In order for the Issuer to deliver Preference Shares to the PMI Holders on the applicable Exchange Date, the Issuer must exercise, to the extent necessary, any conversion or exchange right in respect of an Eligible Asset which is convertible into, or exchangeable for, Preference Shares and procure that the Preference Shares are delivered to, or in accordance with the instructions of, the relevant PMI Holder (whether by giving directions to the issuer of that Eligible Asset or otherwise).

### 5.6 Failure to Exchange

If, in respect of an Exchange of a PMI, the Preference Shares are not delivered to, or in accordance with the instructions of, the relevant PMI Holder on the applicable Exchange Date, that PMI remains on issue and clause 3 (“Distributions”) applies until the Preference Shares are delivered to, or in accordance with the instructions of, the PMI Holder or that PMI is Redeemed in accordance with these Terms. This clause 5.6 (“Failure to Exchange”) does not affect the obligation of the Issuer to deliver the Preference Shares when required in accordance with these Terms.

## **5.7 Foreign Holders**

Where PMIs held by a Foreign Holder are to be Exchanged for Preference Shares in accordance with clause 5 (“Exchange”), unless the Issuer is satisfied that the laws of both Australia and the Foreign Holder’s country of residence permit the delivery of Preference Shares to the Foreign Holder (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, the Preference Shares which the Foreign Holder is obliged to accept will be delivered to a nominee who will sell the Preference Shares it receives and pay a cash amount equal to the net proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to the Foreign Holder accordingly.

## **5.8 No right of PMI Holders to require Exchange**

The PMIs are not Exchangeable at the option of the PMI Holders.

## **5.9 Partial Exchange**

If some but not all outstanding PMIs are Exchanged, the Issuer must, in each case, endeavour to treat all PMI Holders:

- (a) in the case of PMIs represented by the Global Certificate, where the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, in accordance with the rules of Euroclear and/or Clearstream, Luxembourg, as the case may be; and
- (b) in the case of PMIs represented by Definitive Certificates, as far as practicable, equally according to the proportion that the aggregate Principal Amount of Definitive Certificates held by that PMI Holder bears to the aggregate Principal Amount of all Definitive Certificates, provided that any final rounding or allocation shall be in the sole discretion of the Issuer and, in the absence of manifest error, binding on the PMI Holders.

## **5.10 Effect of Exchange**

Upon Exchange of a PMI and delivery of Preference Shares in respect of that PMI:

- (a) Distributions and Unpaid Distributions will be treated in accordance with clause 3.2 (“Effect of Exchange on Distributions and Unpaid Distributions”);
- (b) the PMI will be cancelled and all other rights conferred, or restrictions or obligations imposed, by that PMI will no longer have effect; and
- (c) transfer restrictions set out in clause 8.8 (“Transfer restrictions”) applicable to the PMI will be applicable to the Preference Shares delivered in respect of the PMI.

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## **6 Acknowledgements**

### **6.1 Effect of Redemption or Exchange**

Each PMI Holder acknowledges and agrees that, upon Redemption or Exchange of a PMI and payment of the Redemption Price or the delivery of Preference Shares, in both cases, in respect of that PMI, all other rights conferred, or restrictions or obligations imposed, by that PMI will no longer have effect.

### **6.2 Acknowledgements**

Each PMI Holder, by subscribing for or acquiring a PMI, irrevocably:

- (a) agrees to be bound by the terms of the LLC Agreement;
- (b) upon an Exchange, consents to becoming a member of MGL and agrees to be bound by the Preference Share Terms and the constitution of MGL;
- (c) agrees that any Redemption or Exchange must occur on a Redemption Date or Exchange Date (as the case may be) in accordance with these Terms;



- (d) agrees that it is obliged to accept the Preference Shares upon an Exchange of each PMI it holds, notwithstanding anything which might otherwise affect the Exchange including:
  - (i) any change in the financial position of MGL or the Macquarie Group since the Issue Date;
  - (ii) any disruption to the market or potential market for the Preference Shares or to capital markets generally;
  - (iii) it being impossible or impracticable to list the Preference Shares on a Stock Exchange; or
  - (iv) it being impossible or impracticable to sell or otherwise dispose of the Preference Shares;
- (e) agrees to provide to the Issuer any information that the Issuer considers necessary or desirable to give effect to a Redemption or an Exchange;
- (f) acknowledges and agrees that a PMI Holder has:
  - (i) no right to request a Redemption or an Exchange;
  - (ii) to the fullest extent permitted by law, no right to initiate the winding up of the Issuer or any member of the Macquarie Group merely on the grounds that a Distribution or Optional Distribution is not paid; and
  - (iii) no direct right in the Eligible Assets held by the Issuer;
- (g) acknowledges and agrees that the Issuer may deal with the Eligible Assets in any way it considers appropriate;
- (h) 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 or an Optional Distribution on the scheduled Distribution Payment Date or Optional Distribution Payment Date will not constitute a MGL Breach of Undertaking Event or an event of default (however described, determined or defined); and
- (i) agrees, to the extent that the PMI Holder is required to report for U.S. federal income tax purposes, to treat:
  - (i) the PMIs as equity interests in the Issuer;
  - (ii) the Issuer as a partnership; and
  - (iii) any Exchange to be effected under clause 5 ("Exchange") as a call option sold by the PMI Holder to MGL with the delivery of the Preference Shares as the exercise price for that call option,

in each case for U.S. federal income tax purposes unless, in all cases, otherwise required by law.

### 6.3 Power of Attorney

Each PMI Holder irrevocably:

- (a) appoints each of MGL, the Issuer, their respective Authorised Officers and any liquidator, administrator or statutory manager of MGL or the Issuer (each an "Appointed Person") severally to be the attorneys of the PMI Holder and the agents of the PMI Holder with the power in the name and on behalf of the PMI Holder to:
  - (i) do all such acts and things (including, without limitation, signing all documents, instruments or transfers) 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 or an Exchange in accordance with clause 4 ("Redemption") or clause 5 ("Exchange");

- (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 a Redemption or an Exchange.

The power of attorney given in this clause 6.3 (“Power of Attorney”) is given for valuable consideration and to secure the performance by the PMI Holder of the PMI Holder’s obligations under these Terms and is irrevocable and shall survive and not be affected by the subsequent disability or incapacity of the PMI Holder (or, if such PMI 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 6.3 (“Power of Attorney”).

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## 7 Payments to PMI Holders

### 7.1 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 PMI Holder’s aggregate holding of PMIs, any fraction of a cent will be disregarded.

### 7.2 Payments subject to laws

All payments are subject in all cases to:

- (a) compliance by the Issuer with applicable laws, including, without limitation, sections 18-607 and 18-804 of the Delaware Limited Liability Company Act; and
- (b) any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of clause 7.4 (“Deductions”).

No commissions or expenses shall be charged to the PMI Holders in respect of such payments.

### 7.3 Gross up

Without prejudice to clause 7.4(c) (“Deductions”), if a deduction made under clause 7.4 (“Deductions”) is imposed or levied by or on behalf of:

- (i) Australia;
- (ii) the United States;
- (iii) any other jurisdiction in which the Issuer is tax resident at any relevant time (“**Residency Jurisdiction**”); or
- (iv) any jurisdiction in which a Paying Agent is appointed from time to time (“**Paying Agent Jurisdiction**”) and the withholding, tax, duty or levy was imposed or levied because the payment was made by a paying agent in a Paying Agent Jurisdiction,

(each of Australia, the United States, a Residency Jurisdiction and any such Paying Agent Jurisdiction, a “**Relevant Jurisdiction**”), the Issuer shall pay such additional amount (“**Additional Amount**”) to the PMI Holder as will result in the receipt by the PMI Holder, after such deduction, of the amount which would have been received by the PMI Holder in respect of that payment if no such deduction had been required, except that no Additional Amount shall be payable to the extent that:

- (a) the relevant tax is imposed or levied by virtue of a PMI Holder, or a beneficial owner, of the relevant PMIs having some connection (whether present, past or future) with a Relevant Jurisdiction or being or having been engaged in any activity, trade or business in a Relevant Jurisdiction, other than being a holder, or a beneficial owner, of the relevant PMIs;

- (b) the relevant tax is imposed or levied by virtue of a PMI Holder, or a beneficial owner, of the PMIs not complying with any statutory requirements or not having made a declaration of non-residence in, or other lack of connection with, the Relevant Jurisdiction or similar claim for exemption;
- (c) the relevant tax is a United States “back-up” withholding tax;
- (d) the relevant tax is imposed or levied on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC on the taxation of savings income or any other directive implementing the conclusions of the ECOFIN Council meeting of 26-27th November 2000, or any law implementing or complying with, or introduced in order to conform to, any such directive or any agreement entered into by an EU Member State with (i) any other state, or (ii) any relevant dependent or associated territory of any EU Member State providing for measures equivalent to, or the same as, those laid down in any such directive; or
- (e) the relevant PMI is presented for payment by or on behalf of a PMI Holder who would have been able to avoid such withholding or deduction by presenting the PMI to another Paying Agent in an EU Member State which has been appointed by the Issuer at that time.

#### **7.4 Deductions**

- (a) The Issuer may deduct from any payment payable to a PMI Holder the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such payment.
- (b) If any deduction is required, the Issuer must pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law.
- (c) If:
  - (i) a deduction is made;
  - (ii) the amount of the deduction is accounted for by the Issuer to the relevant revenue authority; and
  - (iii) the balance of the amount payable, together with any Additional Amount payable in accordance with clause 7.3 (“Gross up”), has been paid to the PMI Holder,

then the Issuer’s obligation to make the payment to the PMI Holder is taken to have been satisfied in full by the Issuer.

#### **7.5 No set-off**

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

#### **7.6 Payments in respect of PMIs**

Subject to clauses 7.2 (“Payments subject to laws”) and 7.7 (“Payments in respect of a PMI represented by the Global Certificate”) below:

- (a) each payment of a Distribution or an Optional Distribution in respect of a PMI (whether or not represented by the Global Certificate) will be made by cheque and mailed to the PMI Holder of record at such PMI Holder’s address as it appears on the Register on the relevant Record Date; and
- (b) any payment in respect of the Redemption Price of a PMI (whether or not represented by the Global Certificate) will be made by cheque against presentation and surrender of the PMI at the Specified Office of the Registrar or any of the Paying Agents,

provided, however, that a PMI Holder may receive such payment by direct transfer (and will so receive if such payment method is elected by the Issuer) if appropriate direct transfer instructions have been received

by the Registrar or the Paying Agent (as the case may be) at least five Business Days prior to the relevant Payment Date (or such other time as the Registrar or the Paying Agent may accept). PMI Holders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due if the due date is not a Business Day, if the PMI Holder is late in surrendering a PMI (if required to do so) or if a cheque mailed in accordance with this clause 7.6 ("Payments in respect of PMIs") arrives after the due date for payment.

#### **7.7 Payments in respect of a PMI represented by the Global Certificate**

For so long as any of the PMIs are represented by the Global Certificate and the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, the registered holder of the Global Certificate is the only person entitled to receive payments in respect of PMIs represented by the Global Certificate and the Issuer is discharged by payment to, or to the order of, the registered holder of the Global Certificate in respect of each amount so paid. Each of the persons shown in the records of Euroclear or of Clearstream, Luxembourg, as the case may be, as the beneficial holder of a particular nominal amount of PMIs represented by the Global Certificate must look solely to Euroclear or Clearstream, Luxembourg, as the case may be, for that person's share of each payment so made by the Issuer to the registered holder of the Global Certificate.

#### **7.8 Payment to joint PMI Holders**

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

#### **7.9 Time limit for claims**

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

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### **8 Title and transfer of PMIs**

#### **8.1 Title**

Title to a PMI passes when details of the transfer are recorded in the Register.

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

Notwithstanding the provisions relating to PMI Certificates in these Terms, an entry in the Register in relation to a PMI constitutes conclusive evidence that the person so entered is the absolute owner of that PMI, subject to correction for fraud or error.

#### **8.3 Non-recognition of interests**

Except as required by law, the Issuer, the Registrar and any Agents must treat the person entered in the Register in respect of a PMI as the absolute owner of that PMI.

No notice of any trust, encumbrance or other interest in, or claim to, any PMI will be entered in the Register. None of the Issuer, the Registrar or any Agent need take notice of any trust, encumbrance or other interest in, or claim to, any PMI, except as ordered by a court of competent jurisdiction or required by law.

For so long as any of the PMIs is represented by the Global Certificate, and the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg:

- (a) with respect to the payment of amounts in respect of a PMI, the registered holder of the Global Certificate shall be treated by the Issuer as the holder of such nominal amount of such PMIs in accordance with and subject to the terms of the Global Certificate; and
- (b) for each purpose other than that provided in paragraph (a) above, each person (other than Euroclear and/or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear and/or of Clearstream, Luxembourg, as the case may be, as the holder of a particular nominal amount of PMIs (in which regard any certificate or other document issued by any person shall be conclusive and binding for all purposes, save in the case of manifest error) shall be treated by the Issuer as the holder of such nominal amount of such PMIs.

The expression “PMI Holder” shall be construed accordingly.

This clause 8.3 (“Non-recognition of interests”) applies whether or not a payment has been made when scheduled on a PMI and despite any notice of ownership, trust, encumbrance or other interest in the PMI.

#### **8.4 Joint holders**

Where two or more persons are entered in the Register as joint PMI Holders then they are taken to hold the PMI as joint tenants, but the Registrar is not bound to register more than three persons as joint holders of a PMI.

#### **8.5 Transfers of PMIs represented by the Global Certificate**

For so long as any of the PMIs is represented by the Global Certificate, and the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, interests in the Global Certificate will be transferable only in accordance with the rules and procedures for the time being of Euroclear and/or Clearstream, Luxembourg, as the case may be.

Transfers of beneficial interests in PMIs represented by the Global Certificate will be effected by Euroclear and/or Clearstream, Luxembourg, as the case may be, and, in turn, by other participants and, if appropriate, indirect participants in such clearing systems acting on behalf of beneficial transferors and transferees of such interests.

#### **8.6 Transfer of PMIs which are represented by Definitive Certificates**

Where PMIs are represented by Definitive Certificates, transfers of PMIs may be effected by presentation and, where the transfer is of all of the PMIs represented by the Definitive Certificate, surrender of the relevant Definitive Certificate (together with the transfer certificate relating thereto duly completed on behalf of the transferor and the transferee) and together with such material as the Issuer determines, and notifies the PMI Holders from time to time, is necessary or desirable for the Issuer to comply with its obligations under applicable know your customer requirements, at the Specified Office of the Registrar or any Transfer Agent. If satisfied that the transfer should be registered, the Registrar or the Transfer Agent (as the case may be) will:

- (a) enter the transfer in the Register; and
- (b) authenticate and deliver (or procure the authentication and delivery of) a new Definitive Certificate of the same Principal Amount of the PMIs represented by that Definitive Certificate (or the relevant part of the PMIs represented by that Definitive Certificate) transferred.

Delivery will be to the Specified Office of the Registrar or the Transfer Agent (as the case may be) or by uninsured mail (at the risk of the transferee) to such address as the transferee may request. The Registrar or the Transfer Agent (as the case may be) shall issue Definitive Certificates only in integral multiples of US\$100,000 (and subject at all times to a minimum aggregate denomination per Definitive Certificate of an amount in United States dollars equivalent to €50,000).

PMI Holders will not be required to bear the costs and expenses of effecting any registration of transfer as provided above, except:

- (i) for any costs or expenses of delivery other than by regular uninsured mail; and
- (ii) that the Issuer may require the payment of a sum sufficient to cover any stamp or other duty, or other tax or other governmental charge that may be imposed in relation to the registration.

#### **8.7 Transferee takes subject to terms**

A transferee of an interest in a PMI takes subject to these Terms and the LLC Agreement.

## 8.8 Transfer restrictions

At any time, a PMI may be offered, sold or otherwise transferred only if:

- (a) the offer or invitation giving rise to the transfer does not constitute an offer or invitation for which disclosure is required to be made to investors under Parts 6D.2 or 7.9 of the Corporations Act;
- (b) the offer is not to a person who is a “retail client” as defined for the purposes of Chapter 7 of the Corporations Act;
- (c) the transaction is exempt from, and does not require registration under, the US Securities Act; and
- (d) the transfer (and any offer or invitation to treat in connection with it) complies with any applicable law or directive of any jurisdiction affecting such conduct,

provided that until 40 days following the original issuance of the PMIs, the PMIs may only be transferred in an offshore transaction pursuant to and in accordance with Regulation S under the US Securities Act where neither the transferor nor any person acting on the transferor’s behalf knows, or has reason to believe, that the sale has been pre-arranged with a transferee in the United States, or that the transferee is, in the United States or is a U.S. Person (each as defined in Regulation S under the US Securities Act).

## 8.9 Other transfers void

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

## 8.10 Refusal to register

- (a) A transferor of a PMI is deemed to remain a PMI 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 PMI if:
  - (i) such registration would contravene these Terms; or
  - (ii) the Corporations Act or any other law or regulation binding on the Issuer or MGL 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 five Business Days after the date on which notice of the transfer was delivered to it.

## 8.11 No liability to persons other than PMI Holders

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

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## 9 Notices and other communications

### 9.1 Notices to PMI Holders

Subject to clause 9.3 (“Notices while PMIs are represented by the Global Certificate”), all notices and other communications to PMI 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 PMI Holder (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice or communication);
- (b) sent by fax to the fax number of the PMI Holder (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice or communication);

- (c) given by an advertisement in a daily broadsheet newspaper of general circulation in Singapore; or
- (d) given in any other way agreed between the Issuer and the PMI Holders.

## **9.2 Notices to the Issuer**

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

- (a) left at the address, or sent by prepaid post (airmail, if appropriate) to the address, set out below;
- (b) sent by fax to the fax number set out below; or
- (c) given in any other way agreed between the Issuer and the PMI Holders.

For the purposes of this clause 9.2 ("Notices to the Issuer"), the Issuer's address for notices and other communications is:

Name: Macquarie PMI LLC  
Address: 125 West 55<sup>th</sup> Street  
New York  
New York 10019  
United States of America  
Attention: Company Secretary  
Fax: +1 212 231 1555

with a copy to:

Name: Macquarie Group Limited  
Address: No. 1 Martin Place  
Sydney NSW 2000  
Australia  
Attention: Company Secretary  
Fax: +61 2 8232 4330

## **9.3 Notices while PMIs are represented by the Global Certificate**

For so long as any of the PMIs is represented by the Global Certificate, and the Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, there may be substituted for the method of notice provided in clause 9.1 ("Notices to PMI Holders") delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg, as the case may be, for communication by them to the PMI Holders. Any such notice shall be deemed to have been given to the PMI Holders on the day immediately following the day on which the notice was delivered to Euroclear and/or Clearstream, Luxembourg, as the case may be.

## **9.4 Notices while PMIs are listed on a Stock Exchange**

For so long as any PMIs are listed on a Stock Exchange and the rules of that Stock Exchange (or any other relevant authority) so require, any notice given under this clause 9 ("Notices and other communications") will also be published in a leading daily newspaper of general circulation in the financial centre in which that Stock Exchange is located (or any other place or places required by those rules) or, if permitted, on the website of the applicable Stock Exchange (being, as at the Issue Date, the Singapore Exchange Securities Trading Limited at [www.sgx.com](http://www.sgx.com)).

## **9.5 When effective**

Communications take effect from the time they are received or taken to be received under clause 9.6 ("When taken to be received") (whichever happens first) unless a later time is specified.

## **9.6 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 seven days after posting if sent from one country to another);

- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if published in a newspaper, on the first date that publication has been made in that newspaper.

### **9.7 Receipt outside business hours**

Despite clauses 9.5 (“When effective”) and 9.6 (“When taken to be received”), if communications are received or taken to be received under clause 9.6 (“When taken to be received”) after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am in the place of receipt on the next Business Day and take effect from that time unless a later time is specified.

### **9.8 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 does not affect the validity of that act, matter or determination.

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## **10 Amendment of Terms**

### **10.1 Amendment without consent**

Subject to complying with all applicable laws, the Issuer may amend these Terms:

- (a) if the Issuer is of the opinion that the amendment is:
  - (i) of a formal, minor or technical nature;
  - (ii) made to cure any ambiguity or correct any manifest error;
  - (iii) expedient for the purpose of enabling the PMIs 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, 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 prejudicial to the interests of PMI Holders as a whole;
  - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority (other than an amendment made to comply with a prudential standard dealing with capital management promulgated by APRA and applying to MGL); or
  - (v) necessary and appropriate to effect the substitution of the Approved Acquirer as the issuer of the Preference Shares on the Exchange Date in the manner contemplated by these Terms, including, without limitation, amendments and additions to the definitions of “Acquisition Event”, “Macquarie Group”, “Preference Share”, “Regulatory Event” and “Tax Event”; or
- (b) if the Issuer is of the opinion that the amendment is not likely (taken as a whole and in conjunction with all other amendments, if any, to be made contemporaneously with the amendment) to be materially prejudicial to the interests of PMI Holders as a whole.

### **10.2 Amendment with consent**

Without limiting clause 10.1 (“Amendment without consent”), the Issuer may, with APRA’s prior written approval, amend these Terms if the amendment has been approved by an Extraordinary Resolution.

### **10.3 Meanings**

In this clause 10 (“Amendment of Terms”), “**amend**” includes modify, cancel, alter, adjust or add to and “**amendment**” has a corresponding meaning.



#### **10.4 Notice of amendments**

Any amendment of these Terms made in accordance with this clause 10 ("Amendment of Terms") must be promptly notified to PMI Holders.

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### **11 General provisions**

#### **11.1 Discretions**

If MGL resolves to request the Issuer to exercise any discretion conferred on the Issuer by these Terms in a particular manner and MGL notifies the Issuer of that resolution then, subject to the duties of the Issuer and to the maximum extent permitted by law, the Issuer is entitled to act accordingly.

#### **11.2 Voting**

- (a) The LLC Agreement contains provisions for convening meetings of the PMI Holders to consider any matter in connection with the PMI Terms affecting their interests, including any variation of these Terms which requires the consent of PMI Holders.
- (b) PMIs carry no right to participate in any offering of securities by any member of the Macquarie Group.
- (c) Subject to applicable law, PMI Holders are not entitled to be provided with copies of:
  - (i) any notices of general meetings of the Issuer or MGL; or
  - (ii) other documents (including annual reports and financial statements) sent by MGL or the Issuer to holders of ordinary shares or securities (if any) in MGL or the Issuer.
- (d) PMI Holders will have no voting rights in respect of any member of the Macquarie Group.

#### **11.3 Variation**

The LLC Agreement contains provisions for amending the LLC Agreement with the consent of PMI Holders and, in certain circumstances, without the consent of PMI Holders.

#### **11.4 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 PMIs on a Stock Exchange.

#### **11.5 On-market buy-backs**

Subject to APRA's prior written approval, the Issuer or any member of the Macquarie Group may buy-back or purchase PMIs at any time and at any price by an on-market buy-back or otherwise.

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### **12 Rights on winding up**

Subject to clause 5 ("Exchange"), in the winding up or dissolution of the Issuer, a PMI Holder is entitled to payment in cash of an amount equal to the Liquidation Amount out of the surplus (if any) available for distribution to members of the Issuer, but no further or other right to participate in the assets of the Issuer or a return of capital in the winding up or dissolution.

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

#### **13.1 Governing law**

The PMIs, including these Terms are governed by, and shall be construed in accordance with, the laws of the State of Delaware, United States of America.

## 13.2 Jurisdiction

The Issuer submits, and each PMI Holder is taken to have submitted, to the non-exclusive jurisdiction of the courts of the State of Delaware and courts of appeal from them. To the fullest extent permitted by law, the Issuer waives, and each PMI Holder is taken to have waived, any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

## 13.3 Serving documents

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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## 14 Interpretation and Definitions

### 14.1 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 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, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) if an event under these Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (g) a reference to United States Dollars, dollars, US\$ or cents is a reference to the lawful currency of the United States of America;
- (h) a reference to Euro or € is a reference to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended;
- (i) a reference to a time of day is a reference to Sydney, Australia time;
- (j) calculations, elections and determinations made by the Issuer or MGL under these Terms are binding on PMI Holders in the absence of manifest error or fraud;
- (k) a reference to a party to an agreement, deed or other instrument includes a reference to a replacement or substitute of the party according to that agreement, deed or instrument;
- (l) any references to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer or MGL only if the Issuer or MGL is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;
- (m) any requirement for APRA's consent or approval will apply only if APRA requires that such consent or approval be given at the relevant time;
- (n) any requirements for the prior approval or consent of APRA for a particular course of action to be taken by the Issuer or MGL do not imply that APRA has given its consent or approval to the particular action as of the Issue Date;

- (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” and “on-market buy-back” when used in these Terms have the meaning given in the Corporations Act; and
- (q) 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.

## 14.2 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 Ordinary Shares and the offer is, or becomes, unconditional and as a result of the bid the bidder has a relevant interest in more than 50% of the Ordinary Shares on issue; or
- (b) a court approves a scheme of arrangement which, when implemented, will result in a person having a relevant interest in more than 50% of the Ordinary Shares,

(each an “**event**”), other than as part of a solvent reorganisation 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 are, or will be, substantially the same, and in substantially the same proportions, as the persons who held relevant interests in the Ordinary Shares immediately prior to the event where:

- (a) the event is initiated by the Directors or would not, in MGL’s reasonable opinion, otherwise materially prejudice the interests of PMI Holders; and
- (b) the Approved Acquirer agrees for the benefit of PMI Holders to:
  - (i) issue preferred equity capital in all circumstances where MGL would have otherwise been obliged to issue Preference Shares as contemplated by these Terms;
  - (ii) use all reasonable endeavours to ensure continued quotation of the PMIs on a Stock Exchange; and
  - (iii) comply with the obligations and restrictions as apply to MGL in connection with the PMIs (with all necessary and appropriate modifications);

**Additional Amount** has the meaning given in clause 7.3 (“Gross up”);

**Agency Agreement** means the agency agreement between the Issuer and the Agents to be dated on or about 29 November 2010;

**Agents** means any or all (as the context requires) of the Registrar, a Paying Agent, Transfer Agent or Calculation Agent;

**Appointed Person** has the meaning given in clause 6.3 (“Power of Attorney”);

**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;

**APRA Payment Condition** means, in respect of a Distribution or Optional Distribution, any one of the following:

- (a) the payment of the Distribution or Optional Distribution will, unless APRA otherwise agrees, result in MGL not complying with APRA’s capital adequacy guidelines as applicable to MGL from time to time;

- (b) MGL becoming, or being likely to become, insolvent within the meaning of section 95A of the Corporations Act or the payment resulting in any member of the Macquarie Group becoming, or being likely to become, insolvent for the purposes of any applicable law;
- (c) MGL having Distributable Profits less than the amount of the relevant Distribution or Optional Distribution; or
- (d) APRA objecting to the payment of the Distribution or Optional Distribution;

**ASX** means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires;

**ASX Listing Rules** means the listing rules of the ASX;

**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 of Australia;

**Business Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Sydney, Australia, London, England, New York, United States of America, Singapore and such other place in which the PMIs may be listed from time to time (not being a Saturday, Sunday or public holiday in any such place);

**Calculation Agent** means Deutsche Bank AG, Hong Kong Branch as calculation agent or any successor calculation agent;

**Capital Event** means, unless APRA otherwise determines that the event is not a Capital Event:

- (a) APRA issues a written directive under section 11CA of the Banking Act for MGL to increase its capital;
- (b) proceedings are commenced, or an effective resolution is passed, for the winding up of MGL (other than a solvent reconstruction approved by APRA); or
- (c) the Issuer is wound up or dissolved or proceedings are commenced, or an effective resolution is passed, for the winding up or dissolution of, the Issuer;

**Certification Event** means:

- (a) the Issuer has or will become subject to adverse tax consequences which would not be suffered were the PMIs in the form of Definitive Certificates instead of in the form of the Global Certificate; or
- (b) the Issuer has been notified that both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or have announced an intention permanently to cease business or have in fact done so and, in any such case, no successor or alternative clearing system satisfactory to the Issuer is available;

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

**Convertible Notes** means the US\$400,000,000 notes convertible into Preference Shares and to be issued by MGL under the convertible note deed poll to be entered into on or about 29 November 2010;

**Corporations Act** means the Corporations Act 2001 of Australia;

**Definitive Certificate** has the meaning given in clause 2.2 ("Entries in the Register and PMI Certificates");

**Delaware Limited Liability Company Act** means the Delaware Limited Liability Company Act *6 Del.C. §18-101 et seq*;

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

**Distributable Profits** means:

- (a) the consolidated net profits after tax of the Macquarie Group which are attributable to the holders of the Ordinary Shares (determined before any interest, Distributions or other distributions paid or payable by a member of the Macquarie Group on any instrument which constitutes Eligible Hybrid Capital for the Non-ADI Group, and for the avoidance of doubt, before the deduction of any amounts included in (b)) for the immediately preceding two half yearly financial periods for which results have been publicly announced for MGL; less
- (b) the aggregate amount of any interest, Distributions or other distributions paid or payable by a member of the Macquarie Group (but not including any interest, Distributions or other distributions paid or payable to a member of the Macquarie Group) on any:
  - (i) ordinary share capital of the Macquarie Group, determined, declared or otherwise resolved to be paid in relation to the corresponding two half yearly financial periods; and
  - (ii) other instruments which constitute Eligible Hybrid Capital for the Non-ADI Group in the 12 months to and including the relevant Distribution Payment Date,but excluding any Distribution payable in relation to the PMIs on the relevant Distribution Payment Date;

**Distribution** has the meaning given in clause 3.1 ("Distributions");

**Distribution Payment Date** has the meaning given in clause 3.3 ("Distribution Payment Dates");

**Distribution Period** has the meaning given in clause 3.1 ("Distributions");

**Distribution Rate** has the meaning given in clause 3.1 ("Distributions");

**Dividend Restriction** has the meaning given in clause 3.8 ("Dividend Restriction");

**Early Redemption Event** has the meaning given in clause 4.2 ("Early Redemption Event");

**Eligible Assets** has the meaning given in the LLC Agreement. As at the Issue Date, the Eligible Assets comprise the Subordinated Notes and the Convertible Notes;

**Eligible Capital** has the meaning given to that term under the NOHC Authority or the equivalent concept in any subsequent or replacement authority given by APRA in favour of MGL or prudential standard promulgated by APRA and applying to MGL;

**Eligible Hybrid Capital for the Non-ADI Group** means hybrid capital that meets the conditions in Annexure 2 to 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 MGL or prudential standard promulgated by APRA and applying to MGL;

**EU Member State** means, at any time, a state that is a member of the European Union at that time;

**Exchange** means, in respect of a PMI, the redemption of that PMI in exchange for a Preference Share in accordance with and subject to clause 5 ("Exchange") and "**Exchangeable**" and "**Exchanged**" have the corresponding meanings;

**Exchange Date** means, in respect of a PMI, a date set out in clause 5.4 ("Exchange Date") on which a PMI is to be Exchanged in accordance with these Terms;

**Exchanged Proportion** has the meaning given in clause 3.2 ("Effect of Exchange on Distributions and Unpaid Distributions");

**Extraordinary Resolution** means:

- (a) the approval of a resolution passed at a meeting of PMI Holders by the affirmative vote of at least 75% of the votes cast by PMI Holders entitled to vote at that meeting on the resolution; or
- (b) the consent in writing of PMI Holders holding at least 75% of the PMIs then on issue;

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

**Global Certificate** has the meaning given in clause 2.2 (“Entries in the Register and PMI Certificates”);

**Guarantee** means the guarantee executed by MGL on or about 29 November 2010 and entitled “PMI Guarantee Deed Poll”;

**Implementation Deed** means the deed entitled “Implementation Deed” dated on or about 29 November 2010 and between MGL and the Issuer;

**Issue Date** means the date on which the PMIs are issued;

**Issuer** means Macquarie PMI LLC, a limited liability company formed under the laws of the State of Delaware, United States of America;

**Liquidation Amount** means, in respect of a PMI, an amount equal to the Principal Amount of that PMI together with any Distribution that was scheduled to be paid on the next Distribution Payment Date in respect of the PMI for the then current Distribution Period, but calculated only for the period from (and including) the previous Distribution Payment Date (or, in the case of the first Distribution Period, the Issue Date) and ending on (but excluding) the date on which the winding up or dissolution commenced;

**LLC Agreement** means the limited liability company agreement relating to Macquarie PMI LLC dated on or about 22 November 2010;

**Macquarie Group** means MGL and each entity it Controls;

**MGL** means Macquarie Group Limited (ABN 94 122 169 279), a company incorporated under the laws of Australia;

**MGL Breach Notice** means MGL has failed to comply with any of its undertakings in the Implementation Deed or the MGL Deed of Undertaking (as applicable) and, following such failure, a notice is given to MGL:

- (a) by the Issuer under, and in accordance with, the Implementation Deed; or
- (b) by PMI Holders whose PMIs have an aggregate Principal Amount of not less than 10% of the aggregate Principal Amount of all outstanding PMIs under, and in accordance with, the MGL Deed of Undertaking;

**MGL Breach of Undertaking Event** means MGL receives a MGL Breach Notice that is not being contested by MGL in good faith;

**MGL Deed of Undertaking** means the deed entitled “Deed of Undertaking” dated on or about 29 November 2010 and given by MGL in favour of PMI Holders;

**MGL Junior Securities** means:

- (a) the Ordinary Shares;
- (b) any preference shares, securities or capital instruments issued by MGL and ranking:
  - (i) where paragraph (a) of the definition of Dividend Restriction applies, for the payment of interest, dividends or distributions or other payments junior to the Preference Shares in respect of the payment of dividends; and

- (ii) where paragraph (b) of the definition of Dividend Restriction applies, for a return of capital in a winding up of MGL junior to the Preference Shares for such return of capital; and
  - (c) any securities or other capital instruments issued by a member of the Macquarie Group or any other entity which, at the option of such issuer or MGL, are convertible or exchangeable into:
    - (i) Ordinary Shares;
    - (ii) where paragraph (a) of the definition of Dividend Restriction applies, any other junior ranking preference shares, securities or capital instruments referred to in paragraph (b)(i); or
    - (iii) where paragraph (b) of the definition of Dividend Restriction applies, any other junior ranking preference shares, securities or capital instruments referred to in paragraph (b)(ii),
- and, in any such case, which are included, or are eligible for inclusion, in Eligible Capital,

but in all circumstances other than any securities or other capital instruments issued by Macquarie Bank Limited (ABN 46 008 583 542) or any entity it Controls;

**MGL Pari Passu Securities** means:

- (a) the Preference Shares;
- (b) the instruments described as the “A\$600,000,000 Macquarie Convertible Preference Securities” issued on 8 July 2008;
- (c) any other preference shares, securities or capital instruments issued by MGL and ranking:
  - (i) where paragraph (a) of the definition of Dividend Restriction applies, for the payment of interest, dividends or distributions or other payments *pari passu* with the Preference Shares in respect of the payment of dividends; and
  - (ii) where paragraph (b) of the definition of Dividend Restriction applies, for a return of capital in a winding up of MGL *pari passu* with the Preference Shares for such return of capital; and
- (d) any securities or other capital instruments issued by a member of the Macquarie Group or any other entity which, at the option of such issuer or MGL, are convertible or exchangeable into:
  - (i) the Preference Shares;
  - (ii) where paragraph (a) of the definition of Dividend Restriction applies, any other *pari passu* preference shares, securities or capital instruments referred to in paragraph (c)(i); or
  - (iii) where paragraph (b) of the definition of Dividend Restriction applies, any other *pari passu* preference shares, securities or capital instruments referred to in paragraph (c)(ii),

and, in any such case, which are included, or are eligible for inclusion, in Eligible Capital,

but in all circumstances other than any securities or other capital instruments issued by Macquarie Bank Limited (ABN 46 008 583 542) or any entity it Controls;

**NOHC Authority** means the authority to be a non-operating holding company of an authorised deposit-taking institution granted by APRA in favour of MGL and taking effect on 5 September 2007, as amended from time to time;

**Optional Distribution** has the meaning given in clause 3.5 (“Optional Distributions”);

**Optional Distribution Payment Date** has the meaning given in clause 3.5 (“Optional Distributions”);

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

**Paying Agent** means Deutsche Bank AG, Hong Kong Branch as principal paying agent or any successor principal paying agent appointed in accordance with the Agency Agreement;

**Paying Agent Jurisdiction** has the meaning given in clause 7.3 (“Gross up”);

**Payment Date** means the relevant Distribution Payment Date, Redemption Date or any other date on which the Issuer is to make a payment in respect of the PMIs;

**PMI Certificate** has the meaning given in clause 2.2 (“Entries in the Register and PMI Certificates”);

**PMI Holder** means a person Registered as the holder of a PMI;

**PMIs** means the limited liability company interests issued by the Issuer in accordance with the LLC Agreement;

**Preference Share** means a non-cumulative, perpetual, redeemable preference share in the capital of MGL which confers on the relevant holder:

- (a) a right to distributions payable from time to time out of the profits of MGL at the discretion of the Directors and otherwise equivalent to the right to Distributions which would have been scheduled to be payable on the PMIs at that time had the Exchange not occurred (including to the full amount of the Distribution in respect of the Distribution Period in which the Exchange Date occurs), such distribution being payable in priority to distributions on Ordinary Shares;
- (b) a right to a return of capital in a winding up of MGL in an amount equal to the Liquidation Amount (as defined in the Preference Share Terms) of the Preference Share, out of the surplus, if any, available to shareholders in priority to holders of Ordinary Shares;
- (c) no further or other right to participate in the assets of MGL or a return of capital in the event of a winding up; and
- (d) voting rights as permitted by ASX Listing Rules,

in accordance with the Preference Share Terms;

**Preference Share Terms** means the terms of issue of the Preference Shares;

**Principal Amount** means, in respect of a PMI, the principal amount of its denomination;

**Record Date** means for payment of:

- (a) a Distribution:
  - (i) the date which is seven Business Days before the Distribution Payment Date for that Distribution; or
  - (ii) such other date as is determined by the Issuer in its absolute discretion and communicated to the relevant Stock Exchange not less than seven Business Days before the specified Record Date; and
- (b) an Optional Distribution, the date prior to the payment of the Optional Distribution that is determined by the Issuer,

or in either case such other date as may be required by, or agreed with, the relevant Stock Exchange;

**Redemption** means, in respect of a PMI, a payment or return of capital in respect of, or a buy-back, cancellation, redemption or repurchase of, that PMI in accordance with and subject to clause 4 (“Redemption”) and “Redeem”, “Redeemable” and “Redeemed” have the corresponding meaning;

**Redemption Date** means, in respect of a PMI, the date determined by the Issuer to be the date on which that PMI is to be Redeemed in accordance with these Terms;

**Redemption Notice** has the meaning given in clause 4.3 (“Notice of Redemption”);



**Redemption Price** has the meaning given to it in clause 4.4 (“Redemption Price”);

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

**Registered** means recorded in the Register;

**Registrar** means the Issuer or any other person appointed by the Issuer to maintain the Register;

**Regulatory Event** means any one of the following events:

- (a) there is an introduction of, an amendment or clarification to or change in (or announcement of a prospective introduction of, amendment or clarification to or change in) a law or regulation of:
  - (i) the Commonwealth of Australia or any State or Territory thereof or any directive, order, standard, requirement, guideline or statement of APRA (whether or not having the force of law); or
  - (ii) the United States or any other jurisdiction through which the PMIs are issued (a “**Relevant Foreign Jurisdiction**”) or any political subdivision thereof or any direction, order, standard, regulatory guideline or statement of a prudential regulatory body in the Relevant Foreign Jurisdiction,(each a “**Change in Law**”);
- (b) MGL receives an opinion of nationally recognised legal counsel in Australia or the Relevant Foreign Jurisdiction experienced in such matters as to the effect of a Change in Law;
- (c) there is any statement, notification or advice by APRA, or a prudential regulatory body in a Relevant Foreign Jurisdiction, or a decision by any court or other authority interpreting, applying or administering any law, regulation, directive, order, standard, requirement, guideline or statement; or
- (d) there is an introduction of, an amendment or clarification to or change in (or announcement of a future introduction of, amendment or clarification to or change in) any applicable accounting standards, regulations or generally accepted practice that results in a change to the accounting treatment of the PMIs as ‘liabilities’,

in each case, on or after the Issue Date and to the effect:

- (i) that:
  - (A) all of the PMIs are not eligible for inclusion as Eligible Hybrid Capital for the Non-ADI Group (except where such non-qualification is only as a result of any applicable limitation on the amount or composition of MGL’s Eligible Hybrid Capital for the Non-ADI Group); and
  - (B) APRA has confirmed to MGL in writing that all of the PMIs are not eligible to qualify as Eligible Hybrid Capital for the Non-ADI Group;
- (ii) that additional requirements (including regulatory, capital, financial, accounting, operational or administrative requirements) would be imposed on the Issuer or MGL which the Directors determine, in their absolute discretion, might have a material adverse effect on the Issuer or MGL (including if a PMI is no longer accounted for as a ‘liability’) or otherwise be unacceptable; or
- (iii) that to have any of the PMIs outstanding would be unlawful or impractical or that the Issuer or MGL would be exposed to a more than *de minimis* increase in its costs in connection with those PMIs;

**Relevant Jurisdiction** has the meaning given in clause 7.3 (“Gross up”);

**Residency Jurisdiction** has the meaning given in clause 7.3 (“Gross up”);

**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 PMI Holders under these Terms;

**Specified Office** of a person means the office specified for that person as notified to the PMI Holders from time to time and, if none is specified, that person's registered office;

**Stock Exchange** means the Singapore Exchange Securities Trading Limited or such other stock or securities exchange on which the PMIs may be listed from time to time;

**Subordinated Notes** means the US\$400,000,000 fixed rate subordinated notes to be issued by Macquarie Group Investments (UK) No.2 Limited constituted by a subordinated note deed poll to be entered into on or about 29 November 2010;

**Tax Act** means the Income Tax Assessment Act 1936 of Australia or the Income Tax Assessment Act 1997 of Australia, as the context requires;

**Tax Event** means that, on or after the Issue Date, MGL receives an opinion of nationally recognised legal counsel or other nationally recognised tax adviser in Australia, the United Kingdom, the United States or any other jurisdiction (each a "**Relevant Tax Event Jurisdiction**") experienced in such matters, that there is more than an insubstantial risk which the Directors determine, at their absolute discretion, to be unacceptable that, as a result of a Tax Law Change:

- (a) Distributions, Optional Distributions or the Redemption Price are, or will be, subject to an amount of withholding or deduction in respect of any taxes, duties or other governmental charges for which MGL or the Issuer must pay additional amounts;
- (b) Distributions or Optional Distributions are, or will be, treated as frankable distributions, as defined in Division 202 of the Tax Act for Australian tax purposes;
- (c) the Subordinated Notes would be treated other than as debt of Macquarie Group Investments (UK) No.2 Limited for United States federal income tax purposes or payments of interest on the Subordinated Notes are not, or will not be, deductible, in whole or in part, for United Kingdom corporation tax purposes; or
- (d) the Issuer, MGL or any member of the Macquarie Group is, or will be, subject to more than a *de minimis* amount of taxes, assessments or other governmental charges in connection with the PMIs, the Subordinated Notes, the Convertible Notes or any other Eligible Asset not otherwise covered by any of paragraphs (a) to (c) inclusive;

**Tax Law Change** means:

- (a) an amendment to, change in or announced prospective change in, any laws or regulations in a Relevant Tax Event Jurisdiction (as defined in the definition of Tax Event);
- (b) a judicial decision interpreting, applying or clarifying any laws or regulations in a Relevant Tax Event Jurisdiction;
- (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; or
- (d) a challenge asserted or threatened in connection with an audit of any member of the Macquarie Group, or a challenge asserted or threatened in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the PMIs or that has issued debt on terms that are substantially similar to those of the Subordinated Notes,

which amendment, change or prospective change is announced, or which action or clarification or challenge occurs, on or after the Issue Date;

**Terms** means these terms and conditions;

**Transfer Agent** means the Registrar or any successor transfer agent or principal transfer agent appointed in accordance with the Agency Agreement;

**Unpaid Distribution** has the meaning given in clause 3.5(a) (“Optional Distributions”); and

**US Securities Act** means the United States Securities Act of 1933, as amended.

## TERMS AND CONDITIONS OF THE PREFERENCE SHARES

*The following are the terms and conditions of the Preference Shares in the form in which they will be issued upon an Exchange and in accordance with clause 3.5 of the Implementation Deed. Words and phrases set out in this section have the meanings given, and are interpreted in accordance with, the Preference Share Terms.*

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### 1 Issue

Each Preference Share will be issued with an issue price of US\$1,000 (“**Issue Price**”).

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### 2 Form and ranking

#### 2.1 Form

- (a) Each Preference Share is a preferred share in MGL conferring the rights set out in these Preference Share Terms which constitute the terms of issue for the purposes of schedule 1 of the Constitution.
- (b) Preference Shares are perpetual instruments, Redeemable, subject to the prior written consent of APRA, by MGL in accordance with these Preference Share Terms.
- (c) Preference Shares are not Redeemable at the option of a Holder.
- (d) Preference Shares do not represent protected accounts of any member of the Macquarie Group for the purposes of section 13A(3) of the Banking Act or any similar law of any jurisdiction nor do they represent deposits with, or deposit liabilities of, any member of the Macquarie Group for any other purposes of the Banking Act and they are not insured by the U.S. Federal Deposit Insurance Corporation.
- (e) Except for a claim made on MGL in accordance with these Preference Share Terms, a Holder has no claim on any member of the Macquarie Group for payment of any amount in respect of any Preference Shares held by that Holder.
- (f) Preference Shares are not obligations of the Australian Government or any other government and, in particular, are not guaranteed or insured by the Commonwealth of Australia or any other government, government agency or compensation scheme in any jurisdiction.

#### 2.2 Ranking

Except to the extent mandatorily provided by law, each Preference Share ranks for payment, and ranks in a winding up of MGL:

- (a) equally with all other Preference Shares in all respects;
- (b) equally with each other instrument that MGL may issue or has issued which is on terms that are expressed to or which will rank equally with the Preference Shares; and
- (c) senior to the Ordinary Shares,

and the rights of a Holder are, in respect of that Preference Share, subordinate to all Senior Creditors of MGL.

#### 2.3 Registered Global Preference Shares

- (a) Subject to clause 2.4(d) (“Registered Definitive Preference Shares”) below, Preference Shares are issued in registered form and will be initially registered in the name of a nominee of a common depositary for Euroclear and Clearstream, Luxembourg (the “**Global Holder**”). Such Preference Shares (the “**Registered Global Preference Shares**”) will be represented by a global certificate in registered form (the “**Registered Global Preference Share Certificate**”) which will be deposited with the common depositary.

- (b) The Registered Global Preference Share Certificate shall be printed or typed in the form determined by MGL from time to time and may be facsimiles and shall be deemed to incorporate these Preference Share Terms in full by reference unless not permitted by the Stock Exchange on which the Preference Shares are listed or quoted, or the clearing system through which the Preference Shares are cleared and settled, in which case these Preference Shares Terms shall be endorsed on the Registered Global Preference Share Certificate.
- (c) The Registered Global Preference Share Certificate shall be signed manually or in facsimile by or on behalf of MGL, and MGL shall procure that the Registered Global Preference Share Certificate shall be authenticated by or on behalf of the Registrar.

## 2.4 Registered Definitive Preference Shares

- (a) On the occurrence of a Certification Event, all (but not some only) of the interests in the Registered Global Preference Shares will be exchangeable (in whole but not in part and in the manner set out in these Preference Share Terms) for Preference Shares registered in the names of persons then holding interests in the Registered Global Preference Shares (and their transferees) (the **“Registered Definitive Preference Shares”**) as provided in this clause 2.4 and such Preference Shares will be represented by definitive certificates in registered form (**“Registered Definitive Preference Share Certificates”**).
- (b) If the Registered Global Preference Shares are exchangeable following the occurrence of a Certification Event:
  - (i) MGL must notify Holders of the occurrence of the Certification Event; and
  - (ii) MGL may give notice to the Registrar requesting exchange and, in the event of the occurrence of a Certification Event as described in paragraph (b) of the definition of Certification Event, Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in a Registered Global Preference Share) may also give notice to the Registrar requesting exchange. Any such exchange shall occur not later than 10 days after the date of receipt of the first relevant notice by the Registrar.
- (c) If MGL gives notice to the Registrar requesting exchange or Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in the Registered Global Preference Share) gives notice to the Registrar requesting exchange (in each case as permitted by clause 2.4(b)(ii) above, MGL shall, at its sole cost and expense within the time permitted by clause 2.4(b)(ii), issue Registered Definitive Preference Shares relating to the Preference Shares represented by the Registered Global Preference Share Certificates in exchange for the whole outstanding interest in each of the Registered Global Preference Shares.
- (d) If:
  - (i) the Preference Shares are not accepted for clearance through Euroclear and Clearstream, Luxembourg; or
  - (ii) the PMIs are in the form of Definitive Certificates (as defined in the PMI Terms) when the Preference Shares are issued,

the Preference Shares will be initially issued in the form of Registered Definitive Preference Shares and will be represented by Registered Definitive Preference Share Certificates.
- (e) The Registered Definitive Preference Share Certificates shall be issued in the form determined by MGL from time to time, shall be serially numbered, shall be endorsed with the Preference Share Terms and a form of transfer and, if listed or quoted, shall be security printed in accordance with the requirements (if any) from time to time of the relevant Stock Exchange.
- (f) The Registered Definitive Preference Share Certificates shall be signed manually or in facsimile by or on behalf of MGL, and MGL shall procure that each Registered Definitive Preference Share Certificate shall be authenticated by or on behalf of the Registrar.

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### 3 Dividends

#### 3.1 Dividends

Subject to these Preference Share Terms, on each Dividend Payment Date MGL will pay to each Holder a dividend (“**Dividend**”) in respect of each Preference Share held by that Holder for the period commencing on (and including) the preceding Dividend Payment Date (or, in the case of the first Dividend Period, the Issue Date) and ending on (but excluding) that Dividend Payment Date or a Redemption Date (“**Dividend Period**”) calculated according to the following formula:

- (a) unless either of paragraphs (b) or (c) below apply, for each Dividend Period ending on (but excluding) a Dividend Payment Date or any other date that would have been a scheduled Dividend Payment Date but for such date also being a Redemption Date:

$$\text{Dividend} = \frac{\text{Dividend Rate} \times \text{US\$1,000}}{2}$$

provided that:

- (b) for the first Dividend Period, the relevant Dividend will be calculated according to the following formula:

$$\text{Dividend} = \frac{\text{Dividend Rate} \times \text{US\$1,000} \times \text{N}}{360} + \text{D}$$

- (c) for each Dividend Period that ends on a date that is not also a scheduled Dividend Payment Date, the relevant Dividend will be calculated according to the following formula:

$$\text{Dividend} = \frac{\text{Dividend Rate} \times \text{US\$1,000} \times \text{N}}{360}$$

where, for the purposes of this clause 3.1 (“Dividends”):

**D** means an amount representing the Exchanged Proportion of the amount of any Distribution that was scheduled, but for the Exchange of any PMI giving rise to the issue of the Preference Share to the holder of the PMI, to be paid in respect of that PMI for that Distribution Period up to (but excluding) the relevant Exchange Date, but that was not paid. Capitalised terms used in this paragraph which are not defined in these Preference Share Terms have the same meaning as in the PMI Terms;

**Dividend Rate** means 8.375% (expressed as a percentage per annum);

**Exchanged Proportion** in respect of a PMI is equal to:

$$\frac{\text{US\$1,000}}{\text{Principal Amount}}$$

**N** means:

- (i) in respect of the first Dividend Period, the number of days from (and including) the Issue Date to (but excluding) the Dividend Payment Date; or
- (ii) in respect of each Redemption Date that is not also a scheduled Dividend Payment Date, the number of days from (and including) the preceding Dividend Payment Date to (but excluding) that Redemption Date.

#### 3.2 Dividend Payment Dates

Subject to clause 3.3 (“Dividend payment tests”), Dividends will be paid on each Preference Share that has not been Redeemed semi-annually in arrear on each six calendar month anniversary of the issue date of the PMIs in each year commencing on the first such date to fall after the Issue Date and until (but excluding) the Redemption Date for that Preference Share, each a “**Dividend Payment Date**”.

If a Dividend Payment Date is a day which is not a Business Day, then that day remains the Dividend Payment Date and the Dividend scheduled to be paid on that day will be paid on the next day which is a Business Day, unless that day falls in the next calendar month in which case that date is brought forward to the first preceding day that is a Business Day, in any case, without any adjustment of the amount of the Dividend or any other payment in respect of the delay in payment.

### 3.3 Dividend payment tests

The payment of all or any part of a Dividend or an Optional Dividend is subject to:

- (a) MGL, in its absolute discretion, having:
  - (i) determined that the payment of that Dividend or Optional Dividend:
    - (A) is fair and reasonable to its shareholders as a whole; and
    - (B) does not materially prejudice its ability to pay its creditors; and
  - (ii) exercised its discretion to declare, determine or otherwise resolve to pay that Dividend or Optional Dividend;
- (b) MGL having sums available for distribution among the Holders as Dividends in accordance with the Corporations Act and not otherwise being precluded from paying that Dividend or Optional Dividend by the Corporations Act;
- (c) an equivalent provision or concept to the Dividend Restriction not having been caused to apply in respect of any securities or other capital instruments issued by a member of the Macquarie Group and *prima facie* applying to restrict payments of Dividends or Optional Dividends under the Preference Shares; and
- (d) there being no APRA Payment Condition subsisting on the relevant Dividend Payment Date or Optional Dividend Payment Date.

MGL must provide the Holders with written notice that a Dividend will not be, or has not been, paid no later than five Business Days after the relevant Dividend Payment Date on which such Dividend was scheduled but not paid. Once given, such notice will constitute notice to the Holders that Dividends scheduled to be paid on any succeeding Dividend Payment Date will not be paid and shall apply until such time as MGL provides further notice that Dividends will recommence to be paid.

### 3.4 Optional Dividends

- (a) Subject to clause 3.3 (“Dividend payment tests”) and clause 3.5 (“Non-payment of Dividends and Optional Dividends”), MGL, in its sole discretion but with APRA’s prior written approval, may determine a Dividend (“**Optional Dividend**”) to be payable by MGL on any date (“**Optional Dividend Payment Date**”) in an amount less than or equal to the aggregate amount of any Dividends not paid on a Preference Share (that unpaid amount, an “**Unpaid Dividend**”) on a relevant Dividend Payment Date because of clause 3.3 (“Dividend payment tests”). For the avoidance of doubt, Optional Dividends will not constitute any amounts of interest in respect of Unpaid Dividends.
- (b) In order to make an Optional Dividend in accordance with these Preference Share Terms, MGL must provide the Holders with written notice of the Optional Dividend at least five Business Days before the relevant Optional Dividend Payment Date.

### 3.5 Non-payment of Dividends and Optional Dividends

- (a) Dividends and Optional Dividends are non-cumulative. MGL has no liability to pay any Unpaid Dividend and, notwithstanding the ability of MGL to make an Optional Dividend in accordance with clause 3.4 (“Optional Dividends”), no Holder has any claim against any person (including in a winding up of MGL) in respect of such Unpaid Dividend.
- (b) The Exchanged Proportion of amounts of any Unpaid Distributions that have not been paid on or before the relevant Exchange Date in respect of any PMI that has been Exchanged for such number of Preference Shares as have an aggregate Issue Price equal to the aggregate Principal

Amount of PMIs so Exchanged will constitute equivalent amounts of Unpaid Dividends under those relevant Preference Shares, provided that:

- (i) capitalised terms used in this paragraph which are not defined in these Preference Share Terms have the same meaning as in the PMI Terms; and
  - (ii) in respect of any Unpaid Dividends constituted in respect of the Preference Shares under this paragraph (b), references in these Preference Share Terms to calculations, periods or dates for those Unpaid Dividends shall refer to the equivalent provisions as though calculated or determined *mutatis mutandis* under the PMI Terms.
- (c) If all or any part of an Optional Dividend is declared, determined or otherwise resolved to be paid and is not paid on the relevant Optional Dividend Payment Date because of clause 3.3 ("Dividend payment tests") or otherwise, the Optional Dividend does not become an Unpaid Dividend and MGL has no liability to pay the Optional Dividend and no Holder has any claim against any person (including in a winding up of MGL) in respect of such Optional Dividend.
  - (d) The non-payment of a Dividend (or any part thereof) because of clause 3.3 ("Dividend payment tests"), or the non-payment of an Optional Dividend (or any part thereof), does not constitute an event of default.
  - (e) No interest accrues on any Unpaid Dividend or Optional Dividend and no Holder has any claim or entitlement in respect of interest on any Unpaid Dividend or Optional Dividend.

### 3.6 Record Dates

- (a) A Dividend is payable on a Dividend Payment Date only to those persons Registered as Holders on the Record Date for that Dividend.
- (b) An Optional Dividend is payable on an Optional Dividend Payment Date only to those persons Registered as Holders on the Record Date for that Optional Dividend.

### 3.7 Dividend Restriction

If MGL fails to pay a Dividend in full within 20 Business Days of the relevant Dividend Payment Date for that Dividend, a Dividend Restriction shall apply until the first of the following occurs:

- (a) MGL makes an Optional Dividend equal to the amount of any Unpaid Dividend attributable to the two Dividend Periods immediately preceding the Dividend Period in which the relevant Optional Dividend Payment Date occurs;
- (b) MGL pays in full each Dividend scheduled to be paid on two successive Dividend Payment Dates both occurring after the date on which the Dividend Restriction first applies; or
- (c) all Preference Shares have been Redeemed.

**"Dividend Restriction"** means that no member of the Macquarie Group will, without the prior approval of an Extraordinary Resolution:

- (a) pay any interest, dividend or other distribution, or make any other payment, in respect of any MGL Pari Passu Securities or MGL Junior Securities; or
- (b) redeem, reduce, cancel, buy-back or repurchase any MGL Pari Passu Securities or MGL Junior Securities.

The Dividend Restriction does not apply to:

- (a) payments on MGL Pari Passu Securities made pro-rata with a payment on the Preference Shares;
- (b) a repurchase, redemption or other acquisition of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of Macquarie Group in connection with:



- (i) 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) a dividend reinvestment plan or shareholder share purchase plan; or
  - (iii) the issuance of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of MGL, or securities convertible into or exercisable for such shares, as consideration in an acquisition transaction entered into prior to the date on which the Dividend Restriction first applies;
- (c) an exchange, redemption or conversion of:
- (i) any class or series of MGL Pari Passu Securities or any shares of a subsidiary of MGL for any class or series of MGL Pari Passu Securities or MGL Junior Securities;
  - (ii) any class or series of MGL Junior Securities or any shares of a subsidiary of MGL for any class or series of MGL Junior Securities; or
  - (iii) any class or series of MGL's indebtedness for any class or series of MGL Pari Passu Securities or MGL Junior Securities, provided such indebtedness ranked for the payment of interest in priority to, or *pari passu* with, those MGL Pari Passu Securities or MGL Junior Securities immediately prior to exchange, redemption or conversion;
- (d) the purchase of fractional interests in shares in the capital of MGL under the conversion or exchange provisions of the shares or the security being converted or exchanged;
- (e) any payment, declaration or determination of, or other resolution to pay a dividend in connection with any shareholder's rights plan, or the issuance of rights, shares or other property under any shareholder's rights plan, or the redemption or repurchase of rights pursuant to the plan;
- (f) any dividend in the form of shares, warrants, options or other rights where the dividend shares or the shares issuable upon exercise of such warrants, options or other rights are the same class or series of shares as those on which the dividend is being paid or rank equal to or junior to those shares; or
- (g) any distribution by way of a rights issue raising capital.

Nothing in the Dividend Restriction prohibits a member of the Macquarie Group from purchasing MGL's shares in connection with transactions for the account of customers of a member of the Macquarie Group or in connection with the distribution or trading of MGL Pari Passu Securities, MGL Junior Securities or any other shares in the capital of MGL in the ordinary course of business.

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## 4 Redemption

### 4.1 Redemption

MGL:

- (a) may, in its sole discretion, but subject to the Corporations Act and with APRA's prior written approval, Redeem:
  - (i) some or all of the Preference Shares on the date falling five years after the date on which the PMIs were issued or on any Dividend Payment Date thereafter; or
  - (ii) all (but not some) of the Preference Shares following the occurrence of an Early Redemption Event; and
- (b) must, but subject to the Corporations Act and with APRA's prior written approval, Redeem all (but not some) of the Preference Shares within 13 months of an Acquisition Event,

in each case at the Redemption Price.

#### 4.2 Early Redemption Event

An “Early Redemption Event” occurs if either of the following occurs:

- (a) a Regulatory Event; or
- (b) a Tax Event.

#### 4.3 Notice of Redemption

In order to Redeem any Preference Shares in accordance with these Preference Share Terms, MGL must provide the relevant Holders with written notice of its election to require the Redemption of, or obligation to Redeem, those Preference Shares (“Redemption Notice”) which notice must state:

- (a) the Redemption Date on which Redemption is to occur, being a day not less than five Business Days and no more than 60 Business Days after the date of the Redemption Notice;
- (b) if less than all outstanding Preference Shares are being Redeemed on the relevant Redemption Date, the proportion of Preference Shares to be Redeemed on that Redemption Date; and
- (c) the Redemption Price for those Preference Shares.

A Redemption Notice is irrevocable once given.

#### 4.4 Redemption Price

If any Preference Shares are to be Redeemed in accordance with this clause 4 (“Redemption”), on the relevant Redemption Date MGL must pay or deliver, or procure the payment or delivery, to the Holders the Redemption Price in respect of each Preference Share which is Redeemed, where the “Redemption Price” is an amount equal to the Issue Price of such Preference Share together with an amount equal to any Dividend that was scheduled to be paid on the next Dividend Payment Date in respect of the Preference Share for the then current Dividend Period, but calculated, in accordance with clause 3.1 (“Dividends”), only for the period from (and including) the previous Dividend Payment Date (or, in the case of the first Dividend Period, the Issue Date) and ending on (but excluding) the relevant Redemption Date.

#### 4.5 No Redemption by Holders

The Preference Shares are not Redeemable at the option of the Holders.

#### 4.6 Partial Redemption

If some but not all outstanding Preference Shares are Redeemed, MGL must, in each case, endeavour to treat all Holders:

- (a) in the case of Registered Global Preference Shares, in accordance with the rules of Euroclear and/or Clearstream, Luxembourg; and
- (b) in the case of Registered Definitive Preference Shares, as far as practicable, equally according to the proportion that the aggregate number of Preference Shares held by that Holder bears to the aggregate number of all outstanding Preference Shares, provided that any final rounding or allocation shall be in the sole discretion of MGL and, in the absence of manifest error, will be binding on the Holders.

#### 4.7 Effect of Redemption

Upon Redemption of a Preference Share and payment of the Redemption Price in respect of that Preference Share:

- (a) each of a Holder’s Preference Shares (or each of the Holder’s Preference Shares comprised in the proportion of the Holder’s Preference Shares specified in the Redemption Notice) will be Redeemed by MGL in each case for the applicable Redemption Price; and

- (b) all other rights conferred, or restrictions or obligations imposed, by that Preference Share will no longer have effect.

For the purposes of clause 4.7(a), if the Redemption involves a buy-back of Preference Shares, the Redemption Notice constitutes a buy-back offer (which will be taken to include MGL's undertaking in clause 3.7 ("Dividend Restriction")) for the Redemption Price payable on the Redemption Date and each Holder is deemed to have accepted that buy-back offer for the Preference Shares held by the Holder to which the Redemption Notice relates on the date the Redemption Notice is given and will be deemed to have sold those Preference Shares to MGL on the Redemption Date on payment of the Redemption Price.

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## 5 Quotation

MGL 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 Preference Shares on any relevant Stock Exchange.

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## 6 General rights

### 6.1 Rights on winding up

In a winding up of MGL, a Preference Share confers upon its Holder the right to payment in cash out of the surplus (if any) available for distribution to shareholders of an amount equal to the Liquidation Amount, but has no further or other right to participate in the assets of MGL or a return of capital in the winding up.

The "**Liquidation Amount**" on each Preference Share is the sum of:

- (a) US\$1,000 or, if it is not possible in accordance with applicable law to pay US\$1,000 in US Dollars, the Australian Dollar Equivalent of US\$1,000;
- (b) any accrued but unpaid Dividends for the Dividend Period current at the date of commencement of the winding up in US Dollars or, if it is not possible in accordance with applicable law to pay those Dividends in US Dollars, the Australian Dollar Equivalent of those accrued but unpaid Dividends; and
- (c) if the amount described in paragraph (a) or (b) is paid in Australian Dollars, an amount in Australian Dollars equal to the additional amount (if any) estimated by the liquidator of MGL in its absolute discretion to be required to convert the Australian Dollar amount referred to in paragraph (a) into US Dollars equal to US\$1,000 and the Australian Dollar amount referred to in paragraph (b) into US Dollars equal to the accrued but unpaid Dividends, including but not limited to amounts required to pay any estimated charges and expenses regarded by the liquidator of MGL as likely to be incurred in effecting such conversion.

For the purposes of clauses 6.1(a) and 6.1(b):

- (i) the "**Australian Dollar Equivalent**" of an amount expressed in US Dollars will be calculated by applying the Noon Buying Rate on the date of payment of the amount in Australian Dollars or, if that day is not a Business Day, on the Business Day immediately preceding the date of payment;
- (ii) "**Noon Buying Rate**" means, with respect to any specified date, the noon buying rate in New York City for the purchase of US Dollars with Australian Dollars cable transfers in Australian Dollars as certified for customs purposes by the Federal Reserve Bank of New York on such date or, if that rate ceases to be available, the average of the rates quoted to the liquidator of MGL by at least three banks selected by the liquidator for the purchase by the liquidator of US Dollars with Australian Dollars; and
- (iii) the date of commencement of the winding up is the date so determined under the Corporations Act.

## 6.2 Variation of rights

An issue of equity securities by MGL, or a conversion of existing securities in MGL to other securities, ranking in priority to the Preference Shares constitutes a variation of rights attaching to the Preference Shares.

## 6.3 Power of Attorney

Each Holder irrevocably:

- (a) appoints each of MGL, its officers and employees and any liquidator, administrator or statutory manager of MGL (each an “**Appointed Person**”) severally to be the attorneys of the Holder and the agents of the Holder with 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) 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 in accordance with clause 4 (“Redemption”);
  - (ii) do all other things which an Appointed Person reasonably believes to be necessary or desirable to give effect to these Preference Share Terms; and
  - (iii) appoint in turn its own agent or delegate; and
- (b) authorises and directs MGL and/or the Registrar to make such entries in the Register, including amendments and additions to the Register, which MGL considers necessary or desirable to record a Redemption.

The power of attorney given in this clause 6.3 (“Power of Attorney”) is given for valuable consideration and to secure the performance by the Holder of the Holder’s obligations under these Preference Share 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 6.3 (“Power of Attorney”).

## 6.4 Holder acknowledgements

Each Holder irrevocably:

- (a) agrees to become a member of MGL and to be bound by these Preference Share Terms and the Constitution;
- (b) acknowledges and agrees that it has no right to request a Redemption and that no other conditions or events will affect Redemption except as expressly provided by these Preference Share Terms;
- (c) agrees that a Redemption must occur on a Redemption Date in accordance with these Preference Share Terms;
- (d) agrees to provide MGL with any information necessary to give effect to a Redemption and, if applicable, to surrender any Preference Share certificate on the occurrence of the Redemption;
- (e) authorises and directs MGL and/or the Registrar to make such entries in the Register, including amendments and additions to the Register, which MGL considers necessary or desirable to record a Redemption;
- (f) acknowledges and agrees that a Holder has, to the fullest extent permitted by law, no right to initiate the winding up of MGL or any member of the Macquarie Group merely on the grounds that MGL does not pay a Dividend or an Optional Dividend is not paid; and
- (g) acknowledges and agrees that these Preference Share Terms contain no events of default (however described, determined or defined). Accordingly (but without limitation) failure to pay in full, for any reason, a Dividend or Optional Dividend on the scheduled Dividend Payment Date or

Optional Dividend Payment Date will not constitute an event of default (however described, determined or defined).

## **6.5 On-market buy-backs**

Subject to APRA's prior written approval, MGL or any member of the Macquarie Group may buy-back or purchase Preference Shares at any time and at any price by an on-market buy-back or otherwise.

## **6.6 No other rights**

- (a) Preference Shares do not confer on Holders any right to participate in profits or property of any member of the Macquarie Group except as set out in these Preference Share Terms.
- (b) Preference Shares do not confer on Holders any right:
  - (i) to subscribe for new securities in any member of the Macquarie Group; or
  - (ii) to participate in any:
    - (A) bonus issues of shares in the capital of any member of the Macquarie Group; or
    - (B) issue of securities made by MGL to holders of Ordinary Shares.

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## **7 Meetings and voting rights**

### **7.1 Meetings**

A Holder has the same rights as those conferred by the Constitution upon the holders of Ordinary Shares as regards receiving notices of general meetings, reports, balance sheets and accounts and attending and being heard at all general meetings of MGL.

### **7.2 Voting rights**

A Preference Share does not entitle its Holder to vote at any general meeting of MGL, except in the following circumstances:

- (a) on any proposal:
  - (i) to reduce the share capital of MGL; or
  - (ii) that affects the rights attached to the Preference Shares; or
  - (iii) to wind-up MGL; or
  - (iv) for the disposal of the whole of the property, business and undertaking of MGL; or
- (b) on any resolution to approve the terms of a share buy back agreement; or
- (c) during a period in which a Dividend or part of a Dividend is in arrears; or
- (d) during the winding up of MGL,

in which case the Holders of Preference Shares have the same rights as to manner of attendance and to voting as holders of Ordinary Shares with one vote per Preference Share.

### **7.3 Not a "voting share"**

Each Holder acknowledges and agrees that a Preference Shares will not constitute a "voting share" for the purposes of the Corporations Act.

## 7.4 Capital reductions

Without limiting clause 7.2 (“Voting rights”), each Holder agrees that if MGL undertakes a reduction of capital with respect to the Preference Shares that involves the cancellation of the Preference Shares and under applicable law the Holder is entitled to a vote on a resolution to approve that reduction, the Holder will vote in favour of that resolution.

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## 8 Payments to Holders

### 8.1 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 Preference Shares, any fraction of a cent will be disregarded.

### 8.2 Payments

The Constitution contains provisions relating to payments in respect of dividends and shares and, subject to this clause 8 (“Payments to Holders”), the relevant provisions apply *mutatis mutandis* to payments in respect of Dividends or Optional Dividends and the Preference Shares provided that, subject to clauses 8.7 (“Payments in respect of a Preference Share represented by a Registered Global Preference Share”) and clause 8.3 (“Payments subject to laws”) and below:

- (a) each payment of a Dividend or Optional Dividend in respect of a Preference Share (whether or not represented by a Registered Global Preference Share) will be made by cheque and mailed to the Holder of record at such Holder’s address as it appears on the Register on the relevant Record Date; and
- (b) any payment in respect of the Redemption Price of a Preference Share (whether or not represented by a Registered Global Preference Share) will be made by cheque against presentation and surrender of the Preference Share at the Specified Office of the Registrar or any of the Paying Agents,

provided, however, that a Holder may receive such payment by direct transfer (and will so receive if such payment method is elected by MGL) if appropriate direct transfer instructions have been received by the Registrar or the Paying Agent (as the case may be) at least five Business Days prior to the relevant payment date (or such other time as the Registrar or the Paying Agent may accept). Holders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due if the due date is not a Business Day, if the Holder is late in surrendering a Preference Share (if required to do so) or if a cheque mailed in accordance with this clause 8.2 (“Payments”) arrives after the due date for payment.

### 8.3 Payments subject to laws

All payments are subject in all cases to compliance by MGL with any applicable fiscal or other laws and regulations.

### 8.4 Gross up

Without prejudice to clause 8.5(c) (“Deductions”), if a deduction made under clause 8.5 (“Deductions”) is imposed or levied by or on behalf of:

- (i) Australia;
- (ii) any other jurisdiction in which MGL is tax resident at any relevant time (“**Residency Jurisdiction**”); or
- (iii) any jurisdiction in which a Paying Agent is appointed from time to time (“**Paying Agent Jurisdiction**”) and the withholding, tax, duty or levy was imposed or levied because the payment was made by a paying agent in a paying agent Jurisdiction,

(each of Australia, Residency Jurisdiction and any such Paying Agent Jurisdiction, a “**Relevant Jurisdiction**”), MGL shall pay an additional amount (“**Additional Amount**”) to the Holder as will result in the receipt by the Holder, after such deduction, of the amount which would have been received by the Holder in respect of

that payment if no such deduction had been required, except that no Additional Amount shall be payable to the extent that:

- (a) the relevant tax is imposed or levied by virtue of a Holder, or a beneficial owner, of the relevant Preference Shares having some connection (whether present, past or future) with a Relevant Jurisdiction or being or having been engaged in any activity, trade or business in a Relevant Jurisdiction, other than being a holder, or a beneficial owner, of the relevant Preference Shares;
- (b) the relevant tax is imposed or levied by virtue of a holder, or a beneficial owner, of the Preference Shares not complying with any statutory requirements or not having made a declaration of non-residence in, or other lack of connection with, the Relevant Jurisdiction or similar claim for exemption;
- (c) the relevant tax is imposed or levied on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC on the taxation of savings income or any other directive implementing the conclusions of the ECOFIN Council meeting of 26-27th November 2000, or any law implementing or complying with, or introduced in order to conform to, any such directive or any agreement entered into by an EU Member States with (i) any other state or (ii) any relevant dependent or associated territory of any EU Member State providing for measures equivalent to, or the same as, those laid down in any such directive; or
- (d) the relevant Preference Share is presented for payment by or on behalf of a Holder who would have been able to avoid such withholding or deduction by presenting the Preference Share to another Paying Agent in an EU Member State which has been appointed by MGL at that time.

#### **8.5 Deductions**

- (a) MGL may deduct from any payment payable to a Holder the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such payment.
- (b) If any deduction is required, MGL must pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law.
- (c) If:
  - (i) a deduction is made;
  - (ii) the amount of the deduction is accounted for by MGL to the relevant revenue authority;
  - (iii) the balance of the amount payable, together with any Additional Amount payable in accordance with clause 8.4 ("Gross up"), has been paid to the Holder,

then MGL's obligation to make the payment to the Holder is taken to have been satisfied in full by MGL.

#### **8.6 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 MGL or another member of the Macquarie Group to such Holder. MGL has no right to set-off any amounts owing by it to a Holder against any claims owing by the Holder to it or any member of the Macquarie Group.

#### **8.7 Payments in respect of a Preference Share represented by a Registered Global Preference Share**

For so long as any of the Preference Shares is in the form of a Registered Global Preference Share, the registered holder of a Registered Global Preference Share is the only person entitled to receive payments in respect of Preference Shares represented by such Registered Global Preference Share Certificate and MGL is discharged by payment to, or to the order of, the Global Holder in respect of each amount so paid. Each of the persons shown in the records of Euroclear or Clearstream, Luxembourg, as the case may be, as the beneficial holder of a particular nominal amount of a Preference Share in this form must look solely to Euroclear or Clearstream, Luxembourg, as the case may be, for that person's share of each payment so made by MGL to the Global Holder.

## 8.8 Payment to joint Holders

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

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## 9 Title and transfer of Preference Shares

### 9.1 Transfers

The Constitution contains provisions relating to title and transfer in respect of shares and the relevant provisions apply *mutatis mutandis* to title and transfer in respect of the Preference Shares.

### 9.2 Transfer restrictions

At any time, a Preference Share may be offered, sold or otherwise transferred only if:

- (a) the offer or invitation giving rise to the transfer does not constitute an offer or invitation for which disclosure is required to be made to investors under Parts 6D.2 or 7.9 of the Corporations Act;
- (b) the offer is not to a person who is a "retail client" as defined for the purposes of Chapter 7 of the Corporations Act;
- (c) the transaction is exempt from, and does not require registration under, the US Securities Act; and
- (d) the transfer (and any offer or invitation to treat in connection with it) complies with any applicable law or directive of any jurisdiction affecting such conduct,

provided that until 40 days following the original issuance of the Preference Shares, the Preference Shares may only be transferred in an offshore transaction pursuant to and in accordance with Regulation S under the US Securities Act where neither the transferor nor any person acting on the transferor's behalf knows, or has reason to believe, that the sale has been pre-arranged with a transferee in the United States, or that the transferee is, in the United States or is a U.S. Person (each as defined in Regulation S under the US Securities Act).

### 9.3 Register conclusive as to ownership

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

### 9.4 Non-recognition of interests

Except as required by law and as provided in this clause 9.4 ("Non-recognition of interests"), MGL, the Registrar, the Paying Agents and the Transfer Agents must treat the person whose name is entered in the Register as the Holder as the absolute owner of that Preference Share.

No notice of any trust or other interest in, or claim to, any Preference Share will be entered in the Register. None of MGL, the Registrar, the Paying Agents or the Transfer Agents need take notice of any trust or other interest in, or claim to, any Preference Share, except as ordered by a court of competent jurisdiction or required by law.

For so long as any of the Preference Shares is in the form of a Registered Global Preference Share:

- (a) with respect to the payment of amounts in respect of a Preference Share, the Global Holder shall be treated by MGL as the holder of the nominal amount of such Preference Shares in accordance with and subject to the terms of the Registered Global Preference Share;
- (b) subject to clauses 9.4(d) and 9.4(e) below, for each purpose other than that provided in clause 9.4(a) above, each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or of Clearstream, Luxembourg as the holder of a particular nominal number of Preference Shares (each an "**Underlying Holder**") (in which regard any certificate or other document issued by any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by MGL to the maximum extent permitted by applicable law as the holder of such nominal number of such Preference Shares and



entitled to exercise all rights and powers which the Underlying Holder could have exercised had the Underlying Holder been registered in the Register as the holder of that number of Preference Shares;

- (c) subject to clause 9.4(d) below, any exercise of rights by an Underlying Holder in accordance with clause 9.4(b) above with respect to a Preference Share shall be deemed to be an exercise of that right in respect of the Preference Share by the Global Holder and any purported exercise by the Global Holder of rights in respect of the Preference Share which is inconsistent with the exercise of that Underlying holder is not valid and must be ignored by MGL;
- (d) if applicable law requires a meeting of Holders (a **"Holder Meeting"**) to be held:
  - (i) a meeting of the Underlying Holders will be held in the manner provided by the Constitution (as if the Underlying Holders were registered as holders of Preference Shares) (the **"Underlying Meeting"**) and MGL shall promptly notify the Global Holder of the result of the Underlying Meeting (the **"Underlying Result"**); and
  - (ii) subject to any applicable rules of Euroclear and/or Clearstream, Luxembourg, the Global Holder agrees to attend the Holder Meeting and to exercise the votes attached to the Preference Shares in a manner consistent with the Underlying Result. For the purposes of this clause 9.4(d)(ii), the Global Holder shall vote on each resolution on a poll and shall give split proxies to reflect the number of votes cast for and against the relevant resolution at the Underlying Meeting and shall abstain from voting that number of Preference Shares equal to the nominal number of Preference Shares shown in the records of Euroclear or of Clearstream, Luxembourg as held by Underlying Holders who do not vote at the Underlying Meeting; and
- (e) nothing in this clause 9.4 ("Non-recognition of interests") entitles an Underlying Holder to require a change in the registration of the Global Holder as the registered holder of the Registered Global Preference Share except as provided by clause 2.4(b)(ii) ("Registered Definitive Preference Shares").

The expression "Holder" shall be construed accordingly.

This clause 9.4 ("Non-recognition of interests") applies whether or not a payment has been made when scheduled on a Preference Share and despite any notice of ownership, trust or interest in the Preference Share.

#### **9.5 Transfers of Preference Shares represented by a Registered Global Preference Share**

For so long as any of the Preference Shares is in the form of a Registered Global Preference Share, interests in the Registered Global Preference Share will be transferable only in accordance with the rules and procedures for the time being of Euroclear or Clearstream, Luxembourg, as the case may be.

Transfers of beneficial interests in Preference Shares in the form of Registered Global Preference Shares will be effected by Euroclear or Clearstream, Luxembourg, as the case may be, and, in turn, by other participants and, if appropriate, indirect participants in such clearing systems acting on behalf of beneficial transferors and transferees of such interests.

#### **9.6 Transfer of Preference Shares represented by Registered Definitive Preference Shares**

Where Preference Shares are in the form of Registered Definitive Preference Shares, transfers of Preference Shares may be effected by presentation and surrender of the relevant Registered Definitive Preference Share Certificate (together with the transfer certificate relating thereto duly completed on behalf of the transferor and the transferee) at the Specified Office of the Registrar or any Transfer Agent. If satisfied that the transfer should be registered, the Registrar or the Transfer Agent (as the case may be) will:

- (a) enter the transfer in the Register; and
- (b) authenticate and deliver (or procure the authentication and delivery of) a new Registered Definitive Preference Share Certificate of a like aggregate amount to the Registered Definitive Preference Share (or the relevant part of the Registered Definitive Preference Share) transferred.

Delivery will be to the Specified Office of the Registrar or the Transfer Agent (as the case may be) or by uninsured mail (at the risk of the transferee) to such address as the transferee may request. Where a Holder transfers only a part of a Registered Definitive Preference Share, he shall be entitled to a new Registered Definitive Preference Share Certificate for the balance without charge which shall be authenticated in the same manner as provided above. In either case, the Registrar or the Transfer Agent (as the case may be) shall only issue a Registered Definitive Preference Share in integral multiples of US\$100,000 (and subject at all times to a minimum aggregate denomination per Registered Definitive Preference Share of an amount in United States Dollars equivalent to €50,000).

Holders will not be required to bear the costs and expenses of effecting any registration of transfer as provided above, except for:

- (i) any costs or expenses of delivery other than by regular uninsured mail; and
- (ii) that MGL may require the payment of a sum sufficient to cover any stamp or other duty, or other tax or other governmental charge that may be imposed in relation to the registration.

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## **10 Notices and other communications**

### **10.1 Notices to Holders**

Except where otherwise provided in these Preference Share Terms, a notice may be given by MGL to a Holder in any manner prescribed by the Constitution for giving notices to members of MGL and the relevant provisions apply with all necessary modifications to notices to Holders.

### **10.2 Notices while Preference Shares represented by a Registered Global Preference Share**

For so long as any of the Preference Shares is in the form of a Registered Global Preference Share, there may be substituted for the method of notice provided in clause 10.1 (“Notices to Holders”), delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg for communication by them to the Holders. Any such notice shall be deemed to have been given to the Holders immediately following the day on which the notice was given to Euroclear and/or Clearstream, Luxembourg.

### **10.3 Notices while Preference Shares are listed on a Stock Exchange**

For so long as any Preference Shares are listed on a Stock Exchange and the rules of that Stock Exchange (or any other relevant authority) so require, any notice given under this clause 10 (“Notices and other communications”) will also be published in a leading daily newspaper of general circulation in the financial centre in which that Stock Exchange is located (or any other place or places required by those rules) or, if permitted, on the website of the applicable Stock Exchange.

### **10.4 Delivery of certain notices**

A Redemption Notice, notice of an Acquisition Event and a MGL Details Notice may each be given to Holders by MGL publishing the notice on its website and announcing the publication of the notice to the relevant Stock Exchange (if any).

### **10.5 Non-receipt of notices by Holders**

The non-receipt of a notice by a Holder or an accidental omission to give notice to a Holder will not invalidate the giving of that notice either in respect of that Holder or generally.

### **10.6 Notices to MGL**

(a) All notices or other communications to MGL in respect of the Preference Share Terms must be:

- (i) in legible writing or typing and in English;
- (ii) addressed as shown below:

Attention: Company Secretary  
Address: Macquarie Group Limited

No.1 Martin Place  
Sydney NSW 2000  
Australia  
Fax No: + 61 2 8232 4330

or to such other address or fax number as MGL notifies to Holders as its address or fax number (as the case may be) for notices or other communications in respect of these Preference Share Terms from time to time (a "MGL Details Notice");

- (iii) signed by the person making the communication or by a person duly authorised by that person; and
  - (iv) delivered or posted by prepaid post to the address, or sent by fax to the fax number, of MGL in accordance with paragraph (b).
- (b) A notice to MGL will be taken to be received:
- (i) if sent by fax, when actually received in its entirety in legible form, unless that local time is not a Business Day, or is after 5.00 pm on a Business Day, in which case that communication will be regarded as received at 9.00 am on the next Business Day; and
  - (ii) in any other case, on delivery at the address of MGL, unless that delivery is not made on a Business Day, or is after 5.00 pm on a Business Day, in which case that communication will be regarded as received at 9.00 am on the next Business Day.

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## 11 Amendment of Preference Share Terms

### 11.1 Amendment without consent

Subject to complying with all applicable laws, MGL may amend these Preference Share Terms:

- (a) if MGL is of the opinion that the amendment is:
  - (i) of a formal, minor or technical nature;
  - (ii) made to cure any ambiguity or correct any manifest error;
  - (iii) expedient for the purpose of enabling the Preference Shares 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, or subscription for, under the laws for the time being in force in any place and, in each case, it is otherwise not considered by MGL to be materially prejudicial to the interests of Holders as a whole; or
  - (iv) necessary to comply with the provisions of any law or the requirements of any statutory authority (other than an amendment made to comply with a prudential standard dealing with capital management promulgated by APRA and applying to MGL); or
- (b) if MGL is of the opinion that the amendment is not likely (taken as a whole and in conjunction with all other amendments, if any, to be made contemporaneously with the amendment) to be materially prejudicial to the interests of the Holders as a whole.

### 11.2 Amendment with consent

Without limiting clause 11.1 ("Amendment without consent"), MGL may, with APRA's prior written approval, amend these Preference Share Terms if the amendment has been approved by an Extraordinary Resolution.

### 11.3 Meanings

In this clause 11 ("Amendment of Preference Share Terms"), "amend" includes modify, cancel, alter, adjust or add to and "amendment" has a corresponding meaning.

#### 11.4 Notice of amendments

Any amendment of these Preference Share Terms made in accordance with this clause 11 ("Amendment of Preference Share Terms") must be promptly notified to Holders.

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#### 12 Governing law

These Preference Share Terms are governed by the law in force in the State of New South Wales, Australia.

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#### 13 Interpretation and definitions

##### 13.1 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 Preference Share Terms;
- (b) if a calculation is required under these Preference Share Terms, unless the contrary intention is expressed, 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 Preference Share Terms;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) if an event under these Preference Share Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (g) a reference to Australian Dollars or A\$ is a reference to the lawful currency of Australia;
- (h) a reference to United States Dollars, dollars, US\$ or cents is a reference to the lawful currency of the United States of America;
- (i) a reference to Euro or € is a reference to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended;
- (j) any references to the requirements of APRA or any other prudential regulatory requirements will apply to MGL only if MGL is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;
- (k) a reference to a time of day is a reference to Sydney, Australia time;
- (l) calculations, elections and determinations made by MGL under these Preference Share Terms are binding on Holders in the absence of manifest error or fraud;
- (m) a reference to a party to an agreement, deed or other instrument includes a reference to a replacement or substitute of the party according to that agreement, deed or instrument;
- (n) 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;
- (o) any references to the requirements of APRA or any other prudential regulatory requirements will apply to MGL only if MGL is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;

- (p) any requirement for APRA's consent or approval will apply only if APRA requires that such consent or approval be given at the relevant time;
- (q) any requirements for the prior approval or consent of APRA for a particular course of action to be taken by MGL do not imply that APRA has given its consent or approval to the particular action as of the Issue Date;
- (r) the terms "takeover bid", "relevant interest", "scheme of arrangement", "buy-back" and "on-market buy-back" when used in these Preference Share Terms have the meaning given in the Corporations Act; and
- (s) 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.

## 13.2 Definitions

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

**Acquisition Event** means:

- (a) a takeover bid is made to acquire all or some Ordinary Shares and the offer is, or becomes, unconditional and as a result of the bid the bidder has a relevant interest in more than 50% of the Ordinary Shares on issue; or
- (b) a court approves a scheme of arrangement which, when implemented, will result in a person having a relevant interest in more than 50% of the Ordinary Shares,

(each an "**event**"), other than as part of a solvent reorganisation 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 are, or will be, substantially the same, and in substantially the same proportions, as the persons who held relevant interests in the Ordinary Shares immediately prior to the event where:

- (i) the event is initiated by the Directors or would not, in MGL's reasonable opinion, otherwise materially prejudice the interests of Holders; and
- (ii) the Approved Acquirer agrees for the benefit of Holders to:
  - (A) in exchange for the Preference Shares, issue its preferred equity capital, on the same terms and subject to the same conditions, as contemplated by these Preference Share Terms;
  - (B) use all reasonable endeavours to ensure continued quotation of such preferred equity capital on any Stock Exchange; and
  - (C) comply with the obligations and restrictions as apply to MGL in connection with the Preference Shares (with all necessary and appropriate modifications);

**Additional Amount** has the meaning given in clause 8.4 ("Gross up");

**Agents** means any or all (as the context requires) of the Registrar, a Paying Agent, Transfer Agent or Calculation Agent;

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

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

**APRA Payment Condition** means, in respect of a Dividend or an Optional Dividend, any one of the following:

- (a) the payment of the Dividend or Optional Dividend will, unless APRA otherwise agrees, result in MGL not complying with APRA's capital adequacy guidelines as applicable to MGL from time to time;

- (b) MGL becoming, or being likely to become, insolvent within the meaning of section 95A of the Corporations Act or the payment resulting in any member of the Macquarie Group becoming, or being likely to become, insolvent for the purposes of any applicable law;
- (c) MGL having Distributable Profits less than the amount of the relevant Dividend or Optional Dividend; or
- (d) APRA objecting to the payment of the Dividend or Optional Dividend;

**ASX** means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires;

**ASX Listing Rules** means the listing rules of the ASX;

**Australian Dollar Equivalent** has the meaning given in clause 6.1 (“Rights on winding up”);

**Banking Act** means the Banking Act 1959 of Australia;

**Business Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Sydney, Australia and in any other place that the Preference Shares are, for the time being, listed or quoted (not being a Saturday, Sunday or public holiday in any such place);

**Calculation Agent** means MGL as calculation agent or any successor calculation agent;

**Certification Event** means:

- (a) MGL has or will become subject to adverse tax consequences which would not be suffered were the Preference Shares in the form of Registered Definitive Preference Shares instead of in the form of Registered Global Preference Shares; or
- (b) MGL has been notified that both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or have announced an intention permanently to cease business or have in fact done so and, in any such case, no successor or alternative clearing system satisfactory to MGL is available;

**Constitution** means the constitution of MGL as amended from time to time;

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

**Convertible Note Subscription Agreement** means the agreement entitled “Convertible Note Subscription and Other Matters Agreement” between MGL and the PMI Issuer and dated on or about 29 November 2010;

**Corporations Act** means the Corporations Act 2001 of Australia;

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

**Distributable Profits** means:

- (a) the consolidated net profits after tax of the Macquarie Group which are attributable to the holders of the Ordinary Shares (determined before any interest, dividends or other distributions paid or payable by a member of the Macquarie Group on any instrument which constitutes Eligible Hybrid Capital for the Non-ADI Group, and for the avoidance of doubt, before the deduction of any amounts included in (b)) for the immediately preceding two half yearly financial periods for which results have been publicly announced for MGL; less
- (b) the aggregate amount of any interest, dividends or other distributions paid or payable by a member of the Macquarie Group (but not including any interest, dividends or other distributions paid or payable to a member of the Macquarie Group) on any:

- (i) ordinary share capital of the Macquarie Group, determined, declared or otherwise resolved to be paid in relation to the corresponding two half yearly financial periods; and
- (ii) other instruments which constitute Eligible Hybrid Capital for the Non-ADI Group in the 12 months to and including the relevant Dividend Payment Date,

but excluding any Dividend payable in relation to the Preference Shares on the relevant Dividend Payment Date;

**Distribution** has the meaning given in the PMI Terms;

**Distribution Period** has the meaning given in the PMI Terms;

**Dividend** has the meaning given in clause 3.1 (“Dividends”);

**Dividend Payment Date** has the meaning given in clause 3.2 (“Dividend Payment Dates”);

**Dividend Period** has the meaning given in clause 3.1 (“Dividends”);

**Dividend Rate** has the meaning given in clause 3.1 (“Dividends”);

**Dividend Restriction** has the meaning given in clause 3.7 (“Dividend Restriction ”);

**Early Redemption Event** has the meaning given in clause 4.2 (“Early Redemption Event”);

**Eligible Capital** has the meaning given to that term under the NOHC Authority or the equivalent concept in any subsequent or replacement authority given by APRA in favour of MGL or prudential standard promulgated by APRA and applying to MGL;

**Eligible Hybrid Capital for the Non-ADI Group** means hybrid capital that meets the conditions in Annexure 2 to 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 MGL or prudential standard promulgated by APRA and applying to MGL;

**EU Member State** means, at any time, a state that is a member of the European Union at that time;

**Euroclear** means Euroclear Bank S.A./N.V. or its successor;

**Exchange** has the meaning given in the PMI Terms;

**Exchange Date** has the meaning given in the PMI Terms;

**Exchanged Proportion** has the meaning given in clause 3.1 (“Dividends”);

**Extraordinary Resolution** means:

- (a) the approval of a resolution passed at a meeting of Holders by the affirmative vote of at least 75% of the votes cast by Holders entitled to vote at that meeting on the resolution; or
- (b) the consent in writing of Holders holding at least 75% of the Preference Shares then on issue;

**Global Holder** has the meaning given in clause 2.3 (“Registered Global Preference Shares”);

**Holder** means a person Registered as the holder of a Preference Share;

**Issue Date** means the date on which Preference Shares are issued;

**Issue Price** has the meaning given in clause 1 (“Issue”);

**Liquidation Amount** has the meaning given in clause 6.1 (“Rights on winding up”);

**LLC Agreement** means the limited liability company agreement relating to the PMI Issuer dated on or about 22 November 2010;

**Macquarie Group** means MGL and each entity it Controls;

**MGL** means Macquarie Group Limited (ABN 94 122 169 279), a company incorporated under the laws of Australia;

**MGL Details Notice** has the meaning given in clause 10.6(a) (“Notices to MGL”);

**MGL Junior Securities** means:

- (a) the Ordinary Shares;
- (b) any preference shares, securities or capital instruments issued by MGL and ranking:
  - (i) where paragraph (a) of the definition of Dividend Restriction applies, for the payment of interest, dividends or distributions or other payments junior to the Preference Shares in respect of the payment of dividends; and
  - (ii) where paragraph (b) of the definition of Dividend Restriction applies, for a return of capital in a winding up of MGL junior to the Preference Shares for such return of capital; and
- (c) any securities or other capital instruments issued by a member of the Macquarie Group or any other entity which, at the option of such issuer or MGL, are convertible or exchangeable into:
  - (i) Ordinary Shares;
  - (ii) where paragraph (a) of the definition of Dividend Restriction applies, any other junior ranking preference shares, securities or capital instruments referred to in paragraph (b)(i); or
  - (iii) where paragraph (b) of the definition of Dividend Restriction applies, any other junior ranking preference shares, securities or capital instruments referred to in paragraph (b)(ii),

and, in any such case, which are included, or are eligible for inclusion, in Eligible Capital,

but in all circumstances other than any securities or other capital instruments issued by Macquarie Bank Limited (ABN 46 008 583 542) or any entity it Controls;

**MGL Pari Passu Securities** means:

- (a) the Preference Shares;
- (b) the instruments described as the “A\$600,000,000 Macquarie Convertible Preference Securities” issued on 8 July 2008;
- (c) any other preference shares, securities or capital instruments issued by MGL and ranking:
  - (i) where paragraph (a) of the definition of Dividend Restriction applies, for the payment of interest, dividends or distributions or other payments *pari passu* with the Preference Shares in respect of the payment of dividends; and
  - (ii) where paragraph (b) of the definition of Dividend Restriction applies, for a return of capital in a winding up of MGL *pari passu* with the Preference Shares for such return of capital; and
- (d) any securities or other capital instruments issued by a member of the Macquarie Group or any other entity which, at the option of such issuer or MGL, are convertible or exchangeable into:
  - (i) the Preference Shares;



- (ii) where paragraph (a) of the definition of Dividend Restriction applies, any other *pari passu* preference shares, securities or capital instruments referred to in paragraph (c)(i); or
- (iii) where paragraph (b) of the definition of Dividend Restriction applies, any other *pari passu* preference shares, securities or capital instruments referred to in paragraph (c)(ii),

and, in any such case, which are included, or are eligible for inclusion, in Eligible Capital,

but in all circumstances other than any securities or other capital instruments issued by Macquarie Bank Limited (ABN 46 008 583 542) or any entity it Controls;

**NOHC Authority** means the authority to be a non-operating holding company of an authorised deposit-taking institution granted by APRA in favour of MGL and taking effect on 5 September 2007, as amended from time to time;

**Noon Buying Rate** has the meaning given in clause 6.1 (“Rights on winding up”);

**Optional Dividend** has the meaning given in clause 3.4 (“Optional Dividends”);

**Optional Dividend Payment Date** has the meaning given in clause 3.4 (“Optional Dividends”);

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

**Paying Agent** means such person appointed as principal paying agent by MGL from time to time;

**Paying Agent Jurisdiction** has the meaning given in clause 8.4 (“Gross up”);

**PMI** means the limited liability company interest issued by the PMI Issuer in accordance with the LLC Agreement;

**PMI Issuer** means Macquarie PMI LLC, a limited liability company formed under the laws of the State of Delaware, United States of America;

**PMI Terms** means the terms of issue of PMIs, which are set out in the LLC Agreement;

**Preference Share** means a non-cumulative, perpetual, redeemable preference share in the capital of MGL on the terms set out in these Preference Share Terms;

**Preference Share Terms** means these terms and conditions;

**Principal Amount** means, in respect of a PMI, the principal amount of its denomination;

**Record Date** means for payment of:

- (a) a Dividend:
  - (i) the date which is seven Business Days before the Dividend Payment Date for that Dividend; or
  - (ii) such other date as is determined by MGL in its absolute discretion and communicated to the relevant Stock Exchange not less than seven Business Days before the specified Record Date; and
- (b) an Optional Dividend, the date prior to the payment of the Optional Dividend that is determined by MGL,

or in either case such other date as may be required by, or agreed with, the relevant Stock Exchange;

**Redemption** means, in respect of a Preference Share, a payment or return of capital in respect of, or a buy-back, cancellation, redemption or repurchase of, that Preference Share in accordance with and subject to clause 4 (“Redemption”) and “**Redeem**”, “**Redeemable**” and “**Redeemed**” have the corresponding meaning;

**Redemption Date** means, in respect of a Preference Share, the date determined by MGL to be the date on which the Preference Share is to be Redeemed in accordance with these Preference Share Terms;

**Redemption Notice** has the meaning given to it in clause 4.3 (“Notice of Redemption”);

**Redemption Price** has the meaning given to it in clause 4.4 (“Redemption Price”);

**Register** means the register, including any branch register, of Preference Shares established and maintained by, or on behalf of, MGL;

**Registered** means recorded in the Register;

**Registered Definitive Preference Share Certificate** has the meaning given in clause 2.4 (“Registered Definitive Preference Shares”);

**Registered Definitive Preference Shares** has the meaning given in clause 2.4 (“Registered Definitive Preference Shares”);

**Registered Global Preference Share Certificate** has the meaning given in clause 2.3 (“Registered Global Preference Shares”);

**Registered Global Preference Share** has the meaning given in clause 2.3 (“Registered Global Preference Shares”);

**Registrar** means the Issuer or any other person appointed by the Issuer to maintain the Register;

**Regulatory Event** means any one of the following events:

- (a) there is an introduction of, an amendment or clarification to or change in (or announcement of a prospective introduction of, amendment or clarification to or change in) a law or regulation of:
  - (i) the Commonwealth of Australia or any State or Territory thereof or any directive, order, standard, requirement, guideline or statement of APRA (whether or not having the force of law); or
  - (ii) any jurisdiction through which the Preference Shares are issued (a “**Relevant Foreign Jurisdiction**”) or any political subdivision thereof or any direction, order, standard, regulatory guideline or statement of a prudential regulatory body in the Relevant Foreign Jurisdiction,(each a “**Change in Law**”);
- (b) MGL receives an opinion of nationally recognised legal counsel in Australia or the Relevant Foreign Jurisdiction experienced in such matters as to the effect of a Change in Law;
- (c) there is any statement, notification or advice by APRA, or a prudential regulatory body in a Relevant Foreign Jurisdiction, or a decision by any court or other authority interpreting, applying or administering any law, regulation, directive, order, standard, requirement, guideline or statement; or
- (d) there is an introduction of, an amendment or clarification to or change in (or announcement of a future introduction of, amendment or clarification to or change in) any applicable accounting standards, regulations or generally accepted practice that results in a change to the accounting treatment of the Preference Shares as ‘liabilities’,

in each case, on or after the Issue Date and to the effect:

- (i) that:
  - (A) all of the Preference Shares are not eligible for inclusion as Eligible Hybrid Capital for the Non-ADI Group (except where such non-qualification is only as a result of any applicable limitation on the amount or composition of MGL’s Eligible Hybrid Capital for the Non-ADI Group); and

- (B) APRA has confirmed to MGL in writing that all of the Preference Shares are not eligible to qualify as Eligible Hybrid Capital for the Non-ADI Group;
- (ii) that additional requirements (including regulatory, capital, financial, accounting, operational or administrative requirements) would be imposed on MGL which the Directors determine, in their absolute discretion, as might have a material adverse effect on MGL (including if a Preference Share is no longer accounted for as a 'liability') or otherwise be unacceptable; or
- (iii) that to have the Preference Shares outstanding would be unlawful or impractical or that MGL would be exposed to a more than *de minimis* increase in its costs in connection with the Preference Shares;

**Relevant Jurisdiction** has the meaning given in clause 8.4 ("Gross up");

**Residency Jurisdiction** has the meaning given in clause 8.4 ("Gross up");

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

- (a) entitled to be admitted in the winding up of MGL; and
- (b) not expressed to rank equally with, or subordinate to, the claims of the Holders under these Preference Share Terms;

**Specified Office** of a person means the office specified for that person as notified to the Holders from time to time and, if none is specified, that person's registered office;

**Stock Exchange** means the stock or securities exchange on which the Preference Shares may be listed from time to time;

**Subordinated Note** has the meaning given in the Convertible Note Subscription Agreement;

**Tax Act** means the Income Tax Assessment Act 1936 of Australia or the Income Tax Assessment Act 1997 of Australia, as the context requires;

**Tax Event** means that, on or after the Issue Date, MGL receives an opinion of nationally recognised legal counsel or other nationally recognised tax adviser in Australia or any other jurisdiction (each a "**Relevant Tax Event Jurisdiction**") experienced in such matters, that there is more than an insubstantial risk which the Directors determine, at their absolute discretion, to be unacceptable that, as a result of a Tax Law Change:

- (a) Dividends, Optional Dividends or the Redemption Price are, or will be, subject to an amount of withholding or deduction in respect of any taxes, duties or other governmental charges for which MGL or the PMI Issuer must pay additional amounts; or
- (b) MGL or any member of the Macquarie Group is, or will be, subject to more than a *de minimis* amount of other taxes, assessments or other governmental charges in connection with the Preference Shares;

**Tax Law Change** means:

- (a) an amendment to, change in or announced prospective change in any laws or regulations in a Relevant Tax Event Jurisdiction (as defined in the definition of Tax Event);
- (b) a judicial decision interpreting, applying or clarifying those laws or regulations in a Relevant Tax Event Jurisdiction;
- (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; or
- (d) a challenge asserted or threatened in connection with an audit of any member of the Macquarie Group, or a challenge asserted or threatened in writing against any other taxpayer that has raised

capital through the issuance of securities that are substantially similar to the Preference Shares or PMIs,

which amendment or change is announced or which action or clarification or challenge occurs on or after the issue date of the PMIs;

**Transfer Agent** means the Registrar or any other transfer agent or principal transfer agent appointed by MGL from time to time;

**Underlying Holder** has the meaning given in clause 9.4 (“Non-recognition of interests”);

**Underlying Meeting** has the meaning given in clause 9.4 (“Non-recognition of interests”);

**Underlying Result** has the meaning given in clause 9.4 (“Non-recognition of interests”);

**Unpaid Dividend** has the meaning given in clause 3.5 (“Non-payment of Dividends and Optional Dividends”); and

**US Securities Act** means the United States Securities Act of 1933, as amended.

### **13.3 Corporations Act**

Despite any other clause or paragraph of these Preference Share Terms, MGL is not required to comply with these Preference Share Terms to the extent that to do so would contravene the Corporations Act.

## FORM OF THE GUARANTEE

*The following is the form of the Guarantee. Words and phrases set out in this section have the meanings given, and are interpreted in accordance with, the Guarantee.*

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### 1 Interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

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

**APRA Payment Condition** means, in respect of a Distribution or Optional Distribution, any one of the following:

- (a) the payment of the Distribution or Optional Distribution will, unless APRA otherwise agrees, result in MGL not complying with APRA's capital adequacy guidelines as applicable to MGL from time to time;
- (b) MGL becoming, or being likely to become, insolvent within the meaning of section 95A of the Corporations Act or the payment resulting in any member of the Macquarie Group becoming, or being likely to become, insolvent for the purposes of any applicable law;
- (c) MGL having Distributable Profits less than the amount of the relevant Distribution or Optional Distribution; or
- (d) APRA objecting to the payment of the Distribution or Optional Distribution;

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

**Convertible Note Deed Poll** means the deed poll entitled "Convertible Note Deed Poll" dated on or about 29 November 2010 and made by MGL;

**Convertible Notes** means the US\$400,000,000 convertible notes issued by MGL and constituted by the Convertible Note Deed Poll;

**Corporations Act** means the Corporations Act 2001 of Australia;

**Distributable Profits** means:

- (a) the consolidated net profits after tax of the Macquarie Group which are attributable to the holders of the Ordinary Shares (determined before any interest, Distributions or other distributions paid or payable by a member of the Macquarie Group on any instrument which constitutes Eligible Hybrid Capital for the Non-ADI Group, and for the avoidance of doubt, before the deduction of any amounts included in (b)) for the immediately preceding two half yearly financial periods for which results have been publicly announced for MGL; less
- (b) the aggregate amount of any interest, Distributions or other distributions paid or payable by a member of the Macquarie Group (but not including any interest, Distributions or other distributions paid or payable to a member of the Macquarie Group) on any:
  - (i) ordinary share capital of the Macquarie Group, declared, determined or resolved to have been paid in relation to the corresponding two half yearly financial periods; and
  - (ii) other instruments which constitute Eligible Hybrid Capital for the Non-ADI Group in the 12 months to and including the relevant Distribution Payment Date,

but excluding any Distribution payable in relation to the PMIs on the relevant Distribution Payment Date;

**Distribution** has the meaning given in the PMI Terms;

**EU Member State** means, at any time, a state that is a member of the European Union at that time;

**Guarantee** means the subordinated guarantee given by MGL in clause 3.1 (“Guarantee”);

**Guaranteed Payments** means, collectively, payments in respect of:

- (a) any Distributions or Optional Distributions due and payable on the PMIs, but only to the extent that:
  - (i) the Issuer has received the funds necessary to pay such Distributions or Optional Distributions from payments on the Subordinated Notes, the Convertible Notes or any Eligible Assets, whilst, in any case, they remain an asset of the Issuer; and
  - (ii) MGL, in its absolute discretion, does not object to the payment of the Distributions or Optional Distributions;
- (b) any Additional Amounts;
- (c) any Liquidation Amount; and
- (d) any other amounts to which the PMI Holders are entitled in respect of the PMIs, including on a Redemption or Exchange of such PMIs;

**Issuer** means Macquarie PMI LLC, a limited liability company formed under the laws of the State of Delaware, United States of America;

**Junior Subordinated Indebtedness** means any indebtedness (present and future) of MGL which by its terms is, or is expressed to be, subordinated in a winding up of MGL to the claims of its Senior Creditors and the PMI Holders under this deed poll;

**LLC Agreement** means the limited liability company agreement relating to Macquarie PMI LLC dated on or about 22 November 2010;

**Macquarie Group** means MGL and each entity it Controls;

**MGIUK2** means Macquarie Group Investments (UK) No.2 Limited, a company incorporated under the laws of England (company registration number 7438584);

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

**Pari Passu Subordinated Indebtedness** means any indebtedness (present and future) of MGL which by its terms is, or is expressed to be, subordinated in a winding up of MGL to the claims of its Senior Creditors and to rank equally with the claims of the PMI Holders under this deed poll;

**PMI Holder** has the meaning given in the PMI Terms;

**PMI Terms** means the terms and conditions of the PMIs set out in the LLC Agreement;

**PMIs** means the limited liability company interests issued by the Issuer in accordance with the LLC Agreement;

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

- (a) entitled to be admitted in the winding up of MGL; and
- (b) not expressed to rank equally with, or subordinate to, the claims of the PMI Holders under the PMI Terms or this deed poll;

**Subordinated Note Deed Poll** means the deed poll entitled “Subordinated Note Deed Poll” dated on or about 29 November 2010 and made by MGIUK2; and

**Subordinated Notes** means the US\$400,000,000 fixed rate subordinated notes issued by MGIUK2 and constituted by the Subordinated Note Deed Poll.

## 1.2 Interpretation

Unless the contrary intention appears, a reference in this deed poll to:

- (a) an agreement, representation or warranty in favour of two or more persons is for the benefit of them collectively and each of them individually;
- (b) anything (including an amount) is a reference to the whole and each part of it;
- (c) a document (including this deed poll) includes any variation or replacement of it;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) United States Dollars, dollars, US\$ or cents is a reference to the lawful currency of the United States of America;
- (f) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority; and
- (g) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

## 1.3 Number

The singular includes the plural and vice versa.

## 1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

## 1.5 Incorporated definitions

A term defined in the PMI Terms has the same meaning when used in this deed poll unless it is expressly defined in this deed poll, in which case the meaning in this deed poll prevails.

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## 2 Deed poll

### 2.1 Benefit

- (a) Each PMI Holder has the benefit of, and is entitled to enforce, this deed poll even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed poll.
- (b) This deed poll is granted for the benefit of each person who at any time is or becomes a PMI Holder.

### 2.2 Rights independent

Each PMI Holder may enforce its rights under this deed poll independently from each other PMI Holder and any other person.

### 2.3 PMI Holder bound

The Guarantee and the other undertakings in this deed poll are given subject to and on the basis that each PMI Holder is taken to have notice of, and be bound by, all the provisions of this deed poll and the PMI Terms.

## 2.4 Status

The Guarantee does not represent a protected account of any member of the Macquarie Group for the purposes of section 13A(3) of the Banking Act or any similar law of any jurisdiction nor do they represent deposits with, or deposit liabilities of, any member of the Macquarie Group for any other purposes of the Banking Act and they are not insured by the U.S. Federal Deposit Insurance Corporation.

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## 3 Terms of Subordinated Guarantee

### 3.1 Guarantee

- (a) Subject to the exceptions and limitations contained in this clause 3 (“Terms of Subordinated Guarantee”) and clause 5 (“Limitations on Payment”), MGL hereby guarantees to the PMI Holders the payment in full of any Guaranteed Payments owing to such PMI Holders, as and when scheduled to be paid, to the extent that such payments shall not have been paid by the Issuer, regardless of any defence, right of set off or counterclaim which the Issuer may have or assert.
- (b) The Guarantee is irrevocable and, subject to the terms of this deed poll, unconditional.
- (c) MGL acknowledges that its obligations hereunder are several and independent of the obligations of the Issuer with respect to the PMIs and that MGL shall be liable as principal and sole obligor hereunder to make the payments undertaken to be made by it pursuant to the terms of this Guarantee, notwithstanding the occurrence of any event referred to in clause 3.3 (“Continuing Guarantee”).

### 3.2 Status and Enforcement of Certain Rights by PMI Holders

- (a) The Guarantee is a direct, unsecured and subordinated obligation of MGL.
- (b) In a winding up of MGL, if no Exchange of the PMIs has taken place under the PMI Terms, the rights and claims of the PMI Holders pursuant to the Guarantee rank:
  - (i) subordinate and junior in right of payment to the obligations of MGL to Senior Creditors and all such obligations to Senior Creditors shall be entitled to be paid in full before any payment shall be paid on account of any sums payable under this Guarantee;
  - (ii) *pari passu* with all other unsecured *Pari Passu* Subordinated Indebtedness of MGL; and
  - (iii) in priority to all Junior Subordinated Indebtedness.
- (c) The rights and claims of the PMI Holders are, in a winding up of MGL, subordinated to the claims of Senior Creditors of MGL and prior to the commencement of a winding up of MGL:
  - (i) the obligation of MGL to make payment of all amounts owing under the Guarantee shall be conditional upon MGL being solvent at the time the amounts owing fall due for payment under the Guarantee; and
  - (ii) no payment of any amount owing under the Guarantee shall be made, except to the extent that MGL may make such payment and still be solvent immediately thereafter.

For the purposes of paragraphs (i) and (ii) above, MGL shall be considered “solvent” if it is not insolvent within the meaning of section 95A of the Corporations Act.

A certificate as to whether MGL is solvent signed by two Directors or, if MGL is being wound up, its liquidator, shall be *prima facie* evidence of the information contained in that certificate. In the absence of such a certificate, a PMI Holder shall be entitled to assume (unless the contrary is proved) that MGL is and will after any payment aforesaid be solvent.

- (d) In a winding up of MGL, PMI Holders shall only be entitled to prove for any sums payable under the Guarantee as a debt which is subject to, and contingent upon, prior payment in full of the Senior Creditors. The PMI Holders in their respective capacities as holders of PMIs will be deemed to 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.



- (e) No PMI Holder shall be entitled to set off against any amounts due under this Guarantee to such PMI Holder any amount held by the PMI Holder to the credit of MGL whether in any account, in cash or otherwise, nor any deposits with, advances to or debts of MGL, nor any other amount owing by the PMI Holder to MGL on any account whatsoever, nor shall any PMI Holder be entitled to effect any reduction of the amount due to such PMI Holder under the Guarantee by merger of accounts or lien or the exercise of any other rights the effect of which is or may be to reduce the amount due under the Guarantee.
- (f) Any payment whether voluntary or in any other circumstances received by a PMI Holder from or on account of MGL (including by way of credit, set off or otherwise howsoever) or from any liquidator, receiver, manager or statutory manager of MGL in breach of this clause 3 ("Terms of Subordinated Guarantee") will be held by the PMI Holder in trust for, and to the order of, the Senior Creditors. The trust hereby created shall be for a term expiring on the earlier of the date on which all Senior Creditors have been paid in full or 80 years from the date of this Guarantee.
- (g) If MGL fails to pay any amount under this Guarantee when due and payable, a PMI Holder may, subject to clause 3.2(h) ("Status and Enforcement of Certain Rights by PMI Holders"), institute proceedings for a winding up of MGL or, subject to clause 3.2(d) ("Status and Enforcement of Certain Rights by PMI Holders"), for proving or claiming in any winding up of MGL.
- (h) No remedy against MGL, other than the institution of proceedings for a winding up or, subject to clause 3.2(d) ("Status and Enforcement of Certain Rights by PMI Holders"), for proving or claiming in any winding up of MGL, shall be available to the PMI Holders for the recovery of amounts owing under the Guarantee or in respect of any breach by MGL of any obligation, condition or provision binding on MGL under the terms of the Guarantee. In particular, no PMI Holder shall be entitled to exercise any right of set off or counterclaim which may be available to the PMI Holder against amounts owing by MGL under the Guarantee (whether prior to, or following, any bankruptcy, liquidation, winding up or sequestration of MGL), as provided in clause 3.2(e) ("Status and Enforcement of Certain Rights by PMI Holders").

### 3.3 Continuing Guarantee

The obligations, covenants, agreements and duties of MGL under the Guarantee shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the PMIs to be performed or observed by or on behalf of the Issuer;
- (b) the extension of time for the payment by or on behalf of the Issuer of all or any portion of any Distribution, Optional Distribution, Redemption Price, Liquidation Amount, Additional Amount or any other sums payable under the PMI Terms or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the PMIs;
- (c) any failure, omission, delay or lack of diligence on the part of PMI Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the PMI Holders pursuant to the terms of the PMIs, or any action on the part of the Issuer granting indulgence or extension of any kind;
- (d) the voluntary or involuntary winding up, dissolution, amalgamation, reconstruction, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganisation, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;
- (e) any invalidity of, or defect or deficiency in, the PMIs; or
- (f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred.

There shall be no obligation on the PMI Holders to give notice to, or obtain consent of, MGL with respect to the happening of any of the foregoing.

### **3.4 Enforcement; Rights of Remedy**

- (a) Subject to clause 3.4(c) ("Enforcement; Rights of Remedy"), a PMI Holder may enforce the Guarantee directly against MGL, and MGL waives any right or remedy to require that any action be brought against the Issuer or any other person or entity before proceeding against MGL.
- (b) Subject to clause 3.4(c) ("Enforcement; Rights of Remedy"), all waivers contained in this deed poll shall be without prejudice to the right to proceed against the Issuer as permitted by the PMI Terms. MGL agrees that the Guarantee shall not be discharged except by complete performance of all obligations of MGL under the Guarantee.
- (c) No PMI Holder shall, following any breach by MGL of any of its obligations under the Guarantee, be entitled to exercise any right of set off or counterclaim which may be available to it against amounts owing by MGL to such PMI Holder. Notwithstanding the provisions of the foregoing sentence, if any of the said rights and claims of any PMI Holder against MGL is discharged by set off, such PMI Holder will immediately pay an amount equal to the amount of such discharge to MGL or, in the event of its winding up, the trustee or liquidator of MGL and, until such time as payment is made, will hold a sum equal to such amount in trust for MGL, or the trustee or liquidator of MGL and, accordingly, any such discharge will be deemed not to have taken place.

### **3.5 Subrogation**

MGL shall be subrogated to any and all rights of the PMI Holders against the assets of the Issuer in respect of any amounts paid to the PMI Holders by MGL under the Guarantee. MGL shall not (except to the extent required by mandatory provisions of law) exercise any rights which it may acquire by way of subrogation or any indemnity, right of reimbursement or other agreement, in any such case as a result of a payment under the Guarantee if, at the time of any such payment, any amounts are due and unpaid under the Guarantee. If MGL shall receive or be paid any amount with respect to the PMIs in violation of the preceding sentence, MGL agrees to pay that amount to the PMI Holders.

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## **4 Amendments; Transfer**

### **4.1 Amendment**

MGL is entitled, without any authority or assent on the part of the PMI Holders, to amend or to add to this deed poll if such amendment or addition is, in the opinion of MGL:

- (a) of a formal, minor or technical nature;
- (b) made to correct a manifest error; or
- (c) not likely (taken as a whole and in conjunction with all other amendments or additions, if any, to be made contemporaneously with the amendment or addition) to be materially prejudicial to the interests of the PMI Holders (taken as a whole).

### **4.2 Transfer by MGL**

Subject to operation of law, all guarantees and agreements contained in this deed poll shall bind the successors, assignees, receivers, trustees and representatives of MGL and shall enure to the benefit of the PMI Holders. MGL shall not transfer its obligations hereunder without the prior approval of the PMI Holders of not less than 50% by nominal amount of the PMIs at an initial meeting of PMI Holders or, in the case of an adjourned meeting, of the PMI Holders of not less than 40% by nominal amount of the PMIs (excluding any PMIs held by MGL or any entity of which MGL, either directly or indirectly, owns 20% or more of the voting shares or similar ownership interests), which approval shall be obtained in accordance with the procedures contained in the LLC Agreement and applicable law.

### **4.3 Transfer by PMI Holders**

The Guarantee is solely for the benefit of the PMI Holders and is not transferable separately from their interests in respect of the PMIs.

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## 5 Limitations on Payment

Notwithstanding clause 3.1 (“Guarantee”), MGL will only, save to the extent provided in clause 6.7 (“Partial payments”), be obliged to make any Guaranteed Payment in respect of Distributions or Optional Distributions on any PMIs to the extent MGL, in its sole discretion, has not informed the Issuer that such Distribution or Optional Distribution should not be paid. MGL will also not be obliged to make any Guaranteed Payment in respect of Distributions or Optional Distributions on any PMIs to the extent that:

- (a) MGL does not have Distributable Profits; or
- (b) an APRA Payment Condition is continuing,

unless APRA has given its prior written approval to the payment of the Distribution or Optional Distribution.

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## 6 Taxation

### 6.1 Payments subject to laws

All payments are subject in all cases to:

- (a) compliance by MGL with applicable laws; and
- (b) any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of clause 6.3 (“Deductions”).

No commissions or expenses shall be charged to the PMI Holders in respect of such payments.

### 6.2 Gross up

Without prejudice to clause 6.3(c) (“Deductions”), if a deduction made under clause 6.3 (“Deductions”) is imposed or levied by or on behalf of:

- (i) Australia;
- (ii) the United States;
- (iii) any other jurisdiction in which MGL is tax resident at any relevant time (“**Residency Jurisdiction**”); or
- (iv) any jurisdiction in which a Paying Agent is appointed from time to time (“**Paying Agent Jurisdiction**”) and the withholding, tax, duty or levy was imposed or levied because the payment was made by a paying agent in a Paying Agent Jurisdiction,

(each of Australia, the United States, a Residency Jurisdiction and any such Paying Agent Jurisdiction, a “**Relevant Jurisdiction**”), MGL shall pay such additional amount (“**Additional Amount**”) to the PMI Holder as will result in the receipt by the PMI Holder, after such deduction, of the amount which would have been received by the PMI Holder in respect of that payment if no such deduction had been required, except that no Additional Amounts shall be payable to the extent that:

- (a) the relevant tax is imposed or levied by virtue of a PMI Holder, or a beneficial owner, of the relevant PMIs having some connection (whether present, past or future) with a Relevant Jurisdiction or being or having been engaged in any activity, trade or business in a Relevant Jurisdiction, other than being a holder, or a beneficial owner, of the relevant PMIs;
- (b) the relevant tax is imposed or levied by virtue of a PMI Holder, or a beneficial owner, of the PMIs not complying with any statutory requirements or not having made a declaration of non-residence in, or other lack of connection with, the Relevant Jurisdiction or similar claim for exemption;
- (c) the relevant tax is a United States “back-up” withholding tax;
- (d) the relevant tax is imposed or levied on a payment to an individual or a residual entity and is required to be made pursuant to European Council Directive 2003/48/EC on the taxation of

savings income or any other directive implementing the conclusions of the ECOFIN Council meeting of 26-27th November 2000, or any law implementing or complying with, or introduced in order to conform to, such Directive or any agreement entered into by an EU Member State with (i) any other state or (ii) any relevant dependent or associated territory of any EU Member State providing for measures equivalent to, or the same as, those laid down in such Directive; or

- (e) the relevant PMI is presented for payment by or on behalf of a PMI Holder who would have been able to avoid such withholding or deduction by presenting the PMI to another Paying Agent in an EU Member State which has been appointed by the Issuer at that time.

### **6.3 Deductions**

- (a) MGL may deduct from any payment payable to a PMI Holder the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such payment.
- (b) If any deduction is required, MGL must pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law.
- (c) If:
  - (i) a deduction is made;
  - (ii) the amount of the deduction is accounted for by MGL to the relevant revenue authority; and
  - (iii) the balance of the amount payable, together with any Additional Amount payable in accordance with clause 6.2 ("Gross up"), has been paid to the PMI Holder,

then MGL's obligation to make the payment to the PMI Holder is taken to have been satisfied in full by MGL.

### **6.4 No set-off**

A PMI Holder has no right to set-off any amounts owing by it to a member of the Macquarie Group against any claims owing by MGL or another member of the Macquarie Group to such PMI Holder. MGL has no right to set-off any amounts owing by it to a PMI Holder against any claims owing by the PMI Holder to it or any member of the Macquarie Group.

### **6.5 Payment to joint PMI Holders**

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

### **6.6 Time limit for claims**

A claim against MGL for a payment under a PMI is void unless made within three years from the date on which payment first became due.

### **6.7 Partial payments**

In the event that the amounts described in clauses 3 ("Terms of Subordinated Guarantee") and 6.2 ("Gross up") cannot be paid in full by reason of the condition referred to in clause 5 ("Limitations on Payment"), such amount as is to be paid will be payable *pro rata* and the obligations of MGL in respect of any such unpaid amount shall lapse.

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## **7 Deposit of deed poll**

This deed poll shall be deposited with and held by the Registrar until all the obligations of MGL have been discharged in full. MGL hereby acknowledges the right of every PMI Holder to the production of, and the right of every PMI Holder to obtain a copy of, this deed poll from the Registrar.

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## 8 Termination

With respect to the PMIs, the Guarantee shall terminate and be of no further force and effect upon:

- (a) payment of the Redemption Price on all PMIs;
- (b) purchase and cancellation of all PMIs;
- (c) payment of the Liquidation Amount, or any relevant proportion thereof, under the PMI Terms; or
- (d) issue and allotment in full of Preference Shares after all PMIs have been Exchanged under the PMI Terms,

provided however that this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time payment of any sums paid in respect of the PMIs or under this Guarantee must be restored by a PMI Holder for any reason whatsoever.

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## 9 Notices

Any notice, request or other communication required or permitted to be given hereunder to MGL shall be given in writing by delivering the same against receipt therefor or by pre-paid post addressed to MGL at:

Address: No. 1 Martin Place  
Sydney NSW 2000  
Australia  
Facsimile: +61 2 8232 4330  
Attention: Company Secretary

The address of MGL may be changed at any time and from time to time and shall be the most recent such address furnished in writing by MGL to the Registrar and notified to the PMI Holders.

Any notice, request or other communication required or permitted to be given hereunder to the PMI Holders shall be given by MGL in the same manner as notices sent on behalf of the Issuer to PMI Holders.

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## 10 General

### 10.1 Supervening legislation

Any present or future legislation which operates to vary the obligations of MGL in connection with this deed poll, with the result that the rights, powers or remedies of the PMI Holders are adversely affected (including by way of delay or postponement), is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### 10.2 Governing law

This deed poll is governed by, and shall be construed in accordance with, the law in force in New South Wales, Australia.

### 10.3 Jurisdiction

MGL irrevocably agrees that the courts of New South Wales and courts of appeal from them are to have jurisdiction to settle any disputes which may arise out of or in connection with this deed poll and that, accordingly, any suit, action or proceedings arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts.

MGL irrevocably and unconditionally waives and agrees not to raise any objection which it may have now or subsequently to the laying of the venue of any Proceedings in the courts of New South Wales and courts of appeal from them and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably and unconditionally agrees that a final judgment in any Proceedings brought in the courts of New South Wales and courts of appeal from them, shall be conclusive and binding upon MGL and may be enforced in the courts of any other jurisdiction.

Nothing contained in this section shall limit any rights of the beneficiaries of this deed poll to take Proceedings against MGL in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other competent jurisdiction, whether concurrently or not, to the extent permitted by applicable law.

**EXECUTED** as a deed poll

## USE OF PROCEEDS

The net proceeds from the issue of the PMIs will be lent to the UK Subsidiary, and will be used by the Group for general corporate purposes across both the banking and non-banking businesses of the Group.

The issue will contribute eligible hybrid capital to the Group, for the purposes of APRA's prudential supervision, to strengthen the capital position of the Group.

## DESCRIPTION OF THE ISSUER

The Issuer, Macquarie PMI LLC, was formed in the State of Delaware, United States of America on 3 November 2010 as a limited liability company under the Delaware Limited Liability Company Act and is a subsidiary of the Guarantor. The liability of the PMI Holders in respect of their limited liability company interest in the Issuer will be limited to the Principal Amount of the PMIs together with Distributions and Optional Distributions to which the PMI Holders may be entitled in respect of their limited liability company interest in the Issuer and the amount of any distributions made to the PMI Holders in violation of applicable law (but only to the extent that such PMI Holder had knowledge of such violation).

The Issuer was established for the sole purpose of raising finance for the Group by issuing the PMIs and using the proceeds for the subscription for, or purchase of, Eligible Assets. The Issuer has carried out no operations since its formation other than in relation to the issue of the PMIs.

The Issuer will be managed by Macquarie PMI Manager LLC. Under the terms of the LLC Agreement, all of the Directors of the Issuer will be nominated by Macquarie PMI Manager LLC. The Directors of the Issuer at the time of this Offering Circular are Tim Bishop, Jamie Marley and James Duffy. The principal business office of the Issuer is 125 West 55<sup>th</sup> Street, New York, NY 10019, United States of America.



## DESCRIPTION OF THE GUARANTOR

### Information about Macquarie Group Limited

Macquarie Group Limited (ABN 94 122 169 279) is the ultimate holding company for all other companies and entities within the Group. As at the date of this Offering Circular, the Guarantor is not a subsidiary of, nor controlled by, any other company.

The Guarantor was incorporated on 12 October 2006 with limited liability for an unlimited duration. It is incorporated in the Commonwealth of Australia, registered in Victoria and is regulated by the Australian Corporations Act.

The registered office of the Guarantor is at No.1 Martin Place, Sydney 2000, New South Wales, Australia. The Guarantor's principal place of business is Level 7, No. 1 Martin Place, Sydney 2000, New South Wales, Australia. The telephone number of the Guarantor's principal place of business is + 61 2 8232 3333.

The Guarantor complies with the ASX Corporate Governance Council's Principles of Corporate Governance and Recommendations, except to the extent publicly disclosed in any annual report of the Guarantor.

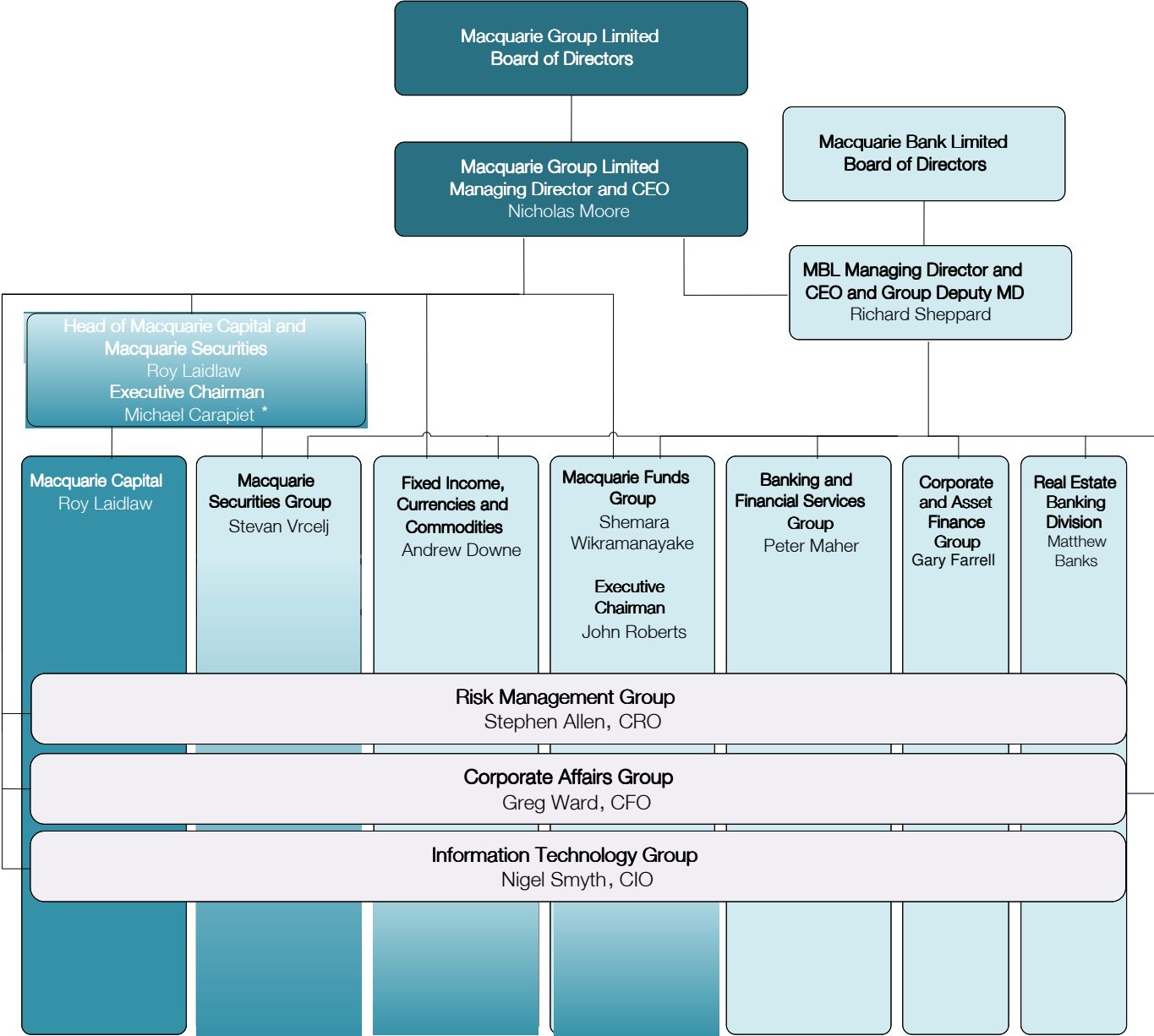
The Guarantor is an Australian Securities Exchange (**ASX**) listed diversified financial services holding company headquartered in Sydney, Australia and regulated as a non-operating holding company of an Australian authorised deposit-taking institution (**ADI**) by APRA, the prudential regulator of the Australian financial services industry. The Group provides banking, financial, advisory, investment and funds management services through client driven businesses which generate income by providing a diversified range of services to clients. The Group acts on behalf of institutional, corporate and retail clients and counterparties around the world.

The Group's operations are conducted primarily through two groups – the **Banking Group**, consisting of MBL and its controlled entities and the **Non-Banking Group**, consisting of most of the activities of Macquarie Capital and certain activities of the Macquarie Securities, Macquarie Funds and Fixed Income, Currencies and Commodities operating groups. Further details of the Banking Group and the Non-Banking Group are provided below.

On 13 November 2007, the Guarantor became the ultimate holding company of MBL and its controlled entities. As such, the historical consolidated financial statements of MBL reflect the historical results of operations and financial condition of the Guarantor's businesses, with certain limited exceptions. As at 30 September 2010, the Group employed over 15,500 people and had total assets of A\$158.1 billion and total equity of A\$11.6 billion.

# Organisational Structure

As at 30 September 2010, the Group's organisational structure was:



\* Mr. Carapiet's role is related to Non-Banking Group businesses



MBL and the Guarantor have corporate governance and policy frameworks that meet APRA's requirements for ADIs and non-operating ADI holding companies, respectively. The Banking Group and the Non-Banking Group operate as separate sub-groups within the Group with clearly identifiable businesses, separate capital requirements and discrete funding programmes. Although the Banking Group and the Non-Banking Group operate as separate sub-groups the Guarantor views both as integral to the Group's identity and strategy as they assist the Group in continuing to pursue value adding and diversified business opportunities while meeting APRA requirements.

## Shared Services

The Banking Group and the Non-Banking Group are supported by a number of specialist areas in the Guarantor. These shared services are outsourcing arrangements for the Banking Group and the Non-Banking Group that Macquarie Group Services Australia Pty Limited, a subsidiary of the Guarantor, performs pursuant to services agreements and include:

- Risk management;
- Finance;
- Information technology;
- Group treasury;
- Settlement services;
- Equity markets operations;
- Human resources services;
- Business services;
- Company secretarial and investor relations services;
- Media relations and corporate communications;
- Taxation services;
- Business improvement and strategy services;
- Central executive services;
- Other group-wide services;
- Business shared services; and
- Other services as may be agreed upon from time to time.

## Business Overview

The following describes the Banking and Non-Banking Groups' operations.

### Overview of Banking Group

MBL is headquartered in Sydney, Australia and is an ADI regulated by APRA that, directly and through subsidiaries, engages in Australian and international financial services businesses.

MBL's origin was as the merchant bank Hill Samuel Australia Limited, created in 1969 as a wholly-owned subsidiary of Hill Samuel & Co. Limited, London. Authority for MBL to conduct banking business in Australia was received from the Australian Federal Treasurer on 28 February, 1985.

MBL's ordinary shares were listed on ASX on 29 July, 1996 until the corporate restructuring of the Group in November 2007. Although MBL's ordinary shares are no longer listed on ASX, MBL's Macquarie Income Securities continue to be listed on ASX and accordingly, MBL remains subject to the disclosure and other requirements of ASX as they apply to ASX Debt Listings.

The Banking Group currently conducts business predominantly through five operating groups and one division:

#### Operating Groups

- Fixed Income, Currencies and Commodities (formerly Treasury & Commodities);
- Banking & Financial Services;
- Macquarie Securities (excluding the Cash division);
- Macquarie Funds (excluding the Macquarie Infrastructure and Real Assets division); and
- Corporate & Asset Finance.

#### Division

- Real Estate Banking.

#### **Overview of Non-Banking Group**

The following operating group, divisions and activities form the Non-Banking Group:

- Macquarie Capital, comprising one division, Macquarie Capital Advisers;
- The Cash division of Macquarie Securities;
- The Macquarie Infrastructure and Real Assets division of Macquarie Funds; and
- Certain less financially significant assets and businesses of the Fixed Income, Currencies and Commodities operating group.

Macquarie Capital includes the Group's corporate advisory, equity and underwriting businesses. Macquarie Capital provides a variety of services including specialist capabilities in:

- Mergers and acquisitions, takeovers and corporate restructuring advice;
- Equity capital markets, debt capital markets and equity and debt capital management and raisings;
- Debt structuring and distribution;
- Private equity placements; and
- Principal products.

#### **Principal Markets**

The Guarantor is an ASX-listed diversified financial services holding company headquartered in Sydney, Australia and regulated as a non-operating holding company of an ADI by APRA. As a provider of banking, financial, advisory, investment and funds management service, the Group acts on behalf of institutional, corporate and retail clients and counterparties around the world.

#### **Profit Estimate**

The Guarantor does not make profit forecasts or estimates.

## **Lawsuits and Contingent Liabilities**

The Group is a large diversified Australian-based financial institution with a long and successful history. Like any financial institution, the Group has been subject to lawsuits most of which have lapsed without further action.

Contingent liabilities exist in respect of current claims against entities within the Group. These claims are confidential. Where necessary, appropriate provisions have been made in the financial statements. However, there are no litigation or regulatory proceedings (including any such proceedings which are pending or threatened and of which the Guarantor is aware at the date of this Offering Circular) that have arisen within the 12 month period prior to the date of this Offering Circular, which have had, or is currently considered likely to have, a significant effect on its financial position or profitability.

No claim has resulted in a material adverse impact on the Group.

## **Material Contracts**

There are no material contracts that are not entered into in the ordinary course of the Guarantor's business which could result in the Guarantor or any entity within the Group being under an obligation or entitlement that is material to the Guarantor's ability to meet its obligations to the PMI Holders in respect of the PMIs.

## **Senior Credit Facility**

To finance the restructure of the Group in 2007 (as it was then, with MBL as the ultimate parent company), on 13 November 2007, the Guarantor entered into a A\$9 billion senior credit facility (the **Senior Credit Facility**). As at 30 September 2010, A\$6.7 billion of the Senior Credit Facility was drawn and A\$0.6 billion remained undrawn. As at the date of this Offering Circular, as a result of a repayment of maturing tranches the Senior Credit Facility was reduced to A\$5.2 billion and now comprises two revolving credit facilities maturing November 2011 and November 2012, respectively and three term facilities maturing May 2011, November 2011 and November 2012, respectively.

## **Principal Investment Activity**

Since the date of the Group's last published financial statements (such date being 30 September 2010), the Guarantor has not made any principal investments that are material to its ability to meet its obligations to the PMI Holders in respect of the PMIs.

## **Significant Change in the Guarantor's Financial Position**

There has been no significant change in the financial or trading position of the Group since the financial half-year ended 30 September 2010, being the date as at which the latest financial statements of the Guarantor consolidated with its subsidiaries were made up.

## **Shareholders and Capital**

As at 30 September 2010, the Guarantor had on issue 345,601,301 fully paid ordinary shares. The ordinary shares of the Guarantor are listed in Australia on the ASX.

As at the date of this Offering Circular, the Guarantor is neither directly nor indirectly controlled by any of its shareholders.

## Documents on Display

Copies of the following documents may be inspected on the Guarantor's internet site, [www.macquarie.com.au](http://www.macquarie.com.au):

- the constitution of the Guarantor; and
- the annual and financial reports of the Guarantor for each of the two financial years preceding the publication of this Offering Circular.

## Directors of the Guarantor

As at the date of this Offering Circular the persons named below are Voting Directors of the Guarantor under the Guarantor's constitution and exercise the powers of directors for the purposes of the Australian Corporations Act. All members of the Board of Voting Directors of the Guarantor have the business address of No.1 Martin Place, Sydney, NSW, 2000, Australia.

### **David S Clarke, AO**

**BEC (Hons), Hon DScEcon (Syd), MBA (Harv) (age 68)**

*Non-Executive Chairman since August 2007 (Chairman of Macquarie Bank since inception in February 1985)*

*Chairman of the Board Nominating Committee*

*Member of the Board Risk Committee*

*Member of the Board Remuneration Committee*

David Clarke was Executive Chairman of Macquarie Bank Limited from its formation in 1985 until March 2007, when he ceased executive duties. From 1971 to 1977, he was Joint Managing Director of Hill Samuel Australia Limited (predecessor to Macquarie Bank Limited), from 1977 to 1984 Managing Director and from 1984, Executive Chairman. He is a member of the Investment Advisory Committee of the Australian Olympic Foundation and in that context, was awarded an 'Order of Merit' by the Australian Olympic Committee Inc. on 15 May 2010. He is also a member of the Bloomberg Asia Advisory Board, a member of Council of the Royal Agricultural Society of NSW and an honorary life member of the Financial Markets Foundation for Children. He was previously Chairman of Australian Vintage Limited, Goodman Group and the management companies of Macquarie ProLogis Trust, Macquarie Office Trust and Macquarie CountryWide Trust.

### **Nicholas W Moore**

**BCom LLB (UNSW), FCA (age 52)**

*Managing Director and Chief Executive Officer since May 2008*

*Executive Voting Director of Macquarie Group since February 2008 (of Macquarie Bank since May 2008)*

*Member of the Board Risk Committee*

Nicholas Moore joined Macquarie's Corporate Services Division in 1986. He led a range of transactions, including Hills Motorway, which led the development of Macquarie's infrastructure business. In 1996, Mr Moore was appointed Head of the Project and Structured Finance Division. In 1998 he was appointed Head of the Asset and Infrastructure Group and then Head of the Investment Banking Group (predecessor to Macquarie Capital) on its inception in 2001. In this role, he oversaw significant growth in Macquarie Capital's net income through the global growth of the advisory, fund management, financing and securities businesses. He was previously a Director of Macquarie Infrastructure Group, Macquarie Alliance Group and Macquarie Media Group. Currently, he is also Chairman of the Police and Community Youth Clubs NSW Limited, a Director of the Centre for Independence Studies and Chairman of the University of NSW Business School Advisory Council.

### **Michael J Hawker, AM**

**BSc (Sydney), FAICD, FAIM, SF Fin (age 51)**

*Independent Voting Director since March 2010*

*Member of the Board Risk Committee*

Michael Hawker was Chief Executive Officer and Managing Director of Insurance Australia Group from 2001 to 2008. From 1995 to 2001, he was with Westpac where his roles included Group Executive of Business and Consumer Banking and General Manager of Financial Markets. Prior to this, he held a number of roles with Citibank, including Deputy Managing Director for Australia and subsequently Executive Director, Head of Derivatives, Europe. Currently, Mr Hawker serves as a Director of Macquarie Bank (since March 2010), Aviva Plc Group, the largest insurance provider in the UK, the Australian Rugby Union and the Sydney University Football Club Foundation. He is also a member of the Advisory Board to GEMS, a Hong-Kong based private equity firm. He was previously President of the Insurance Council of Australia, Chairman of the Australian Financial Markets Association, board member of the Geneva Association, member of the Financial Sector Advisory Council and is the founder of the Australian Business in the Community Network.

**Peter M Kirby**

**BEC (Rhodes), BEc (Hons) (Natal), MA (Manch), MBA (Wits) (age 63)**

*Independent Voting Director since August 2007 (of Macquarie Bank since June 2003)*

*Member of the Board Audit Committee*

*Member of the Board Corporate Governance Committee*

*Member of the Board Risk Committee*

Peter Kirby was the Managing Director and Chief Executive Officer of CSR Limited from 1998 to March 2003. He was a member of the Board of the Business Council of Australia from 2001 to 2003. Mr Kirby received the Centenary Medal in 2003. Prior to joining CSR, he was with the Imperial Chemical Industries PLC group (ICI) for 25 years in a variety of senior management positions around the world, including Chairman/CEO of ICI Paints, responsible for the group's coatings businesses worldwide, and a member of the Executive Board of ICI PLC, with responsibility for ICI Americas and the western hemisphere. He is Chairman of DuluxGroup Limited and a Director of the Beacon Foundation. He is a former Chairman and Director of Medibank Private Limited and a former Director of Orica Limited.

**Catherine B Livingstone, AO**

**BA (Hons) (Macquarie), HonDBus (Macquarie), HonDSc (Murdoch), FCA FTSE (age 55)**

*Independent Voting Director since August 2007 (of Macquarie Bank since November 2003)*

*Chairman of the Board Audit Committee*

*Member of the Board Corporate Governance Committee*

*Member of the Board Nominating Committee*

*Member of the Board Risk Committee*

Catherine Livingstone was the Managing Director of Cochlear Limited from 1994 to 2000. Prior to that she was the Chief Executive, Finance at Nucleus Limited and before that held a variety of finance and accounting roles including having been with chartered accountants, Price Waterhouse, for several years. Ms Livingstone was also previously Chairman of CSIRO and a Director of Goodman Fielder and Rural Press Limited. Ms Livingstone was awarded the Centenary Medal in 2003 for service to Australian Society in Business Leadership and was elected a Fellow of the Australian Academy of Technological Sciences and Engineering in 2002. She is currently Chairman of Telstra Corporation Limited, a Director of WorleyParsons Limited and Future Directions International Pty Limited and a member of the New South Wales Innovation Council and the Royal Institution of Australia.

**H Kevin McCann, AM**

**BA LLB (Hons) (Syd) LLM (Harv) FAICD (age 69)**

*Independent Voting Director since August 2007 (of Macquarie Bank since December 1996)*

*Lead Independent Voting Director*

*Chairman of the Board Corporate Governance Committee*

*Member of the Board Audit Committee*

*Member of the Board Risk Committee*

Kevin McCann is currently Chairman of Origin Energy Limited and ING Management Limited, a Director of BlueScope Steel Limited and a member of the Council of the National Library of Australia, the University of Sydney Senate and the Evans and Partners Advisory Board. He is also NSW President, Chairman of the Corporate Governance Committee and board member of the Australian Institute of Company Directors. Mr McCann was a Partner (from 1970 to 2004) and Chairman of Allens Arthur Robinson, a leading firm of Australian lawyers. He practiced as a commercial lawyer specialising in Mergers and Acquisitions, Mineral and Resources Law and Capital Markets Transactions. He was previously Chairman of Triako Resources Limited and Healthscope Limited.



**John R Niland, AC**

**BCom MCom HonDSc (UNSW) PhD (Illinois) DUniv (SCU) FAICD (age 70)**

*Independent Voting Director since August 2007 (of Macquarie Bank since February 2003)*

*Member of the Board Corporate Governance Committee*

*Member of the Board Remuneration Committee*

*Member of the Board Risk Committee*

John Niland is a Professor Emeritus of the University of New South Wales (UNSW) and was Vice-Chancellor and President of UNSW from 1992 to 2002. Before that he was the Dean of the Faculty of Commerce and Economics. He is currently Chairman of Campus Living Funds Management Limited. He is also a member of the University Grants Committee of Hong Kong and Deputy Chairman of the Board of Trustees of Singapore Management University. Dr Niland is a former Chief Executive of the State Pollution Control Commission and Executive Chairman of the Environment Protection Authority. He has served on the Australian Universities Council, the Prime Minister's Science, Engineering and Innovation Council, the boards of the Centennial Park and Moore Park Trust, realestate.com.au Limited, St Vincent's Hospital, the Sydney Symphony Orchestra Foundation and the Sydney Olympic bid's Building Commission. He is a former President of the National Trust of Australia (NSW).

**Helen M Nugent, AO**

**BA (Hons) (Qld) PhD (Qld) MBA (Harv) HonDBus (Qld) (age 61)**

*Independent Voting Director since August 2007 (of Macquarie Bank since June 1999)*

*Chairman of the Board Remuneration Committee*

*Member of the Board Nominating Committee*

*Member of the Board Risk Committee*

Helen Nugent is currently Chairman of Funds SA and a Director of Origin Energy Limited and Freehills. Previously, she was involved in the financial services sector as Director of Strategy at Westpac Banking Corporation (1994 to 1999) and a Non-Executive Director of the State Bank of New South Wales and Mercantile Mutual. In addition, she was previously Chairman of Hudson (Australia and New Zealand) and Swiss Re Life and Health (Australia) Limited and a Director of UNITAB, Carter Holt Harvey and Australia Post. She has also been a Partner at McKinsey and Company. She has been actively involved in the arts and education. In the arts, she is a Director of the National Portrait Gallery and was formerly Deputy Chairman of the Australia Council, Chairman of the Major Performing Arts Board of the Australia Council, Chairman of the Ministerial Inquiry into the Major Performing Arts and Deputy Chairman of Opera Australia. In education, she is currently Chancellor of Bond University and was a member of the Bradley Review into Higher Education and Professor in Management and Director of the MBA Program at the Australian Graduate School of Management.

**Peter H Warne**

**BA (Macquarie) (age 54)**

*Independent Voting Director since August 2007 (of Macquarie Bank since July 2007)*

*Member of the Board Audit Committee*

*Member of the Board Corporate Governance Committee*

*Member of the Board Remuneration Committee*

*Chairman of the Board Risk Committee*

Peter Warne was Head of Bankers Trust Australia Limited's (BTAL) Financial Markets Group from 1988 to 1999. Prior to this he held a number of roles at BTAL. He was a Director and Deputy Chairman of the Sydney Futures Exchange (SFE) from 1995 to 1999 and a Director from 2000 to 2006. When the SFE merged with the Australian Securities Exchange (ASX Limited) in 2006 he became a Director of ASX Limited. Currently, Mr Warne is on the boards of other listed entities as Chairman of ALE Property Group and Deputy Chairman (currently acting Chairman) of WHK Group Limited. He is also Deputy Chairman of Capital Markets CRC Limited, a Director of Next Financial Limited, a Director of Securities Research Centre of Asia Pacific Limited and a member of the Advisory Board of the Australian Office of Financial Management. He is a former Director of Macquarie Capital Alliance Group and a former Chairman and Director of TEYS Limited.

## Board Committees

All Directors are members of the Risk Committee (Peter Warne is Chairman). The Chief Executive Officer of Macquarie Bank, Richard Sheppard, is also a member of the Risk Committee. Catherine Livingstone is Chairman and Peter Kirby, Kevin McCann and Peter Warne are members of the Board Audit Committee. Kevin McCann is Chairman and Peter Kirby, John Niland, Catherine Livingstone and Peter Warne are members of the Corporate Governance Committee. David Clarke is Chairman and Catherine Livingstone and Helen Nugent are members of the Nominating Committee. Helen Nugent is Chairman and David Clarke, John Niland and Peter Warne are members of the Remuneration Committee.

Information on the significant corporate governance practices of the Guarantor and the charter of each Board Committee is available on the Guarantor's internet site [www.macquarie.com.au](http://www.macquarie.com.au). In particular, the main objective of the Board Audit Committee is to assist the Board of Voting Directors of the Guarantor and MBL in fulfilling their responsibility for oversight of the quality and integrity of the accounting, auditing and financial reporting practices of the Group.

## Director Duties and Conflict of Interest

No member of the Guarantor Board has a material conflict between their duties to the Guarantor and their personal interests or other duties. In broad terms, the Directors of the Guarantor have duties to the Guarantor including to:

- act with care and diligence;
- exercise their powers and discharge their duties in good faith and in the best interests of the Guarantor, and for a proper purpose;
- not improperly use their position to gain an advantage for themselves or someone else or to cause detriment to the Guarantor; and
- not improperly use information they have obtained as a result of their position to gain an advantage for themselves or someone else or to cause detriment to the Guarantor.

In the event that a material conflict of interest between the duties of a Director to the Guarantor and their personal interests arises, a Director with a conflict will:

- notify the other Directors of their interest in the matter when the conflict arises (unless a standing notice regarding the material personal interest has already been given to the other Directors); and
- not receive the relevant Board paper nor be present whilst the matter that they have an interest in is being considered at a Directors' meeting and not vote on the matter unless the Board (excluding the relevant Board member) resolves otherwise.

## SELECTED FINANCIAL INFORMATION

The consolidated income statement and consolidated statement of financial position below has been extracted from the Interim Directors' Report and Financial Report Half-Year ended 30 September 2010 of the Guarantor.

### Macquarie Group Limited and its subsidiaries

#### Consolidated Income Statement for the half year ended 30 September 2010

	Half Year to 30 September 2010 A\$m	Half Year to 31 March 2010 A\$m	Half Year to 30 September 2009 A\$m
Interest and similar income	2,637	2,436	2,155
Interest expense and similar charges	(2,032)	(1,781)	(1,730)
Net interest income	605	655	425
Fee and commission income	1,995	1,839	1,882
Net trading income	606	666	633
Share of net profits/(losses) of associates and joint ventures accounted for using the equity method	85	(33)	(197)
Other operating income and charges	370	406	362
Net operating income	3,661	3,533	3,105
Employment expenses	(1,896)	(1,592)	(1,509)
Brokerage and commission expenses	(441)	(316)	(329)
Occupancy expenses	(237)	(231)	(251)
Non-salary technology expenses	(159)	(158)	(125)
Other operating expenses	(432)	(474)	(359)
Total operating expenses	(3,165)	(2,771)	(2,573)
<b>Operating profit before income tax</b>	<b>496</b>	<b>762</b>	<b>532</b>
Income tax expense	(85)	(165)	(36)
<b>Profit after income tax</b>	<b>411</b>	<b>597</b>	<b>496</b>
(Profit)/loss attributable to non-controlling interests:			
Macquarie Income Preferred Securities	(2)	(2)	(6)
Macquarie Income Securities	(13)	(11)	(10)
Other non-controlling interests	7	(13)	(1)
Profit attributable to non-controlling interests	(8)	(26)	(17)
<b>Profit attributable to ordinary equity holders of Macquarie Group Limited</b>	<b>403</b>	<b>571</b>	<b>479</b>
Basic earnings per share	119.2	169.5	150.2
Diluted earnings per share	117.1	167.7	149.6

Macquarie Group Limited and its subsidiaries  
Consolidated Statement of Financial Position as at 30 September 2010

	As at 30 September 2010 A\$m	As at 31 March 2010 A\$m	As at 30 September 2009 A\$m
<b>ASSETS</b>			
Cash and balances with central banks	9	-	3
Due from banks	9,757	8,251	8,936
Cash collateral on securities borrowed and reverse repurchase agreements	9,266	7,149	4,493
Trading portfolio assets	15,938	12,138	14,502
Loan assets held at amortised cost	45,130	44,267	42,504
Other financial assets at fair value through profit or loss	11,025	9,172	5,249
Derivative financial instruments – positive values	23,430	21,561	21,441
Other assets	13,862	13,096	13,791
Investment securities available for sale	18,576	18,221	23,152
Intangible assets	1,411	1,456	715
Life investment contracts and other unitholder investment assets	5,047	4,846	5,066
Interests in associates and joint ventures accounted for using the equity method	2,719	3,927	4,931
Property, plant and equipment	708	605	647
Deferred income tax assets	1,107	1,124	1,401
Non-current assets and assets of disposal groups classified as held for sale	75	127	100
<b>Total assets</b>	<b>158,060</b>	<b>145,940</b>	<b>146,931</b>
<b>LIABILITIES</b>			
Due to banks	9,981	9,927	10,284
Cash collateral on securities lent and repurchase agreements	6,482	7,490	5,328
Trading portfolio liabilities	5,811	5,432	7,368
Derivative financial instruments – negative values	24,326	21,706	21,552
Deposits	35,047	22,484	20,692
Debt issued at amortised cost	39,955	42,614	44,896
Other financial liabilities at fair value through profit or loss	3,710	4,413	5,037
Other liabilities	12,973	12,679	12,871
Current tax liabilities	94	119	103
Life investment contracts and other unitholder liabilities	5,069	4,864	5,062
Provisions	221	191	184
Deferred income tax liabilities	235	235	210
Liabilities of disposal groups classified as held for sale	-	9	-
<b>Total liabilities excluding loan capital</b>	<b>143,904</b>	<b>132,163</b>	<b>133,587</b>
<b>Loan capital</b>			
Macquarie Convertible Preference Securities	593	593	591
Subordinated debt at amortised cost	1,483	916	1,011
Subordinated debt at fair value through profit or loss	487	499	522
<b>Total loan capital</b>	<b>2,563</b>	<b>2,008</b>	<b>2,124</b>
<b>Total liabilities</b>	<b>146,467</b>	<b>134,171</b>	<b>135,711</b>
<b>Net assets</b>	<b>11,593</b>	<b>11,769</b>	<b>11,220</b>
<b>EQUITY</b>			
Contributed equity			
Ordinary share capital	7,063	6,990	6,267
Treasury shares	(719)	(443)	(2)
Exchangeable shares	129	137	159
Reserves	263	280	276
Retained earnings	4,325	4,268	3,984
Total capital and reserves attributable to ordinary equity holders of Macquarie Group Limited	11,061	11,232	10,684
<b>NON-CONTROLLING INTERESTS</b>			
Macquarie Income Preferred Securities	66	67	74
Macquarie Income Securities	391	391	391
Other non-controlling interests	75	79	71
<b>Total equity</b>	<b>11,593</b>	<b>11,769</b>	<b>11,220</b>

## Capital position

As an APRA authorised and regulated Non-Operating Holding Company, the Guarantor is required to hold adequate regulatory capital to cover the risks for the whole Group, including the Non-Banking Group. The Guarantor and APRA have agreed a capital adequacy framework for the Guarantor, based on the Guarantor's Board-approved Economic Capital Adequacy Model (**ECAM**) and APRA's capital standards for ADIs.

The Guarantor's capital adequacy framework requires it to maintain minimum regulatory capital requirements calculated as the sum of the dollar value of:

- the Banking Group's minimum Tier 1 capital requirement, based on a percentage of risk-weighted assets plus Tier 1 deductions (using prevailing APRA ADI Prudential Standards); and
- the Non-Banking Group capital requirement, calculated using Macquarie's ECAM.

Transactions internal to the Group are eliminated.

Eligible regulatory capital of the Guarantor consists of ordinary share capital, retained earnings and certain reserves plus eligible hybrid instruments. Eligible hybrid instruments currently include the Convertible Preference Securities issued by the Guarantor in July 2008 as well as the Macquarie Income Securities and Macquarie Income Preferred Securities.

### Macquarie Group regulatory capital surplus calculation

	As at 30 September 2010		
	Actual A\$m	Pro-forma adjustments	Pro-forma A\$m
Macquarie Group eligible capital	11,594	396 <sup>1</sup>	11,990
Macquarie Group capital requirement:			
<b>Banking Group</b>			
Risk-Weighted Assets (excluding intra-group exposures) <sup>2</sup>	53,363	-	53,363
Capital required to cover Risk-Weighted Assets <sup>3</sup>	3,735	-	3,735
Tier 1 deductions (excluding intra-group exposures)	2,664	-	2,664
Banking Group (excluding intra-group exposures)	6,399	-	6,399
<b>Non-Banking Group</b>	2,328	-	2,328
Total capital requirement	8,727	-	8,727
<b>Macquarie Group regulatory capital surplus</b>	2,867	396	3,263

1 U.S.\$400 million issued, with transaction expenses of U.S.\$9 million, converted to AUD using a USD exchange rate of 0.9867, being the exchange rate on 23 November 2010. The USD-AUD exchange rate is subject to fluctuation on a day-to-day basis and the conversion of this amount would vary if a different exchange rate were applied.

2 In calculating the Banking Group's contribution to the Guarantor's capital requirement, Risk-Weighted Assets associated with exposures to the Non-Banking Group of A\$330 million are eliminated.

3 At the internal minimum Tier 1 ratio of the Banking Group, which is 7%.

## TAXATION

### United States

#### *Certain U.S. Federal Income Tax Considerations*

The following summary describes certain U.S. federal income tax consequences relevant to the purchase, ownership, and disposition of the PMIs (and any Preference Shares received in Exchange for such PMIs) for Non-U.S. Holders (as defined below). This summary applies only to holders that acquire their PMIs in this offering for a price equal to the original offering price and hold such PMIs as capital assets within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the **Code**). This discussion is based upon current provisions of the Code, existing and proposed Treasury Regulations thereunder, current administrative rulings, judicial decisions and other applicable authorities. All of the foregoing are subject to change, which change may apply retroactively and could affect the continued validity of this summary. This summary does not describe any tax consequences arising under the laws of any state, locality or taxing jurisdiction other than the U.S. federal government.

This discussion does not purport to deal with all aspects of U.S. federal income taxation that may be relevant to investors in the PMIs in light of their personal investment circumstances nor, except for limited discussions of particular topics, to holders subject to special treatment under the U.S. federal income tax laws, including: financial institutions; “controlled foreign corporations”; “passive foreign investment companies”; life insurance companies; securities dealers or traders electing mark-to-market treatment; certain governmental entities; partnerships or any entities treated as partnerships for U.S. federal income tax purposes; tax-exempt organizations; persons that hold the PMIs as a position in a “straddle” or as part of a synthetic security or “hedge”, “conversion transaction” or other integrated investment; persons that have a “functional currency” other than the U.S. dollar; and investors in pass-through entities that hold the PMIs.

No authority directly addresses the U.S. federal income tax treatment of instruments such as the PMIs, and no rulings have been or will be sought from the Internal Revenue Service (the **IRS**) in respect of the PMIs. Accordingly, the U.S. federal income tax consequences of an acquisition and disposition of a PMI (or any Preference Shares received in Exchange for such PMI) are not free from doubt, and there can be no assurance that the IRS will not issue guidance or otherwise adopt a view that is contrary to the discussion below. In the event that the IRS were to adopt such a contrary view and ultimately prevail, the amount, timing, and character of income, gain, or loss in respect of the PMIs (or related Preference Shares) could differ from the description below. Prospective investors should consult their own tax advisors regarding the U.S. federal, state, local, and non-U.S. tax consequences of the acquisition, ownership, and disposition of a PMI (or related Preference Share) based upon their particular circumstances.

As used in this section, a “Non-U.S. Holder” is a beneficial owner of a PMI that is treated for U.S. federal income tax purposes as:

- a non-resident alien individual;
- a foreign corporation;
- an estate that is not subject to U.S. federal income tax on a net income basis; or
- a trust if (1) no U.S. court can exercise primary supervision over the trust’s administration or no U.S. person and no group of such persons is authorized to control all substantial decisions of the trust, and (2) the trust has no election to be treated as a U.S. person in effect.

If a partnership (or an entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of a PMI, the treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner of a PMI that is a partnership, and partners in such a partnership, should consult with their tax advisors about the U.S. federal income tax consequences of purchasing, holding and disposing of such PMI.

### *Notice pursuant to IRS Circular 230*

THIS DISCUSSION IS NOT INTENDED OR WRITTEN BY THE ISSUER OR THE GUARANTOR OR THEIR COUNSEL TO BE USED, AND CANNOT BE USED, BY ANY PERSON FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED UNDER U.S. TAX LAWS. THIS DISCUSSION IS PROVIDED TO SUPPORT THE PROMOTION OR MARKETING BY US OF THE PMIS OFFERED HEREBY. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE POTENTIAL TAX CONSEQUENCES, INCLUDING THE FEDERAL, STATE, LOCAL, AND NON-U.S. TAX CONSEQUENCES, OF AN INVESTMENT IN THE PMIS.

### *Expected U.S. Federal Income Tax Treatment of the PMIs; Taxation of the Issuer*

There are no regulations, published rulings, or judicial decisions addressing the characterization for U.S. federal income tax purposes of instruments with terms that are substantially the same as those of the PMIs. Notwithstanding such fact, based on the transaction structure and the organizational documents of the Issuer, the Issuer intends to take the position that, for U.S. federal, state and local income tax purposes, (a) the PMIs will be characterized as equity interests in the Issuer, (b) the Issuer will be characterized as a partnership, and (c) the Exchange right constitutes a call option (the **call option**) sold by the PMI Holders to the Guarantor with the delivery of the Preference Shares constituting the exercise price for such option (such position, the **intended characterization**). The Issuer shall and each purchaser of the PMIs, to the extent required to take any position for U.S. federal income tax purposes, shall agree to treat the PMIs in conformity with the intended characterization for all U.S. federal, state, and local income tax purposes, unless otherwise required by law. Notwithstanding such fact, it is possible that the IRS could prevail in taking an alternative characterization and that such alternative characterization could have significant adverse U.S. federal income tax consequences for the PMI Holders. Prospective investors are therefore urged to consult their advisors prior to making an investment in the PMIs. The balance of this discussion assumes that the intended characterization will apply to the PMIs, the Issuer and the Exchange right.

Because the PMIs are expected to be listed on SGX-ST, it is possible that the Issuer may constitute a "publicly traded partnership" for U.S. federal income tax purposes. In such event, unless the exception described below applies, the Issuer would be subject to U.S. corporate net basis taxation (and distributions on the PMIs to Non-U.S. Holders could be subject to a 30% withholding tax to the extent such distributions constitute dividends) and such tax (and withholding tax) would reduce amounts available to make distributions on the PMIs. Such U.S. corporate net basis tax will not apply, however, if 90 percent or more of the Issuer's gross income for each year constitutes "qualifying income" (the **qualifying income exception**). For this purpose, qualifying income generally includes interest income that is not derived in the conduct of a "financial or insurance business". While the Code contains no definition of a "financial or insurance business," the Issuer intends to take the position that, due to the fact that the Issuer is prohibited from undertaking any actions other than acquiring the Eligible Assets, entering into the various transaction documents and making limited reinvestments, the Issuer is not engaged in a financial or insurance business. If the qualifying income exception were to apply, the Issuer would not be subject to a U.S. corporate net basis tax (and distributions on the PMIs would generally not be subject to a 30% withholding tax). Prior to the issuance of the PMIs, the Guarantor will receive an opinion from Mayer Brown LLP (**Special U.S. Tax Counsel**), to the effect that, although no activity closely comparable to that contemplated by the Issuer has been the subject of any Treasury regulation, revenue ruling or judicial decision, the Issuer will not constitute a publicly traded partnership that is treated as a corporation. This opinion will be based on certain prohibitions in the transaction documents placed on the activities of the Issuer. The remainder of this discussion assumes that the qualifying income exception applies.

### *U.S. federal income tax consequences to Non-U.S. Holders*

*The PMIs.* A Non-U.S. Holder will generally be subject to U.S. federal income tax in respect of the PMIs (including on a disposition of the PMIs pursuant to an exercise of the call option), only to the extent of:

- any income or gain of the Issuer that is allocated to the Non-U.S. Holder (whether or not amounts in respect of such income are distributable to the Non-U.S. Holders) and any gain upon

the disposition of the PMI by the Non-U.S. Holder that is effectively connected with the conduct of a trade or business in the United States by the Issuer;

- any income or gain allocated to the Non-U.S. Holder (whether or not amounts in respect of such income are distributable to the Non-U.S. Holders) and any gain upon the disposition of the PMIs by the Non-U.S. Holder that is effectively connected with the conduct of a trade or business in the United States by the Non-U.S. Holder; and
- in the case of a foreign individual, the Non-U.S. Holder is present in the United States for 183 days or more in the taxable year.

Due to the fact that the Issuer is prohibited from undertaking any actions other than acquiring the Eligible Assets, entering into the various transaction documents and making certain limited reinvestments, the Issuer expects that it will not be treated as engaged in a trade or business in the United States. In addition, prior to the issuance of the PMIs, the Guarantor will receive an opinion from Special U.S. Tax Counsel to the effect that, although no activity closely comparable to that contemplated by the Issuer has been the subject of any Treasury regulation, revenue ruling or judicial decision, in the opinion of Special U.S. Tax Counsel, income or gain of the Issuer will not be treated as effectively connected with a trade or business in the United States by the Issuer. Such opinion will be based on certain prohibitions in the transaction documents placed on the activities of the Issuer. However, no assurance can be given that the IRS will not take a contrary position and that a court will not uphold that position.

In the event that income or gain in respect of the PMIs is treated as effectively connected with the conduct of a trade or business in the United States, although exempt from U.S. federal withholding tax if an appropriate statement is furnished, the Non-U.S. Holder will generally be subject to U.S. federal income tax on the income or gain at regular U.S. federal income tax rates, unless reduced or eliminated pursuant to an applicable tax treaty. In addition, if the Non-U.S. Holder is a foreign corporation, its effectively connected income will generally be subject to an additional 30% branch profits tax, unless reduced or eliminated pursuant to an applicable tax treaty.

*The Call Option.* A Non-U.S. Holder would generally be subject to U.S. federal income tax with regard to the call option only on the gain recognized upon the sale, exchange or lapse of the call option and only if:

- such gain is effectively connected with the conduct of a trade or business in the United States by the Non-U.S. Holder; and
- in the case of a foreign individual, the Non-U.S. Holder is present in the United States for 183 days or more in the taxable year.

In the event that gain in respect of the call option is treated as effectively connected with the conduct of a trade or business in the United States, although exempt from U.S. federal withholding tax if an appropriate statement is furnished, the Non-U.S. Holder will generally be subject to U.S. federal income tax on the income or gain at regular U.S. federal income tax rates, unless reduced or eliminated pursuant to an applicable tax treaty. In addition, if the Non-U.S. Holder is a foreign corporation, its effectively connected income will generally be subject to an additional 30% branch profits tax, unless reduced or eliminated pursuant to an applicable tax treaty.

*Preference Shares.* A Non-U.S. Holder will generally be subject to U.S. federal income tax in respect of any Preference Shares received on exercise of the call option only to the extent of:

- any income received or gain recognized upon the disposition of the Preference Shares by the Non-U.S. Holder that is effectively connected with the conduct of a trade or business in the United States by the Non-U.S. Holder; and
- in the case of a foreign individual, the Non-U.S. Holder is present in the United States for 183 days or more in the taxable year.



In the event that income or gain in respect of the Preference Shares is treated as effectively connected with the conduct of a trade or business in the United States, although exempt from U.S. federal withholding tax if an appropriate statement is furnished, the Non-U.S. Holder will generally be subject to U.S. federal income tax on the income or gain at regular U.S. federal income tax rates, unless reduced or eliminated pursuant to an applicable tax treaty. In addition, if the Non-U.S. Holder is a foreign corporation, its effectively connected income will generally be subject to an additional 30% branch profits tax, unless reduced or eliminated pursuant to an applicable tax treaty.

It is also possible that the PMIs could be characterized for U.S. federal income tax purposes in a manner other than as described above. Certain alternative characterizations could have significant adverse U.S. federal income tax consequences for Non-U.S. Holders of the PMIs. Prospective investors are therefore urged to consult their advisors prior to making an investment in the PMIs.

### ***Information reporting and backup withholding***

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale, redemption, retirement, or other disposition of the PMIs within the United States or conducted through certain United States-related financial intermediaries, unless the Non-U.S. Holder certifies to the payer under penalties of perjury that it is a Non-U.S. Holder (and the payer does not have actual knowledge or reason to know that such holder is a U.S. person), or the holder otherwise establishes an exemption.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability provided the required information is timely furnished to the IRS. Non-U.S. Holders should consult their tax advisors regarding the application of the backup withholding and information reporting rules to their particular circumstances.

**If you are considering the purchase of the PMIs, you are strongly urged to consult your own tax advisor concerning the application of U.S. tax laws to your particular situation (including the possibility of alternative characterizations and treatments of the PMIs), as well as any tax consequences arising under the laws of any federal, state, local or foreign jurisdiction.**

### **Australia**

The following is a general summary of the Australian tax consequences of a person who is not a resident of Australia acquiring, holding and disposing of the PMIs or the Preference Shares. This summary is of a general nature and based on the law as in effect at the date of this Offering Circular, but which is subject to change. This summary assumes that all relevant transactions are carried out in the manner described in this Offering Circular.

The discussion below is not intended to constitute a complete analysis of all the tax consequences relating to the acquisition, ownership and disposal of the PMIs or the Preference Shares by all persons, some of whom may be subject to special or additional rules. This summary is not intended to address the Australian tax consequences to any person who is a resident of Australia or who acquires, holds or disposes of the PMIs or the Preference Shares as part of or in the course of carrying on a business in Australia.

Each holder or prospective holder of the PMIs or Preference Shares should consult its own tax advisers concerning the tax consequences of acquiring, owning or disposing of the PMIs or Preference Shares in their own particular circumstances.

### ***PMI Distributions***

Distributions made by the Issuer on the PMIs to a PMI Holder who is not a resident of Australia and who does not acquire or hold the PMIs in Australia or in connection with a business carried on in Australia should not be subject to Australian income or withholding tax.

### ***Disposal of PMIs***

A PMI Holder who is not a resident of Australia and who does not acquire, hold or dispose of the PMIs in Australia or in connection with a business carried on in Australia should not be subject to any Australian income or capital gains tax on the disposal of the PMIs, including a disposal by way of Exchange for Preference Shares.

### ***Preference Share Dividends***

Dividends paid on the Preference Shares to a Preference Share Holder who is not a resident of Australia and who does not acquire or hold the Preference Shares in Australia or in connection with a business carried on in Australia should not be subject to Australian income or withholding tax if, but only to the extent to which, those Dividends are either franked or declared to be conduit foreign income by the Guarantor. That part of any such Dividends which is neither franked nor declared to be conduit foreign income would be subject to Australian dividend withholding tax at the rate of 30%, unless that rate is reduced by an applicable double tax treaty between Australia and the country of which the Preference Share Holder is a resident.

To the extent that the Guarantor is required to make deductions from the Dividends for withholding tax, the Guarantor is, subject to certain exceptions, required to pay such additional amounts as will result in the Preference Share Holders receiving, after such withholding, the same amounts as they would have received if no such withholding were required.

### ***Disposal of Preference Shares***

A Preference Share Holder who is not a resident of Australia and who does not acquire, hold or dispose of the Preference Shares in Australia or in connection with a business carried on in Australia should not be subject to any Australian income or capital gains tax on a profit or gain from the disposal of the Preference Shares, provided that, in the case of income tax, the profit does not have an Australian source and, in the case of capital gains tax, the Preference Share Holder and its associates do not at any time hold or have the right to acquire 10% or more of the voting rights in or rights to distribution of income or capital from the Guarantor.

Although the application of the source rules depend heavily on the particular facts and circumstances of each case, and can be uncertain, a profit from the disposal of the Preference Shares by a non-resident Preference Share Holder should generally not be from Australian sources if the non-resident Preference Share Holder acquired, held and disposed of the Preference Shares outside Australia.

## **Singapore**

The summary below is of a general nature and based on the law and practice currently applicable in Singapore. It is not intended to be and does not constitute legal or tax advice. No assurance can be given that the Singapore Courts or fiscal authorities will agree with the positions set out below.

The discussion below is not intended to constitute a complete analysis of all the tax consequences relating to the acquisition, ownership and disposal of the PMIs or Preference Shares by any persons, some of whom may be subject to special or additional rules.

Each holder or prospective holder of the PMIs or Preference Shares should consult its own tax advisers concerning the Singaporean or non-Singaporean tax consequences of acquiring, owning or disposing of the PMIs or Preference Shares.

### ***Corporate Income Tax***

Singapore tax-resident corporate taxpayers are subject to Singapore income tax on income accruing in or derived from Singapore and on income derived from sources outside Singapore (i.e. foreign-sourced income) received or deemed received in Singapore, subject to certain exceptions.

Foreign-sourced dividends received or deemed received in Singapore by Singapore tax-resident corporate taxpayers are exempt from Singapore income tax provided that the following conditions are met:

- (i) at the time the income is received in Singapore, the highest rate of tax of a similar character to income tax in the jurisdiction from which the income is received is at least 15%;
- (ii) the dividend or the income out of which it was paid is subject to some tax of a similar character to income tax under the law of the jurisdiction from which the dividend is received; and
- (iii) the Comptroller of Income Tax in Singapore is satisfied that the tax exemption would be beneficial to the recipient of the foreign-sourced income.

From 30 July 2004, the above exemption was extended to foreign dividends or underlying income which is exempted from tax of a similar character to income tax in the foreign jurisdiction as a result of a tax incentive granted by that foreign jurisdiction for carrying out substantive business activities thereon, provided that conditions (i) and (iii) above continue to be satisfied.

Non-Singapore tax-resident corporate taxpayers in Singapore (such as a Singapore branch of a foreign company) are subject to Singapore income tax on income accruing in or derived from Singapore and on foreign-sourced income that is received or deemed received in Singapore, subject to certain exceptions.

For the purposes of the above exemption, Distributions paid on the PMIs and Dividends paid on the Preference Shares are likely to be classified as foreign source dividends, assuming that the business of the Issuer and the Guarantor continues not to be managed and controlled from Singapore. Whether Distributions paid on the PMIs and Dividends paid on the Preference Shares would constitute foreign source income for the purposes of Singapore income tax more generally would depend on the circumstances of the taxpayer in question.

### ***Individual Income Tax***

An individual taxpayer (whether tax-resident and non-tax-resident) is subject to Singapore income tax on income accruing in or derived from Singapore, subject to certain exceptions.

Foreign-sourced income received or deemed received by a Singapore tax-resident individual is exempt from income tax in Singapore, except where such income is received through a partnership in Singapore.

Foreign-sourced income received or deemed received by a non-Singapore tax-resident individual is exempt from income tax in Singapore.

### ***Tax Residency***

A company is regarded as tax resident in Singapore if the control and management of its business is exercised in Singapore.

An individual is regarded as tax resident in Singapore if the individual is physically present in Singapore or exercises an employment in Singapore (other than as a director of a company) for 183 days or more in the calendar year preceding the year of assessment, or if the individual ordinarily resides in Singapore.

### ***Rates of tax***

The corporate tax rate in Singapore is 17% with effect from the year of assessment 2010 (i.e. in respect of income earned during the financial year or other basis period ended in 2009), with certain partial exemptions granted on the first S\$300,000 of chargeable income.

Singapore tax-resident individuals are subject to tax on their taxable income based on progressive tax rates, currently ranging from 0% to 20%. Non-resident individuals are taxable on income (excluding employment income) at 20%.

### ***Gains on the realization of the PMIs or Preference Shares***

Singapore currently does not impose tax on gains of a capital nature. However, there are no specific laws or regulations which deal with the characterisation of whether a gain is income or capital in nature.

Gains arising from a realization of the PMIs or Preference Shares may be construed to be income in nature and subject to Singapore income tax provided further that the gains constitute either income sourced in Singapore or income received (or deemed received) in Singapore from outside Singapore. Gains are likely to be considered to be income in nature and sourced in Singapore if they arise from or are otherwise connected with a trade or business in Singapore of dealing in securities.

Such gains may also be considered income in nature, even if they do not arise from a trade or business of dealing in securities, if the PMIs or Preference Shares were acquired with the intention or purpose of making a profit by sale or disposal and not with the intention of holding for long-term investment, again subject to the gains being either income sourced in Singapore or income received (or deemed received) in Singapore from outside Singapore.

The Exchange of the PMIs into Preference Shares is also likely to be considered to be a realization of the PMIs for Singapore income tax purposes.

### ***Adoption of Financial Reporting Standards 39 for Singapore income tax purposes***

Under Section 34A of the Income Tax Act, Chapter 134 of Singapore, subject to certain "opt-out" provisions, Singapore incorporated companies and other taxpayers which are required to comply with *Financial Reporting Standards 39 - Financial instruments: Recognition and Measurement (FRS 39)* for financial reporting purposes are generally also required to apply FRS 39 for Singapore income tax purposes, subject to certain modifications.

Such taxpayers may be required to recognise gains or losses (not being gains or losses in the nature of capital) even though no sale or disposal is made (e.g. on the basis of changes in "fair value"). Each holder or prospective holder of the PMIs or Preference Shares who may be subject to such provisions should consult their own accounting and tax advisers regarding the Singapore income tax consequences of their acquisition, ownership and disposal of the PMIs or Preference Shares.

### ***Stamp duty***

Stamp duty is payable in Singapore only on instruments that:

- (a) are first executed in Singapore, or executed outside Singapore and brought into Singapore; and
- (b) which relate to immovable property and stocks and shares.

However, there is no Singapore stamp duty payable on the issuance of the PMIs or Preference Shares.

As the Issuer and the Guarantor are foreign incorporated companies, there is also no stamp duty payable in Singapore on any sale or gift of the PMIs and Preference Shares in the event the PMIs and Preference Shares are not registered in any register kept in Singapore.

However, in the event that the PMIs or the Preference Shares are registered in a register kept in Singapore, any instrument for the transfer on sale or gift of the PMIs or the Preference Shares (as the case may be) would attract stamp duty at the rate of S\$0.20 for every S\$100 of the consideration or value of the PMIs or the Preference Shares or part thereof.

In the event that any other instruments in relation to the PMIs or Preference Shares are first executed in Singapore or executed abroad and brought into Singapore, specific advice should be sought as to whether the particular instrument is subject to stamp duty and, if so, at what rate or amount.

### ***Goods and Services Tax (GST)***

A sale of the PMIs or Preference Shares by a GST-registered investor belonging in Singapore for GST purposes to another person belonging in Singapore is an exempt supply and not subject to GST. Any input GST incurred by the GST-registered investor in making such an exempt supply is generally not recoverable from the Comptroller of GST.

Where the PMIs or Preference Shares are sold by a GST-registered investor in the course of or furtherance of a business carried on by such investor to a person belonging outside Singapore and that person is outside Singapore when the sale is executed, the sale should generally be considered a taxable supply subject to GST at zero-rate. Subject to the normal rules and limitations for input tax claims under the Singapore GST legislation, any input GST incurred by the GST-registered investor in making such a taxable supply in the course of or furtherance of a business carried on by such investor may generally be recoverable from the Comptroller of GST.

Services consisting of arranging, broking, underwriting or advising on the issue, allotment or transfer of ownership of the PMIs or Preference Shares provided by a GST-registered person to an investor belonging in Singapore for GST purposes will be subject to GST at the current standard rate of 7%. Similar services rendered to an investor belonging outside Singapore should generally be subject to GST at zero-rate, provided that the investor is outside Singapore when the services are performed and the services provided do not directly benefit any person in Singapore.

### ***Creditability of Foreign Income Tax***

Each holder or prospective holder in the PMIs or Preference Shares should consult its own tax advisers as to whether, and if so to what extent, any foreign tax credit in Singapore may be obtained for any United States, Australian or other non-Singaporean tax payable on any amount arising in relation to the PMIs or Preference Shares

## SUBSCRIPTION AND SALE

The Managers will, in a subscription agreement (the **Subscription Agreement**) to be dated on or about 29 November 2010, agree with the Issuer and the Guarantor the basis upon which they will agree to subscribe for the PMIs. In the Subscription Agreement, the Issuer will agree to reimburse the Managers for certain of their expenses in connection with the Offer and the issue of the PMIs under the Offer and to indemnify the Managers against certain liabilities incurred by them in connection therewith.

### United States

Neither the PMIs nor the Guarantee have been, nor will they be, registered under the U.S. Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S under the U.S. Securities Act or pursuant to an exemption from the registration requirements of the U.S. Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the U.S. Securities Act.

Each Manager has represented and agreed that it will not offer, sell or deliver any PMIs (a) as part of their distribution at any time, or (b) otherwise until 40 days after the completion of the distribution, as determined and certified by the relevant Manager or, in the case of an issue of the PMIs on a syndicated basis, the relevant lead manager, of the PMIs, within the United States or to, or for the account or benefit of, U.S. persons. Each Manager has further agreed that it will send to each dealer to which it sells any PMIs during the distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the PMIs within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings given to them by Regulation S under the U.S. Securities Act.

In addition, until 40 days after the commencement of the offer of the PMIs, an offer, sale or distribution of such PMIs within the United States by any dealer (whether or not participating in the offering) may violate the registration requirements of the U.S. Securities Act if such offer, sale or distribution is made otherwise than in accordance with an available exemption from registration under the U.S. Securities Act.

### Public Offer Selling Restriction under the Prospectus Directive

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State it has not made and will not make an offer of any PMIs to the public in that Relevant Member State other than:

- (a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year, (2) a total balance sheet of more than €43,000,000, and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
- (c) to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the Managers; or
- (d) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of any PMIs referred to in (a) to (d) above shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression **an offer of the PMIs to the public** in relation to any PMIs in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the PMIs to be offered so as to enable an investor to decide to purchase or subscribe the PMIs, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression **Prospectus Directive**

means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

### **United Kingdom**

Each Manager has represented and agreed that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the **FSMA**) received by it in connection with the issue or sale of the PMIs in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer or the Guarantor; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the PMIs in, from or otherwise involving the United Kingdom.

### **Switzerland**

The PMIs may not be publicly offered, sold or advertised, directly or indirectly, in or from Switzerland. Neither this Offering Circular nor any other offering or marketing material relating to the PMIs constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Federal Code of Obligations or a listing prospectus within the meaning of the listing rules of the SIX Swiss Exchange AG, and neither this Offering Circular nor any other offering or marketing material relating to the PMIs may be publicly distributed or otherwise made publicly available in Switzerland.

Each Manager has acknowledged and agreed that:

- (a) neither this Offering Circular nor any other offering or marketing document relating to the PMIs constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Federal Code of Obligations or a listing prospectus within the meaning of the listing rules of the SIX Swiss Exchange AG; and
- (b) the PMIs may be distributed or otherwise be made available in or from Switzerland on a private placement basis only.

Each Manager has further agreed not to:

- (i) publicly distribute (or otherwise make publicly available) this Offering Circular or any other offering or marketing document relating to the PMIs in or from Switzerland; or
- (ii) publicly offer, sell or advertise the PMIs, directly or indirectly, in or from Switzerland.

### **Australia**

No prospectus or other disclosure document (as defined in the Australian Corporations Act) in relation to the Offer or the PMIs has been, or will be, lodged with the Australian Securities and Investments Commission (**ASIC**). Each Manager has represented and agreed that it:

- (a) has not offered and will not offer applications for the issue, sale or purchase, and has not invited and will not invite applications for the issue, sale or purchase, of any PMIs in Australia, including an offer or invitation received in Australia; and
- (b) has not distributed or published, and will not distribute or publish, any offering memorandum, advertisement or other offering material or advertisement relating to the PMIs in Australia or received in Australia,

in each case unless:

- (i) the minimum aggregate consideration payable by each offeree or invitee for the PMIs is at least A\$500,000 (or its equivalent in an alternative currency, in each case, disregarding amounts, if any, lent by the offeror or its associates) or the offer or invitation is otherwise an offer or invitation for which disclosure is not required to be made to investors under Parts 6D.2 or 7.9 of the Australian Corporations Act;
- (ii) the offer is not made to a person who is a "retail client" within the meaning of section 761G of the Australian Corporations Act;
- (iii) the offer, invitation or distribution complies with all applicable Australian laws, regulations and directives; and
- (iv) the offer, invitation or distribution does not require any document to be lodged with ASIC or any other regulatory authority in Australia.

## Japan

The PMIs have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Law No.25 of 1948, as amended, the **FIEA**) and each Manager has represented and agreed that it will not offer or sell any PMIs, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (as defined under Item 5, Paragraph 1, Article 6 of the Foreign Exchange and Foreign Trade Control Law (Law No. 228 of 1949, as amended)), or to others for re-offering or resale, directly or indirectly, in Japan or to, or for the benefit of, a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the FIEA and any other applicable laws, regulations and ministerial guidelines of Japan.

## Hong Kong

The PMIs have not been authorised by the Hong Kong Securities and Futures Commission.

Each Manager has represented and agreed that:

- (a) it has not offered or sold and will not offer or sell in Hong Kong, by means of any document, any PMIs other than (i) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong (the **SFO**) and any rules made under that Ordinance, or (ii) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; and
- (b) it has not issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the PMIs, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to any PMIs which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the SFO and any rules made under that Ordinance.

## Singapore

Each Manager has acknowledged that this Offering Circular has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each Manager has represented and agreed that this Offering Circular and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of any PMIs to be issued from time to time by the Issuer and/or the Guarantor pursuant to the Offer have not been and will not be circulated or distributed, nor the PMIs offered or sold, or made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor pursuant to Section 274 of the SFA, (ii) to a relevant person under Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.



Where the PMIs are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the PMIs under Section 275 of the SFA except:

- (1) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or (in the case of a corporation) where the transfer arises from an offer referred to in Section 276(3)(i)(B) of the SFA or (in the case of a trust) where the transfer arises from an offer referred to in Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law; or
- (4) as specified in Section 276(7) of the SFA.

#### **General**

Each Manager has agreed that it will (to the best of its knowledge and belief) comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers any PMIs or possesses or distributes this Offering Circular and will obtain any consent, approval or permission required by it for the purchase, offer, sale, distribution, transfer or delivery by it of the PMIs under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, offers, sales or deliveries and neither the Issuer, the Guarantor, nor any of the other Managers shall have any responsibility therefore.

None of the Issuer, the Guarantor, or the Managers represents that the PMIs may at any time lawfully be purchased, offered, sold, delivered or transferred in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to any exemption available thereunder, or assumes any responsibility for facilitating such purchase, offer, sale, distribution, transfer or delivery.

## GENERAL INFORMATION

### Authorisation

The Offer and the issue of the PMIs have been duly authorised by the Issuer as set out in Article 4 of the LLC Agreement and approved by resolutions of a duly appointed Director of the Issuer made on 24 November 2010. The giving of the Guarantee and the issue of the Preference Shares on an Exchange of any PMIs have been duly authorised by resolutions of a duly appointed committee of the Board of Directors of the Guarantor made on 19 November 2010 and 26 November 2010.

### Listing and Trading of the PMIs on the SGX-ST

Approval in-principle for the listing of the PMIs on the official list of the SGX-ST has been received from the SGX-ST. The PMIs will be traded in a minimum board lot size of S\$200,000 (or equivalent in another currency) for so long as the PMIs are listed on the SGX-ST.

Admission of the Securities to the official list of the SGX-ST is not to be taken as an indication of the merits of the Issuer, the Guarantor or the PMIs.

For so long as the PMIs are listed on the SGX-ST and the rules of the SGX-ST so require, the Issuer shall appoint and maintain a paying agent in Singapore, where the PMIs may be presented or surrendered for payment or Redemption, in the event that the Global Certificate is exchanged for Definitive Certificates. In addition, in the event that a Global Certificate is exchanged for Definitive Certificates, an announcement of such exchange shall be made through the SGX-ST and such announcement will include all material information with respect to the delivery of the Definitive Certificates, including details of the paying agent in Singapore.

### Documents Available

From the date hereof and so long as the PMIs are capable of being issued under the Offer, copies of the following documents will, when published, be available for inspection from the registered offices of the Issuer and the Guarantor and from the specified offices of the Principal Paying Agent:

- (a) the certificate of formation of the Issuer and the constitutional documents of the Guarantor;
- (b) the LLC Agreement;
- (c) the Guarantee;
- (d) the Deed of Undertaking;
- (e) the Implementation Deed;
- (f) the Agency Agreement;
- (g) this Offering Circular; and
- (h) each document incorporated by reference into this Offering Circular (see "*Documents Incorporated by Reference*").

### Clearing Systems

The PMIs have been accepted for clearance through Euroclear and Clearstream, Luxembourg (which are the entities in charge of keeping the records). The Common Code and ISIN for the PMIs allocated by Euroclear and Clearstream, Luxembourg are 056235442 and XS0562354422.

## **Auditors**

The auditors of the Group are PricewaterhouseCoopers, an independent registered public accounting firm, being an Australian partnership and a member of The Institute of Chartered Accountants in Australia (**PwC Australia**).

PwC Australia may be able to assert a limitation of liability with respect to claims arising out of its audit report described or included in the documents identified under “*Documents Incorporated by Reference*” on page 6 of this Offering Circular, and elsewhere in this Offering Circular, to the extent it is subject to the limitations set forth in the Professional Standards Act 1994 of New South Wales, Australia (the **Professional Standards Act**) and the Institute of Chartered Accountants in Australia (NSW) Scheme adopted by The Institute of Chartered Accountants in Australia and approved by the New South Wales Professional Standards Council pursuant to the Professional Standards Act (together, the **NSW Accountants Scheme**) (or, in relation to matters occurring prior to 7 October 2007, the predecessor scheme).

The Professional Standards Act and the NSW Accountants Scheme may limit the liability of PwC Australia for damages with respect to certain civil claims arising in, or governed by the laws of, New South Wales directly or vicariously from anything done or omitted in the performance of its professional services to the Group, including, without limitation, its audits of the Group’s financial statements, to the lesser of ten times the reasonable charge for the service by PwC Australia that gave rise to the claim and a maximum of A\$75 million and for other work of A\$20 million (or in relation to matters occurring prior to 7 October 2007, A\$20 million). The limit does not apply to claims for breach of trust, fraud or dishonesty.

## **Managers transacting with the Issuer and the Guarantor**

Certain of the Managers and their affiliates have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and may perform services to the Issuer, the Guarantor and their affiliates in the ordinary course of business.

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