

## **PRODUCT RULING - BR Prd 09/12**

This is a product ruling made under section 91F of the Tax Administration Act 1994.

### **Name of the Person who applied for the Ruling**

This Ruling has been applied for by BNZ Income Securities 2 Limited ("BNZIS 2").

### **Taxation Laws**

All legislative references are to the Income Tax Act 2007, unless otherwise stated.

This Ruling applies in respect of sections BG 1, CX 56(3), GA 1 and GB 35.

### **The Arrangement to which this Ruling applies**

The Arrangement involved the raising of capital by Bank of New Zealand Limited ("BNZ") and its parent company National Australia Bank Limited ("NAB"). BNZIS 2 issued perpetual non-cumulative shares ("BNZIS 2 Shares") to members of the public ("BNZIS 2 Shareholders"). BNZIS 2 lent the proceeds raised from the issue to BNZ Income Management Limited ("BNZIM") under the BNZIM Loan Agreement. BNZIM invested the proceeds of that Loan ("BNZIM Loan") in perpetual preference shares issued by BNZ ("2009 BNZ PPS") and, in turn, the BNZ used the proceeds for general corporate purposes.

There was, at the time the Arrangement was entered into, and is no intention on the part of the Board of Directors of the BNZ and/or NAB that BNZ and/or NAB would promote the acquisition of BNZIS 2 Shares by providing investors with a loan or other financing from any of the companies in the BNZ or NAB Consolidated Group ("NAB Group").

This Ruling does not apply to any investor who, or which, has funded the acquisition of BNZIS 2 Shares by means of borrowing or other financing from any of the companies in the BNZ or NAB Group of companies, where such borrowing or other financing was part of an express agreement or arrangement (whether in writing or otherwise) with such entity that the proceeds of some or all of such borrowing or other financing would be used for the purposes of acquiring BNZIS 2 Shares.

Further details of the Arrangement are set out in the paragraphs below.

1. The parties to the Arrangement are:
  - NAB, a limited liability company incorporated under Australian law and tax resident in Australia;
  - National Equities Limited ("NEL"), a limited liability company incorporated under Australian law and tax resident in Australia – a wholly owned subsidiary of NAB;
  - National Australia Group (NZ) Limited ("NAGNZ"), a limited liability company incorporated under New Zealand law – a wholly owned

subsidiary of NEL and a 100 percent indirectly owned subsidiary of NAB;

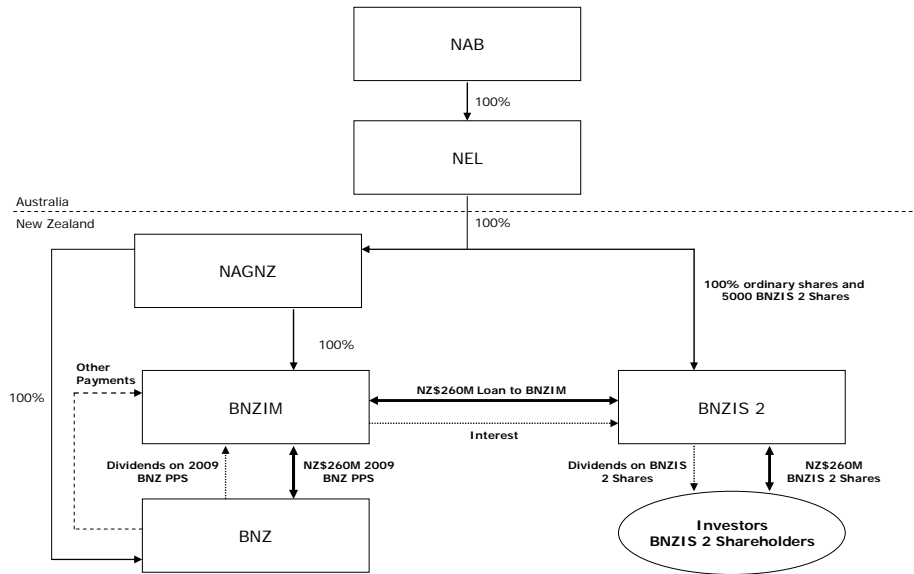
- BNZ, a limited liability company incorporated under New Zealand law – a wholly owned subsidiary of NAGNZ and a 100 percent indirectly owned subsidiary of NAB;
- BNZIM, a limited liability company incorporated under New Zealand law – a wholly owned subsidiary of NAGNZ and a 100 percent indirectly owned subsidiary of NAB; and
- BNZIS 2, a limited liability company incorporated under New Zealand law – a wholly owned subsidiary of NEL and a 100 percent indirectly owned subsidiary of NAB.

2. The material terms of the transactions comprising the Arrangement are governed by the following documents, which were provided to Inland Revenue by the Applicant in a letter dated 18 August 2009 (received by Inland Revenue on 20 August 2009):

- BNZIM Loan Agreement (“Loan Agreement”) dated 19 May 2009, between BNZIS 2 and BNZIM, evidencing the loan between BNZIS 2 as lender and BNZIM as borrower (the BNZIM Loan);
- BNZIS 2 Deed Poll, dated 19 May 2009, entered into by BNZIS 2 in favour of the BNZIS 2 Shareholders;
- Security Trust Deed, dated 19 May 2009, between BNZIM, BNZIS 2 and New Zealand Permanent Trustees Limited (“Trustee”);
- Clause 26 of the Constitution of BNZ (“BNZ Constitution”) registered with the New Zealand Companies Office on 19 May 2009;
- Constitution of BNZIS 2 (“BNZIS 2 Constitution”) registered with the New Zealand Companies Office on 14 May 2009;
- Committed Cash Advances Facility Agreement, between BNZ and BNZIS 2, dated 19 May 2009;
- Administration Agreement, between BNZ and BNZIS 2, dated 19 May 2009; and
- NZX Limited (“NZX”) rulings and waivers dated 13 May 2009.

3. Also provided to Inland Revenue by the Applicant in a letter dated 18 August 2009 (received by Inland Revenue on 20 August 2009) was a copy of the Combined Investment Statement and Prospectus regarding the Offer of Perpetual Non-cumulative Shares by BNZIS 2 prepared and dated as at 19 May 2009 for the purposes of the Securities Act 1978 (“Prospectus”).

4. The Arrangement is summarised in the diagram below and discussed in subsequent paragraphs.



5. The Australian Prudential Regulatory Authority (“APRA”) currently treats the BNZIS 2 Shares as innovative residual tier 1 capital for NAB on a level 2 basis. The Reserve Bank of New Zealand (“RBNZ”) currently treats the 2009 BNZ PPS as tier 1 capital for BNZ.

### **BNZIS 2**

#### *Incorporation of BNZIS 2*

6. BNZIS 2 is a special-purpose company incorporated on 12 January 2009 under the Companies Act 1993 and intended to be tax resident solely in New Zealand. BNZIS 2 was incorporated with 100 ordinary shares of \$1 each, all of which are held by NEL. NEL is a 100 percent subsidiary of NAB and is incorporated and tax resident in Australia. BNZIS 2 subsequently issued a further 6,800,000 ordinary shares to NEL. On 29 September 2009 a further tranche of 135,431 \$1 ordinary shares was issued to NEL to cover additional establishment costs in excess of the initial ordinary share issues.
7. The ordinary shares carry all of the voting rights in BNZIS 2 but carry no right to a distribution in any circumstances.
8. Under the relevant accounting standards, BNZIS 2 is a member of the NAB Group.

#### *BNZIS 2 Constitution*

9. BNZIS 2 has no power to carry on any business or activity other than that described in the BNZIS 2 Constitution, which was lodged with the Companies Office on 14 May 2009.
10. Clause 4.1 of the BNZIS 2 Constitution states:

**Limitation on Business:** The only business or activity which the Company may carry on is to:

- (a) issue and maintain in existence perpetual non-cumulative shares, including listing (and maintaining a listing of) those shares on any stock or securities exchange in New Zealand or elsewhere;
- (b) advance the proceeds of perpetual non-cumulative shares to BNZIM, or a Related Company of that company pursuant to one or more loan agreements;
- (c) enter into the Administration Agreement, the Committed Cash Advance Facility Agreement, the Security Trust Deed, the Loan Agreement, the Registration Agreement and the Deed Poll (and any other administration agreements, committed cash advance facility agreements, security trust deeds, loan agreements, registration agreements and/or deed polls in connection with the issue of perpetual non-cumulative shares);
- (d) do all other things reasonably incidental to the activities referred to in paragraphs (a), (b), (c) and this Constitution.

The Company has no power to:

- (e) carry on any other business or activity; or
- (f) apply amounts received by way of interest on, or repayment of, the loans referred to in paragraph (b) for any purpose other than in payments to the holders of the perpetual non-cumulative shares, meeting costs and expenses incurred in connection with the issuance and maintenance in existence of perpetual non-cumulative shares and making income and other tax payments to the New Zealand Inland Revenue Department.

11. BNZIS 2 elected to be a "portfolio listed company" ("PLC") under the "portfolio investment entity" ("PIE") regime (as those terms are defined in section YA 1) with a commencement date of 26 June 2009.
12. To ensure compliance with the PIE regime, the BNZIS 2 Constitution contains certain restrictions on the percentage of the BNZIS 2 Shares that can be held by a person and their associates. Under the BNZIS 2 Constitution, the directors of BNZIS 2 may take the following steps if these restrictions are breached (or would be breached were a transfer permitted to be effected). These steps include:
  - rejecting applications for, or transfers of, BNZIS 2 Shares (clauses 6.16 and 6.17 of the BNZIS 2 Constitution);
  - treating the transfer of any BNZIS 2 Shares as void (*ab initio* or from such other date as BNZIS 2 may decide in its complete discretion) (clause 6.17 of the BNZIS 2 Constitution);
  - deeming any BNZIS 2 Shares held that exceed the "investor interest size" requirements specified in the Act to be held by the BNZIS 2 Shareholder on trust for any company in the NAB Group appointed by BNZIS 2, and allowing such shares to be sold by that company (clause 6.17 of the BNZIS 2 Constitution);
  - allowing BNZIS 2 to request any BNZIS 2 Shareholder to provide such information as it may require to determine whether BNZIS 2 continues to meet the PLC requirements set out in the Act and, where holders do not provide such information within relevant time periods, providing that the relevant BNZIS 2 Shares are held on trust by the holder thereof for any company in the NAB Group appointed by BNZIS 2 and allowing such shares to be sold by that company (clause 6.17 of the BNZIS 2 Constitution).

- taking any of the steps in clause 6.18 of the BNZIS 2 Constitution to ensure any breach of the “investor interest size” requirement is remedied within the period specified in the Act.

13. The BNZIS 2 Constitution was amended from the version provided to Inland Revenue (refer paragraph 2 above) effective from 29 October 2009, so that in accordance with market practice the Record Date for payment of dividends to BNZIS 2 Shareholders is 10 days, rather than 10 *business* days, before Dividend Payment Date. The revised definition of “Record Date” in the BNZIS 2 Constitution is as follows:

**“Record Date”** means 18 March, 18 June, 18 September and 18 December of each calendar year, or if that date is not a Business Day, the preceding Business Day, or such other date as the Directors may determine in respect of any Dividend;

### ***BNZIS 2 Shares***

14. BNZIS 2 offered BNZIS 2 Shares with an issue price of \$1 each to members of the public in New Zealand under the Prospectus referred to at paragraph 3 above. The minimum holding amount was \$5,000. The offer – which opened on 26 May 2009 and closed on 23 June 2009 was available to both retail and institutional investors. In total 260,000,000 BNZIS 2 Shares were issued under the offer, for a total subscription price of \$260,000,000. Of these shares, 5,000 (the minimum parcel) have been subscribed for and are held by NEL.
15. The issue date of the BNZIS 2 Shares was 26 June 2009, and the date of initial quotation and trading on the debt securities market (the “NZDX”) operated by the NZX was 1 July 2009. Although the BNZIS 2 Shares are not debt securities for the purposes of the Securities Act 1978, the NZX has given certain rulings on, and waivers of, the Listing Rules in relation to the listing of the BNZIS 2 Shares on the NZDX. The BNZIS 2 Shares are freely transferable, subject to certain ownership limitations.
16. The BNZIS 2 Shares are perpetual, non-cumulative shares and have no fixed term, although the commercial expectation is that the funding raised by means of the issue of the BNZIS 2 Shares will be in place for an initial five-year period, with extensions of further five-year periods, if desired. This is subject to potential exercise of the call option (“Call”) referred to in paragraph 46 below. The BNZIS 2 Shares are not redeemable at the option of BNZIS 2 or the BNZIS 2 Shareholders, and in no circumstances will there be any conversion of the BNZIS 2 Shares to ordinary shares.
17. The BNZIS 2 Shares are non-voting shares, other than in respect of amendments that relate to the rights, privileges, limitations and conditions attaching to them, meetings convened in relation to BNZIS 2’s liquidation in certain circumstances and certain proceedings under the Security Trust Deed and the BNZIS 2 Deed Poll (clause 6.22 of the BNZIS 2 Constitution).
18. Under the terms of the BNZIS 2 Shares as set out in clause 6 of the BNZIS 2 Constitution, the BNZIS 2 Shares give BNZIS 2 Shareholders the right to a quarterly dividend, with the Dividend Amount (as defined in clause 6.1 of the BNZIS 2 Constitution) payable on each BNZIS 2 Share, for the first five years being calculated in accordance with the following formulae:

(a) in respect of the first dividend period:

$$\text{Issue Price} \times \text{Dividend Rate} \times \frac{X}{365} \times (1-t)$$

(b) in respect of a dividend period other than the first dividend period:

$$\frac{\text{Issue Price} \times \text{Dividend Rate}}{4} \times (1-t)$$

Where:

The issue price is \$1.00;

"Dividend Rate" is the aggregate of the five-year swap rate (adjusted as necessary, to a quarterly rate) and the Margin (being 4.09 percent);

"t" is (in each case) the weighted average basic rate of New Zealand income tax applicable to BNZIS 2 during the period ending on the relevant Dividend Payment Date; and

"X" is the number of days from (and including) the Issue Date to (but excluding) 28 September 2009.

19. At the expiry of the first five-year period, there will be a further five-year rate set by reference to the five-year swap rate two business days prior to that expiry date (but with no change to the Margin of 4.09 percent). The same process will apply at the end of the second and each subsequent five-year period.
20. On a liquidation of BNZIS 2, the BNZIS 2 Shares give the right to a pro rata share of any surplus after liquidation of BNZIS 2's assets and payment of its debts, in priority and to the exclusion of, the holders of other classes of shares of BNZIS 2 (including any ordinary shares) other than shares expressed to rank equally in a liquidation of BNZIS 2 (under clause 6.8 of the BNZIS 2 Constitution).
21. The Prospectus stated (at page 8):

Use of Proceeds

...

Interest payable by BNZIM to BNZIS 2 on the Loan will be the source of cash for BNZIS 2 to pay Dividends to investors. The primary sources of cash for BNZIM to pay interest on the Loan to BNZIS 2 are dividends from BNZ on the 2009 BNZ PPS and other payments received from BNZ (including interest payments on its cash balances with BNZ and tax loss offset payments it receives from BNZ).

...

How will Dividends be funded?

Cash to pay Dividends on the Shares will be derived by BNZIS 2 from interest it receives on its Loan to BNZIM. The most likely reasons for the directors of BNZIS 2 not declaring a Dividend would be the failure of BNZ to make a distribution or other payment to BNZIM (meaning that BNZIM will have insufficient income to enable it to pay interest on its Loan from BNZIS 2), or a deterioration in the financial condition of the NAB Group, which might lead to the application of a payment condition or to the regulator of Australian banks, APRA, prohibiting the payment of dividends by the NAB Group.

22. Payment of dividends on the BNZIS 2 Shares will not occur if a Dividend Payment Condition occurs. Clause 6.5 of the BNZIS 2 Constitution defines Dividend Payment Condition as any of the following conditions:
- (a) the Directors in their sole discretion do not resolve to pay the Dividend on the relevant Dividend Payment Date;
  - (b) without limiting section 52(1) of the [Companies] Act [1993], the Directors are not satisfied on reasonable grounds that the Company will satisfy the solvency test (as defined in section 4 of the [Companies] Act [1993]) immediately after the payment of the Dividend;
  - (c) unless APRA otherwise agrees:
    - (i) after payment of the Dividend (which for the purposes of this calculation includes both the Dividend Amount in respect of the relevant Dividend and an amount equal to the Imputation Credits to be attached to the Dividend, on the basis that the Dividend is Fully-Credited), the APRA Prudential Capital Ratio or the APRA Tier 1 Capital Ratio of the NAB Group (on an APRA Level 2 or, if applicable, APRA Level 3 basis) would cease to comply with APRA's then current capital adequacy guidelines, as they are applied to the NAB Group at the time; or
    - (ii) the amount of the Dividend (which for the purposes of this calculation includes both the Dividend Amount in respect of the relevant Dividend and an amount equal to the Imputation Credits to be attached to the Dividend, on the basis that the Dividend is Fully-Credited) would exceed the Distributable Profits of the NAB Group as at the relevant Dividend Payment Date; or
  - (d) APRA otherwise objects to the payment of the Dividend by the Company.
23. Dividends paid on the BNZIS 2 Shares will not be cumulative, and holders of the BNZIS 2 Shares have no right to put BNZIS 2 into liquidation for their non-payment (clause 6.6 of the BNZIS 2 Constitution).
24. Many of the above features of the BNZIS 2 Shares are required to ensure that the BNZIS 2 Shares are treated by APRA as innovative residual tier 1 capital for the NAB Group on a level 2 basis.
25. The BNZIS 2 Constitution provides that all dividends shall be fully credited. Relevant provisions from the Constitution are as follows:
- 6.1 **Definitions**  
...
  - "Fully-Credited"** means, in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law.
  - 6.3 **Dividend to be Fully-Credited:** All Dividend Amounts shall be Fully-Credited.
26. BNZIS 2 is party to the BNZIS 2 Deed Poll in favour of the holders of the BNZIS 2 Shares. Under the BNZIS 2 Deed Poll, BNZIS 2 covenants that, if it fails to fully impute dividends paid to the holders, it will compensate the holders for the additional tax cost incurred by the holders as a result of that failure. Clause 2 of the BNZIS 2 Deed Poll states:
- COVENANT TO PAY**
- BNZIS 2 irrevocably covenants and agrees in favour of each Holder that, if BNZIS 2 fails to attach sufficient Imputation Credits to any Dividend it pays on a Dividend Payment Date so that the Dividend is Fully-Credited, then, subject to clause 3, it will pay to each Holder, within 10 Business Days of its receipt of the Holder's certificate, the amount that the Holder certifies in writing is necessary to

compensate the Holder, on an after tax basis, for any additional tax cost the Holder suffers or incurs (or will suffer or incur) as a result of that failure, other than tax withheld by the Holder from a payment to another person.

### ***BNZIM Loan***

#### *Details of the BNZIM Loan*

27. The proceeds of the issue of the BNZIS 2 Shares were used by BNZIS 2 to make the BNZIM Loan to BNZIM. BNZIM is a company incorporated in New Zealand on 11 February 2008. BNZIM is expected to be resident for tax purposes in New Zealand. All of the shares in BNZIM are held by NAGNZ, also a company incorporated and tax resident in New Zealand. NAGNZ is the immediate holding company of BNZ and holds all of the ordinary shares issued in BNZ.
28. The BNZIM Loan is a perpetual loan (ie, it has no fixed maturity date). The principal amount of the BNZIM Loan is equal to the subscription amount for the BNZIS 2 Shares (being \$260 million). The BNZIM Loan is the only material asset of BNZIS 2, and at least 90 percent of the income BNZIS 2 derives will be interest from the BNZIM Loan.
29. Clause 4 of the Loan Agreement provides that interest is payable on the BNZIM Loan at the Interest Rate in equal quarterly instalments on each Interest Payment Date (being 28 March, 28 June, 28 September and 28 December in each calendar year) with the first Interest Payment Date being 28 September 2009. The Interest Amount is calculated in accordance with the following formulae as defined in clause 1.1 of the Loan Agreement:

- (i) in respect of the first Interest Period:

$$\text{Loan} \times \text{Interest Rate} \times \frac{X}{365}$$

- (ii) in respect of an Interest Period other than the first Interest Period

$$\frac{\text{Loan} \times \text{Interest rate}}{4}$$

Where:

“Loan” means the principal amount advanced to BNZIM by BNZIS 2 on the Advance Date;

“Interest Rate” is (in each case):

- (a) in respect of the period from (and including) the Advance Date to (but excluding) the first Rate Start Date, the aggregate of the Benchmark Rate and the Margin; and
- (b) in respect of the subsequent periods from (and including) a Rate Start Date to (but excluding) the immediately succeeding Rate Start date, a fixed rate that is equal to the aggregate of the Reset Benchmark Rate applying on that first mentioned date and the Margin;

“Benchmark Rate” is the five-year swap rate (adjusted, as necessary to a quarterly rate);



"Margin" is 4.09 percent;

"Rate Start Date" means 28 June 2014 and, thereafter, each five-yearly date falling after that date; and

"X" is the number of days from (and including) the Advance Date of the BNZIM Loan to (but excluding) 28 September 2009.

30. At the expiry of the first five-year period, there will be a further five-year rate set by reference to the then applicable five-year swap rate, such rate setting to take place two business days before that expiry date (but with no change to the Margin). The same process will apply at the end of the second and subsequent five-year periods.
31. The terms of the BNZIM Loan also oblige BNZIM, in consideration for BNZIS 2 making the Loan, to pay on-going expenses incurred by BNZIS 2 (such as expenses for services provided to it by BNZ or its auditors, and any net interest on short-term funding arrangements between it and BNZ) (clause 9 of the Loan Agreement).
32. Under clause 4.3 of the Loan Agreement, interest on the BNZIM Loan will not be payable in respect of a quarterly interest period if an Interest Payment Condition applies. These conditions are if:
  - payment of the corresponding dividend by BNZIS 2 would breach certain APRA requirements or exceed the NAB Group's distributable profits;
  - the payment of the interest would result in BNZIM failing to satisfy the solvency test under the Companies Act 1993;
  - the directors of BNZIS 2 would not be satisfied on reasonable grounds that BNZIS 2 would satisfy the solvency test under the Companies Act 1993 immediately on payment of the corresponding dividend by BNZIS 2; or
  - APRA otherwise objects to BNZIS 2 making the corresponding dividend payment.
33. If, and to the extent that all or any part of any interest on the BNZIM Loan is not paid because any of the above Interest Payment Conditions apply, BNZIM shall have no obligation to pay the Interest Amount in respect of the relevant Interest Period, the unpaid amount shall not accumulate interest or be capitalised and added to the Loan, and BNZIS 2's right to such amount shall be cancelled absolutely.
34. As with the dividends on the BNZIS 2 Shares, interest on the BNZIM Loan is not cumulative.
35. BNZIM invested the proceeds of the BNZIM Loan in the 2009 BNZ PPS (refer paragraph 41 below). Because dividends on the 2009 BNZ PPS will be paid on an after-tax basis, BNZIM will have a cash shortfall and will require additional funds to meet the interest payments on the BNZIM Loan. This cash shortfall will be funded primarily by way of BNZ (or other profit-making companies in the BNZ Group) making cash payments to BNZIM in exchange for loss-offset elections, whereby BNZIM will elect to offset its tax losses against BNZ's taxable income.

### *Repayment of BNZIM Loan*

36. Clause 6.1 of the Loan Agreement provides that the BNZIM Loan is repayable at the option of BNZIM at any time on or after 28 June 2014, or following the occurrence of a Regulatory Event, a Loan Repayment Event, a Call (refer paragraph 46) or a Tax Event (as these terms are defined in clause 1.1 of the Loan Agreement).
37. BNZIM must repay the BNZIM Loan in whole following the redemption, buy back, or acquisition of the 2009 BNZ PPS. In this regard, clause 6.2 of the Loan Agreement states:

The Borrower shall repay the Loan (in whole but not in part) together with any unpaid interest (accrued since the last Interest Payment Date) calculated at the applicable Interest Rate on the number of days elapsed since the last Interest Payment Date and on the basis of a 365-day year, immediately following the redemption, buy back or acquisition of the 2009 BNZ PPS.

38. Following the occurrence of a Transfer Event (as described in paragraph 38 below), BNZIM will repay the BNZIM Loan by transferring the 2009 BNZ PPS to BNZIS 2. Such a transfer shall be deemed to be in full satisfaction of BNZIM's obligations under the Loan Agreement.
39. Transfer Events are defined in clause 1.1 of the Loan Agreement as follows:

*Transfer Event* means the occurrence of an APRA Event, a Liquidation Event, a Distribution Non-Payment Event or a BNZ Distribution Event;

Broadly, Transfer Events comprise:

- NAB failing to meet certain APRA requirements or being subject to the Australian equivalent of statutory management;
  - non-payment of interest where the conditions to payment of interest under the BNZIM Loan have been satisfied;
  - BNZIS 2, BNZIM, or BNZ going into liquidation or statutory management; and
  - BNZ paying an ordinary dividend when it has not paid dividends on the 2009 BNZ PPS.
40. BNZIS 2's rights under the BNZIM Loan are limited in recourse to the 2009 BNZ PPS, distributions on those 2009 BNZ PPS, or the proceeds of their sale (clause 10 of the Loan Agreement and the definition of "Collateral" in clause 3.1 of the Security Trust Deed). BNZIS 2 does not have recourse to any other assets of BNZIM.
41. BNZIM's obligation to transfer the 2009 BNZ PPS to BNZIS 2 is secured by a security interest over the 2009 BNZ PPS in favour of the Trustee under the Security Trust Deed.

### **2009 BNZ PPS**

42. BNZIM applied the proceeds of the BNZIM Loan to subscribe for \$260 million 2009 BNZ PPS issued by BNZ. These shares:
- on a liquidation of BNZ, rank in priority to ordinary shares and equally with the preference shares issued by BNZ in March 2008 for the BNZIS transaction (BNZ PPS) and have a right to receive an amount equal to

their issue price plus the dividend accrued from the last dividend payment date (clause 26.9 of the BNZ Constitution);

- are non-voting shares, except as to certain matters such as those affecting their rights, privileges, or limitations (clause 26.10 of the BNZ Constitution);
  - pay a dividend on generally the same basis as the BNZIS 2 Shares pay a dividend (but including the condition that directors of BNZ must be satisfied that payment of the dividend will not cause BNZ's capital ratios to cease complying with RBNZ's then current capital adequacy requirements) (clause 26.5 of the BNZ Constitution); and
  - have a right to such a dividend in priority to the payment of dividends on the ordinary shares issued by BNZ (clause 26.2 of the BNZ Constitution). They rank equally with the BNZ PPS for dividend purposes.
43. In the event that a dividend is not paid on the 2009 BNZ PPS on a dividend payment date, BNZ is not permitted to declare or make any distributions or payments on, or with respect to, any other shares in the capital of BNZ that rank equally with or junior to the 2009 BNZ PPS (other than pro rata payments or distributions on shares that rank equally with the 2009 BNZ PPS) unless and until:
- BNZ has paid dividends in full on the 2009 BNZ PPS on two consecutive dividend payment dates immediately following that dividend payment date; or
  - the Call over the BNZIS 2 Shares is exercised and the BNZIS 2 Shares have been transferred in accordance with the terms of the Call.
44. BNZ used the funds obtained by way of the issue of the 2009 BNZ PPS for general business purposes, which may have included using them to repatriate funds back to the NAB Group in Australia. Any such repatriation may be by way of a dividend, a share or loan repayment, or another mechanism.
45. BNZ and BNZIM are both members of the BNZ "consolidated imputation group" (as defined in section YA 1).

***Termination - Call over BNZIS 2 Shares***

46. Under the terms of clauses 6.9 to 6.11 of the BNZIS 2 Constitution (and subject to it having obtained the prior written approval of APRA) NAB has the right, on the fifth anniversary of the issue of the BNZIS 2 Shares (the "Initial Call Date", being 28 June 2014) and on any quarterly dividend payment date thereafter, at a price equal to their issue price plus the dividend accrued from the last dividend payment date, to give a Call Notice to all BNZIS 2 Shareholders requiring those holders to transfer all their BNZIS 2 Shares to NAB or a nominated member of the NAB Group (other than BNZIS 2).
47. The Call may be exercised before the fifth anniversary upon the happening of certain events that, broadly speaking, diminish the benefits to the NAB Group of the BNZIS 2 Shares being on issue. These are referred to as Regulatory Events and Tax Events. The Call may also be exercised if certain other structurally significant events affecting BNZIS 2 or BNZIM occur, referred to as Loan Repayment Events, or the 2009 BNZ PPS are redeemed, bought back or acquired.

### **Conditions stipulated by the Commissioner**

This Ruling is made subject to the following conditions:

- a) During the period of the Ruling, the BNZIS 2 Shares will be listed on the NZDX or another "recognised exchange" as defined in section YA 1.
- b) During the period of the Ruling, BNZIS 2 is not treated under a double tax agreement as not being resident in New Zealand.
- c) During the period of the Ruling, ordinary shares in BNZIS 2 will only be held by a person who also holds BNZIS 2 Shares.
- d) During the period of the Ruling, each BNZIS 2 Shareholder has rights in relation to all the proceeds from the BNZIM Loan.
- e) During the period of the Ruling, BNZIS 2 will be an "ICA company" as defined in section YA 1.
- f) During the period of the Ruling, any distributions made by BNZIS 2 in respect of the BNZIS 2 Shares will be fully credited for the purposes of section CD 43(26) of the Act to the extent permitted by the imputation credits that the directors of BNZIS 2 determine are available.
- g) During the period of the Ruling, income derived by BNZIS 2 will to the extent of 90 percent or more be derived from interest it receives on its loan to BNZIM.
- h) During the period of the Ruling, BNZIS 2 will not cancel the election it has made to be a PIE under section HL 11.
- i) During the period of the Ruling, the Constitution of BNZIS 2 will not be materially altered or amended from the version provided to Inland Revenue on 18 August 2009 (as part of the application for a binding ruling) in a manner that relates to the eligibility requirements to be a PIE and a PLC set out in the Act.

### **How the Taxation Laws apply to the Arrangement**

Subject in all respects to any condition stated above, the Taxation Laws apply to the Arrangement as follows:

- A distribution in respect of the BNZIS 2 Shares is "excluded income" under section CX 56(3) of a holder of the BNZIS 2 Shares who is:
  - (i) A New Zealand resident who is a natural person or a trustee and who does not elect to include the amount of such distributions in that holder's return of income for the applicable year; and
  - (ii) A person not referred to in paragraph (i) above to the extent to which the amount of the distribution is not fully imputed as described in section RF 9(2).
- Section GB 35 does not apply to the Arrangement.

- Sections BG 1 and GA 1 do not apply to the Arrangement.

**The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 26 June 2009 and ending on 30 June 2014.

This Ruling is signed by me on the 14<sup>th</sup> day of December 2009.

**Howard Davis**  
Director (Taxpayer Rulings)