
Deed of Amendment of the Crown
Deed of Nomination
(Unit Trust)

Her Majesty the Queen in right of New Zealand

Date: 20th November

2009

ANZ Investment Services (New Zealand) Limited in its capacity as manager of the National Bank Private Banking Call Fund and The New Zealand Guardian Trust Company Limited in its capacity as trustee of the National Bank Private Banking Call Fund.

Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance (*Crown*)

BACKGROUND

- A Under clause 10.2(b) of the Crown Deed of Nomination, the Crown may unilaterally amend any provision of the Crown Deed of Nomination if the Crown is reasonably satisfied that the amendment will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Initial Deed if they held a Debt Security issued by each Principal Debtor.
- B The Crown intends to amend the Crown Deed of Nomination by the terms set out in this Deed, which amendments the Crown considers will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Initial Deed if they held a Debt Security issued by each Principal Debtor.

THE PARTY AGREES as follows:

1 CONSTRUCTION

In this Deed, unless the context requires otherwise:

- (a) *Crown Deed of Nomination* means the Crown Deed of Nomination entered into between the Crown and ANZ Investment Services (New Zealand) Limited in its capacity as manager of the National Bank Private Banking Call Fund and The New Zealand Guardian Trust Company Limited in its capacity as trustee of the National Bank Private Banking Call Fund dated 18 March 2009;
- (b) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time;
- (c) *Headings*: headings are for convenience only, and do not affect interpretation;
- (d) *Nominated Beneficiary* has the meaning set out in Background C of the Crown Deed of Nomination;

(e) *Singular and plural:* the singular includes the plural and the converse;

(f) *Schedule:* the Schedule forms part of this Deed.

2 **AMENDMENTS TO THE CROWN DEED OF NOMINATION**

2.1 Subject to clause 2.2, the Crown Deed of Nomination shall be and is hereby amended, with effect from 31 December 2009, by inserting the underlined text, and deleting the crossed out text, as shown in the version of the Crown Deed of Nomination set out in the Schedule to this Deed.

2.2 If, by 5:00pm on 30 December 2009, none of the Principal Debtors that the Nominated Beneficiary has investments in as at that date has signed a Revised Deed, then this Deed of Amendment shall not take effect and that Nominated Beneficiary shall continue to be bound by the existing terms of the Crown Deed of Nomination.

3 **CONFIRMATION**

The Crown Deed of Nomination shall continue in full force and effect, and the Crown hereby confirms its obligations, rights, powers and duties under the Crown Deed of Nomination, as the same may be modified, altered or varied by this Deed.

4 **GOVERNING LAW**

This Deed shall be governed by, and construed in accordance with, New Zealand law.

EXECUTED AND DELIVERED as a Deed by

Her Majesty the Queen in right of)
New Zealand acting by and through)
Dr Brian McCulloch for and on behalf of)
the Minister of Finance in the presence of:)



Dr Brian McCulloch

Witness' signature: *S. Marlow*)

Witness' occupation: *PA*)

Witness' address: *c/o The Treasury*
Wellington)

Crown Deed of Nomination (Unit Trust)

Her Majesty the Queen in right of New Zealand

and

ANZ Investment Services (New Zealand) Limited

(in its capacity as manager)

and

The New Zealand Guardian Trust Company Limited

(in its capacity as trustee)

of the

National Bank Private Banking Call Fund

Date: ~~2008~~2009

PARTIES

Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance (*Crown*)

ANZ Investment Services (New Zealand) Limited in its capacity as manager of the Fund and **The New Zealand Guardian Trust Company Limited** in its capacity as trustee of the Fund (together, the *Nominee*)

BACKGROUND

- A Given turmoil in world financial markets and the need to maintain public confidence in New Zealand's financial system and in order to maintain the confidence of general public depositors in New Zealand financial institutions it ~~appears~~appeared to the Minister of Finance that it ~~is~~was necessary and expedient in the public interest that the Crown ~~guarantees~~guaranteed certain amounts owing to certain persons.
- B To achieve this, the Crown ~~intends to enter~~entered into Deeds of Guarantee (the Initial Deeds and each an Initial Deed), under which it ~~will guarantee~~guaranteed certain obligations of the Principal Debtor (under each Initial Deed ~~of Guarantee~~) to Creditors (under each Initial Deed ~~of Guarantee~~).
- C Under clause 10.3(b) of the Initial Deeds, the Crown may withdraw the Initial Crown Guarantee by written notice to each relevant Principal Debtor if the Crown considers it appropriate to do so (the Notice of Withdrawal), so long as before the Notice of Withdrawal is given to each relevant Principal Debtor, the Crown has made an offer to each relevant Principal Debtor to enter into a new deed of guarantee (the Revised Deed and the Revised Deeds) with each relevant Principal Debtor, with effect from the Notice of Withdrawal taking effect, on terms which the Crown, taking into account clause 10.3(b) of the Initial Deed, reasonably considers to be not materially adverse to "creditors" generally (as that term is defined in the Initial Deed) as compared to the terms of the Initial Deed.
- D The Crown is intending to make an offer to each relevant Principal Debtor, under clause 10.3(b) of the Initial Deed, to enter into a Revised Deed with each relevant Principal Debtor on terms which the Crown reasonably considers to be not materially adverse to "Creditors" generally as compared to the terms of the Initial Deed.
- E If the relevant Principal Debtor accepts the Crown's offer to enter into a Revised Deed, the Revised Deed shall take effect on and from the date specified by the Crown in the Notice of Withdrawal.

~~EF~~ For the purposes of the Initial Deeds of Guarantee and the Revised Deeds, a Creditor includes any Person that has been designated by the Crown by deed as a Nominated Beneficiary.

~~DG~~ Recognising that some members of the public obtain exposure to cash deposits through collective investment schemes that only invest in debt securities of the New Zealand government or institutions subject to a Deed of Guarantee, the Crown ~~has~~ agreed to designate the trustee of the Fund as a Nominated Beneficiary for the purposes of the Initial Deeds of Guarantee so that those members of the public who do invest through such collective investment schemes obtain the benefit of the Crown's guarantee.

H The Minister of Finance and the Manager and Trustee of National Bank Private Banking Call Fund entered into a Deed of Nomination dated 18 March 2009.

I Under clause 10.2(b) of the Deed of Nomination, the Crown may amend any provision of the Deed of Nomination if the Crown is reasonably satisfied that the amendment will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Initial Deed if they held a Debt Security issued by each Principal Debtor.

J The Crown has amended the Deed of Nomination, by the terms set out in the Deed of Amendment of the Crown Deed of Nomination and to take effect on 31 December 2009 provided that by 5:00pm on 30 December 2009, at least one of the Principal Debtors that the Nominated Beneficiary has investments in as at that date has signed a Revised Deed, which amendments the Crown considers will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Initial Deed if they held a Debt Security issued by each Principal Debtor.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Announcement Date means 12 October 2008.

Capped Amount means, in respect of a Relevant Guarantee and in respect of each Relevant Person in respect of that Relevant Guarantee at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, the lesser of:

- (a) the amount calculated in accordance with the formula set out in clause 3.1 in respect of the Relevant Guarantee, multiplied by (X divided by Y), where:

X = the subscription amount of unsubordinated Fund Securities that are on issue and held by that Relevant Person plus accrued but unpaid returns on those Fund Securities;

Y = the aggregate subscription amounts of unsubordinated Fund Securities that are on issue and held by all Relevant Persons in respect of that Relevant Guarantee plus the aggregate accrued but unpaid returns on those Fund Securities, and

- (b) one million New Zealand dollars (\$1,000,000).

Conditions means, at any time:

- (a) the trust deed and the rules of the Fund at that time; and
- (b) the terms and conditions of each Fund Security that is outstanding at that time.

Debt Security has the meaning given to that term in section 2 of the Securities Act 1978, but as if the phrase "deposited with, lent to or otherwise owing by any person" in that definition read "deposited with or lent to any person".

Deed of Guarantee means, from time to time, each document under which the Crown has guaranteed the obligations of a Principal Debtor to Creditors as part of the New Zealand government's programme, ~~announced on the Announcement Date,~~ to guarantee certain deposits in eligible financial institutions, and that meets the following conditions:

- (a) the document has been executed and delivered by the Crown and the Principal Debtor thereunder, and remains in full force and effect; ~~and~~
- (b) the document includes Nominated Beneficiaries in the definition of Creditor therein; and

(c) the document includes a guarantee of all Indebtedness that becomes due and payable during the Guarantee Period.

and includes the Initial Deed(s) and the Revised Deed(s).

Fund means [*identify the unit trust in respect of which this guarantee is given*].

Fund Security means a unit issued or to be issued by or in respect of the Fund.

Guarantee Period means the period commencing at 12.01am on the Announcement Date and expiring at 12.01am on 12 October 2010.

Indebtedness means any obligation:

- (a) of a Principal Debtor to pay money (whether present or future) to the trustee of the Fund in respect of Debt Securities issued by that Principal Debtor, if that Principal Debtor is a Person incorporated or established in New Zealand; and
- (b) of a Principal Debtor to pay money (whether present or future) to the trustee of the Fund in respect of Debt Securities issued by that Principal Debtor from and in respect of its New Zealand Branch, if that Principal Debtor is a Person incorporated or established overseas,

but excluding (in each case):

(c) any obligations which in terms of priority of payment and otherwise on a winding up, dissolution or liquidation of the Principal Debtor would rank behind the unsecured unsubordinated obligations of the Principal Debtor;

(d) any obligation under a Debt Security in respect of which the Crown has provided a guarantee (by issue of a "guarantee eligibility certificate") under the Crown's Wholesale Funding Guarantee Facility (as defined in the Act); and

(e) any other obligation excluded under any Revised Deed.

Initial Crown Guarantee means the Crown Guarantee as defined in the Initial Deed.

Initial Deed has the meaning given in Background B above.

Notice of Withdrawal has the meaning given in Background C above.

New Zealand Branch, in respect of a Relevant Guarantee, has the meaning given to that term in the Relevant Guarantee.

Party means the Crown or the Nominee, and *Parties* means them collectively.

Person includes an individual, a body corporate, any association of persons (whether corporate or not), a trust (including the trustees of a trust acting in

that capacity), and a state and any agency of a state (in each case whether or not having separate legal personality).

Registered Bank means a Person registered as a bank under the Reserve Bank Act.

Relevant Guarantee has the meaning given to that term in clause 3.1.

Relevant Person means, in respect of a Relevant Guarantee, a Person who would be a Creditor under that Relevant Guarantee if they had held a Debt Security issued by the ~~Relevant~~relevant Principal Debtor, provided that to the extent any such Person is acting as a bare trustee for one or more beneficiaries of a trust, each beneficiary who would be a Creditor under the Relevant Guarantee if they had held a Debt Security issued by the ~~Relevant~~relevant Principal Debtor shall be a *Relevant Person*, and that trustee shall not be a *Relevant Person*.

~~*Relevant Principal Debtor* has the meaning given to that term in clause 3.1.~~

Reserve Bank Act means the Reserve Bank of New Zealand Act 1989.

Revised Deed has the meaning given in Background C above.

1.2 Construction

In this Deed, unless the context requires otherwise:

- (a) *Headings*: headings are for convenience only, and do not affect interpretation;
- (b) *Sections, Clauses and Schedules*: a reference to a section or a clause or schedule is a reference to a section or clause in, or schedule to, this Deed;
- (c) *Singular and plural*: the singular includes the plural and the converse;
- (d) *Particular party or person*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and assigns;
- (e) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time;
- (f) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it;

- (g) *Capitalised terms*: each capitalised term used in this Deed, but not defined in this Deed, has the meaning given to it in each Revised Deed of Guarantee or the Relevant Guarantee, as the context requires; and
- (h) *Nominee*: for the avoidance of doubt, each reference:
- (i) in clauses 4.1(a) and 4.3 to information relating to the Nominee shall include a reference to information relating to the Fund;
 - (ii) in clause 10.2(a) to the business or affairs of the Nominee shall include a reference to the business or affairs of the Fund; and
 - (iii) in clauses 4.2(b) and 4.2(c) to the Nominee shall include a reference to the Fund.

2 DESIGNATION

- 2.1 The Crown hereby designates the trustee of the Fund as a Nominated Beneficiary for the purposes of each Deed of Guarantee, on and subject to the terms and conditions of this Deed.

3 PAYMENTS

- 3.1 Any amount payable to the trustee of the Fund by the Crown under a Deed of Guarantee (the *Relevant Guarantee*) shall be payable in accordance with, and on the terms set out in, the Relevant Guarantee, except that the amount payable to the trustee of the Fund by the Crown under a Relevant Guarantee shall be, subject to clauses ~~3.2, 3.3 and 3.4~~, 3.2 to 3.6, the amount calculated in accordance with the following formula:

$P = I_{PD}$ multiplied by (X divided by Y), where:

P = the amount payable by the Crown to the trustee of the Fund pursuant to the Relevant Guarantee;

I_{PD} = the total Indebtedness to the trustee of the Fund of the relevant Principal Debtor ~~whose obligations are~~ which is guaranteed under the Relevant Guarantee ~~(the Relevant Principal Debtor)~~ at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee to the extent that such Indebtedness has not been subsequently paid to the trustee of the Fund;

X = the aggregate subscription amount of unsubordinated Fund Securities that are on issue and that are held by or on behalf of Relevant Persons in respect of the Relevant Guarantee at 5.00pm on the day the relevant Default Event occurs

under the Relevant Guarantee, plus accrued but unpaid returns on those Fund Securities;

Y = the aggregate subscription amount of unsubordinated Fund Securities that are on issue at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, plus accrued but unpaid returns on those Fund Securities.

- 3.2 In the event that the amount calculated to be payable by the Crown to the trustee of the Fund pursuant to a Relevant Guarantee in accordance with the formula set out in clause 3.1 exceeds the aggregate of the Capped Amounts for each Relevant Person at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, the amount payable by the Crown to the trustee of the Fund pursuant to that Relevant Guarantee shall be, subject to ~~clause 3.3,~~ clauses 3.3 to 3.6 the aggregate of those Capped Amounts.

3.3 If the Crown has entered into two or more Relevant Guarantees with a Principal Debtor, then for the purposes of this Deed, all of those Relevant Guarantees shall be deemed to be one Relevant Guarantee with the effect that if a Default Event occurs in respect of that Principal Debtor:

(a) The Capped Amount shall be calculated once; and

(b) the amount I_{pd} for the purposes of clause 3.1 shall be the total Indebtedness to the trustee of the Fund of the Principal Debtor which is guaranteed under all the Relevant Guarantees entered into with that Principal Debtor at 5.00pm on the day the Default Event occurs under the Relevant Guarantees to the extent such Indebtedness has not been subsequently paid to the trustee of the fund.

~~3.3.4~~ In devising the formula set out in paragraph (a) of the definition of Capped Amount, the Crown has assumed that Relevant Persons will be entitled to receive amounts paid from the Fund in accordance with uniform rights applying to Relevant Persons generally. The Crown therefore reserves the right to alter the formula set out in paragraph (a) of the definition of Capped Amount in respect of each Relevant Person, depending on the structure and rules of the Fund, to ensure that the amount calculated by that formula correctly reflects that Relevant Person's rights to receive amounts paid from the Fund.

3.5 In addition the Crown has assumed for the purposes of clause 3.3 that if a Default Event occurs in respect of a Principal Debtor it will also be a Default Event under all the Relevant Guarantees entered into with that Principal Debtor. The Crown therefore reserves the right to amend the provisions of this Deed in an instance where a Default Event occurs under one of the Relevant Guarantees relating to that Principal Debtor and, on a subsequent date, a Default Event occurs under another of the Relevant Guarantees relating to that Principal

Debtor, to ensure that the Relevant Persons' entitlements and the Crown's obligations are in substance the same as they would have been if a Default Event had occurred at the same time in relation to all the Relevant Guarantees relating to that Principal Debtor.

~~3.43.6~~ The Crown's obligation to make any payment in respect of a Relevant Guarantee is conditional on the Crown being satisfied that, under the Conditions or otherwise, no amount of that payment can be paid to (or otherwise made available for the benefit of) a Person who would not be a Relevant Person in respect of that Relevant Guarantee.

4 REPORTING

4.1 Nominee to Supply Information to the Crown

(a) The Crown may at any time during the Guarantee Period require from the Nominee:

(i) any information in the possession or under the control of the Nominee relating to the financial position or affairs, or the business, management, or operation, of the Nominee; or

(ii) any information concerning any investor in Fund Securities issued or proposed to be issued by the Nominee to the extent the Crown reasonably requires such information for the purposes of:

A determining the nature and extent of any of its rights and obligations under this Deed;

B exercising its rights and remedies under this Deed; or

C administering payments to be made by it under this Deed.

(b) During the Guarantee Period, the Nominee shall promptly deliver to the Secretary to the Treasury the following:

- (i) a true, correct and up to date copy of any trust deed in respect of the Fund, any investment policy of the Fund and the most recent investment statement and registered prospectus (if any) from time to time in respect of Fund Securities;
- (ii) any memorandum of amendments that is registered in respect of any trust deed or registered prospectus referred to in clause 4.1(b)(i) above, and any amendments in respect of any investment policy referred to in clause 4.1(b)(i) above.

- (c) At any time the trustee of the Fund delivers a Notice of Claim under a Deed of Guarantee, the Nominee shall also deliver to the Crown such evidence as the Crown reasonably considers appropriate in order to ascertain the extent of its liability to the trustee of the Fund, including in respect of the matters relevant under ~~clause 3.4~~ clauses 3.2 to 3.6.

4.2 Third Party Information

The Nominee authorises the Crown to contact and request information from those third parties that the Crown requires, including (but not limited to):

- (a) ~~The~~the trustee of any Debt Security held by the Nominee;
- (b) ~~The~~the auditors of the Nominee;
- (c) ~~The~~the Nominee's bankers or any other providers of finance;
- (d) ~~The~~the Securities Commission;
- (e) ~~The~~the Registrar of Companies; ~~and~~
- (f) any rating agency contracted to provide rating information in respect of the Nominee; and

~~(f)~~(g) ~~The~~the Reserve Bank of New Zealand,

and ~~shall~~hereby authorises (and shall take any other step requested by the Crown to authorise) all such requested disclosure, and will use its best endeavours to ensure that any such person ~~provide~~provides the requested information as soon as practicable.

4.3 Sharing of Information

The Nominee authorises the Crown to share information provided in accordance with clauses 4.1 and 4.2 with the Reserve Bank of New Zealand and ~~authorises the Reserve Bank of New Zealand to share with the Crown any information relating to the Nominee that the Reserve Bank has collected in connection with its functions under the Reserve Bank Act~~ the Securities Commission.

4.4 Failure to Comply with Information Request

- (a) If the Crown reasonably considers that the Nominee ~~fails~~has failed to comply with clause 4.1 or clause 4.2, or ~~supplies~~has supplied information or data that is false or misleading in a material particular, the Crown may give the Nominee notice (which may be by way of public notice) that:

(i) it considers that the Nominee has failed to comply with the relevant provision ~~and that or has supplied information or data that is false or misleading in a material particular;~~ and

(ii) the Nominee has 14 days to ~~comply with it.~~ rectify that failure or supply, for which purpose "rectify" means:

A complying with that provision to the reasonable satisfaction of the Crown or supplying such additional information or data as (in the reasonable opinion of the Crown) is required to ensure that the information or data previously supplied is not false or misleading in a material particular (as the case may be); or

B satisfying the Crown (acting reasonably) that it has already complied with that provision or that the relevant information or data is not false or misleading in a material particular (as the case may be).

- (b) If the Nominee fails to ~~comply~~ so rectify that failure or supply within the 14 day period referred to in clause 4.4(a)(ii) the Crown may give public notice that the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee ~~in 14 days on the date of that notice (or will cease at such later date as may be specified in that notice).~~
- (c) ~~Following~~ On the ~~expiry of the second 14 day period~~ day of (or, as the case may be, the date specified in) that notice the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

5 COMPLIANCE WITH PRUDENTIAL SUPERVISION OR OTHER MATTERS

5.1 If the Crown reasonably considers that the Nominee ~~fails~~ has failed to comply with:

- (a) any prudential supervision direction, notice or requirement under any statute or regulation or otherwise; or
- (b) the Conditions applicable at any time,

then ~~such failure shall be a breach of this Deed and~~ the Crown may give the Nominee notice (which may be by way of public notice) that ~~the Nominee is in breach of this Deed.~~

(c) it considers that the Nominee has failed to comply with that, direction, notice or requirement or those Conditions (as the case may be); and

(d) the Nominee has 14 days to rectify that failure, for which purpose "rectify" means:

(i) complying with that, direction, notice or requirement or those Conditions to the Crown's reasonable satisfaction; or

(ii) satisfying the Crown (acting reasonably) that it has not failed to comply with it.

5.2 If the ~~breach is not remedied to the Crown's satisfaction within 14 days of the public notice~~ Nominee fails to so rectify that failure within the 14 day period referred to in clause 5.1(d) the Crown may give public notice that the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee ~~in 14 days on the date of that notice (or will cease at such later date as may be specified in that notice).~~

5.3 ~~Following~~ On the ~~expiry of the second 14 day period~~ day of (or, as the case may be, the date specified in) that notice the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

6 ACKNOWLEDGEMENT

6.1 The Parties acknowledge that the offering or entering into of this Deed does not in any respect restrict any regulatory or supervisory action by the Reserve Bank of New Zealand or other regulator, or any action the Crown may take, including but not limited to extending any Deed of Guarantee, not extending the term of any Deed of Guarantee or entering into any other Crown Deed of Nomination or other document of similar effect.

7 INITIAL AND ONGOING OBLIGATIONS

7.1 Warranty on signing of Deed

- (a) The Nominee warrants that, as of the date of the Nominee signing this Deed, the Fund's only investments are securities issued by the New Zealand government and/or Debt Securities issued by any Person that is a Principal Debtor and being Debt Securities that would constitute Indebtedness (as defined in a Deed of Guarantee).
- (b) The Nominee warrants on the date of the Nominee signing this Deed and on each other day during the Guarantee Period that the Conditions existing on that day provide or have the effect that no amount received by the trustee of the Fund from the Crown in respect of a Relevant Guarantee could be paid to (or otherwise made available for the benefit of) a Person who would not be a Relevant Person in respect of that Relevant Guarantee.

7.2 Business of the Fund

During the Guarantee Period the Nominee shall ensure that the Fund does not make any new investment in anything other than securities issued by the New Zealand government and/or Debt Securities issued by any Registered Bank that is a Principal Debtor at the time of that investment ~~and being Debt Securities that would constitute Indebtedness (as defined in a Deed of Guarantee).~~

7.3 Non-compliance

- (a) If the Crown reasonably considers that the Nominee ~~fails~~ has failed to comply with clauses 7.1(a), 7.1(b) or 7.2, the Crown may give the Nominee notice (which may be by way of public notice) that:

(i) it considers that the Nominee has failed to comply with the relevant provision ~~and that;~~ and

(ii) the Nominee has 14 days to ~~remedy that non-compliance.~~ rectify that failure, for which purpose "rectify" means:

A complying with the relevant provision to the reasonable satisfaction of the Crown; or

B satisfying the Crown (acting reasonably) that it has not so failed to comply with it.

- (b) If the Nominee fails to ~~remedy~~ so rectify that ~~non-compliance~~ failure within the 14 day period in clause 7.3(a) (ii) the Crown may give public notice that the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee ~~in 14 days~~ on the date of that notice (or will cease at such later date as may be specified in that notice).
- (c) ~~Following~~ On the ~~expiry of the second 14 day period~~ day of (or, as the case may be, the date specified in) that notice the trustee of the Fund ~~shall cease~~ ceases to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

8 NO ASSIGNMENT

- 8.1 Neither Party may assign or transfer any of its rights under this Deed.

9 GOVERNING LAW AND JURISDICTION

9.1 Governing Law

This Deed is governed by and is to be construed in accordance with New Zealand law.

9.2 New Zealand Courts

Each of the Parties irrevocably and unconditionally agrees that the Courts of New Zealand shall have non-exclusive jurisdiction to hear and determine each suit, action or proceeding (proceedings) and to settle disputes that may arise out of or in connection with this Deed and for these purposes irrevocably submits to the non-exclusive jurisdiction of those courts.

10 GENERAL

10.1 Entire Agreement

This Deed constitutes the entire agreement between the Parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter, except that any rights of the Crown and obligations of the Nominee arising as a result of any misrepresentation by or on behalf of the Nominee prior to execution of this Deed shall continue.

10.2 ~~Withdrawal and amendments as a result of Inappropriate Activity~~

(a) If the Crown reasonably considers that the business or affairs of the Nominee have been (since the entry into this Deed), are being, or are intended or likely to be, carried on in a manner which:

- (i) will or may extend the effective benefit of any Deed of Guarantee to Persons who are not intended to receive that benefit; or
- (ii) is or would be otherwise inconsistent with the intentions of the Crown in entering into this Deed,

in each case an "Inappropriate Activity", the Crown may withdraw the designation of the trustee of the Fund as a Nominated Beneficiary for the purposes of one or more Deeds of Guarantee by written notice to the Nominee.

~~(b) The Crown may, without the consent of the Nominee, amend any provision of this Deed if the Crown is reasonably satisfied that the amendment will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Deed of Guarantee if they held a Debt Security issued by each Principal Debtor.~~

(b) Any notice given under clause 10.2(a) may be expressed to take effect immediately on delivery or at any time thereafter, and shall take effect accordingly.

(c) On the taking effect of a notice given under clause 10.2(a), the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of any one or more Deeds of Guarantee withdrawn by written notice to the Nominee pursuant to clause 10.2(a).

10.3 Amendment

The Crown may, without the consent of the Nominee, amend any provision of this Deed if the Crown is reasonably satisfied that the amendment will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Deed of Guarantee if they held a Debt Security issued by each Principal Debtor.

- ~~(c) Any notice given under clause 10.2(a) may be expressed to take effect immediately on delivery or at any time thereafter, and shall take effect accordingly.~~
- ~~(d) On the taking effect of a notice given under clause 10.2(a), the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each relevant Deed of Guarantee.~~

10.4 Public Notice

A certificate from the Crown (i) to the effect that it is satisfied that it has given public notice for the purposes of this Deed and (ii) as to the date on which that public notice was given shall, in the absence of manifest error, be conclusive evidence of that public notice and that date.

10.5 Currency amounts

Any reference in this Deed to an amount shall, to the extent that that amount is not already denominated in New Zealand Dollars, mean the amount determined by the Crown to be the New Zealand Dollar equivalent of that amount as at the time relevant to its calculation or determination.

10.6 Warranty

Each of the trustee of the Fund and the manager of the Fund represents and warrants to the Crown that it is duly authorised to execute and deliver this Deed, and that upon execution of this Deed by it and the Crown it will constitute the legal, valid and binding obligations of it, enforceable against it in accordance with its terms.

10.7 Joint and several obligations

Each of the trustee of the Fund and the manager of the Fund shall have, on a joint and several basis, all of the obligations of the Nominee under this Deed.

10.8 Counterparts

This Deed may be executed in any number of counterparts. Once a party has executed a counterpart, and the other party has received a copy of the signed counterpart, that counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by both parties.

10.9 Waiver

(a) A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

(b) A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

10.10 Severability

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed, but the Principal Debtor and the Crown shall, if requested by either of them, negotiate in good faith in an endeavour to agree on such alternative provisions and/or amendments as shall achieve as nearly as possible the original intent of this Deed (including the severed part).

10.11 Working days

Any payment required to be made, or other action required to be taken, by this Deed on or by a date which is not a working day (as defined in the Companies Act 1993) shall be validly done if made or taken on or by (as the case may be) the next working day (as so defined) following that date.

EXECUTED AND DELIVERED as a Deed by

| | | |
|--|---|--------------------|
| Her Majesty the Queen in right of |) | |
| New Zealand acting by and through |) | |
| Dr Brian McCulloch for and on behalf of |) | _____ |
| the Minister of Finance in the presence of: |) | Dr Brian McCulloch |
| |) | |
| Witness' signature: |) | |
| |) | |
| Witness' occupation: |) | |
| |) | |
| Witness' address: |) | |

in the name and under the seal of **The New Zealand Guardian Trust Company Limited**, in its capacity as trustee of National Bank Private Banking Call Fund:)
)
)
)
)

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

in the presence of:

Witness' signature:

Witness' occupation:

Witness' address:

ANZ Investment Services (New Zealand) Limited, in its capacity as manager of National Bank Private Banking Call Fund, by two Directors)
)
)

Name:
Director

Name:
Director