

# Capital Series

Product Disclosure Statement (Part 1 of 2)

Dated: 23 August 2010



**Determined** to be different

# Disclosures and Important Information

This Product Disclosure Statement (“PDS”) is comprised of two parts:

**Part 1** Contains general information relating to Capital Series, the Terms of Sale and the Terms and Conditions of the Commonwealth Bank Capital Investment Loan and Interest in Advance Loan.

**Part 2** Contains details of the Strategies, including information regarding the Underlying Portfolio and the methods used in calculating the Maturity Value of the Strategies. Part 2 also contains the costs associated with an investment in Capital Series and the Application Form.

This is Part 1 of this PDS. If you have not received both parts, please contact your financial adviser or, if you do not have a financial adviser, call us on 13 15 20. In relation to any Strategy, Part 2 of this PDS may amend or vary any statement or provision in Part 1 of this PDS. In this case, Part 2 of this PDS prevails. You should read both parts of this PDS (Part 1 and Part 2 together are referred to as the “PDS”) before deciding whether to invest in Capital Series.

This PDS has been prepared by Commonwealth Bank of Australia (“Commonwealth Bank”), the issuer of Capital Series. This PDS does not constitute an offer for sale or issue of any securities by Commonwealth Bank that requires disclosure under Chapter 6D of the Corporations Act 2001 (Cth).

**Terms of Sale:** Investments in Capital Series are not bank deposits. They are contracts entered into between Investors and Commonwealth Bank on the terms set out in the Terms of Sale. It is important that Investors read the Terms of Sale in full which are contained in pages 41 to 56 in Part 1 of this PDS.

**Definitions:** Capitalised words and phrases which are used in this PDS have the meaning given to those words and phrases as set out in the Definitions in the Terms of Sale, the Schedule of Terms and the Terms and Conditions of the Loan.

**Investment Decisions:** It is impossible in a document of this type to take into account the investment objectives, financial situation and particular needs of each reader. Accordingly, nothing in this PDS should be construed as a recommendation by Commonwealth Bank, or any associate of it or any other person concerning investment in Capital Series, the Delivery Asset or any other security. Readers should not rely on this PDS as the sole or principal basis of a decision to invest in Capital Series, the Delivery Asset or any other security and should seek independent financial and taxation advice before making a decision whether to invest in Capital Series. Any information or representation not contained in this PDS must not be relied upon as having been authorised by or on behalf of Commonwealth Bank. Nothing in this PDS is, or may be relied upon as, a representation as to the future performance of Capital Series or of any Reference Asset or the Delivery Asset.

**Preparation of this PDS:** Commonwealth Bank has taken all reasonable care to ensure that the information contained in this PDS is true and accurate in all material respects and that, to the best of its knowledge and belief, such information does not omit anything likely to affect its scope. Commonwealth Bank has prepared this PDS only from publicly available information, which Commonwealth Bank has not verified. No Relevant Asset Provider has been a party to its preparation or furnished any information specifically to Commonwealth Bank for the purpose of its preparation.

**Changes to Information in this PDS:** This PDS is current at the time of issue. Information in this PDS is subject to change from time to time. Where information is not materially adverse to Investors, Commonwealth Bank will update the information by posting a notice on its website at [commsec.com.au](http://commsec.com.au) You can request a paper copy of updated information by contacting your financial adviser. If you do not have a financial adviser, you can contact us on 13 15 20.

**Withdrawal of Applications:** If you have lodged an application for Capital Series, and you wish to withdraw your Application, you may withdraw your Application at any time prior to the Closing Date. After the Closing Date, if you withdraw your application for Capital Series, the Early Termination provisions will apply.

**Jurisdiction and Selling Restrictions:** This PDS is not an offer or invitation in relation to Capital Series in any place outside Australia.

**Registration with the Australian Securities and Investments Commission:** This PDS has not been lodged with the Australian Securities and Investments Commission (“ASIC”) and is not required by the Corporations Act 2001 (Cth) to be lodged with ASIC. ASIC takes no responsibility for the contents of this PDS.

**Capital Investment Loan and Interest in Advance Loan:** A Capital Investment Loan is available from Commonwealth Bank to fund your Investment Amount. An Interest in Advance Loan is available from Commonwealth Bank to pay the yearly interest in advance due and owing under a Capital Investment Loan. The Capital Investment Loan and Interest in Advance Loan (each a “Loan”) are products of Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 administered by its wholly owned subsidiary Commonwealth Securities Limited (“CommSec”) ABN 60 067 254 399 AFSL 238814. Applications for the Capital Investment Loan and Interest in Advance Loan are subject to Commonwealth Bank’s credit approval process.

You are not required to obtain a Capital Investment Loan to make an investment in Capital Series. You can use your own funds or other loan funds. If you are considering a Capital Investment Loan from Commonwealth Bank to fund your investment in Capital Series, then you should read Section 2 in Part 1 of this PDS. You must also ensure you understand your obligations under the Terms and Conditions of the Loan, which are contained in Section 7 in Part 1 of this PDS, before deciding whether to apply for a Capital Investment Loan.

You are not required to obtain an Interest in Advance Loan to prepay in advance the yearly interest due and owing under a Capital Investment Loan. You can use your own funds or other loan funds. If you are considering an Interest in Advance Loan, you must obtain a Capital Investment Loan. You should read Section 2 and Section 3 in Part 1 of this PDS and you must ensure you understand your obligations under the Terms and Conditions of the Loan, which are contained in Section 7 in Part 1 of this PDS, before deciding whether to apply for an Interest in Advance Loan.

No cooling-off rights apply to an application for a Capital Investment Loan or an Interest in Advance Loan. This means that, in most circumstances, you cannot withdraw an application once it has been made.

You should not rely on Section 2 or Section 3 in Part 1 of this PDS and the Terms and Conditions of the Loan as the sole or principal basis of a decision to apply for a Capital Investment Loan or Interest in Advance Loan and should seek independent financial and taxation advice before making a decision.

Any information or representation not contained in Section 2 or Section 3 in Part 1 of this PDS and the Terms and Conditions of the Loan must not be relied upon as having been authorised by or on behalf of Commonwealth Bank. Nothing in Section 2 or Section 3 in Part 1 of this PDS and the Terms and Conditions of the Loan is, or may be relied upon as, a representation as to the future performance of Capital Series.

**Associations and Relevant Interests:** You should obtain professional advice as to whether by acquiring an interest in Capital Series you will be subject to the relevant interest, substantial shareholding or takeover provisions of the Corporations Act 2001 (Cth). The acquisition and Completion of Capital Series could also have implications for Investors under the Foreign Acquisitions and Takeovers Act 1975 (Cth) and other legislation that may affect shareholdings in certain types of companies. You should obtain your own advice in this regard.

Commonwealth Bank has not taken into account any labour standards or environmental, social or ethical considerations in the selection, retention or realisation of the investment.

Any person receiving this PDS electronically should note that applications can only be accepted if the Issuer receives a completed, current Application Form which accompanied the electronic or paper copy of this PDS. We will send you paper copies of this PDS (with attached Application Form) free of charge upon request. Please call your financial adviser or, if you do not have a financial adviser, call us on 13 15 20 for a paper copy of this PDS.

**Examples:** The assumed Reference Asset values included in the examples in this PDS are for illustrative purposes only and do not reflect Commonwealth Bank’s views on future events.

**Issued by Commonwealth Bank of Australia**  
ABN 48 123 123 124, AFSL 234945

**Administered by Commonwealth Securities Limited (“CommSec”)**  
ABN 60 067 254 399, AFSL 238814

**CommSec is a wholly owned but non-guaranteed subsidiary of Commonwealth Bank of Australia, and is a Participant of the ASX Group.**

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This PDS is a two-part PDS comprising of Part 1 and Part 2. You must read both parts carefully and completely. You should not apply for this investment unless you have received, read and understood both Part 1 and Part 2 of this PDS.

# Investment Summary

The summary of topics listed in the table below briefly summarises some of the key information contained in this PDS. It is not intended to be a complete summary. Please read both Part 1 and Part 2 of this PDS carefully and seek your own independent legal, taxation and financial advice to determine whether an investment in Capital Series is appropriate for you.

Topic	Description	More information
<b>The Issuer</b>	Commonwealth Bank of Australia ABN 48 123 123 124	Part 1, Section 5
<b>The Investment</b>	Capital Series offers a potentially diversified exposure to global markets and a range of asset classes such as equities, currencies and commodities through different Strategies. Capital Series also offers levels of capital protection at maturity varying between 0% and 100% of the Investment Amount, which depends on each Strategy. Capital Series is a deferred purchase agreement. When you invest, you agree to purchase a Delivery Parcel from Commonwealth Bank at maturity of the Investment. This Delivery Parcel is a number of Delivery Assets, equal in value to the Maturity Value. The number of Delivery Assets you receive at the end of that time (that is, the Delivery Parcel) depends on the Maturity Value.	Part 1, Section 1
<b>Investment Objective</b>	During the Investment Term, each Strategy of Capital Series provides exposure to an Underlying Portfolio and aims to generate capital growth.	Part 1, Section 1
<b>Strategy or Strategies</b>	Capital Series consists of one or more Strategies which you may choose to invest in. Each Strategy provides exposure to a particular Underlying Portfolio.	Part 1, Section 1 Part 2
<b>Underlying Portfolio</b>	The Underlying Portfolio is the group of assets mentioned in "The Investment" above whose performance determines the return at maturity.	Part 1, Section 1.4 Part 2
<b>Reference Assets</b>	The Reference Assets are assets as mentioned in "The Investment" above comprising the Underlying Portfolio.	Part 1, Section 1.4 Part 2
<b>Strategy Investment Amount</b>	The amount you invest into each Strategy.	Part 1, Section 1
<b>Investment Amount</b>	The sum of each Strategy Investment Amount.	Part 1, Section 1
<b>Capital Protection</b>	Capital Series offers levels of capital protection at maturity which vary between 0% and 100% of the Investment Amount depending on which Strategy you choose to invest in. Any capital protection only applies if your Investment is held to maturity. Investments in Capital Series are not bank deposits. You are reliant on us – Commonwealth Bank – to meet our obligations, which are unsecured.	Part 1, Section 1.5 Part 1, Section 1.21
<b>Strategy Capital Protection Amount</b>	The level of capital protection for each Strategy.	Part 1, Section 1.5
<b>Total Capital Protection Amount</b>	The sum of each Strategy Capital Protection Amount.	Part 1, Section 1.5
<b>Coupons</b>	The Strategy or Strategies of Capital Series may or may not pay coupons. The conditions and timing for these payments will vary from Strategy to Strategy.	Part 1, Section 1.7 Part 2
<b>Significant Benefits</b>	<ul style="list-style-type: none"> <li>› Exposure to the performance of the Reference Assets in an Underlying Portfolio during the Investment Term.</li> <li>› Up to 100% capital protection at maturity where the investment is held to maturity</li> <li>› Potential capital growth</li> <li>› Potential income</li> <li>› At maturity you can choose to either: <ul style="list-style-type: none"> <li>• Accept physical delivery of the Delivery Parcel; or</li> <li>• Receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service</li> </ul> </li> </ul>	Part 1, Section 1.19 Part 2

## Investment Summary (cont).

Topic	Description	More information
<b>Significant Disadvantages</b>	<ul style="list-style-type: none"> <li>› If you choose to accept physical delivery of the Delivery Parcel at maturity, on and after the Settlement Date you will have exposure to the performance of the Delivery Asset which may not be advantageous to you.</li> <li>› A Brokerage Fee of up to 0.55% (including GST) will be charged to you if you elect to use the Delivery Asset Sale Service at maturity or upon Early Termination.</li> <li>› Potential tax consequences.</li> <li>› Your Investment Amount is not capital protected if your Investment is terminated early.</li> </ul>	Part 1, Section 1.20 Part 2
<b>Significant Risks</b>	<p>An investment in Capital Series involves a number of risks, which may lead to financial outcomes that are unfavourable to you. You should consider carefully the risks before investing. You should also seek independent financial and taxation advice before making a decision whether to invest in Capital Series.</p> <p>The key risks are:</p> <ul style="list-style-type: none"> <li>› <b>Performance and general investment risk</b> – performance of the Underlying Portfolio will depend on the performance of the Reference Assets. There is a risk that the Reference Assets may perform poorly and you may receive no return on your Investment. Capital Series is not a listed investment. It cannot be traded on a market. Investments in Capital Series are not bank deposits and you may make a capital loss in certain circumstances.</li> <li>› <b>Market risk</b> – even though the Strategies aim to generate a return over the Investment Term, Capital Series may be affected by market variables, such as uncertain economic conditions.</li> <li>› <b>Taxation risk</b> – changes to the tax law or interpretation could affect the value of your Investment and/or the return on your Investment.</li> <li>› <b>Credit risk</b> – the risk that Commonwealth Bank does not meet its obligations under the terms of each transaction, which are unsecured.</li> <li>› <b>Operational risk</b> – the risk of Commonwealth Bank delaying or failing to execute and settle your Investment in a timely and accurate manner.</li> <li>› <b>Legal risk</b> – the risk that Commonwealth Bank suspends, cancels, terminates or refuses you services due to our requirement to comply with any relevant laws.</li> <li>› <b>Adjustment Events</b> – due to certain events occurring the Delivery Assets or Reference Assets may change.</li> <li>› <b>Changes of dates and times</b> – the risk that dates and times of the Investment change.</li> </ul>	Part 1, Section 1.21 Part 2
<b>Minimum Investment Amount</b>	<p>\$10,000 per Strategy and increments thereafter of \$1,000 (not including any Initial Adviser Fee)</p> <p>We may, at our absolute discretion, accept Applications for a lesser amount.</p>	Part 2
<b>Delivery Asset</b>	The asset you may receive at maturity of the Investment.	Part 1, Section 1.10 Part 2
<b>Delivery Parcel</b>	The number of Delivery Assets you may receive at maturity of the Investment.	Part 1, Section 1.10 Part 2
<b>Opening Date</b>	The date after which Applications will be accepted.	Part 1, Section 1.24 Part 2
<b>Closing Date</b>	The date after which Applications will no longer be accepted.	Part 1, Section 1.24 Part 2

Topic	Description	More information
<b>Start Date</b>	The date on which your Investment in Capital Series commences.	Part 1, Section 1.6 Part 2
<b>Maturity Date</b>	The date on which the term of your Investment ends.	Part 1, Section 1.12 Part 2
<b>Trade Date</b>	The date on which we purchase the Delivery Parcel on your behalf.	Part 1, Section 1.16 Part 2
<b>Settlement Date</b>	The date on which we will either physically deliver the Delivery Parcel to you or pay you the Sale Proceeds.	Part 1, Section 1.16 Part 2
<b>Early Termination</b>	Capital Series is a hold to maturity investment. However, your Investment may be terminated by agreement between you and Commonwealth Bank or by Commonwealth Bank in accordance with the Terms of Sale. If your investment is terminated early, Break Costs will apply and these may be significant. The Early Termination Value may be less than your Investment Amount.	Part 1, Section 1.17
<b>Fees and other costs</b>	The fees and other costs relating to your investment may include: <ul style="list-style-type: none"> <li>› Initial Adviser Fee</li> <li>› Brokerage Fee</li> <li>› Early Termination Fee</li> </ul>	Part 1, Section 1.23 Part 2
<b>Adviser fees</b>	We may pay adviser fees to any broker, financial planner or other financial intermediary who introduces you to us if they declare in the Application Form that you have agreed with them that they may be eligible for such a payment.  We may also reimburse them for promotional and marketing fees from time to time out of our own funds. These fees should be disclosed to you by your broker, financial planner or other financial intermediary.	Part 1, Section 1.23 and Section 6 Part 2
<b>Tax Considerations</b>	Some general information on the indicative tax treatment for Capital Series investors and a taxation opinion from Greenwoods & Freehills is included in Section 4. Nevertheless, you should seek your own independent taxation advice to determine whether an investment in Capital Series is suitable for you and the tax consequences depending on your circumstances.	Part 1, Section 4 Part 2
<b>Complaints</b>	We have procedures for resolving complaints.	Part 1, Section 5
<b>Further information and questions</b>	If you have any questions about an investment in Capital Series, please contact your financial adviser.  If you do not have a financial adviser, contact us on: <b>Phone: 13 15 20</b> <b>Email: capitalseries@cba.com.au</b> <b>Internet: commsec.info/capital</b>	Directory

## How do I invest?

- › Carefully read both Part 1 and Part 2 of this PDS;
- › Consult your independent legal, taxation and financial advisers; and
- › Complete and submit the Application Form in Part 2 of this PDS.

# Section 1: Details of the Investment

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## 1.1 What is Capital Series?

Capital Series offers a diversified exposure to global markets and a range of asset classes such as equities, currencies and commodities through different Strategies. Capital Series also offers varying levels of capital protection at maturity which are specific to each Strategy.

During the Investment Term, each Strategy of Capital Series provides exposure to an Underlying Portfolio and aims to generate capital growth and, depending on the Strategy you choose, may also aim to provide income.

## 1.2 What are some of the features of Capital Series?

Generally, Capital Series offers a combination of one or more of the following features:

- › Up to 100% capital protection at maturity
- › Capital growth potential based on the performance of an Underlying Portfolio
- › Potential diversified exposure to select markets and asset classes
- › Income potential
- › 100% funding via the Capital Investment Loan and Interest in Advance Loan
- › 2-7 year term

Each Strategy of Capital Series has different features, so it's important you read Part 2 of this PDS to determine whether a specific Strategy is suitable for you.

## 1.3 Who is Capital Series suitable for?

Capital Series may not be suitable for you. You should seek your own independent financial and taxation advice before making a decision whether to invest in Capital Series.

Generally, Capital Series may be suitable for individuals, companies, trusts and superannuation funds looking to:

- › diversify their investment portfolio by gaining exposure to the Reference Assets in each Underlying Portfolio and the Delivery Asset;
- › gain exposure to the Reference Assets in each Underlying Portfolio without the complications of direct investment on an international stock exchange or other financial market. Under Capital Series, investors have the security and convenience of dealing exclusively with Commonwealth Bank, one of Australia's leading financial institutions;
- › invest with the potential cash flow advantages of coupon payments (depending on which Strategy or Strategies you choose to invest in);
- › invest with up to 100% gearing where a Capital Investment Loan is used (except for superannuation funds who may be able to use an alternative gearing package offered by us); and
- › invest with up to 100% capital protection at maturity (depending on which Strategy or Strategies you choose to invest in).

Generally, Capital Series may not be suitable for you if:

- › you do not have any experience or knowledge in relevant equity, currency, commodity or other markets to which the Reference Assets and the Delivery Asset relate;
- › you are reliant on an income stream from your investment;
- › you require an investment which is guaranteed by the government or has the benefit of any statutory priority; or
- › you are likely to require access to your funds before the end of the term.

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## **1.4 What are the Underlying Portfolio and the Reference Assets?**

The Underlying Portfolio is the group of indices, commodities, securities or other assets that make up each Strategy. The return of each Strategy is based on the performance of the Underlying Portfolio.

The Reference Assets are the individual indices, commodities, securities or other assets comprising the Underlying Portfolio.

A guide to the Underlying Portfolio and Reference Assets for each Strategy are detailed in Part 2 of this PDS.

The Underlying Portfolio may change in certain situations, such as when an Adjustment Event occurs (please refer to Section 1.21 “What are the significant risks?” in Part 1 of this PDS).

The Underlying Portfolio is not otherwise actively managed and may remain unchanged until maturity. This means the Underlying Portfolio may not be changed due to poor performance.

## **1.5 What is capital protection and how does it work?**

The capital protection level for Capital Series is, in relation to each Strategy, the Strategy Capital Protection Amount.

This level varies between 0% and 100% of your Strategy Investment Amount on the Maturity Date, depending on the Strategy. This means that the Strategy Maturity Value cannot be less than the Strategy Capital Protection Amount, unless an Early Termination Event occurs. The Strategy Capital Protection Amount may be less than the Strategy Investment Amount, in which case there is no capital protection for the difference.

The sum of each Strategy Capital Protection Amount is the Total Capital Protection Amount. Accordingly, your Investment is capital protected for the amount equal to the Total Capital Protection Amount. The Total Capital Protection Amount may be less than your Investment Amount, in which case there is no capital protection for the difference.

Investments in Capital Series are not bank deposits. Any capital protection only applies if your Investment is held to maturity. However, you are reliant on us – Commonwealth Bank – to meet our obligations, which are unsecured. Please refer to Section 1.21 “What are the significant risks?” in Part 1 of this PDS for more information.

## **1.6 What happens on the Start Date?**

On the Start Date, you will have exposure to the Reference Assets in each Underlying Portfolio in the Strategy or Strategies you have chosen to invest in.

If your Application is accepted, we will send you an Acceptance Notice which will specify your Investment Amount and the Initial Reference Level for each Reference Asset.

## **1.7 Are there any coupons payable?**

The Strategies of Capital Series may or may not pay coupons.

If coupons are payable, they may be payable at a rate which is fixed, regardless of the performance of the Underlying Portfolio. Alternatively, whether coupons are payable and the rate at which they are payable, may be dependant on the performance of the Underlying Portfolio. For example, the Reference Asset in the Underlying Portfolio may have to increase above a specified level for the coupon to be payable.

The Schedule of Terms in Part 2 of this PDS sets out the conditions for each coupon payment and the timing of these payments, depending on the Strategy or Strategies you choose to invest in.

If you provide a valid bank account for direct credit in your Application Form, any coupon payment will be directly credited to the bank account you have provided.

## Section 1: Details of the Investment (cont).

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### 1.8 What is the Participation Rate?

The Participation Rate is the rate at which you will participate in any return on the Underlying Portfolio. Generally, the Participation Rate is 100%, however, this rate may change from Strategy to Strategy.

The actual Participation Rate is set on the Start Date based on the prevailing market variables. The factors that affect the Participation Rate are market variables that are constantly changing, including for example, volatility in the Underlying Portfolio. The Participation Rate will be the same for all Investors in a particular Strategy of Capital Series.

The indicative Participation Rate of each Strategy will be specified in the Schedule of Terms in Part 2 of this PDS.

### 1.9 Is there any foreign exchange risk?

Unless one or more of the Reference Assets is a foreign currency there is no direct currency risk associated with your Investment, as Capital Series is denominated in Australian Dollars.

### 1.10 What is the Delivery Asset?

The Delivery Asset is the asset which, on the Start Date, you agree to purchase. The Delivery Asset is purchased at maturity of the Investment. The Delivery Asset is the asset as set out in the Schedule of Terms in Part 2 of this PDS, or, where we offer you a choice of assets in the Application Form, the asset selected by you. This Delivery Asset (which we refer to as the Specified Delivery Asset) may change in certain circumstances. Please refer to Section 1.11 in Part 1 of this PDS for more information.

### 1.11 Can the Delivery Asset change?

It is our intention that the Specified Delivery Asset will be and will remain the Delivery Asset during the term of your Investment. However, on the occurrence of an Adjustment Event, we may substitute the Specified Delivery Asset with a Substituted Delivery Asset. The Substituted Delivery Asset may be any Security as determined by us.

Subject to an Adjustment Event occurring, the substitution of the Delivery Asset may occur at any time after the Start Date and up to and including the Settlement Date. We will only substitute if we reasonably believe there is a valid and sufficient reason for doing so. If substitution occurs and you have elected to accept physical delivery of the Delivery Parcel, the Delivery Parcel will comprise the Substituted Delivery Asset, not the Specified Delivery Asset. We will notify you if a substitution occurs.

### 1.12 What are my options at maturity?

At maturity, you can choose to either:

- (a) accept physical delivery of the Delivery Parcel, or
- (b) receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service.

If you choose to accept physical delivery of the Delivery Parcel, you will have an investment in the Delivery Asset. You will then no longer have an investment linked to the Reference Assets in each Underlying Portfolio. You should consider whether or not this is suitable for you.

Subject to the Specified Delivery Asset being substituted, the Delivery Asset at maturity will be the Specified Delivery Asset as set out in the Schedule of Terms in Part 2 of this PDS. If you do not consider that an investment in the Delivery Asset, at maturity, is suitable for you, you may choose to receive the Sale Proceeds from the sale of the Delivery Parcel by using our Delivery Asset Sale Service. If you do so, you will incur a Brokerage Fee of up to 0.55% (including GST) of the Maturity Value.

Choosing to accept physical delivery of the Delivery Parcel may have different tax consequences for you than if you choose to receive the Sale Proceeds. This will depend on your specific circumstances and the applicable tax law and Australian Taxation Office ("ATO") rulings and determinations (including, for example, any ATO determinations on deferred purchase agreements). Capital Series is a deferred purchase agreement. You should seek independent tax advice on your investment in Capital Series. Please also refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.

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### 1.13 How is the Maturity Value calculated?

At the Maturity Date, the Strategy Portfolio Return is calculated for each Strategy you choose to invest in and is used to determine the Strategy Maturity Value.

The Strategy Portfolio Return calculations are detailed in Part 2 of this PDS.

In relation to each Strategy you have chosen to invest in, the Strategy Maturity Value is equal to the greater of:

- (a) your Strategy Investment Amount + (your Strategy Investment Amount x Strategy Portfolio Return); and
- (b) your Strategy Capital Protection Amount.

The Maturity Value of your Investment is the sum of the Strategy Maturity Values for each Strategy you choose to invest in.

### 1.14 What kind of structure is Capital Series?

Capital Series is a deferred purchase agreement between you, the Investor, and Commonwealth Bank. When you invest, you agree to purchase the Delivery Parcel from Commonwealth Bank. The Delivery Parcel is a number of Delivery Assets, equal in value to the Maturity Value. Delivery of the Delivery Parcel is deferred for the Investment Term. The number of Delivery Assets you receive at the end of that time (that is, the Delivery Parcel) depends on the Maturity Value. The Delivery Asset for each Strategy is detailed in Part 2 of this PDS.

Capital Series is classified as a “security” under the Corporations Act because it gives you an equitable beneficial interest (the “Beneficial Interest” as more particularly defined in the Nominee Deed) in a fraction of the Nominee Security for the duration of the investment.

The Nominee Security is held by the Nominee for Investors for the term of the investment and your Beneficial Interest in it cannot be dealt with separately to the rest of the Capital Series (i.e. they form a single package of rights and obligations). So if an Investor transfers its Capital Series interest under clause 13.11 of the Terms of Sale, the Investor’s Beneficial Interest will automatically be transferred along with it to the transferee.

The Nominee Security is 1 ordinary share in the capital of BHP Billiton Limited, or any other substitute security in accordance with the Nominee Deed.

### 1.15 When do I notify Commonwealth Bank of my preferred settlement at maturity?

Approximately one month before your investment matures, we will send you a Completion Notice to fill out and return to us. In your Completion Notice you must indicate whether:

- 1. you wish to accept physical delivery of the Delivery Parcel, which will be described in the Completion Notice, or
- 2. you wish to receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service.

There may be different tax consequences for you depending on which option you choose. For more information, please refer to Section 4 “Tax Considerations” and “Tax Opinion” in Part 1 of this PDS.

You should complete all the relevant details on the Completion Notice. If the Delivery Asset is a Security quoted and trading on the ASX, you should also specify your broker sponsored account and your Holder Identification Number (HIN).

If you are not funding your investment in Capital Series with a Capital Investment Loan and if we do not receive your Completion Notice by 5 pm, Sydney time, on the Maturity Date we will arrange for physical delivery of the Delivery Parcel to you.

If you choose to receive the Sale Proceeds from the sale of the Delivery Parcel using the Delivery Asset Sale Service, you are instructing us or our nominee to sell the Delivery Parcel on your behalf and forward the Sales Proceeds to you. If your holding includes any partial unit, you will receive the relevant dollar value of the partial unit in cash. We charge a Brokerage Fee of up to 0.55% (including GST) of the Maturity Value for using the Delivery Asset Sale Service.

# Section 1: Details of the Investment (cont).

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If you are funding your investment in Capital Series with a Capital Investment Loan, and you indicate on your Completion Notice that you wish to accept physical delivery of the Delivery Parcel, subject to clause 3.9, you will need to repay the Capital Investment Loan with your own capital or with other borrowed funds. If you are in default under your Capital Investment Loan, you will not be offered the choice of repaying the Capital Investment Loan with your own capital or with other borrowed funds. If you indicate on your Completion Notice that you wish to use the Delivery Asset Sale Service or if we do not receive a validly completed Completion Notice from you (in which case, we will assume you have chosen to use the Delivery Asset Sale Service), the Sale Proceeds will be used to repay all monies you owe us under the Capital Investment Loan and the Interest in Advance Loan (if applicable). Any residual amount will be paid to the account nominated in your Application Form.

### 1.16 What happens on the Trade Date and Settlement Date?

On the Trade Date, we will purchase the Delivery Parcel on your behalf. The Trade Date will be five Business Days after the Maturity Date.

On the Settlement Date, we will either physically deliver the Delivery Parcel to you or, if you have elected to receive the Sale Proceeds using our Delivery Asset Sales Service, we will pay you the Sale Proceeds.

The Trade Date and the Settlement Date are set out in the Schedule of Terms in Part 2 of this PDS.

If you are taking physical delivery of the Delivery Parcel, we will transfer the Delivery Parcel as set out in the Completion Notice. For example, if the Delivery Asset is a security quoted and trading on the ASX, we will transfer the Delivery Parcel to your broker-sponsored account and Holder Identification Number (HIN) nominated in your Completion Notice. If you have not nominated a broker-sponsored account and HIN, or they are invalid, we will transfer the Delivery Parcel to an issuer-sponsored account in the same name as your investment.

If you are taking physical delivery of the Delivery Parcel and your holding includes any partial unit, you will receive the relevant dollar value of the partial unit in cash. For example, if the Maturity Value is \$250,000.00 and the Delivery Asset is trading at \$45.00, we will buy on your behalf 5,555 units for a value of \$249,975.00 (5,555 X \$45.00) and forward the residual amount of \$25.00 to you (\$250,000 – \$249,975.00). Note that if the residual amount does not exceed \$20.00, we are under no obligation to you to make any payment for the fractional security or unit (as applicable) that make up the Delivery Asset.

If you are using our Delivery Asset Sale Service we will credit the Sale Proceeds to the account nominated in your Application Form. If you use the Delivery Asset Sale Service, there may be different tax consequences so you should seek your own independent tax advice in this situation. For more information, please refer to Section 4 “Tax Considerations” and “Tax Opinion” in Part 1 of this PDS.

### 1.17 Can my investment be terminated early?

Capital Series is a hold to maturity investment. However, your Investment may be terminated before maturity by:

- (a) agreement between you and Commonwealth Bank, or
- (b) Commonwealth Bank, in accordance with the Terms of Sale.

#### **Where capital protection applies, if your investment is terminated early, you will not receive any capital protection for your Investment.**

You may request Commonwealth Bank to terminate your Investment early. If we agree to terminate your Investment early, we will provide you with an indicative quote and we will determine the date on which the termination will be processed. We will notify you of the date on which the termination will be processed.

At the time of termination we will calculate the Early Termination Value. In doing so we will take into account the Break Costs associated with unwinding the hedge arrangements Commonwealth Bank established in connection with your Investment (which may be an addition (that is, in your favour) or a deduction (that is, not in your favour) in the calculation of the Early Termination Amount).

Break Costs are defined in clause 14.1 of the Terms of Sale. They represent the costs to Commonwealth Bank of terminating your Investment before maturity. They are an amount calculated and determined by us in our absolute discretion, exercised with due care and skill. They may be in your favour, which means they will be added in determining the Early Termination Value; or they may not be in your favour, which means they will be deducted in determining the Early Termination Value.

Break Costs may be significant. They are only payable if your Investment is terminated prior to the Maturity Date. If your Investment is terminated prior to the Maturity Date, the Early Termination Value may be less than your Investment Amount – even if the Underlying Portfolio has increased in value. You will also have to pay an Early Termination Fee (being an amount up to \$500) and, if you elect to use the Delivery Asset Sale Service, a Brokerage Fee (being up to 0.55% (including GST) of the Early Termination Value).

It is not possible to accurately forecast the Break Costs on your Investment. You should therefore not invest in Capital Series if you are likely to need your funds before the Maturity Date.

The table below provides an indication of how changes in some variables can affect Break Costs. The table assumes all other variables remain constant. A downward pointing arrow in the Break Costs column in the table below means it is more favourable to you. An upward pointing arrow in the Break Costs column in the table below means it is less favourable to you.

#### How changes in some variables affect Break Costs

Variable	Change in Variable	Break Costs
Underlying Portfolio	↑	↓
Underlying Portfolio Volatility	↑	↓
AUD Interest Rates	↑	↑

There may also be different tax consequences if your investment is terminated early. You will need independent tax advice in this situation. For more information, please refer to Section 4 “Tax Considerations” and “Tax Opinion” in Part 1 of this PDS.

### 1.18 Can Commonwealth Bank terminate the investment early?

We may terminate the Investment early, following an Early Termination Event. In clause 14.1 of the Terms of Sale, an Early Termination Event is defined to mean:

- (a) you are or become Insolvent;
- (b) you or a signatory to your Investment appears to be a Proscribed Person;
- (c) you breach, or fail to fully observe or perform, any of your obligations or undertakings under these Terms of Sale;
- (d) any actual or proposed Adjustment Event which, in our reasonable opinion, it is not possible or desirable to deal with in accordance with clause 9;
- (e) any arrangements entered into by us in order to hedge our obligations under these Terms of Sale in whole or in part cannot reasonably be established, maintained or re-established;
- (f) if you have funded your investment in Capital Series with a Capital Investment Loan and an Interest in Advance Loan (if applicable), a default by you under the terms of your Capital Investment Loan or your Interest in Advance Loan (if applicable); or
- (g) any actual or proposed event that may reasonably in our opinion be expected to lead to any of the events in paragraphs (a) to (f) above occurring.

### 1.19 What are the significant benefits?

- You have the potential to receive capital growth based on the performance of the Reference Assets in the Underlying Portfolio of the Strategy or Strategies you choose to invest in.
- Each Reference Asset in the Underlying Portfolios may be diversified across a broad base of companies, asset classes or geographic regions. This diversification may reduce investment risk by potentially moderating volatility compared to investing in individual stocks or assets.
- If your Investment is held to maturity, you will receive capital protection equal to the amount of the Total Capital Protection Amount; and in relation to each Strategy, the Strategy Capital Protection Amount.
- The Strategies of Capital Series may or may not pay coupons. For information on coupon payments and the timing of these payments for each Strategy, please refer to Part 2 of this PDS.

# Section 1: Details of the Investment (cont).

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- Any return on your Strategy Investment Amount, apart from any coupon payments (depending on which Strategy or Strategies you choose to invest in), reflects the performance of the Underlying Portfolio. You also gain exposure to the performance of these assets without the complication of direct investment in stock exchanges and other financial markets.
- You have the security and convenience of dealing exclusively with Commonwealth Bank, one of Australia's leading financial institutions.
- Unless one or more of the Reference Assets is a foreign currency, there is no direct currency risk associated with your investment, as Capital Series is denominated in Australian Dollars.
- At maturity of Capital Series you can choose to either:
  - (a) accept physical delivery of the Delivery Parcel, or
  - (b) receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service.

If you choose to accept physical delivery of the Delivery Parcel, you will then have an investment in the Delivery Asset. An investment in the Delivery Asset gives you exposure to the performance of the Delivery Asset, which may be of benefit to you.

- If you choose to accept physical delivery of the Delivery Parcel there may be tax consequences that are favourable to you, depending on your specific taxation circumstances and the applicable tax law and ATO rulings and determinations (including, for example, any ATO determinations on deferred purchase agreements). You should note that these consequences may not be available to you. Please refer to Section 1.21 "What are the significant risks?" in Part 1 of this PDS. For further information, please also refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.
- You may withdraw your Application for Capital Series at any time before the Closing Date. Any money that you have paid with the Application Form will be refunded to you, without interest.

The benefits above may have risk associated with them. Please refer to Section 1.21 "What are the significant risks?" in Part 1 of this PDS.

## 1.20 What are the significant disadvantages?

- On the Maturity Date you can choose to either:
    - (a) accept physical delivery of the Delivery Parcel, or
    - (b) receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service.
- If you choose to accept physical delivery of the Delivery Parcel at maturity, you will have an investment in the Delivery Asset. This will give you exposure to the performance of the Delivery Asset which may not be advantageous to you.
- If you choose to receive the Sale Proceeds from the sale of the Delivery Parcel using our Delivery Asset Sale Service at maturity or upon Early Termination, you will incur a Brokerage Fee of up to 0.55% (including GST) of the Maturity Value or the Early Termination Value (whichever is applicable). There may also be tax consequences. In particular, you may be treated as holding your investment on revenue account and may not be eligible for any Capital Gains Taxation (CGT) discount on any gain on your Investment. You should seek independent tax advice in this situation. For more information on taxation, please refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.
  - You need to be aware of the applicable tax law and relevant rulings and determinations (including determinations on deferred purchase agreements). Receiving the Sale Proceeds at maturity may be more disadvantageous from a tax perspective than accepting physical delivery of the Delivery Parcel at maturity, depending on your specific circumstances. Please refer to the "Taxation risk" part of Section 1.21 "What are the significant risks?" in Part 1 of this PDS. For more information on this subject, please refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.
  - If capital protection applies to any Strategy at maturity and your Investment is terminated early, you will not receive any capital protection for your Investment. Break Costs may be significant and may result in the Early Termination Value of your investment being less than your Investment Amount. You will have to pay an Early Termination Fee (being an amount up to \$500) and, if you elect to use the Delivery Asset Sale Service, a Brokerage Fee (being up to 0.55% (including GST) of the Early Termination Value). There may also be different tax consequences. Please refer to Section 1.17 "Can my investment be terminated early?" and Section 1.18 "Can Commonwealth Bank terminate the investment early?" in Part 1 of this PDS. Please also refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.

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## 1.21 What are the significant risks?

Capital Series may not be suitable for you. You need to make sure that you understand all of the risks of investing before applying. We recommend that you obtain independent financial advice before investing in Capital Series.

Starting from the time at which you make your Investment, risk factors may lead to changes in the financial outcomes that are unfavourable to you. Monitoring of any risks associated with this product is your responsibility (subject to the responsibility of Commonwealth Bank for its own operational processes, please refer to “Operational risk” on page 14 in Part 1 of this PDS).

### Performance and general investment risk

- There is a risk that you may receive no return on your Investment. Apart from any coupon payments you may receive during the term of your Investment (depending on which Strategy or Strategies you choose to invest in), you will only receive a return on your investment on the Settlement Date if on the Maturity Date the final value of your Investment is higher than your Investment Amount. Commonwealth Bank cannot guarantee the performance of the Reference Assets in each Underlying Portfolio nor your Investment.
- There are circumstances where you may make a capital loss. Any capital protection feature, which provides protection equal to the Total Capital Protection Amount and, in relation to each Strategy, the Strategy Capital Protection Amount, will apply only if your Investment is held until maturity. If the Total Capital Protection Amount is less than your Investment Amount, you may incur a loss on your Investment.
- The effects of inflation and time value of money mean the amount you invest may be worth less at maturity, even if that amount was capital protected.
- Investments in Capital Series are not bank deposits. You are reliant on us – Commonwealth Bank – to meet our obligations, which are unsecured.
- Capital Series is a hold to maturity investment. However, your Investment may be terminated before maturity either by agreement between you and Commonwealth Bank, or by Commonwealth Bank following an Early Termination Event. Please refer to Section 1.18 “Can Commonwealth Bank terminate the investment early?” for more information on Early Termination Events. If terminated before maturity, the Early Termination Value of your investment may be less than your Investment Amount and you may make a capital loss. Break Costs payable by you could be a factor in this. Break Costs are defined in clause 14.1 of the Terms of Sale and can be significant. They represent the costs to Commonwealth Bank of terminating your Investment before maturity. The Break Costs could be in your favour, which means they will be added in when determining the Early Termination Value or they may not be in your favour, in which case they will be deducted. Break Costs may be significant. Break Costs are payable only if your Investment is terminated prior to the Maturity Date. This, together with the fact that an Early Termination Fee and, if you elect to use the Delivery Asset Sale Service, a Brokerage Fee is payable on Early Termination, is why Capital Series is a hold to maturity investment. If you choose to invest, we recommend that you only invest funds which you will not require for other purposes during the life of your Investment. Please refer to Section 1.17 “Can my investment be terminated early?” and Section 1.18 “Can Commonwealth Bank terminate the investment early in Part 1 of this PDS for more information.
- Capital Series is a speculative financial product and its returns may be less than the return you could earn on other investments.
- Capital Series is not a listed investment. It cannot be traded on a market.
- The performance of Capital Series and the Strategy Portfolio Return of each Underlying Portfolio are not affected by the performance of the Delivery Asset over the Investment Term. However, if you elect to accept physical delivery of the Delivery Parcel at maturity you should be aware that following purchase by Commonwealth Bank of the Delivery Parcel on the Trade Date, the value of the Delivery Parcel will be affected by changes in the price of the Delivery Asset. You can find out where to obtain more information about the Delivery Asset in Part 2 of this PDS.
- On the occurrence of an Adjustment Event, we may substitute the Specified Delivery Asset the Substituted Delivery Asset. If substitution occurs, the Delivery Asset will be the Substituted Delivery Asset, not the Specified Delivery Asset. You are warned of this and should take this into account when considering investing in Capital Series. We will promptly notify you if substitution occurs.
- Although funds invested in Capital Series may be capital protected, if you borrow funds to invest in Capital Series any interest you pay on those borrowed funds will not be capital protected.

# Section 1: Details of the Investment (cont).

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### Market risk

- › During the Investment Term, Capital Series may be affected by a number of market variables, including but not limited to, the performance of the Reference Assets in each Underlying Portfolio, interest rates, economic variables, time remaining to maturity, technological, legal or political conditions that may occur globally or at a country, industry or asset specific level.
- › Investors should be familiar with stocks and with investments in the financial markets generally. In particular, Investors should be familiar with the financial market on which the Reference Assets in each Underlying Portfolio are traded.
- › If there is more than one Reference Asset in any Underlying Portfolio or if you invest in more than one Strategy, the Reference Assets in these Strategies may be correlated to a greater or lesser extent than you anticipate.

### Taxation risk

- › Capital Series is a deferred purchase agreement. The ATO has made determinations in relation to deferred purchase agreements (TD 2008/21 and TD 2008/22) and this may have taxation implications for you. Any changes to the tax law, ATO interpretation of the tax law or change in the way your Investment affects your tax position could affect the value and/or the return of your Investment. For more information on tax, please refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.
- › Whether at maturity you choose to accept physical delivery of the Delivery Parcel or to receive the Sale Proceeds may have different tax consequences for you, depending on your specific taxation circumstances and the applicable tax law and ATO rulings and determinations (including, for example, any ATO determinations on deferred purchase agreements). If you intend to terminate early, there may be tax consequences which you should consider. For more information, please refer to Section 4 "Tax Considerations" and "Tax Opinion" in Part 1 of this PDS.

### Credit risk

Credit risk, which is sometimes described as "counterparty risk", is common to all investment products that you may hold with Commonwealth Bank. In all cases, you are reliant on the ability of Commonwealth Bank to meet its obligations to you under the terms of each transaction, which in the case of Capital Series are unsecured obligations.

Where under a Strategy of Capital Series coupons are payable, payment of these coupons is an obligation of Commonwealth Bank. You are reliant on us – Commonwealth Bank – to meet our obligations. Capital Series is capital protected only at maturity by Commonwealth Bank in the amount of the Total Capital Protection Amount and in relation to each Strategy, in the amount of the Strategy Capital Protection Amount. This means that the Maturity Value of your Investment at maturity cannot be less than the Total Capital Protection Amount, and for each Strategy you choose to invest in, the Strategy Maturity Value of your investment at maturity cannot be less than your Strategy Capital Protection Amount. However, even though we use the word "protected" in relation to the capital of your Investment, you are reliant on us – Commonwealth Bank – to meet our obligations. You are warned that the obligation of Commonwealth Bank to ensure that coupon payments are paid (depending on which Strategy or Strategies you choose to invest in) and the obligation of Commonwealth Bank to ensure the Maturity Value of your Investment at maturity is not less than the Total Capital Protection Amount, and the Strategy Maturity Value is not less than your Strategy Capital Protection Amount, are unsecured obligations of Commonwealth Bank which rank equally with other unsecured obligations of Commonwealth Bank. If, for example, in the unlikely event Commonwealth Bank were wound up, there would be a risk you may not receive your capital protection at maturity and if coupons are payable for a Strategy, you may not receive your coupon payments. This means you may make no return on your Investment and you may make a capital loss.

For more information on Commonwealth Bank, please refer to Section 5 under "Information about Commonwealth Bank" in Part 1 of this PDS. You can also view further information about Commonwealth Bank, including financial statements and annual reports, at [commbank.com.au](http://commbank.com.au)

### Operational risk

Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems or external events.

You are reliant on the ability of Commonwealth Bank to price and settle your investment in a timely and accurate manner. Commonwealth Bank in turn is dependent on the reliability of its own operational processes that include communications, computers and computer networks. Disruptions in Commonwealth Bank's processes may lead to delays in the execution and settlement of your investment. Such disruptions may result in outcomes that are less favourable to you. However, once you have made your Investment, the management of risks associated with its own operational processes is the responsibility of Commonwealth Bank.

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## Legal risk

Australia, as a member state of the United Nations, is obliged to implement United Nations Security Council sanctions. Australia also may be required to implement other international sanctions and sometimes imposes unilateral sanctions. Sanctions can cover various subject matters including financial restrictions. Consequently, Commonwealth Bank may be prohibited from dealing with certain persons or entities.

This means that if Commonwealth Bank is aware that you, or a signatory to your Investment, are a proscribed person or entity, then we may be required to suspend, cancel or refuse you services or close or terminate any account, facility, transaction, arrangement or agreement with you. We may also be required to freeze your assets. You could incur significant costs as a result of these actions.

## Adjustment events and other changes to the Terms of Sale

Certain events may occur affecting the use or suitability of the Specified Delivery Asset or the Reference Assets in each Underlying Portfolio for Capital Series. If these events occur we may substitute the Delivery Asset with another Security (the Substituted Delivery Asset), or substitute one or more of the Reference Assets in each Underlying Portfolio with another asset or other assets. We will only substitute if we reasonably believe there is a valid and sufficient reason for doing so. For more information on adjustments, please refer to clause 9 of the Terms of Sale and the definition of "Adjustment Event" in clause 14.1 of the Terms of Sale.

If adjustment occurs, the Delivery Asset and/or the Reference Assets in each Underlying Portfolio will change. You are warned of this and should take this into account when considering your Investment.

Further, if we determine in our reasonable opinion that any adjustments we make are not appropriate to deal with the occurrence of an Adjustment Event we may make alterations to clause 9 of the Terms of Sale or any other term that we consider is reasonably appropriate. Alternatively, we can nominate the Adjustment Event as an Early Termination Event and deal with it accordingly. We may also adjust or amend any variable, formulae, amount, weighting or calculation set out or used in the Terms of Sale and/or the Schedule of Terms. You will be notified if an adjustment occurs.

If we determine that any Early Termination provision in clause 8 of the Terms of Sale is not appropriate in any particular circumstances, or that any event which is not dealt with in clause 8 of the Terms of Sale should have been dealt with, we may make any alterations to these provisions or any other Term in the Terms of Sale that we consider appropriate.

We may from time to time make any modification, variation, alteration or deletion of, or addition to, the Terms of Sale ("Amendment") by sending you written notice describing the amendments where:

- (a) the Amendment is one determined by us as being required under either of clauses 8 or 9 of the Terms of Sale;
- (b) the Amendment is necessary or desirable in our reasonable opinion to comply with any statutory or other requirement of law, or
- (c) in our reasonable opinion the Amendment is necessary, desirable or expedient to:
  - (i) correct any error, inconsistency, inadvertent omission, inaccuracy or ambiguity in these Terms of Sale;
  - (ii) conform Commonwealth Bank with its competitors, industry or market practice or best practice in Australia or overseas;
  - (iii) accommodate changes to the needs or requirements of the Bank's customers (such as new product features or services); or
  - (iv) address any internal requirements of the Bank, for example, occasioned by changes in technology or processing (including computer systems),

but only if such Amendment does not, in our reasonable opinion, cause you detriment.

The risks described here may not include all the risk considerations that may be relevant to you when making an investment. Please also refer to Section 1.20 "What are the significant disadvantages?" in Part 1 of this PDS. Before transacting in Capital Series you should be satisfied that Capital Series is suitable for you. We recommend that you consult your investment adviser or obtain other independent advice on your Investment.

## Changes of dates and times

At any time before the Start Date specified in the "Key dates and information" in Part 2 of this PDS, Commonwealth Bank may, if we consider it necessary, desirable or expedient, change the Start Date, the Closing Date (and time), the Maturity Date, the Trade Date or the Settlement Date of this invitation, in which case you acknowledge that the Investment Term may be more or less than the term stated in the Schedule of Terms. We may do this, for example, to deal with changes in pricing or market conditions, or to achieve a requisite number of applicants for Capital Series, or to address regulatory or compliance requirements.

## Section 1: Details of the Investment (cont).

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### **1.22 What information is contained in the Nominee Deed?**

This is a summary of some of the key terms of the Nominee Deed. It does not purport to be a comprehensive summary of the relevant terms of the Nominee Deed. It highlights particular provisions that we encourage you and other prospective Investors to consider in detail and discuss with your advisers. A copy of the Nominee Deed is available free of charge to prospective applicants and Investors in Capital Series. Clause references in this section are references to clauses in the Nominee Deed.

#### **Trust**

The Nominee will hold each item of trust property on the terms of the Nominee Deed on trust for the Beneficiaries solely. The trust property is comprised of the Nominee Security and the Beneficiaries of the trust are:

- (a) in respect of income relating to the Nominee Security, us; and
- (b) in all other respects, you.

The trust will terminate on the earlier of the date on which all Capital Series have been discharged (or any other date determined by us and notified to the Nominee), and the day before the date 80 years from the date of the Nominee Deed.

It is a term of the trust that no encumbrance may be created, arise or continue to exist over the trust property.

#### **Beneficial Interest**

Each Investor has an equitable beneficial interest in the Nominee Security (the "Beneficial Interest", as more particularly defined in the Nominee Deed) which is subject to the terms of the Nominee Deed.

Neither the Capital Series nor the Beneficial Interest in the trust property held by you confers or entitles you or any other Investor to:

- (a) any right to require the transfer to it of any of the Nominee Security;
- (b) any further assurance of that Beneficial Interest beyond that resulting from the Terms of Sale and the Nominee Deed;
- (c) receive notices of meetings of the issuer of the Nominee Security, attend, speak or vote at any meetings of members of the issuer of the Nominee Security, or require the Nominee to do so; or
- (d) otherwise control the transfer or disposal of the trust property.

#### **Voting by the Nominee**

The Nominee must not cast any vote in respect of the Nominee Security comprised in the trust property. The Nominee must not dispose of the Nominee Security for the duration of the Trust except that the Nominee may:

- (a) deposit certificates for the Nominee Security with a custodian; and/or
- (b) hold uncertificated shares in the name of a custodian,

where required for compliance with our obligations under the Terms of Sale in relation to Capital Series or as otherwise expressly permitted by the Nominee Deed.

#### **Entitlements to Dividends**

If a Dividend is paid, the Nominee must pay the Dividend directly to us as soon as possible after receipt in the form of cleared funds. You have no entitlement to any Dividends. Neither we nor the Nominee has any obligation to accept or participate in any dividend reinvestment plans on behalf of you or any other investor.

#### **Corporate Actions and Takeover Bids**

In the event of a corporate action or a takeover bid, the Nominee may (at our direction) take (and will not be liable for) any reasonable action in respect to the corporate action or takeover bid. This might include substituting the Nominee Security for some other security.

In particular, if a takeover bid is made or announced for any Nominee Security, the Nominee will not accept that takeover bid, will be under no obligation to communicate any information or document it receives in connection with that takeover bid to any Beneficiaries and will have no other obligation to any person in connection with that takeover bid.

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### **Occurrence of disposal event**

If a disposal event occurs and the Nominee is obliged to dispose of the Nominee Security, the Nominee must take all reasonable steps to determine which securities will be sold and to sell the securities in accordance with that obligation. Upon completion of a sale of a Nominee Security the proceeds of any sale made upon a disposal event will be applied at our direction to acquire a substitute Nominee Security.

### **Extinguishment and transfer of Beneficial Interest of Investor**

Upon the occurrence of an extinguishment event, your Beneficial Interest in the Nominee Security is automatically extinguished in full and you will no longer have any interest, right or claim to or in respect of the Nominee Security or the other trust property. An extinguishment event happens when any event or circumstance referred to in the Terms of Sale in clause 3.6 (“Satisfaction of obligations”), clause 3.9 (“Default under the Capital Investment Loan or the Interest in Advance Loan”) or clause 8.3 (“Procedure for Early Termination”) occurs.

If an Investor transfers any of the Investor’s rights or obligations under the Terms of Sale in accordance with clause 13.11 (“Assignment and transfer of interests”) of the Terms of Sale, then automatically upon such transfer the Investor’s related Beneficial Interest will be transferred to the relevant transferee.

### **Delegation**

The Nominee may authorise any person(s) to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to the Nominee Security, perform any act or obligation or exercise any discretion within the Nominee’s power. The delegate may be an associate of the Issuer or the Nominee.

### **Retirement**

The Nominee must retire as the trustee of the trust when required to retire by the operation of law. The Nominee may retire by giving 30 days notice to us or any shorter notice period we accept. We may also remove the Nominee in accordance with the Nominee Deed. In either case, we appoint the replacement.

### **Limitation on liability**

The Nominee does not have any obligations or duties in respect of the trust, the Capital Series, the Nominee Security, the trust property or anything in relation to them except as expressly set out in the Nominee Deed. If the Nominee acts in good faith and without wilful default or negligence in endeavouring to perform its obligations under the Nominee Deed, it is not responsible to you or any other investor for any loss suffered in respect of the trust including in case of a breach of an obligation imposed on the Nominee.

The liability of the Nominee in relation to the trust is in any case limited to the trust property.

### **Exercise of discretion**

The Nominee need not act except when required to do so by the Nominee Deed. The Nominee need not consult with your or any other Investor before acting, giving any consent, approval or agreement or making any determination under the Nominee Deed except if it expressly provides otherwise.

### **Further obligations**

Notwithstanding any other provision of the Nominee Deed the Nominee is not required to do or to omit to do anything or to incur any liability unless the Nominee’s liability is limited in a manner satisfactory to the Nominee, the Nominee will not be under any obligation to advance or to use its own funds for the payment of any costs, expenses or liabilities, the Nominee is not required to keep itself generally informed as to the circumstances or activities of the issuer of the Nominee Security, the Issuer or any other person, including their compliance with their obligations in connection with the Nominee Deed, the Capital Series or the Nominee Security and a liability or obligation of the Nominee arising under the Nominee Deed is strictly limited to the extent to which (and can be enforced against the Nominee only to the extent to which) the Nominee is actually indemnified for the liability by the Issuer or the liability or obligation can lawfully be satisfied in accordance with the Nominee Deed out of the Nominee Security in respect of the Trust.

## Section 1: Details of the Investment (cont).

### Reimbursement of outgoings

All costs, fees, expenses and liabilities reasonably and properly incurred by the Nominee in connection with the Trust or in performing its obligations under the Nominee Deed are payable or reimbursable by the Issuer.

Investors must pay all transfer tax and other charges including a goods and services tax, if any, and any taxes payable by the Nominee in connection with the ownership, transfer, termination and/or maturity of a Capital Series.

### Statements, accounts and audit

The Nominee is not required to prepare and lodge consolidated accounts and financial and taxation returns unless it is required by law to do so.

### Amendments to deed

The Issuer and the Nominee may together by supplemental deed amend the Nominee Deed if one or more of the following applies:

- (a) the amendment is necessary to rectify any defect, manifest error or ambiguity in the terms of the Nominee Deed where the amendment is not materially prejudicial to the interests of Investors;
- (b) the terms of the amendment are authorised by us; or
- (c) the terms of the amendment are necessary in the opinion of the Nominee and the Issuer to comply with any statutory or other requirement of law (including as modified or applied in any respect to the Capital Series).

### 1.23 What are the costs?

<b>Initial Adviser Fee</b>	The Initial Adviser Fee may be payable by you at the start of your Investment. If you have been introduced to us by any broker, financial planner or other financial intermediary, and they declare in the Application Form that you have agreed an Initial Adviser Fee with them, we will pay this amount on your behalf to them as an adviser fee.
<b>Brokerage Fee</b>	If you elect to use the Delivery Asset Sale Service at maturity or upon Early Termination, the Brokerage Fee on the sale of the Delivery Asset is up to 0.55% (including GST) of the Maturity Value or the Early Termination Value (whichever is applicable). The Brokerage Fee is payable by you at maturity or at the time of Early Termination (whichever is applicable).
<b>Early Termination Fee</b>	The Early Termination Fee is an amount up to \$500 and is payable by you at the time of Early Termination.

### 1.24 Who may apply for Capital Series?

Application for Capital Series is open to:

- > Australian residents
- > Companies registered in Australia
- > Australian trust entities
- > Australian superannuation funds

You are bound by the Terms of Sale when you make an Application.

Commonwealth Bank issues Capital Series on the Terms of Sale set out in Section 6 “Terms of Sale” in Part 1 of this PDS. You should make sure that you read and understand the Terms of Sale. Signing and lodging an Application Form will bind you to the Terms of Sale, provided that, where you have signed and lodged an Application Form, you may withdraw your Application at any time prior to the Closing Date. The Terms of Sale include the Schedule of Terms.

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## 1.25 How do I apply?

You should send us your completed Application Form, which must be received by Commonwealth Bank no later than 12.00 pm (noon) Sydney time on the Closing Date, as specified in Part 2 of this PDS. Applications may be made only on the Application Form attached to the back of Part 2 of this PDS.

You may apply for any amount in any Strategy or Strategies in Capital Series, subject to a Minimum Investment Amount and minimum increments as specified in the Schedule of Terms.

The sum you pay is called the Application Amount. We may deduct from this any Initial Adviser Fee as agreed between you and your broker, financial planner or other financial intermediary. The amount invested by you is your Investment Amount. This is the Application Amount, less any Initial Adviser Fee. No stamp duty is payable by you under Capital Series.

You can pay the Application Amount by cheque or direct debit.

If you are paying by cheque, you should attach the cheque to your completed Application Form and the cheque will be processed once your Application has been received. If you are paying by direct debit, you should complete the Direct Debit section in the Application Form and your nominated account will be debited once your Application has been received. Any interest on these funds in the period between the date we receive your funds and the Start Date will be retained by Commonwealth Bank.

If you are paying by cheque, you should ensure that you have sufficient cleared funds in the account against which your cheque will be drawn when you submit your Application Form. If you are paying by direct debit, you should ensure you have sufficient cleared funds in the account you have nominated in your Application Form. If you do not have sufficient cleared funds in the relevant account, your application may not be accepted. If your application is not accepted, any money that you have paid to us will be returned to you. Any interest on these funds will be retained by Commonwealth Bank.

**Important:** If any Capital Series is approved by an investor directed portfolio service, master trust, wrap platform, nominee or custody service you can also apply for Capital Series through that service, as approved by us. To invest in Capital Series through these services, you will need to complete an application form for the relevant service. You should not complete the Application Form in this PDS.

For the purposes of quotation on any investor directed portfolio service, master trust, wrap platform, nominee or custody service, your Investment may be quoted as a quantity of units. Units do not confer a separate item of property on investors. Rather, each unit will represent \$1.00 of your Investment Amount. Any unit price quoted on these services during the term of the Investment will represent a value for every \$1.00 of your Investment Amount as at the date of quotation.

## 1.26 Will my application be accepted?

We may, in our absolute discretion, refuse or reject any Application (wholly or in part) without giving you a reason. We also reserve the right at any time to close the invitation early. If an Application is rejected or accepted only in part, we will return all or part of the Application Amount to you, without interest.

If we decide that we will accept an Application, acceptance of your offer will take place on the Start Date, as specified in the Terms of Sale. Within 10 Business Days of the Start Date, we will provide you with a notice acknowledging acceptance.

## 1.27 Can I withdraw my Application?

You may withdraw your Application for Capital Series any time before the Closing Date. Any money that you have paid will be refunded to you without interest.

## 1.28 How can I find out the value of my investment?

During the term, you can view updates on Capital Series by visiting our website: [commsec.info/capital](http://commsec.info/capital)

## Section 1: Details of the Investment (cont).

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### **1.29 Who do I contact for more information?**

If you have any questions about how to invest in Capital Series or how to complete the Application Form, please contact your financial adviser.

If you do not have a financial adviser, please contact us on:

**Phone:** 13 15 20

**Email:** [capitalseries@cba.com.au](mailto:capitalseries@cba.com.au)

**Internet:** [commsec.info/capital](http://commsec.info/capital)

## Section 2: The Capital Investment Loan

### 2.1 What is the Capital Investment Loan?

The Commonwealth Bank Capital Investment Loan is an interest only loan designed for investors who want to borrow to invest in Capital Series (the “Product”). You may borrow an amount up to the Total Capital Protection Amount for the Product. If the Total Capital Protection Amount is less than your Investment Amount, you will be required to contribute the difference using your own funds.

You should read the Terms and Conditions of the Loan, and seek professional advice on your rights and obligations under the Terms and Conditions of the Loan. Applications for the Capital Investment Loan are subject to Commonwealth Bank's credit approval process.

Capitalised terms in this section are as defined in the Terms and Conditions of the Loan.

### 2.2 What are the features of the Capital Investment Loan?

<b>Eligible applicants</b>	Investors who want to borrow to invest in Capital Series.
<b>Loan Limit</b>	The maximum amount we are prepared to lend you under the Capital Investment Loan, which is an amount up to your Total Capital Protection Amount for the Product, subject to Commonwealth Bank's credit approval process.
<b>Loan Term</b>	The period of time from the Capital Investment Loan Start Date to the Capital Investment Loan Maturity Date.
<b>Capital Investment Loan Start Date</b>	The Capital Investment Loan is used to invest in the Product, therefore the Capital Investment Loan Start Date will be the Start Date of the Product. If the Start Date of the Product changes, the Capital Investment Loan Start Date may also change. The Start Date of the Product is determined by Commonwealth Bank.
<b>Capital Investment Loan Maturity Date</b>	The Capital Investment Loan Maturity Date is the Settlement Date as defined in this PDS. Any changes to the Settlement Date of the Product may result in changes to the Capital Investment Loan Maturity Date.
<b>Interest Rate</b>	The Interest Rate is either a fixed rate payable yearly in advance or payable monthly in arrears, or a variable rate payable monthly in arrears. Please contact your financial adviser or, if you do not have a financial adviser, contact us on <b>13 15 20</b> to obtain the indicative interest rates.
<b>Interest Payment</b>	You can either pay interest each month in arrears or pay for a year's interest in advance. If you elect to pay interest monthly in arrears, your interest payment will be debited from your Nominated Account on the last day of each month (or if the last day of the month is not a Business Day, the next Business Day). If you elect to pay interest yearly in advance, your first yearly interest payment will be debited from your Nominated Account on the Capital Investment Loan Start Date (unless you have an Interest in Advance Loan, in which case, we will apply the proceeds of the Interest in Advance Loan to pay the interest yearly in advance due and owing under the Capital Investment Loan). For further information on Interest in Advance Loan, please refer to Section 3.1 “What is the Interest in Advance Loan?” in Part 1 of this PDS.
<b>Fees</b>	Fees and charges may include: <ul style="list-style-type: none"> <li>› An establishment fee</li> <li>› A trust deed review fee</li> <li>› A prepayment fee</li> <li>› A direct debit dishonour fee</li> <li>› A statement reissuing fee (the amount and purpose of the above are set out in the Schedule to the Terms and Conditions)</li> <li>› Government charges and stamp duty</li> <li>› Regulatory establishment fees for company and trust applicants</li> </ul> <p>These fees are subject to change. Please contact your financial adviser or, if you do not have a financial adviser, call us on <b>13 15 20</b> to obtain the current rates for these fees.</p>

It is important that you read all of Section 2 “The Capital Investment Loan” and the attached Terms and Conditions of the Loan. You should also consult your investment adviser before making an application for a Capital Investment Loan.

## Section 2: The Capital Investment Loan (cont).

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### 2.3 How does the Capital Investment Loan work?

The Capital Investment Loan is an interest only loan, so you make no repayments of the Capital Investment Loan principal until your Capital Investment Loan matures on the Capital Investment Loan Maturity Date.

You can pay a fixed interest rate either monthly in arrears or annually in advance, or you can pay a variable interest rate monthly in arrears. If you elect to pay interest monthly in arrears (at a fixed or variable rate), your interest payment will be debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, your interest payment will be debited from your Nominated Account on the next Business Day.

If you elect to pay fixed interest yearly in advance, your first yearly interest payment will be debited from your Nominated Account on the Capital Investment Loan Start Date (unless you have an Interest in Advance Loan, in which case, we will apply the proceeds of the Interest in Advance Loan to pay the yearly interest in advance due and owing under the Capital Investment Loan).

For further information in Interest in Advance Loan, please refer to Section 3 “The Interest in Advance Loan” in Part 1 of this PDS.

### 2.4 What happens at maturity?

Before your Capital Investment Loan matures, you can elect to repay the Capital Investment Loan with:

- › the Sale Proceeds – any amount above the outstanding Loan Balance will be paid to your Nominated Account; or
- › your own capital (and take possession of the Delivery Asset as specified in this PDS) or with other borrowed funds.

We must receive your repayment election at least 10 Business Days prior to the Capital Investment Loan Maturity Date. The notification date will be specified on your Loan Confirmation. If we do not receive any valid notification you will be deemed to have elected to use the Delivery Asset Sale Service and to have authorised us to use the Sale Proceeds to repay all moneys you owe us in connection with the Capital Investment Loan.

If the Capital Investment Loan Maturity Date does not coincide with the anniversary of the Capital Investment Loan Start Date, then the final interest payment of the Capital Investment Loan will cover the remaining period and may be payable on the Capital Investment Loan Maturity Date.

### 2.5 How do I apply for the Capital Investment Loan?

Once you have decided to apply for the Capital Investment Loan, you need to:

1	Read Section 2 in Part 1 of this PDS and the Terms and Conditions of the Loan carefully.
2	Complete the relevant section of the Application Form and sign the Application Form in Part 2 of this PDS. Attach supporting documentation as required.
3	Forward your completed Application Form to: Capital Series Commonwealth Securities Locked Bag 34 Australia Square NSW 1214
4	Contact your financial adviser or, if you do not have a financial adviser, call us on <b>13 15 20</b> if you require further assistance.

If Commonwealth Bank approves your Capital Investment Loan application, the funds will be used on your behalf to make an investment in the Product. You will receive a Loan Confirmation from Commonwealth Bank setting out the details of your Capital Investment Loan.

You can only borrow up to an amount equal to the Total Capital Protection Amount. The Total Capital Protection Amount will be specified in the Schedule of Terms in Part 2 of this PDS.

If the Total Capital Protection Amount is less than your Investment Amount, you must contribute the difference to make an investment in the Product. The difference between your Investment Amount and the Total Capital Protection Amount will be debited from your nominated account once your Application is received.

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## 2.6 Can I prepay my Capital Investment Loan before maturity or terminate early?

The objective of the Capital Investment Loan is that you invest in the Product and continue that investment until maturity. However, if you wish to prepay your Capital Investment Loan before the Capital Investment Loan Maturity Date, you may do so provided you give us at least five Business Days prior notice. The Capital Investment Loan must be prepaid in full.

If you prepay the Capital Investment Loan and you have an Interest in Advance Loan, you must prepay all Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan on the date of prepayment of the Capital Investment Loan.

Prepayment or early termination will result in additional costs, including:

- › A prepayment fee of \$300
- › Break Costs (if they are not in your favour)
- › Any government fees, charges or taxes, including stamp duty
- › Any accrued but unpaid interest and bank fees

This PDS contains an explanation of how the capital protection works. Capital protection will only apply if the Product is held for the full Investment Term (as defined in this PDS).

## 2.7 What happens to my Capital Investment Loan if my investment in the Product is terminated early?

If your investment in the Product is terminated early, you will be required upon termination to repay the full Capital Investment Loan principal and all other Money Owing under your Capital Investment Loan (including the additional costs referred to above) to Commonwealth Bank. If you choose to accept physical delivery of the Delivery Parcel, subject to clause 3.9, you will need to repay the full Capital Investment Loan principal and all other Money Owing under your Capital Investment Loan (including the additional costs referred to above) with your own capital or with other borrowed funds. If you choose to use the Delivery Asset Sale Service, the Sale Proceeds will be applied against the amounts you owe under the Capital Investment Loan and all other Money Owing under your Capital Investment Loan.

The Terms and Conditions of the Loan provide that Commonwealth Bank is authorised to apply the Sale Proceeds against amounts you owe to Commonwealth Bank under the Capital Investment Loan and all other Money Owing under the Capital Investment Loan. If your investment in the Product is terminated early and the Sale Proceeds are used to repay the Capital Investment Loan and all other Money Owing under the Capital Investment Loan, it may be possible for the Sale Proceeds to be less than the principal of the Capital Investment Loan and other Money Owing to Commonwealth Bank in connection with the Capital Investment Loan. You will still be liable for the full Capital Investment Loan principal and Break Costs (if they are not in your favour) and any other costs associated with early termination, whether or not you are in default under the Capital Investment Loan.

## 2.8 What happens if I default under the Capital Investment Loan?

If you are in default under the Capital Investment Loan, then under the Terms of Sale in this PDS, Commonwealth Bank can terminate your investment in the Product early. You will not be entitled to receive the Delivery Assets or the Sale Proceeds if you are in default under the Capital Investment Loan. Instead, you may be entitled to receive an amount ("Early Termination Payment") equal to the Early Termination Value, less the Early Termination Fee and less the Brokerage Fee (as those terms are defined in this PDS). The Terms and Conditions of the Loan provide that Commonwealth Bank is authorised to apply the Early Termination Payment against amounts you owe to Commonwealth Bank under the Capital Investment Loan and all other Money Owing under the Capital Investment Loan. If you are in default and are required by Commonwealth Bank to terminate your investment in the Product early and you use the Early Termination Payment to repay the Capital Investment Loan, it may be possible that the Early Termination Payment is less than the principal of the Capital Investment Loan and other Money Owing (if any) that you owe to Commonwealth Bank in connection with the Capital Investment Loan. You will be required to repay any of the principal under the Capital Investment Loan and other Money Owing (if any) that is not covered by the Early Termination Payment.

## Section 2: The Capital Investment Loan (cont).

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### **2.9 Are there any taxation implications?**

You need to be aware that the interest you pay on the Capital Investment Loan may not be allowable as a tax deduction. This depends on your specific circumstances and you should seek your own independent tax advice. Should the interest not be deductible in your specific circumstances, the interest should generally form part of the cost base of your Investment.

For more information, please refer to Section 4 “Tax Considerations” and “Tax Opinion” in Part 1 of this PDS.

### **2.10 What paperwork will I receive?**

Your Loan Confirmation will contain information on your interest payments. If you have elected to pay interest yearly in advance using your funds (i.e. without using an Interest in Advance Loan) you will also receive an interest payment notification two weeks before interest is due to be debited from your Nominated Account.

## Section 3: The Interest in Advance Loan

### 3.1 What is the Interest in Advance Loan?

The Commonwealth Bank Interest in Advance Loan is designed for investors who wish to borrow and prepay in advance 100% of the yearly interest owing and due on the Capital Investment Loan. The Interest in Advance Loan is a principal and interest loan with a term of up to 12 months.

You should read the Terms and Conditions of the Loan in Part 1 of this PDS, and seek professional advice on your rights and obligations under the Terms and Conditions of the Loan. Applications for the Interest in Advance Loan are subject to Commonwealth Bank's credit approval process.

Capitalised terms in this section are as defined in the Terms and Conditions of the Loan.

### 3.2 What are the features of the Interest in Advance Loan?

<b>Eligible applicants</b>	Applicants for a Capital Investment Loan or existing holders of a Capital Investment Loan.
<b>Loan Limit</b>	The amount we are prepared to lend you under the Interest in Advance Loan, which is an amount equal to 100% of the yearly interest owing and due on the Capital Investment Loan, subject to Commonwealth Bank's credit approval process.
<b>Loan Term</b>	The period of time from the Interest in Advance Loan Start Date to the Interest in Advance Loan Maturity Date which is up to 12 months.
<b>Interest in Advance Loan Start Date</b>	The date the Interest in Advance Loan is drawn down.
<b>Interest in Advance Loan Maturity Date</b>	The date which is 12 months after the Interest in Advance Loan Start Date but can be no later than the Capital Investment Loan Maturity Date.
<b>Interest Rate</b>	The Interest Rate is a fixed rate payable monthly in arrears. Please contact your financial adviser or, if you do not have a financial adviser, please call us on <b>13 15 20</b> to obtain the indicative fixed interest rate.
<b>Interest Payment</b>	You must pay interest each month in arrears. Interest payments will be made by direct debit from your Nominated Account.
<b>Automatic Redraw Facility</b>	Upon repayment of the Interest in Advance Loan in full and subject to certain conditions, we may automatically redraw an amount of up to 100% of the yearly interest due and owing under the Capital Investment Loan for another Term commencing on the redraw date. You may notify us at least 10 Business Days prior to the Interest in Advance Loan Maturity Date that you do not want us to make an automatic redraw.
<b>Fees</b>	Fees and charges may include: <ul style="list-style-type: none"> <li>› An establishment fee</li> <li>› A trust deed review fee</li> <li>› A prepayment fee</li> <li>› A direct debit dishonour fee</li> <li>› A statement reissuing fee (the amount and purpose of the above are set out in the Schedule to the Terms and Conditions)</li> <li>› Government charges and stamp duty</li> <li>› Regulatory establishment fees for company and trust applicants</li> </ul> <p>These fees are subject to change. Please contact your financial adviser or, if you do not have a financial adviser, please call us on <b>13 15 20</b> to obtain the current rates for these fees.</p>

It is important you read all of Section 3 "The Interest in Advance Loan" and the attached Terms and Conditions of the Loan. You should also consult your investment adviser before making an application for an Interest in Advance Loan.

## Section 3: The Interest in Advance Loan (cont).

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### 3.3 How does the Interest in Advance Loan work?

The Interest in Advance Loan is a principal and interest loan with a term of up to 12 months. You will be required to pay back your Interest in Advance Loan in equal monthly instalments (comprising principal and interest) over the period beginning immediately after the Interest in Advance Loan is used to pay the interest in advance on your Capital Investment Loan (Interest in Advance Loan Start Date) until your Interest in Advance Loan matures on the Interest in Advance Loan Maturity Date.

You pay a fixed interest rate monthly in arrears and your interest payment will be debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, your interest payment will be debited from your Nominated Account on the next Business Day.

Your Loan Confirmation will contain information about your interest payments.

### 3.4 What is the Automatic Redraw Facility?

Provided that no Default Event has occurred, we will notify you at least 1 month prior to the Interest in Advance Loan Maturity Date that, upon repayment of the Interest in Advance Loan in full, we will automatically redraw an amount equal to up to 100% of the yearly interest on the Capital Investment Loan due and owing under the Capital Investment Loan for another Term commencing on the redraw date ("New Interest in Advance Loan").

The indicative interest rate on the New Interest in Advance Loan will be stated in the notice. The interest on the New Interest in Advance Loan must be paid monthly in arrears at a fixed rate.

The proceeds of the New Interest in Advance Loan will be used to prepay in advance the yearly interest on the Capital Investment Loan due and payable by you under the Capital Investment Loan for another Term commencing on the redraw date. Upon automatic redraw, we will send to you the details of your New Interest in Advance Loan in a Loan Confirmation (including the Interest Rate applicable to your New Interest in Advance Loan).

If you notify us at least 10 Business Days prior to the Interest in Advance Loan Maturity Date that you do not want us to make an automatic redraw, then we will not redraw any amounts and the yearly interest on the Capital Investment Loan will be direct debited to your Nominated Account.

### 3.5 What happens at maturity?

By the Interest in Advance Loan Maturity Date, you must repay any outstanding Interest in Advance Loan and all other Money Owing under the Interest in Advance Loan.

### 3.6 How do I apply for the Interest in Advance Loan?

Once you have decided to apply for an Interest in Advance Loan, you need to:

- 1 Read Section 2 and Section 3 in Part 1 of this PDS and the Terms and Conditions of the Loan carefully.
- 2 Complete the relevant section of the Application Form and sign the Application Form in Part 2 of this PDS. Attach supporting documentation as required.
- 3 Forward your completed Application Form to:  
Capital Series  
Commonwealth Securities  
Locked Bag 34  
Australia Square NSW 1214
- 4 Contact your financial adviser or, if you do not have a financial adviser, call us on **13 15 20** if you require further assistance.

If Commonwealth Bank approves your Interest in Advance Loan application, the funds will be used on your behalf to prepay in advance up to 100% of the yearly interest owing and due under the Capital Investment Loan. You will receive a Loan Confirmation from Commonwealth Bank setting out the details of your Interest in Advance Loan.

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### **3.7 Can I prepay my Interest in Advance Loan before maturity or terminate early?**

If you wish to prepay your Interest in Advance Loan before the Interest in Advance Loan Maturity Date, you may do so, provided you give us at least five Business Days prior notice. The Interest in Advance Loan must be prepaid in full.

If you prepay the Capital Investment Loan, you must prepay all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan on the date of prepayment of the Capital Investment Loan.

Prepayment or early termination will result in additional costs, including:

- › A prepayment fee of \$300
- › Break Costs (if they are not in your favour)
- › Any government fees, charges or taxes, including stamp duty
- › Any accrued but unpaid interest and bank fees

If your investment in the Product is terminated early, you will be required to repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan to Commonwealth Bank. If you choose to accept physical delivery of the Delivery Parcel, subject to clause 3.9, you will need to repay all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan with your own capital or with other borrowed funds. If you choose to use the Delivery Asset Sale Service, the Sale Proceeds will be applied against all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan.

The Terms and Conditions of the Loan provide that Commonwealth Bank is authorised to apply the Sale Proceeds against amounts you owe to Commonwealth Bank under the Capital Investment Loan and any outstanding Interest in Advance Loan and all other Money Owing (if any) under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan.

### **3.8 What happens to my Interest in Advance Loan if my investment in the Product is terminated early?**

If your investment in the Product is terminated early and the Sale Proceeds are used to repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan, it may be possible for the Sale Proceeds to be less than the principal of the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan. You will still be liable for the full Capital Investment Loan principal, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan and Break Costs (if they are not in your favour) and any other costs associated with early termination, whether or not you are in default under the Capital Investment Loan or the Interest in Advance Loan.

### **3.9 What happens if I default under the Interest in Advance Loan?**

If you are in default under the Capital Investment Loan or the Interest in Advance Loan, then under the Terms of Sale in this PDS, Commonwealth Bank can terminate your investment in the Product early. You will not be entitled to receive the Delivery Assets or the Sale Proceeds if you are in default under the Capital Investment Loan or the Interest in Advance Loan. Instead, you may be entitled to receive an amount ("Early Termination Payment") equal to the Early Termination Value, less the Early Termination Fee and less the Brokerage Fee (as those terms are defined in this PDS).

The Terms and Conditions of the Loan provide that Commonwealth Bank is authorised to apply the Early Termination Payment against amounts you owe to Commonwealth Bank under the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan.

If you are in default and are required by Commonwealth Bank to terminate your investment in the Product early and you use the Early Termination Payment to repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan, it may be possible that the Early Termination Payment is less than the principal of the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest

## Section 3: The Interest in Advance Loan (cont).

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in Advance Loan. You will be required to repay any of the principal under the Capital Investment Loan, any Money Owing under the Capital Investment Loan and any Money Owing under the Interest in Advance Loan that is not covered by the Early Termination Payment.

### **3.10 Are there any taxation implications?**

You need to be aware that the interest you pay on the Interest in Advance Loan may not be allowable as a tax deduction. This depends on your specific circumstances and you should seek your own independent tax advice. Should the interest not be deductible in your specific circumstances, the interest should generally form part of the cost base of your Investment.

For more information, please refer to Section 4 “Tax Considerations” and “Tax Opinion” in Part 1 of this PDS.

### **3.11 What paperwork will I receive?**

Your Loan Confirmation will contain information about your interest payments.

Upon automatic redraw, we will send to you the details of your New Interest in Advance Loan in a Loan Confirmation (including the Interest Rate applicable to your New Interest in Advance Loan).

## Section 4: Tax Considerations

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Commonwealth Bank does not provide taxation advice. Taxation law is complex and its application will depend on your circumstances.

Commonwealth Bank has obtained an opinion (the Tax Opinion) from Greenwood & Freehills Pty Limited, which discusses the indicative tax treatment for Capital Series investors, including the ATO's determinations on deferred purchase agreements. You should read the Tax Opinion carefully and seek independent taxation advice when determining whether an investment in Capital Series is suitable for you. You should also visit the ATO website [www.ato.gov.au](http://www.ato.gov.au) to view any changes to the tax law and the ATO's interpretation of the tax law. You should then consider the tax consequences and whether these make Capital Series suitable for you in light of any possible changes.

Part 2 of this PDS may also contain additional comments on the indicative tax treatment referable to a particular Capital Series in the event that it differs from the indicative tax treatment contained in the Tax Opinion.

# Tax Opinion

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## Greenwoods & Freehills

The Directors  
Commonwealth Bank of Australia  
Ground Floor, Tower 1  
201 Sussex Street  
SYDNEY NSW 2000

23 August 2010

Dear Directors

### Capital Series Australian taxation opinion

We have been instructed by the Commonwealth Bank of Australia (**Commonwealth Bank**) to prepare a taxation opinion for inclusion in Part 1 of a Product Disclosure Statement (**PDS**) to be dated on or about 23 August 2010, in relation to the issue of interests in the Capital Series investment product.

All references in this letter to legislative provisions are references to provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (each the **Act**), as applicable. Capitalised terms not defined in this letter have the same meanings as in the PDS.

#### 1 Scope

This letter provides an indicative analysis of the principal Australian income tax and goods and services tax (**GST**) implications arising for persons who invest in a Strategy or Strategies in Capital Series in accordance with the terms of the PDS.

Unless indicated otherwise, the comments in this letter apply generally to each Strategy within Capital Series that may be issued from time to time by Commonwealth Bank.

It is important that potential investors check the tax section in Part 2 of the PDS for any additional tax comments that may be applicable to their particular Strategy or Strategies in Capital Series.

This letter only examines the indicative tax position of investors (**Investors**) who:

- (a) are residents of Australia for tax purposes including individuals, companies and complying superannuation entities;
- (b) do not carry on the business of trading or dealing in securities;
- (c) are not subject to the regime for the taxation of financial arrangements (**TOFA regime**) – this would be expected to be the case for most potential Investors, but see further the discussion in section 6.6; and
- (d) hold their Capital Series investment on capital account for tax purposes. In this regard, the Commissioner of Taxation (**Commissioner**) expresses the view in Taxation Determination TD 2008/22 that, in relation to deferred purchase agreements (**DPA**s):

*“While it is expected that a gain or loss on a DPA warrant as defined in this Determination would generally be on capital account, in some*

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*cases the particular terms of the DPA warrant and/or the circumstances of the investor may mean that the gain or loss is on revenue account. A gain or loss will be on revenue account and assessable income under either section 6-5 or 15-15 of the ITAA 1997 or deductible under either section 8-1 or 25-40 of the ITAA 1997 where the transaction is entered into as an ordinary incident of carrying on a business or in a business operation or commercial transaction with a purpose of profit-making."*

This opinion is based on Australian tax laws and practices applicable as at the date of this letter. Investors should be aware that such laws and practices may change during the term of Capital Series. Again, Investors should check the tax section in Part 2 of the PDS for any updated tax comments.

## **2 Tax treatment of coupons**

Any coupons paid to Investors will be assessable in the income year in which they are received. Coupons are not frankable distributions and so no franking credits will be attached to them.

## **3 Tax treatment of gains arising from an investment in Capital Series**

### **3.1 Introduction**

Under Capital Series, an Investor agrees to purchase the Delivery Assets. On the Settlement Date, Commonwealth Bank will be required to deliver the Delivery Assets to the Investor, with the total number of Delivery Assets to be determined by the price performance (over the life of Capital Series) of the Underlying Portfolio relevant to the Strategy or Strategies selected by the Investor.

Having regard to the comments above as to the scope of this letter, i.e. it has been assumed that an Investor holds their investment in Capital Series and the Delivery Assets on capital account for tax purposes, any gains made by an Investor in relation to Capital Series and the Delivery Assets should be subject to taxation under the capital gains tax (CGT) rules of the Act.

### **3.2 Application of the Commissioner's views on DPAs to Capital Series**

In TD 2008/22, the Commissioner expresses the contentious view that two taxing points for CGT purposes will arise in a typical DPA.

Commonwealth Bank anticipates that each Strategy to be issued in Capital Series will be structured as a DPA that will fall within the scope of TD 2008/22, and also TD 2008/21 referred to below. Should any particular Strategy be thought not to be within the scope of these Taxation Determinations, this will be noted in the tax section in Part 2 of the PDS for the relevant Strategy.

#### *First taxing point – delivery of the Delivery Assets*

Under the approach in TD 2008/22, a "CGT event" (known as CGT event C2) will happen when the Delivery Assets are delivered to an Investor in Capital Series on the Settlement Date, even if the Investor continues to hold the Delivery Assets beyond that date. In other words, under this approach, CGT will apply to an unrealised gain at the time of the delivery of the relevant Delivery Assets, on the basis that the Investor's contractual rights under the DPA are separate and distinct assets for tax purposes to the actual Delivery Assets.

Accordingly, a capital gain would arise on the Settlement Date equal to any excess of the then market value of the Delivery Assets over the Investor's CGT cost base upon entering into their relevant Strategy of Capital Series. The cost base will include the initial Investment Amount (plus any Initial Adviser Fee and any applicable brokerage costs and non-deductible professional advisory fees) paid by an Investor upon entry into Capital Series.

## Tax Opinion (cont).

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### Greenwoods & Freehills

#### *CGT discount concession applicable to the first taxing point*

An Investor who is a natural person, a trust, or a complying superannuation entity may be entitled to the CGT discount concession on any capital gain arising at the first taxing point, i.e. on the delivery of the Delivery Assets (after first offsetting any capital losses). Individuals and trustees are entitled to a discount of 50%, while complying superannuation entities are entitled to a discount of 33.33% of the net gain. The Commissioner acknowledges in TD 2008/22 that the CGT discount concession may be available where the relevant conditions (see below) are met.

Investors should note that the CGT discount concession only applies to reduce capital gains made in relation to CGT assets (i.e. the Investor's rights under Capital Series) which are held for a continuous period of not less than 12 months. In relation to any gain arising upon the delivery of the Delivery Assets, the 12 month period should generally be met, as it will be measured from the inception of the Investment (i.e. upon entry into Capital Series) to the Settlement Date.

As a practical matter, where an Investor intends to retain their Delivery Assets beyond the Settlement Date, they will need to fund the tax liability in relation to any capital gain at the first taxing point from other sources, given that they will have no realised gain/cash from their Investment at that time.

#### *Second taxing point – sale of the Delivery Assets*

A separate/additional CGT gain or loss would arise when the Investor sells their Delivery Assets.

In accordance with TD 2008/22, the cost base and reduced cost base of the Delivery Assets in Capital Series should be an amount equal to their market value on the Settlement Date. Accordingly, no question of "double tax" in relation to the overall gain from an investment in Capital Series should arise. That is, any gain on disposal of the Delivery Assets would only reflect any increase in value of the Delivery Assets from the Settlement Date to the date of disposal.

In accordance with TD 2008/22, the Delivery Assets themselves would need to be held for at least 12 months (not including the Settlement Date and the date of disposal) in order to benefit from any available CGT discount concession as regards any capital gain upon their subsequent disposal. That is, for the purposes of the second taxing point, the 12 months will run from the Settlement Date and not from the inception of Capital Series.

#### *Loss on disposal of the Delivery Assets*

Any capital loss realised by an Investor upon the disposal of Delivery Assets (i.e. where the disposal proceeds are less than the market value of the Delivery Assets on the Settlement Date) may be applied to offset capital gains realised in the same year of income or may be carried forward to future years. Capital losses are not able to be applied against ordinary income.

#### *Alternative analysis*

As noted earlier, the Commissioner's view in TD 2008/22 to the effect that there are two taxing points for CGT purposes arising from a typical DPA, is contentious and has not been the subject of any consideration by a Court.

In the Compendium to TD 2008/22, the Commissioner explains why he rejected submissions (on the previous draft determination) that there should be only a single CGT taxing point, i.e. upon the actual sale of delivery assets under a DPA, and not also on the maturity date.

Investors should seek their own taxation advice if they wish to take a position contrary to that set out in TD 2008/22 (whether as set out in the Compendium or otherwise).

## **4 Distributions on Delivery Assets**

### **4.1 Where Delivery Assets are shares in a company**

After delivery of the Delivery Assets, an Investor may thereafter receive dividends.

An Investor's assessable income will include the amount of any dividends, as well as the amount of franking credits, if any, attached to the dividends. The Investor will generally be entitled to a tax offset (rebate) corresponding to the amount of the franking credits.

Where franking credits are attached to dividends paid on the shares comprising the Delivery Assets, to be eligible for the franking credit and tax offset, the Investor must generally have held the shares comprising the Delivery Assets "at risk" for a period of at least 45 days (not including the date of acquisition or the date of disposal). For these purposes an Investor is taken to acquire the shares comprising the Delivery Assets on Settlement Date, so that the period before the Settlement Date does not count towards the holding period.

In addition, Investors who are under an obligation to pass on to other persons the benefit of dividends paid on the shares comprising the Delivery Assets must, in order to be eligible for the franking credit and tax offset in respect of a particular dividend, have held the shares comprising the Delivery Assets "at risk" for a continuous period of at least 45 days during the period commencing 45 days before the "ex-dividend" date and ending 45 days after that date.

The above rules should not apply to an Investor if the Investor is an individual whose tax offset entitlement (on all shares and interests in shares held) does not exceed \$5,000 for the income year in which the franked dividend is paid. If an Investor enters into put or call options (or other derivatives) in relation to the shares comprising the Delivery Parcel, this may affect whether the shares are sufficiently held "at risk" for the purposes of the franking rules.

Although certain changes to the tax law have affected the applicability of the abovementioned rules, the previous Government indicated in a press release dated 27 September 2002 that it intended to amend the law to ensure that these rules continue to apply without substantive change. As at the date of this letter, no legislation has been enacted in this regard. The ATO has indicated that it will continue to apply the rules as a matter of administrative practice.

Where the Investor is an individual, a complying superannuation entity or a registered charity (in certain circumstances), the Investor will generally be entitled to a refund to the extent that the franking credits attached to the Investor's dividends exceed the Investor's tax liability for the income year.

Where the Investor is a company, any franked dividends the Investor receives will generally give rise to a franking credit in the Investor's franking account, with an offset available against the Investor's tax liability in respect of the dividends.

### **4.2 Where Delivery Assets are units in a trust**

After delivery of the Delivery Assets, an Investor may thereafter receive distributions on their units in the relevant unit trust.

Distributions from unit trusts may contain amounts which are assessable income. Where the assessable income reflects amounts of franked dividends received by the responsible entity of the relevant trust, in very broad terms the comments in section 5.1 above will generally have similar application to Investors.

Distributions from unit trusts may also contain amounts which are not assessable income upon receipt, but which may reduce the Investor's CGT cost base of the relevant units.

Investors can generally expect to receive statements from the responsible entity of the relevant trust which will explain the tax implications of the distributions made by the trust.

## Tax Opinion (cont).

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### **5 Investors should seek their own advice before gearing an investment in Capital Series**

This section does not apply to Investors who are complying superannuation entities. These entities will be subject to additional regulation regarding borrowing transactions and should seek appropriate advice in this regard.

Where an Investor borrows money for the purpose of funding an investment in Capital Series (whether via a Capital Investment Loan, Interest in Advance Loan or otherwise), they should seek their own advice as to whether interest expenses and any other borrowing costs will be deductible having regard to their own facts and circumstances.

Interest costs are generally deductible only where an Investor has a purpose of deriving assessable income from an investment acquired with borrowed funds, however there are a number of provisions in the Act that can operate to deny or defer a deduction for interest costs in various situations.

Investors should note that coupons payments or other items of assessable income may or may not be payable during the term of Capital Series – depending on the Strategy or Strategies they have selected.

Investors will need to consider, in conjunction with their own adviser, whether a deduction for some or all of any interest funding costs is available in their particular circumstances, and their particular Strategy or Strategies, having regard to any coupon payments and their intentions to hold their Delivery Assets after the Settlement Date so as to derive assessable dividend income or assessable trust distributions.

In considering whether interest funding costs are deductible in their situation, Investors and their advisers should have regard to tax rules in relation to prepayments (including the tax shelter rules) and capital protected borrowings.

Where interest costs are not deductible, they should generally be capable of inclusion in the cost base of the relevant CGT asset when calculating a gain (but not when calculating a loss).

### **6 Application of other income tax rules**

The CGT implications of entering into Capital Series have been considered above. Our comments as to the applicability or otherwise of other provisions in the Act to an investment in Capital Series are as follows.

#### **6.1 Traditional securities**

Sections 26BB and 70B of the Act contain rules which, in broad terms, seek to recognise gains and losses upon the disposal in most instances of “traditional securities”, as effectively ordinary income and expense for tax purposes. That is, where such rules apply, any gains effectively would not be subject to the CGT rules, including discounting, and any losses would not be quarantined.

An investment in Capital Series should not be regarded as comprising a “traditional security”, and accordingly these rules should not apply to an Investor. This opinion accords with the view of the Commissioner in TD 2008/21 that a typical DPA will not be a “traditional security”.

#### **6.2 Qualifying securities**

Division 16E of Part III of the Act contains provisions that impose tax on an accruals basis on holders of certain debt-like securities in relation to income that is deferred under the security. For example, securities issued at a large discount to face value often bring those rules into operation; the discount is taxed to the holder over the term of the security so as to prevent the deferral of tax.

Division 16E applies only to a “qualifying security”, as that term is defined in the Act. In our opinion, an investment in Capital Series should not be regarded as comprising a “qualifying security” for this purpose, and accordingly we believe the Division should not

apply. This conclusion is supported by the approach taken by the Commissioner in TD 2008/21.

### 6.3 Foreign Investment Fund rules

The Foreign Investment Fund (FIF) regime has been repealed in respect of the 2010-11 and later income years. Accordingly, this regime will not apply to an investment in Capital Series.

### 6.4 The general anti-avoidance rule: Part IVA

The general anti-avoidance rule, contained in Part IVA of the Act, gives the Commissioner the power to issue a determination which, generally speaking, cancels a "tax benefit" obtained by a taxpayer in connection with a scheme entered into or carried out by a person where a party to the scheme has a sole or dominant purpose, objectively determined, of obtaining the tax benefit for the taxpayer. An example of a tax benefit is an amount that is not included in the assessable income of a taxpayer, which would have been, or could reasonably be expected to have been, included if the scheme did not take place.

Whether Part IVA is capable of applying to a given Investor in relation to their acquisition, ownership and disposal of an investment in Capital Series will depend to a significant extent on the particular circumstances surrounding the Investor. However, given that the terms of Capital Series are consistent with the DPA features set out in TD 2008/21 and TD 2008/22, in our view it is unlikely that Part IVA would have any application.

### 6.5 Investors on revenue account

If an Investor holds their investment on revenue account (rather than on capital account) for tax purposes, then the Australian taxation position of such an Investor will be different to that described in the foregoing analysis.

More specifically:

- any net profit realised through investing in Capital Series would be assessable as ordinary income (i.e. without the benefit of the CGT discount concession); and
- any net loss would be deductible (i.e. without having to be quarantined against capital gains).

### 6.6 The TOFA regime

Where the TOFA regime applies, it may impact upon the tax character and tax timing of gains and losses arising from certain financial arrangements.

By way of overview, the TOFA regime only applies to certain investors – and, even then, only in respect of certain DPAs.

The TOFA regime would not be expected to automatically apply to many Investors. This is because a number of exceptions may be available to retail investors. For example, the TOFA regime does not generally apply to investments in DPAs made by:

- individuals; and
- superannuation entities with assets of less than \$100 million.

However, even if an Investor would otherwise be excluded from the TOFA regime, they may elect for the TOFA regime to apply to their financial arrangements.

Where a DPA is acquired by an Investor who has elected into the TOFA regime, or who is not otherwise subject to a general exception from the TOFA regime, the issue then becomes whether their Capital Series investment is a financial arrangement to which the TOFA regime applies. The TOFA regime will not necessarily apply to all DPAs. In this regard:

## Tax Opinion (cont).

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- changes contained in a bill (that has now lapsed with the calling of the recent Federal election) would, if reintroduced and enacted as currently drafted, ensure that the TOFA regime will apply to an investment in fully capital protected DPAs; and
- doubts remain about whether the TOFA regime will apply to an investment in DPAs that are not fully capital protected.

Investors who are subject to the TOFA regime, or who are considering electing into the TOFA regime, are advised to obtain independent tax advice as to its potential impact upon the taxation consequences discussed in this letter.

#### **7 Pay-As-You-Go withholding obligations**

Where an Investor accepts physical delivery of Delivery Assets on the Settlement Date, the Investor may receive dividends or trust distributions thereafter, depending on whether the Delivery Assets are shares in a company or units in a unit trust.

Investors may, if they choose, notify the relevant company or the responsible entity of the relevant unit trust of their tax file number (**TFN**), Australian business number (**ABN**) or a relevant exemption from the disclosure regulations. Unless an Investor provides a TFN, ABN or exemption details, tax will be automatically deducted by the relevant company or trust from the unfranked component of any dividends or assessable trust distributions, currently at the rate of 46.5%. Investors will be entitled to claim an income tax credit or refund (as applicable) in their income tax returns for any tax withheld by the company.

#### **8 GST**

Investors should not be liable to GST by reason of their acquisition, ownership and disposal of an investment in Capital Series and the Delivery Assets.

#### **9 Disclaimer**

The information contained in this opinion is of a general nature only and does not attempt to address all of the tax implications that may be relevant. Prospective Investors should not rely on the information contained in this opinion and should seek independent taxation advice in light of their own particular facts and circumstances.

The representatives of Greenwood & Freehills Pty Limited involved in preparing this opinion are not licensed to provide financial product advice in relation to dealing in securities. Accordingly, Greenwood & Freehills Pty Limited does not seek to recommend, promote or otherwise encourage any party to participate in Capital Series. Applicants should consider seeking advice from a suitably qualified Australian Financial Services Licence holder before making any investment decision. Applicants should also note that taxation is only one of the matters that may need to be considered.

Yours faithfully



**Tim Kyle**  
Director  
Greenwoods & Freehills Pty Limited

## Section 5: General Matters

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### **Customer Information and Privacy**

#### **Collection and Verification of Customer Information**

“Customer information” is information about a customer. It includes personal information.

The law requires us to identify our customers. We do this by collecting and verifying information about you. We may also collect and verify information about persons who act on your behalf. If you apply for Capital Series indirectly through an investor directed portfolio service, master trust or wrap platform, you may also be subject to the identification requirements of that service. The collection and verification of information helps to protect against identity theft, money-laundering and other illegal activities.

We use your customer information to manage our relationship with you, to provide you with the products and services you request and also to tell you about the products and services offered by the Commonwealth Bank Group (“Group”), affiliated providers and external providers for whom we act as agent. If you have given us your electronic contact details, we may provide marketing information to you electronically.

The collection and verification of customer information may be carried out in different ways and we will advise you of the most acceptable ways of doing this. We may disclose your customer information in carrying out verification – for example, we may refer to public records to verify information and documentation, or we may verify with an employer that the information you have given us is accurate.

The information we collect will vary depending on whether you are an individual or an organisation. If you are an individual, the type of information we collect and verify includes your full name, date of birth and residential address. If you are commonly known by two or more different names, you must give us full details of your other name or names.

For instance, if you are a company, the information we may collect and verify includes company incorporation and registration details, as well as details of the company’s officers and major shareholders.

If you are acting as a trustee we may ask you for, amongst other things, information on the beneficiaries of the trust and evidence of the existence of the trust.

If you are a partnership, we may require information including evidence of the fact that the partnership exists, as well as the full name of the partnership, the names of the partners and any business name owned by the partnership.

For other organisations, the kind of information we collect and verify will depend on the type of organisation you are.

In addition, during your relationship with us, we may ask for and collect further information about you and about your dealings with us.

You must provide us with accurate and complete information. If you do not, you may be in breach of the law and we may not be able to provide you with products and services that best suit your needs.

#### **Protecting Customer Information**

We comply with the National Privacy Principles as incorporated into the Privacy Act 1988 (Cth).

We disclose customer information to other members of the Group (including overseas members), so that the Group may have an integrated view of its customers and to facilitate the integrated treatment of its customers. It also enables other members of the Group to provide you with information on their products and services.

#### **Other disclosures**

At common law, banks are permitted to disclose customer information in the following circumstances:

- (a) where disclosure is compelled by law, or
- (b) where there is a duty to the public to disclose, or
- (c) where our interests require disclosure, or
- (d) where disclosure is made with your express or implied consent.

# Section 5: General Matters (cont).

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So that we can manage our relationships, customer information may be disclosed to:

- › Brokers and agents who refer your business to us
- › Any person acting on your behalf, including your financial adviser, solicitor, settlement agent, accountant, executor, administrator, trustee, guardian or attorney
- › Financial institutions who request information from us if you seek credit from them
- › If you have borrowed from the Bank to purchase property, valuers and insurers (so that the Bank can obtain a valuation of your property and confirm that it is insured)
- › If you have insurance: medical practitioners (to verify or clarify, if necessary, any health information you may provide), claims investigators and reinsurers (so that any claim you make can be assessed and managed), insurance reference agencies (where the Bank is considering whether or not to accept a proposal of insurance from you and, if so, on what terms)
- › Organisations to whom we may outsource certain functions

In all circumstances where our contractors, agents and outsourced service providers become aware of customer information, confidentiality arrangements apply. Customer information may only be used by our agents, contractors and outsourced service providers for our purposes.

We may be required to disclose customer information by law – for example, under Court Orders or Statutory Notices pursuant to taxation or social security laws or under laws relating to sanctions, anti-money laundering or counter terrorism financing.

We may send customer information overseas if:

- › that is necessary to complete a transaction, or
- › we outsource certain functions overseas.

We may also be permitted, as distinct from required, to disclose information in other circumstances. For more information, please see our Privacy Policy.

### **Access to Your Personal Information**

The law allows you (subject to permitted exceptions) to access your personal information. You can do this by contacting:

Customer Relations  
Commonwealth Bank  
Reply Paid 41  
Sydney NSW 2001

We may charge you for providing access.

### **Further information**

For further information on our privacy and information handling practices, please see the Group's Privacy Policy, which is available at [commbank.com.au](http://commbank.com.au) or upon request from any branch of Commonwealth Bank.

### **Code of Banking Practice**

The relevant provisions of the Code of Banking Practice apply to Capital Series. You should read Commonwealth Bank's information booklet "The Better Banking Book", copies of which may be obtained by telephoning Commonwealth Bank on **13 2221** (between 8 am and 8 pm, Monday to Friday), by contacting your relationship manager, by visiting our website at [commbank.com.au](http://commbank.com.au) or from any branch of Commonwealth Bank.

The Better Banking Book contains useful information on a range of banking matters. These include the rights and obligations that arise out of the banker and customer relationship, account opening procedures, Commonwealth Bank's obligations regarding confidentiality of your information, complaint handling procedures, bank cheques, the advisability of you informing Commonwealth Bank promptly when you are in financial difficulty and the advisability of you reading the terms and conditions applying to any banking service provided to you or in which you are interested.

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## What if I have a Complaint?

The Code of Banking Practice requires us to have procedures in place for dispute resolution. The Code states that the process for dispute resolution is to be readily available to customers (investors) free of charge.

Should you wish to make a complaint relating to Capital Series, the Capital Investment Loan or the Interest in Advance Loan you should either:

- (a) contact the adviser through whom you bought the product, or
- (b) if you bought the product directly from us:

Telephone Client Relations from 8 am to 5 pm Sydney time, Monday to Friday on 1300 786 039 (outside Australia +61 2 9118 1466) or write to:

Client Relations  
Locked Bag 22  
Australia Square NSW 1215

If Commonwealth Bank's internal dispute resolution is unsuccessful, you may take the matter to an external authority such as the Financial Ombudsman Service Ltd.

Financial Ombudsman Service Ltd  
GPO Box 3  
Melbourne VIC 3001  
Tel: 1300 780 808  
Fax: (03) 9613 6399

## Information about Commonwealth Bank

The continuous disclosure obligations of Commonwealth Bank mean that Commonwealth Bank must disclose to the ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of its ordinary shares. Copies of the information disclosed to the ASX can be viewed on the public file at the ASX for Commonwealth Bank of Australia.

Information about Commonwealth Bank, including documents such as financial statements and annual reports, or any documents sent to the ASX to fulfil our continuous disclosure obligations, can be provided free of charge to anyone who requests these documents.

If you would like copies of these documents write to:

Commonwealth Bank of Australia  
Ground Floor  
Tower 1  
201 Sussex Street  
Sydney NSW 2000

You should obtain independent advice in respect to the nature of the business activities in which Commonwealth Bank is participating and to the prospects of those business activities.

## Section 5: General Matters (cont).

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### **Disclosures**

#### **Directors and Related Entity Interests**

Commonwealth Bank will be entitled to receive commission in relation to Capital Series. The employees and directors of Commonwealth Bank may participate in that entitlement through remuneration including indirect shareholding.

Commonwealth Securities Limited earns brokerage at normal commercial rates on transactions which it undertakes on behalf of Commonwealth Bank.

Commonwealth Bank, as part of its employee remuneration arrangements, conducts an incentive system based on the success of its activities. The employees of Commonwealth Bank may participate in these incentive remuneration arrangements.

Commonwealth Bank and its related bodies corporate, and their directors and employees, may from time to time:

- (a) hold the Delivery Asset or have other pecuniary or other interests (including the holding of shares, stock, units or options) in the Delivery Asset or the issuer of the Delivery Asset
- (b) hold any asset comprising the Reference Assets or have other pecuniary or other interests (including the holding of shares, stock, units or options) in any asset comprising the Reference Assets or the issuer of any asset comprising the Reference Assets
- (c) buy, sell and otherwise deal in (whether as principal or agent) the Delivery Asset or any asset which makes up the Reference Assets
- (d) have business relationships or alliances (including joint ventures) with the issuer of the Delivery Asset, the issuer of any asset which makes up the Reference Assets, the Reference Asset Provider or any financial market to which the Reference Asset relates
- (e) advise or act for the issuer of the Delivery Asset, the issuer of any asset which makes up the Reference Assets, the Asset Provider or any financial market to which the Reference Asset relates, or advise or act for other clients in relation to the issuer of the Delivery Asset, the issuer of any asset comprising the Reference Assets, the Asset Provider or any financial market to which the Reference Asset relates, or publish research reports on the Delivery Asset or any asset which comprises the Reference Assets as part of its investment banking and stockbroking activities.

#### **Potential Conflicts of Interest**

Commonwealth Bank and its related bodies corporate will conduct transactions as principal and as agent in various securities, including the assets which make up the Delivery Asset and securities comprising the Reference Assets generally. These trading activities may affect (positively or negatively) the price at which the assets comprising the Delivery Asset trade in the secondary market or the level of the Reference Assets at any point in time.

# Section 6: Terms of Sale

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## Commonwealth Bank of Australia

These Terms of Sale form the terms and conditions on which the person named in the Application Form (“you” or the “Investor”) agrees to purchase the Delivery Parcel from Commonwealth Bank of Australia (“us”, “we” or “Commonwealth Bank”).

### 1. Applications

#### 1.1 You may make an Offer to us

You may make an offer to us to purchase the Delivery Parcel from us on a deferred basis in accordance with these Terms of Sale by completing and returning to us a valid Application Form before the Closing Time on the Closing Date and by paying to us the amount equal to the Application Amount on or prior to the Closing Time.

The funds that you pay us must have cleared on or before 12 noon on the Closing Date otherwise we will not be obligated to accept your Application.

#### 1.2 You are bound by these Terms of Sale

By signing the Application Form and lodging it with us, you agree to be bound by these Terms of Sale, provided that, where you have signed and lodged an Application Form, you may withdraw your Application at any time prior to the Closing Date.

#### 1.3 Our Acceptance of your offer

- (a) We have the right to decide in our absolute discretion whether or not we will accept your offer to purchase the Delivery Parcel from us.
- (b) If we decide to accept your Application, acceptance of your offer will take place on, and the parties’ rights and obligations under these Terms of Sale will commence on, the Start Date.
- (c) Without limiting clause 1.3(a), it is a condition precedent to our acceptance of any such offer from you that:
  - (i) we receive the necessary identification documentation that we require in order to verify your identity including the identity of any signatories to the Terms of Sale;
  - (ii) we receive from you a validly completed and signed Application Form;
  - (iii) we receive the Application Amount on or prior to the Closing Time and these funds must clear by 12 noon (Sydney Time) on the Closing Date in accordance with clause 2.2 of these Terms of Sale; and
  - (iv) acceptance of your Application is conditional upon:
    - › the Investor providing us with the necessary identification and
    - › us carrying out any necessary verification check(s).

If you do not fulfil the conditions precedent under this clause 1.3(c) your Application will be ineffective and we will have no further obligations to you.

- (d) Within 10 Business Days of the Start Date, we will send to you a notice acknowledging whether we have accepted or rejected your offer (“Acceptance Notice”).
- (e) Should we decide to reject your Offer, any money that you have paid with the Application Form will be refunded to you, without interest.
- (f) If we accept your Offer, we will confirm your Investment Amount in the Acceptance Notice.

#### 1.4 Code of Banking Practice

The parties acknowledge that the Code of Banking Practice applies to Capital Series.

## Section 6: Terms of Sale (cont).

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### **2. Deferred purchase of Delivery Parcel and coupon payments**

#### **2.1 Purchase of Delivery Parcel**

- (a) You agree to purchase the Delivery Parcel for your Investment Amount (which will be paid by you in accordance with clause 2.2) from us on the Maturity Date.
- (b) We will then deliver the Delivery Parcel to you in accordance with clauses 3.4 and 3.5.

#### **2.2 Paying the Application Amount to us**

- (a) You must pay to us your Application Amount which consists of the Initial Adviser Fee and your Investment Amount.
- (b) You must make payment of the Application Amount in cleared funds on or prior to the Closing Time on the Closing Date.
- (c) Of the Application Amount, your Investment Amount will be applied to purchase the Delivery Parcel on the Trade Date (in accordance with clause 2.1(a)) and the remainder of the Application Amount (i.e. the Application Amount minus the Investment Amount) will be applied towards payment of the Initial Adviser Fee.
- (d) The Minimum Investment Amount that we will accept under these Terms of Sale is set out in the Schedule of Terms.

#### **2.3 Coupon payments**

If we accept your Offer and you choose to invest in a Strategy or Strategies which will pay coupons, then we agree to pay to you coupon payments as set out in the Schedule of Terms.

#### **2.4 Interest in the Nominee Security**

Entry into Capital Series with us gives you a Beneficial Interest in a fraction of the relevant Nominee Security in accordance with the Nominee Deed. You irrevocably agree and acknowledge you are bound by the terms of the Nominee Deed.

### **3. Completion**

#### **3.1 Completion Notices**

We will send you a Completion Notice at least twenty (20) Business Days before the Maturity Date.

#### **3.2 How to complete**

In order to complete the deferred purchase of the Delivery Parcel you must:

- (a) fill out the Completion Notice by electing whether you will accept physical delivery of the Delivery Parcel or use the Delivery Asset Sale Service; and
- (b) send the Completion Notice back to us so we receive it on or before the Completion Time.

#### **3.3 Deemed election**

- (a) You are deemed to have elected to accept physical delivery of the Delivery Parcel and physical delivery will take place in accordance with clause 3.4 and the purchase of the Delivery Parcel will complete if:
  - (i) we do not receive a Completion Notice from you by the Completion Time; or
  - (ii) even though you have returned the Completion Notice to us by the Completion Time, you fail to elect in the Completion Notice whether you are either going to accept physical delivery of the Delivery Parcel or use the Delivery Asset Sale Service.
- (b) If you have funded your Investment with a Capital Investment Loan you are deemed to have elected to use our Delivery Asset Sale Service unless, subject to clause 3.9, you inform us in writing that you will be repaying the Capital Investment Loan with your own capital or with other borrowed funds.

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### **3.4 If you elect to accept physical delivery of the Delivery Parcel**

Where:

- (a) you have elected in the Completion Notice to accept physical delivery of the Delivery Parcel; or
- (b) you are deemed under clause 3.3 to have elected to accept physical delivery of the Delivery Parcel;

then we will physically deliver it to you and for this purpose:

- (i) we will (either us or through our nominee) procure the performance of all acts required of a transferor of marketable securities to enable the Delivery Parcel to be transferred from us to you on the Settlement Date, free from any security interest or third party interest or restriction on transfer (other than one that has been accepted by the ASX for the purposes of quotation of the property comprising the Delivery Parcel); and
- (ii) you irrevocably authorise us and any of our nominees that we may appoint, at our option, to act as your agent to do all things required to be done, to effect physical delivery of the Delivery Parcel to you. This includes but is not limited to supplying your HIN (if applicable).

### **3.5 If you elect to accept delivery through the Delivery Asset Sale Service**

Where:

- (a) you have elected in the Completion Notice to use the Delivery Asset Sale Service, or
- (b) you are deemed under clause 3.3 to use the Delivery Asset Sale Service,

we will provide the Delivery Asset Sale Service and for this purpose:

- (i) we (or our nominee) are irrevocably authorised to hold the Delivery Parcel (which we transfer from us to you) for and on your behalf on the Trade Date;
- (ii) you:
  - (A) irrevocably authorise us or our nominee to sell the Delivery Parcel; and
  - (B) irrevocably direct and authorise us or any of our nominees to take all actions necessary or desirable for us or our nominee to effect the sale of the Delivery Parcel;
- (iii) we or our nominee on behalf of us, will pay you the Sale Proceeds on the Settlement Date; and
- (iv) you acknowledge and agree that:
  - (A) we or our nominee agree to sell the Delivery Parcel on your behalf on the Trade Date for an amount equal to the Delivery Asset Price; and
  - (B) to the maximum extent permitted by law, neither we nor our nominee are responsible for any loss, costs or expense that you incur as a result of using the Delivery Asset Sale Service, except to the extent that such loss, cost or expense arises as a result of our or our nominee's negligence, default, fraud or dishonesty.

### **3.6 Satisfaction of obligations**

Upon delivery of the Delivery Parcel to you in accordance with clause 3.4 or payment by us or our nominee (on behalf of us) to you of the Sale Proceeds in respect of the Delivery Parcel under clause 3.5(b)(iii):

- (a) our obligations to you under these Terms of Sale are satisfied and discharged; and
- (b) your interest in the relevant Nominee Security is extinguished in accordance with the terms of the Nominee Deed.

### **3.7 No delivery of fractional interests in the Delivery Asset**

We or our nominee will not transfer a fractional interest or a part of the securities or units (as applicable) that comprise the Delivery Assets. If there are any fractional securities or units that comprise the Delivery Assets, that would be transferable by us on the Settlement Date, we will pay to you an amount equal to the value of the fraction of the securities or units (as applicable) that comprise the Delivery Assets provided that such amount exceeds twenty Australian Dollars (\$20.00). If the amount does not exceed

## Section 6: Terms of Sale (cont).

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\$20.00, we are under no obligation to you to make any payment for the fractional security or unit (as applicable) that comprise the Delivery Asset. Once we have paid this amount under this clause, we are discharged of our obligation to deliver the fraction of the securities or units (as applicable) that comprise the Delivery Assets which has been forgone.

### **3.8 Inability to complete**

If, on Completion, we are unable to deliver the Delivery Parcel to you or pay the Sale Proceeds to you, as the case may be, in accordance with this clause 3, we will refund to you either part or all of the Application Amount.

### **3.9 Default under Capital Investment Loan or Interest in Advance Loan**

If you are in default under your Capital Investment Loan or Interest in Advance Loan, at maturity or on Early Termination you are deemed to have elected to use our Delivery Asset Sale Service and:

- (a) you authorise us to apply the Sale Proceeds against your obligation to repay your Capital Investment Loan and your Interest in Advance Loan (if applicable); and
- (b) your interest in the relevant Nominee Security is extinguished in accordance with the terms of the Nominee Deed.

## **4. Our obligations are unsecured**

Our obligations under these Terms of Sale or in relation to the deferred purchase of the Delivery Parcel are direct, unconditional and unsecured obligations and these obligations rank equally with our existing unsecured debt.

## **5. No transfer of legal or beneficial interest in the Delivery Parcel**

You agree and acknowledge that:

- (a) the agreement to purchase the Delivery Parcel as set out in these Terms of Sale and the payment of the Application Amount does not transfer the legal or beneficial interest in the Delivery Parcel or any Delivery Asset to you;
- (b) you will only acquire an interest in the Delivery Parcel when we physically deliver it to you or hold it on your behalf; and
- (c) should we fail to physically deliver the Delivery Parcel to you or pay to you the Sale Proceeds under these Terms of Sale, you will not be entitled to an injunction, specific performance or any other equitable rights or remedies and the only remedy that you will be entitled to is damages.

## **6. Accretions**

These Terms of Sale do not confer on you any right or interest in respect of Accretions to the Delivery Parcel. Accretions to the Delivery Asset may lead to adjustments as provided for in clause 9 of these Terms of Sale.

## **7. Taxes**

- (a) You must pay all Taxes and other charges including goods and services tax, if any:
  - (i) payable by you in relation to or in connection with these Terms of Sale; or
  - (ii) payable by any person on, as a result of, or in connection with, coupon payments or the purchase, sale or transfer of, or the completion of the purchase and sale of the Delivery Parcel.
- (b) We are not responsible for the payment of any Taxes or other charges:
  - (i) payable by you in relation to or in connection with these Terms of Sale; or
  - (ii) payable by any person on, as a result of, or in connection with, coupon payments or the purchase, sale or transfer of, or the completion of the purchase and sale of the Delivery Parcel.

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## 8. Early Termination

### 8.1 Issuer elects Early Termination

We may, in our absolute discretion, at any time following the occurrence of an Early Termination Event elect Early Termination for all or a portion of your Investment and deliver an Early Termination Notice to you.

We will determine, acting reasonably, the Early Termination Date and the Early Termination Value and will notify you of these, together with the Early Termination Fee, in the Early Termination Notice.

### 8.2 Where you request Early Termination

You may request an Early Termination by giving us written notice. We may, in our discretion, accept or reject your request. If we accept your request, as soon as practicable after we receive your written notice, acting reasonably, we will determine an Early Termination Date, the Early Termination Value and the Early Termination Fee and will complete accordingly.

### 8.3 Procedure for Early Termination

Subject to clauses 8.3(e) and 8.6, if we determine that there will be Early Termination, or if you request and we accept Early Termination, then Early Termination will take place as follows:

- (a) we will notify you prior to the Early Termination Date:
  - (i) of the Early Termination Date, the Trade Date and the Settlement Date;
  - (ii) that purchase and completion will occur in accordance with clauses 2 and 3 of these Terms of Sale, with the necessary changes; and
  - (iii) of any other matter that is required to be in a Completion Notice.

The notice that we give you under this clause shall serve as the Completion Notice.

- (b) Early Termination will take place in accordance with the procedures set out in clauses 2 and 3 of these Terms of Sale, with the necessary changes. You must also pay to us the Early Termination Fee on or before the Early Termination Date.
- (c) If:
  - (i) subject to clause 8.3(d) and 8.3(e), you have elected to accept physical delivery of the Delivery Parcel then after the Delivery Parcel is physically delivered to you under clause 3.4(b)(i); or
  - (ii) we (or our nominee) pay you the relevant amount in respect of the Delivery Parcel under clause 3.5(b)(iii),

all of our obligations to you under these Terms of Sale are deemed to be satisfied in full and we are discharged from our obligations under these Terms of Sale and your interest in the relevant Nominee Security is extinguished in accordance with the terms of the Nominee Deed.

- (d) If you funded your Investment with a Capital Investment Loan you are deemed to have elected to use the Delivery Asset Sale Service and we (or our nominee) will pay you the relevant amount in respect of the Delivery Parcel under clause 3.5(b)(iii) of these Terms of Sale unless, subject to clause 3.9 of the Terms of Sale, you inform us in writing that you will be repaying the Capital Investment Loan with your own capital or with other borrowed funds.
- (e) If you funded your investment in Capital Series with a Capital Investment Loan and you are in default under your Capital Investment Loan:
  - (i) you will be in breach of these Terms of Sale; and
  - (ii) if you have informed us that you require the Delivery Parcel to be physically delivered to you, we will no longer be under any obligation to physically deliver to you the Delivery Parcel under clause 3.4(b)(i) or pay you the relevant amount in respect of the Delivery Parcel under clause 3.5(b)(iii), despite any other provision of these Terms of Sale; and
  - (iii) we will pay you an amount equal to the Early Termination Value less the Early Termination Fee and less the Brokerage Fee payable by you to us, subject to the terms and conditions of your Capital Investment Loan, and you authorise us to apply such amount against your obligation to repay the Capital Investment Loan and upon such payment your interest in the relevant Nominee Security is extinguished in accordance with the terms of the Nominee Deed.

## Section 6: Terms of Sale (cont).

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### 8.4 Alterations

If in our reasonable opinion we determine that any of the provisions of this clause 8 are not appropriate in any particular circumstances, or that any event which is not dealt with in clause 8 should have been dealt with, in order that the provisions of this clause 8 may be rendered appropriate, or the event dealt with, we may make any alterations to the provisions of this clause 8 or to any other Term that we consider appropriate.

### 8.5 Notification

We will notify you of any alteration we propose to make under this clause before the alteration occurs or as soon as reasonably practicable after the alteration occurs.

### 8.6 Proscribed Person Early Termination Event

If we elect Early Termination and deliver an Early Termination Notice to you on the basis of the occurrence of an Early Termination Event in paragraph (b) of the definition of "Early Termination Event", namely, that you are or have become a Proscribed Person, then despite any other provision of these Terms of Sale:

- › we may be required by law to refuse, and may accordingly so refuse, to physically deliver the Delivery Parcel to you or to pay the Sale Proceeds to you; and
- › if we are so required and so refuse,
  - (a) your Investment may be suspended or terminated on the Early Termination Date;
  - (b) you will not be able to access or to facilitate any assets of yours held by us or enable any such asset to be used or dealt with;
    - (i) you must pay to us the Early Termination Fee and the Brokerage Fee (if applicable) on or before the Early Termination Date;
    - (ii) upon the exercise of our rights under this clause you must pay us any damages, losses, costs or expenses that we incur in relation to any action taken under this clause, including without limitation our refusal of service under this clause, interest adjustments, administrative costs and/or costs of sale of any asset for the purposes of meeting our obligations under these Terms of Sale; and
    - (iii) we will be under no liability to you in respect of our compliance with any legal requirement to refuse to physically deliver the Delivery Parcel to you or to pay the Sale Proceeds to you.

## 9. Adjustment Events

### 9.1 Adjustment Events

If an Adjustment Event occurs on or before the Settlement Date, we may elect to do any or all of the following, if we reasonably believe there is a valid and sufficient reason for doing so:

- (a) substitute the Specified Delivery Asset with the Substituted Delivery Asset; and/or
- (b) substitute the Delivery Asset Issuer with any other company or fund; and/or
- (c) substitute the Delivery Asset Market with any other market; and/or
- (d) substitute the Reference Asset or Assets with another asset; and/or
- (e) adjust or amend the definition of Delivery Asset and/or Reference Asset; and/or
- (f) adjust or amend any variable, formula, amount, weighting or calculation as set out or used in these Terms of Sale, as we believe to be as equitable as possible for you and us.

### 9.2 Alterations

If in our reasonable opinion we determine that any of the provisions of this clause 9 are not appropriate to deal with the occurrence of the Adjustment Event in accordance with this clause 9, in order that the occurrence of the Adjustment Event may be appropriately dealt with, we may make any alterations to the provisions of this clause 9 or to any other Term that we reasonably consider are appropriate, or nominate the Adjustment Event as an Early Termination Event and deal with it in accordance with clause 8.

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### 9.3 Notification

We will notify you of any alteration we propose to make under this clause before the alteration occurs or as soon as reasonably practicable after the alteration occurs.

## 10. Your representations and warranties

By signing the Application Form and submitting it to us, you represent and warrant to us (as a continuing representation and warranty) that:

- (a) you have full legal capacity to make this Application and be bound by these Terms of Sale and you have taken all actions that are necessary to authorise the Application and be bound by these Terms of Sale;
- (b) you have made your own independent investigations and appraisals of the financial, taxation, legal, commercial and credit aspects associated with the purchase of the Delivery Parcel prior to making this Application;
- (c) you have and will rely on your own judgment and you have not relied in any way on any statements or representations made by us or our related entities or their servants, agents, employees or representatives in relation to these Terms of Sale or the deferred purchase of the Delivery Parcel and you acknowledge that we have not made any representations to you regarding the suitability or appropriateness of the deferred purchase of the Delivery Parcel pursuant to these Terms of Sale;
- (d) you understand that nothing in these Terms of Sale or any marketing material associated with these Terms of Sale can be considered investment advice or a recommendation to buy the Delivery Parcel;
- (e) you have obtained all consents which may be required by law to enable you to purchase the Delivery Parcel and to become registered as the holder of the Delivery Assets and that the registration of you as the holder of the Delivery Parcel will not contravene any law, regulation or ruling or the constitution of the Delivery Asset Issuer;
- (f) you are not in breach of any law or any obligation to another person by entering into or becoming bound by these Terms of Sale;
- (g) your applying for Capital Series will not be in breach or result in a breach of any exchange controls, fiscal, securities or other laws or regulations for the time being applicable to Capital Series or you;
- (h) you are not a resident or national of any jurisdiction where the Application for or the Completion of Capital Series is prohibited by any law or regulation or where compliance with the relevant laws or regulations would require filing or other action by us or any of our related bodies corporate;
- (i) you acknowledge that information in Section 4 in Part 1 of this PDS headed "Taxation" is necessarily general in nature and does not take into account the specific taxation circumstances of each individual Investor. You acknowledge that you have sought your own independent advice on the taxation implications relevant to your own circumstances before making an investment decision;
- (j) all the information you have given us is correct and not misleading;
- (k) you have not withheld any information that might have caused us to reject your Application; and
- (l) if you are a company, the Bank is able to rely on an ASIC company search of you as being up to date and correct at all times.

## 11. Notices

- (a) Unless otherwise required or permitted by us, all notices and other communications must be in writing.
- (b) Any notice or statement to be given or demand to be made on you under these Terms of Sale:
  - (i) will be effectively signed on behalf of us if it is executed by us, any of our officers, our solicitor or our attorney;
  - (ii) may be served by being delivered personally to, by being left at, by being emailed to, or by being posted in a prepaid envelope or wrapper to your address (or email address) notified to us or your registered office, place of business, or residence last known to us, or by being sent to you by facsimile transmission.
- (c) A demand or notice if:
  - (i) posted will be deemed served 2 Business Days after posting;
  - (ii) sent by facsimile or electronic transmission will be deemed served on conclusion of transmission.
- (d) Service by any of these methods will be valid and effectual even if you do not receive the document or if the document is returned to us unclaimed.

## Section 6: Terms of Sale (cont).

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### **12. Amendment of Terms of Sale**

#### **12.1 Amendment**

We may from time to time make any modification, amendment, variation, alteration or deletion of, or addition to, these Terms of Sale ("Amendment") where:

- (a) the Amendment is one determined by us as being required under either of clauses 8 or 9 of these Terms of Sale;
- (b) the Amendment is necessary, expedient or desirable in our reasonable opinion to comply with any statutory or other requirement of law; or
- (c) in our reasonable opinion the Amendment is necessary, expedient or desirable to:
  - (i) correct any error, inconsistency, inadvertent omission, inaccuracy or ambiguity in these Terms of Sale;
  - (ii) conform Commonwealth Bank with its competitors, industry or market practice or best practice in Australia or overseas;
  - (iii) accommodate changes to the needs or requirements of the Bank's customers (such as new product features or services); or
  - (iv) address any internal requirements of the Bank, for example, occasioned by changes in technology or processing (including computer systems),

but only if such Amendment does not, in our reasonable opinion, cause you detriment.

#### **12.2 Notification**

We will give you notice of any Amendment to these Terms of Sale in writing and you will be bound by any such Amendment at the time you are served with such notice.

#### **12.3 Amendment agreed in Application Form**

Without limiting clause 12.1, these Terms of Sale will be amended in accordance with any amendment you have agreed and acknowledged in the Application Form.

### **13. General provisions**

#### **13.1 Priority between Terms of Sale, Schedule of Terms and this PDS**

- (a) Subject to clause 13.1(b), if there is an inconsistency between these Terms of Sale, the Schedule of Terms or this PDS, then the Schedule of Terms will prevail over both the Terms of Sale and this PDS, and the Terms of Sale will prevail over this PDS.
- (b) If there is an inconsistency between either or both of clauses 8 or 9 of these Terms of Sale and the Schedule of Terms, then clauses 8 and/or 9 will prevail.

#### **13.2 Currency**

All amounts payable by either party under these Terms of Sale will be paid in Australian Dollars unless otherwise specified in the Schedule of Terms.

#### **13.3 No merger**

Our rights under these Terms of Sale are additional to and do not merge with or affect and are not affected by any mortgage, charge or other encumbrance held by us or any of your other obligations to us, despite any rule of law or equity or any other statutory provision to the contrary.

#### **13.4 Rounding**

All calculations that we make for the purposes of these Terms of Sale will be made to not fewer than three decimal places. Other than as provided in these Terms of Sale, rounding of numbers will not occur until the final calculation of a relevant amount or number at which time your entitlements will be aggregated and that aggregate will be rounded so that all money amounts are rounded down to the nearest whole cent and all numbers relating to the amount of securities or units that comprise the Delivery Assets are rounded down to the nearest whole number.

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### **13.5 Indemnity**

- (a) You indemnify each of Commonwealth Bank ("us") and its officers, agents and employees against all loss, damage, costs, expense or liability suffered or incurred by us as a direct or indirect consequence of:
- (i) entering into or acting in accordance with these Terms of Sale; or
  - (ii) any act, omission, breach or default by you under or in relation to these Terms of Sale (including without limitation your failure to complete).
  - (iii) your default under these Terms of Sale (including without limitation your failure to complete) or breach of these Terms of Sale.
- (b) The indemnities in these Terms of Sale are:
- (i) continuing, separate and independent obligations of the parties from their other obligations and survive the termination of the agreement between the parties; and
  - (ii) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.

### **13.6 Certificates**

Any document or thing required to be certified by you or us must be certified by (as the case requires):

- (a) you, if you are an individual; or
- (b) a director, secretary or authorised officer of the company, if you are a company; or
- (c) us; or
- (d) in any other manner that we may approve.

### **13.7 Execution by attorneys**

Each attorney executing the Application Form which binds you to these Terms of Sale states that he, she or it has no notice of revocation or suspension of the power of attorney under which the attorney executes the Application Form.

### **13.8 Power of attorney**

You irrevocably appoints us, Commonwealth Bank and our nominee and any of our directors, secretaries and managers from time to time jointly and severally as your attorney to do (either in your name or the attorney's name) all acts and things that you are obliged to do under these Terms of Sale or which, in our opinion, are necessary or desirable in connection with the Delivery Assets or the protection of our interests or the exercise of our rights, powers and remedies, including without limitation the authority to sell the Delivery Parcel on your behalf in accordance with clause 3.5(b)(ii).

### **13.9 Invalid or unenforceable provisions**

If a provision of these Terms of Sale is invalid or unenforceable in a jurisdiction, it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability, and that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

### **13.10 Waiver and exercise of rights**

A single or partial exercise of a right by us does not preclude another exercise or attempted exercise of that right or the exercise of another right. Failure by us to exercise or delay in exercising a right, does not prevent its exercise or operate as a waiver.

## Section 6: Terms of Sale (cont).

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### 13.11 Assignment and transfer of interests

- (a) We may transfer our rights and obligations under these Terms of Sale at any time by giving you notice.
- (b) You may, with our prior written consent:
  - (i) transfer (whether in law, in equity or otherwise) your rights and obligations under these Terms of Sale; or
  - (ii) create any encumbrance, charge, trust or fiduciary obligation in relation to your rights and obligations under these Terms of Sale,provided that any action that purports to do so without our prior written consent is invalid, void and without effect as between you, us and any third party.

Your interest in the relevant Nominee Security is, in accordance with the terms of the Nominee Deed, automatically transferred to the relevant transferee if you transfer in any way your rights and obligations under these Terms of Sale.

### 13.12 Recording conversations

You acknowledge that conversations between you and us (or any of our officers) may be tape-recorded. You acknowledge and consent to the tape-recording and its use (or any transcript of the recording) in any proceedings that may be commenced in connection with these Terms of Sale.

### 13.13 Calculations and references to dates and times

Calculations or determinations which are to be made on or by reference to a particular day, are to be made on or by reference to that day in the place and time zone of Sydney, Australia unless otherwise specified in the Schedule of Terms.

### 13.14 Governing law and jurisdiction

These Terms of Sale are governed by the laws of New South Wales. You irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

### 13.15 Change of dates

Notwithstanding any other provision of these Terms of Sale, prior to the Start Date we may, acting reasonably and if we consider it necessary, expedient or desirable, change the Start Date, the Closing Date (and time), the Maturity Date, the Trade Date or the Settlement Date, in which case you acknowledge that the Investment Term will be less than or more than what is specified in the Schedule of Terms. We may do this, for example, to deal with changes in pricing or market conditions, or to achieve a requisite number of applicants for Capital Series, or to address regulatory or compliance requirements.

### 13.16 Provision of Information

You must provide us with information and documents which may reasonably be required by us for us to comply with any applicable laws relating to sanctions, anti-money laundering or counter-terrorism financing, including (without limitation) any laws imposing “know your customer” or other identification requirements. The obligation to provide such information and documents:

- (a) extends only to material which is in your possession, or otherwise readily available to you; and
- (b) is subject to any requirement of law to the contrary.

## 14. Definitions and interpretation

### 14.1 Definitions

In these Terms of Sale, unless the context requires otherwise, the following terms have the following meanings:

**Acceptance Notice** has the meaning given to this item in clause 1.3(d);

**Accretions** means all rights, accretions and entitlements attaching to the Delivery Asset after the Start Date including without limitation, all voting rights, all dividends and all rights to receive dividends and other distributions or shares, notes, options or other securities exercisable, declared, paid or issued in respect of the Delivery Asset;

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**Adjustment Event** means in respect of the Reference Asset or Delivery Asset (the “Relevant Asset” for the purpose of this definition) any of the following events:

- (a) where the Relevant Asset is a security or an interest in a managed investment scheme:
  - (i) the actual or proposed adoption of any procedure, event or action which is or which is likely to result in any cash return of capital, pro-rata cash distribution, capital reduction, liquidator’s distributions, share buy-back, bonus issue, rights issue, arrangement, scheme of arrangement, compromise, merger, demerger, reconstruction, compulsory acquisition, redemption, cancellation, replacement, modification, subdivision or consolidation, takeover bid, special dividend, non cash dividend, share split or any other similar or like event (however described);
  - (ii) any event which is or which results in the actual or proposed administration, liquidation, winding up or termination of the issuer of the Relevant Asset or other similar or like event (however described);
  - (iii) any event which is or which results in the actual or proposed de-listing of the Relevant Asset or the actual or proposed removal from quotation of the Relevant Asset or the actual or proposed Suspension from trading of the Relevant Asset; or
  - (iv) any event which, in our opinion, causes insufficient liquidity or limited trading ability of the Relevant Asset;
- (b) where the Relevant Asset is an index:
  - (i) the Relevant Asset is suspended or ceases to be published for a period of 24 hours or more;
  - (ii) the Relevant Asset is not calculated and announced by the Relevant Asset Provider, but is calculated and announced by a successor to the Relevant Asset Provider;
  - (iii) the Relevant Asset is replaced by a successor index using the same or a substantially similar formula for and method of calculation;
  - (iv) the Relevant Asset Provider or any successor makes a material change in the formula for or the method of calculating the Relevant Asset or in any way materially modifies that Relevant Asset;
  - (v) there is a suspension or material limitation on trading of securities generally on any financial market to which the Reference Asset relates for a period of 24 hours or more; or
  - (vi) there is a suspension or material limitation of trading in a futures contract relating to the Relevant Asset (or any equivalent futures contract) traded on a Relevant Futures Exchange (or any successor) for a period of 24 hours or more;
- (c) if we determine (in good faith) that the performance of our obligations in relation to or under these Terms of Sale has or will become, in circumstances beyond our reasonable control:
  - (i) impossible;
  - (ii) unlawful;
  - (iii) illegal; or
  - (iv) otherwise prohibited as a result of compliance with any applicable present or future law, rule, regulation, judgment, order or directive of any government, administrative, legislative or judicial authority or power;
- (d) any actual or proposed event that may reasonably (in our opinion) be expected to lead to any of the events referred to in paragraphs (a) to (c) above occurring;

**Application** means an offer by you to us to purchase the Delivery Parcel on a deferred basis on the terms and conditions set out in these Terms of Sale;

**Application Amount** means the total amount payable by you to us in consideration for acquiring the Delivery Parcel on the Maturity Date being an amount equal to your Investment Amount plus Initial Adviser Fee;

**Application Form** means the application form attached to this PDS;

**Approved Delivery Assets** means the Delivery Assets approved by us and which we offer you as specified in the Schedule of Terms, or any other delivery asset determined by us in accordance with these Terms of Sale;

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means Australian Securities Exchange Limited ACN 008 624 691;

## Section 6: Terms of Sale (cont).

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**Australian Dollars** and **\$** means the lawful currency of Australia;

**Beneficial Interest** has the meaning given to that term in the Nominee Deed;

**Beneficiaries** has the meaning given to that term in the Nominee Deed;

**Break Costs** means an amount calculated and determined by us in our absolute discretion, exercised with due care and skill, as being all costs, expenses and losses incurred by us (in which case they will not be in your favour), or gains or benefits received by us (in which they will be in your favour), and notified by us as payable by you (if not in your favour) or to you (if in your favour) as a result of:

- (a) the acceleration of the Maturity Date or other Early Termination of Capital Series;
- (b) the termination or reversal of any arrangements or hedge position entered into by us in connection with Capital Series which is terminated early; or
- (c) any loss of profits that we may suffer by reason of the early termination of Capital Series;

**Brokerage Fee** means a fee equal to up to 0.55% (including GST) of the Maturity Value or Early Termination Value (whichever is applicable);

**Business Day** means a day on which all Australian banks, the ASX and any financial market to which the Reference Asset relates are open for business, but does not include a Saturday, Sunday or public holiday;

**Calculation Agent** means the Calculation Agent specified in the Schedule of Terms;

**Capital** or **Capital Series** means the agreement under which you purchase the Delivery Parcel from us on the terms and conditions set out in these Terms of Sale;

**Capital Investment Loan** or **Loan** means a loan made by us to you under which you borrow your Investment Amount for the purposes of investing in Capital Series;

**Closing Time** means 12:00 noon Sydney time on the Closing Date;

**Closing Date** means in relation to each series of Capital Series, the date specified as the "Closing Date" in this PDS;

**Closing Level** has the meaning specified in the Schedule of Terms;

**Commonwealth Bank** or **us** or **we** or **the Bank** means Commonwealth Bank of Australia of Ground Floor, Tower 1, 201 Sussex Street, Sydney, New South Wales, Australia;

**Completion** means the completion by you of the deferred purchase of the Delivery Parcel in accordance with clause 3 of these Terms of Sale, and "Complete" has a corresponding meaning;

**Completion Time** means 5:00 pm Sydney time on the Maturity Date;

**Completion Notice** means a notice issued by us in accordance with clause 3.1 or 8.3(a)(ii) as the case may be;

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

**Coupon Observation Date** means the date specified as such in the Schedule of Terms;

**Coupon Payment Date** means the date specified as such in the Schedule of Terms;

**Delivery Asset** means the Specified Delivery Asset or, where substitution occurs under clause 9, the Substituted Delivery Asset;

**Delivery Asset Issuer** means the entity specified as the "Delivery Asset Issuer" in the Schedule of Terms or any other entity substituted in accordance with these Terms of Sale;

**Delivery Asset Market** means the relevant financial market that reports and disseminates traded prices of the Delivery Asset, as specified in the Schedule of Terms;

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**Delivery Asset Price** has the meaning specified in the Schedule of Terms;

**Delivery Asset Sale Service** means the arrangement whereby we sell the Delivery Parcel for and on behalf of, at the direction of and as agent for you on the Trade Date in accordance with clause 3.5 of these Terms of Sale;

**Delivery Parcel** means

(a) the number of Delivery Assets to be purchased by you on the Maturity Date as determined by the following formula:

$$\text{Delivery Parcel} = \frac{\text{Maturity Value}}{\text{Delivery Asset Price}}$$

rounded down to the nearest whole unit; or

(b) (this only applies if there is an Early Termination under clause 8), the number of Delivery Assets to be purchased by you on the Early Termination Date as determined by the following formula:

$$\text{Delivery Parcel} = \frac{\text{Early Termination Value}}{\text{Delivery Asset Price}}$$

rounded down to the nearest whole unit.

**Determined Level** has the meaning specified in the Schedule of Terms;

**Dividend** has the meaning given to that term in the Nominee Deed;

**Early Termination** means the early completion of the deferred purchase of the Delivery Parcel as determined and completed in accordance with clause 8;

**Early Termination Date** means the date notified to you as the “Early Termination Date” in the Early Termination Notice, being the Maturity Date for the purpose of applying clauses 2 and 3 to Early Termination;

**Early Termination Fee** means an amount of up to \$500 as an administration fee;

**Early Termination Event** means:

- (a) you are or become Insolvent;
- (b) you or a signatory to your Investment appears to be a Proscribed Person;
- (c) you breach, or fail to fully observe or perform, any of your obligations or undertakings under these Terms of Sale;
- (d) any actual or proposed Adjustment Event which, in our reasonable opinion, it is not possible or desirable to deal with in accordance with clause 9;
- (e) any arrangements entered into by us in order to hedge our obligations under these Terms of Sale in whole or in part cannot reasonably be established, maintained or re-established;
- (f) if you have funded your investment in Capital Series with a Capital Investment Loan and an Interest in Advance Loan (if applicable), a default by you under the terms of your Capital Investment Loan or your Interest in Advance Loan (if applicable); or
- (g) any actual or proposed event that may reasonably in our opinion be expected to lead to any of the events in paragraphs (a) to (f) above occurring;

**Early Termination Notice** means the notice provided by us to you notifying you either that an Early Termination Event has occurred or that we have accepted your request to terminate Capital Series early and that an Early Termination will take place in accordance with the notice;

## Section 6: Terms of Sale (cont).

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**Early Termination Value** means the fair economic value of your Investment on the Early Termination Date as we reasonably determine. Without limiting the foregoing, in determining the “Early Termination Value” we may deduct any costs, losses or expenses that we incur in relation to the Early Termination, including without limitation, Break Costs (if they are not in your favour), administrative costs, costs of unwinding any hedge put in place for the purposes of meeting our obligations under these Terms of Sale, any cost of funding or any loss of bargain;

**Final Reference Level** has the meaning specified in the Schedule of Terms;

**HIN** means Holder Identification Number;

**Insolvent** means “Insolvent” or “insolvent under administration” (each as defined in the Corporations Act), bankrupt, in receivership, in receivership and management, under administration, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, or dissolved;

**Initial Adviser Fee** means in relation to each series of Capital Series, the amount set out in the Application Form;

**Initial Reference Level** has the meaning specified in the Schedule of Terms;

**Interest in Advance Loan** or **Loan** means a loan made by us to you under which you borrow and prepay in advance 100% of the yearly interest owing and due on the Capital Investment Loan;

**Investment** means your investment in Capital Series as specified in the Schedule of Terms;

**Investment Amount** means the amount invested by you in Capital Series and specified as confirmed in the Acceptance Notice;

**Investment Term** means the length of time specified as such in the Schedule of Terms;

**Investor** or **you** means the person or entity whose Application is accepted by us in accordance with clause 1 of these Terms of Sale;

**Issuer** has the meaning given to that term in the Nominee Deed;

**Maturity Date** means:

- (a) the date specified as such in the Schedule of Terms; or
- (b) if there is an Early Termination under clause 8, the Maturity Date will be that specified in the Early Termination Notice;

**Maturity Value** means: the amount determined using the formula set out in the Schedule of Terms to determine the Maturity Value;

**Minimum Investment Amount** means the amount specified as such in the Schedule of Terms;

**Nominee** means Share Direct Nominees Pty Limited (ABN 56 006 437 065);

**Nominee Deed** means the document entitled “Capital Series Nominee Deed” to be executed by the Nominee prior to the date of this PDS;

**Nominee Security** has the meaning given to that term in the Nominee Deed;

**Observation Dates** means the dates specified as such in the Schedule of Terms;

**Offer** has the meaning specified in the Schedule of Terms;

**Participation Rate** has the meaning specified in the Schedule of Terms;

**PDS** means Part 1 of the product disclosure statement dated 23 August 2010, of which these Terms of Sale form part and Part 2 of the product disclosure statement detailing a particular Strategy or Strategies;

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**Proscribed Person** means a person who appears to us either:

- (a) to be a proscribed person or entity under the Charter of the United Nations Act 1945 (Cth);
- (b) to be in breach of the laws of any jurisdiction relating to money-laundering or counter-terrorism; or
- (c) to appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- (d) to act on behalf, or for the benefit of, a person listed in subclauses (a) to (c);

**Reference Asset** means the Reference Asset specified as such in the Schedule of Terms, or any other index, commodity, security, interest in managed investment scheme or other asset substituted in accordance with these Terms of Sale;

**Reference Asset Provider** means the entity specified as the “Reference Asset Provider” in the Schedule of Terms;

**Reference Asset Return** has the meaning specified in the Schedule of Terms;

**Relevant Asset Provider** means, as the context requires, the entity who is responsible for (as applicable and as the context requires) the calculation, dissemination or provision of the Relevant Asset (as defined in “Adjustment Event”), or any other provider substituted in accordance with these Terms of Sale;

**Relevant Futures Exchange** means the futures exchange upon which the futures contract entered into by us to hedge the Reference Assets is traded;

**Sale Proceeds** means the proceeds of the sale of the Delivery Parcel that we (or our nominee) obtain on your behalf under the Delivery Asset Sale Service, being an amount equal to the number of Delivery Assets comprising the Delivery Parcel multiplied by the Delivery Asset Price;

**Schedule of Terms** means the Schedule of Terms contained in Part 2 of this PDS;

**Security** means:

- (a) a share or unit in the capital of a corporation;
- (b) a unit in any trust or managed fund; or
- (c) any other unit, share or security we agree is a “Security” for the purposes of this definition;

**Settlement Date** means:

- (a) the date specified as such in the Schedule of Terms; or
- (b) if there is an Early Termination under clause 8, the Settlement Date will be that specified in the Early Termination Notice;

**Specified Delivery Asset** means either the asset:

- (a) specified in the Schedule of Terms; or
- (b) where the Application Form provides for selection by you, the asset selected as such by you from the list of Approved Delivery Assets in the Application Form;

**Start Date** means the date specified as such in the Schedule of Terms;

**Strategy** means the Investment specified in the Schedule of Terms.

**Strategy Capital Protection Amount** in relation to each Strategy, has the meaning specified in the Schedule of Terms;

**Strategy Investment Amount** in relation to each Strategy, has the meaning specified in the Schedule of Terms;

**Strategy Maturity Value** in relation to each Strategy, has the meaning specified in the Schedule of Terms;

**Strategy Portfolio Return** in relation to each Strategy, has the meaning specified in the Schedule of Terms;

**Suspension** means any temporary cessation of quotation of a Reference Asset;

## Section 6: Terms of Sale (cont).

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**Substituted Delivery Asset** means any Security selected by us and which is substituted for the Specified Delivery Asset in accordance with clause 9;

**Tax** or **Taxes** means any income tax, capital gains tax, goods and services tax (GST), withholding tax, stamp, financial institutions, registration and other duties, bank accounts debits tax and other related taxes, levies, imposts, deductions, interest, penalties and charges;

**Term** means a provision in these Terms of Sale;

**Terms of Sale** means these terms and conditions, including the Schedule of Terms, under which you agree to purchase the Delivery Parcel from us as set out in this document in Section 6 “Terms of Sale” and any amendment to these terms and conditions for a relevant purpose as set out in Part 2 of this PDS;

**Total Capital Protection Amount** has the meaning specified in the Schedule of Terms;

**Trade Date** means:

- (a) the date specified as such in the Schedule of Terms; or
- (b) if there is an Early Termination under clause 8, the Trade Date will be that specified in the Early Termination Notice;

**Trust** has the meaning given to that term in the Nominee Deed;

**Underlying Portfolio** means the Underlying Portfolio specified as such in the Schedule of Terms, or any other index, commodity, security, interest in managed investment scheme or other asset substituted in accordance with these Terms of Sale.

### 14.2 Interpretation

- (a) In these Terms of Sale, unless the context requires another meaning, a reference:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to a document (including these Terms of Sale) is a reference to that document (including any Schedule of Terms and annexures) as amended, consolidated, supplemented, novated or replaced;
  - (iii) to a party means a party to these Terms of Sale;
  - (iv) to a person (including a party) includes:
    - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
    - (B) the person’s successors, permitted assigns, substitutes, executors and administrators;
  - (v) to a law:
    - (A) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
    - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
    - (C) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) Headings are for convenience only and do not affect interpretation.
- (d) If a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day.
- (e) If a period occurs from, after or before a day or the day of an act or event, it excludes that day.

### 15. Severance

If any term or condition of these Terms of Sale is found to be void or unenforceable for unfairness or any other reason (for example, if a court or other tribunal or authority declares it so), the remaining terms and conditions will continue to apply to the extent possible as if the void or unenforceable term or condition had never existed.

## Section 7: Terms and Conditions of the Loan

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These are the terms and conditions on which we make a Commonwealth Bank Capital Investment Loan and Interest in Advance Loan (each a “Loan”) available to you and on which we accept offers to provide security for the Loans. We refer to them collectively as the “Terms and Conditions”. The Terms and Conditions apply to each Loan.

The Terms and Conditions are made up of:

**Part 1** General Provisions

**Part 2** Loan Agreement

which appear under those headings in the Terms and Conditions.

If there is any inconsistency with Section 2 or Section 3 in Part 1 of this PDS, or the Application Form in Part 2 of this PDS, the Terms and Conditions shall prevail.

### **PART 1 GENERAL PROVISIONS**

#### **1. Definitions**

In these Terms and Conditions:

**Application Form** means the application form which is enclosed within Part 2 of this PDS, completed by you and lodged with us;

**Authorised Officer** means each of our officers and each officer of Commonwealth Securities whose title, in both cases, is or includes the word “manager” or the word “executive”;

**Borrower** means how we refer to the applicant for a Loan and to those whose application is accepted by us;

**Break Costs** means an amount calculated and determined by us in our absolute discretion, exercised with due care and skill, as being any interest, fees and other costs and losses which we may incur as a result of your prepayment of any Money Owing (whether pursuant to clause 13 of the Loan Agreement or otherwise);

**Business Day** means each day on which we are open for business in Sydney;

**Capital Investment Loan** means a loan advanced by us to you to acquire the Product;

**Capital Investment Loan Maturity Date** means the day which is notified to you in a Loan Confirmation from us for full repayment of the Capital Investment Loan;

**Capital Investment Loan Start Date** means the date on which the Capital Investment Loan is drawn down, which is the Start Date of the Product;

**CIL Loan Account** means the account we keep, in the Borrower’s name, to which we debit the amount of the Capital Investment Loan and any other liability of the Borrower in respect of the Capital Investment Loan under the Terms and Conditions;

**Commonwealth Securities** means Commonwealth Securities Limited ABN 60 067 254 399;

**Default Event** means any Default Event set out in clause 15 of the Loan Agreement;

**Delivery Asset** has the meaning given to it under the Terms of Sale in Part 1 of this PDS;

**Delivery Asset Sale Service** has the meaning given to it under the Terms of Sale in Part 1 of this PDS;

**Guarantee** means the guarantee referred to in the Application Form and given to us by the directors of a Borrower company guaranteeing the Borrower’s obligations under the Loan Agreement;

**Guarantor** means any director of a Borrower company that provides a Guarantee;

**IAL Loan Account** means the account we keep, in the Borrower’s name, to which we debit the amount of the Interest in Advance Loan and any other liability of the Borrower in respect of the Interest in Advance Loan under the Terms and Conditions;

## Section 7: Terms and Conditions of the Loan (cont).

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**Interest in Advance Loan** means a loan advanced by us to you to prepay in advance 100% of the yearly interest due and owing under the Capital Investment Loan (including any New Interest in Advance Loan under clause 14 of the Loan Agreement);

**Interest in Advance Loan Maturity Date** means the maturity date notified in writing by us, to you in respect of the Interest in Advance Loan in a Loan Confirmation;

**Interest in Advance Loan Start Date** means the date the Interest in Advance Loan is drawn down or redrawn down (if applicable), or if we offer you an Interest in Advance Loan for a period that is not a full year, we will confirm when the relevant Interest in Advance Loan Start Date is;

**Interest Rate** means the interest rate we charge on a Loan Account;

**Loan** means either:

- (a) a Capital Investment Loan; or
- (b) an Interest in Advance Loan,

which we make available to the Borrower under and subject to the Terms and Conditions;

**Loan Account** means either the CIL Loan Account or the IAL Loan Account;

**Loan Agreement** means the Loan Agreement in Part 2 of the Terms and Conditions created when we accept the Borrower's application for a Loan;

**Loan Balance** means, in relation to a Loan at any time, the balance on the Loan Account at that time;

**Loan Confirmation** means, in relation to a Loan, a letter of confirmation we give you setting out particulars of our approval of the Loan;

**Loan Limit** means, in relation to a Loan, the amount that we are prepared to lend to the Borrower under the Loan;

**Material Adverse Change** means a change which, in our reasonable opinion, has a material adverse effect on your assets, revenue or financial position, or your ability to perform your obligations under the Terms and Conditions;

**Money Owning** means, in relation to a Loan, any money payable by the Borrower under or in connection with the Loan and includes any interest payable in connection with the Loan pursuant to clause 8 of the Loan Agreement;

**Nominated Account** means an account (for which a statement issues other than a loan or credit card account) opened by and in the name of the Borrower with us or with another financial institution and in relation to which you have given us an authorisation to debit;

**our** means belonging to us;

**Prepayment Fee** means an amount of \$300 as an administration cost. Such fee will not be applicable if prepayment occurs within three (3) months of the Capital Investment Loan Maturity Date or Interest in Advance Loan Maturity Date except if clause 12 of the Loan Agreement applies;

**Product** means Capital Series issued by us to you which you are using the proceeds of the Capital Investment Loan to invest in;

**Product Disclosure Statement** or **PDS** means this PDS, being the Product Disclosure Statement issued by us in respect of the Product;

**Product Issuer Obligations** means any obligations or liabilities which we owe to you under this PDS including under or in connection with the Terms of Sale, including but not limited to payment of any coupons or payment of any amount on early termination or on completion;

**Proscribed Person** means a person who appears to us either:

- (a) to be a proscribed person or entity under the Charter of the United Nations Act 1945 (Cth);
- (b) to be in breach of the laws of any jurisdiction relating to money laundering or counter-terrorism;
- (c) to appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- (d) act on behalf, or for the benefit of, a person listed in subclauses (a) to (c);

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**Sale Proceeds** means the proceeds of sale which you are entitled to under the Terms of Sale upon the sale of the Delivery Assets through the Delivery Asset Sale Service;

**Security Interest** means and includes an interest arising under a mortgage, charge, pledge or other encumbrance of any nature and an interest arising from any reservation of title;

**Start Date** has the meaning given to it under the Terms of Sale in Part 1 of this PDS;

**Term** means:

- › in respect of the Capital Investment Loan, the period from and including the Capital Investment Loan Start Date to but excluding the Capital Investment Loan Maturity Date; and
- › in respect of the Interest in Advance Loan, the period from and including the Interest in Advance Loan Start Date to but excluding the Interest in Advance Loan Maturity Date.

**Terms of Sale** means the terms of sale set out in Part 1 of this PDS in Section 6 “Terms of Sale”;

**we** or **us** means Commonwealth Bank of Australia ABN 48 123 123 124, its successors or assigns;

**you** means:

- › in Part 1 General Provisions of these Terms and Conditions, any person who agrees to be bound by any of the Terms and Conditions;
- › in Part 2 Loan Agreement, the Borrower;
- › in each case, that person’s executors and administrators and, in the case of a corporation, its successors and assigns;

**your** means belonging to you.

## 2. Interpretation

The Terms and Conditions must be interpreted according to the following:

- › when more than one person enters into any of the Terms and Conditions the obligations of those persons will be joint and several;
- › unless the context indicates otherwise, where you have a Capital Investment Loan only, the word “Loan” refers to the Capital Investment Loan only. Where you have both a Capital Investment Loan and an Interest in Advance Loan, the word “Loan” refers to both the Capital Investment Loan and Interest in Advance Loan;
- › words indicating the singular number include the plural number and vice versa;
- › words indicating persons include bodies corporate; and
- › the words “including” or “for example” and similar words or expressions when introducing an example do not limit the meaning of the words, to which the example relates, to that example or examples of a similar kind.

## 3. Our consent

Whenever you ask for our consent we may give or refuse our consent as we consider reasonable to do so and we may impose reasonable conditions on the giving of our consent.

## 4. Trustee provisions

If you enter into any of the Terms and Conditions as a trustee:

- (a) you acknowledge that the relevant Terms and Conditions bind you personally and in your capacity as trustee of the trust;
- (b) you represent that:
  - › you have full power and are legally entitled to appoint us and each of our officers separately as your agent and attorney under the Terms and Conditions;

## Section 7: Terms and Conditions of the Loan (cont).

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- you have full power and are legally entitled to enter into and perform your obligations under the Terms and Conditions;
  - any conflict of interest and duty which might arise from your entry into any of the Terms and Conditions is satisfactorily overcome by the trust instrument or has been overcome by a resolution by all unitholders of the trust;
  - you are entitled to be indemnified out of trust assets to the full extent of the liabilities you enter into in your trustee capacity;
  - you are not aware of any threatened or pending action or claim which may affect your indemnity out of trust assets; and
  - you have taken every necessary action to ensure you are effectively bound by the Terms and Conditions and that you are authorised to perform your obligations under the Terms and Conditions;
- (c) you must inform us if you are removed from office as trustee;
- (d) you agree to satisfy us, in the manner we require, that the Terms and Conditions will be valid and enforceable against you in your trustee capacity.

### 5. Change in your constitution, name or style

Where you are a partnership, firm, committee, trustee or unincorporated body or any of the Money Owed is advanced on or are otherwise owing or payable on a joint account your obligations under the Terms and Conditions remain effective and binding despite any change in your constitution, name or style.

### 6. Authorities you give us

- (a) You authorise us to act on any of your instructions and if there is more than one of you, on the instructions of any one or more of you;
- (b) You irrevocably authorise, instruct and direct us to act on the instructions of each nominated representative that you appoint in the Application Form (“Nominated Representative”) until you give us written notice not to do so;
- (c) You agree to grant the powers of your Nominated Representative as set out in the Application Form;
- (d) If you are a company and there is more than one (1) director, we may act on the instructions of any one (1) or more directors;
- (e) You authorise us to act on instructions sent to us from time to time, in relation to the Terms and Conditions, by telephone, facsimile transmission, telex, cable or other electronic means.

### 7. Obligations are not affected by unauthorised instructions

- (a) Subject to clause 16 of Part 2 Loan Agreement of the Terms and Conditions, if we have exercised due care and skill, your obligations are not affected or limited by:
- any falsity, inaccuracy, insufficiency or forgery of or in any instructions given to us; or
  - our failure to enquire whether any instruction has been transmitted or received accurately or has been given or sent by an unauthorised person.
- (b) If we act or continue to act on the basis of your instructions, provided we have exercised due care and skill, you agree as follows:
- (i) all risks of unauthorised instruction or fraud lie with you and are not to be borne by us; and
  - (ii) to indemnify us and hold us harmless against:
    - (A) any and all claims which you or any third party may have against us for any damage, loss, cost or expense which you or that third party may suffer or incur (whether directly or indirectly and whether foreseeable or not); and
    - (B) any damage, loss, cost or expense which we may suffer or incur (whether directly or indirectly and whether foreseeable or not) as a result of or in connection with:
      - i. us acting upon any instruction purporting to be from you, your agent or your employee (whether by telephone, facsimile, telex, cable or other electronic means);

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- ii. us not acting upon any instruction purporting to be from you, your agent or your employee (whether in writing by telephone, facsimile, telex, cable or other electronic means) where we (in our subjective determination) consider or suspect that such instruction has been communicated to us fraudulently, mistakenly or without authority, or contain material omissions or errors; or
  - iii. Nothing in this clause shall be construed as requiring us to make enquiries as to the genuineness or validity of an instruction.
- (iii) The indemnity contained in this clause is subject to us acting only upon instructions from persons purporting to be you or persons authorised by you from time to time by notice to us. For the purposes of this clause a person shall be deemed to be a person authorised by you if you have held out that person to us as a person authorised by you and have not notified us in writing that such person has ceased to be authorised.

## 8. Variation

- (a) On giving you at least thirty (30) days' notice in writing, we may:
  - impose any new fee; and/or
  - vary the amount of any fee.
- (b) We may reduce or increase the Interest Rate applicable to a Loan Account from time to time – except in relation to any Loan Account with a fixed interest rate whilst the fixed term relating to the fixed interest rate has not ended. We will advertise any reduction or increase in an interest rate, as well as the introduction of any new government charge or the variation in any existing government charge which affects you, in a leading national newspaper in each State and Territory or notify you in writing no later than the day on which the change takes effect. At any time, you can ask us to state the then current interest rate or any other interest rate we charge on any Loan Transaction to which you are a party.
- (c) Without limiting our rights under clauses 8(a) or 8(b), in addition to the variations referred to in clauses 8(a) and 8(b), we may vary any other provision of these Terms and Conditions on giving notice in writing no later than the day the variation takes effect to:
  - (i) correct any error, inconsistency, inadvertent omission, inaccuracy or ambiguity in these Terms and Conditions;
  - (ii) conform the Bank with its competitors, industry or market practice or best practice in Australia or overseas;
  - (iii) accommodate changes to the needs or requirements of the Bank's customers (such as new product features or services);
  - (iv) address any internal requirements of the Bank, for example, occasioned by changes in technology or processing (including computer systems), or
  - (v) comply with, adopt or implement any law, legal requirement, decision, recommendation, regulatory guidance or standard of any government body, court, tribunal, ombudsman or regulator.
- (d) Each of the variations in clauses 8(a), 8(b) and 8(c) is a separate right and this clause 8 is to be read as if such a change was a separately expressed right.
- (e) If any of the variations referred to in clauses 8(a), 8(b) or 8(c) is unacceptable to you, you may terminate the Loan by:
  - (i) notifying us in writing of the particular variation which is unacceptable to you; and
  - (ii) prepaying the Loan in accordance with clause 13 of the Loan Agreement, in which case the provisions of clause 13 of the Loan Agreement will apply.

## 9. Exercise of rights

- (a) We may exercise any right, remedy or power in any way we consider appropriate in our sole and absolute discretion exercised with due care and skill. If we do not exercise a right, remedy or power fully or at a given time, we can still exercise it later.
- (b) We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

## Section 7: Terms and Conditions of the Loan (cont).

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### 10. Payments under the Terms and Conditions

- (a) We may apply any moneys received or recovered towards the satisfaction of the Money Owning under the Terms and Conditions in the manner and order in which we reasonably see fit.
- (b) All payments by you under the Terms and Conditions must be made in Australian dollars without deduction or set-off.
- (c) Unless there is a specific provision to the contrary in the Terms and Conditions regarding payment of an amount owing to us, you must pay that amount on demand.
- (d) If your liability under the Terms and Conditions is merged in any judgment or order, you will pay interest on the amount owing under that judgment or order at the higher of the rate at which default interest is charged under clause 10 of the Loan Agreement and the interest rate charged on the court order.

### 11. Giving of notices

- (a) Notices take effect from the time they are received unless a later time is specified in them.
- (b) If notices are sent by post, they are taken to be received on the day they would be received in the ordinary course of post.
- (c) If notices are sent by a facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.
- (d) You must tell us as soon as possible if you change your name or your address.

### 12. Assignment

- (a) You must not assign your rights under the Terms and Conditions without our prior written consent, which we may withhold in our absolute discretion.
- (b) We may assign or otherwise deal with our rights under the Terms and Conditions, without your consent, in any way we consider appropriate free from any equities, set-off or cross claim which you could otherwise set up against us provided that you then have and may exercise the same rights against the assignee as you have against us.
- (c) You authorise us to disclose to any assignee or potential assignee (including any employee, agent or contractor engaged by that assignee or potential assignee) any information relating to you, the Loan and (if applicable) the Guarantee that we reasonably consider appropriate in the circumstances.

### 13. Continuing rights

- (a) Under law, a trustee in bankruptcy or a liquidator or administrator might demand the refund of a payment we receive pursuant to the Terms and Conditions. To the extent we are obliged to make a refund or we agree to do so, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under the Terms and Conditions as if the payment had never been made.
- (b) Each indemnity you give under the Terms and Conditions is a continuing obligation which survives termination of any other obligation you owe us under the Terms and Conditions.

### 14. Administration and adviser fees

- (a) We may:
  - pay adviser fees to any broker or financial planner or other financial intermediary who introduces you to us if they declare in the Application Form that you have agreed this with them; and
  - reimburse promotional and marketing fees from time to time out of our own funds to any broker or financial planner or other financial intermediary who introduces you to us.These fees should be disclosed to you by your broker, financial planner or other financial intermediary
- (b) We may pay Commonwealth Securities their fees and costs relating to administration of the Loan.

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## 15. Telephone Recording

You authorise us to record any telephone conversation between you (including your agents and employees) and us with or without an audible tone warning device.

## 16. Governing law

The laws of New South Wales govern the Terms and Conditions and the parties irrevocably and unconditionally submit themselves to the non-exclusive jurisdiction of the courts of that State (and courts of appeal from them) and (subject to your right to refer a matter to the Banking and Financial Services Ombudsman) waive any right they have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.

## 17. Code of Banking Practice

If you are an individual or small business, the relevant provisions of the Code of Banking Practice apply to these Terms and Conditions.

## 18. Warranties not excluded

Where any statute implies any term or warranty into these Terms and Conditions and that statute avoids or prohibits provisions in a contract excluding or modifying that term or warranty (except in certain cases), that implied term or warranty is not excluded or modified by any provision in these Terms and Conditions except to the extent permitted under that statute.

## 19. Severability

If any term or condition of these Terms and Conditions is found to be void or unenforceable for unfairness or any other reason (for example, if a court or other tribunal or authority declares it so), the remaining terms and conditions will continue to apply to the extent possible as if the void or unenforceable term or condition had never existed.

## PART 2 LOAN AGREEMENT

### 1. Opening a Loan

Opening a Loan is conditional upon:

- › the Borrower providing us with the necessary identification; and
- › us carrying out any necessary verification check(s).

### 2. Types of Loans and application for Loans

- (a) A Loan may be either:
  - (i) a Capital Investment Loan; or
  - (ii) an Interest in Advance Loan.
- (b) Subject to approval of your Capital Investment Loan application, we agree to provide a Capital Investment Loan to you which may be used only to invest in the Product.
- (c) Subject to approval of your Interest in Advance Loan application and your Capital Investment Loan application, we agree to provide an Interest in Advance Loan to you which may be used only to prepay in advance the yearly interest due and owing under the Capital Investment Loan.
- (d) If we approve your Loan application, we will advise particulars of the approval in a Loan Confirmation.
- (e) You agree you will be bound by these Terms and Conditions and any further and additional conditions we may impose if we approve your Loan application.

## Section 7: Terms and Conditions of the Loan (cont).

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- (f) If either:
  - (i) you do not apply for an Interest in Advance Loan, or
  - (ii) you apply for an Interest in Advance Loan but your Loan application is not approved by us,the terms of the Loan Agreement relating to the Interest in Advance Loan will have no application to you.

### 3. Drawings on a Loan Account

- (a) Our obligation to make available to you a Loan in one amount not exceeding the Loan Limit under the Capital Investment Loan on the Capital Investment Loan Start Date or a Loan in one amount equivalent to the Loan Limit under the Interest in Advance Loan on the Interest in Advance Loan Start Date is subject to the following conditions:
  - (i) your compliance with the Terms and Conditions; and
  - (ii) where we require a Guarantee, our receipt of a duly executed Guarantee; and
  - (iii) your Loan application is approved by us.
- (b) We have no obligation to provide an Interest in Advance Loan unless we provide to you, and are obliged to advance funds to you under a Capital Investment Loan.
- (c) For the Capital Investment Loan, if you have not drawn down under the Capital Investment Loan within 60 days of the Capital Investment Loan Start Date, we may regard the Capital Investment Loan as lapsed.
- (d) For the Interest in Advance Loan, you authorise us to draw down the Interest in Advance Loan on the Interest in Advance Loan Start Date by a single drawdown.
- (e) You may only make one drawing on the CIL Loan Account and one drawing on the Interest in Advance Loan (subject to and in accordance with clause 14 of the Loan Agreement).

### 4. Application of Loan proceeds

- (a) Upon drawdown of the Capital Investment Loan, you irrevocably authorise us to apply the Capital Investment Loan to invest in the Product on your behalf and pay any related expenses.
- (b) Upon drawdown of the Interest in Advance Loan, you irrevocably authorise us to apply the Interest in Advance Loan in payment of the yearly interest in advance due and owing by you under the Capital Investment Loan.
- (c) We are not liable for any loss you may suffer because the Capital Investment Loan Start Date or Interest in Advance Loan Start Date occurs during the time we take to lend you the money or forward any communications on your behalf.

### 5. Payment of Capital Investment Loan

- (a) You agree to repay the Capital Investment Loan in one amount on the Capital Investment Loan Maturity Date as set out in the Loan Confirmation.
- (b) Payment of the Capital Investment Loan under clause 5(a) will be effected in accordance with clause 12 of the Loan Agreement.
- (c) Payment of the interest on the Capital Investment Loan will be effected in accordance with clause 8 of the Loan Agreement.

### 6. Payment of Interest in Advance Loan

- (a) Subject to paragraph 6(c), you agree to repay the total of the Loan Balance of the Interest in Advance Loan by monthly instalments of principal and interest as set out in the Loan Confirmation.
- (b) Payment of the interest on the Interest in Advance Loan will be effected in accordance with clause 8 of the Loan Agreement.
- (c) You agree to repay the total of the Loan Balance of the Interest in Advance Loan to us in full no later than the earlier of:
  - (i) the Interest in Advance Loan Maturity Date; or
  - (ii) the date the Capital Investment Loan is repaid or becomes repayable under its terms.

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## 7. Your undertaking and representation

- (a) Where you are an individual you undertake to use the Capital Investment Loan solely to invest in the Product, which you acknowledge is wholly or predominantly for business or investment purposes (other than investment in residential property).
- (b) You undertake to provide us, upon request, any financial information in relation to you, your business, property, management, operations, financial condition and prospects as we may reasonably request.
- (c) You represent, on each occasion that you draw an amount from your Loan Account, that you are not insolvent and, if you are an individual, that you are not an undischarged bankrupt and have not assigned your estate or entered into any arrangement or composition for the benefit of your creditors.

## 8. Interest on the Loan Account

- (a) You pay interest only, at either a fixed or variable interest rate as set out in the Loan Confirmation.
- (b) You must pay interest on the outstanding debit balance on the Loan Account at the times and in the manner set out in the Loan Confirmation unless we agree otherwise.
- (c) Interest on the Capital Investment Loan:
  - Begins to accrue from the date we first debit the CIL Loan Account.
  - If it is being paid annually in advance at a fixed interest rate, is calculated and charged to the CIL Loan Account on the first day of the period for which the interest rate is fixed for the whole of that period on the basis of a 365 day year.
    - (i) Where you do not have an Interest in Advance Loan, the interest charged to the CIL Loan Account is then debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, the interest will be debited from your Nominated Account on the next Business Day.
    - (ii) Where you have an Interest in Advance Loan, we will draw down the Interest in Advance Loan from the IAL Loan Account and apply the Interest in Advance Loan in payment of the interest annual in advance due and owing under the Capital Investment Loan in accordance with clauses 2(c) and 3(b) of the Loan Agreement.
  - If it is being paid monthly in arrears at a fixed rate, is calculated daily by applying the fixed interest rate to the outstanding balance of the CIL Loan Account at the end of that day and is charged to the CIL Loan Account monthly and on the day the CIL Loan Account is repaid in full and the account is closed. The interest charged to the CIL Loan Account is then debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, the interest will be debited from your Nominated Account on the next Business Day. We charge interest on unpaid interest, fees and charges to your Nominated Account. We can do this at any time without informing you.
  - If it is being paid monthly in arrears at a variable rate, is calculated daily by applying the interest rate for that day to the outstanding balance of the CIL Loan Account at the end of that day and is charged to the CIL Loan Account monthly and on the day the CIL Loan Account is repaid in full and the account is closed. The interest charged to the CIL Loan Account is then debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, the interest will be debited from your Nominated Account on the next Business Day.
  - We charge interest on unpaid interest, fees and charges to your Nominated Account. We can do this at any time without informing you.
- (d) Interest on an Interest in Advance Loan:
  - (i) Begins to accrue from the date we first debit the IAL Loan Account
  - (ii) Must be paid monthly in arrears at a fixed rate and is calculated daily by applying the fixed interest rate to the outstanding balance of the IAL Loan Account at the end of that day and is charged to the IAL Loan Account monthly and on the day the IAL Loan Account is repaid in full and the account is closed. The interest charged to the IAL Loan Account is then debited from your Nominated Account on the last day of each month. If the last day of the month is not a Business Day, the interest will be debited from your Nominated Account on the next Business Day. We charge interest on unpaid interest, fees and charges to your Nominated Account. We can do this at any time without informing you.

## Section 7: Terms and Conditions of the Loan (cont).

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### **9. Where we agree that interest can be prepaid on the Capital Investment Loan**

We may consent to your request to prepay interest on the Capital Investment Loan (for the avoidance of doubt, without using an Interest in Advance Loan). If we consent to your request, we will debit your Nominated Account with the interest we charge for the whole of that period on the date the period starts.

### **10. Default interest**

You must pay us default interest on any amount you fail to pay on the due date in relation to the Loan.

Default interest:

- is charged at an interest rate equal to our monthly index rate for overdraft accounts plus a margin which we set from time to time and which reflects our reasonable costs incurred as a result of your failure to pay;
- is calculated daily on the overdue amount from the due date of payment of the amount until the amount is paid, is debited to your Nominated Account monthly (and on the date the Loan Account is repaid in full and the account is closed) and is due for payment on the date it is debited to your Nominated Account.

### **11. No deduction or withholding**

All monies payable by you shall be paid in full without set-off or counter-claim of any kind and free and clear of and without any deduction or withholding of any kind.

### **12. Repayment**

- (a) Subject to clause 13 of the Loan Agreement, you must repay or arrange repayment of the Capital Investment Loan and all other Money Owing under the Capital Investment Loan to us in one amount on the Capital Investment Loan Maturity Date;
- (b) Subject to clause 13 of the Loan Agreement, you must repay or arrange repayment of the Interest in Advance Loan and all other Money Owing under the Interest in Advance Loan by the Interest in Advance Loan Maturity Date.
- (c) You must, at least ten (10) Business Days prior to the Capital Investment Loan Maturity Date and no later than the date specified in the Loan Confirmation, by irrevocable notice in writing to us, inform us that:
  - (i) you will repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan on the Capital Investment Loan Maturity Date with your own capital or with other borrowed funds; or
  - (ii) you will repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan on the Capital Investment Loan Maturity Date with the Sale Proceeds and authorise us to apply the Sale Proceeds in repayment of the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan in accordance with clause 20 of the Loan Agreement.

If you do not provide a notice to us under this clause 12(c), you will be taken to have elected to use the Delivery Asset Sale Service under the Terms of Sale and to have authorised us to apply the Sale Proceeds to repay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan in accordance with clause 20 of the Loan Agreement.

- (d) If we are authorised or taken to be authorised to apply the Sale Proceeds under clause 12(c) of the Loan Agreement, you irrevocably authorise us to apply the Sale Proceeds in repayment of the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan in accordance with clause 12(c) and in addition to draw under any periodical debit or payment authority to ensure that, on the Capital Investment Loan Maturity Date, we receive the full loan principal and any interest owing under the Capital Investment Loan and the Interest in Advance Loan and all other costs, charges and expenses for which we are entitled to reimbursement under the Terms and Conditions.

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### **13. Prepayment and Termination**

- (a) You may prepay the Loan provided you give us not less than 5 Business Days notice.
- (b) If you provide a notice under paragraph (a), you must prepay the Loan in full. Partial prepayment of the Loan is not permitted.
- (c) If you prepay the Capital Investment Loan, you agree to prepay the Interest in Advance Loan and all Money Owing under the Capital Investment Loan and the Interest in Advance Loan on the date of repayment of the Capital Investment Loan.
- (d) You must prepay the Capital Investment Loan, all other Money Owing under the Capital Investment Loan and all Money Owing under the Interest in Advance Loan if your investment in the Product is terminated early under the Terms of Sale. Notwithstanding clause 12(c) of the Loan Agreement and irrespective of the date of the Interest in Advance Loan Maturity Date, you agree that we may apply the Sale Proceeds in repayment of the Capital Investment Loan and the Interest in Advance Loan and all other Money Owing in accordance with clauses 12(d) and 20 of the Loan Agreement, unless, subject to clause 3.9 of the Terms of Sale, you inform us in writing that you will be repaying the Capital Investment Loan and the Interest in Advance Loan with your own capital or with other borrowed funds.
- (e) If you prepay the Loan pursuant to paragraph (a) or (d), you must pay any interest, fees, Break Costs and other costs losses or damages which we may incur as a result of the Loan being repaid before the Capital Investment Loan Maturity Date or Interest in Advance Loan Maturity Date, together with any other moneys then accrued under this Loan Agreement to the date of prepayment (whether or not payable).
- (f) On or before the date of any optional prepayment pursuant to paragraph (a) or any mandatory prepayment pursuant to paragraph (d), you must pay to us the Prepayment Fee.
- (g) Amounts prepaid may not be re-borrowed under this Loan Agreement.
- (h) If there occurs any change in law or interpretation which makes it unlawful for us to give effect to the Loan Agreement, we may, in our absolute discretion, exercised with due care and skill, terminate the Loan upon giving you thirty (30) days prior written notice to you.

### **14. Automatic Redraw Facility**

- (a) Provided that no Default Event has occurred, we will notify you at least 1 month prior to the Interest in Advance Loan Maturity Date that, upon your repayment of the principal outstanding and accrued interest in respect of the Interest in Advance Loan in full, we will automatically redraw, in respect of an Interest in Advance Loan, an amount equal to 100% of the yearly interest on the Capital Investment Loan due and owing under the Capital Investment Loan for another Term commencing on the redraw date ("New Interest in Advance Loan").
- (b) You irrevocably authorise, instruct and direct us, upon any redraw, in respect of the New Interest in Advance Loan, to apply the proceeds of the redraw in prepayment of the yearly interest on the Capital Investment Loan in advance due and owing by you under the Capital Investment Loan for another Term commencing on the redraw date.
- (c) The indicative interest rate on the New Interest in Advance Loan will be stated in the notice provided to you under paragraph (a).
- (d) The interest on the New Interest in Advance Loan must be paid in accordance with clause 8(d) of the Loan Agreement.
- (e) Upon automatic redraw in accordance with paragraphs (a) and (b) above, we will advise particulars of your New Interest in Advance Loan in a Loan Confirmation (including the Interest Rate applicable to your New Interest in Advance Loan)
- (f) If you notify us at least 10 Business Days prior to the Interest in Advance Loan Maturity Date that you do not want us to make an automatic redraw in accordance with this clause 14, then we will not redraw any amounts and the yearly interest on the Capital Investment Loan must be paid by you in full in accordance with clause 8 of the Loan Agreement.

## Section 7: Terms and Conditions of the Loan (cont).

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### 15. Default

- (a) A Default Event occurs if:
- you fail to pay any sum payable by you under the Loan Agreement on the date the payment is due, or to give us a notice under clause 12(c) of the Loan Agreement;
  - you fail to duly and punctually perform or comply with any of your other obligations under the Loan Agreement;
  - a judgment of any court or any order of an authority is executed against any or all of your assets;
  - you fail to immediately comply with any direction by us to you;
  - you, without our prior written consent, create or purport or attempt to create any Security Interest over all or part of your rights in respect of the Product in favour of any person;
  - in our opinion a Materially Adverse Change occurs in respect to you or any Guarantor;
  - you, or the Guarantor make any representation or warranty to us in relation to the Terms and Conditions that, in our reasonable opinion, is misleading or incorrect in any material respect when made (whether the lack of correctness is apparent at the time or becomes apparent subsequently);
  - you or a signatory becomes a Proscribed Person; or
  - you fail to provide financial information which is requested pursuant to clause 7(b) of the Loan Agreement.
- (b) If a Default Event occurs:
- (i) we may declare, by notice in writing to you, that you are in default and that all amounts owing under the Terms and Conditions are immediately due and payable; and
  - (ii) if we make a declaration under clause 15(b)(i) of the Loan Agreement, you will be in breach of the Terms of Sale and your investment in the Product will be terminated in accordance with the terms of the Terms of Sale. You agree that we may apply any amounts that you are entitled to under the Terms of Sale as a consequence of your investment in the Product being terminated against any amounts which you owe to us under or in connection with the Loan, in accordance with clause 20 of the Loan Agreement.
- (c) We may exercise our right to make the declaration referred to in clause 15(b)(i) of the Loan Agreement despite any delay in our exercising the right or our having waived the right previously.
- (d) In addition to any other amount you must pay, after we make a declaration under clause 15(b)(i) of the Loan Agreement and on our demand, you must pay our estimate of the loss we will incur due to the Loan not being conducted for the whole of the then current period for which the Interest Rate is fixed (if any).

### 16. Refusal of service

- (a) Further to any right in clause 15(a), if you or an individual signatory appears to be a Proscribed Person, then we may, acting reasonably, immediately refuse to process or complete any transaction or dealing of yours; suspend the provision of a product or service to you; refuse to allow or to facilitate any of your assets held by us to be used or dealt with; refuse to make any asset available to you to any other proscribed person or entity; or terminate these arrangements with you. Provided we act in good faith and in compliance, or purported compliance, with any legal requirement in relation to a Proscribed Person, we will be under no liability to you if we do any or all of these things. Our rights under this clause are in addition to all other rights we may have.
- (b) If we exercise our rights under this clause you must pay us any damages, losses, costs or expenses that we reasonably incur in relation to any action taken under this clause, including without limitation our refusal of service under this clause, administrative costs and/or costs of sale or purchase of any transaction or deal put in place for the purposes of meeting our obligations under these Terms and Conditions.

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## 17. Fees and Charges

- (a) You must pay us:
- our fees and charges (as varied from time to time), including any establishment fee, as soon as they are due and payable, whether or not you draw on the Loan Account. We set out particulars of the fees and charges you must pay, and the purpose of the fees and charges, in the schedule of fees and charges to the Terms and Conditions. On your request, we will supply you with a copy of our current fees and charges for the Loan.
  - government stamp duty and any other government tax or duty payable in relation to the Terms and Conditions, or any Guarantee provided to us or any transaction on the Loan Account.
  - all amounts which we are charged or charge or pay or incur in connection with establishing and administering the Loan, or any transaction contemplated by the Terms and Conditions, terminating the Loan, or our exercising or enforcing any right, power, claim or remedy of any kind arising out of the Terms and Conditions.
- (b) We may debit the Loan Account with all unpaid fees and charges you must pay us under the Terms and Conditions. Any amounts we receive from you for crediting to the Loan Account are applied to pay unpaid fees and charges on the Loan Account first.

## 18. Disclaimers

- (a) We take no responsibility for any decision you make to obtain the Loan, to enter into any arrangement incidental to the Loan, about the investment you make with the Loan proceeds, or the performance of your investment in the Product.
- (b) In so far that they act on our behalf and not as your broker or financial advisor, our officers and agents do not have our authority to recommend an investment in the Product, make any predictions about what might happen to Interest Rates or the value of your investment in the Product or to make any other representation, prediction or statement of opinion about any other matter or thing affecting the Terms and Conditions.

## 19. Indemnity

- (a) You agree to indemnify us in an amount reasonably determined by us from and against all actions, suits, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by us arising out of or in connection with:
- any Default Event;
  - the exercise or non-exercise of any right, power or remedy contained, referred to or implied in the Terms and Conditions;
  - any prepayment including, without limitation, any loss or expense incurred in respect of:
    - (i) any cost associated with us obtaining an appropriate form of risk management agreement (or instrument of similar effect) with respect to the Terms and Conditions or the funding of the Loan; or
    - (ii) the exercise, non-exercise or the prevention or inability by us to exercise any rights under any risk management agreement; or
    - (iii) the liquidation or redeployment of funds acquired from third parties to make or maintain the Loan; or
    - (iv) the termination or reversal of any arrangements entered into in connection with the funding of the Loan; or
    - (v) any loss or profits that we may suffer by reason of the early liquidation or redeployment of such funds or the termination or reversal of such arrangements.
- (b) You agree to compensate us on demand if we determine that any new or amended law, order, official policy, directive or request of any governmental agency, or any change in any interpretation or administration of any law, order, official policy, directive or request of any governmental agency, directly or indirectly:
- increases the cost to us of providing, funding or maintaining the Loan Account; or
  - reduces any amount received or receivable by us, or its effective return, in connection with the Loan Account; or
  - reduces our return on capital allocated to the Loan Account, or its overall return on capital.

## Section 7: Terms and Conditions of the Loan (cont).

- (c) In any demand that we make, we will give you sufficient details of any amount which we certify to you that we have expended, incurred or will incur, or which we will forego pursuant to paragraphs (a) and (b).
- (d) We are not responsible for any loss of any kind whatsoever (including, without limitation, anything done by any servant, agent or auctioneer employed by us, any attorney of ours or a receiver) which may occur in or about the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of ours under the Terms and Conditions if we and they have acted with due care and skill and in compliance with any legal requirement.

### 20. Set off

You authorise us (but without imposing any obligation on us) to apply:

- (a) any credit balance, whether or not matured, in any of your accounts (each an “Account”) with any branch of ours; and
- (b) any amounts actually or contingently owing to you by us under or in relation to the Product Issuer Obligations, in any currency, in or towards satisfaction of any sum at any time due and payable by you to us under or in relation to this Loan. You undertake not to attempt to assign your property in any Account or in the Product Issuer Obligations.

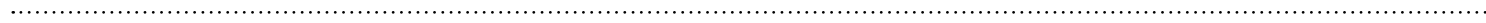
### SCHEDULE

#### Fees and charges for the Loan

Fee	Purpose	Amount
<b>Establishment Fee</b>	To establish the Capital Investment Loan and Interest in Advance Loan	If applicable, it will be set out in Part 2 of this PDS.
<b>Trust Deed Review Fee</b>	We may require in our discretion a review of the trust deed to ensure the Capital Investment Loan and Interest in Advance Loan is allowed under the trust deed terms.  This fee is applicable to trust applicants.	\$430, subject to change by us
<b>Prepayment Fee</b>	To cover administration costs	\$300, subject to change by us
<b>Direct Debit Dishonour Fee</b>	Where a direct debit to your Nominated Account is dishonoured	\$50, subject to change by us
<b>Statement Reissuing Fee</b>	To retrieve archived or historical information about a Transaction	\$50, subject to change by us

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# Directory

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Registered office of the Issuer:  
Commonwealth Bank of Australia  
Ground Floor  
Tower 1  
201 Sussex Street  
Sydney NSW 2000

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