

VARIATION OF ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

National Australia Bank Limited
ACN 004 044 937
800 Bourke Street, Docklands VIC 3008

(NAB)

1. Definitions

- 1.1 Defined terms used in this variation of the Enforceable Undertaking given by NAB to ASIC on 21 December 2016 (**Enforceable Undertaking**) have the same meaning as in the Enforceable Undertaking. A copy of the Enforceable Undertaking is attached as an Annexure to this document.

2. Background

- 2.1. On 21 December 2016, ASIC accepted the Enforceable Undertaking, which had been offered to it by NAB.
- 2.2. Under paragraphs 3.5 to 3.14 of the Enforceable Undertaking, NAB must develop, implement and then maintain in operation for at least a further three year period, an FX Program.
- 2.3. Following acceptance of the Enforceable Undertaking by ASIC, ASIC was unable to appoint the Independent Expert sufficiently in time to permit NAB to provide its FX Program by 30 June 2017 under paragraph 3.5 of the Enforceable Undertaking. In light of this, ASIC and NAB agreed to extend the date at paragraph 3.5 of the Enforceable Undertaking.
- 2.4. In accordance with the agreed extended date, NAB provided its FX Program to ASIC and the Independent Expert under paragraph 3.5 of the Enforceable Undertaking on 28 November 2017.
- 2.5. In accordance with an extended date agreed between ASIC and NAB, the Independent Expert delivered its Expert Report under paragraph 3.7 of the Enforceable Undertaking on 29 March 2018. The Independent Expert concluded that it was unable to undertake a complete assessment of the effectiveness of NAB's FX Program because further substantial development was required in order for the FX Program to be able to be subject to an effectiveness assessment.

- 2.6. Given this, NAB has offered this variation of the Enforceable Undertaking in order to further develop its FX Program, which will then be subject to an effectiveness assessment by the Independent Expert in accordance with the provisions of the Enforceable Undertaking, as varied. This will enable NAB to subsequently satisfy its undertakings in paragraph 3.8 and following of the Enforceable Undertaking.
- 2.7. ASIC has agreed to accept this variation of the Enforceable Undertaking on the basis that neither the intent nor realisation of the objective of the Enforceable Undertaking has been altered.

3. Variation of Undertakings

- 3.1 Under s93AA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), NAB and ASIC agree to make the following variations to the Enforceable Undertaking:

- 3.1.1 After paragraph 3.7, insert the following paragraphs:

3.7A. By 10 August 2018, NAB undertakes to provide to ASIC and the Independent Expert an updated version of its FX Program (**Updated FX Program**) addressing all of the requirements of paragraphs 3.5 and 3.6.

3.7B. Between 13 August 2018 and 5 October 2018, the Independent Expert is to:

3.7B.1. conduct an assessment of the effectiveness of the Updated FX Program to prevent, detect and respond to the matters set out at paragraph 3.5.1(i)-(v); and

3.7B.2. provide a written report (**Addendum to the Expert Report**) to NAB and ASIC of the assessment referred to in paragraph 3.7B.1, including:

(i) identification of any deficiencies in the Updated FX Program; and

(ii) recommendations for actions that, in the opinion of the Independent Expert, would be necessary for NAB to implement to rectify deficiencies identified in the Addendum to the Expert Report.

- 3.1.2 In paragraph 3.8, replace the words “within 90 days (or such later date as agreed between ASIC and NAB) of receipt of the Expert Report” with the words “between 5 October 2018 and 23 November 2018”.

- 3.1.3 In paragraphs 3.8.1, 3.8.2 (where twice appearing) and in the final line of paragraph 3.9, insert “and Addendum to the Expert Report” after the words “Expert Report”.

- 3.1.4 In paragraph 4.2, insert “3.7B,” after “3.7,”.

3.2 No other aspects of the Enforceable Undertaking are changed in any way.

4. Acknowledgments

4.1 NAB acknowledges that ASIC:

- (a) may issue a media release on execution of this variation referring to its terms and to the reasons for its execution;
- (b) may from time to time publicly refer to this variation;
- (c) will, subject to paragraph 4.4 of the Enforceable Undertaking, from time to time publicly report about compliance with the Enforceable Undertaking as varied; and
- (d) will make this variation available for public inspection.

4.2 NAB acknowledges that this variation in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in the Enforceable Undertaking as varied.

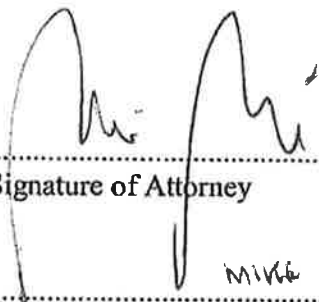
4.3 NAB acknowledges that the entry into this variation modifies the Enforceable Undertaking but does not affect the validity of the Enforceable Undertaking and does not prejudice ASIC's ability to take any action in relation to the Enforceable Undertaking.

4.4 NAB acknowledges that this variation has no operative force until accepted by ASIC.


EXECUTED for and on behalf of)
 NATIONAL AUSTRALIA BANK)
 LIMITED (ACN 004 044 937) by)
 its attorney who holds the position)
 of Level 1 Attorney under the Power)
 of Attorney dated 1 March 2007 in)
 the presence of:)


 Signature of witness)

JUSTIN TILLEY)
 Name of witness (block letters)


 Signature of Attorney)
 MIKE BAWZ)
 Name of Attorney)

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:


 Greg Yanco

Delegate of Australian Securities and Investments Commission

Date: 28/6/18

Annexure

**Copy of the Enforceable Undertaking offered by NAB to ASIC and dated 21 December
2016**

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

National Australia Bank Limited
ACN 004 044 937
800 Bourke Street, Docklands VIC 3008

(NAB)

1. Definitions

In addition to terms defined elsewhere in this enforceable undertaking, the following definitions are used:

Acceptance Date means the date this undertaking is accepted by ASIC.

AFSL means Australian Financial Services Licence.

ASIC Act means the *Australian Securities and Investments Commission Act 2001 (Cth)*.

ASIC's Concerns means the matters referred to and set out in paragraphs 2.15 to 2.17 of this enforceable undertaking.

BIS Code means the FX Global Code published by the Bank of International Settlements as in force from time to time.

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

Deal has the meaning given to it in section 761A of the Corporations Act.

Desk Manual has the meaning given to it in paragraph 3.6.1 of this enforceable undertaking.

Desk Manual Test has the meaning given to it in paragraph 3.6.2 of this enforceable undertaking.

FICC means NAB's Fixed Income, Currencies & Commodities division.

Foreign Exchange Contract has the meaning given to it in section 761A of the Corporations Act.

FX means foreign exchange.

FX Salesperson means a person employed by NAB FICC's FI Sales division who has the primary responsibility for handling customer orders for Spot FX on behalf of NAB.

Independent Expert means the expert referred to in paragraph 3.2 appointed by ASIC.

Makes a Market has the meaning given to 'makes a market for a financial product' in section 761A of the Corporations Act.

NAB means National Australia Bank Limited ACN 004 044 937 (AFSL 230686).

Relevant Period means the period 1 January 2008 to 30 June 2013.

Spot FX refers to Foreign Exchange Contracts involving the exchange of two currencies at a price (exchange rate) agreed on a date (the trade date), and which are usually settled two business days from the trade date, as further described in paragraph 2.4 of this enforceable undertaking.

Spot FX Trader means a person employed by NAB FICC who has the primary responsibility for transacting in spot Foreign Exchange Contracts on behalf of NAB with other market participants in the Wholesale FX Market.

Wholesale FX Market is described in paragraph 2.7 of this enforceable undertaking and is further described in the BIS Code.

WM/R London 4pm fix rate refers to a benchmark rate for Spot FX published by Thomson Reuters which, during the Relevant Period, was determined over a one-minute window from 30 seconds before 4:00pm in London to 30 seconds after 4:00pm (that is, from 3:59:30pm to 4:00:30pm).

2. Background

ASIC's role

- 2.1. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

NAB's Foreign Exchange Business

- 2.2. NAB operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3. During the Relevant Period, NAB held an AFSL (no. 230686) which authorised NAB, among other things, to:
 - 2.3.1. provide financial product advice in respect of Foreign Exchange Contracts;
 - 2.3.2. Deal in Foreign Exchange Contracts; and

2.3.3. Make a Market in Foreign Exchange Contracts.

- 2.4. A Foreign Exchange Contract entered into on the trade date, under which one party delivers an agreed amount of one currency in exchange for the other party delivering an agreed amount of another currency on a date that is usually two business days following the trade date (the settlement date), is known as a spot Foreign Exchange Contract.
- 2.5. Throughout the Relevant Period, NAB conducted a global Spot FX business (as part of FICC), in the course of which it provided financial services relating to Spot FX through offices, including in New York, London and Sydney.
- 2.6. As part of that Spot FX business, NAB entered into different types of Spot FX agreements with its clients (client orders), including Australian clients. The client orders generally included details such as the identity of the client, the relevant currency pair, and instructions for the fill of the client order such as the direction, volume and price (level) to be traded, and included orders referenced to the WM/R London 4pm fix rate (fix orders).
- 2.7. The Wholesale FX Market is a global over-the-counter market. It facilitates the exchange of one currency for another and thus allows market participants to buy and sell foreign currencies. Those participants include large global banks, smaller regional banks, investment firms, inter-dealer brokers, agency brokers, hedge funds, other institutions, corporates and central banks. This market operates worldwide, on a 24 hour basis, commencing on Mondays at 5.00am Sydney time, and concluding on Fridays at 5.00pm New York time. It is one of the largest financial markets in the world, with high liquidity and large volumes of currency traded on a daily basis. Liquidity (that is, the availability of supply) can vary within a given day depending on how many markets are open.
- 2.8. NAB is a participant in this Wholesale FX Market and acts as a market maker by quoting prices at which it is willing to trade in Spot FX. During the Relevant Period, NAB primarily engaged in this market through electronic trading platforms including the Reuters platform and dedicated electronic communication systems.

Overview of ASIC's investigation

- 2.9. ASIC's inquiry into NAB's Spot FX business began on 3 April 2014 when ASIC issued to NAB a notice under section 912C of the Corporations Act, as part of a market-wide inquiry into the conduct of financial services licensees with domestic and offshore Spot FX desks.
- 2.10. Following this inquiry, ASIC commenced an investigation into a suspected failure by NAB to comply with its general obligations under section 912A of

the Corporations Act in respect of trading in Spot FX during the Relevant Period.

ASIC's investigation findings

2.11. ASIC's investigations have caused it to form the view that there was the following conduct by employees of NAB during the Relevant Period which reflected a failure by NAB to comply with its general obligations under section 912A of the Corporations Act.

2.12. On several occasions, a NAB employee on an offshore Spot FX desk acted together with an employee of another Australian bank by sharing confidential information and by entering offers into the Reuters trading platform without any apparent legitimate commercial reason for placing the offers. For example, the Spot FX Trader was involved in the following chat communication with a trader from another Australian bank wherein the external trader disclosed confidential information to the Spot FX Trader in relation to his trading position. Following the receipt of the information, the Spot FX Trader agreed to place and cancel offers in Reuters in order to assist the external trader to obtain a potential unfair advantage:

External market participant:	<i>im 17 short</i>
Spot FX Trader:	<i>k</i>
External market participant:	<i>that was my 44 offer</i>
Spot FX Trader:	<i>k</i>
External market participant:	<i>go 43 offered 1 and get ready to pull ok,</i>
Spot FX Trader:	<i>ok</i>
...	
External market participant:	<i>go 43 offerd 1 again and get ready</i>
Spot FX Trader:	<i>k</i>
External market participant:	<i>off</i>
Spot FX Trader:	<i>off</i>
External market participant:	<i>nice</i>

2.13. On a number of occasions, NAB employees on a Spot FX desk disclosed specific confidential details of pending client orders to external market participants, including the identification of the client through the use of code names. For example, on one occasion during the Relevant Period, a Spot FX Trader disclosed a client order to an external market participant by identifying the NAB client, using a code name, as well as details of volume (being over \$100 million) and rate (45) of the client order. The disclosure was made in the following chat communication:

Spot FX Trader:	<i>we got offer at 45</i>
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...
 Spot FX Trader: *tonne and change*
 ...
 External market participant: *what kind of acct is it for*
 ...
 Spot FX Trader: *a*
 Spot FX Trader: *c*
 Spot FX Trader: *b*
 ...
 External market participant: *wondering*
 External market participant: *hey go to google*
 External market participant: *and type in [code name]*
 Spot FX Trader: *yea and*
 External market participant: *what does it come up with*
 External market participant: *a [redacted]?*
 Spot FX Trader: *yea*
 External market participant: *[redacted] one ah*
 Spot FX Trader: *yea*
 Spot FX Trader: *got ya*

2.14. On several occasions, NAB employees on an offshore Spot FX desk inappropriately received from and disclosed to other market participants confidential and potentially material information about their own institution's client flow or proprietary positions, including information concerning likely directional flow at the WM/R London 4pm fix rate, which was inconsistent with a proper approach to market making or hedging. For example, on at least one occasion, a NAB employee on an offshore Spot FX Sales Desk inappropriately received from the employee of another Australian bank details about pending fix orders, in order to inform their joint personal trading strategy called 'papa' as shown in the chat communication below:

External market participant: *some lhs aud to do, nig big just 60 oz so far*
 FX Salesperson: *ok*
 External market participant: *120 now*
 FX Salesperson: *ok... u wanna do 35... give u more bullets.*
 External market participant: *ok... done lf okay with you*

FX Salesperson:	<i>sure. Its not enough for us to get Involved today... no papa thou</i>
External market participant:	<i>ok we have now 250... so 35 I buy from you at the fix latu</i>
FX Salesperson:	<i>yes</i>
External market participant:	<i>300 now our total lhs</i>
FX Salesperson:	<i>ok papa in</i>
External market participant:	<i>ok fine with me</i>

ASIC's Concerns

2.15. As a result of matters referred to in paragraphs 2.11 to 2.14, ASIC is concerned that during the Relevant Period, NAB failed to comply with its obligations under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that financial services in connection with its Spot FX business were provided efficiently, honestly and fairly, in that NAB failed to ensure that its systems, controls, training, guidance, and framework for monitoring and supervision of employees in its Spot FX business were adequate to prevent, detect and respond to:

2.15.1. inappropriate disclosure or receipt of confidential information as between Spot FX market participants; and

2.15.2. other forms of misconduct that might arise out of the disclosure or receipt of such information.

In particular, ASIC is concerned that, during the Relevant Period:

2.15.3. NAB did not provide adequate guidance to its Spot FX Traders and FX Salespersons regarding the handling of confidential information and appropriate interactions with other Spot FX market participants;

2.15.4. NAB did not have adequate arrangements for controlling and monitoring interactions between its Spot FX Traders and FX Salespersons, and other Spot FX market participants; and

2.15.5. NAB did not provide adequate training or guidance to its Spot FX Traders and FX Salespersons on the substantive application of market misconduct provisions within Part 7.10 of the Corporations Act to trading in the Wholesale FX Market.

- 2.16. ASIC is also concerned that, by reason of the above, during the Relevant Period, NAB did not comply with Condition 2 of its AFSL, by which it was required to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that it complies with its obligation to ensure that its financial services were supplied efficiently, honestly and fairly.
- 2.17. ASIC is concerned that the conduct referred to in paragraphs 2.11 to 2.14, taken separately or together, had the potential to undermine confidence in the proper functioning and integrity of the market.

Acknowledgement of ASIC's Concerns

- 2.18. NAB acknowledges ASIC's Concerns and that they are reasonably held and has offered an enforceable undertaking in terms set out at Section 3 below as a resolution of ASIC's Concerns.

3. Undertakings

- 3.1. Under section 93AA of the ASIC Act, NAB has offered, and ASIC has agreed to accept as an alternative to ASIC commencing civil proceedings or pursuing administrative action against NAB in respect of ASIC's Concerns, the following undertakings.

Remediation assessed by an Independent Expert

Engagement of Independent Expert

- 3.2. NAB agrees to the appointment by ASIC of an Independent Expert who, in ASIC's opinion:
 - 3.2.1. has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
 - 3.2.2. is independent of NAB, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.
- 3.3. NAB agrees that the terms of engagement of the Independent Expert appointed by ASIC will include at least the following:
 - 3.3.1. a statement to the effect that the work of the Independent Expert is being carried out for NAB and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
 - 3.3.2. a statement that upon request ASIC is to be copied into all or some communications between NAB and the Independent Expert;
 - 3.3.3. a requirement that the Independent Expert notify ASIC where a conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement;

- 3.3.4. a requirement that the Independent Expert perform the work, and provide the written reports to ASIC and NAB, as set out at paragraphs 3.7, 3.9, 3.13 and 3.15;
- 3.3.5. acknowledgement that in relation to the written reports to be provided to ASIC and NAB as described in paragraphs 3.7, 3.9, 3.13 and 3.15, ASIC may from time to time publicly refer to the content of the written report(s), and may make a summary of the content of the written report(s) or a statement that refers to the content of the written report(s) public (subject to paragraph 4.4); and
- 3.3.6. a requirement that the written reports of the Independent Expert:
 - (i) set out separately each of the factual findings or assumptions on which the Independent Expert's opinion is based;
 - (ii) set out separately from the factual findings or assumptions each of the Independent Expert's opinions;
 - (iii) set out the reasons for each of the Independent Expert's opinions; and
 - (iv) where the Independent Expert believes that its written report may be incomplete or inaccurate without some qualification, that qualification.

Undertakings to ensure access for an expert

- 3.4. NAB undertakes to:
 - 3.4.1. permit the Independent Expert, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current employees;
 - 3.4.2. give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the written reports required to be prepared by the Independent Expert under this enforceable undertaking; and
 - 3.4.3. otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the written reports required to be prepared by the Independent Expert under this enforceable undertaking.

Proposed FX Program

- 3.5. NAB undertakes to, by 30 June 2017 (or such later date as agreed between ASIC and NAB), provide to ASIC and the Independent Expert a program (FX Program):
 - 3.5.1. of changes to its existing systems, controls, training, guidance and framework for monitoring and supervision of employees in its Spot FX business to prevent, detect and respond to conduct of the following types:

- (i) attempts to manipulate the market for a currency, including by placing offers without a legitimate commercial reason and attempts to influence benchmark rates;
- (ii) inappropriate trading while in possession of confidential and potentially material information;
- (iii) disclosures of client confidential information;
- (iv) disclosures of confidential and potentially material information; and
- (v) inappropriate personal trading,

to ensure compliance with NAB's obligation to ensure that relevant financial services are provided efficiently, honestly and fairly; and

3.5.2. which specifies the date by which each proposed action will be taken.

3.6. The FX Program is to include (but not be limited to) the following:

- 3.6.1. revisions to the desk manual for Spot FX Traders and FX Salespersons globally (Desk Manual) to address the matters set out at paragraph 3.5.1(i)-(v) and so that it aligns with those recommendations made in the BIS Code that are relevant to NAB's Spot FX business;
- 3.6.2. a mandatory face-to-face training program in relation to the revised Desk Manual for Spot FX Traders and FX Salespersons globally followed by a compulsory test for all current Spot FX Traders and FX Salespersons (Desk Manual Test). Under that program, if a Spot FX Trader or FX Salesperson does not pass the Desk Manual Test, their line manager must provide written recommendations to the Executive General Manager - FICC at NAB as to the consequences;
- 3.6.3. a requirement that the requirements of paragraph 3.6.2 above shall also apply to all new Spot FX Traders and FX Salespersons and shall be performed within no more than 3 months of their start date;
- 3.6.4. an appropriate monitoring system of Spot FX Traders' communications and FX Salespersons' communications on electronic trading platforms and dedicated electronic communication systems for adherence to the revised Desk Manual; and
- 3.6.5. documentation of the matters at paragraphs 3.6.1 to 3.6.4 in a formal procedures document that will require formal sign off by line managers in NAB's Spot FX business, NAB's management and NAB's Operational Risk & Compliance function.

Assessment by Independent Expert

- 3.7. The Independent Expert is to, within three months of receiving the FX Program under paragraph 3.5 (or such other date as may be agreed by NAB and ASIC):
- 3.7.1. conduct an assessment of the effectiveness of the FX Program to prevent, detect and respond to the matters set out at paragraph 3.5.1(i)-(v); and
 - 3.7.2. provide a written report (**Expert Report**) to NAB and ASIC on the assessment referred to in paragraph 3.7.1, including:
 - (i) identification of any deficiencies in the FX Program; and
 - (ii) recommendations for actions that, in the opinion of the Independent Expert, would be necessary for NAB to implement to rectify deficiencies identified in the Expert Report.

Provision of Final FX Program

- 3.8. NAB undertakes to, within 90 days (or such later date as agreed between ASIC and NAB) of receipt of the Expert Report, provide to ASIC and the Independent Expert a revised FX Program (**Final FX Program**) which:
- 3.8.1. incorporates the actions NAB proposes to take to implement recommendations identified in the Expert Report;
 - 3.8.2. in respect of any recommendation identified in the Expert Report which NAB will not implement, provides reasons and an alternative action (if any) that NAB proposes to take to address the cause of the recommendation in the Expert Report;
 - 3.8.3. specifies the date by which each action will be taken; and
 - 3.8.4. provides for all proposed changes to be implemented in a reasonable timeframe.
- 3.9. The Independent Expert is to, within 10 days of receiving the Final FX Program, provide a written report (**Further Expert Report**), with reasons, to ASIC and NAB reporting on whether, in the opinion of the Independent Expert, and having regard to any reasons and proposed alternative actions provided by NAB under paragraph 3.8.2, the Final FX Program addresses the cause of the recommendation in the Expert Report.
- 3.10. NAB and ASIC shall seek to agree the terms of the Final FX Program, each acting reasonably. If NAB and ASIC are unable to reach agreement on any of the terms of the Final FX Program, then the provisions of paragraph 3.11.3 apply to the implementation of such terms as are agreed.

Implementation of Final FX Program

- 3.11. NAB undertakes to:
- 3.11.1. ensure that sufficiently qualified and skilled staff are employed to discharge the Final FX Program; and
 - 3.11.2. implement the Final FX Program in full, and within the timeframes specified in the Final FX Program, or such varied timeframes as are agreed by ASIC; or
 - 3.11.3. alternatively to paragraph 3.11.2, in the event that not all terms of the Final FX Program are agreed by NAB and ASIC, implement those terms of the Final FX Program which are agreed, within the timeframes specified in the Final FX Program, or such varied timeframes as are agreed by ASIC.
- 3.12. NAB undertakes to, within 20 days of full implementation of the Final FX Program, provide written confirmation to ASIC and the Independent Expert that:
- 3.12.1. the Final FX Program has been fully implemented; and
 - 3.12.2. it believes the Final FX Program is effective, to the extent reasonably possible, to address the matters set out at paragraph 3.5.1(i)-(v),
signed by the Executive General Manager – FICC and the Chief Risk Officer for Corporate and Institutional Banking at NAB or, in the event of those positions being discontinued, by two members of senior management of NAB as agreed with ASIC.

Assessment of FX Program Implementation by the Independent Expert

- 3.13. The Independent Expert is to, within three months after the receipt of NAB's notification under paragraph 3.12 (or such other date as may be agreed between NAB and ASIC), conduct an assessment of NAB's implementation of the Final FX Program and to provide a written report (**Implementation Expert Report**) on the outcome of such assessment to NAB and ASIC as soon as practicable after that assessment.

Ongoing review of FX Program

- 3.14. NAB undertakes that, every year for a period of three years from the provision of the confirmation referred to at paragraph 3.12 of this enforceable undertaking, it will:
- 3.14.1. conduct an internal review of the current operation of the Final FX Program (including any material changes), and document the results of that review (**Internal Review Report**);
 - 3.14.2. provide a copy of the Internal Review Report to the Executive General Manager - FICC and the Chief Risk Officer for Corporate and Institutional Banking; and

- 3.14.3. provide a copy of the Internal Review Report to ASIC and the Independent Expert.
- 3.15. The Independent Expert is to, within 60 days of receipt of each of the Internal Review Reports, conduct an assessment of the effectiveness of the Final FX Program, as then in operation (and including any material changes), to prevent, detect and respond to matters set out at paragraph 3.5.1(i)-(v), and to provide a written report (Annual Expert Report) on the outcome of such assessment to NAB and ASIC as soon as practicable after that assessment.

Attestation

- 3.16. NAB undertakes to, upon full implementation of the Final FX Program, and thereafter annually for a period of three years, provide ASIC with an attestation signed by the Executive General Manager - FICC and the Chief Risk Officer for Corporate and Institutional Banking or, in the event of those positions being discontinued, by two members of senior management of NAB as agreed with ASIC, that:
- 3.16.1. he or she has taken reasonable steps to satisfy himself or herself that NAB's systems and controls in its Spot FX business are appropriate and adequate to effectively prevent, detect and respond to the matters set out at paragraph 3.5.1(i)-(v); and
- 3.16.2. confirms nothing has come to its attention during the preceding twelve months that would indicate that the Final FX Program (including any material changes) is not appropriate, to the extent reasonably possible, to address the matters set out at paragraph 3.5.1(i)-(v); or
- 3.16.3. identifies any matters that have come to its attention during the preceding twelve months that would indicate that the Final FX Program (including any material changes) is not appropriate, to the extent reasonably possible, to address the matters set out at paragraph 3.5.1(i)-(v) and the steps NAB has taken to address those matters.

Community benefit payment

- 3.17. NAB undertakes to make by 30 January 2017, or such other date as agreed by ASIC and NAB, a community benefit payment in the amount of \$2.5 million to Financial Literacy Australia to fund the advancement of financial literacy in the aged care sector (including by providing assistance for aged care financial consumers with cognitive difficulties) and the promotion of ethical behaviour in Australian financial markets.

Other undertakings

- 3.18. NAB undertakes to pay the costs of its compliance with this enforceable undertaking.
- 3.19. NAB undertakes to pay the costs of the Independent Expert appointed by ASIC.

- 3.20. NAB undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing NAB's compliance with the terms of this enforceable undertaking.
- 3.21. NAB undertakes to notify ASIC as soon as reasonably practicable and in any event within five business days of becoming aware of any failure by NAB to comply with a term of this enforceable undertaking.

4. Acknowledgments

- 4.1. NAB acknowledges that ASIC:
 - 4.1.1. may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2. may from time to time publicly refer to this undertaking;
 - 4.1.3. will, subject to paragraph 4.4, from time to time publicly report about compliance with this undertaking; and
 - 4.1.4. will make this undertaking available for public inspection.
- 4.2. In relation to the written reports to be provided to ASIC and NAB under paragraphs 3.7, 3.9, 3.13 and 3.15, NAB acknowledges that ASIC:
 - 4.2.1. may issue a media release referring to the content of the written reports;
 - 4.2.2. may, subject to paragraph 4.4, from time to time publicly refer to the content of the written reports; and
 - 4.2.3. will make available for public inspection a summary of the content of the written reports, or a statement that refers to the content of those reports.
- 4.3. NAB acknowledges that ASIC may, subject to paragraph 4.4, from time to time publicly refer to the terms of the Final FX Program.
- 4.4. ASIC acknowledges that it will delete, remove or not refer to any specific information from an expert written report or the Final FX Program that:
 - 4.4.1. consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 4.4.2. ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of NAB or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
 - 4.4.3. ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.4.4. NAB has requested not to be released if ASIC is satisfied that the information:

- (i) would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of NAB otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
- (ii) it should not be released because it would be against the public interest to do so.


4.5. Further NAB acknowledges that:

- 4.5.1. ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's Concerns or arising from future conduct; and**
- 4.5.2. this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.**

4.6. ASIC acknowledges that NAB has co-operated with ASIC in its investigation.

4.7. NAB acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and NAB and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

EXECUTED by NATIONAL AUSTRALIA)
BANK LIMITED in accordance with)
section 127(1) of the Corporations Act)
2001 (Cth) by authority of its directors:)


.....
Signature of director

DAVID ARMSTRONG
.....
Name of director (block letters)



.....
Signature of director/company
secretary*

*delete whichever is not applicable

LOUISE THOMSON
.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Accepted by the Australian Securities and Investments Commission under s93AA of the
ASIC Act by its duly authorised delegate:


.....

Christopher Savundra

Delegate of Australian Securities and Investments Commission

Date: 21 DECEMBER 2016

