

# Capital Japan

Product Disclosure Statement  
The easy way to invest in Japan

Issued by the Commonwealth Bank of Australia ABN 48 123 123 124, AFSL 234945  
Issue date 7 February 2006

## Disclosures and important information

**Product Disclosure Statement:** This Product Disclosure Statement (“PDS”) sets out general information relating to Capital Japan (“Capital”), and the terms and conditions of sale. You should read the entire PDS before deciding whether to invest in Capital Japan. This PDS has been prepared by Commonwealth Bank of Australia (“the Bank”), the issuer of Capital Japan. This PDS does not constitute an offer for sale or issue of any securities by the Commonwealth Bank that requires disclosure under Chapter 6D of the Corporations Act.

**Terms of Sale:** Investments in Capital Japan are not bank deposits. They are contracts entered into between Investors and the Commonwealth Bank of Australia 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 26-33 of this PDS. 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.

**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 Japan, 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 Japan, the Delivery Asset or any other security and should seek independent financial and taxation advice before making a decision whether to invest in Capital Japan. No person is authorised by Commonwealth Bank to give any information or to make any representation not contained in this PDS. Any information or representation not contained in this PDS must not be relied upon as having been authorised by or on behalf of the Commonwealth Bank. Nothing in this PDS is, or may be relied upon as, a representation as to the future performance of Capital Japan or of any Reference Index, 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 the Commonwealth Bank for the purpose of its preparation.

**Changes to Information in the 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, the Commonwealth Bank will update the information by posting a notice on its website at [www.commsec.com.au](http://www.commsec.com.au). You can request a paper copy of updated information by telephoning **13 15 19**.

**Cooling-off:** No cooling-off rights apply to the issue of Capital Japan. This means that, in most circumstances, you cannot withdraw an application for Capital Japan once it has been made. If you withdraw your application for Capital Japan, the Early Termination provisions will apply.

**Jurisdiction and Selling Restrictions:** This Product Disclosure Statement is not an offer or invitation in relation to Capital Japan 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 to be lodged with ASIC. ASIC takes no responsibility for the contents of this PDS.

**Associations and Relevant Interests:** You should obtain professional advice as to whether by acquiring an interest in Capital Japan 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 Japan 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.

This PDS does not take into account the investment objectives, financial situation or particular needs of any particular investor. Investors should assess whether Capital Japan is appropriate to their own investment objectives, financial situation and needs, and should consider taking professional advice, before investing.

Capital Japan is an index-linked product. As a result, the 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 the PDS. Paper copies of the PDS (with attached Application Form) will be sent to any person who requests by the Issuer free of charge. To obtain a paper copy free of charge, please call **13 15 19**.

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

Issued by the 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 the Commonwealth Bank of Australia, and is a Participating Organisation of the Australian Stock Exchange.

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## Features at a glance

<b>Significant benefits</b>	<p>Capital Japan is a 5 year Australian Dollar investment that seeks to provide capital growth based on the price performance of the Nikkei 225 index (the “Nikkei”). The Nikkei is designed to track the price performance of the 225 largest stocks listed on the Tokyo Stock Exchange.</p> <p>Capital Japan also protects 100% of your Investment Amount on the Maturity Date and distributes coupons based on the Investment Amount paid annually in arrears as set out below;</p> <p><b>Year 1</b> Not less than 7.00%pa guaranteed*.</p> <p><b>Year 2</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the closing level on the start date (the “Initial Reference Level”).</p> <p><b>Year 3</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.</p> <p><b>Year 4</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.</p> <p><b>Year 5</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.</p> <p>Any return on your Investment, apart from the guaranteed coupon of not less than 7%pa payable at the end of year 1*, is dependent on the performance of the Nikkei. This avoids the need for you to analyse and monitor the performance of individual Japanese companies. Meanwhile, you have the security and convenience of dealing exclusively with the Commonwealth Bank of Australia, one of Australia’s leading financial institutions.</p> <p>The Final Reference Level is the average of the closing levels of the Nikkei on 10 March 2009, 10 March 2010 and 10 March 2011. This average price mechanism should reduce your exposure to a sharp fall in the Nikkei in the period leading up to the Maturity Date.</p> <p>There is no currency risk associated with your investment, as Capital Japan is denominated in Australian Dollars.</p>
<b>Significant risks</b>	<p>Any capital growth on your investment payable to you at maturity will depend on the performance of the Nikkei.</p> <p>Your potential to receive coupon payments in years 2, 3, 4 and 5 is dependent on the performance of the Nikkei.</p> <p>The exact rate of the guaranteed coupon payable at the end of year 1 will not be known until the Start Date. The rate however will not be less than 7%pa*.</p> <p>The capital protection feature will apply only if the investment is held to maturity.</p> <p>If your investment in Capital Japan is terminated prior to the Maturity Date, the Early Termination Value may be less than your initial Investment Amount. Refer to “Early Termination” in this PDS for more information.</p> <p>The return on your investment may be negative despite the capital protection feature because of;</p> <ul style="list-style-type: none"> <li>➤ The Application Fee;</li> <li>➤ Brokerage on the sale of the Delivery Asset; and</li> <li>➤ Any Additional costs such as Break Costs (refer to “Early Termination” for a discussion on “Break Costs”) and the Early Termination Fee.</li> </ul> <p>There may also be some market risk, operational risk and credit risk.</p>
<b>Minimum investment amount</b>	<p>The minimum Investment Amount is AUD\$10,000.00 with increments of AUD\$1,000.00 thereafter.</p>
<b>Term</b>	<p>The term is 5 years.</p>

<b>Coupon payments</b>	<p>Capital Japan distributes coupons based on the Investment Amount paid annually in arrears as set out below;</p> <p><b>Year 1</b> Not less than 7.00%pa guaranteed*.</p> <p><b>Year 2</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the closing level on the start date (the "Initial Reference Level").</p> <p><b>Year 3</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.</p> <p><b>Year 4</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.</p> <p><b>Year 5</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.</p>
<b>Costs</b>	<ul style="list-style-type: none"> <li>➤ Application fee of 2.00% of the Investment Amount.</li> <li>➤ Brokerage on the sale of the Delivery Asset of 0.55% (including GST) of the Maturity Value at maturity.</li> <li>➤ An Early Termination Fee of 1.50% of the Early Termination Value on sale before maturity.</li> </ul>
<b>At maturity</b>	<p>You will receive units in the StreetTRACKS S&amp;P/ASX 200 Fund. The Maturity Value of your investment is equal to the greater of:</p> <p>(a) your number of Units multiplied by the Unit Price minus the coupon payment paid to you in year 1; and</p> <p>(b) your Investment Amount.</p> <p>This means that you will only receive capital growth on your Investment if the Maturity Value is higher than the aggregate of the Initial Reference Level and the coupon payment paid to you in year 1. Refer to "What happens at maturity" on page 5 of this PDS.</p>
<b>Early Termination</b>	The Early Termination Value of your investment may be less than your initial Investment Amount. See "Early Termination" on page 8 of this PDS.
<b>Capital Investment Loan</b>	You may qualify for a Capital Investment Loan to fund your investment in Capital Japan.

\* See "Factors affecting the rate of the coupon payment in year 1" on page 3 of this PDS.

## Key Dates and Information

<b>Opening date</b>	<b>7 February 2006</b>
<b>Closing date</b>	<b>6 March 2006, 12 noon Sydney time</b>
<b>Start date</b> The closing level of the Nikkei on this date is used as the Initial Reference Level.	<b>10 March 2006</b>
<b>Acceptance notices mailed</b>	<b>21 March 2006</b>
<b>Maturity Date</b> The closing level of the Nikkei on 10 March 2009, 10 March 2010 and 10 March 2011 are used to calculate the Final Reference Level.	<b>10 March 2011</b>
<b>Trade Date</b> The date when we purchase the StreetTRACKS S&P/ASX 200 units on the Australian Stock Exchange (ASX).	<b>17 March 2011</b>
<b>Settlement Date</b> The date when we physically deliver the StreetTRACKS S&P/ASX 200 units to you.	<b>22 March 2011</b>

We (Commonwealth Bank of Australia) reserve the right to amend the dates and times of the offer or, if insufficient subscriptions are received, to enable us to effectively manage the issue, and withdraw the offer completely. This means that we may decide to change the Opening Date or Closing Date to lengthen or shorten the period of time the invitation is open for. We are likely to exercise this right where there has been very high demand for Capital Japan or if a large number of customers ask us to extend the period of time that this invitation is open. However, we would always act reasonably and have regard to standard market practice in making any decision on whether to extend or reduce the length of time that this invitation is open.

# What is Capital Japan?

Capital Japan is a 5 year Australian Dollar investment that seeks to provide capital growth based on the price performance of the Nikkei 225 index (the “Nikkei”). The Nikkei is designed to track the price performance of the 225 largest stocks listed on the Tokyo Stock Exchange.

Capital Japan also distributes coupons based on the Investment Amount paid annually in arrears as set out below;

- Year 1** Not less than 7.00%pa guaranteed\*.
- Year 2** 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the closing level on the start date (the “Initial Reference Level”).
- Year 3** 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.
- Year 4** 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.
- Year 5** 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.

Capital Japan protects 100% of your Investment Amount on the Maturity Date regardless of how the Nikkei performs during the Investment Term.

Capital Japan is structured as a deferred purchase agreement between you, the Investor, and the Commonwealth Bank of Australia. When you invest, you agree to purchase units in the StreetTRACKS S&P/ASX 200 fund (the Delivery Asset) from the Bank. StreetTRACKS S&P/ASX 200 (ASX Code: STW) is a managed fund listed on the Australian Stock Exchange (ASX). The fund is managed by State Street Global Advisors. It is designed to track the performance of the S&P 200 share market index. You can obtain more information about the StreetTRACKS S&P/ASX 200 fund from the website [www.streettracks.com.au/](http://www.streettracks.com.au/).

Delivery of the units is deferred for five years. The number of units you receive at the end of that time depends on the Final Reference Level of the Nikkei. The Final Reference Level is the average of the closing levels of the Nikkei on 10 March 2009, 10 March 2010 and 10 March 2011. This average price mechanism should reduce an Investors exposure to a sharp fall in the Nikkei in the period leading up to the Maturity Date.

On the Maturity Date;

- If the Maturity Value (the Final Reference Level minus the coupon payment paid to you in year 1) is higher than the

Initial Reference Level, on the Settlement Date you will receive StreetTRACKS S&P/ASX 200 units with a higher value than your Investment Amount; or

- If the Maturity Value is equal to or lower than the Initial Reference Level, on the Settlement Date you will receive StreetTRACKS S&P/ASX 200 units equal to your Investment Amount.

There is no currency risk associated with your investment, as Capital Japan is denominated in Australian Dollars.

An investment in Capital Japan is not subject to the Foreign Investment Fund regime. If you hold your investment on capital account (ie. you intend to take delivery of the Delivery Assets on the Maturity Date and hold them to derive assessable income), any growth in the value of your investment would be taxed as a capital gain when you sell the StreetTRACKS S&P/ASX 200 units. Certain investors who hold their investments for more than 12 months, may be eligible for the discount to reduce the capital gains on the sale of their investment. However, if you intend to use the Delivery Asset Sale Service (see “Completion Notice” on page 5 of this PDS for details on the Delivery Asset Sale Service) or intend to terminate early, you may be treated as holding your investment on revenue account. This means that capital gains tax treatment may not apply and the capital gains discount on the sale of your investment is unlikely to be available. You should seek your own independent tax advice in this situation. For more information on taxation, see “Tax Considerations” on page 12 of this PDS.

Prior to making an investment in Capital Japan you can view the performance of the Nikkei at the website [www.nni.Nikkei.co.jp](http://www.nni.Nikkei.co.jp). The section “Historical values of the Nikkei 225” on page X of the PDS also provides information on the Nikkei.

## Factors affecting the rate of the coupon payment in year 1

The factors that affect the rate of this coupon payment are market variables that are constantly changing. These factors include volatility in the Nikkei 225 index and Australian Dollar interest rates.

The actual rate of this coupon payment cannot be calculated until all Investment Amounts have been received and are available for investment on the Start Date. Once this has occurred, we will set the rate of this coupon payment based on the prevailing market variables. The rate of this coupon payment will be the same for all Investors in Capital Japan.

The minimum rate for this coupon payment will be 7%pa.

## Who is Capital Japan suitable for?

Capital Japan is suitable for individuals, companies, trusts and superannuation funds looking to;

- Diversify their investment portfolio by gaining exposure to the performance of the 225 largest stocks listed on the Tokyo Stock Exchange without needing to have the knowledge or resources to pick stocks directly;
- Gain access to the Japanese market without the complications of direct investment on the Japanese stock exchange. Under Capital Japan you have the

security and convenience of dealing exclusively with the Commonwealth Bank of Australia, one of Australia's leading financial institutions;

- Invest with the cash flow advantages of coupon payments;
- Invest with 100% gearing where a Capital Investment Loan is used (except for superannuation funds); and
- Invest with 100% capital protection at maturity.

## How does Capital Japan work?

### Application

You send us your completed Application Form, Investment Amount and Application Fee in cleared funds, prior to the Closing Date. Once your application has been accepted we will, as close as practicable to the Start Date, debit your Nominated Account for the Investment Amount and Application Fee. Any interest on these funds in the period between the date which we debit your Nominated Account and the Start Date will be retained by the Bank.

If you do not have sufficient funds in your Nominated Account this may result in your application not being 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 the Bank.

### Allocation of Units

Your allocation of Units is calculated using the Initial Reference Level as follows;

1. The Unit Price on the Start Date is equal to the Initial Reference Level divided by 100. For example, if the Initial Reference Level was 15,000 then the Unit Price is \$150 (15,000 divided by 100).
2. The number of Units allocated to you is equal to the Investment Amount divided by the Unit Price on the Start Date. For example, if the Investment Amount is \$150,000 and the Unit Price is \$150, then the number of Units you receive is 1,000 (\$150,000 divided by \$150).

### What happens during the term of my investment?

#### Coupon payments

You will receive coupon payments based on the Investment Amount paid annually in arrears as set out below:

- Year 1** Not less than 7.00%pa guaranteed
- Year 2** 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the Initial Reference Level.
- Year 3** 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.
- Year 4** 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.
- Year 5** 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.

For example, if you invest \$150,000 you would receive coupon payments paid annually in arrears as follows;

<b>Year 1</b>	\$10,500 (\$150,000 X 7.00%, assuming the rate payable was set at the minimum rate of 7%pa).
<b>Year 2</b>	\$3,000 (\$150,000 X 2.00%) subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the Initial Reference Level. For example if the Initial Reference Level was 15,000 and the closing level of the Nikkei was at or above 16,500 (15,000 X 110%) you would receive \$3,000).
<b>Year 3</b>	\$3,000 (\$150,000 X 2.00%) subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level. For example if the Initial Reference Level was 15,000 and the closing level of the Nikkei was at or above 17,250 (15,000 X 115%) you would receive \$3,000).
<b>Year 4</b>	\$3,000 (\$150,000 X 2.00%) subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level. For example if the Initial Reference Level was 15,000 and the closing level of the Nikkei was at or above 18,000 (15,000 X 120%) you would receive \$3,000).
<b>Year 5</b>	\$3,000 (\$150,000 X 2.00%) subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level. For example if the Initial Reference Level was 15,000 and the closing level of the Nikkei was at or above 18,750 (15,000 X 125%) you would receive \$3,000).

### Tracking your investment

Each year you will receive a letter from us that sets out how your investment is performing.

You can also visit us on [funds.comsec.com.au](http://funds.comsec.com.au) to view the updated Unit Price at the end of each month. You can also

track the performance of the Nikkei at the website [www.nni.Nikkei.co.jp](http://www.nni.Nikkei.co.jp). Alternatively please contact CommSec on **13 15 19**, your Investment Adviser or your Relationship Manager.

### Completion Notice

A month before your investment matures, we will send you a Completion Notice to fill out and return to us. On your Completion Notice you can indicate whether;

1. you wish to accept delivery of units in the StreetTRACKS S&P/ASX 200 fund (the Delivery Asset); or
2. you wish to use our Delivery Asset Sale Service and receive a cash payment. There may be different tax implications to you if you use the Delivery Asset Sale Service and you should seek your own independent tax advice. For more information, see "Tax Considerations - Investors who do not take delivery of the Delivery Assets or who terminate early" on page 14 of this PDS.

If we do not receive your notice by 5 pm, Sydney time, on the Maturity Date, we will arrange for delivery of units in the StreetTRACKS S&P/ASX 200 fund.

When, on the Trade Date, we buy units for you in the StreetTRACKS S&P/ASX 200 fund, you gain exposure to the performance of the Australian stockmarket.

If you choose to use the Delivery Asset Sale Service, you instruct us or our nominee to sell your StreetTRACKS S&P/ASX 200 holding 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 brokerage of 0.55% of the Maturity Value (including GST) for the use of the Delivery Asset Sale Service.

If you are funding your investment in Capital Japan with a Capital Investment Loan, then you will be taken to have chosen to use the Delivery Asset Sale Service and the sale proceeds received to repay the Capital Investment Loan on the maturity of your investment, unless you tell us that you will be repaying the Capital Investment Loan with your own capital or with other borrowed funds.

## What happens at Maturity?

### Calculating the Final Reference Level

The Final Reference Level is the average of the closing levels of the Nikkei on 10 March 2009, 10 March 2010 and 10 March 2011. For example if the closing level was 20,000 on 10 March 2009, 30,000 on 10 March 2010 and 25,000 on 10 March 2011, the Final Reference Level would be 25,000  $(20,000 + 30,000 + 25,000 / 3)$

### Calculating the Unit Price

The Unit Price on the Maturity Date is equal to the Final Reference Level divided by 100. For example if the Final Reference Level was 25,000, then the Unit Price would be \$250  $(25,000 / 100)$ .

### Calculating the Maturity Value

The Maturity Value of your investment is equal to the greater of:

- (a) your number of Units multiplied by the Unit Price minus the coupon payment paid to you in year 1; and
- (b) your Investment Amount.

This means that you will only receive capital growth on your Investment if the Maturity Value is higher than the aggregate of the Initial Reference Level and the coupon payment paid to you in year 1.

#### Examples

These examples assume that the rate of the guaranteed coupon payable in year 1 was set at the minimum rate of 7.00%pa.

##### Example 1.

**The Final Reference Level minus the coupon payment paid to you in year 1 is HIGHER than the Initial Reference Level.**

If you invested \$150,000.00 and the Final Reference Level was 25,000 (equal to a Unit Price of \$250), the Maturity Value of your investment would be \$239,500.00.

$$\begin{aligned} \text{Maturity Value} &= (\text{Number of Units} \times \text{Unit Price}) - (\text{Investment Amount} \times 7.00\%pa) \\ &= (1,000 \times 250) - (\$150,000 \times 7.00\%pa) \\ &= \$250,000 - \$10,500 \\ &= \$239,500 \end{aligned}$$

**Result:** The capital growth in your investment would be \$89,500.00 (\$239,500.00 - \$150,000.00). You will receive Units in the StreetTRACKS S&P/ASX 200 fund to the value of \$239,500.00.

##### Example 2.

**The Final Reference Level minus the coupon payment paid to you in year 1 is EQUAL to the Initial Reference Level.**

If you invested \$150,000.00 and the Final Reference Level was 16,050 (equal to a Unit Price of \$160.50), the Maturity Value of your investment would be \$150,000.00.

$$\begin{aligned} \text{Maturity Value} &= (\text{Number of Units} \times \text{Unit Price}) - (\text{Investment Amount} \times 7.00\%pa) \\ &= (1,000 \times \$160.50) - (\$150,000 \times 7.00\%pa) \\ &= \$160,500 - \$10,500 \\ &= \$150,000 \end{aligned}$$

**Result:** There would not be any capital growth in your investment. You will receive Units in the StreetTRACKS S&P/ASX 200 fund to the value of \$150,000.00.

##### Example 3.

**The Final Reference Level minus the coupon payment paid to you in year 1 is LOWER than the Initial Reference Level.**

If you invested \$150,000.00 and the Final Reference Level was 5,000 (equal to a Unit Price of \$50), the Maturity Value of your investment would be \$150,000.00 because of the capital protection feature.

$$\begin{aligned} \text{Maturity Value} &= (\text{Number of Units} \times \text{Unit Price}) - (\text{Investment Amount} \times 7.00\%pa) \\ &= (1,000 \times \$50) - (\$150,000 \times 7.00\%pa) \\ &= \$50,000 - \$10,500 \\ &= \$39,500 \end{aligned}$$

**Result:** There would not be any capital growth in your investment. You will receive units in the StreetTRACKS S&P/ASX 200 fund to the value of \$150,000.00 because of the capital protection feature.

### Settlement

On the Trade Date, we will purchase the StreetTRACKS S&P/ASX 200 units for you. The Trade Date will be 5 Business Days after the Maturity Date.

On the Settlement Date, we will deliver the physical StreetTRACKS S&P/ASX 200 units to you. The Settlement Date will be 8 Business Days after the Maturity Date.

If you are taking delivery of your StreetTRACKS S&P/ASX 200 units, we will transfer your StreetTRACKS S&P/ASX 200 units to your broker-sponsored account and Holder Identification Number (HIN) nominated on your Application Form. If the broker-sponsored account and HIN have not been nominated, or are otherwise invalid, we will transfer your StreetTRACKS S&P/ASX 200 units to an Issuer-sponsored account in the same name as your Capital Japan investment. If you advise us on a valid Completion Notice an alternative broker-sponsored account and corresponding HIN, we will transfer your StreetTRACKS S&P/ASX 200 units to that broker-sponsored account and HIN.

If you have indicated in the Completion Notice that you wish to retain your units 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 units in the StreetTRACKS S&P/ASX 200 fund are trading at \$45.00 we will buy you 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).

If you are using our Delivery Asset Sale Service we will credit these funds to your Nominated Account as indicated in your Application Form. There may be different tax implications to you if you use the Delivery Asset Sale Service and you should seek your own independent tax advice in this situation. For more information, see “Tax Considerations - Investors who do not take delivery of the Delivery Assets or who terminate early” on page 14 of this PDS.

## Alternative delivery asset

If you have used the Completion Notice to elect to retain units in the StreetTRACKS S&P/ASX 200 fund, we may at our discretion substitute an alternative Delivery Asset. Instead of units in the StreetTRACKS S&P/ASX 200 fund, you may receive any other security quoted and trading on ASX (including any other security or any other fund or entity listed on ASX).

## What are the costs?

<b>Application Fee</b>	An Application Fee of 2.00% of the Investment Amount is payable at the start of your investment, reflecting the costs of establishing a position on the Japanese market.
<b>Brokerage Fee</b>	Brokerage on the sale of the Delivery Asset of 0.55% (including GST) of the Maturity Value at maturity.
<b>Early Termination Fee</b>	An Early Termination Fee of 1.50% of the Early Termination Value on sale before maturity.

## Making an application for Capital Japan

### How to apply

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

You may apply for any amount of this product, subject to a Minimum Investment Amount and minimum increments as specified in the Schedule. You should make payment with your applications by cheque or direct debit.

The sum you send us is called the Application Amount. We may deduct from this an Application Fee and any Distribution Fee as shown in the Schedule.

The amount invested is the Investment Amount. This is the Application Amount, less any Application Fee or Distribution Fee. No stamp duty is payable by Applicants under this Offer.

### Acceptance of Applications

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 Offer early. If an Application is rejected or accepted only in part, we will return 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 Closing

Date, we will provide you with a notice, acknowledging acceptance.

### Who may apply for Capital Japan?

Application for Capital Japan is open to:

- › Australian residents
- › Companies registered in Australia
- › Trust entities
- › Superannuation Funds

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

Commonwealth Bank issues Capital Japan on the Terms of Sale set out in the section headed “Terms of Sale”. You should ensure that you read and understand the Terms of Sale. Signing and lodging an Application Form will bind you to the Terms of Sale.

### Additional information about the Capital Japan

Please contact your financial adviser or Commonwealth Bank if you have any questions about:

- › how to invest in Capital Japan; or
- › how to complete the attached Application Form.

## Early Termination

Capital Japan is a hold to maturity investment. However, your Capital Japan investment may be terminated prior to the Maturity Date:

- › by agreement between you and the Bank; or
- › by the Bank in accordance with the Terms of Sale.

At the time of termination we will calculate the Early Termination Value taking into account:

- › the Break Costs associated with unwinding the hedge arrangements the Bank established in connection with your investment; and
- › The guaranteed coupon payment that was paid to you in year 1.

The Early Termination Value may be less than your initial Investment Amount.

It is not possible to forecast the amount of Break Costs on your Investment. You should therefore not enter the investment if you may need your funds prior to 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.

Terminating your Investment prior to the Maturity Date will also result in you paying the Bank the Early Termination Fee of 1.50% of the Early Termination Value.

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

Variable	Change in Variable	Break Costs
Nikkei	↑	↓
Nikkei Volatility	↑	↓
AUD interest rates	↑	↑

There may be different tax implications if you elect Early Termination. You should seek your own independent tax advice in this situation. For more information, see “Tax Considerations - Investors who do not take delivery of the Delivery Assets or who terminate early” on page 14 of this PDS.

## What are the significant benefits?

Capital Japan is a 5 year investment that:

- › Seeks to provide capital growth based on the price performance of the Nikkei;
- › Protects 100% of your Investment Amount on the Maturity Date; and
- › distributes coupons based on the Investment Amount paid annually in arrears as set out below:

**Year 1** Not less than 7.00%pa guaranteed.

**Year 2** 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the closing level on the Start Date (the “Initial Reference Level”).

**Year 3** 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.

**Year 4** 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.

**Year 5** 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.

Any return on your investment reflects the performance of the Nikkei, avoiding the need for analysing and monitoring the performance of individual Japanese companies and helping to reduce volatility. Meanwhile, you have the security and convenience of dealing exclusively with the Commonwealth Bank of Australia, one of Australia’s leading financial institutions.

The Final Reference Level is the average of the closing level of the Nikkei on 10 March 2009, 10 March 2010 and 10 March 2011. This average price mechanism should reduce your exposure to a sharp fall in the Nikkei in the period leading up to the Maturity Date.

There is no currency risk associated with your investment, as Capital Japan is denominated in Australian Dollars.

## What are the significant disadvantages?

There is no cooling off period available to you in respect of your investment under Capital Japan.

## What are the significant risks?

Capital Japan may not be suitable for all investors. You need to ensure that you understand all of the risks of investing before applying. We recommend that you obtain independent financial advice.

Starting from the time at which you enter into an Investment under Capital Japan, 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 the Bank for its own operational processes, see “Operational risk” on page 10).

### Market risk

The key market risk to you is that the return on your investment may be negative despite the capital protection feature because the Application Fee, Brokerage on the sale of the Delivery Asset and any additional costs such as Break Costs and the Early Termination Fee may exceed any capital gains and income (such as the coupon payments).

You will only receive coupon payments of 2.00% pa in years 2, 3, 4 and 5 if the closing levels of the Nikkei are at or above:

- 110% of the Initial Reference Level on 10 March 2008;
- 115% of the Initial Reference Level on 10 March 2009;
- 120% of the Initial Reference Level on 10 March 2010;
- 125% of the Initial Reference Level on 10 March 2011.

The exact rate of the guaranteed coupon payable at the end of year 1 will not be known until the Start Date. The rate however will not be less than 7%pa.

Apart from any coupon payments you receive during the term of your investment, you will only receive a return on your investment on the Settlement Date, if on the Maturity Date the Final Reference Level minus the coupon payment paid to you in year one is higher than the Initial Reference Level. The Bank cannot guarantee the performance of the Nikkei nor your investment.

The average price mechanism may be a disadvantage to you if any of the closing levels on 10 March 2009, 10 March 2010 and 10 March 2011, are below the Initial Reference Level. For example if the Initial Reference Level was 15,000 and the closing level was 20,000 on 10 March 2009,

10,000 on 10 March 2010 (below the Initial Reference Level) and 30,000 on 10 March 2011, the Final Reference Level would be 20,000  $(20,000 + 10,000 + 30,000 / 3)$ .

The average price mechanism may also be a disadvantage to you if the closing level of the Nikkei is at its highest on 10 March 2011. For example if the closing level was 20,000 on 10 March 2009, 10,000 on 10 March 2010 (below the Initial Reference Level) and 30,000 on 10 March 2011, the Final Reference Level would be:

- 20,000 with the average price mechanism  $(20,000 + 10,000 + 30,000 / 3)$ ; or
- 30,000 without it, as only the level of 30,000 on 10 March 2011 would be used to calculate the Final Reference Level.

Capital Japan is not a listed investment. It cannot be traded on a market. The capital protection feature will apply only if the investment is held to maturity. If your investment in Capital Japan is terminated prior to the Maturity Date, the Early Termination Value may be less than your initial Investment Amount. Refer to “Early Termination” in this PDS for more information. We recommend that you only invest funds which you will not require for other purposes during the life of the investment.

The performance of Capital Japan and the Final Reference Level are not affected by the performance of the StreetTRACKS S&P/ASX 200 fund, or any substituted alternative Delivery Asset, over the investment period. However, investors who elect to receive units in the StreetTRACKS S&P/ASX 200 fund or any substituted alternative Delivery Asset at maturity should be aware that following purchase of their units on the Trade Date, the value of their units will be affected by changes in the price of units in the StreetTRACKS S&P/ASX 200 fund or the alternative Delivery Asset as traded on ASX. Investors can obtain more information about the StreetTRACKS S&P/ASX 200 fund from the website [www.streettracks.com.au/](http://www.streettracks.com.au/).

Capital Japan is a speculative financial product and its returns may be less than the return you could earn on other investments.

## Financial risk

Any change to the tax law, Australian Taxation Office (ATO) interpretation of the tax law or in the way an investment in Capital Japan affects your tax position could affect the value of your investment.

Investors who do not intend to take delivery of the Delivery Assets to realise a long term return or intend to terminate early may not receive capital gains tax treatment on their investment. For more information, see “Tax Considerations - Investors who do not take delivery of the Delivery Assets or who terminate early” on page 14 of this PDS.

## Credit risk

Credit risk is common to all investment products that you may hold with the Bank. In all cases, you are reliant on the ability of the Bank to meet its obligations to you under the terms of each transaction. This risk is sometimes described as “counterparty risk”. An investment in Capital Japan is an unsecured obligation from the Commonwealth Bank, ranking equally with the Bank’s other unsecured obligations. Investments in Capital Japan are not bank deposits. In the unlikely event that we fail to meet our obligations, both your investment returns, and your initial capital, could be at risk.

## 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 the Bank to price and settle your investment in a timely and accurate manner. The Bank in turn is dependent on the reliability of its own operational processes that include communications, computers and computer networks. Disruptions in the 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 entered into the transaction, the management of risks associated with its own operational processes is the responsibility of the Bank.

## Adjustment Events and other changes to the terms of sale

The Terms of Sale for Capital Japan define a number of Adjustment Events. If an Adjustment Event occurs, the Terms of Sale may be amended, varied, or at our discretion terminated early. One example of an Adjustment Event would be where the Reference Index for the investment was discontinued. The Terms of Sale may also be amended or varied in certain other, limited situations; for example, where a change is necessary to comply with the law or to correct an error or inconsistency.

If an amendment becomes necessary, we have discretion to make adjustments to the Terms of Sale, including adjusting any formulas or terms, replacing the Reference Index with another reference index or other asset, or replacing the Delivery Asset with other securities. However, we will notify you of any such changes and will carry out the adjustment in a manner we believe to be as equitable as possible for you and for us. Clause 10 of the Terms of Sale fully describes your rights and obligations if an Adjustment Event occurs. The exercise or non-exercise of these discretions could adversely affect the value of your investment.

The risks described here may not include all risk considerations that may be relevant to you when making an investment. Please also refer to “What are the significant disadvantages?” on page 9. Before transacting in this product you should be satisfied that this product is suitable for you. We recommend that you consult your investment adviser or obtain other independent advice.

# Information about the Reference Index and the Delivery Asset

## Role of the Reference Index

The return investors receive at maturity from an investment in Capital Japan is dependent on the performance of the Nikkei 225 Index (the “Reference Index”).

## Nikkei 225 Index

The Nikkei 225 Stock Average (Nikkei) is a price-weighted average of 225 top-rated Japanese companies listed on the Tokyo Stock Exchange. It is the most widely monitored index of stock market activity in Japan and has been calculated continuously since 7 September 1950. The 225 companies included in the Nikkei are among the most actively traded stocks on the Tokyo Stock Exchange.

The Nikkei is expected to capture the price performance of a broad cross-section of Japanese industries as well as the market in general. As such, the mix of the companies has been rebalanced from time to time to assure that all stocks included in the Nikkei are both highly liquid and representative of Japan’s industrial structure.

The companies included in the Nikkei are selected by Nihon Keizai Shimbun Inc. Capital Japan is not sponsored, endorsed, sold or promoted by Nihon Keizai Shimbun Inc. Nihon Keizai Shimbun Inc does not make any representation, condition or warranty, express or implied, to the holders of Capital Japan or any member of the public regarding the advisability of investing in securities generally, or in Capital Japan particularly, or the ability of the Nikkei to track general stock market performance.

The Nikkei is determined, composed and calculated by Nihon Keizai Shimbun Inc without regard to Commonwealth Bank or Capital Japan. Nihon Keizai Shimbun Inc has no obligation to take the needs of Commonwealth Bank or Capital Japan holders into consideration in determining, composing or calculating the Indexes. Nihon Keizai Shimbun Inc is not responsible for and has not participated in the determination of the timing of, prices at, or quantities of Capital Japan to be issued or in the determination or calculation of the equation by which Capital Japan is to be converted into cash. Nihon Keizai Shimbun Inc has no obligation or liability in connection with the administration, marketing or trading of Capital Japan.

## The Top 20 Constituents of the Nikkei

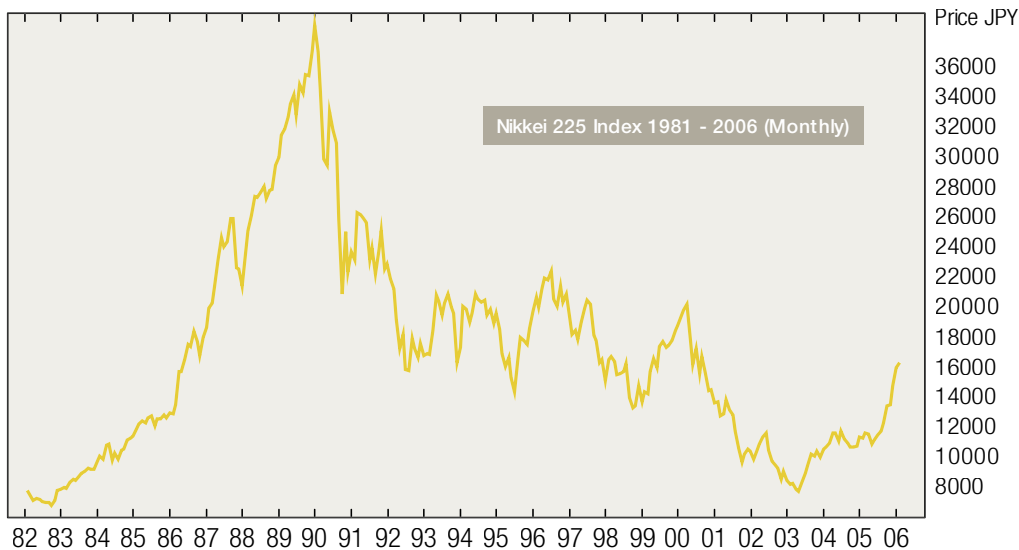
The twenty largest constituents of the Nikkei 225 Index by market capitalisation, as at 12 January 2006 are shown below. These twenty companies represent approximately 44% of the total market capitalisation of the Nikkei 225.

Company name	Market Cap (JPY millions)
TOYOTA MOTOR CORP	21,623,880
MITSUBISHI UFJ FINANCIAL GRO	15,315,890
MIZUHO FINANCIAL GROUP INC	10,839,610
NTT DOCOMO INC	9,691,300
NIPPON TELEGRAPH & TELEPHONE	8,941,007
SUMITOMO MITSUI FINANCIAL GR	8,637,492
SEVEN & I HOLDINGS CO LTD	6,933,873
CANON INC	6,363,030
HONDA MOTOR CO LTD	6,071,829
MATSUSHITA ELECTRIC INDUST	6,046,776
NISSAN MOTOR CO LTD	5,723,226
TAKEDA PHARMACEUTICAL CO LTD	5,709,126
YAHOO! JAPAN CORP	5,226,835
SONY CORP	5,153,443
RESONA HOLDINGS INC	4,982,300
SOFTBANK CORP	4,534,547
NOMURA HOLDINGS INC	4,423,320
MITSUBISHI CORP	4,408,237
TOKYO ELECTRIC POWER CO INC	3,875,967
DENSO CORP	3,545,116

## Historical values of the Nikkei 225

The historical values of the Nikkei 225 index since 1982 are shown in the graph below.

The Nikkei has increased by over 115 % between April 2003 (when it was 7,607.88) and January 2006 (when it was 16,363.59). This level is still well below the highs of December 1989 where it reached a level of 38,915.90.



Source: Reuters.

Note that past performance is not a reliable indicator of future performance.

## The Delivery Asset

The Delivery Asset is units in the StreetTRACKS S&P/ASX 200 fund. StreetTRACKS S&P/ASX 200 is a managed fund listed on the Australian Stock Exchange (ASX). The fund is managed by State Street Global Advisors. It is designed to track the performance of the S&P 200 share market index, with each unit in the fund having a value approximately equal to one hundredth of the level of the index. Third-party brokers act as market-makers for the fund, helping to maintain liquidity so that investors can buy and sell units at fair value without difficulty.

## Role of the Delivery Asset Issuer – the Delivery Asset Issuer has had no involvement in this PDS

References in this PDS to the StreetTRACKS S&P/ASX 200 Fund and any member of the State Street Group are included solely for the purpose of identification of the securities to which Capital Japan relates. These references are not an express or implied endorsement of Capital Japan by any member of the State Street Group. No member of the State Street Group has had any involvement in the preparation of any part of this PDS, accepts responsibility for any statement in this PDS, or has been involved in or consented to the issue of this PDS.

## Tax Considerations

The Commonwealth Bank of Australia does not provide taxation advice. This section is necessarily general in nature and does not take into account the specific taxation circumstances of each individual investor. Potential investors should seek their own independent advice on the taxation implications relevant to their own circumstances before making any investment decision (particularly if Section B applies to their circumstances).

This section is based on the law in force, and administrative practice, as of 7 February 2006. However, potential investors should be aware that the ultimate interpretation of the taxation law rests with the Courts and that the law, and the way the Commissioner of Taxation (“the Commissioner”) administers the law, may change at any time.

An opinion from Greenwoods & Freehills Pty Limited detailing the tax treatment of Capital Japan for Investors follows this summary.

## Section A - Investors who take delivery of the Delivery Assets

This section is a summary of the key Australian income tax implications arising for Investors who hold their Capital Japan investment for the purposes of realising a long term return (ie. hold their investment on capital account for tax). In particular it is assumed that Investors will take delivery of Delivery Assets on the Maturity Date and hold them for the purpose of deriving assessable distributions. Investors who do not have such an intention (eg. Investors who utilise the Delivery Asset Sale Service) and situations involving Early Terminations are addressed in Section B “Investors who do not take delivery of the Delivery Assets or who terminate early”.

This section is not relevant for investors who enter into Capital Japan with a view to acquiring the Delivery Asset on revenue account or as trading stock.

**Capital Gains Tax**

- › Investors who make an investment in Capital Japan will enter into deferred purchase agreements for units in the StreetTRACKS S&P/ASX 200 fund (ie. the Delivery Assets). Investors will acquire their units in this fund on the Maturity Date.
- › The Delivery Assets which will be assets for capital gains tax (CGT) purposes.
- › The disposal of the Delivery Assets will be subject to CGT.

**Disposal of Delivery Assets**

- › An Investor will make a capital gain to the extent that the sales proceeds of the Delivery Assets exceed the tax cost base of these units.
- › If the sales proceeds from the sale of the Delivery Assets are less than the tax cost base of these units, the Investor will make a capital loss. Capital losses can be offset against capital gains but not against ordinary income.
- › The tax cost base of the Delivery Assets will be the initial investment amount (and any applicable brokerage costs and professional advisory fees). The tax cost of the Delivery Assets will be determined as at the date on which the investment in Capital Japan is made, rather than the date on which the Delivery Assets are provided.
- › An investor who is a natural person, a trust, or a complying superannuation fund may be entitled to the CGT discount concession on a capital gain realised on the disposal of the Delivery Assets, if the CGT assets are held for a continuous period of not less than 12 months. This requirement should be met by all investors who hold their investment in Capital Japan to the Maturity Date.

**Deductibility of interest**

- › An Investor who makes an investment in Capital Japan with the intention of acquiring and holding the Delivery Assets for the purposes of deriving assessable distributions should be entitled to a deduction for any interest and borrowing costs connected with their investment, although prospective Investors should seek their own advice on this matter referable to their specific circumstances.

**Receipt of coupons**

- › Coupons distributed to Investors prior to the Maturity Date should be treated as assessable income in the financial year in which the coupons are received.

**Accruals taxation should not apply**

- › The anti-deferral taxation rules should not apply to impose tax on an accruals basis on Investors of Capital Japan.

**Foreign Investment Fund rules**

- › An Investor holding an investment in Capital Japan will not be subject to the Foreign Investment Fund regime as the Delivery Assets are not interest in companies or trusts which are foreign companies or foreign trusts for the purposes of the Foreign Investment Fund rules.

**Distributions on Delivery Assets**

- › Distributions received by Investors on the Delivery assets (ie. units in the StreetTRACKS S&P/ASX 200 fund) are likely to constitute assessable income in whole or in part. It can be expected that distributions from the StreetTRACKS S&P/ASX 200 fund will be accompanied by an annual statement which will explain the tax treatment of the distributions.

**General anti-avoidance rule**

- › The anti-avoidance rule contained in Part IVA should not apply where an investor holds their investment beyond the Maturity Date and receives Delivery Assets with a view to deriving assessable distributions over the longer term.
- › Whether Part IVA is capable of applying to a given Investor in relation to their acquisition, ownership and disposal of an investment in Capital Japan will depend on the particular circumstances of the Investor.

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

- › Investors may, if they choose, notify the Commonwealth Bank of their tax file number (TFN), Australian business number (ABN) or a relevant exemption from the disclosure regulations.
- › In the event that the Commonwealth Bank is not so notified, tax will be automatically deducted from any cash distributions made as part of Capital Japan (including distributions made by the StreetTRACKS fund) at the rate of 48.5% of the gross payment. This requirement to withhold will continue until such time as the relevant TFN, ABN or exemption notification is given.
- › Investors will be entitled to claim an income tax credit or refund (as applicable) in their income tax returns in respect of the tax withheld.

**Stamp Duty and GST**

- › Investors should not be liable to GST or stamp duty by reason of their acquisition, ownership and disposal of an investment in Capital Japan and the Delivery Assets.

## **Section B - Investors who do not take delivery of the Delivery Assets or who terminate early**

Investors who do not intend to take delivery of the Delivery Assets (ie. use the Delivery Asset Sale Service) and hold those assets for the purpose of deriving assessable distributions or intend to terminate early may be treated as entering into Capital Japan with a view to acquiring the Delivery Asset on revenue account.

Set out below are the Australian income tax consequences applicable to such Investors that are different to the consequences set out above.

### **Revenue gains**

- › Investors may be viewed as acquiring the Delivery Asset on revenue account and therefore capital gains tax treatment may not apply.
- › Any gains realised on the disposal of Capital Japan or the use of the Delivery Asset Sale Service are likely to be taxed as ordinary income.
- › This means that the CGT discount concession is unlikely to be available for an investor who is a natural person, a trust, or a complying superannuation fund.

# Tax Opinion

## Greenwoods & Freehills

24 January 2006

The Directors  
Commonwealth Bank of Australia  
52 Martin Place  
SYDNEY NSW 1155

Dear Directors

### **Capital Japan Australian taxation opinion**

We have been instructed by Commonwealth Bank of Australia (**Commonwealth Bank**) to prepare a Taxation Opinion for inclusion in a Product Disclosure Statement (**PDS**) to be dated on or about 07 February 2006, in relation to the issue of interests in the Capital Japan investment product.

#### **1 Scope**

This letter provides an analysis of the principal Australian income tax, goods and services tax (**GST**), and stamp duty implications arising for persons who invest in Capital Japan in accordance with the terms of the PDS. This opinion only examines the indicative tax position of Investors who:

- are residents of Australia for tax purposes including individuals, companies and complying superannuation entities;
- do not carry on the business of trading or dealing in securities; and
- hold their Capital Japan investment for the purpose of realising a long term return (i.e. hold their investment on capital account for tax). In particular it is assumed that Investors will take delivery of Delivery Assets on the Maturity Date and hold them for the purpose of deriving assessable distributions. Investors who do not have such an intention (e.g. Investors who utilise the Delivery Asset Sale Service) and situations involving Early Terminations are not addressed in this opinion.

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.

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 Japan. All references to legislative provisions made in the body of this opinion are 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.

## **2 Tax characterisation of Capital Japan**

The legal nature of Capital Japan as an investment product is explained under the heading "What is Capital Japan?" which is provided in the PDS. In broad terms, Investors who successfully apply to make an investment in Capital Japan will enter into deferred purchase agreements for units in the StreetTRACKS S&P/ASX 200 fund (i.e. the Delivery Assets). Investors will acquire their units in this fund on the Maturity Date, with the total number of units to be determined by the performance of the Nikkei during the intervening period. Subject to the satisfaction of certain performance benchmarks, interim coupon distributions may be made to Investors prior to the Maturity Date.

Both the initial investment in Capital Japan and the Delivery Assets which will be acquired on the Maturity Date, will be assets for capital gains tax (CGT) purposes. The satisfaction of the deferred purchase agreements through the vesting of Delivery Assets should not give rise to any Australian taxation consequences. However, upon the eventual disposal of the Delivery Assets, an Investor may make a capital gain to the extent that the sale proceeds exceed the tax cost of these units, or a capital loss (refer below).

## **3 Receipt of coupons**

Any coupons which are distributed to Investors prior to the Maturity Date should be treated as being assessable income. These amounts will therefore need to be taken into consideration by an Investor in preparing the income tax return for the financial year in which such amounts are received.

## **4 Distributions on Delivery Assets**

Distributions received by Investors on the Delivery Assets (i.e. units in the StreetTRACKS S&P/ASX 200 fund) are likely to constitute assessable income in whole or in part. Given that this fund is a trust, the distributions may contain different components of assessable and non-assessable income, including amounts that are effectively treated as dividends for tax purposes. It can be expected that distributions from the StreetTRACKS S&P/ASX 200 fund will be accompanied by an annual statement which will explain the tax treatment of the distributions.

## **5 Disposal of Delivery Assets**

On the basis of the assumption that an Investor holds their investment in Capital Japan and the Delivery Assets as capital assets, the eventual disposal of the Delivery Assets will be subject to taxation under the CGT rules of the Act.

An Investor will be required to include in their assessable income, as a capital gain, any excess of the sale proceeds of their Delivery Assets over the tax cost of these interests. Significantly, the tax cost of the Delivery Assets will be determined as at the date on which the investment in Capital Japan is made, rather than the date on which the Delivery Assets are provided. This will be the initial investment amount (and any applicable brokerage costs and professional advisory

## Tax Opinion (continued)

fees), as opposed to the value of the investment amount adjusted to reflect the performance of the Nikkei.

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 realised on the disposal of the Delivery Assets. 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. It is important to note that the CGT discount concession only applies to reduce the net capital gain made in relation to CGT assets which are held for a continuous period of not less than 12 months. This requirement should be met by all Investors, with the exception of those Investors who are permitted to make an Early Termination shortly after making an investment in Capital Japan, given that the 12 month period will be measured from the inception of the Investment (i.e. upon entry into the deferred purchase agreements) and not from the Maturity Date.

Any capital losses realised by an Investor upon a disposal of the Delivery Assets 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.

### **6 Deductibility of borrowing costs incurred by Investors**

Investors may borrow funds for the purpose of making an investment, and in so doing, may incur interest expenses and other costs. Interest costs are generally deductible where the investor has a purpose of deriving assessable income from an investment, however there are provisions in the Act that can operate to deny a deduction for borrowing costs associated with capital assets.

In the ordinary course, an Investor who makes an investment in Capital Japan with the intention of acquiring and holding the Delivery Assets should be entitled to a deduction for any borrowing costs connected with their investment, although prospective Investors should seek their own advice on this matter referable to their circumstances. Where an Investor is an individual, interest funding costs paid in arrears, or paid in advance for a period not exceeding 12 months, should generally be deductible when the amounts are paid.

The Government announced on 16 April 2003 that tax law would be amended in relation to the deductibility of financing costs on certain "capital protected products" undertaken after that date. To date, no final or draft legislation has been released on this matter. Based on the brief details of the proposed measure currently available it would appear that the new measures should have no application to an investment in Capital Japan or in relation to any borrowing costs connected with such an investment. However, Investors will need to monitor the progress of this proposed legislation to determine whether any amendment in due course does in fact impact on their investment.

Deductions for some borrowing expenses other than interest costs may be 'spread' over the term of the borrowing.

### **7 Application of anti-deferral taxation rules**

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 'security', as that term is defined in the Act. In our opinion, an investment in Capital Japan should not be regarded as comprising a 'security' for this purpose, and accordingly we believe the Division should not apply.

It is important to note that draft legislation has recently been released which proposes the introduction of a broad based accruals regime applying to financial instruments. If enacted in its current form, this legislation could potentially operate to cause accruals taxation for a range of interests. Whilst it is expected that any such changes would operate prospectively (and therefore should not apply to Investors with an investment in Capital Japan), the full impact of this legislation will not be known until it is finalised.

## **8 Foreign Investment Fund rules**

The Foreign Investment Fund (FIF) regime has potential application to all interests held by Australian taxpayers in foreign companies and foreign trusts. Broadly speaking, this regime operates to require Australian taxpayers to include in their assessable income an amount of attributed income which is a proxy for the taxpayer's share of the undistributed profits of the foreign entity. There are a variety of exceptions which may apply to certain taxpayers meeting specifically articulated criteria.

An Investor holding an investment in Capital Japan will not be subject to FIF attribution. This is because Investors will only acquire Australian assets; being the rights under the deferred purchase agreement and the Delivery Assets. At no stage will an Investor have any right, entitlement, or expectation in relation to any interests in a foreign company or foreign trust. The fact that the number of the Delivery Assets is calculated on the basis of a foreign share index, is immaterial for these purposes.

## **9 The general anti-avoidance rule: Part IVA**

The general anti-avoidance rule, contained in Part IVA of the Act, gives the Commissioner of Taxation (**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 Japan will depend to a significant extent on the particular circumstances surrounding the Investor. However, given the structure of Capital Japan, in our view it is unlikely that Part IVA would have any application where an Investor holds their investment beyond the Maturity Date and receives Delivery Assets with a view to deriving assessable distributions over the longer term.

## Tax Opinion (continued)

### 10 Pay-As-You-Go withholding obligations

Investors may, if they choose, notify the Commonwealth Bank of their tax file number (TFN), Australian business number (ABN) or a relevant exemption from the disclosure regulations.

In the event that the Commonwealth Bank is not so notified, tax will be automatically deducted from any cash distributions made as part of Capital Japan (including distributions made by the StreetTRACKS fund) at the rate of 48.5% of the gross payment. This requirement to withhold will continue until such time as the relevant TFN, ABN or exemption notification is given.

Investors will be entitled to claim an income tax credit or refund (as applicable) in their income tax returns in respect of the tax withheld.

### 11 GST

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

### 12 Stamp duty

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

### 13 Alternative analysis

As noted above, this opinion has been prepared on the assumption that Investors acquire their interest in the Capital Japan investment product with the intention of receiving the Delivery Assets, and realising a long term return. If this assumption proves to be inapplicable to an Investor, it is possible that the Australian taxation position of such an Investor may be different to that described in the foregoing analysis. In particular, it is possible that the net profit realised through investing in Capital Japan may be assessable as ordinary income, i.e. without the benefit of the CGT discount concession. Investors who do not intend to take delivery of the Delivery Assets to realise a long term return, are strongly advised to seek professional taxation advice which considers their own taxation position.

### 14 Disclaimer

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. 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  
GREENWOODS & FREEHILLS PTY LIMITED

per:



**Tony Frost**  
Director

# Privacy Statement

## Collection of personal information

Commonwealth Bank collects personal information (including full name, address and contact details, as well as credit information) so that Commonwealth Bank may administer its client relationships and provide clients with the products and services they request as well as information on the Commonwealth Bank Group's ('the Group') products and services.

Where it is necessary to do so, Commonwealth Bank also collects information on individuals such as company directors and officers (where the company is Commonwealth Bank's client), as well as clients' agents and persons dealing with Commonwealth Bank on a "one-off" basis.

The law can also require Commonwealth Bank to collect personal information, for example, Commonwealth legislation requires Commonwealth Bank to identify persons who open or operate accounts.

You need to provide us with accurate and relevant information.

If an investor provides Commonwealth Bank with incomplete or inaccurate information, Commonwealth Bank may not be able to provide the investor with the products or services the investor is seeking.

## Disclosure and use of personal information

Commonwealth Bank is permitted by the Privacy Act to disclose personal information to other members of the Group. This enables the Group to have an integrated view of its clients.

Personal information may be disclosed to:

- › brokers and agents who refer business to Commonwealth Bank;

- › any person acting on your behalf, including your financial adviser, solicitor or accountant, executor, administrator, trustee, guardian or attorney;
- › organisations to whom we outsource certain functions.

In all circumstances where Commonwealth Bank's contractors, agents and outsourced service providers may become aware of personal information, confidentiality arrangements apply. Personal information may only be used by Commonwealth Bank's agents, contractors and outsourced service providers for Commonwealth Bank's purposes.

Commonwealth Bank may also disclose personal information to other financial institutions and organisations at their request if an investor seeks credit from them.

Commonwealth Bank may be allowed or obliged to disclose information by law, eg, under Court Orders or Statutory Notices pursuant to taxation or social security laws.

## Access

A person may (subject to permitted exceptions) access personal information by contacting Customer Relations, Commonwealth Bank Group, Reply Paid 41, Sydney NSW 2001. Commonwealth Bank may charge the person for providing access.

## Further information

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

# Code of Banking Practice

The relevant provisions of the Code of Banking Practice apply to Capital Japan. You should read the Bank's information booklet "The Better Banking Book" copies of which may be obtained by telephoning the Bank on 13 2221 (between 8am and 8pm, Monday to Friday), contacting your relationship manager, visiting our website at [www.commbank.com.au](http://www.commbank.com.au) or from any branch of the 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, the Bank's obligations regarding confidentiality of your information, complaint handling procedures, bank cheques, the advisability of you informing the 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.

# What if I have any disputes concerning Capital Japan

The Code of Banking Practice requires that we 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 Japan then:

(a) Contact the adviser through whom you bought the product; or

(b) If you bought the product directly from us:

Telephone Client Relations from 8:00 am to 7:00 pm Sydney time, Monday to Friday on **13 15 19** (outside Australia +61 2 8223 7014); or write to,

Client Relations  
Locked Bag 22  
Australia Square  
NSW 1215.

If the internal dispute resolution is unsuccessful, you may take the matter to an external authority such as the Australian Banking Industry Ombudsman.

The Banking and Financial Services Ombudsman  
GPO Box 3  
Melbourne Victoria 3001

Tel: 1300 780 808

# Information about Commonwealth Bank

The continuous disclosure obligations of the Commonwealth Bank mean that the 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 the Commonwealth Bank of Australia.

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

Persons requiring these documents should write to:

Commonwealth Bank of Australia  
48 Martin Place  
SYDNEY NSW 2000

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

# Disclosures

## Directors' and related entity Interests

Except as set out in this paragraph, Commonwealth Bank and its related bodies corporate are not associated with and have no access to information concerning the Delivery Asset, the Reference Index or the Reference Index Provider other than that which is in the public domain. Commonwealth Bank and its related bodies corporate have and no director or proposed director of Commonwealth Bank and no firm in which a director or proposed director of Commonwealth Bank is a partner, has at the date of this PDS any material interest in connection with the formation or promotion of any of Capital Japan, the Reference Index, the Reference Index Providers, the Delivery Asset or the Delivery Asset Entity, except that:

- (a) Commonwealth Bank will be entitled to receive commission in relation to Capital Japan and all the directors of Commonwealth Bank participate in that entitlement through remuneration and indirect shareholding;
- (b) Commonwealth Securities Limited earns brokerage at normal commercial rates on transactions which it undertakes on behalf of Commonwealth Bank;
- (c) The Commonwealth Bank, as part of its employee remuneration arrangements, conducts an incentive system based on the success of its activities. The directors and senior executive officers of Commonwealth Bank, being also employees of the Commonwealth Bank, participate in these incentive remuneration arrangements;

- (d) Commonwealth Bank or an associate or related body corporate may from time to time hold the type of assets comprising the Delivery Asset or Reference Index for trading purposes or to hedge Capital Japan. As at the date of this PDS, Commonwealth Bank and its related entities owned the type of assets comprising the Delivery Asset and the Reference Index. Related bodies corporate of Commonwealth Bank may deal in type of assets comprising Delivery Asset or Reference Index, options and other derivative contracts in respect of the Reference Index and/or the Delivery Asset.
- (e) The directors of Commonwealth Bank may hold other property whether in their own right or non-beneficially, in which Commonwealth Bank may have an interest from time to time;
- (f) The Constitution of Commonwealth Bank contains indemnities in favour of the directors within the limits prescribed by the Corporations Act;
- (g) Commonwealth Bank and its related bodies corporate, as part of its investment banking and stockbroking business, may from time to time advise or act for the Delivery Asset Issuer or the Relevant Asset Provider, or advise or act for other clients in relation to the Delivery Asset Entity or the Relevant Asset Provider, or publish research reports on the Delivery Asset or Relevant Asset. Investors will not be notified of these activities, or the content of such reports.

## 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 comprising the Delivery Asset and securities comprising the Reference Index 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 Index at any point in time.

# Schedule of Terms for Capital Japan

This Schedule of Terms constitutes the specific terms for Capital Japan.

You should read this PDS completely, including the Terms of Sale before you make a decision to invest in this Product.

<b>Issuer</b>	Commonwealth Bank of Australia (“Commonwealth Bank”)
<b>Broker to the Issue</b>	Commonwealth Securities Limited (“CommSec”)
<b>Investment Term</b>	5 years
<b>Reference Index</b>	Nikkei 225 index (“Nikkei”)
<b>Relevant Financial Market</b>	Tokyo Stock Exchange
<b>Issue Size</b>	Proposed A\$10 million dollars
<b>Investment Amount</b>	Minimum of A\$10,000 and increments thereafter of A\$1,000 (not including the Application Fee – see below)
<b>Unit Size (1 Unit)</b>	<p>One Unit of Capital Japan is 1/100th of the Reference Index</p> <p>Unit Price is determined as the Reference Index divided by 100. Hence the Unit Price is denominated in Australian Dollars.</p> <p>Units will be allocated as follows:</p> <p>Number of Units = Investment Amount / Unit Price</p> <p>We will notify you of the number of Units in Capital Japan held by you and the per Unit value within 10 Business Days of the Closing Date.</p> <p>Please note that “Units” when used in this PDS are not units in a managed investment scheme.</p>
<b>Initial Reference Level</b>	The Initial Reference Level for Capital Japan is the closing level of the Reference Index on the Start Date as determined by the Calculation Agent, in its discretion.
<b>Final Reference Level</b>	The Final Reference Level for Capital Japan is the average of the closing levels of the Reference Index on 10 March 2009, 10 March 2010 and 10 March 2011 as determined by the Calculation Agent, in its discretion.
<b>Coupon Payments</b>	<p>Capital Japan also distributes coupons based on the Investment Amount paid annually in arrears as set out below:</p> <p><b>Year 1</b> Not less than 7.00%pa guaranteed.</p> <p><b>Year 2</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2008 being at or above 110% of the closing level on the start date (the “Initial Reference Level”).</p> <p><b>Year 3</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2009 being at or above 115% of the Initial Reference Level.</p> <p><b>Year 4</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2010 being at or above 120% of the Initial Reference Level.</p> <p><b>Year 5</b> 2.00%pa subject to the closing level of the Nikkei on 10 March 2011 being at or above 125% of the Initial Reference Level.</p>
<b>Maturity Value</b>	<p>Determined by the formula:</p> <p>Maturity Value = the greater of:</p> <ul style="list-style-type: none"> <li>➤ number of Units allocated x Unit Price minus the coupon payment paid to you in year 1; and</li> <li>➤ your Investment Amount.</li> </ul> <p>Where the Unit Price is the Final Reference Level divided by 100. The Unit Price is denominated in Australian Dollars.</p>
<b>Early Termination</b>	Capital Japan is a hold to maturity investment. However, your Capital Japan Investment may be terminated prior to the Maturity Date. In determining the Early Termination Value, we take into account Break Costs and the guaranteed coupon payment that was paid to you in year 1. Your Early Termination Value may be less than your initial Investment Amount. Refer to “Early Termination” in this PDS for more information.
<b>Calculation Agent</b>	Commonwealth Bank of Australia
<b>Application Amount</b>	Minimum of A\$10,000 plus the Application Fee of 2.00%; that is, \$10,200.
<b>Application Fee</b>	2.00% of the Investment Amount
<b>Distribution Fee</b>	Nil
<b>Brokerage for sale of the Delivery Asset</b>	Where investors choose to utilise our Delivery Asset Sale Service, we charge a brokerage of 0.55% (including GST) of the Maturity Value on maturity. This fee will be charged separately to your nominated bank account. There may be tax implications to you if you use the Delivery Asset Sale Service. For more information, see “Tax Considerations” on page 12 of this PDS.
<b>Early Termination fee</b>	1.50% of Early Termination Value on sale before maturity.
<b>Delivery Asset</b>	Units in the StreetTRACKS S&P/ASX 200 Fund
<b>Delivery Asset Issuer</b>	State Street Services Limited (ABN 31 087 786 123)
<b>Delivery Asset Market</b>	Australian Stock Exchange Limited

We consider that Capital Japan is only suitable for investors who understand the risks involved, which include market performance and opportunity costs. For further discussion of the risks involved with this product, please refer to the section headed “Risks of investing” of this PDS. Please contact your adviser if you would like further information about this Product.

# Terms of Sale

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 acquire the Delivery Asset 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 acquire the Delivery Asset 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 and by paying to us the amount equal to the Application Amount on or before the Closing Time.

The funds that you pay us must have cleared on or before 12 noon on the Start 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.

### 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 acquire the Delivery Asset 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) It is a condition precedent to our acceptance of any such offer from you that:
  - (i) we receive from you a validly completed and signed Application Form; and
  - (ii) we receive the Application Amount on or prior to the Closing Time and these funds must clear by 12 noon (Sydney Time) on the Start Date in accordance with clause 3.2 of these Terms of Sale.

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 Closing 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 determine the number of Capital Japan Units and the Unit Price per Capital Japan as at the Start Date and will specify this in the Acceptance Notice.

### 1.4 Code of Banking Practice

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

## 2. Coupon payments

If we accept your offer, we agree to distribute to you coupon payments on the terms and as set out in the Schedule of Terms.

## 3. Deferred purchase of Delivery Asset

### 3.1 Purchase of Delivery Asset

- (a) You agree to purchase the Delivery Parcel for the Investment Amount (which will be paid by you in accordance with clause 3.2) from us on the Maturity Date.
- (b) We will then deliver the Delivery Parcel to you after Completion in accordance with clause 3.3.

### 3.2 Paying the Application Amount to us

- (a) You must pay to us the Application Amount which consists of the Application Fee, the Distribution Fee, if any, and the Investment Amount.
- (b) You must make payment of the Application Amount on or prior to the Closing Time on the Closing Date.
- (c) Of the Application Amount, the Investment Amount will be applied to purchase the Delivery Parcel on the Trade Date after Maturity (in accordance with clause 3.1(a)) and the remainder of the Application Amount (ie, the Application Amount minus the Investment Amount) will be applied towards payment of the Application Fee and Distribution Fee, if any.
- (d) The Minimum Application Amount that we will accept under these Terms of Sale is set out in the Schedule of Terms.

## 4. Completion and Settlement

### 4.1 Completion Notices

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

### 4.2 How to make an Effective Completion

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

- (a) fill out the Completion Notice by electing whether you will accept legal title to the Delivery Asset 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.

### 4.3 Deemed election to receive legal title to the Delivery Asset

Subject to the terms of the Capital Investment Loan (if you have funded your investment in Capital Japan with a Capital Investment Loan), you are deemed to have elected to receive legal title to the Delivery Asset and delivery will take place in accordance with clause 4.4 and the purchase of the Delivery Asset will complete if:

- (a) we do not receive a Completion Notice from you by the Completion Time; or
- (b) 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 legal title to the Delivery Asset or use the Delivery Asset Sale Service.

### 4.4 If you have elected to receive legal title to the Delivery Asset

Where:

- (a) you have elected on the Completion Notice to accept legal title to the Delivery Asset; or
- (b) you are deemed under clause 4.3 to have elected to receive legal title to the Delivery Asset;
 

then:

  - (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 Asset to be transferred 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 Asset); 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 delivery of Delivery Asset to you. This includes but is not limited to supplying your HIN.

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

Where you have elected on the Completion Notice to use the Delivery Asset Sale Service we will procure (either us or through our nominee) delivery of the Delivery Asset as follows:

- (a) we (or our nominees) are irrevocably authorised to accept physical delivery of the Delivery Asset and hold the Delivery Asset for and on your behalf on the Settlement Date;
- (b) you:
  - (i) irrevocably authorise us or our nominees to sell the Delivery Asset; and
  - (ii) irrevocably direct and authorise us or any of our nominees to take all actions necessary or desirable for us or our nominees to effect the sale of the Delivery Asset;
- (c) we or our nominees on behalf of us, will pay you the Sale Proceeds on or as soon as reasonably practicable after the Settlement Date; and
- (d) you acknowledge and agree that:
  - (i) we or our nominees agree to sell the Delivery Asset on your behalf on (or as soon as reasonably practicable after) the Settlement Date for an amount equal to the Delivery Asset Price; and
  - (ii) to the maximum extent permitted by law, neither we or our nominees 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.

**4.6** Satisfaction of obligations

Upon delivery of the Delivery Asset to you in accordance with this clause 4 or payment by us or our nominee (on behalf of us) to you of the relevant amount in respect of the Delivery Asset under clause 4.5(c), our obligations to you under these Terms of Sale are satisfied and discharged.

**4.7** 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 Asset. If there are any fractional securities or units that comprise the Delivery Asset, 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 Asset provided that such amount exceeds twenty Australian Dollars (A\$20.00). If the amount does not exceed A\$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 Asset which has been forgone.

**4.8** Substitution of Delivery Asset

We may substitute the Delivery Asset with any other security quoted and trading on ASX (including any other security or any other fund or entity listed on ASX) and deliver that substituted security in accordance with these Terms of Sale as if the definition of "Delivery Asset" was amended to refer to the substituted security if delivery of the Delivery Asset is considered by us to be inappropriate for any reason in our absolute discretion.

**4.9** Default by us

If we default in relation to any of our obligations under these Terms of Sale and as a result, Completion and Settlement does not occur in accordance with this clause 4, we will refund to you either part or all of the Application Amount.

**5. Our obligations are unsecured**

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

**6. No transfer of legal or beneficial interest in the Delivery Asset**

You agree and acknowledge that the agreement to purchase the Delivery Asset 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 Asset to you. The parties agree and acknowledge that the legal or beneficial interest in the Delivery Asset will transfer to you only on the Settlement Date. You agree and acknowledge that should we fail to deliver the Delivery Asset to you 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.

**7. Accretions**

These Terms of Sale do not confer on you any right or interest in respect of Accretions to the Delivery Asset. Accretions to the Delivery Asset may lead to adjustments as provided for in clause 10 of these Terms of Sale.

**8. 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, the purchase, sale or transfer of, or the completion of the purchase and sale of the Delivery Asset.
- (b) We are not responsible for the payment of any Taxes or other charge:
  - (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, the purchase, sale or transfer of, or the completion of the purchase and sale of the Delivery Asset or Delivery Assets.

**9 Early Termination****9.1** 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 Capital Japan held by you and deliver an Early Termination Notice to you.

We will determine, in our discretion, the Early Termination Date and the Early Termination Value and will notify you in these, together with the Early Termination Fee, in the Early Termination Notice.

**9.2** 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 this written notice, we will determine an Early Termination Date, the Early Termination Value and the Early Termination Fee and will complete accordingly.

**9.3 Procedure for Early Termination**

Subject to clause 9.3(e), 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) that completion will occur on the Early Termination Date in accordance with clause 4 of these Terms of Sale; and
  - (ii) 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 4.2 to 4.8 of these Terms of Sale. You must also pay to us the Early Termination Fee on or before the Early Termination Date.
- (c) If:
- (i) subject to clause 9.3(d) and 9.3(e), you have elected to take legal title of the Delivery Asset then after the Delivery Asset is delivered to you under clause 4.4(i); or
  - (ii) we (or our nominee) pay you the relevant amount in respect of the Delivery Asset under clause 4.5(c),
- 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.
- (d) If you funded your investment in Capital Japan with a Capital Investment Loan, unless we require otherwise or you are in default under your 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 (subject to the terms of the Capital Investment Loan) in respect of the Delivery Asset under clause 4.5(c) of these Terms of Sale.
- (e) If you funded your investment in Capital Japan 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) we will no longer be under any obligation to deliver to you the Delivery Asset under clause 4.4(i) or pay you the relevant amount in respect of the Delivery Asset under clause 4.5(c), 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 payable by you to us, subject to the terms and conditions of your Capital Investment Loan.

**9.4 Adjustments to this clause**

If we determine that any of the provisions of this clause 9 are not appropriate in any particular circumstances, or that any event which is not dealt with in clause 9 should have been dealt with, we may make any alterations to these provisions or any other Term that we consider appropriate.

**10. Adjustment Events****10.1** If an Adjustment Event occurs on or before the Maturity Date, we may in our absolute discretion elect to do any or all of the following:

- (a) substitute the Delivery Asset with any other security quoted and trading on ASX; or other Delivery Asset Market; and/or
- (b) substitute the Delivery Asset Issuer with any other company or fund listed on ASX or other Delivery Asset Market; and/or
- (c) substitute the Reference Index with another Reference Index; and/or

- (d) adjust or amend the definition of Delivery Asset and/or Reference Index; and/or
  - (e) adjust or amend any variable, formula, amount or calculation as set out or used in these Terms of Sale and/or the Schedule of Terms,
- as we believe to be as equitable as possible for you and us.

**10.2** If in our reasonable opinion, we determine that any of the provisions of this clause 10 are not appropriate to deal with the occurrence of the Adjustment Event in accordance with this clause 10, we may make any alterations to this provision or any Term that we consider is reasonably appropriate; or nominate the event as an Early Termination Event and deal with the event in accordance with clause 9.**10.3** We will notify you of any adjustment we propose to make under this clause before the adjustment occurs or as soon as reasonably practicable after the adjustment occurs.**11. 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 reviewed and fully understood these Terms of Sale and have made your own independent investigations and appraisals of the financial, taxation, legal, commercial and credit aspects associated with the purchase of the Delivery Asset prior to making this Application;
- (c) you have and will rely on your own judgement 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 Asset and you acknowledge that we have not made any representations to you regarding the suitability or appropriateness of the deferred purchase of the Delivery Asset 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 Asset;
- (e) you have obtained all consents which may be required by law to enable you to acquire the Delivery Asset and to become registered as the holder of the Delivery Asset and that the registration of you as the holder of the Delivery Asset will not contravene any law, regulation or ruling or the constitution of the Delivery Asset Issuer;
- (f) you (and no other person) 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) Capital Japan being applied for 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 Japan or you;
- (h) you are not a resident or national of any jurisdiction where the Application for or the Completion of Capital Japan 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 the section of the PDS headed "Tax Considerations" set out in pages 12 of the PDS is provided only for the benefit of Commonwealth Bank of Australia and the information contained 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; and
- (k) you have not withheld any information that might have caused us to reject your Application;

## 12. 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 e-mailed to, or by being posted in a prepaid envelope or wrapper to your address (or e-mail 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 two 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.

## 13. Amendment of Terms of Sale

- 13.1** We may from time to time make any modification, variation, alteration or deletion of, or addition to, these 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 9 or 10 of these Terms of Sale;
  - (b) the Amendment is necessary or desirable in the reasonable opinion of us to comply with any statutory or other requirement of law; or
  - (c) the Amendment is desirable to correct an inconsistency or error in these Terms of Sale (but only if such Amendment does not, in our opinion, prejudice your interests).
- 13.2** We will give you notice of any Amendment to these Terms of Sale and you will be bound by any such Amendment at the time you are served with such notice.
- 14. General provisions**
- 14.1** Priority between Terms of Sale, Schedule of Terms and the remainder of the PDS
- (a) Subject to clause 14.1(b), if there is an inconsistency between these Terms of Sale, and the Schedule of Terms or the remainder of the PDS, then the statements made in the Schedule of Terms or the remainder of the PDS will prevail.
  - (b) If there is an inconsistency between either or both of clauses 9 or 10 of these Terms of Sale, and the Schedule of Terms or the remainder of the PDS, then clauses 9 and/or 10 will prevail.

## 14.2 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.

## 14.3 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.

## 14.4 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 Asset are rounded down to the nearest whole number.

## 14.5 Indemnity

- (a) You indemnify each of the Commonwealth Bank of Australia ("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; or
  - (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.

## 14.6 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.

## 14.7 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.

## 14.8 Power of attorney

You irrevocably appoints us, the Commonwealth Bank of Australia and our nominees 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 Asset or the protection of our interests or the exercise of the rights, powers and remedies of us, including without limitation the authority to sell the Delivery Asset on behalf of you in accordance with clause 4.5(b).

**14.9** 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.

**14.10** 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.

**14.11** 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) The rights and obligations under these Terms of Sale may not without our prior consent:
- (i) be assigned (whether in law, in equity or otherwise) by you; or
  - (ii) be made the subject of any encumbrance, charge, trust or fiduciary obligation,
- and any action that purports to do so is invalid, void and without effect as between you, us and any third party.

**14.12** Recording conversations

You acknowledge that conversations between the 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.

**14.13** 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.

**14.14** 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.

**15. Definitions and interpretation****15.1** Definitions

In these Terms of Sale, unless the context requires otherwise:

**“Accretions”** – 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;

**“Adjustment Event”** means in respect of either the Reference Index or Delivery Assets (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;

- (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;

## (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; or
- (v) there is a Suspension or material limitation on trading of securities generally on a Relevant Exchange for a period of 24 hours or more;
- (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) where the Relevant Asset is a commodity:

- (i) the commodity price is suspended or ceases to be available for a period of 24 hours or more;
- (ii) there is a material change in the method of calculation of the commodity price; or
- (iii) there is a suspension or material limitation in trading of the commodity on any relevant over-the-counter market for a period of 24 hours or more; or
- (iv) there is a suspension or material limitation of trading in the commodity futures contract used by the Issuer to hedge its position, for a period of 24 hours or more;

## (d) 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, judgement, order or directive of any government, administrative, legislative or judicial authority or power;

## (e) 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 (d) above occurring;

**“Application”** – an offer by you to us to acquire the Delivery Asset on a deferred basis on the terms and conditions set out in these Terms of Sale;

**“Application Amount”** – the total amount payable by you to us in consideration for acquiring the Delivery Asset on the Maturity Date being an amount equal to the Investment Amount plus Application Fee and Distribution Fee, if applicable;

**“Application Fee”** – in relation to each series of Capital Japan, the amount set out as the “Application Fee” in the Schedule of Terms;

**“Application Form”** – the application form attached to the PDS;

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

**“ASX”** – Australian Stock Exchange Limited ACN 008 624 691;

**“Australian Dollars”** – the lawful currency of Australia;

**“Break Costs”** means all costs, expenses and losses incurred by us and notified by us as payable by you as a result of:

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

**“Business Day”** – a day on which all Australian banks, the ASX and the Relevant Financial Market 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 Japan”** – the agreement under which you purchase the Delivery Asset from us on the terms and conditions set out in these Terms of Sale and the PDS;

**“Capital Investment Loan”** means a loan made by us to you under which you borrow the Investment Amount for the purposes of investing in Capital Japan;

**“Closing Time”** – 12:00 noon Sydney time on the Closing Date;

**“Closing Date”** – in relation to each series of Capital Japan, the date specified as the “Closing Date” in the PDS;

**“Commonwealth Bank”** or **“us”** or **“we”** or **“the Bank”** – Commonwealth Bank of Australia of 48 Martin Place Sydney, New South Wales, Australia;

**“Completion”** – the completion by you of the deferred purchase of the Delivery Asset in accordance with clause 4 of these Terms of Sale, and “Complete” has a corresponding meaning;

**“Completion Time”** – 5:00 p.m. Sydney time on the Maturity Date;

**“Completion Notice”** – a notice issued by us in accordance with clause 4.1 or 9.2(a)(i) as the case may be;

**“Corporations Act”** – the Corporations Act 2001 (Cth);

**“Delivery Asset”** – for each series of Capital, the “Delivery Asset” as specified in the Schedule of Terms or any other delivery asset determined by us in accordance with the Terms of Sale and the PDS;

**“Delivery Parcel”** means:

- (a) the number of Delivery Assets to be delivered by us to you on the Settlement Date as determined by the following formula:

$$\text{Delivery Parcel} = \frac{\text{Maturity Value} - \text{Transfer Costs and Taxes}}{\text{Delivery Asset Price}}$$

rounded down to the nearest whole unit; or

- (b) (this only applies if there is an Early Termination under clause 9, for the purposes of determining the Delivery Asset), the number of Delivery Assets to be delivered by us to you on the Settlement Date as determined by the following formula:

$$\text{Delivery Parcel} = \frac{\text{Early Termination Value} - \text{Transfer Costs and Taxes}}{\text{Delivery Asset Price}}$$

rounded down to the nearest whole unit.

**“Delivery Asset Issuer”** – entity specified for each series 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”** – the relevant financial market that reports and disseminates traded prices of the Delivery Asset, as specified in the Schedule of Terms;

**“Delivery Asset Price”** – the price per unit of the Delivery Asset paid by us to acquire the Delivery Asset on the Trade Date;

**“Delivery Asset Sale Service”** – the arrangement whereby we sell the Delivery Asset for and on behalf of, at the direction of and as agent for you on the Settlement Date in accordance with clause 4.5 of these Terms of Sale;

**“Distribution Fee”** – in relation to each series of Capital, the amount set out as the “Distribution Fee” in the Schedule of Terms;

**“Early Termination”** – the early completion of the deferred purchase of the Delivery Asset as determined and completed in accordance with clause 9;

**“Early Termination Date”** – the date notified to you as the “Early Termination Date” in the Early Termination Notice;

**“Early Termination Fee”** means a fee equal to 1.50% of the Early Termination Value;

**“Early Termination Event”** means:

- (a) an event considered to be a termination event as described in the PDS;
- (b) actual or proposed Adjustment Event of which, in our reasonable opinion, it is not possible or desirable for that event to be dealt with in accordance with clause 10;
- (c) any actual or proposed event that may reasonably in our opinion be expected to lead to any of the events in paragraphs (a) and (b) above occurring; or
- (d) if you have funded your investment in Capital Japan with a Capital Investment Loan, a default by you under the terms of your Capital Investment Loan;

**“Early Termination Notice”** – 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 Japan early and that an Early Termination will take place on the specified Early Termination Date;

**“Early Termination Value”** – the fair economic value of Capital Japan at 5:00 pm Sydney time on the Early Termination Date as we determine in our absolute discretion. 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, administrative costs, Transfer Costs and Taxes, costs of unwinding any hedge put in place for the purposes of meeting its obligations under these Terms of Sale, any cost of funding or any loss of bargain;

**“Final Reference Level”** – the method of calculating the level of the Reference Index as set out in the Schedule of Terms;

**“HIN”** – Holder Identification Number;

**“Japanese Yen”** – the lawful currency of Japan;

**“Initial Reference Level”** – the method of calculating the level of the Reference Index on the Start Date, as specified in the Schedule of Terms;

**“Investment Amount”** – in relation to each series of Capital Japan, the amount invested by you in Capital Japan;

**“Investment Term”** – in relation to each series of Capital Japan, the length of time set out as the “Investment Term” in the Schedule of Terms;

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

**“Maturity Date”** – the date specified in the PDS. If there is an Early Termination under clause 9, the Maturity Date will be that specified in the Early Termination Notice;

**“Maturity Value”** – the amount determined using the formula set out in the Schedule of Terms to determine the Maturity Value;

**“Minimum Investment Amount”** – in relation to each series of Capital Japan, the amount as set out as the “Minimum Investment Amount” in the PDS;

**“PDS”** means the product disclosure statement dated 7 February 2006, of which these Terms of Sale form part;

**“Reference Index”** – the Reference Index specified 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;

**“Relevant Asset Provider”** – 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 Financial Market”** – the financial market to which the Reference Index relates as specified in the Schedule of Terms;

**“Relevant Futures Exchange”** – the futures exchange upon which the futures contract entered into by us to hedge the Reference Index is traded;

**“Reference Level”** – the verified closing level of the Reference Index on the relevant day in the place of the Relevant Financial Market, as reported or published by the Reference Asset Provider;

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

**“Schedule of Terms”** – the Schedule of Terms contained in the PDS;

**“Settlement Date”** – the date specified in the PDS as the “Settlement Date”, or such later date as determined by us in our discretion as is reasonably necessary for us to fulfil our

obligations under these Terms of Sale;

**“Start Date”** – the date specified in the PDS as the “Start Date”;

**“Suspension”** – any temporary cessation of quotation of the Reference Index;

**“Tax”** or **“Taxes”** – 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”** – a provision in these Terms of Sale;

**“Terms of Sale”** – these terms and conditions on which you agree to acquire the Delivery Asset from us as set out in this document in the section headed “Terms of Sale”;

**“Trade Date”** the date specified in the PDS as the “Trade Date”, or such later date as determined by us in our discretion as is reasonably necessary for us to fulfil our obligations under these Terms of Sale;

**“Transfer Costs and Taxes”** – the brokerage or exit fee specified in the Schedule of Terms plus any incidental costs or expenses that we incur in relation to the transfer of any Delivery Asset to or for your benefit following Completion (whether by way of physical delivery of the Delivery Asset to you or delivery to one of our nominees under the Delivery Asset Sale Service) plus any Taxes incurred in relation to the transfer of any Delivery Asset to or on your behalf following Completion;

**“Unit”** means each unit in Capital Japan and is determined in accordance with the Schedule of Terms;

**“Unit Price”** is the price per Unit determined in accordance with the Schedule of Terms for each of the Start Date, the Early Termination Date and Maturity Date, as the context requires.

## 15.2 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.

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# Capital Japan

## Application Form

Issued by the Commonwealth Bank of Australia ABN 48 123 123 124, AFSL 234945  
Issue date 7 February 2006

## Application Form Instructions

- A –** Write the full name(s) that you wish to appear on your Acceptance Notice. The name or names that appear in this section will be those in which Commonwealth Bank **Capital Japan** issued to you will be held.
- Each joint applicant must sign the Application Form.**
- B –** Enter your postal address for all correspondence. If more than one Applicant applies jointly, then correspondence will only go to the address specified in this section.
- C –** If you have purchased securities on the ASX before, and have received a CHESS statement as a result, you should already have a Holder Identification Number (HIN). Alternatively, if you have purchased securities but were sponsored by a CHESS participant, such as a broker, then on your broker statements there will be a reference to a Participant Identifier (PID). If either your HIN or PID is available please write them in this section.
- D –** Write your contact details here.
- E –** Indicate your intended method of payment by ticking the appropriate box. If you select Direct Debit as the method of payment you need to complete and sign the Direct Debit Form.
- F –** Write the amount you wish to invest in Capital Japan. Make sure that the cheque amount you attach corresponds to the total figure that you write in the section.
- G –** If you wish to have cash payments credited directly into your account please enter the details here. This option is only available for accounts held with banks, building societies and credit unions within Australia.
- H –** Write the details of your authorised representative (optional) here. You may nominate your adviser as your authorised representative.
- I –** Write the details of the cheque(s) you are attaching as your Application Amount. Please make sure that the attached cheque amount equals the Total in Section F. The cheque(s) must be made out to Commonwealth Bank of Australia and marked not negotiable. In addition, the cheque(s) must be payable in Australian currency and drawn on an Australian bank.
- J –** This section must be completed with your identification details.
- K –** Complete and sign this section if you wish to pay your Investment Amount and Application Fee through your nominated bank account.
- L –** You must complete and sign this section as it allows Commonwealth Bank to do all things necessary to establish your investment in Capital Japan.

Please read in full the Terms of Sale. The Terms of Sale contain important information about Capital Japan. A person who gives another person access to this Application Form must at the same time and by the same means give the other person access to the Terms of Sale. While the Terms of Sale are current, Commonwealth Bank or a securities dealer or other licensed financial intermediary who has provided an electronic copy of it will send a paper copy of the Terms of Sale and the application form on request and without charge.

**Correct form of registrable title.** Applications must be in the name(s) of natural person, companies or other legal entities acceptable to Commonwealth Bank. At least one full given name and the surname are required for each natural person. A non-registrable name may be included by way of account designation if completed exactly as described below.

Type of Investor	Correct Form	Examples of Incorrect Form
<b>Individual.</b> Use given names not initials	John Adam Smith	J.A. Smith
<b>Company.</b> Do not use abbreviations	ABC Pty Ltd	ABC P/L ABC Co
<b>Trusts.</b> Use Trustee's personal name Do not use the name of the Trust	John Smith <John Smith Family A/C>	John Smith Family Trust
<b>Deceased Estates.</b> Use executor's personal name not the name of the deceased.	John Smith <Est James Smith A/C>	Estate of late James Smith
<b>Partnerships.</b> Use personal names not the name of the partnership	John Smith and Michael Smith <John Smith & Sons A/C>	John Smith & Son
<b>Clubs/Incorporated Bodies/Business Names.</b>	Amanda Smith <ABC Bowling Club>	ABC Bowling Club
<b>Superannuation Funds.</b> Use Trustee's name not the name of the Trust	John Smith Pty Ltd <Super Fund A/C>	John Smith Pty Ltd Superannuation Fund

**Send Applications to:**

Capital Japan  
Commonwealth Securities  
Locked Bag 34  
Australia Square NSW 1214

**Office use only**

Loan Application Number

Application Fee

Adviser Name

Broker/Adviser Stamp:

This Application Form is to be used for investing in Capital Japan. If this PDS is distributed electronically, then those receiving it 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 dated 7 February 2006. Paper copies of this PDS (with Attached Application Form) are available free on request.

Terms used in this Application Form which are defined in the Terms of Sale have the same meaning in this Application Form.

**A Applicant Name(s) – Title, First Name, Last Name; or Company Name**

Applicant #1

Tax File Number

Applicant #2

Tax File Number

**B Address**

State

Postcode

**C CHESS Details**

Sponsoring Broker

Broker PID

HIN

Account Name



**D Personal Contact Details**

Name

Daytime Phone No. (  )  Mobile Phone No.

Email Address

**E Method of applying the Application Amount**

*(Tick the appropriate box)*

Cheque payable to Commonwealth Bank of Australia (please complete Section I)

Direct Debit (Complete and sign the Direct Debit Form in Section K)

**F Application Amount**

Investment Amount \$  **A**

Application Fee \$  **B**

**Application Amount** \$  **C** = **A** + **B**

I am applying for a Capital Investment Loan. I have attached the application for a Capital Investment Loan together with this Application Form *(Tick if applicable)*.

- Minimum Investment Amount is A\$10,000 with increments of \$1,000
- Application Fee is 2.00% of the Investment Amount (for example, \$10,000 Investment Amount has an Application Fee of \$200)
- Application Amount would be the sum of the Investment Amount and the Application Fee.
- If you are applying for a Capital Investment Loan and your Capital Investment Loan is approved, we will only lend the Investment Amount to you. We will direct debit the Application Fee from your nominated bank account. Alternatively, you can attach a cheque for the total of the Application Fee together with your Application Form.

**G Bank Account Details (for payments)**

Please credit all coupon payments and the Maturity Value of my investment to the following bank account (must be in the exact same name/s as your Capital Japan investment).

Bank Name

Branch

Account Name

BSB No.    -    Account Number

› If you do not complete this section, or the Direct Debit Request, we will pay any amounts that are due to you by cheque made payable to you and sent to the address nominated by you on the Application Form.

**H Broker/Authorised Representative Details**

**OPTIONAL**

**Authorised representative** *(to be completed by Applicant – optional)*

We are authorised to share information about Capital Japan with your authorised representative and we are authorised to act on the instructions of your authorised representative.

Your authorised representative is nominated below:

Title  Mr  Ms  Mrs  Miss  Dr Other (specify) \_\_\_\_\_

Surname  Given Name(s)

Phone Numbers Home  ( )  Work  ( )

Fax  ( )  Mobile

*please tick your preferred contact number*

Residential address   
 State  Postcode

Postal address   
 State  Postcode

Email address

Signature of Authorised Representative

**I Cheque for Application Amount**

**OPTIONAL**

Drawer

Bank

Branch

Amount

▶ If you are applying for a Capital Investment Loan, please attach a cheque for the total of the Application Fee.



**J Identification Details**

**1. Existing CommSec Share Trading Account**

Please indicate how many years *you* have been trading in shares  0-2 years  2-5 years  Over 5 years  
 Are you a client of *Commonwealth Securities*?  Yes  No

If Yes, please provide *your* account number:

**BORROWER 1 / DIRECTOR 1 / TRUSTEE 1 (OR JOINT ACCOUNT)**

**BORROWER 2 / DIRECTOR 2 / TRUSTEE 2**

*(only to be used if CommSec accounts are in individual names)*

**2. Existing Commonwealth Bank Accounts**

Do you have any other Commonwealth Bank Accounts?  Yes  No

If yes, please write the account numbers here: *(Loan account numbers should include both personal and company accounts)*

BSB No.    -    Account Number

Account in the name(s) of:

BSB No.    -    Account Number

Account in the name(s) of:

BSB No.    -    Account Number

Account in the name(s) of:

BSB No.    -    Account Number

Account in the name(s) of:

**3. Identification**

If any Borrower/Director cannot provide details in either questions 1 or 2 (above), then please attach a copy of one form of identification as listed below:

**BORROWER 1 / DIRECTOR 1 / TRUSTEE 1 (OR JOINT ACCOUNT)**

- Driver's Licence  Passport  Proof of Age Card  Seniors Card

**BORROWER 2 / DIRECTOR 2 / TRUSTEE 2**

- Driver's Licence  Passport  Proof of Age Card  Seniors Card

**K Direct Debit Request**

**COMPULSORY**

Form of Request for debiting amounts to accounts through the Bulk Electronic Clearing System (BECS). If you wish to make payment of the Application Amount for Capital Japan by Direct Debit, we can arrange a Direct Debit from your Bank Account. By completing this Direct Debit Request you are authorising Commonwealth Securities Ltd to both direct debit and direct credit your account.

I/We (Name that appears on your account)

I/We (Name that appears on your account if held jointly)

authorise and request, Commonwealth Securities (APCA User ID No. 062934) as agent for Commonwealth Bank of Australia to arrange for funds to be debited from my/our account at the financial institution identified below and as prescribed below through the Bulk Electronic Clearing System (BECS). This authorisation is to remain in force in accordance with the terms described in the Direct Debit Request Service Agreement below.

I/We authorise the following:

1. Commonwealth Bank to verify the details of the account with my/our Financial Institution.
2. The Financial Institution to release information allowing Commonwealth Bank to verify the account details.

Signature of Individual/Client 1 (Joint)

Signature of Client 2 (Joint)

**Details of the Account to be debited**

Name of Financial Institution or Bank at which your account is held

Account Name (eg Mr John Brown)

BSB No.

 - 

Account Number

Date

 /  / 

**Note:** The Account Name must be a holder of this Capital Japan Investment. Direct Debit is not allowed on the full range of accounts. If in doubt, please refer to your bank.

**Commonwealth Bank Capital Japan Direct Debit Service Agreement**

**Debit arrangements**

1. We reserve the right to charge a transaction fee if any debit item already debited from your nominated account is returned as unpaid by the Financial Institution.
2. We will keep the information about your nominated account at the Financial Institution private and confidential unless this information is required by us to investigate a claim made on it relating to an alleged incorrect or wrongful debt, or as otherwise required by law.
3. In the event of a debit returned unpaid we may attempt a redraw on your nominated account.
4. We will advise you 14 days in advance of any changes to the Direct Debit arrangements.

**Your Rights**

5. You may terminate the Direct Debit arrangement with us, however this termination must be in writing.
6. Where you consider the debit is incorrect in either the due date or amount or both, you should raise the matter with Commonwealth Bank on **13 15 19**.

**Your Responsibilities**

7. It is your responsibility:
  - to check with the Financial Institution where your account is held before completing the Direct Debit Request (DDR) as Direct Debiting through Bulk Electronic Clearing System (BECS) is not allowed on the full range of accounts. You should also complete your account details (including Bank State Branch (BSB) number) directly from a recent account statement from your Financial Institution;
  - to ensure sufficient cleared funds are available in the nominated account to meet the debit on the due settlement date of your transactions executed by Commonwealth Bank;
  - to ensure that the authorisation to debit the nominated account is in the same name as the account held by the Financial Institution;
  - to advise us if the account you have nominated to debit is transferred or closed;
  - to ensure that suitable arrangements are made if the Direct Debit is cancelled;
    - by yourself;
    - by your nominated Financial Institution; or
    - for any other reason

➤ Please detach and keep for future reference



**L Declaration and Signature(s)**

**COMPULSORY**

- › Please read the Declaration and Privacy Statement on the following pages.
- › Ensure that you provide the relevant signature/s, witness signature and company seal (if applicable) in the Further Information section on page 42 before returning the Application Form to us.

**Applicants Declaration**

**General Declaration:** I/We whose full name(s) and address(es) appear above, hereby apply for Commonwealth Bank Capital Japan as set out on this Application Form, to be issued in accordance with the Terms of Sale issued by Commonwealth Bank of Australia. I/We have read and understood the Product Disclosure Statement, Terms of Sale and Schedule of Terms for Capital Japan. I/we agree to accept Commonwealth Bank Capital Japan on the basis of and be bound by the Terms of Sale.

I/we acknowledge that we have read and understood the declarations set out above in this Application Form and by signing below I/we agree to be bound by them and make the declarations contained therein.

Your signature below also indicates your consent to such use and disclosure of your personal information as are indicated above.

You may, however, indicate that you do not want to receive marketing information from us by ticking the box.

Applicant #1

Applicant #2

**Representations and Warranties: I/We represent and warrant that:**

- I am/we are not bankrupt nor insolvent, am/are able to pay my/our debts as and when they become due, no step has been taken to make me/us bankrupt or commence winding up proceedings, appoint a controller or administrator, seize or take possession of any of my/our assets or make an arrangement, compromise or composition with any of my/our creditors;
- I/we have full legal capacity to make the Application and be bound by the Terms of Sale and have taken all actions that are necessary to authorise the Application and be bound by the Terms;
- I/we have reviewed the Terms of Sale and I/we have made my/our own independent investigations and appraisals of the taxation, legal, commercial and credit aspects associated with the purchase of the Delivery Asset;
- I/we have not relied in any way whatsoever on any statements made by Commonwealth Bank of Australia or any of its related entities or their servants, agents, employees or representatives in relation to the Terms of Sale or the deferred purchase of the Delivery Asset and I/we acknowledge that Commonwealth Bank of Australia has not made any representations to me/us regarding the suitability or appropriateness of the deferred purchase of the Delivery Asset;
- I/we understand that nothing in the Terms of Sale or any marketing material associated with Capital Japan can be considered investment advice or a recommendation to buy the Delivery Asset; and
- I/we have obtained all consents which may be required by law to enable me/us to acquire the Delivery Asset and to become registered as the holder of the Delivery Asset and that the registration of me/us as the holder of the Delivery Asset will not contravene any law, regulation or ruling or the constitution of any company.
- I/we (and no other person) are not in breach of any law or any obligation to another person by entering into or becoming bound by the Terms of Sale;
- by applying for Capital Japan, I/we will not be in breach nor there be any resulting breach of any exchange controls, fiscal, securities or other laws or regulations for the time being applicable to Capital Japan or me/us;
- I/we are not a resident or national of any jurisdiction where the Application for or the Completion of Capital Japan is prohibited by any law or regulation or where compliance with the relevant laws or regulations would require filing or other action by the Commonwealth Bank of Australia or any of its related bodies corporate.
- I/we acknowledge that the Commonwealth Bank does not provide taxation advice and the information contained in section of the PDS headed "Tax Considerations" is necessarily general in nature and does not take into account the specific taxation circumstances of each individual Investor. I/we acknowledge that I/we have been advised to seek my/our own independent advice on the taxation implications relevant to my/our own circumstances before making an investment decision;



**L Declaration and Signature(s) (continued...)**

- all the information that I/we have given to the Commonwealth Bank of Australia is correct and not misleading; and
- I/we have not withheld any information that might have caused the Commonwealth Bank of Australia to reject my/our Application.
- I/we acknowledge that my/our signatures below indicates my/our authorisation of the payment instructions provided to the Bank in this application form.

**Power of Attorney:** For valuable consideration I/we irrevocably appoint Commonwealth Bank of Australia, its nominees and any of their directors, secretaries and managers or any employee whose title includes the words “director”, “head” or “manager” severally as my/our attorney to do (either in my/our name or the name of the attorney) all acts and things that I am/we are obliged to do under the Terms of Sale or which, in the opinion of Commonwealth Bank of Australia, are necessary or desirable in connection with the Delivery Asset (as defined in the Terms of Sale) or the protection of Commonwealth Bank of Australia’s interests or the exercise of the rights, powers and remedies of Commonwealth Bank of Australia, including without limitation the authority to sell the Delivery Asset on my/our behalf in accordance with clause 4.5(b).of the Terms of Sale.

**PLEASE READ THE TERMS CAREFULLY BEFORE SIGNING THIS APPLICATION FORM**

- › Every statement and direction made above is, in the case of persons who jointly apply for Capital Japan, made jointly and severally by each applicant.
- › Each Joint Applicant must sign this Application Form.

Signature / Execution clause Signed by:

Applicant #1 Signature

Director Signature

Applicant #2 Signature

Director/Secretary Signature

Witness Signature

Company Seal

Witness Name (print)

Date

**Bank use only**

Branch number

RM name

Client’s CRIS code

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**Check List - Capital Japan****Application Form**

Before you send in your Application Form for Capital Japan, use this list to check that you have provided all the information required.

**Have you:**

- Completed Section A to Section G and Section J.
- If applicable, completed the Authority in Section H (if authorising someone, for example, your adviser, to act on your behalf).
- If applicable, complete Section I (if paying by cheque).
- If applicable, complete and sign Section K (if paying through your nominated bank account).
- Provided the relevant signature/s, witness signature and a company seal (if applicable).
- Completed and signed the Direct Debit Request, if applicable.
- Signed Section L

**Send your completed Application Form and Direct Debit Request to:**

Capital Japan  
Commonwealth Securities  
Locked Bag 34  
Australia Square NSW 1214

If you have any queries please contact your adviser or contact us on **13 15 19**.

# Directory

**Registered office of the Issuer:**

Commonwealth Bank of Australia  
48 Martin Place,  
Sydney, NSW 2000

