

EMEA DC STATEMENT AND REQUEST FOR MARKET FEEDBACK

The EMEA DC met on Monday 3 July 2017 to continue discussions on Auction-related matters with respect to Banco Popular Español SA (**Banco Popular**) and agreed to publish the following statement /request for market feedback.

For purposes of the Auction that the EMEA DC has resolved to hold in respect of subordinated 2014 Transactions, the EMEA DC has previously noted that the related Governmental Intervention Credit Event constitutes an Asset Package Credit Event such that Asset Package Delivery applies for purposes of settlement of such 2014 Transactions.

The 2014 Definitions provide that the Asset Package will be comprised of all of the "Assets" received or retained by a holder of the Tier 2 subordinated debt instruments issued or guaranteed by Banco Popular (the **Tier 2 Notes**)¹ in connection with this Credit Event.

By way of background, as part of the resolution action taken by the Single Resolution Board and the Fondo de Reestructuración Ordenada Bancaria, the Tier 2 Notes were converted into new shares and those shares were then effectively expropriated from noteholders and sold to Banco Santander S.A. for a nominal consideration.

As part of its Auction-related deliberations, the EMEA DC has been considering whether any rights retained by noteholders following the resolution action (the **Retained Rights**, being broadly speaking any claims or rights arising from a direct holding of the Tier 2 Notes immediately prior to the Credit Event and any claims or rights ancillary to such holding, in each case which have been retained by the holder of the Tier 2 Notes following the resolution action, and including potential compensation claims, litigation claims, or rights to initiate legal proceedings, arising as a result of, relating to or in connection with the resolution action) should be included in the related Asset Package and therefore be taken into consideration in the Auction for the subordinated 2014 Transactions.

The EMEA DC is of the view that, in principle, Retained Rights could constitute Assets that would form part of the Asset Package. However, in order to develop its thinking on this issue, the EMEA DC would like to consider further the materiality and marketability of the Retained Rights: the EMEA DC is of the view that it is not the intention of the 2014 Definitions that any *de minimis* and immaterial rights should be included in the Asset Package; there has to be a materiality threshold in the interests of ensuring an efficient auction.

Accordingly, the EMEA DC is seeking information from market participants as to whether there is a market for the purchase and sale of any Retained Rights in connection with the bail-in of the Banco Popular Tier 2 Notes for purposes of determining whether any such Retained Rights should form part of the Asset Package and be included in the Auction for the 2014 Transactions. In other words, whether market participants are willing to pay more than *de minimis* consideration to purchase the Retained Rights. Of particular use and relevance will be any evidence of actual transactions that have been entered into in respect of such Retained Rights. If market participants do have evidence of such transactions having taken place, we would be grateful if they could contact Allen & Overy (as legal counsel to the EMEA DC) as soon as possible (and in any event on or before Wednesday 19 July 2017) at: neil.patel@allenoverly.com and david.benton@allenoverly.com. For the avoidance of doubt, the EMEA DC is not asking market participants to provide Allen & Overy with any information relating to matters which could be viewed as competitively sensitive, such as transaction sizes, prices and details of counterparties. The information that will be shared with the EMEA DC will be limited to numbers of trades (if any, but will not include specific information about the size of any particular transaction) and the form of documentation used to effect any such trades, but in any event will be shared on an anonymised basis.

¹ NB This assumes each such Tier 2 Note would constitute a "Prior Deliverable Obligations" in the first place. This is certainly the case for the Tier 2 Note which was the Standard Reference Obligation for the Subordinated Level. Pending ongoing legal review of the relevant underlying terms and conditions, the EMEA DC has assumed (including for present purposes) this is also the case for all other Tier 2 Notes.

The EMEA DC will, among other things, consider any submissions received when determining whether any Retained Rights form part of the Asset Package.

By way of further background, the treatment of any Retained Rights for purposes of inclusion in the Auction for the subordinated 2014 Transactions will ultimately be reflected in the related Auction Settlement Terms, a draft form of which will be published once the EMEA DC have agreed upon the appropriate approach. Publication of such draft Auction Settlement Terms usually triggers a public comment period whereby market participants are invited to submit any comments on such draft terms. On this occasion, the EMEA DC felt that such public comment period should be run ahead of (as well as following) the publication of the draft Auction Settlement Terms as feedback from market participants will help inform what might be the most appropriate approach in terms of how Retained Rights are dealt with in the Auction Settlement Terms.