

## IMPORTANT NOTICE

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION TO ANY U.S. PERSON (AS DEFINED IN REGULATION S ("REGULATION S")) UNDER THE SECURITIES ACT) OR IN OR INTO THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS (INCLUDING PUERTO RICO, THE U.S. VIRGIN ISLANDS, GUAM, AMERICAN SAMOA, WAKE ISLAND AND THE NORTHERN MARIANA ISLANDS), ANY STATE OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA (THE "UNITED STATES") OR TO ANY PERSON LOCATED OR RESIDENT IN ANY OTHER JURISDICTION WHERE IT IS UNLAWFUL TO DISTRIBUTE THIS DOCUMENT.

**IMPORTANT:** You must read the following disclaimer before continuing. The following disclaimer applies to the attached exchange offer memorandum (the "**Exchange Offer Memorandum**") and you are therefore required to read this disclaimer carefully before accessing, reading or making any other use of the Exchange Offer Memorandum. By accessing the Exchange Offer Memorandum, you agree (in addition to giving the representations below) to be bound by the following terms and conditions, including any modifications to them from time to time, each time you receive any information from any of Banco Popular Español, S.A. (the "**Bank**"), in its capacity as a Joint Dealer Manager and Société Générale (together the "**Joint Dealer Managers**") and each, a "**Joint Dealer Manager**") or Lucid Issuer Services Limited (the "**Exchange Agent**") as a result of such access. Capitalised terms used but not otherwise defined in this disclaimer shall have the meaning given to them in the Exchange Offer Memorandum.

THIS ELECTRONIC TRANSMISSION DOES NOT CONTAIN OR CONSTITUTE AN OFFER OF, OR THE SOLICITATION OF AN OFFER TO BUY OR SUBSCRIBE FOR, SECURITIES TO OR FROM ANY PERSON IN THE UNITED STATES OR ANY OTHER JURISDICTION TO WHOM OR IN WHICH SUCH OFFER OR SOLICITATION IS UNLAWFUL. SECURITIES MAY NOT BE OFFERED, SOLD OR DELIVERED IN THE UNITED STATES ABSENT REGISTRATION UNDER, OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF, THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"). THE NEW NOTES (AS DEFINED IN THE ATTACHED EXCHANGE OFFER MEMORANDUM) HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE SECURITIES ACT, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES, AND THE NEW NOTES MAY NOT BE OFFERED, SOLD OR DELIVERED, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS (AS DEFINED IN REGULATION S).

THE ATTACHED EXCHANGE OFFER MEMORANDUM MAY NOT BE FORWARDED OR DISTRIBUTED TO ANY OTHER PERSON AND MAY NOT BE REPRODUCED IN ANY MANNER WHATSOEVER. THE EXCHANGE OFFER MEMORANDUM MAY ONLY BE DISTRIBUTED OUTSIDE THE UNITED STATES AND TO PERSONS WHO ARE NOT U.S. PERSONS AND TO WHOM IT IS OTHERWISE LAWFUL TO SEND THE EXCHANGE OFFER MEMORANDUM. ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THIS DOCUMENT IN WHOLE OR IN PART IS UNAUTHORISED. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN A VIOLATION OF THE SECURITIES ACT OR THE APPLICABLE LAWS OF OTHER JURISDICTIONS.

**Confirmation of your representation:** In order to be eligible to view the attached Exchange Offer Memorandum or make an investment decision with respect to the Euro denominated 4.5 per cent. subordinated mandatorily convertible notes due 29 March 2014 (the "**New Notes**") to be issued by the Bank, you must not be a U.S. person and must be outside the United States and you must be otherwise able to participate lawfully in the invitation by the Bank to holders of the Existing Securities (as defined below) to offer to exchange their Existing Securities for New Notes (the "**Exchange Offer**"), on the terms and subject to the conditions set out in the Exchange Offer Memorandum including the offer and distribution restrictions set out on pages 9 to 12 (the "**Offer and Distribution Restrictions**").

The Exchange Offer Memorandum was sent at your request and by accessing the Exchange Offer Memorandum you shall be deemed to have represented to the Bank, the Joint Dealer Managers and the Exchange Agent that:

- (a) you are a Holder or a beneficial owner of the Existing Securities;
- (b) neither you nor any beneficial owner of the Existing Securities or any other person on whose behalf you are acting, either directly or indirectly, is a U.S. person or is located in the United States;
- (c) the electronic mail address that you have given to us and to which the Exchange Offer Memorandum has been delivered is not located in the United States;

- (d) you are otherwise a person to whom it is lawful to send the Exchange Offer Memorandum or to make an invitation pursuant to the Exchange Offer in accordance with applicable laws, including the Offer and Distribution Restrictions; and
- (e) you consent to delivery of the Exchange Offer Memorandum by electronic transmission.

The attached Exchange Offer Memorandum has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of electronic transmission and consequently none of the Bank, the Joint Dealer Managers, the Exchange Agent or any person who controls, or is a director, officer, employee, agent or affiliate of, any such person accepts any liability or responsibility whatsoever in respect of any difference between the Exchange Offer Memorandum distributed to you in electronic format and the hard copy version available to you on request from the Joint Dealer Managers or the Exchange Agent.

If any Holder has sold or otherwise transferred all of its Existing Securities, it should forward the Exchange Offer Memorandum to the purchaser or transferee of its Existing Securities, or to the stockbroker, bank or other agent through whom the sale or transfer was effected, for transmission to the purchaser or transferee, provided (a) the Exchange Offer Memorandum may be lawfully delivered to such person in accordance with the laws of the jurisdiction where such person is located or resident, and (b) such person confirms the representations given in (a) to (e) above.

You are also reminded that the attached Exchange Offer Memorandum has been sent to you on the basis that you are a person into whose possession the Exchange Offer Memorandum may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located or resident and you may not, nor are you authorised to, deliver the Exchange Offer Memorandum to any other person. Any materials relating to the Exchange Offer do not constitute, and may not be used in connection with, any form of offer or solicitation in any place where such offers or solicitations are not permitted by law. If a jurisdiction requires that the Exchange Offer be made by a licensed broker or dealer and any of the Joint Dealer Managers or any of their respective affiliates is such a licensed broker or dealer in that jurisdiction, that Exchange Offer shall be deemed to be made by such Joint Dealer Manager or affiliate on behalf of the Bank in such jurisdiction.

The Exchange Offer Memorandum may only be communicated to persons in the United Kingdom in circumstances where section 21(1) of the Financial Services and Markets Act 2000 ("FSMA") does not apply. Accordingly, the attached Exchange Offer Memorandum is not being distributed to, and must not be passed on to, persons in the United Kingdom save in circumstances where section 21(1) of the FSMA does not apply. The communication of the attached Exchange Offer Memorandum is only being made to those persons in the United Kingdom falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**Order**")) or within Article 43(2) of the Order, or to other persons to whom it may otherwise be lawfully communicated by virtue of an exemption to section 21(1) of the FSMA or otherwise in circumstances where it does not apply (such persons together being "**Relevant Persons**"). **The Exchange Offer Memorandum is only available to Relevant Persons and the transactions contemplated herein will be available only to, or engaged in only with, Relevant Persons, and must not be relied or acted upon by persons other than Relevant Persons.**

**The distribution of the Exchange Offer Memorandum in certain jurisdictions may be restricted by law. The Exchange Offer Memorandum may only be distributed outside the United States and to persons who are not U.S. persons. Persons into whose possession the Exchange Offer Memorandum comes are required by the Bank, the Joint Dealer Managers and the Exchange Agent to inform themselves about, and to observe, such restrictions. No action has been or will be taken in any jurisdiction in relation to the Exchange Offer that would permit a public offering of securities.**

This Exchange Offer Memorandum does not comprise a prospectus for the purposes of the Spanish Securities Market Law (*Ley 24/1988, de 28 de Julio, del Mercado de Valores*) and has not been approved, filed with or reviewed by any commission or regulatory authority, whether national (such as the Spanish Securities Market Regulator (*Comisión Nacional del Mercado de Valores*), the "**CNMV**") or foreign (including the U.S.), nor has any such entity issued any report regarding the accuracy or adequacy of this Exchange Offer Memorandum.

This Exchange Offer Memorandum does not constitute a prospectus for the purposes of Directive 2003/71/EC.

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION TO ANY U.S. PERSON OR IN OR INTO THE UNITED STATES OR ANY OTHER JURISDICTION WHERE IT IS UNLAWFUL TO DISTRIBUTE THE EXCHANGE OFFER MEMORANDUM

EXCHANGE OFFER MEMORANDUM DATED 21 June 2012. THIS DOCUMENT IS IMPORTANT AND REQUIRES IMMEDIATE ATTENTION.

*This Exchange Offer Memorandum does not constitute an offer to buy or a solicitation of an offer to sell Existing Securities (as defined below) in any jurisdiction in which, or to or from any person to or from whom, it is unlawful to make such offer or solicitation under applicable securities laws or otherwise. The distribution of this document in certain jurisdictions (in particular, the United States, Spain, the United Kingdom, France, Italy, Belgium, Portugal and The Netherlands) may be restricted by law. See "Offer and Distribution Restrictions" below. Persons into whose possession this Exchange Offer Memorandum comes are required by each of the Joint Dealer Managers, the Bank and the Exchange Agent (each as defined below) to inform themselves about, and to observe, any such restrictions.*



Invitation by

**BANCO POPULAR ESPAÑOL, S.A.**

(incorporated with limited liability in the Kingdom of Spain)

(the "Bank")

to holders (the "Holders") of the outstanding

- (i) €300,000,000 Series A 6 per cent. Non-cumulative Perpetual Preferred Securities (DE0009190702) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A. (the "**Series A Securities**");
- (ii) €250,000,000 Series B CMS-Linked Non-cumulative Perpetual Preferred Securities (DE000A0BDW10) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A. (the "**Series B Securities**");
- (iii) €300,000,000 Series C Step-Up Fixed/Floating Rate Non-cumulative Perpetual Preferred Securities (XS0288613119) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A. (the "**Series C Securities**");
- (iv) €250,000,000 Fixed/Floating Rate Non-Cumulative Perpetual Preferred Securities (XS0225590362) issued by Pastor Participaciones Preferentes, S.A. Unipersonal and guaranteed by Banco Pastor, S.A. (the "**Banco Pastor Securities**"); and
- (v) First Issue of Special Subordinated Debt (*Primera emisión de Obligaciones de Deuda Subordinada Especial*) (ES0213770011) issued by Banco Pastor, S.A. (the "**Subordinated Securities**").

(together, the "Existing Securities" and each, a "Series")

to offer to tender for repurchase any and all Existing Securities and subscribe for

**Euro denominated 4.5 per cent. Subordinated Mandatorily Convertible Notes due 29 March 2014 to be issued by the Bank**

(the "New Notes")

(the "Exchange Offer")

Existing Securities Issuer	ISIN	Status	Aggregate outstanding nominal amount <sup>1</sup>	Exchange Price	Exchange Ratio
Popular Capital, S.A.	DE0009190702	Preferred Securities	€144,052,000	100%	1:1
Popular Capital, S.A.	DE000A0BDW10	Preferred Securities	€101,518,000	100%	1:1
Popular Capital, S.A.	XS0288613119	Preferred Securities	€71,650,000	100%	1:1
Pastor Participaciones Preferentes, S.A. Unipersonal	XS0225590362	Preferred Securities	€50,000,000	100%	1:1
Banco Pastor, S.A.	ES0213770011	Junior Subordinated Debt	€49,500,000	100%	1:1

**New Notes**

Status	Issue Price	Coupon	Final Conversion Date
Subordinated	100%	4.5%	2014

In order to participate in the Exchange Offer, a Holder must validly offer for exchange a nominal amount of Existing Securities of a Series (a "**Minimum Submission Amount**") of at least €100,000. The nominal amount of Existing Securities offered for exchange pursuant to the Exchange Offer must be €100,000 or integral multiples of €100,000 in excess thereof. The Existing Securities will be repurchased at an amount equal to their aggregate nominal amount multiplied by the applicable Exchange Price, and the resulting cash amount will be automatically applied on behalf of the relevant Holder in subscription for an aggregate nominal amount of New Notes calculated in accordance with the terms set out in this Exchange Offer Memorandum. Subject to a Holder satisfying the Minimum Submission Amount condition, the nominal amount of New Notes which each Holder whose Existing Securities are accepted by the Bank for exchange pursuant to the Exchange Offer will receive on the Settlement Date will equal the aggregate nominal amount of such Existing Securities accepted by the Bank for exchange multiplied by the relevant Exchange Ratio.

<sup>1</sup> Excluding amounts held by the Bank or its subsidiaries.

Holders whose offers for exchange are accepted by the Bank shall also receive, on the Settlement Date, an amount in cash equal to accrued and unpaid periodic distributions and/or interest (as applicable) on their holdings of Existing Securities accepted for exchange pursuant to the Exchange Offer, up to (and excluding) the Settlement Date.

*Before making any decision as to whether or not to offer Existing Securities for exchange pursuant to the Exchange Offer, Holders should consider carefully all of the information set out in this Exchange Offer Memorandum and the Preliminary Listing Particulars attached at as annex 1 hereto, including the sections headed "Risk Factors". Holders should note that there are significant differences between the terms of the Existing Securities and the New Notes, including the fact that the New Notes are mandatorily convertible into ordinary shares of the Bank in certain circumstances.*

THE EXCHANGE OFFER WILL EXPIRE AT 5.00 P.M. (CENTRAL EUROPEAN TIME) ON 27 JUNE 2012, UNLESS EXTENDED, RE-OPENED OR TERMINATED AS PROVIDED IN THIS EXCHANGE OFFER MEMORANDUM. THE DEADLINE SET BY ANY INTERMEDIARY OR CLEARING SYSTEM WILL BE EARLIER THAN THIS DEADLINE. EXCHANGE INSTRUCTIONS ARE IRREVOCABLE ONCE SUBMITTED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THIS EXCHANGE OFFER MEMORANDUM.

**JOINT DEALER MANAGERS**

**Banco Popular Español, S.A.**

**Société Générale**

**This Exchange Offer Memorandum contains important information which should be read carefully before any decision is made with respect to the Exchange Offer. If any Holder is in any doubt as to the contents of this document or the action it should take, it is recommended to seek its own financial and legal advice, including in respect of any tax consequences, immediately from its stockbroker, bank manager, solicitor, accountant or other independent financial or legal adviser. Any individual or company whose Existing Securities are held on its behalf by a broker, dealer, bank, custodian, trust company or other nominee must contact such entity if it wishes to offer Existing Securities for exchange pursuant to the Exchange Offer.**

**None of Banco Popular Español, S.A. (in its capacity as a Joint Dealer Manager) or Société Générale (together, the "Joint Dealer Managers" and each, a "Joint Dealer Manager"), Lucid Issuer Services Limited (the "Exchange Agent"), the Bank, or any subsidiary of the Bank (together with the Bank, the "Group") makes any recommendation as to whether Holders should offer Existing Securities for exchange pursuant to the Exchange Offer.**

No Exchange Offer is being made, and any instructions relating to an Exchange Offer will not be accepted from, or on behalf of, Holders in any jurisdiction in which the making of the relevant Exchange Offer would not be in compliance with the laws or regulations of such jurisdictions. See "*Offer and Distribution Restrictions*".

This Exchange Offer Memorandum does not constitute an invitation to participate in the Exchange Offer in any jurisdiction in which, or to or from any person to or from whom, it is unlawful to make such invitation under applicable securities laws. The Exchange Offer is subject to offer and distribution restrictions in, amongst other countries, the United States of America, Spain, the United Kingdom, Belgium, France, Italy, Portugal and The Netherlands. The distribution of this Exchange Offer Memorandum in those jurisdictions is restricted by the laws of such jurisdictions. The Exchange Offer will be made, in any Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**") pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for any offer of securities. See "*Offer and Distribution Restrictions*".

The Exchange Offer is not being made within, and this Exchange Offer Memorandum is not for distribution in or into, the United States of America or to any U.S. person (as defined in Regulation S ("**Regulation S**") under the United States Securities Act of 1933, as amended (the "**Securities Act**"). This Exchange Offer Memorandum is not an offer of securities for sale in the United States or any other jurisdiction. Securities may not be offered, sold or delivered in the United States absent registration under, or an exemption from the registration requirements of, the Securities Act. The New Notes have not been, and will not be, registered under the Securities Act or the securities laws of any state or other jurisdiction of the United States and may not be offered, sold or delivered, directly or indirectly, within the United States or to, or for the account or benefit of, U.S. persons.

## GENERAL

The Bank accepts responsibility for the information contained in this Exchange Offer Memorandum including, without limitation, the Preliminary Listing Particulars and any information incorporated by reference therein. To the best of the knowledge of the Bank (having taken all reasonable care to ensure that such is the case) the information contained in this Exchange Offer Memorandum including, without limitation, the Preliminary Listing Particulars and any information incorporated by reference therein, is in accordance with the facts and does not omit anything likely to affect the import of such information.

No Exchange Offer is being made, and any instructions relating to an Exchange Offer will not be accepted from, or on behalf of, Holders in any jurisdiction in which the making of the Exchange Offer would not be in compliance with the laws or regulations of such jurisdictions. See "*Offer and Distribution Restrictions*".

If any Holder has sold or otherwise transferred all of its Existing Securities, as the case may be, it should forward this document (subject to applicable laws and the restrictions set out in "*Offer and Distribution Restrictions*") to the purchaser or transferee of its Existing Securities, or to the stockbroker, bank or other agent through whom the sale or transfer was effected, for transmission to the purchaser or transferee.

Copies of this Exchange Offer Memorandum and the documents incorporated by reference herein are available on request, subject to applicable laws and the restrictions set out in "*Offer and Distribution Restrictions*", from the Exchange Agent, the contact details for whom appear on the last page of this Exchange Offer Memorandum (see "*Documents Incorporated by Reference*" for further information).

Each Holder is solely responsible for making its own independent appraisal of all matters such Holder deems appropriate (including those relating to the Exchange Offer, the New Notes, and those relating to the Bank) and each Holder must make its own decision as to whether to offer any or all of its Existing Securities for exchange pursuant to the Exchange Offer. None of the Joint Dealer Managers or the Exchange Agent (or their respective directors, employees or affiliates) makes any representation or recommendation whatsoever regarding this Exchange Offer Memorandum or the Exchange Offer, and none of the Bank, any other Group company, the Joint Dealer Managers or the Exchange Agent (or their respective directors, employees or affiliates) makes any recommendation as to whether holders of Existing Securities should offer any Existing Securities for exchange pursuant to the Exchange Offer. The Exchange Agent is the agent of the Bank and does not owe any duty to any Holder.

None of the Joint Dealer Managers, the Exchange Agent and their respective directors, employees or affiliates assumes any responsibility for the accuracy or completeness of the information concerning the Exchange Offer or the Bank contained in this Exchange Offer Memorandum or for any failure by the Bank to disclose events that may have occurred and may affect the significance or accuracy of the information in this Exchange Offer Memorandum.

In the ordinary course of their respective businesses, the Joint Dealer Managers and the Exchange Agent are entitled to hold positions in the Existing Securities and the New Notes either for their own account or for the account, directly or indirectly, of third parties. The Joint Dealer Managers and their affiliates may hold significant positions in the Existing Securities. Each Joint Dealer Manager is entitled to continue to hold or dispose of, in any manner it may elect, any Existing Securities it may hold as at the date of this Exchange Offer Memorandum or, from such date, to acquire further Existing Securities, subject to applicable law and may or may not submit offers to exchange in respect of such Existing Securities. No such submission or non-submission by the Joint Dealer Managers or the Exchange Agent should be taken by any holder of Existing Securities or any other person as any recommendation or otherwise by the Joint Dealer Managers or the Exchange Agent, as the case may be, as to the merits of participating or not participating in the Exchange Offer.

Neither the delivery of this Exchange Offer Memorandum nor any exchange of Existing Securities pursuant to the Exchange Offer shall, under any circumstances, create any implication that the information contained in this Exchange Offer Memorandum is current as of any time subsequent to the date of such information or that there has been no change in the information set out in it or in the affairs of the Bank or the Group since the date of this Exchange Offer Memorandum.

No person has been authorised to give any information or to make any representation about the Bank or about the Exchange Offer other than as contained in this Exchange Offer Memorandum (including all information incorporated by reference) and, if given or made, such information or representation must not

be relied upon as having been authorised by the Bank, the Joint Dealer Managers or the Exchange Agent or any of their affiliates or respective agents.

The applicable provisions of the Financial Services and Markets Act 2000 must be complied with in respect of anything done in relation to the Exchange Offer in, from or otherwise involving the United Kingdom.

Holders who do not participate in the Exchange Offer, or whose Existing Securities are not accepted for exchange by the Bank, will continue to hold their Existing Securities subject to the terms and conditions of such Existing Securities.

For the avoidance of doubt, each invitation by the Bank to Holders contained in this Exchange Offer Memorandum is an invitation to treat by the Bank and any references to any offer or invitation being made by the Bank under or in respect of the Exchange Offer shall be construed accordingly.

Unless the context otherwise requires, all references in this Exchange Offer Memorandum to "**Holders**" or "**holders of Existing Securities**" include:

- (a) each person who is shown in the records of any Clearing System as a holder of the Existing Securities (also referred to as "**Direct Participants**" and each a "**Direct Participant**"); and
- (b) each beneficial owner of the Existing Securities holding such Existing Securities, directly or indirectly, in an account in the name of a Direct Participant acting on such beneficial owner's behalf,

except that for the purposes of the exchange of any Existing Securities for New Notes and the payment of any Accrued Distribution Payment pursuant to the Exchange Offer, to the extent the beneficial owner of the relevant Existing Securities is not a Direct Participant, the New Notes will only be delivered and such payment will only be made by or on behalf of the Bank through the relevant Clearing System to the relevant Direct Participant and the delivery of such New Notes and making of such payment by or on behalf of the Bank to such Clearing System and by such Clearing System to such Direct Participant will satisfy the respective obligations of the Bank and such Clearing System in respect of the exchange of such Existing Securities.

Holders of Existing Securities who hold positions directly in Clearstream Banking Frankfurt or through an accountholder of Clearstream Banking Frankfurt must, in order to be eligible to participate in the Exchange Offer, (i) arrange for the relevant nominal amount of Existing Securities which they wish to tender to be deposited with an account in either Euroclear or Clearstream, Luxembourg, and (ii) maintain, or where relevant, procure access to an account in either Euroclear or Clearstream, Luxembourg through which such Existing Securities can be traded, and to which any Accrued Distribution Payment may be credited by the Bank.

Holders of Existing Securities who do not have access to an account in either Euroclear or Clearstream, Luxembourg (either directly or through a Direct Participant or other intermediary), or who do not deposit the relevant Existing Securities which they wish to offer for exchange pursuant to the Exchange Offer with a Direct Participant in either Euroclear or Clearstream, Luxembourg, will not be able to submit an Exchange Instruction to the Exchange Agent and will not be eligible to participate in the Exchange Offer.

Holders of Existing Securities who believe they hold positions directly in Clearstream Banking Frankfurt or through an accountholder of Clearstream Banking Frankfurt may contact the Exchange Agent or consult their broker, dealer, or other similar nominee for assistance in respect of these procedures.

Unless otherwise defined herein or the context otherwise requires, capitalised expressions used in this Exchange Offer Memorandum shall have the meanings set out under "*Definitions*" herein.

All references in this Exchange Offer Memorandum to "**Euro**", "**euro**" or "**€**" are to the single currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty on the functioning of the European Union, as amended.

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## EXCHANGE OFFER

The Bank invites all Holders (subject to the offer restrictions referred to in "*Offer and Distribution Restrictions*") to offer to exchange any and all of their Existing Securities for New Notes. The Exchange Offer is made on the terms and subject to the conditions set out in this Exchange Offer Memorandum. Capitalised terms used in this Exchange Offer Memorandum have the meaning given in "*Definitions*" and any other definitions of such terms are for ease of reference only and shall not affect their interpretation.

*Before making a decision whether to offer Existing Securities for exchange, Holders should carefully consider all of the information in this Exchange Offer Memorandum (including all the information in, and incorporated by reference in, the Preliminary Listing Particulars) and in particular, the risk factors described or referred to in "Risk Factors and Other Considerations" and the Listing Particulars Risk Factors.*

**THE EXCHANGE OFFER WILL EXPIRE AT 5.00 P.M. (CET) ON 27 JUNE 2012 (THE EXCHANGE OFFER DEADLINE), UNLESS EXTENDED, RE-OPENED OR TERMINATED AS PROVIDED IN THIS EXCHANGE OFFER MEMORANDUM. THE DEADLINE SET BY ANY INTERMEDIARY OR CLEARING SYSTEM WILL BE EARLIER THAN THIS DEADLINE.**

### 1. Rationale for the Exchange Offer

The rationale of the Exchange Offer is to strengthen the Group's capital base. The New Notes meet the eligibility requirements of national and international regulators to count as highest quality capital. From 2013, the Existing Securities are expected to start losing their regulatory eligibility and will be subject to grandfathering provisions. Replacement of the Existing Securities with the issue of New Notes in the Exchange Offer will allow the Group to strategically transition into the new regulatory framework.

As per the dispositions of Disposición adicional primera of Royal Decree 18/2012 of 11 May ("**Royal Decree 18/2012**"), the Bank intends to seek regulatory approval to defer the coupons on the Existing Securities for a period of up to twelve months, as a result of the additional provisions imposed by Royal Decree 18/2012, (i) even if the Bank has sufficient distributable profit or reserves, or (ii) if the Bank's solvency ratios are below required levels.

Subject to the foregoing, any further decisions by the Bank as to whether it will exercise future calls in respect of the Existing Securities of any Series that are not exchanged pursuant to the Exchange Offer will be taken having regard to the economic impact of exercising (or not exercising) such calls, the Bank's regulatory capital requirements and prevailing market conditions.

Any Existing Securities acquired by the Bank pursuant to the Exchange Offer will be cancelled and will not be reissued or resold.

### 2. Submission Amount

In order to participate in the Exchange Offer, a Holder must validly offer for exchange a nominal amount of Existing Securities of a Series (a "**Minimum Submission Amount**") of at least €100,000. The nominal amount of Existing Securities offered for exchange pursuant to the Exchange Offer must be €100,000 or integral multiples of €100,000 in excess thereof. Any Exchange Instructions which specify a nominal amount of Existing Securities of a Series that is not an integral multiple of €100,000 will be rounded down to the nearest €100,000.

The Existing Securities will be repurchased at an amount equal to their aggregate nominal amount multiplied by the applicable Exchange Price, and the resulting cash amount will be automatically applied on behalf of the relevant Holder in subscription for an aggregate nominal amount of New Notes calculated in accordance with the terms set out in this Exchange Offer Memorandum (the "**Exchange**"). Subject to a Holder satisfying the Minimum Submission Amount condition, the nominal amount of New Notes which each Holder whose Existing Securities are accepted by the Bank for exchange pursuant to the Exchange Offer will receive on the Settlement Date will equal the aggregate nominal amount of such Existing Securities accepted by the Bank for exchange multiplied by the relevant Exchange Ratio.

### 3. **Accrued Distribution**

On the Settlement Date, the Bank will also pay (or procure to be paid) to Holders whose Existing Securities are accepted for exchange a euro amount in cash (rounded to the nearest €0.01, with half a euro cent rounded upwards) equal to the amount of accrued but unpaid distributions and/or interest (as applicable) in respect of such Existing Securities from (and including) the immediately preceding Existing Securities Distribution Payment Date of such Existing Securities to (but excluding) the Settlement Date, calculated in accordance with the relevant Existing Securities Conditions.

### 4. **Exchange Price, New Issue Price and Exchange Ratio**

Subject to a Holder satisfying the Minimum Submission Amount condition, the nominal amount of New Notes that each Holder whose Existing Securities are accepted for exchange pursuant to the Exchange Offer will receive on the Settlement Date will be an amount equal to the product of:

- (a) the aggregate principal amount of the relevant Series of Existing Securities validly offered for exchange by such holder (and accepted for exchange by the Bank); and
- (b) the relevant Exchange Ratio, which will be calculated by dividing the Exchange Price for the relevant Series of Existing Securities by the New Issue Price.

### 5. **New Issue Price and New Notes Coupon**

The New Notes will be issued at a price (the "**New Issue Price**") equal to 100 per cent. of their aggregate nominal amount. The New Notes will bear interest at a fixed rate of 4.5 per cent. per annum, calculated on the principal amount outstanding from time to time and payable quarterly in arrear (the "**New Notes Coupon**").

### 6. **Acceptance, no scaling of Existing Securities**

If the Bank decides to accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer, the Bank will accept for exchange all of the Existing Securities that are the subject of the Exchange Offer that are validly offered for exchange and there will be no scaling of any offers of Existing Securities for exchange.

#### **Existing Securities not exchanged**

Holders who do not participate in the Exchange Offer (including any Holder that is not eligible to participate in the Exchange Offer, whether due to the offer restrictions referred to in "*Offer and Distribution Restrictions*" or otherwise), or whose Existing Securities are not accepted for exchange by the Bank, will continue to hold their Existing Securities subject to the terms and conditions of such Existing Securities.

### 7. **New Notes**

The New Notes will be issued pursuant to the Listing Particulars substantially on the terms set out in the form of the Preliminary Listing Particulars contained in annex 1 of this Exchange Offer Memorandum. Application will be made for the New Notes to be admitted to trading on the professional securities market of the London Stock Exchange plc (the "**PSM**").

### 8. **Differences between the Existing Securities Conditions and the New Notes Conditions**

The differences between the terms and conditions of the Existing Securities and the New Notes Conditions are significant. Holders are advised to review the New Notes Conditions in their entirety before making a decision whether to offer their Existing Securities for exchange. In particular, Holders should refer to the sections of the Preliminary Listing Particulars relating to the mandatory conversion features of the New Notes.

9. **Announcement of Results**

As soon as reasonably practicable on the first business day following the Exchange Offer Deadline, the Bank will announce (the "**Announcement of Results**"):

- (a) its decision whether to accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer; and, if so accepted,
- (b) the final aggregate amount of (i) Existing Securities of each Series accepted for exchange and (ii) New Notes to be issued.

10. **Termination**

The Exchange Offer may be terminated by the Bank, at its option and in its sole discretion, at any time on any day up to (and including) the day prior to the Settlement Date, if:

- (a) in the Bank's view, there has occurred (i) an event or circumstance which results, or may result, in changes in the national or international financial, political or economic conditions or currency exchange rates or exchange controls as would, be likely to prejudice materially the success of the Exchange Offer; (ii) any event or circumstance that results in a significant worsening of the Bank's capital, income, financial, tax, regulatory, corporate or legal conditions compared with such conditions as reported in most recently published financial information; or (iii) any change in law or regulations that would limit, or otherwise negatively affect, the purchase of Existing Securities; or
- (b) in the Bank's view, taking into consideration the New Notes Coupon and the number of New Notes that will need to be issued in exchange for Existing Securities validly offered for exchange, it would not be economically advisable for the Bank to proceed with the Exchange Offer.

The Bank will announce any such termination to the Holders as soon as is reasonably practicable after the decision to terminate is made and, in any case, no later than the Settlement Date. Upon such announcement to the Holders, the Exchange Offer will be terminated with immediate effect.

**The submission of a valid Exchange Instruction in accordance with the procedures set out in the section "*Procedures for Participating in the Exchange Offer*" will be irrevocable (except in the limited circumstances described in "*Amendment and Termination – Revocation Rights*").**

11. **Delivery of New Notes and payment**

If Existing Securities validly offered for exchange pursuant to the Exchange Offer are accepted for exchange by the Bank, the corresponding New Notes will be delivered and the aggregate amount of the Accrued Distribution Payment will be paid by or on behalf of the Bank in immediately available funds on the Settlement Date.

At settlement of the Exchange Offer, the New Notes will be delivered and cash payments made, through the relevant Clearing System, to the Clearing System accounts specified by the relevant Holders in the relevant Exchange Instructions, against transfer of title to the Bank of the relevant Existing Securities (including any Subordinated Securities already deposited in the Iberclear account of the Bank in accordance with the section of this Exchange Offer Memorandum headed "*Procedures for Participating in the Exchange Offer-Transfer of Subordinated Securities*". The delivery of such New Notes and payment of such aggregate amounts to the Clearing Systems will discharge the obligation of the Bank to all such Holders in respect of the delivery of the New Notes and payment of the Accrued Distribution Payment.

Provided the Bank delivers, or has delivered on its behalf, the New Notes, and makes, or has made on its behalf, full payment of the Accrued Distribution Payment for all Existing Securities accepted for exchange pursuant to the Exchange Offer to the relevant Clearing Systems, on or before the Settlement Date, under no circumstances will any additional distribution or interest be payable to a Holder because of any delay in the delivery of the New Notes by, or transmission of funds from, the relevant Clearing System or any other intermediary with respect to such Existing Securities of that Holder.

## 12. **Offers for exchange and Exchange Instructions**

The Bank expressly reserves the right, in its sole discretion, to delay acceptance of Existing Securities offered for exchange pursuant to the Exchange Offer in order to comply with applicable laws. In all cases, the Bank will only accept Existing Securities offered for exchange pursuant to the Exchange Offer after the submission of a valid Exchange Instruction in accordance with the procedures described in "*Procedures for Participating in the Exchange Offer*" and acceptance of the Exchange Offer as announced by the Bank. In the case of Existing Securities held in a Clearing System, these procedures include the blocking of the Existing Securities offered for exchange in the relevant account in the applicable Clearing System from the date the relevant Exchange Instruction is submitted until the earlier of (i) the time of settlement on the Settlement Date, and (ii) the date of any termination of the Exchange Offer (including where such Existing Securities are not accepted by the relevant Bank for exchange) or on which the Exchange Instruction is validly revoked, in the circumstances in which such revocation is permitted.

The Bank will at all times have the discretion to accept any Existing Securities offered for exchange the offer of which would otherwise be invalid or, in the sole opinion of the Bank, may otherwise be invalid. See also "*Risk Factors and Other Considerations*".

The Bank is not under any obligation to accept, and shall have no liability to any person for any non-acceptance of, any offer of Existing Securities for exchange pursuant to the Exchange Offer. Offers of Existing Securities for exchange may be rejected in the sole discretion of the Bank for any reason and the Bank is not under any obligation to Holders to furnish any reason or justification for refusing to accept an offer of Existing Securities for exchange. For example, offers of Existing Securities for exchange may be rejected if the Exchange Offer is terminated, if such offer of Notes for exchange does not comply with the relevant requirements of a particular jurisdiction or for any other reason.

The Bank may, in its sole discretion, extend, re-open, amend, waive any condition of or terminate the Exchange Offer at any time (subject to applicable law and as provided in this Exchange Offer Memorandum). Details of any such extension, re-opening, amendment, waiver or termination will be announced as provided in this Exchange Offer Memorandum as soon as reasonably practicable after the relevant decision is made. See "*Amendment and Termination*". Holders are advised that the Bank may, in its sole discretion, accept offers of Existing Securities for exchange pursuant to the Exchange Offer on more than one date if the Exchange Offer is extended or re-opened.

The failure of any person to receive a copy of this Exchange Offer Memorandum or any announcement made or notice issued in connection with the Exchange Offer shall not invalidate any aspect of the Exchange Offer. No acknowledgement of receipt of any Exchange Instructions and/or other documents will be given by the Bank or the Exchange Agent.

## 13. **Announcements**

Unless stated otherwise, announcements in connection with the Exchange Offer will be made, as applicable, by (a) notification to the Luxembourg Stock Exchange, Euronext Amsterdam, the Frankfurt Stock Exchange, the London Stock Exchange and the AIAF, as applicable, (b) filing a regulatory announcement (*hecho relevante*) with the Spanish Market Securities Commission (*Comisión Nacional del Mercado de Valores*) (the "CNMV"), (c) the delivery of notices to the Clearing Systems for communication to Direct Participants, and (d) through the issue of a press release to a Notifying News Service, and may also be found on the relevant Reuters International Insider Screen.

Copies of all such announcements, press releases and notices can also be obtained from the Exchange Agent, the contact details for which are on the last page of this Exchange Offer Memorandum. Significant delays may be experienced where notices are delivered to the Clearing Systems and Holders are urged to contact the Exchange Agent for the relevant announcements during the course of the Exchange Offer. In addition, holders of Existing Securities may contact the Joint Dealer Managers for information using the contact details on the last page of this Exchange Offer Memorandum.

14. **Governing law and jurisdiction**

The Exchange Offer, each Exchange Instruction, any exchange of Existing Securities pursuant to the Exchange Offer and any non-contractual obligations arising out of or in connection with the Exchange Offer shall be governed by English law.

By submitting the Exchange Instruction, the relevant Holder irrevocably and unconditionally agrees for the benefit of the Bank, the Joint Dealer Managers and the Exchange Agent that the courts of England are to have jurisdiction to settle any disputes that may arise out of or in connection with the Exchange Offer, such Exchange Instruction, any exchange of Existing Securities pursuant to the Exchange Offer or any non-contractual obligations arising out of or in connection with the foregoing and that, accordingly, any suit, action or proceedings arising out of or in connection with any such dispute may be brought in such courts.

15. **General**

Before making a decision whether to offer Existing Securities for exchange, Holders should carefully consider all of the information in this Exchange Offer Memorandum (including all of the information in, and incorporated by reference in, the Listing Particulars) and, in particular, the risk factors described or referred to in the section headed "*Risk Factors and Other Considerations*" of this Exchange Offer Memorandum and the Listing Particulars Risk Factors.

Holders of the Existing Securities should consult their tax advisers as to the tax consequences in the country in which they are resident for tax purposes of the Exchange Offer and of the ownership and transfer of the New Notes. For further information concerning certain taxation matters in connection with the Exchange Offer see the section entitled "*Tax Consequences*" in this Exchange Offer Memorandum.

***Holders are advised to check with any bank, securities broker or other intermediary through which they hold Existing Securities whether such intermediary needs to receive instructions from a Holder before the deadlines specified in this Exchange Offer Memorandum in order for that Holder to be able to participate in, or (in the limited circumstances in which revocation is permitted) revoke their instruction to participate in, the Exchange Offer. The deadlines set by each Clearing System for the submission and withdrawal of Exchange Instructions will also be earlier than the relevant deadlines specified in this Exchange Offer Memorandum.***

For further information on the Exchange Offer and the further terms and conditions on which the Exchange Offer is made, Holders should refer to "*Further Information and Terms and Conditions*". Questions and requests for assistance in connection with the (a) Exchange Offer, may be directed to the Joint Dealer Managers, and (b) delivery of Exchange Instructions, may be directed to the Exchange Agent, the contact details for each of whom are on the last page of this Exchange Offer Memorandum.

## EXPECTED TIMETABLE OF EVENTS

The times and dates below are indicative only.

<b>Events</b>	<b>Times and Dates</b>
<b><i>Announcement and Commencement of the Exchange Offer</i></b>	
Exchange Offer announced, including New Notes Coupon and New Issue Price. Notice of the Exchange Offer submitted to the Clearing Systems. Exchange Offer Memorandum available from the Joint Dealer Managers and the Exchange Agent.	21 June 2012
Notice of the Exchange Offer submitted to the Luxembourg Stock Exchange, Euronext Amsterdam, the Frankfurt Stock Exchange, the London Stock Exchange and the AIAF and by way of a filing with the CNMV.	As soon as reasonably practicable on 21 June 2012
<b><i>Exchange Offer Deadline</i></b>	
Final deadline for receipt of valid Exchange Instructions by the Exchange Agent in order for Holders to be able to participate in the Exchange Offer.	5.00 p.m. (CET) on 27 June 2012
<b><i>End of Exchange Period, subject to the right of the Bank to extend, re-open, amend and/or terminate the Exchange Offer.</i></b>	
<b><i>Announcement of Exchange Offer Results</i></b>	
Announcement of:	
<ul style="list-style-type: none"><li>whether the Bank will accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer; and, if so,</li><li>the final aggregate nominal amount of (i) Existing Securities of each Series accepted for exchange; and (ii) New Notes to be issued.</li></ul>	As soon as reasonably practicable on the first business day following the Exchange Offer Deadline.
<b><i>Publication of Listing Particulars of the New Notes via RNS</i></b>	28 June 2012
<b><i>Settlement</i></b>	
Expected settlement date for Exchange Offer, including the delivery of the New Notes and the Existing Securities validly offered for exchange by a Holder and accepted by the Bank and payment of any Accrued Distribution Payment.	29 June 2012
<b><i>Admission of New Notes to Listing and Trading</i></b>	6 July 2012
Expected date for the New Notes to be admitted to the Official List of the United Kingdom Listing Authority and to be admitted to trading on the Professional Securities Market of the London Stock Exchange plc	

The above times and dates are subject to the right of the Bank to extend, re-open, amend and/or terminate the Exchange Offer (subject to applicable law and as provided in this Exchange Offer Memorandum). Holders are advised to check with any bank, securities broker or other intermediary through which they

hold Existing Securities whether such intermediary needs to receive instructions from a Holder before the deadlines set out above in order for that Holder to be able to participate in, or (in the limited circumstances in which revocation is permitted) revoke their instruction to participate in, the Exchange Offer. **The deadlines set by each Clearing System for the submission of Exchange Instructions will also be earlier than the deadlines above.** See "*Procedures for Participating in the Exchange Offer*".

Unless stated otherwise, announcements in connection with the Exchange Offer will be made, as applicable, by (a) notification to the Luxembourg Stock Exchange, Euronext Amsterdam, the Frankfurt Stock Exchange, the London Stock Exchange and the AIAF, (b) filing a regulatory announcement (*hecho relevante*) with the CNMV, (c) the delivery of notices to the Clearing Systems for communication to Direct Participants, and (d) through the issue of a press release to a Notifying News Service, and may also be found on the relevant Reuters International Insider Screen. Copies of all such announcements, press releases and notices can also be obtained from the Exchange Agent, the contact details for which are on the last page of this Exchange Offer Memorandum. Significant delays may be experienced where notices are delivered to the Clearing Systems and Holders are urged to contact the Exchange Agent for the relevant announcements during the course of the Exchange Offer. In addition, holders of Existing Securities may contact the Joint Dealer Managers for information using the contact details on the last page of this Exchange Offer Memorandum.

## OFFER AND DISTRIBUTION RESTRICTIONS

*This Exchange Offer Memorandum does not constitute an invitation to participate in the Exchange Offer in any jurisdiction in which, or to any person to or from whom, it is unlawful to make such invitation or for there to be such participation under applicable securities laws. The distribution of this Exchange Offer Memorandum in certain jurisdictions may be restricted by law. Persons into whose possession this Exchange Offer Memorandum comes are required by each of the Bank, the Joint Dealer Managers and the Exchange Agent to inform themselves about, and to observe, any such restrictions.*

*No action has been or will be taken in any jurisdiction in relation to the Exchange Offer that would permit a public offering of securities. This Exchange Offer Memorandum has been prepared on the basis that the Exchange Offer in any Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**"), will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for any offer of securities. The Bank has submitted an application for the Bank of Spain's authorisation for the repurchase of the Existing Securities in the context of the Exchange Offer, and has obtained such authorisation.*

### **United States**

The Exchange Offer is not being made, and will not be made, directly or indirectly in or into, or by use of the mail of, or by any means or instrumentality of interstate or foreign commerce of, or of any facilities of a national securities exchange of, the United States or to, for the account or benefit of, U.S. persons. This includes, but is not limited to, facsimile transmission, electronic mail, telex, telephone, the internet and other forms of electronic communication. Accordingly, copies of this Exchange Offer Memorandum and any other documents or materials relating to the Exchange Offer are not being, and must not be, directly or indirectly mailed or otherwise transmitted, distributed or forwarded (including, without limitation, by custodians, nominees or trustees) in or into the United States or to U.S. persons, and the Existing Securities cannot be offered for exchange in the Exchange Offer by any such use, means, instrumentality or facilities or from within the United States or by U.S. persons. Any purported offer of Existing Securities for exchange resulting directly or indirectly from a violation of these restrictions will be invalid, and any purported offer of Existing Securities for exchange made by a U.S. person, a person located in the United States or any agent, fiduciary or other intermediary acting on a non-discretionary basis for a principal giving instructions from within the United States or for a U.S. person will be invalid and will not be accepted.

This Exchange Offer Memorandum is not an offer of securities for sale in the United States or to U.S. persons. Securities may not be offered or sold in the United States absent registration under, or an exemption from the registration requirements of, the Securities Act. The New Notes and the Existing Securities have not been, and will not be, registered under the Securities Act or the securities laws of any state or other jurisdiction of the United States, and may not be offered, sold or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, U.S. persons. The purpose of this Exchange Offer Memorandum is limited to the Exchange Offer and this Exchange Offer Memorandum may not be sent or given to a person in the United States or otherwise to any person other than in an offshore transaction in accordance with Regulation S under the Securities Act.

Each Holder participating in the Exchange Offer will represent that it is not located in the United States and is not participating in the Exchange Offer from the United States, that it is participating in the Exchange Offer in accordance with Regulation S under the Securities Act and that it is not a U.S. person or it is acting on a non-discretionary basis for a principal located outside the United States that is not giving an order to participate in the Exchange Offer from the United States and is not a U.S. person.

As used herein and elsewhere in this Exchange Offer Memorandum, "**United States**" means United States of America, its territories and possessions, any state of the United States of America and the District of Columbia and "**US person**" has the meaning given to such term in Regulation S under the Securities Act.

## **EEA**

The Exchange Offer is not being made, and the New Notes are not being offered, in any Member State of the European Economic Area which has implemented the Prospectus Directive, other than to persons who are "qualified investors" for the purposes of Article 3(2)(a) of the Prospectus Directive.

## **United Kingdom**

The communication of this Exchange Offer Memorandum and any other documents or materials relating to the Exchange Offer is not being made and such documents and/or materials have not been approved by an authorised person for the purposes of section 21 of the FSMA. Accordingly, such documents and/or materials are not being distributed to, and must not be passed on to, the general public in the United Kingdom. The communication of such documents and/or materials as a financial promotion is only being made to those persons in the United Kingdom falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**Financial Promotion Order**")) or persons who are within Article 43(2) of the Financial Promotion Order or any other persons to whom it may otherwise lawfully be made under the Financial Promotion Order. Any investment or investment activity to which this Exchange Offer Memorandum relates is available only to such persons or will be engaged only with such persons and other persons should not rely on it.

## **France**

The Exchange Offer is not being made, directly or indirectly, to the public in the Republic of France ("**France**"). Neither this Exchange Offer Memorandum nor any other document or material relating to the Exchange Offer has been or shall be distributed to the public in France and only (a) providers of investment services relating to portfolio management for the account of third parties (*personnes fournissant le service d'investissement de gestion de portefeuille pour compte de tiers*) and/or (b) qualified investors (*investisseurs qualifiés*) other than individuals, in each case acting on their own account and all as defined in, and in accordance with, Articles L.411-1, L.411-2 and D.411-1 to D.411-3 of the French *Code Monétaire et Financier* are eligible to participate in the Exchange Offer. This Exchange Offer Memorandum and any other such offering material have not been and will not be submitted for clearance to nor approved by the *Autorité des Marchés Financiers*.

## **Italy**

None of the Exchange Offer, this Exchange Offer Memorandum or any other documents or materials relating to the Exchange Offer have been or will be submitted to the clearance procedure of the *Commissione Nazionale per le Società e la Borsa* ("**CONSOB**").

The Exchange Offer is being carried out in the Republic of Italy as exempted offers pursuant to article 101-bis, paragraph 3-bis of the Legislative Decree No. 58 of 24 February 1998, as amended (the "**Financial Services Act**") and article 35-bis, paragraph 4, of CONSOB Regulation No. 11971 of 14 May 1999, as amended.

## **Belgium**

Neither this Exchange Offer Memorandum nor any other documents or materials relating to the Exchange Offer have been, or will be, submitted for approval or recognition to the Belgian Financial Services and Markets Authority (*Autorité des services et marchés financiers/Autoriteit Financiële dienst(en) en markten*) and, accordingly, the Exchange Offer may not be made in Belgium by way of a public offering, as defined in Articles 3 and 6 of the Belgian law of 1 April 2007 on public takeover bids (*Loi relative aux offres publiques d'acquisition / Wet op de openbare overnamebiedingen* (the "**Law on Public Acquisition Offers**")) or as defined in Article 3 of the Belgian Law of 16 June 2006 on the public offer of placement instruments and the admission to trading of placement instruments on regulated markets (*Loi relative aux offres publiques d'instruments de placement et aux admissions d'instruments de placement à la négociation sur des marchés réglementés / Wet op de openbare aanbieding van beleggingsinstrumenten en de toelating van beleggingsinstrumenten tot de verhandeling op een geregelde markt* (the "**Law on Public Offerings**")), each as amended or replaced from time to time. Accordingly, the Exchange Offer may not be advertised, and the Exchange Offer will not be extended, and neither this Exchange Offer Memorandum nor any other documents or materials relating to

the Exchange Offer (including any memorandum, information circular, brochure or any similar documents) has been or shall be distributed or made available, directly or indirectly, to any person in Belgium other than "qualified investors" (as referred to in Article 10 of the Law on Public Offerings and Article 6 of the Law on Public Acquisition Offers), acting on their own account. Insofar as Belgium is concerned, this Exchange Offer Memorandum has been issued only for the personal use of the above qualified investors and exclusively for the purpose of the Exchange Offer. Accordingly, the information contained in this Exchange Offer Memorandum may not be used for any other purpose or disclosed to any other person in Belgium.

### **Spain**

Neither the Offers nor this Exchange Offer Memorandum nor the issuance of the New Notes constitute a public offer of securities to the public in Spain under the Spanish Securities Market Law (*Ley 24/1988, de 28 de julio, del Mercado de Valores*) (the "**Spanish Securities Market Law**") and related legislation. Accordingly, this Exchange Offer Memorandum and/or any documentation relating to the issuance of the New Notes have not been submitted for approval and have not been approved by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*, the securities market regulator in Spain). The New Notes may only be offered, sold and/or resold in Spain in accordance with the provisions of the Spanish Securities Market Law and related legislation.

### **Portugal**

The Exchange Offer is not being made, directly or indirectly, to the public in the Republic of Portugal ("**Portugal**"). Neither the Exchange Offer, this Exchange Offer Memorandum, any other document or material relating to the Exchange Offer or the issuance of the New Notes has been or will be approved by the Portuguese Securities Commission (*Comissão do Mercado de Valores Mobiliários*) (the "**CMVM**") or by any other competent authority of another Member State of the European Union and notified to the CMVM.

Neither the Bank, the Joint Dealer Managers or the Exchange Agent have, directly or indirectly, offered or sold any notes or distributed or published any offering circular, prospectus, form of application, advertisement or other document or information in Portugal and will not take any such actions in the future, except under circumstances that will not be considered as a public offering under article 109 of the Portuguese Securities Code (*Código dos Valores Mobiliários* - the "**Cód.VM**") approved by Decree-Law 486/99 of 13 November 1999, as last amended by Decree-Law no. 85/2011, of 29 June 2011.

As a result, the Exchange Offer, and any material relating to the Exchange Offer, is addressed solely to, and may only be accepted by, any persons or legal entities that are resident in Portugal or that will hold the New Notes through a permanent establishment in Portugal (each a "**Portuguese Investor**") to the extent that the Portuguese Investors are deemed qualified investors (*investidores qualificados*) (each a "**Portuguese Qualified Investor**") under paragraphs 1 and 2 of article 30 Cód.VM.

Subject to approval, publication and entry into force of new regulation by the CMVM (the "**New Regulation**"), the entities and individuals set out in article 110-A Cód.VM may also be deemed a Portuguese Qualified Investor for the purposes of the Exchange Offer, provided that they are properly registered as qualified investors (*investidores qualificados*) in accordance with the New Regulation.

### **The Netherlands**

The Exchange Offer is not being made, and the New Notes are not being offered, in The Netherlands other than to persons who are "qualified investors" (*gekwalificeerde beleggers*) within the meaning of the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*).

### **General**

The distribution of this Exchange Offer Memorandum in certain jurisdictions may be restricted by law. Persons into whose possession this Exchange Offer Memorandum comes are required by the Bank, the Joint Dealer Managers and the Exchange Agent to inform themselves about and to observe any such restrictions.

The Joint Dealer Managers and the Exchange Agent (and their respective directors, employees or affiliates) make no representations or recommendations whatsoever regarding this Exchange Offer

Memorandum or the Exchange Offer. The Exchange Agent is the agent of the Bank and owes no duty to any Holder. None of the Bank, the Joint Dealer Managers or the Exchange Agent makes any recommendation as to whether or not Holders should participate in the Exchange Offer or refrain from taking any action in the Exchange Offer with respect to any of such Holder's Existing Securities, and none of them has authorised any person to make any such recommendation.

This Exchange Offer Memorandum does not constitute an offer to sell or buy or the solicitation of an offer to sell or buy the Existing Securities and/or New Notes, as applicable, and offers of Existing Securities for exchange pursuant to the Exchange Offer will not be accepted, from Holders in any circumstances in which such offer or solicitation is unlawful. In those jurisdictions where the securities, blue sky or other laws require an exchange offer to be made by a licensed broker or dealer and any of the Joint Dealer Managers or any of their respective affiliates is such a licensed broker or dealer in any such jurisdiction, the Exchange Offer shall be deemed to be made by such Joint Dealer Manager or affiliate (as the case may be) on behalf of the Bank in such jurisdiction.

No action has been or will be taken in any jurisdiction by the Bank, the Joint Dealer Managers or the Exchange Agent that would permit a public offering of the New Notes.

In addition to the representations referred to above in respect of the United States, each Holder participating in the Exchange Offer will also be deemed to give certain representations in respect of the other jurisdictions referred to above and generally as set out in "*Procedures for Participating in the Exchange Offer*". Any offer of Existing Securities for exchange pursuant to the Exchange Offer from a Holder that is unable to make these representations will not be accepted. Each of the Bank, the Joint Dealer Managers and the Exchange Agent reserves the right, in its absolute discretion, to investigate, in relation to any offer of Existing Securities for exchange pursuant to the Exchange Offer, whether any such representation given by a Holder is correct and, if such investigation is undertaken and as a result the Bank determines (for any reason) that such representation is not correct, such offer shall not be accepted.

## DEFINITIONS

<b>Accrued Distribution</b>	In respect of the Existing Securities of any Series, the amount of accrued but unpaid distribution or interest (as applicable) in respect of such Existing Securities from (and including) the immediately preceding Existing Securities Distribution Payment Date of such Existing Securities to (but excluding) the Settlement Date, calculated in accordance with the Existing Securities Conditions.
<b>Accrued Distribution Payment</b>	An amount in cash (rounded to the nearest €0.01, with half a cent rounded upwards) equal to the Accrued Distribution of the relevant Existing Securities validly offered for exchange by a Holder and accepted by the Bank.
<b>AIAF</b>	AIAF Mercado de Renta Fija.
<b>Announcement of Results</b>	Announcement which the Bank intends to release as soon as reasonably practicable on the first business day following the Exchange Offer Deadline, setting out: <ul style="list-style-type: none"><li>(a) whether the Bank will accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer; and, if so</li><li>(b) the final aggregate nominal amount of (i) Existing Securities of each Series accepted for exchange; and (ii) New Notes to be issued.</li></ul>
<b>Bank</b>	Banco Popular Español, S.A. in its capacity as offeror.
<b>Beneficial Owner</b>	A person who is the owner, either directly or indirectly, of an interest in a particular nominal amount of the Existing Securities, as shown in the records of the Clearing Systems or their Direct Participants.
<b>Business Day</b>	A day other than a Saturday or a Sunday or a public holiday on which commercial banks and foreign exchange markets are open for business in London and Madrid.
<b>CET</b>	Central European Summer Time.
<b>Clearing Systems</b>	Euroclear, Clearstream, Luxembourg and Iberclear.
<b>Clearing System Notice</b>	The notice to be sent to Direct Participants by each of the Clearing Systems on or about the date of commencement of the Exchange Offer Period, informing Direct Participants, <i>inter alia</i> , of the procedures to be followed in order to participate in the Exchange Offer.
<b>Clearstream Banking Frankfurt</b>	Clearstream Banking Aktiengesellschaft, Frankfurt am Main.

<b>Clearstream, Luxembourg</b>	Clearstream Banking, <i>société anonyme</i> .
<b>Direct Participant</b>	Each person who is shown in the records of any Clearing System as a holder of an interest in the Existing Securities.
<b>Euroclear</b>	Euroclear Bank S.A./N.V.
<b>Euronext Amsterdam</b>	Euronext Amsterdam N.V.
<b>Exchange</b>	The repurchase of the Existing Securities at an amount equal to their aggregate nominal amount multiplied by the applicable Exchange Price, with the resulting cash amount being automatically applied on behalf of the relevant Holder in subscription for an aggregate nominal amount of New Notes calculated in accordance with the terms set out in this Exchange Offer Memorandum.
<b>Exchange Agent</b>	Lucid Issuer Services Limited.
<b>Exchange Instruction</b>	The electronic exchange and blocking instruction in the form specified in the relevant Clearing System Notice, which must be submitted by (or on behalf of) Holders, Direct Participants or Beneficial Owners in accordance with the requirements of the relevant Clearing System in order for Holders to participate in the Exchange Offer.
<b>Exchange Offer</b>	The invitation by the Bank to Holders of each Series of Existing Securities (subject to the offer and distribution restrictions referred to in " <i>Offer and Distribution Restrictions</i> ") to offer to exchange their Existing Securities, on the terms and subject to the conditions set out in this Exchange Offer Memorandum.
<b>Exchange Offer Deadline</b>	5.00 p.m. (CET) on 27 June 2012 (subject to the right of the Bank to extend, re-open, amend and/or terminate the Exchange Offer).
<b>Exchange Period</b>	The period of time from the commencement of the Exchange Offer to the Exchange Offer Deadline.
<b>Exchange Price</b>	In respect of: <ul style="list-style-type: none"> <li>• the Series A Securities; 100 per cent.;</li> <li>• the Series B Securities; 100 per cent.;</li> <li>• the Series C Securities; 100 per cent.;</li> <li>• the Banco Pastor Securities; 100 per cent.;</li> <li>and</li> <li>• the Subordinated Securities, 100 per cent.,</li> </ul> which is used in the calculation of the Exchange Ratio applicable to such Series of Existing Securities.
<b>Exchange Ratio</b>	The ratio that will be used to determine the

aggregate nominal amount of New Notes that each Holder whose Existing Securities are accepted for exchange pursuant to the Exchange Offer will receive on the Settlement Date, which will be calculated by dividing the Exchange Price of the Existing Securities of such Series by the New Issue Price, which ratio is 1:1.

### Existing Securities

- (i) €300,000,000 Series A 6 per cent. Non-cumulative Perpetual Preferred Securities (DE0009190702) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A (the "**Series A Securities**");
- (ii) €250,000,000 Series B CMS-Linked Non-cumulative Perpetual Preferred Securities (DE000A0BDW10) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A (the "**Series B Securities**");
- (iii) €300,000,000 Series C Step-Up Fixed/Floating Rate Non-cumulative Perpetual Preferred Securities (XS0288613119) issued by Popular Capital, S.A. and guaranteed by Banco Popular Español, S.A (the "**Series C Securities**");
- (iv) €250,000,000 Fixed/Floating Rate Non-Cumulative Perpetual Preferred Securities (XS0225590362) issued by Pastor Participaciones Preferentes, S.A. Unipersonal and guaranteed by Banco Pastor, S.A (the "**Banco Pastor Securities**"); and
- (v) the First Issue of Special Subordinated Debt (*Primera emision de Obligaciones de Deuda Subordinada Especial*) (ES0213770011) issued by Banco Pastor, S.A. (the "**Subordinated Securities**").

### Existing Securities Conditions

The terms and conditions of the Existing Securities of each Series as set out:

- (i) in the case of the Series A Securities, in the Offering Circular dated 16 October 2003;
- (ii) in the case of the Series B Securities, in the Offering Circular dated 28 June 2004;
- (iii) in the case of the Series C Securities, in the Prospectus dated 28 February 2007;
- (iv) in the case of the Banco Pastor Securities, in the Offering Circular dated 22 July 2005; and
- (v) in the case of the Subordinated Securities, in the Reduced Prospectus (*Folleto*

*Informativo Reducido Models RED3*) dated  
11 May 2004

<b>Existing Securities Distribution Payment Date</b>	<p>In respect of the Existing Securities of each Series, has the meaning given to:</p> <p>"<i>Distribution Payment Date</i>" in respect of the (i) Series A Securities and (ii) Series B Securities; or</p> <p>"<i>Distribution Payment Date (Fixed)</i>" or "<i>Distribution Payment Date (Floating)</i>" in respect of the (i) Series C Securities and (ii) Banco Pastor Securities.</p> <p>"<i>Coupon Payment Date (Fecha de pago del cupon)</i>" in respect of the Subordinated Securities.</p>
<b>Financial Promotion Order</b>	The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.
<b>Frankfurt Stock Exchange</b>	Frankfurt Stock Exchange
<b>Group</b>	The Bank and its subsidiaries.
<b>Holder</b>	A holder of the Existing Securities, including (where the context so permits) a Direct Participant or Beneficial Owner in respect of the Existing Securities, except that for the purposes of the exchange of any Existing Securities for New Notes and the payment of any Accrued Distribution Payment pursuant to the Exchange Offer, the holder shall be the Direct Participant.
<b>Iberclear</b>	the <i>Sociedad de Gestión de las Sistemas de Registro, Compensación y Liquidación de Valores, S.A.</i> with its address at Plaza de Lealtad, 1, 28014, Madrid.
<b>Iberclear Accountholder</b>	Each one of the members of Iberclear that appears on the registers thereof as holders of Subordinated Securities in its own name or on behalf of the relevant holder of Subordinated Securities.
<b>Joint Dealer Managers</b>	Banco Popular Español, S.A. in its capacity as Joint Dealer Manager and Société Générale.
<b>Listing Particulars</b>	The listing particulars prepared by the Bank in connection with the issue of New Notes.
<b>Listing Particulars Risk Factors</b>	The risk factors disclosed in the Preliminary Listing Particulars.
<b>London Stock Exchange</b>	London Stock Exchange plc
<b>Luxembourg Stock Exchange</b>	Société de la Bourse de Luxembourg, société anonyme.
<b>Minimum Submission Amount</b>	€100,000 in aggregate nominal amount of the relevant Series of Existing Securities.
<b>New Issue Price</b>	The price at which New Notes will be issued, being 100 per cent. of their aggregate nominal amount

<b>New Notes</b>	The Euro denominated 4.5 per cent. subordinated mandatorily convertible notes due 29 March 2014, which will be cleared through Euroclear and Clearstream, Luxembourg.
<b>New Notes Conditions</b>	The terms and conditions of the New Notes as set out in the Preliminary Listing Particulars (see annex 1 to this Exchange Offer Memorandum).
<b>New Notes Coupon</b>	The interest rate applicable to the New Notes, being 4.5 per cent. per annum, calculated on the principal amount outstanding from time to time and payable quarterly in arrear.
<b>New Notes Interest Payment Date</b>	Has the meaning given to " <b>Interest Payment Date</b> " in the New Notes Conditions.
<b>New Notes Maturity Date</b>	29 March 2014.
<b>Notifying News Service</b>	A recognised financial news service or services (e.g. Reuters/Bloomberg) as selected by the Bank.
<b>Preliminary Listing Particulars</b>	The preliminary listing particulars prepared by the Bank in connection with the issue of New Notes, substantially in the form of annex 1 to this Exchange Offer Memorandum.
<b>Prospectus Directive</b>	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 (and amendments thereto, including Directive 2010/73/EU, to the extent implemented in the relevant Member State).
<b>PSM</b>	The professional securities market of the London Stock Exchange plc.
<b>Regulation S</b>	Regulation S under the Securities Act.
<b>RNS</b>	The Regulatory News Service of the London Stock Exchange.
<b>Securities Act</b>	United States Securities Act of 1933, as amended.
<b>Settlement Date</b>	On or about 29 June 2012 to the right of the Bank to extend, re-open, amend and/or terminate the Exchange Offer.
<b>Subordinated Securities Instruction Date</b>	28 June 2012

## **RISK FACTORS AND OTHER CONSIDERATIONS**

*The following section does not describe all of the risks for Holders participating in the Exchange Offer.*

*Prior to making a decision as to whether to participate, Holders should consider carefully, in light of their own financial circumstances and investment objectives, all the information set forth in this Exchange Offer Memorandum including, without limitation, all information in, and incorporated by reference in, the Preliminary Listing Particulars and, in particular, the following factors and the Listing Particulars Risk Factors in evaluating whether to participate in the Exchange Offer. Holders should make such inquiries as they think appropriate regarding the terms of the Exchange Offer, the New Notes and the Bank all without relying on the Bank, the Joint Dealer Managers, the Exchange Agent or any other person.*

### **Uncertainty as to the cash flows associated with the Existing Securities**

The Bank may exercise the option to redeem the Existing Securities in accordance with the Existing Securities Conditions, which option may be exercised by the Bank on any Distribution Payment Date. The Bank does not have any obligation to exercise the option to redeem the Existing Securities of any Series and if it decides to exercise such option, is under no obligation to do so by any particular date.

As per the dispositions of Royal Decree 18/2012, the Bank intends to seek regulatory approval to defer the coupons on the Existing Securities for a period of up to twelve months, as a result of the additional provisions imposed by Royal Decree 18/2012, (i) even if the Bank has sufficient distributable profit or reserves, or (ii) if the Bank's solvency ratios are below required levels.

Subject to the foregoing, any further decisions by the Bank as to whether it will exercise future calls in respect of the Existing Securities of any Series that are not exchanged pursuant to the Exchange Offer will be taken having regard to the economic impact of exercising (or not exercising) such calls, the Bank's regulatory capital requirements and prevailing market conditions.

### **Uncertainty as to the trading market for Existing Securities not exchanged**

Although the Existing Securities of each Series that are not validly offered for exchange by Holders or accepted by the Bank for exchange will continue to be listed on the Luxembourg Stock Exchange, Euronext Amsterdam and the Frankfurt Stock Exchange, in the case of the Series A Securities, on Euronext Amsterdam and the Frankfurt Stock Exchange, in the case of the Series B Securities, on the Regulated Market of the London Stock Exchange, in the case of the Series C Securities, on Euronext Amsterdam, in the case of the Banco Pastor Securities, and on the AIAF, in the case of the Subordinated Securities, to the extent offers of Existing Securities for exchange in the Exchange Offer are accepted by the Bank and the Exchange Offer is completed, the trading market for the Existing Securities of any Series that remain outstanding following such completion may be significantly more limited. Such remaining Existing Securities may command a lower price than a comparable issue of securities with greater market liquidity. A reduced market value and liquidity may also make the trading price of such remaining Existing Securities more volatile.

As a result, the market price for Existing Securities of each Series that remain outstanding after the completion of the Exchange Offer may be adversely affected as a result of the Exchange Offer. None of the Bank, any other Group company, the Joint Dealer Managers or the Exchange Agent has any duty to make a market in any such remaining Existing Securities.

### **Uncertainty as to the trading market for the New Notes**

The Bank does not intend to make any application for the listing and admission to trading of the New Notes on any market other than the listing of the New Notes on the Official List of the London Stock Exchange and admission to trading on the PSM. The New Notes are securities for which there is currently no trading market and for which there can be no assurance of future liquidity. None of the Bank, any other Group company, the Dealer Managers or the Exchange Agent has any duty to make a market in any New Notes.

The quantity of New Notes to be issued will depend on the level of participation in the Exchange Offer. In case of low acceptance of the Exchange Offer, the New Notes issued may have a lower market price

than would a comparable issue of debt securities with greater market liquidity. A reduced market value may also make the trading price of such New Notes more volatile.

**Holders must validly offer for exchange a nominal amount of Existing Securities of the relevant Series equal to or greater than the Minimum Submission Amount in order to receive New Notes pursuant to the Exchange Offer**

In order to receive New Notes pursuant to the Exchange Offer, a Holder must validly offer for exchange a nominal amount of the Existing Securities of the relevant Series at least equal to the Minimum Submission Amount. A Holder that holds Existing Securities of a Series having a nominal amount less than the Minimum Submission Amount must, if it wishes to receive New Notes pursuant to the Exchange Offer, first acquire such additional Existing Securities of such Series as is necessary to enable that Holder to be able to offer for exchange Existing Securities equal to at least the Minimum Submission Amount.

**Holders of Existing Securities with a residual holding of less than the minimum denomination of such Existing Securities**

If a Holder of Existing Securities does not, for any reason, submit all of its Existing Securities in the Exchange Offer and, following the Exchange Offer, continues to hold in its account with the relevant Clearing System a nominal amount of Existing Securities of any Series which is less than the lowest minimum denomination of such Series of Existing Securities, such Holder would need to purchase a nominal amount of Existing Securities of such Series such that its holding amounts to at least the amount of such lowest minimum denomination. Otherwise, its residual holding may not be tradeable in the Clearing Systems.

**Future actions in respect of the Existing Securities**

From time to time in the future, the Bank, the Joint Dealer Managers and their respective affiliates may, to the extent permitted by applicable law, acquire, during or after the Exchange Offer, Existing Securities other than pursuant to the Exchange Offer, including through open market purchases, privately negotiated transactions, tender offers, exchange offers or otherwise, upon such terms and at such prices as they may determine, subject (where required in respect of transactions by the Bank) to the authorisation of the Bank of Spain. Such prices may be more or less than the prices to be paid pursuant to the Exchange Offer and could be for cash or other consideration or otherwise on terms more or less favourable than those of the Exchange Offer.

**No obligation to accept offers to exchange**

The Bank is not under any obligation to accept, and shall have no liability to any person for any non-acceptance of, any offer of Existing Securities for exchange pursuant to the Exchange Offer. Offers of Existing Securities for exchange may be rejected in the sole discretion of the Bank for any reason and the Bank is not under any obligation to Holders to furnish any reason or justification for refusing to accept an offer of Existing Securities for exchange. For example, offers of Existing Securities for exchange may be rejected if the Exchange Offer is terminated, if the Exchange Offer does not comply with the relevant requirements of a particular jurisdiction or for any other reason.

**Responsibility for complying with the procedures of the Exchange Offer**

Holders of Existing Securities are responsible for complying with all of the procedures for offering Existing Securities for exchange. None of the Bank, the Joint Dealer Managers or the Exchange Agent assumes any responsibility for informing any holder of Existing Securities of irregularities with respect to such Holder's participation in the Exchange Offer.

**Differences between the Existing Securities and the New Notes**

There are a number of significant differences between the Existing Securities Conditions and the New Notes Conditions. The New Notes Conditions are set out in the Preliminary Listing Particulars (the form of which is set out in "*Annex 1 – Form of Preliminary Listing Particulars for the New Notes*"). Holders should review the Preliminary Listing Particulars, including in particular the Listing Particulars Risk Factors and the New Notes Conditions in their entirety before making a decision whether to offer Existing Securities for exchange pursuant to the Exchange Offer.

### **Completion, termination and amendment**

Until the Bank announces whether it has decided to accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer, no assurance can be given that the Exchange Offer will be completed. This may depend upon the satisfaction or waiver of the conditions of the Exchange Offer. Existing Securities that are not successfully offered for exchange pursuant to the Exchange Offer will remain outstanding.

In addition, subject to applicable laws and as provided in this Exchange Offer Memorandum, the Bank may, in its sole discretion, extend, re-open, amend or terminate the Exchange Offer at any time before its announcement of whether it will accept valid offers of Existing Securities for exchange pursuant to the Exchange Offer, and may, in its sole discretion, waive any of the conditions to the Exchange Offer either before or after such announcement. The Bank is furthermore entitled to terminate the Exchange Offer at any time after its commencement to (and including) the day prior to the Settlement Date upon the occurrence of certain extraordinary events. See further "*Exchange Offer – Termination*".

### **Exchange Instructions irrevocable**

Exchange Instructions will be irrevocable except in the limited circumstances described in "*Amendment and Termination – Revocation Rights*" below.

### **Compliance with offer and distribution restrictions**

Holders of Existing Securities are referred to the offer and distribution restrictions in "*Offer and Distribution Restrictions*" and the agreements, acknowledgements, representations, warranties and undertakings in "*Procedures for Participating in the Exchange Offer*", which Holders will be deemed to make on submission of an Exchange Instruction. Non-compliance with the offer and distribution restrictions could result in the unwinding of trades and/or in significant costs for investors.

### **Responsibility to consult advisers**

None of the Bank, its directors, the Joint Dealer Managers or the Exchange Agent makes any recommendation to any Holder of Existing Securities as to whether the Holder should tender its Existing Securities, or refrain from taking any action in the Exchange Offer with respect to any of such Holder's Existing Securities, and none of them has authorised any person to make any such recommendation. Holders should consult their own tax, accounting, financial and legal advisers regarding the suitability to themselves of the tax or accounting consequences of participating in the Exchange Offer and an investment in the New Notes. None of the Bank, the Joint Dealer Managers or the Exchange Agent has made or will make any assessment of the merits of the offer or of the impact of the Exchange Offer on the interests of Holders either as a class or as individuals.

### **Exchange Ratios, Exchange Prices and market value**

The Exchange Price for each Series of Existing Securities may not reflect market value of the Existing Securities of the relevant Series and the Exchange Ratios may not reflect the market value of the New Notes. Application will be made for the New Notes to be listed on the Official List and admitted to trading on the PSM. To the extent that the New Notes are traded, the price of the New Notes may fluctuate greatly depending on the trading volume and the balance between buy and sell orders. Holders are urged to contact their brokers to obtain the best available information as to the potential market price of the New Notes and for advice concerning the effect of the Exchange Ratios.

### **Restrictions on transfer of Existing Securities**

When considering whether to participate in the Exchange Offer, Holders should take into account that restrictions on the transfer of Existing Securities by Holders will apply from the time of submission of Exchange Instructions. A Holder will, on submitting an Exchange Instruction, agree that its Existing Securities will be blocked in the relevant account in the relevant Clearing System, from the date the relevant Exchange Instruction is submitted until the earlier of:

- (a) the time of settlement on the Settlement Date; and

- (b) the date of any termination of the Exchange Offer (including where such Existing Securities are not accepted by the Bank for exchange) or on which the Exchange Instruction is validly revoked, in the limited circumstances in which such revocation is permitted, in accordance with the applicable procedures set forth in the section "*Procedures for participating in the Exchange Offer*" of this Exchange Offer Memorandum.

**Differences between the Existing Securities and the New Notes**

Holders should note that there are significant differences between the terms of the Existing Securities and the New Notes, including the fact that the New Notes are mandatorily convertible into ordinary shares of the Bank in certain circumstances. Holders should make a full evaluation of the terms and conditions of the New Notes as set out in the Preliminary Listing Particulars at annex 1 and pay careful attention to the Listing Particulars Risk Factors.

## TAX CONSEQUENCES

In view of the number of different jurisdictions where tax laws may apply to a Holder, this Exchange Offer Memorandum does not discuss the tax consequences for Holders arising from the exchange of Existing Securities pursuant to the Exchange Offer, or in relation to the New Notes, save for certain Spanish tax consequences that are described below. The following is a summary of certain Spanish tax implications that may be relevant to Holders who exchange their Existing Securities pursuant to the Exchange Offer. This summary does not purport to be a complete analysis of the tax law and practice currently applicable in Spain and does not purport to address the tax consequences applicable to all categories of Holders, some of whom may be subject to special rules.

Holders are urged to consult their own professional advisers regarding the possible tax consequences under the laws of the jurisdictions that apply to them or to the exchange of their Existing Securities and the receipt pursuant to the Exchange Offer of New Notes and the Accrued Distribution Payment. Holders are liable for their own taxes and have no recourse to the Bank, any other Group company, the Dealer Managers or the Exchange Agent with respect to taxes arising in connection with the Exchange Offer.

Certain tax consequences applicable to the New Notes are described in the section headed "*Taxation*" of the Preliminary Listing Particulars.

### Spanish Tax Consequences

#### 1. Existing Securities issued by Popular Capital, S.A. ("**Banco Popular Preferred Securities**")

##### (a) *Spanish tax resident individual investors:*

Spanish tax resident individual Holders of Banco Popular Preferred Securities who exchange them pursuant to the Exchange Offer may obtain a taxable income subject to the Spanish Personal Income Tax on the positive difference, if any, between the transfer price of the tendered Banco Popular Preferred Securities and their acquisition or subscription price. The ancillary costs and expenses which are inherent to the acquisition (or, if applicable, to the transfer) of the securities will also be included in the acquisition value (or deducted from the transfer value, as the case may be), provided that they are duly evidenced.

Income, if any, obtained from the exchange or from the Accrued Distribution Payment of the Banco Popular Preferred Securities under the Exchange Offer must be included in the Holder's Personal Income Tax savings base, and will be taxed, together with the other savings income obtained by such Holder in that same tax year, at a flat rate of 21% on the first €6,000, 25% on the following €18,000 and 27% for any amount in excess of €24,000.

Exceptionally, negative income derived from the exchange of the Banco Popular Preferred Securities under the Exchange Offer, in the event that a Holder had acquired other homogeneous securities within the two months prior or subsequent to such exchange, shall be included in his or her Personal Income Tax base as and when the remaining homogeneous securities are transferred.

When calculating the net income, expenses related to the management and deposit of the Banco Popular Preferred Securities will be deductible, excluding those pertaining to discretionary or individual portfolio management.

No withholding on account will be made on income obtained by Spanish resident individuals from the exchange of the Banco Popular Preferred Securities or from the Accrued Distribution Payment provided that the relevant formalities in relation to the Banco Popular Preferred Securities as described in the section "*Disclosure of Information about the Securities*" below are complied with.

Notwithstanding the above, in the case of Banco Popular Preferred Securities held by Spanish resident individuals and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest under the Banco Popular Preferred

Securities may be subject to withholding tax at the current rate of 21% which will be made by the depositary or custodian.

(b) *Spanish tax resident investors subject to Corporate Income Tax*

Income derived from the exchange or from the Accrued Distribution Payment of the Banco Popular Preferred Securities under the Exchange Offer by Spanish Corporate Income Tax (CIT) taxpayers (or by non-Spanish tax resident Holders acting, with respect to the Banco Popular Preferred Securities, through a permanent establishment in Spain) will be subject to CIT (at the current general flat tax rate of 30% for 2012) in accordance with the rules for this tax.

No withholding on account will be made on income obtained by investors subject to Corporate Income Tax from the exchange of the Banco Popular Preferred Securities or from the Accrued Distribution Payment provided that the relevant formalities in relation to the Preferred Securities as described in the section "Disclosure of Information about the Securities" below are complied with.

Income obtained by Spanish resident corporate investors from securities listed on an official OECD market will not be subject to withholding tax in accordance with Section 59(s) of the Corporate Income Tax Regulations.

However, in the case of Banco Popular Preferred Securities held by Spanish resident entity and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest may be subject to withholding tax at the current rate of 21 per cent., withholding that will be made by the depositary or custodian, if the Banco Popular Preferred Securities do not comply with the exemption requirements specified in the ruling issued by the Spanish Tax Authorities (*Dirección General de Tributos*) dated 27 July 2004 and require a withholding to be made.

(c) *Non-Spanish tax resident investors:*

Income obtained by individuals or entities who are not resident in Spain for tax purposes and do not act, with respect to the Banco Popular Preferred Securities through a permanent establishment in Spain, from the exchange or from the Accrued Distribution Payment of the Banco Popular Preferred Securities pursuant to the Exchange Offer will be exempt from Spanish Non-Resident Income Tax provided that the relevant formalities in relation to the Preferred Securities as described in the section "Disclosure of Information about the Securities" below are complied with.

2. **Existing Securities issued by Pastor Participaciones Preferentes, S.A. Unipersonal ("Banco Pastor Preferred Securities")**

(a) Spanish tax resident individual investors:

Spanish tax resident individual Holders of Banco Pastor Preferred Securities who exchange them pursuant to the Exchange Offer may obtain a taxable income subject to the Spanish Personal Income Tax on the positive difference, if any, between the transfer price of the tendered Banco Pastor Preferred Securities and their acquisition or subscription price. The ancillary costs and expenses which are inherent to the acquisition (or, if applicable, to the transfer) of the securities will also be included in the acquisition value (or deducted from the transfer value, as the case may be), provided that they are duly evidenced.

Income, if any, obtained from the exchange of the Banco Pastor Preferred Securities or from the Accrued Distribution Payment under the Exchange Offer must be included in the Holder's Personal Income Tax savings taxable base, and will be taxed, together with the other savings income obtained by such Holder in that same tax year, at a flat rate of 21% on the first €6,000, 25% on the following €18,000 and 27% for any amount in excess of €24,000.

Exceptionally, negative income derived from the exchange of the Banco Pastor Preferred Securities under the Exchange Offer, in the event that a Holder had acquired other homogeneous securities within the two months prior or subsequent to such exchange, shall be included in his or her Personal Income Tax base as and when the remaining homogeneous securities are transferred.

When calculating the net income, expenses related to the management and deposit of the Banco Pastor Preferred Securities will be deductible, excluding those pertaining to discretionary or individual portfolio management.

No withholding on account will be made on income obtained by Spanish tax resident individual investors from the exchange or from the Accrued Distribution Payment of the Banco Pastor Preferred Securities provided that the relevant formalities in relation to the Banco Pastor Preferred Securities as described in the section "Disclosure of Information about the Securities" below are complied with.

Notwithstanding the above, in the case of Securities held by Spanish resident individuals and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest under the Banco Pastor Preferred Securities may be subject to withholding tax at the current rate of 21% which will be made by the depositary or custodian.

(b) *Spanish tax resident investors subject to Corporate Income Tax*

Income derived from the exchange or from the Accrued Distribution Payment of the Banco Pastor Preferred Securities under the Exchange Offer by Spanish Corporate Income Tax (CIT) taxpayers (or by non-Spanish tax resident Holders acting, with respect to the Banco Pastor Preferred Securities, through a permanent establishment in Spain) will be subject to CIT (at the current general flat tax rate of 30% for 2012) in accordance with the rules for this tax.

No withholding on account will be made on income derived by Spanish investors subject to Corporate Income Tax (as well as by investors not resident in Spain for tax purposes who act, with respect to the Securities, through a permanent establishment in Spain) from the exchange or from the Accrued Distribution Payment of the Banco Pastor Preferred Securities provided that the relevant formalities in relation to the Banco Pastor Preferred Securities as described in the section "Disclosure of Information about the Securities" below are complied with.

However, if a Spanish financial entity acted as depositary of the Banco Pastor Preferred Securities or intervened the transaction on behalf of the Holder, a withholding on account of CIT may be imposed on such income although an exemption based in Article 59(s) of the Corporate Income Tax Regulations may apply to the extent that the Banco Pastor Preferred Securities are placed outside of Spain in an OECD country and are listed on an organized market in an OECD country other than Spain in accordance with the requirements laid down by the reply to the consultation of the Directorate General of Taxation of 27 July 2004 and provided further that the relevant CIT taxpayer provides evidence of its status to the depositary or intervening Spanish financial entity.

(c) *Non-Spanish tax resident investors:*

Income obtained by individuals or entities who are not resident in Spain for tax purposes and do not act, with respect to the Banco Pastor Preferred Securities, through a permanent establishment in Spain, from the exchange or from the Accrued Distribution Payment of the Banco Pastor Preferred Securities pursuant to the Exchange Offer, will be exempt from the Spanish Non-Resident Income Tax provided that the relevant formalities in relation to the Banco Pastor Preferred Securities as described in the section "Disclosure of Information about the Securities" below are complied with.

3. **Existing Securities issued by Banco Pastor, S.A. ("Banco Pastor Perpetual Debt")**

(a) *Spanish tax resident individual investors:*

Spanish tax resident individual Holders of Banco Pastor Perpetual Debt who exchange them pursuant to the Exchange Offer may obtain a taxable income subject to the Spanish Personal Income Tax on the positive difference, if any, between the transfer price of the tendered Banco Pastor Perpetual Debt and their acquisition or subscription price. The ancillary costs and expenses which are inherent to the acquisition (or, if applicable, to the transfer) of the securities will also be included in the acquisition value (or deducted from the transfer value, as the case may be), provided that they are duly evidenced.

Income, if any, obtained from the exchange or from the Accrued Distribution Payment of the Banco Pastor Perpetual Debt under the Exchange Offer must be included in the Holder's Personal Income Tax savings taxable base, and will be taxed, together with the other savings income obtained by such Holder in that same tax year, at a flat rate of 21% on the first €6,000, 25% on the following €18,000 and 27% for any amount in excess of €24,000.

Exceptionally, negative income derived from the exchange of the Banco Pastor Perpetual Debt under the Exchange Offer, in the event that a Holder had acquired other homogeneous securities within the two months prior or subsequent to such exchange, shall be included in his or her Personal Income Tax base as and when the remaining homogeneous securities are transferred.

When calculating the net income, expenses related to the management and deposit of the Banco Pastor Perpetual Debt will be deductible, excluding those pertaining to discretionary or individual portfolio management.

Income from the transfer of the Banco Pastor Perpetual Debt will be exempt from Spanish withholding in accordance with Article 75.3(e) of the Personal Income Tax regulations, to the extent that the securities are financial assets with an explicit yield registered in book-entry forms and listed on a Spanish official secondary market (i.e. AIAF).

The Accrued Distribution Payment may be subject to withholding on account at the current rate of 21%.

(b) *Spanish tax resident investors subject to Corporate Income Tax*

Income derived from the exchange or from the Accrued Distribution Payment of the Banco Pastor Perpetual Debt under the Exchange Offer by Spanish Corporate Income Tax (CIT) taxpayers (or by non-Spanish tax resident Holders of Securities acting, with respect to the Banco Pastor Perpetual Debt, through a permanent establishment in Spain) will be subject to CIT (at the current general flat tax rate of 30% for 2012) in accordance with the rules for this tax.

No withholding on account will be made on income derived by Spanish investors subject to Corporate Income Tax (as well as by investors not resident in Spain for tax purposes who act, with respect to the Banco Pastor Perpetual Debt, through a permanent establishment in Spain from the exchange or from the Accrued Distribution Payment of the Banco Pastor Perpetual Debt provided that the relevant formalities in relation to the Banco Pastor Perpetual Debt as described in the section "Disclosure of Information about the Securities" below are complied with.

In addition, no withholding on account of CIT will be imposed on such income in accordance with Article 59(q) of the Corporate Income Tax regulations as the Banco Pastor Perpetual Debt are financial assets with an explicit yield registered in book-entry forms and listed on a Spanish official secondary market (i.e. AIAF) and provided further that the relevant CIT taxpayer provides evidence of its status to the Spanish financial entity, if any, that intervenes the transaction on its behalf.

(c) *Non-Spanish tax resident investors:*

Income obtained by individuals or entities who are not resident in Spain for tax purposes and do not act, with respect to the Banco Pastor Perpetual Debt, through a permanent establishment in Spain, from the exchange or from the Accrued Distribution Payment of the Banco Pastor Perpetual Debt pursuant to the Exchange Offer, will be exempt from the Spanish Non-Resident Income Tax provided that the relevant formalities in relation to the Banco Pastor Perpetual Debt as described in the section "Disclosure of Information about the Securities" below are complied with.

If a Spanish financial entity intervenes the transaction on behalf of the Holder, any income from the transfer of the Banco Pastor Perpetual Debt will be exempt from withholding in accordance with Article 10.3(b) of the Non Residents Income Tax regulations as the securities are listed on AIAF Fixed Income Securities Market and represented in book entry form. The application of the exemption may require that the relevant non-Spanish tax resident Holder provides to such financial entity documentary evidence of its tax residence outside of Spain

4. **Disclosure of Information about the Securities**

*Securities held in Euroclear and Clearstream*

As described above, income obtained as a result of the exchange of certain series of Existing Securities will be exempt from Spanish withholding tax if the procedures for delivering to the Bank the information described in Exhibit I of this Exchange Offer Memorandum are complied with.

The following is a description of the procedures applicable in the case of Securities originally registered in Euroclear and Clearstream.

The information obligations to be complied with in order to apply the exemption are those laid down in Section 44 of Royal Decree 1065/2007 ("**Section 44**"), as amended by Royal Decree 1145/2011 of 29 July.

In accordance with Section 44 paragraph 5, before the close of business on the Business Day (as defined in the Existing Securities) immediately preceding the date on which any payment of interest, principal or of any amounts in respect of the early redemption of the securities (each, a "**Payment Date**") is due, the Bank must receive from the Exchange Agent the following information about the securities:

- (a) the identification of the securities with respect to which the relevant payment is made;
- (b) the date on which the relevant payment is made;
- (c) the total amount of the relevant payment;
- (d) the amount of the relevant payment paid to each entity that manages a clearing and settlement system for securities situated outside of Spain.

In particular, the Exchange Agent must certify the information above about the securities by means of a certificate, the form of which is attached as Exhibit I of this Exchange Offer Memorandum.

In light of the above, the Bank and the Exchange Agent have arranged certain procedures to facilitate the collection of information concerning the securities by the close of business on the Business Day immediately preceding each relevant Payment Date. If, despite these procedures, the relevant information is not received by the Bank on each Payment Date, the Bank will withhold tax at the then-applicable rate (currently 21%) from any payment in respect of the relevant securities.

If, before the tenth day of the month following the month in which interest is paid, the Exchange Agent provides such information, the Bank will reimburse the amounts withheld.

Prospective Holders of securities should note that none of the Bank or the Dealer Managers accepts any responsibility relating to the procedures established for the collection of information concerning the securities. Accordingly, none of the Bank or the Dealer Managers will be liable for any damage or loss suffered by any Holder who would otherwise be entitled to an exemption from Spanish withholding tax but whose income payments are nonetheless paid net of Spanish withholding tax because these procedures prove ineffective. Notwithstanding the foregoing, the Bank has agreed that, in the event that withholding tax were required by law, the Bank would pay such additional amounts as will result in receipt by Holders of such amounts as would have been received by them had no such withholding or deduction been applied, except as provided in the section headed "*Terms and Conditions of the Notes – Taxation*" in the Preliminary Listing Particulars.

*Securities held in Iberclear*

In the case of Existing Securities originally registered in Iberclear, the obligations to be complied with are those laid down in Section 44 paragraph 4 of Royal Decree 1065/2007 as amended by Royal Decree 1145/2011 of 29 July.

In accordance with it, before the close of business on the Business Day (as defined in the Existing Securities) immediately preceding the date on which any payment of interest, principal or of any amounts in respect of the early redemption of the securities (each, a "**Payment Date**") is due, the Bank must receive from the entities that hold the securities registered in their third party accounts the following information about the securities:

- (a) the identification of the securities with respect to which the relevant payment is made;
- (b) the date on which the relevant payment is made;
- (c) the total amount of the relevant payment;
- (d) the amount of income corresponding to Personal Income Tax taxpayers; and
- (e) Amount of income which according to paragraph 2 of Article 44 must be paid gross.

## PROCEDURES FOR PARTICIPATING IN THE EXCHANGE OFFER

*Holders who need assistance with respect to the procedures for participating in the Exchange Offer should contact the Exchange Agent, the contact details for whom are on the last page of this Exchange Offer Memorandum.*

### Summary of action to be taken

The Bank will only accept offers of Existing Securities for exchange pursuant to the Exchange Offer which are made by way of the submission of valid Exchange Instructions in accordance with the procedures set out in this section "*Procedures for Participating in the Exchange Offer*".

Save in respect of the Subordinated Securities, to offer Existing Securities for exchange pursuant to the Exchange Offer where such Existing Securities are held in a Clearing System, a Holder should deliver, or arrange to have delivered on its behalf, via the relevant Clearing System and in accordance with the requirements of such Clearing System, a valid Exchange Instruction that is received by the Exchange Agent by the Exchange Offer Deadline.

Holders of Existing Securities who hold positions directly in Clearstream Banking Frankfurt or through an accountholder of Clearstream Banking Frankfurt must, in order to be eligible to participate in the Exchange Offer, (i) arrange for the relevant nominal amount of Existing Securities which they wish to tender to be deposited with an account in either Euroclear or Clearstream, Luxembourg, and (ii) maintain, or where relevant, procure access to an account in either Euroclear or Clearstream, Luxembourg through which such Existing Securities can be traded, and to which any Accrued Distribution Payment may be credited by the Bank. Holders of Existing Securities who do not have access to an account in either Euroclear or Clearstream, Luxembourg (either directly or through a Direct Participant or other intermediary), or who do not deposit the relevant Existing Securities which they wish to offer for exchange pursuant to the Exchange Offer with a Direct Participant in either Euroclear or Clearstream, Luxembourg, will not be able to submit an Exchange Instruction to the Exchange Agent and will not be eligible to participate in the Exchange Offer.

Each holder of Subordinated Securities that has deposited its Subordinated Securities with an Iberclear Accountholder and that wishes to offer Subordinated Securities for exchange must instruct such Iberclear Accountholder to send an Exchange Instruction to the Exchange Agent in the name and on behalf of the relevant holder. If the holder of Subordinated Securities is an Iberclear Accountholder itself, it must send an Exchange Instruction in respect of its Subordinated Securities in its own name to the Exchange Agent.

The notice will be sent by the relevant Iberclear Accountholder to the Exchange Agent either online via [www.lucid-is.com/popular](http://www.lucid-is.com/popular) or by fax to +44 207 067 9098 containing the duly completed form of Exchange Instruction, attached hereto as annex 2.

Any holder of Subordinated Securities that does not appear as a holder of Subordinated Securities in the registers of Iberclear or of an Iberclear Accountholder, must contact the financial entity or the Iberclear Accountholder through which it holds the Subordinated Securities, so that the latter may carry out the steps necessary to accept the Exchange Offer on the terms of this Exchange Offer Memorandum.

Each Iberclear Accountholder must send an Exchange Instruction per beneficial owner of Subordinated Securities that accepts the Exchange Offer through that Iberclear Accountholder.

Holders are advised to check with any bank, securities broker or other intermediary through which they hold Existing Securities whether such intermediary needs to receive instructions from a Holder before the deadlines specified in this Exchange Offer Memorandum in order for that Holder to be able to participate in, or (in the limited circumstances in which revocation is permitted) revoke their instruction to participate in, the Exchange Offer. **The deadlines set by each Clearing System for the submission and withdrawal of Exchange Instructions will also be earlier than the relevant deadlines specified in this Exchange Offer Memorandum.**

### Responsibility for delivery of Exchange Instructions

- (a) **No responsibility:** None of the Bank, the Joint Dealer Managers or the Exchange Agent will be responsible for the communication of any offer to exchange and corresponding Exchange Instructions by:
  - (i) Beneficial Owners to the Direct Participant through which they hold Existing Securities; or
  - (ii) the Direct Participant to the relevant Clearing System or the Exchange Agent (as applicable).
- (b) **Direct Participants:** If a Beneficial Owner holds its Existing Securities through a Direct Participant, such Beneficial Owner should contact that Direct Participant to discuss the manner in which offers for exchange and transmission of the corresponding Exchange Instructions and, as the case may be, transfer instructions may be made on its behalf.
- (c) **Inability to submit instructions:** In the event that the Direct Participant through which a Beneficial Owner holds its Existing Securities is unable to submit an Exchange Instruction on its behalf, such Beneficial Owner should contact the Exchange Agent for assistance.
- (d) **Timely delivery:** Holders, Direct Participants and Beneficial Owners are solely responsible for arranging the timely delivery of their Exchange Instructions.
- (e) **Service fees:** If a Beneficial Owner offers its Existing Securities through a Direct Participant, such beneficial owner should consult with that Direct Participant as to whether it will charge any service fees in connection with the participation in the Exchange Offer.

Holders should note that:

- (i) each Beneficial Owner should submit (or arrange to have submitted on its behalf) a separate Exchange Instruction in respect of such Beneficial Owner's Existing Securities;
- (ii) each Exchange Instruction must be in respect of one Series of Existing Securities only; and
- (iii) a Beneficial Owner must not submit (or arrange to have submitted on its behalf) more than one Exchange Instruction in respect of any particular Series of Existing Securities.

Accordingly:

- (i) where an intermediary intends to submit Exchange Instructions on behalf of multiple Beneficial Owners who hold their Existing Securities through such intermediary, it must submit a separate Exchange Instruction in respect of each Beneficial Owner;
- (ii) if a Holder wishes to offer to exchange more than one Series of Existing Securities, it must submit (or arrange to have submitted on its behalf) a separate Exchange Instruction in relation to each Series of Existing Securities to be offered for exchange; and
- (iii) if a beneficial owner submits (or arranges to have submitted on its behalf) more than one Exchange Instruction in respect of its holding of a particular Series of Existing Securities, each such Exchange Instruction will be invalid, and may be rejected by the Bank.

### **Exchange Instructions**

The offering of Existing Securities for exchange by a Holder will be deemed to have occurred upon receipt by the Exchange Agent from the relevant Clearing System of a valid Exchange Instruction submitted in accordance with the requirements of such Clearing System. The receipt of such Exchange Instruction by the relevant Clearing System will be acknowledged in accordance with the standard practices of such Clearing System and will result in the blocking of the relevant Existing Securities in the Holder's account with the relevant Clearing System so that no transfers may be effected in relation to such Existing Securities.

Holders must take the appropriate steps through the relevant Clearing System so that no transfers may be effected in relation to such blocked Existing Securities at any time after the date of submission of such

Exchange Instruction, in accordance with the requirements of the relevant Clearing System and the deadlines required by such Clearing System. By blocking such Existing Securities in the relevant Clearing System, each Direct Participant will be deemed to consent to have the relevant Clearing System provide details concerning such Direct Participant's identity to the Exchange Agent (and for the Exchange Agent to provide such details to the Bank and to the Joint Dealer Managers and their legal advisers).

**Only Direct Participants may submit Exchange Instructions. Each Holder that is not a Direct Participant must arrange for the Direct Participant through which such Holder holds its Existing Securities to submit a valid Exchange Instruction on its behalf to the relevant Clearing System before the deadlines specified by the relevant Clearing System.**

It is a term of the Exchange Offer that Exchange Instructions are irrevocable except in the limited circumstances described in "*Amendment and Termination*". In such circumstances, Exchange Instructions may be revoked by a Holder, or the relevant Direct Participant on its behalf, by submitting (for receipt before the relevant deadline) a valid electronic withdrawal instruction to the relevant Clearing System. To be valid, such instruction must specify the Existing Securities to which the original Exchange Instruction related, the nominal amount of the Existing Securities for which the Exchange Instruction is requested to be revoked, the securities account to which such Existing Securities are credited and any other information required by the relevant Clearing System.

#### **Transfer of Subordinated Securities**

For the purposes of properly completing the settlement of the Exchange Offer on the Settlement Date, on the business day before the Settlement Date (which is expected to be 28 June 2012) (the "**Subordinated Securities Instruction Date**"), the Iberclear Accountholders through which the relevant holders of Subordinated Securities have submitted the Exchange Instructions will match the instructions on the Iberclear electronic system with the Bank. The Bank will transfer the relevant Subordinated Securities in respect of which the Exchange Offer has been accepted, free of payment, on the Settlement Date, to the securities account of Banco Popular Español, S.A. at Iberclear (the "**Banco Popular Iberclear Own Account**"). The instruction of transfer will be from the Accountholders own accounts (*cuenta propia*) to the Banco Popular Iberclear Own Account (*cuenta propia*).

On the Settlement Date, title to the Existing Securities will be acquired by the Bank against delivery of the corresponding New Notes and payment of the Accrued Distribution Payment to the relevant Clearing System.

#### **Holders of Subordinated Securities not appearing in the registers of Iberclear Accountholder**

Any holder of Subordinated Securities not appearing as a holder of Subordinated Securities in the registers of Iberclear or of an Iberclear Accountholder, must contact the financial entity or the Iberclear Accountholder through which it holds the Subordinated Securities if it wishes to participate in the Exchange Offer.

If the holder of Subordinated Securities is a holder thereof through a member of Clearstream and/or Euroclear it must contact the financial entity or accountholder through which it holds the Subordinated Securities as soon as possible and, in any event, sufficiently in advance so that (i) it is possible for all necessary steps and notifications to be taken and made between the relevant Clearing Systems, liaison entities and Iberclear Accountholders and (ii) the acceptance instructions may be received by the Iberclear Accountholder with which the Subordinated Securities have been deposited so that the Iberclear Accountholder may submit the Exchange Instruction to the Exchange Agent by the Exchange Offer Deadline. In order for the holders of Subordinated Securities and the members of Clearstream and/or Euroclear to submit acceptances, they will follow the procedures and requirements that have been or are established in the future by the relevant clearance and settlement system.

#### **Submission of Subordinated Securities Withdrawal Instructions**

The Exchange Instructions in relation to the exchange of Subordinated Securities may be revoked in accordance with the revocation rights set out under "*Amendment and Termination - Revocation Rights*", below, by submitting a Subordinated Securities Withdrawal Instruction that will contain the same data and references as the Exchange Instruction to the Exchange Agent. The Exchange Agent must receive the Subordinated Securities Withdrawal Instruction within the deadline established in the relevant notice and

following the same procedure established for the acceptance of the Exchange Offer (see annex 3 - "*Form of Subordinated Securities Withdrawal Instruction*").

### **Acknowledgements and Representations**

By submitting a valid Exchange Instruction to the relevant Clearing System in accordance with the standard procedures of such Clearing System, a Holder and any Direct Participant submitting such Exchange Instruction on such Holder's behalf shall be deemed to agree, and acknowledge, represent, warrant and undertake, to the Bank, the Exchange Agent and the Joint Dealer Managers the following at the Exchange Offer Deadline and the time of settlement on the Settlement Date (if a Holder or Direct Participant is unable to make any such agreement or acknowledgement or give any such representation, warranty or undertaking, such Holder or Direct Participant should contact the Exchange Agent immediately):

- (a) it has received the Exchange Offer Memorandum, and has reviewed and accepts the offer and distribution restrictions, terms, conditions, risk factors (including the Listing Particulars Risk Factors), New Note Conditions and other considerations of the Exchange Offer, all as described in this Exchange Offer Memorandum, and has undertaken an appropriate analysis of the implications of the Exchange Offer without reliance on the Bank, any of the Joint Dealer Managers or the Exchange Agent;
- (b) by blocking the relevant Existing Securities in the relevant Clearing System, it will be deemed to consent, in the case of a Direct Participant, to have such Clearing System provide details concerning its identity to the Exchange Agent (and for the Exchange Agent to provide such details to the Bank and to the Joint Dealer Managers and their legal advisers);
- (c) upon the terms and subject to the conditions of the Exchange Offer, it offers for exchange the nominal amount of Existing Securities specified in the Exchange Instruction validly submitted and blocked in its account in the relevant Clearing System and, subject to and effective upon such exchange by the Bank, it renounces all right, title and interest in and to all such Existing Securities exchanged by or at the direction of the Bank and waives and releases any rights or claims it may have against the Bank and the issuers of the relevant series of Notes with respect to any such Existing Securities and the Exchange Offer;
- (d) if the Existing Securities offered for exchange are accepted for exchange by the Bank, it acknowledges that: (i) any New Notes deliverable and/or cash amounts payable to it in respect of the Existing Securities so accepted will be delivered, deposited or paid (as the case may be) by or on behalf of the Bank with or to the Clearing Systems on the relevant Settlement Date; (ii) the Clearing Systems thereafter will deliver such New Notes and/or pay such cash amounts promptly to the relevant account(s) in the Clearing Systems of the relevant Holder; and (iii) the New Notes will be delivered and/or cash amounts will be paid to the Clearing System account(s) in which the relevant Existing Securities are held; and the delivery of such New Notes and/or payment of such cash amounts to or to the order of the Clearing Systems will discharge the obligation of the Bank to such Holder in respect of the delivery of the New Notes and/or payment of the cash amounts, and no additional amounts shall be payable to the Holder in the event of a delay in the transmission of the relevant New Notes and/or cash amounts by the relevant Clearing System or an intermediary to the Holder;
- (e) it agrees to ratify and confirm each and every act or thing that may be done or effected by the Bank, any of its directors or any person nominated by the Bank in the proper exercise of his or her powers and/or authority hereunder;
- (f) it agrees to do all such acts and things as shall be necessary and execute and deliver any additional documents deemed by the Bank to be desirable, in each case to complete the transfer of the relevant Existing Securities to the Bank or its nominee in exchange for the relevant New Notes and/or to perfect any of the authorities expressed to be given hereunder;
- (g) it has observed the laws of all relevant jurisdictions; obtained all requisite governmental, exchange control or other required consents; complied with all requisite formalities; and paid any issue, transfer or other taxes or requisite payments due from it in each respect in connection with any offer or acceptance in any jurisdiction and that it has not taken or omitted to take any action

in breach of the terms of the Exchange Offer or which will or may result in the Bank, the Joint Dealer Managers, the Exchange Agent or any other person acting in breach of the legal or regulatory requirements of any such jurisdiction in connection with the relevant Exchange Offer;

- (h) all authority conferred or agreed to be conferred pursuant to its acknowledgements, agreements, representations, warranties and undertakings, and all of its obligations shall be binding upon its successors, assigns, heirs, executors, trustees in bankruptcy and legal representatives, and shall not be affected by, and shall survive, its death or incapacity;
- (i) no information has been provided to it by the Bank, the Joint Dealer Managers or the Exchange Agent, or any of their respective directors or employees, with regard to the tax consequences for Holders arising from the exchange of Existing Securities pursuant to the Exchange Offer for New Notes and/or receipt of the Accrued Distribution Payment, or in relation to the New Notes save as set out in the section headed "*Tax Consequences*" in the Exchange Offer Memorandum, and it acknowledges that it is solely liable for any taxes and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its participation in the Exchange Offer (including the exchange of its Existing Securities and the receipt pursuant to the Exchange Offer of the relevant New Notes and the Accrued Distribution Payment and agrees that it will not and does not have any right of recourse (whether by way of reimbursement, indemnity or otherwise) against the Bank, the Joint Dealer Managers or the Exchange Agent, or any of their respective directors or employees, or any other person in respect of such taxes and payments;
- (j) it is not a person to whom it is unlawful to make an invitation pursuant to the Exchange Offer under applicable securities laws it has not distributed or forwarded this Exchange Offer Memorandum or any other documents or material relating to the Exchange Offer to any other person and it has (before submitting, or arranging for the submission on its behalf, as the case may be, of the Exchange Instruction in respect of the Existing Securities it is offering for exchange) complied with all laws and regulations applicable to it for the purposes of its participation in the Exchange Offer;
- (k) the New Notes are being offered and sold in transactions not involving a public offering in the United States within the meaning of the Securities Act, and the New Notes have not been and will not be registered under the Securities Act or any other applicable U.S. State securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (terms used in this and the following paragraph that are defined in Regulation S under the Securities Act are used as defined in Regulation S);
- (l) either (a) (i) it is the beneficial owner of the Existing Securities being offered for exchange and (ii) it is located outside the United States and is participating in the relevant Exchange Offer from outside the United States and it is not a U.S. person or (b) (i) it is acting on behalf of the beneficial owner of the Existing Securities being offered for exchange on a non-discretionary basis and has been duly authorised to so act and (ii) such beneficial owner has confirmed to it that it is located outside the United States and is participating in the relevant Exchange Offer from outside the United States and it is not a U.S. person;
- (m) it is not located or resident in the United Kingdom or, if it is located or resident in the United Kingdom, it is a person falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Promotion Order) or within Article 43(2) of the Financial Promotion Order, or to whom this Exchange Offer Memorandum and any other documents or materials relating to the Exchange Offer may otherwise lawfully be communicated in accordance with the Financial Promotion Order;
- (n) it is not located or resident in Belgium, or, if it is located or resident in Belgium it is a qualified investor, in the sense of Article 10 of the Law on Public Offerings;
- (o) it is not located or resident in France or, if it is located or resident in France, it is a (i) provider of investment services relating to portfolio management for the account of third parties (*personnes fournissant le service d'investissement de gestion de portefeuille pour compte de tiers*) and/or (ii) qualified investor (*investisseur qualifié*) other than an individual (as defined in, and in accordance with, Articles L.411-1, L.411-2 and D.411-1 to D.411-4 of the French *Code monétaire et financier*), acting on its own account;

- (p) it is not located or resident in Italy, or if it is located or resident in Italy, the relevant Exchange Instruction is being submitted by or on behalf of the beneficial owners of the Existing Securities through an authorised person (such as an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with the Financial Services Act, CONSOB Regulation No. 16190 of 29 October 2007, as amended from time to time, and Legislative Decree No. 385 of September 1, 1993, as amended) and in compliance with applicable laws and regulations or with requirements imposed by CONSOB or any other Italian authority;
- (q) it is not located or resident in Portugal and does not have any permanent establishment in Portugal, or if it is located or resident in Portugal (or has a permanent establishment in Portugal through which the New Notes will be held): (i) it is a Portuguese Qualified Investor (as defined in the section "*Offer and Distribution Restrictions*" above); and (ii) it will not place, distribute or publish any offering circular or other offering material relating to, the New Notes, otherwise than in conformity with Portuguese laws and regulations and in such circumstances that do not require the publication of any prospectus or other offering materials by the Bank, the Joint Dealer Managers or the Exchange Agent;
- (r) it is not located or resident in The Netherlands, or if it is located or resident in The Netherlands it is a "qualified investor" (*gekwalificeerde belegger*) within the meaning of the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*);
- (s) it has full power and authority to offer for exchange and transfer the Existing Securities offered for exchange and, if such Existing Securities are accepted for exchange by the Bank, such Existing Securities will be transferred to, or to the order of, the Bank with full title free from all liens, charges and encumbrances, not subject to any adverse claim and together with all rights attached to such Existing Securities, and it will, upon request, execute and deliver any additional documents and/or do such other things deemed by the Bank to be necessary or desirable to complete the transfer and cancellation of such Existing Securities or to evidence such power and authority;
- (t) it holds and will hold, until the time of settlement on the Settlement Date, the Existing Securities blocked in the relevant Clearing System and, in accordance with the requirements of, and by the deadline required by, such Clearing System, it has submitted, or has caused to be submitted, an Exchange Instruction to such Clearing System to authorise the blocking of the Existing Securities offered for exchange with effect on and from the date of such submission so that, at any time pending the transfer of such Existing Securities on the Settlement Date to the Bank, or to its agent on its behalf, no transfers of such Existing Securities may be effected;
- (u) it understands that acceptance for exchange of Existing Securities validly offered for exchange by it pursuant to the Exchange Offer will constitute a binding agreement between it and the Bank in accordance with and subject to the terms and conditions of the Exchange Offer;
- (v) it understands that the Bank may, at its sole discretion, extend, re-open, amend, waive any condition of or terminate the Exchange Offer at any time, and that in the event of a termination of the Exchange Offer, the Exchange Instructions with respect to the Existing Securities will be released (and the relevant Existing Securities returned to the Holder);
- (w) none of the Bank, the Joint Dealer Managers or the Exchange Agent, or any of their respective directors or employees, has given it any information with respect to the Exchange Offer save as expressly set out in this Exchange Offer Memorandum and the form of Preliminary Listing Particulars attached as annex 1 to this Exchange Offer Memorandum nor has any of them made any recommendation to it as to whether it should offer Existing Securities for exchange in the Exchange Offer and it has made its own decision with regard to offering Existing Securities for exchange in the Exchange Offer based on any legal, tax or financial advice it has deemed necessary to seek;
- (x) it acknowledges that the Bank, the Joint Dealer Managers and the Exchange Agent will rely upon the truth and accuracy of the foregoing acknowledgments, agreements, representations, warranties and undertakings;

- (y) the terms and conditions of the Exchange Offer shall be deemed to be incorporated in, and form a part of, the Exchange Instruction which shall be read and construed accordingly, and that the information given by or on behalf of such Holder in the Exchange Instruction is true and will be true in all respects at the time of the exchange on the Settlement Date;
- (z) it accepts the Bank is under no obligation to accept offers of Existing Securities for exchange pursuant to the Exchange Offer, and accordingly such offers may be accepted or rejected by the Bank in its sole discretion and for any reason; and
- (aa) it will indemnify the Bank, the Joint Dealer Managers and the Exchange Agent against any and all losses, costs, claims, liabilities, expenses, charges, actions or demands which any of them may incur or which may be made against any of them as a result of any breach of any of the terms of, or any of the acknowledgements, representations, warranties and/or undertakings given pursuant to, the Exchange Offer by any such Holder.

The receipt of an Exchange Instruction by the relevant Clearing System will constitute instructions to debit the securities account of the relevant Direct Participant on the Settlement Date in respect of all of the Existing Securities that the relevant Holder has offered for exchange, upon receipt by such Clearing System of an instruction from the Exchange Agent for such Existing Securities to be transferred to the specified account of the Bank or its agent on its behalf and against credit of the relevant New Notes and payment by the Bank of the Accrued Distribution Payment subject to the automatic withdrawal of those instructions on the date of any termination of the Exchange Offer (including where such Existing Securities are not accepted for exchange by the Bank) or on the valid revocation of such Exchange Instruction, in the limited circumstances in which such revocation is permitted as described in this Exchange Offer Memorandum, and subject to acceptance of the Exchange Offer by the Bank and all other conditions of such Exchange Offer.

## **General**

### ***Exchange Instructions***

A separate Exchange Instruction must be completed on behalf of each Beneficial Owner and must relate to an aggregate nominal amount of the Existing Securities of at least the Minimum Submission Amount, being €100,000.

### ***Irrevocability***

The submission of a valid Exchange Instruction in accordance with the procedures set out in this section "*Procedures for Participating in the Exchange Offer*" will be irrevocable (except in the limited circumstances described in "*Amendment and Termination*").

### ***Irregularities***

All questions as to the validity, form, eligibility and valid revocation (including times of receipt) of the Exchange Instruction will be determined by the Bank in its sole discretion, which determination shall be final and binding.

The Bank reserves the absolute right to reject any and all Exchange Instructions or revocation instructions not in proper form or for which any corresponding agreement by the Bank to accept would, in the opinion of the Bank, be unlawful. The Bank also reserves the absolute right to waive any defects, irregularities or delay in the submission of any and all Exchange Instructions or revocation instructions and to waive any such defect, irregularity or delay in respect of particular offers of Existing Securities for exchange, whether or not the Bank elects to waive similar defects, irregularities or any delay in respect of any other offers of Existing Securities for exchange.

Any defect, irregularity or delay must be cured within such time as the Bank determines, unless waived by it. Exchange Instructions will be deemed not to have been made until such defects, irregularities or delays have been cured or waived. None of the Bank, the Joint Dealer Managers or the Exchange Agent shall be under any duty to give notice to a Holder of any defects, irregularities or delays in an Exchange Instruction or revocation instruction, nor shall any of them incur any liability for failure to give such notice.

## AMENDMENT AND TERMINATION

### Amendment and Termination

Notwithstanding any other provision of the Exchange Offer, and in addition to the Bank's right to terminate the Exchange Offer upon occurrence of an extraordinary event as set out in the section "*Exchange Offer – Termination*", the Bank may, subject to applicable laws, at its option and in its sole discretion, at any time before any acceptance by it of the Exchange Offer:

- (a) extend the Exchange Offer Deadline for, or re-open, the Exchange Offer (in which case all references in this Exchange Offer Memorandum to "Exchange Offer Deadline", shall for the purposes of the Exchange Offer unless the context otherwise requires, be to the latest time and date to which the Exchange Offer Deadline has been so extended or the Exchange Offer re-opened);
- (b) otherwise extend, re-open or amend the Exchange Offer in any respect (including, but not limited to, any increase, decrease, extension, re-opening or amendment, as applicable, in relation to the Exchange Offer Deadline, the date of the Announcement of Results, the Settlement Date, the Exchange Price, the Exchange Ratio, New Issue Price and/or New Notes Coupon);
- (c) delay the acceptance of Exchange Instructions or exchange of Existing Securities validly submitted for exchange in the Exchange Offer until satisfaction or waiver of the conditions to the Exchange Offer, even if the Exchange Offer has expired; or
- (d) terminate the Exchange Offer, including with respect to Exchange Instructions submitted before the time of such termination.

The Bank also reserves the right at any time to waive any or all of the conditions of the Exchange Offer as set out in this Exchange Offer Memorandum.

The Bank will make an announcement in respect of any such extension, re-opening, amendment or termination as soon as is reasonably practicable after the relevant decision is made as described under "*Exchange Offer - Announcements*" above. To the extent a decision is made to waive any condition of the Exchange Offer generally, as opposed to in respect of certain offers of Existing Securities for exchange only, the Bank will make a similar announcement in respect of such decision as soon as is reasonably practicable after it is made.

At any time before offers to exchange are accepted pursuant to the Exchange Offer, the Bank may, at its sole discretion, terminate the Exchange Offer, including with respect to Exchange Instructions submitted before the time of such termination, by giving notice of such termination as described under "*Exchange Offer – Announcements*" above.

### Revocation Rights

If during the Exchange Offer Period, the Bank amends the Exchange Offer in any way (including by way of the issue of any supplement or other form of update to this Exchange Offer Memorandum or the Preliminary Listing Particulars or the making of any other announcement, in which any material development is disclosed and which supplement, other form of update or announcement is made before any acceptance by the Bank of the Exchange Offer) that, in the opinion of the Bank (in consultation with the Joint Dealer Managers), is materially prejudicial to Holders that have already submitted Exchange Instructions in respect of the Exchange Offer before the announcement of such amendment (which announcement shall include a statement that in the opinion of the Bank such amendment is materially prejudicial to such Holders) then such Exchange Instructions may be revoked at any time from the date and time of the announcement of such amendment until 5.00 p.m. (CET) on the second Business Day following such announcement (subject to the earlier deadlines required by the Clearing Systems and any intermediary through which Holders hold their Existing Securities).

Any extension or re-opening of the Exchange Offer (including any amendment in relation to the Exchange Offer Deadline, the date of the Announcement of Results and/or the Settlement Date) or waiver of any condition in accordance with the terms of the Exchange Offer as described in this section "*Amendment and Termination*" shall not be considered materially prejudicial to Holders that have already submitted Exchange Instructions before the announcement of such amendment.

Holders wishing to exercise any right of revocation as set out above should do so in accordance with the procedures set out in "*Procedures for Participating in the Exchange Offer*" above. Beneficial owners of Existing Securities that are held through an intermediary are advised to check with such entity when it needs to receive instructions to revoke an Exchange Instruction in order to meet the above deadline. For the avoidance of doubt, any Holder who does not exercise any such right of revocation in the circumstances and in the manner specified above shall be deemed to have waived such right of revocation and its original Exchange Instruction will remain effective.

## JOINT DEALER MANAGERS AND EXCHANGE AGENT

The Bank has retained Société Générale to act, together with itself, as Joint Dealer Manager for the Exchange Offer and has retained Lucid Issuer Services Limited as Exchange Agent. The Bank and the Joint Dealer Managers have entered into a Joint Dealer Manager Agreement dated 21 June 2012 which contains certain provisions regarding payment of fees, expense reimbursement and indemnity arrangements relating to the Exchange Offer.

For the purposes of the settlement of the Exchange Offer on the Settlement Date, the Bank will calculate, or procure the calculation on its behalf of, the Accrued Distribution Payment, for each Holder in respect of the Existing Securities validly offered for exchange by such Holder and accepted by the Bank. All such determinations and calculations by the Bank, or by a third party acting on its instructions and on its behalf, will, absent manifest error, be conclusive and binding on the Bank and the Holders.

The Joint Dealer Managers and their affiliates may contact Holders regarding the Exchange Offer and may request brokerage houses, custodians, nominees, fiduciaries and others to forward this Exchange Offer Memorandum and related materials to Holders.

The Joint Dealer Managers and their affiliates have provided and continue to provide certain investment banking services to the Bank and other Group companies for which they have received and will receive compensation that is customary for services of such nature.

None of the Joint Dealer Managers or the Exchange Agent or any of their respective directors, employees or affiliates assume any responsibility for the accuracy or completeness of the information concerning the Exchange Offer, the Bank, any other Group company, the Existing Securities or the New Notes contained in this Exchange Offer Memorandum (including the Preliminary Listing Particulars and any information incorporated by reference therein) or for any failure by the Bank to disclose events that may have occurred and may affect the significance or accuracy of such information.

The Joint Dealer Managers may (i) submit Exchange Instructions for their own account and (ii) submit Exchange Instructions (subject to the offer restrictions set out in "*Offer and Distribution Restrictions*") on behalf of Holders.

None of the Joint Dealer Managers, the Exchange Agent, the Bank, any other Group company or any of their respective directors, employees or affiliates make any representation or recommendation whatsoever regarding the Exchange Offer, or any recommendation as to whether Holders should offer Existing Securities for exchange.

The Exchange Agent is the agent of the Bank and does not owe any duty to any Holder.

### **Conflicts of interest**

Each of the Joint Dealer Managers is involved in a wide range of commercial banking, investment banking and other activities out of which conflicting interests or duties may arise. The Joint Dealer Managers and any of their subsidiaries and affiliates, in connection with their other business activities, may possess or acquire material information about the Existing Securities. Such activities and conflicts may include, without limitation, the exercise of voting power, the purchase and sale of securities, the provision of financial advisory services and the exercise of creditor rights. None of the Joint Dealer Managers or any of their subsidiaries and affiliates have any obligation to disclose any such information. The Joint Dealer Managers and any of their subsidiaries and affiliates and their officers and directors may engage in any such activities without regard to the Existing Securities or the effect that such activities may directly or indirectly have on any of the Existing Securities.

**ANNEX 1 – FORM OF PRELIMINARY LISTING PARTICULARS FOR THE NEW NOTES**

NOT FOR DISTRIBUTION - SUBJECT TO AMENDMENT AND COMPLETION  
PRELIMINARY LISTING PARTICULARS DATED 21 JUNE 2012

**BANCO POPULAR ESPAÑOL, S.A.**  
(incorporated with limited liability under  
the laws of Spain)

EUR[●] 4.50 per cent.

**Subordinated Mandatorily Convertible Notes due 29 March 2014**

The EUR[●] 4.50 per cent. Subordinated Mandatorily Convertible Notes due 29 March 2014 (the "**Notes**") of Banco Popular Español, S.A. ("**Banco Popular**" or the "**Issuer**") will be issued on 29 June 2012 (the "**Issue Date**"). The Notes are mandatorily convertible into fully paid ordinary shares in the Issuer (the "**Shares**"). See "*Terms and Conditions of the Notes — Scheduled Mandatory Conversion, Redemption and Purchase*".

Provided that certain conditions are met for interest to be paid (see "*Terms and Conditions of the Notes — Interest — Limitations on interest payments*"), the Notes will bear interest from (and including) the Issue Date at the rate of 4.50 per cent. per annum payable quarterly in arrear on 29 March, 29 June, 29 September and 29 December in each year, commencing on 29 September 2012 (each, an "**Interest Payment Date**"). See "*Terms and Conditions of the Notes — Interest*". Payments in respect of Notes will be made subject to any withholding or deduction for or on account of taxes as is required by law. The Issuer will not be required to pay any additional or further amounts to Noteholders in respect of any such withholding or deduction, save as specified in the Terms and Conditions of the Notes. See "*Terms and Conditions of the Notes — Taxation*".

Unless previously redeemed, converted or purchased and cancelled, a third of the Notes will mandatorily and automatically be converted on each of 29 March 2013, 29 September 2013 and 29 March 2014 (each a "**Scheduled Conversion Date**") into such number of Shares as results from dividing the outstanding principal amount of each Note by the Conversion Price (as defined in "*Terms and Conditions of the Notes*" below) in effect on the Scheduled Conversion Date (rounded down to the nearest whole number of Shares). The Notes will also be mandatorily converted into Shares upon the occurrence of an Insolvency Event, Contingency Event, Viability Event or a Capital Treatment Event as more fully described in *Terms and Conditions of the Notes — Mandatory Conversion Upon Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event*. Noteholders shall not be entitled to receive fractions of a Share but shall be entitled to receive a cash payment in lieu thereof. In addition to the issue of the Shares, the holder of each Note subject to mandatory conversion shall be entitled to receive any accrued but unpaid interest due on the Scheduled Conversion Date but shall not be entitled to receive any accrued interest where conversion occurs by reason of an Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event.

See "*Risk Factors*" for a discussion of certain factors that should be considered in connection with an investment in the Notes.

These Listing Particulars comprise listing particulars in compliance with the listing rules (the "**Listing Rules**") of the UK Listing Authority (the "**UKLA**") made under Section 73A of the Financial Services and Markets Act 2000. Applications have been made for the Notes to be admitted to the official list of the UKLA (the "**Official List**") and to be admitted to trading on the Professional Securities Market (the "**Market**") of the London Stock Exchange plc (the "**London Stock Exchange**" or "**LSE**"). The Market is not a regulated market for the purposes of Directive 2004/39/EC of the European Parliament and the Council on markets in financial instruments ("**MiFID**"). The Issuer intends to apply for the Ordinary Shares issued on conversion of the Notes to be admitted to the Bilbao, Barcelona, Madrid, Lisbon and Valencia stock exchanges as further described under "*General Information — Listing of the Shares*".

The Notes and the Shares have not been, and will not be, registered under the U.S. Securities Act of 1933 (the "**Securities Act**"). The Notes have been offered outside the United States in accordance with Regulation S under the Securities Act ("**Regulation S**"), and the Notes and the Shares may not be offered, sold or delivered within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

The Notes will be issued in bearer form in the denomination of EUR100,000. The Notes will be initially represented by a temporary global note (the "**Temporary Global Note**"), without interest coupons, which will be deposited with a common depositary on behalf of Euroclear Bank S.A./N.V. ("**Euroclear**") and Clearstream Banking, *société anonyme*, Luxembourg ("**Clearstream, Luxembourg**") on or about the Issue Date. The Temporary Global Note will be exchangeable for interests in a permanent global note (the "**Permanent Global Note**"), without interest coupons, on or after the date which is 40 days after the Issue Date, upon certification as to non-U.S. beneficial ownership. The Permanent Global Note will be exchangeable in certain limited circumstances in whole, but not in part, for Notes in definitive form in the denomination of EUR100,000, each and with interest coupons attached. See "*Summary of Provisions Relating to the Notes in Global Form*".

**MANAGERS**

**BANCO POPULAR**

**SOCIETE GENERALE CORPORATE &  
INVESTMENT BANKING**

28 June 2012

*These preliminary Listing Particulars are not made in compliance with the listing rules of the UK Listing Authority made under Section 73A of the Financial Services and Markets Act 2000, but are an advertisement and are subject to amendment and completion. Final Listing Particulars will be published and copies will be available from the registered office of the Issuer. Investors should not subscribe for any securities referred to herein except on the basis of the information in the final Listing Particulars. These preliminary Listing Particulars may not be passed on in the United Kingdom except to investment professionals or other persons in circumstances in which section 21(1) of the Financial Services and Markets Act 2000 does not apply to the Issuer.*

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## IMPORTANT NOTICES

The Issuer accepts responsibility for the information contained in these Listing Particulars and declares that, having taken all reasonable care to ensure that such is the case, the information contained in these Listing Particulars to the best of its knowledge is in accordance with the facts and contains no omission likely to affect its import.

The Issuer has confirmed to Banco Popular Español, S.A. in its capacity as a Manager and Société Générale (together, the "**Managers**") that these Listing Particulars contain all information regarding the Issuer and the Notes which is (in the context of the issue of the Notes) material; such information is true and accurate in all material respects and is not misleading in any material respect; any opinions, predictions or intentions expressed in these Listing Particulars on the part of the Issuer are honestly held or made and are not misleading in any material respect; these Listing Particulars do not omit to state any material fact necessary to make such information, opinions, predictions or intentions (in such context) not misleading in any material respect; and all proper enquiries have been made to ascertain and to verify the foregoing.

The Issuer has not authorised the making or provision of any representation or information regarding the Issuer or the Notes other than as contained in these Listing Particulars or as approved for such purpose by the Issuer. Any such representation or information should not be relied upon as having been authorised by the Issuer or the Managers.

Neither the Managers nor any of their respective affiliates have authorised the whole or any part of these Listing Particulars and none of them makes any representation or warranty or accepts any responsibility as to the accuracy or completeness of the information contained in these Listing Particulars. Neither the delivery of these Listing Particulars nor the offering, sale or delivery of any Note shall in any circumstances create any implication that there has been no adverse change, or any event reasonably likely to involve any adverse change, in the condition (financial or otherwise) of the Issuer since the date of these Listing Particulars.

These Listing Particulars do not constitute an offer of, or an invitation to subscribe for or purchase, any Notes.

The distribution of these Listing Particulars and the offering, sale and delivery of Notes in certain jurisdictions may be restricted by law. Persons into whose possession these Listing Particulars come are required by the Issuer and the Managers to inform themselves about and to observe any such restrictions.

In particular, the Notes and the Shares have not been and will not be registered under the Securities Act and are subject to United States tax law requirements. Subject to certain exceptions, Notes may not be offered, sold or delivered within the United States or to U.S. persons.

In these Listing Particulars, unless otherwise specified, references to a "**Member State**" are references to a Member State of the European Economic Area, references to "**U.S. \$**" are to United States dollars, and references to "**€**", "**EUR**" or "**euro**" are to the currency introduced at the start of the third stage of European economic and monetary union, and as defined in Article 2 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro, as amended.

*Certain figures included in these Listing Particulars have been subject to rounding adjustments; accordingly, figures shown for the same category presented in different tables may vary slightly and figures shown as totals in certain tables may not be an arithmetic aggregation of the figures which precede them.*

### **The Notes are a novel form of security and may not be a suitable investment for all investors**

The Notes are a novel form of security. As a result, an investment in the Notes and the Shares issuable upon conversion of the Notes will involve certain risks not associated with some other securities. Each potential investor in the Notes must determine the suitability of such investment in light of its own circumstances. In particular, each potential investor should:

- (i) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Notes and the impact the Notes will have on its overall investment portfolio;

- (ii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Notes, including where the currency for principal or interest payments is different from the potential investor's currency;
- (iii) understand thoroughly the terms of the Notes, such as the provisions governing an Insolvency Event, a Contingency Event, a Viability Event and a Capital Treatment Event and related definitions, and be familiar with the behaviour of any relevant financial markets and their potential impact on the likelihood of an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event occurring; and
- (iv) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment, the conversion of Notes into Shares, and its ability to bear the applicable risks.

The Notes are novel and complex financial instruments, one of the first issues of mandatorily convertible securities and the first international issue of notes with these characteristics by a Spanish bank. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should not invest in the Notes unless it has the knowledge and expertise (either alone or with a financial adviser) to evaluate how the Notes will perform under changing conditions, the resulting effects on the likelihood of conversion and the value of the Notes, and the impact this investment will have on the potential investor's overall investment portfolio.

Prior to making an investment decision, potential investors should consider carefully, in light of their own financial circumstances and investment objectives, all the information contained in these Listing Particulars or incorporated by reference herein.

## INFORMATION INCORPORATED BY REFERENCE

The information set out in the table below shall be deemed to be incorporated in, and to form part of, these Listing Particulars **provided however that** any statement contained in any document incorporated by reference in, and forming part of, these Listing Particulars shall be deemed to be modified or superseded for the purpose of these Listing Particulars to the extent that a statement contained herein modifies or supersedes such statement. Any documents themselves incorporated by reference in the documents incorporated by reference in these Listing Particulars shall not form part of these Listing Particulars.

Such documents will be made available, free of charge, during usual business hours at the specified offices of the Principal Paying and Conversion Agent, unless such documents have been modified or superseded, and may be viewed on the website of the Regulatory News Service operated by the London Stock Exchange.

For ease of reference, the tables below set out the relevant page references for the consolidated annual accounts, the notes to the consolidated financial statements and the Auditors' reports for the years ended 31 December 2010 and 2011 for the Issuer and Banco Pastor S.A., and the unaudited consolidated interim financial information for the three months ended 31 March 2012 for the Issuer (including Banco Pastor S.A. on a consolidated basis), as set out in the respective annual reports or interim report. Any information not listed in the cross-reference tables but included in the documents incorporated by reference is either not relevant for prospective investors in the Notes or the relevant information is included elsewhere in these Listing Particulars.

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***Unaudited interim consolidated financial information for period ended 31 March 2012***

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## OVERVIEW

This overview must be read as an introduction to these Listing Particulars and any decision to invest in the Notes should be based on a consideration of these Listing Particulars as a whole, including the documents incorporated by reference.

Words and expressions defined in the "Terms and Conditions of the Notes" below or elsewhere in these Listing Particulars have the same meanings in this overview.

The Issuer:	Banco Popular Español, S.A.
Dealer Managers:	Banco Popular Español, S.A. (in its capacity as a Manager) Société Générale
The Notes:	EUR[●] 4.50 per cent. Mandatorily Convertible Notes due 29 March 2014
The Shares:	Ordinary shares of EUR 0.10 in nominal amount
Issue Price:	100 per cent. of the principal amount of the Notes
Issue Date:	Expected to be on or about 29 June 2012.
Maturity Date:	Unless previously redeemed, converted or purchased and cancelled, the Notes shall be redeemed by the issue of fully paid new Shares to the Noteholders as described under "Scheduled Conversion Dates" below.
Interest:	Interest payments on the Notes are discretionary and are subject to certain conditions being met, as more particularly described in Condition 5(b) ( <i>Interest – Limitations on interest payment</i> ). Subject thereto, the Notes will bear interest from (and including) the Issue Date at the rate of 4.50 per cent. per annum payable quarterly in arrear on 29 March, 29 June, 29 September and 29 December in each year, commencing on 29 September 2012.
Conversion Events:	The Notes shall mandatorily convert into Shares at the Conversion Price following the occurrence of a Scheduled Conversion Date, an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, as more particularly described in Condition 10 ( <i>Conversion</i> ) and Condition 11 ( <i>Procedure for Conversion</i> ).
Scheduled Conversion Dates:	Unless previously redeemed, converted or purchased and cancelled, the Notes shall be redeemed and settled in three equal installments by the conversion of a third of the original in aggregate principal amount of the Notes into new fully paid Shares at the Conversion Price on each of the Payment Business Days falling on or closest to 29 March 2013, 29 September 2013 and 29 March 2014.
Insolvency Event:	An "Insolvency Event" shall have occurred if: <ul style="list-style-type: none"><li>• a resolution is passed, or other action or measure taken or adopted by the Issuer, for the liquidation, dissolution or winding-up of the Issuer, whether voluntary or otherwise (except, in any such case, a solvent liquidation, dissolution or winding-up by means of a merger, de-merger or transfer of assets and liabilities solely for the purposes of a reorganisation, reconstruction or amalgamation of the Issuer or the substitution in place of the Issuer of a successor in business of the Issuer);</li></ul>

- the Issuer takes any step, action or measure that results in the approval of a reduction of the Issuer's share capital pursuant to the terms of Article 418(3) of the Consolidated Text of the Law on Limited Liability Companies, as approved by Royal Decree-Law 1/2010 dated 2 July 2010 (*Texto Refundido de la Ley de Sociedades de Capital*);
- if the Issuer is declared in insolvency (*concurso*) under Law 22/2003 of 9 July on insolvency (*Ley Concursal*) an order is made for the liquidation, dissolution, winding-up, re-organisation or restructuring of the Issuer by reason of insolvency, bankruptcy or otherwise, the Issuer is nationalised or intervened or if the Board of Directors (or other governing body of the Issuer) is replaced by the Regulator;

Contingency Event:

A Contingency Event shall have occurred if:

- the EBA Capital Ratio is below the EBA Capital Ratio Threshold as at the date of the financial statements contained in a Quarterly Financial Report;
- the CET1 Capital Ratio is below the CET1 Capital Ratio Threshold at the date of the financial statements contained in a Quarterly Financial Report; or
- the Tier 1 Capital Ratio is below the Tier 1 Capital Ratio Threshold as at the date of the financial statements contained in a Quarterly Financial Report and the Issuer has reported Significant Losses.

Viability Event:

A Viability Event means that either (a) the Regulator has notified the Issuer that it has determined that Conversion of the Notes, together with the conversion or write off of holders' claims in respect of any other CET1 Capital Instruments, Tier 1 Instruments and Tier 2 Instruments that, pursuant to their terms or by operation of law, are capable of being converted into equity on the occurrence of a contingency event or viability event, or written off at that time, is, because customary measures to improve the Issuer's capital adequacy are at the time, inadequate or unfeasible, an essential requirement to prevent the Issuer from becoming insolvent, bankrupt or unable to pay a material part of its debts as they fall due, or from ceasing to carry on its business; or (b) customary measures to improve the Issuer's capital adequacy being at the time inadequate or unfeasible, the Issuer has received an irrevocable commitment of extraordinary support from the Public Sector (beyond customary transactions and arrangements in the ordinary course) that has, or imminently will have, the effect of improving the Issuer's capital adequacy and without which, in the determination of the Regulator, the Issuer would have become insolvent, bankrupt, unable to pay a material part of its debts as they fall due or unable to carry on its business.

Capital Treatment Event:

A "Capital Treatment Event" shall have occurred if, as a result of any change in the Capital Adequacy Regulations or the EBA Recommendations, or any change in the official application or interpretation thereof becoming effective on or after the Issue Date, the Notes either (i) cease to qualify as core tier 1 capital of the Group pursuant to EBA Recommendations, or (ii) cease to qualify as Tier 1 Capital or any other equivalent regulatory capital category, as the case may be, of the Group pursuant to the Capital Adequacy

Regulations.

Conversion Procedure: Following conversion of the Notes, the Issuer will procure that the relevant number of Shares are issued and registered by Iberclear in an account of such Noteholder (or its nominee) within Iberclear. Registration of the Shares by Iberclear and the payment in cash of any and all accrued (and due) but unpaid interest on such Notes, shall be a good and complete discharge of the Issuer's obligations in respect of the Notes and a Noteholder shall have recourse only to Iberclear or the relevant nominee for receiving all payments and exercising any rights in respect of such Shares and the payment to it of interest, if any. In order to obtain delivery of the relevant Shares and the payment of interest, if any, the relevant Noteholder must deliver a duly completed Conversion Notice in accordance with the provisions set out under "*Terms and Conditions of the Notes—The Equity Option*". If the Noteholder is unable to take delivery of the relevant Shares for legal or regulatory reasons, then the issuer will, in certain cases, be obliged to appoint a Selling Agent who will use reasonable endeavours to sell such Shares on the Noteholder's behalf, all as more fully described in Condition 11(e).

Conversion price: The number of Shares deliverable upon conversion of a Note will be such number as is determined by dividing the principal amount of such Note by the Conversion Price in effect on the relevant Conversion Date. The Conversion Price will be the greatest of: (a) the Reference Market Price of an Ordinary Share on the Exchange Business Day preceding the relevant Conversion Date (which will be calculated as the average of the daily volume weighted average prices of an Ordinary Share (derived from or published by the SBIE) on each of the 15 consecutive Exchange Business Days ending on and including the Exchange Business Day preceding the relevant Conversion Date), (b) the "**Floor Price**" (which is EUR 1.00) and (c) the Closing Price (being the sale price of an Ordinary Share at close of business on the relevant Exchange Business Day (derived from or published by the SBIE)) of an Ordinary Share multiplied by 0.75. The Conversion Price may also be no higher than either (i) EUR15.00 (the "**Ceiling Price**") or (ii) the Reference Market Price of an Ordinary Share multiplied by 0.75, whichever is the higher.

"**Conversion Date**" means::

- (i) in the case of Scheduled Mandatory Conversion, each of the dates specified as a Scheduled Conversion Date in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*); and
- (ii) in all other cases, the Business Day on which the relevant Conversion Event Notice is published.

Anti-Dilution: The Floor Price and the Ceiling Price will be adjusted in the event that there is a consolidation or subdivision of the Shares, the payment of any extraordinary dividends or non-cash dividends, rights issues or grant of other subscription rights or certain other events which affect the Shares, but only in the situations and to the extent provided in "*Terms and Conditions of the Notes—Adjustments to the Conversion Price*".

Optional Early Redemption: The Notes may be redeemed in the event that the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 (*Taxation*) as a result of any change in, or amendment to, the laws or regulations of the Kingdom of Spain or

any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations which becomes effective on or after 29 June 2012 and such obligation cannot be avoided by the issuer taking reasonable measures available to it.

Status and Subordination:

The Notes will constitute direct, unconditional, unsecured and subordinated obligations of the Issuer and will rank *pari passu* and without any preference among themselves. Save as provided below, the rights and claims of the Noteholders against the Issuer in respect of or arising under (including any damages awarded for breach of any obligation under) the Notes shall, subject to any obligations which are mandatorily preferred by law, rank:

- junior to the claims of common creditors (including depositors and holders of unsubordinated obligations of the Issuer) and to the claims of holders of all subordinated obligations of the Issuer other than those expressed to rank *pari passu* with the Notes;
- junior to the claims of holders of any preferred securities (*participaciones preferentes*) issued under Law 13/1985 or any securities or instruments equivalent to preferred securities or preferred shares (whether issued under Law 13/1985 or any other law or regulation of Spain or of any other jurisdiction), in each case issued by the Issuer, or issued by any Subsidiary with the benefit of a guarantee of the Issuer;
- *pari passu* with the claims of holders of all other unsecured, subordinated obligations, notes, bonds, instruments or other securities in each case convertible into Shares and issued by the Issuer, or issued by any Subsidiary with the benefit of a guarantee of the Issuer;
- senior to the claims of holders of ordinary shares of the Issuer.

The claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the rights of holders of Shares and junior to the claims of holders referred to in the first three bullet points above (except, in the case of holders referred to in the third bullet point, holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).

If any of the circumstances as set out in Condition 10 (*Conversion*) giving rise to the mandatory conversion of the Notes has occurred and Shares have not been issued or delivered to any Noteholder pursuant to Condition 10, the claim of such Noteholder in respect of the liquidation, dissolution or winding-up of the Issuer shall be the sum equal to that which holders of the number of Shares into which the Notes held by such Noteholder should have been converted at the then Conversion Price would have received out of the proceeds of the liquidation, dissolution or winding-up of the Issuer. In such circumstances, the claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the rights of holders of Shares and junior to the claims of holders referred to in the first three bullet points above (except, in the case of holders referred to in the third bullet point,

holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).

Taxation:	The Issuer will pay such Additional Amounts as may be necessary in order that the net payment received by each Noteholder in respect of the Notes, after withholding for any taxes imposed by tax authorities in the Kingdom of Spain upon payments made by or on behalf of the Issuer in respect of the Notes, will equal the amount which would have been received in the absence of any such withholding taxes, subject to customary exceptions, as more particularly set out in Condition 8 ( <i>Taxation</i> ).
Governing Law:	The Notes, the Deed of Covenant and the Agency Agreement, and any non-contractual obligations arising out of or in connection with them, will be governed by English law, save that Condition 9(a) and the Regulations of the Syndicate of Noteholders will be governed by Spanish law.
Listing and Trading:	Applications have been made to the UKLA for the Notes to be admitted to listing on the Official List and to the London Stock Exchange for the Notes to be admitted to trading on the Market.
Principal Paying and Conversion Agent:	The Bank of New York Mellon.
Clearing Systems:	Euroclear and Clearstream, Luxembourg. Shares arising upon conversion will be delivered via Iberclear.
Selling Restrictions:	See " <i>Subscription and Sale</i> ".
Risk Factors:	See " <i>Risk Factors</i> ".
Financial Information:	See " <i>Description of the Issuer—Selected Financial Information</i> ".
Rating:	The Notes have not been rated.
Form and Denomination of the Notes:	The Notes will be issued in bearer form in the denomination of EUR100,000. The Notes will be initially represented by the Temporary Global Note, without interest coupons, which will be deposited with a common depository on behalf of Euroclear and Clearstream Luxembourg on or about the Issue Date. The Temporary Global Note will be exchangeable for interests in the Permanent Global Note, without interest coupons, on or after the date which is 40 days after the Issue Date, upon certification as to non-U.S. beneficial ownership. The Permanent Global Note will be exchangeable in certain limited circumstances in whole, but not in part, for Notes in definitive form in the denomination of EUR100,000, each and with interest coupons attached.

## **RISK FACTORS**

*The Issuer believes that the following factors may affect its ability to fulfil its obligations under the Notes. All of these factors are contingencies which may or may not occur and the Issuer is not in a position to express a view on the likelihood of any such contingency occurring.*

*Factors which the Issuer believes may be material for the purpose of assessing the market risks associated with the Notes are also described below.*

*The Issuer believes that the factors described below represent the principal risks inherent in investing in the Notes, but the inability of the Issuer to pay interest, principal or other amounts, on or in connection with the Notes may occur for other reasons and the Issuer does not represent that the statements below regarding the risks of holding the Notes are exhaustive. Prospective investors should give careful consideration to the following risk factors in evaluating the merits and suitability of an investment in the Notes. The information is not intended to be an exhaustive list of all potential risks associated with an investment in the Notes. Prospective investors should also read the detailed information set out elsewhere in these Listing Particulars and reach their own views prior to making any investment decision.*

*Words and expressions defined in the "Terms and Conditions of the Notes" below or elsewhere in these Listing Particulars have the same meanings in this section.*

### **Factors that may affect the Issuer's ability to fulfil its obligations under the Notes**

*Risks involved in the Group's activities.*

The following is a description of the principal types of risk to which the banking activities of the Group are subject:

**Credit Risk:** Credit risk can be defined as possible losses which may be generated by a potential default in whole or in part of obligations by a counterparty or debtor (including, but not limited to, an insolvency proceeding of a counterparty or debtor). These obligations arise in both the financial activities of the Group and its dealing and investment activities since they arise by means of loans, fixed interest or equity securities, derivative instruments or other types of products (for example, guarantees).

**Market Risk:** Market risk refers to the uncertainties to which the Group's financial position and future income are exposed as a result of adverse movements in the prices of financial instruments with which the Group operates in its activities in financial and securities markets.

**Interest Rate Risk:** Overall balance sheet interest risk can be defined as the extent to which an institution may be affected by future movements which occur in market interest rates. The principal reasons for this risk derive from the different speed and intensity with which changes in market interest rates are passed on to assets, liabilities and off-balance sheet positions based on the times when they fall due and repricing.

Short term effects are shown in the profit and loss account and in the medium term are manifested by movements in the financial value of assets and liabilities which form part of the balance sheet.

**Liquidity Risk:** Liquidity risk comprises uncertainties in relation to the Group's ability, under adverse conditions, to access funding necessary to cover its obligations to customers, meet the maturity of its liabilities and to satisfy capital requirements. It includes both the risk of unexpected increases in the cost of financing and the risk of not being able to structure the maturity dates of the Group's liabilities reasonably in line with its assets, as well as the risk of not being able to meet its payment obligations on time at a reasonable price due to liquidity pressures.

**Exchange Rate Risk:** The exchange rate risk consists of the potential losses which may occur as a result of adverse movements in exchange rates in respect of the different currencies in which the Group operates. The Issuer has adopted a policy of maintaining a low or very low profile in its exposure to this type of risk factor.

Operational Risk: Operational risk includes:

- (a) the business risk which may result from unforeseeable changes in external factors without sufficient time to make the structural changes necessary to adapt to them, and the risk that unforeseeable events occur which could lead to losses for the Group;
- (b) transactional risks resulting from errors in execution, registration failure, deriving from the complexity of certain products, errors in delivery and/or liquidation and/or human error;
- (c) risks in operational controls which include losses resulting from potential errors in transaction documentation, in obtaining the appropriate authorisations, fraud, lack of personnel training, failure to comply with limits or procedures laid down, failure of internal controls or unavailability of personnel;
- (d) losses resulting from material loss and damage as well as extreme events, for example natural disasters;
- (e) data processing risks, such as programming errors, systems failure and application design errors; and
- (f) legal risks, including the possibility that transactions may not be legally enforceable in the existing legal and/or regulatory framework, and also that change in law and regulations may negatively affect the situation of the Group.

Notwithstanding anything in this risk factor, this risk factor should not be taken as implying that either the Issuer or the Group will be unable to comply with its obligations as a company with securities admitted to the Official List.

*The Group is vulnerable to the current disruptions and volatility in the global financial markets and could be subject to further government action intended to alleviate the effects of the current financial crisis.*

The global economy began a period of moderate recovery from severe recessionary conditions in mid-2009, which began to slow down in 2011. This risks leading to another recession. The sustainability of the moderate recovery is dependent on a number of factors that are not within the Group's control, such as a return to private sector job growth and investment, strengthening of housing sales and construction, continuation of the economic recovery globally, and the timing of the exit from government credit easing policies. The Group continues to face risks resulting from the aftermath of the severe recession generally and the moderate pace of the current recovery. A slowing or failure of the economic recovery could bring a return to some or all of the adverse effects of the earlier recessionary conditions.

Since the middle of 2007, there has been disruption and turmoil in financial markets around the world. In particular, in Spain there have been dramatic declines in the housing market, with falling home prices and increasing foreclosures, high levels of unemployment and underemployment, and reduced earnings, or in some cases losses, for businesses across many industries, with reduced investments in growth.

This overall environment resulted in significant stress for the financial services industry, particularly in Spain, and led to distress in credit markets, reduced liquidity for many types of financial assets, including loans and securities, and concerns regarding the financial strength and adequacy of the capitalisation of financial institutions including the Group. Some financial institutions around the world and in Spain in particular have failed, some have needed significant additional capital, and others have been forced to seek acquisition partners.

Reflecting concern about the stability of the financial markets generally and the strength of counterparties, as well as concern about their own capital and liquidity positions, many lenders and institutional investors reduced or ceased providing funding to borrowers. The resulting economic pressure on consumers and businesses and the lack of confidence in the financial markets exacerbated the state of economic distress and hampered, and to some extent continues to hamper, efforts to bring about and sustain an economic recovery.

These economic conditions have had a material adverse effect on the Group's business, financial condition and results of operation. The management of the Issuer expects these conditions to continue to

have an ongoing negative impact on it and the rest of the Group. A slowing or failure of any economic recovery would likely aggravate the adverse effects of these difficult economic and market conditions on the Group and on others in the financial services industry.

In an attempt to prevent the failure of the financial system, Spain, the United States and other European governments have intervened on an unprecedented scale. In Spain, measures adopted by the government included increased consumer deposit guarantees, a program to guarantee the debt of certain financial institutions (the "**Government Guarantee Programme**") and a fund to purchase assets from financial institutions. Banco Popular issued €17 million bonds guaranteed by the Spanish government pursuant to the Government Guarantee Programme which, as of the date of these Listing Particulars, have matured and no amount remains outstanding.

In 2009 the Spanish government created the Orderly Banking Restructuring Fund ("**FROB**") to manage the restructuring processes of credit institutions and reinforce the equity of institutions undergoing integration. In the United States, the federal government took equity stakes in several financial institutions, implemented a program to guarantee the short-term and certain medium-term debt of financial institutions, increased consumer deposit guarantees, and brokered the acquisitions of certain struggling financial institutions, among other measures. In the United Kingdom, the government effectively nationalized some of the country's largest banks and provided a program to guarantee short-term and certain medium-term debt of financial institutions, among other measures.

On 9 June 2012, the Spanish government announced that Spain is expected to receive funding from the European Financial Stability Facility or the European Stability Mechanism with the purpose of recapitalising parts of its banking sector. Neither the final amount, nor the conditions, have been confirmed at the date of these Listing Particulars, although media reports have speculated that the extraordinary financing will cover the estimated capital requirements of the Spanish banking sector with an additional safety margin, estimated to amount to approximately €100 billion in total. This funding may result in additional debt being incurred by Spain's government and an increase in debt servicing costs which, in turn, could contribute to an increase in Spain's budget deficit. It is not yet known what the impact of the additional funding will have in Spain, its banking sector or the Issuer.

The aforementioned announcement could create concerns over the stability and solvency of the Spanish banking sector and the ability of the Spanish government to service its debt. In turn, this could have an adverse impact on the Issuer's ability to generate business, its ability to obtain funding or cause a decline in the price of the Issuer's shares or may otherwise adversely impact its business, financial condition or results of operation.

Despite the extent of the aforementioned intervention, global investor confidence remains cautious. The world's largest developed economies, including the United States and United Kingdom, grew during 2011, although in most cases still at a slow pace. In addition, recent downgrades of the sovereign debt of Greece, Portugal and Spain have caused further volatility in the capital markets. Continued or worsening disruption and volatility in the global financial markets could have a material adverse effect on the Group's ability to access capital and liquidity on financial terms acceptable to the Group, if at all. If capital markets financing ceases to become available, or becomes excessively expensive, the Group may be forced to raise the rates it pays on deposits to attract more customers. Any such increase in capital markets funding costs or deposit rates would entail a repricing of loans, which would result in a reduction of volume, and may also have an adverse effect on the Group's interest margins. A further economic downturn, especially in Spain and other European countries, could also result in a further reduction in business activity, a consequent loss of income for the Group and further losses on the Group's assets resulting in a further reduction of its capital resources.

In addition, a premature removal of the aforementioned support measures as a result of perceived improvement in the financial markets and concerns over the sustainability of public deficits could result in a prolonged economic downturn and further instability in the financial markets, which could have a material adverse effect on the Issuer's business, financial condition and results of operation.

*Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business.*

Substantially all of the Group's operations entail considerable regulatory and legal risk. Most entities within the Group are subject to government regulation and inquiry as financial companies in the markets in which they operate, and regulations may be extensive and may change rapidly.

Extensive legislation affecting the financial services industry has recently been adopted in Spain, the United States, the European Union and other jurisdictions, and regulations are in the process of being implemented. In response to the recent financial crisis, the European Union commenced a process of reforms to contend with the deficiencies detected in prudential regulation. These reforms coincide with what was agreed within the framework of the G-20 and the Basel II amendment presently underway. Along these lines, European Parliament and Council Directive 2009/111/EC, of 16 September 2009 was also approved, amending directives 2006/48/EC, 2006/49/EC and 2007/64/EC with respect to banks affiliated to a central body, certain elements of capital, major risk, the supervisory system and crisis management. In Spain, Act 6/2011, of 11 April, was passed, with the object of commencing the transposition of the aforementioned Directive 2009/111/EC, as well as Royal Decree-Law 2/2011, of 18 February, for the reinforcement of the financial system. In line with the new international capital standards established by the so-called Basel III accords, this Royal Decree toughens the capital requirements of credit institutions. In turn, the Bank of Spain issued Circular 9/2010 of 22 December, 2010, which amends certain rules in order to establish more restrictive conditions regarding capital requirements for credit risk, credit risk mitigation techniques, securitisation and treatment of counterparty and trading book risk. The circular was issued following the passage of two EU Directives on risk management (Directive 2009/27/CE and Directive 2009/83/CE).

Royal Decree-Law 2/2011 required that consolidated groups of credit entities reach a core capital ratio throughout the 2011 fiscal year of 8% of their risk-weighted exposures, unless their wholesale funding ratio exceeded 20% and at least 20% of their capital or voting rights are not placed with third parties, in which case the above requirement stands at 10% of their risk-weighted exposures. As at June 30, 2011, Banco Popular had core capital of €8,919 million (9.84%).

On 8 December 2011, the European Banking Authority ("**EBA**") in the EBA/REC/2011/1 Recommendation established exceptional measures for certain credit institutions such as Banco Popular in order to strengthen their capital structure, including the obligation to build a temporary capital buffer to reach a 9% Core Tier 1 ratio by 30 June 2012.

On 8 December 2011 Banco Popular reported on the notice received from the Bank of Spain in relation to the EBA announcement of new capital requirements, updated with information up to September 2011, which totalled €2,581 million, €900 million of which referred to sovereign debt adjustments. The updated requirements impose an increase of €219 million compared to the information published with data from June 2011, due to the updated price of sovereign debt caused by changing market conditions between June and September and a change in the calculation method use by the EBA, which in September included adjustments to the fair market value of European debt hedging instruments. On 20 January 2012, Banco Popular presented a detailed plan to the Bank of Spain describing the measures to be implemented to meet the capitalisation requirements.

In addition, on 3 February 2012, Spain's government enacted Royal Decree-Law 2/2012, which aims at strengthening the Spanish banking system by requiring all Spanish banks to increase provisions and capital requirements in respect of certain real estate-related assets on their balance sheets as of 31 December 2011.

On 7 June 2012, Banco Popular reported on the requirements contained in Royal Decree-Law 2/2012 for increasing the coverage of real estate balances and loans for real estate development and construction on its balance sheet. Banco Popular reported that the impact of the new requirements amounted to provisions of approximately €2,900 million and €1,100 million for Banco Pastor, approximately €2,400 million covered as at the date of these Listing Particulars.

Further, on 11 May 2012, Spain's government enacted Royal Decree-Law 18/2012, which imposed additional coverage requirements due to the deterioration of financial transactions linked to real estate activities where such transactions are classified as "normal".

Royal Decree-Law 18/2012 anticipates and raises, by a considerable amount, the provisions for non problematic loans for real estate construction and development, from 7% to 29% for loans on real estate under development; from 7% to 14% for loans to developers and completed residential property, and from 7% to 52% for all other loans to the real estate construction and development sector under normal circumstances.

Under Royal Decree-Law 18/2012, Banco Popular must implement these provisions within a period of two fiscal years. The provisional calculation of the provisions that Banco Popular will need to have in place under the new Royal Decree is €3,300 million, net of taxes (to cover both Banco Popular and Banco Pastor).

On 11 June 2012, the Issuer submitted to the Bank of Spain a plan detailing the measures it intends to take in order to comply with the requirements introduced under Royal Decree-Law 18/2012 (the "**Proposed Plan**"), which included (inter alia) a share capital increase announced in October 2011 in connection with the acquisition of Banco Pastor, and real estate related asset divestment programme and related execution calendar (see "*Description of the Issuer – Recent Developments*"). The Bank of Spain is scheduled to make a determination on the Proposed Plan within a period of 15 business days following its submission. In this respect, the Bank of Spain may ask the Issuer to make amendments and/or include additional measures in the Proposed Plan as it may deem necessary in order to ensure compliance with Royal Decree-Law 18/2012, including submitting a request for financial support to the FROB in accordance Royal Decree-Law 9/2009 and/or requiring the Issuer to raise additional capital.

Further, there can be no assurance that the Proposed Plan, including any additional requirements imposed by the Bank of Spain will be met. Even if the Proposed Plan is met, there can be no assurance that it will be successful in ensuring the Issuer's compliance with Royal Decree-Law 18/2012 or any other applicable regulation. Should the Proposed Plan fail to make available sufficient capital to comply with the applicable regulations, the Issuer may be required to raise additional capital and may do so, inter alia, through share capital increases and/or the issuance of additional mandatorily convertible bonds.

For more information in relation to Royal Decree-Law 2/2011, Royal Decree-Law 2/2012 and Royal Decree-Law 18/2012, see "*Description of the Spanish Banking Sector – Capital Requirements*".

Compliance with these legislations may require the Issuer to dispose of certain of its assets, raise additional capital and/or make additional provisions, amongst other possible measures.

Between January 2013 and January 2019 the progressive introduction of the new capital parameters for financial institutions established by Basel III will take place. It is unknown at this point how these parameters will be implemented in Spain in general terms and, in particular, with respect to banks of the Banco Popular's size. Furthermore, greater capital requirements imposed by the Spanish regulator (in line with those established by Royal Decree-Law 2/2011 for reinforcement of the financial system) may translate into additional capital needs and could adversely affect Banco Popular's business. It cannot be assured that the implementation of these parameters or of any other new regulations will not adversely affect Banco Popular's capacity to pay dividends or will not require Banco Popular to issue securities that are classified as regulatory capital or to sell assets at a loss or to reduce its business activity, which could have an adverse effect on the business, financial condition or results of operation of Banco Popular.

The European Union has created a European Systemic Risk Board to monitor financial stability and implemented rules that will increase capital requirements for certain trading instruments or exposures and impose compensation limits on certain employees located in affected countries. In addition, the European Union Commission is considering a wide array of other initiatives, including separating wholesale and retail banking activities, new legislation that will affect derivatives trading, impose surcharges on "**globally**" systemically important firms and possibly impose new levies on bank balance sheets.

In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act was adopted in 2010 and will effect significant structural reforms to the financial services industry. This legislation provides for, among other things: the establishment of a Bureau of Consumer Financial Protection which will have broad authority to regulate the credit, savings, payment and other consumer financial products and services that the Group offers; the creation of a structure to regulate systemically important financial companies; more comprehensive regulation of the over-the-counter derivatives market; prohibitions on the Group engaging in certain proprietary trading activities and restricting its ownership of, investment in or sponsorship of, hedge funds and private equity funds; restrictions on the interchange fees that the

Group earns on debit card transactions; and a requirement that bank regulators phase out the treatment of trust preferred capital debt securities as Tier 1 capital for regulatory capital purposes.

The Basel Committee on Banking Supervision announced in December 2010 revisions to its Capital Accord, which will require higher capital ratio requirements for banks, narrow the definition of capital, and introduce short term liquidity and term funding standards, among other things. Also being considered is the imposition of a bank surcharge on institutions that are determined to be "globally significant financial institutions." These requirements could increase the Group's funding and operational costs.

These and any additional legislative or regulatory actions in Spain, the European Union, the United States or other countries, and any required changes to the Group's business operations resulting from such legislation and regulations, could result in significant loss of revenue, limit the Group's ability to pursue business opportunities in which the Group might otherwise consider engaging, affect the value of assets that the Group holds, require the Group to increase its prices and therefore reduce demand for its products, impose additional costs on the Group or otherwise adversely affect its businesses. Stricter requirements imposed on Spanish financial institutions relative to those imposed in other countries could also affect the competitive position of the Issuer relative to other institutions in Europe. Accordingly, the Group cannot provide assurance that any such new legislation or regulations would not have a material adverse effect on its business, results of operations or financial condition in the future.

In addition, increasing regulatory capital requirements may create a need for the Issuer to raise additional capital. For example, the Proposed Plan involves a share capital increase, which was announced in October 2011 in connection with the acquisition of Banco Pastor (see "*Description of the Issuer – Recent Developments*"). The Issuer is constantly evaluating potential sources of funding, including share capital increases and the issuance of additional mandatorily convertible notes. The aforementioned share capital increase and other capital raisings by the Issuer could result in dilution of the Noteholder's interests. For more information, see "*Risk Factors – Noteholders have limited anti-dilution protection*".

The Group may also face increased compliance costs and limitations on its ability to pursue certain business opportunities. Changes in regulations, which are beyond the Group's control, may have a material effect on the Group's business and operations. As some of the banking laws and regulations have been recently adopted, the manner in which those laws and related regulations are applied to the operations of financial institutions is still evolving. Moreover, no assurance can be given generally that laws or regulations will be adopted, enforced or interpreted in a manner that will not have a material adverse effect on the Group's business.

In addition, many of the Group's operations are dependent upon licenses issued by financial authorities, which are typically subject to ongoing compliance with stipulated conditions. If any such licenses were to be revoked, suspended or otherwise amended (including through the imposition of additional or more onerous conditions), whether as a result of a change in law, a failure to comply with stipulated conditions or otherwise, or if other related sanctions were imposed, the Issuer's business, financial condition and results of operations could be adversely affected.

*The Issuer's business is substantially dependent on the Spanish economy.*

As the Issuer's activity is mainly concentrated in Spain, its performance is influenced by the cyclical nature of financial activity in that country, which is in turn impacted by both domestic and international economic and political events.

The Spanish economy has been affected by the slowdown in global growth and is particularly sensitive to economic conditions in the rest of the European Economic Area, the primary market for Spanish goods and services exports. The pace of recovery in private domestic demand in the short- and medium-term is expected to continue to be hindered by weak economic fundamentals and the effects of on-going adjustments in the private sector, such as private deleveraging.

There are diverse factors influencing the Spanish economy that could adversely affect the Issuer's business including, in particular, the structural adjustment taking place in the real estate sector, which is associated with reduced access to credit for property purchases and contracted residential investment; and the restructuring of the financial sector. In addition, increases in interest rates in the Euro could also hinder the recovery of the Spanish economy.

There can be no assurance that any adverse changes that may affect the Spanish economy, including but not limited to, movements in employment and the housing market, and growth in the Spanish economy in general, will not negatively affect the business and profitability of the Issuer.

*The financial problems faced by the Group's customers could adversely affect the Group.*

Market turmoil and economic recession, especially in Spain, could materially and adversely affect the liquidity, businesses and/or financial conditions of the Group's borrowers, which could in turn increase the Group's non-performing loan ratios, impair the Group's loan and other financial assets and result in decreased demand for borrowings in general. In the context of the recovery from the recent market turmoil and economic recession, and with high unemployment coupled with low consumer spending, the value of assets collateralising the Group's secured loans, including homes and other real estate, could still decline significantly, which could result in the impairment of the value of the Group's loan assets. In addition, the Group's customers may further significantly decrease their risk tolerance to non-deposit investments such as stocks, bonds and mutual funds, which would adversely affect the Group's fee and commission income. Any of the conditions described above could have a material adverse effect on the Group's business, financial condition and results of operations.

*Increased exposure to the real estate market has made the Issuer more vulnerable to market fluctuations in the price of real estate.*

As a material portion of the Issuer's loan portfolio is linked to the real estate market, it is exposed to market fluctuations in the price of real estate.

From 2002-2007, population increase, economic growth and the strength of the labour market in Spain, together with the decrease in interest rates within the EU, led to an increase in demand for mortgage loans. This contributed to increased real estate prices in Spain, which, in turn, has led to speculation that there could be a significant downturn in the Spanish real estate market. During late 2007, the housing market began to adjust in Spain as a result of excess supply and higher interest rates. Since 2008, as economic growth came to a halt in Spain, housing oversupply has persisted, unemployment has continued to increase, housing demand has continued to decrease and home prices have declined while mortgage delinquencies have increased. Further, recent government measures, such as the increase in the value added tax rate of real estate transactions may lead to further declines in demand for property. These trends, especially higher interest rates and unemployment rates coupled with declining real estate prices, could have a material adverse impact on the Issuer's mortgage payment delinquency rates, which in turn could have a material adverse effect on its business, financial condition and results of operations.

In addition, the decline in property prices decreases the value of the real estate securing the Issuer's mortgage loans and adversely affects the credit quality of property developers to whom the Issuer has lent. A further decrease in real estate prices may occur including to levels below the outstanding principal balance on these loans, which may require the Issuer to reclassify the relevant loans, establish additional provisions for loan losses and increase reserve requirements. Decreasing real estate prices therefore increase the risk of loss and decrease the value of the Issuer's real estate loan portfolio, which could have a material adverse effect on its business, results of operation and financial condition.

*Household and corporate indebtedness could endanger the Issuer's asset quality and future revenues.*

The indebtedness of Spanish households and firms has increased in recent years, which represents increased risk for the Spanish banking system. The increase of loans referenced to variable interest rates make debt service on such loans more vulnerable to changes in interest rates than in the past. The increase in households' and firms' indebtedness also limits their ability to incur additional debt, decreasing the number of new products the Issuer may otherwise be able to sell them, which may have an adverse affect on the Issuer's business, financial position and results of operations.

*The Issuer faces increasing competition in its business lines.*

The markets in which the Issuer operates are highly competitive. Financial sector reforms in Spain and in the European Union have increased competition among both local and foreign financial institutions, and the Issuer believes that this trend will continue. There is also a trend towards consolidation in the banking industry, which has created larger and stronger banks with which the Issuer must compete. This trend is expected to continue as the Bank of Spain continues to impose measures aimed at restructuring the

Spanish financial sector, including requirements that smaller, regional banks consolidate into larger, more solvent and competitive entities, and overcapacity be reduced.

Some of the Issuer's competitors, including well-established domestic banks in each of the regional Spanish markets in which it operates, as well as international banks with operations in the regions in which the Issuer operates, may have better banking relationships with corporate clients that comprise one of its target customer bases and may have greater resources.

In addition, the Issuer faces increased pressure to meet rising customer demands to provide new banking products. There is no guarantee that the Issuer's management and employees will succeed in adopting new work methods and approaches to customer service that will keep up with the pace of change in the current banking environment, which may adversely affect its ability to successfully compete in its primary markets.

Further, the number of banking transactions conducted over the internet in the markets in which the Issuer operates has grown in recent years and is expected to grow further. The Issuer may be unable to compete with other banks that offer more extensive online services to their customers than it currently offers to its customers. The Issuer also faces competition from non-bank financial institutions and other entities, such as leasing companies, mutual funds, pension funds and insurance companies and, to a lesser extent, department stores (for some consumer finance products).

The current economic environment in Spain has generated significant competition on the basis of interest rates among lending institutions in the demand for all types of deposits. This competition has prompted financial institutions to offer increasingly higher interest rates on deposits, which generates higher interest expenses without a corresponding increase in interest income. Increasing competitive pressures could cause the Issuer to lose customer deposits to its competitors or force the Issuer to offer interest rates on deposits that are higher than the rates received on its loan products. As a result, the Issuer could suffer losses which could have a material adverse effect on its business, results of operations and financial condition.

These and other factors related to competition could have a material adverse effect on the Issuer's ability to compete effectively in these markets, and could adversely affect its business, financial condition and results of operations.

*Liquidity constraints could lead to increased financing costs or changes in the lending practices of the Issuer.*

Ready access to funds is essential to any banking business, including that of the Issuer. The Issuer's ability to raise funds may be impaired by factors that are not specific to its operations, such as general market conditions, disruption of the financial markets or negative views about the prospects of the industries to which the Issuer provides a large proportion of loans, which could in turn generate a negative view of the Issuer's liquidity among creditors and result in a less favourable credit rating, higher borrowing costs and poorer access to funds. The Issuer may be unable to secure additional funding in the international capital markets if conditions in these markets, or its credit ratings, were to deteriorate.

Further, customer deposits are a significant source of funding for the Issuer. There can be no assurance that in the event that the Issuer's depositors withdraw their funds at a rate faster than the rate at which borrowers repay their loans, it will be able to maintain its current levels of funding without incurring higher funding costs or having to liquidate certain of the Group's assets. A shortage of funds from retail deposits could have a material adverse effect on the Group's business, financial condition and results of operations.

In addition, as sources of liquidity introduced as extraordinary measures in response to the financial crisis are withdrawn (such as financing from the European Central Bank, the Spanish treasury, the *Instituto Oficial de Crédito* and various Spanish public administrations), expansionary economic policies are removed from the market and the market adjusts accordingly, there can be no assurance that the Issuer will be able to continue funding its business or maintain its current levels of funding without incurring higher funding costs or having to liquidate certain of its assets.

There can be no assurance that, in the event that depositors withdraw their funds at a rate faster than the rate at which borrowers repay their loans or in the event of a sudden or unexpected shortage of funds in the banking systems or money markets in which the Issuer operates, the Issuer will be able to meet its liquidity needs or to do so without incurring higher funding costs or having to liquidate certain of its assets which could reduce its asset management income and have a material adverse effect on its interest margins, as well as a material adverse effect on the Issuer's business, financial condition and results of operations.

*The imminent publication of new stress test results and evaluations of the asset quality and risk management systems of the main Spanish banking groups mandated by Spain's government and the Bank of Spain may adversely affect the Issuer and the price of its shares.*

Spain's government and the Bank of Spain are coordinating a new initiative aimed at improving transparency and restoring confidence in the valuation of banking assets within the Spanish banking sector. This new initiative will involve two independent analyses of the 14 main Spanish banking groups, representing approximately 90 per cent. of the Spanish financial sector.

Firstly, independent consulting companies Oliver Wyman and Roland Berger have been mandated to conduct stress tests to evaluate the resilience of the Spanish banks and the potential impact on their credit portfolios in the event of a severe deterioration of economic conditions. The results of this analysis, which is expected to provide an indication of the aggregate capital needs of the Spanish banking sector under extreme adverse economic conditions and identify the most vulnerable institutions, are expected to be released on 21 June 2012.

For the second analysis, the four largest auditing firms in Spain, Deloitte, PwC, Ernst & Young and KPMG, were mandated to conduct an individualised, in-depth analysis of the internal risk-management procedures for the classification, provisioning for and measurement of risk exposure within the credit portfolio of each of the Spanish banking groups. The results of the second analysis are expected to be submitted to the Bank of Spain by 31 July 2012, which will then review such results and, where necessary, increase the capital and provisioning requirements of those banks for which additional needs are identified.

There can be no assurance regarding the impact of the results of the aforementioned analyses commissioned by Spain's government and the Bank of Spain as applied to the Issuer or other participants in the Spanish banking sector. Such stress tests or evaluations could reveal additional capital and provisioning needs or expose vulnerabilities in the risk management systems of the Issuer. In particular, if the results of the stress tests as applied to the Issuer are not viewed as satisfactory, the cost and availability of funding to the Issuer could be adversely affected, the price of the Issuer's shares could decline, the Issuer may be required to raise additional capital and the Issuer could otherwise be adversely affected. There can be no assurance that the Bank of Spain will not introduce stricter capital or risk-management requirements on the Issuer in response to the results of these analyses. In addition, if the aforementioned analyses yield unsatisfactory results across a significant proportion of the Spanish banking groups under review, this could lead to uncertainty in the markets regarding the health and stability of the Spanish banking sector generally, which could in turn have an adverse impact on our business and our ability to obtain finance.

*Risks concerning borrower credit quality and general economic conditions are inherent in the Group's business.*

Risks arising from changes in credit quality and the recoverability of loans and amounts due from counterparties are inherent in a wide range of the Group's businesses. Adverse changes in the credit quality of the Group's borrowers and counterparties or a general deterioration in Spanish or global economic conditions, or arising from systemic risks in the financial systems, could reduce the recoverability and value of the Group's assets and require an increase in the Group's level of allowances for credit losses. Deterioration in the economies in which the Group operates could reduce the profit margins for the Group's banking and financial services businesses.

*The Group is exposed to risks faced by other financial institutions.*

The Group routinely transacts with counterparties in the financial services industry, including brokers and dealers, commercial banks, investment banks, mutual and hedge funds, and other institutional clients.

Defaults by, and even rumours or questions about the solvency of, certain financial institutions and the financial services industry generally have led to market-wide liquidity problems and could lead to losses or defaults by other institutions. These liquidity concerns have had, and may continue to have, a chilling effect on inter-institutional financial transactions in general. Many of the routine transactions the Group enters into expose it to significant credit risk in the event of default by one of the Group's significant counterparties. Despite the risk control measures the Group have in place, a default by a significant financial counterparty, or liquidity problems in the financial services industry in general, could have a material adverse effect on the Group's business, financial condition and results of operations.

*Portions of the Group's loan portfolio are subject to risks relating to force majeure and any such event could materially adversely affect its operating results.*

The Group's financial and operating performance may be adversely affected by force majeure events, such as natural disasters, particularly in locations where a significant portion of its loan portfolio is composed of real estate loans. Natural disasters such as earthquakes and floods may cause widespread damage which could impair the asset quality of its loan portfolio and could have an adverse impact on the economy of the affected region.

*The Group may generate lower revenues from brokerage and other commission- and fee-based businesses.*

Market downturns are likely to lead to declines in the volume of transactions that the Group executes for its customers and, therefore, to declines in the Group's non-interest revenues. In addition, because the fees that the Group charges for managing its clients' portfolios are in many cases based on the value or performance of those portfolios, a market downturn that reduces the value of the Group's clients' portfolios or increases the amount of withdrawals would reduce the revenues the Group receives from its asset management and private banking and custody businesses.

Even in the absence of a market downturn, below-market performance by the Group's mutual funds may result in increased withdrawals and reduced inflows, which would reduce the revenue the Group receives from its asset management business.

*Market risks associated with fluctuations in bond and equity prices and other market factors are inherent in the Group's business. Protracted market declines can reduce liquidity in the markets, making it harder to sell assets and leading to material losses.*

The performance of financial markets may cause changes in the value of the Group's investment and trading portfolios. In some of the Group's business, protracted adverse market movements, particularly asset price decline, can reduce the level of activity in the market or reduce market liquidity. These developments can lead to material losses if the Group cannot close out deteriorating positions in a timely way. This may especially be the case for assets of the Group for which there are less liquid markets. Assets that are not traded on stock exchanges or other public trading markets, such as derivative contracts between banks, may have values that the Group calculates using models other than publicly quoted prices. Monitoring the deterioration of prices of assets like these is difficult and could lead to losses that the Group does not anticipate.

The volatility of world equity markets due to the recent economic uncertainty has had a particularly strong impact on the financial sector. Continued volatility may affect the value of the Group's investments in entities in this sector and, depending on their fair value and future recovery expectations, could become a permanent impairment which would be subject to write-offs against the Group's results.

*Despite the Group's risk management policies, procedures and methods, the Group may nonetheless be exposed to unidentified or unanticipated risks.*

The Group's risk management techniques and strategies may not be fully effective in mitigating the Group's risk exposure in all economic market environments or against all types of risk, including risks that the Group fails to identify or anticipate. Some of the Group's qualitative tools and metrics for managing risk are based upon the Group's use of observed historical market behaviour. The Group applies statistical and other tools to these observations to arrive at quantifications of its risk exposures. These qualitative tools and metrics may fail to predict future risk exposures. These risk exposures could, for example, arise from factors the Group did not anticipate or correctly evaluate in its statistical models.

This would limit the Group's ability to manage its risks. The Group's losses thus could be significantly greater than the historical measures indicate. In addition, the Group's quantified modelling does not take all risks into account. The Group's more qualitative approach to managing those risks could prove insufficient, exposing it to material unanticipated losses. If existing or potential customers believe the Group's risk management is inadequate, they could take their business elsewhere. This could harm the Group's reputation as well as its revenues and profits.

*Volatility in interest rates may negatively affect the Group's net interest income and increase the Group's non-performing loan portfolio.*

Changes in market interest rates could affect the interest rates charged on interest-earning assets differently than the interest rates paid on interest-bearing liabilities. This difference could result in an increase in interest expense relative to interest income leading to a reduction in the Group's net interest income. Income from treasury operations is particularly vulnerable to interest rate volatility. Interest rates are highly sensitive to many factors beyond the Group's control, including increased regulation of the financial sector, monetary policies, domestic and international economic and political conditions and other factors.

Rising interest rates may also lead to an increase in the Issuer's bad and doubtful debts portfolio if borrowers cannot refinance in a higher interest rate environment, resulting an increase in defaults on its loans to customers if borrowers are unable to meet their increased interest expense obligations and reduce demand for loans and the Issuer's ability to generate loans.

Changes in interest rates may therefore have a material adverse effect on the Group's interest margins as well as the Issuer's business, financial condition and results of operations.

*Operational risks are inherent in the Group's business.*

The Group's businesses depend on the ability to process a large number of transactions efficiently and accurately. Losses can result from inadequate personnel, inadequate or failed internal control processes and systems, or from external events that interrupt normal business operations. The Group also faces the risk that the design of its controls and procedures prove to be inadequate or are circumvented.

In addition, any persons that circumvent the security measures could wrongfully use the Group's confidential information or that of its clients, which could expose it to a risk of loss, regulatory consequences or litigation and could negatively impact its reputation and brand name.

The banking business involves the routine handling of large amounts of money, creating the risk of theft, fraud or deception carried out by clients, third-party agents, employees and managers. The employees of the Group may also commit errors that could subject it to financial claims for negligence and otherwise, as well as regulatory actions. Despite the risk management measures put in place by the Issuer, there can be no assurance that funds under its control could lead to inappropriate or illegal manners, which could expose the Issuer to liability to customers, governmental sanctions, negative publicity, loss of customers and other negative consequences.

Substantial losses incurred by the Issuer's customers as a result of any security breaches, errors, omissions, malfunctions, system failures or disaster could subject it to claims from clients for recovery of such losses. These claims, together with the resulting damage to the Issuer's reputation, could have a material adverse effect on its business, financial condition and results of operation.

*The Group relies on recruiting, retaining and developing appropriate senior management and skilled personnel.*

The Group's continued success depends in part on the continued service of key members of its management team. The ability to continue to attract, train, motivate and retain highly qualified professionals is a key element of the Group's strategy. The successful implementation of the Group's growth strategy depends on the availability of skilled management, both at its head office and at each of its business units. If the Group or one of its business units or other functions fails to staff its operations appropriately or loses one or more of its key senior executives and fails to replace them in a satisfactory and timely manner, the Group's business, financial condition and results of operations, including control and operational risks, may be adversely affected. Likewise, if the Group fails to attract and appropriately train, motivate and retain qualified professionals, its business may also be affected.

*The Group is exposed to risk of loss from legal and regulatory proceedings.*

The Group faces various issues that may give rise to risk of loss from legal and regulatory proceedings. These issues include appropriately dealing with potential conflicts of interest, legal and regulatory requirements, ethical issues, and conduct by companies in which the Group holds strategic investments or joint venture partners, which could increase the number of litigation claims and the amount of damages asserted against the Group or subject the Group to regulatory enforcement actions, fines and penalties.

*Credit, market and liquidity risks may have an adverse effect on the Issuer's credit ratings and the cost of funds. Any reduction in the Issuer's credit rating could increase its cost of funding and adversely affect its interest margins.*

Credit ratings affect the cost and other terms upon which the Issuer is able to obtain funding. Rating agencies regularly evaluate the Issuer and their ratings of its long-term debt are based on a number of factors, including its financial strength as well as conditions affecting the financial services industry generally.

Any downgrade in the Issuer's ratings could increase its borrowing costs, limit its access to capital markets and adversely affect the ability of the Issuer's business to sell or market its products, engage in business transactions—particularly longer-term and derivatives transactions—and retain its customers. This, in turn, could reduce the Issuer's liquidity and have an adverse effect on its financial position and results of operations.

The Issuer's long-term debt is currently rated A3 by Moody's Investors Service España, S.A., BBB by Fitch Ratings España, S.A.U., BB+ by Standard & Poor's Credit Market Services Europe Limited and A (high) by DBRS Ratings Limited. Each of these rating agencies maintains the Group's outlook as it follows:

Moody's Investors Service España, S.A.: Review for possible downgrade

Fitch Ratings España, S.A.U.: Stable

Standard & Poor's Credit Market Services Europe Limited: Negative

DBRS Ratings Limited: Review with negative implications.

In light of the difficulties in the financial services industry and the financial markets, there can be no assurance that the rating agencies will maintain their current ratings or outlooks. With regard to those rating agencies who have a negative outlook on the Group, there can be no assurances that such agencies will revise such outlooks upward. The Group's failure to maintain favourable ratings and outlooks could increase the cost of its funding and adversely affect the Group's interest margins.

In addition, certain countries in Europe, including Spain, have relatively large sovereign debts or fiscal deficits, or both. Several EU countries have recently experienced significant increases in their cost of funding which, in the case of certain countries has led them to seek financial assistance from the European Commission and the International Monetary Fund. Spain has also recently experienced increases in its cost of funding due to concerns regarding rising sovereign debt levels. Any downgrade in the credit rating of the Kingdom of Spain or increasing concerns about its ability to make payments on its sovereign debt could lead to an increase in the Issuer's borrowing costs, limit its access to capital markets and adversely affect the sale or marketing of its products, its participation in business transactions and its ability to retain customers, which could adversely affect its liquidity and have a material adverse effect on its business, financial condition and results of operation.

*The Issuer's insurance coverage may not adequately cover its losses.*

Due to the nature of the Issuer's operations and the nature of the risks that it faces, there can be no assurance that the insurance coverage it maintains is adequate. If the Issuer were to suffer a significant loss for which it is not insured, its business, financial condition and results of operations could be materially adversely affected.

## **Risks in relation to the integration of Banco Pastor**

On 10 October 2011, the Issuer announced that it was in negotiations with the relevant shareholders to acquire share capital of Banco Pastor S.A. ("**Banco Pastor**") to become an integration partner. It was agreed that the integration operation would consist of an offer to all the shareholders of Banco Pastor through an exchange of 1.115 new shares of the Issuer for every share of Banco Pastor, and 30.9 shares of the Issuer for every mandatory convertible subordinated bond of Banco Pastor (the "**Share Acquisition**").

On 15 February 2012 the Issuer disclosed that, as Agent Bank, it had notified the CNMV that the Share Exchange Offer had been accepted for over 90% of voting shares in Banco Pastor. Having satisfied this condition, the Issuer executed a squeeze-out of the remaining shareholders and bondholders of mandatory convertible subordinated bonds in Banco Pastor who had not accepted the Share Acquisition. As a result of the execution of the Share Acquisition and the squeeze-out on 8 March 2012, the Issuer holds all of the share capital in Banco Pastor.

In general terms, the risks which currently affect Banco Pastor, and any other factors that could arise as a result of the operational integration of Banco Pastor into the Group (the "**Merger**"), will be part of the risks affecting the Group and Banco Pastor as a whole (the "**Enlarged Group**").

Without prejudice to the foregoing, specific risks in relation to the Merger include:

*Emergence of liabilities that were hidden or unknown at the time of acquisition.*

Further to completion of the Merger, the business, financial condition and results of operations of the Enlarged Group will differ substantially from the business, financial condition and results of operations of the Group at the date of, and as described in, these Listing Particulars.

Despite the legal and business due diligence review conducted of Banco Pastor, the Issuer may uncover information after acquiring Banco Pastor that is not known to the Issuer at present and which may give rise to significant new contingencies or to contingencies in excess of the projections currently made by the Issuer. Any losses incurred by the Issuer as a result of the occurrence of any such contingencies relating to Banco Pastor and hidden from the Issuer in the context of the Acquisition could have a material adverse effect on the business, financial conditions and results of operations of the Enlarged Group.

*Risks deriving from the integration of Banco Pastor into the Group.*

The operational integration of Banco Pastor into the Group could prove to be difficult and complex, and the benefits and synergies obtained from that integration may not be in line with expectations. The Issuer could, for example, face difficulties as a consequence, *inter alia*, of the existence of conflicts of interest between, among others, the respective control structures, procedures, standards, business cultures and policies, or compensation structures of the Group and Banco Pastor, the need to implement, integrate and harmonise diverse business operating procedures and systems and financial, accounting, reporting systems and other systems of the Group and Banco Pastor.

Also, the need for a large part of the attention of the management of the Issuer to be focused on questions arising from the integration with Banco Pastor could have an adverse effect on its business. If the Issuer is unable to manage the expanded organisation efficiently, this could result in a loss of market share and of key clients, in addition to any other difficulties that could arise if full integration of Banco Pastor's assets and resources is not achieved, which could have a material adverse effect on the business, financial position and results of operations of the Enlarged Group.

*The Enlarged Group may not be able to retain key employees or manage its staff efficiently.*

The success of the Enlarged Group will depend in part on its ability to retain key personnel of the Issuer and Banco Pastor, and on successful management of the Enlarged Group. Factors that could influence key personnel to leave the Enlarged Group include difficulty integrating both the operations of the Group and those of Banco Pastor, uncertainty in relation to such integration or unwillingness to work in the context of the Enlarged Group. Furthermore, competitive pressures may make it difficult to replace skilled employees who choose to leave the Enlarged Group. In addition, the Issuer may encounter difficulties in efficiently managing a larger workforce. There can be no assurances that the Issuer will be able to manage these risks successfully. If the Issuer is unable to manage these risks successfully, this

could have a material adverse effect on business, financial position and results of operations of the Enlarged Group.

### **Risk factors associated with the Notes**

*The Notes are subject to the provisions of the laws of England and Wales and the Kingdom of Spain, either of which may change and have a material adverse effect on the terms and market value of the Notes.*

(i) *England and Wales*

The terms and conditions of the Notes are, save for the subordination provisions and the provisions relating to the appointment of the Commissioner and the Syndicate of Noteholders (which will be subject to Spanish law), drafted on the basis of English law in effect as at the date of these Listing Particulars. No assurance can be given as to the impact of any possible judicial decision or change to English law or administrative practice after the date of these Listing Particulars.

(ii) *Kingdom of Spain*

Changes in the laws of the Kingdom of Spain after the date hereof may also affect the rights and effective remedies of Noteholders as well as the market value of the Notes. Such changes in law may include changes in statutory, tax and regulatory regimes during the life of the Notes, which may have an adverse effect on investment in the Notes and the introduction of a variety of statutory resolution and loss-absorption tools, which may affect the rights of holders of obligations issued by the Issuer, including the Notes and may cause a Viability Event to occur which will require the Issuer to convert the Notes into Shares (see — *The circumstances of the conversion are unpredictable*). Such tools may include the ability to write off sums otherwise payable on such securities or override shareholder rights at a time when the Issuer is no longer considered viable by its regulator or upon the occurrence of another trigger.

Such changes may also include the amendment of Spanish laws governing the capital requirements of banks, including Law 13/1985, of 25 May (*Ley 13/1985, de 25 de mayo, de Coeficientes de Inversión, Recursos Propios y Obligaciones de Información de los Intermediarios Financieros*) or any implementing ordinance, in particular (i) Royal Decree 216/2008, of 15 February (*Real Decreto 216/2008, de 15 de febrero, de recursos propios de las entidades financieras*) and Circular 3/2008, of 22 May (*Circular 3/2008, de 22 de mayo, del Banco de España, a entidades de crédito, sobre determinación y control de los recursos propios mínimos*) or (ii) as required in order to implement the proposals by the Basel Committee on Banking Supervision, "Basel III: A global regulatory framework for more resilient bank and banking systems", published in December 2010 as amended and supplemented in January 2011 or the Capital Requirements Directive (CRD 4). Any such changes could impact the calculation of the Common Equity Tier 1 Capital Ratio, the CET1 Capital Amount, the RWA Amount, the Tier 1 Capital Ratio or the Tier 1 Capital Amount. Furthermore, because the occurrence of a Contingency Event after the Capital Regulations Date depends, in part, on the calculation of the CET1 Capital Ratio after the Capital Regulations Date, any change in Spanish law that could affect the calculation of the CET1 Capital Ratio could also affect the determination of whether a Contingency Event has actually occurred. This uncertainty relates one of the principal terms of the Notes and any uncertainty regarding this term can be expected to have an adverse effect on the market value of the Notes.

On 6 June 2012, the European Commission published a proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of failing banks in the European Union. If this proposal were to be adopted in its current form, each European Union member state, including the Kingdom of Spain, would be required to appoint a resolution authority and create a resolution framework. The resolution authority would have a range of powers available to it, including: (i) a sale mechanism whereby it could sell all or part of the failing bank; (ii) a bridge bank mechanism under which good assets and critical functions could be transferred to a new bridge bank; (iii) an "asset separation" tool under which the bank's bad assets could be transferred into an asset management vehicle; and (iv) a "bail-in" or debt write down mechanism which could be used to recapitalise the bank, with unsecured creditors having all or part of their claims converted into equity and existing equity holders either being diluted or extinguished. Each of these and other powers under the proposals would, if imposed, have a material adverse effect on the value of the Shares and, in the case of

(iv), may lead to the loss of all interests in the Shares. The proposals are intended to be implemented in each European Union member state from 31 December 2014.

Furthermore, any change in the laws or regulations of the Kingdom of Spain or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), which change or amendment becomes effective on or after 29 June 2012, that would cause the Issuer to have to pay additional amounts under Condition 8 (*Taxation*) of the terms and conditions of the Notes would allow the Issuer the option, subject to certain conditions and subject to the Noteholders' option to receive payments net of withholding to redeem the Notes in whole but not in part. In any such case, the Notes would cease to be outstanding, which could materially and adversely affect investors and frustrate investment strategies and goals.

In addition, subject to the Issuer having exercised the option described in the preceding paragraph, the Notes will be mandatorily convertible into Shares if, as a result of any change in the Capital Adequacy Regulations or the EBA Recommendations, or any change in the official application or interpretation thereof becoming effective on or after the Issue Date, the Notes either (i) cease to qualify as core tier 1 capital of the Group pursuant to EBA Recommendations, or (ii) cease to qualify as Tier 1 Capital or any other equivalent regulatory capital category, as the case may be, of the Group pursuant to the Capital Adequacy Regulations.

Such legislative and regulatory uncertainty could affect an investor's ability to value the Notes accurately and therefore affect the trading price of the Notes given the extent and impact on the Notes of one or more regulatory or legislative changes, including the ones described above.

*The circumstances triggering conversion are unpredictable.*

The occurrence of an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event is inherently unpredictable and depends on a number of factors, many of which are outside of the Issuer's control. For example, the occurrence of one or more of the risks described under "*Risk Factors – Factors that may affect the Issuer's ability to fulfil its obligations under the Notes*", or the deterioration of the circumstances described therein, will substantially increase the likelihood of the occurrence of an Insolvency Event, a Contingency Event or a Viability Event. Furthermore, the occurrence of a Contingency Event depends, in part, on the calculation of the CET1 Capital Ratio, the EBA Capital Ratio and the Tier 1 Capital Ratio, which can be affected, among other things, by the growth of the Issuer's business and its future earnings; expected dividend payments by the Issuer; regulatory changes (including possible changes in regulatory capital definitions and calculations) and the Issuer's ability to mitigate RWAs.

For more information on the capital ratios of the Issuer, see "*Description of the Issuer – Capital Adequacy*". For more information on the Issuer's plans to raise additional capital, see "*Description of the Issuer – Business Plan 2012/2013*".

The occurrence of a Viability Event is subject to, inter alia, a subjective determination by the Regulator that conversion of the Notes or the acceptance of support from the Public Sector is essential to prevent the Issuer from becoming insolvent, bankrupt, unable to pay a material part of its debts as they fall due or otherwise unable to carry on its business as more particularly described in Condition 10(b)(iii). As a result, the Regulator may require or may cause the conversion of the Notes into Shares in circumstances that are beyond the control of the Issuer.

Because of the inherent uncertainty regarding the determination of whether an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event exists, it will be difficult to predict when, if at all, the Notes will be mandatorily converted into Shares (other than on a Scheduled Conversion Date). Accordingly, trading behaviour in respect of the Notes is not necessarily expected to follow trading behaviour associated with other types of convertible or exchangeable securities. Any indication that the Issuer is trending towards an Insolvency Event, a Contingency Event or a Viability Event, or that change in Capital Adequacy Regulations or EBA Recommendations may give rise to a Capital Treatment Event, can be expected to have an adverse effect on the market price of the Notes and on the price of the Shares.

*Mandatory share conversion and risk of fluctuation in the value of the Issuer's shares.*

The Notes will not be redeemed for cash on their maturity date or on any Scheduled Conversion Date; rather Noteholders will only receive a number of newly issued ordinary shares of the Issuer (the "Shares") calculated by applying the prevailing Conversion Price in accordance with the Conditions. Noteholders will therefore bear the risk of fluctuation in the value of the Issuer's Shares.

At the time the Notes are acquired by investors, the price of the Shares, the number of Shares to be received upon conversion of the Notes and (other than with respect to a Scheduled Mandatory Conversion) the date on which the Notes will be converted into Shares will not be ascertainable.

Moreover upon the occurrence of an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, the Notes will be mandatorily converted into Shares. Because a Contingency Event will occur when the Issuer's EBA Capital Ratio, CET1 Capital Ratio or Tier 1 Capital Ratio will have deteriorated significantly and a Viability Event or Insolvency Event will occur when, respectively, the Issuer's chances of continuing as a going concern will have deteriorated significantly or when the Issuer will no longer be a going concern, the Contingency Event, Viability Event or Insolvency Event will likely be accompanied by a prior deterioration in the market price of the Shares, which may be expected to continue after declaration of the relevant Insolvency Event, Contingency Event or Viability Event.

Therefore, if there were an Insolvency Event, a Contingency Event or a Viability Event, the Reference Price may be below the Floor Price, and investors would receive Shares at a time when the market price of the Shares is diminished. In addition, there may be a delay in a Noteholder receiving its Shares following an Insolvency Event, a Contingency Event or Viability Event, during which time the market price of the Shares may further decline. As a result, the value of the Shares received upon an Insolvency Event, a Contingency Event or Viability Event could be substantially lower than the price paid for the Notes at the time of their purchase.

As a result, an investor in the Notes faces almost the same risk of loss as an investor in the Shares since the investor will receive Shares in case of an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, and, unless previously redeemed, converted or purchased and cancelled, on each Scheduled Conversion Date. See also "*The Price of the Shares may decrease*" below.

*The Notes may be redeemed prior to conversion.*

The Notes may also be redeemed, subject to the Noteholder's option to receive payments net of withholding, in the event that the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 (*Taxation*) as a result of any change in, or amendment to, the laws or regulations of the Kingdom of Spain or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations which becomes effective on or after 29 June 2012.

It is not possible to predict whether or not changes to the tax laws or regulations of the Kingdom of Spain will occur, and if so whether or not the Issuer will elect to exercise its option to redeem the Notes. There can be no assurances that, in the event of any such early redemption, Holders will be able to reinvest the proceeds at a rate that is equal to the return on the Notes. In addition, the redemption feature of the Notes is likely to limit their market value. During any period when the Issuer has the right to elect to redeem all or part of the Notes, the market value of the Notes generally will not rise substantially above the price at which they can be redeemed.

*Payments of Interest on the Notes are discretionary and subject to the fulfilment of certain conditions.*

Interest payments on the Notes may be cancelled, without prior notice to the Noteholders, by the Issuer to the extent that:

- (i) Distributable Profits are not available for the purpose of making the payment (as more particularly described in Condition 5(b)(ii));
- (ii) under applicable Capital Adequacy Regulations, including Spanish banking regulations, the Issuer would be prevented at such time from making payments on its ordinary shares, on the Notes or on Parity Securities (as more particularly described in Condition 5(b)(ii)); or

- (iii) the Board of Directors of the Issuer, in its absolute discretion, has determined that in light of the then-current solvency of the Issuer, the Group or the Sub-Group, a payment of interest shall not take place on the relevant Interest Payment Date; or
- (iv) the Regulator has, in accordance with applicable law, instructed the Issuer, in light of the then-current financial condition and solvency of the Issuer, to cancel any payment of interest (as more particularly described in Condition 5(b)(iv)).

There can therefore be no assurances that Noteholder will receive payments of interest in respect of the Notes. Unpaid interest is not cumulative or payable at any time thereafter, and Noteholders shall accordingly have no right, whether in a liquidation, dissolution or winding-up or otherwise, to claim the payment of any foregone interest or to convert their Notes into Shares in lieu of any such payment.

If, as a result of any of the conditions set out in (i), (ii), (iii) or (iv) above being applicable, only part of the interest under the Notes becomes payable, the Issuer may proceed, in its sole discretion, to pay any such part of the interest under the Notes.

Notwithstanding the applicability of any one or more of the conditions set out in (i), (ii), (iii) or (iv) above resulting in interest under the Notes not being paid or being paid only in part, there will be no restriction on the Issuer paying dividends on its ordinary shares or making pecuniary or other distributions to the holders of its ordinary shares or making payments on securities ranking *pari passu* with the Notes.

*There are no events of default.*

Noteholders have no ability to require the Issuer to redeem their Notes. The terms of the Notes do not provide for any events of default. The Issuer is entitled to cancel any and all of the interest payments in the circumstances contemplated in Condition 5 (*Interest*). If Shares are not issued and delivered following a Conversion Event as required by Condition 10 (*Conversion*), on a liquidation, dissolution or winding-up of the Issuer the claim of a Noteholder shall be limited to the sum equal to that which holders of the number of Shares into which the Notes held by such Noteholder should have been converted would receive, as more particularly described in Condition 4(c).

*Noteholders only have a limited ability to cash in their investment in the Notes.*

The Issuer has the option to redeem the Notes in certain circumstances (see "*The Notes may be redeemed prior to Conversion*" above). The ability of the Issuer to redeem the Notes is subject to the Issuer satisfying certain conditions (as more particularly described in Condition 6 (*Scheduled Mandatory Conversion, Redemption and Purchase*)). There can be no assurance that Noteholders will be able to reinvest the amount received upon redemption at a rate that will provide the same rate of return as their investment in the Notes.

Therefore, Noteholders have no ability to cash in their investment, except:

- (a) if the Issuer exercises its rights to redeem or purchase the Notes in accordance with Condition 6; or
- (b) by selling their Notes or, following the occurrence of a Conversion Event and the issue and delivery of Shares in accordance with Conditions 10 (*Conversion*) and 11 (*Procedure for Conversion*), their Shares.

If the Issuer exercised its right to redeem or purchase the Notes in accordance with Condition 6 and failed to make payment in redemption of the Notes when due, such failure would not constitute an event of default but would entitle Noteholders to bring a claim for breach of contract against the Issuer, which, if successful, would result in damages.

*Noteholders have limited anti-dilution protection.*

The number of Shares deliverable upon conversion of a Note will be the principal amount thereof divided by the Conversion Price in effect on the relevant Conversion Date. The Conversion Price will be the greatest of: (a) the Reference Market Price of an Ordinary Share on the Exchange Business Day preceding the relevant Conversion Date (which will be calculated as the average of the daily volume weighted average price of an Ordinary Share (derived from or published by the SBIE) on each of the 15

consecutive Exchange Business Days ending on the Exchange Business Day preceding the relevant Conversion Date), (b) the Floor Price (which is EUR 1.00 at the date of these Listing Particulars) and (c) the Closing Price (being the sale price of an Ordinary Share at close of business on the relevant Exchange Business Day (derived from or published by the SBIE)) of an Ordinary Share multiplied by 0.75. The Conversion Price may also be no higher than either (i) EUR15.00 (the "Ceiling Price") or (ii) the Reference Market Price of an Ordinary Share multiplied by 0.75, whichever is the higher. See Condition 10 (*Conversion*) for the complete provisions regarding the Conversion Price.

The Floor Price and the Ceiling Price will be adjusted in the event that there is a consolidation or subdivision of the Shares, the payment of any extraordinary dividends or non-cash dividends which exceed the Threshold Amount specified in the Conditions, rights issues or grant of other subscription rights or certain other events which affect the Shares, but only in the situations and to the extent provided in "*Terms and Conditions of the Notes—Adjustments to the Conversion Price*". There is no requirement that there should be an adjustment for every corporate or other event that may affect the value of the Shares or that, if a Noteholder were to have held the Shares at the time of such adjustment, such Noteholder would not have benefited to a greater extent.

Furthermore, the Conditions do not provide for certain Issuer undertakings which are sometimes included in securities that convert into the ordinary shares of an issuer to protect investors in situations where the relevant conversion price adjustment provisions do not operate to neutralise the dilutive effect of certain corporate events or actions on the economic value of the conversion price. For example, the Conditions contain neither an undertaking restricting the modification of rights attaching to the Shares nor an undertaking restricting issues of new share capital with preferential rights relative to the Notes.

Accordingly, corporate events or actions in respect of which no adjustment to the Floor Price or the Ceiling Price is made may adversely affect the value of the Notes.

In order to comply with increasing regulatory capital requirements imposed by applicable regulations, the Issuer may need to raise additional capital. For example, the Proposed Plan involves a share capital increase by the Issuer which was announced in October 2011 in connection with Banco Pastor (see "*Description of the Issuer – Recent Developments*"). The Issuer is constantly evaluating potential sources of funding, including further share capital increases and issuances of additional mandatorily convertible notes. Further capital raisings by the Issuer could result in dilution of the interests of the Noteholders, subject only to the aforementioned limited anti-dilution protections. For more information, see "*Risk Factors - Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business*".

*The obligations of the Issuer under the Notes are subordinated and will be further subordinated upon conversion into shares.*

The Notes will constitute direct, unsecured and subordinated obligations of the Issuer and will rank *pari passu* and without any preference among themselves. Save as provided below, the rights and claims of the Noteholders against the Issuer in respect of or arising under (including any damages awarded for breach of any obligation under) the Notes shall, subject to any obligations which are mandatorily preferred by law, rank:

- junior to the claims of common creditors (including depositors and holders of unsubordinated obligations of the Issuer) and to the claims of holders of all other subordinated obligations of the Issuer other than those referred to in the third bullet point below;
- junior to the claims of holders of any preferred securities (*participaciones preferentes*) issued under Law 13/1985 or any securities or instruments equivalent to preferred securities or preferred shares (whether issued under Law 13/1985 or any other law or regulation of Spain or of any other jurisdiction), in each case issued by the Issuer, or issued by any Subsidiary with the benefit of a guarantee of the Issuer;
- *pari passu* with the claims of holders of all other unsecured, subordinated obligations, notes, bonds, instruments or other securities in each case convertible into Shares and issued by the Issuer on terms similar to the Notes, or issued by any Subsidiary on terms similar to the Notes with the benefit of a guarantee of the Issuer;

- senior to the claims of holders of ordinary shares of the Issuer.

Claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the claims of holders of Shares and junior to the claims of holders referred to in the first three bullet points above (except, in the case of holders referred to in the third bullet point, holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).

If any of the circumstances giving rise to the mandatory conversion of the Notes has occurred and Shares have not been delivered to any Noteholder pursuant to Condition 10, the claim of such Noteholder in respect of the liquidation, dissolution or winding-up of the Issuer shall be the sum equal to that which holders of the number of Shares into which the Notes held by such Noteholder should have been converted at the then Conversion Price would have received out of the proceeds of the liquidation, dissolution or winding-up of the Issuer. In such circumstances, the claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the claims of holders of Shares and junior to the claims of holders referred to in the first three bullet points above (except, in the case of holders referred to in the third bullet point, holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).

Therefore, if the Issuer were wound up, liquidated or dissolved, the Issuer's liquidator would first apply assets of the Issuer to satisfy all claims of holders of unsubordinated obligations of the Issuer and other creditors ranking ahead of holders of the Notes. If the Issuer does not have sufficient assets to settle claims of prior ranking creditors in full, the claims of the Noteholders under the Notes will not be settled. The Notes will share equally in payment with subordinated obligations of the Issuer ranking *pari passu* with the Notes if the Issuer does not have sufficient funds to make full payments on all of them. In such a situation, Noteholders could lose all or part of their investment.

In addition, when the Notes are converted into Shares following a Scheduled Mandatory Conversion or if the Notes are converted into Shares following an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, each Noteholder will be effectively further subordinated due to their conversion from being the holder of a subordinated debt instrument to being the holder of Shares and there is an enhanced risk that Noteholders will lose all or some of their investment.

*If a Conversion Notice is not delivered by a Noteholder, the Issuer may, in its sole and absolute discretion, cause the sale of any Shares underlying the Notes.*

In order to obtain delivery of the relevant Shares and the payment of interest, if any, the relevant Noteholder must deliver a duly completed Conversion Notice in accordance with the provisions set out under "*Terms and Conditions of the Notes—The Equity Option*". If a duly completed Conversion Notice is not so delivered, then (save as provided below) on the Notice Cut-Off Date, the Issuer may, in its sole and absolute discretion, elect to appoint a person (the "**Selling Agent**") to take delivery of all Shares in respect of which no duly completed Conversion Notice has been duly delivered. The Selling Agent shall hold such Shares until the date falling on the third anniversary of their delivery to the Selling Agent. Thereafter the Selling Agent may sell the Shares, but it shall have no obligation to do so.

If any Noteholder is unable to take delivery of Shares due to any applicable laws or regulations, or any judicial or administrative order or decision, in the jurisdiction of residence of such Noteholder, or due to any provisions of the constitutive documents such Noteholder, then, subject to receipt of satisfactory evidence of the same, the Issuer shall appoint a Selling Agent, at such Noteholder's cost and expense, to register the relevant Shares in a third-party account of the Issuer with Iberclear on such Noteholder's behalf and use its reasonable endeavours to sell the relevant Shares.

Because, in the event of an Insolvency Event, a Contingency Event or Viability Event, investors are likely to receive Shares at a time when both the conversion ratio and the market price of the Shares are diminished, the cash value of the Shares received upon the sale could be substantially lower than the price paid for the Notes at the time of their purchase. In addition, the proceeds of the Shares received upon sale may be further reduced as a result of the number of Shares offered for sale at the same time than would be the case in sales by individual Noteholders.

*There are limited remedies available under the Notes.*

There are no Events of Default under the Notes. In the event that the Issuer fails to make any payments or deliver any Shares when the same may be due, the remedies of holders are limited to bringing a claim for breach of contract and, in the case of enforcing payment of sums due, to instituting proceedings for, and/or proving in, the winding-up, dissolution or liquidation of the Issuer.

*Registration of the Share by Iberclear in the name of the Noteholder or its Nominee shall be good and complete discharge of the Issuer's obligations in respect of the Notes.*

Following conversion of the Notes, the Issuer will procure that the relevant number of Shares are issued and registered by Iberclear in an account of such Noteholder (or its nominee) within Iberclear. Registration of the Shares by Iberclear and the payment in cash of any and all accrued (and due) but unpaid interest on such Notes, shall be a good and complete discharge of the Issuer's obligations in respect of the Notes and a Noteholder shall have recourse only to Iberclear or the relevant nominee for receiving all payments and exercising any rights in respect of such Shares and the payment to it of interest, if any. In no event will Noteholders be entitled to receive American depositary shares ("ADSs") upon conversion and a Noteholder may not be able to deposit the Shares it receives upon conversion into the ADS deposit facility. The Issuer shall have no liability for the performance of the obligations of Iberclear or any nominee.

*Prior to the issue and registration of the Shares following the occurrence of a Conversion Event, Noteholders will not be entitled to any rights with respect to the Shares, but will be subject to all changes made with respect to the Shares.*

Any pecuniary rights with respect to the Shares, in particular the entitlement to dividends shall only arise and the exercise of voting rights and rights related thereto with respect to any Shares is only possible after the date on which, following conversion, as a matter of Spanish law the relevant Shares are issued and the person entitled to the Shares is registered as a shareholder in Iberclear (or its participant entities) in accordance with the provisions of, and subject to the limitations provided in, the articles of association of the Issuer. Therefore, any failure by the Issuer to issue, or effect the registration of, the Shares after the occurrence of a Conversion Event shall result in the Noteholders not receiving any benefits related to the holding of the Shares and, on a liquidation, dissolution or winding-up of the Issuer, the claim of any such Noteholders shall be to the sum equal to that which holders of the number of Shares into which the Notes held by such Noteholder should have been converted at the then Conversion Price would receive, as more particularly described in Condition 4(c).

*Noteholders may be obliged to make a Take-over Bid in case of a Contingency Event or Viability Event if they take delivery of Shares.*

Upon the occurrence of a Conversion Event, a Holder receiving Shares may have to make a take-over bid addressed to the shareholders of the Issuer pursuant to Law 24/1988, of 28 July, on the Securities Market (*Ley 24/1988, de 28 de julio, del Mercado de Valores*) and Royal Decree 1066/2007, of 27 July (*Real Decreto 1066/2007, de 27 de julio, sobre el régimen de las ofertas públicas de adquisición de valores*), which have implemented Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004, if its aggregate holding in the Issuer exceed 30 per cent. of the voting rights or if its aggregate holding in the Issuer is less than 30 per cent of the voting rights, but within the 24 months following the date on which it has acquired that lower percentage, it nominates a number of directors that, together with those it had already nominated in the past, as the case may be, represent more than half of the members of the company's management body in the Issuer as a result of the mandatory conversion of the Notes into Shares.

*Noteholders may be subject to disclosure obligations and/or may need approval by the Issuer's Regulator.*

As the Notes are mandatorily convertible into Shares, an investment in the Notes may result in Holders, upon conversion of their Notes into Shares, having to comply with certain approval and/or disclosure requirements pursuant to Spanish laws and regulations as described under "*Description of the Shares-Legal Restrictions on Acquisitions of Shares in Spanish Banks*" and "*Description of the Shares-Reporting Requirements*". Non-compliance with such approval and/or disclosure requirements may lead to the incurrance by Holders of substantial fines and/or suspension of voting rights associated with the Shares.

Each potential investor should consult its legal advisers as to the terms of the Notes (in particular as to conversion).

*Shares to be delivered upon conversion of the Notes will be delivered through Iberclear.*

The Notes will be delivered and traded in Euroclear and/or Clearstream, Luxembourg. Shares to be delivered upon conversion of the Notes will be delivered in uncertificated form through the dematerialised securities trading system operated by *Iberclear*. Accordingly, in the event of conversion of Notes into Shares to be delivered in uncertificated form, Noteholders will be required to specify in their Conversion Notice details of the Iberclear account and the name or names in which the newly-issued Shares shall be issued and registered. Noteholders who do not timely present a duly completed and valid Conversion Notice including such identifying information may not receive shares on the conversion of the Notes.

*There is no restriction on the amount or type of further securities or indebtedness which the Issuer may incur.*

There is no restriction on the amount or type of further securities or indebtedness which the Issuer may issue or incur which ranks senior to, or *pari passu* with, the Notes offered hereby. The incurrence of any such further indebtedness may reduce the amount recoverable by Noteholders on a winding-up of the Issuer under the Notes and may limit the ability of the Issuer to meet their respective obligations under the Notes. In addition, the Notes do not contain any restriction on the Issuer issuing securities that may have preferential rights to the Shares or securities with similar or preferential terms to the Notes.

*In certain instances Noteholders may be bound by certain amendments to the Notes to which they did not consent.*

The Conditions of the Notes contain provisions for calling meetings of a syndicate of Noteholders to consider matters affecting their interests generally. These provisions permit defined majorities to bind all Noteholders to amendments to the terms and conditions of the Notes, including Noteholders who did not attend and vote at the relevant meeting and Noteholders who voted in a manner contrary to the majority.

#### **Risk Factors associated with the market generally**

*The Global Notes will be held by or on behalf of Euroclear and Clearstream, Luxembourg and investors will have to rely on their procedures for transfer, payment, voting and communication with the Issuer.*

The Notes will be represented by one or more Global Notes, which will be deposited with a common depositary for Euroclear and Clearstream, Luxembourg. Except in certain limited circumstances described in the Permanent Global Note, investors will not be entitled to receive Notes in definitive form. Euroclear and Clearstream, Luxembourg will maintain records of the beneficial interests in the Permanent Global Note. While the Notes are represented by one or more Global Notes, investors will be able to trade their beneficial interests only through Euroclear or Clearstream, Luxembourg.

The Issuer will discharge its payment obligations under the Notes by making payments to the common depositary for Euroclear and Clearstream, Luxembourg for distribution to their account holders. A holder of a beneficial interest in a Global Note must rely on the procedures of Euroclear and Clearstream, Luxembourg to receive payments under the Notes. The Issuer has no responsibility or liability for the records relating to, or payments made in respect of, beneficial interests in the Global Notes.

Noteholders of beneficial interests in the Global Notes will not have a direct right to vote in respect of the Notes. Instead, such Noteholders will be permitted to act only to the extent that they are enabled by Euroclear or Clearstream, Luxembourg to appoint appropriate proxies.

*The Notes are not covered by any government compensation or insurance scheme and do not have the benefit of any government guarantee.*

An investment in the Notes will not be covered by any compensation or insurance scheme of any government agency of the Kingdom of Spain or any other jurisdiction and the Notes do not have the benefit of any government guarantee. The Notes are the obligations of the Issuer only and Noteholders must solely look to the Issuer for the performance of the Issuer's obligations under the Notes. In the event of the insolvency of the Issuer, a Noteholder may lose all or some of its investment in the Notes.

*Payments on the Notes and Shares may be subject to U.S. withholding under FATCA.*

The Issuer and other financial institutions through which payments on the Notes or Shares are made may be required to withhold at a rate of up to 30 per cent. on all, or a portion of, payments made after 31 December 2016 in respect of the Shares as well any Notes which are issued (or materially modified) after 31 December 2012 or that are treated as equity for U.S. federal tax purposes whenever issued, pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code (commonly referred to as "**FATCA**").

The Issuer is a foreign financial institution ("**FFI**") for the purposes of FATCA. If the Issuer becomes obliged to provide certain information on its account holders pursuant to a FATCA agreement with the U.S. Internal Revenue Service ("**IRS**") (i.e. the Issuer is a "**Participating FFI**") then withholding may be triggered if: (i) the Issuer has a positive "passthru payment percentage" (as determined under FATCA), and (ii) (a) an investor does not provide information sufficient for the relevant Participating FFI to determine whether the investor is a U.S. person or should otherwise be treated as holding a "United States Account" of the Issuer, (b) an investor does not consent, where necessary, to have its information disclosed to the IRS or (c) any FFI that is an investor, or through which payment on the Notes or Shares is made, is not a Participating FFI.

If an amount in respect of FATCA were to be deducted or withheld from interest, principal, dividends or other payments on or with respect to the Notes or Shares, the Issuer would have no obligation to pay additional amounts or otherwise indemnify a holder for any such withholding or deduction by the Issuer, a Paying Agent or any other party as a result of the deduction or withholding of such amount. As a result, investors may, if FATCA is implemented as currently proposed by the IRS, receive less interest or principal than expected.

An investor that is withheld upon generally will be able to obtain a refund only to the extent an applicable income tax treaty with the United States entitles the investor to a reduced rate of tax on the payment that was subject to withholding under FATCA, provided the required information is furnished in a timely manner to the IRS.

Significant aspects of the application of FATCA are not currently clear and the above description is based on proposed regulations and interim guidance. Investors should consult their own advisors about the application of FATCA, in particular if they may be classified as financial institutions under the FATCA rules.

*The EU Savings Directive imposes certain informational and withholding requirements, which are subject to change.*

Under EC Council Directive 2003/48/EC on the taxation of savings income (for the purposes of the following paragraph, the "**Directive**"), each Member State is required to provide to the tax authorities of another Member State details of payments of interest or other similar income paid by a person within its jurisdiction to, or collected by such a person for, an individual resident or certain limited types of entity established in that other Member State. However, for a transitional period, Austria, Belgium and Luxembourg may instead apply a withholding system in relation to such payments, deducting tax at rates rising over time to 35 per cent. The transitional period is to terminate at the end of the first full fiscal year following agreement by certain non EU countries to the exchange of information relating to such payments.

A number of non EU countries, and certain dependent or associated territories of certain Member States, have adopted similar measures (either provision of information or transitional withholding) in relation to payments made by a person within its jurisdiction to, or collected by such a person for, an individual resident or certain limited types of entity established in a Member State. In addition, the Member States have entered into provision of information or transitional withholding arrangements with certain of those dependent or associated territories in relation to payments made by a person in a Member State to, or collected by such a person for, an individual resident or certain limited types of entity established in one of those territories.

On 13 November 2008 the European Commission published a proposal for amendments to the Directive, which included a number of suggested changes which, if implemented, would broaden the scope of the requirements described above. The European Parliament approved an amended version of this proposal on 24 April 2009. If any of the proposed changes are made in relation to the Directive, they may amend

or broaden the scope of the requirements described above. Investors who are in any doubt as to their position should consult their professional advisers.

If a payment were to be made or collected through a Member State which has opted for a withholding system and an amount of, or in respect of tax were to be withheld from that payment, neither the Issuer nor any Paying Agent nor any other person would be obliged to pay additional amounts with respect to any Notes as a result of the imposition of such withholding tax. If a withholding tax is imposed on payment made by a Paying Agent, the Issuer will be required to maintain a Paying and Conversion Agent in a Member State that will not be obliged to withhold or deduct tax pursuant to the Directive.

*No public market exists for the Notes, and there are uncertainties regarding the existence of any trading market for the Notes.*

The Notes are new securities which may not be widely distributed and for which there is currently no active trading market.

If the Notes are traded after their initial issuance, they may trade at a discount to their issue price, depending upon prevailing interest rates, the market for similar securities, general economic conditions, the Issuer's results of operations, fluctuations in the Issuer's Capital Ratio and the market price of the Shares. Therefore, investors may not be able to sell their Notes easily or at prices that will provide them with a yield comparable to similar investments that have a developed secondary market. This is particularly the case for Notes as they are especially sensitive to interest rate, currency and market risks, are designed for specific objectives and may meet the investment requirements and mandates of limited categories of investors. These types of Notes generally would have a more limited secondary market and more price volatility than conventional debt securities.

Although applications have been made for the Notes to be listed on the Official List of the London Stock Exchange and to trading on the Professional Securities Market, there can be no assurance that such applications will be accepted or that an active trading market in the Notes will develop. Accordingly, there can be no assurance as to the development or liquidity of any trading market for the Notes. Illiquidity may have a severely adverse effect on the market value of the Notes.

None of the Issuer, any other Group company or the Dealer Managers has any duty to make a market in any Notes.

*The market value of the Notes may be influenced by unpredictable factors.*

Many factors, most of which are beyond the Issuer's control, will influence the value of the Notes and the price, if any, at which securities dealers may be willing to purchase or sell the Notes in the secondary market, including:

- (i) the trading price of the Shares;
- (ii) the creditworthiness of the Issuer;
- (iii) supply and demand for the Notes; and
- (iv) economic, financial, political or regulatory events or judicial decisions that affect the Issuer or the financial markets generally.

Accordingly, if a holder sells its Notes in the secondary market, it may not be able to obtain a price equal to the principal amount of the Notes or a price equal to the price that it paid for the Notes.

*Since Noteholders receive Shares upon a Scheduled Mandatory Conversion, an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, they are particularly exposed to changes in the market price of the Shares.*

Many investors in convertible or exchangeable securities seek to hedge their exposure in the underlying equity securities at the time of acquisition of the convertible or exchangeable securities, often through short selling of the underlying equity securities or through similar transactions. Prospective investors in the Notes may look to sell Shares in anticipation of taking a position in, or during the term of, the Notes. This could cause downward pressure on the price of the Shares. Since the Notes will mandatorily convert

into a variable number of Shares upon a Scheduled Mandatory Conversion, an Insolvency Event, a Contingency Event, a Viability Event or a Capital Treatment Event, the price of the Shares may be more volatile from the date of issue of the Notes.

*The price of the Shares may decrease.*

The trading price of the Shares of the Issuer may decrease as a result of a diverse range of factors, including the Issuer's results of operation, changes in research analyst recommendations or changes in the financial markets.

The number of Shares to be received by the Noteholders upon conversion will vary in accordance with the average price of a Share (derived from or published by the SBIE) on each of the 15 consecutive dealing days ending on the Exchange Business immediately preceding the relevant Conversion Date or the Closing Price of an Ordinary Share multiplied by 0.75 used as reference to determine the Conversion Price. Investors may suffer losses on their original investment:

- (i) If the Conversion Price is greater than the trading price of the Shares at the time of delivery of the Shares, since the Issuer has a limited period to carry out the necessary capital increase and apply for the admission of the Shares to trading;
- (ii) If the average price of a Share on each of the 15 consecutive Exchange Business Days ending on the Exchange Business Day immediately preceding the relevant Conversion Date, or the Closing Price of an Ordinary Share multiplied by 0.75, used as reference to determine the Conversion Price, is lower than EUR 1.00, since in that case the Conversion Price would be set at EUR 1.00, this being the minimum Conversion Price, provided that at the time of delivery of the Shares, the trading price of the Shares is below EUR 1.00.

*Noteholders are subject to interest rate risks.*

Because the Notes bear a fixed rate of interest, an investment in the Notes involves the risk that subsequent changes in market interest rates may adversely affect the value of the Notes.

*Exchange rate fluctuations may affect the value of the Notes and the Shares.*

The Issuer will pay principal and interest on the Notes in Euros. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the "**Investor's Currency**") other than Euros. These include the risk that exchange rates may significantly change (including changes due to devaluation of Euros or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. An appreciation in the value of the Investor's Currency relative to Euros would decrease (1) the Investor's Currency-equivalent yield on the Notes, (2) the Investor's Currency-equivalent value of the principal payable on the Notes and (3) the Investor's Currency equivalent market value of the Notes.

Government and monetary authorities may impose exchange controls that could adversely affect an applicable exchange rate. As a result, investors may receive less interest or principal than expected, or no interest or principal. Any of the foregoing events could adversely affect the price of the Notes and the Shares.

## TERMS AND CONDITIONS OF THE NOTES

*The following are the terms and conditions of the Notes substantially as they will appear attached to each Note in definitive form. For ease of reference these terms and conditions are divided into sections dealing with: the definitions used in these terms and conditions (Conditions 1-2); the debt security (Conditions 3-10); the equity option (Conditions 11-13); adjustments to the floor price and ceiling price for conversion (Conditions 14-23); covenants relating to the equity option (Conditions 24-25); and miscellaneous provisions (Conditions 26-32). This paragraph, and any other paragraphs appearing in italics in these terms and conditions, do not form part of these terms and conditions.*

### INTRODUCTION AND DEFINITIONS

#### 1. Introduction

- (a) *The Notes:* The expression the "**Notes**" refers to the €[•] 4.5 per cent. Subordinated Mandatorily Convertible Notes due 2014 of Banco Popular Español, S.A. (the "**Issuer**").

The issue of the Notes was authorised by resolutions of the Board of Directors of the Issuer passed on 25 April 2012 on the basis of the authorisation granted by a resolution of the Ordinary General Meeting of Shareholders passed on 8 April 2011 and by the decisions of the Executive Committee of the Issuer dated 19 June 2012, on the basis of the authorisation granted by the Board of Directors of the Issuer passed on 25 April 2012.

The Issuer, as required by Spanish law, has executed an *escritura pública* (the "**Public Deed**") before a Spanish notary public in relation to the issue of the Notes and has registered the Public Deed with Mercantile Registry of Madrid. The Public Deed contains, among other information, these Terms and Conditions (translated into Spanish).

- (b) *Agency Agreement:* The Notes are also the subject of an agency agreement dated 29 June 2012 (as amended or supplemented from time to time, the "**Agency Agreement**") between the Issuer, The Bank of New York Mellon as principal paying and conversion agent (the "**Principal Paying and Conversion Agent**", which expression includes any successor principal paying and conversion agent appointed from time to time in connection with the Notes, and together with any other paying and conversion agents that accede to the Agency Agreement from time to time, the "**Paying and Conversion Agents**").
- (c) *Summaries:* Certain provisions of these Conditions are summaries of the Agency Agreement and subject to its detailed provisions. The holders of the Notes (the "**Noteholders**") and the holders of the related interest coupons (the "**Couponholders**" and the "**Coupons**", respectively) are deemed to have notice of, all the provisions of the Agency Agreement applicable to them. Copies of the Agency Agreement are available for inspection by Noteholders during normal business hours at the Specified Offices for the time being of each of the Paying and Conversion Agents, the initial Specified Offices of which are set out below.

#### 2. Interpretation

- (a) *Definitions:* In these Conditions the following expressions have the following meanings:

"**Accrued Conversion Interest**" means, in the case of the Conversion of the Notes pursuant to Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*) only, interest accrued on the Notes, if any, from (and including) the Interest Payment Date immediately preceding the date of publication of the Scheduled Mandatory Conversion Notice (or, if none, from the Issue Date) to (but excluding) the relevant Conversion Date;

"**Accrued Distributions Payable**" means an amount equal to the aggregate of all amounts of interest or other distributions scheduled to be paid in respect of Parity Securities during the then-current Financial Year falling after the Interest Payment Date referred to in Condition 5(b)(B) (*Interest – Limitations on Interest Payment*);

"**Accrued Interest Payable**" means an amount equal to the aggregate of all amounts of interest scheduled to be paid in respect of the Notes on all Interest Payment dates during the then-current Financial Year falling after the Interest Payment Date referred to in Condition 5(b)(A) (*Interest – Limitations on Interest Payment*);

"**Additional Tier 1 Capital**" means, at any time, any or all items constituting additional tier 1 capital within the meaning of the Capital Regulations;

"**Aggregate Consideration**" has the meaning given in Condition 23 (*Aggregate Consideration and Consideration per Share*);

"**Auditor**" means the accounting firm appointed by the Board of Directors or shareholders of the Issuer from time to time, as the case may be, to provide, *inter alia*, audit and review opinions on the Issuer's and the Group's financial statements;

"**Authorised Signatory**" means an officer, director, senior manager or other person authorised in writing by or on behalf of the Issuer to make any statement contemplated to be made by such person herein on the Issuer's behalf;

"**Basel III Document**" means the Basel Committee on Banking Supervision document "*Basel III: A global regulatory framework for more resilient banks and banking systems*" published in December 2010;

"**Bonus Issue**" means any issue of Shares credited as fully paid to the Shareholders by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) which does not constitute a Dividend;

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in Madrid;

"**Capital Adequacy Regulations**" means the National Regulations together with the Capital Regulations, taken together with the prevailing capital adequacy regulations promulgated by the European Commission and/or the European Parliament and/or the Council of the European Union and applicable to the Issuer, from time to time;

"**Capital Regulations**" means any European Commission and/or European Parliament and/or Council of the European Union regulations that incorporate and implement all or a substantial part of the regulatory guidelines set out in the Basel III Document;

"**Capital Regulations Date**" means the first date on which the Issuer is required to comply with the Capital Regulations;

"**Capital Treatment Event**" has the meaning given in Condition 10(b)(iv) (*Mandatory Conversion Upon Capital Treatment Event*);

"**Capital Treatment Event Notice**" means the notice substantially in the form scheduled to the Agency Agreement that the Issuer shall give to the Noteholders stating that a Capital Treatment Event has occurred;

"**Cash Dividend**" means any Dividend which is to be paid or made in cash (in whatever currency) *provided that*:

- (i) any Dividend determined to be a Cash Dividend pursuant to sub-paragraph (iii) of the definition of "Dividend" shall constitute a Cash Dividend;
- (ii) a Dividend falling within sub-paragraphs (v) or (vi) of the definition of "Dividend" shall not constitute a Cash Dividend; and
- (iii) a Dividend falling within sub-paragraph (ii) of the definition of "Spin-Off" shall not constitute a Cash Dividend;

"**CET1 Capital**" means (a) prior to the Capital Regulations Date, all items that constitute common equity tier 1 capital (*capital predominante*) within the meaning of that term in the National Regulations, and (b) on or after the Capital Regulations Date, all items that constitute common equity tier 1 capital within the meaning of that term in the Capital Adequacy Regulations applicable at the relevant time;

"**CET1 Capital Amount**" means, at any time, the aggregate amount of all items of CET1 Capital of the Group as calculated by the Issuer and expressed in the Issuer's reporting currency at such time;

"**CET1 Capital Instruments**" means, at any time, any or all securities and other instruments issued by the Issuer or a member of the Group, as the case may be, that are, at such time, eligible to be treated as CET1 Capital;

"**CET1 Capital Ratio**" means, in respect of any Quarterly Reporting Period and pursuant to the Capital Adequacy Regulations, the ratio as calculated by the Issuer (expressed as a percentage) of the CET1 Capital Amount divided by the RWA Amount or such other equivalent amount or amounts as may be required by the Capital Adequacy Regulations, as at the date of the relevant Quarterly Financial Report;

"**CET1 Capital Ratio Threshold**" means, at any time, 5.125 per cent. or such other lower percentage as may be provided for under prevailing Capital Adequacy Regulations from time to time;

"**CET1 Capital Ratio Contingency Event Notice**" means the notice in substantially the form scheduled to the Agency Agreement from the Issuer to the Noteholders in accordance with Condition 31 (*Notices*) stating that (i) a CET1 Capital Ratio Contingency Event has occurred; and (ii) a Contingency Event Conversion will take place;

"**Commissioner**" means the commissioner (*comisario*) as that term is defined in the Consolidated Text of the Law on Limited Liability Companies, as approved by Royal Decree-Law 1/2010 dated 2 July 2010 (*Texto Refundido de la Ley de Sociedades de Capital*);

"**Consideration per Share**" has the meaning given in Condition 23 (*Aggregate Consideration and Consideration per Share*);

"**Contingency Event**" means either an EBA Capital Ratio Contingency Event, a CET1 Capital Ratio Contingency Event or a Loss Absorption Contingency Event;

"**Contingency Event Notice**" means either an EBA Capital Ratio Contingency Event Notice, a CET1 Capital Ratio Contingency Event Notice or a Loss Absorption Contingency Event Notice;

"**Conversion Date**" has the meaning given in Condition 11(f) (*Procedure for Conversion - Conversion Date*);

"**Conversion Expenses**" has the meaning given in Condition 11(c) (*Procedure for Conversion - Conversion Expenses*);

"**Conversion Event**" means a Scheduled Mandatory Conversion (as defined in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*)), an Insolvency Event (as defined in Condition 10(b)(i) (*Conversion - Mandatory Conversion Upon Insolvency Event*)), a Contingency Event (as defined in 10(b)(ii) (*Conversion - Mandatory Conversion Upon Contingency Event*)), a Viability Event (as defined in 10(b)(iii) (*Conversion - Mandatory Conversion Upon Viability Event*)) or a Capital Treatment Event (as defined in Condition 10(b)(iv) (*Mandatory Conversion Upon Capital Treatment Event*));

"**Conversion Event Notice**" means a Scheduled Mandatory Conversion Notice, an Insolvency Event Notice, a Contingency Event Notice, a Viability Event Notice or a Capital Treatment Event Notice, in each case in the form (for the time being current) obtainable from the Specified Office of any Paying and Conversion Agent;

"**Conversion Notice**" has the meaning given in Condition 11(b)(i) (*Conversion Notice and Endorsement of Note*);

"**Conversion Price**" has the meaning given in Condition 10(f) (*Conversion - Conversion Price*);

"**Core Tier 1 Amount**" means the aggregate amount of core tier 1 capital of the Group as determined by the Issuer pursuant to EBA Recommendations applicable at the relevant time, expressed in the Issuer's reporting currency;

"**Day Count Fraction**" means, in respect of any period, the number of days in the relevant period, from (and including) the first day in such period to (but excluding) the last day in such period, divided by the number of days in the Regular Period in which the relevant period falls;

"**Determined by an Expert**" means determined in good faith by an Expert acting as an expert;

"**Distributable Profits**" means, in respect of any Financial Year, the sum of:

- (i) the lesser of the net profit (calculated in accordance with the Regulator's calculation standards), of (A) the Issuer and (B) the Group, in each case, as reflected in the reserved financial statements of the Issuer and the Group, respectively, approved by the Board of Directors of the Issuer and submitted to the Regulator in compliance with regulations applicable from time to time to financial institutions relating to their obligation to file such financial statements (the "**Reserved Financial Statements**"), and
- (ii) Accrued Interest Payable, and
- (iii) Accrued Distributions Payable.

Circular 4/2004, of 22 December 2004, on Public and Restricted Financial Reporting Standards and Model Financial Statements shall be applicable to any such Reserved Financial Statements. In the event that on any Interest Payment Date, the Reserved Financial Statements of the Issuer and/or the Group, respectively, have not been submitted to the Regulator, the Distributable Profits shall be the sum of:

- (A) the lesser of the net profit (calculated in accordance with the Regulator's calculation standards), of (1) the Issuer and (2) the Group, in each case determined by reference to the latest Reserved Financial Statements of the Issuer and the Group, respectively, and
- (B) Accrued Interest Payable, and
- (C) Accrued Distributions Payable.

In all cases, the net profit shown in the Reserved Financial Statements of the Issuer and the Group, respectively, shall be annual audited figures and if the net profit figure contained in such Reserved Financial Statements is different from that contained in the published annual financial statements of the Group, prepared in accordance with Circular 4/2004, of 22 December 2004, on Public and Restricted Financial Reporting Standards and Model Financial Statements, the amount of, and reason for, such difference shall be highlighted by the Issuer in the relevant annual report prepared by it containing such published annual financial statements of the Group;

"**Dividend**" means any dividend or distribution of any kind whatsoever attributable to Shareholders whether of cash or other property and however described *provided that*:

- (i) a Spin-Off shall constitute a Dividend;
- (ii) a distribution or payment to Shareholders upon or in connection with a reduction of capital shall constitute a Dividend;

- (iii) where a Dividend in cash is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Shares or other property or assets, or where a capitalisation of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of cash, then the Dividend or capitalisation in question shall be treated as a Cash Dividend of the greater of:
  - (A) such cash amount; and
  - (B) the Reference Market Price of such Shares or, as the case may be, the Fair Market Value of such other property or assets (as at the date of the first public announcement of such Dividend or capitalisation (as the case may be) or, if later, the date on which the number of Shares (or amount of property or assets, as the case may be) which may be issued or transferred and delivered is determined);
- (iv) subject as provided in (iii) above, a Bonus Issue shall not constitute a Dividend;
- (v) a purchase or redemption or buy back of share capital of the Issuer by the Issuer or any of its Subsidiaries shall only constitute a Dividend if the weighted average price per Share (before expenses) on any one day in respect of such purchases or redemptions or buy backs (translated, if not in euros, into euros at the Prevailing Rate on such day) exceeds by more than 5 per cent. the average of the Officially Published VWAP of the Shares on the Relevant Exchange on the five Exchange Business Days immediately preceding such day, in which case such purchase, redemption or buy back shall be deemed to constitute a Dividend to the extent that the aggregate price paid (before expenses) in respect of such Shares purchased, redeemed or bought back by the Issuer or, as the case may be, any of its Subsidiaries (translated where appropriate into euros as provided above) exceeds the product of (a) 105 per cent. of the average VWAP of the Shares determined as provided above and (b) the number of Shares so purchased, redeemed or bought back *provided, however, that* where an announcement (excluding, for the avoidance of doubt, any general authority for such purchases, redemptions or buy backs approved by a general meeting of Shareholders or any notice convening such a meeting of Shareholders) has been made of the intention to purchase, redeem or buy back Shares at some future date at a specified price or where a tender offer is made, the relevant five Exchange Business Days shall be the five Exchange Business Days immediately preceding the date of such announcement; and
- (vi) if the Issuer or any of its Subsidiaries shall purchase, redeem or buy back any depositary receipts (or any other receipts or certificates) representing Shares, the provisions of (v) above shall be applied in respect thereof in such manner and with such modifications (if any) as shall be Determined by an Expert;

"EBA" means the European Banking Authority and any successor regulatory authority or authorities;

"EBA Capital Ratio" means in respect of any Quarterly Reporting Period, the ratio (expressed as a percentage) of the Core Tier 1 Amount divided by the RWA Amount, as at the date of the relevant Quarterly Financial Report;

"EBA Capital Ratio Contingency Event Notice" means the notice substantially in the form scheduled to the Agency Agreement from the Issuer to the Noteholders in accordance with Condition 31 (*Notices*) stating that (i) an EBA Capital Ratio Contingency Event has occurred; and (ii) a Contingency Event Conversion will take place;

"EBA Capital Ratio Threshold" means, at any time, 7 per cent. or, at the relevant time, such other lower percentage as may be provided for under prevailing EBA Recommendations;

"EBA Recommendations" means EBA/REC/2011/1 (*EBA Recommendation on the creation and supervisory oversight of temporary capital buffers to restore market confidence*) or such other recommendations of the EBA that supplement, modify or replace it from time to time;

"**Effective Date**" has, for the purposes of any Condition in which such expression is used, the meaning given in the relevant Condition;

"**Euro**", "**euro**" or "**euros**" refers to the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community;

"**Exchange Business Day**" means any day that is a trading day on the Relevant Exchange other than a day on which the Relevant Exchange is scheduled to close prior to its regular weekday closing time;

"**Expert**" means, in relation to any matter to be Determined by an Expert, an independent investment bank and/or a firm of accountants which is, in either case, of international repute, appointed to act as an expert for the purposes of such matter in accordance with these Conditions;

"**Extraordinary Dividend**" has the meaning given in Condition 13(b) (*Dividends – Extraordinary Dividend*);

"**Fair Market Value**" means,

- (i) with respect to a Cash Dividend or other cash amount the amount of such cash; and
- (ii) with respect to any other property on any date, the fair market value of that property as of that date as Determined by an Expert,

*provided, however, that in any such case:*

- (A) where Securities, Spin-Off Securities, options, warrants or other rights are publicly traded in a market which is Determined by an Expert to have adequate liquidity, the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such Securities, Spin-Off Securities, options, warrants or other rights during the period of five trading days on the relevant market commencing on such date (or, if later, the first such trading day such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights are publicly traded;
- (B) where Securities, Spin-Off Securities, options, warrants or other rights are not publicly traded on a stock exchange or securities market of adequate liquidity (as aforesaid), the Fair Market Value of such Securities, Spin-Off Securities, options, warrants or other rights shall be Determined by an Expert, on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, including the market price per Share, the dividend yield of a Share, the volatility of such market price, prevailing interest rates and the terms of such Securities, Spin-Off Securities, options, warrants or other rights, including as to the expiry date and exercise price (if any) thereof;
- (C) any Cash Dividend declared or paid in a currency other than euros shall be translated into euros at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid the Cash Dividend in euros;
- (D) any other amount or value in a currency other than euros shall be translated into euros at the Prevailing Rate on that date; and
- (E) the amount or value shall be determined on a gross basis disregarding any withholding or deduction required to be made on account of tax and disregarding any associated tax credit;

**"Financial Year"** means, in respect of the Issuer, any accounting period in respect of which audited annual financial statements of the Issuer have been published or are expected to be published;

**"Floor Price"** means €1.00;

**"Group"** means the Issuer together with its consolidated Subsidiaries, in accordance with Article 8(3) of Law 13/1985, Royal Decree 216/2008 and Bank of Spain Circular 3/2008;

**"Iberclear"** means the Spanish clearing and settlement system (*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.*);

**"Insolvency Event Notice"** has the meaning given in Condition 10(b)(i) (*Conversion – Mandatory Conversion Upon Insolvency Event*);

**"Interest Payment Date"** has the meaning given in Condition 5(a) (*Interest - Interest payment*);

**"Issue Date"** means 29 June 2012;

**"Loss Absorption Contingency Event Notice"** means the notice substantially in the form scheduled to the Agency Agreement from the Issuer to the Noteholders in accordance with Condition 31 (*Notices*) stating that (i) a Loss Absorption contingency Event Notice has occurred; and (ii) a Contingency Event Conversion will take place;

**"National Regulations"** means the prevailing Spanish national banking and capital adequacy laws directly applicable to the Issuer, from time to time, taken together with the prevailing capital adequacy regulations promulgated by the Regulator and applicable to the Issuer from time to time;

**"Non-Cash Dividend"** means any Dividend which is not a Cash Dividend and shall include a Spin-Off;

**"Officially Published"** means:

- (i) in relation to the Notes, published in accordance with the laws, rules or regulations governing publication of information to holders of debt securities admitted to listing, trading and/or quotation by the United Kingdom Listing Authority and/or the London Stock Exchange plc; and
- (ii) in relation to the Shares, for so long as the Shares are admitted to trading on the Stock Exchanges, published in accordance with the laws, rules or regulations governing publication of information to holders of equity securities admitted to listing, trading and/or quotation by the Relevant Exchange;

**"Parity Securities"** means any obligations, notes, bonds, instruments or other securities in each case convertible into Shares and ranking *pari passu* with the Notes, any preferred securities (*participaciones preferentes*) issued under Law 13/1985 or any securities or instruments equivalent to preferred securities or preferred shares (whether issued under Law 13/1985 or any other law or regulation of Spain or of any other jurisdiction), in each case issued by the Issuer, or issued by any Subsidiary with the benefit of a guarantee of the Issuer, but excluding any such securities the interest or distribution payment in respect of which is paid from the Issuer's reserves;

**"Payment Business Day"** means, in respect of any place of presentation of any Note or Coupon, any day on which banks are open for presentation and payment of bearer debt securities and for dealings in foreign currencies in such place of presentation and, in the case of payment by transfer to a Euro account as referred to in Condition 7 (*Payments*), on which the TARGET2 System is open;

**"Prevailing Rate"** means, in respect of any currencies on any day, the spot rate of exchange between the relevant currencies prevailing as at or about 12 noon (London time) on that date as appearing on or derived from the Reference Page or, if such a rate cannot be determined at such time, the rate prevailing as at or about 12 noon (London time) on the immediately preceding day on which such rate can be so determined or, if such rate cannot be so determined by reference to the Reference Page, the rate Determined by an Expert;

**"Previous Relevant Cash Dividends"** has the meaning given in Condition 13(b) (*Dividends – Extraordinary Dividend*);

**"Public Sector"** means the European Central Bank, the European Commission, the Federal or central government of Spain, any regional or local government with Spain, government or the central bank of the Kingdom of Spain;

**"Quarterly Financial Report"** means the financial accounts and disclosures of the Issuer and the Group in respect of a calendar quarterly reporting period (the **"Quarterly Reporting Period"**) contained in a customary financial report published by the Issuer;

**"Rate of Interest"** means 4.5 per cent. per annum;

**"Record Date"** means, in respect of any entitlement to receive any dividend or other distribution declared, paid or made, or any rights granted, the record date or other due date for the establishment of the relevant entitlement;

**"Reference Page"** means the relevant page on Bloomberg or such other information service provider that displays the relevant information;

**"Reference Market Price"** means in respect of a Share on any Exchange Business Day, the average of the daily VWAP of a Share on each of the 15 consecutive Exchange Business Days ending on and including such Exchange Business Day (the **"Reference Period"**); provided that, if at any time during the Reference Period the VWAP shall have been based on a price ex-Dividend (or ex- any other entitlement) and during some other part of that Reference Period the VWAP shall have been based on a price cum-Dividend (or cum- any other entitlement), then:

- (i) if the Shares to be issued or delivered (if applicable) do not rank for the Dividend (or entitlement) in question, the VWAP on the dates on which the Shares shall have been based on a price cum-Dividend (or cum- any other entitlement) shall, for the purposes of this definition, be deemed to be the amount thereof reduced by an amount equal to the fair market value (as Determined by an Expert) of any such Dividend or other entitlement per Share as at the date of first public announcement relating to such Dividend or entitlement; or
- (ii) if the Shares to be issued or delivered (if applicable) do rank for the Dividend (or entitlement) in question, the VWAP on the dates on which the Shares shall have been based on a price ex-Dividend (or ex- any other entitlement) shall, for the purposes of this definition, be deemed to be the amount thereof increased by an amount equal to the fair market value (as Determined by an Expert) of any such Dividend or other entitlement per Share as at the date of first public announcement relating to such Dividend or entitlement,

and provided further that, if on each of the Exchange Business Days in the Reference Period the VWAP shall have been based on a price cum-Dividend (or cum- any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Shares to be issued or delivered do not rank for that Dividend (or other entitlement), the VWAP on each of such dates shall, for the purposes of this definition, be deemed to be the amount thereof reduced by an amount equal to the fair market value (as Determined by an Expert) of any such Dividend or entitlement per Share as at the date of first public announcement relating to such Dividend or entitlement,

and provided further that, if the VWAP of a Share is not available on one or more of the Exchange Business Days in the Reference Period (disregarding for this purpose the proviso to the definition of VWAP), then the average of such VWAPs which are available in the Reference Period shall be used (subject to a minimum of two such prices) and if only one, or no, such VWAP is available in the Reference Period, the Reference Market Price shall be Determined by an Expert;

**"Regulator"** means the national regulatory body from time to time having the leading authority to supervise and regulate the Issuer and its Group with respect to its consolidated capital adequacy at the relevant time being, at the Issue Date, the Bank of Spain;

**"Regulation S"** means Regulation S under the United States Securities Act of 1933;

**"Relevant Date"** means, in relation to any payment in respect of a Note, whichever is the later of (1) the date on which the payment in question first becomes due and (2) if the full amount payable has not been received in a city in which banks have access to the TARGET2 System by the Principal Paying and Conversion Agent on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Noteholders;

**"Relevant Exchange"** means the Stock Exchanges or, if the Shares are no longer admitted to listing, trading and/or quotation on or by the Stock Exchanges the principal stock exchange or securities market on or by which the Shares are then listed, admitted to trading and/or quoted;

**"Rights"** means, in respect of any Securities or assets, any options, warrants or other rights (other than Share-Related Securities) which by their terms of issue carry a right to subscribe for, purchase or otherwise acquire such Securities or assets;

**"RWA Amount"** means, as at any date, the aggregate amount of all risk-weighted assets of the Group, calculated by the Issuer pursuant to:

- (i) in the case of a determination of the EBA Capital Ratio, EBA Recommendations; or
- (ii) in the case of a determination of the CET1 Capital Ratio and/or the Tier 1 Capital Ratio prior to the Capital Regulations Date, National Regulations; or
- (iii) in the case of a determination of the CET1 Capital Ratio and/or the Tier 1 Capital Ratio on or after the Capital Regulations Date, Capital Adequacy Regulations,

in each case expressed in the Issuer's reporting currency;

**"Scheduled Mandatory Conversion Notice"** has the meaning given to it in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*);

**"Securities"** means any securities including, without limitation, shares in the capital of the Issuer, or options, warrants or other rights to subscribe for or purchase or acquire shares in the capital of the Issuer;

**"Share"** means an ordinary share, of €0.10 par value as at the Issue Date, in the share capital of the Issuer;

**"Share Currency"** means euros or such other currency in which the Shares are quoted or dealt in on the Relevant Exchange at such time;

**"Shareholder"** means the person in whose name a Share is for the time being registered in the register of Share ownership maintained by or on behalf of the Issuer, including Iberclear;

**"Share-Related Securities"** means any Securities (excluding the Notes but including any further Notes issued pursuant to Condition 30 (*Further Issues*)) which by their terms of issue:

- (i) carry a right to subscribe for, purchase or otherwise acquire Shares or any Securities which by their terms of issue might be redesignated as Shares; or
- (ii) might be redesignated as Shares or be redesignated so as to carry a right to subscribe for, purchase or otherwise acquire Shares;

**"Share Settlement Date"** has the meaning given in Condition 11(a) (*Procedure for Conversion – Issue of Shares*);

**"SIBE"** means the Stock Market Interconnection System (*Sistema de Interconexión Bursátil - Mercado Continuo*) of the Spanish Stock Exchanges;

**"Significant Losses"** means, by reference to the date on which the Tier 1 Capital Ratio is below the Tier 1 Capital Ratio Threshold, the aggregate amount of the losses reported by the Issuer in respect of the immediately preceding four consecutive Quarterly Reporting Periods have caused the Issuer's, or the Group's, or the Sub-Group's capital and reserves to be reduced by one-third;

**"Spanish Stock Exchanges"** means the Madrid, Barcelona, Bilbao and Valencia stock exchanges interconnected through SIBE;

**"Specified Office"** has the meaning given in the Agency Agreement;

**"Spin-Off"** means:

- (i) a distribution of Spin-Off Securities or Rights in respect of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (ii) any issue, transfer or delivery of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class pursuant to any arrangements with the Issuer or any of its Subsidiaries;

**"Spin-Off Securities"** means equity share capital of an entity other than the Issuer or options, warrants or other rights to subscribe for or purchase equity share capital of an entity other than the Issuer;

**"Stock Exchanges"** means the Spanish Stock Exchanges and Euronext Lisbon;

**"Subsidiary"** means any entity in which the Issuer holds, directly or indirectly more than 50% of the share capital, or over which the Issuer has, directly or indirectly, control in accordance with Article 8(3)(a) of Law 13/1985;

**"Sub-Group"** means a *sub-grupo consolidable* within the meaning of Law 13/1985, Royal Decree 216/2008 and Bank of Spain Circular 3/2008;

**"Syndicate of Noteholders"** means the syndicate (*sindicato*) of Noteholders as that term is defined in the Consolidated Text of the Law on Limited Liability Companies, as approved by Royal Decree-Law 1/2010 dated 2 July 2010 (*Texto Refundido de la Ley de Sociedades de Capital*);

**"TARGET2 System"** means the Trans-European Automated Real-time Gross settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007;

**"Tax Redemption Date"** has the meaning given in Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for taxation reasons*);

"**Threshold Amount**" has the meaning given in Condition 13(b) (*Dividends – Extraordinary Dividend*);

"**Tier 1 Capital**" means (a) prior to the Capital Regulations Date, all items treated as tier 1 capital (*recursos propios básicos*) in accordance with National Regulations, and (b) on or after the Capital Regulations Date, Additional Tier 1 Capital together with CET1 Capital;

"**Tier 1 Capital Amount**" means, at any time, the aggregate amount of all items of Tier 1 Capital of the Group as calculated by the Issuer and expressed in the Issuer's reporting currency at such time;

"**Tier 1 Capital Ratio**" means, in respect of a Quarterly Reporting Period, the ratio as calculated by the Issuer (expressed as a percentage) of the Tier 1 Capital Amount divided by the RWA Amount or such other amount or amounts as may be required by the Capital Adequacy Regulations, as at the date of the relevant Quarterly Financial Report;

"**Tier 1 Capital Ratio Threshold**" means, at any time, 6.0 per cent. or, at the relevant time, any lower minimum tier 1 threshold ratio as may be provided for under prevailing Capital Adequacy Regulations;

"**Tier 1 Instruments**" means any and all shares, securities, participation securities or other obligations issued (a) by the Issuer (whether or not acting through a branch) but excluding Tier 1 Shares or (b) by a Subsidiary of the Issuer and having the benefit of a guarantee, credit support agreement or similar undertaking of the Issuer, each of which shares, securities or other obligations under (a) and (b) qualify, or are issued in respect of a security that qualifies, as Tier 1 Capital of the Issuer and/or the Group (without regard to quantitative limits on such capital) on a consolidated or on an unconsolidated basis;

"**Tier 1 Shares**" means all classes of paid-in capital in relation to shares and participation certificates, if any, of the Issuer or any other Subsidiary that qualify as Tier 1 Capital of the Issuer on a consolidated or on an unconsolidated basis;

"**Tier 2 Capital**" means any or all items constituting at the relevant time tier 2 capital under Capital Adequacy Regulations or National Regulations;

"**Tier 2 Instruments**" means any and all securities or other obligations issued (a) by the Issuer (whether or not acting through a branch) or (b) by a Subsidiary and having the benefit of a guarantee, credit support agreement or similar undertaking of the Issuer, each of which securities or other obligations under (a) and (b) qualify, or are issued in respect of a security that is eligible to qualify, as Tier 2 Capital of the Group on a consolidated or on an unconsolidated basis;

"**Viability Event Notice**" means the notice substantially in the form scheduled to the Agency Agreement that the Issuer shall give to the Noteholders stating that a Viability Event has occurred; and

"**VWAP**" means, in respect of a Share on any Exchange Business Day, the order book volume weighted average closing sale price in the Share Currency of a Share (rounded to the nearest second decimal place) published by or derived from the SIBE or such other source as shall be Determined by an Expert on such Exchange Business Day, *provided that* if on any such Exchange Business Day such price is not available or cannot otherwise be determined as provided above, the VWAP, in respect of such Exchange Business Day shall be the VWAP, determined as provided above, on the immediately preceding Exchange Business Day on which the same can be so determined or Determined by an Expert.

- (b) *Construction of certain references:* In these Conditions, unless otherwise specified or unless the context otherwise requires:
- (i) the expression the "Notes" shall be construed so as to include any further notes issued pursuant to Condition 30 (*Further Issues*) and forming a single series with the Notes;

- (ii) references to Notes being "outstanding" shall be construed in accordance with the Agency Agreement;
- (iii) references to any issue or offer or grant to Shareholders "as a class" or "by way of rights" shall be construed so as to include an issue or offer or grant to all or substantially all Shareholders other than Shareholders to whom, by reason of the laws of any jurisdiction or requirements of any recognised regulatory body or any stock exchange in any jurisdiction or in connection with fractional entitlements, it is determined not to make such issue or offer or grant;
- (iv) "equity share capital" means, in relation to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution;
- (v) references to the "issue" of Shares shall include the transfer and/or delivery of Shares by the Issuer or any of its Subsidiaries, whether newly issued and allotted or previously existing;
- (vi) Shares held by the Issuer or any of its Subsidiaries shall not be considered as or treated as "in issue"; and
- (vii) headings and sub-headings are for ease of reference only and shall not affect the construction of these Conditions.

#### *THE DEBT SECURITY*

### 3. **Form, Denomination and Title**

The Notes are in bearer form in the denominations of €100,000 with Coupons attached at the time of issue. Title to the Notes and the Coupons will pass by delivery. The holder of any Note or Coupon shall (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing thereon or any notice of any previous loss or theft thereof) and no person shall be liable for so treating such holder. No person shall have any right to enforce any term or condition of the Notes under the Contracts (Rights of Third Parties) Act 1999.

### 4. **Status, Subordination and Liquidation Distribution**

- (a) *Status*: The Notes constitute direct, unconditional, unsecured and subordinated obligations of the Issuer which will at all times rank *pari passu* among themselves. The rights and claims of the Noteholders are subordinated in the manner described in Condition 4(b) (*Status, Subordination and Liquidation Distribution - Subordination*).
- (b) *Subordination*: Except as provided in Condition 4(c) (*Status, Subordination and Liquidation Distribution – Liquidation distribution*), the rights and claims of the Noteholders against the Issuer in respect of or arising under the Notes (including any damages awarded for breach of any obligation) shall, subject to any obligations which are mandatorily preferred by law, rank:
  - (i) junior to the claims of common creditors (including depositors and holders of unsubordinated obligations of the Issuer) and to the claims of holders of all subordinated obligations of the Issuer other than as referred to in Condition 4(b)(iii);
  - (ii) junior to the claims of holders of any preferred securities (*participaciones preferentes*) issued under Law 13/1985 or any securities or instruments equivalent to preferred securities or preferred shares (whether issued under Law 13/1985 or any other law or regulation of Spain or of any other jurisdiction) in each case issued by the Issuer, or issued by any Subsidiary with the benefit of a guarantee of the Issuer;
  - (iii) *pari passu* with the claims of holders of all other unsecured, subordinated obligations, notes, bonds, instruments or other securities in each case convertible into Shares and

issued by the Issuer on terms similar to the Notes, or issued by any Subsidiary on terms similar to the Notes with the benefit of a guarantee of the Issuer;

- (iv) senior to the claims of holders of ordinary shares of the Issuer.

The claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the rights of holders of Shares and junior to the claims of holders referred to in Condition 4(b)(i) to (iii) (except, in the case of holders referred to in Condition 4(b)(iii), holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).

- (c) *Liquidation distribution:* if any of the circumstances set out in Condition 10 (*Conversion*) giving rise to the mandatory conversion of the Notes has occurred and Shares have not been issued or delivered to any Noteholder pursuant to Condition 10, the claim of such Noteholder in respect of the liquidation, dissolution or winding-up of the Issuer shall be the sum equal to that which holders of the number of Shares into which the Notes held by such Noteholder should have been converted at the then Conversion Price would have received out of the proceeds of the liquidation, dissolution or winding-up of the Issuer. In such circumstances, the claims of Noteholders in relation to the Notes shall rank, as from the relevant Conversion Date, in order of priority *pari passu* with the rights of holders of Shares and junior to the claims of holders referred to in Condition 4(b)(i) to (iii) (except, in the case of holders referred to in Condition 4(b)(iii), holders of securities that are expressed by their terms to rank *pari passu* with the rights of holders of Shares in circumstances such as those set out in Condition 10 (*Conversion*)).
- (d) *Waiver of statutory priorities:* By virtue of the subscription or acquisition of the Notes, the Noteholders waive any order of priority that may be granted to them by any applicable legislation from time to time and, in particular, which may arise from Articles 92 and 158 of Law 22/2003, of 9 July on insolvency (*Ley Concursal*).

## 5. Interest

- (a) *Interest payment:* Subject as set out in Condition 5(b) (*Interest – Limitations on interest payment*), below, the Notes bear interest from 29 June 2012 (the "**Issue Date**") at the rate of 4.5 per cent. per annum, (the "**Rate of Interest**") on the outstanding principal amount of each Note payable in arrear on 29 March, 29 June, 29 September and 29 December in each year (each, an "**Interest Payment Date**"), subject as provided in Condition 7 (*Payments*). Subject as set out in Condition 7(e) (*Payments – Payments on business days*), the first Interest Payment Date shall be 29 September 2012.

Each Note will cease to bear interest from the due date for redemption unless, upon due presentation, payment of interest is improperly withheld or refused, in which case it will (subject to Condition 5(b) (*Limitations on interest payment*), continue to bear interest at such rate (both before and after judgment) until whichever is the earlier of (a) the day on which all sums due in respect of such Note up to that day are received by or on behalf of the relevant Noteholder and (b) the day which is seven days after the Principal Paying and Conversion Agent has notified the Noteholders that it has received all sums due in respect of the Notes up to such seventh day (except to the extent that there is any subsequent default in payment).

If interest is required to be paid in respect of a Note on any date other than an Interest Payment Date, it shall be calculated by applying the Rate of Interest to the outstanding principal amount of such Note, multiplying the product by the relevant Day Count Fraction and rounding the resulting figure to the nearest cent (half a cent being rounded upwards), where:

"**Day Count Fraction**" means, in respect of any period, the number of days in the relevant period, from (and including) the first day in such period to (but excluding) the last day in such period, divided by the product of (1) the number of days in the Regular Period in which the relevant period falls and (2) four; and

**"Regular Period"** means each period from (and including) any Interest Payment Date (or, in the case of the first Interest Payment Date, the Issue Date) to (but excluding) the next Interest Payment Date.

(b) *Limitations on interest payment:* Interest in respect of the Notes shall not be payable to the extent that:

(i) the aggregate amount of:

(A) interest scheduled to be paid in respect of the Notes on an Interest Payment Date, together with the aggregate amount of interest paid on each prior Interest Payment Date during the then-current Financial Year; and

(B) interest or other distributions scheduled to be paid in respect of Parity Securities on or prior to the same Interest Payment Date, together with the aggregate amount of interest or other distributions paid in respect of Parity Securities during the then-current Financial Year,

by the Issuer or by any Subsidiary would exceed the Distributable Profits of the immediately preceding Financial Year; or

(ii) even if Distributable Profits are sufficient, to the extent that under applicable Capital Adequacy Regulations, including Spanish banking regulations affecting financial institutions which fail to meet their required capital ratios (including Law 13/1985, Royal Decree 216/2008, Bank of Spain Circular 3/2008 as amended by Bank of Spain Circular 4/2011, or 30 November, and Royal Decree-Law 2/2011), the Issuer would be prevented at such time from making payments on its ordinary shares, on the Notes or on Parity Securities; or

(iii) the Board of Directors of the Issuer, in its absolute discretion, has determined that, in light of the then current solvency of the Issuer, the Group or the Sub-Group, a payment of interest shall not take place on the relevant Interest Payment Date; or

(iv) the Regulator has, in accordance with applicable law, instructed the Issuer, in light of the then-current financial condition and solvency of the Issuer, the Group or the Sub-Group to cancel a payment of interest scheduled to take place on the relevant Interest Payment Date.

The Issuer shall give notice to the Noteholders in accordance with Condition 31 (*Notices*), prior to the relevant Interest Payment Date (or as soon as reasonably practicable thereafter), of the occurrence of any of the events described in this Condition 5(b) and of the non-payment of the interest scheduled to be paid on such Interest Payment Date.

(c) *Partial interest payment:* If, notwithstanding the occurrence of one or more events of the type described in Condition 5(b) (*Interest – Limitations on interest payment*), the Board of Directors of the Issuer determines, in its absolute discretion, that some only but not all of the interest payment scheduled to be paid on the relevant Interest Payment Date may be paid, then the Issuer shall, prior to the relevant Interest Payment Date (or as soon as reasonably practicable thereafter), give notice thereof to the Noteholders in accordance with Condition 31 (*Notices*).

If, in the circumstances of Condition 5(c), a partial payment of interest in respect of the Notes is made on an Interest Payment Date, such payment will be made *pro rata* in relation to the outstanding principal amount of Notes. Therefore, the amount of interest to be received by a Noteholder on the relevant Interest Payment Date will depend on the total outstanding principal amount of Notes and on the amount of interest scheduled to be paid on the Notes on such Interest Payment Date.

(d) *Interest non-cumulative:* Payments of interest in respect of the Notes will be non-cumulative. Accordingly, if an interest payment is not paid (or not paid in full) on an Interest Payment Date in respect of the Notes as a result of the limitations set out in Condition 5(b) (*Interest –*

*Limitations on interest payment*) above, then the right of the Noteholders to receive a payment of interest in respect of the relevant Interest Period (or to receive that portion of the interest amount that has not been paid) will be lost and the Issuer will have no obligation to pay any accrued but unpaid interest for such Interest Period or to pay any interest thereon, whether or not interest in respect of the Notes is paid in respect of any future Interest Period.

- (e) *No right to Dividends*: The Notes will not confer on the Noteholders any right to receive Dividends or otherwise to participate in the profits of the Issuer.

6. **Scheduled Mandatory Conversion, Redemption and Purchase**

- (a) *Scheduled mandatory conversion*: Unless previously redeemed, converted, or purchased and cancelled, the Notes shall be redeemed and settled by the issue and delivery of fully paid new Shares to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) in the amounts and on the dates specified in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*). Subject to Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for tax reasons*), the Issuer shall not redeem the Notes in cash.

- (b) *Redemption for tax reasons*: Subject as provided in Condition 6(c) (*Scheduled Mandatory Conversion, Redemption and Purchase - Noteholders' tax option*) and to the prior written consent of the Regulator, the Notes may be redeemed at the option of the Issuer in whole, but not in part, at any time, on giving not less than 30 nor more than 60 days' notice to the Noteholders (which notice shall be irrevocable), at their principal amount, together with (subject to Condition 5(b) (*Limitations on interest payment*)) interest accrued to the date fixed for redemption (the "**Tax Redemption Date**"), if, immediately before giving such notice:

- (i) the Issuer has or will become obliged to pay additional amounts as provided or referred to in Condition 8 (*Taxation*) as a result of any change in, or amendment to, the laws or regulations of the Kingdom of Spain or any political subdivision or any authority thereof or therein having power to tax, or any change in the application or official interpretation of such laws or regulations (including a holding by a court of competent jurisdiction), which change or amendment becomes effective on or after 29 June 2012; and
- (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it;

*provided, however, that* no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts if a payment in respect of the Notes were then due.

Prior to the publication of any notice of redemption pursuant to this Condition 6(b), the Issuer shall deliver to the Commissioner:

- (A) a certificate signed by a director of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred; and
- (B) an opinion of independent legal advisers of recognised standing to the effect that the Issuer has or will become obliged to pay such additional amounts as a result of such change or amendment.

Subject as provided in Condition 6(c) (*Scheduled Mandatory Conversion, Redemption and Purchase - Noteholders' tax option*), upon the expiry of any such notice as is referred to in this Condition 6(b), the Issuer shall be bound to redeem the Notes in accordance with this Condition 6(b).

The Issuer may not give a notice of redemption of the Notes pursuant to this Condition 6(b) if a Conversion Event Notice has already been given.

- (c) *Noteholders' tax option:* If the Issuer shall give a redemption notice pursuant to Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for taxation reasons*), each Noteholder will have the right to elect that its Note(s) shall not be redeemed and that the provisions of Condition 8 (*Taxation*) shall not apply in respect of any payment of interest to be made on such Note(s) which falls due after the Tax Redemption Date whereupon no additional amounts shall be payable in respect thereof pursuant to Condition 8 (*Taxation*) and payment of all amounts shall be made subject to the deduction or withholding of the relevant Spanish taxation required to be withheld or deducted. To exercise a right pursuant to this Condition 6(c), the relevant Noteholder must present a duly completed and signed notice of exercise in the form (for the time being current) obtainable from the specified office of any Paying and Conversion Agent (together with its Notes) by not later than 20 days prior to the Tax Redemption Date at the specified office of any Paying and Conversion Agent.
- (d) *No other redemption:* The Issuer shall not be entitled to redeem the Notes otherwise than as provided in Condition 6(a) (*Scheduled Mandatory Conversion, Redemption and Purchase - Scheduled mandatory conversion*) and Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for tax reasons*).
- (e) *Purchase:* Subject to the prior written consent of the Regulator (if so required pursuant to Capital Adequacy Regulations or the requirements of any applicable regulatory authority from time to time in force), the Issuer or any of its Subsidiaries may at any time purchase Notes in the open market or otherwise and at any price, *provided that* all unmatured Coupons are purchased therewith.
- (f) *Cancellation:* All Notes so redeemed or purchased by the Issuer or any of its Subsidiaries, and all Notes which are converted, and any unmatured Coupons attached to or surrendered with them shall be cancelled and may not be reissued or resold.

## 7. **Payments**

- (a) *Principal:* Payments of principal made in the circumstances of Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for tax reasons*), shall be made only against presentation and (provided that payment is made in full) surrender of Notes at the Specified Office of any Paying and Conversion Agent outside the United States by Euro cheque drawn on, or by transfer to a Euro account maintained by the payee with, a bank in a city in which banks have access to the TARGET2 System.
- (b) *Interest:* Payments of interest shall, subject to Condition 5(b) (*Limitations on interest payment*) and Condition 7(f) (*Payments - Payments other than in respect of matured Coupons*), be made only against presentation and (provided that payment is made in full) surrender of the appropriate Coupons at the Specified Office of any Paying and Conversion Agent outside the United States in the manner described in Condition 7(a) (*Payments - Principal*).
- (c) *Payments subject to fiscal laws:* All payments in respect of the Notes are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment or other laws to which the Issuer or its agents agree to be subject. No commissions or expenses shall be charged to the Noteholders or Couponholders in respect of such payments.
- (d) *Deduction for unmatured Coupons:* If a Note is presented without all unmatured Coupons relating thereto, a sum equal to the aggregate amount of the missing unmatured Coupons will be deducted from the amount due for payment in respect of such Note. Each sum of principal so deducted shall be paid in the manner provided in Condition 7(a) (*Payments - Principal*) against presentation and (*provided that* payment is made in full) surrender of the relevant missing Coupons.
- (e) *Payments on business days:* If the due date for payment of any amount in respect of any Note or Coupon is not a Payment Business Day in the place of presentation, the holder shall not be

entitled to payment in such place of the amount due until the next succeeding Payment Business Day in such place and shall not be entitled to any further interest or other payment in respect of any such delay.

- (f) *Payments other than in respect of matured Coupons:* Payments of interest other than in respect of matured Coupons shall be made only against presentation of the relevant Notes at the Specified Office of any Paying and Conversion Agent outside the United States.
- (g) *Partial payments:* If a Paying and Conversion Agent makes a partial payment in respect of any Note or Coupon presented to it for payment, such Paying and Conversion Agent will endorse thereon a statement indicating the amount and date of such payment.

## 8. **Taxation**

Subject to Condition 6(c) (*Scheduled Mandatory Conversion, Redemption and Purchase – Noteholders' tax option*), payments of principal and interest (if any) in respect of the Notes and the Coupons by the Issuer will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the Kingdom of Spain or any authority therein or thereof having power to tax unless the withholding or deduction of such taxes, duties, assessments or governmental charges is required by law. In that event, the Issuer will pay such additional amounts as may be necessary in order that the net amounts received by the Noteholders and the Couponholders after such withholding or deduction shall equal the respective amounts of principal and interest which would have been received in respect of the Notes or (as the case may be) Coupons, in the absence of such withholding or deduction; except that no additional amounts shall be payable with respect to any payment in respect of any Note or Coupon:

- (i) to, or to a third party on behalf of, a Noteholder who is subject to such taxes, duties, assessments or governmental charges in respect of such Note or Coupon by reason of his having some connection with the Kingdom of Spain otherwise than merely by holding the Note or Coupon;
- (ii) to, or to a third party on behalf of, a Noteholder who does not provide the issuer or an agent acting on behalf of the Issuer the information concerning such Noteholder as may be required in order to comply with the procedures that may be implemented to comply with the interpretation of Royal Decree 1145/2011 as eventually made by the Spanish tax authorities;
- (iii) presented for payment more than 30 days after the Relevant Date except to the extent that the Noteholder thereof would have been entitled to such additional amount on presenting the same for payment on the thirtieth such day;
- (iv) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26-27 November 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (v) by or on behalf of a Noteholder who would have been able to avoid such withholding or deduction by presenting the relevant Note or Coupon to another paying agent in a Member State of the European Union.

## 9. **Syndicate of Noteholders and Modification of Agency Agreement**

### (a) **Syndicate of Noteholders**

The Noteholders shall meet in accordance with the regulations governing the Syndicate of Noteholders (the "**Regulations**"). The Regulations contain the rules governing the functioning of the Syndicate of Noteholders and its relationship with the Issuer and shall be attached to the

public deed of issuance (*escritura pública*) in relation to the Notes. The Regulations are contained in the Agency Agreement.

A temporary Commissioner will be appointed for the Syndicate of Noteholders. In particular, by virtue of purchasing and/or holding Notes, each Noteholder shall be deemed to have granted to the Principal Paying and Conversion Agent full power and authority to take any action and/or to execute and deliver any document or notices for the purposes of attending on behalf of the Noteholders the first meeting of the Syndicate of Noteholders called to confirm the appointment of the temporary Commissioner, approve its actions and ratify the Regulations contained in the Agency Agreement and vote in favour of each of those resolutions. Upon the subscription of the Notes, the temporary Commissioner will call a general meeting of the Syndicate of Noteholders to ratify or reject the acts of the temporary Commissioner, confirm his appointment or appoint a substitute Commissioner for him and to ratify the Regulations. Provisions for meetings of the Syndicate of Noteholders are contained in the Regulations and in the Agency Agreement. Such provisions shall have effect as if incorporated herein.

(b) **Modification of Agency Agreement**

The Issuer shall only permit any modification of, or any waiver or authorisation of any breach or proposed breach of or any failure to comply with, the Agency Agreement, if to do so could not reasonably be expected to be prejudicial to the interests of the Noteholders.

Provisions for meetings of the Syndicate of Noteholders will be contained in the Regulations and the Agency Agreement (which shall have effect as if incorporated herein).

The Issuer may, with the consent of the Commissioner, but without the consent of the Noteholders or Couponholders, amend these Terms and Conditions to correct a manifest error. Subject as aforesaid, no other modification may be made to, or waiver of any breach or proposed breach of, these Terms and Conditions except as approved by a resolution of the Syndicate of Noteholders.

Any modification, waiver or authorisation in accordance with this Condition 9(b) shall be binding on the Noteholders and shall be notified by the Issuer to the Noteholders in accordance with Condition 31 (*Notices*) as soon as reasonably practicable after the occurrence of such modification, waiver or authorization.

*THE EQUITY OPTION*

10. **Conversion**

- (a) *Scheduled Mandatory Conversion*: Unless previously redeemed, converted, or purchased and cancelled, the Notes shall be redeemed and settled in three equal installments by the conversion of a third of the original aggregate principal amount of the Notes into new fully paid Shares issued and delivered to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) ("**Scheduled Mandatory Conversion**") on the following dates (each, a "**Scheduled Conversion Date**"):

- (i) the Payment Business Day falling on or closest to 29 March 2013;
- (ii) the Payment Business Day falling on or closest to 29 September 2013; and
- (iii) the Payment Business Day falling on or closest to 29 March 2014.

Subject to Condition 10(d) (*Conversion - Accrued Conversion Interest*), the registration by Iberclear of the corresponding amount of newly-issued Shares in an account with Iberclear in the name of the relevant Noteholder or its nominee shall be a good and complete discharge of the Issuer's obligations in respect of the corresponding principal amount of the Notes.

The Issuer shall give notice, substantially in the form scheduled to the Agency Agreement, to the Noteholders (the "**Scheduled Mandatory Conversion Notice**") in accordance with Condition 31 (*Notices*) no later than the twentieth (20th) Business Day prior to the relevant Scheduled Conversion Date, and shall notify the Principal Paying and Conversion Agent of the terms of the Scheduled Mandatory Conversion. The Scheduled Mandatory Conversion Notice shall specify the Scheduled Conversion Date, the Notice Cut-Off Date and whether Accrued Conversion Interest will be paid (in part, in full or not at all).

The Issuer shall give notice of the Conversion Price and the expected Share Settlement Date in accordance with Condition 31 (*Notices*) on the Business Day immediately following the relevant Scheduled Conversion Date.

- (b) *Mandatory Conversion Upon Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event*:

- (i) *Mandatory Conversion Upon Insolvency Event*:

If an Insolvency Event occurs at any time while the Notes are outstanding, each Note shall, subject to and as provided in this Condition 10, be redeemed and settled (the "**Insolvency Event Conversion**") by the issue and delivery of new fully paid Shares to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) on the expected date specified therefor in the Insolvency Event Notice. The registration by Iberclear of the corresponding amount of newly-issued Shares in an account with Iberclear in the name of the relevant Noteholder or its nominee shall be a good and complete discharge of the Issuer's obligations in respect of the Notes.

An "**Insolvency Event**" shall have occurred if:

- (A) a resolution is passed, or other action or measure taken or adopted by the Issuer, for the liquidation, dissolution or winding-up of the Issuer, whether voluntary or otherwise (except, in any such case, a solvent liquidation, dissolution or winding-up by means of a merger, de-merger or transfer of assets and liabilities solely for the purposes of a reorganisation, reconstruction or amalgamation of the Issuer or the substitution in place of the Issuer of a successor in business of the Issuer);
- (B) the Issuer takes any step, action or measure that results in the approval of a reduction of the Issuer's share capital pursuant to the terms of Article 418(3) of the Consolidated Text of the Law on Limited Liability Companies, as

approved by Royal Decree-Law 1/2010 dated 2 July 2010 (*Texto Refundido de la Ley de Sociedades de Capital*);

- (C) if the Issuer is declared in insolvency (*concurso*) under Law 22/2003 of 9 July on insolvency (*Ley Concursal*) an order is made for the liquidation, dissolution, winding-up, re-organisation or restructuring of the Issuer by reason of insolvency, bankruptcy or otherwise, the Issuer is nationalised or intervened or if the Board of Directors (or other governing body of the Issuer) is replaced by the Regulator;

The Issuer (1) shall notify the Noteholders in accordance with Condition 31 (*Notices*) no later than the third Business Day after the occurrence of the relevant Insolvency Event (such notice, an "**Insolvency Event Notice**"), in substantially the form scheduled to the Agency Agreement, that (i) one or more Insolvency Events has or have occurred, and (ii) an Insolvency Event Conversion will take place and (2) shall notify the Principal Paying and Conversion Agent of the terms of the consequent Insolvency Event Conversion. The Insolvency Event Notice shall specify the circumstances giving rise to the Insolvency Event, the Conversion Price, the Notice Cut-Off Date and the expected Share Settlement Date.

(ii) *Mandatory Conversion Upon Contingency Event:*

If a Contingency Event occurs at any time while the Notes are outstanding, each Note shall, subject to and as provided in this Condition 10, be redeemed and settled (the "**Contingency Event Conversion**") by the issue and delivery of new fully paid Shares to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) on the expected date specified therefor in the Contingency Event Notice. The registration by Iberclear of the corresponding amount of newly-issued Shares in an account with Iberclear in the name of the relevant Noteholder or its nominee shall be a good and complete discharge of the Issuer's obligations in respect of the Notes.

A contingency event shall have occurred if any of the following occurs (each, a "**Contingency Event**"):

- (A) *EBA Capital Ratio Contingency Event:* the EBA Capital Ratio is below the EBA Capital Ratio Threshold at the date of the financial statements contained in a Quarterly Financial Report (an "**EBA Capital Ratio Contingency Event**");
- (B) *CET1 Capital Ratio Contingency Event:* the CET1 Capital Ratio is below the CET1 Capital Ratio Threshold at the date of the financial statements contained in a Quarterly Financial Report (a "**CET1 Capital Ratio Contingency Event**"); or
- (C) *Loss Absorption Contingency Event:* the Tier 1 Capital Ratio is below the Tier 1 Capital Ratio Threshold at the date of the financial statements contained in a Quarterly Financial Report and the Issuer has reported Significant Losses (a "**Loss Absorption Contingency Event**").

The Issuer shall give the relevant Contingency Event Notice no later than the third Business Day after the publication of the relevant Quarterly Financial Report and shall notify the Principal Paying and Conversion Agent of the terms of the consequent Contingency Event Conversion. Each Contingency Event Notice shall specify the circumstances giving rise to the Contingency Event, the Conversion Price, the Notice Cut-Off Date and the expected Share Settlement Date.

(iii) *Mandatory Conversion Upon Viability Event:*

If a Viability Event occurs at any time while the Notes are outstanding, each Note shall, subject to and as provided in this Condition 10, be redeemed and settled (the "**Viability**

**Event Conversion**") by the issue and delivery of new fully paid Shares to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) on the expected date specified therefor in the Viability Event Notice. The registration by Iberclear of the corresponding amount of newly-issued Shares in an account with Iberclear in the name of the relevant Noteholder or its nominee shall be a good and complete discharge of the Issuer's obligations in respect of the Notes.

The Issuer shall give a Viability Event Notice in accordance with Condition 31 (*Notices*) no later than the third Business Day after the occurrence of a Viability Event. The Viability Event Notice shall specify the circumstances giving rise to the Viability Event, the Conversion Price, the Notice Cut-Off Date and the expected Share Settlement Date.

**"Viability Event"** means that either (a) the Regulator has notified the Issuer that it has determined that Conversion of the Notes, together with the conversion or write off of holders' claims in respect of any other CET1 Capital Instruments, Tier 1 Instruments and Tier 2 Instruments that, pursuant to their terms or by operation of law, are capable of being converted into equity on the occurrence of a contingency event or a viability event or written off at that time, is, because customary measures to improve the Issuer's capital adequacy are at the time, inadequate or unfeasible, an essential requirement to prevent the Issuer from becoming insolvent, bankrupt or unable to pay a material part of its debts as they fall due, or from ceasing to carry on its business; or (b) customary measures to improve the Issuer's capital adequacy being at the time inadequate or unfeasible, the Issuer has received an irrevocable commitment of extraordinary support from the Public Sector (beyond customary transactions and arrangements in the ordinary course) that has, or imminently will have, the effect of improving the Issuer's capital adequacy and without which, in the determination of the Regulator, the Issuer would have become insolvent, bankrupt, unable to pay a material part of its debts as they fall due or unable to carry on its business.

(iv) *Mandatory Conversion Upon Capital Treatment Event:*

Subject to Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for tax reasons*), if a Capital Treatment Event occurs at any time while the Notes are outstanding, each Note shall, subject to and as provided in this Condition 10, be redeemed and settled (the "**Capital Treatment Event Conversion**") by the issue of fully paid Shares to the Noteholders in the manner described in Condition 11 (*Procedure for Conversion*) on the expected date specified therefor in the Capital Treatment Event Notice. The registration by Iberclear of the corresponding amount of newly-issued Shares in an account with Iberclear in the name of the relevant Noteholder or its nominee shall be a good and complete discharge of the Issuer's obligations in respect of the Notes.

The Issuer shall give a Capital Treatment Event Notice in accordance with Condition 31 (*Notices*) no later than the third Business Day after the occurrence of a Capital Treatment Event. The Capital Treatment Event Notice shall specify the circumstances giving rise to the Capital Treatment Event, the Conversion Price, the Notice Cut-Off Date and the expected Share Settlement Date.

A "**Capital Treatment Event**" shall have occurred if, as a result of any change in the Capital Adequacy Regulations or the EBA Recommendations, or any change in the official application or interpretation thereof becoming effective on or after the Issue Date, the Notes either (i) cease to qualify as core tier 1 capital of the Group pursuant to EBA Recommendations, or (ii) cease to qualify as Tier 1 Capital or any other equivalent regulatory capital category, as the case may be, of the Group pursuant to the Capital Adequacy Regulations.

(v) If an Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event occurs, the Notes will be converted in whole and not in part as provided in accordance with this Condition 10.

- (vi) Prior to giving the Insolvency Event Notice, the Contingency Event Notice, the Viability Event Notice or the Capital Treatment Event Notice, the Issuer shall deliver to the Commissioner a certificate signed by two Authorised Signatories of the Issuer stating that the Insolvency Event, Contingency Event or, as the case may be, the Viability Event has occurred, and such certificate will be conclusive and binding on the Noteholders.
- (c) *Recourse for Shares and/or cash:* Noteholders shall have recourse only to the Issuer for the issue of Shares pursuant to these Conditions, including in the circumstances described in Condition 11(d) (*Procedure for Conversion - Failure to Deliver Conversion Notice*) or Condition 11(e) (*Noteholder unable to receive Shares*) or any cash amounts to which such Holders are entitled under Condition 11(d) (*Procedure for Conversion - Failure to Deliver Conversion Notice*) or Condition 11(e) (*Noteholder unable to receive Shares*).
- (d) *Accrued Conversion Interest:*
  - (i) Upon the Share Settlement Date in accordance with Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*), and subject to the provisions of Condition 5(b) (*Interest - Limitations on interest payment*) the Issuer shall pay to the Noteholders in cash the Accrued Conversion Interest (if any).
  - (ii) Payment of any Accrued Conversion Interest will be made in Euro by transfer to the cash account specified by the Noteholder in the relevant Conversion Notice.
  - (iii) Accrued Conversion Interest will only be payable (if at all) in the circumstances set out in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*). No payment or adjustment shall be made in respect of any accrued but unpaid interest on the conversion of Notes in the circumstances of Condition 10(b) (*Conversion - Mandatory Conversion Upon Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event*).
  - (iv) Upon the final Scheduled Mandatory Conversion Date of a Note, or upon a Conversion Date in respect of all, but not some only, of the outstanding principal amount of the Notes, all unmatured Coupons relating thereto (whether or not still attached) shall become void and no payment will be made in respect thereof (for this purpose treating any Coupon expressed to be payable on or after the relevant Conversion Date as an unmatured Coupon), subject as provided in Condition 11(g) (*Procedure for Conversion - Unmatured Coupons*).
- (e) *Conversion ratio:* The number of Shares to be issued upon the conversion of any Note shall be determined by dividing the outstanding principal amount of the Note by the Conversion Price in effect on the Conversion Date.
- (f) *Conversion Price:* As at the date on which a Conversion Event Notice is published, each Noteholder shall be deemed to have accepted the conversion of its holding of the Notes into Shares at the Conversion Price provided for herein. Such Shares shall be issued and settled in the manner described in Condition 11 (*Procedure for Conversion*).

The Issuer shall procure that such number of Shares are issued and registered by Iberclear in the manner, and subject to the conditions, described in Condition 11 (*Procedure for Conversion*) in respect of each Note as is determined by dividing the outstanding principal amount of a Note by the applicable Conversion Price corresponding to the relevant Conversion Date.

The Notes are not convertible into Shares at the option of Noteholders at any time and are not redeemable in cash on any Scheduled Conversion Date, or as a result of an Insolvency Event, Contingency Event, Viability Event or Capital Treatment Event, or otherwise except as provided in Condition 6(b) (*Scheduled Mandatory Conversion, Redemption and Purchase - Redemption for tax reasons*).

For the purposes of this Condition 10(f):

"**Closing Price**" means in respect of a Share on any Exchange Business Day, the sale price in the Share Currency of the Share (rounded to the nearest second decimal place, with 0.005 being rounded down) published by or derived from the SIBE or such other source as shall be Determined by an Expert at the close of trading on such Exchange Business Day, *provided that* if on any such Exchange Business Day such price is not available or cannot otherwise be determined as provided above, the Closing Price in respect of such Exchange Business Day shall be the Closing Price, determined as provided above, on the immediately preceding Exchange Business Day on which the same can be so determined or Determined by an Expert;

"**Conversion Price**" means, in respect of the Conversion Date, the higher of:

- (i) the Reference Market Price of a Share on the Exchange Business Day immediately preceding such date;
- (ii) the Closing Price of a Share multiplied by 0.75 on the Exchange Business Day immediately preceding such date; and
- (iii) the Floor Price,

*provided, however, that* the Conversion Price may not be greater than either (i) €15.00 (the "**Ceiling Price**"), or (ii) the Reference Market Price of a Share multiplied by 0.75, whichever is higher.

- (g) *Fractions of a Share:* Fractions of a Share will not be issued on conversion. However, if more than one Note is to be converted at any one time by the same Noteholder such that the Shares to be issued upon conversion thereof are to be registered in the same name, the number of Shares which shall be issued upon conversion thereof shall be calculated on the basis of the aggregate principal amount of the Notes so to be converted. If a fraction of a Share would otherwise fall to be issued upon conversion, the Issuer shall make or procure that there is made, on the Share Settlement Date, a cash payment equal to such fraction of the Reference Market Price per Share as at the relevant Conversion Date by Euro cheque drawn on, or by transfer to a Euro account maintained by the payee with, a bank in a city in which banks have access to the TARGET2 System in accordance with instructions given in the relevant Conversion Notice.

## 11. **Procedure for Conversion**

- (a) *Issue of Shares:* Subject to Condition 11(b) (*Procedure for Conversion - Conversion Notice and Endorsement of Note*), the Shares, upon issue, shall be registered in the name of the Noteholder in an account of such Noteholder with Iberclear or, as the case may be, in the name of a nominee on behalf of the Noteholder in the account of such nominee with Iberclear. The date of such registration is referred to herein as the "**Share Settlement Date**".

In connection with the conversion of any Notes, the Issuer shall execute the relevant capital increase and grant and file the relevant public deed (*escritura pública*) in respect of the issue of the new Shares with the Mercantile Registry of Madrid within five (5) Business Days from the Conversion Date. The Issuer shall also use its best endeavours to register the newly-issued Shares and have these Shares listed and/or admitted to trading on the Stock Exchanges as soon as practicable after the Conversion Date but in any event by not later than twenty (20) Business Days following the Conversion Date.

*The Share Settlement Date for newly-issued Shares is generally expected to occur between one and two weeks after the relevant Conversion Date in the case of a Scheduled Mandatory Conversion and between two and three weeks in all other cases.*

In the Conversion Event Notice, the Issuer, through the Principal Paying and Conversion Agent, will notify the Noteholders of the relevant Conversion Event, the Conversion Date, the Notice Cut-Off Date, the expected Share Settlement Date and the aggregate number of newly-issued Shares to be issued and delivered on the Share Settlement Date.

- (b) *Conversion Notice and Endorsement of Note:* In order to obtain delivery of the relevant Shares upon conversion, the Noteholder must:
- (i) complete, execute and deposit at the Noteholder's own expense during normal business hours not later than the date specified in the Conversion Event Notice which date shall be no earlier than the tenth (10) Business Day after the date of publication of the Conversion Event Notice (the "**Notice Cut-off Date**") at the Specified Office of any Paying and Conversion Agent a notice in the form obtainable from the Specified Office of any Paying and Conversion Agent (a "**Conversion Notice**") specifying:
    - (A) a euro account with a bank in a city in which banks have access to the TARGET2 System to which any cash amount payable on or in respect of the conversion (including any cash amount payable in the circumstances of Condition 11(d) (*Failure to Deliver Conversion Notice*) and Condition 11(e) (*Noteholders unable to receive Shares*)) shall be credited; and
    - (B) details of the Iberclear account and the name or names in which the newly-issued Shares shall be issued and delivered;
  - (ii) authorise, in the Conversion Notice, the Principal Paying and Conversion Agent to endorse each Note with the corresponding principal amount written-down in respect of the relevant Conversion; and
  - (iii) represent and agree in the Conversion Notice that at the time of execution and deposit of such Conversion Notice it or the person who has the beneficial interest in that Note is not in the United States (within the meaning of Regulation S) and it, or such person, purchased such Note, or the beneficial interest therein, in a transaction made in accordance with Rule 903 or Rule 904 of Regulation S.

No Shares will be issued and delivered to a Noteholder unless the Noteholder satisfies the foregoing conditions.

A Conversion Notice once deposited shall not be withdrawn without the consent in writing of the Issuer.

- (c) *Conversion Expenses:* The Issuer will pay all stamp, issue, registration or other similar taxes and duties (if any) arising in the Kingdom of Spain on the issue of Shares on conversion of the Notes, their transfer and delivery to or to the order of the converting Noteholder, any expenses of obtaining a listing and/or admission to trading for such Shares on the Stock Exchanges and all charges of the Paying and Conversion Agents in connection therewith as provided in the Agency Agreement. Subject thereto, as conditions precedent to conversion, the Noteholder must pay to the Issuer (or to such person as the Issuer may direct) all stamp, issue, registration or other similar taxes and duties (if any) ("**Conversion Expenses**") arising on conversion which may be payable:
- (i) in the country in which the Specified Office of the relevant Paying and Conversion Agent is located (if not the Kingdom of Spain); and
  - (ii) in any other jurisdiction,

as a result of the issue, transfer or delivery of Shares or any other property or cash upon conversion to or to the order of the converting Noteholder.

- (d) *Failure to Deliver Conversion Notice:*

Failure properly to complete and deliver a Conversion Notice may result in such Conversion Notice being treated as null and void and the Issuer shall be entitled to procure the sale of any applicable Shares to which the relevant Noteholder may be entitled in accordance with this Condition 11(d). Any determination as to whether any Conversion Notice has been properly completed and delivered as provided in this Condition 11 shall be made by the Issuer in its sole

discretion, acting in good faith, and shall, in the absence of manifest error, be conclusive and binding on the relevant Noteholders. If a duly completed Conversion Notice is not delivered to the Specified Office of a Paying and Conversion Agent on or before the Notice Cut-off Date, then at any time prior to date on which the Board of Directors of the Issuer (or the Executive Committee or such other administrative body, director, officer, manager or employee of the Issuer to whom the Board of Directors shall have delegated authority in this respect) authorises the creation and issue of any Shares in which all or some of the aggregate principal amount of a Note is converted, the Issuer may in its sole and absolute discretion (and the relevant Noteholders of such Notes shall be deemed to agree thereto), elect to have all Shares in respect of which no duly completed Conversion Notice(s) have been delivered on or before the Notice Cut-off Date as aforesaid registered in the name of, and in the Iberclear account of (or of a nominee for), a person appointed by the Issuer (the "**Selling Agent**") on behalf of the relevant Noteholders. The Issuer may, in its absolute discretion, appoint itself as Selling Agent and register the relevant Shares in a third-party account of the Issuer with Iberclear on behalf of the relevant Noteholders, but it shall have no obligation to do so.

The Selling Agent shall hold such Shares until the date falling on the third anniversary of the Share Settlement Date or, if such date is not an Exchange Business Day, the next succeeding date that is an Exchange Business Day (the "**Share Hold Period**").

As soon as reasonably practicable following the expiry of the Share Hold Period, the Selling Agent may sell the Shares, but it shall have no obligation to do so. Subject to the deduction by or on behalf of the Selling Agent of any amount payable in respect of its liability to taxation and the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Selling Agent in connection with the issue, allotment and sale thereof, the net proceeds of sale, converted into euros at the Prevailing Rate on the Notice Cut-off Date, if necessary, shall as soon as reasonably practicable be deposited with the General Deposit Account of the Bank of Spain to be claimed by the relevant Noteholders.

The deposit of such proceeds with the General Deposit Account of the Bank of Spain shall be treated for all purposes as a good discharge of the obligations of the Issuer in respect of the relevant Conversion.

The Issuer and the Selling Agent shall have no liability in respect of the exercise or non-exercise of any discretion or power pursuant to this Condition 11(d) or in respect of any sale of any Shares, whether for the timing of any such sale or the price at or manner in which any such Ordinary Shares are sold or the inability to sell any such Shares.

For so long as any Shares are not sold by the Selling Agent in accordance with this Condition 11(d), such Shares shall continue to be held by the Selling Agent until the relevant Noteholder delivers a duly completed Conversion Notice together with evidence satisfactory to the Issuer that, at the Notice Cut-off Date, such person was a Noteholder.

- (e) *Noteholder unable to receive Shares*: if any Noteholder is unable to take delivery of Shares due to any applicable laws or regulations, or any judicial or administrative order or decision, in the jurisdiction of residence of such Noteholder, or due to any provisions of the constitutive documents such Noteholder, then:
- (i) *Evidence*: such Noteholder shall include evidence of the relevant restriction or prohibition in the Conversion Notice;
  - (ii) *Sale of Shares*: if, upon receipt of the relevant evidence referred in paragraph (i) above, the Issuer is satisfied that Shares may not be issued and delivered to such Noteholder, the Issuer shall appoint a Selling Agent, at such Noteholder's cost and expense, to:
    - (A) register the relevant Shares in a third-party account of the Issuer with Iberclear on such Noteholder's behalf; and
    - (B) immediately thereafter use its reasonable endeavours to sell the relevant Shares;

- (iii) *Payment of proceeds:* As soon as reasonably practicable, and subject to the deduction by or on behalf of the Selling Agent of any amount payable in respect of its liability to taxation and the payment of any capital, stamp, issue, registration and/or transfer taxes and duties (if any) and any fees or costs incurred by or on behalf of the Selling Agent in connection with the issue, allotment and sale of such Shares, the net proceeds of sale, converted into euros at the Prevailing Rate on the Notice Cut-off Date, if necessary, shall be deposited in the euro account specified by the relevant Noteholder for that purposes in the relevant Conversion Notice.
- (f) *Conversion Date:* The conversion date in respect of a Note (the "**Conversion Date**") shall be:
  - (i) in the case of Scheduled Mandatory Conversion, each of the dates specified as a Scheduled Conversion Date in Condition 10(a) (*Conversion - Scheduled Mandatory Conversion*); and
  - (ii) in all other cases, the Business Day on which the relevant Conversion Event Notice is published.

## 12. **Rights Arising on Conversion**

- (a) *Rights in respect of Shares issued upon conversion:* Shares issued upon the conversion of any Note will be delivered with full title guarantee, will be fully paid, free from any liens, charges, encumbrances, pre-emptive rights or other third-party rights and, subject as provided in Conditions 12(b) (*Rights Arising on Conversion – Dividends and other distributions*) and 12(c) (*Rights Arising on Conversion - Voting rights*) and to any mandatory provisions of applicable law:
  - (i) such Shares will rank *pari passu* in all respects with all other Shares in issue on the Share Settlement Date; and
  - (ii) the holders of such Shares will be treated by the Issuer as Shareholders for all purposes with effect from and including the Share Settlement Date.
- (b) *Dividends and other distributions:* Shares issued upon the conversion of any Note will (subject to any mandatory provisions of applicable law) rank *pari passu* in respect of Dividends and other distributions declared, paid or made, or rights granted, with all other Shares in issue on the Share Settlement Date except that such Shares will not rank for any Dividend or other distribution declared, paid or made on, or rights granted in respect of, the Shares for which the Record Date precedes the Share Settlement Date.
- (c) *Voting rights:* Shares issued upon the conversion of any Note will (subject to any mandatory provisions of applicable law) rank *pari passu* in respect of voting rights with all other Shares in issue on the Share Settlement Date except that they will not rank for any voting rights where the entitlement to voting rights accrues to Shareholders by reference to a Record Date which precedes the Share Settlement Date.

### *ADJUSTMENTS TO THE CONVERSION PRICE*

## 13. **Dividends**

- (a) *Adjustment Event:* If and whenever the Issuer shall distribute any Extraordinary Dividend or any Non-Cash Dividend to the Shareholders, the Floor Price and the Ceiling Price (each, a "**Benchmark Price**") shall be subject to adjustment in accordance with this Condition 13.

(b) *Extraordinary Dividend:*

An "**Extraordinary Dividend**" means a Cash Dividend which exceeds the Threshold Amount. A Cash Dividend (the "**Relevant Cash Dividend**") will exceed the Threshold Amount if (and only if) the aggregate of the Fair Market Value of:

- (i) the Relevant Cash Dividend; and
- (ii) all other Cash Dividends paid in or declared by reference to the same Financial Year of the Issuer as the Relevant Cash Dividend,

exceeds the Threshold Amount.

For the purposes of this Condition 13:

"**Threshold Amount**" means, in respect of any Cash Dividend (the "**Relevant Cash Dividend**"), 100 per cent. of the aggregate of the Fair Market Value of all Cash Dividends (excluding for this purpose any other Cash Dividend which was itself an Extraordinary Dividend) attributable to the Financial Year of the Issuer immediately preceding the Financial Year to which the Relevant Cash Dividend is attributable; and

"**Previous Relevant Cash Dividends**" means, in respect of any Cash Dividend (the "**Relevant Cash Dividend**"), the aggregate on a per Share basis of all previous Cash Dividends (excluding the Relevant Cash Dividend) attributable to the same Financial Year of the Issuer as the Relevant Cash Dividend.

(c) *Effective Date:* For the purposes of this Condition 13, the "**Effective Date**" means the first date on which the Shares are traded ex-the relevant Dividend on the Relevant Exchange or, in the case of a purchase, redemption or buy back of Shares or any depository receipts (or any other receipts or certificates) representing Shares, the date such purchase, redemption or buy back is made or, in the case of a Spin-Off, on the first date on which the Shares are traded ex-the relevant Spin-Off on the Relevant Exchange or (in any such case), if later, the date upon which the Fair Market Value of the relevant Dividend is capable of being determined as provided herein.

(d) *Adjustment to the relevant Benchmark Price for Extraordinary Dividend:* If and whenever the Issuer shall distribute any Extraordinary Dividend to the Shareholders, in relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A - B}{A - C}$$

where:

- A = the Reference Market Price of one Share on the Effective Date;
- B = the Fair Market Value on the Effective Date of the portion of the Extraordinary Dividend attributable to one Share, with such portion being determined by dividing the Fair Market Value of the aggregate Extraordinary Dividend by the number of Shares entitled to receive the Extraordinary Dividend;
- C = the amount (if any) by which the Threshold Amount exceeds any Previous Relevant Cash Dividends and which, for the avoidance of doubt, shall be equal to the Threshold Amount if no Previous Relevant Cash Dividends have been paid and shall be zero if the Previous Relevant Cash Dividends are equal to, or greater than, the Threshold Amount;

- (e) *Adjustment to the relevant Benchmark Price for Non-Cash Dividend:* If and whenever the Issuer shall distribute any Non-Cash Dividend to the Shareholders, in relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A - B}{A}$$

where:

- A = the Reference Market Price of one Share on the Effective Date; and
- B = the portion of the Fair Market Value on the Effective Date of the aggregate Non-Cash Dividend attributable to one Share, with such portion being determined by dividing the Fair Market Value of the aggregate Non-Cash Dividend by the number of Shares entitled to receive the relevant Non-Cash Dividend (or, in the case of a purchase, redemption or buy back of Shares or any depositary or other receipts or certificates representing Shares by or on behalf of the Issuer or any Subsidiary of the Issuer, by the number of Shares in issue immediately following such purchase, redemption or buy back, and treating as not being in issue any Shares, or any Shares represented by depositary or other receipts or certificates, purchased, redeemed or bought back).
- (f) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 13 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

#### 14. **Bonus Issues**

- (a) *Adjustment event:* If and whenever the Issuer shall make any Bonus Issue, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 14.
- (b) *Effective Date:* For the purposes of this Condition 14, the "**Effective Date**" means the date of issue of the relevant Shares.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A}{B}$$

where:

- A = the aggregate number of Shares in issue immediately before the issue of such Shares;  
and
- B = the aggregate number of Shares in issue immediately after the issue of such Shares.
- (d) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 14 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

15. **Alteration to Nominal Value**

- (a) *Adjustment event:* If and whenever there shall be an alteration to the nominal value of the Shares as a result of consolidation, reclassification or subdivision, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 15.
- (b) *Effective Date:* For the purposes of this Condition 15, the "**Effective Date**" means the date on which such consolidation, reclassification or subdivision becomes effective.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A}{B}$$

where:

- A = the number of Shares in issue immediately before such consolidation, reclassification or subdivision; and
- B = the number of Shares in issue immediately after such consolidation, reclassification or subdivision.
- (d) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 15 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

16. **Shares, Rights and Share-Related Securities Issued to Shareholders**

- (a) *Adjustment event:* If and whenever the Issuer or any Subsidiary of the Issuer or (at the direction or request or pursuant to any arrangements with the issuer or any Subsidiary of the Issuer) any other company, person or entity shall issue, grant or offer Shares, Share-Related Securities, Rights in respect of Shares or Rights in respect of Share-Related Securities to all or substantially all of the Shareholders as a class by way of rights as a result of which, in each case, Shareholders have the right to acquire Shares at a Consideration per Share which is less than 95 per cent. of the Reference Market Price of the Shares on the Effective Date, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 16.
- (b) *Effective Date:* For the purposes of this Condition 16, the "**Effective Date**" means the first date on which the Shares are traded ex-rights, ex-warrants or ex-options on the Relevant Exchange.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A = the number of Shares in issue on the Exchange Business Day immediately preceding the Effective Date;
- B = the number of Shares which the Aggregate Consideration would purchase at the

Reference Market Price of the Shares on the Effective Date; and

- C = (1) in the case of an issue, grant or offer of Shares, the number of Shares comprised in the issue, grant or offer; or
- (2) in the case of an issue, grant or offer of Share-Related Securities or Rights, the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities or Rights at the initial price or rate.
- (d) *Formula:* If on the date (the "**Specified Date**") of issue, grant or offer of the relevant Share-Related Securities, Rights in respect of Shares or Rights in respect of Share Related Securities the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share Related Securities or Rights is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time then, for the purposes of this Condition 16, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such subscription, purchase or acquisition had taken place on the Specified Date.
- (e) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 16 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

#### 17. **Issue of Other Securities to Shareholders**

- (a) *Adjustment event:* If and whenever the Issuer or any Subsidiary of the Issuer or (at the direction or request or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) any other company, person or entity shall issue any Securities (other than Shares, Share-Related Securities, Rights in respect of Shares, Rights in respect of Share-Related Securities or Spin-Off Securities) to all or substantially all of the Shareholders as a class by way of rights or grant any Rights in respect of any Securities (other than Shares, Share-Related Securities, Rights in respect of Shares or Rights in respect of Share-Related Securities or Spin-Off Securities) or assets to all or substantially all of the Shareholders as a class, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 17.
- (b) *Effective Date:* For the purposes of this Condition 17, "**Effective Date**" means the first date on which the Shares are traded ex-rights, ex-warrants or ex-options on the Relevant Exchange.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A - B}{A}$$

where:

- A = the Reference Market Price of one Share on the Effective Date; and
- B = the Fair Market Value on the Effective Date of the portion of the rights attributable to one Share.
- (d) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 17 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

18. **Issues of Shares at Below Reference Market Price**

- (a) *Adjustment event:* If and whenever the Issuer shall issue, wholly for cash or for no consideration, any Shares or the Issuer or any Subsidiary of the Issuer or (at the direction or request or pursuant to any arrangements with the issuer or any Subsidiary of the Issuer) any other company, person or entity shall issue or grant, wholly for cash or for no consideration, Rights in respect of Shares or Rights in respect of Share-Related Securities as a result of which, in each case, persons to whom the Shares or Rights are issued or granted have the right to acquire Shares at a Consideration per Share which is less than 95 per cent. of the Reference Market Price of the Shares on the date of the first public announcement of the terms of such issue or grant, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 18. However, if any such issue or grant also falls within the terms of Condition 16 (*Shares, Rights and Share-Related Securities Issued to Shareholders*) or constitutes an issue of Shares consequent upon the conversion of any Note or on the exercise of any rights of conversion into, or exchange or subscription for, Shares, the relevant Benchmark Price shall not be subject to adjustment in accordance with this Condition 18.
- (b) *Effective Date:* For the purposes of this Condition 18, the "**Effective Date**" means the date of issue of such Shares or, as the case may be, the issue or grant of such Rights.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A = the number of Shares in issue on the Exchange Business Day immediately preceding the date of the first public announcement of the terms of such issue or grant;
- B = the number of Shares which the Aggregate Consideration would purchase at the Reference Market Price of the Shares on the date of the first public announcement of the terms of such issue or grant; and
- C = (1) in the case of an issue of Shares, the number of Shares issued; or
- (2) in the case of an issue or grant of Rights, the maximum number of Shares which could be issued upon exercise of the rights to subscribe for, purchase or otherwise acquire Shares and, if applicable, Share-Related Securities pursuant to the terms of such Rights and, if applicable, Share-Related Securities at the initial price or rate.
- (d) *Formula:* If on the date (the "**Specified Date**") of issue or grant of the relevant Rights in respect of Shares or Rights in respect of Share-Related Securities the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares and, if applicable, Share-Related Securities pursuant to the terms of such Rights and, if applicable, Share-Related Securities is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time then, for the purposes of this Condition 18, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such subscription, purchase or acquisition had taken place on the Specified Date.
- (e) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 18 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

19. **Share-Related Securities Issued Other than to Shareholders**

- (a) *Adjustment event:* If and whenever the Issuer or any Subsidiary or (pursuant to arrangements with the Issuer or any of its Subsidiaries) any other person or entity shall issue, wholly for cash or for no consideration, any Share-Related Securities or shall grant to any existing Securities so issued such rights as to make such securities Share-Related Securities as a result of which, in each case, persons to whom the Share-Related Securities or such rights are issued or granted have the right to acquire Shares at a Consideration per Share which is less than 95 per cent. of the Reference Market Price of the Shares on the date of the first public announcement of the terms of issue of such Share-Related Securities or the terms of such grant, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 19. However, if any such issue or grant also falls within the terms of Condition 16 (*Shares, Rights and Share-Related Securities Issued to Shareholders*), Condition 17 (*Issue of Other Securities to Shareholders*) or Condition 18 (*Issues of Shares at Below Reference Market Price*), the relevant Benchmark Price shall not be subject to adjustment in accordance with this Condition 19.
- (b) *Effective Date:* For the purposes of this Condition 19 the "**Effective Date**" means the date of issue of the Share-Related Securities or the grant of the relevant rights.
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A = the number of Shares in issue on the Exchange Business Day immediately preceding the date of the first public announcement of the terms of such issue or grant;
- B = the number of Shares which the Aggregate Consideration would purchase at the Reference Market Price of the Shares on the date of the first public announcement of the terms of such issue or grant; and
- C = the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities at the initial price or rate.
- (d) *Formula:* If on the date (the "**Specified Date**") of issue of the relevant Share-Related Securities or date of grant of such rights the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time then, for the purposes of this Condition 19, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such subscription, purchase or acquisition had taken place on the Specified Date.
- (e) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 19 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

20. **Amendment of Terms of Rights or Share-Related Securities**

- (a) *Adjustment event:* If and whenever the rights to subscribe for, convert, exchange, purchase or otherwise acquire Shares pursuant to the terms of any Rights or Share-Related Securities are amended (other than in accordance with their terms of issue (including terms as to adjustment of such rights)) so that following such amendment the Consideration per Share is (1) reduced and

(2) less than 95 per cent. of the Reference Market Price of the Shares on the date of the first public announcement of the proposals for such amendment, the relevant Benchmark Price shall be subject to adjustment in accordance with this Condition 20.

- (b) *Effective Date:* For the purposes of this Condition 21, "**Effective Date**" means the date of amendment of such rights referred to in Condition 20(a).
- (c) *Adjustment to the relevant Benchmark Price:* In relation to each Note for which the Conversion Date has not occurred prior to the Effective Date, the relevant Benchmark Price shall be adjusted by multiplying the relevant Benchmark Price in effect immediately prior to the Effective Date by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Shares issued on the Exchange Business Day immediately preceding the date of the first public announcement of the proposals for such amendment;
- B is the number of Shares which the Aggregate Consideration (calculated taking account of the amended rights) would purchase at the Reference Market Price of the Shares on the date of the first public announcement of the proposals for such amendment (or, if lower, at the subscription, purchase or other acquisition price before the relevant amendment); and
- C the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Rights or Share-Related Securities at the amended subscription, purchase or acquisition price or rate (but giving credit in such manner as shall be Determined by an Expert to be appropriate for any previous adjustment under Condition 16 (*Shares, Rights and Share-Related Securities Issued to Shareholders*), Condition 19 (*Share-Related Securities Issued Other than to Shareholders*) or this Condition 20).
- (d) *Formula:* If on the date (the "**Specified Date**") of such amendment the maximum number of Shares which could be issued upon exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Rights or Share-Related Securities is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time then, for the purposes of this Condition 20, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such subscription, purchase or acquisition had taken place on the Specified Date.
- (e) *Effect of adjustment:* The relevant Benchmark Price as adjusted pursuant to this Condition 20 shall apply, with effect from and including the Effective Date, to each Note for which the Conversion Date has not occurred prior to the Effective Date. Any such adjustment shall be subject to any subsequent adjustment pursuant to these Conditions.

## 21. **Minor Adjustments and No Adjustments**

- (a) *Rounding and adjustments of less than one per cent:* On any adjustment of the relevant Benchmark Price, the resultant adjusted Benchmark Price, if not an integral multiple of one cent, shall be rounded down to the nearest whole cent. No adjustment shall be made to the relevant Benchmark Price where such adjustment (rounded down if applicable) would be less than one per cent. of the relevant Benchmark Price then in effect. Any adjustment not required to be made, and any amount by which the relevant Benchmark Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment but such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

- (b) *Employee share schemes*: No adjustment shall be made to the relevant Benchmark Price where Shares or other securities (including rights, warrants or options) are issued, offered, exercised, allotted, appropriated, modified or granted to or for the benefit of, or are subscribed, purchased or otherwise acquired by, employees or former employees (including directors holding or formerly holding executive office) of the Issuer or any Subsidiary or any associated company of the Issuer pursuant to any employees' share scheme or plan (including a dividend reinvestment plan).
- (c) *Adjustments not permitted by law*: The relevant Benchmark Price may not be adjusted so that the potential conversion of any Note would require Shares to be issued in circumstances not permitted by applicable law.

## 22. **Retroactive Adjustments**

- (a) *Adjustment Event*: If and whenever a Benchmark Price is to be adjusted pursuant to any of Condition 13 (*Dividends*) to Condition 20 (*Amendment of Terms of Rights or Share-Related Securities*) and the Conversion Date in relation to any Note is after the Record Date for any such issue, distribution, grant or offer as is mentioned in the relevant Condition but before the relevant adjustment becomes effective under the relevant Condition the retroactive adjustment set out in this Condition 22 shall apply.
- (b) *Adjustment to the Conversion*: Upon the date on which the relevant adjustment becomes effective under the relevant Condition (the "**Retroactive Adjustment Date**") the Issuer shall procure that there shall be issued to the converting Noteholder or in accordance with the instructions contained in the relevant Conversion Notice such additional number of Shares (the "**Additional Shares**") as, together with the Shares issued or to be issued on conversion of the relevant Note (together with any fraction of a Share not so issued due to Condition 10(g) (*Conversion - Fractions of a Share*), is equal to the number of Shares which would have been required to be issued on conversion of such Note if the relevant adjustment to the Benchmark Price had in fact been made and become effective immediately before the relevant Conversion Date. In calculating the number of any such additional Shares the provisions of Condition 10(g) (*Conversion - Fractions of a Share*) shall apply *mutatis mutandis*.
- (c) *Issue of Shares*: Such Additional Shares, upon issue, shall be registered in the name of the Noteholder in an account of such Noteholder with Iberclear or, as the case may be, in the name of a nominee on behalf of the Noteholder in the account of such nominee with Iberclear.
- (d) *Rights Arising on Conversion*: In the case of any Additional Shares, each reference in Condition 12(a) (*Rights Arising on Conversion - Rights in respect of Shares issued upon conversion*) to Condition 12(c) (*Rights Arising on Conversion - Voting rights*) to the Conversion Date shall be deemed to be a reference to the relevant Retroactive Adjustment Date.

## 23. **Aggregate Consideration and Consideration per Share**

- (a) *Applicability of this Condition*: For the purpose of calculating any adjustment to the relevant Benchmark Price pursuant to these Conditions, in the case of any:
  - (i) issue, grant or offer of Shares, Share-Related Securities, Rights in respect of Shares or Rights in respect of Share-Related Securities; or
  - (ii) grant to any existing securities issued of such rights as to make such securities Share-Related Securities; or
  - (iii) amendment of the terms of any Rights or Share-Related Securities (other than in accordance with their terms of issue),

the "**Aggregate Consideration**" and the "**Number of Shares**" shall be calculated or determined (if necessary) in accordance with the following provisions of this Condition 23 and the "**Consideration per Share**" shall, in each case, be the relevant Aggregate Consideration divided by the relevant Number of Shares.

- (b) *Shares for cash:* In the case of an issue, grant or offer of Shares for cash:
- (i) the Aggregate Consideration shall be the amount of such cash, *provided that* in no such case shall any deduction be made for any commissions or any expenses paid or incurred by the Issuer for any underwriting of the issue or otherwise in connection therewith; and
  - (ii) the Number of Shares shall be the number of Shares so issued, granted or offered.
- (c) *Shares not for cash:* In the case of the issue, grant or offer of Shares for a consideration in whole or in part other than cash:
- (i) the Aggregate Consideration shall be the amount of such cash (if any) plus the consideration other than cash, which shall be deemed to be the Fair Market Value thereof or, if pursuant to applicable law such determination is to be made by application to a court of competent jurisdiction, the value thereof as determined by such court or an appraiser appointed by such court, irrespective of the accounting treatment thereof; and
  - (ii) the Number of Shares shall be the number of Shares so issued, granted or offered.
- (d) *Issue of Share-Related Securities:* In the case of the issue, grant or offer of Share-Related Securities or Rights in respect of Share-Related Securities or the grant to any securities issued of such rights as to make such securities Share-Related Securities:
- (i) the Aggregate Consideration shall be:
    - (A) the consideration (if any) received by the Issuer for such Share-Related Securities and (if applicable) Rights or, as the case may be, such grant; plus
    - (B) the additional consideration (if any) to be received by the Issuer upon (and assuming) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities at the initial price or rate and (if applicable) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Share-Related Securities pursuant to the terms of such Rights at the initial price or rate,

the consideration in each case to be determined in the same manner as provided in paragraphs (b) and (c) of this Condition 23; and
  - (ii) the Number of Shares shall be the number of Shares to be issued upon (and assuming) such exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities at the initial price or rate and (if applicable) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Share-Related Securities pursuant to the terms of such Rights at the initial price or rate.
- (e) *Amendment of Share-Related Securities/Rights in respect of Share-Related Securities:* In the case of the amendment of the terms of any Share-Related Securities and/or Rights in respect of Share-Related Securities (in either case, other than in accordance with their terms of issue):
- (i) the Aggregate Consideration shall be:
    - (A) the consideration (if any) received by the Issuer for such amendment; plus
    - (B) the additional consideration (if any) to be received by the Issuer upon (and assuming) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities at the initial price or rate or (in the case of an amendment to the terms of such Share-Related Securities) the amended price or rate and (if applicable) the exercise in full of the rights to subscribe for, purchase or

otherwise acquire Share-Related Securities pursuant to the terms of such Rights at the initial price or rate or (in the case of an amendment to the terms of such Rights) the amended price or rate,

the consideration in each case to be determined in the same manner as provided in paragraphs (b) and (c) of this Condition 23; and

- (ii) the Number of Shares shall be the number of Shares to be issued upon (and assuming) such exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Share-Related Securities at the initial price or rate or (in the case of an amendment to the terms of such Share-Related Securities) the amended price or rate and (if applicable) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Share-Related Securities pursuant to the terms of such Rights at the initial price or rate or (in the case of an amendment to the terms of such Rights) the amended price or rate.
- (f) *Rights in respect of Shares:* In the case of the issue, grant or offer of Rights in respect of Shares or the amendment of the terms of any Rights in respect of Shares (other than in accordance with their terms of issue):
- (i) the Aggregate Consideration shall be:
    - (A) the consideration received by the Issuer for any such Rights or, as the case may be, such amendment; plus
    - (B) the additional consideration to be received by the Issuer upon (and assuming) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Rights at the initial price or rate or (in the case of an amendment to the terms of such Rights) the amended price or rate,the consideration in each case to be determined in the same manner as provided in paragraphs (b) and (c) of this Condition 23; and
  - (ii) the Number of Shares shall be the number of Shares to be issued upon (and assuming) the exercise in full of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Rights at the initial price or rate or (in the case of an amendment to the terms of such Rights) the amended price or rate.
- (g) *Currency translation:* If any of the consideration referred to in any of the preceding paragraphs of this Condition 23 is receivable in a currency other than euros, such consideration shall be translated into euros for the purposes of this Condition 23:
- (i) in any case where there is a fixed rate of exchange between euros and the relevant currency for the purposes of the issue, grant or offer of the Shares, Share-Related Securities or Rights, the exercise of the rights to subscribe for, purchase or otherwise acquire Share-Related Securities pursuant to the terms of such Rights or the exercise of the rights to subscribe for, purchase or otherwise acquire Shares pursuant to the terms of such Rights or Share-Related Securities, at such fixed rate of exchange; and
  - (ii) in all other cases, at the Prevailing Rate on the date as of which the said consideration is required to be calculated.

#### 24. **Other Adjustments**

Notwithstanding the foregoing provisions of these Conditions:

- (a) where the events or circumstances giving rise to any adjustment pursuant to these Conditions 13 to 23 have already resulted or will result in an adjustment to a Benchmark Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to a Benchmark Price

or where more than one event which gives rise to an adjustment to a Benchmark Price occurs within such a short period of time that, in the opinion of the Issuer, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be Determined by an Expert to be in its opinion appropriate to give the intended result; and

- (b) such modification shall be made to the operation of these Conditions as may be Determined by an Expert to be in its opinion appropriate (i) to ensure that an adjustment to the Benchmark Price or the economic effect thereof shall not be taken into account more than once and (ii) to ensure that the economic effect of a Dividend is not taken into account more than once.

#### *COVENANTS RELATING TO THE EQUITY OPTION*

#### 25. **Undertakings**

So long as any Note remains outstanding, the Issuer will, save (in the case of (b) and (c) below) with the approval of a resolution of the Syndicate of Noteholders:

- (a) not make any issue, grant or distribution or any other action taken if the effect thereof would be that, on conversion, Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- (b) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offeror and/or any associate (or affiliate) of the offeror) to acquire the whole or any part of the issued Shares, or if any person proposes a scheme with regard to such acquisition, give notice of such offer or scheme to the Noteholders at the same time as any notice thereof is sent to the Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the Specified Offices of the Paying and Conversion Agents and, where such an offer or scheme has been recommended by the board of directors of the Issuer, or where such an offer has become or been declared unconditional in all respects, use all reasonable endeavours to procure that a like offer is extended to the holders of any Shares issued during the period of the offer arising out of the exercise of the conversion of the Notes and/or to the Noteholders;
- (c) use its reasonable endeavours to ensure that (i) its issued and outstanding Shares shall be admitted to listing and to trading on the Relevant Exchange, (ii) the Shares issued upon conversion of the Notes will, as soon as is practicable, be admitted to listing and to trading on the Relevant Exchange and will be listed, quoted or dealt in, as soon as is practicable, on any other stock exchange or securities market on which the Shares may then be listed or quoted or dealt in and comply with such requirements and conditions as may be imposed for the official admission to listing of shares in the Relevant Exchange and (iii) the Notes are admitted to listing on the Official List of the London Stock Exchange and to trading on the London Stock Exchange's Professional Securities Market and that such admissions are maintained for so long as any Notes remain outstanding, unless to do so proves unduly onerous, in which case it shall use its reasonable endeavours to maintain a listing and admission to trading for the Notes on such other international stock exchange as it may reasonably decide; and
- (d) issue Shares upon conversion of Notes and at all times keep available for issue free from preemptive rights out of its authorised but unissued capital sufficient authorised but unissued Shares to enable the Notes to be converted in full, and all other rights of subscription and conversion for Shares, to be satisfied in full.

#### *MISCELLANEOUS PROVISIONS*

#### 26. **Determined by an Expert**

In relation to any matter required by these Conditions to be Determined by an Expert, the Issuer shall promptly appoint an Expert. If when any matter is required by these Conditions to be Determined by an Expert, the Issuer shall within a reasonable time fail to appoint an Expert the

Commissioner shall be entitled (but not obliged) to make such appointment. In either case, any such appointment shall be for the account of the Issuer.

If any doubt shall arise as to whether an adjustment falls to be made to a Benchmark Price or as to the appropriate adjustment to a Benchmark Price, and following consultation between the Issuer and an Expert, a written opinion of such Expert in respect thereof shall be conclusive and binding on the Issuer and the Noteholders, save in the case of manifest error.

27. **Prescription**

Claims for principal shall become void unless the relevant Notes are presented for payment within ten years of the appropriate Relevant Date. Claims for interest shall become void unless the relevant Coupons are presented for payment within five years of the appropriate Relevant Date.

28. **Replacement of Notes and Coupons**

If any Note or Coupon is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Principal Paying and Conversion Agent, subject to all applicable laws and stock exchange requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Notes or Coupons must be surrendered before replacements will be issued.

29. **Paying and Conversion Agents**

- (a) *Roles of Paying and Conversion Agents:* In acting under the Agency Agreement and in connection with the Notes and the Coupons, the Paying and Conversion Agents act solely as agents of the Issuer and (to the extent provided therein) and do not assume any obligations towards or relationship of agency or trust for or with any of the Noteholders or Couponholders.
- (b) *Changes to Paying and Conversion Agents:* The initial Paying and Conversion Agents and their initial Specified Offices are listed below. The Issuer reserves the right at any time to vary or terminate the appointment of any Paying and Conversion Agent and to appoint a successor principal paying and conversion agent and additional or successor paying and conversion agents; *provided, however, that* the Issuer shall at all times maintain a principal paying and conversion agent.

Notice of any change in any of the Paying and Conversion Agents or in their Specified Offices shall promptly be given to the Noteholders.

30. **Further Issues**

The Issuer may from time to time, without the consent of the Noteholders or the Couponholders, create and issue further notes having the same terms and conditions as the Notes in all respects (or in all respects except for the first payment of interest) so as to form a single series with the Notes.

31. **Notices**

Notices to the Noteholders shall be valid if published in a leading English language daily newspaper published in London (which is expected to be the *Financial Times*) or, if such publication is not practicable, in a leading English language daily newspaper having general circulation in Europe. Any such notice shall be deemed to have been given on the date of first publication. Couponholders shall be deemed for all purposes to have notice of the contents of any notice given to the Noteholders.

32. **Governing Law and Jurisdiction**

- (a) *Governing law:* Subject as provided in the immediately following sentence, the Notes and any non-contractual obligations arising out of or in connection with the Notes are governed by, and

shall be construed in accordance with, English law. Notwithstanding the previous sentence, the status of the Notes as described in Condition 4 (*Status, Subordination and Liquidation Distribution*) and the provisions of Condition 9 (*Syndicate of Noteholders and Modification of Agency Agreement*) relating to the appointment of the Commissioner and the Syndicate of Noteholders are governed by, and shall be construed in accordance with, Spanish law.

- (b) *English courts:* The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising with the Notes (including a dispute relating to the existence, validity or termination of the Notes or any non-contractual obligation arising out of or in connection with the Notes) or the consequences of their nullity.
- (c) *Appropriate forum:* The Issuer agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.
- (d) *Rights of the Noteholders to take proceedings outside England:* Condition 32(b) (*Governing Law and Jurisdiction - English courts*) is for the benefit of the Noteholders only. As a result, nothing in this Condition 32 prevents any Noteholder from taking proceedings relating to a Dispute ("**Proceedings**") in any other courts with jurisdiction. To the extent allowed by law, Noteholders may take concurrent Proceedings in any number of jurisdictions.
- (e) *Process agent:* The Issuer agrees that the documents which start any Proceedings and any other documents required to be served in relation to those Proceedings may be served on it by being delivered to Law Debenture Corporate Services Ltd. at Fifth Floor, 100 Wood Street, London EC2V 7EX or, if different, its registered office for the time being or at any address of the Issuer in Great Britain at which process may be served on it. If such person is not or ceases to be effectively appointed to accept service of process on behalf of the Issuer, the Issuer shall, on the written demand of any Noteholder addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Principal Paying and Conversion Agent appoint a further person in England to accept service of process on its behalf and, failing such appointment within 15 days, any Noteholder shall be entitled to appoint such a person by written notice addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Principal Paying and Conversion Agent. Nothing in this paragraph shall affect the right of any Noteholder to serve process in any other manner permitted by law. This Condition applies to Proceedings in England and to Proceedings elsewhere.

### 33. **Spanish Corporations Act**

In compliance with, and save as provided in, Condition 32(a), Noteholders:

- (a) will not benefit from any right as a holder of Notes arising from article 418 of the Consolidated Text of the Law on Limited Liability Companies, as approved by Royal Decree-Law 1/2010 dated 2 July 2010 (*Texto Refundido de la Ley de Sociedades de Capital*); and
- (b) will be deemed to have irrevocably instructed the Commissioner to take any action and/or to sign or execute and deliver any documents or notices that may be necessary or desirable to comply with and give effect to paragraph (a) hereof.

## SUMMARY OF PROVISIONS RELATING TO THE NOTES IN GLOBAL FORM

The Notes will initially be represented by the Temporary Global Note which will be deposited on or around the Issue Date with a common depositary for Euroclear and Clearstream, Luxembourg.

The Temporary Global Note will be exchangeable in whole or in part for interests in the Permanent Global Note not earlier than 40 days after the Issue Date upon certification as to non-U.S. beneficial ownership. No payments will be made under the Temporary Global Note unless exchange for interests in the Permanent Global Note is improperly withheld or refused. In addition, interest payments in respect of the Notes cannot be collected without such certification of non-U.S. beneficial ownership.

The Permanent Global Note will become exchangeable in whole, but not in part, for Notes in definitive form ("**Definitive Notes**") in the denomination of EUR100,000 each at the request of the bearer of the Permanent Global Note if Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business.

Whenever the Permanent Global Note is to be exchanged for Definitive Notes, the Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Notes, duly authenticated and with Coupons attached, in an aggregate principal amount equal to the principal amount of the Permanent Global Note to the bearer of the Permanent Global Note against the surrender of the Permanent Global Note to or to the order of the Fiscal Agent within 30 days of the bearer requesting such exchange.

If:

- (a) Definitive Notes have not been delivered by 5.00 p.m. (London time) on the thirtieth day after the bearer has duly requested exchange of the Permanent Global Note for Definitive Notes; or
- (b) the Permanent Global Note (or any part of it) has become due for conversion in accordance with the Conditions or the date for final mandatory conversion of the Notes has occurred and, in either case, the relevant Shares have not been delivered, and the relevant payment of accrued interest (if any) has not been made to or to the order of, the bearer in accordance with the terms of the Permanent Global Note,

then the Permanent Global Note (including the obligation to deliver Definitive Notes) will become void at 5.00 p.m. (London time) on such thirtieth day (in the case of (a) above) or at 5.00 p.m. (London time) on such due date (in the case of (b) above) and the bearer of the Permanent Global Note will have no further rights thereunder (but without prejudice to the rights which the bearer of the Permanent Global Note or others may have under a deed of covenant dated 29 June 2012 (the "**Deed of Covenant**") executed by the Issuer). Under the Deed of Covenant, persons shown in the records of Euroclear and/or Clearstream, Luxembourg as being entitled to an interest in the Permanent Global Note will acquire directly against the Issuer all those rights to which they would have been entitled if, immediately before the Permanent Global Note became void, they had been the holders of Definitive Notes in an aggregate principal amount equal to the principal amount of Notes they were shown as holding in the records of Euroclear and/or (as the case may be) Clearstream, Luxembourg.

In addition, the Temporary Global Note and the Permanent Global Note will contain provisions which modify the Terms and Conditions of the Notes as they apply to the Temporary Global Note and the Permanent Global Note. The following is a summary of certain of those provisions:

*Payments:* All payments in respect of the Temporary Global Note and the Permanent Global Note will be made against presentation and (in the case of mandatory conversion in full with all interest accrued thereon) surrender of the Temporary Global Note or (as the case may be) the Permanent Global Note to or to the order of any Principal Paying and Conversion Agent and will be effective to satisfy and discharge the corresponding liabilities of the Issuer in respect of the Notes. On each occasion on which mandatory conversion occurs or payment of interest is made in respect of the Temporary Global Note or (as the case may be) the Permanent Global Note, the Issuer shall procure that the conversion and/or payment is noted in a schedule thereto, which shall be prima facie evidence that such payment has been made.

*Payments on business days:* In the case of all payments made in respect of the Temporary Global Note and the Permanent Global Note "**business day**" means any day on which the TARGET System is open.

*Notices:* Notwithstanding Condition 31 (*Notices*), while all the Notes are represented by the Permanent Global Note or the Temporary Global Note, and the Permanent Global Note or the Temporary Global Note is deposited with a common depositary for Euroclear and Clearstream, Luxembourg, notices to Noteholders may be given by delivery of the relevant notice to Euroclear and Clearstream, Luxembourg and, in any case, such notices shall be deemed to have been given to the Noteholders in accordance with Condition 31 (*Notices*) on the date of delivery to Euroclear and Clearstream, Luxembourg.

*Meetings:* The holder of the Permanent Global Note or the Temporary Global Note shall be treated as two persons for the purposes of any quorum requirements of a meeting of Noteholders and, at any such meeting, as having one vote in respect of each EUR100,000 in principal amount of Notes represented by the Permanent Global Note or the Temporary Global Note (as the case may be).

*Purchase and Cancellation:* Cancellation of any Note following its purchase will be effected by reduction in the principal amount of the Temporary Global Note or Permanent Global Note (as applicable).

*Mandatory Conversion:* Subject to the requirements of Euroclear and Clearstream Luxembourg, where there is a mandatory conversion in respect of Notes represented by the Permanent Global Note, the Permanent Global Note together with one or more Conversion Notices duly completed and signed by or on behalf of one or more Noteholders shall be presented to the Principal Paying and Conversion Agent or such other Agent as shall have been notified to the Noteholders for such purpose.

## REASONS FOR THE OFFER

The Notes are being issued pursuant to an exchange offer (the "**Offer**") made to holders of certain series of perpetual preferred securities issued by Banco Popular, Popular Capital, S.A. and Pastor Participaciones Preferentes, S.A. Unipersonal, and subordinated securities issued by Banco Pastor (collectively, the "**Existing Securities**").

The rationale of the Offer is to strengthen the Group's capital base. As a result of letters sent by the Bank of Spain to the Issuer on 8 June 2012 and 14 June 2012, the Notes are expected to meet the eligibility requirements of national and international regulators to count as highest quality capital. From 2013, the Existing Securities are expected to start losing their regulatory eligibility and will be subject to grandfathering provisions. Replacement of the Existing Securities with the issue of Notes in the Offer is intended to allow the Group to strategically transition into the new regulatory framework.

## DESCRIPTION OF THE ISSUER

### Information about the Issuer

Banco Popular Español, S.A. (the "**Issuer**" or the "**Bank**" or "**Banco Popular**") was incorporated for an indefinite period on 14 July 1926, under the name "Banco Popular de los Previsores del Porvenir", a public limited company registered in the Mercantile Registry of Madrid. It began operations on 1 October 1926, changing its name to "Banco Popular Español, S.A." by a deed on 8 March 1947.

The Issuer's registered office is at calle Velázquez nº 34, 28001 Madrid, Spain, telephone number +34 902 30 10 00.

The Issuer is incorporated as a *sociedad anónima* (public limited company), and is governed by the Consolidated Text of the Capital Companies Act (*Texto Refundido de la Ley de Sociedades de Capital*) approved by Royal Legislative Decree 1/2010, dated 2 July, and associated regulations, as recently modified by Law 25/2011, dated 1 August, regarding the execution of rights from shareholders.

The purposes of the Issuer (set out in Article 4 of the Issuer's Articles of Association) are to:

- (a) carry out all kinds of operations in relation to securities and credit instruments, without prejudice to the provisions of stock trading and collective investment laws;
- (b) carry out active and passive credit and surety operations in its own name or on behalf of third parties;
- (c) acquire or transmit, in its own name, commission, shares, debentures, and other public and private securities, national or international, bank notes and coins from all countries and formulating public offers for the purchase and sale of securities;
- (d) receive and place cash and securities on deposit or administration. The Bank is not authorised under any circumstances to use the cash or securities placed in its custody on deposit;
- (e) perform all kinds of operations current accounts, time deposits, and others;
- (f) accept and grant administrations, representations, delegations, commission, agencies and other remits in the interest of those who use the Bank's services; and
- (g) all other private banking activities allowed by law.

Part or all of the activities included in the corporate purpose may be carried out indirectly by the Bank through the ownership of shares or participations in companies with similar or identical purposes.

Given its status as a financial entity, the Issuer's activities are subject to supervision by the Bank of Spain. The Issuer is registered in the Banks and Bankers' Registry (*Registro de Bancos y Banqueros*) registration 0075.

### Group Structure

The Banco Popular group is comprised of the Bank and its consolidated subsidiaries as at 31 December 2011 (the "**Group**"). Following the acquisition of Banco Pastor S.A. ("**Banco Pastor**"), as of 31 March 2012 the Group includes Banco Pastor and its consolidated subsidiaries (the "**Enlarged Group**").

### Principal Subsidiaries

As at the date of these Listing Particulars, the five principal banking subsidiaries of the Bank are:

- Bancopopular-e, S.A., specialising in Internet banking in Spain (wholly-owned subsidiary);
- Popular Banca Privada, S.A., which provides private banking services in Spain (owned 60 per cent. by the Group and 40 per cent. by Dexia Banque Internationale à Luxembourg S.A.);
- Banco Popular Portugal, S.A. ("**Banco Popular Portugal**"), a commercial bank operating in Portugal (wholly-owned subsidiary). Banco Popular Portugal S.A. shares the Group's

technological platform and is fully integrated with its central services, but it also maintains a structure of its own in order to comply with Portuguese regulations and to respond to the specific requirements of its customers;

- TotalBank, which provides a range of business and personal banking and financial products and services in the United States (wholly-owned subsidiary). This entity operates through fourteen branches located in Miami Dade County, in the state of Florida; and
- Banco Pastor, which offers wholesale and retail banking services, catering mainly to individuals and small-and medium-size businesses ("SMEs") in Spain, operating in Galicia and other financial centres in Spain (wholly-owned subsidiary).

### Other Subsidiaries and Affiliates

The Group also includes twenty-three other operating companies which provide a range of financial services offered by the Group, including factoring, mutual and pension fund management, securities intermediation, portfolio and asset management, life insurance broking, venture capital investment and equipment renting. Some of these companies are joint ventures between the Bank and other entities. The Group also includes companies which provide support for the Enlarged Group's main activities and several other smaller companies.

The following table summarises the companies making up the Group and the Bank's ownership of such companies as at 31 December 2011:

	Registered Office		Business	Ownership Interest (%)	
				Direct	Indirect
<b>Deposit-taking companies:</b>					
Bancopopular-e, S.A.	Velázquez, 34	Madrid	Banking	100.00	—
Banco Popular Portugal S.A.	Rua Ramalho Ortigao, 51	Lisbon	Banking	100.00	—
Popular Banca Privada S.A.	Luca de Tena, 13	Madrid	Banking	52.50	7.50
TotalBank	2720 Coral Way	Miami	Banking	100.00	—
<b>Financing companies:</b>					
Popular Factoring S.A.	Rua Castilho, 39	Lisbon	Factoring	99.82	—
Popular de Factoring S.A.	Maria de Molina, 54	Madrid	Factoring	100.00	—
<b>Portfolio &amp; Service Companies:</b>					
Popular Gestao de Activos S.A.	Rua Ramalho Ortigao, 51	Lisbon	Pension plan management	100	—
Gestora Popular S.A.	J.Ortega y Gasset, 29	Madrid	Share portfolio and ownership	35.00	65.00
PBP Cartera Premium SICAV, S.A.	J, Ignacio Luca de Tena, 13	Madrid	Sicav	45.95	2.80
Popular Bolsa S.V, S.A.	Labastida, 9-11	Madrid	Stockbroker	100.00	—
Popular de Participaciones Fin.	Labastida, 9-11	Madrid	Venture capital	100.00	—
Popular Gestión Privada SGIIC,S.A.	Luca de Tena, 13	Madrid	Mutual fund management	—	60.00
<b>Instrumentality companies:</b>					
Aliseda S.A.	J.Ortega y Gasset, 29	Madrid	Asset ownership	100.00	—
BPE Finance Internacional LTD	Ugland House George	George Town	Financial instrumentality	100.00	—
BPE Financiaciones S.A.	J.Ortega y Gasset, 29	Madrid	Financial instrumentality	90.00	10.00
BPE Preference Internacional LTD	Ugland House George	George Town	Financial instrumentality	100.00	—
Consulteam-Consultores de Gestao, S.A.	Rua Tomás Ribeiro, 50	Lisboa	Real estate management consultant	85.45	19.55
Finespa S.A.	J.Ortega y Gasset, 29	Madrid	Property instrumentality	4.19	95.81
Fondo Imopopular FTIIF	J. Ortega y Gasset, 29	Madrid	Property investment fund	90	10
Gestora Europea de Inversiones S.A.	Labastida, 9-11	Madrid	Services instrumentality	99.90	0.10
Gold Leaf Title Company	2720 Coral Way	Miami	Financial Instrumentality	—	100.00
IM Banco Popular FTPYME 1, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Banco Popular FTPYME 2, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Banco Popular FTPYME 3, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Banco Popular MBS 1, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Banco Popular MBS 2, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Cédulas Grupo Banco Popular 1, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Cédulas Grupo Banco Popular 3, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Cédulas Grupo Banco Popular 5, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular Empresas 1, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular Empresas 3, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular Empresas 4, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular FTPYME 1, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular FTPYME 2, FTA	Pz. Pablo Ruiz Picasso	Madrid	Asset securitisation fund	100.00	—
IM Grupo Banco Popular Leasing 2, FTA	Pz. Pablo Ruiz Picasso, s/n	Madrid	Asset securitisation fund	100.00	—
Inversiones Inmobiliarias Alprosa, S.L.	J. Ortega y Gasset, 29	Madrid	Real estate development	68.25	31.75
Red Leaf Holding	2720 Coral Way	Miami	Real estate development	100.00	—
Inversiones Inmobiliarias Canvices, S.L.	J. Ortega y Gasset, 29	Madrid	Real estate development	—	100.00
Inversiones Inmobiliarias Cedaceros, S.L.	J. Ortega y Gasset, 29	Madrid	Real estate development	—	100.00
Inversiones Inmobiliarias Gercebio, S.L.	J. Ortega y Gasset, 29	Madrid	Real estate development	—	100.00
Inversiones Inmobiliarias Jeraguilas, S.L.	J. Ortega y Gasset, 29	Madrid	Real estate development	—	100.00
Inversiones Inmobiliarias Tamadaba, S.L.	Prof. Agustin Miralles Carlo, s/n	Las Palmas, Canary	Real estate development	99,00	1.00

	Registered Office	Business	Ownership Interest (%)		
			Direct	Indirect	
		Islands			
Isla de los Buques S.A. ....	J. Ortega y Gasset, 29	Madrid	Financial instrumentality	99.98	0.02
Manberor S.L. ....	J. Ortega y Gasset, 29	Madrid	Real estate	—	100.00
Meglahe S.L. ....	J. Ortega y Gasset, 29	Madrid	Real estate	—	100.00
Inmobiliaria Viagracia S.A. ....	J.Ortega y Gasset, 29	Madrid	Property instrumentality	99.99	0.01
Inmobiliaria Vivesa S.A. ....	J.Ortega y Gasset, 29	Madrid	Property instrumentality	99.99	0.01
Intermediación y SS Tecnológicos.....	Luca de Tena, 13	Madrid	Services instrumentality	99.50	0.50
Popular Capital S.A. ....	J.Ortega y Gasset, 29	Madrid	Financial instrumentality	90.00	10.00
Popular Español Asia Trade LTD .....	13/F Tim Mei Avenue	Hong Kong	Financial instrumentality	100.00	—
Urbanizadora Española S.A. ....	J.Ortega y Gasset, 29	Madrid	Property instrumentality	7.19	90.55
Velázquez 34.S.L.....	J.Ortega y Gasset, 29	Madrid	Real estate	97.80	2.20
Popular de Mediación S.A. ....	J.Ortega y Gasset, 29	Madrid	Insurance brokering	80.00	15.00
<b>Non-financial companies:</b>					
Desarrollo Aplicaciones Especiales S.A. ....	Juan de Oñías, 1	Madrid	Data processing	50.67	—
FIB Realty Corporation .....	2720 Coral Way	Miami	Dormant	—	100.00
Eurovida S.A. (Portugal) .....	Av. da República, 57	Madrid	Insurance	84.07	15.93
Panorama Ibicenca S.A. ....	J.Ortega y Gasset, 29	Madrid	Asset ownership	—	100.00
Popular de Comunicaciones S.A. ....	J.Ortega y Gasset, 29	Paris	Communications services	99.84	0.16
Popular de Informática S.A. ....	J.Ortega y Gasset, 29	Madrid	IT services	99.84	0.16
Popular de Renting S.A. ....	Labastida, 9-11	Madrid	Renting	100.00	—
Popular Seguros S.A. ....	Av. da Republica, 57	Lisbon	Insurance	—	100.00
Promoción Social de Viviendas S.A. ....	J.Ortega y Gasset, 29	Madrid	Asset ownership	—	91.84
Total Sunset Inc.....	2720 Coral Way	Miami	Dormant	—	100.00

By virtue of the Issuer's majority holdings in capital stock and voting rights or agreements with both its principal and other subsidiaries and affiliates, the Group operates as a single holdings unit with unified direction and management and common technical and support services. The banking and other subsidiaries of the Issuer act as geographical or functional units forming part of the organisation, the primary differentiating features being those arising from the differing legal status of each entity.

### Business of the Group

The Issuer's business is concentrated in the traditional domestic retail banking business of savings and loans. Through its specialised subsidiaries it also offers factoring, investment management, mutual and pension funds, stock broking, life assurance and mortgage lending. At the date of these Listing Particulars, the Issuer's shares are listed on the Madrid, Barcelona, Valencia and Bilbao stock exchanges (the "Spanish Stock Exchanges") and on Euronext Lisbon, each of which is a regulated market for the purposes of MiFID.

### Commercial Banking

Commercial banking is the core business of the Group, and is comprised of: (i) corporate banking activity; and (ii) retail banking activity. At 31 December 2011 the Group had 6,929,863 customers, an increase of 117,187 in comparison to 2010. New customers added in the first quarter of 2012 amounted to 47,723.

At 31 December 2011, the Group had 2,203 branch offices (in comparison to 2,224 in 2010) of which 1,967 were distributed throughout Spain with 236 located in Portugal and the United States. At 31 March 2012, this figure increased to 2,765 branch offices, 2,529 in Spain and 236 in Portugal and the United States.

#### (i) Corporate Banking

The Group's corporate banking business was managing 1,089,959 customers at 31 December 2011 (an increase of 640,000 new customers in comparison to the total at 31 December 2010) and contributed 71 per cent. of the average total assets and 81 per cent. of the gross operating income in respect of the financial year ended 31 December 2011. New SMEs in the first quarter of 2012 reached 17,672. Corporate customers consist of big companies, SMEs, self-employed individuals and retail traders, and non-commercial undertakings. A big company is defined as a company with total assets of over €100 million and income of over €100 million. The SMEs category includes medium-sized companies with assets and income of €10 million to €100 million, small companies with assets and income of €1 million to €10 million and micro-companies with assets and income of under €1 million. Non-commercial undertakings include legal entities such as, for example, associations and sports clubs.

The segment with the greatest weight in the income statement is that of SMEs, which accounted for 29.8 per cent. of total assets in 2011, compared with 28.2 per cent. in 2010. Self-employed individuals and retail traders together accounted for 12.2 per cent. of the Issuer's gross operating income in 2011.

(ii) *Retail Banking*

The Group had 5,839,904 retail banking customers at 31 December 2011, with a total of 36,210 new customers in 2011. The retail banking business contributed 29 per cent. of the average total assets and 19 per cent. of the gross operating income of the Group. In comparison with the previous year ended 31 December 2010, retail banking fell behind corporate banking as a whole in its importance due to the lower demand for mortgage loans and to growth in demand for corporate lending.

The Group's retail banking activities include personal banking, banking for private individuals and retail banking. Personal banking customers are those with a net worth of over €60,000. The difference between banking for private individuals and retail banking is based on the level of personalised attention and the degree of connection with the Issuer. The banking for private individuals segment has the greatest weight and importance, both in total assets and in contribution to gross operating income, within the retail banking activities of the Group.

*Commercial Banking in Spain*

The Group's commercial banking activities are carried out in Spain primarily by the Issuer itself and two specialist subsidiary banks: Popular Banca Privada S.A., specialising in private banking; and Bancopopular-e S.A., an internet bank.

Popular Banca Privada, S.A., is the Group's private banking branch. It is specialised in offering global tailor-made solutions for investors, from investment decisions to capital management, supported by the Group and Banque Internationale à Luxembourg (BIL), an entity with more than 150 years of experience in the banking sector.

Bancopopular-e, S.A., is the on-line bank which has been part of the Group since 2000. Bancopopular-e, S.A. offers a wide range of products and services, being a key provider of on-line banking services.

*Commercial Banking in Portugal*

The Group's commercial banking activities are carried out in Portugal through Banco Popular Portugal, S.A.

Banco Popular Portugal, S.A.'s total assets at 31 December 2011 amounted to €9,054 million, of which €6,501 million related to gross lending to customers. 2011 was a year of consolidation and take-off in both lending and deposits with Banco Popular Portugal, S.A. increasing its loans and receivables (excluding investment in debt) by 7.4 per cent., after a slight decrease in 2010. The biggest contributors to this were mortgage loans, commercial paper and finance leases, in contrast with the divestment in construction. The majority of this increase was financed via customer deposits, which were up by 17.1 per cent. to nearly €4,147 million at 31 December 2011.

*Commercial Banking in The United States*

The commercial banking business in the United States is conducted through TotalBank, which was acquired at the end of 2007 and operates in the State of Florida. As of 31 December 2011, TotalBank had 17 branches and 405 employees; its total assets amounted to US\$ 2.28 billion and included US\$ 1.29 billion in loans and receivables.

**Asset management**

The Group's asset management business is comprised of: (i) collective investment institution management activities; (ii) individual and collective pension plans management; and (iii) private banking. This business is managed by two collective investment institution managers in Spain and one in Portugal, and two pension plan managers, one in each of Spain and Portugal. The Group experienced significant outflows of assets from the collective investment institutions in 2011 largely towards bank deposits. The

negative performance of the collective investment institutions management area was offset by a more positive performance by the Group's other businesses within this area, such as management of individual and collective pension plans and private banking. Net fees and commissions decreased by 34.43 per cent. in 2011 in comparison to 2010, with pre-tax profit for 2011 standing at €15.6 million.

(i) *Collective investment institution management*

At 31 December 2011, the Group was managing assets in collective investment institutions of €6,049 million through two managers in Spain, Popular Gestión SGIIC, S.A. and Popular Gestión Privada SGIIC, S.A., and one manager in Portugal, Popular Gestão de Activos S.A. The assets under management in Spain were €6,049 million, divided among 290,222 investors.

In 2011 the Group saw net outflows of funds from its managers in Spain. This situation was also reflected in the variation in the number of fund participants which fell 3.9 per cent. for 2011 in comparison to 2010.

(ii) *Individual and collective pension plans management*

This activity is conducted mainly through Europensiones, EGFP ("**Europensiones**"), a Spanish company which is owned 40 per cent. by the Group and 60 per cent. by the Allianz insurance group. The Group also has a pension fund manager in Portugal, Eurovida S.A. (Portugal). The assets managed by Europensiones totalled €4,026 million at 31 December 2011, an increase of 1.9 per cent. in comparison to 2010. The assets managed in individual schemes at 31 December 2011 totalled €3,079 million, with €914 million in occupational plans and €34 million in associated schemes.

(iii) *Private banking*

This activity is conducted mainly through Popular Banca Privada S.A., in which the Issuer holds 60 per cent. of the share capital, the remaining 40 per cent. being held by BIL Internationale à Luxembourg S.A. Popular Banca Privada, S.A. provides advisory and management services to high net worth customers with assets under management or advisory services of at least €300,000.

At 31 December 2011 Popular Banca Privada had 4,586 customers, an increase of 268 in comparison to 2010, and was managing assets of €5,38 million, 1.8 per cent. less than at 31 December 2010.

## **Insurance**

The Group's insurance business is focused on pension and insurance products that include life insurance (both as a means of savings and life policies linked to credit transactions), miscellaneous insurance (mainly home, health and car insurance) and those linked to retirement. The range of products is adapted to each of the Issuer's individual businesses and customer segments, be they private individuals, businesses or institutions.

The activity is run by two life insurance companies, Eurovida, S.A. Cía. de Seguros y Reaseguros (Spain), 40 per cent. owned by the Group and 60 per cent. owned by Allianz, S.E., and Eurovida S.A. Cía. de Seguros y Reaseguros (Portugal), which is a wholly-owned subsidiary of the Group. The on-balance sheet assets of Eurovida España totalled €1,188 million at 31 December 2011, an increase of 13.5 per cent. in comparison to 2010. There was a 9.5 per cent. rise in the premiums collected.

The non-life insurance business in Portugal is managed by Popular Seguros S.A. and an insurance broking subsidiary, Popular de Mediación S.A., both of which are wholly-owned by the Enlarged Group.

At 31 December 2011 the Group saw a growth of 6.8 per cent. on the earnings provided by its insurance business in comparison at 31 December 2010, which contributed a profit of €30.3 million.

## **Investments and market activities**

The Group's investments and market activities include: (i) raising of funds in the wholesale and inter-bank markets; (ii) treasury activity assigned to the held-to-maturity, the available-for-sale and the trading

portfolios; (iii) asset and liability hedging operations; and (iv) management of tangible and intangible assets, including non-current assets for sale. Also assigned to this business area are the asset and liability balances arising from pensions, tax assets and liabilities, risk provisions, and other assets and liabilities.

These activities contributed to the Group's total earnings in 2011 with profit before taxes at 31 December 2011 standing at €106.4 million. 2011 saw an increase of more than 273 per cent. compared to the same period in 2010.

## **Financial Overview**

### ***Income and expenses***

At 31 December 2011 the Group had total assets of €130,926 million, customer funds of €68,743 million and shareholder funds of €8,388 million (after distributions of the year's income). The Group's net income for the year ended 31 December 2011 was €484 million.

On a consolidated basis the Group's net income for the three months ended 31 March 2012 was €100.6 million.

In 2011 there was an increase of 4.7 per cent. in operating costs in comparison to 2010. Personnel expenses remained flat and general expenses rose, due mainly to increases in advertising and publicity expenses, VAT and other expenses, and technology investments (which increased by 70.4 per cent., 29.1 per cent. and 18.7 per cent., respectively, in 2011 in comparison to 2010).

As a result of the performance of income and expenses discussed above, Banco Popular achieved an efficiency ratio of 42.15 per cent. Depreciation and amortisation totalled €106 million, 10.4 per cent. more than in 2010. 63.9 per cent. of this amount related to the depreciation of tangible assets. Net provisions to allowances amounted to €-18 million as a result of the release of provisions for contingent exposures.

Schedules of provisioning gave rise to net financial asset impairment losses of €970 million in 2011, which was €305 million less than the allowances registered in 2010. €940 million of this amount (96.9 per cent.) related to loans and receivables and included the registration of €31 million to the allowance for substandard credit risk and the release of €148 million for assets written off.

The remaining financial asset impairment losses amounted to €30 million, which was 82.1 per cent. less than in 2010, as a result of the lower provisions for equity instruments.

### ***Assets and liabilities***

To guarantee the solvency of the financial system, banks must maintain a minimum level of capital above their total risk-weighted assets. This will be measured by reference to each bank's additional core capital ratio, bank of international settlements ("**BIS**") ratio and tier I capital ratio. In addition, from 1 January 2013 banks must also maintain a minimum ratio of core tier I capital.

Extraordinarily, from 30 June 2012 banks must comply with the new capital requirements of the EBA relating to the core tier I ratio, at a minimum level of 9 per cent.

The Group had a core capital ratio of 10.09 per cent. capitalisation at 31 December 2011, compared with 9.43 per cent. a year previously; a BIS ratio of 10.18 per cent. at 31 December 2011, compared with 9.76 per cent. at 31 December 2010 and a tier I capital ratio of 10.04 per cent. at 31 December 2011 compared with 9.67 per cent. at 31 December 2010. During the first three months of 2012, the Group's core capital ratio was 9.84 per cent.

At 31 December 2011, the Group was managing assets worth €143,389 million (compared with €143,206 million at 31 December 2010) and on-balance sheet funds of €130,926 million, with a capital base of €9,124 million (compared with €130,140 million at December 2010).

The Group sought to strengthen its liquidity position during 2011 by reducing the commercial gap by €226 million compared with €6,100 million at 31 December 2010. Due to the acquisition of Banco Pastor (as discussed below), the Group reduced the commercial gap by a further €4,360 million during the first three months of 2012.

Despite the difficult situation in 2011, Banco Popular's non-performing loans remained below the average of the banking sector. The non-performing ratio was 5.99 per cent. at 31 December 2011 and has remained at all times below the average for Spanish credit institutions (7.61 per cent.).

### ***Profit***

Due primarily to the factors described above, profit attributable to the Issuer during 2011 was €480 million, a decrease of 18.7 per cent. compared with the amount of €590 million in 2010. During the first three months of 2012, the consolidated profit of the Group was €100.6 million, a decrease of 46.8 per cent. compared to corresponding period in 2011.

### ***Funding***

On 26 June 2009, the General Meeting of Shareholders agreed to delegate to the Board of Directors, pursuant to article 319 of the Mercantile Registry Regulations, the authority to issue fixed income securities convertible into newly issued shares, and/or existing shares of the Issuer, with the determination of the bases and types of the conversion and/or swap, with the waiver, if necessary, of preferential subscription rights, and the delegation of powers to increase the capital stock by the required amount.

Pursuant to this Agreement, the Board of Directors resolved on 27 July 2009 to issue subordinated bonds compulsorily convertible into newly-issued ordinary shares of the Issuer through the subsidiary Popular Capital, S.A., for a total nominal amount of €700 million and at a conversion price of €7.1377 per share. These bonds were traded on the Electronic Bond Market of the Madrid Stock Exchange.

The Board of Directors resolved on 30 March 2012 to issue subordinated bonds compulsorily convertible into newly-issued ordinary shares of the Issuer to the holders of these compulsorily convertible subordinated bonds issued on 23 October 2009 (ISIN 0370412001). This last issue was convened under the Agreement of the General Shareholders Meeting held on 8 April 2011, detailed further below.

The Board of Directors resolved in October 2010 to issue subordinated bonds compulsorily convertible into newly-issued ordinary shares of the Issuer through the subsidiary Popular Capital, S.A., for a total nominal amount of €500 million and at a conversion price of €1.9645 per share. These bonds are traded on the Electronic Bond Market of the Madrid Stock Exchange. It was convened, in the meeting of the Board of Directors of the Issuer held on 25 April 2012, to proceed with a mandatory conversion for the total amount of the bonds in circulation. This mandatory conversion took place on 18 June 2012. Such mandatory conversion was decided under the Agreement of the General Shareholders Meeting held on 8 April 2011.

The agreement of 2009, agreed at the General Shareholders Meeting held on 26 June 2009, was reinstated at the General Shareholders Meeting held on 8 April 2011 with the same terms and conditions as the 2009 agreement.

Pursuant to this Agreement, the Board of Directors resolved in 25 January 2012 to issue subordinated bonds compulsorily convertible into newly-issued ordinary shares of the Issuer directed to the holders of the Series A, B and C of preferred securities issued by BPE Preference International Ltd (ISIN KYG717151099, KYG717151172 y KYG1280W1015), and the Series 1-2009 issued by Pastor Participaciones Preferentes S.A.U. (ISIN ES0168569004). The total nominal amount of the issue was €1,109,375,800. These bonds are traded on the Electronic Bond Market of the Madrid Stock Exchange.

### ***Liquidity***

Since the beginning of the global financial crisis in 2007, the Group has sought to reduce its reliance on the short and long term capital markets while at the same time extending the terms of its financing.

As a result, the strategy of the Group has been to prioritise retail financing, which has led to a commercial gap at 31 December 2011 of €23,286 million and a loans to deposits ratio of 135%. This represents a reduction in the commercial gap of €14,800 million of the course of the three years ended in December 2011, and a reduction in the loans to deposits ratio of 39 percentage points.

Retail financing increased by 1% during 2011, reaching 53.6% of the total financing of the Group. The composition of the Group's retail financing at the end of 2011 was: (1) current accounts and term deposits, 49.5%; and (2) products placed through the Group's retail network, 4.1%.

By comparison, wholesale financing of the Group represented 20.2% of total financing and was spread over a variety of sources, capital markets financing represented 11.0% of total financing and financing from the public sector (the European Central Bank, the Spanish treasury, the *Instituto Oficial de Crédito* and various Spanish public administrations) represented 15.2% of total financing.

Wholesale financing decreased by €4,200 million in 2011. Of that amount, €2,400 million corresponded to a decrease in short-term financing and €1,800 million corresponded to a decrease in long-term financing. The aggregate amount of the Group's long-term financing by means of *cédulas hipotecarias* (a type of Spanish asset covered bonds) has remained constant, as maturing *cédulas hipotecarias* have been rolled-over in the ordinary course. The aggregate amount of *cédulas hipotecarias* issued in 2011 was €1,650 million.

Although the aggregate amount of eurobond issuance decreased by €1,400 million, the Issuer issued an aggregate amount of €550 million of eurobonds in 2011. The total aggregate amount of eurobonds outstanding at 31 December 2011 was €4,330 million.

In addition, the Group had liquid assets available of €11,044 million at 31 December 2011, with which to obtain further financing.

In order to increase its sources of financing guaranteed by liquid assets, and as an alternative to financing from the European Central Bank, in 2010 the Issuer, together with other international financial institutions, became a member of the three European clearing houses LCH. Clearnet (London), LCH.Clearnet (Paris) and Eurex Repo. This initiative was intended to allow the Issuer to attract funds for terms between 1 day and 1 year at market rates. The clearing houses act as guarantor of the transactions carried out by financial institutions, which is intended to reduce risk. The Issuer's financing activity with these clearing houses continued during 2011, although the aggregate value of transactions involving the Issuer decreased by 12% with respect to 2010.

### ***Solvency***

The Issuer has historically maintained a good position regarding capital strength. While in 2007, the year the credit crisis began, it had a capital ratio of 6.47 per cent., this had risen by 357 basis points to 10.04 per cent. in 2011. Despite the complicated environment, this was due to the Issuer maintaining sustainable profit throughout the period.

In 2011, the Bank continued to strengthen its solvency in order to prepare for a demanding regulatory environment. Mandatorily convertible notes ("MCNs") were issued in 2009 and 2010 and two accelerated capital increases were made to strengthen the core capital. In 2011 this reinforcement plan was completed with the issuance of €450 million of subordinated debt. At the same time, the steps taken during the year to optimise the capital, combined with the profit generated, made it possible to increase the core capital year on year by 61 basis points, ending 2011 at 10.04 per cent. The position with respect to the sector is very favourable, since Banco Popular's capital ratio is higher than the average for comparable Spanish banks and the average for European banks.

The Group maintains a low level of leverage, calculated as the ratio of tangible assets to tangible equity, which, at December 2011 was 14.84x compared with the average for comparable Spanish banks of 19.4x and for European banks of 30.92x (*source*: Bank of Spain).

Recent developments in the regulatory framework have affected the solvency metrics of the Issuer and imposed additional requirements. For more information on the changes to the regulatory framework and their impact on the Issuer, see "*Risk Factors – Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business*".

### ***Credit Quality***

At 31 December 2011, the balance of troubled risks or non-performing loans amounted to €7,323 million, an increase of €1.268 million in comparison to 2010. This was the outcome, on the one hand, of a gross addition to the exposure for non-performing loans of €4,279 million and recoveries of €2,117 million and, on the other, of the write-off of €894 million of non-performing balances, of which €869 million were charged against credit loss provisions and the remainder was charged directly against profit by accelerated write-off.

The non-performing ratio was 5.99 per cent. at 31 December 2011 compared with 5.27 per cent. at 31 December 2010. This meant that the Group's non-performing loans ratio was below that of the sector, which was 7.61 per cent. in December 2011 (*source*: Bank of Spain), as discussed in the section on the positioning of the Group in the banking sector.

The total risk premium (losses for impairment of loans and receivables / average balance of lending to customers) was 1.00 per cent. at 31 December 2011 compared with 1.21 per cent. at 31 December 2010, an improvement of 21 basis points. Excluding the impact of the release from the general allowance, there would be a 52 basis points improvement in the premium for 2011, year on year.

The credit loss provisions registered at 31 December 2011 amounted to €2,530 million, which was €82 million (3.3 per cent.) more than at 31 December 2010. This allowance is the sum of €2.414 million of specific allowances for troubled risks, €114 million of general allowances and €2 million to cover cross-border risk.

In order to keep its risks covered the Group has a set of instruments to provide coverage of its non-performing loans consisting of the guarantees received, and the provisions registered (both the regulatory and the accelerated provisions).

Recent developments in the regulatory framework, in particular Royal Decree-Laws 2/2012 and 18/2012, have introduced, inter alia, additional provisioning requirements. For more information, see "*Risk Factors - Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business*".

### ***Investments***

The principal investment that the Group has made in the last two years is the acquisition of Banco Pastor and its consolidated subsidiaries (together, the "**Banco Pastor Group**"), as described further below.

### **Recent Developments**

The most significant acquisitions and disposals of investments in Group entities and other relevant corporate transactions from 31 December 2011 to the date of these Listing Particulars are as follows:

#### ***Acquisition of Banco Pastor***

On 7 October 2011 the Issuer released a press release informing the market of a possible agreement with the relevant shareholders of Banco Pastor, in order to become an integration partner. As a consequence of conversations between the management of the two entities, the Issuer communicated to the relevant shareholders its intention to participate in an integration operation that would maintain the name and brand of Banco Pastor within its traditional geographic area.

It was agreed that the integration operation would consist of an offer to all the shareholders of Banco Pastor through an exchange of 1.115 new shares of the Issuer for every share of Banco Pastor, and 30.9 shares of the Issuer for every mandatory convertible subordinated bond of Banco Pastor. The irrevocable compromise of acceptance was planned to represent at least 50.1 per cent. of the share capital of Banco Pastor.

The structure of the offer to Banco Pastor shareholders was agreed at the Extraordinary Shareholders General Meeting of the Issuer held on 20 December 2011 to increase the capital by non-monetary contributions of a maximum of €38,203,799.10, by issuing and placing in circulation a maximum of 382,037,991 shares, with a par value of €0.10 each, solely for the exchange of shares and necessarily convertible subordinated bonds held by Banco Pastor shareholders and bondholders who had transmitted such securities in accordance with the terms of the share offer which they proffered voluntarily or, as applicable, in use of the rights of purchase and mandatory sale.

On 15 February 2012, in relation to the takeover bid (the "**Share Acquisition**") made by the Issuer for the sum total of shares and mandatory convertible subordinated bonds issued by Banco Pastor, the Issuer disclosed that, as Agent Bank, it had notified the CNMV that the Offer had been accepted for over 90 per cent. of voting shares in Banco Pastor (over 263,135,538 shares). As a result of this acceptance, the sole condition to which the Share Acquisition remained subject had been met (acceptance of the Share

Acquisition by those holding a minimum number of shares, ensuring that the Issuer would become the holder of shares representing at least 75 per cent. of the share capital of Banco Pastor).

Having satisfied this condition, the Issuer required a squeeze-out of the remaining shareholders and bondholders of mandatory convertible subordinated bonds in Banco Pastor (the forcible sale of such holdings) who had not accepted the Offer and required the Issuer to allow them sell-out terms (forcing the Issuer to buy their shareholdings).

Also on 15 February 2012, the Issuer notified the CNMV as bidder of its irrevocable decision to exercise its squeeze-out rights for the whole of the shares and mandatory convertible subordinated bonds in Banco Pastor.

On 16 February 2012, the Issuer released a press release concerning the squeeze-out over Banco Pastor. Pursuant to the squeeze-out, ordinary new shares of the Issuer were to be issued on the terms covered in the relevant documentation as follows:

- (i) 1.115 of the Issuer's ordinary shares with a face value of €0.10 to be exchanged for each Banco Pastor share; and
- (ii) 30.9 of the Issuer's ordinary shares with a face value of €0.10 to be exchanged for each Banco Pastor mandatory convertible subordinated bond.

If, through applying these exchange terms:

- (i) a whole number is obtained, the relevant number of the Issuer's shares would be given; or
- (ii) a whole number is not obtained, the number of the Issuer's shares would be rounded down to the next whole number, together with a cash payment of the remainder (i.e. the other fractions).

On 17 February 2012, in connection with the total sum of shares and mandatory convertible subordinated bonds issued by Banco Pastor, the Issuer communicated that the price of the remaining fraction following acceptance of one Banco Pastor share was €0.3961 and the price of the remaining fraction following the acceptance of one mandatory convertible subordinated bond was €3.1002.

On 21 February 2012, the Issuer published a press release confirming that, on 20 February 2012, the public deed was entered on the Madrid Trade Register recording the increase in the capital of the Issuer by a total nominal amount of €37,043,384.50 through the issue and placing on the market of 370,433,845 ordinary new shares with a par value of €0.10 each, to address the exchange of shares and mandatory convertible bonds of Banco Pastor for those holders thereof who had accepted the Share Acquisition. As a result, the share capital of the Group would stand at €178,516,253.90, represented by 1,785,162,539 shares.

The new shares from the capital increase have been listed on the stock markets of Madrid, Barcelona, Bilbao and Valencia through the Market Interconnection System (Continuous Market), as well as Euronext Lisbon as of 22 February 2012, effective for market pricing purposes as of 23 February 2012.

On 8 March 2012, the Issuer communicated that Iberclear and its members had carried out the settlement for the squeeze-out, as well as the resulting registration in their accounting records of the ownership of the Issuer's ordinary shares as a result of the exercise of squeeze-out rights to holders of shares and mandatory convertible subordinated bonds of Banco Pastor.

On 8 March 2012, the Issuer made public that the CNMV had verified that the requirements for the admission to trading of the 11,565,876 shares with a par value of €0.10 each issued by the Issuer to satisfy the exchange arising from execution of the squeeze-out had been met. The Issuer communicated as well that the governing bodies of the stock markets of Barcelona, Madrid, Valencia and Bilbao had accepted the listing of the new shares referred to and that the trading of them would commence on such stock markets via the Market Interconnection System (S.I.B. or the Continuous Market) and Euronext Lisbon (Portugal) as of the following day.

At the end of the first quarter of 2012, the process of integration of Banco Pastor was on schedule.

At 31 March 2012, Banco Pastor contributed €20,699 million of gross lending and €15,079 million in retail liabilities to the Group; its loan-to-deposit ratio was 135 per cent.

#### *Draft terms for the merger with Banco Pastor*

On 30 March 2012, the Issuer presented the draft terms for the merger with Banco Pastor. The structure of the merger is considered as a special merger, as Banco Pastor is a bank that is wholly owned by Banco Popular. The merger will be undertaken, pursuant to articles 22 et seq of Law 3/2009 of 3 April on Structural Changes to Companies subject to Commercial Law and applying those provisions laid down in Section 8 of Chapter I, Heading II thereof, by means of the takeover of Banco Pastor by the Issuer and the winding-up of Banco Pastor through dissolution without liquidation involving the block transfer of its assets to the Issuer, which will assume the rights and obligations of Banco Pastor via universal succession.

The merger is being carried out to simplify the shareholder, organisational and operating structure of the Enlarged Group and allow better use of the Enlarged Group's capital and will be completed on the date of registration of the public deed of merger with the Madrid mercantile registry (*registro mercantil de Madrid*).

The acquirer is the Issuer and the acquiree company is Banco Pastor, S.A. Sociedad Unipersonal.

Since the Issuer is the direct owner of the entire complement of shares into which the share capital of Banco Pastor is divided, the Issuer will not increase its share capital or include or make any provision at all in the draft merger arrangements concerning the ratio and procedure for the exchange of the shares of takeover target companies or in connection with the date from which the new shares would give rise to the right to a share in corporate profits. There is no need for reports by the directors of the companies taking part in the merger or by an independent expert on the draft merger terms. As this is not a cross-border merger, it is also not necessary to incorporate any provision at all in the draft merger terms concerning valuation of the assets and liabilities for the capital of each company transferred to the resulting company and the dates of the accounts of the companies being merged that are used to determine the terms and conditions for the merger. The merger will go through without any requirement for it to be passed at the General Meeting of shareholders of the Issuer except if this is demanded by those speaking for at least one per cent. of its share capital. At the date of the merger's registration the entire complement of Banco Pastor shares will be redeemed and cancelled, and it will be wound up through dissolution without liquidation, whereupon there will be a block transfer of its assets to the Issuer, which will assume the rights and obligations of Banco Pastor via universal succession.

#### ***Sale of share in Bancopopular-e, S.A.***

On 29 May 2012, the Issuer communicated that it is in the process of negotiating the sale and outsourcing of a majority share of its Internet banking and means of payment businesses, although no deal has yet been finalised in this regard.

The move is similar to others already made by the Bank and would reinforce the Enlarged Group's position in relation to the requirements imposed under the reform of the Spanish financial sector, making it possible to produce reasonable results in the next two years. It comes within the context of a set of measures aimed at complying with the financial reforms that will also be disclosed to the market in due course.

#### ***Business Plan 2012/2013***

On 6 June 2012, Banco Popular filed a regulatory announcement (*Hecho Relevante*) with the CNMV disclosing its plan to comply with the requirements of Royal Decree-Law 2/2012 and Royal Decree-Law 18/2012. The plan involves Banco Popular taking the following measures:

- funding all of the generic and accelerated provisions required by Royal Decree-Law 2/2012 and Royal Decree-Law 18/2012 to cover the Banco Popular's exposure to the real estate and construction sectors in 2012 and 2013.
- conducting an asset sale plan to reduce the capital spending and generate significant capital gains in the amount of approximately EUR 2,000 million over the next two years, including the possible sale of the Group's holding in Eurovida S.A. Cfa. de Seguros y Reaseguros (Portugal).

- increasing provisions beyond the internal loss forecasts obtained using advanced calculation models for the non-real estate and private loan portfolios.
- implementing the capital increase announced in October 2011 in conjunction with the acquisition of Pastor.

### ***Recapitalisation of the Spanish banking sector***

On 9 June 2012, the Spanish government announced that Spain is expected to receive funding from the European Financial Stability Facility or the European Stability Mechanism with the purpose of recapitalising parts of its banking sector. Neither the final amount, nor the conditions, have been confirmed at the date of these Listing Particulars, although media reports have speculated that the extraordinary financing will cover the estimated capital requirements of the Spanish banking sector with an additional safety margin, estimated to amount to approximately €100 billion in total. This funding may result in additional debt being incurred by Spain's government and an increase in debt servicing costs which, in turn, could contribute to an increase in Spain's budget deficit. It is not yet known what the impact of the additional funding will have in Spain, its banking sector or the Issuer. See "*Risk Factors – Factors that may affect the Issuer's ability to fulfil its obligations under the Notes – The Group is vulnerable to current disruptions and volatility in the global financial markets and could be subject to further government action intended to alleviate the effects of the current financial crisis*".

### **Administrative, Management and Supervisory Bodies**

#### ***Board of Directors***

The table below sets forth, at the date of these Listing Particulars, the names of the members of the Board of Directors of the Issuer, the respective dates of their appointment their positions within the Issuer and their membership type:

<b>Last appointed</b>	<b>First appointed</b>	<b>Name</b>	<b>Title</b>	<b>Type</b>
26/06/2009	15/12/2008	Allianz, S.E. <sup>(1)</sup> .....	Director	Domanial <sup>(*)</sup>
30/05/2007	18/12/2003	Mr. Francisco Aparicio Valls .....	Secretary-Director	Executive
30/05/2008	27/11/1980	Asociación Profesional de Directivos BPE. <sup>(2)</sup> ..	Director	Executive
30/05/2008	27/05/2003	Mr. Américo Ferreira de Amorim .....	Director	Domanial <sup>(*)</sup>
30/05/2008	20/06/2002	Mr. Eric Gancedo Holmer .....	Director	Independent
30/05/2007	21/06/2001	Mr. Luis Herrando Prat de la Riba <sup>(3)</sup> .....	Vice-Chairman	Independent
			Director	
11/09/2008	30/05/2008	Mr. Roberto Higuera Montejo <sup>(4)</sup> .....	Vice-Chairman	Other external
20/12/2011	28/04/2011	Ms. Ana María Molins López-Rodó <sup>(5)</sup> .....	Director	Independent
30/05/2008	19/12/1974	Mr. Miguel Nigorra Oliver .....	Director	Other external
30/05/2007	30/05/07	Ms. Helena Revoredo Delveccio .....	Director	Independent
30/05/2008	1/12/1987	Mr. José Ramón Rodríguez García .....	Director	Independent
30/05/2008	19/10/2004	Mr. Ángel Carlos Ron Güimil .....	Chairman	Executive
30/05/2007	28/06/1988	Sindicatura de Accionistas de BPE <sup>(6)</sup> .....	Director	Domanial <sup>(*)</sup>
30/05/2008	18/12/1996	Mr. Miguel A. de Solís y Martínez-Campos ....	Director	Independent
30/05/2008	19/12/2007	Vicente Tardío Barutel .....	Director	Domanial <sup>(*)</sup>
26/06/2009	19/05/2009	Unión Europea de Inversiones, S.A. <sup>(7)</sup> .....	Director	Domanial <sup>(*)</sup>
20/12/2011	20/12/2011	Mr. Alain Fradin <sup>(8)</sup> .....	Director	Domanial <sup>(*)</sup>

<sup>(1)</sup> From 23 February 2010 the representative of Allianz, S.E. is Mr. Jan R. Carendi, after the replacement of Mr. Herbert Walter.

<sup>(2)</sup> From 1 March 2011 the representative of Asociación Profesional de Directivos BPE is Mr. Francisco Aparicio Valls, after the replacement of Mr. Roberto Higuera Montejo.

<sup>(3)</sup> Mr. Luis Herrando Prat de la Riva was appointed as Vice Chairman at the General Shareholders' Meeting held on 30 May 2008.

<sup>(4)</sup> Mr. Robert Higuera Montejo was appointed as Vice Chairman at the General Shareholders' Meeting held on 30 May 2008. From 28 April 2011 Mr. Higuera has been classified as "Other External Directors".

<sup>(5)</sup> Ms. Ana María Molins López-Rodó has been appointed as Director by cooptation at the Board of Directors meeting held on 28 April 2011.

<sup>(6)</sup> From 1 February 2010 the representative of Sindicatura de Accionistas de BPE is Mr. Carlos Figuero García, after the replacement of Mr. José María Mas.

<sup>(7)</sup> From 10 May 2011 the representative is Mr. Jorge Oroviogioicoechea Ortega, after the replacement of Mr. Luis Montuenga Aguayo.

<sup>(8)</sup> Mr. Alain Fradin has been appointed as Domanial Director at the Extraordinary Shareholders' General Meeting held on 20 December 2011, representing Banque Fédérative du Crédit Mutuel.

<sup>(\*)</sup> The Directors are classified as "Domanial" due to being direct or indirect shareholders with a stake higher than 1 per cent. of the Issuer's stock capital, or having been appointed to represent shareholders that own said percentage of stock capital.

The table below sets forth the names of the members of the Board of Directors of the Issuer and their principal activities outside the Issuer as at the date of these Listing Particulars. As at the date of these Listing Particulars, there were no conflicts of interest in relation to members of the Board of Directors of the Issuer between any duties owed to the Issuer and their private interests and other duties.

Name	Company	Position
Allianz, S.E. (representative: Jan Olof Richard Carendi)		
Aparicio Valls, Francisco .....	Centro Social Universitario Pan de Azúcar, S.A.	Sole Director
	Targobank, S.A.	Director
Asociación Profesional de Directivos (representative: Francisco Aparicio Valls) .....	Targobank, S.A.	Director
Ferreira de Amorim, Americo .....	Grupo Amorim	President
	Unión Europea de Inversiones S.A.	Director
Gancedo Holmer, Eric .....	Bancopopular-e, S.A.	President
	Manuel Gancedo, S.A.	Director
	Gancedo y González, S.A.	Director
	Aliseda	Director
	Targobank, S.A.	Vice Chairman
	Popular Banca Privada, S.A.	Director
Herrando Prat, Luis .....	Instituto de Educación e Investigación, S.A.	President
	Sociedad de Promoción y Desarrollo Talde, S.A.	Director
	Bilbao Equity SIMCAV, S.A.	President
	Asistencia Clínica Universitaria de Navarra, S.A.	Director
	Popular Banca Privada, S.A.	President
	Aliseda	Director
Figuero García, Carlos (representative of Sindicatura de Accionistas) .....	Sindicatura de Accionistas de BPE S.A.	Sole Director
	Formación de la Mujer S.A.	Sole Director
	Viviendas y Oficinas S.A.	Sole Director
	Comercial de Libros y Documentación S.A	Sole Director
Fradin, Alain .....	Banque Fédérative du Crédit Mutuel	Chief Executive
	Caisse Federal du Crédit Mutuel	Officer
	CIC	Chief Executive
	Targobank, S.A.	Officer
	Targo Deutschland	Vice Chairman
		President
		Compliance Group Member
Higuera, Roberto .....	Popular de Mediación, S.A.	President
	Popular de Factoring, S.A., E.F.C	President
	TotalBank	Director
Molins López-Rodó, Ana María .....	Cementos Molins, S.A.	Vice Chairman and Director
	Inversora Pedralves, S.A.	Director
	Otinix, S.A.	Director
Nigorra Oliver, Miguel .....	Nova Santa Ponsa Golf, S.A.	President
	Gestión y Administración Registral, S.L.	President-CEO
	Habitat Golf Santa Ponsa, S.A.	President
Rodríguez García, José Ramón .....	Inmobiliaria Urbana de la Moncloa, S.A.	President
	Aliseda	President
Revoredo Delveccio, Helena .....	Prosegur, S.A.	President
	Euroforum Escorial S.A.	President
	Mediaset España Comunicaciones, S.A.	Director
	TF Artes Gráficas S.A.	Director
	Romeracapital Sicav S.A.	Director
Ron, Ángel Carlos .....	-	-
Santana, Vicente .....	Popular Banca Privada, S.A.	Director
	Cignus Valores SIMCAV, S.A.	President
	Fides Capital, S.C.R., S.A.	Director
Solís, Miguel Ángel de .....	Sur CIA. Española de Seguros y Reaseguros, S.A.	Director
Tardío Barutel, Vicente .....	Allianz Compañía de Seguros y Reaseguros, S.A	President and CEO
	AGF Inversiones, S.A.	Director
	Eurovida S.A.	President
Unión Europea de Inversiones, S.A. (representante físico D. Jorge Oroviogicoechea Ortega) .....	Unión Europea de Inversiones, S.A.	President
	Instituto de Educación e Investigación, S.A.	Director
	Sociedad General Fiduciaria y Financiera, S.A..	Director

### ***Executive Committee***

The Board of Directors has delegated all of its powers in favour of the Executive Committee, except for those which cannot be delegated pursuant to the provisions of the Capital Companies Act (*Ley de Sociedades de Capital*) and Board Regulations (*Reglamentos del Consejo*).

At the date of these Listing Particulars, the Executive Committee was composed of the following six directors:

Name	Position
Ángel Ron Güimil.....	Chairman
Eric Gancedo Holmer .....	Member
Luis Herrando Prat de la Riba.....	Member
José Ramón Rodríguez García.....	Member
Roberto Higuera Montejo .....	Member
Francisco Aparicio Valls.....	Secretary

The resolutions adopted by the Executive Committee do not require subsequent ratification by a meeting of the Board of Directors, although the Executive Committee does inform the Board of Directors about the matters dealt with and the decisions adopted in its meetings.

#### ***Audit and Control Committee***

The Audit and Control Committee is entrusted with the task of assisting the Board of Directors in its functions of overseeing and controlling the Issuer by means of the evaluation of the Issuer's auditing system, the verification of the independence of the external auditor and the review of the internal control systems. The role of this committee is fundamentally informative and consultative, although, on an exceptional basis, the Board of Directors may delegate decision-making powers to it.

At the date of these Listing Particulars, the Audit and Control Committee was composed of the following four directors:

Name	Position
José Ramón Rodríguez García.....	Chairman
Eric Gancedo Holmer .....	Member
M. Ángel Solís Martínez-Campos.....	Member
Francisco Aparicio Valls.....	Non-member Secretary

#### ***Risk Committee***

The Risk Committee supervises the market and operational credit risks affecting the Issuer's activity and evaluates continuously the overall risk assumed, its industry and geographic diversification and the hedges that are deemed advisable to preserve the solvency level considered to be necessary, proposing the most adequate policies to obtain these objectives.

At the date of these Listing Particulars, the Audit and Control Committee was composed of the following six directors:

Name	Position
Eric Gancedo Holmer .....	Chairman
Luis Herrando Prat de la Riba.....	Member
Unión Europea de Inversiones, S.A. (Mr. Jorge Oroviogicochea Ortega).....	Member
José Ramón Rodríguez García.....	Member
Francisco Aparicio Valls.....	Secretary
Francisco Gómez Martín.....	Spokesman

#### ***Appointments, Compensation, Corporate Governance and Conflicts of Interest Committee***

In 2003 the Appointment, Compensation, Corporate Governance and Conflicts of Interest Committee was attributed with numerous tasks including consideration of the compensation policy for the Board of Directors and the senior management of the Group and, in 2005, the determination of policy, control and reporting with regard to the Group's corporate social responsibility.

The role of this committee is fundamentally informative and consultative, although, on an exceptional basis, the Board of Directors may delegate decision-making powers to it. Its principal duty is to assist the Board of Directors in its functions such as the appointment, re-election, termination and compensation of the Directors and of the Senior Management of the Issuer, to ensure that the Directors receive all of the information necessary for the proper discharge of their duties, to evaluate the Board of Directors and its Committees, as well as to oversee observance of the rules of governance of the Issuer, reviewing compliance with its rules, recommendations and principles on a regular basis.

At the date of these Listing Particulars, the Appointments, Compensation, Corporate Governance and Conflicts of Interest Committee was composed of the following six directors:

Name	Position
Luis Herrando Prat de la Riba.....	Chairman
Ms. Ana María Molins López-Rodó .....	Member
Eric Gancedo Holmer .....	Member
Francisco Aparicio Valls.....	Non-member Secretary

### **Senior Management**

The following table, excluding the chief executive officers, specifies the senior management of the Issuer.

Name	Position
Jesús Arellano Escobar .....	General Control and Default Management
Francisco Gómez Martín.....	General Risk Management
Jacobo González Robatto Fernández .....	General Corporate and Finance Director
Eutimio Morales López.....	General Auditing
Tomás Pereira Pena .....	Central Legal Department
Ángel Rivera Congosto.....	General Business Management
Fernando Rodríguez Baquero .....	Technical Resources
Francisco J. Safont Marco.....	Management of the Catalonia Region
Francisco Sancha Bermejo.....	General Technical Secretary
Alberto Muñoz Fernández .....	Chairman's Office

As provided by article 26 of the by-laws, the general management of the Issuer is the technical and executive governing body.

At present, the Issuer's general management committee is formed by Mr. Eutimio Morales López, Mr. Jesús Arellano Escobar, Mr. Jacobo González-Robatto Fernández, Mr. Francisco Gómez Martín, Mr. Fernando Rodríguez Baquero, Mr. Ángel Rivera Congosto, Mr. Francisco Sancha Bermejo and Mr. Alberto Muñoz Fernández.

The principal activities of each member of senior management outside of the Issuer are set out in the table below:

Name	Company	Title
Jesús Arellano Escobar .....	Sociedad Conjunta para la Emisión and Gestión de Medios de Pago EFC, S.A. (IBERIA CARDS)	Director
	Daesa, S.A.	
	Redsys Servicios de Procesamiento, S.L.	Director Chairman
Francisco Gómez Martín.....	—	—
Jacobo González-Robatto Fernández .....	Targobank	Director
Eutimio Morales López.....	Intermediación and Servicios Tecnológicos, S.A.	Sole Director
	Bancopopular-e	Director
	Popular de Factoring S.A. E.F.C.	Director
Tomás Pereira Pena .....	Banco Popular Portugal S.A.	Director
Fernando Rodríguez Baquero .....	Redsys Servicios de Procesamiento, S.L.	Director
	Daesa, S.A	Director
Ángel Rivera Congosto.....	Banco Popular Portugal S.A.	Director
	Europensiones S.A.	Chairman
	Eurovida S.A.	Vice Chairman
	Popular Gestión S.G.I.I.S.A.	Chairman
	Popular Factoring S.A.	Chairman
	Popular de Factoring S.A. E.F.C.	Director
	Popular Banca Privada S.A.	Director
	Banco Popular Hipotecario, S.A.	
Francisco J. Safont Marco.....	Avalis de Catalunya, S.A., S.G.R.	Representative <sup>1</sup>
Francisco Sancha Bermejo.....	Popular de Factoring, S.A. E.F.C.	Director
	Popular de Renting, S.A.	Representative Sole Director BPE

<sup>1</sup> Representative of the Issuer.

There are no conflicts of interest, or potential conflicts of interest, between any duties toward the Issuer of any of the persons referred to above and their respective private interests and/or any other duties.

The business address of each member of the Board of Directors and the other members of the Issuer's management mentioned above is calle Velázquez nº 34, 28001 Madrid, Spain.

### ***Deferred and contingent bonuses for the Board of Directors***

In 2011, the Chairman of the Board of Directors, Mr. Ángel Ron received €154,000 as variable remuneration and Mr. Francisco Aparicio, Secretary of the Board, received €73,200. These are the only board members who receive remuneration. These amounts include: (i) cash bonuses (€77,000 in the Chairman's case and €36,600 in the Secretary's case) and (ii) share-based bonuses (€77,000 in the Chairman's case and €36,600 in the Secretary's case). 50 per cent. of each bonus item, that is both the cash portion and the portion payable in the form of shares, will be deferred in time, with the deferred portion being paid in equal amounts over a three-year period. Hence, the non-deferred portion of the 2011 bonus will be paid in 2012, while the deferred portion will be paid in three instalments in 2013, 2014 and 2015.

The costs met by the Bank during 2011 corresponding to the coverage of pension commitments in respect of the beneficiary Directors Ron and Aparicio amount to €251,000. These same directors are also the beneficiaries of life and health insurance premiums totalling €8,000.

The vested rights and mathematical reserves linked to the pension rights of current Directors Messrs. Ron, Aparicio and Higuera amount to €5,659, €1,946 and €10,134 thousand, respectively, making up a total of €17.7 million. This figure, added to the €37.9 million corresponding to other past directors, makes up a total of €55.6 million at 31 December 2011.

### ***Employees***

The number of employees of the Enlarged Group at 31 March 2012 was 18,059, compared to 14,062 in 31 March 2011. In Spain, the number of employees was 16,236, divided in 10,456 men and 5,780 women. Abroad, the number of employees at 31 March 2012 was 1,823, divided in 1,123 men and 700 women.

### ***Major Shareholders***

The Issuer is not aware of the existence of any individual or body corporate exercising, or who could exercise, directly or indirectly, control over it, nor is the Issuer aware of the existence of any agreement which could lead to a change of control at a subsequent date.

### **Financial Information Concerning the Issuer's Assets and Liabilities, Financial Position and Profits and Losses**

The audited consolidated annual accounts of the Issuer and of Banco Pastor for the financial years ended 31 December 2011 (which includes 31 December 2010 financial information for comparative purposes) and for the financial year ended 31 December 2010 (which includes 31 December 2009 financial information for comparative purposes) prepared in accordance with IFRS-EU, have been incorporated by reference in these Listing Particulars.

The above mentioned consolidated annual accounts were audited by PricewaterhouseCoopers Auditores, S.L. No other information in these Listing Particulars (including the 2011 Third Quarter Financial Statements) has been audited by PricewaterhouseCoopers Auditores, S.L.

No financial data in these Listing Particulars has been extracted from a source other than the 31 December 2011 financial statements, 31 December 2010 financial statements or the 31 March 2012 financial information.

### **Capital Adequacy**

The following table sets forth the details of risk-weighted assets, capital and ratios of the Group:

	<b>BANCO POPULAR GROUP BIS DATA</b>	
	<i>(thousands of euro)</i>	
	<b>31-12-2011</b>	<b>31-12-2010</b>
Credit risk .....	81,417,863	87,487,050

Market risk.....	469,750	407,388
Operational risk .....	6,293,613	5,852,725
Risk-weighted assets.....	88,181,225	93,747,163
Capital deductions 50% from tier 1.....	916,557	690,574
Hybrid instruments .....	2,315,871	2,376,284
Core capital ratio (%).....	10.09	9.43
Tier 1 capital.....	8,852,679	9,069,691
Tier 1 ratio (%) .....	10.04	9.67
Tier 2 capital.....	127,405	77,806
Upper tier 2 .....	40,044	164,033
Lower tier 2 .....	1,003,918	604,347
Capital deductions 50% from tier 2.....	916,557	690,574
Tier 2 ratio (%) .....	0.14	0.09
BIS computable capital .....	8,980,084	9,147,497
BIS ratio (%).....	10.18	9.76

Recent developments in the regulatory framework have affected the capital adequacy of the Issuer and imposed additional requirements. For more information on the changes to the regulatory framework and their impact on the Issuer, see "*Risk Factors - Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business*".

## DESCRIPTION OF THE SHARES

The following summary describes all material considerations concerning the share capital of Banco Popular and briefly describes all material provisions of its by-laws and Spanish law.

### General

The issued share capital of Banco Popular as of 21 June 2012 was EUR181,373,856, represented by a single series and class of 1,813,738,560 shares, with a nominal value per ordinary share of EUR0.10. Residents and non-residents of Spain may hold and vote shares of Banco Popular subject to the restrictions set forth below.

#### *Historic price of ordinary shares*

The following table sets forth the price of Banco Popular's ordinary shares for the years 2009 to 2011, and the period from 2 January 2012 to 5 June 2012:

	<u>Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Final</u>	
2009	5.89	3.34	7.62	5.13	31/12/2009
2010	4.81	3.81	6.00	3.84	31/12/2010
2011	3.75	2.80	4.65	3.52	30/12/2011
2012	2.80	1.63	3.68	1.67	05/06/2012

### Form and Transfer

The shares are in book-entry form and are indivisible. Joint holders must nominate one person to exercise the shareholders' rights, though joint holders are jointly and severally liable *vis-à-vis* Banco Popular for all obligations arising from their status as shareholders. Iberclear, which manages the clearance and settlement system of the Spanish stock exchanges, maintains the central registry of shares reflecting for each of its member entities (*entidades participantes*), the number of shares held by such entities for their own account, as well as the amount of such shares held on behalf of their customers. Each member entity in turn maintains a detailed register of the owners of such shares. The shares must be entered in the corresponding register in the name of the person or persons that own them. The shareholders and holders of the limited real rights or encumbrances on the shares may obtain legitimation certificates (*certificados de legitimación*) as provided for under the laws governing shares represented by book entries.

Transfers of shares quoted on a Spanish stock exchange must be made through or with the participation of a member of a Spanish stock exchange that is an authorised broker or dealer by recording these transfers in the book-entry registry maintained by Iberclear and its member entities. The transfer of shares may be subject to certain fees and expenses.

### Dividend and Liquidation Rights

Payment of dividends is proposed by the Board of Directors and must then be authorised by the Issuer's shareholders at a shareholders' meeting. Shareholders participate in such dividends for each year from the date such dividends are agreed by a shareholders' meeting. Spanish law requires each company to contribute at least 10% of its profits for the year to a legal reserve each year until the balance of such reserve is equivalent to at least 20% of such company's issued share capital. Company's legal reserve is not available for distribution to its shareholders except upon such company's liquidation. According to Spanish law, dividends may only be paid out from the portion of profits or distributable reserves that exceed the Issuer's amortisable goodwill and its incorporation, research and development expenses, and only if the value of the Issuer's net worth is not, and as a result of distribution would not be, less than its share capital plus legal reserve. In accordance with article 947 of Spanish Commercial Code, the right to a dividend lapses and reverts to the Issuer if it is not claimed within five years after it becomes due.

With regard to the tax implications derived from dividends paid by the Issuer see "*Taxation - Taxation on Ownership and Transfer of Shares - Direct taxation - Taxation of dividends.*"

Upon the Issuer's liquidation, its shareholders would be entitled to receive proportionately any assets remaining after the payment of the Issuer's debts and taxes and expenses of the liquidation.

<b>Year</b>	<b>Payment day(s)</b>	<b>Ex-dividend day</b>	<b>Gross Amount (euro)</b>	<b>Total gross amount of dividend paid (euro)</b>
<b>2010</b>				
1st Interim	11-10-2010	11-10-2010	0.07500	99,986,376.75
2nd Interim	12-01-2011	12-01-2011	0.05000	68,764,232.30
3rd Interim	02-05-2011	13-04-2011	0.05000 1x85	17,705,839.00 (script dividend)
4° Final	14-07-2011	27-06-2011	0.05000 1x78	19,254,670.45 (script dividend)
<b>2011</b>				
1st Interim	11-10-2011	11-10-2011	0.05000	70,007,358.30
2nd Interim	30-03-2012	13-03-2012	0.04000 1x77	19,476,536.00

### **Attendance and Voting at Shareholders' Meetings**

Each EUR100 of nominal value of the share capital of Banco Popular (equivalent to 1,000 shares) entitles the shareholder to attend the general meeting of shareholders. Shares may be voted by written proxy, and proxies may be given to another person, who does not need to be a shareholder. Proxies must be in writing and are valid only for a single meeting, subject to limited exceptions under the Spanish Companies Law (*Ley de Sociedades de Capital*).

Pursuant to the by-laws of Banco Popular and the Spanish Companies Law, general meetings of shareholders may be either ordinary or extraordinary. Ordinary general meetings must be convened within the first six months of each fiscal year on a date fixed by the Board of Directors. As a general rule, extraordinary general meetings may be called from time to time by the Board of Directors of Banco Popular at its discretion or at the request of shareholders representing at least 5 per cent. of Banco Popular share capital. Notices of all shareholders' meetings must be published in the Commercial Registry Official Gazette (*Boletín Oficial del Registro Mercantil*) and on the National Securities Market Commission (*Comisión Nacional del Mercado de Valores* or "CNMV") and the Banco Popular web sites. The interval between the first and second calls for a shareholders meeting must be at least 24 hours. The notice must include the date and place of the first call, the agenda of the meeting, the date on which shareholders need to be registered as such in order to attend and vote at the meeting, the place and form in which information related to the proposed resolutions can be obtained by the shareholders, the web page where such information will be available, and clear instructions on how shareholders can attend and vote in the general shareholders meeting. It may also state the date in which, if applicable, the shareholders' meeting is to be held on the second call.

Shareholders representing at least 5 per cent. of the share capital of Banco Popular have the right to request the publication of an amended notice including one or more additional agenda items to the ordinary general meeting and to add new resolution proposals to the agenda of any general shareholders' meeting, within the first five days following the publication of the agenda.

At ordinary general meetings, shareholders are asked to approve the financial statements for the previous fiscal year, the management and the application of the profit or loss attributable to Banco Popular. All other matters that can be decided by a general shareholders' meeting may be addressed at either ordinary general meetings or extraordinary general meetings called for a specific purpose. Shareholders can vote on these matters at an ordinary general meeting if such items are included on the meeting's agenda. The by-laws of Banco Popular provide that, in order to facilitate the shareholders' assistance to the meetings, shareholders shall be provided with registered admission cards (*tarjetas de admisión*). Admission cards can be obtained at any time up to five days before a given shareholders' meeting. Admission cards include the number of votes corresponding to their holders at the relevant shareholders meeting.

The by-laws of Banco Popular and the Spanish Companies Law provide that, on the first call of a general shareholders' meeting, a duly constituted general meeting of shareholders requires a quorum of at least 25 per cent. of the issued voting share capital, present in person or by proxy. On the second call, there is no quorum requirement.

Resolutions relating to ordinary matters may be adopted upon the affirmative vote of a majority of votes cast at such meeting. Likewise, the Spanish Companies Law and the by-laws of Banco Popular provide that the consideration of extraordinary matters such as the issuance of bonds, changes in the share capital structure, cancellation or restriction of the pre-emptive rights to acquire new shares, mergers, spin-offs, changes in the corporate form, global assignment of assets and liabilities, dissolution, transfer of the registered office abroad and amendment of the by-laws in general require on first call a quorum of at least 50 per cent. of the issued voting share capital, present in person or by proxy, and on second call, the presence of shareholders representing at least 25 per cent. of the issued voting share capital, present in person or by proxy. If, after the second call, the shareholders present or represented constitute less than 50 per cent. of the issued voting share capital, present in person or by proxy, resolutions relating to the extraordinary matters referred to above may be adopted only with the approval of two-thirds of the votes validly cast at such meeting.

A shareholders' meeting at which 100 per cent. of the share capital is present or represented is validly constituted even if no notice of such meeting was given, and, upon unanimous agreement, shareholders may consider any matter at such meeting. A resolution passed in a shareholders' meeting is binding on all shareholders, unless such resolution is: (i) contrary to Spanish laws or the company's by-laws; or (ii) prejudicial to the company's interests and beneficial to one or more shareholders or third parties. However, in the case of resolutions contrary to Spanish law, the right to contest is extended to all shareholders, directors and interested third parties. In the case of resolutions prejudicial to the company's interests or contrary to its by-laws, such right is extended to shareholders who attended the shareholders' meeting and recorded their opposition in the minutes of the meeting, to shareholders who were absent and to those unlawfully prevented from casting their vote, as well as to members of the Board of Directors. In certain circumstances (such as a substantial modification of corporate purpose or change of the corporate form, transfer of domicile to a foreign country, intra-European Union merger with transfer of domicile to another European Union country or incorporation of a limited liability European holding company if the dissenting shareholder is a partner of the promoter companies), Spanish corporate law gives dissenting or absent shareholders the right to withdraw from the company. If this right were to be exercised, the company would be required to purchase or offset the relevant share ownership at prices determined in accordance with established formula or criteria relating to the average price of the shares in the Spanish Stock Exchanges within certain periods of time.

Under the Spanish Companies Law, shareholders who voluntarily aggregate their shares so that they are equal to or greater than the result of dividing the total share capital by the number of directors have the right to appoint a corresponding proportion of the members of the Board of Directors. Shareholders who exercise this right may not vote on the appointment of other directors.

### **Pre-emption Rights and Increase of Share Capital**

Pursuant to Spanish law, shareholders have pre-emption rights to subscribe for any new shares and for bonds convertible into shares. However, a resolution passed at a general shareholders' meeting or a meeting of the Board of Directors acting by delegation may, in certain circumstances, waive such pre-emption rights, provided that the relevant requirements of Spanish law are met. In any event, pre-emption rights will not be available in the event of an increase in the share capital of Banco Popular on a conversion of convertible bonds into shares, a merger in which new shares are issued as consideration or in the case of a capital increase with non-monetary contributions.

Pre-emptive rights are transferable, may be traded on the Automated Quotation System of the Spanish stock exchanges and may be of value to existing shareholders because new shares may be offered for subscription at prices lower than prevailing market prices.

In the case of a listed company, when the shareholders authorise the Board of Directors to issue new shares or bonds convertible into shares, they can also authorise the Board of Directors to not grant pre-emptive rights in connection with such new shares or bonds convertible into shares if it is in the best interest of the company.

### **Shareholder Suits**

Shareholders in their capacity as shareholders may bring actions challenging resolutions adopted at general meetings. The court of first instance in the company's corporate domicile has exclusive jurisdiction over shareholder suits.

Under the Spanish Companies Law, directors are liable to the company and the shareholders and creditors of the company for acts and omissions contrary to Spanish law or the company's by-laws and for failure to carry out the duties and obligations required of directors. Directors have such liability even if the transaction in connection with which the acts or omissions occurred is approved or ratified by the shareholders.

The liability of the directors is joint and several, except to the extent any director can demonstrate that he or she did not participate in decision making relating to the transaction at issue, was unaware of its existence or being aware of it, did all that was possible to mitigate any damages or expressly disagreed with the decision-making relating to the transaction.

### **Legal Restrictions on Acquisitions of Shares in Spanish Banks**

Certain provisions of Spanish law require notice to the Bank of Spain prior to the acquisition by any individual or corporation of a significant holding of shares of a Spanish bank.

Any natural or legal person or such persons acting in concert, who have taken a decision either to acquire, directly or indirectly, a qualifying holding (*participación significativa*) in a Spanish bank or to further increase, directly or indirectly, such a qualifying holding in a Spanish bank as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 per cent., 30 per cent. or 50 per cent. or so that the bank would become its subsidiary, must first notify the Bank of Spain, indicating the size of the intended holding and other relevant information. A significant holding for these purposes is defined as a direct or indirect holding in a Spanish bank which represents 10 per cent. or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that bank.

If the acquisition is carried out and the required notice is not given to the Bank of Spain or if the acquisition is carried out before the 60 business days' period following the giving of notice elapses, or if the acquisition is opposed by the Bank of Spain, then there shall be the following consequences: (A) the voting rights corresponding to the acquired shares may not be exercised or, if exercised, will be deemed null, (B) the Bank of Spain may seize control of the bank or replace its board of directors, and (C) a fine may be levied on the acquirer.

The Bank of Spain has 60 business days after the receipt of any such notice to object to a proposed transaction. Such objection may be based on finding the acquirer unsuitable on the basis of its commercial or professional reputation, its solvency or the transparency of its corporate structure, among other things. If no such objection is raised within the 60 business days' period, the authorization is deemed to have been granted.

Any natural or legal person, or such persons acting in concert, who has acquired, directly or indirectly, a holding in a Spanish bank so that the proportion of the voting rights or of the capital held reaches or exceeds 5 per cent., must immediately notify in writing the Bank of Spain and the relevant Spanish bank, indicating the size of the acquired holding.

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a bank must first notify the Bank of Spain, indicating the size of his intended reduced holding. Such a person shall likewise notify the Bank of Spain if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 per cent., 30 per cent. or 50 per cent. or so that the bank would cease to be its subsidiary. Failure to comply with these requirements may lead to sanctions being imposed on the defaulting party.

Banks are required, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to above, inform the Bank of Spain of those acquisitions or disposals.

Furthermore, banks are required to inform the Bank of Spain as soon as they become aware of, and in any case no later than 10 business days after it is noted in their shareholders' registry, each direct or indirect acquisition by a natural or legal person of at least 1 per cent. of the bank's total share capital. The Bank of Spain also requires each bank to provide it quarterly with a list of all its shareholders that are financial institutions and all other shareholders that own at least 0.25 per cent. of the bank's share capital by reference to the last day of each calendar quarter.

If the Bank of Spain determines at any time that the influence of a person who owns a qualifying holding of a bank may adversely affect that bank's management or financial situation, it may request that the Spanish Ministry of Economy and Competitiveness: (1) suspend the voting rights of such person's shares for a period not exceeding three years; (2) seize control of the bank or replace its board of directors; or (3) in exceptional circumstances revoke the bank's license. A fine may also be levied on the person owning the relevant significant shareholding.

## **Reporting Requirements**

### ***Acquisition of shares***

Pursuant to Royal Decree 1362/2007, of 19 October, any individual or legal entity who, by whatever means, purchases or transfers shares which grant voting rights in a company for which Spain is the Country of Origin (*Estado de origen*) (as defined therein) and which is listed on a secondary official market or other regulated market in the EU, must notify the relevant issuer and the CNMV, if, as a result of such transaction, the proportion of voting rights held by that individual or legal entity reaches, exceeds or falls below a 3 per cent. threshold of the company's total voting rights. The notification obligations are also triggered at thresholds of 5 per cent. and multiples thereof (excluding 55 per cent., 65 per cent., 85 per cent., 95 per cent. and 100 per cent.).

The individual or legal entity required to carry out the notification must serve the notification by means of the form approved by the CNMV from time to time for such purpose, within four business days from the date on which the transaction is acknowledged (the Royal Decree deems a transaction to be acknowledged within two business days from the date on which such transaction is entered into).

Should the individual or legal entity effecting the transaction be a non-resident of Spain, notice must also be given to the Spanish Registry of Foreign Investments maintained by the General Bureau of Commerce and Investments (a department of the Ministry of Economy and Competitiveness).

The reporting requirements apply not only to the purchase or transfer of shares, but also to those transactions in which, without a purchase or transfer, the proportion of voting rights of an individual or legal entity reaches, exceeds or falls below the threshold that triggers the obligation to report as a consequence of a change in the total number of voting rights of a company on the basis of the information reported to the CNMV and disclosed by it.

Regardless of the actual ownership of the shares, any individual or legal entity with a right to acquire, transfer or exercise voting rights granted by the shares, and any individual or legal entity who owns, acquires or transfers, whether directly or indirectly, other securities or financial instruments which grant a right to acquire shares with voting rights, will also have an obligation to notify the company and the CNMV of the holding of a significant stake in accordance with the regulations.

Should the individual or the legal entity effecting the transaction be resident in a tax haven (as defined in Royal Decree 1080/1991, of 5 July), the threshold that triggers the obligation to disclose the acquisition or disposition of shares is reduced to 1 per cent. (and successive multiples thereof).

All members of the Board of Directors must report to both the company and the CNMV the percentage and number of voting rights in the company held by them at the time of becoming or ceasing to be a member of the Board of Directors. Furthermore, all members of the Board of Directors must report any change in the percentage of voting rights they hold, regardless of the amount, as a result of any acquisition or disposition of shares or voting rights, or financial instruments which carry a right to acquire or dispose of shares which have voting rights attached, including any stock-based compensation that they may receive pursuant to any compensation plans.

Members of the senior management must also report any share-based compensation that they may receive pursuant to any compensation plans or any subsequent amendment to such plans. Royal Decree 1362/2007 refers to the definition given by Royal Decree 1333/2005, of 11 November, developing the Spanish Securities Market Law, regarding market abuse, which defines senior management (*directivos*) as those "high-level employees in positions of responsibility with regular access to insider information (*información privilegiada*) related, directly or indirectly, to the issuer and that, furthermore, are empowered to adopt management decisions affecting the future development and business perspectives of the issuer".

In addition, pursuant to Royal Decree 1333/2005 of November 11 (implementing European Directive 2004/72/EC), any member of the Board of Directors and the senior management, or any parties closely related to any of them, as such terms are defined therein, must report to the CNMV any transactions carried out with respect to the company's shares or derivatives or other financial instruments relating to the company's shares within five business days of such transaction. The notification of the transaction must include particulars of, among others, the type of transaction, the date of the transaction and the market in which the transactions were carried out, the number of shares traded and the price paid.

### ***Acquisition of own shares***

Banco Popular is required to report to the CNMV any acquisition of its own shares which, together with all other acquisitions since the last notification, reaches or exceeds 1 per cent. of its share capital (irrespective of whether any own shares have been sold in the same period). In such circumstances, the notification must include the number of shares acquired since the last notification (detailed by transaction), the number of shares sold (detailed by transaction) and the resulting net holding of treasury shares.

### ***Shareholder agreements***

The Spanish Securities Market Law and Articles 531, 533 and 535 of the Spanish Companies Law require parties to disclose certain types of shareholders' agreements that affect the exercise of voting rights at a general shareholders' meeting or contain restrictions or conditions on the transferability of shares or bonds that are convertible or exchangeable into shares. If any shareholders enter into such agreements with respect to Banco Popular's shares, they must disclose the execution, amendment or extension of such agreements to Banco Popular and the CNMV and file such agreements with the appropriate commercial registry. Failure to comply with these disclosure obligations renders any such shareholders' agreement unenforceable and constitutes a violation of the Spanish Securities Market Law.

Such shareholders' agreement has no effect with respect to the regulation of the right to vote in general meetings and restrictions or conditions on the free transferability of shares and bonds convertible into shares until such time as the aforementioned notifications, deposits and publications are made.

Upon request by the interested parties, the CNMV may waive the requirement to report, deposit and publish the agreement when publishing the shareholders' agreement could cause harm to the company.

### ***Net Short Positions***

Any net short position on shares listed on the Spanish stock exchanges in excess of 0.2 per cent. of the relevant issuer's share capital and any increases or reductions thereof by 0.1 per cent. are required to be disclosed to the CNMV by no later than the first trading day following the transaction. If the net short position reaches 0.5 per cent., the CNMV will disclose the net short position to the public.

### **Share Repurchases**

Pursuant to Spanish corporate law, Banco Popular may only repurchase its own shares within certain limits and in compliance with the following requirements:

- the repurchase must be authorized by the general shareholders' meeting by a resolution establishing the maximum number of shares to be acquired, the minimum and maximum acquisition price and the duration of the authorisation, which may not exceed five years from the date of the resolution;
- the aggregate par value of the shares repurchased, together with the aggregate par value of the shares already held by Banco Popular and its subsidiaries, must not exceed 10 per cent. of its share capital;
- the acquisition may not lead to net equity being lower than the share capital plus non-distributable reserves in accordance with Spanish corporate law and the by-laws of Banco Popular; and
- the shares repurchased must be fully paid, and must be free of ancillary contributions (*prestaciones accesorias*).

Treasury shares do not have voting rights or economic rights (e.g., the right to receive dividends and other distributions and liquidation rights), except the right to receive bonus shares, which will accrue proportionately to all of Banco Popular's shareholders. Treasury shares are counted for purposes of establishing the quorum for shareholders' meetings and majority voting requirements to pass resolutions at shareholders' meetings.

Directive 2003/6/EC of the European Parliament and the Council, dated 28 January 2003, on insider dealing and market manipulation establishes rules in order to ensure the integrity of European Community financial markets and to enhance investor confidence in those markets. Article 8 of this directive establishes an exemption from the market manipulation rules regarding share buy-back programs by companies listed on a stock exchange in an EU Member State. European Commission Regulation No. 2273/2003, dated 22 December 2003, implemented the aforementioned directive with regard to exemptions for buy-back programs. Article 3 of this regulation states that in order to benefit from the exemption provided for in Article 8 of the directive, a buy-back program must comply with certain requirements established under such regulation and the sole purpose of the buy-back program must be to reduce the share capital of an issuer (in value or in number of shares) or to meet obligations arising from either of the following:

- debt financial instruments exchangeable into equity instruments; or
- employee share option programs or other allocations of shares to employees of the issuer or an associated company.

In addition, on 19 December 2007, the CNMV issued Circular 3/2007 setting out the requirements to be met by liquidity contracts entered into by issuers with financial institutions for the management of its treasury shares to constitute an accepted market practice and, therefore, be able to rely on a safe harbour for the purposes of market abuse regulations.

#### **Provision of Information to Shareholders**

Under Spanish law, shareholders are entitled to receive certain information, including information relating to any amendment of the by-laws, an increase or reduction in the share capital, the approval of the financial statements and other major corporate events or actions.

#### **Foreign Investment and Exchange Control Regulations**

##### ***Restrictions on Foreign Investment***

Spain has traditionally regulated foreign currency movements and foreign investments. However, since the end of 1991, Spain has moved into conformity with European Union standards regarding the movement of capital and services. On 23 April 1999, a new regulation on foreign investments (Royal Decree 664/1999) was approved in conjunction with the Spanish Foreign Investment Law (*Ley 18/1992*) to bring the existing legal framework in line with the provisions of the Treaty of the European Union. As a result, exchange controls and foreign investments have been, with certain exceptions, completely liberalised.

Subject to the restrictions described below, foreign investors may freely invest in shares of Spanish companies and transfer invested capital, capital gains and dividends out of Spain without limitation (subject to applicable taxes and exchange controls), and need only file a notification with the Spanish Registry of Foreign Investments maintained by the General Bureau of Commerce and Investments within the Ministry of Economy and Competitiveness following the investment or divestiture, if any, solely for statistical, economic and administrative purposes. Where the investment or divestiture is made in shares of Spanish companies listed on any of the Spanish stock exchanges, as it is the case of Banco Popular, the duty to provide notice of a foreign investment or divestiture lies with the relevant entity with whom the shares in book-entry form have been deposited or which has acted as an intermediary in connection with the investment or divestiture.

If the foreign investor is a resident of a tax haven, as defined under Spanish law (Royal Decree 1080/1991, of 5 July 1991), notice must be provided to the Registry of Foreign Investments prior to making the investment, as well as after consummating the transaction. However, prior notification is not necessary in the following cases:

- investments in listed securities, whether or not trading on an official secondary market, as well as investments in participations in investment funds registered with the CNMV; and
- foreign shareholdings that do not exceed 50 per cent. of the capital of the Spanish company in which the investment is made.

The Spanish Council of Ministers, acting on the recommendation of the Ministry of Economy and Competitiveness, may suspend the aforementioned provisions relating to foreign investments for reasons of public policy, health or safety, either generally or in respect of investments in specified industries, in which case any proposed foreign investments falling within the scope of such a suspension would be subject to prior authorisation from the Spanish government, acting on the recommendation of the Ministry of Economy and Competitiveness.

Law 19/2003 of July 4, 2003, which has as its purpose the establishment of a regulatory regime relating to capital flows to and from legal or natural persons abroad and the prevention of money laundering, generally provides for the liberalisation of the regulatory environment with respect to acts, businesses, transactions and other operations between Spanish residents and non-residents of Spain in respect of which charges or payments abroad will occur, as well as money transfers, variations in accounts or financial debit or credits abroad. These operations must be reported to the Ministry of the Economy and Competitiveness and the Bank of Spain only for informational and statistical purposes. The most important developments resulting from Law 19/2003 are the obligations on financial intermediaries to provide to the Spanish Ministry of Economy and Finance and the Bank of Spain information corresponding to client transactions.

Finally, in addition to the notices relating to significant shareholdings that must be sent to the relevant company, the CNMV and the relevant Spanish stock exchanges, as described in this section under "*Reporting Requirements*", foreign investors are required to provide such notices to the Registry of Foreign Investments.

#### ***Exchange control regulations***

Pursuant to Royal Decree 1816/1991 of 20 December 1991, relating to economic transactions with non-residents, and EC Directive 88/361/EEC, receipts, payments or transfers between non-residents and residents of Spain must be made through registered entities such as banks and other financial institutions properly registered with the Bank of Spain and/or the CNMV, through bank accounts opened with foreign banks or foreign branches of registered entities or in cash or by a cheque payable to bearer.

## DESCRIPTION OF THE SPANISH BANKING SECTOR

### The Bank of Spain

The Bank of Spain was transformed in 1962 into a public law entity (*entidad de derecho público*) that operates as Spain's autonomous central bank. In addition, it has the ability to function as a private bank. Except in its public functions, the Bank of Spain's relations with third parties are governed by private law and its actions are subject to the civil and business law codes and regulations.

Until 1 January 1999, the Bank of Spain was also the sole entity responsible for implementing Spanish monetary policy. For a description of monetary policy since the introduction of the euro, see "*Capital Management—Monetary Policy*" below.

Since 1 January 1999, the Bank of Spain has been participating in the following basic functions attributed to the European System of Central Banks ("**ESCB**"):

- defining and implementing the ESCB's monetary policy, with the principal aim of maintaining price stability across the euro area;
- conducting currency exchange operations consistent with the provisions of Article 219 of the Treaty of the Functioning of the European Union (the "**EU Treaty**"), and holding and managing the Member States' official currency reserves;
- promoting the proper working of payment systems in the euro area;
- issuing legal tender banknotes; and
- other functions deriving from its condition as a member of the ESCB.

Recognising the foregoing functions as a full-fledged member of the ESCB, the Bank of Spain Law of Autonomy (*Ley de Autonomía del Banco de España*) (Law 13/1994, of 1 June) stipulates the performance of the following functions by the Bank of Spain:

- holding and managing currency and precious metal reserves not transferred to the ECB;
- supervising the solvency and compliance with regulations of credit institutions, other entities and financial markets, for which it has been assigned supervisory responsibility, in accordance with the provisions in force;
- promoting the proper working and stability of the financial system and, without prejudice to the functions of the ECB, of national payment systems;
- placing coins in circulation and the performance, on behalf of the State, of all such other functions entrusted to it in this connection;
- preparing and publishing statistics relating to its functions, and assisting the ECB in the compilation of the necessary statistical information;
- providing treasury services and acting as financial agent for government debt;
- advising the government, preparing the appropriate reports and studies; and
- exercising all other powers attributed to it by legislation.

Subject to the rules and regulations issued by the Ministry of Economy, the Bank of Spain has, amongst others, the following supervisory powers over Spanish credit institutions:

- conducting periodic and extraordinary inspections of Spanish credit institutions to evaluate a credit institution's compliance with current regulations including the preparation of financial statements, account structure and credit policies;
- authorise (or not) the payment of dividends by credit institutions when their capital does not meet the relevant regulatory requirements;

- imposing penalties for infringement or violation of applicable regulations; in relation to serious or very serious infringements, together with the Ministry of Economy or the Council of Ministers;
- reviewing the systems and procedures applied for the compliance with the solvency regulations and evaluating the risks to which they are exposed; and
- requiring governance rules that include remuneration policies consistent with the effective risk management.

#### ***Fondo de Garantía de Depósitos de Entidades de Crédito***

The current *Fondo de Garantía de Depósitos de Entidades de Crédito* was created (from a consolidation of the former deposit guarantee funds of banks, saving banks and credit cooperatives) by Royal Decree-Law 16/2011, of 14 October (the Guaranteed Deposit Fund or "**FGD**"), as amended. The FGD guarantees both cash and securities deposits up to EUR100,000 per customer and credit institution, which is the minimum insured amount for all EU member banks. Pursuant to the FGD regulations, when the situation of a credit institution is such that it is possible that the FGD will be obliged to make payment (based on information supplied by the Bank of Spain), the FGD may adopt preventive measures and measures of reorganization of the institution concerned with a view to improving its viability and enabling it to overcome its crisis, within the framework of an action plan agreed by the institution and approved by the Bank of Spain.

The FGD is funded by annual contributions from member credit institutions up to a maximum amount of 3 per thousand of the deposits to which the guarantee extends, depending of the type of credit institution. The Ministry of Economy is authorised to reduce the member banks contributions when the FGD's equity is considered sufficient to meet its needs. Moreover, it will suspend contributions when the FGD's equity reaches 1 per cent. of the calculation base of the contributions of the member institutions as a whole. Pursuant to Royal Decree 771/2011, of 3 June, such contributions may be increased if credit institutions offer to clients guaranteed deposits with remuneration higher than certain thresholds specified in the abovementioned Royal Decree.

Under certain circumstances defined by law, the Management Committee of the FGD may agree on extraordinary contributions from the institutions, and the Bank of Spain may also make exceptional contributions of an amount set by law.

#### **Liquidity Ratio**

In an effort to implement European Union monetary policy, effective 1 January 1999, the ECB has adopted a regulation (Regulation No 1745/2003 of the European Central Bank of 12 September 2003 on the application on minimum reserves, amended by Regulation No 1358/2011 of the European Central Bank of 14 December 2011) that currently requires banks to deposit an amount equal to 1 per cent. of their qualifying liabilities, as defined by the regulation, with the central bank of their home country. These deposits will earn an interest rate equal to the average interest rate of the ESCB. Qualifying liabilities for this purpose include:

- deposits; and
- debt securities issued.

Furthermore, the liquidity ratio is set at 0 per cent. instead of 1 per cent. for those qualifying liabilities that have a maturity over two years or are sold under repurchase agreements.

#### **Orderly Banking Restructuring Fund (Fondo de Reestructuración Ordenada Bancaria) ("FROB")**

The crisis that has affected the financial markets since 2007 led the Spanish authorities to create the FROB. Its purpose is to help the restructuring processes undertaken by credit institutions and to strengthen the capital positions of such credit institutions subject to certain conditions. The FROB will support the restructuring strategy of those institutions that require assistance in two different ways:

- by adopting measures to tackle any weaknesses that may affect the viability of credit institutions; and

- by initiating restructuring processes in which the FROB itself has to intervene directly.

The FROB must act only in exceptional situations that are closely linked to the effects of the financial crisis. In order to comply with its objectives, the FROB is funded jointly by the Spanish national budget and the deposit guarantee funds of credit institutions. The FROB is able to raise funds in capital markets through the issuance of debt securities as well as by lending and engaging in any other debt transaction necessary to fulfill its objectives.

Pursuant to Royal Decree-Law 9/2009, of 26 June, as amended, the FROB is authorised to adopt financial support measures, such as acquiring (a) ordinary shares issued by banks and contributions to the share capital of credit cooperatives that need to reinforce their own resources and have applied for such measures within the framework of a recapitalisation plan, and (b) instruments convertible into shares issued by banks or contributions to the share capital of credit cooperatives involved in integration processes and need to reinforce their own resources.

### Capital Requirements

The Bank of Spain's Circular 3/2008 ("**Circular 3/2008**"), of 22 May, on the calculation and control of minimum capital requirements, regulates the minimum capital requirements for Spanish credit institutions, on an individual and consolidated group basis, and sets forth how to calculate capital meeting such requirements, as well as the various internal capital adequacy assessment processes credit institutions must have in place and the information they must disclose to the market.

Circular 3/2008 is the final implementation, for credit institutions, of the legislation on capital and consolidated supervision of financial institutions, which was contained in Law 36/2007, of 16 November, amending Law 13/1985, of 25 May, on the investment ratios, capital and reporting requirements of financial intermediaries, and other financial regulations, which also includes Royal Decree 216/2008, of 15 February, on the capital of financial institutions. Circular 3/2008 also conforms Spanish legislation to Directive 2006/48/EC of the European Parliament and of the Council, of 14 June, and Directive 2006/49/EC of the European Parliament and of the Council, of 14 June. The minimum capital requirements for credit institutions and their consolidated groups were thoroughly revised in the said EC directives based on the new Capital Accord adopted by the Basel Committee on Banking Supervision ("**Basel II**").

The minimum capital requirements established by Circular 3/2008 are calculated on the basis of Banco Popular's exposure to: (i) credit risk and dilution risk (on the basis of the assets, obligations and contingent exposures and commitments that present these risks, depending on their amounts, characteristics, counterparties, guarantees, etc.); (ii) counterparty risk and position and settlement risk in the trading book; (iii) foreign exchange risk (on the basis of the overall net foreign currency position); and (iv) operational risk. Additionally, Banco Popular is subject to compliance with the large exposures limits established in Circular 3/2008 and with the requirements related to corporate governance, internal capital adequacy assessment, measurement of interest rate risk and certain additional public disclosure obligations set forth therein. With a view to guaranteeing compliance with the aforementioned objectives, Banco Popular performs integrated management of these risks, in accordance with the internal policies of Banco Popular.

Under Basel II, the calculation of the minimum regulatory capital requirements under the new standards, referred to as "Pillar 1", is supplemented with an internal capital adequacy assessment and supervisory review process, referred to as "Pillar 2". Finally, Basel II standards establish, through what is referred to as "Pillar 3", strict transparency requirements regarding the information on risks to be disclosed to the market.

Between December 2010 and January 2011 the members of the Basel Committee on Banking Supervision agreed the new Basel III guidelines on new regulatory requirements on credit institutions ("**Basel III**"). Basel III will require banks to hold 6 per cent. of *Tier 1* (up from 2 per cent. in Basel II) composed of 4.5 per cent. of *common equity Tier 1* (up from 2 per cent. in Basel II) and 1.5 per cent. of additional *Tier 1 capital*. Basel III's capital requirements will be implemented by the regulation on prudential requirements for credit institutions and investment firms which is pending to be approved but is expected to be in force on 1 January 2013.

Law 13/1985, of 25 May and Royal Decree 216/2008, of 15 February have been recently modified by Law 6/2011, of 11 April, and Royal Decree 771/2011, of 3 June, respectively. Additionally, Circular 3/2008 has been recently modified by Circular 9/2010, of December 22 and Circular 4/2011, of 30 November. All amendments seek to implement in Spain part of the changes to the solvency framework approved at the European Union level (Directives 2009/111/EC and 2010/76/EU).

The main changes considered in these directives are:

- European harmonisation of large exposures limits: a bank will be restricted in lending beyond a certain limit (25 per cent. of regulatory capital) to a client or group of connected clients;
- Improved quality of banks' capital: clear, EU-wide criteria for assessing whether 'hybrid' capital (i.e., composed of both equity and debt), is eligible to be counted as part of a bank's overall capital;
- Improved liquidity risk management: for banking groups that operate in multiple countries, their liquidity risk management (i.e., how they fund their operations on a day-to-day basis) will also be discussed and coordinated within 'colleges of supervisors'; and
- Improved risk management for securitized products: rules on securitized debt (the repayment of which depends on the performance of a dedicated pool of loans) have been tightened. Firms that re-package loans into tradable securities will be required to retain some risk exposure to these securities, while firms that invest in the securities will be allowed to make their decisions only after conducting comprehensive due diligence. If they fail to do so, they will be subject to capital penalties.

As part of a broader plan of Spain's government to strengthen the financial sector, the Royal Decree-Law 2/2011, of 18 February, has established higher minimum capital requirements for Spanish credit institutions, with a new *capital principal* requirement for all credit institutions of up to a minimum of 8 per cent.. This ratio will be 10 per cent. for those institutions that: (i) have not allocated at least 20 per cent. of their shares to third parties; and (ii) hold a rate of wholesale funding (or *financiación mayorista*, as defined in the Bank of Spain Circular 2/2011, of 4 March) exceeding 20 per cent. The core capital ratio of Banco Popular was 10.04 per cent. as of 31 December 2011. Moreover, the Royal Decree-Law 2/2011 entitles the Bank of Spain to increase the foregoing minimum capital requirements for the credit institutions or groups whose results in the worst scenario of a stress test fail to comply with the minimum capital requirements set for that stress test.

On 3 February 2012, Spain's government enacted Royal Decree-Law 2/2012, which aims at strengthening the Spanish banking system by requiring all Spanish banks to increase provisions and capital requirements in respect of certain real estate-related assets on their balance sheets as of 31 December 2011. In particular, the new measures affect Spanish real estate-related financings and asset foreclosures or assets received as payment of debts and are to be implemented through a combination of generic and specific provisions and capital buffers:

- *Specific provisions:* The specific coverage requirements were increased for real estate assets that were on financial institutions' balance sheets as of 31 December 2011 classified as substandard or doubtful, above the thresholds established in Annex IX of the Circular of the Bank of Spain 4/2004.
- *Generic provision:* A new one-off 7 per cent. coverage was required to cover real estate assets and related financings on financial institutions' balance sheets as of 31 December 2011 classified as normal.
- *Capital buffer:* Additional principal capital requirements were established in connection with problematic credit assets and asset foreclosures.

On 11 May 2012, Royal Decree-Law 18/2012, regarding the reorganization and sale of the real estate assets of the financial sector ("**Royal Decree-Law 18/2012**"), was enacted. Royal Decree-Law 18/2012 imposed additional coverage requirements due to the deterioration of financial transactions linked to real estate activities where such transactions are classified as "normal".

In addition, Royal Decree-Law 18/2012 requires Spanish financial institutions to contribute their real estate assets to newly incorporated public limited liability companies (*sociedades anónimas*) (the "**Real Estate Managing Companies**"), which will be in charge of managing and selling them in the market (whether directly or indirectly). The real estate assets will need to be contributed to the Real Estate Managing Companies generally before 31 December 2012. The contributed real estate assets will be valued based on their fair value. If no fair value can be determined or it is difficult to determine, they will be valued based on their book value, which will be determined taking into account the provisions that need to be made in respect of those real estate assets following Royal Decree-Law 2/2012 and Royal Decree-Law 18/2012. According to the preliminary estimations of Banco Popular, such additional coverage requirements amount to €3,300 million, net of taxes (to cover both Banco Popular and Banco Pastor).

The aforementioned regulatory developments have affected the capital adequacy of the Issuer and imposed additional requirements. For more information on these changes and their specific impact on the Issuer, see "*Risk Factors - Changes in the regulatory framework, including increased regulation of the financial services industry in the jurisdictions where the Group operates could adversely affect its business*".

## **Capital Management**

### ***Large exposures***

The Bank of Spain regulates large exposures in the context of capital management. Since 1 January 1999, any exposure to a person or group exceeding 10 per cent. of a group's or bank's regulatory capital has been deemed an exposure. The total amount of exposure represented by all of such concentrations may not exceed 800 per cent. of regulatory capital. Exposure to a single person or group may not exceed 25 per cent. (20 per cent. in the case of non-consolidated companies of the economic group) of a bank's or group's regulatory capital.

### ***Legal and other restricted reserves***

Banco Popular is subject to the legal and other restricted reserves requirements applicable to Spanish companies. See "*Capital Requirements*" above.

### ***Allowance for loan losses***

The allowances for loan losses depend on the specific conditions of the loans and the regulations of the Bank of Spain relating to allowances for loan losses, which can be found in Circular of the Bank of Spain 3/2008 and Circular of the Bank of Spain 4/2004.

### ***Regulation of the disclosure of fees and interest rates***

Interest rates on most kinds of loans and deposits are not subject to a maximum limit. Banks must publish their preferential rates, rates applied on overdrafts, maximum fees and commissions charged in connection with banking transactions. The foregoing regulations are enforced by the Bank of Spain.

### ***Dividends***

If a bank meets the Bank of Spain's minimum capital requirements described above under "Capital Requirements," it may dedicate all of its net profits to the payment of dividends, although, in practice, banks consult with the Bank of Spain before declaring a dividend. Compliance with such requirements notwithstanding, the Bank of Spain may advise a bank against the payment of dividends on grounds of prudence. In no event may dividends be paid from non-distributable reserves and the payment of dividends against distributable reserves requires the prior authorisation of the Bank of Spain. Banks which fail to comply with the capital adequacy ratio by more than 20 per cent. or whose capital falls below 50 per cent. of the required minimum are required to devote all of their net profits to increasing their capital ratios. Banks which fail to meet the required ratio by 20 per cent. or less may be restricted by the Bank of Spain in the amount of profits that may be devoted to dividends. In addition, banks, and their directors and executive officers that do not comply with the liquidity and investment ratios and capital adequacy requirements may be subject to fines or other sanctions. Compliance with the Bank of Spain's capital requirements is determined on both a consolidated and individual basis. If a bank has no net

profits, the board of directors may propose at the general meeting of the shareholders that a dividend be declared out of retained earnings.

### ***Mortgage legislation***

The Spanish mortgage market has its origins in Law 2/1981, of 25 March, which was reformed by Law 41/2007, of December 7. Law 41/2007 also amended specific provisions of Law 2/1994, of 30 March, on the subrogation and modification of mortgage loans, and the mortgage law passed by the Decree of 8 February 1946, with the purpose of providing the Spanish mortgage market greater flexibility, sophistication and efficiency. A number of reforms have been introduced relating to: (i) asset or financing transactions carried out by credit institutions and (ii) liability transactions (i.e., selling mortgage loans and credits as refinancing mechanisms). Law 2/1981, of 25 March, on mortgage market regulation as reformed by Law 41/2007, was amended by Royal Decree 716/2009 of 24 April which replaced Royal Decree 685/1982, of 17 March.

The most significant developments introduced by Royal Decree 716/2009 are (i) the modification on the loan-to-value ratio requirement in order to improve the quality of Spanish mortgage-backed securities; (ii) the elimination of many of the administrative requirements for the issuance of covered bonds and mortgage bonds; and (iii) the implementation of a special accounting record of the loans and credit facilities used to back issuances of covered bonds and mortgage-backed bonds.

### ***Mutual fund regulation***

Mutual funds in Spain are regulated by the CNMV. All mutual funds (Spanish or foreign) to be marketed in Spain, and mutual fund management companies (Spanish or acting through branches in Spain or on a free provision of services basis) are required to be registered with the CNMV. Spanish mutual funds may be subject to investment limits with respect to single sectors or companies and overall portfolio diversification minimums. In addition, periodic reports including a review of the Spanish fund's performance and certain material events affecting the Spanish fund are required to be distributed/notified to the Spanish fund's investors and filed with the CNMV.

### ***Reform of the Spanish Companies Law***

The consolidated text of the Spanish Companies Law, adopted under Royal Legislative Decree 1/2010, of 2 July, has repealed the former Joint Stock Companies Law, adopted under Royal Legislative Decree 1564/1989, of 22 December, and the former Limited Liability Companies Law, adopted under Law 2/1995, of 23 March. This Royal Legislative Decree stems from the authorisation set out in Law 3/2009, of 3 April, on structural changes in companies, enabling the Government to proceed to consolidate the legislation for joint stock ("*sociedades anónimas*") and limited liability ("*sociedades de responsabilidad limitada*") companies in a single text, bringing together the contents of the two aforementioned acts, as well as the part of the Securities Market Law that regulates the most purely corporate-related aspects of joint stock companies whose securities are traded on an official secondary market.

In addition, Royal Legislative Decree 1/2010, of 2 July, has been recently modified by Royal Decree-Law 13/2010, of 3 December, and by Law 25/2011, of 1 August. These modifications were introduced in order to: (i) reduce costs, and (ii) implement Directive 2007/36/EC of the European Parliament and the Council, of 11 July, regarding the exercise of certain shareholder rights in listed companies.

### ***Reform of the Spanish Auditing Law***

Law 12/2010, of June 30, amends Law 19/1988, of 12 July, on Account Audits, Law 24/1988, of 28 July, on Securities Exchanges and the consolidated text of the former Joint Stock Companies Law adopted by Royal Legislative Decree 1564/1989, of 22 December (currently, the Spanish Companies Law), for its adaptation to EU regulations. This new law transposes Directive EU/2006/43 which regulates aspects, among others, related to: authorisation and registry of auditors and auditing companies, confidentiality and professional secrecy which the auditors may observe, rules on independency and liability and quality control of auditors and auditing companies.

### ***Monetary policy***

The integration of Spain into the European Monetary Union (the "**EMU**") on 1 January 1999 implied the yielding of monetary policy sovereignty to the ESCB. The ESCB is composed of the ECB and the

national central banks of the 17 member countries that form the EMU (Estonia joined the EMU on January 1, 2011).

The ESCB determines and executes the single monetary policy of the 17 member countries of the EMU. The ESCB collaborates with the central banks of member countries to take advantage of the experience of the central banks in each of its national markets. The basic tasks to be carried out by the ESCB include:

- defining and implementing the single monetary policy of the EU;
- conducting foreign exchange operations in accordance with the set exchange policy;
- lending to national monetary financial institutions in collateralized operations;
- holding and managing the official foreign reserves of the member states; and
- promoting the smooth operation of the payment systems.

In addition, the EU Treaty establishes a series of rules designed to safeguard the independence of the system, in its institutional as well as in its administrative functions.

## TAXATION

### 1. Tax treatment of the Notes

The following is a brief analysis of the fiscal aspects associated with the acquisition, ownership and subsequent transfer of the Notes and with converting them into newly issued Shares as well as the tax aspects associated with owning and subsequently transferring the Shares.

This analysis is a general description of the tax treatment under the currently in force Spanish legislation, without prejudice of regional tax regimes in the Historical Territories of the Basque Country and the Community of Navarre, or provisions passed by Autonomous Communities which may apply to investors for certain taxes.

This is not intended to be an exhaustive description of all relevant tax-related considerations for making a decision to acquire or sell Notes, nor does it address the tax consequences applicable to all investor categories, some of whom may be subject to special rules.

It is therefore recommended that investors who are interested in acquiring the Notes consult with tax experts who can provide them with personalised advice based on their particular circumstances. Likewise, investors should consider the legislative changes which could occur in the future.

The Issuer considers that the Notes qualify as financial assets with explicit yield, as such yield exceeds the reference rates fixed in Article 91 of Royal Decree No. 439/2007 of 30 March approving the Personal Income Tax Regulations, and in Article 61 of Royal Decree No. 1777/2004 of 30 July approving the Corporate Income Tax Regulations.

#### 1.1 *Acquisition and disposal of the Notes. Transfer Tax and Value Added Tax*

The acquisition and any subsequent disposal of the Notes is exempt from Transfer Tax, Stamp Duties and Value Added Tax as provided for in Article 108 of the Stock Market Law and related provisions.

#### 1.2 *Income from the Notes*

##### (a) *Individuals with tax residency in Spain*

Both interest periodically received and income derived from the transfer, redemption or repayment of the Notes constitute a return on investment obtained from the transfer of own capital to third parties in accordance with the provisions of Section 25.2 of the Personal Income Tax Law, and must be included in each investor's savings income and taxed at the tax rate applicable from time to time, currently 21 per cent. for taxable income up to EUR6,000, 25 per cent. for taxable income between EUR6,000 and EUR 24,000 and 27 per cent. for taxable income in excess of EUR24,000.

Income from the transfer of the Notes is computed as the difference between their transfer value and their acquisition or subscription value. Also, ancillary acquisition and disposal charges are taken into account, insofar as adequately evidenced, in calculating the income.

Negative income derived from the transfer of the Notes, in the event that the investor had acquired other homogeneous securities within the two months prior or subsequent to such transfer or exchange, shall be included in his or her Personal Income Tax base as and when the remaining homogeneous securities are transferred.

When calculating the net income, expenses related to the management and deposit of the Notes will be deductible, excluding those pertaining to discretionary or individual portfolio management.

According to Section 44.5 of Royal Decree 1065/2007, of 27 July as amended by Royal Decree 1145/2011, of 29 July, the Issuer will make interest payments to individual

noteholders who are resident for tax purposes in Spain without withholding in the terms described under "*Reporting obligations*" below.

Notwithstanding the above, in the case of Notes held by Spanish resident individuals and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest under the Notes may be subject to withholding tax at the current rate of 21 per cent. which will be made by the depositary or custodian.

Withholdings can be deducted from the final Personal Income Tax liability owed and may be refundable pursuant to Article 103 of the Personal Income Tax Law.

(b) *Spanish Corporate Income Tax taxpayers*

Both interest periodically received and income derived from the transfer, redemption or repayment of the Notes must be included in the taxable income of legal entities with tax residency in Spain and will be subject to Corporate Income Tax (at the current general rate of 30 per cent. for 2012) in accordance with the rules for this tax.

Income obtained by Spanish resident corporate investors from financial assets listed on an official OECD market will not be subject to withholding tax in accordance with Section 59(s) of the Corporate Income Tax Regulations.

In accordance with Section 44.5 of Royal Decree 1065/2007, of 27 July as amended by Royal Decree 1145/2011 of 29 July, there is no obligation to withhold on income payable to Spanish Corporate Income Tax taxpayers. Consequently, the Issuer will not withhold on interest payments under the Notes to Spanish Corporate Income Tax taxpayers in the terms described under "*Reporting obligations*" below.

However, in the case of Notes held by a Spanish resident entity and deposited with a Spanish resident entity acting as depositary or custodian, payments of interest under the Notes may be subject to withholding tax at the current rate of 21 per cent., withholding that will be made by the depositary or custodian, if the Notes do not comply with the exemption requirements specified in the ruling issued by the Spanish Tax Authorities (*Dirección General de Tributos*) dated 27 July 2004, which requires a withholding to be made.

Notwithstanding the above, amounts withheld, if any, may be credited by the relevant investors against its final CIT liability.

(c) *Non-Spanish resident investors*

This section analyses the tax treatment for non-Spanish resident investors and for individual investors who become tax residents in Spain and elect to pay non-resident income tax for the tax period in which the change of residency takes place and the following five years.

(i) Non-Spanish resident investors acting through a permanent establishment in Spain

Ownership of the Notes by investors who are not resident for tax purposes in Spain will not in itself create the existence of a permanent establishment in Spain.

If the Notes form part of the assets of a permanent establishment in Spain of a person or legal entity who is not resident in Spain for tax purposes, the tax rules applicable to income deriving from such Notes are the same as those for Spanish Corporate Income Tax taxpayers.

- (ii) Non-Spanish resident investors not operating through a permanent establishment in Spain

Both interest payments periodically received and income derived from the transfer, redemption or repayment of the Notes, obtained by individuals or entities who have no tax residency in Spain, and which are Non-Resident Income Tax taxpayers with no permanent establishment in Spain, are exempt from such Non-Resident Income Tax **provided that** certain formalities as described in section "*Reporting obligations*" below are complied with.

### 1.3 ***Wealth Tax and Inheritance and Gift Tax***

#### Wealth Tax

- (a) *Individuals with tax residency in Spain*

According to Wealth Tax regulations as amended by Royal Decree-Law 13/2011 (subject to any exceptions provided under relevant legislation in an autonomous region (Comunidad Autónoma)), the net worth of any individuals with tax residency in Spain up to the amount of EUR700,000 is not subject to Wealth Tax in respect of tax years 2011 and 2012. Therefore, they should take into account the value of the Notes which they hold as at 31 December 2012, the applicable marginal rates ranging between 0.2 per cent. and 2.5 per cent.

- (b) *Spanish resident legal entities*

Spanish resident legal entities are not subject to Wealth Tax.

- (c) *Non-Spanish resident individuals and entities*

To the extent that the income deriving from the Notes is exempt from Non Resident Income Tax, individuals who do not have tax residency in Spain who hold such Notes on the last day of any year will be exempt from Wealth Tax. Individuals resident in a country with which Spain has entered into a double tax treaty in relation to the Wealth Tax would generally not be subject to such tax. Otherwise, according to Royal Decree-Law 13/2011, non-Spanish resident individuals whose properties and rights located in Spain, or that can be exercised within the Spanish territory exceed EUR700,000 would be subject to Wealth Tax, the applicable rates ranging between 0.2 per cent. and 2.5 per cent.

Non-Spanish resident legal entities are not subject to Wealth Tax.

#### Inheritance and Gift Tax

- (a) *Individuals with tax residency in Spain*

Individuals with tax residency in Spain who acquire ownership or other rights over any Notes by inheritance, gift or legacy will be subject to inheritance and gift tax in accordance with the applicable Spanish regional or federal rules. The effective tax rates range between 7.65 per cent. and 81.6 per cent., depending on relevant factors.

- (b) *Spanish resident legal entities*

Legal entities with tax residency in Spain which acquire ownership or other rights over the Notes by inheritance, gift or legacy are not subject to inheritance and gift tax and must include the market value of the Notes in their taxable income for Spanish Corporate Income Tax purposes.

- (c) *Non-Spanish resident individuals and entities*

Individuals who do not have tax residency in Spain who acquire ownership or other rights over the Notes by inheritance, gift or legacy, and who reside in a country with

which Spain has entered into a double tax treaty in relation to inheritance and gift tax will be subject to the relevant double tax treaty.

If the provisions of the foregoing paragraph do not apply, such individuals will be subject to inheritance and gift tax in accordance with Spanish legislation.

Non-Spanish resident legal entities which acquire ownership or other rights over the Notes by inheritance, gift or legacy are not subject to inheritance and gift tax. They will be subject to Non-Resident Income Tax. If the legal entity is resident in a country with which Spain has entered into a double tax treaty, the provisions of such treaty will apply. In general, double-tax treaties provide for the taxation of this type of income in the country of residence of the beneficiary.

#### 1.4 **Reporting obligations**

As described above, interest and other income paid with respect to the Notes will be exempt from Spanish withholding tax if the procedures for delivering to the Issuer the information described in Exhibit I (see below) are complied with.

The Second Additional provision of Law 13/1985, of 25 May on investment ratios, own funds and information obligations of financial intermediaries establishes certain reporting obligations in relation to the Notes that must be met each time there is an interest payment on the Notes.

The information obligations to be complied with in order to apply the exemption are those laid down in Section 44 of Royal Decree 1065/2007 ("**Section 44**"), as amended by Royal Decree 1145/2011 of 29 July.

In accordance with Section 44 paragraph 5, before the close of business on the Business Day (as defined in the Terms and Conditions of the Notes) immediately preceding the date on which any payment of interest, principal or of any amounts in respect of the early redemption of the Notes (each, a "**Payment Date**") is due, the Issuer must receive from the Principal Paying and Conversion Agent the following information about the Notes:

- (a) the identification of the Notes with respect to which the relevant payment is made;
- (b) the date on which the relevant payment is made;
- (c) the total amount of the relevant payment;
- (d) the amount of the relevant payment paid to each entity that manages a clearing and settlement system for securities situated outside of Spain.

In particular, the Principal Paying and Conversion Agent must certify the information above about the Notes by means of a certificate, the form of which is attached as Exhibit I.

In light of the above, the Issuer and the Principal Paying and Conversion Agent have arranged certain procedures to facilitate the collection of information concerning the Notes by the close of business on the Business Day immediately preceding each relevant Payment Date. If, despite these procedures, the relevant information is not received by the Issuer on each Payment Date, the Issuer will withhold tax at the then-applicable rate (currently 21 per cent.) from any payment in respect of the relevant Notes.

If, before the tenth day of the month following the month in which interest is paid, the Principal Paying and Conversion Agent provides such information, the Issuer will reimburse the amounts withheld.

Notwithstanding the foregoing, the Issuer has agreed that, in the event that withholding tax were required by law, the Issuer, failing which the Guarantors, would pay such additional amounts as will result in receipt by the Noteholders of such amounts as would have been received by them had no such withholding or deduction, except as provided in "Terms and Conditions of the Notes—8. Taxation".

## 1.5 ***Conversion of the Notes into Shares***

### (a) *Individuals with tax residency in Spain*

Income earned on the conversion of the Notes to Shares, computed as the difference between the market value of the newly-issued Shares received and the acquisition or subscription value of the Notes delivered in exchange will be considered as a return on investment obtained from the transfer of own capital to third parties in accordance with the provisions of Section 25.2 of the Personal Income Tax.

The tax treatment will be the one referred to in section 1.2 (a) above.

Also, ancillary acquisition and disposal charges are taken into account, insofar as adequately evidenced, in calculating the income obtained.

Any income obtained in the conversion will not be subject to withholding tax.

### (b) *Spanish Corporate Income Tax taxpayers*

Subject to the applicable accounting regulations, income derived from the conversion of the Notes will be computed as the difference between the market value of the newly-issued Shares received and the book value of the Notes delivered in exchange.

Such income will be subject to Corporate Income Tax at the current general rate of 30 per cent. for 2012 in accordance with the rules for this tax.

Any income obtained in the conversion will not be subject to withholding tax.

The tax treatment will be the one referred to in section 1.2 (b) above.

### (c) *Non-Spanish resident investors*

#### (i) Non-Spanish resident investors operating through permanent establishments in Spain

Non-Spanish resident investors operating through permanent establishment in Spain are subject to the same tax treatment that applies to Spanish Corporate Income Tax taxpayers.

#### (ii) Non-Spanish resident investors operating without permanent establishment in Spain

Income obtained by non-Spanish resident investors on the conversion of the Notes to Shares will be computed as the difference between the market value of the newly-issued Shares received and the book value of the Notes delivered in exchange.

The tax treatment applicable to the income obtained will be the one described in section 1.2 (c) above.

## 2. **Taxation on Ownership and Transfer of Shares**

### 2.1 ***Indirect taxation***

The acquisition of the shares and any subsequent transfer thereof will be exempt from Transfer Tax, Stamp Duty and Value Added Tax, under the terms and with the exemptions set out in article 108 of the Spanish Securities Market Law.

## 2.2 *Direct taxation*

### Individuals. Personal Income

(a) *Tax Taxation of dividends.*

According to the Spanish PIT Law the following, amongst others, shall be treated as gross capital income: income received by a Spanish Noteholder in the form of dividends, shares in profits, consideration paid for attendance at shareholders' meetings, income from the creation or assignment of rights of use or enjoyment of the shares and any other income received in his capacity as shareholder.

Gross capital income shall be reduced by any administration and custody expenses (but not by those incurred in individualised portfolio management) and the net amount shall be included in the relevant Spanish Noteholder savings taxable base and taxed in tax years 2012 and 2013 at a flat rate of 21 per cent. for the first EUR6,000, 25 per cent. between EUR6,001 and EUR24,000 and 27 per cent. for any amount in excess of EUR24,000.

However, according to the LPIT, dividends, shares in profits of any class of entity, considerations paid for attendance at shareholders' meetings and any other income arising from other assets (except for the delivery of bonus shares which entitle the noteholder to share in the profits according to the by-laws or a decision of ours) will be exempt from PIT up to an aggregate amount of EUR1,500. This limit will be applicable to all dividends and profit participations obtained by the taxpayer in its capacity as a shareholder during a calendar year.

Such exemption will not be applicable to dividends and distributed profits arising from securities acquired by the shareholder during the two months prior to the dividend distribution date if, after that date, within the same term, the shareholder sells securities of the same type.

The payment to Spanish Noteholders of dividends or any other distribution will be generally subject to a withholding tax at the rate of 21 per cent. without taking into consideration the EUR1,500 exemption described above. Such withholding tax will be deductible from the net PIT payable (*cuota líquida*), and if the amount of tax withheld is greater than the amount of the net PIT payable, the taxpayer will be entitled to a refund of the excess withheld in accordance with the LPIT.

(b) *Share premium distributions.*

Dividends charged against the share premium reserve shall reduce the acquisition value of the shares in respect of which such dividends are paid until such value is reduced to zero. Only any amount exceeding the acquisition value of such shares shall be included in the Spanish Noteholder savings taxable base and taxed in tax years 2012 and 2013 at a flat rate of 21 per cent. for the first EUR6,000, 25 per cent. between EUR6,001 and EUR24,000 and 27 per cent. for any amount in excess of EUR24,000.

(c) *Taxation of capital gains.*

Gains or losses recorded by a Spanish Noteholder as a result of the transfer of listed shares which represent a participation in a company's equity, will qualify for the purposes of the LPIT as capital gains or losses and will be subject to taxation according to the general rules applicable to capital gains. The amount of capital gains or losses shall be the difference between the shares' acquisition value (plus any fees or taxes incurred) and the transfer value, which is the listed value of the share as of the transfer date or, if higher, the agreed transfer price, less any fees or taxes incurred.

Capital gains or losses arising from the transfer of shares by the Spanish Noteholders shall be included in such Spanish Noteholder's savings taxable base corresponding to the period in which the transfer takes place, and any gain resulting from such compensation will be taxed in tax years 2012 and 2013 at a flat rate of 21 per cent. for the first

EUR6,000, 25 per cent. between EUR6,001 and EUR24,000 and 27 per cent. for any amount in excess of EUR24,000.

Capital gains arising from the transfer of shares are not subject to withholding tax on account of PIT.

Losses arising from the transfer of shares admitted to trading on certain official stock exchanges will not be treated as capital losses if securities of the same kind have been acquired during the period between two months before and two months after the date of the transfer which originated the loss. In these cases, the capital losses will be included in the savings taxable base upon the transfer of the remaining shares of the taxpayer.

(d) *Spanish Wealth Tax.*

Individual Spanish Noteholders are subject to the Spanish Wealth Tax on all their assets (such as shares in the Issuer) in tax years 2011 and 2012.

Spanish Wealth Tax Law provides that the first EUR700,000 of net wealth owned by an individual Spanish Noteholder will be exempt from taxation, while the rest of the net wealth will be taxed at a rate ranging between 0.2 per cent. and 2.5 per cent. However, this may vary by Spanish Autonomous Region. As such, prospective Noteholders should consult their tax advisors.

(e) *Spanish Inheritance and Gift Tax.*

Individuals resident in Spain for tax purposes who acquire shares by inheritance or gift will be subject to the Spanish Inheritance and Gift Tax ("**IGT**") in accordance with the IGT Law ("**LIGT**"), without prejudice to the specific legislation applicable in each Autonomous Region. The effective tax rate, after applying all relevant factors, ranges from 7.65 per cent. to 81.6 per cent. Some tax benefits could reduce the effective tax rate.

## 2.3 *Legal Entities*

### Corporate Income Tax

(a) *Taxation of Dividends.*

According to article 10 of the CIT Law, dividends from the Issuer or a share of the Issuer's profits received by corporate Spanish Noteholders, or by NRIT taxpayers who operate, with respect to the Issuer's shares, through a permanent establishment in Spain, as a consequence of the ownership of the shares, less any expenses inherent to holding the shares, shall be included in the CIT taxable base. The general CIT tax rate is currently 30 per cent.

Furthermore, taxpayers will be entitled to a tax credit for double taxation of dividends equal to 50 per cent. of the gross tax due in respect of the taxable income attributable to such dividends, subject to the exceptions set out in article 30.4 of the LCIT.

Notwithstanding the above, the tax credit for double taxation of dividends will be equal to 100 per cent. of the gross tax due in respect of the taxable income attributable to such dividends if the shareholding (direct or indirect) held in the Issuer is equal to or higher than 5 per cent. (which, under certain circumstances may be reduced to 3 per cent.) and such shareholding has been held continuously for one full year up to the date on which the dividend is paid or straddling such date.

Should such tax credits exceed the amount of gross CIT payable, the excess may be carried forward and deducted from the CIT tax liability arising in tax periods ending within the following seven years.

Also, CIT taxpayers are subject to withholding at a rate of 21 per cent. on the full amount of the distributed profits, unless the taxpayer is entitled to a 100 per cent. tax

credit for double taxation of dividends, provided also that the one year holding period has been complied with. Such withholding tax will be deductible from the net CIT payable, and if the amount of tax withheld is greater than the amount of the net CIT payable, the taxpayer will be entitled to a refund of the excess withheld in accordance with the LCIT.

(b) *Income deriving from share transfers.*

The gain or loss arising on transfer of the shares or from any other change in net worth relating to the shares will be included in the tax base of CIT taxpayers, or of NRIT taxpayers who operate through a permanent establishment in Spain, in the manner contemplated in articles 10 *et seq.* of the LCIT, being taxed generally at a rate of 30 per cent.

Income deriving from share transfers is not subject to withholding on account of CIT.

Also, on the terms contemplated in article 30.5 of the LCIT, the transfer of shares by CIT taxpayers may entitle the transferor to a double taxation credit; further, it may qualify in respect of the portion of income that has not benefited from such a credit for the tax credit for reinvestment of extraordinary profits, in accordance with the provisions of article 42 of the aforesaid legal text.

Lastly, in the event of acquisition of the shares free of charge by a CIT taxpayer, the income generated for the latter will likewise be taxed according to the CIT rules, the IGT not being applicable.

2.4 ***Non-Spanish Noteholders***

(a) *Taxation of Dividends*

Under Spanish law, dividends paid by a Spanish resident company to a non-Spanish Noteholder are subject to Spanish Non-Resident Income Tax, approved by the NRIT, withheld at the source on the gross amount of dividends, currently at a tax rate of 21 per cent. Notwithstanding the above, the NRIT Law includes an exemption in respect of the first EUR1,500 of any Spanish source dividends received annually by individuals (without a permanent establishment in Spain and not acting through a tax haven) who are resident in an EU member state or in a territory or country that has an effective exchange of fiscal information agreement with Spain. However, Spanish withholding tax will nevertheless be required to be deducted from the gross amount of the dividends paid. Noteholders will have to seek a refund of such withholding taxes from the Spanish tax authorities by following the Spanish refund procedure (as described below under "*Spanish Refund Procedure*").

In addition, Noteholders resident in certain countries will be entitled to the benefits of a Double Taxation Convention ("**DTC**"), in effect between Spain and their country of tax residence. Such Noteholders may benefit from a reduced tax rate or an exemption under an applicable DTC with Spain, subject to the satisfaction of any conditions specified in the relevant DTC, including providing evidence of the tax residence of the non-Spanish Noteholder by means of a valid certificate of tax residence duly issued by the tax authorities of the country of tax residence of the non-Spanish Noteholder or, as the case may be, the equivalent document specified in the Spanish Order which further develops the applicable DTC.

According to the Order of the Ministry of Economy and Finance of 13 April 2000, upon distribution of a dividend, Banco Popular or its paying agent will withhold an amount equal to the tax amount required to be withheld according to the general rules set forth above (*e.g.*, applying the general withholding tax rate of 21 per cent.), transferring the resulting net amount to the depositary. For this purpose, the depositary is the financial institution with which the non-Spanish Noteholder has entered into a contract of deposit or management with respect to shares in the Issuer held by such Noteholders. If the depositary of the non-Spanish Noteholder is resident, domiciled or represented in Spain

and it provides timely evidence (*e.g.*, a valid certificate of tax residence issued by the relevant tax authorities of the non-Spanish Noteholder's country of residence stating that, for the records of such authorities, the non-Spanish Noteholder is a resident of such country within the meaning of the relevant DTC, or as the case may be, the equivalent document regulated in the Order which further develops the applicable DTC) of the non-Spanish Noteholder's right to obtain the DTC-reduced rate or the exemption, it will immediately receive the surplus amount withheld, which will be credited to the non-Spanish Noteholder. For these purposes, the relevant certificate of residence must be provided before the tenth day following the end of the month in which the dividends were paid. The tax certificate is generally valid only for a period of one year from the date of issuance.

If this certificate of tax residence, or as the case may be, the equivalent document referred to above, is not provided within this time period or if the depositary of the non-Spanish Noteholder is not resident, domiciled or represented in Spain, the non-Spanish Noteholder may subsequently obtain a refund of the amount withheld in excess from the Spanish tax authorities, following the standard refund procedure established by the Royal Decree 1776/2004, dated 30 July 2004, and an Order dated 17 December 2010, as amended.

Notwithstanding the above, the procedure established in the Order dated 13 April 2000 (described above) will not be applicable in respect to the first EUR1,500 dividends exempt from taxation in the terms indicated above. In such event, dividends will be paid net of the general withholding tax rate and the non-Spanish Noteholder may obtain the refund of the amount withheld from the Spanish tax authorities following the Spanish refund procedure (as described below).

(b) *Spanish Refund Procedure*

According to Spanish Regulations on NRIT, approved by Royal Decree 1776/2004 and the Order dated 17 December 2010, a refund for the amount withheld in excess of any applicable DTC-reduced rate can be obtained from the relevant Spanish tax authorities. To pursue the refund claim, the non-Spanish Noteholder is required to file:

- (i) the corresponding Spanish Tax Form (currently, Form 210);
- (ii) the certificate of tax residence and or equivalent document referred to above under "*—Taxation of Dividends*";
- (iii) a certificate from the Issuer stating that Spanish NRIT was withheld with respect to such non-Spanish Holder.

For further details, prospective Noteholders should consult their tax advisors.

2.5 *Taxation of Pre-Emptive Rights*

Distributions to Noteholders of pre-emptive rights to subscribe for new shares made with respect to the shares are not treated as income under Spanish law and, therefore, are not subject to Spanish NRIT. The exercise of such pre-emptive rights is not considered a taxable event under Spanish law and thus is not subject to Spanish NRIT. However, if these pre-emptive rights are transferred by the Noteholders, the amount received as a result of the transfer will reduce the acquisition cost of the shares to which they pertain. If the amount received exceeds this acquisition cost, the excess will be regarded as a capital gain and subject to Spanish NRIT in the manner described under "*—Taxation of Capital Gains*" below.

2.6 *Taxation of Capital Gains*

Capital gains derived from the transfer or sale of the shares will be deemed income arising in Spain, and, therefore, are taxable in Spain at a general tax rate of 21 per cent.

Capital gains and losses will be calculated separately for each transaction. It is not possible to offset losses against capital gains.

However, capital gains derived from shares in the Issuer will be exempt from taxation in Spain in either of the following cases:

- (i) Capital gains derived from the transfer of the shares on an official Spanish secondary stock market (such as the Madrid, Barcelona, Bilbao or Valencia stock exchanges) by any non-Spanish Noteholder who is tax resident of a country that has entered into a DTC with Spain containing an "exchange of information" clause. This exemption is not applicable to capital gains obtained by a non-Spanish Noteholder through a country or territory that is defined as a tax haven by Spanish regulations.
- (ii) Capital gains obtained directly by any non-Spanish Noteholder resident of another EU Member State or indirectly through a permanent establishment of such non-Spanish Noteholder in a EU Member State other than Spain, provided that:
  - the Issuer's assets do not mainly consist of, directly or indirectly, Spanish real estate;
  - during the preceding twelve months the non-Spanish Noteholder has not held a direct or indirect interest of at least 25 per cent. in the Issuer's capital or net equity; and
  - the gain is not obtained through a country or territory defined as a tax haven under applicable Spanish regulations.
- (iii) Capital gains realised by non-Spanish Noteholders who benefit from a DTC that provides for taxation only in such non-Spanish Noteholder's country of residence.

Noteholders must submit a Spanish Tax Form (currently, Form 210) within the time periods set out in the applicable Spanish regulations to pay the corresponding tax or qualify for an exemption. In order for the exemptions mentioned above to apply, a non-Spanish Noteholder must provide a certificate of tax residence issued by the tax authority of its country of residence (which, if applicable, must state that, to the best knowledge of such authority, the non-Spanish Noteholder is resident of such country within the meaning of the relevant DTC) or equivalent document meeting the requirements of the Order which further develops the applicable DTC, together with the Spanish Tax Form. The non-Spanish Noteholder's tax representative in Spain and the depositary of the shares are also entitled to carry out such filing.

The certificate of tax residence mentioned above will be generally valid for a period of one year after its date of issuance.

## **2.7 Spanish Wealth Tax**

Spanish non-resident tax individuals are subject to the Spanish Wealth Tax on the assets located in Spain (such as shares in the Issuer) in tax years 2011 and 2012 unless an applicable DTC provides otherwise.

Spanish Wealth Tax Law provides that the first EUR700,000 of assets owned in Spain by Spanish non-resident tax individuals will be exempt from taxation, while the rest of the wealth will be taxed at a rate ranging between 0.2 per cent. and 2.5 per cent.

## **2.8 Spanish Inheritance and Gift Tax**

Unless otherwise provided under an applicable DTC, transfers of shares upon death and by gift to individuals not resident in Spain for tax purposes are subject to Spanish Inheritance and Gift Tax if the shares are located in Spain (as is the case with shares in the Issuer) or the rights attached to such shares are exercisable in Spain, regardless of the residence of the heir or the beneficiary. The applicable tax rate, after applying all relevant factors, ranges between 7.65 per cent. and 81.6 per cent. for individuals. Gifts granted to non-Spanish tax resident corporations will be generally subject to Spanish NRIT as capital gains, without prejudice to the exemptions referred to above under "*Taxation of capital gains*".

## **2.9 Spanish Transfer Tax**

Subscription, acquisition and transfers of shares will be exempt from Transfer Tax (*Impuesto sobre Transmisiones Patrimoniales*) and Value Added Tax. Additionally, no Stamp Duty will be levied on such subscription, acquisition and transfers.

*Set out below is Exhibit I. Sections in English have been translated from the original Spanish and such translations constitute direct and accurate translations of the Spanish language text. In the event of any discrepancy between the Spanish language version of the certificate contained in Exhibit I and the corresponding English translation, the Spanish tax authorities will give effect to the Spanish language version of the relevant certificate only.*

*The language of this Base Prospectus is English. The Spanish language text of Exhibit I has been included in order that the correct technical meaning may be ascribed to such text under applicable Spanish law.*

## EXHIBIT 1

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal (...) (1), en nombre y representación de (entidad declarante), con número de identificación fiscal (...) (1) y domicilio en (...) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number (...) (1), in the name and on behalf of (entity), with tax identification number (...) (1) and address in (...) as (function - mark as applicable):

- (a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**
  - (a) Management Entity of the Public Debt Market in book entry form.
- (b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**
  - (b) Entity that manages the clearing and settlement system of securities resident in a foreign country.
- (c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**
  - (c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.
- (d) Agente de pagos designado por el emisor.**
  - (d) Issuing and Paying Agent appointed by the issuer.

**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

- 1. En relación con los apartados 3 y 4 del artículo 44:**
  - 1. In relation to paragraphs 3 and 4 of Article 44:
    - 1.1 Identificación de los valores.**
      - 1.1 Identification of the securities.
    - 1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados).**
      - 1.2 Income payment date (or refund if the securities are issued at discount or are segregated).

- 1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados).**
- 1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated).
- 1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora.**
- 1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved.
- 1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**
- 1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).
- 2. En relación con el apartado 5 del artículo 44.**
- 2. In relation to paragraph 5 of Article 44.
- 2.1 Identificación de los valores.**
- 2.1 Identification of the securities.
- 2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados).**
- 2.2 Income payment date (or refund if the securities are issued at discount or are segregated).
- 2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados).**
- 2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated).
- 2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**
- 2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.
- 2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**
- 2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.
- 2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**
- 2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en .....a .... de .....de ....**

I declare the above in ..... on the.... of ..... of ....

- (1) En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia
- (1) In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.

### **EU Savings Tax Directive**

Under EC Council Directive 2003/48/EC on the taxation of savings income, each Member State is required to provide to the tax authorities of another Member State details of payments of interest or other *similar* income paid by a person within its jurisdiction to, or collected by such a person for, an individual resident or certain limited types of entity established in that other Member State; however, for a transitional period, Austria, Belgium and Luxembourg may instead apply a withholding system in relation to such payments, deducting tax at rates rising over time to 35 per cent. The transitional period is to terminate at the end of the first full fiscal year following agreement by certain non-EU countries to the exchange of information relating to such payments. Belgium has replaced this withholding tax with a regime of exchange of information to the Member State of residence as from 1 January 2010.

A number of non-EU countries, and certain dependent or associated territories of certain Member States, have adopted similar measures (either provision of information or transitional withholding) in relation to payments *made* by a person within its jurisdiction to, or collected by such a person for, an individual resident or certain limited types of entity established in a Member State. In addition, the Member States have entered into provision of information or transitional withholding arrangements with certain of those dependent or associated territories in relation to payments made by a person in a Member State to, or collected by such a person for, an individual resident or certain limited types of entity established in one of those territories.

On 13 November 2008 the European Commission published a proposal for amendments to the Directive, which *included* a number of suggested changes which, if implemented, would broaden the scope of the requirements described above. The European Parliament approved an amended version of this proposal on 24 April 2009. Investors who are in any doubt as to their position should consult their professional advisers.

## SUBSCRIPTION AND SALE

The Notes have been offered in exchange for certain existing securities issued by one or more of the Issuer and its consolidated subsidiaries, as more fully described in an exchange offer memorandum dated 21 June 2012 (the "**Exchange Offer**"). Banco Popular Español, S.A. in its capacity as a Manager, and Société Générale have entered into a dealer manager agreement with the Issuer dated 21 June 2012 setting out the terms on which they have agreed to act as dealer managers in relation to the Exchange Offer.

## GENERAL INFORMATION

### 1. Listing

Application has been made to the UKLA for the Notes to be admitted to the Official List. Application has also been made to the London Stock Exchange for the Notes to be admitted to trading on the Market. It is expected that admission of the Notes to the Official List and admission to trading of the Notes on the Market will take place and that dealings in the Notes will commence at 8 a.m. on or about 6 July 2012. The Issuer estimates that the expenses related to the admission of Notes to trading on the Market are expected to be EUR[●].

### 2. Authorisation

The creation and issue of the Notes have been authorised by a resolution of the Board of Directors of the Issuer dated 25 April 2012 and by a resolution of the Executive Commission of the Issuer dated 29 May 2012, acting by delegation of the shareholders' meeting dated 8 April 2011.

### 3. Legal and Arbitration Proceedings

There are no, nor have there been any, governmental, legal or arbitration proceedings (and no such proceedings are pending or threatened of which the Issuer is aware) which have or may have or have had during the twelve months prior to the date of these Listing Particulars, individually or in the aggregate, a significant effect on the financial position or profitability of the Issuer or its subsidiaries taken as a whole.

### 4. Significant/Material Change

Since 31 December 2011, there has been no material adverse change in the prospects of the Issuer. Since 31 March 2012 there has been no significant change in the financial or trading position of the Issuer and its subsidiaries taken as a whole.

### 5. Auditors

The consolidated financial statements of the Issuer and Banco Pastor S.A. for the two years ended 31 December 2010 and 2011 have been audited without qualification by PricewaterhouseCoopers Auditores, S.L. (registered in the Official Registry of Auditors of Accounts (*Registro Oficial de Auditores de Cuentas*) under number S0242), Paseo de la Castellana, 259 B, 28046 Madrid, Spain.

### 6. Third party information

Information included in these Listing Particulars sourced from the Bank of Spain has been accurately reproduced and, as far as the Issuer is aware and able to ascertain from the information published by the Bank of Spain, no facts have been omitted which would render the reproduced information inaccurate or misleading.

### 7. Documents on Display

Copies of the following documents may be inspected during normal business hours at the offices of the Issuer at C/ Velázquez, 34. 28001, Madrid, Spain for 12 months from the date of these Listing Particulars:

- (i) the constitutive documents of the Issuer;
- (ii) the Agency Agreement and the Deed of Covenant;
- (iii) the audited consolidated financial statements of the Issuer for the two years ended 31 December 2010 and 2011 and the unaudited consolidated financial statements of the Issuer for the three months ended 31 March 2012; and
- (iv) the audited consolidated financial statements of the Banco Pastor S.A. for the two years ended 31 December 2010 and 2011.

8. **Material Contracts**

At the date of these Listing Particulars, no contracts had been entered into that were not in the ordinary course of business of the Issuer and which could result in any Group member being under an obligation or entitlement that is material to the Issuer's ability to meet its obligations to holders of the Notes.

9. **Yield**

On the basis of the issue price of the Notes of 100 per cent. of their principal amount, the yield of the Notes is 4.50 per cent. on an annual basis. This yield is calculated on the Issue Date and is not an indication of future yield.

10. **Legend Concerning US Persons**

The Notes and any Coupons appertaining thereto will bear a legend to the following effect: "Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in Sections 165(j) and 1287(a) of the Internal Revenue Code".

11. **Listing of the Shares**

The Shares are listed on the Bilbao, Barcelona, Madrid and Valencia stock exchanges (the "**Spanish Stock Exchanges**") and the Lisbon stock exchange and are quoted on the Automated Quotation System (*Sistema de Interconexión Bursátil* (SIBE)) of the Spanish Stock Exchanges under the symbol "POP". The ISIN for the Shares is ES0113790531. Information about the past and future performance of the Shares and their volatility can be obtained from the respective websites of each of the Spanish Stock Exchanges at [www.bolsamadrid.es](http://www.bolsamadrid.es), [www.borsabcn.es](http://www.borsabcn.es), [www.bolsavalencia.es](http://www.bolsavalencia.es) and [www.bolsabilbao.es](http://www.bolsabilbao.es), and from the website of the Lisbon stock exchange at [www.bolsadelisboa.com.pt](http://www.bolsadelisboa.com.pt).

12. **ISIN and Common Code**

The Notes have been accepted for clearance through Euroclear and Clearstream, Luxembourg. The Notes bear the ISIN of XS[•] and the common code ([•]).

**REGISTERED  
OFFICE OF THE ISSUER**

Banco Popular Español, S.A.  
C/ Velázquez, 34.  
28001 Madrid  
Spain

**MANAGERS**

Banco Popular Español, S.A.  
C/ Velázquez, 34.  
28001 Madrid  
Spain

Société Générale  
29, boulevard Haussmann  
75009 Paris  
France

**PRINCIPAL PAYING AND CONVERSION AGENT**

The Bank of New York Mellon  
One Canada Square  
London E14 5AL  
United Kingdom

**LEGAL ADVISERS**

*To the Issuer as to English law:*

Clifford Chance LLP  
10 Upper Bank Street  
London E14 5JJ  
United Kingdom

*To the Issuer as to Spanish law:*

Clifford Chance S.L.  
Paseo de la Castellana, 110  
28046 Madrid  
Spain

*To the Managers as to English law:*

Linklaters LLP  
1 Silk Street  
London EC2Y 8HQ  
United Kingdom

*To the Managers as to English and Spanish  
law:*

Linklaters S.L.P  
Zurbarán, 28  
28010 Madrid  
Spain

**AUDITORS TO THE ISSUER**

PricewaterhouseCoopers Auditores, S.L.,  
Paseo de la Castellana, 259-B  
28046 Madrid  
Spain

## ANNEX 2- FORM OF EXCHANGE INSTRUCTION

### **First Issue of Special Subordinated Debt (*Primera emision de Obligaciones de Deuda Subordinada Especial*) (ES0213770011) issued by Banco Pastor, S.A.**

In relation to the Exchange Offer launched by Banco Popular Español, S.A., the Iberclear Accountholder referred to below, acting [for and on behalf of [name of the holder of Subordinated Securities]]/[in its own name and on its own behalf]<sup>2</sup>, in accordance with the Exchange Offer Memorandum dated 21 June 2012, offers for exchange the Subordinated Securities referred to below to Banco Popular Español, S.A. for New Notes pursuant to the Exchange Offer and the corresponding subscription of the New Notes.

The Iberclear Accountholder, in its own name and on its own behalf represents: (i) that the Subordinated Securities in respect of which the Exchange Instruction is submitted will be deposited [(a) with it, in an account open in the name of [name of the holder of Subordinated Securities]/[name of the financial entity through which the holder of Subordinated Securities holds them] in the name of [holder of Subordinated Securities]/(b) in its own account at the relevant Clearing System]<sup>2</sup>; (ii) that it has blocked the Subordinated Securities in respect of which the Exchange Instruction has been submitted on the terms of the Exchange Offer Memorandum/has instructed Iberclear to block the Subordinated Securities in the terms and conditions of the Exchange Offer Memorandum; (iii) that on the Settlement Date the Subordinated Securities in respect of which it submitted the Exchange Instruction will be transferred to the Banco Popular Iberclear Own Account (account number: 0075), on the terms of the Exchange Offer Memorandum, and (iv) that it confirms each and every one of the representations and warranties expressed in the section "*Procedures for participating in the Exchange Offer*" of the Exchange Offer Memorandum,

Date	
Iberclear Accountholder	
Type of Existing Securities in respect of which the Exchange Instruction is submitted <sup>2</sup>	First Issue of Special Subordinated Debt (Primera emision de Obligaciones de Deuda Subordinada Especial) (ES0213770011) issued by Banco Pastor, S.A. (the " <b>Subordinated Securities</b> ")
Number of Subordinated Securities in respect of which the Exchange Instruction is submitted	
Total nominal value of the Subordinated Securities to be exchanged	
Account number of the Iberclear securities account of the Accountholder:	
Clearing System for credit of New Notes [Euroclear]/[Clearstream, Luxembourg] and Accrued Distribution Payment	
Clearing System Account number	

All the capitalised terms used and not expressly defined in this notice have the meaning given to them in the Exchange Offer Memorandum.

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<sup>2</sup> Delete as applicable.

Contact name:

Telephone number:

Email:

Fax:

Signature:

### ANNEX 3- FORM OF SUBORDINATED SECURITIES WITHDRAWAL INSTRUCTION

#### First Issue of Special Subordinated Debt (*Primera emision de Obligaciones de Deuda Subordinada Especial*) (ES0213770011) issued by Banco Pastor, S.A.

In relation to the Exchange Offer launched by Banco Popular Español, S.A. on 21 June 2012, the Iberclear Accountholder referred to below notified Lucid Issuer Services as Exchange Agent, [in the name and on behalf of [name of the holder of Subordinated Securities]]/[in its own name and on its own behalf] I, through an Exchange Instruction on [•] 2012 at [•] by means of the attached fax.

[Exchange Instructions may be amended or revoked at any time up to the Revocation Deadline.]/[On [•] 2012 Banco Popular Español, S.A. announced the modification of the terms and conditions of the Exchange Offer and has considered those modifications to be materially prejudicial to the holders of the Subordinated Securities.]<sup>3</sup>

In accordance with the Exchange Offer Memorandum, the Iberclear Accountholder referred to below, [on behalf of [name of the holder of Subordinated Securities]]/[in its own name and on its own behalf]<sup>4</sup>, wishes to withdraw the Exchange Instruction in respect of the number of the Subordinated Securities indicated below.

Date	
Iberclear Accountholder	
Number of Subordinated Securities in respect of which exchange is withdrawn	
Type of Subordinated Securities in respect of which Exchange Instruction is submitted	First Issue of Special Subordinated Debt (Primera emision de Obligaciones de Deuda Subordinada Especial) (ES0213770011) issued by Banco Pastor, S.A. (the " <b>Subordinated Securities</b> ")
Total nominal value of the Subordinated Securities in respect of which exchange is withdrawn	
Account number of the Iberclear securities account of the Accountholder:	

All the capitalised terms used and not expressly defined in this notice have the meaning given to them in the Exchange Offer Memorandum.

Contact name:

Telephone:

Email:

Fax:

Signature:

---

<sup>3</sup> Delete as applicable.

<sup>4</sup> Delete as applicable.

## EXHIBIT 1

**Anexo al Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos, aprobado por Real Decreto 1065/2007**

**Modelo de declaración a que se refieren los apartados 3, 4 y 5 del artículo 44 del Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos**

Annex to Royal Decree 1065/2007, of 27 July, approving the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

Declaration form referred to in paragraphs 3, 4 and 5 of Article 44 of the General Regulations of the tax inspection and management procedures and developing the common rules of the procedures to apply taxes

**Don (nombre), con número de identificación fiscal (...) (1), en nombre y representación de (entidad declarante), con número de identificación fiscal (...) (1) y domicilio en (...) en calidad de (marcar la letra que proceda):**

Mr. (name), with tax identification number (...) (1), in the name and on behalf of (entity), with tax identification number (...) (1) and address in (...) as (function - mark as applicable):

**(a) Entidad Gestora del Mercado de Deuda Pública en Anotaciones.**

(a) Management Entity of the Public Debt Market in book entry form.

**(b) Entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero.**

(b) Entity that manages the clearing and settlement system of securities resident in a foreign country.

**(c) Otras entidades que mantienen valores por cuenta de terceros en entidades de compensación y liquidación de valores domiciliadas en territorio español.**

(c) Other entities that hold securities on behalf of third parties within clearing and settlement systems domiciled in the Spanish territory.

**(d) Agente de pagos designado por el emisor.**

(d) Issuing and Paying Agent appointed by the issuer.

**Formula la siguiente declaración, de acuerdo con lo que consta en sus propios registros:**

Makes the following statement, according to its own records:

**1. En relación con los apartados 3 y 4 del artículo 44:**

1. In relation to paragraphs 3 and 4 of Article 44:

**1.1 Identificación de los valores.....**

1.1 Identification of the securities.....

**1.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados)**

1.2 Income payment date (or refund if the securities are issued at discount or are segregated)

**1.3 Importe total de los rendimientos (o importe total a reembolsar, en todo caso, si son valores emitidos al descuento o segregados).....**

- 1.3 Total amount of income (or total amount to be refunded, in any case, if the securities are issued at discount or are segregated)
- 1.4 Importe de los rendimientos correspondiente a contribuyentes del Impuesto sobre la Renta de las Personas Físicas, excepto cupones segregados y principales segregados en cuyo reembolso intervenga una Entidad Gestora .....**
- 1.4 Amount of income corresponding to Personal Income Tax taxpayers, except segregated coupons and segregated principals for which reimbursement an intermediary entity is involved.....
- 1.5 Importe de los rendimientos que conforme al apartado 2 del artículo 44 debe abonarse por su importe íntegro (o importe total a reembolsar si son valores emitidos al descuento o segregados).**
- 1.5 Amount of income which according to paragraph 2 of Article 44 must be paid gross (or total amount to be refunded if the securities are issued at discount or are segregated).
- 2. En relación con el apartado 5 del artículo 44.**
2. In relation to paragraph 5 of Article 44.
- 2.1 Identificación de los valores.....**
- 2.1 Identification of the securities.....
- 2.2 Fecha de pago de los rendimientos (o de reembolso si son valores emitidos al descuento o segregados) .....**
- 2.2 Income payment date (or refund if the securities are issued at discount or are segregated) .....
- 2.3 Importe total de los rendimientos (o importe total a reembolsar si son valores emitidos al descuento o segregados .....**
- 2.3 Total amount of income (or total amount to be refunded if the securities are issued at discount or are segregated)
- 2.4 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero A.**
- 2.4 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country A.
- 2.5 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero B.**
- 2.5 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country B.
- 2.6 Importe correspondiente a la entidad que gestiona el sistema de compensación y liquidación de valores con sede en el extranjero C.**
- 2.6 Amount corresponding to the entity that manages the clearing and settlement system of securities resident in a foreign country C.

**Lo que declaro en .....a .... de .....de ....**

I declare the above in ..... on the.... of ..... of ....

<sup>(1)</sup> **En caso de personas, físicas o jurídicas, no residentes sin establecimiento permanente se hará constar el número o código de identificación que corresponda de conformidad con su país de residencia**

<sup>(1)</sup> In case of non-residents (individuals or corporations) without permanent establishment in Spain it shall be included the number or identification code which corresponds according to their country of residence.

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