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# CAIXABANK, S.A.

# **Special Report on the Issue of Preferred Securities**

24<sup>th</sup> September 2020





SPECIAL REPORT ON THE ISSUE OF CONTINGENT CONVERTIBLE PREFERRED SECURITIES WITH EXCLUSION OF PREFERENTIAL SUBSCRIPTION RIGHTS IN THE CASE OF ARTICLES 414, 417 AND 511 OF THE CONSOLIDATED TEXT OF THE SPANISH CORPORATE ENTREPRISES ACT ("LEY DE SOCIEDADES DE CAPITAL")

CAIXABANK, S.A.

To CaixaBank, S.A.'s Annual General Shareholders' Meeting:

For the purposes set forth in articles 414, 417 and 511 of the Consolidated Text of the Corporate Entreprises Act ("Ley de Sociedades de Capital") approved by the Royal Legislative Decree 1/2010, of July 2<sup>nd</sup> (hereinafter "TRLSC"), and in accordance with the assignment received from CaixaBank, S.A. (hereinafter "CaixaBank" or the "Bank") by appointment of the Mercantile Registry of Valencia, corresponding to file number 86/2020 and in accordance with our professional services proposal dated September 15<sup>th</sup> 2020, we issue this Special Report on the issue of Contingent Convertible Preferred Securities by CaixaBank, S.A. with exclusion of preferential subscription rights.

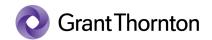
### 1. BACKGROUND AND OBJECTIVE OF OUR WORK

### 1.1. Background

CaixaBank, S.A. is a public limited company, with Tax Identification Number (known in Spanish as "Número de Identificación Fiscal" or "NIF") A08663619, with head office at Pintor Sorolla, 2-4, Valencia, registered in the Mercantile Registry of Valencia, volume 10,370, section 1, page V-178351 and registered in the Special Administrative Registry ("Registro Administrativo Especial") of the Spanish Central Bank ("Banco de España") under number 2100. CaixaBank stock is listed on the Barcelona, Madrid, Valencia and Bilbao exchanges and on the continuous market, being included in the IBEX 35.

The Bank's Annual General Shareholders' Meeting held on April 28<sup>th</sup> 2016, in its twelfth resolution on the Agenda, approved to delegate to the Board of Directors the power to issue obligations, bonds, preferred securities and any other fixed income securities or instruments of a similar nature convertible into CaixaBank shares or that may give the right, directly or indirectly, to the subscription or acquisition of CaixaBank shares, including warrants, with the possibility to be additionally or alternatively exchangeable for Bank's shares, for a total combined amount of up to three billion euros (€3.000.000.000 or its equivalent in other currencies), as well as the power to increase the share capital by the necessary amount, and the power to exclude, where appropriate, the preferential subscription right.

The Bank's Annual General Shareholders' Meeting held on May 22<sup>nd</sup> 2020, in its seventh resolution on the Agenda, approved to authorize the Board of Directors to increase the capital one or more times and at any time, within the term of five years, through monetary contributions



and in a maximum nominal amount of two billion, nine hundred ninety million, seven hundred nineteen thousand and fifteen euros (€2.990.719.015), all under the terms and conditions that it deems appropriate, leaving the previous delegation in force without effect, approved at the Annual General Shareholders' Meeting of the Bank held on April 23<sup>rd</sup> 2015, in its unused part.

By virtue of the aforementioned authorizations, and in accordance with the information and documentation received, the Board of Directors of CaixaBank has agreed on September 23<sup>rd</sup> 2020 to carry out an issue of contingent convertible preferred securities (hereinafter, "Preferred Securities") for a maximum nominal amount of 750,000,000 euros with the possibility of incomplete subscription and excluding the preferential subscription right (hereinafter, the "Issue").

To this end, the Bank's Board of Directors, on the same date, has prepared the CaixaBank Board of Directors Report regarding the issue of Contingent Convertible Preferred Securities excluding the preferential subscription right (hereinafter, the "Board of Directors' Report"), which is attached as an Appendix, in which the conditions of the Issue are specified, the basis and types for the conversion of the Preferred Securities into shares are explained, the reasons that justify the Issue and the proposal of exclusion of the preferential subscription right, indicating that it will be addressed to professional clients and eligible counterparties, foreseeing the possibility of incomplete subscription.

### 1.2. Objective of our work

The purpose of our work has not been to certify the Issue or conversion price of the Preference Shares. The objectives of our work have been the following:

- To express, based on analogy and where applicable, by performing the procedures established in the Resolution of June 16<sup>th</sup> 2004, of the Accounting and Auditing Institute (known in Spanish as "Instituto de Contabilidad y Auditoría de Cuentas" or "ICAC"), by which it publishes the Technical Standards to elaborate the Special Report on the exclusion of the preferential subscription right in the case of article 159 of the Consolidated Text of the Public Limited Companies Act or "Ley de Sociedades Anónimas" (the aforementioned rule and article were included in Royal Legislative Decree 1564/1989 of December 22<sup>nd,</sup> and are currently repealed, but for the purpose of this report these have been assimilated to article 414 of the current TRLSC, hereinafter "Technical Standard published in the ICAC's Resolution of June 16<sup>th</sup> 2004"), if the Board of Directors' Report contains the required information collected in the aforementioned standard, which includes the explanation of the basis and types of the conversion corresponding to the Preferred Securities.
- The issue of a technical judgment on the reasonableness of the data relating to the Issue of Preferred Securities excluding the preferential subscription right contained in the Directors' Report, and on the suitability of the conversion ratio of the Preferred Securities and the adjustment formulas to compensate for a possible dilution of the shareholders' ownership, all in accordance with the provisions of article 417 of the TRLSC, and based,



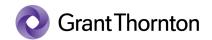
by analogy, where applicable, on the Technical Standard published in the ICAC's Resolution of June 16<sup>th</sup> 2004.

The accounting information used in this work has been obtained from the individual and consolidated annual accounts of the Bank as of December 31<sup>st</sup> 2019, which were audited by the independent auditor PricewaterhouseCoopers Auditores, S.L., who issued its audit report on December 21<sup>st</sup> February 2020 in which he expressed a favorable opinion, as well as the Consolidated Summarized Interim Financial Statements corresponding to the 6-month period ended June 30<sup>th</sup> 2020, which have been reviewed by the same auditor, having issued its limited review report, stating that no matter has come to their knowledge that makes them conclude that such Interim Financial Statements for the 6-month period ended June 30<sup>th</sup> 2020 have not been prepared in all their significant aspects, in accordance with the requirements established in the applicable accounting regulations.

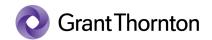
### 2. PROCEDURES USED IN OUR WORK

The procedures used to perform our engagement have been the following:

- A) Compiling and analyzing the following information:
  - a. Appointment by the Mercantile Registry of Valencia to Grant Thornton, S.L.P., dated September 14<sup>th</sup> 2020 for the preparation of this Special Report.
  - b. Twelfth Resolution of the Annual General Shareholders' Meeting of CaixaBank of April 28<sup>th</sup> 2016, whereby it was agreed to delegate to the Board of Directors the power to issue obligations, bonds, preferred securities and any other securities that may be convertible into newly issued CaixaBank shares with the possibility of exclusion of the preferential subscription right and the power to increase the capital in the necessary amount to meet the requests for conversion into shares.
  - c. Seventh Resolution of the Annual General Shareholders' Meeting of CaixaBank of May 22<sup>nd</sup> 2020, which authorizes the Board of Directors to increase the capital one or more times and at any time, within a period of five years, through monetary contributions and in a maximum nominal amount of two billion, nine hundred ninety million, seven hundred nineteen thousand and fifteen euros (€2.990.719.015).
  - d. CaixaBank's Board of Directors' Report, concerning the Issue of Contingent Convertible Preferred Securities excluding the preferential subscription right of September 23<sup>rd</sup> 2020.
  - e. Individual and Consolidated Annual Accounts of the Bank together with the independent audit report corresponding to the year ended December 31st 2019.

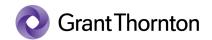


- f. CaixaBank Consolidated Interim Summarized Financial Statements corresponding to the 6-month period ended June 30<sup>th</sup> 2020 and other additional information relevant to our analysis.
- g. Latest financial information disclosed to the market and the latest closing available prior to the issuance of our report, in order to identify relevant events that could affect the issue (June 30<sup>th</sup> 2020).
- h. Information and explanations offered by CaixaBank's Management regarding the events that occurred after February 21<sup>st</sup> 2020 (date of the independent audit report on the last audited Individual and Consolidated Annual Accounts of CaixaBank for the 2019 financial year), mainly the following aspects:
  - i. Evolution, where appropriate, of contingent liabilities or significant commitments at the date of the Bank's last audited Individual and Consolidated Annual Accounts and the existence, where appropriate, of contingent liabilities or significant commitments at the date of our report.
  - ii. Changes, if applicable, in the share capital or significant changes in long-term debts or working capital that may have taken place between the date of the audit report (February 21<sup>st</sup> 2020) on the latest audited Individual and Consolidated Annual Accounts of the Bank and the date of our Report.
  - iii. Situation, if applicable, of the items included in the Bank's last audited Individual and Consolidated Annual Accounts that were determined based on provisional, preliminary or non-definitive data.
  - iv. The existence, if applicable, of changes in any accounting principle to date.
  - v. Relevant Facts ("Hechos Relevantes"), if applicable, reported to the National Securities Market Commission (known in Spanish as "Comisión Nacional del Mercado de Valores" or "CNMV") from the date of the last audit report on the Individual and Consolidated Annual Accounts of CaixaBank for the 2019 financial year (February 21<sup>st</sup> 2020) until the date of our Report.
  - vi. The existence, if applicable, of other events that could significantly affect the latest Individual and Consolidated Annual Accounts of the Bank.
  - vii. Other aspects, if applicable, considered of interest for the performance of our work.
- i. Explanations provided by CaixaBank's Management regarding the reasons included in the Board of Directors' Report, in relation to the Bank's interest to



justify the proposal for the Issue of Preferred Securities and to totally suppress the preferential subscription right.

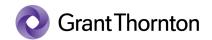
- j. Any other information deemed necessary for the performance of our work.
- B) Meetings with the Bank's Management involved in this operation, in order to obtain clarifications on the questions that may arise during the performance of our work as well as to gather other useful information.
- C) Reading of the available Minutes of the Annual General Shareholders' Meeting and of the meetings of the Board of Directors and the Executive Committee, in relation to the Issue of Preferred Securities.
- D) Review of existing para-corporate/shareholders' agreements ("pactos parasociales"), if applicable, in accordance with the article 530 of the TRLSC.
- E) Verification of the calculations performed in the applied valuation methods used by the Board of Directors in determining the basis and types of the conversion corresponding to the Preferred Securities.
- F) Analysis of the suitability of the conversion ratio and its adjustment formulas, to compensate for a possible dilution of the participation of the shareholder.
- G) Analysis of the evolution of the price of CaixaBank shares and calculation of the average listing price during the last representative listing period prior to the date of this Special Report (the last quarter) and the last available listing prior to said date, also considering the frequency and volume of trading of the periods under analysis.
- H) Since the proposed conversion rate is variable, verification that the formula established by the Board of Directors applicable as the basis for establishing the conversion price guarantees that it is not in any case less than the fair value of the shares of the Bank.
- I) Evaluation of the reasonableness of the data contained in the Board of Directors' Report that justifies the suppression of the preferential subscription rights of the shareholders.
- J) Receipt of a management representation letter signed by the Chief Executive Officer and the Secretary of the Board of Directors and the Executive Director of Intervention, Management Control and Capital of CaixaBank in which we are informed that all hypotheses have been brought to our attention, relevant data and information from the Board of Directors' Report, as well as that they are not aware of any relevant facts that have occurred after the last audit report, up to the date of the management representation letter, other than those that emerge from the financial and corporate information provided and publicly available information that could significantly affect the purpose of our Report.



# 3. FINANCIAL CONDITIONS OF THE ISSUE, BASIS AND TYPES OF CONVERSION AND ITS ADJUSTMENT FORMULAS, AND JUSTIFICATION OF THE EXCLUSION OF THE PREFERENTIAL SUBSCRIPTION RIGHT

The basic and main characteristics of the Issue will be:

- The securities to be issued are Preferred Securities in accordance with the provisions of the First Additional Provision of Law 10/2014, of June 26<sup>th</sup>, on the management, supervision and solvency of credit institutions and in Regulation (EU) 575 / 2013 of the European Parliament and of the Council of June 26<sup>th</sup> 2013 on prudential requirements of credit institutions and investment firms, and for the purpose that Preference Securities may be computed as additional Tier 1 capital of the Bank; these will be perpetual obligations contingently convertible into newly issued ordinary shares of CaixaBank, as a loss absorption mechanism required by the aforementioned provisions. These will be represented by book entries registered in the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. ("Iberclear") or in any other registry entity authorized by the CNMV.
- Preferred Securities will be issued for a maximum nominal amount of seven hundred and fifty million euros (€750.000.000), denominated in euros, explicitly providing for the possibility of incomplete subscription of the Issue. The nominal amount of each preferred security will be two hundred thousand euros (€200.000).
- A maximum of three thousand, seven hundred and fifty (3,750) Preferred Securities will be issued (except for incomplete subscription as mentioned above).
- The Preferred Securities will accrue a fixed annual remuneration payable quarterly in arrears. The remuneration that the Preferred Securities will accrue during the period that elapses from the date of issue to the "First Remuneration Review Date", scheduled between the fifth and tenth anniversary, will be set at a maximum of 7.75%. During each of the following 5-year periods after the First Remuneration Review Date, the remuneration accrued by the Preferred Securities will be the result of adding a margin (the "Initial Margin") at a rate set for each period of 5 years in accordance with the 5-year Mid-Swap Rate, as specified in the terms and conditions of the Issue attached as Appendix I to the Board of Directors' resolution adopted in relation with the proposal that is transcribed in section IX of the Board of Directors' Report (the "Terms and Conditions of the Issue"). The Initial Margin will be set at a maximum of 8.75%.
- The Bank may only make the payment of the corresponding remuneration if:
  - There are benefits and reserves available for this purpose in accordance with banking regulations.
  - The regulator has not required total or partial cancellation of the same.
  - The payment does not entail the breach of any regulatory restriction or prohibition applicable to the remuneration of additional Tier 1 capital instruments.



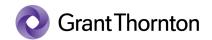
- There has not been a case of conversion of the Preferred Securities.
- In any case, the payment of the remuneration will be discretionary throughout the life of the Issue, with CaixaBank having the ability to cancel it, totally or partially, at any time and for any reason. In addition, the remuneration will not be cumulative.
- The Preferred Securities are perpetual, therefore they do not have an expiration date, although they may be subject to early redemption, by returning the nominal value of the Preferred Securities plus, where appropriate, the accrued and unpaid remuneration, a decision which is up to the Bank with some pre-established rules.

The basis and types of conversion are the following:

- Conversion cases: Preferred Securities will be mandatory converted into newly issued ordinary shares of CaixaBank if the ordinary capital ratio of CaixaBank or its group (Common Equity Tier 1 ratio) falls below 5.125% at any time.
- Conversion Ratio: the conversion ratio will be the quotient between the nominal value of the Preferred Securities and the conversion price (hereinafter, the "Conversion Price"). The Conversion Price will correspond to the market price of CaixaBank shares at the time of conversion of the Preferred Securities, calculated as the average of the volumeweighted average prices of the Bank's share on the five trading days prior to the day on which it is announced that the corresponding conversion event has occurred (the "Reference Price"), with a Minimum Conversion Price that will correspond to two thirds of the closing price of CaixaBank's share on the previous day to the date of fixing the definitive terms and conditions of the transaction which, in any case, will not be less than one euro (€1,00) per share, in such a way that if the Reference Price is below to this value, the Conversion Price will correspond to said minimum (without prejudice to the modifications that this amount may undergo depending on the application of the antidilution mechanisms established in the Board of Directors' Report in accordance with the Terms and Conditions of the Issue). Likewise, and without prejudice to the foregoing, the Conversion Price may in no case be less than the nominal value of CaixaBank shares at the time of conversion.

Also, the Board of Directors considers that the current shareholders do not lose any economic value with the exclusion of the preferential subscription right, due to:

- The eventuality of the conversion, with conversion assumptions being very narrow and special.
- The conversion ratio proposed for the Preferred Securities in the case that a conversion event occurs, is designed to serve the social interest, since the proposed mechanism for setting the conversion price ensures that the issue of the shares necessary for the conversion of the Preferred Securities is performed at market value (since it is referenced to the Bank's share price) or to a higher value (if the Minimum Conversion Price is applicable), which means that the theoretical value of the preferential subscription rights derived from the Issue is equal to zero.



# 4. RELEVANT ASPECTS TO CONSIDER IN THE INTERPRETATION OF THE RESULTS OF OUR WORK

Both the interpretation of what is required under article 414, 417 and 511 of the TRLSC, as well as the opinions expressed in this Report, have implicit, besides objective factors, other subjective factors that imply judgment and, therefore, it is not possible to ensure that third parties necessarily agree with the interpretation and judgments expressed in this Report.

The necessary information to perform our work has been provided to us by CaixaBank's Management, its advisors or has been obtained from public sources. In relation to this information, it has not been part of our work to corroborate it with external sources, without prejudice to the fact that, as far as possible, we have verified that the information presented is consistent with other data obtained in the course of our work.

We are under no obligation of updating our Report due to events that may occur after the issue date. The content of this Report must be understood as referred to all the information received on the events that occurred prior to the issue date.

We have assumed that all authorizations and registrations that, where appropriate, are relevant or needed for the effectiveness of the designed operation and that significantly affect our analysis, will be obtained without any adverse effect to the objective of the operation that we have analyzed.

Finally, it is important to note that our work is independent in nature, and therefore does not imply any recommendation to CaixaBank, S.A., its shareholders or third parties in relation to the position they should take when analyzing the issue of Preferred Securities.

### 5. CONCLUSION

Based on the work carried out with the scope described in the previous paragraphs, and subject to the relevant aspects to consider when interpreting the results of our work, all with the sole purpose of fulfilling the requirements set out in articles 414, 417 and 511 of the TRLSC, in our professional judgment:

- The attached CaixaBank Board of Directors' Report, on the proposal to issue Contingent Convertible Preferred Securities excluding the preferential subscription rights, contains the information required by articles 414, 417 and 511 of the TRLSC and what is applicable under the Technical Standard published in the ICAC's Resolution of June 16<sup>th</sup> 2004, and the figures included in the aforementioned Board of Directors' Report are reasonable, since are adequately documented and explained.
- The conversion ratio of the Contingent Convertible Preferred Securities excluding the preferential subscription right and, if applicable, its adjustment formulas, are suitable to offset a potential dilution of shareholders' participation.

This Report has been prepared exclusively for the purposes set forth in articles 414, 417 and 511 of the TRLSC, therefore it should not be used for any other purpose.

#### APPENDIX II

Report of the Board of Directors of CaixaBank, S.A. regarding the issuance of Preferred Securities convertible into common shares, with the pre-emptive subscription right disapplied, such issuance to be carried out by virtue of the powers vested in the Board of Directors at the Annual General Meeting held on 28 April 2016, in accordance with Articles 414, 417, 511 and 286, in relation to Article 297.1.b) of the Capital Companies Law (*Ley de Sociedades de Capital*, or LSC for short)

#### I. Introduction

### 1.1 Purpose of the report and applicable law and regulations

This report is drawn up in relation to the resolution to issue preferred securities contingently convertible into new-issue common shares of CaixaBank, S.A.¹ ("CaixaBank" or the "Bank"), pursuant to Additional Provision One of Spanish Law 10/2014 of 26 June, on the organisation, supervision and capital adequacy of credit institutions ("Law 10/2014") and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms, as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 ("CRR II") and by Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 (all known jointly as the "CRR") (the "Preferred Securities"), for a maximum nominal amount of SEVEN HUNDRED AND FIFTY MILLION EUROS (€750,000,000) (with incomplete subscription permitted) and with the pre-emptive subscription right disapplied (the "Issuance"), such resolution as adopted by the Bank's Board of Directors on the date of this report further to the powers vested in it by the Annual General Meeting held on 28 April 2016 under item 12 on the agenda.

For a company to be able to issue bonds convertible into shares, Article 414.2 of the Restated Text of the Capital Companies Law, as enacted by Royal Legislative Decree 1/2010 of 2 July, in its current wording (the "**LSC**"), states that the company's directors must draw up a report explaining the terms and methods for converting such bonds.

Further, Article 417.2 of the LSC states that where an issuance of bonds convertible into shares includes a clause disapplying the pre-emptive right of shareholders over those bonds, the aforementioned directors' report must also provide detailed reasons for the proposed disapplication of such rights.

Meanwhile, Article 511.1 of the LSC states that in the case of listed companies, when the Annual General Meeting delegates to the directors the power to issue convertible bonds, it may also grant them authority to disapply the pre-emptive subscription right in relation to those issuances for which powers have been vested in the directors, if doing so is deemed to be in the company's best interests. Article 511, paragraph 3 states that in such cases the aforementioned directors' report must address each individual issuance of convertible bonds made pursuant to such powers.

Where the issuance of convertible bonds by a company entails a corresponding capital increase to cover the eventual conversion of the issued convertible bonds, the requirements and other formalities required by the LSC in relation to capital increases must also be

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<sup>&</sup>lt;sup>1</sup> All information concerning the name, share capital, registered office and significant corporate events of the Issuer can be found on its corporate website (www.caixabank.com).

observed when effecting the convertible bond issuance. Where the issuance of convertible bonds and the corresponding capital increase are approved by the company's directors by virtue of powers vested in them by the company's general meeting, then in accordance with Article 286 relating to Article 297.1 b) of the LSC the directors must draw up a written report justifying any amendment of the company's by-laws resulting from that capital increase.

This report is therefore issued in compliance with Articles 414, 417, 511 and 286, in relation to 297.1.b) of the LSC, for the purpose of issuing the Preferred Securities and disapplying the pre-emptive subscription right that the shareholders would otherwise be able to exercise in relation to the Issuance.

The Bank has instructed the Companies Registry of Valencia to appoint an auditor other than the Bank's own to issue a special report containing a technical opinion as to the reasonableness of the information included in this report and as to the suitability of the conversion ratio and, as the case may be, the adjustment methods there to offset any ensuing dilution of the economic stake held by the shareholders, pursuant to Article 511 of the LSC in relation to Articles 414.2 and 417.2 of the LSC.

This report and the special report drawn up by the auditor other than that of CaixaBank, as appointed by the Companies Registry, will be made available to shareholders and will be presented at the first General Shareholders' Meeting to be held after the corresponding resolution to effect the issuance.

### 1.2 Advice received

CaixaBank has received advice in relation to the Issuance from: (i) Barclays Bank, a leading investment bank with recognised experience in this type of issue, as the structuring bank of the Issue; and (ii) the law firm Linklaters, S.L.P., acting as legal advisor for the Issuance under the laws of Spain.

# II. Delegation of powers upon the Board of Directors by the General Meeting dated 28 April 2016

The Board of Directors intends to issue the Preferred Securities further to the powers vested in it by shareholders at the General Meeting held on 28 April 2016, in its resolution 12, which was approved in the following terms:

"Delegation of powers to the Board of Directors to issue long- and short-term bonds, preferred securities and any other fixed income securities or substantially similar instruments convertible into Company shares, or that entitle the holders to subscribe or acquire shares in the company, including warrants, whether directly or indirectly, with the possibility also of their being additionally or alternatively exchangeable for Company shares, for a combined amount of up to three billion (3,000,000,000) euros (or equivalent value in other currencies); and the power also to increase share capital by the necessary amount, and to disapply, where applicable, the pre-emptive subscription right. To revoke the authorisation hitherto in effect, in relation to any part thereof that may remain unused, as approved at the Annual General Meeting of 25 April 2013.

In accordance with the general rules on the issuance of bonds and as set forth in Article 319 of the Regulations of the Companies Registry, it is agreed to vest powers in the Company's Board of Directors to issue long- and short-term bonds, preferred securities and any other fixed income securities or substantially similar instruments, convertible into CaixaBank shares or entitling the holders to subscribe or acquire company shares, including warrants,

whether directly or indirectly, which may in turn be settled via physical delivery of the shares, or, as the case may be, by offset, all the foregoing under the terms described in this resolution.

The securities issued under this delegation of powers may be additional to or alternatively exchangeable for outstanding shares of the Company, or may be settled by offset at CaixaBank's discretion. For the sake of clarity, it is hereby noted that the issuance of fixed-income securities that are exclusively exchangeable (i.e. that are not additional to or alternatively convertible into new-issue Company shares) for existing shares in the Company or other companies in which CaixaBank may or may not hold a stake, or simply to be settled by offset, falls outside the scope of this delegation of powers and will be governed instead by prevailing law and regulations and by Articles 14 and 15 of the Company's By-laws, as per their proposed drafting under point item 7.1 on the Agenda, once that proposal has been approved and once the corresponding authorisation to amend the By-laws has been obtained or, until such time as the proposal has not been approved and that authorisation obtained, then under the terms of the resolution to delegate powers approved at the General Shareholders' Meeting of 25 April 2013, under item 9 on the agenda, by virtue of the legal and by-law system hitherto in effect.

The delegation is made in accordance with the following conditions:

- 1. The issuance of securities that the Board of Directors is authorised to effect by virtue of this resolution may be made on one or more occasions at any time within the maximum term of five years from the date on which this resolution is carried.
- 2. The maximum amount of the issuance(s) of the securities agreed on by virtue of this delegation will be THREE BILLION EUROS (€3,000,000,000), or equivalent value in foreign currency.
  - In the case of warrants, this limit will include the total sum of all premiums and the strike price of the warrants for each issuance approved by virtue of this delegation of powers.
- 3. Issuances made by virtue of this delegation may be aimed at all manner of Spanish or foreign investors.
- 4. Further to the powers agreed herein and by way of example only, the Board of Directors will be responsible for setting the amount of each issuance within the total quantitative limit, the place of issuance (domestic or foreign), the currency and, if foreign, the equivalent value in euros; the denomination or form, whether short- or long-term bonds, preferred securities, warrants or any other legally permissible form, including, as the case may be, subordinated securities within the meaning of Regulation (EC) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms; the date or dates of issue; whether the securities are necessarily or voluntarily convertible and/or exchangeable, including on a contingent basis, and, if voluntarily, whether this is at the option of the holder of the securities or the issuer; whether settlement is by physical delivery of the shares or, where appropriate, by offset and whether they may be exchanged in whole or in part for existing shares in the issuing Company itself or in other companies, whether or not owned by the Company, or whether they include a call option over those shares; the number of securities and their nominal value, which in the case of convertible and/or exchangeable securities may not be lower than the nominal value of the shares; in the case of warrants and

analogous securities, the issue price and/or premium, the exercise price —which may be fixed or variable— and the procedure, term and other applicable terms and conditions for exercising the right to subscribe for the underlying shares or, where applicable, the exclusion of that right; the method and terms of remuneration/retum; whether or not redeemable and, as the case may be, the relevant time frames and redemption events (total or partial), whether perpetual or subject to a fixed term, and, if fixed, the maturity date or dates; guarantees, redemption system, premiums and batches; how the securities are represented: certificates or book -entry form; antidilution clauses; pre-emptive subscription right, if any, and subscription system; the seniority of the securities and any subordination clauses; the law governing the issuance, whether domestic or foreign; to request, as the case may be, admission for trading on official or non-official secondary mark ets, whether or not organised, whether Spanish or foreign, in respect of the securities to be issued, subject to all prevailing legal and regulatory requirements; and, in general, any other terms or conditions relating to the issuance. It shall also establish the body and form of representation of the holders of the securities and, where appropriate, appoint the trustee and approve the basic rules governing the legal relations between the Company and the syndicate of holders of the securities that are issued, if it proves necessary or it is otherwise decided to set up such a syndicate.

The delegation of powers also includes authority for the Board of Directors to decide upon the terms of redemption of the securities issued by virtue of this authorisation, including authority to apply the redemption methods provided for in Article 430 of the Capital Companies Law or any other applicable legislation. The Board of Directors is also granted the power to modify the terms for redemption of the securities issued and their respective time periods and, as the case may be, the rates of interest payable on the securities included in each of the issuances made by virtue of this authorisation, when it deems this appropriate and subject to obtaining any pertinent authorisations and, where appropriate, the approval of the general meetings of the corresponding syndicates or representative bodies of the holders of the securities.

- 5. The following rules and criteria will govern the conversion and/or exchange systems:
  - 5.1 Long- and short-term bonds
  - (i) The securities issued by virtue of this resolution will be convertible to newissue shares in the Company, with the possibility of their being additional to or alternatively exchangeable for outstanding shares in the Company, or to be settled by offset, in accordance with a conversion and/or exchange ratio that is either fixed (determined or determinable) or variable (which may include upper and lower limits on the price of the conversion and/or exchange). The Board of Directors is likewise authorised to determine whether the securities are to be convertible and/or exchangeable, and whether they are to be necessarily or voluntarily convertible and/or exchangeable, or to be settled by offset, including the possibility of being contingently convertible. If voluntarily convertible and/or exchangeable, it shall decide whether this will be at the decision of the holder or the issuer, in accordance with the frequency and time frames set out in the resolution to issue the securities, which may not exceed fifty (50) years from date of issue. The aforementioned deadline shall not apply in the case of perpetual securities.

- (ii) If the issuance is convertible and exchangeable, the Board of Directors may also decide that the issuer will reserve the right to choose at any time between the conversion into new shares or the exchange for outstanding shares in the Company. It shall also specify the nature or type of the shares to be delivered upon carrying out the conversion or exchange, and it may also choose to deliver a combination of newly-issued shares and existing shares in the Company, or to settle the difference in cash.
- (iii) In the case of a fixed conversion and/or exchange ratio, and for purposes of either a conversion and/or exchange of securities, the securities shall be priced at their nominal value and the shares at the fixed exchange rate determined in the resolution issued by the Board of Directors by virtue of this delegation of powers, or at the exchange rate to be determined on the relevant date(s) around the time of the issuance stipulated in the resolution issued by the Board of Directors, and based on the quoted price of the Company's shares on the stock exchange on the date(s) or during the period(s) to be used as a reference point pursuant to that same resolution, with or without a discount or premium. The Board of Directors is likewise authorised to determine any further rules and criteria it deems fit for the conversion and/or exchange.
- (iv) The Board may also agree to issue additionally or alternatively convertible or exchangeable fixed income securities or to be settled by offset, with a variable conversion and/or exchange ratio. In this case, the price of the shares for purposes of the conversion and/or exchange will be as determined by the Board of Directors and may include a premium or, as the case may be, a discount with regard to the price per share resulting from the applicable rules and criteria. The premium or discount may be different for each date used as a reference point for the conversion and/or exchange for each issuance (or, where applicable, each tranche of an issuance). Additionally, a minimum and/or maximum reference price may be established for the shares for the purpose of their conversion and/or exchange, under the terms deemed appropriate by the Board of Directors.
- (v) On making the conversion and/or the exchange, any fractions of shares to be delivered to the holder of the securities will be rounded down to the next whole number. The Board shall decide whether each holder should be paid the resulting difference in cash.
- (vi) For purposes of the security/share conversion ratio, under no circumstances may the value of the share be below its nominal value. Pursuant to Article 415.2 of the Capital Companies Law, debt securities may not be converted into shares if the nominal value of the securities is lower than that of the shares.

On approving any issuance of securities by virtue of the authorisation contained in this resolution, the Board of Directors shall issue a directors' report explaining and specifying the terms and conversion or exchange mechanisms specifically applicable to each such issuance, on the basis of the rules and criteria described above. This report will be accompanied by the report of an auditor other than the Company's own auditor, such other auditor to be appointed by the Companies Registry, in accordance with Article 414 of the Capital Companies Law.

5.2 Warrants and other analogous securities that may confer rights directly or indirectly to subscribe or acquire shares in the Company.

For issuances of warrants and other analogous securities that may directly or indirectly grant the right to subscribe or acquire shares in the Company and which are additional to or alternatively exchangeable for shares in the Company or in other companies, or subject to settlement by offset, which will be subject to the provisions of the Capital Companies Law governing convertible bonds, insofar as applicable by analogy, then for the purposes of determining the terms and systems for exercising such warrants and securities, the Board of Directors is authorised to determine, under the broadest terms, the applicable rules and criteria for exercising the rights to subscribe or acquire shares in the Company deriving from the warrants and analogous securities issued by virtue of the this delegation of powers. The rules and criteria set out in section 5.1 above shall govern all such issues, adapted as necessary to ensure that they are compatible with the legal and financial system regulating these types of security.

- 6. Where it is possible to convert and/or exchange into shares the securities issued by virtue of this delegation of powers, their holders shall have all the rights vested in them by applicable law.
- 7. This delegation of powers in the Board of Directors also encompasses the following powers, without limitation:
  - The power for the Board of Directors, by virtue of Articles 308, 417 and 511 (i) of the Capital Companies Law, to totally or partially disapply the pre-emptive subscription right of shareholders, when this is required in order to secure funding on domestic or international markets through market sounding or book building techniques or when the Company's interests warrant this. In any event, if the Board resolves to disapply the pre-emptive subscription right of shareholders in respect of a specific issuance carried out by virtue of these powers, it shall, upon approving the issuance and pursuant to applicable legislation, issue a report detailing the specific reasons of corporate interest that warrant such a measure. The matter will also be scrutinised in a report to be issued by an auditor other than the Company's own auditor and to be appointed by the Companies Registry, as discussed in Articles 417.2 and 511.3 of the Capital Companies Law. These reports will be made available to shareholders and presented to shareholders at the first General Meeting held after the resolution to issue the securities is carried.
  - (ii) The power to increase capital by the amount necessary to cover requests for conversion and/or to exercise the right to subscribe shares. This powers may only be exercised insofar as the Board, when calculating the amount of capital to be increased in order to cover the issuance of convertible bonds, warrants and other similar securities and any other capital increases that may have been agreed pursuant to the authorisations granted at the General Meeting, does not exceed the limit of half of the total share capital as provided for in Article 297.1.b) of the Capital Companies Law. Any capital increases that the Board of Directors approves under this authorisation in order to cover the conversion of securities for whose issuance the preemptive subscription right has been disapplied will not be subject to the maximum limit of 20% of share capital, as approved by shareholders at the

General Meeting held on 23 April 2015 as item 14 on the agenda. This authorisation to raise increase includes authority to issue and place into circulation, on one or more occasions, the shares representing the capital increase that are required to carry out the conversion and/or exercise the share subscription right. It likewise includes authority to redraft the relevant articles of the By-laws governing share amount and shares and, as the case may be, to cancel the part of said capital increase that is not necessary for the conversion and/or exercise of the share subscription right.

- (iii) The power to draw up and set out the terms and mechanisms of the conversion and, as the case may be, exchange and/or exercise of the rights to subscribe and/or acquire shares by virtue of the securities to be issued, in accordance with the rules and criteria defined in point 5 above, and, in general and in the broadest terms, the power to determine any aspects or other terms and conditions as may be necessary or appropriate for the issuance.
- (iv) To request, when deemed appropriate, admission to trading (or, as the case may be, withdrawal from trading) on official or non-official secondary markets, whether or not organised, whether Spanish or foreign, in respect of the securities to be issued under this delegation of powers, with authority for the Board of Directors to act accordingly or as deemed desirable to ensure the admission to trading of the securities to be issued as before the competent bodies of domestic or foreign securities markets, subject to all existing and future law and regulations governing the stock exchange, particularly in relation to admission, permanence and exclusion from official trading.

The delegation of powers to the Board of Directors includes, with express powers to sub-delegate such powers to the Executive Committee of the Board of Directors or one or more Board members, the broadest powers required by law to interpret, apply, enforce and further specify the resolutions to issue securities. The Board is likewise granted powers to cure defects and expand upon the resolutions on all matters that prove necessary and to ensure compliance with any and all applicable legal requirements for implementing those resolutions, with authority to cure omissions or defects in those resolutions, upon the indications of any national or foreign authorities, public servants or bodies, and to carry any further resolutions and execute any public or private documents it considers necessary or desirable for the purpose of adapting the preceding resolutions to issue securities and the related capital increase to address any defects or issues raised verbally or in writing by the Companies Registrar or, in general, any other competent national or foreign authorities, public servants or institutions.

This delegation supersedes and repeals the unused portion of the delegation of powers hitherto in effect, as approved at the General Shareholders' Meeting of 25 April 2013."

Given that the Board of Directors has already exercised the powers conferred in it by the aforementioned General Meeting when carrying out the issuances made in 2017 and 2018 for a nominal amount of one billion euros (€1,000,000,000) and one billion, two hundred and fifty million euros (€1,250,000,000), respectively, it is hereby stated that no further amount will be available if the Issuance is fully subscribed.

### III. Current circumstances warranting the Issuance

This Issuance, as with the issuances carried out in 2017 and 2018 for a nominal amount of one billion euros (€1,000,000,000) and one billion, thousand two hundred and fifty million euros (€1,250,000,000), respectively, aims to strengthen the shareholders' equity of both the Bank and all companies that belong to the business group of which CaixaBank is the parent company (the "CaixaBank Group" or the "Group"), given that the Preferred Securities are a subordinate instrument and eligible for absorbing losses through their conversion into newly issued shares under certain circumstances and subject to the eligibility requirements for qualifying as Additional Tier 1 Capital under the CRR.

### Regulatory environment

The regulatory framework in Spain, within the EU and on the international stage governing own funds and capital adequacy requirements for banks has seen some hugely significant changes in recent years.

In December 2010, the Basel Committee on Banking Supervision released the recommendations for the Basel III framework, which contained a set of reforms aimed at toughening international capital adequacy and liquidity rules for banks in a bid to create a more resilient banking sector. These recommendations were transposed into EU Law through Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("Directive 2013/36/EU") and the aforementioned Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms, which, together with Directive 2013/36/EU, is known as "CRD IV".

Without prejudice to the direct applicability of the CRR, the CRD IV framework has been implemented in Spain through: (i) Royal Decree-Law 14/2013 of 29 November, on urgent measures to bring the laws of Spain in line with EU regulations on the supervision and capital adequacy of financial institutions; (ii) Law 10/2014; (iii) Royal Decree 84/2015 of 13 February, implementing Law 10/2014; and (iv) Bank of Spain Circulars 2/2014 and 2/2016. This law is further supplemented by various binding technical standards, as well as recommendations and guidelines issued by various national and supranational bodies.

In November 2016, the European Commission presented a package of reforms amending the CRD IV regulatory framework, which finally materialised on 7 June 2019 with the publication of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May, amending Directive 2013/36/EU ("CRD V"), and Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019, amending Regulation (EU) 575/2013 (CRR II) (together with CRD V, the "Reform Package"). The Reform Package entered into force on 27 June 2019 and will apply as of year-end December 2020, with the exception of CRR II, which comes with a two-year phase-in period (subject to certain exceptions).

Further, Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June (also known as CRR 2.5 or "quick fix") came into force on 28 June 2020, ushering in a series of amendments to the CRR.

CRD IV, as amended by the Reform Package, envisions the need for banks, in order to be considered adequately capitalised, to possess certain proportions of equity instruments of different types and classes, depending on the composition and size of their balance sheets.

More precisely, CRD IV (i) established, inter alia, a minimum capital requirement ("**Pillar 1**"), which can be met in certain proportions and not only with the bank's highest quality equity (Common Equity Tier 1 or "CET1"), which would be more burdensome and less efficient, but also with two additional categories of regulatory capital, namely Additional Tier 1 and Tier 2 capital; while at the same time (ii) raising the level of capital required through the "combined capital buffer requirement" to be met by ordinary Tier 1 capital (in addition to the capital required to meet the Pillar 1, Pillar 2R and Pillar 2G requirements discussed below).

In addition to Pillar 1, and in light of the outcome of the supervisory review and evaluation process ("SREP"), each year the European Central Bank ("ECB") sets an institution-specific capital requirement (known as the Pillar 2 requirement or Pillar 2R) to be met with ordinary Tier 1 capital. In addition, the ECB sets out what is known as Pillar 2 guidance or Pillar 2G, which provides a guide for all categories of capital non-compliance with which would entail tougher supervisory scrutiny.

With regard to the Reform Package, it should be noted that the amendments introduced by CRD V include the possibility (set out in Article 104a) that some of the Pillar 2R requirements for institutions may be met with additional Tier 1 (up to 18.75%) and Tier 2 (up to 25%) capital instruments as from its entry into force in December 2020.

As part of the measures adopted by the supervisory authorities in response to the global health crisis caused by the COVID-19 pandemic, the Single Supervisory Mechanism has brought forward the entry into force of this possibility, meaning that the Preferred Securities can also count towards compliance with the Pillar 2R requirement by increasing the capital buffer beyond the minimum regulatory CET1 requirements and thereby also reducing the risk of possible restrictions on discretionary pay-outs (dividends, variable remuneration or distributions of instruments eligible for Additional Tier 1 Capital).

It is also worth noting that issuances such as the Preferred Securities now being proposed can also be used to strengthen the leverage ratio. On this point, it should also be noted that a leverage ratio calculated as the institution's Tier 1 capital divided by its total exposure will be required from June 2021 onward. Therefore, issuances of instruments such as these Preferred Securities will effectively help strengthen this ratio by raising the numerator.

Preferred Securities also count as an "eligible" liability for the purposes of the minimum requirement for own funds and eligible liabilities (MREL). Therefore, this Issuance will strengthen the Bank's MREL position for meeting future requirements of this nature (those currently in force are explained in the disclosure of inside information of 5 June 2020).

Following the most recent SREP and as announced by the Bank by means of a disclosure of price sensitive information on 6 December 2019, the ECB requires the Group to maintain a Tier 1 capital ratio of 8.78% in 2020, to include: the Pillar 1 regulatory minimum (4.5%) the Pillar 2 requirement (1.5%); the capital conservation buffer (2.5%); the capital buffer required of Other Systemically Important Institutions (0.25%) and the countercyclical buffer (0.03%), to be updated quarterly. Similarly, taking minimum applicable Pillar 1 requirements of 6% for Tier 1 and of 8% for total capital, the minimum capital requirements would be 10.28% for Tier 1 capital and 12.28% for total capital.

At 30 June 2020, CaixaBank's Common Equity Tier 1 (CETI1) ratio was 12.3% in consolidated terms and 14.1% in separate terms, with a Tier 1 capital ratio of 13.8% and 15.7% at consolidated and separate levels, respectively, and a total capital ratio of 16.0%

and 18.1% at consolidated and separate levels, respectively. These ratios are comfortably clear of the minimum capital requirements.

However, the Board believes that the regulator may in the future require additional capital buffers beyond those currently in effect and that the current Pillar 2 measures will be reviewed on an annual basis, in line with the conclusions that the ECB has been drawing from successive SREP exercises. It may therefore impose more stringent Pillar 2R requirements than those that currently apply. With this in mind, the Board has deemed it necessary for CaixaBank and its Group to build an additional capital buffer to ensure adequate and proper management of these requirements.

Accordingly, the Board of Directors considers it desirable to effect a new issuance of securities in the form of the Preferred Securities, which are eligible as Additional Tier 1 Capital under CRD IV (as amended by the Reform Package), so as to strengthen, as efficiently as possible, the Bank's capital ratios, given that the associated cost is lower than that of common Tier 1 equity (estimated at around 10.83% according to the consensus of analysts who follow the CaixaBank share), which is tax deductible and should not have any dilutive effect on shareholders, except in the exceptional case of an eventual conversion of the instruments.

#### Mark et situation

With this Issuance, the Bank aims to take advantage of the current favourable situation within the financial markets when it comes to issuing this type of instrument, as corroborated by the success of recent Additional Tier 1 Capital issues by other peer banks, now that the market has reopened following several months of closure amid the COVID-19 pandemic and ensuing crisis, which could change dramatically as we move forward. The decision is also based on the interest and demand the Bank has noticed for the securities among certain investors classified as professional clients and eligible counterparties, as well as prevailing prices on the secondary market for similar instruments. Given the recent market improvement and the Bank's policy of displaying the utmost prudence and foresight when it comes to capital planning, the Board of Directors deems it appropriate to effect the Issuance of the Preferred Securities.

In conclusion, the current financial climate is conducive to carrying out an issuance of Preferred Securities that will allow the Bank to: (i) take advantage of the easing of the regulatory framework so as to meet Pillar 2R requirements with Additional Tier 1 Capital instruments such as the Preferred Securities, thus strengthening capital buffers and bringing them in line with the prevailing supervisory trend and uncertain macroeconomic outlook; (ii) replace Common Equity Tier 1 with Additional Tier 1 Capital to cover the P2R requirement at a lower cost, thus further optimising the financial cost of the Bank's capital structure and serving its corporate interests; (iii) increase the loss absorbing capacity in order to contend with a more demanding economic or regulatory environment, thereby reducing the risk of possible restrictions on discretionary pay-outs (dividends, variable remuneration, or distributions of instruments eligible as Additional Tier 1 Capital); (iv) strengthen the MREL structure to cope with future regulatory requirements of this nature and to reduce the likelihood of future restrictions on discretionary payments in connection with MREL deficits (M-MDA), as provided for in Directive 98/26/EC (BRRD 2); and (v) strengthen the leverage ratio, calculated as the Bank's Tier 1 capital divided by its total exposure, which must be met from June 2021 onward.

Lastly, it is worth noting that while the Preferred Securities that the Bank intends to issue are essentially a perpetual fixed income security, Additional Provision One of Spanish Law 10/2014 and CRD IV both insist that the terms and conditions of these securities include — in order for them to count— a mechanism for absorbing losses if and when certain exceptional events envisioned in those regulations materialise.

In the case of the Preferred Securities, this loss-absorbing mechanism consists of their conversion into newly issued common shares of the Bank in the event that CaixaBank or its Group presents a Common Equity Tier One ratio of below 5.125%, as explained in the section on Conversion Terms and Methods below.

This loss absorption mechanism, through the eventual conversion of the securities into shares in accordance with the requirements of the legislation mentioned above, is designed to trigger only in very specific situations of own funds deficits, so that the issuers concerned can enhance their Common Equity Tier 1 levels through such a conversion process in response to severe scenarios involving significant accounting losses or where the relevant ratios decline sharply.

Therefore, the Preferred Securities that the Bank plans to issue will be perpetual fixed-income securities with the capacity to absorb losses through their conversion into shares in the event of a deterioration in the capital adequacy of the Bank or its Group. Were this to take place, the process would immediately strengthen the regulatory capital of CaixaBank and its Group, given that the shares issued when converting the Preferred Securities would count as Common Equity Tier 1 capital under CRD IV (as modified by the Reform Package).

### IV. Financial terms of the Issuance

The financial terms of the Issuance are as set out in the Board resolution adopted in accordance with the proposal transcribed in section IX of this report.

### V. Conversion terms and methods

- (i) Convertible nature of the Preferred Securities: the Preferred Securities will be automatically converted into new-issue shares of CaixaBank in response to the conversion event described below.
- (ii) **Conversion Event**: the Preferred Securities will be compulsorily converted into newly-issue common shares of CaixaBank if the Common Equity Tier 1 ratio of CaixaBank or its Group falls below 5.125% at any time.
- (iii) Conversion Ratio: the Conversion Ratio will be the quotient between the nominal amount of the Preferred Securities and the conversion price (the "Conversion Price").

The Conversion Price will be the market value of the CaixaBank share at the time the Preferred Securities are converted, calculated as the average of the weighted average price by volume of the CaixaBank share over the five trading days prior to the day on which it is announced that the corresponding conversion event has occurred (the "**Reference Price**").

Under no circumstances may the Reference Price be lower than the conversion Floor Price (as defined in the "**Terms and Conditions of the Issuance**"). The Minimum Conversion Price will be equivalent to two thirds of the closing price of the CaixaBank share on the day immediately preceding the date on which the final terms and conditions of the transaction are set (pricing) and will be determined by persons

expressly authorised for that purpose in accordance with section VI of the Board resolution. Under no circumstances may the Minimum Conversion Price be less than one euro (€1) per share. If the Reference Price is lower than the Minimum Conversion Price, the Conversion Price will be that minimum (without prejudice to any possible changes in this amount if the anti-dilution mechanisms provided for in section (v) below are triggered).

In addition, and without prejudice to the foregoing, under no circumstances may the Conversion Price be less than the nominal value of the CaixaBank shares at the time of conversion, thus ensuring compliance at all times with Article 415 of the LSC.

- (iv) Conversion Procedure: if a conversion event occurs, the Bank shall: (a) promptly notify the competent regulatory body and the holders of the Preferred Securities by making the relevant announcements at CNMV, AIAF and Iberclear; (b) abstain from paying further remuneration on the Preferred Securities, including any accrued and unpaid remuneration; and (c) act accordingly to complete the conversion of all the Preferred Securities into shares in accordance with the Terms and Conditions of the Issuance.
- (v) "Anti-dilution" mechanisms: the Minimum Conversion Price will be adjusted in order to protect the holders of the Preferred Securities against any possible dilution they may suffer in respect of the Bank's shareholders were certain events to take place in relation to CaixaBank's share capital.

The Terms and Conditions of the Issuance explain these "anti-dilution" mechanisms, which are standard practice for this type of operation and cover the following events: (a) any consolidation, reclassification, redenomination, splitting or division that affects the number of shares of the Bank; (b) capital increases charged to profits or reserves, except where the delivery of the shares is linked to the payment of dividends of the Bank; (c) payments of extra or in-kind dividends; (d) capital increases with pre-emptive subscription rights and issuances of any other securities that include the right to subscribe for or acquire shares in the Bank by granting the Bank's shareholders a pre-emptive subscription right, if the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; (e) issuances of any securities other than those referred to in point (d) above, or of securities that include the right to subscribe such securities other than those referred to in point (d) above, where the Bank's shareholders are granted a pre-emptive subscription right; (f) capital increases through cash or non-cash contributions and the issue of options, warrants or any other rights to subscribe for or acquire shares in the Bank through cash or non-cash contributions, where the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; (g) issuances of any securities that grant the right to subscribe for or acquire shares through cash contributions or without payment, where the subscription or acquisition price is less than 95 per cent of the corresponding market price; (h) where the terms of the subscription or acquisition rights of the Bank's shares contained in any issuance of securities are modified and where, as a result of such modification, the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; and (i) offerings of any securities in which shareholders are recognised as having an acquisition right and which are not caught by any of the above events.

### VI. Capital increase

Pursuant to the delegation of powers agreed upon at the Annual General Meeting held on 28 April 2016 under item 12 on the agenda, and in accordance with Article 414 of the LSC and as agreed at the Annual General Meeting held on 22 May 2020 under item seven on the agenda, the share capital must be increased by the amount necessary to cover the eventual conversion of the Preferred Securities issued. For this purpose, it is agreed that share capital will be increased by an amount equivalent to the quotient between the total nominal value of the Preferred Securities and the Conversion Price.

Given that the maximum nominal amount of the issuance amounts to SEVEN HUNDRED AND FIFTY MILLION EUROS (€750,000,000), assuming a Minimum Conversion Price of one euro (€1) per share, the maximum number of shares to be issued, if any, would be seven hundred and fifty million (750,000,000) common shares, assuming that no anti-dilution adjustment is made. It is expressly envisaged that the capital increase may be carried out with a higher share premium or for a smaller number of shares and with incomplete subscription also permitted.

This capital increase will be carried out totally or partially by the Board of Directors or by persons expressly authorised for that purpose and under the conditions set out in section VI of the Board's resolution adopted in accordance with the motion transcribed in section IX of this report, when a capital increase becomes necessary in order to cover the eventual conversion of the Preferred Securities. The capital increase will be effected through the issuance of new common shares with the same nominal value and the same rights as the common shares that remain outstanding on the date the corresponding resolution to raise capital is adopted. If the Board of Directors, or the persons expressly authorised for this purpose and under the conditions set out in section VI of the Board resolution adopted in accordance with the motion transcribed in section IX of this report, proceeds to execute this resolution, then the Board, or the persons concerned, shall redraft the relevant article of the By-laws relating to share capital.

In accordance with Article 304.2 of the Capital Companies Law, the pre-emptive subscription right of shareholders will not apply to capital increases that result from the conversion of the Preferred Securities.

### VII. Justification for disapplying the pre-emptive subscription right

The General Shareholders' Meeting of CaixaBank held on 28 April 2016 agreed, under item 12 on the agenda, that the powers vested in the Board of Directors to issue securities convertible into shares and to increase share capital would also include the power to disapply the pre-emptive subscription right in relation to any issuances of convertible securities effected under such delegation of powers.

To this end, and coinciding with the announcement of the aforementioned General Shareholders' Meeting, the Board of Directors of CaixaBank approved and made available to shareholders a report justifying that proposed delegation of the power to disapply the preemptive subscription right.

Furthermore, Article 511 of the LSC insists that it must be in the company's interests to disapply the pre-emptive right in relation to convertible bond issuances.

The Board of Directors of CaixaBank, in exercise of this power, has decided to disapply the pre-emptive subscription right in relation to the Issuance, as it considers that this exclusion

is fully justified and in accordance with applicable legal requirements, while also being necessary and in the company's interests, all as explained below.

The stricter own funds requirements stemming from the current economic and regulatory climate within the financial industry have rendered it advisable to maintain the current policy of maximum prudence and foresight in relation to capital planning at the Bank and its Group, which requires the Bank to have flexible and suitable instruments for responding adequately to prevailing capital requirements in the Bank's best interests.

In this context, and as indicated above, despite the fact that CaixaBank and its Group comfortably comply with the own funds requirements currently in force and have sufficient issuances of specific instruments with which to efficiently meet their capital requirements, the Board of Directors has deemed it desirable to further strengthen the own funds of both the Bank and its Group by issuing the Preferred Securities (which will be eligible as Additional Tier 1 Capital under CRD IV (as amended by the Reform Package)) for investors classified as professional clients and eligible counterparties. This necessarily entails the exclusion of the pre-emptive subscription right of the Bank's shareholders given the convertibility element provided for in the Terms and Conditions of the Issuance.

The Company's Board of Directors believes that the structure of the proposed Issuance, which will entail disapplying the pre-emptive subscription right, is fully compliant with the substantive requirements set out in the LSC and, in particular, the need for the exclusion of the right to be in the Bank's interests. This is effectively the case, because it will make it possible to carry out an operation that is not only desirable but also necessary to achieve the desired result and also because, having taken into account the possible dilution of shareholders, it strikes a suitable balance between the objective being pursued and the means employed.

To provide a more detailed explanation of the desirability of the proposed structure, the following benefits should be noted:

(i) Intended for investors who qualify as professional clients and eligible counterparties in order to bring about the proposed improvement in the equity structure and as a legal requirement following the entry into force of MiFID II

The issuance of the Preferred Securities will effectively improve the Bank's capital structure. However, in order to be eligible as Additional Tier 1 Capital, the Preferred Securities must provide for discretionary and non-cumulative remuneration and must also be contingently convertible into common shares of CaixaBank in response to the conversion events explained earlier in this report, such conversion being an essential feature for their classification as Additional Tier 1 Capital.

The Preferred Securities qualify as complex instruments and this, coupled with the recent regulatory changes, means that they are not a suitable product for placement among retail investors, based partially on the following main characteristics of the product:+

- Perpetuity: the Preferred Securities are perpetual instruments with no fixed final redemption or maturity date (although certain early redemption mechanisms do exist exercisable by the issuer only);
- Discretionary payment of remuneration: payment of remuneration is discretionary over the entire life of the issuance. The issuer may choose to cancel any or all of such payments at any time and for any reason and

moreover is obligated to do so in the circumstances prescribed by applicable law and regulations. Furthermore, the remuneration is not cumulative, meaning that if any payment of remuneration (or part thereof) is not made at the issuer's discretion or because of the applicable restrictions mentioned earlier, the right of the holders of the Preferred Securities to receive the unpaid remuneration will be extinguished;

Convertibility into shares: the Preferred Securities will be automatically and compulsorily converted into newly issued shares in the event that the Common Equity Tier 1 ratio of CaixaBank or its Group falls below a certain threshold at any time. This conversion might also take place at a price higher than the market price at the time of conversion, meaning that the holders of the Preferred Securities may have to bear not only the conversion but also any further losses arising from that process.

Following the entry into force of Directive 2014/65/EU of the European Parliament and of the Council of 15 May and its implementing regulations (the "MiFID II Regulation"), when preparing to issue financial instruments, customer groups whose needs, characteristics and objectives are not compatible with the financial instrument must be identified prior to the issue and moreover the issue cannot be offered to those customers.

Accordingly, and given that a significant portion of CaixaBank's shareholding structure is held by retail customers, failing to disapply the pre-emptive subscription right would effectively result in the Bank having to offer a significant portion of its shareholders a product that in practice is not suitable in view of their investment profile (needs, characteristics and objectives), which would breach the legal requirements imposed by the MiFID II Regulations.

Conversely, there has been growing demand for instruments such as the Preferred Securities among investors classified as professional clients and eligible counterparties. These investors possess considerable expertise and knowledge about this type of instrument and regularly subscribe this type of product. They are therefore the segment typically targeted by these issuances. All of these considerations make the Preferred Securities a suitable product for this type of investor, and it is therefore advisable to target the Issuance exclusively at investors classified as professional clients and eligible counterparties, while expressly excluding retail investors.

Further, directing the Issuance exclusively at investors classified as professional clients and eligible counterparties will enable the Issuance to be carried out under more favourable conditions, with the effective, operational, temporary and capital costs that this entails.

Therefore, disapplying the pre-emptive right so as to target the Issuance exclusively at investors classified as professional clients and eligible counterparties and prohibiting their placement among retail investors, will allow the Bank not only to comply with prevailing legal requirements, but also to attract a significant volume of funds from a limited number of investors active in the international financial markets, thus harnessing the enormous revenue-generating capacity offered by such markets.

(ii) <u>Execution speed. Less exposure to market volatility</u>

Similarly, disapplying the pre-emptive right will enable the Bank to accomplish the objective of the Issuance, which is to raise capital by taking advantage of prevailing financing conditions within the market and the existing demand among specific investors for products such as the Preferred Securities, by allowing their placement through an accelerated bookbuild process.

The accelerated bookbuild process enables issuers to take full advantage of what are known as "market windows" (opportunities conducive to carrying out financial transactions at a specific time), thus providing potentially more favourable financial conditions at lower costs and, in general, increasing the likelihood of success of the transaction. An accelerated bookbuild can also have the effect of reducing uncertainty and exposure to market volatility, while cushioning the potential impact of the Issuance on the share price.

The combination of the factors described above (strengthening CaixaBank's own funds, market conditions and targets of the Issuance and speed of execution) means that the proposed structure is the Bank's best and most attractive option when it comes to issuing the Preferred Securities, targeting them solely at investors who qualify as professional clients and eligible counterparties and consequently excluding the pre-emptive subscription rights of existing shareholders.

In addition, the Bank's Board of Directors believes that, for the reasons set out below, the decision to disapply the pre-emptive right complies ensures the balance that should always exist between the benefits obtained for the Bank and any inconvenience that could be caused to shareholders:

- (a) The theoretical value of the pre-emptive subscription right in relation to the Issuance is equivalent to zero. In accordance with the proposed conversion terms and methods, existing shareholders will not lose any economic value by disapplying the pre-emptive subscription right, since the proposed mechanism for setting the conversion price is such that the shares needed to meet the conversion of the Preferred Securities will be issued at their market value (by linking them to the Bank's share price) or at a higher value (if the Minimum Conversion Price applies).
- (b) The Preferred Securities are structured as contingently convertible securities, i.e. securities that will be converted solely and exclusively in the event of certain specific and exceptional circumstances entailing a severe deterioration in the capital adequacy of the Bank and its Group (and not as securities that will necessarily be converted once a certain period of time has elapsed or convertible at the request of investors). Therefore, the most likely scenario is that the conversion will not take place, in which case the Issuance would not generate any dilution (of either the voting or financial rights) of the Bank's shareholders.
- (c) The proposed conversion ratio for the Preferred Securities in response to a conversion event is designed to meet the corporate interest, because they are convertible at a price pegged to the quoted price or market price of the share at the time of conversion (unless the Minimum Conversion Price indicated above is not reached), thus maximising the funds that the Bank will be able to raise and enabling the entire amount to be allocated as efficiently as possible to strengthening its own funds and accomplishing its corporate interest, this being main objective of the issuance.

Setting a Minimum Conversion Price (which will be determined according to the parameters indicated above by the persons expressly authorised for that purpose in accordance with section VI of the Board resolution adopted pursuant to the proposal transcribed under section IX of this report) effectively limits the maximum number of shares to be delivered, on the further understanding that this Minimum Conversion Price would result in the shares being delivered at a premium above their market price.

Therefore, given (i) the specific characteristics of the Preferred Securities; (ii) the fact that the conversion events are very limited and specific in scope; and (iii) that since the conversion price would be the market price or, as the case may be, with a premium over the market price, the theoretical value of the pre-emptive subscription right under the Issuance is zero, it can safely be aid that the existing shareholders do not stand to lose any economic value following the decision to disapply the pre-emptive subscription right.

### VIII. Auditor's Report

The information and data included in this report will be reviewed in a report to be issued by Grant Thornton, S.L.P. as financial auditor other than the Bank's own auditor duly appointed for this purpose by the Companies Registry of Valencia pursuant to Articles 414, 417 and 511 of the LSC (the "Auditor's Report"). The Auditor's Report shall contain a technical opinion as to the reasonableness of the information contained in this report, especially with respect to the conversion terms and methods, and on the suitability of the conversion ratio and its adjustment formulas to offset any dilution of the economic interest of the existing shareholders.

### IX. Full text of the proposed resolution:

"ISSUANCE OF PREFERRED SECURITIES CONTINGENTLY CONVERTIBLE INTO SHARES OF CAIXABANK, S.A.

### I. ISSUANCE

The Board of Directors of CaixaBank, S.A. ("CaixaBank" or the "Bank"), in exercise of the powers vested in it by shareholders at the Annual General Meeting held on 28 April 2016 under item 12 on the agenda, hereby resolves to carry out an issue of preferred securities contingently convertible into newly issued common shares of the Bank (the "Preferred Securities"), in accordance with Additional Provision One of Spanish Law 10/2014 of 26 June, on the organisation, supervision and capital adequacy of credit institutions ("Law 10/2014") and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, on the prudential requirements for credit institutions and investment firms, as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 and by Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 (referred to jointly as the "CRR"), said issuance (the "Issuance") for a maximum nominal amount of SEVEN HUNDRED AND FIFTY MILLION EUROS (€750,000,000) (with incomplete subscription permitted) and with the pre-emptive subscription right disapplied, to take effect once all preliminary formalities with the Bank of Spain, the European Central Bank, the Spanish National Securities Market Commission ("CNM V") and any other competent bodies have been completed.

This resolution supersedes and renders null and void the resolution approved by the Bank's Board of Directors at its meeting of 30 July 2020 regarding the issue of preferred securities contingently convertible into shares of CaixaBank, S.A.

The Board of Directors also approves the terms and conditions of the Issuance, which are described below and attached as Appendix I to this agreement in both English and Spanish (the English version prevailing in the event of any contradiction) (the "Terms and Conditions"). This is without prejudice to the fact that certain Terms and Conditions of the Issuance will be specified by the Bank in accordance with section VI below, once the book building process has been completed, which the underwriters of the Issuance shall carry out exclusively among professional clients and eligible counterparties (the "Book Building Process" and the "Lead Managers", respectively).

- (i) **Issuer**: CaixaBank, S.A., with registered office at calle Pintor Sorolla, 2-4, 46002 Valencia, and bearing tax number A-08663619.
- (ii) **Nature of the securities**: the securities to be issued are Preferred Securities in accordance with Additional Provision One of Spanish Law 10/2014 and the CRR.
  - For the Preferred Securities to eligible as Additional Tier 1 Capital of the Bank and its Group, they will be perpetual bonds contingently convertible into newly issued common shares of CaixaBank under the terms set out in section II below, as a loss-absorbing mechanism required by the aforementioned legal provisions.
- (iii) **Nominal amount of the Issuance**: the Preferred Securities will be issued for a maximum nominal amount of SEVEN HUNDRED AND FIFTY MILLION EUROS (€750,000,000).

Incomplete subscription of the Issue is expressly permitted. The final nominal amount of the Issuance will be established through the Book Building Process, by the persons expressly authorised for such purpose and under the conditions set out in Section II below.

- (iv) Currency of the Issuance: euro.
- (v) Nominal amount of each Preferred Security and Issue Price: TWO HUNDRED THOUSAND EUROS (€200,000). The Preferred Securities will be issued at par.
- (vi) Number of Preferred Securities: a maximum of THREE THOUSAND SEVEN HUNDRED AND FIFTY (3,750) Preferred Securities will be issued (unless incomplete subscription exists as foreseen above). The exact number will be determined on the basis of the final nominal amount of the Issuance, as established through the Book Building Process.
- (vii) **Remuneration**: the Preferred Securities will yield a fixed annual return payable quarterly in arrears.

The Preferred Securities will pay a maximum return of 7.75% over the period running from date of issue through to the First Remuneration Review Date (as defined below).

The "First Remuneration Review Date" may fall on any date between the fifth and tenth anniversary of the Issuance. The First Remuneration Review Date need not coincide with an anniversary date of the Issuance. Both the remuneration and the First Remuneration Review Date will be established by persons expressly authorised for such purpose under the terms of section VI below.

During each of the five-year periods following the First Remuneration Review Date, the return accruing on the Preferred Securities will be the result of adding a margin (the "Initial Margin") to a rate set for each five-year period in accordance with a reference index for financial derivatives at five years (5-year Mid-Swap Rate), as specified in the Terms and Conditions. The Initial Margin shall be a maximum of 8.75%, with the exact amount to be determined by persons expressly authorised for that purpose in accordance with section VI below following completion of the Book Building Process.

The Bank may only pay the corresponding remuneration if: (i) profits and reserves are available for that purpose in accordance with banking regulations; (ii) the regulator has not required the cancellation of all or any part of the remuneration; (iii) its payment does not entail breach of any regulatory restriction or prohibition applicable to remuneration payable on Additional Tier 1 Capital instruments; and (iv) there has been no conversion of the Preferred Securities.

In any case, payment of the remuneration is discretionary over the entire life of the Issuance and the Bank may choose to cancel all or any part of such payments at any time and for any reason.

Furthermore, the remuneration is not cumulative, meaning that if any payment of remuneration (or part thereof) is not made at the Bank's discretion or because of any applicable restriction as mentioned above, the right of the holders of the Preferred Securities to receive the unpaid remuneration will be extinguished.

Cancellation of payment of the remuneration, no matter the reason, will not constitute breach of contract or a valid ground for the early termination of the Issuance.

- (viii) Form of representation: the Preferred Securities will be represented in book-entry form and registered with Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Unipersonal ("Iberclear"), or any other registration entity authorised by the CNMV.
- (ix) **Subscription period**: subscription requests shall be made through the Book Building Process, which shall take place at the time determined by the persons expressly authorised for that purpose in accordance with the provisions of section VI below.
- (x) **Maturity Date and early redemption**: the Preferred Securities are perpetual and therefore have no maturity date.

Without prejudice to the foregoing, the Preferred Securities may be subject to early redemption at the Bank's discretion, whereupon the nominal value of the securities will be returned plus any accrued and unpaid remuneration, as follows:

- (a) on or after the First Remuneration Review Date, on any subsequent remuneration payment date, and, if so determined by the persons expressly empowered to do so in accordance with the provisions of section VI below at any time during the six months prior to the First Remuneration Review Date (said date inclusive), although in the latter case, the First Remuneration Review Date must be set no earlier than the date on which five years and six months have elapsed since the issue date (said date inclusive);
- (b) from the date of issue of the Preferred Securities, if (i) the Preferred Securities no longer qualify, whether fully or partially, as Additional Tier 1 Capital of CaixaBank or its Group (Capital Event, as defined in the Terms

and Conditions document attached as Appendix I); or (ii) following any change in applicable tax law, or in the application of existing law, the remuneration payments to be made under the Preferred Securities are no longer tax deductible or where the Bank becomes obligated to gross up said payments to the holders of the Preferred Securities due to the need to make tax withholdings or deductions (Tax Event, as defined in the Terms and Conditions document attached as Appendix I).

To be able to effect the early redemption of the Preferred Securities in any of the above situations, the Bank must invariably comply with prevailing banking regulations and requirements, including, as the case may be, the need to obtain the prior consent of the competent regulatory body.

(xi) Substitution and variation: If (i) the Preferred Securities no longer quality, whether fully or partially, as Additional Tier 1 Capital of CaixaBank or its Group (Capital Event, as defined in the Terms and Conditions document attached as Appendix I); or (ii) following any change in applicable tax law, or in the application of existing law, the remuneration payments to be made under the Preferred Securities are no longer tax deductible or where the Bank becomes obligated to gross up said payments to the holders of the Preferred Securities due to the need to make tax withholdings or deductions (Tax Event, as defined in the Terms and Conditions document attached as Appendix I), the Bank may choose to exchange the Preferred Securities or amend the terms and conditions thereof in accordance with the Terms and Conditions document attached as Appendix I.

To be able to proceed with either of the two options described above, the Bank must invariably comply with prevailing banking regulations and requirements, including, as the case may be, the need to obtain the prior consent of the competent regulatory body.

- (xii) Ranking: the Preferred Securities shall constitute contractually subordinated credits of the Bank in accordance with Article 281.1.2 of Royal Legislative Decree 1/2020 of 5 May, enacting the restated text of the Insolvency Law (Ley Concursal). While they remain Additional Tier 1 Capital instruments in accordance with Additional Provision 14 of Law 11/2015 of 18 June, on the recovery and resolution of credit institutions and investment firms, they will have the ranking envisioned therein, as described further in the Terms and Conditions.
- (xiii) **Exclusion of the pre-emptive subscription right**: As explained below, the pre-emptive subscription right of CaixaBank shareholders has been disapplied for the purposes of this Issuance.
- (xiv) Financial institution responsible for the Financial Service of the Issuance: the Bank itself.
- (xv) **Target of the Issuance**: in accordance with Directive 2014/65/EU of the European Parliament and the Council and its implementing regulations (MiFID II regulations), the Issuance will be targeted at professional clients and eligible counterparties, expressly excluding retail clients.
- (xvi) **Secondary market**: it is agreed to request admission to trading of the Preferred Securities on the AIAF fixed income market.

# II. CONVERTIBILITY OF THE PREFERRED SECURITIES. CONVERSION TERMS AND METHODS

- (i) Convertible nature of the Preferred Securities: the Preferred Securities will be automatically converted into new-issue shares of CaixaBank in response to the conversion event described below.
- (ii) Conversion Event: the Preferred Securities will be compulsorily converted into newly-issue common shares of CaixaBank if the Common Equity Tier 1 ratio of CaixaBank or its Group falls below 5.125% at any time.
- (iii) **Conversion Ratio**: the Conversion Ratio will be the quotient between the nominal amount of the Preferred Securities and the conversion price (the "**Conversion Price**").

The Conversion Price will be the market value of the CaixaBank share at the time the Preferred Securities are converted, calculated as the average of the weighted average price by volume of the CaixaBank share over the five trading days prior to the day on which it is announced that the corresponding conversion event has occurred (the "Reference Price").

Under no circumstances may the Reference Price be below the Minimum Conversion Price (Floor Price) (as defined in the Terms and Conditions of the Issuance), which will be equivalent to two thirds of the closing price of the CaixaBank share on the day immediately preceding the date on which the final terms and conditions of the transaction are set (pricing) and will be determined by persons expressly authorised for that purpose in accordance with section VI of this resolution. Under no circumstances may the Minimum Conversion Price be less than one euro (€1) per share. If the Reference Price is lower than the Minimum Conversion Price, the Conversion Price will be that minimum (without prejudice to any possible changes in this amount if the anti-dilution mechanisms provided for in section (v) below are triggered).

In addition, and without prejudice to the foregoing, under no circumstances may the Conversion Price be less than the nominal value of the CaixaBank shares at time of conversion, thus ensuring compliance at all times with Article 415 of the Restated Text of the Capital Companies Law, as enacted by Royal Legislative Decree 1/2010 of 2 July (the "LSC").

- (iv) Conversion Procedure: If a conversion event occurs, the Bank shall: (a) promptly notify the competent regulatory body and the holders of the Preferred Securities by making the relevant announcements at CNMV, AIAF and Iberclear; (b) abstain from paying further remuneration on the Preferred Securities, including any accrued and unpaid remuneration; and (c) act accordingly to complete the conversion of all the Preferred Securities into shares in accordance with the Terms and Conditions.
- (v) "Anti-dilution" mechanisms: The Minimum Conversion Price will be adjusted in order to protect the holders of the Preferred Securities against any possible dilution they may suffer in respect of the Bank's shareholders were certain events to take place in relation to CaixaBank's share capital.

The Terms and Conditions attached hereto as Appendix I explain these "anti-dilution" mechanisms, which are standard practice for this type of operation and cover the following events: (a) any consolidation, reclassification, redenomination, splitting or

division that affects the number of shares of the Bank; (b) capital increases charged to profits or reserves, except where the delivery of the shares is link ed to the payment of dividends of the Bank; (c) payments of extra or in-kind dividends; (d) capital increases with pre-emptive subscription rights and issuances of any other securities that include the right to subscribe for or acquire shares in the Bank by granting the Bank's shareholders a pre-emptive subscription right, if the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; (e) issuances of any securities other than those referred to in point (d) above, or of securities that include the right to subscribe such securities other than those referred to in point (d) above, where the Bank's shareholders are granted a pre-emptive subscription right; (f) capital increases through cash or non-cash contributions and the issue of options, warrants or any other rights to subscribe for or acquire shares in the Bank through cash or non-cash contributions, where the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; (g) issuances of any securities that grant the right to subscribe for or acquire shares through cash contributions or without payment, where the subscription or acquisition price is less than 95 per cent of the corresponding market price; (h) where the terms of the subscription or acquisition rights of the Bank's shares contained in any issuance of securities are modified and where, as a result of such modification, the subscription or acquisition price per share is less than 95 per cent of the corresponding market price; and (i) offerings of any securities in which shareholders are recognised as having an acquisition right and which are not caught by any of the above events.

#### III. EXCLUSION OF THE PRE-EMPTIVE SUBSCRIPTION RIGHT

In accordance with the directors' report approved under section V below, it is agreed to disapply the pre-emptive subscription right of the Bank's shareholders with respect to the Issuance on the understanding that this is in the Bank's interests, in accordance with the powers specifically conferred by shareholders at the Annual General Meeting held on 28 April 2016, under the terms of Articles 417 and 511 of the LSC.

### IV. CAPITAL INCREASE

Pursuant to the delegation of powers agreed upon at the Annual General Meeting held on 28 April 2016 under item 12 on the agenda, and in accordance with Article 414 of the LSC and as agreed at the Annual General Meeting held on 22 May 2020 under item seven on the agenda, it is agreed to raise the share capital by the maximum amount necessary to cover the eventual conversion of the Preferred Securities to be issued.

Given that the maximum nominal amount of the issuance amounts to SEVEN HUNDRED AND FIFTY MILLION EUROS (€750,000,000), assuming a Minimum Conversion Price of one euro (€1) per share, the maximum number of shares to be issued, if any, would be seven hundred and fifty million (750,000,000) common shares, assuming that no anti-dilution adjustment is made. It is expressly envisaged that the capital increase may be carried out with a higher share premium or for a smaller number of shares and with incomplete subscription also permitted.

This capital increase will be carried out totally or partially by the Board of Directors or by persons expressly authorised for that purpose and under the conditions set out in section VI below, when the capital increase becomes necessary in order to cover the eventual conversion of the Preferred Securities. The capital increase will be effected through the

issuance of new common shares with the same nominal value and the same rights as the common shares that remain outstanding on the date the corresponding resolution to raise capital is adopted. If the Board of Directors, or the persons expressly authorised for that purpose and under the conditions set out in section VI below, executes this resolution, the Board, or the persons concerned, shall redraft the relevant article of the By-laws relating to share capital.

In accordance with Article 304.2 of the Capital Companies Law, the pre-emptive subscription right of shareholders will not apply to capital increases that result from the conversion of the Preferred Securities.

It is agreed to request the admission to trading of the shares issued by CaixaBank to cover the conversion of the Preferred Securities on the Barcelona, Madrid, Bilbao and Valencia Stock Exchanges, as well as on any other markets on which the Bank's shares are admitted to trading. It is expressly stated that if a request is subsequently made to delist the issued securities, the adoption of the corresponding resolution will be subject to the same legal requirements and formalities and, in such case, the interests of any shareholders or holders of Preferred Securities who vote against or do not vote at all on the resolution must be protected by duly observing the requirements set out in the LSC and related legal provisions, all the foregoing in accordance with the regulations of the stock exchanges concerned, Royal Legislative Decree 4/2015 of 23 October, enacting the restated text of the Securities Market Law and all implementing provisions.

# V. APPROVAL OF THE REPORT DRAWN UP BY THE BOARD OF DIRECTORS FOR THE PURPOSES OF ARTICLES 414, 417, 511 AND 286, IN RELATION TO ARTICLE 297.1 B) OF THE LSC

The report drawn up by the Board of Directors for the purposes of Articles 414, 417, 511 and 286 in relation to 297.1 b) of the LSC is hereby approved and attached as Appendix II.

That report, together with the report drawn up by Grant Thornton, S.L.P., as auditor other than CaixaBank's own auditor and duly appointed by the Companies Registry of Valencia for the purposes of Articles 511, 414 and 417 of the LSC, will be made available to CaixaBank shareholders upon publication of the announcement of the next General Shareholders' Meeting of the Bank to be held.

### VI. SUBSTITUTION OF POWERS

In accordance with the delegation of powers conferred by shareholders at the Annual General Meeting held on 28 April 2016 under item 12 on the agenda, and without prejudice to the provisions of the last paragraph of paragraph (d) and the last paragraph of point (f), the broadest powers required by law are hereby also vested in the Chairman, the Deputy Chairman and the Chief Executive Officer of the Bank's Board of Directors so that any of them may, without distinction, interpret, apply, execute and implement this resolution to issue securities, including authority for such persons to rectify and further specify this resolution as and when necessary and likewise to comply with any legal requirements to ensure the effectiveness of the resolution, this to include powers to cure omissions or defects in that resolution, as indicated by any national or foreign authority, public servant or institution, and to adopt any further resolutions and execute any public or private documents as they deem necessary or desirable for the purpose of adjusting the resolution to issue securities and the corresponding capital increase to address any defects or issues raised verbally or in writing by the Companies Registrar or, in general, any other competent national or foreign authority,

public servant or institution In particular, though without limitation, such persons are granted the necessary powers so that any of them may, without distinction:

- (a) decide to proceed with or abandon the Issuance, thus determining, among other matters, the start date of the Book Building Process to be undertaken by the Lead Managers of the Issuance, as well as the period and terms for subscribing and paying up the Preferred Securities and their date of issue;
- (b) determine the Terms and Conditions of the Preferred Securities on all matters not provided for in this resolution, in particular those terms that are expected to be fulfilled as a result of the Book Building Process, with authority to implement, further specify or amend them as provided for above, including the Minimum Conversion Price in accordance with the terms of this resolution:
- (c) declare the Issuance fully or only partially subscribed for, based on the outcome of the Book Building Process, and thus determine the final amount of the Issuance subject to the relevant limits;
- (d) announce the remuneration payable on the Preferred Securities, whether that be partial or full remuneration, pursuant to the terms of this resolution and as determined in accordance with the Terms and Conditions of the Issuance. However, the Board of Directors or the Executive Committee will be solely responsible for announcing that no remuneration will be payable, as determined in the Terms and Conditions of the Issuance;
- (e) apply, where appropriate, the anti-dilution mechanisms, in accordance with the Terms and Conditions:
- (f) if and when the time comes to convert the Preferred Securities into shares of CaixaBank, to set the Conversion Price, to determine the amount of the capital increase and the number of shares of CaixaBank to be issued, declaring, as the case may be, that the increase has been incompletely subscribed, and to act as necessary, including, without limitation, authority to grant any public or private documents that prove necessary to effect the capital increase and to amend the wording of the Bank's By-laws to reflect the new amount of capital, with authority also to appear for these purposes before any public or private body, all the foregoing in accordance with the terms of this resolution. The above notwithstanding, the Board of Directors or the Executive Committee shall be solely responsible for declaring the existence of the Conversion Event, as defined in section II ii) above, prior to any conversion;
- (g) appear before a notary public and execute or sign any public instruments that prove necessary or desirable in order to formalise the above resolutions (particularly, though without limitation, the instrument used to issue the Preferred Securities and, as the case may be, the instrument used to effect the capital increase to cover the eventual conversion), including any further powers deemed appropriate or fitting so as to ensure that those instruments are filed or deposited at the corresponding registries, with partial filing also permitted.

### VII. GRANTING OF POWERS

Notwithstanding the delegation of powers described in the preceding section, Gonzalo Gortázar Rotaeche, Juan Antonio Alcaraz García, Francesc Xavier Coll Escursell, Jorge Mondéjar López, Óscar Calderón de Oya, Óscar Figueres Fortuna, Javier Pano Riera,

Ignacio Redondo Andreu, Sergio Castellá Quintana, Álex Valencia Baeza, Jordi Soy Viñas, Carlos Curiel Cabezudo and María Castro Payo are all granted the fullest powers required by law so that any of them may, acting jointly and severally and indistinctly, act as necessary or as deemed desirable in order to execute the above resolutions, including, without limitation, the following powers:

- (a) carry out any formality, request or appointment that may be required by law in order to complete the Issuance of the Preferred Securities, doing so before the Companies Registry or any other body or entity, whether public or private;
- (b) formalise and/or file prospectuses, offer documents, admission to trading documents or any other similar documents concerning the Issue, as well as any further documents whereby such persons assume responsibility for the content of the foregoing documents, and any other documents required for the issuance, placement and admission to trading of the Preferred Securities as before the Bank of Spain, the European Central Bank, the governing bodies of the securities markets, Sociedad de Bolsas (Spanish stock exchange manager), the Companies Registry, the CNMV, Iberclear, the AIAF fixed income market, or any other bodies or markets;
- (c) request, where appropriate, admission to trading of the Preferred Securities on the AIAF fixed income market and/or on any other national or foreign secondary markets, whether or not official and whether or not organised;
- (d) designate one or more financial institutions to act as Lead Manager(s) of the Issuance. negotiate, sign and execute any contracts and public or private documents as may prove necessary or desirable for the purposes of carrying out the Issuance, under the terms and conditions deemed most appropriate, whether subject to the laws of England, Spain or any other law, including, among other documents, placement and underwriting contracts (in the form of a subscription agreement, purchase agreement or any other), agency agreements (fiscal agency agreements or similar), appointment letters for procedural agents and, as the case may be, representatives of the bond holders (including trustees) and, in general, any documents, instruments, or contracts to ratify, further specify, amend, novate, clarify, modify and/or reword or restate any such documents, including any and all ancillary instruments or documents;
- (e) undertake any action, make any declaration, complete any formality and sign any certificates, instructions, significant event filings, announcements or documents as may prove necessary or desirable in connection with the Issuance of the Preferred Securities, doing so before any body, entity or registry, whether public or private, with authority to determine the specific content and terms of such items;
- (f) request the admission to trading of any new shares issued to cover the eventual conversion of the Preferred Securities in the markets where the shares are listed at the time of issue, and likewise to act as deemed necessary in any jurisdiction in which CaixaBank shares are offered or listed or in which a request for admission to trading has been submitted. Including, without limitation, powers to:
  - (i) draw up such prospectuses, requests, communications or notifications as may be required by applicable legislation in each competent jurisdiction and agree upon any subsequent modifications to those items that they deem appropriate;

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- (ii) act as necessary before any competent authorities in each jurisdiction and approve and formalise such public or private documents as prove necessary or desirable to ensure the absolute effectiveness of any resolution that may be carried to increase capital carried in order to cover the conversion of the Preferred Securities, in relation to any aspect of such actions and documents:
- (g) appear before notary public to sign and execute the instrument to issue the Preferred Securities and, where appropriate, the instrument to increase capital to cover the eventual conversion of those securities, including the signing of public instruments to put on record the corresponding resolutions; and act as necessary to file such instruments at the Companies Registry and any other competent body, with partial filing permitted if appropriate, and with authority also to execute any further or amending instruments that may prove necessary or otherwise desirable;
- (h) In general, act as necessary to ensure the full and effective execution of these resolutions and to complete all supplementary or ancillary business; act as necessary or desirable in order to secure any authorisations or filings that may be required by the Bank of Spain, the European Central Bank, the Spanish Securities Mark et Regulator (CNMV), the Companies Registry, or any other public or private body, including, by way of example only, authority to make statements, publish advertisements, request authorisations, draft and send communications to the supervisory authorities, or request the filing of the resolutions at the pertinent registries.

Appendix I – Terms and Conditions

Appendix II - Directors' Report"

Approved:

Jordi Gual Solé Chairman Óscar Calderón de Oya Secretary

### CONDITIONS OF THE PREFERRED SECURITIES

The following is the text of the Conditions of the Preferred Securities (save for the paragraphs in italics which are for disclosure purposes only).

The Preferred Securities (as defined below) are issued by CaixaBank, S.A. (the "Bank") by virtue of the resolutions passed by (a) the general meeting of shareholders of the Bank, held on 28 April 2016 and (b) the meeting of the Board of Directors (Consejo de Administración) of the Bank, held on 23 September 2020 and in accordance with the First Additional Provision of Law 10/2014, of 26 June, on regulation, supervision and solvency of credit institutions (Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito) ("Law 10/2014") and the CRR (as defined below).

The Preferred Securities will be issued following the registration with the Mercantile Registry of Valencia of a public deed relating to the issuance of the Preferred Securities before the Closing Date (as defined below).

The Preferred Securities do not grant Holders (as defined below) preferential subscription rights in respect of any possible future issues of shares, preferred securities or any other securities to be carried out by the Bank or any of its Subsidiaries (as defined below).

### 1 Definitions

- 1.1 For the purposes of the Preferred Securities, the following expressions shall have the following meanings:
  - "5-year Mid-Swap Rate" means, in relation to a Reset Date and the Reset Period commencing on that Reset Date:
  - (a) the rate for the Reset Date of the annual swap rate for euro swap transactions with a maturity of five years, expressed as a percentage, which appears on the relevant Screen Page under the heading "EURIBOR BASIS EUR" and above the caption "11AM FRANKFURT" as of 11.00 a.m. (CET) on the Reset Determination Date; or
  - (b) if such rate does not appear on the relevant Screen Page at such time on such Reset Determination Date, the Reset Reference Bank Rate for such Reset Period, unless a Benchmark Event has occurred, in which case the 5-year Mid-Swap Rate shall be determined pursuant to Condition 4.9;
  - "5-year Mid-Swap Rate Quotations" means the arithmetic mean of the bid and offered rates for the annual fixed leg (calculated on a 30/360 day count basis) of a fixed-for-floating euro interest rate swap transaction which:
  - (a) has a term of five years commencing on the relevant Reset Date; and
  - (b) is in a Representative Amount,

where the floating leg (calculated on an Actual/360 day count basis) is equivalent to EURIBOR 6-month or, if not available, such other benchmark rate and/or day count fraction as is in customary market usage in the markets for such euro interest rate swap transactions at the relevant time;

- "Accounting Currency" means euro or such other primary currency used in the presentation of the Bank and/or Group's accounts from time to time;
- "Additional Ordinary Shares" has the meaning given in Condition 6.4;
- "Additional Tier 1 Capital" means additional tier 1 capital (capital de nivel 1 adicional) in accordance with Chapter 3 (Additional Tier 1 capital) of Title I (Elements of own funds) of Part Two (Own Funds

and Eligible Liabilities) of the CRR and/or the Applicable Banking Regulations at any time;

"Additional Tier 1 Instrument" means any contractually subordinated obligation of the Bank constituting an additional tier 1 instrument (instrumento de capital de nivel 1 adicional) in accordance with the Applicable Banking Regulations and as referred to under Additional Provision 14.3°(c) of Law 11/2015;

"Adjustment Spread" means either a spread or quantum (which may be positive or negative), or the formula or methodology for calculating a spread, in either case, to be applied to the Successor Rate or the Alternative Rate (as the case may be) and is the spread, quantum, formula or methodology which:

- in the case of a Successor Rate, is formally recommended in relation to the replacement of the 5year Mid-Swap Rate with the Successor Rate by any Relevant Nominating Body; or
- (ii) (if no such recommendation has been made, or in the case of an Alternative Rate) the Bank determines, following consultation with the Independent Financial Advisor and acting in good faith and in a commercially reasonable manner, is customarily applied to the relevant Successor Rate or the Alternative Rate (as the case may be) in international debt capital market transactions to produce an industry-accepted replacement rate for the 5-year Mid-Swap Rate; or
- (iii) (if the Bank determines that no such spread is customarily applied) the Bank determines, following consultation with the Independent Financial Adviser and acting in good faith and in a commercially reasonable manner, is recognised or acknowledged as being the industry standard for over-the counter derivative transactions which reference the 5-year Mid-Swap Rate, where such rate has been replaced by the Successor Rate or the Alternative Rate (as the case may be); or
- (iv) (if the Bank determines that no such industry standard is recognised or acknowledged) if no such spread, quantum, formula or methodology can be determined in accordance with (i) to (iii) above, the Bank determines, in its discretion and following consultation with the Independent Financial Adviser and acting in good faith and in a commercially reasonable manner, is appropriate, to reduce or eliminate to the extent reasonably practicable in the circumstances, any economic prejudice or benefit (as the case may be) to the Holders as a result of the replacement of the 5-year Mid-Swap Rate Rate with the Successor Rate or the Alternative Rate (as the case may be).

"AIAF" means the Spanish AIAF Fixed Income Securities Market (AIAF Mercado de Renta Fija S.A.);

"Alternative Rate" means an alternative benchmark or screen rate which the Bank determines, following consultation with the Independent Financial Adviser and acting in good faith and in a commercially reasonable manner, is customary in market usage in the international debt capital markets for the purposes of determining floating rates of interest (or the relevant component part thereof) in euro;

"Applicable Banking Regulations" means at any time the laws, regulations, requirements, guidelines and policies relating to capital adequacy, resolution and/or solvency then applicable to the Bank and/or the Group including, without limitation to the generality of the foregoing, CRD IV, the BRRD, the SRM Regulation and those regulations, requirements, guidelines and policies of the Competent Authority relating to capital adequacy, resolution and/or solvency then in effect (whether or not such requirements, guidelines or policies have the force of law and whether or not they are applied generally or specifically to the Bank and/or the Group);

"Bank" has the meaning given to such term in the introductory paragraph;

"Benchmark Amendments" has the meaning given to such term in Condition 4.9.(c);

### "Benchmark Event" means:

- the 5-year Mid-Swap Rate ceasing to be published for a period of at least 5 Business Days or ceasing to exist; or
- (ii) a public statement by the administrator of the 5-year Mid-Swap Rate that it has ceased or will cease publishing the 5-year Mid-Swap Rate permanently or indefinitely or that it will cease to do so by a specified future date (the "Specified Future Date") (in circumstances where no successor administrator has been appointed that will continue publication of the 5-year Mid-Swap Rate); or
- (iii) a public statement by the supervisor of the administrator of the 5-year Mid-Swap Rate that the 5-year Mid-Swap Rate has been or will, by a Specified Future Date, be permanently or indefinitely discontinued; or
- (iv) a public statement by the supervisor of the administrator of the 5-year Mid-Swap Rate that the 5-year Mid-Swap Rate will, by a Specified Future Date, be prohibited from being used or that its use will be subject to restrictions or adverse consequences; or
- (v) a public statement by the supervisor of the administrator of the 5-year Mid-Swap Rate that, in the view of such supervisor, the 5-year Mid-Swap Rate is no longer representative of an underlying market; or
- (vi) it has or will become unlawful for the Bank or any other party to calculate any payments due to be made to any Holder using the 5-year Mid-Swap Rate (including, without limitation, under the Benchmarks Regulation (EU) 2016/1011, if applicable).

Notwithstanding the sub-paragraphs above, where the relevant Benchmark Event is a public statement within sub-paragraphs (ii), (iii) or (iv) above and the Specified Future Date in the public statement is more than six months after the date of that public statement, the Benchmark Event shall not be deemed occur until the date falling six months prior to such Specified Future Date.

"BRRD" means Directive 2014/59/EU, of 15 May, establishing the framework for the recovery and resolution of credit institutions and investment firms, as amended or replaced from time to time including by BRRD II, as implemented into Spanish law by Law 11/2015 and Royal Decree 1012/2015, as amended or replaced from time to time and including any other relevant implementing regulatory provisions;

"BRRD II" means Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC;

"Business Day" means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Barcelona, Madrid and London;

"Capital Event" means, at any time on or after the Closing Date, a change (or any pending change which the Competent Authority considers sufficiently certain) in the regulatory classification of the Preferred Securities that results (or would be likely to result) in:

- (a) the exclusion of any of the outstanding aggregate Liquidation Preference of the Preferred Securities from the Bank's or the Group's Additional Tier 1 Capital; or
- (b) the reclassification of any of the outstanding aggregate Liquidation Preference of the Preferred Securities as a lower quality form of own funds of the Bank or the Group in accordance with the

Applicable Banking Regulations;

"Certificate" has the meaning given to such term in Condition 2.3;

"Cash Dividend" means any Dividend which is (a) to be paid or made in cash (in whatever currency), other than any such Dividend falling within paragraph (b) of the definition of "Spin-Off", or (b) to be treated as a Cash Dividend pursuant to paragraph (a) of the definition of "Dividend", and for the avoidance of doubt, a Dividend falling within paragraph (c) or (d) of the definition of "Dividend" shall be treated as being a Non-Cash Dividend;

"CET" means Central European Time;

"CET1 Capital" means common equity tier 1 capital (capital de nivel 1 ordinario) in accordance with Chapter 2 (Common Equity Tier 1 capital) of Title I (Elements of own funds) of Part Two (Own Funds and Eligible Liabilities) of the CRR and/or Applicable Banking Regulations at any time, including any applicable transitional, phasing-in or similar provisions;

"CET1 ratio" means with respect to the Bank or the Group, as the case may be, the ratio (expressed as a percentage) of the aggregate amount (in the Accounting Currency) of the CET1 Capital of the Bank or the Group, respectively, divided by the Risk-Weighted Assets Amount of the Bank or the Group, respectively, all as calculated by the Bank at any time in accordance with Applicable Banking Regulations and reported to the Competent Authority if and as applicable;

"Chairman" has the meaning given to such term in Condition 12.3;

"Clearstream Luxembourg" has the meaning given to such term in Condition 2.2;

"Closing Date" means [ ] 2020;

"Closing Price" means, in respect of an Ordinary Share, Security or, as the case may be, a Spin-Off Security, warrant or other right or asset, on any dealing day, the closing price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security, warrant or other right or asset on the Relevant Stock Exchange on such dealing day published by or derived from Bloomberg page HP (using the setting labelled "Last Price", or any successor thereto) for such Ordinary Share, Security or, as the case may be, Spin-Off Security, warrant or other right or asset in respect of the Relevant Stock Exchange and such dealing day (and for the avoidance of doubt, such Bloomberg page for the Ordinary Shares as at the Closing Date is CABK SM Equity IIP), or, if the Closing Price cannot be determined as aforesaid, such other source (if any) as shall be determined in good faith to be appropriate by an Independent Financial Adviser on such dealing day, provided that if on any such dealing day such price is not available or cannot otherwise be determined as provided above, the Closing Price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security, warrant or other right or asset, in respect of such dealing day shall be the Closing Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined or as an Independent Financial Adviser might otherwise determine in good faith to be appropriate;

"CNMV" means the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores);

"Competent Authority" means the Buropean Central Bank or the Bank of Spain, as applicable, the Relevant Resolution Authority, or such other successor authority having primary bank supervisory authority with respect to prudential oversight and supervision in relation to the Bank and/or the Group;

"Conversion Calculation Agent" has the meaning given in Condition 6.14.

"Conversion Price" means, in respect of the Trigger Event Notice Date, if the Ordinary Shares are:

- (a) then admitted to trading on a Relevant Stock Exchange, the higher of:
  - (i) the Current Market Price of an Ordinary Share;
  - (ii) the Floor Price; and
  - (iii) the nominal value of an Ordinary Share (being €1.00 on the Closing Date),

in each case on the Trigger Event Notice Date; or

(b) not then admitted to trading on a Relevant Stock Exchange, the higher of subparagraph (ii) or
 (iii) of paragraph (a) above;

"Conversion Settlement Date" means the date on which the relevant Ordinary Shares are to be delivered on Trigger Conversion, which shall be as soon as practicable and in any event not later than one month following (or such other period as Applicable Banking Regulations or the Competent Authority may require) the Trigger Event Notice Date;

"Conversion Shares" has the meaning given in Condition 6.2;

"CRD IV" means any or any combination of the CRD IV Directive, the CRR and any CRD IV Implementing Measures;

"CRD IV Directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as amended or replaced from time to time including by the CRD V Directive;

"CRD IV Implementing Measures" means any regulatory capital rules implementing the CRD IV Directive or the CRR which may from time to time be introduced, including, but not limited to, delegated or implementing acts (regulatory technical standards) adopted by the European Commission, national laws and regulations, and regulations and guidelines issued by the Competent Authority, the European Banking Authority or any other relevant authority, which are applicable to the Bank (on a stand-alone basis) or the Group (on a consolidated basis), including, without limitation, Law 10/2014, as amended or replaced from time to time, Royal Decree 84/2015, as amended or replaced from time to time, and any other regulation, circular or guidelines implementing CRD IV;

"CRD V Directive" means Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;

"CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms, as amended or replaced from time to time including by CRR II;

"CRR II" means Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012;

"Current Market Price" means, in respect of an Ordinary Share at a particular date, the average of the daily Volume Weighted Average Price of an Ordinary Share on each of the five consecutive dealing days ending on the dealing day immediately preceding such date (the "Relevant Period") provided that for the purposes of determining the Current Market Price pursuant to Condition 6.3(d) or (f) in circumstances where the relevant event relates to an issue of Ordinary Shares if at any time during the Relevant Period the Volume Weighted Average Price shall have been based on a price ex Dividend (or ex-any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum-any other entitlement), then:

- (a) if the Ordinary Shares to be issued and delivered do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price cum- such Dividend (or cum- such 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 of any such Dividend (or other entitlement) per Ordinary Share as at the Ex Date of such Dividend or entitlement; or
- (b) if the Ordinary Shares to be issued and delivered do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Ordinary Shares shall have been based on a price ex- such Dividend (or ex- such 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 of any such Dividend (or entitlement) per Ordinary Share as at the Ex Date of such Dividend (or entitlement),

## provided further that:

- (i) for the purposes of determining the Current Market Price pursuant to Condition 6.3(d) or (f) in circumstances where the relevant event relates to an issue of Ordinary Shares if on each of the dealing days in the Relevant Period the Volume Weighted Average Price 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 Ordinary Shares to be issued and delivered do not rank for that Dividend (or other entitlement) the Volume Weighted Average Price 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 of any such Dividend or entitlement per Ordinary Share as at the date of first public announcement relating to such Dividend or entitlement;
- (ii) if the Volume Weighted Average Price of an Ordinary Share is not available on one or more of the dealing days in the Relevant Period (disregarding for this purpose the proviso to the definition of Volume Weighted Average Price), then the average of such Volume Weighted Average Prices which are available in the Relevant Period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the Relevant Period, or if the Ordinary Shares are not admitted to trading on a Relevant Stock Exchange at any relevant time for these purposes, the Current Market Price shall be determined in good faith by an Independent Financial Adviser; and
- (iii) for the purposes of any calculation or determination required to be made pursuant to paragraphs (a)(i) or (a)(ii) of the definition of "Dividend", if on each of the said five consecutive dealing days the Volume Weighted Average Price shall have been based on a price cum the relevant Dividend or capitalisation giving rise to the requirement to make such calculation or determination, the Volume Weighted Average Price 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 of the relevant Dividend or capitalisation.

"dealing day" means, in relation to Ordinary Shares, Securities, Spin-Off Securities, options, warrants or other rights or assets, as the context may require, a day on which the Relevant Stock Exchange in respect thereof is open for business and on such Ordinary Shares, Securities, Spin-Off Securities, options, warrants or other rights or assets (as the case may be) may be dealt in (other than a day on which such Relevant Stock Exchange is scheduled to or does close prior to its regular weekday closing time);

"Delivery Notice" means a notice to be provided by the relevant Holder in accordance with Condition 6.10 which contains the relevant account and related details for the delivery of any Ordinary Shares in connection with a conversion of the Preferred Securities;

According to the Iberclear procedures applicable as of the Closing Date, Delivery Notices will take the form of a Swift MT565 communication.

"Distributable Items" means, in respect of the payment of a Distribution at any time, those profits and reserves (if any) of the Bank that are available in accordance with Applicable Banking Regulations for the payment of that Distribution at such time.

As of the Closing Date, CRR defines "distributable items" as the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose, before distributions to holders of own funds instruments (excluding for avoidance of doubt any Tier 2 instruments), less any losses brought forward, any profits which are non-distributable pursuant to European Union or national law or the institution's bylaws and any sums placed in non-distributable reserves in accordance with applicable national law or the statutes of the institution, in each case with respect to the specific category of own funds instruments to which European or national law, institution's bylaws or statute relates; such profits, losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts.

"Distribution" means the non-cumulative cash distribution in respect of the Preferred Securities and a Distribution Period determined in accordance with Condition 4;

"Distribution Payment Date" means each of [•], [•], [•] and [•], in each year, with the first Distribution Payment Date falling on [•] 2020;

"Distribution Period" means the period from and including one Distribution Payment Date (or, in the case of the first Distribution Period, the Closing Date) to but excluding the next (or first) Distribution Payment Date;

"Distribution Rate" means the rate at which the Preferred Securities accrue Distributions in accordance with Condition 4;

"Dividend" means any dividend or distribution to Shareholders in respect of the Ordinary Shares (including a Spin-Off) whether of cash, assets or other property (and for these purposes a distribution of assets includes without limitation an issue of Ordinary Shares or other Securities credited as fully or partly paid up by way of capitalisation of profits or reserves), and however described and whether payable out of a share premium account, profits, retained earnings or any other capital or revenue reserve or account, and including a distribution or payment to Shareholders upon or in connection with a reduction of capital, provided that:

(a) where:

- (i) (x) a Dividend in cash is announced which may (at the election of a Shareholder or Shareholders) be satisfied by the issue or delivery of Ordinary Shares or other property or assets, or (y) an issue of Ordinary Shares or other property or assets by way of 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 (including without limitation where Shareholders have the option to transfer, sell or renounce all or a portion of their entitlement to receive Ordinary Shares to the Bank for a payment of cash by the Bank pursuant to a purchase commitment assumed by the Bank), then the Dividend in question shall be treated as a Cash Dividend of an amount equal to the greater of:
  - (A) the Fair Market Value of such cash amount as at the Ex Date of such Dividend or capitalisation; and
  - (B) the Current Market Price of such Ordinary Shares or, as the case may be, the Fair Market Value of such other property or assets, in each case as at the Ex Date of such Dividend or capitalisation or, in any such case, if later, the date on which the number of Ordinary Shares (or amount of such other property or assets, as the case may be) which may be issued and delivered is determined; or
- (ii) (x) there shall be any issue of Ordinary Shares or other property or assets by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) where such issue is or is expressed to be in lieu of a Dividend (whether or not a Cash Dividend equivalent or amount is announced) or (y) a Dividend is announced that is to be satisfied by the issue or delivery of Ordinary Shares or other property or assets or (z) any issue of Ordinary Shares or other property or assets by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) that is to be satisfied by the payment of cash, in each case other than in the circumstances the subject of sub-paragraph (i) above), the Dividend or capitalisation in question shall be treated as a Cash Dividend of an amount equal to the Current Market Price of such Ordinary Shares or, as the case may be, the Fair Market Value of such other property or assets, in each case as at the Ex Date of such Dividend or capitalisation or, in any such case, if later, the date on which the number of Ordinary Shares (or amount of other property or assets) to be issued and delivered is determined;
- (b) any issue of Ordinary Shares falling within Condition 6.3(a) or 6.3(b) shall be disregarded;
- (c) a purchase or redemption or buy-back of share capital of the Bank by or on behalf of the Bank in accordance with any general authority for such purchases or buy-backs approved by a general meeting of Shareholders and otherwise in accordance with the limitations prescribed under the Spanish Companies Law for dealings generally by a company in its own shares shall not constitute a Dividend and any other purchase or redemption or buy-back of share capital of the Bank by or on behalf of the Bank or any member of the Group shall not constitute a Dividend unless, in the case of a purchase or redemption or buy-back of Ordinary Shares by or on behalf of the Bank or any member of the Group, the weighted average price per Ordinary Share (before expenses) on any one day (a "Specified Share Day") in respect of such purchases or redemptions or buy-backs (translated, if not in the Share Currency, into the Share Currency at the Prevailing Rate on such day) exceeds by more than 5 per cent, of the Current Market Price of an Ordinary Share on the Specified Share Day or, where an announcement (excluding, for the avoidance of doubt for these purposes, 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 Ordinary Shares

at some future date at a specified price or where a tender offer is made, on the date of such announcement or the date of first public announcement of such tender offer (and regardless of whether or not a price per Ordinary Share, a minimum price per Ordinary Share or a price range or a formula for the determination thereof is or is not announced at such time), as the case may be, in which case such purchase, redemption or buy-back shall be deemed to constitute a Dividend in the Share Currency in an amount equal to the amount by which the aggregate price paid (before expenses) in respect of such Ordinary Shares purchased, redeemed or bought back by or on behalf of the Bank or, as the case may be, any member of the Group (translated where appropriate into the Share Currency as provided above) exceeds the product of:

- 105 per cent, of the Current Market Price of an Ordinary Share determined as aforesaid;
   and
- (ii) the number of Ordinary Shares so purchased, redeemed or bought back;
- (d) if the Bank or any member of the Group shall purchase, redeem or buy-back any depositary or other receipts or certificates representing Ordinary Shares, the provisions of paragraph (c) above shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by an Independent Financial Adviser; and
- (e) where a dividend or distribution is paid or made to Shareholders pursuant to any plan implemented by the Bank for the purpose of enabling Shareholders to elect, or which may require Shareholders, to receive dividends or distributions in respect of the Ordinary Shares held by them from a person other than (or in addition to) the Bank, such dividend or distribution shall for the purposes of these Conditions be treated as a dividend or distribution made or paid to Shareholders by the Bank, and the foregoing provisions of this definition, and the provisions of these Conditions, including references to the Bank paying or making a dividend, shall be construed accordingly;

"Eligible Persons" means those Holders or persons (being duly appointed proxies or representatives of such Holders) that are entitled to attend and vote at a meeting of the Holders, for the purposes of which no person shall be entitled to vote at any such meeting in respect of Preferred Securities held by or for the benefit, or on behalf, of the Bank or any of its Subsidiaries;

"Equity Share Capital" means, in relation to any entity, its issued share capital excluding any part of that capital which, in respect of dividends and capital, does not carry any right to participate beyond a specific amount in a distribution;

"EUR", "E" and "curo" means the 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 or replaced from time to time;

### "EURIBOR 6-month" means:

- (a) the rate for deposits in curo for a six-month period which appears on the relevant Screen Page as of 11,00 a.m. (CET) on the Reset Determination Date for the relevant Reset Date; or
- (b) if such rate does not appear on the relevant Screen Page at such time on such Reset Determination Date, the arithmetic mean of the rates at which deposits in euros are offered by four major banks in the Eurozone interbank market, as selected by the Bank, at such time on such Reset Determination Date to prime banks in the Eurozone interbank market for a six-month period commencing on such Reset Date in a Representative Amount, with the Bank to request the principal Eurozone office of each such major bank to provide a quotation of its rate;

"Euroclear" has the meaning given to such term in Condition 2.2;

"Existing Shareholders" has the meaning given in the definition of "Newco Scheme";

"Extraordinary Resolution" has the meaning given to such term in Condition 12;

"Ex Date" means, in relation to any Dividend, capitalisation or other entitlement, unless otherwise defined herein, the first dealing day on which the Ordinary Shares are traded ex- the relevant Dividend, capitalisation or other entitlement on the Relevant Stock Exchange;

"Fair Market Value" means, with respect to any property on any date:

- (a) in the case of a Cash Dividend, the amount of such Cash Dividend;
- (b) in the case of any other cash amount, the amount of such cash;
- (c) in the case of Securities or Spin-Off Securities, options, warrants or other rights or assets that are publicly traded on a Relevant Stock Exchange of adequate liquidity (as determined by the Conversion Calculation Agent in good faith);
  - in the case of Securities or Spin-Off Securities (in each case to the extent constituting equity share capital), the average of the daily Volume Weighted Average Prices of such Securities or Spin-Off Securities; and
  - (ii) in the case of Securities or Spin-Off Securities (in each case other than to the extent constituting equity share capital), options, warrants or other rights or assets, the arithmetic mean of the daily Closing Prices of such Securities, Spin-Off Securities, options, warrants or other rights or assets,

in the case of both (i) and (ii) above during the period of five consecutive dealing days on the Relevant Stock Exchange commencing on such date (or, if later, the first such dealing day such Securities, Spin-Off Securities, options, warrants or other rights or assets are publicly traded on the Relevant Stock Exchange) or such shorter period as such Securities, Spin-Off Securities, options, warrants or other rights or assets are publicly traded on the Relevant Stock Exchange; and

(d) in the case of Securities, Spin-Off Securities, options, warrants or other rights or assets that are not publicly traded on a Relevant Stock Exchange of adequate liquidity (as aforesaid), the fair market value of such Securities, Spin-Off Securities, options, warrants or other rights or assets as shall be determined by an Independent Financial Adviser in good faith, on the basis of a commonly accepted market valuation method and taking into account such factors as it considers appropriate, including the market price per Ordinary Share, the dividend yield of an Ordinary 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.

Such amounts shall, in the case of (a) above, be translated into the Share Currency (if such Cash Dividend is declared or paid or payable in a currency other than the Share Currency) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the Cash Dividend in the Share Currency; and in any other case, shall be translated into the Share Currency (if expressed in a currency other than the Share Currency) at the Prevailing Rate on that date. In addition, in the case of (a) and (b) above, the Fair Market Value shall be determined on a gross basis and disregarding any withholding or deduction required to be made for or on account of tax, and disregarding any associated tax credit;

"First Reset Date" means on [o]1

"Floor Price" means €[•] per Ordinary Share, subject to adjustment in accordance with Condition 6.3;

"Further Preferred Securities" means any substantively similar instrument ranking by law or by its terms, to the extent permitted by law, *pari passu* with the Preferred Securities that is contingently convertible into Ordinary Shares other than at the option of the holders thereof;

"Group" means the Bank together with its consolidated Subsidiaries;

"Holders" means the holders of the Preferred Securities in the terms provided in Condition 2.3;

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

"Iberclear Members" means the respective participating entities (entidades participantes) in Iberclear;

"Independent Financial Adviser" means an independent financial firm or financial adviser with appropriate expertise or financial institution of international repute, which may include without limitation the Conversion Calculation Agent, appointed by the Bank at its own expense;

"Initial Margin" means [ • ] per cent. per annum;

"Insolvency Law" means Royal Legislative Decree 1/2020, of 5 May, approving the consolidated text of the Insolvency Law (Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal), as amended or replaced from time to time;

"Law 10/2014" has the meaning given to such term in the introductory paragraph of the Conditions;

"Law 11/2015" means Law 11/2015, of 18 Junc, on the recovery and resolution of credit institutions and investment firms (Ley 11/2015 de 18 de junio de recuperación y resolución de entidades de crédito y empresas de servicios de inversión), as amended or replaced from time to time;

"Liquidation Distribution" means the Liquidation Preference per Preferred Security plus, if applicable, where not cancelled pursuant to, or otherwise subject to the limitations on payment set out in Condition 4, an amount equal to accrued and unpaid Distributions for the then current Distribution Period to (but excluding) the date of payment of the Liquidation Distribution;

"Liquidation Preference" means €200,000 per Preferred Security;

"Maximum Distributable Amount" means, at any time, the lower of any maximum distributable amount relating to the Bank or the Group required to be calculated, if applicable, at such time in accordance with (a) Article 48 of Law 10/2014 and any provision developing such Article, and any other provision of Spanish law transposing or implementing Article 141 of the CRD IV Directive and/or (b) Applicable Banking Regulations;

"Newco Scheme" means a scheme of arrangement or an analogous proceeding ("Scheme of Arrangement") which effects the interposition of a limited liability company ("Newco") between the Shareholders of the Bank immediately prior to the Scheme of Arrangement (the "Existing Shareholders") and the Bank, provided that:

 only ordinary shares of Newco or depositary or other receipts or certificates representing ordinary shares of Newco are issued to Existing Shareholders;

NTD: The date falling at least 5 years and 6 months after the Closing Date.

- (b) immediately after completion of the Scheme of Arrangement, the only shareholders of Newco or, as the case may be, the only holders of depositary or other receipts or certificates representing ordinary shares of Newco are Existing Shareholders, and the Voting Rights in respect of Newco are held by Existing Shareholders in the same proportion as their respective holdings of such Voting Rights immediately prior to the Scheme of Arrangement;
- immediately after completion of the Scheme of Arrangement, Newco is (or one or more whollyowned Subsidiaries of Newco are) the only ordinary shareholder (or shareholders) of the Bank;
- (d) all Subsidiaries of the Bank immediately prior to the Scheme of Arrangement (other than Newco, if Newco is then a Subsidiary) are Subsidiaries of the Bank (or of Newco) immediately after completion of the Scheme of Arrangement; and
- (e) immediately after completion of the Scheme of Arrangement, the Bank (or Newco) holds, directly or indirectly, the same percentage of the ordinary share capital and equity share capital of those Subsidiaries as was held by the Bank immediately prior to the Scheme of Arrangement;

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

"Ordinary Shares" means ordinary shares in the capital of the Bank, each of which confers on the holder one vote at general meetings of Shareholders of the Bank and is credited as fully paid up;

"outstanding" means, in relation to the Preferred Securities, all the Preferred Securities issued other than those Preferred Securities:

- (a) that have been redeemed pursuant to Condition 7 or otherwise pursuant to the Conditions;
- (b) that have been or are in the process of being converted into Ordinary Shares following a Trigger Event under Condition 6;
- (c) that have been purchased and cancelled under Condition 9; and
- (d) that have become void under Condition 15,

provided that for each of the following purposes, namely:

- (a) the right to attend and vote at any meeting of Holders; and
- (b) the determination of how many and which Preferred Securities are for the time being outstanding for the purposes of Condition 12,

those Preferred Securities (if any) which are for the time being held by or for the benefit of the Bank or any of its Subsidiaries shall (unless and until ceasing to be so held) be deemed not to remain outstanding.

"Preferred Securities" means the  $\mathcal{E}[\bullet]$  Perpetual Non-Cumulative Contingent Convertible Additional Tier 1 Preferred Securities issued by the Bank on the Closing Date;

"Prevailing Rate" means, in respect of any currencies on any day, the mid-spot rate of exchange between the relevant currencies prevailing as at 12 noon (CET) on that date as appearing on or derived from the Reference Page or, if such a rate cannot be determined at such time, the mid-spot rate prevailing as at 12 noon (CET) 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 mid-spot rate of exchange determined in such other manner as an Independent Financial Adviser in good faith shall prescribe;

"Proceedings" has the meaning given to such term in Condition 16;

"Qualifying Preferred Securities" means preferred securities issued directly or indirectly by the Bank where such securities:

- (a) have terms not otherwise materially less favourable to the Holders than the terms of the Preferred Securities with any differences between their terms and conditions and these Conditions being those strictly necessary to (in the case of a Capital Event) comply with the requirements of the Competent Authority in relation to Additional Tier 1 Capital in accordance with the Applicable Banking Regulations and/or (in the case of a Tax Event) cure the relevant Tax Event (provided that the Bank shall have delivered a certificate signed by two authorised signatories of the Bank to that effect to the Holders in accordance with Condition 14 not less than five Business Days prior to (x) in the case of a substitution of the Preferred Securities, the issue date of the relevant securities or (y) in the case of a variation of the Preferred Securities, the date such variation becomes effective); and
- subject to (a) above, shall (i) carry the same (or higher) Distribution Rates and the same (b) Distribution Payment Dates as those from time to time applying to the Preferred Securities; (ii) have the same currency, denomination and aggregate outstanding Liquidation Preference as the Preferred Securities prior to the relevant substitution or variation; (iii) have the same redemption rights as the Preferred Securities, provided that (if and only to the extent required in order for the Preferred Securities to qualify, or to continue to qualify, as Additional Tier 1 Capital of either the Bank and/or the Group pursuant to the Applicable Banking Regulations) the optional redemption rights provided in Condition 7.2.1 may be disapplied; (iv) preserve any existing rights under the Preferred Securities to any accrued Distribution which has not been paid in respect of the period from (and including) the Distribution Payment Date immediately preceding the date of substitution or variation; (v) subject as set out in the proviso below, have at least the same ranking as the Preferred Securities as set out in Condition 3; (vi) be assigned (or maintain) at least the same credit ratings as were assigned to the Preferred Securities immediately prior to such variation or substitution; (vii) not, immediately following such substitution or variation, be subject to a Capital Event and/or Tax Event; (viii) be listed and admitted to trading on AIAF or any other Recognised Stock Exchange as selected by the Bank, if the Preferred Securities were listed and admitted to trading immediately prior to such variation or substitution; and (ix) comply with the then current requirements of the Applicable Banking Regulations in relation to Additional Tier 1 Capital,

provided that any variation in the ranking of the Preferred Securities as set out in Condition 3 resulting from any such substitution or variation shall be deemed not to be materially less favourable to the interests of the Holders where the ranking of such Preferred Securities following such substitution or variation is at least the same ranking as is applicable to the Preferred Securities under Condition 3 on the issue date of the Preferred Securities;

"Recognised Stock Exchange" means a regulated, regularly operating, recognised stock exchange or securities market in an OECD member state;

"Redemption Price" means, per Preferred Security, the Liquidation Distribution upon the date fixed for redemption of the Preferred Securities;

"Reference Banks" means five leading swap dealers in the Eurozone interbank market as selected by the Bank;

"Reference Date" means, in relation to a Retroactive Adjustment, the date as of which the relevant Retroactive Adjustment takes effect or, in any such case, if that is not a dealing day, the next following dealing day;

"Reference Page" means Bloomberg page BFIX, or if such page is not available, the relevant page (as determined in good faith by an Independent Financial Adviser) on Reuters or such other information service provider that displays the relevant information;

"Relevant Nominating Body" means, in respect of a benchmark or a screen rate (as applicable):

- (a) the central bank for the currency to which the benchmark or screen rate (as applicable) relates, or any central bank or other supervisory authority which is responsible for supervising the administrator of the benchmark or screen rate (as applicable); or
- (b) any working group or committee sponsored by, chaired or co-chaired by or constituted at the request of (a) the central bank for the currency to which the benchmark or screen rate (as applicable) relates, (b) any central bank or other supervisory authority which is responsible for supervising the administrator of the benchmark or screen rate (as applicable), (c) a group of the aforementioned central banks or other supervisory authorities or (d) the Financial Stability Board or any part thereof;

"Relevant Resolution Authority" means the Fund for Orderly Bank Restructuring (Fondo de Restructuración Ordenada Bancaria), the Single Resolution Board, the Bank of Spain, the CNMV or any other entity with the authority to exercise any of the resolutions tools and powers contained in Law 11/2015 from time to time that performs the role of primary bank resolution authority";

"Relevant Stock Exchange" means (i) in the case of Ordinary Shares, the Spanish Stock Exchanges or if at the relevant time the Ordinary Shares are not at that time listed and admitted to trading on any of the Spanish Stock Exchanges, the principal stock exchange or securities market on which the Ordinary Shares are then listed, admitted to trading or quoted or accepted for dealing and (ii) in the case of Securities (other than Ordinary Shares), Spin-Off Securities, options, warrants or other rights or assets, the principal stock exchange or securities market on which such Securities, Spin-Off Securities, options, warrants or other rights or assets are then listed, admitted to trading or quoted or accepted for dealing;

"Representative Amount" means an amount that is representative for a single transaction in the relevant market at the relevant time with an acknowledged dealer of good credit in the swap market;

"Reset Date" means the First Reset Date and every fifth anniversary thereof,

"Reset Determination Date" means, in relation to each Reset Date, the second TARGET Business Day immediately preceding such Reset Date;

"Reset Period" means the period from (and including) a Reset Date to (but excluding) the next succeeding Reset Date;

"Reset Reference Bank Rate" means, in relation to a Reset Date and the Reset Period commencing on that Reset Date, the percentage determined on the basis of the 5-year Mid-Swap Rate Quotations provided by the Reference Banks at approximately 11.00 a.m. (CET) on the Reset Determination Date for such Reset Date. The Bank will request the principal offices of each of the Reference Banks to provide a quotation of its rate. If three or more quotations are provided, the Reset Reference Bank Rate for such Reset Period will be the percentage reflecting the arithmetic mean of the quotations, eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest). If only two quotations are provided, it will be the arithmetic mean of the quotations provided. If only one quotation is provided, it will be the quotation provided. If no quotations are provided, the Reset Reference Bank Rate for the Reset Period will be:

(a) in the case of each Reset Period other than the Reset Period commencing on the First Reset Date, the 5-year Mid-Swap Rate in respect of the immediately preceding Reset Period; or (b) in the case of the Reset Period commencing on the First Reset Date, [●] per cent. per annum;

"Retroactive Adjustment" has the meaning given in Condition 6.4;

"Risk-Weighted Assets Amount" means at any time, with respect to the Bank or the Group, as the case may be, the aggregate amount (in the Accounting Currency) of the risk-weighted assets of the Bank or the Group, respectively, calculated in accordance with CRR and/or Applicable Banking Regulations at such time;

"Royal Decree 84/2015" means Royal Decree 84/2015, of 13 February, implementing Law 10/2014 (Real Decreto 84/2015, de 13 de febrero, por el que se desarolla la Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito), as amended or replaced from time to time;

"Royal Decree 1012/2015" means Royal Decree 1012/2015, of 6 November, developing Law 11/2015 (Real Decreto 1012/2015, de 6 de noviembre, por el que se desarrolla la Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión, y por el que se modifica el Real Decreto 2606/1996, de 20 de diciembre, sobre fondos de garantía de depósitos de entidades de crédito) as amended or replaced from time to time;

"Scheme of Arrangement" has the meaning given in the definition of "Newco Scheme";

"Screen Page" means the display page on the relevant Reuters information service designated as:

- (a) in the case of the 5-year Mid-Swap Rate, the "ICESWAP2" page; or
- (b) in the case of EURIBOR 6-month, the "EURIBOR01" page, or in each case such other page as may replace that page on that information service, or on such other equivalent information service as may be nominated by the person providing or sponsoring such information, for the purpose of displaying equivalent or comparable rates to the 5-year Mid-Swap Rate or EURIBOR 6-month, as applicable;

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

"Settlement Shares Depository" means any reputable independent financial institution, trust company or similar entity to be appointed by the Bank, on or prior to any date when a function ascribed to the Settlement Shares Depository in these Conditions is required to be performed, to perform such functions and who will hold Ordinary Shares in Iberclear or any Iberclear Members in a designated custody account for the benefit of the Holders and otherwise on terms consistent with these Conditions;

"Share Currency" means euro or such other currency in which the Ordinary Shares are quoted or dealt in on the Relevant Stock Exchange at the relevant time or for the purposes of the relevant calculation or determination;

"Shareholders" means the holders of Ordinary Shares;

"Spanish Companies Law" means the Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Spanish Companies Law (*Ley de Sociedades de Capital*) as amended or replaced from time to time;

"Spanish Stock Exchanges" means the Madrid, Barcelona, Bilbao and Valencia stock exchanges and the Automated Quotation System – Continuous Market (Sistema de Interconexión Bursátil– Mercado Continuo (SIB)) (AQS);

"Specified Date" has the meanings given in Conditions 6.3(d), 6.3(f), 6.3(g) and 6.3(h), as applicable;

# "Spin-Off" means:

- (a) a distribution of Spin-Off Securities by the Bank to the Shareholders as a class; or
- (b) any issue, transfer or delivery of any property or assets (including cash or shares or other securities of or in or issued or allotted by any entity) by any entity (other than the Bank) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders as a class (but excluding the issue and allotment of ordinary shares (or depositary or other receipts or certificates representing such ordinary shares) by Newco to Existing Shareholders as a class), pursuant in each case to any arrangements with the Bank or any member of the Group;

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

"SRM Regulation" means Regulation (EU) No 806/2014 of the European Parliament and the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of the Single Resolution Mechanism and the Single Resolution Fund and amending Regulation (EU) No 1093/2010, as amended or replaced from time to time, including by the SRM Regulation II;

"SRM Regulation II" means Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms;

"SSM Regulation" means Council Regulation (EU) No. 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, as amended or replaced from time to time;

"Subsidiary" means any entity over which the Bank has, directly or indirectly, control in accordance with Article 42 of the Spanish Commercial Code (Código de Comercio) and Applicable Banking Regulations;

"Successor Rate" means a successor to or replacement of the 5-year Mid-Swap Rate which is formally recommended by any Relevant Nominating Body;

"TARGET Business Day" means any day on which the Trans-European Automated Real Time Gross Settlement Transfer (TARGET 2) system is open;

"Tax Event" means, at any time on or after the Closing Date, a change in, or amendment to, the laws or regulations of the Kingdom of Spain, or any change in the application of such laws or regulations that results in:

- (a) the Bank not being entitled to claim a deduction in computing taxation liabilities in Spain in respect of any Distribution to be made on the next Distribution Payment Date or the value of such deduction to the Bank being materially reduced; or
- (b) the Bank being obliged to pay additional amounts pursuant to Condition 13 below; or
- (c) the applicable tax treatment of the Preferred Securities being materially affected, and, in each case, cannot be avoided by the Bank taking reasonable measures available to it;

"Trigger Conversion" has the meaning given in Condition 6.1;

"Trigger Event" means if, at any time, as determined by the Bank or the Competent Authority (or any other agent appointed for such purpose by the Competent Authority), the CETI ratio is less than 5.125 per cent.;

"Trigger Event Notice" has the meaning given in Condition 6.1;

"Trigger Event Notice Date" means the date on which a Trigger Event Notice is given in accordance with Condition 6.1;

"Volume Weighted Average Price" means, in respect of an Ordinary Share, Security or, as the case may be, a Spin-Off Security on any dealing day, the order book volume-weighted average price of an Ordinary Share, Security or, as the case may be, a Spin-Off Security on the Relevant Stock Exchange on such dealing day published by or derived from Bloomberg page HP (using the setting labelled "Weighted Average Line" or any successor thereto) for such Ordinary Share, Security or, as the case may be, Spin-Off Security in respect of the Relevant Stock Exchange and such dealing day (and for the avoidance of doubt, such Bloomberg page for the Ordinary Shares as at the Closing Date is CABK SM Equity HP), or, if the Volume Weighted Average Price cannot be determined as aforesaid, such other source (if any) as shall be determined in good faith to be appropriate by an Independent Financial Adviser on such dealing day, provided that if on any such dealing day such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Ordinary Share, Security or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined or as an Independent Financial Adviser might otherwise determine in good faith to be appropriate.

As of the Closing Date, the price of the Ordinary Shares, which are listed and admitted to trading on the Relevant Stock Exchange, is published on such Bloomberg page as aforesaid on each dealing day.

"Voting Right" means the right generally to vote at a general meeting of Shareholders of the Bank (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the occurrence of any contingency).

"Walved Set-Off Rights" means any and all rights of or claims of any Holder for deduction, set-off, netting, compensation, retention or counterclaim arising directly or indirectly under or in connection with any Preferred Security.

- 1.2 References to any act or statute or any provision of any act or statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or in accordance therewith or under or in accordance with such modification or re-enactment.
- 1.3 References to any issue or offer or grant to Shareholders or Existing Shareholders as a class or by way of rights shall be taken to be references to an issue or offer or grant to all or substantially all Shareholders or Existing Shareholders, as the case may be, other than Shareholders or Existing Shareholders, as the case may be, to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange or securities market in any territory or in connection with fractional entitlements, it is determined not to make such issue or offer or grant.
- 1.4 In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as the Conversion Calculation Agent or an Independent Pinancial Adviser determines in good faith appropriate to reflect any consolidation or subdivision of the Ordinary Shares or any issue of Ordinary Shares by way of capitalisation of profits or reserves, or any like or similar event.

- 1.5 For the purposes of Condition 6.3 only:
  - (a) references to the issue of Ordinary Shares or Ordinary Shares being issued shall, if not otherwise expressly specified in these Conditions, include the transfer and/or delivery of Ordinary Shares, whether newly issued and allotted or previously existing or held by or on behalf of the Bank or any member of the Group; and
  - (b) Ordinary Shares held by or on behalf of the Bank or any member of the Group (and which, in the case of Conditions 6.3(d) and 6.3(f), do not rank for the relevant right or other entitlement) shall not be considered as or treated as in issue or issued or entitled to receive any Dividend, right or other entitlement.

### 2 Form, Denomination and Title

- 2.1 The Preferred Securities have been issued in uncertificated, dematerialised book-entry form (anotaciones en cuenta) in euro in an aggregate nominal amount of €[•] and denominations of €200,000.
- 2.2 The Preferred Securities have been registered with Iberclear as managing entity of the central registry of the Spanish clearance and settlement system (the "Spanish Central Registry"). Holders of a beneficial interest in the Preferred Securities who do not have, directly or indirectly through their custodians, a participating account with Iberclear may participate in the Preferred Securities through bridge accounts maintained by each of Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking, S.A. ("Clearstream Luxembourg") with Iberclear.

Iberclear manages the settlement and clearing of the Preferred Securities, notwithstanding the Bank's commitment to assist, when appropriate, on the clearing and settlement of the Preferred Securities through Euroclear and Clearstream Luxembourg.

The Spanish National Numbering Agency (Agencia Nacional de Codificación de Valores Mobiliarios) has assigned the following International Securities Identification Number (ISIN) to identify the Preferred Securities: [•]. The Common Code for this issue is [•].

2.3 Title to the Preferred Securities is evidenced by book entries, and each person shown in the Spanish Central Registry managed by Iberclear and in the registries maintained by the Iberclear Members as having an interest in the Preferred Securities shall be (except as otherwise required by Spanish law) considered the holder of the principal amount of the Preferred Securities recorded therein. In these Conditions, the "Holder" means the person in whose name such Preferred Securities is for the time being registered in the Spanish Central Registry managed by Iberclear or, as the case may be, the relevant Iberclear Member accounting book (or, in the case of a joint holding, the first named thereof) and Holder shall be construed accordingly.

One or more certificates (each a "Certificate") attesting to the relevant Holder's holding of Preferred Securities in the relevant registry will be delivered by the relevant Iberclear Member or by Iberclear (in each case, in accordance with the requirements of Spanish law and the relevant Iberclear Member's or, as the case may be, Iberclear's procedures) to such Holder upon such Holder's request.

The Preferred Securities are issued without any restrictions on their transferability. Consequently, the Preferred Securities may be transferred and title to the Preferred Securities may pass (subject to Spanish law and to compliance with all applicable rules, restrictions and requirements of Iberclear or, as the case may be, the relevant Iberclear Member) upon registration in the relevant registry of each Iberclear Member and/or Iberclear itself, as applicable. Each Holder will be (except as otherwise required by Spanish law) treated as the absolute owner of the relevant Preferred Securities for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest, or any writing on, or

the theft or loss of, the Certificate issued in respect of it), and no person will be liable for so treating the Holder.

## 3 Status of the Preferred Securities

Unless previously converted into Ordinary Shares pursuant to Condition 6, the payment obligations of the Bank under the Preferred Securities on account of principal constitute direct, unconditional, unsecured and subordinated obligations (*créditos subordinados*) of the Bank in accordance with Article 281.1.2° of the Insolvency Law and, in accordance with Additional Provision 14.3° of Law 11/2015 or any other Spanish law provisions which replace them from time to time, but subject to any other ranking that may apply as a result of any mandatory provision of law (or otherwise), upon the insolvency of the Bank, for so long as the obligations of the Bank under the Preferred Securities qualify as Additional Tier 1 Instruments of the Bank, rank:

- (a) pari passu among themselves and with:
  - (i) any claims for principal in respect of other contractually subordinated obligations (créditos subordinados) of the Bank in accordance with Article 281.1.2° of the Insolvency Law or any other Spanish law provisions which replace them from time to time, qualifying as Additional Tier 1 Instruments; and
  - any other subordinated obligations (créditos subordinados) of the Bank which by law and/or by their terms, to the extent permitted by Spanish law, rank pari passu with the Bank's obligations under the Preferred Securities;

# (b) junior to:

- (i) any claims for principal in respect of unsubordinated obligations of the Bank;
- (ii) any subordinated obligations (créditos subordinados) of the Bank under Article 281.1.1° of the Insolvency Law or any other Spanish law provisions which replace them from time to time;
- (iii) any claims for principal in respect of other contractually subordinated obligations (créditos subordinados) of the Bank in accordance with Article 281.1.2° of the Insolvency Law or any other Spanish law provisions which replace them from time to time, not qualifying as Additional Tier 1 Instruments; and
- (iv) any other subordinated obligations (créditos subordinados) of the Bank which by law and/or by their terms, to the extent permitted by Spanish law, rank senior to the Bank's obligations under the Preferred Securities; and

## (c) senior to:

- (i) any claims for the liquidation amount of the Ordinary Shares; and
- (ii) any other subordinated obligations (créditos subordinados) of the Bank which by law and/or by their terms, to the extent permitted by Spanish law, rank junior to the Bank's obligations under the Preferred Securities.

## 4 Distributions

- 4.1 The Preferred Securities accrue Distributions:
  - (a) in respect of the period from (and including) the Closing Date to (but excluding) the First Reset
     Date at the rate of [●] per cent, per annum; and
  - (b) in respect of each Reset Period, at the rate per annum equal to the aggregate of the Initial Margin and the 5-year Mid-Swap Rate (quoted on an annual basis) for such Reset Period, first calculated on an annual basis and then converted to a quarterly rate in accordance with market convention (rounded to four decimal places, with 0.00005 rounded down), all as determined by the Bank on the relevant Reset Determination Date.

Subject as provided in Conditions 4.3 and 4.4, such Distributions will be payable quarterly in arrear on each Distribution Payment Date.

If a Distribution is required to be paid in respect of a Preferred Security on any other date (other than as a result of the postponement of such payment as a result of the operation of Condition 4.2), it shall be calculated by the Bank by applying the Distribution Rate to the Liquidation Preference in respect of each Preferred Security, multiplying the product by (i) the actual number of days in the period from (and including) the date from which Distributions began to accrue (the Accrual Date) to (but excluding) the date on which Distributions fall due divided by (ii) the actual number of days from (and including) the Accrual Date to (but excluding) the next following Distribution Payment Date multiplied by four, and rounding the resulting figure to the nearest cent (half a cent being rounded upwards).

4.2 Subject to any applicable fiscal or other laws and regulations, the payment of Distributions on the Preferred Securities will be made in euros by the Bank on the relevant Distribution Payment Date by transfer to an account capable of receiving euro payments, details of which appear in the records of Iberclear or, as the case may be, the relevant Iberclear Member at close of business on the day immediately preceding the date on which the payment of Distributions falls due. Holders must rely on the procedures of Iberclear or, as the case may be, the relevant Iberclear Member to receive payments under the relevant Preferred Securities. The Bank will have no responsibility or liability for the records relating to payments made in respect of the Preferred Securities.

If any date on which any payment is due to be made on the Preferred Securities would otherwise fall on a date which is not a TARGET Business Day, the payment will be postponed to the next TARGET Business Day and the Holder shall not be entitled to any interest or other payment in respect of any such delay.

- 4.3 The Bank may elect, in its sole and absolute discretion, to cancel the payment of any Distribution (including any additional amounts pursuant to Condition 13) in whole or in part at any time that it deems necessary or desirable and for any reason.
- 4.4 Without prejudice to the right of the Bank to cancel the payments of any Distribution under Condition 4.3 above:
  - (a) Payments of Distributions (including any additional amounts pursuant to Condition 13) in any financial year of the Bank shall be made only to the extent the Bank has sufficient Distributable Items. To the extent that the Bank has insufficient Distributable Items to make Distributions (including any additional amounts pursuant to Condition 13) on the Preferred Securities scheduled for payment in the then current financial year and any interest payments, distributions or other payments on own funds items that have been paid or made or are scheduled or required to be paid out of or conditional to sufficient Distributable Items in the then current financial year,

in each case excluding any portion of such payments already accounted for in determining the Distributable Items of the Bank or which are not required to be made conditional upon Distributable Items, the Bank will only make partial or, as the case may be, no payment of the relevant Distribution (including any additional amounts pursuant to Condition 13) on the Preferred Securities.

- (b) If the Competent Authority, in accordance with Article 68 of Law 10/2014 and/or Article 16 of the SSM Regulation and/or with Applicable Banking Regulations, requires the Bank to cancel a relevant Distribution (including any additional amounts pursuant to Condition 13) in whole or in part, the Bank will only make partial or, as the case may be, no payment of the relevant Distribution (including any additional amounts pursuant to Condition 13) on the Preferred Securities.
- (c) The Bank may make partial or, as the ease may be, no payment of the relevant Distribution (including any additional amounts pursuant to Condition 13) on the Preferred Securities (whether by way of a repayment of the Liquidation Preference, the payment of any Distribution or otherwise) if and to the extent that payment of any Distribution (including any additional amounts pursuant to Condition 13) would cause, when aggregated together with other distributions of the kind referred to in Article 141(2) of the CRD IV Directive (or, as the case may be, any provision of Spanish law transposing or implementing CRD IV, which will include Article 48 of Law 10/2014 and any of its development provisions), the Maximum Distributable Amount to be exceeded or otherwise would cause any other breach of any regulatory restriction or prohibition on payments on Additional Tier 1 Capital pursuant to Applicable Banking Regulations;
- (d) If the Trigger Event occurs at any time on or after the Closing Date, the Bank will not make any further Distribution (including any additional amounts pursuant to Condition 13) on the Preferred Securities and any accrued and unpaid Distributions up to a Trigger Event (whether or not such distributions have become due for payment) shall be automatically cancelled in accordance with Condition 6.1(b).
- 4.5 Distributions on the Preferred Securities will be non-cumulative. Accordingly, if any Distribution (or part thereof) is not made in respect of the Preferred Securities as a result of any election of the Bank to cancel such Distribution pursuant to Condition 4.3 above or the limitations on payment set out in Condition 4.4 above and Condition 6.1(b) below then the right of the Holders to receive the relevant Distribution (or part thereof) in respect of the relevant Distribution Period will be extinguished and the Bank will have no obligation to pay such Distribution (or part thereof) accrued for such Distribution Period or to pay any interest thereon, whether or not Distributions on the Preferred Securities are paid in respect of any future Distribution Period.
- 4.6 No such election to cancel the payment of any Distribution (or part thereof) pursuant to Condition 4.3 above or non-payment of any Distribution (or part thereof) as a result of the limitations on payment set out in Condition 4.4 above and Condition 6.1(b) below will constitute an event of default or the occurrence of any event related to the insolvency of the Bank or entitle Holders to take any action to cause the liquidation or winding-up of the Bank or in any way limit or restrict the Bank from making any distribution or equivalent payment in connection with any instrument ranking junior to the Preferred Securities (including, without limitation, any CET1 Capital of the Bank or the Group, respectively) or in respect of any other instrument ranking by law or by its terms, to the extent permitted by law, *pari passu* with Preferred Securities. If the Bank does not pay a Distribution or part thereof on the relevant Distribution Payment Date, such non-payment shall evidence the cancellation of such Distribution (or relevant part thereof) or, as appropriate, the Bank's exercise of its discretion to cancel such Distribution (or relevant part thereof) and accordingly, such Distribution shall not in any such case be due and

payable. Notwithstanding the previous sentence, the Bank will give notice to the Holders in accordance with Condition 14 of any election under Condition 4.3 and of any limitation set out in Condition 4.4 occurring or applying and for avoidance of doubt, failure to deliver such notice shall not affect the validity of the cancellation.

- 4.7 The Bank will at, or as soon as practicable after, the relevant time on each Reset Determination Date at which the Distribution Rate is to be determined, determine the Distribution Rate for the relevant Reset Period. The Bank will cause the Distribution Rate for each Reset Period to be notified to any stock exchange or other relevant authority on which the Preferred Securities are for the time being listed or by which they have been admitted to listing and notice thereof is to be published in accordance with Condition 14 as soon as possible after its determination but in no event later than the fourth Business Day thereafter.
- 4.8 All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 4 by the Bank, shall (in the absence of wilful default, bad faith or manifest error) be binding on all Holders.
- 4.9 If the Bank determines that a Benchmark Event has occurred when the Distribution Rate (or any component part thereof) remains to be determined by reference to the 5-year Mid-Swap Rate, then the Bank shall use its reasonable endeavours to appoint an Independent Financial Adviser, as soon as reasonably practicable, with a view to the Bank and the Independent Financial Adviser (acting in good faith and in a commercially reasonable manner) determining, no later than three Business Days prior to the Reset Determination Date, a Successor Rate, failing which an Alternative Rate (in accordance with Condition 4.9(a)) and, in either case, an Adjustment Spread if any (in accordance with Condition 4.9(b)) and any Benchmark Amendments (in accordance with Condition 4.9(c)).

#### (a) Successor Rate or Alternative Rate

If the Bank and the Independent Financial Adviser (acting in good faith and in a commercially reasonable manner):

- (i) agree that there is a Successor Rate, then such Successor Rate shall (subject to adjustment as provided in Condition 4.9(b)) subsequently be used in place of the 5-year Mid-Swap Rate to determine the Distribution Rate (or the relevant component part thereof) for all future Distributions (subject to the operation of this Condition 4.9); or
- (ii) agree that there is no Successor Rate but that there is an Alternative Rate, then such Alternative Rate shall (subject to adjustment as provided in Condition 4.9(b)) subsequently be used in place of the 5-year Mid-Swap Rate to determine the Distribution Rate (or the relevant component part thereof) for all future Distributions (subject to the operation of this Condition 4.9).

If (i) the Bank is unable to appoint an Independent Financial Adviser, (ii) the Bank and the Independent Financial Adviser, acting in good faith and in a commercially reasonable manner, do not agree on the selection of a Successor Rate or an Alternative Rate prior to the relevant Reset Determination Date, or (iii) the last paragraph of this Condition 4.9 applies, the Distribution Rate applicable to the next succeeding Reset Period shall be equal to the Distribution Rate last determined or applicable in relation to the Preferred Securities in respect of the immediately preceding Reset Period. If the Bank fails to make such determination prior to the first Reset Determination Date, the Distribution Rate applicable to the next succeeding Reset Period shall be [•] per cent. per annum. For the avoidance of doubt, this Condition 4.9(a) shall apply to the

relevant next succeeding Reset Period only and any subsequent Reset Period are subject to the subsequent operation of, and to adjustment as provided in, this Condition 4.9(a).

## (b) Adjustment Spread

If the Bank and the Independent Financial Adviser agree (i) that an Adjustment Spread is required to be applied to the Successor Rate or the Alternative Rate (as the case may be) and (ii) the quantum of, or a formula or methodology for determining, such Adjustment Spread, then such Adjustment Spread shall be applied to the Successor Rate or the Alternative Rate (as the case may be).

# (c) Benchmark Amendments

If any Successor Rate, Alternative Rate and/or Adjustment Spread is determined in accordance with this Condition 4.9 and the Bank and the Independent Financial Adviser agree: (i) that amendments to these Conditions are necessary to ensure the proper operation of such Successor Rate, Alternative Rate and/or Adjustment Spread (such amendments, the "Benchmark Amendments") and (ii) the terms of the Benchmark Amendments, then the Bank shall, subject to giving notice thereof in accordance with Condition 4.9(d), without any requirement for consent or approval of the Holders, vary these Conditions to give effect to such Benchmark Amendments with the date specified in such notice.

In connection with any such variation in accordance with this Condition 4.9(c), the Bank shall comply with the rules of any stock exchange on which the Notes are for the time being listed or admitted to trading.

## (d) Notices, etc.

Any Successor Rate, Alternative Rate, Adjustment Spread and the specific terms of any Benchmark Amendments determined under this Condition 4.9 will be notified promptly by the Bank to the Holders in accordance with Condition 14. Such notice shall be irrevocable and shall specify the effective date of the Benchmark Amendments, if any, and will be binding on the Bank and the Holders.

# (e) Survival of 5-year Mid-Swap Rate

Without prejudice to the obligations of the Bank under this Condition 4.9, the 5-year Mid-Swap Rate and the fallback provisions otherwise provided for in these Conditions will continue to apply unless and until a Benchmark Event has occurred.

Notwithstanding any other provision of this Condition 4.9, no Successor Rate, Alternative Rate, Adjustment Spread or Benchmark Amendments (as applicable) will be adopted, if and to the extent that, in the determination of the Bank, the same could reasonably be expected to prejudice the qualification of the Preferred Securities as Additional Tier 1 Capital of the Bank or the Group.

### 15 Liquidation Distribution

5.1 Subject as provided in Condition 5.2 below, in the event of any voluntary or involuntary liquidation or winding-up of the Bank, the Preferred Securities (unless previously converted into Ordinary Shares pursuant to Condition 6 below) will confer an entitlement to receive out of the assets of the Bank available for distribution to Holders, the Liquidation Distribution. Such entitlement will arise before any distribution of assets is made to holders of Ordinary Shares or any other instrument of the Bank ranking junior to the Preferred Securities.

- 5.2 If, before such liquidation or winding-up of the Bank described in Condition 5.1, the Trigger Event occurs but the relevant conversion of the Preferred Securities into Ordinary Shares pursuant to Condition 6 below is still to take place, the entitlement conferred by the Preferred Securities for the purposes of Condition 5.1, will be an entitlement to receive out of the relevant assets of the Bank a monetary amount equal to that which holders of such Preferred Securities would have received on any distribution of the assets of the Bank if such conversion had taken place immediately prior to such liquidation or winding-up.
- 5.3 After payment of the relevant entitlement in respect of a Preferred Security as described in Conditions 5.1 and 5.2, such Preferred Security will confer no further right or claim to any of the remaining assets of the Bank.

#### 6 Conversion

- 6.1 If the Trigger Event occurs at any time on or after the Closing Date, then the Bank will:
  - (a) notify the Competent Authority and Holders thereof immediately in accordance with Condition
     14 below (together, the "Trigger Event Notice");
  - (b) not make any further Distribution on the Preferred Securities, including any accrued and unpaid Distributions which shall be cancelled by the Bank in accordance with Condition 4.4 above; and
  - (c) irrevocably and mandatorily (and without any requirement for the consent or approval of Holders) convert all the Preferred Securities into Ordinary Shares (the "Trigger Conversion") to be delivered on the relevant Conversion Settlement Date.

The Bank shall also notify Holders of the expected Conversion Settlement Date and of the Conversion Price in accordance with Condition 14 not more than ten Business Days following the Trigger Event Notice Date. Notwithstanding the previous sentence, failure to provide such notifications shall not have any impact on the effectiveness of or otherwise affect the Trigger Conversion or give Holders any rights as a result of such failure.

Holders shall have no claim against the Bank in respect of (A) any Liquidation Preference of Preferred Securities converted into Ordinary Shares or (B) any accrued and unpaid Distributions cancelled or otherwise unpaid, in each case pursuant to any Trigger Conversion.

The Bank will (x) calculate the CET1 ratio based on information (whether or not published) available to management of the Bank, including information internally reported within the Bank pursuant to its procedures for ensuring effective on-going monitoring of the capital ratios of the Bank and/or Group and (y) calculate and publish the CET1 ratio on at least a quarterly basis.

6.2 Subject as provided in Condition 6.9, the number of Ordinary Shares to be issued on Trigger Conversion in respect of each Preferred Security to be converted (the "Conversion Shares") shall be determined by dividing the Liquidation Preference of such Preferred Security by the Conversion Price in effect on the Trigger Event Notice Date.

The obligation of the Bank to issue and deliver Conversion Shares on the Conversion Settlement Date shall be satisfied by the delivery of the Conversion Shares either directly to the Holders or, alternatively, to the Settlement Shares Depository on behalf of them, all in accordance with Condition 6.10. Receipt of the Conversion Shares by the Holders or the Settlement Shares Depository, as appropriate, shall discharge the Bank's obligations in respect of the Preferred Securities.

Holders shall have recourse to the Bank only for the issue and delivery of Conversion Shares pursuant to these Conditions. After the delivery of any Conversion Shares to the Settlement Shares Depository in

accordance with Condition 6.10, the relevant Holders shall have recourse to the Settlement Shares Depository only for the delivery to them of any cash amounts or Conversion Shares to which such Holders are entitled under such Condition.

- 6.3 Upon the occurrence of any of the events described below, the Floor Price shall be adjusted as follows:
  - (a) If and whenever there shall be a consolidation, reclassification/redesignation or subdivision affecting the number of Ordinary Shares, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to such consolidation, reclassification/redesignation or subdivision by the following fraction:

 $\frac{A}{B}$ 

where:

- A is the aggregate number of Ordinary Shares in issue immediately before such consolidation, reclassification/redesignation or subdivision, as the case may be; and
- B is the aggregate number of Ordinary Shares in issue immediately after, and as a result of, such consolidation, reclassification/redesignation or subdivision, as the case may be.

Such adjustment shall become effective on the date the consolidation, reclassification/redesignation or subdivision, as the case may be, takes effect.

(b) If and whenever the Bank shall issue any Ordinary Shares credited as fully paid to Shareholders by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) other than where such issue constitutes a Cash Dividend pursuant to limb (b) of the definition thereof, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to such issue by the following fraction:

 $\frac{A}{B}$ 

where:

- A is the aggregate number of Ordinary Shares in issue immediately before such issue; and
- B is the aggregate number of Ordinary Shares in issue immediately after such issue.

Such adjustment shall become effective on the date of issue of such Ordinary Shares.

(c)

(i) If and whenever the Bank shall pay any Extraordinary Dividend to Shareholders, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the Ex Date of the Extraordinary Dividend; and
- B is the portion of the Fair Market Value of the aggregate Extraordinary Dividend attributable to one Ordinary Share, with such portion being determined by dividing

the Fair Market Value of the aggregate Extraordinary Dividend by the number of Ordinary Shares entitled to receive the relevant Dividend.

Such adjustment shall become effective on the date (in respect of this Condition 6.3(c)(i), the "Effective Date") which is the Ex Date of the Extraordinary Dividend, or, if later, the first date upon which the Fair Market Value of the relevant Extraordinary Dividend can be determined.

"Extraordinary Dividend" means any Cash Dividend which is expressly declared by the Bank to be a capital distribution, extraordinary dividend, extraordinary distribution, special dividend, special distribution or return of value to Shareholders or any analogous or similar term, in which case the Extraordinary Dividend shall be such Cash Dividend.

(ii) If and whenever the Bank shall pay or make any Non-Cash Dividend to Shareholders, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the Non-Cash Dividend Effective Date; and
- is the portion of the Fair Market Value of the aggregate Non-Cash Dividend attributable to one Ordinary Share, with such portion being determined by dividing the Fair Market Value of the aggregate Non-Cash Dividend by the number of Ordinary Shares entitled to receive the relevant Non-Cash Dividend (or, in the case of a purchase, redemption or buy-back of Ordinary Shares or any depositary or other receipts or certificates representing Ordinary Shares by or on behalf of the Bank or any member of the Group, by the number of Ordinary Shares in issue immediately following such purchase, redemption or buy-back, and treating as not being in issue any Ordinary Shares, or any Ordinary Shares represented by depositary or other receipts or certificates, purchased, redeemed or bought back).

Such adjustment shall become effective on the date (in respect of this Condition 6.3(c)(ii), the "Effective Date") which is the Non-Cash Dividend Effective Date or, if later, the first date upon which the Fair Market Value of the relevant Non-Cash Dividend is capable of being determined as provided herein.

"Non-Cash Dividend Effective Date" means, in respect of this Condition 6.3(c)(ii), the Ex Date of the Non-Cash Dividend or, in the case of a purchase, redemption or buy back of Ordinary Shares or any depositary or other receipts or certificates representing Ordinary Shares by or on behalf of the Bank or any member of the Group, the date on which such purchase, redemption or buy back is made (or, in any such case if later, the first date upon which the Fair Market Value of the relevant Dividend is capable of being determined as provided herein).

(iii) For the purposes of the above, Fair Market Value shall (subject as provided in paragraph(a) of the definition of "Dividend" and in the definition of "Fair Market Value") be

- determined as at the Ex Date of the relevant Extraordinary Dividend, or, as the case may be, the Non-Cash Dividend Effective Date.
- (iv) In making any calculations for the purposes of this Condition 6.3(c), such adjustments (if any) shall be made as the Conversion Calculation Agent or an Independent Financial Adviser may determine in good faith to be appropriate to reflect:
  - (A) any consolidation or subdivision of any Ordinary Shares; or
  - (B) the issue of Ordinary Shares by way of capitalisation of profits or reserves (or any like or similar event); or
  - (C) any increase in the number of Ordinary Sharcs in issue in the relevant year in question.
- (d) If and whenever the Bank shall issue Ordinary Shares to Shareholders as a class by way of rights, or the Bank or any member of the Group or (at the direction or request or pursuant to any arrangements with the Bank or any member of the Group) any other company, person or entity shall issue or grant to Shareholders as a class by way of rights, any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Ordinary Shares, or any Securities which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, or the right to acquire, any Ordinary Shares (or shall grant any such rights in respect of existing Securities so issued), in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on the Effective Date, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of Ordinary Shares in issue on the Effective Date;
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares issued by way of rights, or for the Securities issued by way of rights, or for the options or warrants or other rights issued or granted by way of rights and for the total number of Ordinary Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Ordinary Share; and
- is the number of Ordinary Shares to be issued or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights or upon conversion or exchange or exercise of rights of subscription or purchase or other rights of acquisition in respect thereof at the initial conversion, exchange, subscription, purchase or acquisition price or rate,

provided that if at the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange (as used in this Condition 6.3(d), the "Specified Date") such number of Ordinary Shares 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 6.3(d), "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 conversion, exchange, subscription, purchase or acquisition had taken place on the Specified Date.

Such adjustment shall become effective on the Effective Date.

"Effective Date" means, in respect of this Condition 6.3(d), the first date on which the Ordinary Shares are traded ex-rights, ex-options or ex-warrants on the Relevant Stock Exchange.

(e) If and whenever the Bank or any member of the Group or (at the direction or request or pursuant to any arrangements with the Bank or any member of the Group) any other company, person or entity shall issue any Securities (other than Ordinary Shares or options, warrants or other rights to subscribe for or purchase or otherwise acquire any Ordinary Shares or Securities which by their terms carry (directly or indirectly) rights of conversion into, or exchange or subscription for, or rights to otherwise acquire, Ordinary Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Securities (other than Ordinary Shares or Ordinary Shares or Securities which by their term carry (directly or indirectly) rights of conversion into, or exchange or subscription for, rights to otherwise acquire, Ordinary Shares), the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A-B}{A}$$

where:

A is the Current Market Price of one Ordinary Share on the Effective Date; and

B is the Fair Market Value on the Effective Date of the portion of the rights attributable to one Ordinary Share.

Such adjustment shall become effective on the Effective Date.

"Effective Date" means, in respect of this Condition 6.3(e), the first date on which the Ordinary Shares are traded ex-the relevant Securities or ex-rights, ex-option or ex-warrants on the Relevant Stock Exchange.

(f) If and whenever the Bank shall issue (otherwise than as mentioned in Condition 6.3(d) above) wholly for cash or for no consideration any Ordinary Shares (other than Ordinary Shares issued on conversion of the Preferred Securities or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, or right to otherwise acquire Ordinary Shares) or if and whenever the Bank or any member of the Group or (at the direction or request or pursuance to any arrangements with the Bank or any member of the Group) any other company, person or entity shall issue or grant (otherwise than as mentioned in Condition 6.3(d) above) wholly for eash or for no consideration any options, warrants or other rights to subscribe for or purchase or otherwise acquire any Ordinary Shares (other than the Preferred Securities, which term shall for this purpose include any Further Preferred Securities), in each case at a price per Ordinary Share which is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the terms of such issue or grant, the Floor Price shall be adjusted by

multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

 $\frac{A+B}{A+C}$ 

where:

- A is the number of Ordinary Shares in issue immediately before the issue of such Ordinary Shares or the grant of such options, warrants or rights;
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the issue of such Ordinary Shares or, as the case may be, for the Ordinary Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per Ordinary Share; and
- C is the number of Ordinary Shares to be issued pursuant to such issue of such Ordinary Shares or, as the case may be, the maximum number of Ordinary Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights,

provided that if at the time of issue of such Ordinary Shares or date of issue or grant of such options, warrants or rights (as used in this Condition 6.3(f), the "Specified Date"), such number of Ordinary Shares 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 6.3(f), "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 conversion, exchange, subscription, purchase or acquisition had taken place on the Specified Date.

Such adjustment shall become effective on the Effective Date.

"Effective Date" means, in respect of this Condition 6.3(f), the date of issue of such Ordinary Shares or, as the case may be, the grant of such options, warrants or rights.

(g) If and whenever the Bank or any member of the Group or (at the direction or request of or pursuant to any arrangements with the Bank or any member of the Group) any other company, person or entity (otherwise than as mentioned in Condition 6.3(d), 6.3(c) or 6.3(f) above) shall issue wholly for eash or for no consideration any Securities (other than the Preferred Securities, which term for this purpose shall include any Further Preferred Securities) which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, purchase of, or rights to otherwise acquire, Ordinary Shares (or shall grant any such rights in respect of existing Securities so issued) or Securities which by their terms might be reclassified/redesignated as Ordinary Shares, and the consideration per Ordinary Share receivable upon conversion, exchange, subscription, purchase, acquisition or redesignation is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the terms of issue of such Securities (or the terms of such grant), the Floor Price

shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of Ordinary Shares in issue immediately before such issue or grant (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for, purchase of, or rights to otherwise acquire Ordinary Shares which have been issued, purchased or acquired by the Bank or any member of the Group (or at the direction or request or pursuant to any arrangements with the Bank or any member of the Group) for the purposes of or in connection with such issue, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription, purchase or acquisition attached to such Securities or, as the case may be, for the Ordinary Shares to be issued or to arise from any such reclassification/redesignation would purchase at such Current Market Price per Ordinary Share; and
- C is the maximum number of Ordinary Shares to be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange, subscription, purchase or acquisition price or rate or, as the case may be, the maximum number of Ordinary Shares which may be issued or arise from any such reclassification/redesignation,

provided that if at the time of issue of the relevant Securities or date of grant of such rights (as used in this Condition 6.3(g), the "Specified Date") such number of Ordinary Shares 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 (which may be when such Securities are converted or exchanged or rights of subscription, purchase or acquisition are exercised or, as the case may be, such Securities are reclassified/redesignated or at such other time as may be provided), then for the purposes of this Condition 6.3(g), "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 conversion, exchange, subscription, purchase or acquisition or, as the case may be, reclassification/redesignation had taken place on the Specified Date.

Such adjustment shall become effective on the Effective Date.

"Effective Date" means, in respect of this Condition 6.3(g), the date of issue of such Securities or, as the case may be, the grant of such rights.

(h) If and whenever there shall be any modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to any such Securities (other than the Preferred Securities, which term shall for this purpose include any Further Preferred Securities) as are mentioned in Condition 6.3(g) above (other than in accordance with the terms (including terms as to adjustment) applicable to such Securities upon issue) so that following such modification the consideration per Ordinary Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per Ordinary Share on the date of the first public announcement of the

proposals for such modification, the Floor Price shall be adjusted by multiplying the Floor Price in force immediately prior to the Effective Date by the following fraction:

 $\frac{A+B}{A+C}$ 

where:

- A is the number of Ordinary Shares in issue immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for, or purchase or acquisition of, Ordinary Shares which have been issued, purchased or acquired by the Bank or any member of the Group (or at the direction or request or pursuant to any arrangements with the Bank or any member of the Group) for the purposes of or in connection with such Securities, less the number of such Ordinary Shares so issued, purchased or acquired);
- B is the number of Ordinary Shares which the aggregate consideration (if any) receivable for the Ordinary Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription, purchase or acquisition attached to the Securities so modified would purchase at such Current Market Price per Ordinary Share or, if lower, the existing conversion, exchange, subscription, purchase or acquisition price or rate of such Securities; and
- C is the maximum number of Ordinary Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription, purchase or acquisition attached thereto at the modified conversion, exchange, subscription, purchase or acquisition price or rate but giving credit in such manner as an Independent Financial Adviser in good faith shall consider appropriate for any previous adjustment under this Condition 6.3(h) or Condition 6.3(g) above,

provided that if at the time of such modification (as used in this Condition 6.3(h), the "Specified Date") such number of Ordinary Shares 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 (which may be when such Securities are converted or exchanged or rights of subscription, purchase or acquisition are exercised or at such other time as may be provided) then for the purposes of this Condition 6.3(h), "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 conversion, exchange, subscription, purchase or acquisition had taken place on the Specified Date.

Such adjustment shall become effective on the Effective Date.

- "Effective Date" means, in respect of this Condition 6.3(h), the date of modification of the rights of conversion, exchange, subscription, purchase or acquisition attaching to such Securities.
- (i) If and whenever the Bank or any member of the Group or (at the direction or request of or pursuant to any arrangements with the Bank or any member of the Group) any other company, person or entity shall offer any Securities in connection with which Shareholders as a class are entitled to participate in arrangements whereby such Securities may be acquired by them (except where the Floor Price falls to be adjusted under Condition 6.3(b), 6.3(c), 6.3(d), 6.3(e) or 6.3(f) above or Condition 6.3(j) below (or would fall to be so adjusted if the relevant issue or grant was at less than 95 per cent. of the Current Market Price per Ordinary Share on the relevant dealing

day under Condition 6.3(e) above) the Floor Price shall be adjusted by multiplying the Floor Price in force immediately before the Effective Date by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one Ordinary Share on the Effective Date; and
- B is the Fair Market Value on the Effective Date of the portion of the relevant offer attributable to one Ordinary Share.

Such adjustment shall become effective on the Effective Date.

"Effective Date" means, in respect of this Condition 6.3(i), the first date on which the Ordinary Shares are traded ex-rights on the Relevant Stock Exchange.

(j) If the Bank determines that a reduction to the Floor Price should be made for whatever reason, the Floor Price will be reduced (either generally or for a specified period as notified to Holders) in such manner and with effect from such date as the Bank shall determine and notify to the Holders.

Notwithstanding the foregoing provisions:

- (i) where the events or circumstances giving rise to any adjustment pursuant to this Condition 6.3 have already resulted or will result in an adjustment to the Floor 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 the Floor Price or where more than one event which gives rise to an adjustment to the Floor Price occurs within such a short period of time that, in the opinion of the Bank, 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 in good faith by an Independent Financial Adviser to be in its opinion appropriate to give the intended result; and
- (ii) such modification shall be made to the operation of these Conditions as may be determined in good faith by an Independent Financial Advisor to be in its opinion appropriate:
  - (A) to ensure that an adjustment to the Floor Price or the economic effect thereof shall not be taken into account more than once; and
  - (B) to ensure that the economic effect of a Dividend is not taken into account more than once.

For the purpose of any calculation of the consideration receivable or price pursuant to Conditions 6.3(d), 6.3(f), 6.3(g) and 6.3(h), the following provisions shall apply:

- the aggregate consideration receivable or price for Ordinary Shares issued for cash shall be the amount of such cash;
- (B) (I) the aggregate consideration receivable or price for Ordinary Shares to be issued or otherwise made available upon the conversion or exchange of any

Securities shall be deemed to be the consideration or price received or receivable for any such Securities; and

- the aggregate consideration receivable or price for Ordinary Shares to be (II) issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Bank to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the relevant Effective Date as referred to in Condition 6.3(d), 6.3(f), 6.3(g) or 6.3(h), as the case may be, plus in the case of each of (I) and (II) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights or subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights; and
- (III) the consideration receivable or price per Ordinary Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Sccurities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price referred to in (1) or (II) above (as the case may be) divided by the number of Ordinary Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (C) if the consideration or price determined pursuant to (A) or (B) above (or any component thereof) shall be expressed in a currency other than the Share Currency, it shall be converted into the Share Currency at the Prevailing Rate on the relevant Effective Date (in the case of (A) above) or the relevant date of first public announcement (in the case of (B) above);
- (D) in determining the consideration or price pursuant to the above, no deduction shall be made for any commissions or fees (howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Ordinary Shares or Securities or options, warrants or rights, or otherwise in connection therewith; and
- (E) the consideration or price shall be determined as provided above on the basis of the consideration or price received, receivable, paid or payable regardless of whether all or part thereof is received, receivable, paid or payable by or to the Bank or another entity.
- 6.4 If the Conversion Settlement Date in relation to the conversion of any Preferred Security shall be after the record date in respect of any consolidation, reclassification/redesignation or subdivision as is mentioned in Condition 6.3 above, or after the record date or other due date for the establishment of entitlement for any such issue, distribution, grant or offer (as the case may be) as is mentioned in Conditions 6.3(b), 6.3(c), 6.3(d), 6.3(e) or 6.3(i) above, or after the date of the first public announcement

of the terms of any such issue or grant as is mentioned in Conditions 6.3(f) and 6.3(g) above or of the terms of any such modification as is mentioned in Condition 6.3(h) above, and the Trigger Event Notice Date falls before the relevant adjustment to the Floor Price (if applicable) becomes effective under Condition 6.3 above (such adjustment, a "Retroactive Adjustment"), then the Bank shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued and delivered to the Holders, in accordance with the instructions contained in the relevant Delivery Notices received by the Bank, or failing the relevant Delivery Notices, to the Settlement Shares Depository, such additional number of Ordinary Shares (if any) (the "Additional Ordinary Shares") as, together with the Ordinary Shares issued on conversion of the Preferred Securities (together with any fraction of an Ordinary Share not so delivered to any relevant Holder), is equal to the number of Ordinary Shares which would have been required to be issued and delivered on such conversion if the relevant adjustment to the Floor Price had been made and become effective immediately prior to the relevant Trigger Event Notice Date, provided that if the Settlement Shares Depository and/or the Holders, as the case may be, shall be entitled to receive the relevant Dividend in respect of the Ordinary Shares to be issued or delivered to them, then no such Retroactive Adjustment shall be made in relation to such Dividend, and Additional Ordinary Shares shall not be issued and delivered to the Settlement Shares Depository and Holders in relation thereto.

- 6.5 If any doubt shall arise as to whether an adjustment falls to be made to the Floor Price or as to the appropriate adjustment to the Floor Price, and following consultation between the Bank and an Independent Financial Adviser, a written determination of such Independent Financial Adviser in respect thereof shall be conclusive and binding on all parties, save in the case of manifest error.
- 6.6 No adjustment will be made to the Floor Price where Ordinary Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, purchased, appropriated, modified or granted to, or for the benefit of, employees or former employees (including directors holding or formerly holding executive or non-executive office or the personal service company of any such person) or their spouses or relatives, in each case, of the Bank or any member of the Group or any associated company or to a trustee or trustees to be held for the benefit of any such person, in any such case pursuant to any share or option or similar scheme.
- 6.7 On any adjustment, the resultant Floor Price shall be rounded down to the nearest integral multiple of €0.0001. No adjustment shall be made to the Floor Price where such adjustment (rounded down if applicable) would be less than 1 per cent. of the Floor Price then in effect. Any adjustment not required to be made and/or any amount by which the Floor Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time and/or, as the case may be, that the relevant rounding down had not been made.
  - Notice of any adjustments to the Floor Price shall be given by the Bank to Holders through the filing of an announcement of inside information (comunicación de información privilegiada) or of other relevant information (comunicación de otra información relevante), as the case may be, with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and Condition 14 promptly after the determination thereof.
- 6.8 On any Trigger Conversion of the Preferred Securities and upon the Trigger Event Notice Date, the Bank shall give instructions in accordance with the Iberclear procedures applicable from time to time so that all the Preferred Securities outstanding are blocked by Iberclear and the Iberclear Members at the relevant securities accounts on the Trigger Event Notice Date and the Ordinary Shares to be issued and delivered shall be issued and delivered subject to, and as provided in, Condition 6.10 below. Immediately

on such conversion the Preferred Securities shall cease to be outstanding for all purposes and shall be cancelled.

- 6.9 Fractions of Ordinary Shares will not be issued on Trigger Conversion or pursuant to Condition 6.4 and no cash payment or other adjustment will be made in lieu thereof. Without prejudice to the generality of the foregoing, the number of Conversion Shares or Additional Ordinary Shares to be delivered in respect of Holders of more than one Preferred Security, shall be calculated on the basis of the aggregate Liquidation Preference of the corresponding Preferred Securities being so converted and rounded down to the nearest whole number of Ordinary Shares.
- 6.10 On the Conversion Settlement Date, the Bank shall deliver to the Holders or the Settlement Shares Depository, as set out below, such number of Ordinary Shares as is required to satisfy in full the Bank's obligation to deliver Ordinary Shares in respect of the Trigger Conversion of the aggregate number of Preferred Securities outstanding on the Trigger Event Notice Date.

In order to obtain direct delivery of the relevant Ordinary Shares upon any Trigger Conversion from the Bank, Holders will have to deliver a duly completed Delivery Notice to the Bank through the relevant Iberclear Members and in accordance with the Iberclear procedures applicable from time to time no later than the moment on or before the Conversion Settlement Date which the said procedures permit (the "Notice Cut-off Date"). The Bank shall then give the relevant instructions, in accordance with the Iberclear procedures applicable from time to time, for the relevant Ordinary Shares corresponding to the Preferred Securities in respect of which duly completed Delivery Notices have been delivered not later than the Notice Cut-off Date, to be delivered on the Conversion Settlement Date in accordance with the instructions given in the relevant Delivery Notices through Iberclear.

The Ordinary Shares corresponding to the Preferred Securities in respect of which no duly completed Delivery Notices have been delivered on or before the Notice Cut-off Date shall be delivered by the Bank to the Settlement Shares Depository on the Conversion Settlement Date through Iberclear.

Within ten Business Day following the Conversion Settlement Date, the Settlement Shares Depository shall procure that all Ordinary Shares so received are sold as soon as reasonably practicable based on advice from an independent financial firm or financial adviser with appropriate expertise or financial institution of international repute to be appointed by the Settlement Shares Depository after consultation with the Bank and, subject to the deduction by or on behalf of the Settlement Shares Depository 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 (including in respect of such independent financial firm or financial adviser with appropriate expertise or financial institution of international repute as aforesaid) incurred by or on behalf of the Settlement Shares Depository in connection with the sale and allotment thereof, the net proceeds of sale shall as soon as reasonably practicable be distributed rateably to the relevant Holders in accordance with Condition 4.2 or in such other manner and at such time as the Bank shall determine and notify to the Holders. Such payment shall for all purposes discharge the obligations of the Bank and the Settlement Shares Depository in respect of the relevant Trigger Conversion.

The Settlement Shares Depository will be deemed to be acting on behalf of the relevant Holders of the Preferred Securities in respect of which no duly completed Delivery Notices are delivered on or before the Notice Cut-off Date for the purposes set out above and to that effect Holders of the Preferred Securities by virtue of the subscription and/or purchase and holding of the Preferred Securities will be

deemed to be accepting and giving express instructions to the Settlement Shares Depository to do so in accordance with these Conditions.

The Bank and the Settlement Shares Depository shall have no liability in respect of any sale of any Ordinary Shares pursuant to these Conditions, 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 Ordinary Shares.

If any Ordinary Shares could not be sold for any reasons by the Settlement Shares Depository in accordance with this Condition 6.10, such Ordinary Shares shall continue to be held by the Settlement Shares Depository until the relevant Holder delivers a duly completed Delivery Notice.

Any Delivery Notice shall be irrevocable. Failure to properly complete and deliver a Delivery Notice may result in such Delivery Notice being treated as mill and void, and the Bank shall be entitled to procure the sale of any applicable Ordinary Shares to which the relevant Holder may be entitled in accordance with this Condition 6.10. Any determination as to whether any Delivery Notice has been properly completed and delivered as provided in this Condition 6.10 shall be made by the Bank in its sole discretion, acting in good faith, and shall, in the absence of manifest error, be conclusive and binding on the relevant Holders.

- 6.11 A Holder or the Settlement Shares Depository must pay (in the case of the Settlement Shares Depository by means of deduction from the net proceeds of sale referred to in Condition 6.10 above) all taxes arising on Trigger Conversion other than;
  - (a) any taxes payable by the Bank; and
  - (b) any capital, issue and registration and transfer taxes or stamp duties;

in each case payable in Spain and in respect of the conversion of the Preferred Securities and the issue and delivery of the Ordinary Shares (including any Additional Ordinary Shares) in accordance with a Delivery Notice delivered pursuant to these Conditions which shall be paid by the Bank. For the avoidance of doubt, such Holder or the Settlement Shares Depository (as the case may be) must pay (in the case of the Settlement Shares Depository, by way of deduction from the net proceeds of sale as aforesaid) all, if any, taxes arising by reference to any disposal or deemed disposal of a Preferred Security or interest therein.

If the Bank shall fail to pay any capital, stamp, issue, registration and transfer taxes and duties for which it is responsible as provided above, the Holder or the Settlement Shares Depository, as the case may be, shall be entitled (but shall not be obliged) to tender and pay the same and the Bank as a separate and independent obligation, undertakes to reimburse and indemnify each Holder or Settlement Shares Depository, as the case may be, in respect of any payment thereof and any penalties payable in respect thereof.

- 6.12 The Ordinary Shares (including any Additional Ordinary Shares) issued on Trigger Conversion will be fully paid and will in all respects rank part passu with the fully paid Ordinary Shares in issue on the Trigger Event Notice Date or, in the case of Additional Ordinary Shares, on the relevant Reference Date, except in any such case for any right excluded by mandatory provisions of applicable law and except \ that such Ordinary Shares or, as the case may be, Additional Ordinary Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the Trigger Event Notice Date or, as the case may be, the relevant Reference Date.
- 6.13 Notwithstanding any other provision of this Condition 6 and subject to compliance with the provisions of the Spanish Companies Law and/or with any Applicable Banking Regulations, the Bank or any

member of the Group may exercise such rights as it may from time to time enjoy to purchase or redeem or buy back any shares of the Bank (including Ordinary Shares) or any depositary or other receipts or certificates representing the same without the consent of the Holders.

6.14 So long as any Preferred Securities are outstanding, there shall at all times be a conversion calculation agent (the "Conversion Calculation Agent"), which may be the Bank or another person appointed by the Bank to serve in such capacity, who shall be responsible, in consultation with the Bank, for the calculation of all adjustments to the Floor Price and all related determinations required to be made in connection therewith. All such calculations and determinations performed by the Conversion Calculation Agent shall be conclusive and binding on the Holders, save in the case of bad faith or manifest error. If any provision in these Conditions at any time calls for any calculation or determination to be made by an Independent Financial Adviser, which may include the Conversion Calculation Agent appointed by the Bank to act in such Independent Financial Adviser capacity, and the person then serving as Conversion Calculation Agent is not wholly independent of the Bank, the Bank shall use commercially reasonable efforts to appoint an Independent Financial Adviser which is wholly independent of the Bank to make such calculation or determination. A written opinion of such Independent Financial Advisor in respect of such calculation or determination shall be conclusive and binding on the Bank and any Holders, save in the case of manifest error. The Bank has appointed Conv-Ex Advisors Limited as the initial Conversion Calculation Agent. The Bank may change the Conversion Calculation Agent at any time without prior notice to any Holder.

The Conversion Calculation Agent (if not the Bank) shall act solely upon request from, and solely as agent of, the Bank and will not thereby assume any obligations towards or relationship of agency or trust with, and it shall not be liable and shall incur no liability as against, the Holders.

## 7 Optional redemption

- 7.1 The Preferred Securities are perpetual and are only redeemable in accordance with the following provisions of this Condition 7.
- 7.2 Subject to Conditions 7.3 and 7.4 below, the Preferred Securities shall not be redeemable prior to [•]². All, and not some only, of the Preferred Securities may be redeemed at the option of the Bank:
  - 7.2.1 at any time in the period commencing on (and including) [●]³ and ending on (and including) the First Reset Date; or
  - 7.2.2 on any Distribution Payment Date thereafter,
  - at the Redemption Price, subject to the prior consent of the Competent Authority (and otherwise in accordance with Applicable Banking Regulations then in force).
- 7.3 If, on or after the Closing Date, there is a Capital Event, the Preferred Securities may be redeemed, in whole but not in part, at the option of the Bank, subject to the prior consent of the Competent Authority

NTD: The date falling 6 months prior to the First Reset Date.

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- (and/or otherwise in accordance with Applicable Banking Regulations then in force), at any time, at the Redemption Price.
- 7.4 If, on or after the Closing Date, there is a Tax Event, the Preferred Securities may be redeemed, in whole but not in part, at the option of the Bank, subject to the prior consent of the Competent Authority (and/or otherwise in accordance with Applicable Banking Regulations then in force), at the Redemption Price.
- 7.5 The decision to redeem the Preferred Securities must be, subject to Condition 6.1 above, irrevocably notified by the Bank to the Holders not less than 15 and not more than 60 days prior to the relevant redemption date through the filing of an announcement of inside information (comunicación de información privilegiada) or of other relevant information (comunicación de otra información relevante), as the case may be, with the CNMV and its publication in accordance with the rules and regulations of any applicable stock exchange or other relevant authority and Condition 14.
  - The Bank will not give notice under this Condition 7.5 unless, at least 15 days prior to the publication of any notice of redemption, it will make available to the Holders at its registered office, a certificate signed by two of its duly authorised officers stating that a Capital Event or a Tax Event has occurred, or there is sufficient certainty that it will occur, as the case may be.
- 7.6 If the notice of redemption has been given, and the funds deposited and instructions and authority to pay given as required above, then on the date of such deposit:
  - (a) Distributions on the Preferred Securities shall cease;
  - (b) such Preferred Securities will no longer be considered outstanding; and
  - (c) the Holders will no longer have any rights as Holders except the right to receive the Redemption Price.
- 7.7 The Bank may not give a notice of redemption pursuant to this Condition 7 if a Trigger Event Notice has been given. If any notice of redemption of the Preferred Securities is given pursuant to this Condition 7 and a Trigger Event occurs prior to such redemption, the relevant redemption notice shall be automatically rescinded and shall be of no force and effect, there shall be no redemption of the Preferred Securities on such redemption date and, instead, the conversion of the Preferred Securities shall take place as provided under Condition 6. The Bank shall give notice of any such automatic rescission of a redemption notice to the Holders in accordance with Condition 14 as soon as possible thereafter.
- 7.8 If either the notice of redemption has been given and the funds are not deposited as required on the date of such deposit or if the Bank improperly withholds or refuses to pay the Redemption Price of the Preferred Securities, Distributions will continue to accrue in accordance with Condition 4 above from (and including) the redemption date to (but excluding) the date of actual payment of the Redemption Price.

## 8 Substitution and Variation

8.1 Subject to the prior consent of the Competent Authority (and/or otherwise in accordance with the Applicable Banking Regulations then in force) and having given no less than 15 nor more than 60 calendar days' notice to the Holders in accordance with Condition 14 (which notice shall be irrevocable and specify the date for substitution or, as applicable, variation), if a Capital Event or Tax Event has occurred and is continuing, the Bank may, at any time, substitute all (but not some only) of the Preferred Securities or vary the terms of all (but not some only) of the Preferred Securities without the consent or approval of the Holders, so that they are substituted for, or varied to, become, or remain, Qualifying Preferred Securities. Any such notice shall specify the relevant details of the manner in which such substitution or variation shall take effect and where the Holders can inspect or obtain copies of the new

terms and conditions of the Preferred Securities. Such substitution or variation will be effected without any cost or charge to the Holders.

- 8.2 Holders shall, by virtue of subscribing and/or purchasing the Preferred Securities, be deemed to accept the substitution or variation of the terms of such Preferred Securities and to grant the Bank full power and authority to take any action and/or execute and deliver any document in the name and/or on behalf of the Holders which is necessary or convenient to complete the substitution or variation of the terms of the Preferred Securities.
- 8.3 The Bank will not give a notice of substitution or variation after a Trigger Event has occurred. If the Bank has given a notice of substitution or variation in accordance with these Conditions but prior to such substitution or variation a Trigger Event has occurred, the relevant substitution or variation notice shall be automatically rescinded and shall be of no force and effect. The Bank shall give notice thereof to the Holders in accordance with Condition 14 as soon as possible following any such automatic rescission of a substitution or variation notice.

## 9 Purchases of Preferred Securities

The Bank or any member of the Group, may purchase or otherwise acquire any of the outstanding Preferred Securities at any price in the open market or otherwise in accordance with Applicable Banking Regulations in force at the relevant time and subject to the prior consent of the Competent Authority, if required.

Any Preferred Securities so acquired by the Bank or any member of the Group may (subject to the approval of the Competent Authority and in accordance with Applicable Banking Regulations then in place) be held, resold or, at the option of the Bank or such member of the Group, cancelled.

#### 10 Waiver of Set-off

No Holder may at any time exercise or claim any Waived Set-Off Rights against any right, claim, or liability the Bank has or may have or acquire against such Holder, directly or indirectly, howsoever arising (and, for the avoidance of doubt, including all such rights, claims and liabilities arising under or in relation to any and all agreements or other instruments of any sort, whether or not relating to such Preferred Security) and each Holder shall be deemed to have waived all Waived Set-Off Rights to the fullest extent permitted by applicable law in relation to all such actual and potential rights, claims and liabilities. Notwithstanding the preceding sentence, if any of the amounts owing to any Holder by the Bank in respect of, or arising under or in connection with the Preferred Securities is discharged by set-off, such Holder shall, subject to applicable law, immediately pay an amount equal to the amount of such discharge to the Bank and, until such time as payment is made, shall hold an amount equal to such amount in trust for the Bank and accordingly any such discharge shall be deemed not to have taken place.

For the avoidance of doubt, nothing in this Condition 10 is intended to provide, or shall be construed as acknowledging, any right of deduction, set-off, netting, compensation, retention or counterclaim or that any such right is or would be available to any Holder of any Preferred Security but for this Condition 10.

# 11 Undertakings

So long as any Preferred Security remains outstanding, the Bank will, save as otherwise permitted or required pursuant to an Extraordinary Resolution:

(a) not make any issue, grant or distribution or take or omit to take any other action if the effect thereof would be that, on Trigger Conversion, Ordinary 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) such Shareholders other than the offeror and/or any associates of the offeror) to acquire all or a majority of the issued Ordinary Shares, or if a scheme is proposed with regard to such acquisition (other than a Newco Scheme), give notice of such offer or scheme to the Holders 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 registered office of the Bank and, where such an offer or scheme has been recommended by the Board of Directors of the Bank, or where such an offer has become or been declared unconditional in all respects or such scheme has become effective, use all reasonable endcavours to procure that a like offer or scheme is extended to the holders of any Ordinary Shares issued during the period of the offer or scheme arising out of any Trigger Conversion and/or to the Holders;
- (c) in the event of a Newco Scheme, take (or shall procure that there is taken) all necessary action to ensure that such amendments are made to these Conditions immediately after completion of the Scheme of Arrangement as are necessary to ensure that the Preferred Securities may be converted into or exchanged for ordinary shares in Newco (or depositary or other receipts or certificates representing ordinary shares of Newco) mutatis mutandis in accordance with and subject to these Conditions and the ordinary shares of Newco are:
  - (i) admitted to the Relevant Stock Exchange; or
  - (ii) listed and/or admitted to trading on another Recognised Stock Exchange,
     and the Holders irrevocably authorise the Bank to make such amendments to these Conditions;
- (d) issue, allot and deliver Ordinary Shares upon Trigger Conversion subject to and as provided in Condition6;
- (e) use all reasonable endeavours to ensure that its issued and outstanding Ordinary Shares and any Ordinary Shares issued upon Trigger Conversion will be admitted to listing and trading on the Relevant Stock Exchange or will be listed and/or admitted to trading on another Recognised Stock Exchange;
- (f) at all times keep in force the relevant resolutions needed for issue, free from pre-emptive rights, sufficient authorised but unissued Ordinary Shares to enable Trigger Conversion of the Preferred Securities, and to satisfy in full all rights that Holders may have hereunder; and
- (g) where the provisions of Condition 6 require or provide for a determination by an Independent Financial Adviser or a role to be performed by a Settlement Shares Depository, use all reasonable endeavours promptly to appoint such person for such purpose.

# 12 Meetings of Holders

# 12.1 Convening meetings

The Bank may, at any time, and shall, if required in writing by Holders holding not less than 10 per cent. in aggregate Liquidation Preference of the Preferred Securities for the time being outstanding, convene a meeting of the Holders and if the Bank fails for a period of seven days to convene the meeting, the meeting may be convened by the relevant Holders.

## 12.2 Procedures for convening meetings

(a) At least 21 clear days' notice specifying the place, day and hour of the meeting shall be given to the Holders in the manner provided in Condition 14. The notice, which shall be in the English language, shall state generally the nature of the business to be transacted at the meeting and, in the case of an Extraordinary Resolution only, shall either:

- (i) specify the terms of the Extraordinary Resolution to be proposed; or
- (ii) inform Holders that the terms of the Extraordinary Resolution are available free of charge from the Bank or an agent thereof, provided that, in the case of this (ii), such resolution is so available in its final form with effect on and from the date on which the notice convening such meeting is given as aforesaid.

#### The notice shall:

- include statements as to the manner in which Holders are entitled to attend and vote at the meeting; or
- (ii) inform Holders that details of the voting arrangements are available free of charge from the Bank or an agent thereof, provided that, in the case of this (ii) the final form of such details are available with effect on and from the date on which the notice convening such meeting is given as aforesaid.

A copy of the notice shall be sent by post to the Bank (unless the meeting is convened by the Bank).

(b) Notice of any adjourned meeting at which an Extraordinary Resolution is to be submitted shall be given in the same manner as notice of an original meeting but as if ten were substituted for 21 in Condition 12.2(a) and the notice shall state the relevant quorum. Subject to the foregoing it shall not be necessary to give any notice of an adjourned meeting.

#### 12.3 Chairman

The person (who may but need not be a Holder) nominated in writing by the Bank (the "Chairman") shall be entitled to take the chair at each meeting but if no nomination is made or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders present shall choose one of their number to be Chairman, failing which the Bank may appoint a Chairman. The Chairman of an adjourned meeting need not be the same person as was Chairman of the meeting from which the adjournment took place.

### 12.4 Quorums

- (a) At any meeting one or more Eligible Persons present and holding or representing in the aggregate not less than 5 per cent. in Liquidation Preference of the Preferred Securities for the time being outstanding shall (except for the purpose of passing an Extraordinary Resolution) form a quorum for the transaction of business, and no business (other than the choosing of a Chairman in accordance with Condition 12.3) shall be transacted at any meeting unless the required quorum is present at the commencement of business. The quorum at any meeting for passing an Extraordinary Resolution shall (subject as provided below) be one or more Eligible Persons present and holding or representing in the aggregate not less than 50 per cent. in Liquidation Preference of the Preferred Securities for the time being outstanding provided that at any meeting the business of which includes any of the following matters (each of which shall only be capable of being effected after having been approved by Extraordinary Resolution):
  - (i) a reduction or cancellation of the Liquidation Preference of the Preferred Securities; or

- (ii) without prejudice to the provisions of Condition 4 (including, without limitation, the right of the Bank to cancel the payment of any Distributions on the Preferred Securities), a reduction or cancellation of the amount payable or modification of the payment date in respect of any Distributions or variation of the method of calculating the Distribution Rate; or
- (iii) a modification of the currency in which payments under the Preferred Securities are to be made; or
- (iv) a modification of the majority required to pass an Extraordinary Resolution; or
- (v) the sanctioning of any scheme or proposal described in Condition 12.7(b)(vi) below; or
- (vi) alteration of this proviso or the proviso to Condition 12.4(b) below,

the quorum shall be one or more Eligible Persons present and holding or representing in the aggregate not less than two-thirds in Liquidation Preference of the Preferred Securities for the time being outstanding.

- (b) If within 15 minutes (or such longer period not exceeding 30 minutes as the Chairman may decide) after the time appointed for any meeting a quorum is not present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the meeting shall, if convened by Holders or if the Bank was required by Holders to convene such meeting pursuant to Condition 12.1, be dissolved. In any other case it shall be adjourned to the same day of the next week (or if that day is not a Business Day the next following Business Day) at the same time and place (except in the case of a meeting at which an Extraordinary Resolution is to be proposed in which case it shall be adjourned for a period being not less than 14 clear days nor more than 42 clear days and at a place appointed by the Chairman and approved by the Bank). If within 15 minutes (or a longer period not exceeding 30 minutes as the Chairman may decide) after the time appointed for any adjourned meeting a quorum is not present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the Chairman may either dissolve the meeting or adjourn it for a period, being not less than 14 clear days (but without any maximum number of clear days) and to a place as may be appointed by the Chairman (either at or after the adjourned meeting) and approved by the Bank, and the provisions of this sentence shall apply to all further adjourned meetings.
- (c) At any adjourned meeting one or more Eligible Persons present (whatever the Liquidation Preference of the Preferred Securities so held or represented by them) shall (subject as provided below) form a quorum and shall (subject as provided below) have power to pass any Extraordinary Resolution or other resolution and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had the required quorum been present, provided that at any adjourned meeting the business of which includes any of the matters specified in the proviso to Condition 12.4(a) the quorum shall be one or more Eligible Persons present and holding or representing in the aggregate not less than one-third in Liquidation Preference of the Preferred Securities for the time being outstanding.

# 12.5 Right to attend and vote

(a) The provisions governing the manner in which Holders may attend and vote at a meeting of the holders of Preferred Securities must be notified to Holders in accordance with Condition 14 and/or at the time of service of any notice convening a meeting.

- (b) Any director or officer of the Bank and its lawyers and financial advisers may attend and speak at any meeting. Subject to this, but without prejudice to the proviso to the definition of "outstanding", no person shall be entitled to attend and speak nor shall any person be entitled to vote at any meeting of the Holders or join with others in requiring the convening of a meeting unless he is an Eligible Person.
- (c) Subject as provided in Condition 12.6(b), at any meeting:
  - (i) on a show of hands every Eligible Person present shall have one vote; and
  - on a poll every Eligible Person present shall have one vote in respect of each Preferred Security.

## 12.6 Holding of meetings

- (a) Every question submitted to a meeting shall be decided in the first instance by a show of hands and in the case of an equality of votes the Chairman shall both on a show of hands and on a poll have a casting vote in addition to the vote or votes (if any) to which he may be entitled as an Eligible Person.
- (b) At any meeting, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or the Bank or by any Eligible Person present (whatever the Liquidation Preference of the Preferred Securities held by him), a declaration by the Chairman that a resolution has been carried by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) Subject to Condition 12.6(e) if at any meeting a poll is demanded, it shall be taken in the manner and, subject as provided below, either at once or after an adjournment as the Chairman may direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded as at the date of the taking of the poll. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the motion on which the poll has been demanded.
- (d) The Chairman may, with the consent of (and shall if directed by) any meeting, adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting except business, which might lawfully (but for lack of required quorum) have been transacted at the meeting from which the adjournment took place.
- (e) Any poll demanded at any meeting on the election of a Chairman or on any question of adjournment shall be taken at the meeting without adjournment.

## 12.7 Approval of the resolutions

- (a) Any resolution passed at a meeting of the Holders duly convened and held shall be binding upon all the Holders whether present or not present at the meeting and whether or not voting and each of them shall be bound to give effect to the resolution accordingly and the passing of any resolution shall be conclusive evidence that the circumstances justify its passing. Notice of the result of voting on any resolution duly considered by the Holders shall be published in accordance with Condition 14 by the Bank within 14 days of the result being known provided that nonpublication shall not invalidate the resolution.
- (b) The expression "Extraordinary Resolution" when used in this Condition 12 means a resolution passed at a meeting of the Holders duly convened and held in accordance with the provisions of

this Condition 12 by a majority consisting of not less than 75 per cent. of the persons voting on the resolution upon a show of hands or, if a poll was duly demanded, by a majority consisting of not less than 75 per cent, of the votes given on the poll.

- (c) A meeting of the Holders shall in addition to the powers set out above have the following powers exercisable only by Extraordinary Resolution (subject to the provisions relating to the quorum contained in Conditions 12.4(a) and 12.4(c)), namely:
  - power to approve any compromise or arrangement proposed to be made between the Bank and the Holders;
  - (ii) power to approve any abrogation, modification, compromise or arrangement in respect of the rights of the Holders against the Bank or against any of its property whether these rights arise under these Conditions or the Preferred Securities or otherwise;
  - (iii) power to agree to any modification of the provisions contained in these Conditions or the Preferred Securities, which is proposed by the Bank;
  - (iv) power to give any authority or approval which under the provisions of this Condition 12 or the Preferred Securities is required to be given by Extraordinary Resolution;
  - (v) power to appoint any persons (whether Holders or not) as a committee or committees to represent the interests of the Holders and to confer upon any committee or committees any powers or discretions which the Holders could themselves exercise by Extraordinary Resolution;
  - (vi) power to approve any scheme or proposal for the exchange or sale of the Preferred Securities for, or the conversion of the Preferred Securities into, or the cancellation of the Preferred Securities in consideration of, shares, stock, notes, bonds, debentures, debenture stock and/or other obligations and/or securities of the Bank or any other company formed or to be formed, or for or into or in consideration of cash, or partly for or into or in consideration of shares, stock, notes, bonds, debentures, debenture stock and/or other obligations and/or securities as stated above and partly for or into or in consideration of cash; and
  - (vii) power to approve the substitution of any entity in place of the Bank (or any previous substitute) as the principal debtor in respect of the Preferred Securities.
- (d) Subject to Condition 12,7(a), to be passed at a meeting of the Holders duly convened and held in accordance with the provisions of this Condition 12, a resolution (other than an Extraordinary Resolution) shall require a majority of the persons voting on the resolution upon a show of hands or, if a poll was duly demanded, a majority of the votes given on the poll.

## 12.8 Miscellaneous

(a) Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Bank and any minutes signed by the Chairman of the meeting at which any resolution was passed or proceedings had transpired shall be conclusive evidence of the matters contained in them and, until the contrary is proved, every meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had transpired at the meeting to have been duly passed or had.

- (b) For the purposes of calculating a period of clear days, no account shall be taken of the day on which a period commences or the day on which a period ends.
- (c) Any modification or waiver of the Conditions in accordance with this Condition 12 will be effected in accordance with the Applicable Banking Regulations and conditional upon any prior approval from the Competent Authority, to the extent required thereunder.

#### 13 Taxation

- All payments of Distributions and other amounts payable (excluding, for the avoidance of doubt, repayment of principal) in respect of the Preferred Securities by or on behalf of the Bank will be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature unless such withholding or deduction is required by law. In the event that any such withholding or deduction is imposed or levied by or on behalf of the Kingdom of Spain or any political subdivision thereof or any authority or agency therein or thereof having power to tax in respect of payments of Distributions (but not any Liquidation Preference or other amount), the Bank shall (to the extent such payment can be made on the same basis as for payment of any Distribution in accordance with Condition 4) pay such additional amounts as will result in Holders receiving such amounts as they would have received in respect of such Distributions had no such withholding or deduction been required.
- 13.2 The Bank shall not be required to pay any additional amounts in relation to any payment in respect of Preferred Securities:
  - (a) presented for payment by or on behalf of a Holder who is liable for such taxes, duties, assessments or governmental charges in respect of the Preferred Securities by reason of his having some connection with Spain other than:
    - (i) the mere holding of Preferred Securities; or
    - (ii) the receipt of any payment in respect of Preferred Securities; or
  - (b) where taxes are imposed by the Kingdom of Spain (or any political subdivision thereof or any authority or agency therein or thereof having power to (ax) that are (i) any estate, inheritance, gift, sales, transfer, personal property or similar taxes or (ii) solely due to the appointment by any Holder, or any person through which such Holder holds such Preferred Security, of a custodian, collection agent, person or entity acting on its behalf or similar person in relation to such Preferred Security; or
  - (c) to, or to a third party on behalf of, a Holder who is an individual resident for tax purposes in Spain (or any political subdivision or any authority thereof or therein having power to tax); or
  - (d) to, or to a third party on behalf of, a Holder in respect of whom the Bank (or an agent acting on behalf of the Bank) has not received such information it may be required in order to comply with Spanish tax reporting requirements, as may be necessary to allow payments on such Preferred Securities to be made free and clear of withholding tax or deduction on account of any taxes imposed by Spain, including when the Bank (or an agent acting on behalf of the Bank) does not receive such information concerning such Holder's identity and tax residence as may be required in order to comply with the procedures that may be implemented to comply with the interpretation of Royal Decree 1065/2007 eventually made by the Spanish Tax Authorities.

Notwithstanding any other provision of these Conditions, any amounts to be paid by the Bank on the Preferred Securities will be paid net of any deduction or withholding imposed or required pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986, as amended or

replaced from time to time (the "Code"), or otherwise imposed pursuant to Sections 1471 to 1474 of the Code and any regulations or agreements thereunder or official interpretations thereof ("FATCA") or any law implementing an intergovernmental approach to FATCA.

For the purposes of this Condition 13, the "Relevant Date" means, in respect of any payment, the date on which such payment first becomes due, and is available for payment to Holders, notice to that effect is duly given to the Holders in accordance with Condition 14 below.

See "Taxation" for a fuller description of certain tax considerations relating to the Preferred Securities.

#### 14 Notices

The Bank shall ensure that all notices are duly published in a manner which complies with the rules and regulations of any stock exchange or other relevant authority on which the Preferred Securities are for the time being listed and/or admitted to trading.

So long as the Preferred Securities are listed and admitted to trading on AIAF, to the extent required by the applicable regulations, the Bank shall ensure that (i) the communication of all notices will be made public to the market through announcements of inside information (comunicación de información privilegiada) or of other relevant information (comunicación de otra información relevante), as the case may be, to be filed with the CNMV and to be published at the CNMV's official website at www.cnmv.es and (ii) all notices to the Holders will be published in the official bulletin of AIAF (Boletín de Cotización de AIAF).

Any such notice shall be deemed to have been given on the date of such publication or, if published more than once, on the first date on which publication is made. If publication as provided above is not practicable, notice will be given in such other manner, and shall be deemed to have been given on such date, as the Bank may approve.

In addition, so long as the Preferred Securities are represented by book-entries in Iberclear, all notices to Holders shall be made through Iberclear for on transmission to their respective accountholders.

#### 15 Prescription

To the extent that Article 950 of the Spanish Commercial Code (*Código de Comercio*) applies to the Preferred Securities, claims relating to the Preferred Securities will be extinguished unless such claims are duly made within three years of the relevant payment date.

# 16 Governing Law and Jurisdiction

- 16.1 The Preferred Securities and any non-contractual obligations arising out of or in connection with the Preferred Securities shall be governed by, and construed in accordance with, Spanish law.
- 16.2 The Bank hereby irrevocably agrees for the benefit of the Holders that the courts of the city of Barcelona, Spain are to have jurisdiction to settle any disputes which may arise out of or in connection with the Preferred Securities (including a dispute relating to any non-contractual obligations arising out of or in connection with the Preferred Securities) and that accordingly any suit, action or proceedings arising out of or in connection with the Preferred Securities (together referred to as "Proceedings") may be brought in such courts. The Bank irrevocably waives any objection which it may have now or hereinafter to the laying of the venue of any Proceedings in the courts of the city of Barcelona, Spain. To the extent permitted by law, nothing contained in this Condition 16 shall limit any right to take Proceedings against the Bank in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other competent jurisdictions, whether concurrently or not.

# TÉRMINOS Y CONDICIONES DE LAS PARTICIPACIONES PREFERENTES

(l'igura a continuación el texto de las Condiciones de las Participaciones Preferentes, quedando exceptuados los párrafos en cursiva, que tienen un carácter meramente informativo)

CaixaBank, S.A. (el "Banco") emite las Participaciones Preferentes (según se define dicho término más adelante) en virtud de los acuerdos adoptados por (a) la Junta General de Accionistas del Banco, celebrada el 28 de abril de 2016 y (b) el Consejo de Administración del Banco, en su reunión celebrada el 23 de septiembre de 2020 y de conformidad con la Disposición Adicional Primera de la Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito (la "Ley 10/2014") y el Reglamento CRR (según se define dicho término más adelante).

Las Participaciones Preferentes se emitirán tras la inscripción en el Registro Mercantil de Valencia de una escritura pública relativa a la emisión de las Participaciones Preferentes antes de la Fecha de Cierre (según se define dicho término más adelante).

Las Participaciones Preferentes no otorgan a los Tenedores (según se define este término más adelante) derechos de suscripción preferente sobre ninguna posible emisión futura de acciones, participaciones preferentes o de cualesquiera otros valores que pudiera realizar el Banco o cualquiera de sus Filiales (según se define dicho término más adelante).

## 1 DEFINICIONES

- 1.1 A los efectos de las Participaciones Preferentes, las siguientes expresiones tendrán el significado que, respectivamente, se les atribuye a continuación:
  - "Tipo Mid-Swap a 5 Años" significa, en relación con una Fecha de Revisión y el Período de Revisión que comience en dicha Fecha de Revisión:
  - (a) el tipo para la Fecha de Revisión del tipo swap anual para operaciones con swaps en euros con un vencimiento de cinco años, expresado como un porcentaje, que aparezca en la correspondiente Pantalla bajo el título "EURIBOR BASIS – BUR" y encima del subtítulo "11AM FRANKFURT" a las 11:00 a.m. (CET) en la Fecha de Determinación de la Revisión; o
  - (b) Si dicho tipo no aparece en la correspondiente Pantalla en ese momento y en dicha Fecha de Determinación de la Revisión, será el Tipo Bancario de Referencia de Revisión para dicho Período de Revisión, a menos que se haya producido un Evento de Referencia, en cuyo caso el Tipo Mid-Swap a 5 Años se determinará de conformidad con la Condición 4.9;

"Cotizaciones del Tipo Mid-Swap a 5 Años" significa la media aritmética de los tipos de compra y venta para el tramo fijo anual (calculado con base en un cómputo de días 30/360) de una operación con swaps de tipos de interés fijo por variable en euros que:

- (a) tenga una duración de cinco años a partir de la correspondiente Fecha de Revisión; y
- (b) sea de un Importe Representativo,

donde el tramo variable (calculado con base en un Cómputo de Días Real/360 días) equivalga

al EURIBOR a 6 meses; o, si no está disponible, a otro tipo de referencia o fracción de cómputo de días como se use habitualmente en los mercados para dichas operaciones con swaps de tipos de interés en euros en el momento correspondiente;

"Divisa de Información Contable" significa el euro o cualquier otra divisa principal empleada en la presentación de las cuentas del Banco y/o del Grupo en cada momento;

"Acciones Ordinarias Adicionales" tendrá el significado que se le atribuye en la Condición 6.4:

"Capital de Nivel 1 Adicional" significa el capital de nivel 1 adicional de conformidad con lo dispuesto en el Capítulo 3 (Capital de nivel 1 adicional) del Título I (Elementos de los fondos propios) de la Parte Segunda (Fondos propios y Pasivos elegibles) del Reglamento CRR y/o de la Normativa Bancaria Aplicable en cualquier momento;

"Instrumento de Capital de Nivel 1 Adicional" significa cualquier obligación contractualmente subordinada del Banco que constituya un instrumento de capital de nivel 1 adicional de conformidad con lo dispuesto en la Normativa Bancaria Aplicable y tal y como se contempla en la Disposición Adicional 14.3°(c) de la Ley 11/2015;

"Diferencial de Ajuste" significa un diferencial o cuantía (que pueden ser positivos o negativos), o la fórmula o metodología para calcular un diferencial, que se va a aplicar, en cualquiera de los casos al Tipo Sucesor o al Tipo Alternativo (según proceda) y es el diferencial, la cuantía, fórmula o metodología que:

- en el caso del Tipo Sucesor, recomiende formalmente cualquier Órgano de Nombramiento Competente con respecto a la sustitución del Tipo Mid-Swap a 5 Años por el Tipo Sucesor; o
- (ii) (si no se ha hecho tal recomendación, o en el caso de un Tipo Alternativo) el Banco determine, después de consultar con el Asesor Financiero Independiente y actuando de buena fe y de una manera comercialmente razonable, que se aplica habitualmente al correspondiente Tipo Succsor o el Tipo Alternativo (según el caso) en las operaciones internacionales del mercado de capital de deuda para producir un tipo de sustitución aceptado por el sector para el Tipo Mid-Swap a 5 Años; o
- (iii) (si el Banco determina que dicho diferencial no se aplica habitualmente) el Banco determine, después de consultar con el Asesor Financiero Independiente y actuando de buena fe y de una manera comercialmente razonable, que está reconocido o se acepta como el estándar del sector para las operaciones de derivados extrabursátiles (over-the counter) cuya referencia es el Tipo Mid-Swap a 5 Años, cuando dicho tipo se ha sustituido por el Tipo Sucesor o el Tipo Alternativo (según el caso); o
- (iv) (si el Banco determina que no se reconoce o acepta tal estándar del sector) si no se puede determinar dicho diferencial, cuantía, fórmula o metodología de acuerdo con los apartados anteriores (i) a (iii), el Banco determine, a su discreción tras consultar con el Asesor Financiero Independiente y actuando de buena fe y de una manera comercialmente razonable, que es apropiado, para reducir o eliminar en la medida razonablemente posible dadas las circunstancias, cualquier perjuicio o beneficio

económico (según sea el caso) para los Tenedores como resultado de la sustitución del Tipo Mid-Swap a 5 años por el Tipo Sucesor o el Tipo Alternativo (según el caso).

"AIAF" significa AIAF Mercado de Renta Fija;

"Tipo Alternativo" significa un tipo de referencia o de pantalla alternativo que el Banco determina, después de consultar con el Asesor Financiero Independiente y actuando de buena fe y de una manera comercialmente razonable, que se utiliza habitualmente en los mercados internacionales de capital de deuda a efectos de determinar los tipos de interés variables (o la correspondiente parte componente del mismo) en euros;

"Normativa Bancaria Aplicable" significa en cada momento las leyes, reglamentos, requerimientos, directrices y políticas que se refieran a la adecuación de capital, resolución y/o solvencia aplicables en ese momento al Banco y/o al Grupo, incluidos, entre otros, la Directiva CRD IV, la BRRD, la Normativa sobre el MUR y cualesquiera reglamentos, requerimientos, directrices y políticas de la Autoridad Competente que se refieran a la adecuación de capital, resolución y/o solvencia en vigor en ese momento (independientemente de que dichos requerimientos, directrices o políticas tengan o no rango de ley e independientemente de que se apliquen o no de forma general o específica al Banco y/o al Grupo).

"Banco" tiene el significado que se le atribuye a dicho término en el párrafo introductorio;

"Modificaciones de Referencia" tiene el significado que se le atribuye a dicho término en la Condición 4.9.(c);

#### "Evento de Referencia" significa:

- el Tipo Mid-Swap a 5 Años que se deja de publicar durante un periodo de al menos 5
   Días Hábiles o que deja de existir; o
- (ii) una declaración pública del administrador del Tipo Mid-Swap a 5 Años de que ha dejado o dejará de publicar el Tipo Mid-Swap a 5 Años permanente o indefinidamente o que dejará de hacerlo en una fecha futura concreta (la "Fecha Futura Especificada") (en circunstancias en que no se ha nombrado ningún administrador sucesor que continúe la publicación del Tipo Mid-Swap a 5 Años); o
- (iii) una declaración pública del supervisor del administrador del Tipo Mid-Swap a 5 Años de que el Tipo Mid-Swap a 5 Años se ha interrumpido o se interrumpirá, en una Fecha Futura Especificada, de forma permanente o indefinida; o
- (iv) una declaración pública del supervisor del administrador del Tipo Mid-Swap a 5 Años de que el uso del Tipo Mid-Swap a 5 Años se prohibirá en una Fecha Futura Especificada o de que su uso estará sujeto a restricciones o consecuencias adversas; o
- (v) una declaración pública del supervisor del administrador del Tipo Mid-Swap a 5 Años de que, a juicio de dicho supervisor, el Tipo Mid-Swap a 5 Años ya no es representativo de un mercado subyacente; o
- (vi) que ha pasado a ser o pasará a ser ilegal que el Banco o cualquier otra parte calcule cualquier pago que deba hacer al Tenedor usando el Tipo Mid-Swap a 5 Años (incluido, entre otros, el Reglamento de Referencias (UE) 2016/1011, si procede).

No obstante lo dispuesto en los subapartados anteriores, cuando el Evento de Referencia correspondiente es una declaración pública incluida en los subapartados (ii), (iii) o (iv) anteriores y la Fecha Futura Especificada en dicha declaración pública tenga lugar en un plazo superior a seis meses a contar desde la fecha de dicha declaración pública, se considerará que el Evento de Referencia ocurrirá seis meses antes de dicha Fecha Futura Especificada.

"BRRD" significa la Directiva 2014/59/UE, de 15 de mayo, por la que se establece un marco para la reestructuración y la resolución de entidades de crédito y empresas de servicios de inversión, con las modificaciones o sustituciones que se vayan introduciendo, incluso por la BRRD II, conforme ha sido transpuesta en España por la Ley 11/2015 y el Real Decreto 1012/2015, con las modificaciones o sustituciones que se vayan introduciendo, e incluyendo cualesquiera otras disposiciones previstas en cualquier normativa de desarrollo;

"BRRD II" significa la Directiva (UE) 2019/879 del Parlamente Europeo y del Consejo de 20 de mayo de 2019 que modifica la Directiva 2014/59/UE en lo que respecta a la capacidad de absorción de pérdidas y recapitalización de las entidades de crédito y las empresas de inversión y la Directiva 98/26/CE;

"Día Hábil" significa un día en el que los bancos comerciales y los mercados de cambio de divisas liquiden pagos y estén abiertos para la realización de actividades generales de negocio (incluidas operaciones de cambio de divisas y depósitos en divisa extranjera) en Barcelona, Madrid y Londres;

"Evento de Capital" significa, en cualquier momento en la Fecha de Cierre o con posterioridad a la misma, un cambio (o cualquier cambio pendiente que la Autoridad Competente considere suficientemente cierto) en la clasificación regulatoria de las Participaciones Preferentes que conlleve (o pudiera probablemente conllevar):

- (a) la exclusión total o parcial del Valor Liquidativo agregado en circulación de las Participaciones Preferentes del Capital de Nivel I Adicional del Banco o del Grupo; o
- la reclasificación total o parcial del Valor Liquidativo agregado en circulación de las Participaciones Preferentes en una categoría inferior de fondos propios del Banco o del Grupo de conformidad con la Normativa Bancaria Aplicable;

"Certificado" tiene el significado que se le atribuye a dicho término en la Condición 2.3;

"Dividendo en Efectivo" significa todo Dividendo que (a) vaya a abonarse o efectuarse en efectivo (independientemente de la divisa), distinto al Dividendo englobado en el apartado (b) de la definición de "Escisión", o (b) cualquier Dividendo que hubiera de ser considerado como Dividendo en Efectivo de conformidad con lo dispuesto en el apartado (a) de la definición de "Dividendo" y, a efectos de aclaración, cualquier Dividendo que cayera dentro de lo dispuesto en el apartado (c) o (d) de la definición de "Dividendo" tendrá la consideración de Dividendo en Especie;

"CET" significa Hora de Europa Central;

"Capital CET1" significa el capital de nivel 1 ordinario de conformidad con el Capítulo 2 (Capital de nivel 1 ordinario) del Título I (Elementos de Fondos Propios) de la Parte Segunda

(Fondos Propios y Pasivos Elegibles) del Reglamento CRR y/o la Normativa Bancaria Aplicable en cualquier momento, incluidas las posibles disposiciones transitorias, de introducción gradual o disposiciones similares;

"Ratio de Capital CET1" significa, por lo que respecta al Banco o al Grupo, según proceda en cada caso, el coeficiente (expresado como un porcentaje) del importe agregado (en la Divisa de Información Contable) del Capital CET1 del Banco o del Grupo, respectivamente, dividido entre el Importe de los Activos Ponderados por Riesgo del Banco o del Grupo, en cada momento, todo ello según el cálculo efectuado por el Banco de conformidad con la Normativa Bancaria Aplicable y comunicado a la Autoridad Competente cuando proceda;

"Presidente" tiene el significado que se le atribuye a dicho término en la Condición 12.3;

"Clearstream Luxembourg" tiene el significado que se le atribuye a dicho término en la Condición 2.2;

"Fecha de Cierre" significa [ ] 2020;

"Precio de Cierre" significa, respecto de cualquier Acción Ordinaria, Valor o, en su caso, Valor de la Escisión, warrant u otro derecho o activo, en cualquier día de negociación, el precio que hubiera alcanzado al cierre del mercado dicha Acción Ordinaria, Valor o, en su caso, Valor de la Escisión, warrant u otro derecho o activo en la Bolsa de Valores Pertinente en dicho día de negociación, conforme dicho precio hubiera sido publicado por u obtenido a través de la página Bloomberg HP (bajo el epigrafe de "Última Cotización" o cualquier otro que pudiera reemplazarlo) para dicha Acción Ordinaria, Valor o, en su caso, Valor de la Escisión, warrant u otro derecho o activo en dicha Bolsa de Valores Pertinente y para dicho día de negociación (haciéndose constar, a efectos de aclaración, que dicha página Bloomberg para las Acciones Ordinarias es, a la Fecha de Cierre, la página CABK SM Equity HP), o, para el caso en que no fuera posible determinar el Precio de Cierre en la forma señalada anteriormente, el precio publicado como tal para dicho día de negociación por cualquier otra fuente (en su caso) que fuera calificada como adecuada por un Asesor Financiero Independiente que actuara de buena fe, en el bien entendido que si en dicho día de negociación dicho precio no estuviera disponible o no pudiera ser determinado en la forma señalada anteriormente, se entenderá por Precio de Cierre de la Acción Ordinaria, Valor o, en su caso, Valor de la Escisión warrant u otro derecho o activo, para dicho día de negociación, el Precio de Cierre, determinado en la forma señalada anteriormente, correspondiente al día de negociación inmediatamente anterior en el que dicho precio pudiera ser determinado en dicha forma o bien ser señalado como apropiado a efectos de su consideración como Precio de Cierre por un Asesor Financiero Independiente que actuara de buena fe;

"CNMV" significa la Comisión Nacional del Mercado de Valores;

"Autoridad Competente" significa el Banco Central Europeo o el Banco de España, según proceda, la Autoridad de Resolución Pertinente o cualquier otra autoridad o autoridad sucesora que ostente la más alta potestad de supervisión bancaria en relación con aspectos prudenciales y de supervisión sobre el Banco y/o el Grupo;

"Agente de Cálculo" tiene el significado que se le atribuye a dicha expresión en la Condición 6.14.

"Precio de Conversión" significa, en relación con una Fecha de Notificación de Supuesto Desencadenante, en caso de que las Acciones Ordinarias:

- (a) estén en dicho momento admitidas a negociación en una Bolsa de Valores Pertinente, el mayor de los siguientes:
  - (i) el Precio de Mercado Vigente de una Acción Ordinaria;
  - (ii) el Precio Mínimo de Conversión; y
  - (iii) el valor nominal de una Acción Ordinaria (siendo este último 1,00€ en la Fecha de Cierre);

en cada caso en dicha Fecha de Notificación de Supuesto Desencadenante; o

no estén en dicho momento admitidas a negociación en una Bolsa de Valores Pertinente,
 el mayor de entre los previstos en los subapartados (ii) o (iii) del apartado (a) anterior;

"Fecha de Liquidación de la Conversión" significa la fecha en la que las correspondientes Acciones Ordinarias vayan a entregarse con ocasión de la Conversión por Supuesto Desencadenante, que será lo antes posible y en todo caso en una fecha no posterior al mes siguiente (o cualquier otro período que exija la Normativa Bancaria Aplicable o la Autoridad Competente) a la Fecha de Notificación de Supuesto Desencadenante;

"Acciones Resultantes de la Conversión" tendrá el significado que se le atribuye en la Condición 6.2;

"Normativa CRD IV" significa cualquiera de los siguientes o cualquier combinación de los mismos: la Directiva CRD IV, el Reglamento CRR y cualesquiera Medidas para la Aplicación de la Normativa CRD IV;

"Directiva CRD IV" significa la Directiva 2013/36/UE del Parlamento Europeo y del Consejo, de 26 de junio, relativa al acceso a la actividad de las entidades de crédito y a la supervisión prudencial de las entidades de crédito y las empresas de inversión, con las modificaciones y sustituciones que se vayan introduciendo, incluido mediante la Directiva CRD V;

"Medidas para la Aplicación de la Normativa CRD IV" significa cualesquiera normas de capital regulatorio mediante las que se implemente o desarrolle la Directiva CRD IV o el Reglamento CRR que puedan aprobarse en su momento, incluidos, entre otros, los actos delegados o de aplicación (normas técnicas reguladoras) que adopte la Comisión Europea, leyes y reglamentos nacionales y reglamentos, normativa y directrices emanados de la Autoridad Competente, la Autoridad Bancaria Europea o cualquier otra autoridad competente, que resulten de aplicación al Banco (individualmente considerado) o al Grupo (de forma consolidada) incluyendo, sin limitación, la Ley 10/2014 y el Real Decreto 84/2015, en cada caso con las modificaciones y sustituciones que se vayan introduciendo, así como cualesquiera otros reglamentos, circulares o directrices que desarrollen la Normativa CRD IV;

"Directiva CRD V" significa la Directiva (UE) 2019/878 del Parlamento Europeo y del Consejo, de 20 de mayo de 2019, que modifica la Directiva 2013/36/UE en lo que respecta a los entes exentos, las sociedades financieras de cartera, las sociedades financieras mixtas de

cartera, las remuneraciones, las medidas y facultades de supervisión y medidas de conservación del capital;

"Reglamento CRR" significa el Reglamento (UE) número 575/2013 del Parlamento Europeo y del Consejo, de 26 de junio, sobre los requisitos prudenciales para las entidades de crédito y las empresas de inversión, en su forma vigente o conforme pudiera haber sido modificado o sustituido en cada momento incluido mediante el Reglamento CRR II;

"Reglamento CRR II" significa el Reglamento (UE) 2019/876 del Parlamento Europeo y del Consejo, de 20 de mayo de 2019, por el que se modifica el Reglamento (UE) número 575/2013 en lo que se refiere a la ratio de apalancamiento, la ratio de financiación estable neta, los requisitos de fondos propios y pasivos admisibles, el riesgo de crédito de la contraparte, el riesgo de mercado, las exposiciones a entidades de contrapartida central, las exposiciones a organismos de inversión colectiva, las grandes exposiciones y los requisitos de presentación y divulgación de información y el Reglamento (UE) número 648/2012;

"Precio de Mercado Vigente" significa en relación con una Acción Ordinaria en una fecha concreta, la media de la Cotización Media Ponderada por Volumen diaria de una Acción Ordinaria en cada uno de los cinco días de negociación consecutivos que finalicen el día de negociación inmediatamente anterior a dicha fecha (el "Periodo Aplicable") teniéndose en cuenta que a los efectos de determinar el Precio de Mercado Vigente de conformidad con lo dispuesto en la Condición 6.3(d) o (f) en circunstancias en los que el supuesto relevante en cuestión viniera referido a la emisión de Acciones Ordinarias, en caso de que en cualquier momento durante el Período Aplicable la Cotización Media Ponderada por Volumen se haya basado en un precio ex-Dividendo (o ex-cualquier otro derecho o legitimación) y durante otra parte de dicho período la Cotización Media Ponderada por Volumen se haya basado en un precio cum-Dividendo (o cum-cualquier otro derecho o legitimación), entonces:

- (a) en caso de que las Acciones Ordinarias que vayan a emitirse y entregarse no confleven el Dividendo (o derecho o legitimación) en cuestión, la Cotización Media Ponderada por Volumen en las fechas en las que las Acciones Ordinarias se hayan basado en un precio cum-dicho Dividendo (o cum- dicho otro derecho o legitimación) se tendrá, a los efectos de la presente definición, por el importe de la misma reducido en un importe igual al Valor Razonable de cualquiera de dichos Dividendos (o derechos o legitimación); o
- (b) en caso de que las Acciones Ordinarias que vayan a emitirse y entregarse sí conlleven el Dividendo (o derecho o legitimación) en cuestión, la Cotización Media Ponderada por Volumen en las fechas en las que las Acciones Ordinarias se hayan basado en un precio ex-dicho Dividendo (o ex-dicho otro derecho o legitimación) se tendrá, a los efectos de la presente definición, por el importe de la misma incrementado en un importe igual al Valor Razonable de cualquiera de dichos Dividendos o derechos o legitimaciones por Acción Ordinaria en la Fecha Ex dicho Dividendo (o derecho o legitimación),

y, teniéndose en cuenta, además, que:

- (i) a los efectos de determinar el Precio de Mercado Vigente de conformidad con la Condición 6.3(d) o (f) en circunstancias en los que el supuesto relevante en cuestión viniera referido a la emisión de Acciones Ordinarias, en caso de que en cada uno de los días de negociación del Período Aplicable la Cotización Media Ponderada por Volumen se haya basado en un precio cum-Dividendo (o cum-cualquier otro derecho o legitimación) en relación con un Dividendo (u otro derecho o legitimación) que haya sido declarado o anunciado pero las Acciones Ordinarias que vayan a emitirse y entregarse no conlleven dicho Dividendo (u otro derecho o legitimación) la Cotización Media Ponderada por Volumen en cada una de dichas fechas se tendrá, a los efectos de la presente definición, por el importe de la misma reducido en un importe igual al Valor Razonable de cualquiera de dichos Dividendos o derechos o legitimaciones por Acción Ordinaria en la fecha del primer anuncio público relativo a dicho Dividendo o derecho o legitimación;
- (ii) en caso de que la Cotización Media Ponderada por Volumen de una Acción Ordinaria no esté disponible en uno o varios de los días de negociación del Período Aplicable (no teniéndose en cuenta a estos efectos la definición de Cotización Media Ponderada por Volumen), entonces se empleará la media de las Cotizaciones Medias Ponderadas por Volumen que estén disponibles en el Período Aplicable (con sujeción a un mínimo de dos cotizaciones) y en caso de que sólo esté disponible una, o no esté disponible ninguna, Cotización Media Ponderada por Volumen en el Período Aplicable o si las Acciones Ordinarias no están admitidas a negociación, en cualquier momento dado, en una Bolsa de Valores Pertinente a estos efectos, el Precio de Mercado Vigente será el que determine de buena fe un Asesor Financiero Independiente; y
- (iii) a los efectos de cualquier cálculo o determinación que hubiera de realizarse de conformidad con lo dispuesto en los apartados (a)(i) o (a)(ii) de la definición de "Dividendo", si en cualquiera de dichos cinco días consecutivos de negociación la Cotización Media Ponderada por Volumen se hubiera basado en un precio cum que incorporara el Dividendo en cuestión o capitalización que diera lugar al requisito de proceder a dicho cálculo o determinación, se entenderá por Cotización Media Ponderada por Volumen en cada uno de dichos días, a los efectos de la presente definición, el importe de la misma minorado en una cifra igual al Valor Razonable del Dividendo o capitalización en cuestión;

"Día de Negociación" significa, en el caso de cualesquiera Acciones Ordinarias, Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos, conforme exigiera el contexto en cada caso, cualquier día en el que funcionara la Bolsa de Valores Pertinente a efectos de la negociación de tales Acciones Ordinarias, Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos tales instrumentos se encontrara abierta (según proceda en cada caso) (exceptuándose aquellos días en los que dicha Bolsa de Valores Pertinente tenga programado cerrar, o cierre, antes de su hora de cierre habitual en días hábiles);

"Notificación de Entrega" significa cualquier notificación remitida por el correspondiente Tenedor de conformidad con la Condición 6.10 que contenga los correspondientes datos de cuenta y demás datos relacionados para la entrega de Acciones Ordinarias en relación con la Conversión de Participaciones Preferentes;

De conformidad con los procedimientos establecidos por Iberclear y aplicables a la Fecha de Cierre, las Notificaciones de Entrega habrán de responder al formato de comunicación Swift MT565.

"Partidas Distribuibles" significa, en relación con el pago de una Remuneración en cada momento, los beneficios y las reservas (si las hubiere) del Banco que estén disponibles de acuerdo con la Normativa Bancaria Aplicable para el pago de esa Remuneración en ese momento.

A la l'echa de Cierre, el Reglamento CRR define "partidas distribuibles" como el importe de los resultados del último ejercicio cerrado, más los beneficios del ejercicio corriente y las reservas disponibles a tal fin antes de las distribuciones a los titulares de los instrumentos de los fondos propios (excluyendo, a efectos de aclaración, cualesquiera instrumentos de nivel 2), menos las pérdidas del ejercicio corriente, así como cualquier beneficio no distribuible de conformidad con la legislación de la Unión Europea, la legislación nacional o los estatutos de la entidad y cualquier saldo mantenido en reservas no distribuibles de conformidad con la ley nacional aplicable o los estatutos de la entidad; en cada caso, según la categoría específica de instrumentos de fondos propios con la que se relacionen la legislación curopea, la legislación nacional o los estatutos de la entidad, dichos beneficios, pérdidas o reservas se determinan sobre la base de las cuentas individuales de la entidad y no de las cuentas consolidadas.

"Remuneración" significa la remuneración en efectivo y no acumulable correspondiente a las Participaciones Preferentes y a un Período de Remuneración determinada de conformidad con lo previsto en la Condición 4;

"Fecha de Pago de Remuneración" significa cada [●], [●], [●] y [●], de cada año; la primera Fecha de Pago de Remuneración cac en [●] de 2020;

"Período de Remuneración" significa el período que transcurra desde, e incluida, una Fecha de Pago de Remuneración (o, en el caso del primer Período de Remuneración, la Fecha de Cierre) hasta, pero excluida, la siguiente (o primera) Fecha de Pago de Remuneración;

"Tipo de Remuneración" significa el tipo al que las Participaciones Preferentes devengan Remuneración de conformidad con la Condición 4;

"Dividendo" significa cualquier dividendo o distribución a los Accionistas en relación con las Acciones Ordinarias (incluida una Escisión) ya sea en efectivo, activos u otros bienes (y, a estos efectos, una distribución de activos incluirá, entre otras, una emisión de Acciones Ordinarias u otros Valores que figuren como total o parcialmente desembolsados mediante capitalización de beneficios o reservas), e independientemente de su descripción y de que resulte pagadero con cargo a la cuenta de primas de emisión, a beneficios, beneficios retenidos o cualquier otra cuenta o reserva de ingresos o capital, e incluida la distribución o pago a los Accionistas con ocasión de, o en relación con, una reducción de capital, teniéndose en cuenta que:

- (a) donde:
  - (i) (x) se anuncie un Dividendo en efectivo que pueda (a elección del Accionista o Accionistas) ser, satisfecho mediante la emisión de Acciones Ordinarias o

entrega de otros bienes o activos, o (y) cuando se anuncie una emisión de Acciones Ordinarias o entrega de otros bienes o activos en virtud de una capitalización de beneficios o reservas que vaya a ser, o pueda -a elección del Accionista o Accionistas- ser, satisfecha mediante el pago de efectivo (incluyendo, sin limitación alguna, en aquellos casos en que los Accionistas pudieran optar entre transmitir al Banco, o bien vender o renunciar total o parcialmente a su derecho a recibir Acciones Ordinarias a cambio del pago de un importe en metálico por parte del Banco en virtud de un compromiso de compra asumido por el Banco), entonces el Dividendo en cuestión se tendrá por un Dividendo en Efectivo de un importe igual al mayor de los siguientes:

- (A) el Valor Razonable de dicho importe en efectivo en la Fecha Ex dicho Dividendo o capitalización; y
- (B) el Precio de Mercado Vigente de dichas Acciones Ordinarias o, según el caso, el Valor Razonable de esos otros bienes o activos, en cada caso a la Fecha Ex dicho Dividendo o capitalización o, en cualquiera de tales casos, en caso de ser posterior, la fecha en la que se determine el número de Acciones Ordinarias (o cuantía de esos otros bienes o activos, según el caso) que pueda emitirse y entregarse; o
- (x) se vaya a producir una emisión de Acciones Ordinarias u otros bienes o activos a través de la capitalización de beneficios o reservas (incluida cualquier cuenta de primas de emisión o reserva de amortización) cuando dicha emisión sea, o se designe como, emisión en lugar de un Dividendo (independientemente de que se anuncie o no un importe o un equivalente a un Dividendo en Efectivo), o (y) se anunciara cualquier Dividendo que hubiera de ser satisfecho mediante la emisión o entrega de Acciones Ordinarias u otros bienes o activos, o (z) tuviera lugar cualquier emisión de Acciones Ordinarias o entrega de otros bienes o activos mediante capitalización de beneficios o reservas (incluyendo de cualquier cuenta de prima de emisión o reserva para amortización de capital) que hubiera de ser satisfecha mediante el pago de cualquier importe en efectivo, en cada caso salvo en las circunstancias previstas en el sub-apartado (i) anterior), el Dividendo o capitalización en cuestión será considerado como un Dividendo en Efectivo por un importe igual al Precio de Mercado Vigente de dichas Acciones Ordinarias o, según proceda en cada caso, por el Valor Razonable de dichos otros bienes o activos en cada caso a la Fecha Ex dicho Dividendo o capitalización o, en cualquiera de tales casos, en caso de ser posterior, a la fecha en la que se determine el número de Acciones Ordinarias (o el importe de dichos otros bienes o activos) que vaya a emitirse y entregarse;
- (b) no se tendrá en cuenta ninguna emisión de Acciones Ordinarias que se englobe en la Condición 6.3(a) o 6.3(b);
- (c) la compra o amortización o recompra de capital del Banco por o en nombre del Banco de conformidad con cualquier autorización general para dichas compras o recompras aprobada por una junta general de Accionistas y conforme -en otros aspectos- a las

limitaciones establecidas en la Ley de Sociedades de Capital para operaciones en general efectuadas por una sociedad con sus acciones propias, no constituirá un Dividendo y cualquier otra compra o amortización o recompra de capital del Banco por o en nombre del Banco o de cualquier miembro del Grupo no constituirá un Dividendo a menos que, en el caso de una compra o amortización o recompra de Acciones Ordinarias por o en nombre del Banco o de cualquier miembro del Grupo, la cotización media ponderada por Acción Ordinaria (antes de gastos) en cualquier día (un "Día de Acciones Especificado") en relación con dichas compras o amortizaciones o recompras (convertida, en caso de no estar expresada en la Divisa de Denominación de las Acciones, a la Divisa de Denominación de las Acciones al Tipo Vigente en dicho día) supere en más de un 5 por ciento el Precio de Mercado Vigente de la Acción Ordinaria en el Día de Acciones Especificado o, cuando se haya producido un anuncio (excluyéndose, con objeto de evitar cualquier tipo de duda a estos efectos, cualquier autorización general para dichas compras, amortizaciones o recompras aprobada por una junta general de Accionistas o cualquier notificación de convocatoria de una junta general de Accionistas de ese tipo) de la intención de comprar, rescatar o recomprar Acciones Ordinarias en una fecha futura a un precio especificado o cuando se presente una oferta pública de adquisición, en la fecha de dicho anuncio o a la fecha del primer anuncio público de dicha oferta pública de adquisición (e independientemente de que se haya anunciado o no en dicho momento un precio por Acción Ordinaria, un precio mínimo por Acción Ordinaria o un abanico de precios o una fórmula para la determinación de los mismos), según el caso, en cuyo caso dicha compra, amortización o recompra se tendrá por constitutiva de un Dividendo en la Divisa de Denominación de las Acciones por un importe igual al importe en el que el precio agregado abonado (antes de impuestos) en relación con las Acciones Ordinarias compradas, rescaladas o recompradas por el Banco o por su cuenta o, según el caso, por cualquier miembro del Grupo (convertido, cuando proceda, a la Divisa de Denominación de las Acciones según se establece en lo que antecede) supere el producto resultante de multiplicar:

- el 105 por ciento del Precio de Mercado Vigente de la Acción Ordinaria determinado según se establece en lo que antecede; por
- el número de Acciones Ordinarias así compradas, rescatadas o recompradas;
- si el Banco o cualquier miembro del Grupo procediese a comprar, amortizar o recomprar cualesquiera certificados de depósito u otros certificados o títulos representativos de Acciones Ordinarias, resultarán de aplicación las disposiciones contenidas en el apartado (c) anterior en relación con los mismos en la forma y con las modificaciones que, en su caso, determine de bucna fe un Asesor Financiero Independiente; y
- (e) cuando se efectúe o abonc un dividendo o distribución a los Accionistas de conformidad con cualquier plan implantado por el Banco con el fin de permitir a los Accionistas optar por, o que pueda requerir a los Accionistas, recibir dividendos o distribuciones en relación con las Acciones Ordinarias que ostenten a través de una persona que no sea (o además de) el Banco, dicho dividendo o distribución se tendrá -a los efectos de las presentes Condiciones- por un dividendo o distribución efectuada o abonada a los Accionistas por el Banco, interpretándose en consecuencia las disposiciones que

anteceden a la presente definición, y las disposiciones de las presentes Condiciones - incluidas las referencias al pago o realización de un dividendo por el Banco;

"Personas Aptas" significa aquellos Tenedores, o personas que hayan sido nombradas apoderados o representantes de dichos Tenedores, que tengan derecho a asistir y votar en una asamblea de Tenedores, no estando facultada a votar en dichas asambleas ninguna persona que ostente Participaciones Preferentes para o en beneficio, o en nombre, del Banco o cualquiera de sus Filiales.

"Capital Social" significa, en relación con cualquier entidad, su capital social emitido excluida cualquier parte de dicho capital que, por lo que respecta a dividendos y capital, no lleva aparejado ningún derecho a participar por encima de un importe específico en una distribución;

"EUR", "€" y "euro" significa el euro, la divisa introducida al comienzo de la tercera fase de la unión económica y monetaria europea de conformidad con el Tratado sobre el Funcionamiento de la Unión Europea, con sus correspondientes modificaciones o sustituciones;

## "EURIBOR a 6 meses" significa:

- (a) el tipo para depósitos en euros por un período de seis meses que aparece en la página de la pantalla correspondiente a partir de las 11.00 a.m. (CET) en la Fecha de Determinación de la Revisión para la Fecha de Revisión correspondiente; o
- (b) si no apareciese ese tipo en la Pantalla en cuestión a esa hora de esa l'echa de Determinación de la Revisión, la media aritmética de los tipos ofrecidos para depósitos en euros por cuatro de los principales bancos del mercado interbancario de la zona euro, seleccionados por el Banco, a esa hora de esa Fecha de Determinación de la Revisión a bancos de primer nivel en el mercado interbancario de la zona euro para un período de seis meses que comience en esa Fecha de Revisión para un Importe Representativo, siendo el Banco quien solicite a la oficina principal en la zona euro de cada uno de esos bancos principales que proporcione una cotización de su tipo;

"Euroclear" tiene el significado que se le atribuye a dicho término en la Condición 2.2;

"Accionistas Existentes" tendrá el significado que se le atribuye en la definición de "Acucrdo de Newco":

"Acuerdo Extraordinario" tendrá el significado que se le atribuye a dicho término en la Condición 12;

"Fecha Ex" significa, respecto de cualquier Dividendo, capitalización u otro derecho, y salvo definición en otro sentido prevista en las presentes Condiciones, la primera fecha de negociación en la que las Acciones Ordinarias cotizaran ex dicho Dividendo, capitalización u otro derecho en la Bolsa de Valores Pertinente;

"Valor Razonable" significa, por lo que respecta a cualquier bien en cualquier fecha:

- en el caso de un Dividendo en efectivo, el importe de dicho Dividendo en Efectivo,
- (b) en el caso de cualquier otro importe en efectivo, dicho importe,

- (e) en el caso de Valores o Valores de la Escisión, opciones, warrants u otros derechos o activos negociados en cualquier Bolsa de Valores Pertinente con un nivel adecuado de liquidez (según la determinación efectuada de buena fe por el Agente de Cálculo):
  - (i) si se tratara de Valores o Valores de la Escisión (en cada caso en la medida en que los mismos tuvieran la consideración de instrumentos de capital), la media aritmética de las Cotizaciones Medias Ponderadas por Volumen diarias de dichos Valores o Valores de la Escisión; y
  - (ii) si se tratara de Valores o Valores de la Escisión (en cada caso salvo en la medida en que los mismos tuvieran la consideración de instrumentos de capital), opciones, warrants u otros derechos o activos, la media aritmética de los Precios de Cierre diarios de tales Valores, Valores de la emisión, opciones, warrants u otros derechos o activos,

en el caso de ambos apartados (i) y (ii) anteriores durante el período de cinco días consecutivos de negociación en la Bolsa de Valores Pertinente a partir de dicha fecha (o, en caso de ser posterior, el primer día de negociación en el que tales Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos sean objeto de negociación en la Bolsa de Valores Pertinente) o cualquier otro período inferior en el que dichos Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos fueran objeto de negociación en la Bolsa de Valores Pertinente; y

(d) en el caso de Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos que no fueran objeto de negociación pública en una Bolsa de Valores Pertinente que presentara un nivel adecuado de liquidez (según lo que antecede), el valor razonable de dichos Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos será el que señalara de buena fe un Asesor Financiero Independiente, con base en un método de valoración de mercado comúnmente aceptado y teniendo en cuenta los factores que considere apropiados, incluido el precio de mercado por Acción Ordinaria, el rendimiento del dividendo de una Acción Ordinaria, la volatilidad de dicho precio de mercado, los tipos de interés vigentes y las condiciones de dichos Valores, Valores de la Escisión, opciones, warrants u otros derechos, incluida la fecha de vencimiento y precio de ejercicio (en su caso) de los mismos.

Tales importes se convertirán -en el caso del apartado (a) anterior- a la Divisa de Denominación de las Acciones (en caso de que dicho Dividendo en Efectivo se declare o abone en una divisa distinta a la Divisa de Denominación de las Acciones) al tipo de cambio empleado a la hora de determinar el importe pagadero a los Accionistas a los que se haya abonado o se vaya a abonar o estén legitimados a que se les abone el Dividendo en Efectivo en la Divisa de Denominación de las Acciones; y en cualquier otro caso, se convertirán a la Divisa de Denominación de las Acciones (en caso de expresarse en una divisa distinta a la Divisa de Denominación de las Acciones) al Tipo Vigente en dicha fecha. Además, en el caso de los apartados (a) y (b) anteriores, el Valor Razonable se determinará en términos brutos y sin tenerse en cuenta ninguna retención o deducción que deba aplicarse en relación con, o a cuenta de, impuestos, y sin tenerse en cuenta ningún crédito fiscal asociado;

"Primera Fecha de Revisión" significa el [•]1;

"Precio Mínimo de Conversión" significa [●] € por Acción Ordinaria, con sujeción a los ajustes previstos de conformidad con la Condición 6.3;

"Participaciones Preferentes Adicionales" significa cualesquiera instrumentos sustancialmente similares que, bien por imperativo legal o en virtud de sus propios términos, en este último caso en la medida en que así lo permitiera la ley, gozaran del mismo rango, pari passu que las Participaciones Preferentes y fueran susceptibles de conversión en Acciones Ordinarias por motivos distintos a la decisión de los tenedores de los mismos;

"Grupo" significa el Banco junto con sus Filiales a nivel consolidado;

"Tenedores" significa los tenedores de las Participaciones Preferentes según los términos previstos en la Condición 2.3;

"Therclear" significa la Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A., Sociedad Unipersonal;

"Entidades Participantes en Iberclear" significa las correspondientes entidades participantes en Iberclear;

"Assor Financiero Independiente" significa una empresa o asesor financiero o entidad financiera independiente de reconocida experiencia o prestigio internacional -pudiendo ser, en su caso y sin limitación alguna, el propio Agente de Cálculo-, nombrada por el Banco corriendo éste con los gastos;

"Margen Inicial" significa el [•] por ciento anual;

"Ley Concursal" significa Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal;

"Ley 10/2014" tiene el significado que se le atribuye a dicho término en el párrafo introductorio de las Condiciones;

Ley 11/2015 significa la Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión, con las modificaciones y sustituciones que se vayan introduciendo en cada momento;

"Distribución en caso de Liquidación" significa el Valor Liquidativo por Participación Preferente más, cuando proceda, en los casos en que no se haya cancelado de conformidad con, o no esté sujeto de otra forma a las limitaciones aplicables a los pagos establecidas en, la Condición 4, un importe igual a la Remuneración devengada y no abonada correspondiente al Período de Remuneración corriente en dicho momento hasta (pero excluida) la fecha del pago de la Distribución en caso de Liquidación;

"Valor Liquidativo" significa 200.000€ por Participación Preferente;

<sup>1</sup> Nota: La fecha que caiga al menos 5 años y 6 meses después de la Fecha de Cierre.

"Importe Máximo Distribuible" significa, en cualquier momento, el más bajo de cualquier importe máximo distribuible relativo al Banco o al Grupo que deba calcularse, en su caso, en ese momento de conformidad con lo previsto en (a) el Artículo 48 de la Ley 10/2014 y en cualquier disposición de desarrollo de ese artículo, y en cualquier otra disposición de la legislación española mediante la que se transponga o aplique el Artículo 141 de la Directiva CRD IV y/o (b) la Normativa Bancaria Aplicable;

"Acuerdo de Newco" significa un acuerdo de reestructuración o procedimiento análogo ("Acuerdo de Reestructuración") que conlleve la interposición de una sociedad anónima ("Newco") entre los Accionistas del Banco existentes inmediatamente antes del Acuerdo de Reestructuración (los "Accionistas Existentes") y el Banco, siempre que:

- sólo se emitan acciones ordinarias de Newco o certificados de depósito u otros certificados o títulos representativos de acciones ordinarias de Newco a los Accionistas Existentes;
- (b) inmediatamente después de la consumación del Acuerdo de Reestructuración los únicos accionistas de Newco o, según el caso, los únicos tenedores de certificados de depósito u otros certificados o títulos representativos de acciones ordinarias de Newco, scan Accionistas Existentes y los Derechos de Voto relativos a Newco sean ostentados por los Accionistas Existentes en las mismas proporciones en las que, respectivamente, ostentaban tales Derechos de Voto inmediatamente antes del Acuerdo de Reestructuración;
- (c) inmediatamente después de la consumación del Acuerdo de Reestructuración, Newco sea (o una o varias de las l'iliales participadas al cien por ciento por Newco sean) el único accionista ordinario (o los únicos accionistas ordinarios) del Banco;
- (d) todas las Filiales del Banco inmediatamente anteriores al Acuerdo de Reestructuración (excepción hecha de Newco, en caso de que Newco sea entonces una Filial) sean Filiales del Banco (o de Newco) inmediatamente después de la consumación del Acuerdo de Reestructuración; e
- (e) inmediatamente después de la consumación del Acuerdo de Reestructuración, el Banco (ο Newco) ostente, directa o indirectamente, el mismo porcentaje del capital ordinario y del capital social de dichas Filiales que el que ostentaba el Banco inmediatamente antes del Λeuerdo de Reestructuración.

"Dividendo en Especie" significa cualquier Dividendo que no sea un Dividendo en Efectivo, e incluirá una Escisión;

"Acciones Ordinarias" significa acciones ordinarias del Banco, cada una de las cuales lleva aparejado para su tenedor un voto en las Juntas Generales de Accionistas del Banco y se encuentra totalmente desembolsada;

"en circulación" significa, en relación con las Participaciones Preferentes, todas las Participaciones Preferentes emitidas salvo aquellas:

 que hubieran sido amortizadas de conformidad con la Condición 7 o en cualquier otra forma en virtud de las presentes Condiciones;

- que hubieran sido o estuvieran siendo convertidas en Acciones Ordinarias tras un Supuesto Desencadenante de conformidad con la Condición 6;
- (c) que hubieran sido adquiridas y amortizadas de conformidad con la Condición 9; y
- (d) que hubieran sido canceladas de conformidad con la Condición 15, si bien, y a efectos de:
- (a) el derecho de asistencia y voto en cualquier asamblea de los Tenedores; y
- (b) el cálculo de cuántas (y cuáles) Participaciones Preferentes se encontraran en cada momento en circulación a efectos de lo dispuesto en la Condición 12,

no se entenderán en circulación aquellas Participaciones Preferentes (si las hubiera) que en ese momento ostentara el Banco o cualquiera de sus Filiales (o que ostentara cualquier otra persona en beneficio del Banco o de cualquiera de las Filiales del Banco) (salvo y hasta el momento en que el Banco y/o cualquiera de sus Filiales y/o tales personas dejaran de ostentar tales Participaciones Preferentes).

"Participaciones Preferentes" significa las Participaciones Preferentes Capital de Nivel 1 Adicional Eventualmente Convertibles No Acumulables Perpetuas por valor de [●] € emitidas por el Banco en la Fecha de Cierre;

"Tipo Vigente" significa, en relación con cualesquiera divisas en cualquier día, el tipo medio de cambio al contado entre las correspondientes divisas vigente a las 12 del mediodía (CET) de dicha fecha según figure en, o se derive de, la Página de Referencia o, en caso de que no pueda determinarse dicho tipo medio en ese momento, el tipo medio vigente a las 12 del mediodía (CET) del día inmediatamente anterior en el que dicho tipo pueda determinarse de esa forma o, en caso de que dicho tipo no pueda determinarse por referencia a la Página de Referencia, el tipo medio de cambio que se determine en la forma que establezca de buena fe un Asesor Financiero Independiente;

"Procedimiento" tiene el significado que se le atribuye a dicho término en la Condición 16;

"Participaciones Preferentes Cualificadas" significa participaciones preferentes emitidas directa o indirectamente por el Banco cuando dichos valores:

(a) contengan términos que no scan por algún motivo materialmente menos favorables para los Tenedores que los términos de las Participaciones Preferentes; siendo cualesquiera diferencias entre sus términos y condiciones y estas Condiciones las estrictamente necesarias para cumplir (en caso de un Evento de Capital) con los requisitos de la Autoridad Competente relativos al Capital de Nivel 1 Adicional de conformidad con la Normativa Bancaria Aplicable y/o para remediar (en el caso de un Evento Fiscal) el correspondiente Evento Fiscal (siempre que el Banco haya entregado a los Tenedores un certificado firmado por dos firmantes autorizados con ese fin de conformidad con la Condición 14 al menos cinco Días Hábiles antes de (x) en el caso de sustitución de las Participaciones Preferentes, la fecha de emisión de las participaciones correspondientes o (y) en el caso de una variación de las Participaciones Preferentes, la fecha en que dicha variación se hace efectiva); y

con sujeción al apartado (a) anterior, (i) devengarán los mismos (o más altos) Tipos de Remuneración y tendrán las mismas l'echas de Pago de Remuneración que las que se apliquen cada cierto tiempo a las Participaciones Preferentes; (ii) tendrán la misma moneda, denominación y Valor Liquidativo agregado en circulación de las Participaciones Preferentes antes de la sustitución o variación pertinente; (iii) tendrán los mismos derechos de amortización que las Participaciones Preferentes, siempre que (si y solo en la medida que se requiera que las Participaciones Preferentes sean o sigan siendo Capital de Nivel I Adicional del banco o del Grupo de conformidad con la Normativa Bancaria Aplicable) los derechos de amortización opcionales dispuestos en la Condición 7.2.1 puedan no aplicarse; (iv) conservarán cualquier derecho existente en virtud de las Participaciones Preferentes a cualquier Distribución devengada que no se haya pagado con respecto al periodo de (e incluido) la Fecha de Pago de Distribución inmediatamente precedente a la fecha de sustitución o variación; (v) con sujeción a lo establecido en la siguiente disposición, tendrán al menos el mismo rango de las Participaciones Preferentes tal como está dispuesto en la Condición 3; (vi) se les asignarán (o mantendrán) como mínimo las mismas calificaciones crediticias asignadas a las Participaciones Preferentes inmediatamente anteriores a dicha variación o sustitución; (vii) no estarán sujetas inmediatamente después de dicha sustitución o variación a un Evento de Capital o Evento Fiscal; (viii) se admitirán a cotización para negociar en AIAF o en cualquier otro Mercado de Valores Reconocido que elija el Banco, si las Participaciones Preferentes se admitían a negociación inmediatamente antes de dicha variación o sustitución; y (ix) cumplirán los requisitos de la Normativa Bancaria Aplicable que sean actuales en ese momento con respecto al Capital de Nivel 1 Adicional,

siempre que cualquier variación del rango de las Participaciones Preferentes tal como se establece en la Condición 3 resultante de dicha sustitución o variación se considere que no es significativamente desfavorable para los intereses de los Tenedores cuando el rango de dichas Participaciones Preferentes tras la sustitución o variación sea al menos el mismo rango aplicable a las Participaciones Preferentes en virtud de la Condición 3 en la fecha de emisión de las Participaciones Preferentes;

"Bolsa de Valores Reconocida" significa un mercado de valores o bolsa de valores reconocida, regulada y que opere regularmente en un estado miembro de la OCDE;

"Precio de Amortización" significa, por Participación Preferente, la Remuneración en caso de Liquidación correspondiente a la fecha fijada para la amortización anticipada de las Participaciones Preferentes;

"Bancos de Referencia" significa las cinco entidades que elija el Banco líderes en el intercambio de swaps en el mercado interbancario de la zona euro;

"Fecha de Referencia" significa, en relación con un Ajuste Retroactivo, la fecha a partir de la cual surta efecto el correspondiente Ajuste Retroactivo o, en cualquier caso, en caso de que no sea un día de negociación, el día de negociación inmediatamente siguiente;

"Página de Referencia" significa la BFIX de Bloomberg o, para el caso en que dicha página no estuviera disponible, la página correspondiente (conforme pudiera determinar de buena fe el Ascsor Financiero Independiente) de Reuters o de cualquier otro proveedor de servicios de información que publique la información correspondiente;

"Órgano de Nombramiento Competente" significa, con respecto a un tipo de referencia o a un tipo de pantalla (según proceda):

- (a) el banco central para la moneda a la que se refiere el tipo de referencia o el tipo de pantalla (según corresponda), o cualquier banco central u otra autoridad de supervisión que sea responsable de supervisar al administrador del tipo de referencia o el tipo de pantalla (según corresponda); o
- (b) cualquier grupo de trabajo o comité patrocinado, presidido o copresidido por o constituido a solicitud de (a) el banco central para la moneda relacionada con el tipo referencia o el tipo de pantalla (según corresponda), (b) cualquier banco central u otro autoridad de supervisión que es responsable de supervisar al administrador del tipo de referencia o el tipo de pantalla (según corresponda), (c) un grupo de los bancos centrales u otras autoridades de supervisión mencionados anteriormente o (d) el Consejo de Estabilidad Financiera o cualquier parte del mismo;

"Autoridad de Resolución Pertinente" significa el Fondo de Reestructuración Ordenada Bancaria, la Junta Única de Resolución, el Banco de España, la Comisión Nacional del Mercado de Valores o cualquier otra entidad con autoridad para ejercer cualquiera de las herramientas de resolución y los poderes recogidos en la Ley 11/2015 en cada momento que desempeñe la función de autoridad de resolución bancaria";

"Bolsa de Valores Pertinente" significa (i) en el caso de las Acciones Ordinarias, las Bolsas de Valores Españolas o en caso de que en el momento correspondiente las Acciones Ordinarias no coticen ni estén admitidas a negociación en ninguna de las Bolsas de Valores Españolas, la principal bolsa de valores o mercado de valores en el que las Acciones Ordinarias coticen, estén admitidas a negociación o hubieran sido aceptados para su negociación en dicho momento y (ii) en el caso de los restantes Valores (distintos de Acciones Ordinarias), Valores de la Escisión, opciones, warrants u otros derechos o activos, la principal bolsa o mercado en el que tales Valores, Valores de la Escisión, opciones, warrants u otros derechos o activos cotizaran en ese momento o se encontraran admitidos a negociación o hubieran sido aceptados para su negociación;

"Importe Representativo" significa un importe que sea representativo de una única operación en el mercado correspondiente y en la hora correspondiente con una reputada y solvente sociedad de valores y bolsa en el mercado de swaps;

"Fecha de Revisión" significa la Primera Fecha de Revisión y cada quinto aniversario de la misma;

"Fecha de Determinación de la Revisión" significa en relación con cada Fecha de Revisión, el segundo Día Hábil TARGET inmediatamente anterior a dicha Fecha de Revisión;

"Período de Revisión" significa el período que transcurra desde (e incluida) una Fecha de Revisión hasta (pero excluida) la Fecha de Revisión inmediatamente siguiente;

"Tipo Bancario de Referencia de Revisión" significa en relación con una Fecha de Revisión y el Período de Revisión que comience en dicha Fecha de Revisión, el porcentaje determinado con base en las Cotizaciones del Tipo Mid-Swap a 5 Años facilitadas por los Bancos de Referencia alrededor de las 11.00 horas (CET) en la l'echa de Determinación de la Revisión para dicha Fecha de Revisión. El Banco solicitará a las oficinas principales de cada uno de los Bancos de Referencia que proporcione una cotización de su tipo. En caso de que se faciliten tres o más cotizaciones, el Tipo Bancario de Referencia de Revisión para dicho Período de Revisión será el porcentaje que refleje la media aritmética de las cotizaciones, eliminándose la cotización más alta (o, en caso de igualdad, una de las más altas) y la cotización más baja (o, en caso de igualdad, una de las más bajas). En caso de que sólo se faciliten dos cotizaciones, será la media aritmética de las cotizaciones facilitadas. En caso de que sólo se facilite una cotización, será la cotización facilitada. En caso de no facilitarse cotización alguna, el Tipo Bancario de Referencia de Revisión para el Período de Revisión será:

- (a) en el caso de cada Periodo de Revisión distinto al Período de Revisión que comience en la Primera Fecha de Revisión, el Tipo Mid-Swap a 5 Años en relación con el Período de Revisión inmediatamente anterior; o
- (b) en el caso del Período de Revisión que comience en la Primera Fecha de Revisión, el
   [●] por ciento anual;

"Ajuste Retroactivo" tendrá el significado que se le atribuye en la Condición 6.4;

"Importe de los Activos Ponderados por Riesgo" significa en cualquier momento, por lo que respecta al Banco o al Grupo, según corresponda en cada caso, el importe agregado (expresado en la Divisa de Información Contable) de los activos ponderados por riesgo del Banco o del Grupo, respectivamente, calculado de conformidad con el Reglamento CRR y/o la Normativa Bancaria Aplicable en dicho momento;

"Real Decreto 84/2015" significa el Real Decreto 84/2015, de 13 de febrero, por el que se desarrolla la Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito, en su versión actualizada o reformulada en cada momento;

"Real Decreto 1012/2015" significa el Real Decreto 1012/2015, de 6 de noviembre, por el que se desarrolla la Ley 11/2015, de 18 de junio, de recuperación y resolución de entidades de crédito y empresas de servicios de inversión, y por el que se modifica el Real Decreto 2606/1996, de 20 de diciembre, sobre fondos de garantía de depósitos de entidades de crédito, en su versión actualizada o reformulada en cada momento;

"Acuerdo de Reestructuración" tiene el significado que se le atribuye en la definición de "Acuerdo de Newco";

"Pantalla" significa la página de publicación del correspondiente servicio de información Reuters designada como

- (a) en el caso del Tipo Mid-Swap a 5 años, la página "ICESWAP2"; ο
- (b) en el caso del EURIBOR a 6 meses, la página EURIBOR01 o, en cada caso, cualquier otra página que pueda sustituir a esa página en dicho servicio de información, o en cualquier otro servicio de información equiparable que indique la persona que facilite o

patrocine dicha información, para la publicación de tipos equivalentes o comparables al Tipo Mid-Swap a 5 Años o, en su caso, al EURIBOR a 6 meses;

"Valores" significa cualesquiera valores, incluidos, entre otros, acciones del Banco, u opciones, warrants u otros derechos a suscribir o comprar o adquirir acciones del Banco;

"Depositario de Acciones de Liquidación" significa cualquier reputada entidad financiera, sociedad fiduciaria o entidad similar independiente que sea nombrada por el Banco, en o con anterioridad a cualquier fecha en la que cualquiera de las funciones asignadas al Depositario de Acciones de Liquidación en las presentes Condiciones deba ser desempeñada, para desempeñar tales funciones y que ostentará Acciones Ordinarias en Iberclear o en cualquiera de las Entidades Participantes de Iberclear en una cuenta de custodia en beneficio de los Tenedores y, en otros aspectos, acorde a las presentes Condiciones;

"Divisa de Denominación de las Acciones" significa el euro o cualquier otra divisa en la que coticen o sean objeto de negociación las Acciones Ordinarias en la Bolsa de Valores Pertinente en el momento correspondiente o a los efectos del correspondiente cálculo o determinación;

"Accionistas" significa los tenedores de Acciones Ordinarias;

"Ley de Sociedades de Capital" significa el Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital, en su forma vigente en cada momento;

"Bolsas de Valores Españolas" significa las bolsas de valores de Madrid, Barcelona, Bilbao y Valencia y el SIB - Sistema de Interconexión Bursátil - Mercado Continuo (SIB);

"Fecha Especificada" tiene los significados que se le atribuyen en las Condiciones 6.3(d), 6.3(f), 6.3(g) y 6.3(h), según proceda;

## "Escisión" significa:

- una distribución de Valores de la Escisión por parte del Banco a los Accionistas como una clase; o
- (b) cualquier emisión, transmisión o entrega de cualesquiera bienes o activos (incluido efectivo o acciones u otros valores de o emitidos o adjudicados por cualquier entidad) por parte de cualquier entidad (distinta al Banco) a los Accionistas como una clase o, en el caso de, o en relación con, un Acuerdo de Newco, a los Accionistas Existentes como una clase (pero excluida la emisión y adjudicación de acciones ordinarias (o certificados de depósito u otros certificados o títulos representativos de dichas acciones ordinarias) por Newco a los Accionistas Existentes como una clase), de conformidad en cada caso- con los acuerdos suscritos con el Banco o con cualquier miembro del Grupo;

"Valores de la Escisión" significa el capital social de una entidad que no sea el Banco u opciones, warrants u otros derechos a suscribir o comprar capital social de cualquier entidad que no sea el Banco;

"Normativa sobre MUR" significa el Reglamento (UE) Nº 806/2014 del Parlamento Europeo y del Consejo de 15 de julio de 2014, por el que se establecen normas uniformes y un

procedimiento uniforme para la resolución de entidades de crédito y determinadas empresas de servicios de inversión en el marco del Mecanismo Único de Resolución y el Fondo Único de Resolución y se modifica el Reglamento (UE) Nº 1093/2010, en su versión modificada o reformulada en cada momento, incluido mediante la Normativa sobre el MUR II;

"Normativa sobre el MUR II" significa el Reglamento (UE) 2019/877 del Parlamento Europeo y del Consejo, de 20 de mayo de 2019, que modifica el Reglamento (UE) N.º 806/2014 en lo que se refiere a la capacidad de absorción de pérdidas y de recapitalización para las entidades de crédito y las empresas de inversión;

"Reglamento SSM" significa el Reglamento (UE) N.º 1024/2013 del Consejo, de 15 de octubre de 2013, que encomienda al Banco Central Europeo tareas específicas respecto de políticas relacionadas con la supervisión prudencial de las entidades de crédito, en su versión actualizada o sustituida en cada momento;

"Filial" significa cualquier entidad sobre la que el Banco tenga, directa o indirectamente, control de conformidad con lo previsto en el Artículo 42 del Código de Comercio y en la Normativa Bancaria Aplicable;

"Tipo Sucesor" significa un tipo sucesor o de sustitución del Tipo Mid-Swap a 5 Años que recomiende formalmente cualquier Órgano de Nombramiento Competente;

"Día Hábil TARGET" significa cualquier día en el que esté abierto el sistema automatizado transeuropeo de transferencia para la liquidación bruta en tiempo real (Trans-European Automated Real Time Gross Settlement Transfer) (TARGET 2);

"Evento Fiscal" significa, en cualquier momento de la Fecha de Cierre o con posterioridad a la misma, un cambio o modificación en la legislación del Reino de España o cualquier cambio en la aplicación de dicha legislación, que conduzca a que:

- (a) el Banco no esté legitimado a reclamar una deducción a la hora de realizarse el cómputo de las obligaciones fiscales en España en relación con cualquier Remuneración que vaya a hacerse efectiva en la siguiente Fecha de Pago de Remuneración o el importe de dicha deducción a favor del Banco se vea significativamente reducido; o
- (b) el Banco esté obligado a abonar importes adicionales de conformidad con la Condición
   13 que figura más adelante; o
- el tratamiento fiscal aplicable a las Participaciones Preferentes se vea significativamente afectado;

y en cada caso el Banco no pudiese evitar dicha obligación adoptando las medidas razonables de que disponga;

"Conversión por Supuesto Desencadenante" tendrá el significado que se le atribuye en la Condición 6.1;

"Supuesto Desencadenante" significa que, en cualquier momento, y según haya sido determinado por el Banco o la Autoridad Competente (u otra persona o entidad designada a tales efectos por la Autoridad Competente), el Ratio de Capital CET I sea inferior al 5,125 por ciento;

"Notificación de Supuesto Desencadenante" tendrá el significado que se le atribuye en la Condición 6.1;

"Fecha de Notificación de Supuesto Desencadenante" significa la fecha en la que se efectúe una Notificación de Supuesto Desencadenante de acuerdo con la Condición 6.1;

"Cotización Media Ponderada por Volumen" significa, en relación con una Acción Ordinaria, Valor o, según proceda, Valor de la Escisión en cualquier día de negociación, la cotización media ponderada por volumen del libro de órdenes de una Acción Ordinaria, Valor o, según el caso, Valor de la Escisión, alcanzada en la Bolsa de Valores Pertinente en dicho día de negociación, publicada por, o derivada de la página HP de Bloomberg (bajo el epigrafe de "Cotización Media" o "Weighted Average Line" o cualquier otro epígrafe que pudiera sustituir al anterior) para dicha Acción Ordinaria, Valor o, según proceda en cada caso, Valor de la Escisión respecto de dicha Bolsa de Valores Pertinente y en dicho día de negociación (haciéndose constar, a efectos de aclaración que dicha página de Bloomberg para las Acciones Ordinarias a la Fecha de Cierre es la denominada "CABK SM Equity HP") o, para el caso en que no pudiera determinarse la Cotización Media Ponderada por Volumen en la forma referida anteriormente, el valor publicado como tal para dicho día de negociación por cualquier otra fuente (en su caso) que fuera calificada como adecuada por un Asesor Financiero Independiente que actuara de buena fe, en el bien entendido que si en dicho día de negociación dicho valor no estuviera disponible o no pudicra ser determinado en la forma señalada anteriormente, se entenderá por Cotización Media Ponderada por Volumen de la Acción Ordinaria, Valor o, en su caso, Valor de la Escisión, para dicho día de negociación, la Cotización Media Ponderada por Volumen calculada en la forma señalada anteriormente, correspondiente al día de negociación inmediatamente anterior en el que dicho valor pudiera ser determinado en dicha forma o bien ser señalado como apropiado a efectos de su consideración como Cotización Media Ponderada por Volumen.

A la Fecha de Cierre, el precio de las Acciones Ordinarias cotizadas y admitidas a negociación en la Bolsa de Valores Pertinente es objeto de publicación cada día de negociación en dicha página de Bloomberg;

"Derecho de Voto" significa el derecho general a votar en una Junta General de Accionistas del Banco (independientemente de que en dicho momento las acciones de cualquier otra clase o clases ostenten o no, o pudieran o no ostentar, facultades de voto por razón del acaecimiento de cualquier contingencia); y

"Derechos de Compensación Renunciados" significa cualesquiera derechos o reclamaciones que asistieran a cualquier Tenedor y le permitieran exigir cualquier forma de deducción, compensación, liquidación o retención y que derivaran directa o indirectamente en virtud de o en relación con cualesquiera Participaciones Preferentes.

1.2 Las referencias hechas a cualquier ley o legislación o a cualquier disposición contenida en cualquier ley o legislación se entenderá que incluyen cualquier modificación o nueva promulgación de las mismas o de cualquier instrumento legislativo, orden o reglamento promulgado en virtud de o de acuerdo con las mismas o en virtud de o de conformidad con dicha modificación o nueva promulgación.

- 1.3 Las referencias a cualquier emisión u oferta u otorgamiento a los Accionistas o Accionistas Existentes "como una clase" o "mediante derechos" se entenderán como referencias hechas a una emisión u oferta u otorgamiento a la totalidad o la práctica totalidad de los Accionistas o Accionistas Existentes, según el caso, excluidos los Accionistas o Accionistas Existentes, según proceda, a favor de quienes se establezca-en virtud de las leyes de cualquier territorio o de los requisitos de cualquier órgano regulador reconocido o cualquier otra bolsa de valores o mercado de valores de cualquier territorio o en relación con legitimaciones fraccionarias- no efectuar dicha emisión u oferta u otorgamiento.
- 1.4 A la hora de efectuar cualquier cálculo o determinación del Precio de Mercado Vigente o de la Cotización Media Ponderada por Volumen, se practicarán los ajustes que (en su caso) estime adecuados el Agente de Cálculo o un Asesor Financiero Independiente -actuando de buena fepara reflejar cualquier consolidación o subdivisión de las Acciones Ordinarias o cualquier emisión de Acciones Ordinarias mediante capitalización de beneficios o reservas, o cualquier supuesto igual o similar.
- 1.5 Exclusivamente a los efectos de la Condición 6.3:
  - (a) las referencias a la emisión de Acciones Ordinarias o a Acciones Ordinarias que se emitan incluirán, a menos que se especifique lo contrario expresamente en las presentes Condiciones, la transmisión y/o entrega de Acciones Ordinarias, ya sean de nueva emisión y adjudicación o previamente existentes u ostentadas por o en nombre del Banco o de cualquier miembro del Grupo; y
  - (b) las Acciones Ordinarias ostentadas por o en nombre del Banco o de cualquier miembro del Grupo (y que, en el caso de las Condiciones 6.3(d) y 6.3(f), no conlleven el correspondiente derecho u otra legitimación) no se entenderán como, ni se considerarán, emitidas o legitimadas a recibir ningún Dividendo, derecho u otra legitimación de ninguna índole.

# 2 Forma, Valor Nominal y Representación

- 2.1 Las Participaciones Preferentes han sido emitidas en forma de anotaciones en cuenta, en Euros, por un importe nominal total de [•] €, con un valor nominal unitario de 200.000 €.
- 2.2 Las Participaciones Preferentes han sido registradas en Iberclear, como entidad gestora del registro central del sistema de compensación y liquidación español (el "Registro Central Español"). Los titulares de cualquier derecho sobre las Participaciones Preferentes que no tuvieran, directa o indirectamente a través de sus depositarios, una cuenta de participación en Iberclear podrán participar en las Participaciones Preferentes a través de cuentas puente mantenidas a través de Euroclear Bank, SA/NV ("Euroclear") y Clearstream Banking, S.A. ("Clearstream Luxembourg") con Iberclear.

Therelear es responsable de la compensación y liquidación de las Participaciones Preferentes, sin perjuicio del compromiso del Banco de colaborar, en su caso, en la compensación y

liquidación de las Participaciones Preferentes a través de Euroclear y Clearstream Luxemburgo.

La Agencia Nacional de Codificación de Valores Mobiliarios ha asignado a las Participaciones Preferentes el código ISIN ES0840609012 a efectos de su identificación. [•]. El Código Común de la emisión es [•].

2.3 Las Participaciones Preferentes se encuentran representadas mediante anotaciones en cuenta, y cualquier persona a cuyo nombre figuraran inscritas en el Registro Central Español gestionado por Iberclear y sus registros a cargo de las Entidades Participantes en Iberclear las Participaciones Preferentes será (salvo disposición en otro sentido prevista en la legislación española) considerada titular del principal de tales Participaciones Preferentes. A efectos de las presentes Condiciones, se entenderá por "Tenedor" la persona a cuyo nombre dichas Participaciones Preferentes se encontraran inscritas en cada momento en el Registro Central Español gestionado por Iberclear o, en su caso, en el registro contable de la correspondiente Entidad Participante (o en el caso de titularidad conjunta, la persona que figurara en primer lugar en dicho registro).

Dicha Entidad Participante o la propia Iberclear (en cada caso, de conformidad con los requisitos establecidos al respecto por la legislación española y por la Entidad Participante en cuestión o, en su caso, en virtud de los procedimientos establecidos por Iberclear) emitirán a favor del Tenedor de las Participaciones Preferentes, a petición de este, uno o varios certificados (en cada caso, un "Certificado") acreditativo de la titularidad del Tenedor en cuestión sobre las Participaciones Preferentes inscritas en el registro en cuestión.

Las Participaciones Preferentes se emiten sin sujeción alguna a ninguna restricción que impida su libre transmisibilidad. En consecuencia, podrán ser libremente transferidas, y la titularidad sobre las mismas podrá pasar (con sujeción a la legislación española y previo cumplimiento de cualesquiera normas, restricciones y requisitos aplicables exigidos por Iberclear o, en su caso, por la correspondiente Entidad Participante) al adquirente previo registro de la transmisión en el correspondiente registro de cada Entidad Participante y/o de la propia Iberclear, según proceda en cada caso. El Tenedor (salvo disposición en otro sentido prevista en la legislación española) será considerado como titular de pleno derecho de las Participaciones Preferentes a cualesquiera efectos que procedan (con independencia de que el mismo debiera cualesquiera importes, y al margen de cualquier notificación de titularidad, depósito u otro interés, así como con independencia de cualquier anotación existente en el propio Certificado, o del robo o pérdida del Certificado emitido respecto de la Participación Preferente en cuestión), sin que pueda exigirse responsabilidad alguna a ninguna persona por considerar como tal al Tenedor.

# 3 Orden de Prelación de las Participaciones Preferentes

A menos que se hayan convertido previamente en Acciones Ordinarias de conformidad con la Condición 6, las obligaciones de pago del Banco bajo las Participaciones Preferentes a cuenta del principal constituyen obligaciones directas, incondicionales, no garantizadas y subordinadas (créditos subordinados) del Banco de conformidad con el Artículo 281.1.2° de la Ley Concursal y, de conformidad con la Disposición Adicional 14.3° de la Ley 11/2015 o cualquier otra disposición de la ley española que la reemplace de vez en cuando, pero sujeto a cualquier otro rango que pueda aplicarse como resultado de cualquier disposición obligatoria de la ley (o de otro modo), en caso de insolvencia

del Banco, siempre que las obligaciones del Banco bajo las Participaciones Preferentes tengan la consideración de Instrumentos de Capital de Nivel 1 Adicional del Banco, se clasificarán con el:

- (a) mismo rango (pari passu) entre sí así como junto con:
  - (i) cualesquiera créditos por principal respecto de otros créditos subordinados del Banco de conformidad con el Artículo 281.1.2º de la Ley Concursal o cualquier otra disposición de la ley española que lo reemplace de vez en cuando, se clasificarán como Instrumentos de Capital de Nivel 1 Adicional; y
  - (ii) cualesquiera otros créditos subordinados del banco que por ley y/o por sus propios términos, en la medida en que así lo permitiera la legislación española, gozaran del mismo rango (pari passu) que las obligaciones del Banco derivadas de las Participaciones Preferentes;

# (b) menor rango que:

- (i) cualesquiera créditos por principal respecto de cualesquiera obligaciones no subordinadas del Banco;
- (ii) cualesquiera créditos subordinados del Banco de conformidad con el Artículo 281.1.2º de la Ley Concursal o cualquier otra disposición de la ley española que lo reemplace de vez en cuando;
- (iii) cualesquiera créditos por principal respecto de cualesquiera otros créditos subordinados del Banco de conformidad con el Artículo 281.1.2º de la Ley Concursal o cualquier otra disposición de la ley española que lo reemplace de vez en cuando, no se clasificarán como Instrumentos de Capital de Nivel 1 Adicional; y
- (iv) cualesquiera otros créditos subordinados del Banco que, bien por ley y/o por sus propios términos, en la medida en que así lo permitiera la legislación española, fueran de mayor rango que las obligaciones del Banco derivadas de las Participaciones Preferentes; y

## (c) mayor que:

- (i) cualesquiera créditos por el importe de liquidación de las Acciones Ordinarias; y
- (ii) cualesquiera otros créditos subordinados del Banco que, bien por ley y/o por sus propios términos, en la medida en que así lo permitiera la legislación española, fueran de menor rango que las obligaciones del Banco derivadas de las Participaciones Preferentes.

## 4 REMUNERACIÓN

- 4.1 Las Participaciones Preferentes devengan Remuneración:
  - (a) (por lo que respecta al período que transcurra desde (e incluida) la Fecha de Cierre hasta (pero excluida) la Primera Fecha de Revisión a un tipo del [●] por ciento anual; y
  - (b) por lo que respecta a cada Período de Revisión, al tipo anual igual a la suma del Margen Inicial y el Tipo Mid-Swap a 5 Años (anualmente) para dicho Período de Revisión, primero calculado anualmente y después convertido a un tipo trimestral de conformidad con la práctica del mercado (redondeado hasta el cuarto decimal, redondeándose a la

baja el 0,00005), todo ello según determinado por el Banco en la correspondiente Fecha de Determinación de la Revisión.

Con sujeción a lo previsto en las Condiciones 4.3 y 4.4, dicha Remuneración devendrá pagadera trimestralmente por trimestre vencido en cada Fecha de Pago de Remuneración.

En caso de que deba abonarse una Remuneración en relación con una Participación Preferente en cualquier otra fecha (por cualquier motivo distinto del aplazamiento de dicho abono como resultado de lo dispuesto en la Condición 4.2), la Remuneración será calculada por el Banco aplicando el Tipo de Remuneración al Valor Liquidativo relativo a cada Participación Preferente, multiplicando el producto por (i) el número real de días del período desde (e incluida) la fecha a partir de la que comenzó a devengarse la Remuneración (la "Fecha de Devengo") hasta (pero excluida) la fecha en la que venza la Remuneración dividido entre (ii) el número real de días desde (e incluida) la Fecha de Devengo hasta (pero excluida) la Fecha de Pago de Remuneración inmediatamente siguiente multiplicado por cuatro, y redondeando la cifra resultante hasta el céntimo más próximo (redondeándose al alza el medio céntimo).

4.2 Con sujeción a la legislación tributaria o al resto de la legislación aplicable, el pago de Remuneración sobre las Participaciones Preferentes será efectuado en euros por el Banco en la correspondiente Fecha de Pago de Remuneración mediante transferencia a una cuenta que pueda recibir pagos en euros, cuyos datos figuraran en los registros de Iberclear o, en su caso, de la correspondiente Entidad Participante al cierre del día inmediatamente anterior a aquel en que venciera el pago de la Remuneración. Los Tenedores vendrán obligados a observar los procedimientos de Iberclear o, en su caso, de la correspondiente Entidad Participante a efectos del cobro de los importes que procedan en virtud de las Participaciones Preferentes en cuestión. El Banco no será responsable en forma alguna por razón de la información de pago facilitada en relación con las Participaciones Preferentes.

En caso de que cualquiera de las fechas en las que venza un pago sobre las Participaciones Preferentes no sea un Día Hábil TARGET, el pago se pospondrá hasta el siguiente Día Hábil TARGET, no estando legitimado el Tenedor a percibir intereses ni ningún otro pago de ninguna indole en relación con dicho retraso.

- 4.3 El Banco podrá optar, a su entera discreción, por cancelar el pago de cualquier Remuneración (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13), en su totalidad o en parte, en cualquier momento que estime necesario o conveniente y por cualquier motivo.
- 4.4 Sin perjuicio del derecho del Banco a cancelar los pagos de cualquier Remuneración con arreglo a la Condición 4.3 anterior:
  - (a) Los pagos de Remuneración (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13) en cualquier ejercicio económico del Banco se efectuarán exclusivamente en la medida en que el Banco dispusiera de suficientes Partidas Distribuibles. En la medida en que el Banco no disponga de Partidas Distribuibles suficientes para atender el pago de la Remuneración (incluyendo el pago de cualesquiera importes adicionales de conformidad con la Condición 13) sobre las Participaciones Preferentes cuyo pago esté programado para el ejercicio económico

corriente en dicho momento y cualesquiera pagos de intereses, remuneración u otros pagos sobre sus fondos propios que se hayan pagado o realizado o esté programado o sea obligatorio pagar o realizar con cargo a o con sujeción a la existencia de suficientes Partidas Distribuibles para el ejercicio económico corriente en dicho momento, en cada caso excluyéndose las posibles porciones de dichos pagos que ya se hayan tenido en cuenta a la hora de determinar las Partidas Distribuibles del Banco o cuyo pago no fuera obligado por estar condicionado a la existencia de suficientes Partidas Distribuibles, el Banco únicamente realizará el pago parcial o, en su caso, no realizará pago alguno de la correspondiente Remuneración (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13) sobre las Participaciones Preferentes,

- (b) Si la Autoridad Competente, de acuerdo con lo previsto en el artículo 68 de la Ley 10/2014 y/o en el artículo 16 del Reglamento SSM y/o en la Normativa Bancaria Aplicable, requiere al Banco la cancelación total o parcial de una Remuneración en cuestión (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13), el Banco procederá a efectuar únicamente un pago parcial o, según el caso, a no efectuar pago alguno, de la correspondiente Remuneración (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13) sobre las Participaciones Preferentes.
- (c) El Banco podrá realizar pagos parciales de o, en su caso, podrá no realizar pago alguno de la correspondiente Remuneración (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13) que proceda respecto de las Participaciones Preferentes (ya sea a través del reembolso del Valor Liquidativo, el pago de cualquier Remuneración o de otra forma) en la medida en que el importe de dicho pago (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13), sumado al importe de cualquier otra remuneración del tipo previsto en el artículo 141(2) de la Directiva CRD IV (o, en su caso, a cualquier otro importe previsto en cualquier otra disposición española que transpusiera o desarrollara la Normativa CRD IV, incluyendo el artículo 48 de la Ley 10/2014 y cualquiera de sus disposiciones de desarrollo), superara el Importe Máximo Distribuible o de cualquier otra manera pudiera dar lugar a cualquier otro incumplimiento de cualquier restricción o prohibición en materia de pagos existente respecto del Capital de Nivel 1 Adicional de conformidad con la Normativa Bancaria Aplicable.
- (d) Si se produce el Supuesto Desencadenante en cualquier momento de la Fecha de Cierre o con posterioridad a la misma, el Banco no abonará ninguna Remuneración adicional (incluyendo el pago de cualesquiera importes adicionales que procedan de conformidad con la Condición 13) sobre las Participaciones Preferentes y cualquier Remuneración devengada y no que no hubiera sido abonada hasta el momento en que hubiera tenido lugar dicho Supuesto Desencadenante (y con independencia de que la remuneración en cuestión hubiera vencido y hubiera de ser satisfecha) se entenderá automáticamente cancelada de conformidad con lo dispuesto en la Condición 6.1(b).
- 4.5 La Remuneración sobre las Participaciones Preferentes no será acumulable. En consecuencia, en caso de no abonarse alguna Remuneración (o parte de la misma) en relación con las

Participaciones Preferentes como consecuencia de la decisión del Banco de cancelar dicha Remuneración de conformidad con lo previsto en la Condición 4.3 anterior o de las limitaciones aplicables a los pagos previstas en la Condición 4.4 anterior y la Condición 6.1(b) posterior, entonces, el derecho de los Tenedores a recibir la correspondiente Remuneración (o parte de la misma) en relación con el Período de Remuneración aplicable se extinguirá, no teniendo el Banco obligación alguna de abonar dicha Remuneración (o parte de la misma) devengada para dicho Período de Remuneración ni de pagar intereses de ninguna índole sobre las mismas, independientemente de que se pague o no Remuneración sobre las Participaciones Preferentes en relación con cualquier Período de Remuneración futuro.

- 4.6 Ninguna de las referidas decisiones de cancelación del pago de cualquier Remuneración (o parte de la misma) tomadas de conformidad con lo previsto en la Condición 4.3 anterior ni la falta de pago de cualquier Remuneración (o parte de la misma) como consecuencia de las limitaciones aplicables a los pagos establecidas en la Condición 4.4 anterior y la Condición 6.1(b) posterior constituirán un supuesto de incumplimiento o el acaccimiento de un supuesto relacionado con la insolvencia del Banco ni legitimarán a los Tenedores a emprender acciones que conlleven la liquidación del Banco ni limitarán o restringirán en modo alguno la capacidad del Banco de efectuar cualquier remuneración o pago equivalente en relación con cualquier instrumento cuya prelación crediticia sea inferior a la de las Participaciones Preferentes (incluido, entre otros, el Capital CET1 del Banco o del Grupo, respectivamente) o con cualquier otro instrumento que bien por imperativo legal o por sus propios términos, en la medida en que así lo permitiera la ley, gozara del mismo rango que las Participaciones Preferentes. Si el Banco no paga una Remuneración o parte de ella en la correspondiente Fecha de Pago de Remuneración, ese impago acreditará la cancelación de esa Remuneración (o de la correspondiente parte de ella) o, en su caso, el ejercicio por el Banco de su potestad discrecional de cancelar esa Remuneración (o la correspondiente parte de ella) y, en consecuencia, esa Remuneración no ostará, en ninguno de esos casos, vencida ni será pagadera. No obstante la frase precedente, el Banco notificará a los Tenedores de acuerdo con lo dispuesto en la Condición 14 el hecho de que se produzca cualquier decisión con arreglo a la Condición 4.3 y se aplique cualquier limitación establecida en la Condición 4.4. A efectos aclaratorios, la ausencia de dicha notificación no afectará la validez de la cancelación.
- 4.7 El Banco procederá a determinar en, o lo antes posible tras, la hora correspondiente de cada Fecha de Determinación de la Revisión en la que vaya a determinarse el Tipo de Distribución, el Tipo de Remuneración para el Período de Revisión aplicable. El Banco se encargará de que se notifique el Tipo de Remuneración para cada Periodo de Revisión a cualquier bolsa de valores u otra autoridad competente en la que coticen en su momento las Participaciones Preferentes o en la que hayan sido admitidas a negociación, publicándose la correspondiente notificación a tal efecto de conformidad con lo previsto en la Condición 14 lo antes posible después de su determinación pero en ningún caso transcurridos más de cuatro Días Hábiles a partir de entonces.
- 4.8 Todos los certificados, comunicaciones, opiniones, determinaciones, cálculos, cotizaciones y decisiones expedidos, expresados, efectuados u obtenidos a los efectos de lo previsto en la

presente Condición 4 por el Banco serán (salvo dolo, mala fe o error manifiesto) vinculantes para todos los Tenedores.

- 4.9 Si el Banco determina que se ha producido un Evento de Referencia cuando el Tipo de Remuneración (o cualquier componente del mismo) aún no se ha determinado por referencia al Tipo Mid-Swap a 5 Años, el Banco hará todos los esfuerzos razonables para designar un Asesor Financiero Independiente tan pronto como sea razonablemente posible, con vistas a que el Banco y el Asesor Financiero Independiente (actuando de buena fe y de manera comercialmente razonable) determinen, a más tardar tres Días Hábiles antes de la Fecha de Determinación de la Revisión, un Tipo Sucesor o en su defecto, un Tipo Alternativo (de acuerdo con la Condición 4.9(a)) y, en cualquier caso, un Diferencial de Ajuste si lo hubiera (de acuerdo con la Condición 4.9(b)) y con cualesquiera Modificaciones de Referencia (de acuerdo con la Condición 4.9(c)).
  - (a) Tipo Succsor o Tipo Alternativo

Si el Banco y el Asesor Financiero Independiente (actuando de buena fe y de una manera comercialmente razonable):

- (i) acuerdan que existe un Tipo Sucesor, dicho Tipo Sucesor (sujeto al ajuste según lo dispuesto en la Condición 4.9(b)) se utilizará en lo sucesivo en lugar del Tipo Mid-Swap a 5 Años para determinar el Tipo de Remuneración (o el componente relevante parte del mismo) para todas las Remuneraciones futuras (sujeto a la operación de la presente Condición 4.9); o
- (ii) acuerdan que no hay un Tipo Sucesor, pero que existe un Tipo Alternativo, dicho Tipo Alternativo (sujeto al ajuste según lo dispuesto en la Condición 4.9(b)) se utilizará en lo sucesivo en lugar del Tipo Mid-Swap a 5 Años para determinar el Tipo de Remuneración (o componente correspondiente del mismo) para todas las remuneraciones futuras (sujeto a la operación de la presente Condición 4.9).

Si (i) el Banco no puede designar un Asesor Financiero Independiente, (ii) el Banco y el Asesor Financiero Independiente, actuando de buena fe y de una manera comercialmente razonable, no acuerdan la selección de un Tipo Sucesor o un Tipo Alternativo antes de la Fecha de Determinación de la Revisión correspondiente, o (iii) se aplica el último párrafo de la presente Condición 4.9, el Tipo de Remuneración aplicable al siguiente Período de Revisión será igual al último Tipo de Remuneración determinado o aplicable en relación con las Participaciones Preferentes con respecto al Período de Revisión inmediatamente anterior. Si el Banco no toma tal determinación antes de la primera Fecha de Determinación de la Revisión, el Tipo de Remuneración aplicable al siguiente Período de Revisión será del [•] por ciento anual. Para evitar dudas, la presente Condición 4.9(a) se aplicará al siguiente Período de Revisión relevante únicamente y cualquier Período de Revisión posterior estará sujeto a la subsiguiente operación y al ajuste según lo dispuesto en la presente Condición 4.9(a).

# (b) Diferencial de Ajuste

Si el Banco y el Asesor Financiero Independiente acuerdan (i) que se requiere aplicar un Diferencial de Ajuste al Tipo Sucesor o al Tipo Alternativo (según sea el caso) y (ii) la cuantía de, o una fórmula o metodología para determinar dicho Diferencial de Ajuste, este se aplicará al Tipo Sucesor o al Tipo Alternativo (según sea el caso).

### (c) Modificaciones de Referencia

Si se determina cualquier Tipo Sucesor, Tipo Alternativo y/o Diferencial de Ajuste de acuerdo con la presente Condición 4.9 y el Banco y el Asesor Financiero Independiente acuerdan: (i) es necesario hacer enmiendas a estas Condiciones para garantizar el correcto funcionamiento de dicho Tipo Sucesor, Tipo Alternativo y/o Diferencial de Ajuste (tales enmiendas, las "Modificaciones de Referencia") y (ii) los términos de las Modificaciones de Referencia, el Banco, dando aviso de conformidad con la Condición 4.9(d), sin ningún requisito de consentimiento o aprobación por parte de los Tenedores, modificará estas Condiciones para que surtan efecto tales Modificaciones de Referencia con la fecha especificada en dicho aviso.

En relación con dicha variación de acuerdo con la presente Condición 4.9(c), el Banco cumplirá las normas de cualquier bolsa de valores en la que las Obligaciones se coticen o se admitan a negociación por el momento.

### (d) Notificaciones, etc.

Cualquier Tipo Succsor, Tipo Alternativo, Diferencial de Ajuste y los términos específicos de cualesquiera Modificaciones de Referencia que se determinen en virtud de la presente Condición 4.9 serán notificados de inmediato por el Banco a los Tenedores de conformidad con la Condición 14. Dicha notificación será irrevocable y especificará la fecha de vigencia de las Modificaciones de Referencia, si las hubiera, y serán vinculantes para el Banco y los Tenedores.

### (e) Supervivencia del Tipo Mid-Swap a 5 Años

Sin perjuicio de las obligaciones del Banco en virtud de la presente Condición 4.9, el Tipo Mid-Swap a 5 Años y las disposiciones de reserva previstas en estas Condiciones continuarán aplicándose a menos y hasta que ocurra un Evento de Referencia.

Sin perjuicio de cualquier otra disposición de la presente Condición 4.9, no se adoptará ningún Tipo Sucesor, Tipo Alternativo, Diferencial de Ajuste ni Modificaciones de Referencia (según corresponda), si y en la medida en que, a juicio del Banco, cabe esperar razonablemente que tal adopción perjudicaría la calificación de las Participaciones Preferentes como Capital de Nivel 1 Adicional del Banco o del Grupo.

# 5 Distribución en caso de Liquidación

5.1 Con sujcción a lo previsto en la Condición 5.2 siguiente, en caso de liquidación voluntaria o forzosa del Banco, las Participaciones Preferentes conferirán (a menos que se hayan convertido previamente en Acciones Ordinarias de conformidad con la Condición 6 siguiente) una legitimación a recibir, con cargo a los activos del Banco disponibles para su distribución a los Tenedores, la Distribución en caso de Liquidación. Dicha legitimación se generará antes de efectuarse cualquier distribución de activos a los tenedores de Acciones Ordinarias o de cualquier otro instrumento del Banco cuya prelación crediticia sea inferior a la de las Participaciones Preferentes.

- 5.2 En caso de que, antes de la liquidación del Banco descrita en la Condición 5.1, se produzca un Supuesto Desencadenante pero esté aún pendiente de producirse la correspondiente conversión de las Participaciones Preferentes en Acciones Ordinarias de conformidad con la Condición 6 siguiente, la legitimación conferida por las Participaciones Preferentes a los efectos de la Condición 5.1, consistirá en una legitimación a recibir con cargo a los correspondientes activos del Banco una cuantía monetaria igual a la que los tenedores de dichas Participaciones Preferentes habrian recibido con ocasión de una distribución de los activos del Banco en caso de que dicha conversión hubiese tenido lugar inmediatamente antes de dicha liquidación voluntaria o forzosa.
- 5.3 Tras el pago de la correspondiente legitimación en relación con una Participación Preferente según se expone en las Condiciones 5.1 y 5.2, dicha Participación Preferente no conferirá derecho o reclamación adicional alguna sobre ninguno del resto de los activos del Banco.

#### 6 Conversión

- 6.1 En caso de producirse el Supuesto Desencadenante en cualquier momento en, o con posterioridad a, la Fecha de Cierre, el Banco:
  - (a) notificará a la Autoridad Competente y a los Tenedores inmediatamente, de conformidad con lo previsto en la Condición 13 siguiente (conjuntamente, la "Notificación de Supuesto Desencadenante");
  - (b) se abstendrá de abonar más Remuneración sobre las Participaciones Preferentes, incluida la posible Remuneración devengada y no abonada, la cual será cancelada por el Banco de conformidad con lo dispuesto en la Condición 4.4 anterior; y
  - (c) convertirá obligatoria e irrevocablemente (y sin necesidad de consentimiento o aprobación alguna por parte de los Tenedores) todas las Participaciones Preferentes en Acciones Ordinarias (la "Conversión por Supuesto Desencadenante") que se entregarán en la correspondiente Fecha de Liquidación de la Conversión.

El Banco notificará también a los Tenedores la Fecha de Liquidación de la Conversión prevista y el Precio de Conversión de acuerdo con lo dispuesto en la Condición 14 transcurridos no más de diez Días Hábiles desde la Fecha de Notificación de Supuesto Desencadenante. No obstante lo anterior, la falta de dicha notificación no afectará a, ni perjudicará en forma alguna a, la eficacia de la Conversión por Supuesto Desencadenante, ni otorgará derecho alguno a los Tenedores.

Los Tenedores no podrán reclamar en modo alguno al Banco en relación con (A) cualquier Valor Liquidativo de las Participaciones Preferentes convertidas en Acciones Ordinarias o (B) cualquier Remuneración devengada y no abonada que haya sido objeto de cancelación o impago, en cada caso en virtud de cualquier Conversión por Supuesto Desencadenante.

El Banco (x) calculará el Ratio de Capital CET1 basándose en la información (publicada o no) de que disponga la dirección del Banco, incluida la información comunicada internamente dentro del Banco de conformidad con sus procedimientos para garantizar el efectivo

- seguimiento continuado de los ratios de capital del Banco y/o del Grupo e (y) calculará y publicará el Ratio de Capital CET1 como mínimo trimestralmente.
- 6.2 Con sujeción a lo previsto en la Condición 6.9, el número de Acciones Ordinarias que vaya a emitirse con ocasión de la Conversión por Supuesto Desencadenante en relación con cada Participación Preferente que vaya a ser objeto de conversión (las "Acclones Resultantes de la Conversión") se determinará dividiendo el Valor Liquidativo de dicha Participación Preferente entre el Precio de Conversión vigente en la Fecha de Notificación de Supuesto Desencadenante.

La obligación del Banco de emitir y entregar Acciones Resultantes de la Conversión en la Fecha de Liquidación de la Conversión quedará satisfecha mediante la entrega de las Acciones Resultantes de la Conversión, bien directamente a los Tenedores o, de forma alternativa, al Depositario de Acciones de Liquidación en nombre de los mismos, todo ello de conformidad con lo previsto en la Condición 6.10. La recepción de las Acciones Resultantes de la Conversión por los Tenedores o por el Depositario de Acciones de Liquidación, según proceda en cada caso, constituirá el cumplimiento de las obligaciones del Banco en relación con las Participaciones Preferentes.

Los Tenedores sólo tendrán derecho a exigir al Banco la emisión y entrega de las Acciones Resultantes de la Conversión al Depositario de Acciones de Liquidación de conformidad con lo establecido en las presentes Condiciones. Tras la entrega de las Acciones Resultantes de la Conversión al Depositario de Acciones de Liquidación de conformidad con lo dispuesto en la Condición 6.10, los correspondientes Tenedores podrán exigir al Depositario de Acciones de Liquidación únicamente la entrega a su favor de cualesquiera importes en efectivo o Acciones Resultantes de la Conversión a las que tales Tenedores tuvieran derecho en virtud de dicha Condición.

- 6.3 En el supuesto de acaecimiento de cualquiera de los supuestos que se exponen a continuación, el Precio Mínimo de Conversión se ajustará como sigue:
  - (a) Siempre y cuando se produzca una consolidación, reclasificación/redenominación, desdoblamiento o subdivisión que afecte al número de Acciones Ordinarias, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión

vigente inmediatamente antes de dicha consolidación, reclasificación/redenominación, desdoblamiento o subdivisión por la siguiente fracción:

 $\frac{A}{B}$ 

## donde:

- A será el número total de Acciones Ordinarias que estén emitidas inmediatamente antes de dicha consolidación, reclasificación/redenominación, desdoblamiento o subdivisión, según proceda; y
- B será el número total de Acciones Ordinarias que estén emitidas inmediatamente después, y como consecuencia, de dicha consolidación, reclasificación/redenominación, desdoblamiento o subdivisión, según proceda.

Dicho ajuste devendrá efectivo en la fecha en la que la consolidación, reclasificación/redenominación, desdoblamiento o subdivisión, según el caso, surta efectos.

(b) Siempre y cuando el Banco emita Acciones Ordinarias que figuren como acciones totalmente desembolsadas a los Accionistas mediante capitalización de beneficios o reservas (incluida cualquier cuenta de prima de emisión o reserva de amortización) - exceptuándose el supuesto en que dicha emisión tuviera la consideración de Dividendo en Efectivo al amparo del apartado (b) de la definición de dicha expresión- el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de dicha emisión por la siguiente fracción:

 $\frac{A}{B}$ 

#### donde:

- A será el número total de Acciones Ordinarias que estén emitidas inmediatamente antes de dicha emisión; y
- B será el número total de Acciones Ordinarias que estén emitidas inmediatamente después de dicha emisión.

Dicho ajuste devendrá efectivo en la fecha de emisión de tales Acciones Ordinarias,

(c)

 Siempre y cuando el Banco abone un Dividendo Extraordinario a los Accionistas, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

$$\frac{A-B}{A}$$

donde:

- A será el Precio de Mercado Vigente de una Acción Ordinaria en la Fecha Ex Dividendo Extraordinario; y
- B será la porción del Valor Razonable del Dividendo Extraordinario agregado atribuible a una Acción Ordinaria, determinándose dicha porción dividiendo el Valor Razonable del Dividendo Extraordinario agregado entre el número de Acciones Ordinarias legitimadas a recibir el correspondiente Dividendo.

Dicho ajuste devendrá efectivo en la fecha (en relación con la presente Condición 6.3(c)(i), la "Fecha de Efectividad") entendiéndose por tal la Fecha Ex dicho Dividendo Extraordinario o, en caso de ser posterior, la primera fecha en la que pueda determinarse el Valor Razonable del correspondiente Dividendo Extraordinario.

Por el término "Dividendo Extraordinario" se entenderá cualquier Dividendo en Efectivo que el Banco declare expresamente que constituye una distribución de capital, un dividendo extraordinario, una distribución extraordinaria, un dividendo especial, una distribución especial o una distribución de valor a los Accionistas o cualquier término análogo o similar, en cuyo caso el Dividendo Extraordinario será dicho Dividendo en Efectivo;

(ii) Siempre y cuando el Banco abone o efectúe cualquier Dividendo en Especie a los Accionistas, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

$$\frac{A-B}{A}$$

donde:

- A será el Precio de Mercado Vigente de una Acción Ordinaria en la Fecha de Efectividad del Dividendo en Especie; y
- B será la porción del Valor Razonable del Dividendo en Especie total atribuible a una Acción Ordinaria, determinándose dicha porción dividiendo el Valor Razonable del Dividendo en Especie total entre el número de Acciones Ordinarias legitimadas a recibir el correspondiente Dividendo en Especie (o, en el caso de una compra, amortización o recompra de Acciones Ordinarias o certificados de depósito u otros certificados o títulos representativos de Acciones Ordinarias por o en nombre del Banco o de cualquier miembro del Grupo, entre el número de

Acciones Ordinarias que estén emitidas inmediatamente después de dicha compra, amortización o recompra, y teniéndose por no emitidas las Acciones Ordinarias-o Acciones Ordinarias representadas mediante certificados de depósito u otros certificados o títulos- compradas, amortizadas o recompradas).

Dicho ajuste devendrá efectivo en la fecha (en relación con la presente Condición 6.3(c)(ii), la "Fecha de Efectividad") que es la Fecha de Efectividad del Dividendo en Especie o, en caso de ser posterior, la primera fecha en la que pueda determinarse el Valor Razonable del correspondiente Dividendo en Especie según aquí estipulado.

A efectos de la presente Condición 6.3(c)(ii) por el término "Fecha de Efectividad del Dividendo en Especie" se entenderá la Fecha Ex del Dividendo en Especie o, en el caso de una compra, amortización o recompra de Acciones Ordinarias o certificados de depósito u otros certificados o títulos representativos de Acciones Ordinarias por o en nombre del Banco o de cualquier miembro del Grupo, la fecha en la que dicha compra, amortización o recompra se efectúe (o, en cualquiera de tales casos si fuese posterior, la primera fecha en la que pueda determinarse el Valor Razonable del correspondiente Dividendo según aquí estipulado).

- (iii) A efectos de lo que antecede, el Valor Razonable se determinará (con sujeción a lo previsto en el apartado (a) de la definición de "Dividendo" y en la definición de "Valor Razonable") a la Fecha Ex de dicho Dividendo Extraordinario o, en su caso, a la l'echa de Efectividad del Dividendo en Especie.
- (iv) A la hora de efectuar los cálculos a los efectos de la presente Condición 6.3(c), se aplicarán los ajustes (en su caso) que el Agente de Cálculo o un Asesor Financiero Independiente -actuando de buena fe- estime adecuados para reflejar:
  - (A) cualquier consolidación o subdivisión de cualesquiera Acciones Ordinarias; o
  - (B) la emisión de Acciones Ordinarias mediante capitalización de beneficios o reservas (o cualquier supuesto igual o similar); o
  - (C) cualquier incremento del número de Acciones Ordinarias que se encuentren emitidas en el Ejercicio Correspondiente en cuestión.
- (d) Siempre y cuando el Banco emita Acciones Ordinarias a los Accionistas como una clase mediante derechos, o el Banco o cualquier miembro del Grupo o (siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) cualquier otra sociedad, persona o entidad emita u otorgue a los Accionistas como una clase mediante derechos, cualesquiera opciones, warrants u otros derechos de suscripción o compra o adquisición por otros medios de Acciones Ordinarias, o Valores que, en virtud de sus condiciones de emisión lleven aparejados (directa o indirectamente) derechos de conversión en, o canje por, o suscripción de, o el derecho a adquirir de otra forma, cualesquiera Acciones

Ordinarias (u otorgue cualquiera de dichos derechos en relación con Valores existentes así emitidos), en cada caso a un precio por Acción Ordinaria que sea inferior al 95 por ciento del Precio de Mercado Vigente por Acción Ordinaria en la Fecha de Efectividad, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

 $\frac{A+B}{A+C}$ 

donde:

- A será el número de Acciones Ordinarias que estén emitidas en la Fecha de Efectividad;
- B scrá el número de Acciones Ordinarias que podría comprarse a dicho Precio de Mercado Vigente por Acción Ordinaria con la contraprestación total (en su caso) a recibir a cambio de las Acciones Ordinarias emitidas mediante derechos, o de los Valores emitidos mediante derechos, o de las opciones o warrants u otros derechos emitidos u otorgados mediante derechos y del número total de Acciones Ordinarias a entregar con ocasión del ejercicio de los mismos; y
- C será el número de Acciones Ordinarias que vaya a emitirse o, según el caso, el número máximo de Acciones Ordinarias que pueda emitirse con ocasión del ejercicio de dichas opciones, warrants o derechos calculado en la fecha de emisión de tales opciones, warrants o derechos o con ocasión de la conversión o canje o ejercicio de derechos de suscripción o compra u otros derechos de adquisición en relación con los mismos al tipo o precio inicial de conversión, canje, suscripción, compra o adquisición,

teniéndose en cuenta que, en caso de que en la primera fecha en la que las Acciones Ordinarias scan objeto de negociación sin derechos, sin opciones o sin warrants en la Bolsa de Valores Pertinente (tal y como se emplea en la presente Condición 6.3(d), la "Fecha Especificada") dicho número de Acciones Ordinarias vaya a determinarse en función de la aplicación de una fórmula u otra variable o del acaecimiento de cualquier supuesto en cualquier momento posterior, entonces, a los efectos de la presente Condición 6.3(d), "C" se determinará mediante la aplicación de dicha fórmula o variable o como si el supuesto de que se trate ocurriese o hubiese ocurrido en la Fecha Especificada y como si dicha conversión, canje, suscripción, compra o adquisición hubiese tenido lugar en la Fecha de Efectividad.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(d), por el término "Fecha de Efectividad" se entenderá la primera fecha en la que las Acciones Ordinarias sean objeto de negociación sin derechos, sin opciones o sin warrants en la Bolsa de Valores Pertinente.

(e) Siempre y cuando el Banco o cualquier miembro del Grupo o (siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) cualquier otra sociedad, persona o entidad emita cualesquiera Valores (exceptuándose Acciones Ordinarias u opciones, warrants u otros derechos de suscripción o compra o adquisición por otros medios de Acciones Ordinarias o Valores que en virtud de sus términos y condiciones lleven aparejados (directa o indirectamente) derechos de conversión en, o canje por, o suscripción de, o derechos a adquirir de otra forma, Acciones Ordinarias) a los Accionistas como una clase mediante derechos u otorgue a los Accionistas como una clase mediante derechos cualesquiera opciones, warrants u otros derechos de suscripción o compra o adquisición por otros medios de cualesquiera Valores (exceptuándose Acciones Ordinarias u opciones, warrants u otros derechos de suscripción o compra o adquisición por otros medios de Acciones Ordinarias o Valores que en virtud de sus términos y condiciones lleven aparejados (directa o indirectamente) derechos de conversión en, o canje por, o suscripción de, o derechos a adquirir de otra forma, Acciones Ordinarias), el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

$$\frac{A-B}{A}$$

donde:

- A será el Precio de Mercado Vigente de una Λcción Ordinaria en la Fecha de Efectividad; y
- B será el Valor Razonable en la Fecha de Efectividad de la porción de los derechos atribuibles a una Acción Ordinaria.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(e), por el término "Fecha de Efectividad" se entenderá la primera fecha en la que las Acciones Ordinarias sean objeto de negociación sin los correspondientes Valores o sin derechos, sin opciones o sin warrants en la Bolsa de Valores Pertinente.

Siempre y cuando el Banco emita (salvo según previsto en la Condición 6.3(d) anterior) (f) integramente a cambio de efectivo o sin contraprestación alguna a cambio Acciones Ordinarias (exceptuándose Acciones Ordinarias emitidas con ocasión de la conversión de las Participaciones Preferentes o con ocasión del ejercicio de cualesquiera derechos de conversión en, o canje por, o suscripción o compra de, o derechos a adquirir de otra forma Acciones Ordinarias) o siempre y cuando el Banco o cualquier miembro del Grupo o (siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) cualquier otra socicdad, persona o entidad emita u otorgue (salvo según previsto en la Condición 6.3(d) anterior) integramente a cambio de efectivo o sin contraprestación alguna a cambio opciones, warrants u otros derechos de suscripción o compra o adquisición de otra forma de cualesquiera Acciones Ordinarias (excepción hecha de las Participaciones Preferentes, término que, a estos efectos incluirá cualesquiera Participaciones Preferentes Adicionales), en cada caso a un precio por Acción Ordinaria que sea inferior al 95 por ciento del Precio de Mercado Vigente por Acción Ordinaria cn la fecha del primer anuncio público de los términos y condiciones de dicha emisión u otorgamiento, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fórmula:

 $\frac{A+B}{A+C}$ 

donde:

- A será el número de Acciones Ordinarias que estén emitidas inmediatamente antes de la emisión de dichas Acciones Ordinarias o del otorgamiento de dichas opciones, warrants o derechos;
- B será el número de Acciones Ordinarias que podría comprarse a dicho Precio de Mercado Vigente por Acción Ordinaria con la contraprestación total (en su caso) a recibir a cambio de la emisión de dichas Acciones Ordinarias o, según proceda, a cambio de las Acciones Ordinarias que se vayan a emitir o a poner de otra forma a disposición con ocasión del ejercicio de cualquiera de tales opciones, warrants o derechos; y
- C será el número de Acciones Ordinarias que vaya a emitirse de conformidad con dicha emisión de Acciones Ordinarias o, según el caso, el número máximo de Acciones Ordinarias que pueda emitirse con ocasión del ejercicio de tales opciones, warrants o derechos calculado a fecha de emisión de tales opciones, warrants o derechos.

teniéndose en cuenta que en caso de que en el momento de la emisión de dichas Acciones Ordinarias o en la fecha de emisión u otorgamiento de tales opciones, warrants o derechos (tal y como se emplea en la presente Condición 6.3(f), la "Fecha Especificada"), dicho número de Acciones Ordinarias vaya a determinarse en función de la aplicación de una fórmula u otra variable o del acaccimiento de cualquier supuesto en cualquier momento posterior, entonces, a los efectos de la Condición 6.3(f), "C" se determinará mediante la aplicación de dicha fórmula o variable o como si el supuesto de que se trate ocurriese o hubiese ocurrido en la Fecha Especificada y como si dicha conversión, canje, suscripción, compra o adquisición hubiese tenido lugar en la Fecha Especificada.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(f), por el término "Fecha de Efectividad" se entenderá la fecha de emisión de dichas Acciones Ordinarias o, según el caso, el otorgamiento de tales opciones, warrants o derechos.

(g) Siempre y cuando el Banco o cualquier miembro del Grupo o (siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) cualquier otra sociedad, persona o entidad (salvo según lo previsto en las Condiciones 6.3(d), 6.3(e) o 6.3(f) anteriores) emita integramente a cambio de efectivo o sin contraprestación alguna a cambio cualesquiera Valores (excepción hecha de las Participaciones Preferentes, término que,

a estos efectos, incluirá cualesquiera Participaciones Preferentes Adicionales) que en virtud de sus condiciones de emisión lleven aparejados (directa o indirectamente) derechos de conversión en, o canje por, o suscripción o compra de, o derechos a adquirir de otra forma, Acciones Ordinarias (u otorgue cualquiera de dichos derechos en relación con Valores existentes así emitidos) o Valores que en virtud de sus términos y condiciones pudieran reclasificarse/redenominarse como Acciones Ordinarias, y la contraprestación por Acción Ordinaria a recibir con ocasión de la conversión, canje, suscripción, compra, adquisición o redenominación sea inferior al 95 por ciento del Precio de Mercado Vigente por Acción Ordinaria en la fecha del primer anuncio público de los términos y condiciones de dicha emisión de tales Valores (o los términos y condiciones de dicho otorgamiento), el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

 $\frac{A+B}{A+C}$ 

donde:

- A será el número de Acciones Ordinarias que estén emitidas inmediatamente antes de dicha emisión u otorgamiento (pero en los casos en que los correspondientes Valores lleven aparejados derechos de conversión en, o derechos de canje por, o suscripción o compra de, o derechos de adquisición por otros medios de Acciones Ordinarias que hayan sido emitidas, compradas o adquiridas por el Banco o por cualquier miembro del Grupo (o siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) a los efectos de o en relación con dicha emisión, menos el número de dichas Acciones Ordinarias así emitidas, compradas o adquiridas);
- B será el número de Acciones Ordinarias que podría comprarse a dicho Precio de Mercado Vigente por Acción Ordinaria con la contraprestación total (en su caso) a recibir a cambio de las Acciones Ordinarias que vayan a emitirse o ponerse a disposición de otra forma con ocasión de la conversión o canje o con ocasión del ejercicio del derecho de suscripción, compra o adquisición inherente a dichos Valores o, según el caso, a cambio de las Acciones Ordinarias que vayan a emitirse o surjan de dicha reclasificación/redenominación; y
- C será el número máximo de Acciones Ordinarias que se emitirán o que se pondrán a disposición de otra forma con ocasión de la conversión o canje de dichos Valores o con ocasión del ejercicio de dicho derecho de suscripción inherente a los mismos al precio o tipo inicial de conversión, canje, suscripción, compra o adquisición o, según el caso, el número máximo de Acciones Ordinarias que pueda emitirse o surja de dicha reclasificación/redenominación;

teniéndose en cuenta que en caso de que en el momento de la emisión de los correspondientes Valores o fecha de otorgamiento de dichos derechos (y como se emplea en la presente Condición 6.3(g), la "Fecha Especificada") dicho número de

Acciones Ordinarias vaya a determinarse en función de la aplicación de una fórmula u otra variable o del acaecimiento de cualquier supuesto en un momento posterior (que podrá ser el momento en el que dichos Valores se conviertan o canjeen o se ejerzan derechos de suscripción, compra o adquisición o, según el caso, dichos Valores sean reclasificados/redenominados o en cualquier otro momento que se disponga), entonces, a los efectos de la presente Condición 6.3(g), "C" se determinará mediante la aplicación de dicha fórmula o variable o como si el supuesto de que se trate ocurriese o hubiese ocurrido en la Fecha Especificada y como si dicha conversión, canje, suscripción, compra o adquisición o, según el caso, reclasificación/redenominación hubiese tenido lugar en la Fecha Especificada.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(g), por el término "Fecha de Efectividad" se entenderá la fecha de emisión de dichos Valores o, según el caso, el otorgamiento de tales derechos.

(h) Siempre y cuando se produzca cualquier modificación de los derechos de conversión, canje, suscripción, compra o adquisición inherentes a cualquiera de los Valores (excepción hecha de las Participaciones Preferentes, término que a estos efectos incluirá cualesquiera Participaciones Preferentes Adicionales) a que se hace referencia en la Condición 6.3(g) anterior (salvo de conformidad con los términos (incluidos los términos relativos al ajuste) aplicables a dichos Valores con ocasión de su emisión) de forma que después de dicha modificación la contraprestación por Acción Ordinaria a recibir se haya reducido y sea inferior al 95 por ciento del Precio de Mercado Vigente por Acción Ordinaria en la fecha del primer anuncio público de las propuestas relativas a dicha modificación, el Precio Mínimo de Conversión se ajustará multiplicando el Precio Mínimo de Conversión en vigor inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

$$\frac{A+B}{A+C}$$

donde:

- A será el número de Acciones Ordinarias que estén emitidas inmediatamente antes de dicha modificación (pero en los casos en que los correspondientes Valores lleven aparejados derechos de conversión en, o derechos de canje por o suscripción de, o compra o adquisición de, Acciones Ordinarias que hayan sido emitidas, compradas o adquiridas por el Banco o por cualquier miembro del Grupo (o siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) a los efectos de o en relación con dichos Valores, menos el número de tales Acciones Ordinarias así emitidas, compradas o adquiridas);
- B scrá el número de Acciones Ordinarias que podría comprarse a dicho Precio de Mercado Vigente por Acción Ordinaria o, en caso de ser inferior, al precio o tipo vigente de conversión, canje, suscripción, compra o adquisición de dichos Valores con la contraprestación total (en su caso) a recibir a cambio de las

Acciones Ordinarias que vayan a emitirse o ponerse a disposición de otra forma con ocasión de la conversión o canje o con ocasión del ejercicio del derecho de suscripción, compra o adquisición inherente a dichos Valores modificados; y

C será el mimero máximo de Acciones Ordinarias que pueda emitirse o ponerse a disposición de otra forma con ocasión de la conversión o canje de dichos Valores o con ocasión del ejercicio de tales derechos de suscripción, compra o adquisición inherentes a los mismos al precio o tipo modificado de conversión, canje, suscripción, compra o adquisición pero reconociendo en la forma que estime adecuada un Asesor Financiero Independiente -actuando de buena fecualquier ajuste previo aplicado en virtud de la presente Condición 6.3(h) o de la Condición 6.3(g) anterior,

teniéndose en cuenta que en caso de que en el momento de dicha modificación (tal y como se emplea en la presente Condición 6.3(h), la "Fecha Especificada") dicho número de Acciones Ordinarias vaya a determinarse en función de la aplicación de una fórmula u otra variable o del acaecimiento de eualquier supuesto en cualquier momento posterior (que podrá ser cuando se conviertan o canjeen dichos Valores o cuando se ejerzan los derechos de suscripción, compra o adquisición, o en cualquier otro momento que se disponga) entonces, a los efectos de la presente Condición 6.3(h), "C" se determinará mediante la aplicación de dicha fórmula o variable o como si el supuesto de que se trate ocurriese o hubiese ocurrido en la Fecha Especificada y como si dicha conversión, canje, suscripción, compra o adquisición hubiese tenido lugar en la Fecha Especificada.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(h), por el término "Fecha de Efectividad" se entenderá la fecha de modificación de los derechos de conversión, canje, suscripción, compra o adquisición inherentes a tales Valores.

(i) Siempre y cuando el Banco o cualquier miembro del Grupo o (siguiendo las instrucciones o a petición de o de conformidad con cualesquiera acuerdos establecidos con el Banco o con cualquier miembro del Grupo) cualquier otra sociedad, persona o entidad ofrezca Valores en relación con los que los Accionistas como una clase estén legitimados a participar en acuerdos en virtud de los cuales dichos Valores podrán ser adquiridos por ellos (salvo cuando el Precio Mínimo de Conversión deba ajustarse con arreglo a lo previsto en las Condiciones 6.3(b), 6.3(c), 6.3(d), 6.3(e) o 6.3(f) anteriores o en la Condición 6.3(j) siguiente (o debiera ajustarse en caso de que la correspondiente emisión u otorgamiento fuese a menos del 95 por ciento del Precio de Mercado Vigente por Acción Ordinaria en el día de negociación correspondiente de acuerdo con la Condición 6.3(e) anterior) el Precio Mínimo de Conversión se ajustará multiplicando el

Precio Mínimo de Conversión vigente inmediatamente antes de la Fecha de Efectividad por la siguiente fracción:

$$\frac{A-B}{A}$$

donde:

- A será el Precio de Mercado Vigente de una Acción Ordinaria en la Fecha de Efectividad; y
- B será el Valor Razonable en la Fecha de Efectividad de la porción de la correspondiente oferta atribuible a una Acción Ordinaria.

Dicho ajuste devendrá efectivo en la Fecha de Efectividad.

A efectos de la presente Condición 6.3(i), por el término "Fecha de Efectividad" se entenderá la primera fecha en la que las Acciones Ordinarias se negocien sin derechos en la Bolsa de Valores Pertinente.

(j) En caso de que el Banco determine que debe efectuarse una reducción del Precio Mínimo de Conversión por cualquier motivo, el Precio Mínimo de Conversión se reducirá (ya sea de forma general o durante un período especificado que se notifique a los Tenedores) en la forma y con efectos a partir de la fecha que el Banco determine y notifique a los Tenedores.

Sin perjuicio de lo que antecede:

(i) en los casos en que los supuestos o circunstancias que ocasionen cualquier ajuste de conformidad con la presente Condición 6.3 ya hayan conllevado o vayan a conllevar un ajuste del Precio Mínimo de Conversión o en los casos en que los supuestos o circunstancias que ocasionen cualquier ajuste surjan en virtud de cualesquiera otros supuestos o circunstancias que ya hayan ocasionado o vayan a ocasionar un ajuste del Precio Mínimo de Conversión o en los casos en que se produzca más de un supuesto que ocasione un ajuste del Precio Mínimo de Conversión en un período tan breve de tiempo que, a juicio del Banco, haga necesario modificar el funcionamiento de las disposiciones sobre ajustes para lograr el resultado pretendido, se introducirán las modificaciones al

funcionamiento que a juicio de un Asesor Financiero Independiente -actuando de buena fe- resulten adecuadas para lograr el resultado pretendido; y

- (ii) se introducirán las modificaciones al funcionamiento de las presentes Condiciones que a juicio de un Asesor Financiero Independiente -actuando de buena fe- resulten adecuadas:
  - (A) para garantizar que no se tenga en cuenta más de una vez un ajuste del Precio Mínimo de Conversión o los efectos económicos del mismo; y
  - (B) para garantizar que no se tengan en cuenta más de una vez los efectos económicos de un Dividendo.

A efectos de cualquier cálculo de la contraprestación a recibir o del precio de conformidad con las Condiciones 6.3(d), 6.3(f), 6.3(g) y 6.3(h), serán aplicables las siguientes disposiciones:

- (A) la contraprestación total a recibir o el precio a cambio de Acciones Ordinarias emitidas a cambio de efectivo será el importe de dicho efectivo;
- (B) (I) se entenderá que la contraprestación total a recibir o el precio a cambio de Acciones Ordinarias que vayan a emitirse o ponerse a disposición de otra forma con ocasión de la conversión o canje de cualesquiera Valores es la contraprestación o precio recibido o a recibir a cambio de cualquiera de tales Valores; y
  - se entenderá que la contraprestación total a recibir o el precio a (II) cambio de Acciones Ordinarias que vayan a emitirse o ponerse a disposición de otra forma con ocasión del ejercicio de derechos de suscripción inherentes a cualesquiera Valores o con ocasión del ejercicio de cualesquiera opciones, warrants o derechos es la parte (que podrá ser la totalidad) de la contraprestación o precio recibido o a recibir a cambio de dichos Valores o, según el caso, a cambio de dichas opciones, warrants o derechos que atribuya el Banco a dichos derechos de suscripción o, según el caso, dichas opciones, warrants o derechos o, en caso de que no se atribuya parte alguna de dicha contraprestación o precio, el Valor Razonable de tales derechos de suscripción o, según el caso, tales opciones, warrants o derechos en la correspondiente Fecha de Efectividad a que se refieren las Condiciones 6.3(d), 6.3(f), 6.3(g) o 6.3(h), según proceda, más en el caso de lo previsto en los apartados (I) y (II) anteriores, la contraprestación mínima adicional a recibir o el precio (en su caso) con ocasión de la conversión o canje de tales Valores, o con ocasión del ejercicio de los derechos o la

suscripción inherentes a los mismos o, según el caso, con ocasión del ejercicio de tales opciones, warrants o derechos; y

- (III) la contraprestación a recibir o el precio por Acción Ordinaria con ocasión de la conversión o canje de, o con ocasión del ejercicio de tales derechos de suscripción inherentes a, tales Valores o, según el caso, con ocasión del ejercicio de tales opciones, warrants o derechos será el precio o contraprestación total a que se hace referencia en los apartados (I) o (II) anteriores (según el caso) dividido entre el número de Acciones Ordinarias que vayan a emitirse con ocasión de dicha conversión o canje o ejercicio al precio o tipo inicial de conversión, canje o suscripción;
- (C) en caso de que la contraprestación o precio determinado con arreglo a los apartados (A) o (B) anteriores (o cualquier componente de los mismos) se exprese en una divisa distinta a la Divisa de Denominación de las Acciones, se convertirá a la Divisa de Denominación de las Acciones al Tipo Vigente en la correspondiente Fecha de Efectividad (en el caso del apartado (A) anterior) o en la correspondiente fecha del primer anuncio público (en el caso del apartado (B) anterior);
- (D) a la hora de determinar la contraprestación o precio de conformidad con lo que antecede, no se practicará deducción alguna en concepto de comisiones u honorarios (independientemente de su descripción) o de gastos abonados o incurridos para el aseguramiento, colocación o gestión de la emisión de las correspondientes Acciones Ordinarias o Valores u opciones, warrants o derechos, o que tengan cualquier otra relación con ello; y
- (E) la contraprestación o precio se determinará según lo que antecede con base en la contraprestación o precio recibido, a recibir, abonado o a abonar independientemente de que la totalidad o parte del mismo se reciba, o sea susceptible de recibirse, se abone o sea susceptible de abonarse por o al Banco u otra entidad.
- En caso de que la Fecha de Liquidación de la Conversión relativa a la conversión de cualquier Participación Preferente sca posterior a la fecha de registro en relación con cualquier consolidación, reclasificación/redenominación, desdoblamiento o subdivisión a que se refiere la Condición 6.3 anterior, o posterior a la fecha de registro u otra fecha máxima fijada para el establecimiento de la legitimación para cualquier emisión, distribución, otorgamiento u oferta (según el caso) a que se refieren las Condiciones 6.3(b), 6.3(c), 6.3(d), 6.3(e) o 6.3(i) anteriores, o posterior a la fecha del primer anuncio público de los términos y condiciones de cualquier emisión u otorgamiento a que se refieren las Condiciones 6.3(f) y 6.3(g) anteriores o de los términos de cualquier modificación a que se refiere la Condición 6.3(h) anterior, y la Fecha de Notificación de un Supuesto Desencadenante fuera anterior al momento en el que el ajuste del Precio Mínimo de Conversión (cuando proceda) devenga efectivo con arreglo a lo previsto en

la Condición 6.3 anterior (dicho ajuste, un "Ajuste Retroactivo"), el Banco se encargará de que (a condición de que el correspondiente ajuste devenga efectivo) se emita y entregue a los Tenedores, de acuerdo con las instrucciones contenidas en las correspondientes Notificaciones de Entrega recibidas por Banco o, a falta de dichas Notificaciones de Entrega, al Depositario de Acciones de Liquidación, un número adicional de Acciones Ordinarias (en su caso) (las "Acciones Ordinarias Adicionales") que, junto con las Acciones Ordinarias emitidas con ocasión de la conversión de las Participaciones Preferentes (junto con cualquier fracción de una Acción Ordinaria no entregada a cualquier Tenedor pertinente), sea igual al número de Acciones Ordinarias que habría sido necesario emitir y entregar con ocasión de dicha Conversión en caso de que el ajuste del Precio Mínimo de Conversión se hubiese efectuado y hubiese devenido efectivo inmediatamente antes de la correspondiente Fecha de Notificación de Supuesto Desencadenante, teniéndose en cuenta que, en caso de que el Depositario de Acciones de Liquidación y/o los Tenedores, según el caso, estén legitimados a recibir el correspondiente Dividendo en relación con las Acciones Ordinarias que vayan a emitirse o entregárseles, entonces, no se aplicará dicho Ajuste Retroactivo en relación con ese Dividendo, no emitiéndose ni entregándose Acciones Ordinarias Adicionales al Depositario de Acciones de Liquidación ni a los Tenedores en relación con ello.

- 6.5 En caso de que surja cualquier duda sobre si ha de practicarse un ajuste al Precio M\u00ednimo de Conversi\u00f3n o sobre el ajuste adecuado a practicar en el Precio M\u00ednimo de Conversi\u00f3n, y tras las consultas pertinentes entre el Banco y un Asesor Financiero Independiente, la determinaci\u00f3n por escrito de dicho Asesor Financiero Independiente en relaci\u00f3n con dicha duda ser\u00e1 definitiva y vinculante para todas las partes, salvo en caso de error manifiesto.
- No se efectuará ajuste alguno en el Precio Mínimo de Conversión en los casos en que las Acciones Ordinarias u otros Valores (incluidos derechos, warrants y opciones) sean emitidos, ofrecidos, ejercidos, adjudicados, comprados, asignados, modificados u otorgados a, o en beneficio de, empleados o antiguos empleados (incluidos consejeros que ostenten o hayan ostentado cargos ejecutivos o no ejecutivos o la empresa de servicios personal de cualquiera de dichas personas) o sus cónyuges o familiares, en cada caso, del Banco o de cualquier miembro del Grupo o de cualquier empresa asociada o a un fideicomisario o fideicomisarios para que se ostenten en beneficio de cualquiera de dichas personas, en cada uno de tales casos de conformidad con un plan de acciones u opciones o plan similar.
- 6.7 En cualquier ajuste, el Precio Mínimo de Conversión se redondeará al múltiplo entero más cercano a 0,0001€. No se efectuará ajuste alguno al Precio Mínimo de Conversión en los casos en que dicho ajuste (redondeado a la baja cuando proceda) fuese inferior al 1 por ciento del Precio Mínimo de Conversión vigente en dicho momento. Todo ajuste que no sea necesario efectuar y/o todo importe en el que el Precio Mínimo de Conversión se haya redondeado a la baja, se trasladará a la nueva cuenta y se tendrá en cuenta en cualquier ajuste posterior, y dicho ajuste posterior se efectuará con base en el hecho de que el ajuste que no era necesario efectuar se efectuó en el momento pertinente y/o, según el caso, que el correspondiente redondeo a la baja no se efectuó.

El Banco notificará a los Tenedores de cualquier ajuste efectuado en el Precio Mínimo de Conversión mediante la presentación de una comunicación de información privilegiada o una comunicación de otra información relevante, según sea el caso, con la CNMV y su publicación se hará de conformidad con las normas y reglamentos de cualquier bolsa de valores u otra autoridad competente y con la Condición 14 inmediatamente después de la determinación del mismo.

- 6.8 Con ocasión de cualquier Conversión por Supuesto Desencadenante de las Participaciones Preferentes, y en la Fecha de Notificación del Supuesto Desencadenante, el Banco cursará instrucciones de conformidad con los procedimientos de Iberclear vigentes en cada momento a efectos la inmovilización por Iberclear y por las Entidades Participantes de Iberclear de todas las Participaciones Preferentes que se encontraran en circulación en dicha Fecha de Notificación del Supuesto Desencadenante, y las Acciones Ordinarias que vayan a emitirse y entregarse se emitirán y entregarán según se dispone en la Condición 6.10 siguiente. Inmediatamente tras dicha conversión las Participaciones Preferentes dejarán de estar en circulación a todos los efectos y quedarán canceladas.
- 6.9 No se emitirán fracciones de Acciones Ordinarias con ocasión de la Conversión o de conformidad con lo previsto en la Condición 6.4 y no se efectuará pago en efectivo alguno ni ningún otro ajuste en lugar de ello. Sin perjuicio de lo anterior, el número de Acciones Resultantes de la Conversión o de Acciones Ordinarias Adicionales que hubiera de entregarse en el caso de Tenedores que ostentaran más de una única Participación Preferente se calculará con base en el Valor Liquidativo total de las correspondientes Participaciones Preferentes que se conviertan y se redondeará a la baja hasta el número entero más próximo de Acciones Ordinarias.
- 6.10 En la Fecha de Liquidación de la Conversión, el Banco entregará a los Tenedores o al Depositario de Acciones de Liquidación, según se prevé a continuación, el número de Acciones Ordinarias que resulte necesario para satisfacer integramente la obligación del Banco de entregar Acciones Ordinarias en relación con la Conversión por Supuesto Desencadenante del número total de Participaciones Preferentes en circulación en la Fecha de Notificación de Supuesto Desencadenante.

Con el fin de recibir la entrega directa de las correspondientes Acciones Ordinarias con ocasión de cualquier Conversión por Supuesto Desencadenante a través del Banco, los Tenedores deberán entregar una Notificación de Entrega debidamente cumplimentada al Banco, a través de la correspondiente Entidad Partícipe de Iberclear y de conformidad con los procedimientos establecidos por Iberclear al respecto vigentes en cada momento, a más tardar en la Fecha de Liquidación de la Conversión que previeran dichos procedimientos (la "Fecha Límite de Admisión de Notificaciones"). El Banco dará en tal caso las correspondientes instrucciones, de conformidad con los procedimientos establecidos al respecto por Iberclear vigentes en cada momento, a efectos de la entrega de las Acciones Ordinarias en cuestión correspondientes a las Participaciones Preferentes respecto de las cuales se hubiera entregado una Notificación de Entrega debidamente cumplimentada a más tardar en la Fecha Límite de Admisión de Notificaciones, entrega que habrá de tener lugar en la Fecha de Liquidación de la Conversión de acuerdo con las instrucciones que figuraran en las correspondientes Notificaciones de Entrega remitidas a través de Iberclear.

Aquellas Acciones Ordinarias correspondientes a Participaciones Preferentes respecto de las cuales no se hubieran entregado, a más tardar en la Fecha Límite de Admisión de

Notificaciones, las correspondientes Notificaciones de Entrega debidamente cumplimentadas, serán entregadas por el Banco al Depositario de Acciones de Liquidación en la Fecha de Liquidación de la Conversión a través de Iberelear.

En un plazo de diez Días Hábiles desde la Fecha de Liquidación de la Conversión, el Depositario de Acciones de Liquidación velará para que todas las Acciones Ordinarias así recibidas sean vendidas con la mayor brevedad posible sobre la base del asesoramiento recibido de cualquier entidad financiera o asesor financiero independiente que contara con la debida experiencia, o de cualquier institución financiera de prestigio internacional nombrada por el Depositario de Acciones de Liquidación previa consulta con el Banco y, con sujeción a la deducción por o en nombre del Depositario de Acciones de Liquidación de cualquier importe pagadero respecto de su obligación fiscal y al pago de los posibles impuestos y derechos de capital, timbre (actos jurídicos documentados), emisión, registro y/o transmisión (en su caso) y cualesquiera honorarios, comisiones o gastos (incluyendo frente a dicha entidad o asesor financiero independiente o institución financiera de prestigio internacional) incurridos por o en nombre del Depositario de Acciones de Liquidación en relación con la venta, y adjudicación de las mismas, se procederá lo antes posible dentro de lo razonable a distribuir proporcionalmente el producto de la venta a los correspondientes Tenedores de conformidad con lo previsto en la Condición 4.2 o en cualquier otra forma o momento que el Banco determine y notifique a los Tenedores. Dicho pago liberará, a cualesquiera efectos que procedan, tanto al Banco como al Depositario de Acciones de Liquidación, de cualesquiera obligaciones a su cargo en relación con la Conversión por Supuesto Desencadenante de que se trate.

A los efectos anteriores, se entenderá que el Depositario de Acciones de Liquidación actúa en nombre de aquellos Tenedores de Participaciones Preferentes respecto de las cuales no se hubiera entregado la correspondiente Notificación de Entrega a más tardar en la Fecha Límite de Admisión de Notificaciones, y a tales efectos se entenderá igualmente que los Tenedores de las Participaciones Preferentes, mediante la suscripción y/o adquisición y mantenimiento de las mismas, aceptan e instruyen expresamente al Depositario de Acciones de Liquidación para que este último actúe en su nombre de conformidad con lo dispuesto en las presentes Condiciones.

Ni el Banco ni el Depositario de Acciones de Liquidación tendrán responsabilidad u obligación alguna en relación con la venta de cualesquiera Acciones Ordinarias en virtud de las presentes Condiciones, ya sea por el momento de dicha venta o por el precio o la forma en la que se haya vendido cualquiera de dichas Acciones Ordinarias o por la imposibilidad de vender cualquiera de dichas Acciones Ordinarias.

Si, por cualquier causa, el Depositario de Acciones de Liquidación no pudiera vender cualesquiera Acciones Ordinarias de conformidad con la presente Condición 6.10, dichas Acciones Ordinarias continuarán siendo ostentadas por el Depositario de Acciones de Liquidación hasta que el Tenedor correspondiente entregue una Notificación de Entrega debidamente cumplimentada.

Las Notificaciones de Entrega serán irrevocables. El hecho de no cumplimentar y entregar debidamente una Notificación de Entrega puede conllevar que dicha Notificación de Entrega

se tenga por nula de pleno derecho, estando el Banco legitimado a encargarse de que se vendan cualesquiera Acciones Ordinarias aplicables a que el Tenedor pertinente pudiera estar legitimado de conformidad con la presente Condición 6.10. Toda decisión relativa a la adecuada o no adecuada cumplimentación y entrega de una Notificación de Entrega de conformidad con lo previsto en la presente Condición 6.10 la efectuará el Banco a su entera discreción, actuando de buena fe, y será -salvo error manifiesto- definitiva y vinculante para los correspondientes Tenedores.

- 6.11 El Tenedor o el Depositario de Acciones de Liquidación deberá abonar (en el caso del Depositario de Acciones de Liquidación, mediante la deducción con cargo al producto neto de la venta a que se refiere la Condición 6.10 anterior) todos los impuestos surgidos con ocasión de la Conversión por Supuesto Desencadenante, exceptuándose
  - (a) los impuestos pagaderos por el Banco; y
  - (b) los impuestos y derechos de capital, emisión y registro, transmisión y timbre (transmisiones patrimoniales y actos jurídicos documentados),

en cada caso, pagaderos en España y en relación con la conversión de las Participaciones Preferentes y la emisión y entrega de las Acciones Ordinarias (incluidas cualesquiera Acciones Ordinarias Adicionales) de acuerdo con una Notificación de Entrega entregada de conformidad con las presentes Condiciones que serán abonados por el Banco. Para que no haya dudas, dicho Tenedor o el Depositario de Acciones de Liquidación (según el caso) deberá abonar (en el caso del Depositario de Acciones de Liquidación, mediante la deducción con cargo al producto neto de la venta de conformidad con lo que antecede) todos los impuestos que surjan (en su caso) en relación con cualquier enajenación o supuesta enajenación de una Participación Preferente o derecho sobre la misma.

En caso de que el Banco no abone cualquiera de los impuestos de capital y demás impuestos y derechos de timbre (actos jurídicos documentados), emisión, registro y transmisión de los que sea responsable de acuerdo con lo que antecede, el Tenedor o el Depositario de Acciones de Liquidación, según el caso, estará legitimado (pero no obligado) a presentarlos y abonarlos; comprometiéndose el Banco -como una obligación separada e independiente- a reembolsar e indemnizar a cada Tenedor o Depositario de Acciones de Liquidación, según el caso, en relación con cualquier pago de tales derechos e impuestos y de cualesquiera penalizaciones pagaderas en relación con los mismos.

6.12 Las Acciones Ordinarias (incluidas las posibles Acciones Ordinarias Adicionales) emitidas con ocasión de la Conversión por Supuesto Desencadenante estarán totalmente desembolsadas y tendrán en todos los aspectos una prelación crediticia pari passu a las Acciones Ordinarias totalmente desembolsadas que estén emitidas en la Fecha de Notificación de Supuesto Desencadenante o, en el caso de Acciones Ordinarias Adicionales, en la correspondiente Fecha de Referencia, exceptuándose -en cualquiera de dichos casos- cualquier derecho excluido en virtud de las disposiciones de obligado cumplimiento de la legislación aplicable y con la salvedad de que dichas Acciones Ordinarias o, según el caso, Acciones Ordinarias Adicionales no conllevarán (o, según el caso, el tenedor pertinente no estará legitimado a percibir) derechos, distribuciones o pagos en la fecha de registro u otra fecha máxima fijada para el establecimiento

- de la legitimación a tal efecto que caiga antes de la Fecha de Notificación de Supuesto Desencadenante o, según el caso, la correspondiente Fecha de Referencia.
- 6.13 Sin perjuicio de cualquier otra disposición de la presente Condición 6 y con sujeción al cumplimiento de las disposiciones contenidas en la Ley de Sociedades de Capital y/o en la Normativa Bancaria Aplicable, el Banco o cualquier miembro del Grupo podrá ejercer los derechos que le asistan en su momento para comprar o amortizar o recomprar cualesquiera acciones del Banco (incluidas Acciones Ordinarias) o cualesquiera certificados de depósito u otros certificados o títulos representativos de las mismas sin necesidad de obtener el consentimiento de los Tenedores.
- En tanto en cuanto siguieran en circulación cualesquiera Participaciones Preferentes, existirá en todo momento la figura de un agente de cálculo a efectos de la conversión (el "Agente de Cálculo"), pudiendo ser el propio Banco o cualquier persona designada por el Banco para actuar como tal, y que será responsable, previa consulta con el Banco, del cálculo de cualesquiera ajustes que pudieran proceder al Precio Mínimo de Conversión, así como de realizar cualquier determinación al respecto que fuera necesaria en relación con dicho precio. Cualesquiera cálculos y decisiones que realizara y adoptara el agente de Cálculo tendrán carácter final y vinculante para los Tenedores, salvo en caso de mala fe o error manifiesto. Si cualquier disposición prevista en las presentes Condiciones exigiera en cualquier momento la realización de cualquier cálculo o la adopción de cualquier decisión, en cada caso por parte de cualquier Asesor Financiero Independiente (entendiéndose que el Banco podrá designar al Agente de Cálculo para que actúe como Asesor Financiero Independiente), y la persona que en ese momento tuviera la condición de Agente de Cálculo no fuera independiente del Banco, el Banco realizará cualesquiera esfuerzos razonables que procedan dese un punto de vista comercial para nombrar a un Asesor Financiero Independiente que fuera totalmente independiente del Banco, a cfectos de realizar dicho cálculo o adoptar dicha decisión. Cualquier opinión presentada por escrito por dicho Asesor Financicro Independiente respecto de dicho cálculo o decisión tendrá carácter final y vinculante tanto para el Banco como para los Tenedores, salvo en caso de error manifiesto. El Banco ha designado a la entidad "ConvEx Advisors Limited" como primer Agente de Cálculo. El Banco podrá sustituir al Agente de Cálculo en cualquier momento, sin necesidad de previa notificación al respecto a ningún Tenedor.

El Agente de Cálculo (para el caso en que fuera distinto del propio Banco) actuará únicamente a solicitud (y exclusivamente como agente) del Banco, sin asumir por ello obligación o

responsabilidad alguna frente a los Tenedores, y sin que ello suponga el establecimiento de relación alguna de agencia o fiducia con tales Tenedores.

### 7 AMORTIZACIÓN ANTICIPADA

- 7.1 Las Participaciones Preferentes son perpetuas y sólo serán amortizables de acuerdo con las disposiciones de la presente Condición 7 que figuran a continuación.
- 7.2 Con sujeción a las Condiciones 7.3 y 7.4 siguientes, las Participaciones Preferentes no serán amortizables antes del [●]². Todas, y no solo algunas de las Participaciones Preferentes pueden canjearse a elección del Banco:
  - 7.2.1 en cualquier momento del periodo que comienza (e incluye) el [●]³ y termina en la Primera Fecha de Revisión (incluida); o
  - 7.2.2 en cualquier Fecha de Pago de Remuneración posterior,

al precio de reembolso, sujeto al consentimiento previo de la Autoridad Competente (y de lo contrario, de conformidad con la Normativa Bancaria Aplicable vigente en ese momento).

- 7.3 En caso de que, en la Fecha de Cierre o con posterioridad a la misma, se produzca un Evento de Capital, las Participaciones Preferentes podrán ser objeto de amortización anticipada total, pero no parcial, a elección del Banco, con sujeción al consentimiento previo de la Autoridad Competente (y/o de otro modo, de conformidad con la Normativa Bancaria Aplicable vigente en ese momento), en cualquier momento, al Precio de Amortización.
- 7.4 En caso de que en, o con posterioridad a, la Fecha de Cierre, se produjese un Evento Fiscal, las Participaciones Preferentes podrán ser objeto de amortización anticipada total, pero no parcial, a elección del Banco, con sujeción al consentimiento previo de la Autoridad Competente (y/o de otro modo, de conformidad con la Normativa Bancaria Aplicable vigente en ese momento), en cualquier momento, al Precio de Amortización.
- 7.5 La decisión de amortizar las Participaciones Preferentes debe ser, de conformidad con la Condición 6.1 anterior, notificada irrevocablemente por el Banco a los Tenedores con una antelación mínima de 15 y máxima de 60 días respecto de la correspondiente fecha de amortización mediante la presentación de una comunicación de información privilegiada o de una comunicación de otra información relevante, según proceda, con la CNMV y su publicación se hará de conformidad con las normas y reglamentos de cualquier bolsa de valores u otra autoridad competente y con la Condición 14.

El Banco no remitirá notificación alguna al amparo de la presente Condición 7.5 salvo que, con al menos 15 días de antelación a la publicación de cualquier notificación de amortización, haya puesto a disposición de los Tenedores en su domicilio social un certificado firmado por

<sup>2</sup> Nota: La fecha que cae 6 meses antes de la Primera Fecha de Revisión.

<sup>3</sup> Nota: La fecha que cae 6 meses antes de la Primera Fecha de Revisión.

- dos de sus firmantes autorizados indicando que un Evento de Capital o un Evento Fiscal se ha producido, o haya suficiente certeza de que se producirá, según sea el caso.
- 7.6 En caso de haberse efectuado la notificación de amortización anticipada y haberse depositado los fondos y dado las instrucciones y atribuciones para el pago según lo que antecede, entonces, en la fecha de dicho depósito:
  - (a) terminará la Remuneración sobre las Participaciones Preferentes;
  - (b) dichas Participaciones Preferentes dejarán de tener la consideración de valores en circulación; y
  - (c) los Tenedores dejarán de ostentar derechos en calidad de Tenedores, salvo por el derecho a recibir el Precio de Amortización.
- 7.7 El Banco podrá abstenerse de notificar la amortización anticipada en virtud de lo dispuesto en la Condición 7 si se ha remitido una Notificación de Supuesto Desencadenante. Si se da un aviso de amortización de las Participaciones Preferentes de conformidad con la presente Condición 7 y se produce un Supuesto Desencadenante antes de dicha amortización, el aviso de amortización correspondiente se rescindirá automáticamente y no tendrá vigencia, de forma que no se producirá la amortización de las Participaciones Preferentes en dicha fecha de amortización y, en su lugar, la conversión de las Participaciones Preferentes se llevará a cabo según lo dispuesto en la Condición 6. El Banco notificará a los Tenedores de cualquier rescisión automática de un aviso de amortización de conformidad con la Condición 14 tan pronto como sea posible tras esa cancelación.
- 7.8 En el caso de que se haya efectuado la notificación de amortización anticipada y los fondos no estén depositados tal y como es necesario en la fecha de dicho depósito o bien en caso de que el Banco retrase o deniegue indebidamente el pago del Precio de Amortización de las Participaciones Preferentes, continuará devengándose Remuneración de acuerdo con lo previsto en la Condición 4 anterior desde (e incluida) la fecha de amortización anticipada hasta (pero excluida) la fecha efectiva de pago del Precio de Amortización.

# 8 Sustitución y Variación

8.1 Sujeto al consentimiento previo de la Autoridad Competente (y/o de acuerdo con la Normativa Bancaria Aplicable vigente en ese momento) y habiendo avisado a los Tenedores con una antelación mínima de 15 y máxima de 60 dias naturales de conformidad con la Condición 14 (cuya notificación será irrevocable y especificará la fecha de sustitución o, según corresponda, de variación), si se ha producido un Evento de Capital o un Evento Fiscal y persiste, el Banco puede, en cualquier momento, sustituir todas (pero no solo algunas) las Participaciones Preferentes o variar los términos de todas (pero no solo algunas) las Participaciones Preferentes sin el consentimiento o aprobación de los Tenedores, de modo que se sustituyan por, o se varíen, para convertirse en, o seguir siendo, Participaciones Preferentes Cualificadas. La notificación contendrá los datos relevantes sobre el modo en el que se producirá dicha sustitución o variación y sobre el lugar en el que los Tenedores podrán examinar u obtener copia de los nuevos términos y condiciones de las Participaciones Preferentes. La sustitución o variación se realizará sin coste para los Tenedores.

- 8.2 Al suscribir y/o adquirir Participaciones Preferentes, se entenderá que los Tenedores aceptan la sustitución y la variación de los términos y condiciones de las Participaciones Preferentes y que otorgan al Banco pleno poder y autoridad para tomar cualquier medida y/o firmar cualquier documento en nombre y/o representación de los Tenedores que sea necesario o adecuado para llevar a término la sustitución o la variación de los términos y condiciones de las Participaciones Preferentes.
- 8.3 El Banco no dará un aviso de sustitución o variación una vez que se haya producido un Supuesto Desencadenante. Si el Banco ha emitido un aviso de sustitución o variación de acuerdo con estas Condiciones, pero antes de dicha sustitución o variación se ha producido un Supuesto Desencadenante, el aviso de sustitución o variación relevante se rescindirá automáticamente y no tendrá vigencia. De conformidad con la Condición 14, el Banco notificará a los Tenedores de dicha cancelación automática de una sustitución o variación pronto como sea posible.

### 9 Compra de Participaciones Preferentes

El Banco o cualquier miembro del Grupo podrá comprar o adquirir de otra forma cualquiera de las Participaciones Preferentes en circulación a cualquier precio en el mercado abierto o de otra forma de conformidad con la Normativa Bancaria Aplicable en vigor en la fecha correspondiente y sujeto al previo consentimiento de la Autoridad Competente, si se requiere.

Todas las Participaciones Preferentes así adquiridas por el Banco o por cualquier miembro del Grupo podrán ser (previa aprobación de la Autoridad Competente y de conformidad con la Normativa Bancaria Aplicable que esté vigente en ese momento) mantenidas, revendidas o, a discreción del Banco o de ese miembro del Grupo, canceladas.

### 10 Renuncia a la Compensación

El Tenedor no podrá en ningún momento ejercitar ni alegar ningún Derecho de Compensación Renunciado frente a ningún derecho, reclamación o responsabilidad que el Banco tuyiera o pudiera tener o adquirir frente a dicho Tenedor, directa o indirectamente, con independencia de la forma en que dicho derecho hubiera nacido (y, a efectos aclaratorios, incluyendo cualesquiera derechos, reclamaciones o responsabilidades derivadas en virtud de o en relación con cualesquiera contratos u otros instrumentos de cualquier naturaleza, relativos o no a dichas Participaciones Preferentes), entendiéndose que el Tenedor renuncia, con la mayor extensión en que así lo permitiera la legislación aplicable, a cualesquiera Derechos de Compensación Renunciados que pudieran asistirle respecto de tales derechos, reclamaciones y responsabilidados, en cada caso efectivas o contingentes. Sin perjuicio de lo dispuesto en la frase anterior, si cualquiera de los importes debidos por el Banco a favor del Tenedor respecto de o en relación con o en virtud de las Participaciones Preferentes fuera satisfecho mediante cualquier forma de compensación, el Tenedor en cuestión, con sujeción a la legislación aplicable, abonará inmediatamente al Banco un importe igual al del pago efectuado en virtud de dicha compensación y, hasta el momento en que tuviera lugar efectivamente dicho abono, mantendrá el importe en cuestión en fideicomiso a favor del Banco, sin que en consecuencia dicha compensación pueda entenderse realizada.

Para evitar cualquier duda, nada de lo dispuesto en la presente Condición 10 pretende reconocer o podrá ser interpretado a efectos de reconocer ningún derecho de compensación, retención o

reclamación, ni pretende sugerir que dicho derecho se encuentra o podría encontrarse a disposición de ningún Tenedor de Participaciones Preferentes salvo por lo dispuesto en la presente Condición 10.

### 11 COMPROMISOS

En tanto en cuanto continúe en circulación cualquier Participación Preferente, el Banco, salvo que se le permita o exija otra cosa con arreglo a un Acuerdo Extraordinario:

- (a) se abstendrá de efectuar cualquier tipo de emisión, otorgamiento o distribución o de llevar a cabo cualquier acto u omisión en caso de que dicha conducta conllevase que, con ocasión de la Conversión por Supuesto Desencadenante, las Acciones Ordinarias no pudieran -en virtud de cualquier ley aplicable en vigor en dicho momento- estar legalmente emitidas y totalmente desembolsadas;
- en caso de presentarse una oferta a la totalidad (o la práctica totalidad en la medida de lo (b) posible) de los Accionistas (o a la totalidad (o la práctica totalidad en la medida de lo posible) de los Accionistas distintos al oferente y/o cualesquiera asociadas del oferente) para adquirir la totalidad o la mayoría de las Acciones Ordinarias emitidas, o en caso de que se proponga un acuerdo en relación con dicha adquisición (distinto a un Acuerdo de Newco), remitirá notificación de dicha oferta o acuerdo a los Tenedores al mismo tiempo que se envie notificación a tal efecto a los Accionistas (o lo antes posible a partir de entonces dentro de lo razonable) en la que se indique que los detalles relativos a dicha oferta o acuerdo podrán obtenerse a través del domicilio social del Banco y, cuando dicha oferta o acuerdo haya sido recomendada por el Consejo de Administración del Banco, o cuando dicha oferta haya devenido o haya sido declarada incondicional en todos sus aspectos o dicho acuerdo haya devenido efectivo, hará todo lo que esté en su mano para lograr que una oferta o acuerdo similar se extienda a los tenedores de Acciones Ordinarias crnitidas durante el período de la oferta o acuerdo que hayan surgido de una Conversión por Supuesto Desencadenante y/o a los Tenedores;
- (c) en el caso de un Acuerdo de Newco, adoptará (o se encargará de que se adopten) todas las actuaciones necesarias para garantizar que se introduzcan en las presentes Condiciones inmediatamente después de la consumación del Acuerdo de Reestructuración- las modificaciones que resulten necesarias para garantizar que las Participaciones Preferentes puedan convertirse en, o canjearse por, acciones ordinarias de la Newco (o los certificados de depósito u otros certificados o títulos representativos de acciones ordinarias de la Newco) de conformidad con y con sujeción a las presentes Condiciones y que las acciones ordinarias de la Newco:
  - (i) sean admitidas en la Bolsa de Valores Pertinente; o
  - (ii) coticen y/o sean admitidas a negociación en otra Bolsa de Valores Reconocida,
     autorizando los Tenedores irrevocablemente al Banco a introducir dichas modificaciones en las presentes Condiciones;
- emitirá, adjudicará y entregará Acciones Ordinarias con ocasión de la Conversión por Supucsto
   Desencadenante con sujeción a, y de conformidad con, lo previsto en la Condición 6;

- (e) hará esfuerzos razonables para garantizar que sus Acciones Ordinarias emitidas y en circulación, así como cualesquiera Acciones Ordinarias emitidas con ocasión de la Conversión por Supuesto Desencadenante, sean admitidas a cotización y negociación en la Bolsa de Valores Pertinente o vayan a cotizar y/o ser admitidas a negociación en otra Bolsa de Valores Reconocida;
- (f) mantendrá en vigor en todo momento los acuerdos pertinentes necesarios para la emisión, con exclusión del derecho de suscripción preferente, de Acciones Ordinarias autorizadas pero no emitidas suficientes para permitir la Conversión por Supuesto Desencadenante de las Participaciones Preferentes, y satisfacer integramente todos los derechos que los Tenedores pudieran tener en lo succesivo; y
- (g) cuando las disposiciones de la Condición 6 requieran o dispongan una determinación por parte de un Ascsor Financiero Independiente o un papel que deba desempeñar un Depositario de Acciones de Liquidación, hará todo lo posible para nombrar sin demora a dicha persona a tal efecto.

#### 12 Asambleas de Tenedores

# 12.1 Legitimación para convocar

El Banco podrá, en cualquier momento, y deberá, si así lo exigieran por escrito Tenedores que posean no menos del 10%, en total, del Valor Liquidativo de las Participaciones Preferentes que estén en circulación en esc momento, convocar una asamblea de Tenedores y, si el Banco no convocase la asamblea en el plazo de siete días, la asamblea podrá ser convocada por los correspondientes Tenedores.

### 12.2 Forma de convocatoria

- (a) Se notificará a los Tenedores con una antelación mínima de 21 días completos, especificando el día y la hora de la reunión, de conformidad con la Condición 14. En la notificación de convocatoria, que estará redactada en inglés, se indicará, por lo general, la naturaleza de los asuntos sobre los que se deliberará en la asamblea y, en el caso exclusivamente de un Acuerdo Extraordinario:
  - se especificarán los términos del Acuerdo Extraordinario que va a someterse a aprobación; o
  - (ii) se informará a los Tenedores de que podrán obtenerse gratuitamente los términos del Acuerdo Extraordinario del Banco o de cualquier agente de este último, siempre que, en el caso establecido en este apartado (ii), dicho acuerdo esté de ese modo disponible en su formato definitivo con efectos en y desde la fecha en que sea remitida tal como se ha indicado la convocatoria de esa asamblea.

#### Tal convocatoria:

- incluirá afirmaciones sobre la manera en que los Tenedores están facultados para asistir y votar en la asamblea; o
- (ii) informará a los Tenedores de que podrán obtener gratuitamente información detallada sobre los procedimientos para votar del Banco o de cualquier agente

de este último, siempre que, en el caso previsto en este apartado (ii) el formato definitivo de esa información detallada esté disponibles con efectos en y desde la fecha en que sea remitida tal como se ha indicado en la convocatoria de esa asamblea.

Se enviará por correo postal al Banco una copia de la convocatoria (a menos que la asamblea sea convocada por el Banco).

(b) La convocatoria de cualquier asamblea aplazada en la que vaya a someterse a aprobación un Acuerdo Extraordinario será remitida de la misma manera que la convocatoria de una asamblea original, aunque como si el 21 fuese sustituido por el diez en la Condición 12.2(a) y en la convocatoria se señalará el quórum pertinente. Con sujeción a lo anterior, no será necesario remitir convocatoria alguna de una asamblea aplazada.

### 12.3 Presidente

La persona (no es necesario que sea un Tenedor) designada por escrito por el Banco (cl "Presidente") estará facultada para asumir la presidencia en cada asamblea, aunque si no se hubiese producido tal designación o si en cualquier asamblea la persona designada no estuviese presente en los 15 minutos posteriores a la hora establecida para la celebración de la asamblea, los Tenedores presentes elegirán a uno de ellos Presidente, y de no ser así el Banco podrá nombrar un Presidente. El Presidente de una asamblea aplazada no tendrá que ser necesariamente la misma persona que ocupaba la presidencia de la asamblea que resultó aplazada.

### 12.4 Quórums

- (a) En cualquier asamblea, una o más Personas Aptas presentes y que poscan o representen, en total, no menos del 5 % del Valor Liquidativo de las Participaciones Preferentes que estén en circulación en ese momento constituirán quórum (excepto al efecto de adoptar un Acuerdo Extraordinario) para la adopción de acuerdos, y no se adoptarán acuerdos (distintos de la elección de un Presidente de acuerdo con lo dispuesto en la Condición 12.3) en ninguna asamblea, a menos que concurra el quórum requerido al comienzo de las deliberaciones. El quórum requerido en cualquier asamblea para la adopción de un Acuerdo Extraordinario será (con sujeción a lo expuesto más abajo) de una o más Personas Aptas presentes y que posean o representen, en total, no menos del 50% del Valor Liquidativo de las Participaciones Preferentes que estén en circulación en ese momento, en el bien entendido que en cualquier asamblea en la que los asuntos sobre los que deliberar figure alguna de las siguientes cuestiones (cada una de las cuales sólo podrá hacerse efectiva tras ser aprobada mediante Acuerdo Extraordinario):
  - (i) una reducción o cancelación del Valor Liquidativo de las Participaciones Preferentes; o
  - (ii) sin perjuicio de lo dispuesto en la Condición 4 (incluyendo, a título meramente enunciativo aunque no limitativo, el derecho del Banco a cancelar el pago de cualquier Remuneración sobre las Participaciones Preferentes), una reducción o cancelación del importe pagadero o una modificación de la fecha de pago

- respecto a cualquier Remuneración o una variación del método de cálculo del Tipo de Remuneración; o
- (iii) una modificación de la divisa en que van a efectuarse los pagos con arreglo a las Participaciones Preferentes; o
- (iv) una modificación de la mayoría requerida para la adopción de un Acuerdo Extraordinario; o
- (v) la aprobación de cualquier acuerdo o propuesta descrito en la Condición 12.7(b)(vi) posterior; o
- (vi) un cambio de esta disposición o de lo dispuesto en la Condición 12.4(b) posterior,

el quórum será de una o más Personas Aptas presentes y que posean o representen, en total, no menos de dos tercios del Valor Liquidativo de las Participaciones Preferentes que estén en circulación en ese momento.

- (b) Si en los 15 minutos (o el período más largo que el Presidente decida, sin que supere los 30 minutos) siguientes a la hora establecida para la celebración de cualquier asamblea no concurre el quórum requerido para la adopción de cualquier acuerdo en particular, en tal caso y con sujeción a y sin perjuicio del acuerdo sobre el que deliberar (si lo hubiere) para el que si concurra quórum, la asamblea, si ha sido convocada por los Tenedores o si los Tenedores exigieron al Banco convocarla al amparo de lo dispuesto en la Condición 12.1, será disuelta. En cualquier otro caso, será aplazada al mismo día de la siguiente semana (o, si ese día no es un Día Hábil, al Día Hábil inmediatamente posterior), a la misma hora y en el mismo lugar (salvo en el caso de una asamblea en la que vaya a someterse a aprobación un Acuerdo Extraordinario, en cuyo caso será aplazada durante un período no menor de 14 días completos ni mayor de 42 días completos y se celebrará en el lugar designado por el Presidente y aprobado por el Banco). Si en los 15 minutos (o el período más largo que el Presidente decida, sin que supere los 30 minutos) siguientes a la hora establecida para la celebración de cualquier asamblea aplazada no concurriese el quórum requerido para la adopción de cualquier acuerdo en particular, en tal caso y con sujeción a y sin perjuicio del acuerdo sobre el que deliberar (si lo hubiere) para el que sí concurra quórum, el Presidente podrá disolver la asamblea o bien aplazarla durante un período que no será menor de 14 días completos (aunque en este caso no estará sujeto a un número máximo de días completos) y se celebrará en el lugar que designe el Presidente (durante o después de la asamblea aplazada) y apruebe el Banco, y lo dispuesto en esta frase será de aplicación a toda asamblea aplazada posterior.
- (c) En cualquier asamblea aplazada, una o más Personas Aptas presentes (sea cual fuere el Valor Liquidativo de las Participaciones Preferentes que posean o representen) constituirán quórum (con sujeción a lo abajo expuesto) y estarán (con sujeción a lo abajo expuesto) facultadas para adoptar cualquier Acuerdo Extraordinario u otro acuerdo y para decidir sobre cualesquiera asuntos sobre los que hubiese podido deliberarse válidamente en la asamblea cuyo aplazamiento la dio lugar si hubiese concurrido el

quórum requerido, en el bien entendido que en cualquier asamblea aplazada entre cuyos asuntos a deliberar figure alguna de las cuestiones señaladas en la Condición 12.4(a), constituirán quórum una o más Personas Aptas presentes y que posean o representen, en total, no menos de un tercio del Valor Liquidativo de las Participaciones Preferentes que estén en circulación en ese momento.

# 12.5 Derecho de asistencia y voto

- (a) Las disposiciones por las que se rige la manera en que los Tenedores podrán asistir y votar en una asamblea de Tenedores de Participaciones Preferentes deberán ser notificadas a los Tenedores de acuerdo con lo dispuesto en la Condición 14 y/o en el momento del envío de cualquier convocatoria de una asamblea.
- (b) Todo administrador o directivo del Banco y sus abogados y asesores financieros podrán asistir e intervenir en cualquier asamblea. Con sujeción a lo anterior, aunque sin perjuicio de la definición del término "en circulación", ninguna persona estará facultada para asistir e intervenir ni tampoco ninguna persona estará facultada para votar en cualquier asamblea de los Tenedores ni para unirse a otros a fin de exigir la convocatoria de una asamblea, a menos que sea una Persona Apta.
- (c) Con sujeción a lo dispuesto en la Condición 12.6(b), en cualquier asamblea:
  - toda Persona Apta presente tendrá un voto en una votación a mano alzada; y
  - (ii) toda Persona Apta presente tendrá un voto por cada Participación Preferente en una votación nominal.

# 12.6 Celebración de asambleas

- (a) Toda cuestión sometida a deliberación en una asamblea será decidida, en primera instancia, mediante una votación a mano alzada y, en caso de empate de votos, el Presidente tendrá, en una votación tanto a mano alzada como nominal, un voto dirimente adicional al voto o los votos a los que (en su caso) tenga derecho como Persona Apta.
- (b) En cualquier asamblea, a menos que el Presidente o el Banco o cualquier Persona Apta presente (sea cual fuere el Valor Liquidativo de las Participaciones Preferentes que posea) pidan (antes o en el momento de declararse el resultado de la votación a mano alzada) una votación nominal, la declaración por el Presidente de que se ha adoptado un acuerdo por una mayoría en particular o de que ha sido rechazado o no se ha aprobado por una mayoría en particular constituirá una prueba concluyente de ese hecho, sin que sea necesario probar el número o la proporción de votos registrados a favor o en contra del acuerdo.
- (c) Con sujeción a lo dispuesto en la Condición 12.6(e), si en cualquier asamblea se pide una votación nominal, esta tendrá lugar de la manera que ordene el Presidente y, con sujeción a lo abajo expuesto, de inmediato o tras un aplazamiento tal como ordene el Presidente, y se considerará que el resultado de la votación nominal es el acuerdo de la asamblea en que se pidió la votación nominal en la fecha de celebración de la votación nominal. La petición de una votación nominal no impedirá la continuación de la

- deliberación en la asamblea sobre cualesquiera asuntos distintos a la propuesta para la que se haya pedido la votación nominal.
- (d) El Presidente podrá, con el consentimiento de (y deberá, si así se lo ordena) cualquier asamblea, aplazar la asamblea a la hora y el lugar que oportunamente se establezca. En cualquier asamblea aplazada solo podrá deliberarse sobre los asuntos acerca de los cuales pudiera haberse deliberado legalmente (de no haber sido por la falta del quórum requerido) en la asamblea que resultó aplazada.
- (e) Toda votación nominal pedida en cualquier asamblea acerca de la elección de un Presidente o de cualquier cuestión relativa al aplazamiento tendrá lugar en la asamblea previamente al aplazamiento.

## 12.7 Adopción de acuerdos

- Cualquier acuerdo adoptado en una asamblea de Tenedores válidamente convocada y celebrada será vinculante para todos los Tenedores, presentes o ausentes en la asamblea y al margen de si votan o no, y cada uno de ellos estará obligado a hacer efectivo el acuerdo en consecuencia y la adopción de cualquier acuerdo será una prueba concluyente de que las circunstancias justifican su adopción. El aviso del resultado de la votación acerca de cualquier acuerdo válidamente sometido a consideración por los Tenedores será publicado por el Banco de acuerdo con lo dispuesto en la Condición 14 en el plazo de 14 días a contar desde que se conozca el resultado, en el bien entendido que la no publicación no invalidará el acuerdo.
- (b) La expresión "Acuerdo Extraordinario" significa, cuando sea utilizada en la presente Condición 12, un acuerdo adoptado en una asamblea de los Tenedores válidamente convocada y celebrada de acuerdo con lo dispuesto en la presente Condición 12 por una mayoría consistente en no menos del 75% de las personas que voten acerca del acuerdo en una votación a mano alzada o, si se pidiera válidamente una votación nominal, por una mayoría consistente en no menos del 75% de los votos emitidos en la votación nominal.
- (c) Una asamblea de los Tenedores tendrá, además de las facultades arriba expuestas, las siguientes facultades ejercitables únicamente mediante Acuerdo Extraordinario (con sujeción a las disposiciones sobre el quórum recogidas en las Condiciones 12.4(a) y 12.4(c)):
  - facultad para aprobar cualquier compromiso o acuerdo cuya celebración sea propuesta entre el Banco y los Tenedores;
  - (ii) facultad para aprobar cualquier revocación, modificación, compromiso o acuerdo respecto a los derechos de los Tenedores frente al Banco o frente a cualquiera de sus bienes, al margen de si esos derechos emanan de las presentes Condiciones o de las Participaciones Preferentes o bien de otro modo;
  - facultad para convenir en cualquier modificación de las disposiciones recogidas en las presentes Condiciones o las Participaciones Preferentes, que sea propuesta por el Banco;

- (iv) facultad para conceder cualquier autorización o aprobación que haya de otorgarse, en virtud de lo dispuesto en la presente Condición 12 o en las Participaciones Preferentes, mediante Acuerdo Extraordinario;
- (v) facultad para nombrar a cualesquiera personas (scan o no Tenedores) como comité o comités para representar los intereses de los Tenedores y para conferir a tal(es) comité(s) cualesquiera facultades o potestades discrecionales que los Tenedores podrían, ellos mismos, ejercitar mediante Acuerdo Extraordinario;
- (vi) facultad para aprobar cualquier acuerdo o propuesta para el canje o la venta de las Participaciones Preferentes por, o para la conversión de las Participaciones Preferentes en, o para la cancelación de las Participaciones Preferentes en contraprestación de, acciones, valores, obligaciones, bonos, obligaciones simples, acciones con rendimientos periódicos preferentes y/u otras obligaciones y/o valores del Banco o de cualquier otra sociedad constituida o por constituir, o por o en o en contraprestación de dinero en efectivo, o parcialmente por o en o en contraprestación de acciones, valores, obligaciones, bonos, obligaciones simples, acciones con rendimientos periódicos preferentes y/u otras obligaciones y/o valores como los arriba indicados y parcialmente por o en o en contraprestación de dinero en efectivo; y
- (vii) facultad para aprobar la sustitución de cualquier entidad en lugar del Banco (o de cualquier sustituto anterior) como deudor principal respecto a las Participaciones Preferentes.
- (d) Con sujeción a la Condición 12.7(a), para ser adoptado en una asamblea de Tenedores válidamente convocada y celebrada de acuerdo con lo dispuesto en la presente Condición 12, un acuerdo (distinto de un Acuerdo Extraordinario) requerirá una mayoría de las personas que voten acerca del acuerdo en una votación a mano alzada o, si se pidiera válidamente una votación nominal, una mayoría de los votos emitidos en la votación nominal.

# 12.8 Otras disposiciones

- (a) Las actas de todos los acuerdos y deliberaciones en cada asamblea serán levantadas y debidamente anotadas en los libros que sean oportunamente llevados a tal efecto por el Banco y cualesquiera actas firmadas por el Presidente de la asamblea en la que se haya adoptado cualquier acuerdo o haya tenido lugar cualquier deliberación serán la prueba concluyente de las cuestiones recogidas en ellas y, hasta que se demuestre lo contrario, toda asamblea respecto a cuyas deliberaciones se hayan levantado actas se considerará válidamente celebrada y convocada y todos los acuerdos adoptados o las deliberaciones acaecidas en la asamblea se considerarán válidamente adoptados o acaecidas.
- (b) A efectos del cálculo de un período de dias completos, no se tendrá en cuenta el día de comienzo de un período ni el día de finalización de un período.
- (c) Cualquier modificación o renuncia a exigir el cumplimiento de las Condiciones, de conformidad con la presente Condición 12, deberá proceder en la forma prevista en la

Normativa Bancaria Aplicable, estando sujeta a cualquier contacto anterior con la Autoridad Competente exigido en las presentes Condiciones.

#### 13 FISCALIDAD

- 13.1 Todos los pagos de Remuneración y demás importes pagaderos (excluyendo, a efectos de aclaración, en concepto de devolución del principal) en relación con las Participaciones Preferentes por el Banco o en su nombre se efectuarán libres de, y sin retenciones o deducciones por o a cuenta de, impuestos, exacciones, derechos, liquidaciones o cargas gubernamentales de cualquier índole, ya scan presentes o futuros, a menos que dicha retención o deducción deba practicarse por ley. En caso de que dicha retención o deducción sea gravada o impuesta por o en nombre del Reino de España o de cualquier subdivisión política del mismo o de cualquiera de sus autoridades, administraciones o agencias con competencias impositivas respecto a pagos de Remuneración (pero no respecto a cualquier Valor Liquidativo u otro importe), el Banco (en la medida en que tales pagos pudieran efectuarse con arreglo a los mismos presupuestos que sirven de base al pago de cualquier Distribución de conformidad con lo dispuesto en la Condición 4 anterior) abonará los importes adicionales que conlleven que los Tenedores reciban los importes que habrían recibido respecto a esa Remuneración de no haber sido necesario practicar tales retenciones o deducciones.
- 13.2 El Banco no estará obligado a abonar ningún importe adicional en relación con los pagos relativos a las Participaciones Preferentes:
  - (a) que se presenten al pago por o en nombre de un Tenedor sujeto a dichos impuestos, exacciones, derechos, liquidaciones o cargas gubernamentales respecto de las Participaciones Preferentes a causa de tener alguna vinculación con España distinta a:
    - (i) la mera tenencia de Participaciones Preferentes; o
    - (ii) la percepción de cualquier pago respecto a las Participaciones Preferentes; o
  - (b) en caso de que el Reino de España (o cualquier subdivisión política del mismo o de cualquiera de sus autoridades o agencias con competencias impositivas) grave con impuestos (i) cualquier patrimonio, herencia, donación, venta, transmisión, bien personal o con impuestos similares; o (ii) debido exclusivamente al nombramiento por cualquier Tenedor, o por cualquier persona a través de la cual ese Tenedor posea dicha Participación Preferente, de un depositario, agente de cobro, persona o entidad que actúe en su nombre o una persona similar en relación con esa Participación Preferente; o
  - (c) a un Tenedor, o a un tercero que en nombre de dicho Tenedor, que en cada caso fuera persona física residente a efectos físcales en España (o en cualquier subdivisión política de España o de cualquiera de sus autoridades con competencias impositivas); o
  - (d) a un Tenedor, o a un tercero que actuara en nombre de dicho Tenedor, respecto del cual el Banco (o cualquier agente que actuara en nombre del Banco) no hubiera recibido aquella información que el Banco pudiera solicitar a efectos de cumplir las obligaciones de información a su cargo previstas en la legislación española, conforme fuera necesario a efectos de realizar los pagos que procedan por razón de dichas Participaciones Preferentes sin sujeción a ninguna forma de retención o deducción a cuenta de

cualesquiera impuestos españoles, incluyendo en aquellos casos en que el Banco (o cualquier agente que actuara en nombre del Banco) no recibiera dicha información sobre la identidad y residencia fiscal del Tenedor que fuera necesaria para cumplir con los procedimientos que pudieran establecerse para cumplir con la interpretación del Real Decreto 1065/2007 que pudieran realizar las Autoridades Fiscales españolas.

Sin perjuicio de lo previsto en cualquier otra disposición de las presentes Condiciones, las sumas que el Banco vaya a abonar respecto a las Participaciones Preferentes serán pagadas netas de cualquier deducción o retención impuesta o exigida de conformidad con un convenio descrito en el artículo 1471(b) del Código Tributario de EE. UU. de 1986 en su forma vigente o conforme pudiera haber sido modificado o sustituido en cada momento (el "Código"), o que puedan imponerse de otra forma de conformidad con los artículos 1471 a 1474 del Código y los reglamentos o convenios en virtud del mismo o las interpretaciones oficiales del mismo ("FATCA") o cualquier ley mediante la que se aplique un enfoque intergubernamental a FATCA.

A efectos de la presente Condición 13, la "Fecha Relevante" significa con respecto a cualquier pago, la fecha en que dicho pago vence por primera vez y está disponible para su pago a los Tenedores; se notificará debidamente a los Tenedores de conformidad con la Condición 14 a continuación.

Véase el apartado "Fiscalidad" para obtener una descripción más completa de ciertas consideraciones fiscales de interés en relación con las Participaciones Preferentes.

#### 14 NOTIFICACIONES

El Banco se asegurará de que todas las notificaciones se publiquen debidamente de manera que se ajusten a las normas y reglamentos de cualquier bolsa de valores o cualquier otra autoridad competente en la que cotizaran y/o hubieran sido admitidas a negociación en dicho momento las Participaciones Preferentes.

Mientras las Participaciones Preferentes se coticen y admitan a negociación en AIAF, en la medida en que lo requieran las normativas aplicables, el Banco se asegurará (i) de que la comunicación de todos los avisos se haga pública en el mercado a través de una comunicación de información privilegiada o de una comunicación de otra información relevante, según sea el caso, que se presentará a la CNMV y se publicará en el sitio web oficial de la CNMV enwww.enmv.es y (ii) de que todas las notificaciones se publiquen en el Boletín de Cotización de AIAF.

Las notificaciones se entenderán realizadas en la fecha de su anuncio o, en el caso en que fueran publicadas en varias ocasiones, en la fecha de su primer anuncio o publicación. Si la publicación referida anteriormente no fuera posible, se admitirá la notificación en cualquier otra forma, entendiéndose realizada dicha notificación en la fecha en que fuera practicada, conforme pudiera autorizar el Banco.

De forma adicional, en tanto en cuanto las Participaciones Preferentes se encontraran representadas por anotaciones en cuenta en Iberclear, todas las notificaciones a los Tenedores se realizarán a través de Iberclear para su transmisión por esta última a los respectivos titulares de cuenta.

### 15 PRESCRIPCIÓN

En tanto en cuanto resulte de aplicación el Artículo 950 del Código de Comercio español a las Participaciones Preferentes, las reclamaciones relativas a las Participaciones Preferentes se extinguirán a menos que se presenten debidamente en el plazo de tres años a partir de la correspondiente fecha de pago.

### 16 Ley Aplicable y Jurisdicción

- 16.1 Las Participaciones Preferentes y todas las obligaciones extracontractuales que surjan de, o en relación con, las Participaciones Preferentes se regirán e interpretarán con arreglo a la legislación española.
- El Banco acuerda irrevocablemente, en beneficio de los Tenedores, someterse a la jurisdicción de los juzgados y tribunales de la ciudad de Barcelona, España, para resolver cualesquiera disputas y controversias que puedan surgir de, o en relación con, las Participaciones Preferentes (incluidas las controversias relativas a las obligaciones extracontractuales que surjan de, o en relación con, las Participaciones Preferentes) y, en consecuencia, acepta que cualquier demanda, acción o procedimiento que surja de, o en relación con, las Participaciones Preferentes (conjuntamente, los "Procedimientos") pueda presentarse, emprenderse o iniciarse ante dichos juzgados y tribunales. El Banco renuncia irrevocablemente a cualquier objeción que pudiese tener en la actualidad o en el futuro a la competencia jurisdiccional de los juzgados y tribunales de la ciudad de Barcelona, España sobre cualquier Procedimiento. En tanto en cuanto así lo permita la ley, ninguna de las disposiciones contenidas en la presente Condición 16 limitará el derecho a iniciar Procedimientos contra el Banco en cualquier otro juzgado o tribunal competente, y el hecho de iniciar un Procedimiento en una o varias jurisdicciones no impedirá que se inicie un Procedimiento en cualquier otra jurisdicción competente, ya sea o no de forma simultánea.